



Oregon

# COASTAL NOTES

June 2, 1989

## HB 2288 (LAND USE REFORM) LEAVES HOUSE ENVIRONMENT AND ENERGY COMMITTEE

by Onno Husing, Legislative Fellow

Representative Ron Cease, House Environment and Energy Committee chairman, opened the work session on HB 2288 with a new set of amendments to the bill. Cease offered these amendments in the spirit of compromise, trying to do what the working group on HB 2288 could not do itself in the year the group has looked at the issue. Not surprisingly, the amendments (which seemed to split the difference on a few key points in the bill) ended up not pleasing anybody. In addition, some of the members of the committee arrived that day intending to vote one way or another on the original bill. They seemed to be in no mood to digest a new set of amendments. Therefore, at the end of the work session, Cease's amendments were abandoned and the committee elected to adopt the original bill. The rationale for moving the bill (despite the lack of consensus) was that a conference committee would address any remaining policy decisions. Impatience seems to be the latest occupational disease at this point in the session. It is interesting to observe this behavior considered the painstaking review other measures receive at the beginning and middle of the session.

In any event, some more illuminating testimony was received during the hearing/work session worth repeating. With respect to the elimination of subdivision approvals within urban growth boundaries (UGBs) from the category of a land-use decision, 1000 Friends of Oregon steadfastly resisted the measure. 1000 Friends of Oregon's continuation to assert these decisions were not

"ministerial" in nature. Others (including representatives of AOC and the Homebuilders) maintained that these were only "cookbook" decisions that did not need to undergo LUBA review. AOC representatives argued that, "Compared with conditional uses, zone changes, or variances, subdivision approvals are as close as we get in this business (planning) to clear and objective decisions".

1000 Friends disagreed. "If Ed Sullivan (one of Oregon's leading land-use attorneys) were here he would tell you why," argued Neil Kagan of 1000 Friends of Oregon. Kagan believes a number of important decisions do get made in subdivision approvals including the placement of roads, sidewalks and other design issues. Moreover, 1000 Friends asserted that there was nothing wrong with the current system, arguing that the sheer lack of appeals of subdivision approvals demonstrates the system is working. In addition, 1000 Friends also alleged that the reason the Homebuilders wanted subdivisions in UGBs removed from LUBA and placed in the Court of Appeals was that this would increase the costs of launching an appeal. "The Homebuilders are counting on the increased time and expense of going to Circuit Court compared to LUBA as a means of discouraging neighboring property owners from seeking an appeal," stated Kagan.

Representative Bernie Agrons noted that it was the chilling effect of potential appeals - not the number of appeals - that is the issue. Testimony from previous hearings revealed that

neighborhood associations have been successful at intimidating developers by threatening to take a developer through the appeals process. In what members of the development community likened to extortion, neighborhood groups have gained cash settlements to drop their appeals (again, avoiding actual appeals). Representative Phil Kiesling asked if the working group contemplated some kind of bonding measure to discourage frivolous lawsuits. The response from the panel was that such a proposal was discussed early on in the working group but was rejected because it would be ineffective. Panel members noted that under current law, if a frivolous suit is undertaken, attorney's fees can be awarded. The threshold for determining whether a suit is frivolous is very high. As a result, the panel argued, bonding wouldn't really add anything to the process.

Another major issue concerning 1000 Friends was whether the notice provisions in HB 2288 were adequate to inform neighbors of zoning changes. HB 2288 contemplates notice to neighbors of 100 feet of property subject to a zoning change within an UGB and 250 feet outside of an UGB. 1000 Friends argued that the proposed notice standards to those outside an UGB was particularly unrealistic for areas such as Eastern Oregon. 1000 Friends thinks that maintaining a register at the county planning office would merely be windowdressing. They believe it unreasonable to expect people in rural locations

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**HOUSE WATER POLICY  
ACTS ON STURGEON AND  
AQUACULTURE BILLS**

As promised in last week's *Coastal Notes*, the following describes actions taken late last week by the House Water Policy.

