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KELLY -

BRIEFING

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(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MEMORANDUM

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Committee Meeting, February 8, 1984

DATE: February 7, 1984

At the request of the Resources Development Council, the Senate Resources Committee has invited Kelly Ross, a former aide to Mark Hatfield and now a county commissioner in Curry County, Oregon, to share his views on land management with committee members. Mr. Ross has had extensive experience with the Oregon Land Conservation and Development Commission, an entity charged with developing statewide goals and guidelines for land use planning. Based on this experience, he will brief the Senate Resources Committee and the Senate Special Agriculture Committee on agriculture and land planning issues. The meeting will be held on Wednesday, February 8, at 3:00 pm in the Beltz Room. Attached are two articles written by Mr. Ross.

Prior to the briefing by Kelly Ross, the Committee will consider HJR 56, which commends and encourages the Alaska-Yukon Trail Association as it stages the Yukon Quest. The first annual Yukon Quest, a 1000 mile sled dog race over the Gold Rush Era route from Fairbanks to Whitehorse, will begin February 25, 1984.

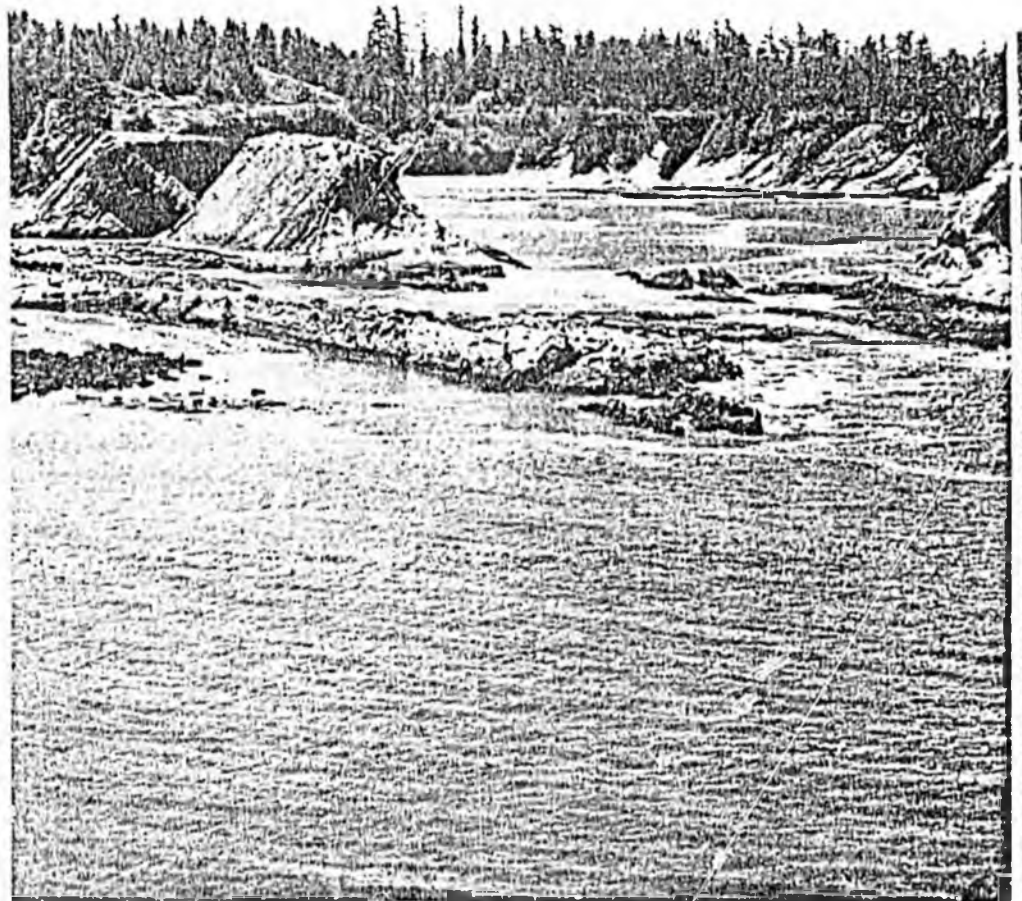
BY KELLY ROSS

"GOING TO OREGON is almost like traveling to English-speaking Canada," observes the *1982 Almanac of American Politics*: "the society is clearly similar, but everything is arranged in a slightly different way and the assumptions that guide public policy are noticeably different." In no area have those assumptions been more different than in the state's policies concerning private property. Beginning with the Oregon Beach Bill of 1967, under which the state declared its ownership of the entire shoreline from extreme low tide up to the 16-foot elevation, a series of legislative acts has aimed at preserving the countryside but has evidenced little regard for those who might own a part of it.

When Oregon's census figures grew by 18 percent during the 1960s and 25 percent during the '70s, many long-time residents displayed a strong xenophobic reaction. Automobiles sprouted bumper stickers reading "Don't Californicate Oregon." The James G. Blaine Society was chartered, dedicated to "various graceful, poetical, vague, and sinister means of discouraging overpopulation of Oregon." And, in a nation that has long equated population growth with prosperity and success, then-Governor Tom McCall publicly urged people to come visit but not stay.

These high feelings reached a crescendo in 1973, when the legislature passed Senate Bill 100, establishing a statewide system of land-use planning. An innocuously named Land Conservation and Development Commission (LCDC)—seven appointed members and their staff—was given considerable power over all land, air, and water resources. The commission was charged with developing what were to be known as "statewide planning goals" and with identifying "areas of critical state concern and activities of statewide significance." These would become the standards for approving or rejecting comprehensive plans that each city and county was required to develop and submit to the LCDC.

The first 14 "goals" were adopted in December 1974, and 5 more were added over the next two years. So vague and general were they that few except the LCDC could fully understand what was required to meet them. Goal 5 for example, is to "conserve open space and protect natural and scenic resources." It requires that "programs be provided that will: (1) increase open space, (2) protect scenic and historic areas and natural resources for future generations, and (3)



Losing Ground

Despite widespread dissatisfaction with it, the nation's toughest land-use control law keeps surviving challenges.

promote healthy and visually attractive environments in harmony with the natural landscape character."

The guiding idea of these goals was to make sure that most future growth was within established urban areas, leaving the more pastoral areas in their pristine state. This aim is clearly expressed in Goal 14, which is "to provide for an orderly and efficient transition from rural to urban land use." To implement this goal, the commission stipulated that "urban growth boundaries shall be estab-

lished to identify and separate urbanizable land from rural land."

As one might guess, the value of land outside these "urban growth boundaries" dropped dramatically once its use was so limited. Coos County Commissioner Ed Stevenson estimates that the 1973 law has translated into a \$50-million loss in property value in mostly rural Coos County.

