

Note: This transcript was substantially edited for accuracy, clarity, and legibility by Katherine Daniels in August of 2015.

Chief Justice Wallace P. Carson, Jr. Interview

Wednesday, 6/29/15

INTERVIEWER: Well, good afternoon, Chief Justice Carson

CHIEF JUSTICE CARSON: Thank you.

INTERVIEWER: You are the esteemed former Chief Justice of the Oregon Supreme Court. I thank you for agreeing to be interviewed today as part of Portland State University's Oral History Project on Oregon's statewide land use planning program. My name is Katherine Daniels, and I'm the Farm and Forest Land Specialist for the Oregon Department of Land Conservation and Development. Today is Monday, June 29, 2015, and we are here in DLCD's Salem offices. Why don't we begin by having you share a brief personal background about you and your family's arrival and settlement and early life here in Oregon?

CHIEF JUSTICE CARSON: Okay. Thank you, and thank you for inviting me to participate. My paternal grandparents, from my father, came from Canada in 1889, and set up a law practice here in Salem. And he had five children, he and his -- my grandmother had five children, three boys and two girls, and they all became lawyers. And one -- one did not practice, one of my aunts did not practice, another did and was an assistant AG for a number of years. And then my two uncles and my father practiced in Salem for some time, up until they passed away. I joined the firm, after getting out of law school, and then left to go on the Circuit Court, then left the Circuit Court to go on the Supreme Court. Both my wife and I were born and raised here in Salem, and -- as was my father. My mother comes from Eastern Oregon. Her lineage dates back to somewhere around 1860 or early there on. Her side came and settled in La Grande, Union County,

and she grew up there and then came down here and met my father and settled down. That's that history. Went to school here in Salem, Bush School, or it used to be, and Leslie Junior High School and Salem High. I'm old enough there was only one high school in Salem at the time and I went to it. It's just over the railroad tracks. I joined in a lot of the civic affairs all through school, and Cub Scouts and Boy Scouts and a variety of other things. So, I enjoyed organized volunteer activity. And so I knew I would probably go into something like that, maybe law, not necessarily, but I was prepared to run for a public office and so I did. And my first -- well, I'll back up a little bit, my first public office was the Salem Planning Commission and I'm not quite sure when I joined it. I joined it, I think, in the latter part of the '50s, or early part of the '60s, and my interests came out of that. My father had a friend and he was -- Willard Marshall was his name, and he was an owner of a bottling company, Kist, and some labels that have long since disappeared, and he was a mayor of Salem and he embarked upon a program with others, I think he called it Massive Cooperation, but it was an attempt to get the various agencies, city, county, state, to work together for the betterment of the area. And it was the major reason Salem was awarded the all-America city status in the late 1950s, '58, '59 or something. I was very impressed by that, because even back then it was apparent that government does not always work well together, and not necessarily well with people, but it might be better than that. And from that came the mid-Willamette Valley Council, and it had county commissioners, city mayors, and state officials, and the leader of the planning side was a fellow by the name of Wes Kvarsten, K-v-a-r-s-t-e-n., and he was --

INTERVIEWER: My first boss.

CHIEF JUSTICE CARSON: Really? Okay.

INTERVIEWER: (Chuckling)

CHIEF JUSTICE CARSON: Well, he was kind of my first boss. I was a volunteer on the Salem Planning Commission and he administered the commission, along with others, and then Allan Hershey was a good friend, and came in later. Both of them have passed away, unfortunately, both very good people. But Wes kind of led my hand through city planning efforts, and then when I got in the legislature, he and others thought it would be good if we had a -- good for Oregon if we had land use planning in an organized way throughout the state. And the first attempt we had, I'm not sure whether it was passed in '67 or '69, I think '67, may have been Senate Bill 10, but it was a plan for voluntary county-by-county land use planning.

