

Ed Sullivan Interview
Thursday, 8/20/15

INTERVIEWER: Today is August 20, 2015, and it is my pleasure to be speaking this morning with Ed Sullivan. Ed has an extensive background in the State's land use system, specializing in land use law for over 45 years. Now retired, he previously practiced in the Portland office of Garvey, Schubert, Barer. Ed has served as Assistant County Counsel and County Counsel for Washington County and as Legal Counsel for the Governor of Oregon. Ed has also served as a board member of the Oregon Chapter of the American Planning Association and as chair of the Housing Land Alliance, among numerous other professional and civic roles. He's an adjunct professor here at the College of Urban and Public Affairs at Portland State University and has also been an instructor in planning law at Lewis & Clark Law School and at Willamette University. My name is Kevin Pozzi, and I'm the Program Manager for the Oregon Planning Forum, which is housed within the College and Urban Public Affairs here at Portland State University. Ed, we're honored that you'd be able to sit down with us today and we're hoping to gather as much information as we can from the people who are influential in forming and shaping Oregon's land use system. We are aiming to document the stories, anecdotes and experiences of people who were involved back then, as well as to get your thoughts on how the system has evolved and where you think it might be headed. We encourage you to share anything you feel is relevant to this effort and so let's begin. I was hoping, as we start this interview, you could touch on your personal and professional relationship with Oregon's land use system?

ED SULLIVAN: Okay. I graduated from law school, Willamette University Law School, in 1969 and my first job after, uh, knowing that I would not go into the Army, uh, was

with Washington County. I was assistant county counsel, the first one there, uh, and I started as a clerk in August of 1969, and when I was admitted to the Bar in the second or third week of September, I became assistant county counsel. The fellow who was county counsel above me went to leave the practice at the end of 1970 and I became the youngest county counsel in the state --

INTERVIEWER: Um hmm.

ED SULLIVAN: -- at age 25. Most of the business for the assistant county counsel was dealing with planning law.

INTERVIEWER: Um hmm.

ED SULLIVAN: The county was exploding in terms of growth. There were many unprocessed zoning enforcement cases, which I took, along with the dog bite cases that assistants take.

INTERVIEWER: Um hmm.

ED SULLIVAN: And also I became de facto counsel for the planning commission and then I became county counsel most of the work of -- for the commissioners that was controversial was in land use. The county was growing, uh, when I got there the county was just doing its last plans for the outer areas of the county so that the whole county by 1970 or '71, was planned and zoned, not greatly, not well, but planned and zoned. I also became part of an effort that the county put forward to be more aggressive in preserving farmland in the county.

INTERVIEWER: Um hmm

ED SULLIVAN: We had, as a result of some great planning efforts, soil inventories, designate those areas that were outside of urban, now what we call urban growth

boundaries, as suitable for farm and forest purposes and set in the EFU, the Exclusive Farm Use zone, a 38 acre minimum lot size, which people thought was beyond the beyond, uh, but that worked. It was an effort that was replicated at the State level with Goal 3 and a little bit later with Goal 4, in setting the minimum lot sizes in attempting to restrict farm and forest zones, so farm and forest use. So, I became very much involved with that. I also became involved with the Fasano decision. It was a very key decision in the State's land use program, which did two things. One, it held the primacy of the plan under the county zoning enabling legislation, ORS Chapter 215, which was something that we emphasized very much to the court. It also said that small tract zone changes, as well as variances and conditional uses, were quasi-judicial, and it looked a lot more like a trial than they did as an all-comer's hearing where everybody yelled at the governing body and the governing body did what it wanted. Now, we didn't win the case because the court made -- made some new law on it, uh, which was fine, uh, nevertheless the *Fasano* case, uh, on both the issues, the primacy of the plan, and the finding that small tract zone changes were quasi-judicial, became very much part of the Oregon land use program. The last thing I want to mention was that just before I left the county to go to the Governor's office I took on, uh, a case for AIP, which is the predecessors of APA, and the American Society of Planning Officials, the other group that moved to form it, I can't remember it right now, to write an Amicus Brief in *Baker vs. Milwaukie*.

INTERVIEWER: Um hmm.

ED SULLIVAN: And *Baker* did the same thing as *Fasano* for city plans. It said that if you've got a plan you have to follow it. So, those two cases formed a fairly good basis for the land use regulation, which followed through Senate Bill 100.

INTERVIEWER: Great. Well, as you're more than familiar, uh, Senate Bill 100 created the framework for land use planning across the state and I was wondering, based on this legislation, uh, the statewide planning goals were drafted to express the state's policy interest in local land use planning.

ED SULLIVAN: Yes.

INTERVIEWER: So, do you believe that LCDC, that created this legislation, acted correctly to ensure the objectives were carried out?

ED SULLIVAN: Yes. No doubt. I was a participant, I believe, in the Goal 14 --

INTERVIEWER: Um hmm.

ED SULLIVAN: -- work group that if you -- I know you know this but --

INTERVIEWER: Um hmm.

INTERVIEWER: -- Goals 1 through 14 were adopted in '74, effective in '75, and there was a second tranche of goals for the coastal areas and the Willamette River Greenway. The main policy of the state was set in the first 14 goals and the brilliance of the Oregon system is encapsulated in Goals 2 and 14. Goal 2, being a land use planning goal, primacy, the plan coordination, uh, plan implementation, periodic review, all that in -- in Goal 2.

INTERVIEWER: Um hmm.

ED SULLIVAN: Goal 14, separating urban and rural areas, uh, maybe not the first iteration of this but certainly a -- the first effective, uh, attempt to separate, uh, urban and rural areas. That's been very good. In addition, the thing that really set off the land use process, preservation of farm and forest lands, was well done in Goals 3 and 4. I wrote a law review article 20 years after the passage of the goals saying that there were some that didn't do so well.

INTERVIEWER: Hmm.

ED SULLIVAN: We love to talk about citizen participation but we don't like to do it. We, uh -- energy was a big problem with the Arab oil -- oil boycott, uh, in the early 70's but once that ended, our commitment to energy, uh, efficiency sort of faded. We've done less than a good job on the environment side.

