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PORTLAND
City Club
BULLETIN

Mayfair Room • Benson Hotel
Friday . . . 12:10 P.M.

PORTLAND, OREGON - Oct. 9, 1970 - Vol. 51, No. 19

*Printed herein for presentation, discussion and action at this
Friday's luncheon, October 9th:*

REPORTS

ON

State Initiative Measures

SCENIC WATERWAYS BILL

(State Measure No. 9)

The Committee: David M. Crow, James T. Grindee, Edward P. Hall,
William W. Howard, D.M.D., Talbert D. Sehorn *and*
Vernon L. Rifer, *Chairman*

AND

**RESTRICTS GOVERNMENT POWERS
OVER RURAL PROPERTY**

(State Measure No. 11)

The Committee: William C. Church, Arno Reifenberg, Charles Robinowitz,
Sidney I. Spiegel, Donald A. Waggoner, Joseph E. Worth *and*
Michael C. Kaye, *Chairman*

*"To inform its members and the community in public matters and to
arouse in them a realization of the obligations of citizenship."*

PROPOSED FOR MEMBERSHIP AND APPROVED BY THE BOARD OF GOVERNORS

If no objections are received by the Executive Secretary prior to October 23, 1970, the following applicants will be accepted for membership:

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Gary L. McClellan, Structural Engineer. Associate Partner: EPI (Engineering Pacific, Inc.) Proposed by Roland A. Haertl.

Richard E. Roy, Lawyer, Davies, Biggs, Strayer, Stoel & Boley. Proposed by Barnes H. Ellis.

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Glenn R. Spriggel, D.M.D., Dentist. Sponsored by Dr. Martin Jacobs.

PORTLAND CITY CLUB BULLETIN

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MORRIS S. ISSEKS, Archivist

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MOVIE STAR HORTON EARLY CITY CLUB MEMBER

The death last week of Edward Everett Horton, 83, popular character actor, recalled to many City Club members that Mr. Horton was an active member of this civic organization while a member of the Baker Theater company in Portland.

His original membership application still in the files lists his phone number as "Main 2" and he checked "Amusements" as his preferred area of committee research.

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION (Act of October 23, 1962; Section 4369, Title 39, United States Code)

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9. The purpose, function and nonprofit status of this organization and the exempt status for Federal income tax purposes have not changed during preceding 12 months.
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I certify that the statements made by me above are correct and complete (signed) Ellamae W. Naylor, Editor.

REPORT
ON
SCENIC WATERWAYS BILL
(State Measure No. 9)

Purpose: To preserve natural beauty of certain rivers. Designates as "scenic waterways" portions of Rogue, Illinois, Deschutes, Owyhee, John Day Rivers, and all Minam River. Prohibits dams and reservoirs on these rivers. State Highway Commission given condemnation and rule-making powers. Landowners within a quarter mile of such rivers must give Commission one year advance notice before mining, cutting trees, or constructing any roads, buildings, or other structures. Governor may designate additional "scenic waterways".

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Your Committee was appointed to investigate and make recommendations on the Scenic Waterways Bill to appear on the November 3, 1970, ballot as State Measure No. 9. Measure No. 9 was placed on the November ballot as a result of an initiative petition. The Scenic Waterways Bill is intended to complement on the state level the National Wild and Scenic Rivers Bill (Public Law 90-542). The Scenic Waterways Bill is included as Exhibit A to this report.

In the course of its investigation the Committee contacted by letter approximately 25 political and business leaders in the regions most directly affected by this bill. The response to these letters was extremely limited, possibly indicating a lack of information on the measure at the local level. The Committee interviewed the following persons:

Herbert H. Anderson, Committee for Minam Action
Herbert Beale, Columbia Region Association of Governments
Dave Corkran, Columbia Chapter, Sierra Club
Ross Davis, Boise Cascade Corporation
Dan Dority, Lake Oswego
Wendell Gray, Deschutes Club
Fred D. Gustafson, Chief Engineer, State Water Resources Board
Paul Hanneman, Oregon State House of Representatives
John J. Inskeep, Oregon State Senate
Tom McAllister, *Oregon Journal*
John T. McMahan, Grants Pass Chamber of Commerce
H. J. Nelson, U. S. Bureau of Reclamation
Robert K. Potter, Scenic Rivers Committee, a citizens' group
Ralph Robinson, Oregon Farm Bureau Federation
Edward Sanchez, U. S. Corps of Engineers
David G. Talbot, Superintendent of Parks, State of Oregon
Don S. Willner, Oregon State Senate

II. HISTORY AND BACKGROUND

The first scenic rivers bill was introduced in the 1967 Session of the Oregon Legislature by Senator Don S. Willner. The bill was supported by outdoor and conservation groups and endorsed by newspapers throughout the State, but opposed by certain timber, agricultural and real estate interests. The bill passed the State Senate but died in Committee in the House of Representatives. After the 1967 session, a Citizens' Committee was formed to solve some of the problems which had killed the original bill.

Senator Willner and Representative Stafford Hansell introduced a modified bill in the 1969 session of the State Legislature. At this session there was little open opposition to the bill but a good deal of private interest lobbying. The Senate and the House passed differing versions of the bill, and it subsequently died in conference committee on adjournment day.

The sponsors of the bill decided not to wait until the 1971 Legislative Session, but to take the case directly to the people through an initiative petition. The petition efforts were started at the State Fair in Salem during August, 1969, and on June 23, 1970, a petition bearing 53,000 signatures was submitted to the Secretary of State. Sponsors of the petition included many Oregon conservation and recreation groups.

By way of background, under existing law, the State Water Resources Board is the single state agency responsible for formulating state water resource policy and for devising plans and programs for development of the water resource. The State Highway Commission is responsible for administering state park lands.

At present there is no organized campaign in opposition to the measure and a rather limited campaign by its proponents.

III. DESCRIPTION OF THE ACT

Measure No. 9 accomplishes the following:

1. Establishes as "scenic waterways" portions of the Rogue River (88 miles), Illinois River (46 miles), Deschutes River (100 miles), Owyhee River (70 miles), John Day River (147 miles), and all of the Minam River (45 miles). Other scenic rivers can be added (a) if they meet the criteria set forth in the bill, (b) if they are recommended for inclusion by the State Highway Commission, (c) if the recommendation is supported by the Water Resources Board, (d) if the Governor of Oregon designates the new stretch of river for inclusion, and (e) if the following general session of the Oregon Legislature does not exercise a veto.

2. Measure No. 9 establishes a system of "scenic waterways" which should be distinguished from "wild rivers". As described in the National Wild and Scenic Rivers Act (PL 90-542), "wild rivers" are defined as:

"those rivers or sections of rivers that are free from impoundments and generally inaccessible except by trail with watersheds or shorelines essentially primitive and waters unpolluted."

Scenic Rivers are defined as:

"those rivers or sections of rivers that are free of impoundments with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by road."