It is interesting to note that in passing Senate Bill 100, the legislature recognized that there could be an adverse in-



N Oregon

pact on some private property owners. One provision of the bill established a committee to study and make recommendations "on the implementation of a program for compensation by the public to owners of lands for the value of any loss of use resulting directly from the imposition of any zoning, subdivision or other ordinance regulating or restricting the use of such lands." Oregonians felt a sense of foreboding when the committee reported back in 1976 that an adequate compensatory program would exhaust the resources of the state treasury. But instead of pausing to ask, Why devalue so much property if we can't pay for it? the legislature blissfully ignored the issue. Since compensation was impossible, it was no longer of concern.

Under the law, comprehensive plans by each city and county were to be completed and approved by the end of 1975, but as of September 1982, only 151 of a total 281 plans had gained the endorsement of the LCDC. Those involved in the system continually found themselves having to revise procedures in response to new law created by court decisions or bureaucratic whim, then revising the revised procedures in response to the next directive. Between 1973 and 1981, \$29.4 million of state and federal taxpayers' money was spent in administering the program. Counties expended an additional \$10-\$15 million and landowners millions more in trying to work within the law.

The complexity of the law gave birth to an army of "planning consultants" whose job it was to generate the mountain of paperwork required for even the most simple project, since every proposal for change had to address every statewide planning goal. A 1972 Oregon Supreme Court decision made things even more difficult by upholding a requirement that applicants for a zone change or subdivision prove not only that the development was legal but that it was *needed* and that *other* suitable property was not available!

Land-use economists were called to testify in public hearings that there was demand for a given project and that the demand constituted a public need. Realtors were asked to testify that they had unsuccessfully searched the marketplace for other available property or, if other property was available, why it was unsuitable. Befuddled property owners wondered what earthly difference it made whether there was other property available when they were interested in the property they owned. In the event that approval was given at the local level, the system almost encouraged appeals to higher bodies. Opponents of change didn't even need to show that they were specifically being affected, since legal standing to file an appeal was granted to any individual or group interested enough merely to testify at the local hearing.

The path of one case could take years to complete, and throughout, the burden of proof was always on the property owner. A former vice-chairman of the LCDC was forced to conclude, writing in the *Willamette Law Review*, that "only the rich, the extremely tenacious or those paid annual salaries to advocate can afford to persevere in such a system."

By 1976, RANCOR against the program was such that enough signatures were gathered to put the entire matter on the ballot for voters to decide. The LCDC survived by a 57-to-43 percent margin. Two years later, in 1978, the issue was once more on the ballot and again was supported, this time by an even wider margin of 60 to 40 percent. After the 1978 defeat, LCDC opponents were becoming resigned to control of private property resting in the hands of a capricious state bureaucracy. But in 1979 a new development markedly changed Oregon's way of life: national interest rates rose to levels that in years past had been prohibited by usury laws.

To fully appreciate the implications of such a shift, one must understand the extent to which the state is dependent on the timber industry. It has been accurately said that when the housing market cools, Oregon freezes. When national housing starts cooled from 2 million units in 1978 to 1.1 million in 1981, three-quarters of Oregon's approximately 28,000 lumber mill workers were frozen out of work or were working less than a full shift. By July 1982, of the 197 lumber mills usually in full production, 73 had closed and 54 were running at less-than-normal capacity. Statewide unemployment rose from 6 percent in 1978 to 12.5 percent in 1982.

The ripple effect was startling. State income tax revenues declined so rapidly that the legislature had to be called into special session three times in 1981 to deal with projected budget deficits. Stores desperate to move merchandise ran continuous clearance sales, even during the usually busy Christmas season. Real estate foreclosures in one county hit 250 per month. And by 1981 the no-growth advocates saw their goal met: figures from Portland State University's Center for Population Growth showed that, not only had Oregon's population growth stopped, but more people were now leaving the state than were arriving.

In the midst of such turbulence, people were beginning to ask why, in this era of high technology, Oregon was still at the mercy of national demand for its forest products. Conferences were held, consultants retained, and studies made, all to determine how best to deal with the economic problems.

With near unanimity, the experts announced that Oregon suffered from an antibusiness image. Frank Cappiello, a panelist on the PBS television series *Wall Street Week*, summed up the situation quite well when he told an economic

development conference, "The perception we have of Oregon in the East is that it really doesn't want industry. Oregon is perceived as wanting a nice, clean, self-contained environment. Investors look around... and go to Arizona, where people are perceived to be more concerned about jobs. One day people who worry about the clear environment will be able to see the Cascade Mountains, but they won't be able to eat."

To confirm this view, an annual study of business climates in the 48 contiguous states by the accounting firm of Alexander Grant Co. ranked Oregon 36th in 1982. As an example of the indifference shown to industry, Allen E. Wood, director of real estate and plant siting for the \$10-billion-a-year Westinghouse Electric Corp., told a reporter for the *Portland Oregonian* how he contacted the Oregon Department of Economic Development for information on industrial land in the state. The material he finally received, after sending in \$15 for handling costs, consisted of brochures detailing campground opportunities. But the coup de grâce was a scorecard published by *National Industrialist* magazine showing how many new industries each state had attracted during the first half of 1981: North Carolina, 179; Texas, 303; Florida, 191; and Oregon, only 4.

Hurting from such rejection, public officials and civic groups suddenly scrambled to find ways to change the state's image. Early attempts bordered on the bizarre. Gov. Victor Atiyeh at one point proposed dynamiting one of the signs along the Oregon-California border welcoming visitors to the state. Because the sign read "Hope You Enjoy Your Visit," Atiyeh felt there was the inference that Oregon would take tourist dollars but still didn't want anyone to move in for good. Plans for the publicity stunt were dropped when someone pointed out that the massive carved wooden sign was worth over \$15,000.

More rational thinkers, however, were increasingly pointing to the state's land-use laws and the LCDC as the main culprit in Oregon's bad business reputation. Since 1978, when the issue was last on the ballot, the planning bureaucracy had made many enemies. Becoming impatient with local governments to conform to its edicts, the commission began exercising its broad enforcement powers. Curry County suffered for two years under a total building moratorium because it had not taken the demanded steps to protect agricultural lands. Ignored was the fact that 94 percent of the county consisted of federal or corporate timber lands, and the only cash crops

were cranberries and Easter lilies. At the other end of the spectrum, the small town of Happy Valley was ordered to speed up development and achieve greater density, even though the 1,440 residents indicated a strong desire to stay small.