INTERVIEWER: Hmm.

ED SULLIVAN: So, there have been some good things and bad things, over -- all in all though the program has been great but the biggest problem that I still have with the program is the lack of emphasis on periodic review.

INTERVIEWER: Hmm. And why do you think that is? Is it because --

ED SULLIVAN: Too expensive and too hard and too long and the constituency that's captured LCDC is local governments and they're just complaining that it's too hard.

INTERVIEWER: Hmm.

ED SULLIVAN: As a result, uh, we've got lots of plans in rural Oregon that really haven't been changed essentially since the late 80's.

INTERVIEWER: Um hmm. Well, one of our questions here touches on the 19 goals and I know you've expressed, you know, the Goal 2, for instance, you thought worked really well. Are there any that you think maybe haven't worked as well? You said the environmental goals. What do you think is the reason why maybe they haven't worked?

ED SULLIVAN: Uh, because of low expectation.

INTERVIEWER: Umm.

ED SULLIVAN: Just as on Goal 6, which is the air, land and water quality. It expects nothing more than compliance with state law.

INTERVIEWER: Hmm.

ED SULLIVAN: And also, uh, the only addition is that with additional uses that they'll still be in compliance. That's a fairly low expectation. There are no administrative rules implementing that goal and it just -- it's easy to comply. I'd just say the same things with Goal 7, which is natural hazards and disasters, we have some good things out of it but you're able to avoid it on a local level if you say we don't have enough information.

INTERVIEWER: I understand that.

ED SULLIVAN: And there have been cases in Columbia and Clatsop Counties where, uh, the information was there, DOGAMI (the Department of Geology and Mineral Industries) provided that information, DOGAMI shelved it and never did anything about it, because it was too hard and too expensive and it would be too politically difficult for people in the Columbia River area, uh, to comply with it.

INTERVIEWER: For floods, for instance?

ED SULLIVAN: Floods -- well, actually it's landslides.

INTERVIEWER: Oh, landslides. Okay.

ED SULLIVAN: Floods you've got the Feds behind it.

INTERVIEWER: Um hmm.

ED SULLIVAN: And so you've got some modicum on the floods. Goal 5 is a big failure.

INTERVIEWER: Hmm.

ED SULLIVAN: Goal 5 lists 12 resources. There was a big controversy in the, if I remember right, the early 90's, it was during Neil Goldschmidt's administration, where the timber companies thought that the county were pushing too hard in timber areas and went to the legislature and got a bill passed that said that as far as timber operations were concerned, the

State Forestry Board had exclusive jurisdiction, that local governments could not do anything about it. That statute remains on the books. It was there to prevent the Tillamook Counties of the world from designating wetlands and other -- those resources within forested areas. In addition, Goal 5 is one of those easy to evade goals by saying we don't have enough information, we put it in a category that says we'll catch you later, but we never seem to ever get there. So, uh, 5, 6, 7, uh, 8's okay, 9's okay, 10's okay, 11, 12, 13 is a failure. It's energy.

INTERVIEWER: Um hmm.

ED SULLIVAN: It basically says do good and avoid evil. We want to be energy efficient but we never seem to have any -- we don't have any rules about what that means or have any expectations of local governments. It seems once we got beyond the completion of the initial acknowledgement of all cities and counties, which happen to be a need for, we didn't expect an awful lot more. We did do periodic review. We were occasionally enthusiastic about it, but not -- not very much.

INTERVIEWER: Um hmm.

ED SULLIVAN: The failure of the periodic review went around in three phases. I've written about this, and I don't remember all the dates, but basically the original expectation was between -- I'll make it up if I know the times, 5 and 10 years. Then it became 5 to 15 years. Then it became -- you didn't have to do it unless you asked for it, uh, or there was major, major, major change, uh, and by placing the Portland metro area outside of that process and making them go through their own separate, uh, reviews, uh, the rest of the state really -- nobody pushed for it, uh, LCDC thought it was too hard, and there wasn't money for it. There was no money to give local governments. There was no money for review. DLCD staff was

effectively emasculated by various budget cuts and budget no's and expectations. So, uh, we have low expectations and that's a bad part of our program.

INTERVIEWER: Hmm. Do you want to talk a little bit about the coastal goals?

ED SULLIVAN: The coastal goals have been reasonably successful.

INTERVIEWER: Um hmm.

ED SULLIVAN: And blah, blah, blah.

INTERVIEWER: (Chuckling)

ED SULLIVAN: Uh, start with the Coast Zone Management Act.

INTERVIEWER: Um hmm.

ED SULLIVAN: One of the finer -- I hate to say this, uh, a result of the Nixon Administration.

INTERVIEWER: Hmm.

ED SULLIVAN: Along with the Clean Air & Clean Water Acts. The Coastal Zone Management Act was basically a method to give local government -- state government, really, which translated into giving more money to local government, money to do planning for coastal areas and also implicitly to set up regulations or if you took the money and ran and did a good job of it. It made a series of goals, 16 through 19, which are complicated as hell, uh, which have very detailed rules, and which only had a few, but I'm not sure I always count myself among them, as the cognoscenti of how those goals actually work on the ground. Remember what we had in Oregon. We had a series of poor coastal counties.

INTERVIEWER: Um hmm.

ED SULLIVAN: Going down the line, uh, Clatsop, Tillamook, Lincoln, Lane, which is pretty good, but only has a short coast line, Douglas, which has money but only a

short coast line, Coos and Curry. All of those, except Lane and Douglas, have no money. So, uh, there had been an infusion of consultants in the 1970's. The plans are set up. Thank, God, there's no development going on and there hasn't been much development because it's a God-damned disaster. We've had a pipeline in Coos County, that's been a problem, uh, and it's been planned around -- oh, mainly because there's a high-powered law firm that has helped the county redo its plan to accommodate the pipeline. We've had other coastal controversies over the, uh, expansion of a Coos Bay Airport in an estuary but aside from that, and a couple of other controversies, we haven't had very much that's gone --

INTERVIEWER: Umm.