3. An adjacent landowner (within one quarter mile of the riverbank) who wishes to make any changes in the use of his land must give the Highway Commission advance notice. If the change is compatible with the scenic qualities of the area, e.g., a farmer putting up a new barn, the Commission's administrative procedures should allow immediate approval of construction. If the change is in conflict with the bill, the Commission is instructed to negotiate with the landowner for up to one year in an endeavor to work out a way that the landowner's objectives can be achieved and preserve the view from the river. As an example, in the case of timber harvesting, a selective cut management plan probably could be negotiated with the Commission. If a successful agreement could not be reached by negotiation within one year, the landowner is free to proceed with his plans, but at the same time, the Highway Commission is free to acquire the land by condemnation.

4. Money for purchasing scenic easements or acquiring land from private owners would come from the Federal Land and Water Conservation Act with matching monies from state gasoline tax revenues. The State may trade public lands in lieu of condemnation and purchase.

5. The public is not given any right of trespass over private land, but the Highway Commission may purchase such land as necessary for road or trail access.

6. Designation of a river as a scenic waterway in no way restricts the right of access to the river necessary to utilize existing water rights.

7. The State Water Resources Board must consider recreation, fish and wildlife as the highest and best uses of waters within scenic waterways.

8. No dams, reservoirs or other water impoundment facilities shall be constructed on waters within scenic waterways. No roads, railroads or utilities shall be constructed within any scenic waterway except where necessary to serve the permissible uses encompassed by the bill.

9. The State Scenic Waterways Bill does not affect lands under the jurisdiction of an Indian tribe or the United States Government. The Highway Commission may enter into agreements with the tribe or the Federal Government for the administration of such lands.

10. Passage of the State Scenic Waterways Bill would allow the Governor to request inclusion of the streams into the Federal Wild and Scenic River System. (PL 90-542) Such inclusion would preclude construction of dams by federal agencies on the designated rivers.

11. Property taxes on private land within the scenic waterways shall be assessed on the basis of true cash value of the property less any reduction in value caused by the scenic easement.

IV. ARGUMENTS IN FAVOR OF THE MEASURE

The following arguments have been advanced in favor of this measure:

1. Portions of rivers determined to be "scenic" should be claimed now to prevent further development incompatible with the scenic beauty of the rivers as they now exist. Preemption of our remaining free-flowing rivers is occurring now and future growth and development will accelerate the change. Already many stretches of Oregon rivers have been taken over by commercial development and lost to scenic uses.

2. The measure is a good compromise between the rights of private property owners and the interests of the people of the State of Oregon.

3. The State can prevent nonfederal dam construction. Although it cannot prohibit federal dams on state scenic waterways, it is unlikely that the federal government would build a dam where the State opposed it. The streams protected by this measure can have federal protection under the National Wild and Scenic Rivers System when requested by the Governor or Legislature.

4. The Legislature can delete, add to, or change portions of the measure so the Act remains amenable to legislative process.

5. The measure contemplates agreements between private landowners on the rivers affected and the Highway Commission. The State would have no power to condemn during the period when these agreements are in effect or during any negotiating period.

6. There would be no new appropriation of tax dollars if this measure were passed. The Highway Commission is directed to use, as deemed necessary, existing federal monies now coming into the State which would be matched by gasoline tax revenues.

7. Without this measure, river land could be condemned for a park. This measure gives the adjacent landowners greater protection since, if he leaves his land in its present use, it is free from condemnation proceedings. Compatible agriculture and forestry are protected with the bill; also existing water rights are preserved. No right of trespass is given to the public over any private land covered by this measure.

8. Additional rivers may be added to the scenic waterways system, utilizing the administrative procedures set forth in the bill.

V. ARGUMENTS AGAINST THE MEASURE

Arguments advanced to your Committee in opposition to this measure include:

1. No thorough study has been undertaken of the designated rivers by the State Water Resources Board to show that such restrictive use is in the public interest. To prevent or limit development of water supply, flood control, agriculture and forestry could result in an economic loss to the State.
2. The State Water Resources Board has been given jurisdiction by the Legislature of all state water policy. It already has the power to create scenic waterways without this initiative measure.
3. The establishment of the State Highway Commission as a land-use policy agency is a dangerous precedent. Such power should be left to local planning commissions.
4. The establishment of scenic waterways places aesthetic considerations over the economic values of the water.
5. The Governor's power to propose additional scenic rivers is an excessive transfer of legislative power to the executive branch.
6. Complex measures of this type should be developed in the Legislature rather than by the initiative process.
7. Lack of an independent source of funds for development of this scenic rivers system may negate the principles of the bill. It may be necessary in the future to divert money from existing state park and highway construction programs.
8. The notification process established by the measure is an unnecessary burden on small landowners.
9. The measure does not prohibit certain facilities such as timber harvesting, which may affect the aesthetic qualities of the area.
10. The establishment of recreation as one of the highest uses for the rivers could result in high density recreation developments incompatible with scenic beauty.
11. The failure to establish land controls beyond one-quarter mile from the riverbanks or in tributaries of the scenic rivers does not provide adequate protection for the overall environment of the river. Passage of this measure will give the impression that these rivers are completely protected, thus eliminating public pressure for more stringent conservation legislation.

VI. DISCUSSION AND CONCLUSIONS

The major argument in favor of Measure No. 9 deals with a fundamental conservation objective of preserving scenic and primitive areas now, before man leaves his indelible mark on them. Henry David Thoreau has expressed man's need for wilderness in *Walden* ". . . in Wildness is the preservation of the World. Every tree sends its fibers forth in search of the Wild. The cities import it at any price. Men plow and sail for it. From the forest and wilderness come the tonics and barks which brace mankind. . . ." This need transcends political and economic considerations. Passage of Measure No. 9 will be a statement of affirmative intent by the voters to preserve some portion of their once wild rivers in a nearly natural state.

Both opponents and proponents of Measure No. 9 agree that is not a perfect bill. The fact that no organized opposition exists, though, indicates a general concurrence with the principles if not the particulars of the measure. The bill has been described as "adequate compromise". Conservation groups generally look upon it as a building block, while commercial interests feel it is something they can live with.

The legal, political and economic arguments against the measure, set forth in Section V are substantial and may provide serious roadblocks to successful administration of the "scenic waterways" system. However, the need for preservation of natural areas is not depreciated by these arguments. If anything, the negative arguments with the most merit are whether this bill will have any substantial effect in preserving the environment of these rivers and also if it will

reduce public pressure for adequate conservation legislation. Considering the action of the last two sessions of the Legislature, it is not realistic to assume that subsequent Legislatures will materially improve the measure's conservation aspects without massive public pressure.

VII. RECOMMENDATION

Your Committee unanimously recommends that the City Club favor the Scenic Waterways Bill, and urges a "Yes" vote on State Measure No. 9.

Respectfully submitted,

David M. Crow
James T. Grindee
Edward P. Hall
William W. Howard, D.M.D.
Talbert D. Sehorn, *and*
Vernon L. Rifer, *Chairman*

Approved by the Research Board October 2, 1970 for transmittal to the Board of Governors

Received by the Board of Governors October 5, 1970 and ordered printed and submitted to the membership for action.

EXHIBIT A

Submitted to the Electorate of Oregon by Initiative Petition to be voted on at the General Election, November 3, 1970.