Counties and cities were finding that after going through the laborious process to develop a comprehensive plan, nearly 86 percent were rejected on first submission as unsatisfactory. A comment by one former LCDC member to a reporter typified the state of affairs: "We're still struggling with how much freedom should be allowed," she said.

THOUGH MOST LOCAL OFFICIALS bowed to the commission's intimidation and arrogance, their constituents were not so accommodating. One county commissioner



was recalled from office for being too sympathetic to the LCDC; voters in three counties threw out commission-approved plans; and bumpers around the state began to carry a new sticker saying, "Poland has martial law, Oregon has LCDC." The time seemed right for a petition drive to place the issue on the ballot again.

Other avenues for dealing with the planning bureaucracy, such as legislative modifications or court cases, had already been pursued, but without success. In every session of the legislature, strong attempts were made to gain relief, but the environmental lobby was always too powerful. A lawsuit challenging the constitutionality of the program was brought in 1977 by 21 local jurisdictions, only to bounce around the court system for five years. (In July 1982, all appeals were exhausted.)

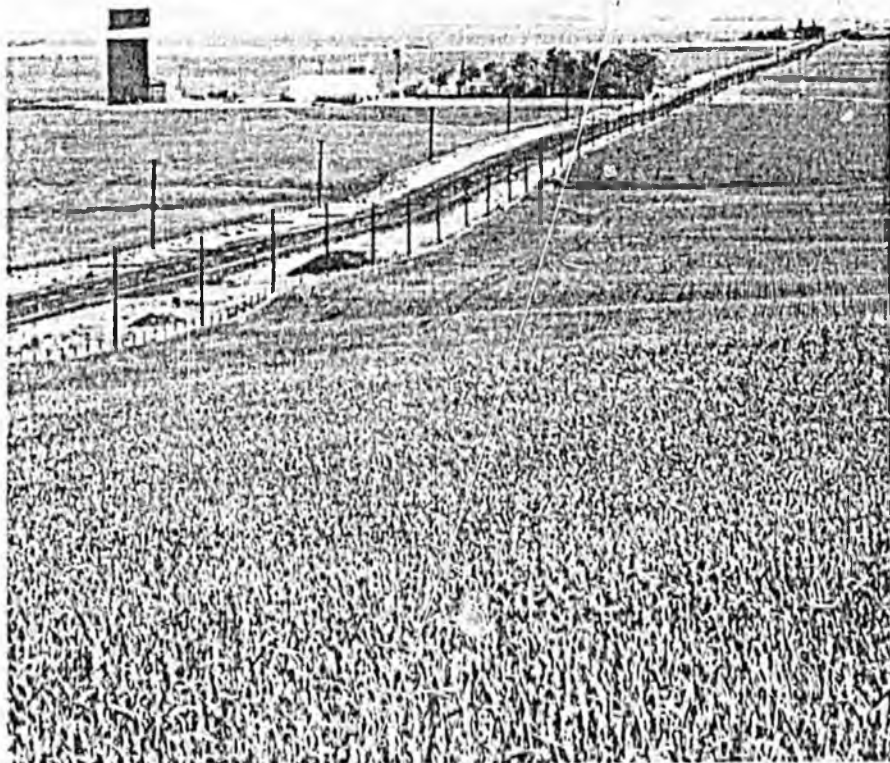
So on November 14, 1981, groups from around the state came together in a Portland suburb to evaluate the feasibility of another initiative campaign. In what may have been an omen of things to come, hurricane winds buffeted the area the day before, causing those in attendance to make their plans without the comfort of heat or electricity. Despite such inconvenience, a coalition was formed under the name Oregon Citizens for Fair Land Planning, and they decided to seek for a third time to overthrow the oppressive planning laws. By the end of June, petitions had been printed and distributed and 65,700 signatures gathered (only 56,000 were required), forcing the secretary of state to certify Ballot Measure 6 for the November general election. Relatively moderate in nature, Measure 6 called for elimination of the state's authority in land use planning but still required local elected officials to maintain master land plans.

It did not take long for the opponents of Measure 6 to make themselves known. While small in number, the list included many of Oregon's most prominent citizens. Both gubernatorial candidates, for example, seemed to disagree on everything except the inadvisability of 6.

Cochairman of Citizens to Defend Your Land—the group formed to defeat the measure—was John Gray. Gray was one of the state's most successful land developers and the chairman of the board of Omark Industries, the world's largest manufacturer of cutting chain for chain saws. He had built two of Oregon's largest luxury resorts in the days before the LCDC would prevent anything on a similar scale from getting off the ground.

Another member of the opposition was Bill Bowerman, cofounder of the Nike

Television ads against the reform measure showed developers' bulldozers plowing up beaches and wheat fields.



shoe company. In his 24 years as head track coach at the University of Oregon, Bowerman had trained 28 Olympians, 12 American record holders, 24 NCAA champions, and in the process, had become something of a guru to thousands of long-distance runners. Another Nike executive publicly declaring his abhorrence of the measure was Neil Goldschmidt, former mayor of Portland and secretary of the Transportation Department under Jimmy Carter.

No one had a greater impact on the outcome of Measure 6, though, than the man most instrumental in the passage of Senate Bill 100 in 1973—the late ex-Governor Tom McCall. With an unorthodox style and strong environmentalism, McCall had become something of an Oregon legend during his two terms in office. He was unsuccessful in a 1973 comeback bid for governor, but he still wielded considerable influence as an elder statesman and as a regular political commentator for a large Portland television station.

In 1973 McCall was found to have cancer, and despite surgery, the cancer appeared again in 1981, spreading throughout his body. Always one for theatrics, on October 7, 1982, McCall gave one of his best performances. Speaking for a gathering sponsored by two environmental groups, the ex-governor acknowledged that he had only a short time to live and pleaded with Oregonians not to repudiate the land-use planning system and "Oregon mystique" that were hallmarks of his administration. Asking the audience to bear with him for some personal remarks, McCall said: "I'm not embarrassed, I haven't got much time left. This is my last to talk to you about this. You all know I have terminal cancer—and I have a lot of it.

"But what many of you might not know," he continued, "is that stress induces its spread and induces its activity. Stress may even bring it on. Yet stress is the fuel of the activist. This activist loves Oregon more than he loves life. I know I can't have both very long, but the trade-

off's all right with me." McCall concluded by declaring, "But if the legacy we helped give Oregon and which made it twinkle afar—if it goes, then I guess I wouldn't want to live in Oregon anyhow."