ED SULLIVAN: -- on, on the coast. So, we have these very elaborate plans, which talk about a lot of balancing and findings potential that really haven't had to be tested.

INTERVIEWER: Hmm.

ED SULLIVAN: So, we've proclaimed victory in Vietnam, uh, on the coastal goals, uh, mainly because the bullets haven't been flying.

INTERVIEWER: Um hmm. Hmm. Well, moving from the goals then, do you think there are any policies or topics that LCDC should have addressed in the goals maybe that weren't?

ED SULLIVAN: I'm glad that we put our eggs in the planning basket rather than the environmental basket.

INTERVIEWER: Interesting.

ED SULLIVAN: Looking at what's happened around us, California and Washington in particular, and the generation of findings to deal with real and supposed environmental issues, I think it was good that we avoided all that. It's helped the credibility of

the program. What hasn't been done? There's a lot that hasn't been done and the first thing that'll have to come along is a program review.

INTERVIEWER: Um hmm.

ED SULLIVAN: I mention that and the program is really courting disaster by not assuring the continued funding for local planning to meet needs that cities and counties are going to have. The first time that Google comes to a rural area, and you have a 1980's plan, they're not going to be able to accommodate, and anybody with half a brain is going to be able to defeat it.

INTERVIEWER: Um hmm.

ED SULLIVAN: We have short-circuited one big issue and I think that is good on the one hand, it's not good on the other, and that's population projection. I've written a lot about population projection recently, uh, because originally, aside from Metro, every county was the coordinator that assigned the population for itself and the cities in it, and most of the county boards and commissioners and county courts, are conflict adverse, so they don't make any decisions on it.

INTERVIEWER: Hmm.

ED SULLIVAN: So, we get every 10 years a decennial population count, and then we don't have the projections going beyond what cities and counties need in order to accommodate development. We took care of that in the '13 legislature by giving Portland State the default mechanisms to handle population and that's a good thing in that this big problem has been relatively solved. It's got problems but it's -- it's generally okay. The problem is that that's the biggest incentive to get moving on plans and to update plans. Now, you fold in new

population figures, which the cities and counties don't even have to adopt. So, there's no introspection.

INTERVIEWER: Um hmm. Hmm.

ED SULLIVAN: So, that's a major problem. I'm pretty good on the way that the state has done and dealt with farm and forest land. I think that's been a -- a great part of it. I think we have a failure on Goal 5 in just playing hide and seek by saying that we don't have enough information, we're going to avoid this big controversy over, what, a scenic area. Some things you have to do under Goal 5, like wetlands, uh, but a lot of things you don't have to do and we've avoided historic preservation. We have the issue, as I know you know, of owner rejection.

INTERVIEWER: Um hmm.

ED SULLIVAN: And there's a case in the Oregon Supreme Court to be heard in November, and we'll talk about the contours of -- of that exemption, which was very political. It was a Republican initiative, it passed over Governor Roberts' veto, and it's created nothing but problems for historical preservation. We could do better on natural hazards and disasters. As I've said before, we could be pushing harder on the environmental and we haven't. Uh --

INTERVIEWER: What angle do you think environmentally would work?

ED SULLIVAN: I think we need to deal with climate change.

INTERVIEWER: Um hmm.

ED SULLIVAN: There was an effort to do a Goal 20 and talk about sea rise, sea level rise and climate change, --

INTERVIEWER: Um hmm.

ED SULLIVAN: -- and LCDC just ducked that one.

INTERVIEWER: Hmm.

ED SULLIVAN: Not the time for it. And it shows to the extent to which inertia and, uh, captured by the regulated community has extended to the -- to the commission.

INTERVIEWER: Hmm.

ED SULLIVAN: Let's see. We've done a fairly good job on urban growth boundaries, a reasonably good job on economic development. On transportation we're outstanding, but the TPR, Transportation Planning Rule, has been a great feature, and it relates to -- first of all, it tries to get people out of cars. It also relates to capacity to changes in plans and urban growth boundaries, which I think is a good thing. Energy we would do a lot better. The greenway has been silent.

INTERVIEWER: That's an interesting one that doesn't come up very often.

ED SULLIVAN: It doesn't come up very often. It was -- when I was in the Governor's office it was a major political battle.

INTERVIEWER: Really?

ED SULLIVAN: Yeah. But basically cities get to do what they want within municipal boundaries, they don't have to do anything except make sure that the greenway is accessible, and rural counties put those lands that are -- most of them are within farm and forest zones, uh, there's a voluntary way of getting access and acquiring property, but it makes -- makes no real change in the way people do their farm and forest activities.

INTERVIEWER: Um hmm.

ED SULLIVAN: And in the coastal goals, I think we have the benefit of just very little activity helping the program.

INTERVIEWER: Hmm. Well, touching on public involvement for a moment, you know, that obviously LCDC and DLCD undertook a pretty impressive and public outreach effort in adopting the first 14 goals.

ED SULLIVAN: Absolutely.

INTERVIEWER: Do you think this was worth doing and did --

ED SULLIVAN: Yes.

INTERVIEWER: -- it shape your views at all or anyone that you worked with?

ED SULLIVAN: The problem with it, if there's a problem, is that everything that happened afterwards pales in comparison.

INTERVIEWER: Interesting.

ED SULLIVAN: Arnold Cogan did a great job in publicizing and doing workshops on having TAC committees, Technical Advisory Committees, on doing the goals and the work that the commission did, L.B. Day and Steve Schell and others, in putting those goals together, where, you know, had a high point of citizen participation, but as time went on there was a conflation of citizen participation and opposition to the program.

INTERVIEWER: Hmm.

ED SULLIVAN: All right. We have 100 farmers in Coos County that don't like minimum lot sizes, and so we're going to do it anyway, and therefore it was something that with -- we have to ignore the citizen participation. Yes, you have to strictly enforce the law but the way that the law was enforced was that there was a conflation of opposition to the program in citizen participation. More than that, uh, there was an original expectation that there would be a separate citizen advisory committee, uh, to -- for every city and county in the state.

INTERVIEWER: Um hmm.