MEASURE NO. 9

Ballot Title: SCENIC WATERWAYS BILL

Purpose: To preserve natural beauty of certain rivers. Designates as "scenic waterways" portions of Rogue, Illinois, Deschutes, Owyhee, John Day Rivers and all Minam River. Prohibits dams and reservoirs on these rivers. State Highway Commission given condemnation and rule-making powers. Landowners within a quarter mile of such rivers must give Commission one year advance notice before mining, cutting trees, or constructing any roads, buildings or other structures. Governor may designate additional "scenic waterways."

Be It Enacted By The People of the State of Oregon:

Section 1. The people of Oregon find that many of the free-flowing rivers of Oregon and lands adjacent to such rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archeologic, and outdoor recreation values of present and future benefit to the public. The people of Oregon also find that the policy of permitting construction of dams and other impoundment facilities at appropriate sections of the rivers of Oregon needs to be complemented by a policy that would preserve other selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of such rivers and fulfill other conservation purposes. It is therefore the policy of Oregon to preserve for the benefit of the public selected parts of the state's free-flowing rivers. For these purposes there is established an Oregon Scenic Waterways System to be composed of areas designated in accordance with this Act and any subsequent Acts.

Section 2. As used in this Act, unless the context requires otherwise:

- (1) "Commission" means the State Highway Commission.
- (2) "Scenic waterway" means a river or segment of river that has been designated as such in accordance with this or any subsequent Act, and includes related adjacent land.
- (3) "Related adjacent land" means all land within one-fourth of one mile of the bank on each side of a river or segment of river within a scenic waterway, except land that, in the commission's judgment, does not affect the view from the waters within a scenic waterway.
- (4) "Scenic easement" means the right to control the use of related adjacent land, including air space above such land, for the purpose of protecting the scenic view from waters within a scenic waterway; but such control does not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement, and the landowner retains

the right to uses of the land not specifically restricted by the easement. ORS 271.750 does not apply to any acquisition of such a scenic easement under this Act.

Section 3. The following rivers, or segments of rivers, and related adjacent land, are designated as scenic waterways:

(1) The segment of the Rogue River extending from the confluence with the Applegate River downstream a distance of approximately 88 miles to Lobster Creek Bridge.

(2) The segment of the Illinois River from the confluence with Deer Creek downstream a distance of approximately 46 miles to its confluence with the Rogue River.

(3) The segment of the Deschutes River from immediately below the existing Pelton reregulating dam downstream approximately 100 miles to its confluence with the Columbia River, excluding the City of Maupin.

(4) The entire Minam River from Minam Lake downstream a distance of approximately 45 miles to its confluence with the Wallowa River.

(5) The segment of the South Fork Owyhee River in Malheur County from the Oregon-Idaho border downstream approximately 25 miles to Three Forks where the main stem of the Owyhee River is formed, and the segment of the main stem Owyhee River from Crooked Creek (six miles below Rome) downstream a distance of approximately 45 miles to the mouth of Birch Creek.

(6) The segment of the main stem of the John Day River from Service Creek Bridge (at river mile 157) downstream 147 miles to Tumwater Falls (at river mile 10).

Section 4. (1) Subject to subsection (12) of ORS 536.310, it is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water impoundment facility shall be constructed on waters within scenic waterways. No water diversion facility shall be constructed on such waters except as necessary to uses designated in subsection (12) of ORS 536.310 or as necessary to existing uses of related adjacent land. The submerged and submersible lands under and along such waterways shall not be modified by placering, dredging or by any other means.

(2) Nothing in this Act affects the authority of the Fish Commission of the State of Oregon and the State Game Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and Wildlife resources. Nothing in this Act affects the authority of the State Engineer to construct and maintain stream gauge stations and other facilities related to his duties in administration of the water laws.

(3) The State Engineer shall administer and enforce the provisions of this section. The State Water Resources Board shall carry out its responsibilities under ORS 536.210 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

Section 5. (1) Except as provided in subsection (3) of section 4 of this Act, scenic waterways shall be administered by the commission, each in such manner as to protect and enhance the values which caused such scenic waterway to be included in the system. In such administration primary emphasis shall be given to protecting the esthetic, scenic, fish and wildlife, scientific and recreation features, based on the special attributes of each area.

(2) After consultation with the State Board of Forestry and the State Department of Agriculture and with the concurrence of the State Water Resources Board, the commission shall adopt rules and regulations governing the management of related adjacent land. Such rules and regulations shall be adopted in accordance with ORS chapter 183. Such rules and regulations shall reflect management principles, standards and plans applicable to scenic waterways, their shore lines and related adjacent land and, if necessary, establish varying intensities of protection or development based on special attributes of each area. Such management principles, standards and plans shall protect or enhance the esthetic and scenic values of the scenic waterways and permit compatible agricultural, forestry and other land uses. Specifically, and not in limitation of the foregoing, such rules and regulations shall provide that:

(a) No roads, railroads or utilities shall be constructed within any scenic waterway except where necessary to serve the permissible uses, as defined in subsection (2) of this section and in the rules and regulations of the commission, of the related adjacent land or unless commission approval of such use is obtained as provided in subsection (4) or (5) of this section. The commission wherever practicable shall require the sharing of land and air space by such roads, railroads and utilities. All permissible roads, railroads and utilities shall be located in such a manner as to minimize the disturbance of the natural beauty of a scenic waterway.

(b) Forest crops shall be harvested in such manner as to maintain as nearly as reasonably is practicable the natural beauty of the scenic waterway;

(c) Occupants of related adjacent land shall avoid pollution of waters within a scenic waterway;

(d) The surface of related adjacent land shall not be disturbed for prospecting or mining unless the commission's approval is obtained under subsection (4) or (5) of this section; and

(e) Unless commission approval of the proposed use is obtained under subsection (4) or (5) of this section, no commercial, business or industrial structures or buildings other than

structures or buildings erected in connection with an existing use shall be erected or placed on related adjacent land. All structures and buildings erected or placed on such land shall be in harmony with the natural beauty of the scenic waterway and shall be placed a sufficient distance from other structures or buildings so as not to impair substantially such natural beauty. No signs or other forms of outdoor advertising that are visible from waters within a scenic waterway shall be constructed or maintained.

(3) No person shall put related adjacent land to uses that violate this Act or the rules or regulations of the commission adopted under this Act or to uses to which the land was not being put before the effective date of this Act or engage in the cutting of trees, or mining, or prospecting on such lands or construct roads, railroads, utilities, buildings or other structures on such lands, unless the owner of the land has given to the commission written notice of such proposed use at least one year prior thereto and has submitted to the commission with the notice a specific and detailed description of such proposed use or has entered into agreement for such use with the commission under subsection (5) of this section. The owner may, however, act in emergencies without the notice required by this Act when necessary in the interests of public safety.

(4) Upon receipt of the written notice provided in subsection (3) of this section, the commission shall first determine whether in its judgment the proposed use would impair substantially the natural beauty of a scenic waterway. If the commission determines that the proposal, if put into effect, would not impair substantially the natural beauty of the scenic waterway, the commission shall notify in writing the owner of the related adjacent land that he may immediately proceed with the proposed use as described to the commission. If the commission determines that the proposal, if put into effect, would impair substantially the natural beauty of the scenic waterway, the commission shall notify in writing the owner of the related adjacent land of such determination and no steps shall be taken to carry out such proposal until at least one year after the original notice to the commission. During such period:

(a) The commission and the owner of the land involved may agree upon modifications or alterations of the proposal so that implementation thereof would not in the judgment of the commission impair substantially the natural beauty of the scenic waterway; or

(b) The commission may acquire by purchase, gift or exchange, the land involved or interests therein, including scenic easements, for the purpose of preserving the natural beauty of the scenic waterway.