With respect to HB 2735 (the hatchery salmon marking bill), in the face of enormous scientific uncertainty, the Committee finally gave up trying to find the proper level at which salmon should be marked (to determine stray rates). Instead, the Committee agreed to defer to ODFW and let them settle the issue by rulemaking.

With the other bill relating to sturgeon, HB 2985, the Committee decided to provide a moratorium on the issuance of sturgeon hatchery permits but approved the continued operation of present permit holders (however, the Oregon Fish and Wildlife Commission can issue a permit if the purpose of the hatchery would be purely for scientific or educational purposes). In addition, the bill now requires the Fish and Wildlife Commission to monitor the operation of privately operated sturgeon hatcheries and the general condition of the sturgeon resource and to submit a status report to the next Legislative Assembly.

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**Ocean Task Force to Meet  
In Salem**

A worksession of the Oregon Ocean Resources Management Task Force is scheduled for Thursday, June 8, 1989 at Eaton Hall on the campus of Willamette University in Salem.

The first item of business will be a review of final Task Force language

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**OIL AND GAS BAN FOR STATE WATERS  
WINS APPROVAL ON HOUSE FLOOR**

by Onno Husing, Legislative Fellow

In the Capitol these days there is a real sense that things are coming to a close. Committees are shutting down. One can see announcements pasted to bulletin boards concerning end-of-the-session parties. People talk regularly about their plans for after the session, and tempers seem to operate on a shorter fuse these days.

SB 1152 entered the House floor shrouded in this new climate. On its face, SB 1152 seems like a simple idea — just say no to oil and gas development in Oregon's territorial sea. But considering the much more serious impact of federal OCS decisions and the unlikelihood that Oregon would have pursued oil and gas development in state waters anyway, some observers couldn't help to see a purely political side of the measure.

When SB 1152 came up for consideration on the House Floor it was the end of a long day. There had been the customary late morning floor session, but lately the House has been meeting with increasing regularity in the late afternoon as well. SB 1152 was the last bill on the day's agenda.

Representative David Dix (the House majority leader) carried the bill on the floor. Instead of a passionate explanation of the bill (his usual style), Dix hurriedly read a prepared statement with little feeling as if to expedite the process so the House could break as early as possible. Dix unemotionally read his litany of reasons why he supports an oil and gas ban (the environmental risks and the lack of jobs such development would provide Oregonians).

After he was through Representative Paul Hanneman rose in opposition to the bill. Unlike most speeches on the House floor where members conduct other business on

the floor and one almost has to shout to be heard, for this one you could hear a pin drop. As I sat next to Hanneman I'm sure I knew what they were thinking, "Why in the world is Hanneman — a coastal representative, boatbuilder and commercial fisherman opposing this bill"?!! Under no illusion that he would be able to defeat the bill, Hanneman started by saying that while he is not in favor of state oil and gas development in the territorial sea, he opposed SB 1152. His principal reason was because the Legislature had already addressed these issues last session when they enacted SB 630. Further, Hanneman asserted that the hastily created oil and gas ban was more a political knee-jerk reaction to the Exxon Valdez situation than a well thought out response to these complex issues. Hanneman alluded that members of the House more routinely concerned with coastal matters would understand his position. Hanneman explained the SB 630 process to the other members of the House and asserted that the House may be undercutting the work of the Task Force.

Representative Tom Hanlon followed Hanneman's remarks and stated the other set of arguments (see Gail Achterman's comments in *Coastal Notes* last week) that the Task Force had recently voted on a similar ban of offshore oil and gas development. Hanlon explained his vote in favor of SB 1152 would be issued with the belief that the SB 1152 and the SB 630 process were complementary — not contradictory. Hanlon noted that while there were serious technical flaws in the bill, these could be worked out in a conference committee. Representative Cease (chairman of the Environment and En-

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ergy committee which issued the amendments of SB 1152) echoed Hanlon's thoughts and added that he was well aware with the fine work of the Task Force and the importance of SB 630.

