

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Subcommittee on  
Land Use

March 15, 1993                      Hearing Room 137 4:30 p.m.                      Tapes 9 -10  
MEMBERS PRESENT: Sen. Ron Cease, Chair Sen. Bob Shoemaker Sen. Gordon  
Smith MEMBERS EXCUSED: None STAFF PRESENT:            Chris Warner,  
Administrator Debi Garrigues, Committee Coordinator Pamella Andersen,  
Committee Clerk MEASURES CONSIDERED:            Secondary Land Use SB 489  
WITNESSES:            Art Schlack, Association of Oregon Counties Russ Nebon,  
Chief Planner, Marion County Sue Cappellis, Jackson County Commissioner  
Roy Burns, Planning Director, Lane County Brent Curtis, Planning  
Manager, Washington County Mike Probst, Polk County Commissioner Jack  
Chapin, Marion County Farm Bureau, Mission Bottom Association Inc. Bruce  
Chapin, Marion County Farm Bureau, Mission Bottom Association Inc. Ron  
Chapin, Marion County Farm Bureau, Mission Bottom Association Inc.  
Richard Angstrom, OCAPA Frank Morse, Morse Brothers Greg Wolf, Assistant  
Director, Land Conservation and Development Larry George, Oregonians in  
Action

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statements made during this session. Only text enclosed in quotation  
marks report a speaker's exact words. For complete contents of the  
proceedings, please refer to the tapes.

TAPE 9, SIDE A 004 CHAIR CEASE: Calls the meeting to order at 4:43 p.m.  
- Opens the discussion on secondary land use. DISCUSSION ON SECONDARY  
LAND USE - EXHIBITS A through C Senate Committee on Agriculture and  
Natural Resources Land Use Subcommittee March 15, 1993 - Page 2

ART SCHLACK: (introduces EXHIBIT A) Introduces four persons accompanying  
him. - References Exhibit A. - Notes Resolution 93-B 1, which was  
adopted February 8, 1993, by the Board of Directors of the Association  
of Oregon Counties. 045 - It indicates major roles and responsibilities  
for LCDC. - It would remove administrative functions the department has  
assumed over the last few years. - AOC supports provisions that local  
land use decisions apply only to specific cases until LCDC has afforded  
local governments a hearing relative to land use appeals. 068 - Notes  
what they support and do not support as stated on Exhibit A. - Mentions  
the important element of bringing together state and local governments  
in the planning process. - HB 3525 provides for expansion of LCDC from 7  
to 9 members with specific requirements of new members.

119 SEN. SMITH: County planners offering testimony last week were  
very favorable to LCDC. You have a different view. SCHLACK: My comments  
are directed toward the overall program of LCDC and the relationship  
between the state and local government. - Comments by other county  
representatives here will give you more insight. - There are changes we  
would like to see implemented to facilitate ease of use at the local  
level. 135 - You have heard from only a few of the 36 counties in the  
state.

CHAIR CEASE: We will try to hold questions other than for those from out  
of town.

152 RUSS NEBON: (introduces EXHIBIT B) Offers testimony on LCDC rules.  
- Reviews a few of the problems in the rules as noted in Exhibit B. - If  
the rule amendments had been balanced between all counties they would  
have been found more acceptable. - Mandating these changes is a heavy  
handed approach. - Counties are concerned the state will not come close  
to covering the cost of implementing these requirements. 195 -

References the "Smith" court case. - Non-mandated western counties almost have to designate small resource lands and adopt greater restrictions on high value farmlands because of the provisions designed for eastern counties. - Technical committees were given little latitude on the forest side to modify the proposal. - 1000 Friends has noted in the House they intend to litigate two criteria extensively.

229 SEN. SHOEMAKER: What are those two uncdefined criteria?

NEBON: I will forward that information to you. - The Commission's restraint is reflected in the limits on uses in standards applicable in the small scale resource zone. - They "slam dunked" the high value zone and made it very restrictive. .\` . .