And it passed. The major structure then, if you go back at that time, was a fear that our valuable and limited agricultural land was being chewed up by developers, and because it's cheap land, they don't have to make roads over hills and things like that. It's all flat.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: And so there was a great concern that we needed some -- to get some control. Our major planning model was strip malls and you can see its remnants around the valley and throughout the country. And so it was the -- I was in the House at the time. A fellow by the name of Tom Hartung (phonetic) was a classmate of mine, later went on to the Senate, and he and I -- and I think the bill came to the Agricultural Committee, which I served on and he served on, and we helped get the bill through and with Wes Kvarsten's guidance and -- and a fellow by the name of Corning Bateson (phonetic), who was a farmer from Pratum, who was in the House and then moved -- the same year that I was elected to the House, he moved to the Senate, and was a very able person and helped get that passed. McCall, Governor McCall, was the leader, although I don't have much recollection of his role My assessment of it was it was all voluntary, no

teeth, and it was judged such by just about everyone that ran into it, nice idea, good idea, and we'll keep it in mind --

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: But it was not effective. So, many people decided that we needed some teeth, some strength, some organization to it, and that started Senate Bill 100. I remember discussing getting Hector McPherson, who was a newly-elected farmer from Lebanon, a very able fellow, but a legitimate farmer, and he had a great concern about what's happening to farmland. And if you look back at that time and see the legislature tried a number of things to protect farmland, land use planning was one, another was EFU, whatever that stands for --

INTERVIEWER: Exclusive Farm Use.

CHIEF JUSTICE CARSON: Exclusive Farm Use. Thank you.

But what was happening, it was obvious, was that all the farmland around the city became future city, and farmers were doing all right, in my view, financially, but they couldn't pay city taxes or housing taxes on farm land. So EFU zoning came in and then -- deferred taxation was another mechanism the legislature came up with.

INTERVIEWER: Right.

CHIEF JUSTICE CARSON: And I thought it was all reasonably balanced, and I think worked reasonably well, but we were receiving substantial increase in population. And so the pressure was on to expand the cities and eat up more farmland. So that's what the land use planning effort, in my view addressed, and it was made to be mandatory and have teeth. And one of the good things, I'll jump ahead, was we happened to have a very good leader who followed me in the Senate, L.B. Day, who was a friend, and he took over leadership of the commission and did a fine job and made it stand up and be noticed.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: So, I'll quit there. (Chuckling)

INTERVIEWER: (Chuckling) That's a great beginning. So -- so from 1970 to 1977, after you had served in the House of Representatives --

CHIEF JUSTICE CARSON: Um hmm.

INTERVIEWER: Including as majority leader, you served in the Oregon Senate and in -- in 1973 Senate Bill 100 was passed. Given the uniqueness of Oregon's statewide planning program, nationally at the time, and today more than 40 years later still, to what do you attribute the ability of Oregon's legislators to be successful in passing such landmark legislation?

CHIEF JUSTICE CARSON: I haven't given that a lot of thought, but I think, if I recall correctly, people have asked me more recently would I like to go back to the legislature again. And my answer was if I could go back with the people with whom I served in the '60s and '70s, I think the answer would be yes.

INTERVIEWER: (Chuckling)

CHIEF JUSTICE CARSON: I had a good time and good people. That's not that I got along with them all, all the time, but it was much more bipartisan. We did have our partisan fights, but there were on usual partisan issues, and most of the people who served had a deep love for Oregon, and they could see that -- this is my version --

They could see that Oregon's worth was eroding to concrete and asphalt, and quick houses, and so let's slow it down and be a little more steadfast in saving our greatest resource, other than people, which would be our land. So, it was fairly easy to pass, and then we had the good leadership of Hector MacPherson and others, who stood up and vouchsafed a great need for the future of our children and grandchildren, and people heard it and believed it and voted for it.

INTERVIEWER: Yes. All right. Well, in 1977, Governor Straub appointed you to the Marion County Circuit Court.

CHIEF JUSTICE CARSON: Yes.

INTERVIEWER: I'm told by my predecessor that you presided over a case that LCDC brought against Columbia County to force the county to comply with an enforcement order to apply EFU zoning. LUBA had not yet been created in Oregon's courts and did not yet have much experience with land use matters.

CHIEF JUSTICE CARSON: That is true.

INTERVIEWER: Do you recall that case, or any other early cases, and did they present any difficulties for the court from the perspective of not having a lot of detail in the law on land use issues?

CHIEF JUSTICE CARSON: No, I don't. I remember I struggled with it, but the terms I was pretty familiar with in my experience -- both on the legislation and on the Salem Planning Commission.

INTERVIEWER: Right.