Oregon's news media gobbled up the maudlin exhibition. The Salem *Statesman-Journal* wrote in an editorial, "Oregon owes Tom McCall something better than the repudiation of his dream for the state." The largest daily, the Portland *Oregonian*, followed suit when it melodramatically said, "Respect for the man, the former governor, left no eye without a shine among the many business and professional persons who heard him, but their understanding of his message went much deeper." Even network television devoted time to the story. CBS News ran a lengthy segment dealing with McCall on the October 22 evening broadcast, and NBC's *Today* show carried a similar report a week later.

Only one newspaper in the state, the Grants Pass *Courier*, had the temerity to note that McCall's "pending death cannot offset the fact that many of the state's 2 million individuals feel oppressed, stifled and indeed hurt by the iron hand of the LCDC and even the plea of this dying man cannot alter the fact." In an attempt to gain similar sympathy for their own position, Oregon Citizens for Fair Land Planning organized a press conference in which a widow told how her husband had also been a victim of cancer, leaving her with \$100,000 in medical bills. LCDC regulations prevented her from selling part of her 21 acres to raise needed cash or to give a parcel to each of her two children—because the land was classified as agricultural, the property had to remain in farm use and couldn't be divided into pieces smaller than 20 acres. This story was almost completely ignored by the media.

THE EMOTIONS GENERATED by McCall's remarks were heightened by strong editorial support from the *Oregonian*. No less than 12 editorials and columns warned that a host of evils would result if the state's authority in land use were ended. Citizens could expect "condomania on the coast," where "beaches could be behind fences and walls... screened by buildings, never to be ours again." Measure 6 would subject "Oregon's rich farm and forest lands and coastal areas to the same type of private, greedy or unthinking trampling of natural areas that existed before LCDC." Oregon's "model state land use planning

program" would be replaced with "chaos, sprawl, and disorderly growth." Residents would find "local politicians acceding to special interests rather than those of most residents and future citizens."

Television ads against the reform measure showed developers' bulldozers plowing up beaches and wheat fields while a narrator cautioned that this would be the result if Measure 6 passed. A radio spot featured a hysterical-sounding farmer saying that the only thing standing between his field and a lay of asphalt was LCDC. His plea: "Stop them! Please stop the land grabbers!" (The protection of farmland against urban development was one of the major objectives of the LCDC program. The commission proceeded to adopt a definition of agricultural land that included not only land currently in production but virtually any parcel that could possibly ever grow anything. Eventually in Oregon, 17 million acres will be in Exclusive Farm Use Zoning—more acreage under such tight restrictions than in the 49 other states combined, according to the 1981 National Agricultural Land Study.)

In contrast, the advertising in support of Measure 6 tried to rely on facts and reason. The dean of the University of Oregon School of Business talked about a Stanford Research Institute study showing that it took 3-5 times longer to prepare a new plant site in Portland, Oregon, than across the river in Vancouver, Washington, and 10-15 times longer than in Austin, Texas. Another ad featured the master of the Oregon State Grange telling why his agricultural organization was supporting Measure 6: farmland had been growing at a faster rate before the LCDC was created than afterward; regulations were denying farmers the flexibility to sell acreage when times were hard; and young people were prevented from breaking into farming because they could not afford the large initial investment required to purchase even the smallest allowable parcel.

Most major business organizations and chambers of commerce in the state endorsed the measure, as did the Association of Oregon Loggers, the Oregon Association of Realtors, the Association of Oregon Counties, the Oregon Cattlemen's Association, the Oregon Forest Industry Council, and many others. But it wasn't enough. The constant barrage of misinformation and scare stories had a devastating effect. Polls showing the percentage of those who would cast a yes vote went from 57 percent on September 24, to 52 percent on October 15, and finally down to 48 percent on October 30, dead even with those who would vote no.

The downward trend continued three days later when Ballot Measure 6 was defeated 55-to-45 percent. Although a majority in 21 of Oregon's 36 counties voted in favor of the proposal, the larger numbers of the Portland metropolitan area, where 40 percent of the state's population lives, were too much to overcome. As might be expected, the heaviest voting against the LCDC came from the areas the agency is most interested in preserving. Of the seven counties where 50 percent or more of the land is in farms, five showed voters casting their ballots decisively for abolishing the laws limiting the use of their property.

IT IS DIFFICULT to find a bright spot in the face of such a defeat. But perhaps the Oregon situation will serve to remind others that the right to own and enjoy private property, one of the most basic rights guaranteed by the Constitution, is probably also the most vulnerable to government encroachment. Because of the double standard in this country regarding political rights and economic rights, governments can quite easily impose an array of restrictions on a person's use of his property but not on something like speech, of which the late Supreme Court Justice Hugo Black once said, "Only the gravest abuses endangering paramount interests give occasion for permissible limitation."

University of San Diego law professor Bernard Siegan has written extensively on this subject and describes the situation quite well when he laments: "Few have better understanding of government abuses than the many organizations in the country dedicated to protecting civil and political rights. However, they never seem to apply this knowledge and prefer to look the other way when governmental agencies effectively deprive people of property, the fruit of their labor, savings, energy, and knowledge. They strenuously fight against the imposition of a minimal fine when political liberties are involved, and stand absolutely mute when the most arbitrary zoning and environmental restrictions reduce by hundreds or thousands of dollars the values of property owned by people of average means."

Let others take heed of what Oregonians have painfully learned: Once ground is lost, it is nearly impossible to regain. [E]

Kelly Ross is a former aide to Sen. Mark Hatfield and is a member of the Curry County, Oregon, Board of Commissioners. He was active in Oregon Citizens for Fair Land Planning.

Arabian War

(Continued from p. 34)

have sternly refused to let us base conventional forces in their nations.

We do not know whether the Soviets will fight for the Gulf, though the risk is clear. Given the Iranian invasion of Iraq, the threat that the Holy War in Iran will spread to the Gulf is much greater. Do we have the forces on hand to stop such a war? Very likely, if we are willing to see many thousands of our sons killed and to spend hundreds of billions that we could spend on alternative energy supplies with no loss of life.

Besides, the Iranians today are in fact steadily increasing the supply of oil to the West. The OPEC Arabs of the Gulf are trying to decrease their supply to keep prices up. The Iranians are bitterly anti-Soviet and are systematically executing some pro-Soviet Iranian leftists and curtailing the operations of the Iranian Communist Tudeh party. A union of Gulf nations led by Iran might be immensely more effective as a bulwark against Soviet expansion and a supplier of more and cheaper oil to the West. Little wonder the Soviets are opposing the Iranian invasion of their ally, Iraq, with greatly increased arms shipments. A divided Gulf is far better for them than one powerful foe.