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263 SUE C APPELLIS: We have been following this entire process. - We have done preliminary mapping. - We were interested in the secondary lands program. - Our mapping was to determine if small scale mapping would create any secondary lands. - We don't believe it will net a lot of small scale land. - Several of the results are going to be hard to live with. - Lists those results (i.e., manzanita and scrub oak in a forest resource zone requires a forest plan.) 311 - The grazing plan criteria won't create much secondary lands or possibility for dwellings, and so is far to strict for our area. - We are one of the mandatory counties, to which we objected. - This will be extremely costly. - Elaborates on funding diffflculties for their jurisdiction. SEN. SHOEMAKER: When you say you won't emerge with much small scale resource land, how did you come to that conclusion? CAPPELLIS: I am unprepared to answer that. - The AUM criteria doesn't work in Jackson County. It requires too much acreage to meet small scale criteria. - Very few farms in Jackson County gross the \$20,000 income level; \$10,000 to \$15,000 is more realistic. - Notes impact of rainfall on their land. 383 R O Y BUR NS: (introduces EXHIBIT C) We do not believe this is a secondary lands program, but a primary lands program. - Reviews fundamental problems with the process and the product. - There is a reversal of roles and relationships between the State and counties. - Lane County is one of the 11 counties. -They are concerned LCDC has gone beyond their authority in establishing high value map designations through administrative rule. 445 - Lane County questions the authority of LCDC to require us to voluntarily withdraw from the marginal lands program. - The new rules make substantial changes to agricultural lands and impose those changes effective August 7, 1993. - They impose substantial changes to non-forest dwellings effective January 3, 1993. TAUPE 10, SIDE A BURNS: Gives example of commercial forest base set aside. - A secondary category of forest land, impacted by development activities should be where forest dwellings are directed, but the rules won't allow it. - We have estimated a cost of \$6,000 to implement this re-acknowledgment. - Urges serious consideration to the amendments to Goals 3 and 4 so local planning efforts can be directed by counties.

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032 BRENT CURTIS: Washington County has long sought a secondary lands program. - They wished a single program instituted at the volition of the local government. ~ There is increased discussion of the program being mandatory rather than optional. - The rules place our county in one of the mandatory positions. - We face having to have planning completed by 1996. - We are an urban planning entity. - Notes deadlines they have to comply with requirements. - Urban planning requires substantial financial commitment. - There is a lot of urban planning coming soon. 069 - Our government is trying to determine its priorities. - The potential payoff causes us to question why we should be a mandatory county. - We expect to have much more EFU land at the end than we now have. - We see no prospects for small scale. - Where small scale makes the most sense does not fit within the requirements. - We are serious about meeting our planning responsibilities. - This program at this time does not meet our county's needs. - A program that is not optional and fully funded by the State and does not count on local decision making on planning issues will fail to be embraced at the local level. - We urge the Committee to continue refinements to the small scale resource package. 110 MIKE PROBST: This secondary land use proposal is probably the first time there was a fully supportive vote on a land use issue in our committee: - A statewide rule has to have flexibility as we have a diverse state. - Polk County has diverse land at both ends of the spectrum. - The counties wanted a secondary land proposal when it was first mentioned. 148 - What we expected was not what was developed. - In our county, we have learned to live with this. - Now that we are a mandatory county, we have to redistrict, and people won't have their expectations fulfilled. - We haven't had the money to make a detailed study. - We expect to have a lot more restrictions.

SEN. SHOEMAKER: We heard from your counterparts in various counties last week. Have you spoken with those planners to determine how this might work in your county?

190 PROBST: I haven't had a chance to talk to Benton County. I have spoken to counties in the pilot program.

NEBON: The planners had a meeting and discussed the testimony you heard. - Offers a summary of the results by county. - in Union County, rangeland testing seems to work. in Deschutes County, there is a highly parcelized farmland situation. - in Benton County, parcelization was the controlling factor. - We have problems with low productivity.

214 CHAIR CEASE: Announces the subcommittee will begin meeting regularly on Monday nights. - Opens public hearing on SB 489.

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PUBLIC HEARING ON SB 489 - EXHIBITS D through O

235 JACK CHAPIN: (introduces EXHIBIT D) Offers testimony in support of

SB 489 . - All testimony he has given before the Legislature over the years has been intended to preserve the integrity of the exclusive farm use zone and to protect the good farmland and the farming industry.

- In 1989, HB 2862 passed taking most decision-making authority from the local governing body and setting only two criteria for approval of a gravel extraction permit. - Reads ORS 215.296. - Lots of money and lawyers make it difficult for farmers to prove that changes and costs inflicted are significant. - Prime land is being destroyed for future generations. - Relates personal experience on neighboring farms that are on prime gravel extraction sites. - Continues relation of legislative history. - In 1991, SB 97 was passed, which mandates protection of aggregate sites. - This resulted in the imposition of restrictive overlay buffer zones on farm lands adjacent to aggregate sites. - Gives example of what cannot be done on the buffer zone. - Assurance can't be secured that existing dwellings in those zones will be allowed to remain. - Reads yellow highlighted section of Exhibit D, under Goal 5. - Lists the ESEE analysis' three options government should pursue in addressing conflicting uses. - None of the options is to curtail aggregate mining. 380 - When aggregate mining is concluded, there is nothing left that is useable. -Quotes from the Oregon Farm Bureau policy book, page 11, lines 29 and 30 that Goal 5 should not be used to restrict Goal 3 and 4 land uses. 422 - References letter from the Director of the Oregon Department of Agriculture attached to Exhibit D. - SB 489 does not stop the industry from supplying gravel but it does stop expansion on prime farmland and the imposition of restrictive buffer zones on surrounding farmlands. - It is a simple, easy to understand and administer bill. - It will accomplish the purpose of saving farmland. - Anne Squier states it does not change the wording of the Goals. - Urges support of the bill. - The farmers need help as they are in an inequitable legal and financial position.