ED SULLIVAN: And that collapsed within the first five years so that it was okay to use the planning commission, uh, which was appointed by the governing body and usually were people who were within the -- you know --

INTERVIEWER: More like rubber stamped?

ED SULLIVAN: Um hmm. Handled so LCDC tended to acknowledge everything that moved when it came to Goal 1. Hey, you got a plan in and we're fine.

INTERVIEWER: Hmm.

ED SULLIVAN: And, uh, there is a -- an emasculated citizen -- citizen's advisory committee, which is notable by its, uh -- not by its silence but by its enfeeblement.

INTERVIEWER: Um hmm. So, are there ways that we can beef this up in today's technological era?

ED SULLIVAN: We can expect for it. We can do some rulemaking. Things we haven't done.

INTERVIEWER: Um hmm.

ED SULLIVAN: Uh, we can bring us into the digital age. We can expect local government to do more than just mouth citizen involvement. We have very low expectations.

INTERVIEWER: Is that perhaps because --

ED SULLIVAN: It's too expensive.

INTERVIEWER: It's too expensive? Is that -- is that a major card? I mean I've also heard that it could be because most people, if they want to have an influence, will go through an interest group, as opposed to as a citizen?

ED SULLIVAN: That's -- say you have ad hoc interest groups for preservation of a creek or something like that.

INTERVIEWER: Right.

ED SULLIVAN: I might align with 1000 Friends or another group.

INTERVIEWER: Right.

ED SULLIVAN: But that really doesn't do anything more when -- when the initial crisis is over. It doesn't do anything permanent and gives a sense to people that the crisis is no longer there and people are not just not interested for the longer haul.

INTERVIEWER: Um hmm. Hmm. I think a really interesting topic is trying to deliberate if the statewide planning goals struck the right balance between state and local control, as LCDC intended in 1974?

ED SULLIVAN: I don't know. It's really the State legislature and not LCDC.

INTERVIEWER: Hmm.

ED SULLIVAN: And that balance was thrown in, in a non-binding part of 197.005 or 010, which says that local governments shall continue to be the primary what, uh, planners and -- and regulators and that's generally true. We have what I call a federal system in which the, uh -- the State sets the policies, makes sure the policies, like what the Supreme Court does, are carried out, but the work on the ground is done at the state -- at the city and county and metro level.

INTERVIEWER: Hmm.

ED SULLIVAN: And I think that's the correct balance.

INTERVIEWER: Any experiences maybe you've had, or whatnot, working with different parts of the state and their views of a system or -- different on the east side then the west side.

ED SULLIVAN: No, it's -- it's political and it's not east/west as much as it is valley versus the rest of the state.

INTERVIEWER: Oh. Um hmm.

ED SULLIVAN: And even in the valley it's separate. Linn County is a very -- is not enamored with the whole program and the way that Lane or Washington or Marion might be. Outside of the valley the program is now part of the background. It's tolerated. It's more than tolerated. People have learned to use it. You go to Umatilla County these days and, you know, they don't like the large minimum lot sizes, they don't like having strict urban and rural divisions, but it's part of it and I think as time goes on, uh, they'll be always growling about the program, grouching about the program, but I don't see a frontal effort to repeal it as being successful at all, and I think my friends on the property rights side see it that way too because they haven't brought a -- a repeal effort forward because they know it's going to go down.

INTERVIEWER: Good. That leads right into our next question. I mean, are there any state or local elected officials, or other ballot measures, that you think maybe have advanced or undercut SB 100 specifically?

ED SULLIVAN: Measure 57 in 2000, I think it was, said you've got to give notice of every change in state law that affects a city and county. You've got to give it to every property owner. And the measure also had a text that had to accompany that notice, which was scary as hell, it might change your property value and here's how you can get ahold of a -- the change and, of course, for the most part, these -- these changes were not very much. On the other hand, it added a lot of expense to the program because the state was obliged to fund these individual notices and any time a city or county wanted to change a plan or a zoning provision that affected an individual property they had to be noticed too.

INTERVIEWER: Hmm.

ED SULLIVAN: So, yes, that's had a -- had a big effect. The effort to -- well, the Measure 7, 37, 49, uh, triumvirate, was an effort to get this vague idea, it was a very popular idea, that if you take somebody's property you've got to pay for it, and then conflate with adjustments in value, and found a way of saying that local government has to make all the proof that it didn't do this to devalue property -- or didn't devalue property. But the claimant could just bring the claim on the back of a napkin that would set off a 180-day period and after 180-day period if the local government did nothing then there could be a claim brought against the local government for the alleged devaluation. We learned a lot from that, uh, including watch the goddamned ballot titles as they come through and people -- you can fool people, uh, not for long, but in 2007 Measure 49 passed by a bigger majority than Measure 37. So, we got through that crisis. As I've written, the real beneficiary here with both 37 and 47, was the timber industry, which funded the measures with Measure 37, and made a deal with the legislature on 49, so that that notion of don't up my regulatory burden became established in law with the threat of having to pay the timber industry for any so-called losses.

INTERVIEWER: I think many are familiar with, you know, the -- like the officials in the 1970's who were champions of the system. Any other elected officials, uh, you knew from subsequent decades who you think were particularly supportive or opposed to the system that stand out?

ED SULLIVAN: In the Portland metro area, of course, you -- you -- it was fairly easy to support in -- in most cases. So, anybody in Multnomah County, Dan Mosee being an exception, uh, probably supported. In Washington County you've got good and bad. One of the original ones was Eldon Hout, whom I worked with in Washington County, who later

became staff to JLCLU and then went to DLCD. There were a few, uh, profiles incurred but, uh, at the local level it really had to seem skeptical because in the end the local government -- government elected officials knew they had to do it but they wanted to avoid blowback. So, again, it was easier in Multnomah County, you know, and maybe okay in -- in Clackamas and Washington but it wasn't good in Marion.

INTERVIEWER: Hmm.

ED SULLIVAN: Marion having a very big constituency of outside the Salem metro area. In Lane County it was mixed too.

INTERVIEWER: Hmm.