(5) The commission, upon written request from an owner of related adjacent land, shall enter into negotiations and endeavor to reach agreement with such owner establishing for the use of such land a plan that would not impair substantially the natural beauty of the scenic waterway. At the time of such request for negotiations, the owner may submit a plan in writing setting forth in detail his proposed uses. Three months after the owner makes such a request for negotiations with respect to use of land, either the commission or the owner may give written notice that the negotiations are terminated without agreement. Nine months after the notice of termination of negotiations the owner may use his land in conformity with any specific written plan submitted by the owner prior to or during negotiations. In the event the commission and the owner reach agreement establishing a plan for land use, such agreement is terminable upon at least one year's written notice by either the commission or the owner.

(6) With the concurrence of the State Water Resources Board, the commission may institute condemnation proceedings and by condemnation acquire related adjacent land:

(a) At any time subsequent to nine months after the receipt of notice of a proposal for the use of such land that the commission determines would, if carried out, impair substantially the natural beauty of a scenic waterway unless the commission and the owner of such land have entered into an agreement as contemplated by subsection (4) or (5) of this section or the owner shall have notified the commission of the abandonment of such proposal; or

(b) At any time related adjacent land is used in a manner violating this Act, the rules and regulations of the commission or any agreement entered into by the commission pursuant to subsection (4) or (5) of this section; or

(c) At any time related adjacent land is used in a manner which, in the judgment of the commission, impairs substantially the natural beauty of a scenic waterway, if the commission has not been given at least one year's advance written notice of such use and if there is not in effect commission approval of such use pursuant to subsection (4) or (5) of this section.

(7) In such condemnation the owner of the land shall not receive any award for the value of any structure, utility, road or other improvement constructed or erected upon the land after the effective date of this Act unless the commission has received written notice of such proposed structure, utility, road or other improvement at least one year prior to commencement of construction or erection of such structure, utility, road or other improvement or unless the commission has given approval for such improvement under subsection (4) or (5) of this section. The commission shall not acquire by condemnation a scenic easement in land. When the commission acquires any related adjacent land that is located between a river and other land that is owned by a person having the right to the beneficial use of waters in the river by virtue of his ownership of the other land:

(a) The right to the beneficial use of such waters shall not be affected by such condemnation; and

(b) The owner of the other land shall retain a right of access to the river necessary to use, store or divert such waters as he has a right to use, consistent with concurrent use of the land so condemned as a part of the Oregon Scenic Waterways System.

(8) Any owner of related adjacent land, upon written request to the commission, shall be provided copies of rules and regulations then in effect or thereafter adopted by the commission pursuant to this Act.

(9) The commission shall furnish to any member of the public upon his written request and at his expense a copy of any notice filed pursuant to subsection (3) of this section.

(10) If a scenic waterway contains lands or interests therein owned by or under the jurisdiction of an Indian tribe, the United States, another state agency or local governmental agency, the commission may enter into agreement with the tribe or the federal, state or local agency for the administration of said lands or interests therein in furtherance of the purposes of this Act.

Section 6. The commission shall undertake a continuing study and submit periodic reports to the Governor, with the concurrence of the State Water Resources Board, recommending the designation of additional rivers or segments of rivers and related adjacent land by the Governor as scenic waterways subject to the provisions of this Act. Consistent with such recommendation, the Governor may designate any river or segment of a river and related adjacent land as a scenic waterway subject to the provisions of this Act. The commission shall consult with the State Game Commission, the Fish Commission of the State of Oregon, the State Department of Agriculture, the Environmental Quality Commission, the Division of State Lands, and such other persons or agencies as it considers appropriate. The State Highway Commission shall conduct hearings in the counties in which the proposed additional rivers or segments of rivers are located. The following criteria shall be considered in making such report:

(1) The river or segment of river is relatively free-flowing and the scene as viewed from the river and related adjacent land is pleasing, whether primitive or rural-pastoral, or these conditions are restorable.

(2) The river or segment of river and its setting possess natural and recreation values of outstanding quality.

(3) The river or segment of river and its setting are large enough to sustain substantial recreation use and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreation experience.

Section 7. The designation of a river or segment of a river and related adjacent land, pursuant to section 6 of this Act, shall not become effective until the day following the adjournment sine die of the regular session of the Legislative Assembly next following the date of the designation or that was in session when the designation was made. The Legislative Assembly by joint resolution may disapprove any such designation or a part thereof, and in that event the designation, or part thereof so disapproved, shall not become effective.

Section 8. Any public land within or adjacent to a scenic waterway, with the consent of the governing body having jurisdiction thereof, may be transferred to the jurisdiction of the commission with or without compensation. Any land so transferred shall become state recreational land and shall be administered as a part of the scenic waterway. Any such land within a scenic waterway which is not transferred to the jurisdiction of the commission, to the fullest extent consistent with the purposes for which the land is held, shall be administered by the body having jurisdiction thereof in accordance with the provisions of this Act.

Section 9. In acquiring related adjacent land by exchange, the commission may accept title to any property within a scenic waterway, and in exchange therefor, may convey to the grantor of such property any property under its jurisdiction that the commission is not otherwise restricted from exchanging. In so far as practicable, the properties so exchanged shall be of approximately equal fair market value. If they are not of approximately equal fair market value, the commission may accept cash or property from, or pay cash or grant property to, the grantor in order to equalize the values of the properties exchanged.

Section 10. In addition to State of Oregon funds available for the purposes of this Act, the commission shall use such portion of moneys made available to it by the Bureau of Outdoor Recreation and other federal agencies, including matching funds, as the commission determines are necessary and available to carry out the purposes of this Act.