TAPE 9, SIDE B CHAPIN: Compares capital and interest with a hypothetical situation of a loan at 8% that can be spent on one item or invested in something that brings a continuing return. - I bought a farm with an existing gravel pit. I stopped the sale of gravel as soon as I could. It is now a farm again. - Future generations need the Legislature to act now. 042BRUCE CHAPIN: (introduces EXHIBIT E) Gives his background and experience and offers testimony in favor of SB 489. - The bill does not affect existing gravel operations. .W ,.,

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- It only draws a line for purposes of preventing additional encroachment. - Offers summary of soil capacity classes and their uses. - Discusses quarry rock and its uses. - References the last page of Exhibit E. 084 - In the south Atlantic, 95 percent of the rock mined is from quarries; the figure is 53 percent in Oregon. - Gives examples of businesses in Oregon using quarry rock. - Indicates where alluvial rock deposits can be found. - There is no legitimate justification for permanently destroying farm land to obtain a resource as plentiful as rock.

SEN. SHOEMAKER: Quarry rock has a slight economic disadvantage compared to what?

B. CHAPIN: Compared to alluvial rock.

SEN. SMITH: Does the aggregate industry across the Columbia River have the same restrictions on locating rock that is proposed here? Would we be put at a competitive disadvantage in the Portland market?

B. CHAPIN: I am not familiar with what is happening in Washington.

148 RON CHAPIN: (introduces EXHIBIT F) Offers testimony in support of SB 489 . Notes personal background and experience. - Averages the price of aggregate land. - Notes the varying sale price of land when offered for differing uses. - The opportunity for a farmer to buy land on the open market will be eliminated due to the economic impacts of competing with gravel interests for the land. - The inflated value will have to be used to determine various taxes which would be higher than if the land were valued based on farming. -Notes the taxes on land should it be determined aggregate useful. -Offers personal history with relation to farming and the cost of buying new property. - Radical inflation will make it impossible to purchase new land. - Groundwater quality is seriously threatened by the depth of mining required to economically remove the gravel from under the rich topsoil (some soil depths are 15 to 20 feet, requiring mining to depths of 90 feet below the water level). 225- This will mix various aquifers and expose the groundwater to surface runoff. - Notes specific mining practices that stir up mud and sediment and damage the aquifer. - Mentions impacts of these mining practices on his personal well water which stinks, is higher in iron and is no longer drinkable. - Some of the finest farmland in the world is at stake.

SEN. SHOEMAKER: What percentage of prime farmland would be sought by aggregate producers?

270 R. CHAPIN: Only the land that lies in the river flood plains is being sought.

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J. CHAPIN: In our area, the parks have taken a certain amount of the existing land, other aggregate companies in the north Keizer area are encroaching on the remainder.

298 RICHARD ANGSTROM: (introduces EXHIBIT G) Offers testimony in opposition to SB 489. - The Chapins' testimony indicated the problems we face anytime we want to site a company. - Sand and gravel deposits are really only found in the rivers and alluvial deposits. - When we build roads or buildings, the quality of rock is crucial. 344 - Gives examples of ground rock resources in inconvenient locations and lists the places that don't have rock. - It is not easy to find high quality rock. Much of the gravel won't meet ODOT regulations. - Notes the total aggregate demand in Oregon. - Industry considerations in siting are complicated. Each company has a specific type of demand for its rock. Some focus on concrete, others make high quality asphalts. 400 - Gives examples of criteria they use to find good land. - Notes how and why

they dig deeper holes. - References tables attached to Exhibit G. -  
Reviews legislation in the past years.

TAPE 10, SIDE B

ANGSTROM: We reclaim sites after we finish mining. - Reviews the flow  
chart on the affects of SB 489 in the packet. - This bill would destroy  
the sand and gravel industry. - This would cost Oregonians a great deal  
by increasing taxes.

050 FRANK MORSE: Shows slides depicting aerial overviews of operations  
this bill would put out of business. 105- This is an extreme  
proposal by persons with a narrow focus. - The conflict in Marion  
County between Morse Brothers and the Chapins should not spill over into  
the industry. - One industry should not put another out of business.  
- The cost of doing this exceed the benefits.