There is little chance the American public will support any enforcement of this doctrine. But there is a serious danger that our leaders, increasingly isolated in their bunkers of power on the Potomac and misled by general public support of rearmament, may make the same fatal miscalculations of the popular will that the Johnson administration did. In some future crisis situation, this could combine with their desire to save face by not reneging on their pledge to produce some rapid deployment of our forces in the Gulf. By the time public outrage was organized, we might already be faced with another Vietnam-style debacle—or even a major war with the Soviets from which we could not back down.

The American people want rearmament to protect them and the country's vital interests, not the OPEC cartel. Our leaders must recognize the fact—"We Will Not Go!"—and exorcise the national nightmare threatened by the Carter-Reagan Doctrine and our almost secret military build-up in the region. [E]

Jack Douglas teaches sociology at the University of California, San Diego.

Oregon Land Use Laws and Cost of Residential Lots

by Kelly Ross, former aide to Senator Mark Hatfield and now a member of the Board of Commissioners in Curry County, Oregon

Many people in Oregon were not surprised when the August 1981 issue of *Land Review* showed that between 1976 and 1980 the state experienced the nation's fastest price increase (127%) in finished residential lots. Such a trend was predicted two years before by Dr. Anthony Downs, a senior fellow at the Washington, D.C., Brookings Institution. The culprit is Oregon's land use laws, generally recognized as the most comprehensive and complex in all the 50 states.

Passed in 1976 by the state legislature, Senate Bill 100 had the admirable aims of assuring "the highest possible level of liveability in Oregon" and assisting in "attainment of the optimum living environment for the state's citizenry." The bill created the Land Conservation and Development Commission (LCDC) and charged it with developing statewide goals and guidelines for land use planning. In addition, it required all cities and counties to comply with the goals and guidelines by formulating comprehensive plans.

According to Downs, the price increases stem from the requirement that future development be channeled away from rural areas into defined urban growth boundaries. He states that while "this reduces the costs of new infrastructure systems like sewer and water and highway systems, it also confers a quasi-monopoly position on the owners of vacant land within the boundaries." Hence, that land becomes much more valuable, both to developers and eventually to consumers of new housing.

Downs also pointed out that an additional cost of such comprehensive planning is the failure of government officials to grasp the money-cost of time. "Since officials are motivated by the desire not to stir up controversy, they want to create consensus and act cautiously, which takes time," he explained. Today, with interest rates ranging between 15% and 18%, any type of delay can be very expensive, and the program in Oregon has been one long series of delays. Originally, it was believed that only one year would be required for all jurisdictions to have their comprehensive plans ready for review and approval. But as 1982 began, seven years after the 19 goals and guidelines were finally adopted, only eight of the state's 36 counties and 117 of the 241 cities had their plans "acknowledged."

The reasons for the delays were brought out in a 1980 survey of 52 persons who are active and knowledgeable in the land use field. The general perception of those interviewed was that Goal 3, the agricultural goal, receives more attention than the others. Interviewees conceded the intent—and perhaps the driving force behind the entire LCDC program, was the preservation of agricultural land, but the need for such preservation and the methods used are in serious question. Such statutes define agricultural land as "land of predominately Class I, II, III, and IV soils as identified in the Soil Capability Classification System of the U.S. Soil Conservation Service." These classes were originally established in the 1930's to

assist farmers in managing their land to control erosion; they were not intended to determine whether the land can or should be farmed. Local governments, aware that a better definition is needed, have attempted different approaches, only to see them overturned in court or rejected by LCDC.

Interestingly, there is mounting evidence that the Goal 3 requirements actually tend to destabilize the agricultural economy. In the past when conditions produced a bad crop, farmers could sell a few acres to satisfy creditors. Today, however, with strict regulations prohibiting parcelization of arable land, farmers are often forced to sell their entire farm to avoid bankruptcy. Also, with such restrictions placed on its use, lending institutions are becoming reluctant to use land as collateral for capital improvements.

Another area of consensus among those interviewed was the perception that the LCDC staff is inexperienced and difficult to deal with. There was a universal feeling that the staff has very little experience in local government or planning, is theoretical in its bias, and impractical in its applications. Two staff members in particular have been the subject of controversy: one is the chairman of Oregon's chapter of the Sierra Club and another was hired directly from the strong environmentalist group, "1000 Friends of Oregon." With this type of orientation it may not be surprising that the LCDC has rejected 86% of the plans on their first submission, returning them for time-consuming corrections or additional information.

Time may be running out, however, for Oregon's experiment in statewide land use planning. Recently, State Senator L.B. Day, one of the authors of the original law and the first director of the agency, was quoted as saying, "Staunch defender or not, I'm not sure we can afford LCDC any longer." Frank Capiello, a panelist on the PBS television series "Wall Street Week," told an economic development conference, "The perception we have of Oregon in the East is that it really doesn't want industry. Oregon is perceived as wanting a nice, clean, self-contained environment, so investors look around and go to Arizona, where people are perceived to be more concerned with jobs."

With Oregon now suffering under the nation's second highest unemployment rate (after Michigan), jobs are rapidly becoming more of a concern than saving farmland. There is currently a grass-roots effort to place an initiative on the November ballot that would abolish the LCDC and return planning functions to the local level.