ED SULLIVAN: You had people who loved the system and hated the system, elected to the same political issues from different districts.

INTERVIEWER: Yeah. I -- I'd heard you mention that Lane County is one of the bigger supporters, but I -- weren't they also one of the biggest oppositions when the system started to get going?

ED SULLIVAN: Yes. And, in fact, I represented Lane County during part of it.

INTERVIEWER: You did? Hmm.

ED SULLIVAN: In the later part of their planning and zoning for their outer areas. There was a fellow named Archie Weinstein, an old man, now dead, uh, who was rude, a populist, and hated the system. And then you had Jerry Rust sitting on the same board. Jerry was, uh, you know, tie-dyed and all that, and represented the Eugene part of -- on the -- on the Lane County Commissioners. So, you had two of them on the same board and their different views of planning.

INTERVIEWER: Hmm. Any other counties that stuck out? I mean, I know, for instance, Coos County seemed as though it's been particularly opposed throughout the years but --

ED SULLIVAN: They had a legislator who was -- who voted no on Senate Bill 100, Doc Stevenson, I think, I think he's dead now too, and then became a Lane County -- uh, Coos County Commissioner.

INTERVIEWER: Um hmm.

ED SULLIVAN: You know county commissioner positions pay, legislative positions don't, so it was a migration occasionally to -- to local governments.

INTERVIEWER: Um hmm.

ED SULLIVAN: So, Coos was a troublesome person. It was timber rich and when timber money started to go away so did the monies for the planning department, uh, and it had 18 of the 19 goals applicable to it, all the coastal goals, everything except the Willamette -- the Willamette River Greenway.

INTERVIEWER: Um hmm.

ED SULLIVAN: The only county that -- the only jurisdiction in the state to which all 19 goals applied was Lane County.

INTERVIEWER: Um hmm.

ED SULLIVAN: And Coos was always battling -- it battled particularly on farm and forest zones, on lots of record, on Goal 14, on whether or not you could have two and five acre chunks in the country, uh, and it took awhile for that to go away, but eventually it got acknowledged. It did -- at least it said the right things.

INTERVIEWER: Um hmm.

ED SULLIVAN: And a lot was left to enforcement of acknowledged plan provisions, which, uh, said all the right things but the Republican legislature cut out most of the enforcement funding. So, it was left to 1000 Friends and a few other groups like that to assure in other words.

INTERVIEWER: Do you think that, uh, you know, the evolution of groups like 1000 Friends or Oregonians In Action, have you seen, uh, I don't want to use the term "growing up" but the professionalizing of tactics from the earlier days to now?

ED SULLIVAN: OIA tried to follow the model of 1000 Friends.

INTERVIEWER: Hmm.

ED SULLIVAN: But in my view what 1000 Friends did in its brilliance was fix a good bad example and then win the case and use that as precedent. They did that and they did that pretty consistently. Uh, where they became more sophisticated was in spending time on policy, going to those boring work group meetings and participating, in addition to the litigation.

INTERVIEWER: Um hmm.

ED SULLIVAN: And participating in the legislature, getting knocked around by rube legislators, rude and rube -- uh, rude, uh, but -- and in dealing with administrative rules, which is where a lot of this stuff is done these days.

INTERVIEWER: Um hmm.

ED SULLIVAN: So, both 1000 Friends and OIA, and also the various other groups, uh, small commercial land owners, uh, small forest land owners, all of them start directing themselves at the rules and that followed a pattern where there was a gaggle of people who were there for acknowledgements until 1984, when the last acknowledgement went

through, and they were all friends and they're all -- you know, they all knew when to file the objections. They all knew the staff by name. And that worked in a -- in a pretty good way. You knew what you could get away with and 1000 Friends, and to a lesser extent OIA, wasn't involved at that stage, uh, commercial land owners, uh, Small Business Council, knew where to pick up on acknowledgements to fight them, uh, and, you know, there's a lot of boring stuff on procedure. How did it get from LCDC to the Court of Appeals?

INTERVIEWER: Hmm.

ED SULLIVAN: And the answer to that initially was you have to go to circuit court first and then go up until the legislature changed that but there was a big push to concentrate power in Salem. The goals weren't really changed much, Goal 5 being the exception, uh, for the first 20 years. So, most of the in-fighting was on what are the details. What do these goals mean? And, initially, until 1983, LCDC didn't have any administrative rules. It has something called policy papers that just gave a staff's best view on how the goal was carried out. The problem with policy papers was they didn't have to follow them. Nor did the commission. So, when they wanted to follow them they cited the policy paper. When they didn't want to follow them they said they did not mean anything. And the Court of Appeals, when I was involved in the case, said you can't do this, you have to use administrative rules. So, LCDC got religion and began using administrative rules findings.

INTERVIEWER: Um hmm. Any thoughts on urban and rural reserves process?

ED SULLIVAN: First of all we represented somebody who was successfully challenging the metro urban reserve. I think that was the right move. I think the Court's decision was correct. I must say that I'm involved on urban reserves. I didn't like that again in the first place. I'll blather again.

INTERVIEWER: Yep.

ED SULLIVAN: ORS 197.298, uh, statute which 1000 Friends made a bargain with other people to get passed, and talked about a list of statutory priorities for bringing land inside the urban growth boundary, and the first of those priorities was urban reserve land and I didn't like that because it meant that you could have otherwise very good farm and forest land, which would be at the bottom of the queue and move it up if -- if it happened to be urban reserve and that -- the urban reserve process would -- started with Metro trying to figure out what to do beyond 20 years and it adopted some ways of dealing with that and got struck down for technical reasons in the Court of Appeals. So, Metro did what every red-blooded American did, they went to the legislature to try to fix some rules but they didn't want the rules to be too tight on them.

INTERVIEWER: Hmm.