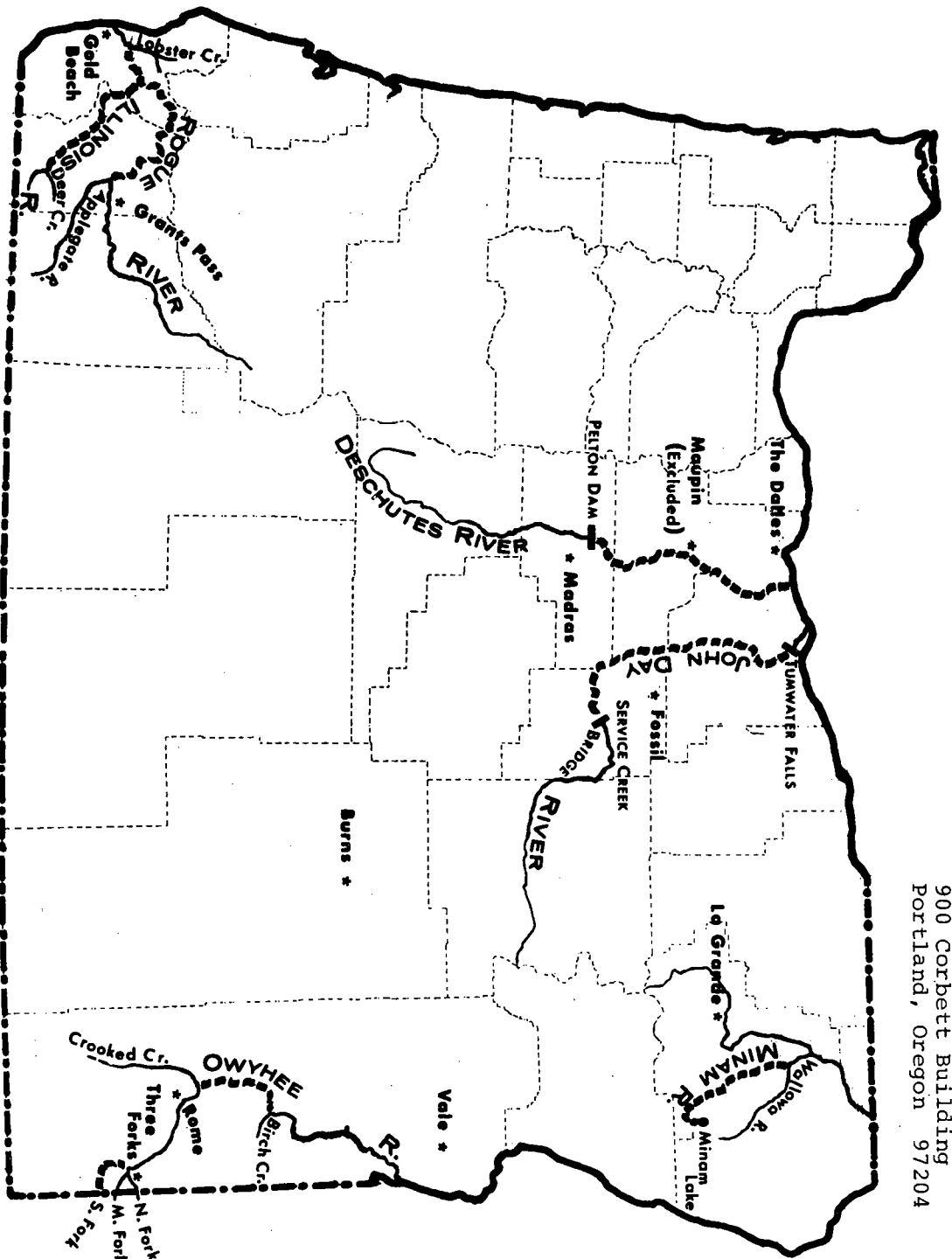
Section 11. Nothing in this Act affects the jurisdiction or responsibility of other state agencies with respect to boating, fishing, hunting, water pollution, health or fire control; except that such state agencies shall endeavor to perform their responsibilities in a manner consistent with the purposes of this Act.

Section 12. For the purposes of assessing property for taxation, real property that is subject to a scenic easement shall be assessed on the basis of the true cash value of the property less any reduction in value caused by the scenic easement. The easement shall be exempt from assessment and taxation the same as any other property owned by the state.

Section 13. The commission is vested with power to obtain injunctions and other appropriate relief against violations of any provisions of this Act and any rules and regulations adopted under this Act and agreements made under this Act.

Filed with Secretary of State July 2, 1970

The Rivers Designated As Oregon Scenic Waterways



Oregon Scenic Rivers Committee
Senator Don S. Willner, Secretary
900 Corbett Building
Portland, Oregon 97204

REPORT
ON
**RESTRICTS GOVERNMENT POWERS
OVER RURAL PROPERTY**
(State Measure No. 11)

Purpose: Constitutional Amendment restricts power of legislature, counties and other governmental units to pass future zoning, subdivision or building code legislation affecting land outside of city limits. Requires all such legislation to be approved by voters of area affected at a special or general election. Further provides that people who live outside city limits shall have initiative and referendum powers over any zoning, subdivision or building code legislation which affects their area.

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

The people of Oregon in the general election of November 3, 1970, will vote on the subject measure. Specifically, the initiative reads:

Be It Enacted By The People of the State of Oregon:

Section 1. No land, not inside incorporated cities, shall be zoned or made subject to any building code or subdivision statute or ordinance without a prior affirmative vote at a special or general election of the legal voters, outside of incorporated cities, of the area to be zoned or to be made subject to such statute or ordinance.

Section 2. Section 1 of this amendment shall not apply to any area actually zoned prior to the effective date of this amendment, nor shall this amendment affect the validity of any building code or subdivision statute or ordinance in effect prior to the effective date of this amendment.

Section 3. Notwithstanding Section 1, Article IV of this Constitution, there is reserved to the people of an area, not inside incorporated cities, which has been zoned or made subject to any building code or subdivision statute or ordinance the referendum and initiative powers which may be exercised against any zoning, building code or subdivision statute or ordinance, whenever enacted, and such referendum and initiative and any election resulting therefrom shall be limited to the legal voters of such area.

Section 4. Each section or part of a section of this amendment is separable.

Your Committee's assignment was to inform the members of the City Club on this matter and to recommend a position for or against.

II. SCOPE OF RESEARCH AND BIBLIOGRAPHY

Your Committee made an effort to locate all points of view. The only organized group found supporting Measure No. 11 was "ZAMO" (Zoning Adjustment and Modification Organization). While the Oregon State Grange has not taken a position on Measure No. 11, it has passed a resolution favoring the right of rural residents to vote on zoning matters and other land use restrictions.

All witnesses connected with government, the planning profession, and conservation groups with whom your Committee spoke were strongly opposed. Organized labor and industry appear to be allied in opposition. The Associated Oregon

Industries and the Oregon AFL-CIO have both taken official positions against the measure. The Sierra Club is opposed, as is the Oregon Rural Areas Development Committee. Both candidates for governor, Tom McCall and Robert W. Straub, spoke against the measure during their debate before the City Club on September 25, 1970.

Your Committee interviewed the following persons:

Irving Anderson, Chief, Division of Lands and Minerals, Oregon Office,
Bureau of Land Management
Leonard Bacon, Reporter, *Oregonian*
Robert Baldwin, Planning Director, Multnomah County
Roscoe E. Bell, Former Regional Director, Bureau of Land Management
Ivan Congleton, Executive Vice President, Associated Oregon Industries
James Faulstich, Head, Department of Planning and Development,
State of Oregon
Ken Fitzgerald, Editor, *Oregon Grange Bulletin*
William G. Grant, Attorney, representing ZAMO
James E. Hall, Planning Director, Clackamas County
Richard Ivey, Planning Projects Manager, Cornell, Howland, Hayes &
Merryfield
Dale Johnson, Vice President, Commonwealth, Inc., former Planning Director,
Washington County
Mrs. Pete Maben, State Chairman, ZAMO
William Nordstrom, Vice Chairman, Regional District, Sierra Club
Bruce Powers, Regional Planner, Portland Office, Bureau of Land Management
Paul C. Ramsey, Public Relations Chairman, ZAMO
Peter Schnell, Public Relations Director, Publishers Paper
J. Herbert Stone, former Regional Forester, U. S. Forest Service (retired)