Homer Hoyt Institute

1133 Fifteenth Street, N.W., Suite 1250
Washington, D.C. 20005

Dr. Marika E. Sumichrast
Editor *Land Review*

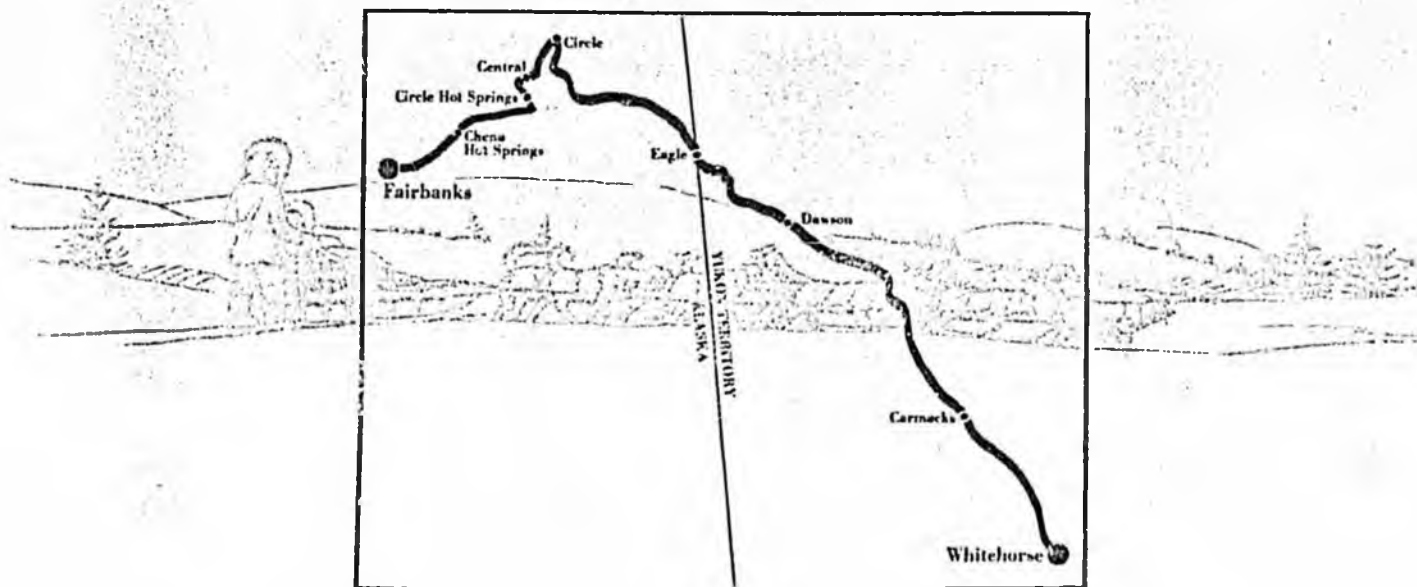
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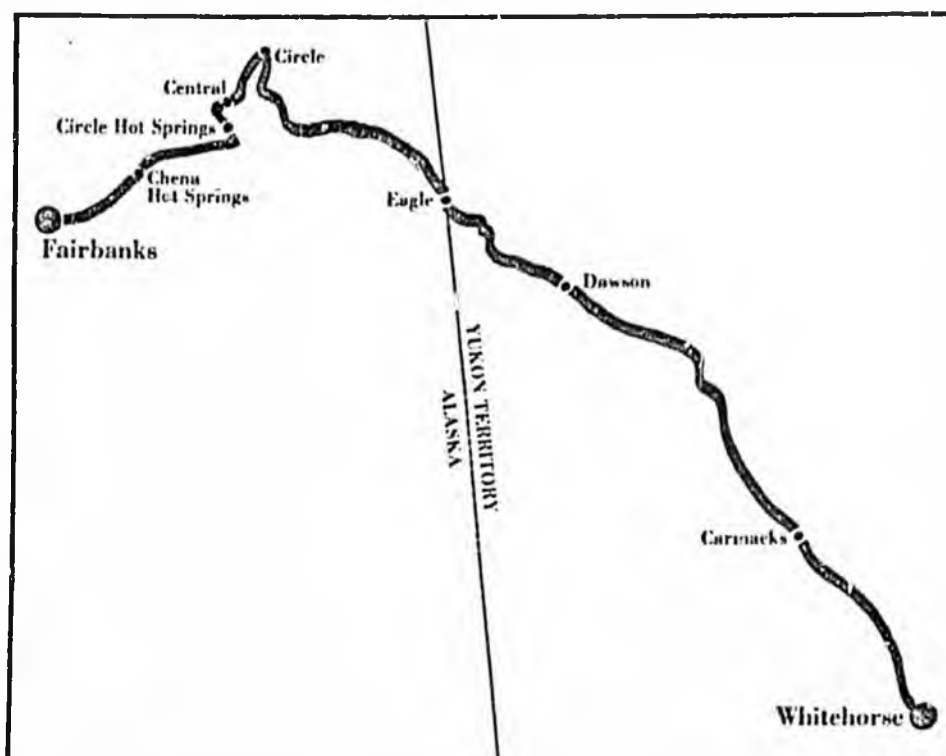
POTENTIAL

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The value of tourism to Interior Alaska and the Yukon hardly needs comment. The Fairbanks to Whitehorse Race could give the towns a vital economic boost during normally slow winter months. But to realize this economic potential a turn-about from the normal limits of thinking and involvement concerning sled dog races is required. Thought and action must now take on a grand dimension to fit the event and its unquestioned possibilities.

The Iditarod became a success in spite of Anchorage apathy and skepticism, not because of its support. It took ten years to really come of age. However, this Fairbanks to Whitehorse Race can enjoy success immediately if the towns will push it from the outset. There must be investment to gain return. The pump must be prime.

No less valuable than economic gain are the following: 1) enhancement of community pride, spirit and energy; 2) rejuvenation of winter moral during race festivities and competition; 3) creation of local folk heroes with whom one may identify and follow during the contest; 4) strengthening of the fraternal spirit that has always bound the people of Interior Alaska and those of the Yukon Territory.



THE RACE

The route shown on the map on the previous page will start in Fairbanks and Whitehorse on alternate years. Established long distance rules will be followed in general. However, a few important differences do exist both within the rules and with the course which makes this race interesting and unique.

- ★ Teams are limited to twelve dogs starting maximum.
- ★ No more than three dogs may be dropped per team.
- ★ A mandatory 36 hour layover will be taken by all teams at Dawson.
- ★ The same sled must be driven from start to finish.
- ★ Food pickups and dog drops at only six points along the route, four of which are well over 100 miles apart, one being over 200. (This could enhance the chances of a driver long on bush skills but short on space age equipment and technology.)
- ★ A small load of promotional freight will be mandatory.

WHAT IS NEEDED

Mushers and teams are poised and ready. What is needed in addition for the Fairbanks to Whitehorse Race to become a recognized major sporting spectacle and a revenue producer is the following:

- 1) Fairbanks and Whitehorse government officials and businesses must make the start and finish of the race not only well run but as colorful and big time as possible. Show the towns off to best advantage for visitors and media.
- 2) A budget must be acquired sufficient to fund the organizing, officiating, trail work, checkpoints, logistics, transportation, communications, promotion and advertising, fuel, supplies and equipment, veterinarians, drawing and awards banquets, start and finish lines organizations, wages and fees, etc.
- 3) Prize money equal to the magnitude of the race must be available in order to give the contest prestige necessary to attract top name teams.
- 4) Talent from the communities must step forward to give of their time and energy to serve in various positions and committees below.

Executive Director

Race Manager

Race Marshall

Trail Managers, trail workers, checkers for Alaska and Yukon

Food Drops Managers for Alaska and Yukon

Dog Drops Managers for Alaska and Yukon

Fairbanks Banquet and Drawing Chairman/Whitehorse Banquet and Awards Chairman

Fairbanks Race Start Manager/Whitehorse Race Finish Manager

Race Communications Headquarters Managers for Alaska and Yukon

Race Central Office Managers for Alaska and Yukon year round offices

Hams for Alaska and Yukon

Publicity and Promotions Managers for Alaska and Yukon

Finance Managers for Alaska and Yukon

Veterinarians for Alaska and Yukon

Musher housing pre and post race for Alaska and Yukon

Typing and Printing for Alaska and Yukon

THE MECHANISM

Limited stock is being sold which entitles the stockholder to vote for the board of directors. Inquiries are welcomed. General corporation meetings and board meetings are held as needed (which is often nowadays).