ED SULLIVAN: So, they did a bunch of loosey goosey factors that would allow them, they thought, to get away with anything, uh, and the result was that the -- the court said, well, you can use these factors but you've got to explain how they all come together that lead you to the decision that you made and that became a -- a real bit of trouble for Metro because they knew where it wanted to be, but no one could explain how it wanted to get there, and the project that was put together to revise Metro's urban reserve in 2007 was the worst of all possible worlds, because it -- it didn't say that Metro did it solely, it said that each county in the Portland metro area had to come to Metro and bring its own list of lands to be included and Metro was supposed to reconcile all that and they were all supposed to apply the same factors and the factors were the statutory list and the -- there were administrative rules adopted by LCDC, which were also fairly meaningless, and let you do whatever you wanted to, but the

numbers had to jibe. And when Washington County said we want a lot more land, that's in farm land now, to be part of the silicon forest, uh, the numbers didn't jibe with those of the other two counties, but factors were added to by the county, too -- in close cases to allow the county to manipulate the land so that they would bring in in the Helvetia area.

INTERVIEWER: Hmm.

ED SULLIVAN: And that's what did them in. There was one property in Multnomah County that got reversed and one series of properties in Clackamas County where the transportation numbers didn't jibe but most of the problem was in Washington County. And when that case came down it was, uh -- the process started in -- well, mainly legislation was in 2010 -- 2007, uh, the process started in 2009, and it got to 2014 when the Court of Appeals ruled on LCDC's acknowledgement of Metro's urban reserves. The prospect was to expend five more years on this stuff so the legislature, when it convened, set the urban growth boundary, set the urban reserve, made 1000 Friends happy, uh, made Washington County sort of happy, uh, but that's a bad precedent.

INTERVIEWER: Um hmm.

ED SULLIVAN: When you get into trouble go to the legislature in the next session. Pull Woodburn back because it has lots of problems; McMinnville came back but they were unsuccessful, but nevertheless, when you start going down that road, uh, then others are -- tend to follow.

INTERVIEWER: Do you wish to speak at all about Damascus and the struggle that has happened there?

ED SULLIVAN: Damascus came as a result of why was all of the development on the west side?

INTERVIEWER: Hmm.

ED SULLIVAN: I mean, aren't they suppose to look at that land that's been cut up and is not newly available for farm and forest on the east side? That's what -- we had to do that. The problem with that is that once that area was admitted to the urban growth boundary, because it followed that criteria, the people incorporated, and you had a -- an element in that people that knew how to manipulate a council. So, the council starts setting, you've got to vote on fees, we're going to vote on the plan, uh, we're going to manipulate it so that, uh, the plan may or may not have to comply. Uh, in the meantime, it was the underlying Clackamas regulations that the state had planned, and the people went after each other with bloody knives, uh, and it was a terrible disaster.

INTERVIEWER: Umm.

ED SULLIVAN: The road to Damascus is the road to hell paved with good intentions but never getting there. And there is a real possibility that Damascus will disincorporate and much of the -- not much, but a significant part of the land, looks like it's moving to Happy Valley.

INTERVIEWER: Um hmm.

ED SULLIVAN: Because the landowners want to develop it and they're not going to be able to develop in Damascus.

INTERVIEWER: Well, zooming out a little bit, I was wondering, uh, Oregon is kind of unique in having quite the strict land use system, why do you think that other states haven't adopted such a system?

ED SULLIVAN: Politics. Look at the states that have developed it -- uh, have developed some sort of system.

INTERVIEWER: Um hmm.

ED SULLIVAN: A lot of them on the west coast. We can't get away from it; we hate California, but we're under California's influence. California's required plan compliance is 60 or 61.

INTERVIEWER: Um hmm.

ED SULLIVAN: So -- and we had it in our legislation and we only got the (unintelligible) about it in the 70's. Washington, you know, you had the two senators that both pushed for national land use legislation, didn't make it, and Washington also wanted to do something along the lines of the environment, they passed a -- it's own SEPA, and for land use, the one thing they did know is they didn't want to be Oregon. All right. So, they sort of did an Oregon light. A terrible process. No review of land use decisions. An expectation for most of the population in the area is do binding plans. Well, that's stupid. An overlay of environmental regulations on coastal and shore land areas may be unnecessary but we haven't done a great job in that either on the -- on the shore lands side of the coast. So -- and Alaska's got sort of a planning obligation. Hawaii, because of its small size, has divided its state into four big planning districts and in the urban areas it's very tightly regulated, most of the litigation that comes out of Hawaii is over conditions of approval and have they gone too far? And aside from that you get a little bit of planning in some states, Pennsylvania, Wisconsin, New York to a certain extent, New Jersey certainly, because of the housing issue there, Florida, but if you look at Alabama, Mississippi, Louisiana, Texas, uh, much of the Midwest, uh, much of the Republican red states west, uh, it's not as big a thing and there -- it's going to change and it's slowly changing. We're not going to get anything nationally. So, states are the laboratories and people come to us to look at what we've done, what we've done, and whether its

successful, and we try to learn from some other places, but I don't see much changing going down.

INTERVIEWER: Um hmm. On the topic of climate refugees --

ED SULLIVAN: Yes?

INTERVIEWER: -- you know, Arizona, parts of California, Texas, has severe drought, and yet their economies are still booming. Will that --

ED SULLIVAN: But if they run out of water?

INTERVIEWER: Well, will there be a mass influx to the Northwest or --

ED SULLIVAN: They're making an effort to get Northwest water down to them much in the way the Colorado has been divvied up and is almost dry. Lacking that there'll be expensive solutions, such as you find in Catalina Island, of conversation of salt water to fresh water, very expensive. I don't see how Nevada and Texas can sustain their current level of development and I do fear climate refugees. This is a great place to live and even though we're -- we have a drought right now, we've got a hell lot more water than most places, and we've got a much better place to live. So, climate refugees is a real phenomena. So --

INTERVIEWER: I was hoping we could talk a little bit about your time on the Housing Alliance and where you see the connections between, uh, maybe its politics or policies surrounding housing, and where we're at today in the Portland metro area or across the state?