SEN. SHOEMAKER: What portion of the potentially affected farmlands would  
be used for aggregate over 50 years time? We need a view of the  
magnitude of the problem.

MORSE: In Marion County, our expansion proposal is for 490 acres. Not  
all that would be mined; a good share would remain in farming. - That  
represents 1/10 of one percent of the class I through IV soils in Marion  
County. - That site would last in excess of 100 years. - That site would  
represent 20 to 30 percent of the county's needs. 140 ANGSTROM: Lane  
County also uses about 3 million tons a year, which would consume about  
1500 acres of EFU class I through IV soils over 100 years. - They have  
180,000 acres of those classes of EFU land. - Shallower sites require  
more acreage. -

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SEN. SHOEMAKER: Reclamation; once reclaimed, is this land again usable  
as farmland?

ANGSTROM: Most to the time we leave a lake which can be reclaimed in a  
variety of ways. - We are creating wildlife habitats. - Ten percent of  
the time, we do reclaim it into farmland. - In Bend and the coastal  
areas, they commonly go back into production. SEN. SHOEMAKER: Where do  
you get the high class soil with which to reclaim it?

MORSE: It is the overburden that is removed and set aside and then  
returned.

190 GREG WOLF: The Department and Commission are obvious supporters of  
the protection of good agricultural land. - Recent rules have  
narrowed the uses allowed on those lands. - Aggregate is also an  
important part of the natural resource base. - We believe the Goal 5  
process the Commission uses is a good way to balance these conflicting  
uses. - Competing uses are sometimes wildlife habitats and other  
natural resource uses. -Conflicts are resolved at the local level.  
- The local government has to inventory the existing resources,  
identify conflicting uses and balance those. - Successes exist in  
Deschutes, Polk and Washington Counties. - An example of the critical  
nature of the location of these resources is in Crook County, where

Highway 97 improvements required a close rock source in order to maintain low costs for the state. 239 - Tillamook County worked with the Department of Fish and Wildlife to address in-stream gravel removal impacting spawning habitats for salmon. - If we are able to protect these strategically located sites, we will find there is significant savings to the state. - Those can be weighed against the need to protect good agricultural land.

SEN. SMITH: A charge was made by Mr. Chapin relative to the sale and resale value of agricultural land as impacted by aggregate producers. - Is this inflation really being felt out there? Will state taxes be radically increased because of the impact of the aggregate industry on farmers?

268 WOLF: I don't think we have studied the effect of aggregate proposals on the price of land.

SEN. SMITH: There is no rush on the aggregate business on the part of farmers is there?

WOLF: Our emphasis is to have the counties deal with this on a county-wide basis. - We have no knowledge of the related financial issues.

SEN. SMITH: Your focus is to prevent abuse?

WOLF: We are focused on the planning issues.

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CHAIR CEASE: The point you are making is you have state guidelines and goals but the actual decision is made at the local level. - Property adjacent to a successful aggregate operation would have its value impacted?

WOLF: Additional areas would have to be reviewed through the Goal 5 process.

CHAIR CEASE: You have a request for a zone change at the local level? What options does the county have for dealing with this?

WOLF: The county needs to follow the Goal 5 process. - That can be done several different ways.

332 LARRY GEORGE: I agree with Greg Wolf's statements. - We oppose SB 489 because it arbitrarily restricts mining. - It constricts the industry without any flexibility. - The main point is Goal 5 already deals with evaluation of property. A reciprocity of benefits and burdens exists.

363 CHAIR CEASE: Closes the public hearing. - Adjourns the meeting at 6:34 p.m.

Submitted by, Reviewed by,

EXHIBIT LOG:

A Testimony on Overview of State Land Use Planning Process and issues  
Related to Secondary Lands, Arthur Schlack, 4 pages B Testimony on  
Secondary Land Use, Russ Nebon, 1 page C Testimony on State Land Use  
Goals 3 :£ 4, Oregon Administrative Rule Amendments, Roy Burns, 2 pages  
D Testimony on SB 489, Jack Chapin, 12 pages E Testimony on SB  
489, Bruce Chapin, 4 pages F Testimony on SB 489, Ron Chapin, 15  
pages G Aggregate Resources, Richard Angstrom, 7 pages  
H Evaluation Criteria for Construction Aggregate Sites, Ron Geitgey,  
2 pages I Testimony on SB 489, Gail McEwen, 2 pages J Testimony on  
SB 489, Charles Gehley, 1 page K Testimony on SB 489, Eugene Lasater,  
2 pages L Testimony on SB 489, Scott Erickson, 1 page M Testimony  
on SB 489, Matt Cyrus, 1 page N Testimony on SB 489, Henry Horvat, 1  
page O Testimony on SB 489, Linda Reynolds, 2 pages