For more information call LeRoy Shank at 488-9763.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
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PAUL FISCHER
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POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MINUTES

February 8, 1984
3:05 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chair
Senator Eliason
Senator P. Fischer
Senator V. Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

HJR 56, Relating to the 1984 Yukon Quest sled dog race.
Briefing by Kelly Ross on land management and planning.

HJR 56

Representative Mike Davis, sponsor of the resolution, spoke in support, explaining that it commends and encourages this 1000 mile sled dog race from Fairbanks to Whitehorse that begins February 24, 1984.

Senator Sturgulewski moved that the resolution be passed out with individual recommendations. There was no objection.

James Jenks, Deputy Director, Resource Development Council, introduced Kelly Ross.

Kelly Ross, County Commissioner, Curry County, Oregon, compared Oregon's comprehensive land use plan to the proposed Bristol Bay Cooperative Management Plan. He cautioned that the Bristol Bay plan be made flexible enough to allow development of other resources in the event that the fish and wildlife resources are naturally depleted.

The meeting adjourned at 3:35 pm.

COMMENTS
ON THE
BRISTOL BAY COOPERATIVE MANAGEMENT PLAN
BY
KELLY ROSS
BEFORE
THE
ALASKA SENATE RESOURCES COMMITTEE
February 8, 1984
Juneau, Alaska

Chairman Bettye Fahrenkamp: Today we have with us James Jinks, who is here with us from the Resource Development Council. We welcome him here and it is my understanding that he will introduce our guest from Oregon. Would you proceed.

Jim Jinks: Some months ago, we became aware of a county commissioner in the state of Oregon who had expressed concerns over land management and land planning problems that had surfaced over the past decade in Oregon.

The commissioner is Kelly Ross who is here on our request to speak before you and speak to some of the problems Alaska is currently facing in land planning and management. I'd like to introduce Kelly Ross.

Fahrenkamp: Mr. Jinks, you are welcome to pull up a chair and sit there at the desk with Mr. Ross. Mr. Ross, welcome aboard.

Ross: Madame Chairman and members of the Committee. Thank you very much for the opportunity to speak to you today. I want to emphasize from the beginning that I know very little about Alaska and am certainly not here to tell you how to run your affairs. There are enough people already trying to do that anyway. But I do know about land planning. As Jim said, for the last decade we in Oregon have been working and struggling under one of the most comprehensive and stringent land use planning programs in the nation. It was conceived by Gov. McCall in 1973 shortly after he made his statement about people coming to visit but please don't stay. It was intended to protect the resources of Oregon, particularly timber and agricultural resources; basically the same program for resources Alaska is trying to protect.

The intent in 1973 was to provide security, certainty and protection and for the future; but, during the ten years it has been in place, many in the state have begun to question these goals and have come to the conclusion that instead it has caused uncertainty, chaos and stagnation.

It is important to emphasize the differences between our planning program and the Bristol Bay Cooperative Management

Program that I have reviewed. Oregon's system is concerned only with private property while Bristol Bay's deals with publicly owned property.

After thoroughly reviewing the Bristol Bay Plan I have come to the conclusion that there are some very significant characteristics that it shares with the Oregon system. I was very interested to read in the Bristol Bay Plan that the area there involved is the most productive salmon fishery in the world. And so I found it very logical and appropriate that the fishery take a high priority in land planning.

I want to caution that the same mistake we made in Oregon not be repeated in Bristol Bay. Like the Bristol Bay Plan, Oregon devoted hundreds of pages to every conceivable act of man that could have a detrimental effect on fisheries; and then along came Mother Nature in the form of the El Nino current which devastated the Oregon fisheries and to a certain extent the Washington fisheries.

It has had widespread effect on the state of Oregon with numerous commercial fishermen going out of business, and as a result, defaulting on loans to banks and actually several banks have gone out of business in the state. (The Governor recently declared the fisheries an economic disaster area to the Small Business Administration.)

So, all the land use planning documents we have in Oregon didn't stop a natural disaster; something that should be considered and flexibility included in the plan in the event such a disaster should occur. There should be flexibility included to accommodate such a disaster and a plan for certain contingencies.

After reviewing the Bristol Bay Plan I would say that it does not have that flexibility. The Plan locks that area into one option and doesn't allow for any other options to be considered in the event something does happen to the fisheries.

While minerals and oil and gas leasing share a primary use designation with fish and wildlife in some areas, the language of the plan places an almost impossible burden of proof on anyone desiring to develop those uses.

We found in Oregon that it's ultimately the courts that shape a land use planning program. Shortly after the bill was passed in Oregon to create our program, a private interest group calling itself "Thousand Friends of Oregon" organized and started challenging and taking into courts local groups, and decisions of land use boards and that was where policies affecting land use in Oregon were developed. Mainly they have been against any kind of development or use of resources because the language used in the original bill and in the

original plans were skewed toward that end.

The Bristol Bay Plan has the same type of language that's in the Oregon regulations. Using this language it takes very little effort to show that a certain requirement or criteria was not met; but to defend against that takes thousands of dollars and thousands of hours of research to show that the criteria has been met. It has reached such a point in Oregon that the Governor created in 1982 a special task force to study the entire program and take testimony from around the state. I think certain excerpts from that are very appropriate. A report was prepared for the task force by a land use study group: I quote -- "It is a complex system of legal rules and procedures, a system with a face that only a lawyer could love." A former vice chairman of the state agency said that "the path of a decision may take years to complete. Only the rich, the extremely tenacious or those paid annual salaries to advocate can afford to persevere in such a system. The courts and the lawyers have lost the program in the procedural woods."

So, I would certainly caution that if the intent is for a balanced approach to the resource, balanced in terms of development as well as conservation, then that intent is spelled out very clearly. It shouldn't be assumed that intent is known because courts looking at what was generated in writing will interpret only what was written.

In Oregon we found that the primary goal was to protect our timber and agricultural resources, but when no one wanted to build houses during our recession we were left at a loss. It was a mad scramble to find other means of employment for the people. But the land use planning regulations serve as an almost impenetrable barrier for new businesses locating in the state.