ED SULLIVAN: Well, I -- the way I think I characterized it, it's not half -- well, half jokingly, is in my penitential phase of my career --

INTERVIEWER: (Chuckling)

ED SULLIVAN: -- I'd done an awful lot on -- more to preserve farm and forest lands. I've done an awful lot to try to do things related to quality of life. Where I've spent

insufficient time is in dealing with affordable housing, and in the last 10 years or so, I've been focusing on that, not to the exclusion of everything else, but I -- I think this is the big unsolved problem today. If we're going to have an urban growth boundary that works, then it's got to work for everybody, uh, and as I look around to see the gentrification in Northeast Portland or North Portland, where the hell are those people going to go? They're going to go to outer Southeast, they're going to Washington County, and they're going to live in not the best housing, and we like to avert our gaze to that issue. We allow the Lake Oswegos and the West Linn of the world not to do anything for affordable housing. It -- I should have included one of the -- the failures of the program and -- and I think I did, 10 good things and 10 bad things. We're --

INTERVIEWER: Yep. Sorry for cutting you out at the end there. Go ahead.

ED SULLIVAN: But it is the deal with affordable housing. We don't have very high expectations. We may have, through the adoption by HUD, of a rule what we'll just call Affirmatively Favoring Fair Housing to require local governments, not only to catalog the impediments to affordable housing, but I think to do something about it. I think that that will be one of the main lasting legacies of the Obama Administration. It is very quiet now, it is likely to be very quiet during the election, but the rules that were adopted, it's subject to challenge, and who knows what will happen on that, but I think it will be upheld, and if we follow with another Democratic administration, uh, then we'll actually do something that will make a difference. We have a big case come out of the U.S. Supreme Court this last term, last June, in fact, in which Inclusive Housing, LLC, I think, uh, took on the practice of the Texas Department of Housing and something else, Communities, to always put affordable housing in black and brown and foreign-aid projects rather than anywhere else, and not to put it in

suburban communities. HUD had adopted a -- a practice of looking at impact of those kinds of decisions rather than requiring a dissident to show that it was intentionally done.

INTERVIEWER: Hmm.

ED SULLIVAN: And it was 5 to 4 decision, Kennedy writing the opinion, God bless him, which will also have a big effect, if done with some political astuteness, it can't go after all bad things all at once but you can do the 1000 Friends approach of finding a good bad example and going after it.

INTERVIEWER: Do you think -- I mean the big conversation right now, especially as Metro decides whether to expand the boundaries, is will people move in mass to multi-family housing? I'm just wondering if you think that is the wave of the future or --

ED SULLIVAN: I do think it's the wave of the future but I think it will not be done because planners think it's great, it will be done because economically it's going to be the -- the only way for families to afford housing.

INTERVIEWER: Um hmm. Um hmm. Well, again, zooming back out, I'm wondering how you think the Oregon's land use program in 2015 compares to what was envisioned by the -- the founders 40 plus years ago? I mean, what -- to put it right are there significant differences?

ED SULLIVAN: Expectations in 1973 were reactive to the loss of farm and forest land, mostly farmland.

INTERVIEWER: Hmm.

ED SULLIVAN: The effort in Tangent, Oregon, a city where I was City Attorney for 20 years, after this period started, uh, to put a shopping center on great farmland where they really didn't need it, out -- outside of Albany, outside of Corvallis, was the thing that got

Hector MacPherson involved, and you may have read of it, there was a -- a study done looking at the alternatives for the Willamette Valley, which were Portland and Eugene, and had various scenarios including build everything or conserve. That resonated with the public to say, you know, we ought to conserve. The Wilsonville -- oh, I forgot, what is the development just south of Wilsonville that came up on great farmland and the other side of the Willamette River? All those things touched the -- the public consciousness. They said we've got to do something. So, the big expectation in '73 was preservation of natural resource lands --

INTERVIEWER: Hmm.

ED SULLIVAN: -- uh, and a lot less on urban form. Urban growth boundaries were there mainly to preserve farm and forest land outside.

INTERVIEWER: Um hmm.

ED SULLIVAN: So, looking at what was expected and we've certainly done that, but the implications of that preservation, or that we've got to be more efficient within urban growth boundaries, uh, we had a couple of throw aways on environment and energy, which really didn't amount to much. It salved our consciousness. We took the money and ran on the coastal goals and did, you know, a pretty good work on that. We solved the problem in the Willamette River greenway by making it into a goal and bringing peace in the valley, but, you know, the urban part of it was, I don't want to say accidental, but if it wasn't, because we didn't think about what -- urban growth boundaries when you thought about the relationship of public facilities and transportation, to serving those lands within the urban growth boundary, but while it wasn't an afterthought, it wasn't very well developed.

INTERVIEWER: Um hmm. And that can lead into, uh, one of the points that you had raised is if there are a list of, you know, great achievements that we have accomplished or

deficiencies, I mean, we touched on a few of those, are there others that we haven't had the chance to talk on?

ED SULLIVAN: Yeah. I mean, I think -- I've thought hard about the -- the ones I gave you.

INTERVIEWER: Um hmm. So, what kind of challenges do you think the system will face that has -- I mean we haven't had a major repeal effort in a while. Are there big challenges for the system or--

ED SULLIVAN: There are, but they're not obvious. Money.

INTERVIEWER: Hmm. Interesting.

ED SULLIVAN: It's a lot sexier to talk about cops, to talk about CO₂, uh, than to underfund local planning, I think. That's a big, big problem. Two, period review. That's my hobby horse.

INTERVIEWER: Um hmm.

ED SULLIVAN: We have this investment, we have this accepted view that we -- that plans mean something, but we deter from that view when we say we're -- but we're not going to continue with this. We're not going to keep plans up to date and we're going to have a big failure when a Google wants to move to some place, other than Prineville, to take advantage of the human resources that we have but we can't accommodate.

INTERVIEWER: Um hmm. Is -- is lack of money why jurisdictions primarily are not doing periodic review?

ED SULLIVAN: Also nobody's pushing them. There is no public felt need to do much. Everybody's self-satisfied.

INTERVIEWER: Hmm. So, your -- your best periodic reviews are -- you know, if you were governor or king of the state are there any specific additions that would make to the system that --

ED SULLIVAN: I would go back to having periodic reviews become a requirement.