Your Committee received written material from the following persons:

John D. Gray, Chairman of the Board, Omark Industries
Stephen Janik, Local Government Relations Division, State of Oregon
David Peterson, Local Government Relations Division, State of Oregon
Ted Sidor, Project Leader, Cooperative Extension Service,
Oregon State University

Your Committee consulted the following sources:

Land Use in Oregon, 1970 (published by Cooperative Extension Service,
Oregon State University, in cooperation with Associated Oregon Industries)
The New York Times (August 29, 1970)
Herald and News, Klamath Falls (August 30, 1970)
Oregonian (August 7, 1970)
Oregon Journal (August 31, 1970)
Oregon Blue Book, 1969-70 (Oregon Constitution)
Democracy in a Revolutionary Era, Harvey Wheeler (Santa Barbara, 1970)
Oregon Revised Statutes
The Nation (August 3, 1970)
Statement for the Voters Pamphlet, General Election November 3, 1970
Zoning for Small Towns and Rural Counties, (published by the Economic
Development Administration, U. S. Department of Commerce, June, 1966)
Existing or Proposed Zoning Ordinances of Clatsop, Morrow and Jefferson
Counties

III. BACKGROUND

One of the present functions of government is to plan for and implement the wisest use of the land for the common good of the people living today, for generations to come, and for the land itself. While doing this, government should consider the rights of the individual property owner. In highly developed industrial countries such as the United States, this is a complex and essential task. It requires the coordination of all levels of government, business and industry, and individual citizens. The very complexity and broad-scale nature of this task tends to produce a lack of understanding between those government officials who are making decisions, and the citizens whose lives are being affected by those decisions.

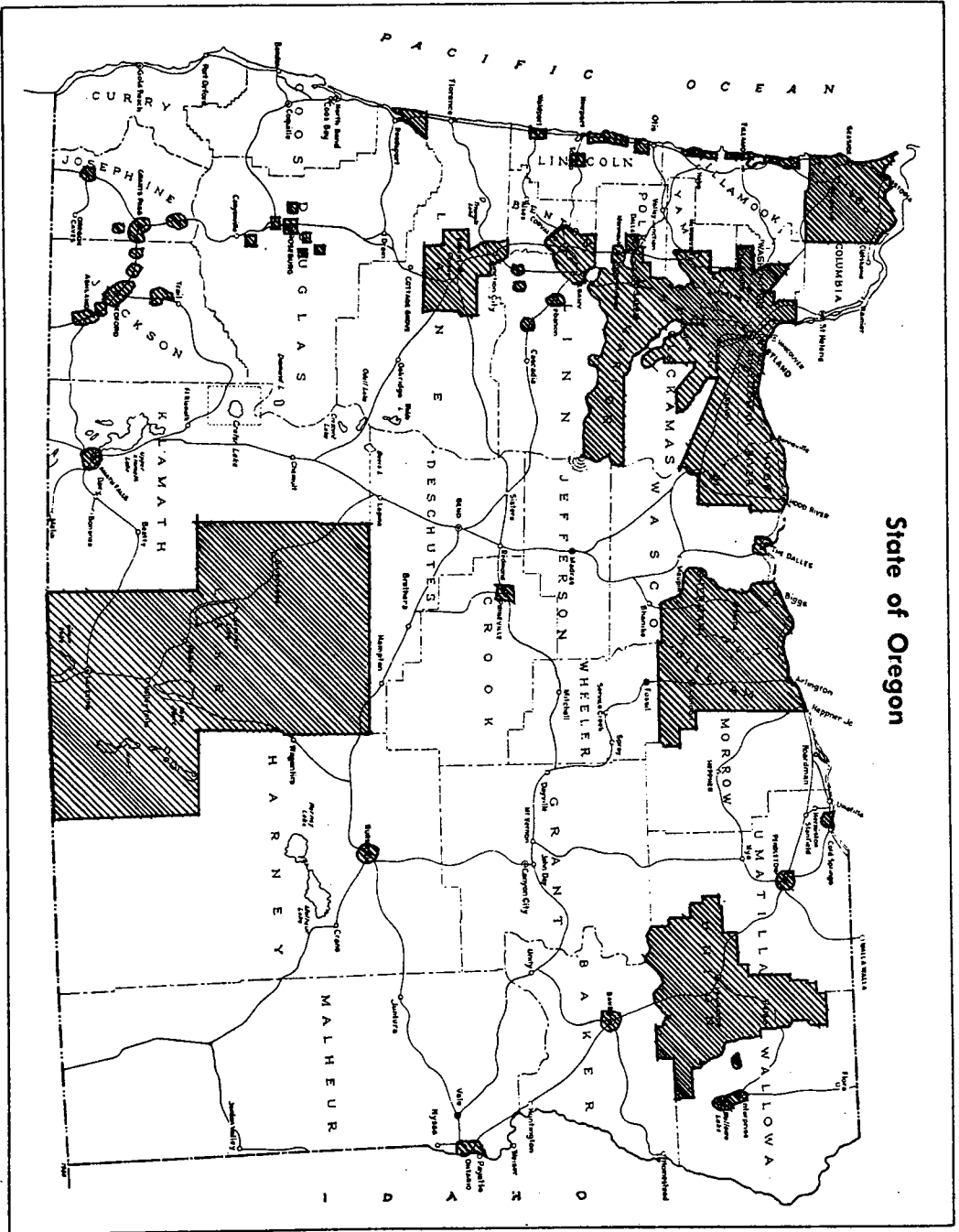
The process begins with a comprehensive plan. The main tools for implementing the comprehensive plan are zoning ordinances, building codes and subdivision statutes. It is typical in Oregon to see densely developed urban areas inside the city limits completely zoned and covered with building codes. As people and industry move outward from the city centers into the suburbs and surrounding countryside, pressure is placed on rural areas which often are not covered with comprehensive plans and the means to implement them. Those in the fields of government and planning contend that such unplanned growth results in waste and deterioration of environmental quality. Many instances of uncontrolled urban sprawl can be shown which result in inadequate police and fire protection, sewerage, water supply and other utilities. Transportation systems suffer as do potential land values. Cost of government increases; industry cannot properly locate itself and the natural beauty of the land is spoiled rather than preserved. The tendency is for land use to be determined by those who arrived first and those who have the most money and influence, rather than by representative government which generally strives for the common good.

Oregon ranks tenth in land area. Of its 96,000 square miles, 52 percent is federally owned. The great majority of the two million *people* in Oregon live in metropolitan centers. The great majority of the *land* is sparsely settled and not covered by zoning ordinances or other land use restrictions. The shaded areas on the adjacent map of Oregon show where interim or permanent zoning ordinances are in force. Oregon has made progress in comprehensive plan development and implementation. The box score is:

Land Area	Counties with completed and adopted preliminary or comprehensive plan	Counties with interim or permanent zoning ordinances outside cities
100%	13 counties	7 counties
Partial	7 counties	14 counties
0%	16 counties	15 counties

Recognizing that vast areas of Oregon are not covered by comprehensive plans and land use restrictions and that population growth and economic development are to be expected, the Oregon Legislature in 1969 enacted Chapter 324, Oregon State Laws (Senate Bill 10). SB 10 was two years in the making. It requires all counties to adopt comprehensive plans and zoning ordinances for all their lands by December 31, 1971. If they do not meet the deadline or are not making progress by then, the Governor is empowered to do the job. If a county or a city afterwards adopts such plans and ordinances, these will take precedence over any the Governor may have prescribed.