CHIEF JUSTICE CARSON: And I knew how the system was supposed to operate, at least I thought I did, and so I do remember that part of the problem was the lawyers weren't very well trained in trial work. Many lawyers in those days would appear before planning commissions and that sort of thing, but when it turned over to trial work they had to transfer their trial skills over to land use planning. And that took a little while for all of us, judges included, to get used to the meter and the discipline of trying the cases. And I remember I came back from the Supreme Court after I'd been appointed, to finish up a case I had in the Marion County Circuit Court -- I've forgotten the name of it but people found out that I had so much invested in it, to train a new judge

on that particular case, was time prohibitive. So, I was fairly used to going the seven blocks between the Supreme Court and the Marion County Courthouse -- it only happened two or three times, I think.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: But, you know, I really don't remember much about the cases other than there was a learning curve to know who to call and to do the work well or hopefully do the work well. So, I can't be much help there.

INTERVIEWER: Um hmm. So, then in 1982, you were appointed to the Oregon Supreme Court, where you served for 24 years, 15 of which was as the Chief Justice. Are there any key land use cases that stand out in your mind as having been especially significant in interpreting Oregon's land use laws?

CHIEF JUSTICE CARSON: Well, I may get a little -- no, but let me get a little aside, one of the things that I find most interesting, and you didn't ask the question, but the politician in me I'll answer it with --

INTERVIEWER: Yes.

CHIEF JUSTICE CARSON: -- my answer but may not match your question.

INTERVIEWER: That's good.

CHIEF JUSTICE CARSON: One of the bills -- it was a type of land use bill in the legislature, called the Beach Bill, and to me that is a landmark as much as the land use planning. And I think that first opinion, upholding the Beach Bill -- well, let me back up. There's a unique aspect of the Beach Bill, and I think I'm correct on this, that when it first started, it was going to be the line of vegetation. That's between the beach and -- because Oz West (phonetic) had already declared that the wet sands were highways that belonged to the public. Between the wet sand and

the dry sand, or from beyond the wet sand, was presumed to be owned by the land owner, but then the Supreme Court, before I got to it, upheld the Beach Bill, and what we had done with the bill was when I was in law school I did some studying and the state line between Oregon and Washington, along the Columbia, was the mid-channel of the main current or the main channel of the Columbia River, and as I understand the history, when they started building bridges and dams over the Columbia River people started getting injured. And the Columbia, not as much as maybe the alignment, but the Columbia meanders, and so in a given year the line between the State of Oregon and the State of Washington would differ. And so somebody came up with the idea, well, let's do it by engineering coordinates, degrees and measurement and mark what the channel was at a given particular time, and survey it, and write it down. Oregon and Washington legislators agreed to it and it went back to Congress and they agreed to it.

INTERVIEWER: Um hmm. Um hmm.

CHIEF JUSTICE CARSON: So, that's the boundary between Oregon and Washington. I haven't checked it recently, but one interesting idiosyncrasy about it is that the state never changed its county boundaries and they stayed at the mid-channel of the Columbia River.

INTERVIEWER: (Chuckling)

CHIEF JUSTICE CARSON: So, there are parts, I maintain, of our common boundary with Washington where the fixed land is not the same as the changing channel. And there may be parts of Wasco County that fall in between the coordinates and the main channel, and they are not in either Oregon -- I mean they may be in Wasco County but they're not in Oregon.

INTERVIEWER: Interesting. (Chuckling)

CHIEF JUSTICE CARSON: Or the other way around.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: Which has caused no problem, as far as that went. The other thing was when we decided to shift to the 16-foot level for the beach elevation, which is about the - - we were told -- the average feet above mean sea level for vegetation We moved it to the 16-foot level, and then it was surveyed, and that's how the Beach Bill was laid out.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: And that reappears, if you look at the portrait of Governor McCall standing in the second floor of the -- I think it's in the Capitol Building, a huge, huge picture --

-- and he's standing there in his suit and an old stump at the beach over there, and here's this engineering aid's rod, the red and white footmarks standing up there in a line, and to me, I have never talked to the artist, but to me that's representative of the Beach Bill, that simple red and white stick.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: And I have an affiliation to that because for a couple three summers I worked for the state highway department as an engineering aid, and that was one of my jobs to hold -- and they indelicately referred to it as the idiot stick. You got a hold of it and then the surveyor would shoot the elevations so you know where it is. But that's the connection with the Beach Bill of McCall. So, every time I see that I smile.

INTERVIEWER: What a background.

CHIEF JUSTICE CARSON: Yeah.

INTERVIEWER: Interesting.

CHIEF JUSTICE CARSON: Yeah.

INTERVIEWER: Any other tales from the legislature? (Chuckling)

CHIEF JUSTICE CARSON: (Chuckling) I can't think of it. I've tried to think of some that might be helpful in further understanding what was going on, but it was a very cooperative legislature back in those days, and we -- my particular party, when I was majority leader, as you already mentioned, in the House in '69 we had a 38 to 22 position benefit.