INTERVIEWER: Hmm.

ED SULLIVAN: I think 5 to 10 years or -- or some period and periodic review failed because it became too expensive, it became the result of a lot of game playing, uh, and local governments dogged it because they didn't have to do very much.

INTERVIEWER: Um hmm.

ED SULLIVAN: There was no pressure, uh, unlike the struggle for acknowledgement. You got acknowledgement and that nirvana gave you the goals dropping out as independent factors in evaluating individual land use decisions. You were complying with the goals so you only looked at the plan. We don't have that.

INTERVIEWER: Um hmm. In a related way, do you think, uh, DLCD and primarily LCDC, if you used the emasculated and whatnot, is that a continuing trend or do you think that they might be --

ED SULLIVAN: No. The other big factor is regulatory capture.

INTERVIEWER: Hmm.

ED SULLIVAN: They are the prisoner, generally of cities and counties, and a few other groups, 1000 Friends included. 1000 Friends knows that LCDC will probably not be able to adopt a rule without its, at least, concurrence or silence or acquiescence.

INTERVIEWER: Um hmm.

ED SULLIVAN: So -- and I think that's good, I like the -- their policies. On the other hand, is this great inertia, is a tendency to do nothing because it doesn't disturb the status quo, uh, and that's a bad thing. We should be looking more than just a -- you don't have, and I don't want to talk badly about the existing staff, you don't have heroes on that staff --

INTERVIEWER: Um hmm.

ED SULLIVAN: -- like you did -- you know, I have a picture of the original '73-'74 staff, uh, people who were specialized in the areas, who put their professional lives on the line, to talk about farm and forest lands, Ron Eber (phonetic), for example.

INTERVIEWER: Hmm. Um hmm.

ED SULLIVAN: What we have now are people who want to get along, and have an agency administration that wants to get along with the legislature, and wants to get along with local governments, and there's nobody pushing them. There's occasionally an eruption, like Steve Schell's attempt to get a Goal 20 on climate change and sea rise, that failed miserably, but you don't find that very often. You look at the agendas for LCDC these days -- boring as heck.

INTERVIEWER: (Chuckling) Hmm. Well, you've had more than four decades of work in land use and are there other experiences or anecdotes, individual stories you'd like to share with us?

ED SULLIVAN: Uh, I'll take some water.

INTERVIEWER: Yeah. Absolutely.

ED SULLIVAN: I've made a new gig now so that I've -- I'd go to conferences, usually international conferences, and I talk about what we're doing.

INTERVIEWER: Um hmm.

ED SULLIVAN: And I listen to what other people are doing. We had the moral high ground in the 70's. We were the best. And we were the best in an era that was very much concentrated on environmental and planning issues and we seem to have lost our mojo.

INTERVIEWER: Hmm.

ED SULLIVAN: And I'm disappointed in that. On the other hand we have a lot going for us. We're the best of a middling group.

INTERVIEWER: I'll take a bumper sticker.

ED SULLIVAN: Ha. Again, Goals 2 and 14 are outstanding examples of what planning can do in the country, given our constitution, given our culture, but old hat in Europe.

INTERVIEWER: Hmm.

ED SULLIVAN: Okay. Of course, we planned and, of course, we think about the environment and, of course, we respond dynamically to changes that come along. We're bored, tired, exhausted, underfunded and reveling in past glory.

INTERVIEWER: Just thinking that I think many people would view Oregon as champion or leader in environmental issues, and it's not necessarily the perception of someone who has worked in this area, you feel like we've lost that?

ED SULLIVAN: Uh, there's an old Woody Allen thing that -- that we're just not -- we're a disappointment. We could be a whole hell of a lot better.

INTERVIEWER: And that's politically or --

ED SULLIVAN: Both. I mean politically we love to strut about. We have a -- a great planning system, we have a good planning system, but nobody wants to do very much to improve it.

INTERVIEWER: Um hmm. It doesn't seem to be a topic that's discussed almost at all in an election, for instance or whatnot.

ED SULLIVAN: What we talk about, and what's been controversial, is our urban growth boundaries change system is too hard, our urban reserve system is too hard, and, indeed, we could do a lot of improvements in that area, but if that's all that's inspiring us it's not a whole lot.

INTERVIEWER: Um hmm.

ED SULLIVAN: Why aren't we doing something about climate change more than just saying Metro you give us a plan? Metro's only too happy to do it and -- and too happy to get something that's enforceable but what about the rest of the state? The sea laps up on a lot of shores of counties that aren't doing anything.

INTERVIEWER: Um hmm.

ED SULLIVAN: And they're not doing anything because they're not pushed, they're not inspired, and they don't have any money.

INTERVIEWER: You know, a related topic, I've had the opportunity to interview many people who were influential in setting up a system, many of these people are now in their 70's, 80's and 90's or passed away.

ED SULLIVAN: Right.

INTERVIEWER: How do we inspire the next generation of young people who are moving to the state to care about planning, who maybe are not familiar with Oregon's legacy, do you -- do you think it is on climate change or what is the topic?

ED SULLIVAN: I -- climate change is one of the major ones. You know, we -- we have declared victory in Vietnam in this state, and to some extent that's correct, farm and forest

land we've done a very good job on that. Setting urban growth boundaries, we've done a very good job on that but that's not the end of the world.

INTERVIEWER: Um hmm.

ED SULLIVAN: Part of it is places like PSU. I teach there, this is my 44th year next January, and I do it, not because I need the money, but because I get inspired by talking to people.

INTERVIEWER: Um hmm.

ED SULLIVAN: I get inspired by having people to work with in doing papers, doing conferences, uh, that may wake up Oregon, but it seems that we -- we need a crisis of some kind. We need climate change or something that is as difficult to deal with to get us to get off our butt.

INTERVIEWER: Well, anything else you'd like to share with us?

ED SULLIVAN: Oh, I think I've said more than enough.

INTERVIEWER: Ha. We've been speaking today with long-time land use lawyer Ed Sullivan and it's been a pleasure. I appreciate you coming by.

ED SULLIVAN: Thank you.

(Concluded)