To understand why Measure No. 11 was initiated, one must know something of what happened in Clackamas County in 1966. That County's Commission blanketed a large rural area with an interim zoning ordinance and building code. There were no public hearings and no referendums. The first time most of the property owners knew of this action was an announcement included in the envelope with their annual tax statement. Subsequently, the ordinance and code were enforced. A large number of rural residents was angered. Over 2,000 people gathered in a county schoolhouse to remonstrate. ZAMO was formed. The interim ordinance and code were repealed by county initiative.



State of Oregon

STATUS OF ZONING
1970

Shaded areas show where
interim or permanent
zoning ordinances are
in force.

ZAMO has now initiated an amendment to the Oregon Constitution which will appear as Measure No. 11 on the November 3, 1970 general election ballot. ZAMO has stated that it is not against planning and zoning but it deplors the way such functions have been done at times in the past. Basically ZAMO feels that the people who live in rural areas which are or will be affected by land use restrictions on their properties ought to have the final decision on zoning ordinances, building codes and subdivision statutes. By amending the Constitution, ZAMO means to put this principle permanently beyond the reach of the "Legislature, counties and other governmental units". ZAMO members feel that there have been instances when bureaucrats have burdened rural property owners with ill-conceived land use restrictions, have unjustly administered these restrictions, and have failed to be responsive to legitimate grievances. The baffled property owner is then left with nowhere to go for redress except through a complex maze of bureaucracy and government.

Planners and government officials concede that even though the present system does have built-in safeguards and does force government to respond to the people, the mistakes ZAMO is talking about have occurred. Some zoning ordinances have been poorly drafted and administered in outlying rural areas. Unlike metropolitan centers where the needs for land use restrictions are immediately visible and where there is money to pay for the effort, rural planning has often lacked priority.

Professional planners believe Measure No. 11 would make the process of developing and implementing comprehensive plans mechanically unworkable, would circumvent the aim of SB 10, and might actually nullify the process of orderly planning altogether.

IV. ARGUMENTS IN SUPPORT OF MEASURE NO. 11

Arguments advanced to your Committee in favor of the measure included:

1. The private property owner has the inalienable right to vote laws regulating use of his property.
2. The present system gives too much power to bureaucracy and government to regulate use of private land; too little freedom is left to the owners of the property.
3. Most voters live in cities and do not understand or care about the real situation of the minority which chooses to live in outlying rural areas. It is unfair that this majority should dictate the land use rules under which fellow citizens in the country must live.
4. Frequently, land use restrictions are poorly drafted and administered. The present system does not require the government officials involved to be sufficiently responsive to the legitimate grievances of the property owners affected.
5. If residents in areas outside cities had the right to approve, amend and repeal land use rules affecting them, the end result would be improved and more realistic rural zoning ordinances, the updating of obsolete building codes and the prevention of exploitive subdivision statutes enacted by weak or opportunistic government officials under the pressure of powerful non-resident land developers.

V. ARGUMENTS AGAINST MEASURE NO. 11

Arguments presented to your Committee in opposition to Measure No. 11 included:

1. Extending initiative and referendum powers to an "area" would enable a small percentage of Oregon's voters residing on a major portion of Oregon's privately owned land, to repeal land use regulations in the "area" where they live, to block the enactment of new regulations, or to make their own regulations. Thus, the majority of Oregon's citizens could not be assured that the aims of comprehensive land use planning would be met. If these aims are not met, then:

- a. the natural resources and beauty of the land will not be protected
 - b. pollution of Oregon's living environment will not be prevented.
 - c. industry and commerce which bring economic health and prosperity to the State will not be able to find sites to locate or expand and will tend to go elsewhere, taking potential jobs with them
 - d. uncontrolled land development will lead to inadequate and inefficient public services, resulting in greater burdens to the taxpayers.
2. Measure No. 11 would deter and make more expensive the thrust of Senate Bill 10, the aim of which was the speedy and complete development and implementation of comprehensive planning for all of Oregon.
3. Aggrieved rural residents who feel unfairly restricted by land use regulations have ample opportunity for redress through the initiative, through court action, through recall of elected officials, and through election of more responsive representatives.
4. Amending the Constitution is not the way to respond to grievances created by poor legislation or administration.
5. Development of long-range, comprehensive land use plans is an increasingly complex and essential task. Neither the professionals in the field nor small groups of citizens can alone comprehend the longterm and widespread effects of land use regulations. They both must work together.
6. The vagueness of Measure No. 11 would probably require court action before the meaning of its provisions could be fully determined. For instance, the word "area" is not defined.
7. Since the term "area" will probably be construed to mean the area covered by the ordinance in question, Measure No. 11 could result in a deluge of ballot measures concerned with referring, initiating, repealing or amending land use ordinances.

VI. DISCUSSION

The time for comprehensive land use planning is before land is settled and developed, not afterwards. For instance, if one is interested in water pollution, one might think that since the State has a Sanitary Code, this will keep rivers, lakes and streams from becoming polluted. However, the Sanitary Code acts on the situation *after* pollution becomes a problem. Advanced planning can prevent pollution in the first place.

Over 30 years ago, Wisconsin enacted legislation which provided for county zoning. Any organized municipality (cities, villages, townships, etc.) was given veto power. Since then, rural zoning has been virtually ineffective in assuring best land use and a hodgepodge of growth has resulted.

A Federal law requires that public lands must be zoned before they can be sold. Since Deschutes County has no zoning, this presented a problem to the Bureau of Land Management when it wished to dispose of lands there. Although counties do not have zoning jurisdiction over federally-owned land, in practice it is federal policy not to ignore county zoning, but rather to cooperate in establishing mutually acceptable plans.

It has been held that an amendment to a zoning ordinance must go through the same process as did the ordinance itself. In other words, an ordinance amendment is a new ordinance. As time goes by, the community's needs change. This typically results in frequent zoning ordinance amendments which often apply just to small land areas lying within the original ordinance area. For example, there were approximately 500 such amendments in the Oregon portion of the Standard Portland Metropolitan Statistical Area in 1969 (excluding incorporated areas)—200 in Multnomah County, 150 in Washington County and 150 in Clackamas County. It seems probable that Ballot Measure # 11 would slow down this orderly process of change, increase the number of special elections and add greatly to the number of ballot decisions faced by each voter. It would appear that this would result in added election costs.

It is typical to find several zoning ordinances, each covering a certain area within a county. Poll books would have to be arranged so that only the voters in

these areas would pass on the ordinance amendments referred or initiated. If such amendments should pass, there would be a still greater number of smaller "areas" for the next time around, since each new ordinance would create a new area.

Rezoning of an individual lot is an amendment. Ballot Measure No. 11 would mean that all eligible residents in the area covered by the ordinance to be amended, an area which might extend over the whole county or a large part of it, would vote on the rezoning of that one lot. It is conceivable that the resident owner of that one lot could afterwards initiate and be the only one to vote on subsequent zone changes.