Then things started to get ragged. Representative Bill Markham (a crusty well-liked veteran of the House and warrior on behalf of the state's timber interests) stated in angry terms that he thought the bill was "ridiculous". "I don't know why we don't stop here, let's ban timber and field burning while we're at it!" Markham expounded. "Why in the heck are we only allowing scientific research out there, what good is research when you can't do anything with those resources?" Markham finished by saying that SB 1152 was incredibly "anti-business".

Representative David Dix (who earlier had been so casual) responded to Markham's attacks. "This is not just a response to the Valdez!!!"

"We know that rigs create pollution", Dix explained. Dix recounted the horrible state of the environment of the Gulf of Mexico (where oil and gas development has been underway for decades) and other rig-related disasters. As he spoke, the tone and volume of Dix's rhetoric rose. "Anti-business you say", countered Dix, "As former Governor Tom McCall stated, "We don't have to chase every smokestack to establish an economy in Oregon"(As an aside, I have noticed during my tenure at the Capitol that when in doubt, politicians quote McCall. A similar phenomenon exists at the federal level where when in doubt, politicians quote Jefferson).

The fiery Dix continued, "Are fishing and tourism not businesses?" "Have we forgotten how much of the state's resources are being devoted to tourism?" Dix asked, "Are tourists going to come to Oregon to look out their hotel rooms at drilling rigs?"

Markham responded to Dix's high volume oratory by asking the Speaker of the House whether the Legislature

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relating to oil and gas policies tentatively adopted at the May Task Force meeting in Lincoln City. Most of the meeting is devoted to a discussion of "special management areas as a specific ocean resource management tool." If the staff recommendation is adopted, the Task Force will be asked to review and approve two policy concepts ("ocean stewardship" and special management areas) as well as a planning process that would lead to a delineation of specific management areas.

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should abandon microphones in the House and just issue megaphones. After nervous laughter subsided Speaker Katz cautioned the House that there were still many days left to go in the session and that "we all have to keep our cool".

The vote was 38-15 in support of SB 1152. All of the coastal representatives except for Hanneman voted for the bill.

It appears that some federal agencies have already acted strongly against the theme of SB 1152. At the Placer Minerals Task Force meeting the previous week on the coast (when the word that a ban was being issued), reportedly, federal officials had an "I told you so attitude". They felt that SB 630 was in effect being repealed. This confirmed their paranoia that Oregon was never serious in the first place when they enacted the bill. In addition, serious problems exist regarding the minerals section of SB 1152. An impossible threshold for mineral development may have been innocently worked into the bill. Again, the conference committee will have the opportunity of correcting these flaws.

However, as Hanneman warned the House, SB 1152 will have its costs. If the Legislature is not careful, it could worsen relations with the feds and cost us research money desperately needed to pursue environmental studies.

**\*Quote of the Week\***

During the House Agriculture, Forestry and Natural Resources Committee deliberation on fee increases for dredge and fill permit applicants, a young representative argued that the fee issue could be "negotiated" in a conference committee. Representative Peter Courtney informed the freshman representative, "That's not how things work in a conference committee; conference committees are ugly, it's up or down or things don't get done, there is no bargaining, there's blood everywhere, it's awful!" The venerable Representative Bernie Agrons (chairman of the Committee) quickly disagreed with Courtney, "I love them, they restore the fires of my youth!"

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to periodically check a zoning registry without another means of notice. 1000 Friends feels strongly about this notice provision. They note the vast majority of enforcement actions concerning land-use decisions originate from neighbors and not organized environmental groups like 1000 Friends.

AOC's representative dismissed 1000 Friends arguments. Russ Nebon noted that once the word gets out by mail to adjacent neighbors, the word spreads quickly through the "grapevine". He noted that it would be costly to extend the notice provisions beyond 250 feet and would really serve no purpose since people seem to work well. At an earlier hearing 1000 Friends disagreed with these observations stating that they continually get calls from aggrieved property owners who felt they did not get adequate notice of changes in land use.

Again, the Committee forwarded HB 2288 to the House Floor.