A study by the Stanford Research Institute found that it took five times as long to locate a business in Portland than it did to locate across the Columbia River in Vancouver, Washington. Fifteen times as long in Portland as in Austin, Texas. So as a result, many businesses didn't even look at Oregon and went elsewhere.

Some more revealing statistics in National Industrial Magazine kind of keeps a scorecard on how many businesses states have attracted. During the first half of 1981 they found that North Carolina had attracted 179, Texas 303, Florida 191, and Oregon 4. So, we are suffering now under effects of this land use program that should have been foreseen in 1973 when it was conceived. A little more balance and flexibility should have been put into the plan.

In talking with some of the people while I've been here in Alaska, I find that one of the reasons for adopting a plan such as Bristol Bay is the feeling that it will give local

control to that area. In Oregon we heard the same kind of stories when we developed our plan. We found in the decade that has passed that, if anything, it has greatly diminished local control over the entire land use planning process for several reasons.

The first is that you have a very complex document that was produced by geologists, biologists, all sorts of experts. It is very hard for the average layman in the local area to understand it so they defer to the judgments of those living outside the area and oftentimes pass the authority of those judgments to outside the area.

As a locally elected official, I've been in office for a little over three years, and I'd say that 80% of the local land use decisions that we've made have been overturned through the courts by the special interest groups appeal or by the state agencies involved. Because again, of the complexity of the document and the requirements and the findings required to justify any decisions, you almost have to be a land use expert to do that. The average locally elected official simply doesn't have the time to develop that expertise.

If the myth of local control was shattered, it was shattered in 1982 when Oregon had an initiative on the ballot in the general election to do away with the entire program. At the polls, the initiative was unsuccessful, but it passed in 21 of Oregon's 36 counties, and was defeated only as a result of a heavy vote in the urban areas around Portland. But the outlying rural areas which are very similar, I think, in many respects to the Bristol Bay region, they no longer had any control, it had passed on to others.

In conclusion, I think it is recognized that a good comprehensive plan is one that realistically works to insure stability in the future and has a flexibility to adapt to whatever the future brings. I don't feel, that in my review of the Bristol Bay Plan, that it has that flexibility.

Now, I realize that the legislature at this point does not have an active role in the Bristol Bay Plan, but as one elected official to another, I know that always doesn't mean a lot. When you're an elected official you take the blame whether you take an active role or not. I think you need to know what to expect in the future and some of the consequences that can arise from adoption of such a plan. I'd be happy to answer any question that you have or provide any further information you may need.

Senator Fahrenkamp:

Mr. Ross, I don't know if you know that we have had a briefing on the plan and we do plan on having more hearings on the Bristol Bay Plan.

There are some areas we are very concerned about. I wonder if you have any specifics as to the type of language that you feel is very restrictive and would not allow for adjustment for disaster or whatever in the future. Or if you could supply us with some of that because it would be very helpful to us.

Mr. Ross:

I can do that. Briefly, the thing that struck me immediately as I read through the plan is that in all the alternatives that were presented, fish and wildlife was the primary use for the entire area. When you look at the definitions for primary use, it says that for a management unit that has two or more primary uses that could conflict, the guidelines of the plan and existing regulations and procedures will direct how those conflicting primary uses are to be managed.

When looking at the guidelines, I find that the criteria you have to satisfy are so restrictive for any conflicting primary uses that it's almost out of the question that any uses outside fish and wildlife would be permitted. Now, I don't know, perhaps that's the intent of Alaska. But I think you should be aware of the consequences of that.

Senator Vic Fischer:

Did you look at the economic values of the fisheries that are involved as against all other uses in the area? I think you'll find that the fisheries are so significant overall that that may well be why the plan gave it such special treatment.

Mr. Ross:

Right. Right. I understand that. But as was spelled out in the plan, there really is no information available on what the mineral resources of the area are and as I said before, we have found in Oregon how fragile that fishery resource is. There should be flexibility and other options for that sort of thing.

Senator Fahrenkamp:

As I understand the plan, Senator Fischer, if you remember the maps we had, there are certain areas not related to fisheries. I don't know, in any management plan of that nature that's been negotiated as long and hard as that one has, it's my understanding the Governor is very close to signing that as it comes before the Council at its next meeting. But it does behoove us to look into the plan to make sure that we haven't closed all of our options.

Mr. Ross:

But of course hindsight is always the best sight and we in Oregon are now regretting that we didn't build into our plan some aggressive measures for enhancement of that fisheries resource.

That we didn't take it for granted that they would always be there. Reading through the Bristol Bay Plan I see only two paragraphs that talk about the enhancement of the fisheries. It would seem wise, certainly in the light of our experience, to take aggressive measures to enhance the fisheries to ensure that they are protected against natural disasters.

Senator Eliason:

I was wondering what mechanism or device you have for bringing those closed options back for consideration again.

Mr. Ross:

It's a very complicated process and easily manipulated by politics. It has to go through the legislature. We found in each legislature that because most of our legislators are from the urban areas of the state and are not really acquainted with the problems of the coastal area or the fisheries, they are unwilling to change what has been put into the law and allow for further options. That sort of thing.

Senator Eliason:

If you put those flexibilities into the plan than you really don't have a plan, is that what you're saying?

Mr. Ross:

No. First of all you need to have all the available information available to you. The Bristol Bay Plan admits that it doesn't have any information on mineral resources of the area. In the event that something happened to the fisheries either a private mining firm or the state would have to come in and develop that type of information to develop the resource.

Also, we have found in our state as in this plan that where it conflicts with existing regulations, it also closes off some of that flexibility. You should strive as much as possible to bring this into consistency with any existing state and federal regulations so that the process can be streamlined and it won't be held up in any phase for arbitration and mediation to iron out the inconsistencies.

Senator Sturgulewski:

I'm interested, Mr. Ross, in Oregon. I'm somewhat familiar

with your economy there, with what happened. You talked about no businesses coming in and you're very dependent on extractive industries and so on. What kind of things were turned down and why were they? Who was seeking to come in and couldn't?

Mr. Ross:

Mr. Jinks showed me an article in the Anchorage Daily News, middle of January, about a new mining venture that had made a commitment to the state of Oregon but was held up because of the land use laws. One county where the mining venture wanted to locate had come into conflict with the state land use planning agency and as a result the state agency had placed a moratorium on the county for any new building permits so that the mining venture was stopped.

Similar things have happened all around the state. It just takes so long to get anything, to clear all the necessary hurdles to get something located there, that most people just don't want to attempt to deal with it.

Senator Fahrenkamp:

Are there any other questions or comments? Mr. Ross, we truly appreciate your bringing to us the problems that are being faced by Oregon, and we appreciate your concern as well, Mr. Jinks.