Witnesses interviewed on both sides of the issue felt that the way public hearings have been handled in the past leaves much to be desired. Public hearings are required by the present system. They give the people who live in the areas affected by land use restriction a chance to have their say about an ordinance or an amendment before it goes into effect.

It often seems to officials that hearings drag on, cutting into the time of the busy planners and commissioners. Frequently, only the angry and self-seekers show up. The officials suspect they are listening only to the highly vocal people who do not really reflect the moods and needs of the majority. Planners sometimes feel they are powerless to get the true facts across to the public after a bombastic witness deliberately misrepresents the truth. Many months of careful planning can go down to defeat when the commission is swayed by the emotional appeal of one witness.

On the other hand, lay people who go to the hearings feel that the powers that be go ahead with what they wanted to do in the first place and ignore their testimony. Lay people sometimes feel they are unevenly matched against the articulate experts who can cut them down and pick apart what they are trying to express before they get a chance to say it.

Planners are beginning to realize that human relations are as important as the technology of planning; that they need to acquire improved skills in communication and a greater sensitivity to public sentiment, as well as the usual nuts and bolts of their trade. As a result, the trend is toward multiple public hearings on each program to give people in many sections of an affected area the opportunity to voice their opinions. The public hearing is evolving as a device to actively seek citizen participation, rather than merely going through the motions to comply with present law.

At the present time an emotion-packed controversy over the rural zoning issue is raging in some large eastern U. S. metropolitan areas, a condition which may have implications for Oregonians. The problem starts with economic decline of city cores. The middle class and well-to-do move to the suburbs taking their tax money and investments with them, leaving the poor and the disadvantaged behind. New industries locate in the suburbs and seek workers. Those in the city's core live too far away from the factories which would like to hire them. They cannot break out of the core-area ghettos because zoning restrictions in the suburbs cause higher rents and property values than they can afford. These zoning restrictions are favored by the suburbanites because they wish to protect their investments and insure that the high standards of living environment they desire and have earned will not deteriorate. This precludes the construction of suburban low cost housing that the potential workers need in order to get close enough to the jobs they want. Ballot Measure No. 11 would give suburbanites more power to resist the outward movement of the less affluent from the city centers into their neighborhoods than are provided by the present system.

Ballot Measure No. 11 points up the dilemma of self-government in the post-pioneering age of rising population, land scarcity and complex technology. In earlier times, when life was simpler, all the people in a community could get together and decide on the matters that affected their lives. Pure democracy was nearly possible. But, as growth occurred, life became too complicated for the town meeting. Citizens did not have the time to be expert in everything, so they elected representatives to conduct government for them. Functions of government such as land use planning have become too complex for the representatives to handle directly, so they have hired such specialists as planners to assist them. As the complexity of society increases, the distance between the people and their representa-

tive specialists becomes greater, creating frustration and misunderstanding, distrust and animosity. Your Committee sees Ballot Measure No. 11 as a manifestation of this overall pattern. It is up to the citizens and their representatives and the specialists to narrow the gap between them by taking the time to become more involved with each other.

VII. CONCLUSION

The passage of Ballot Measure No. 11 would prevent the orderly application of comprehensive land use planning required by the present needs of Oregon's growth and development.

VIII. RECOMMENDATION

Your Committee unanimously recommends that the City Club accept this report and take a position against the restriction of governmental powers over rural property, urging a "NO" vote on State Measure No. 11 in the General Election on November 3, 1970.

Respectfully submitted,

William C. Church

Arno Reifenberg

Charles Robinowitz

Sidney I. Spiegel

Donald A. Waggoner

Joseph E. Worth, *and*

Michael C. Kaye, *Chairman*

Approved by the Research Board October 1, 1970 for transmittal to the Board of Governors.

Received by the Board of Governors October 5, 1970 and ordered printed and submitted to the membership for action.

**COMMITTEE REPORTS
GAIN CITY CLUB
APPROVAL OCTOBER 2**

The three state ballot measure reports presented to the City Club membership at its regular program meeting on Friday, October 2, were all approved. All three recommended "Yes" votes.

Measure No. 8, "Allows Penal Institutions Anywhere in Oregon" received unanimous approval in favor of passage of the measure, following presentation by Chairman William A. Comrie. No discussion on the floor developed.

The Veterans' Loan Amendment, Measure No. 5, was presented by its chairman, Del Leeson, and also received unanimous approval in favor of its passage, but not until several questions from the floor had been discussed.

Most discussion followed the presentation of Measure No. 1, "Convening of Legislature". It was presented by Chairman Lloyd Weisensee, and a major "seconding statement" was given by Keith Skelton in support of its passage. The report was accepted by a strong majority vote, with only one audible "No" vote.

This group of ballot measure reports was the first in a series of five programs devoted to the state, city, county, metro district and port district measures on the November 3, 1970 ballot.

All studies are under the supervision of the Research Board, headed by Ralph G. Alberger, First Vice President.

**NEW MEMBER INTRODUCTIONS
DELAYED UNTIL AFTER
BALLOT MEASURES OUT**

Newly-accepted City Club members are usually introduced to their fellow members at the Friday luncheon meeting of the week their membership has been accepted.

However, such introductions are necessarily delayed when research reports are being presented. In the case of a long-range report, the entire committee is seated at the head table with the chairman. On ballot measures, when anywhere from two to four chairmen occupy the head table, plus the presiding officer, plus the parliamentarian, and the committeemen are seated in reserved space immediately below the head table, to be introduced and recognized for their labors.

**HOW WELL DO YOU KNOW
YOUR CITY CLUB HISTORY?**

Perhaps dozens of City Club members who have joined the City Club since its anniversary year, 1966-67, are not aware that a handsome hardcover volume, entitled "Conscience of a City" sets forth the Club's complete history.

The unusual publication was produced under the direction of a special 50th Anniversary Committee for which Past President Luke L. Roberts was general chairman, and researched and edited under the direction of Roy F. Bessey, Club Historian.

Ellis Lucia, colorful Northwest author, wrote the history which is handsomely illustrated with photographs ranging from 1915 to date.

The publication is available for the far-below production cost of \$4.00 each. A 25-cent handling fee should be included if ordered by mail. Arrangements for purchase of the history may be made with the staff. Copies may be perused at the City Club office.

ADDRESS CHANGES WANTED

Members are reminded to inform the City Club staff when home or office address or phone changes are made.

Members are urged to keep the City Club staff posted on any changes in home or business phone or address, as well as occupation, so that the membership punch-card system can be as up to date as possible. Phone changes to 228-7231.

In either event, the head table schedule is too crowded to do new-member introductions justice, and they are invited for a subsequent luncheon meeting at their convenience.

Any member in good standing may sponsor someone for membership. Application cards are available from the staff at any meeting, or a telephone call to the office will result in a personal letter of invitation to your friend or colleague, enclosing an application form showing you as sponsor. Applicants are asked to accompany their applications with a check for at least half a year's dues, or an inquiry to the staff can provide the exact *pro rata* amount of dues applicable to the end of the fiscal year, May 31, 1971.