INTERVIEWER: And you -- you were a Republican?

CHIEF JUSTICE CARSON: I was.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: And am. And by the time I got to the Senate, it was 16 -14, but then we had Debbs Potts (phonetic) from Grant's Pass, and he was a very conservative Democrat, so he usually joined with the Republicans. So we were tied 15/15 for a long time, and -- on selecting a president of the Senate, in 1971 we ultimately elected John Burns when Tom Hartung and I convinced him he ought to join the Republicans, and we would vote him to be president of the Senate. So, he joined the 14 Republicans, Debbs Potts and his vote, and got the 16 votes to elect him as president of the Senate. And then he organized the Senate, because that's what presidents do. And of course, all -- the major positions went to Democrats, as they should, that's what we understood, and he fell out of great favor with many Democrats in downtown Portland, but I think he ran a good job, did a good job. He was from Condon (phonetic) in the early days, so a free thinker. So, that worked out very well, I think, and we did well. By the time I left the Senate, we were down to six, and the margin was 24 to 6, and if anybody was interested, I would always assure them it was a lot more fun being in the majority than in the tiny minority. And I likened it to being the driver on the back end of the hook and later truck, sitting way back there. We didn't get to choose the streets we went down, or the speeds by which we moved, but we could kind of control whether we went a little to the left or a little to the right, at least the back end.

INTERVIEW: Um hmm. Um hmm.

CHIEF JUSTICE CARSON: So, but it was good. I had given notice that I wasn't going to run again, and then, Jena Schlegel, who was the sitting Circuit Judge, died of cancer, and Bob Straub called.—We Increased the number of seats on the Court of Appeals from six to ten, and I voted against it, because the bar didn't want it and I thought the bar was more right than the court system, but it passed, so, undaunted, I put my name in to be appointed in the Court of Appeals. I did not get the appointment, but not long thereafter Governor Straub called me and asked if I would like to take Jena Schlegel's position on the Circuit Court. My father had served for a short period of time, a year or so, on the Marion County Court, and in a heartbeat, I said sure, I'd be glad to. He did not like it. I thoroughly enjoyed it and I thought I would. And so I went on to the Marion County Circuit Court and then -- let's see who was it? Arno Denecke (phonetic) retired, and he'd been Chief Justice, he retired, and I called my friend, a fellow Republican Senator when I served, our majority leader in the Senate, Victor Atiyeh, and said if there's any chance I'd like to be considered. And so I was considered, I got the nod and on the 13th of July of '82, I became a Supreme Court Judge. And I thoroughly enjoyed that, great people to work with, but those were easier times than we have now, and we did have partisan moments, but not many.

INTERVIEWER: I've read that there was a lot of unanimity of opinion among many of your decisions.

CHIEF JUSTICE CARSON: Yes. Well, we worked hard on that. In those days a number of us were -- had been either trial lawyers, or trial lawyers and trial judges, and saw that one of the major purposes of rendering an opinion, not only deciding the one case that is in front of us, but leading others, citizens and lawyers and other judges, to understand what the rule of law is that comes out of that particular case. And if the court splits four to three, then a change of one position

on the court, and we see this all the time in the Supreme Court, SCOTUS, as they now call it, the Supreme Court of the United States, one person just changes the law upside down, yes becomes no or vice versa. We deemed it important to have a longer shelf life on the cases we wrote for the civility of trying the cases, trial courts, on up, and so we worked hard to get unanimous decisions. Everybody was encouraged, if they wanted to, to write a concurring [opinion] to say a little bit more. But we wanted to get them to join as much as we could and they agreed over a bit. And it's still true, I think. Over that 13 plus years, most of the people agreed, if we can, let's make a unanimous opinion and it'll have a little longer life -- legal life, and we had, oh, usually about 97 percent of our cases were unanimous. At the same time, which was a long time ago, the U.S. Supreme Court, about 48 percent of their cases were unanimous. And it's culture. None of us felt, at least most of us over time, did not feel any compulsion to write on everything and -- we voted on everything but it -- one opinion is enough. So, that was part of the fun.

INTERVIEWER: Well, that's a remarkable record, and it seems to have gone hand-in-hand with the bipartisanship that you saw in the legislature in the same time span.

CHIEF JUSTICE CARSON: Well, we were -- we had altruistic -- one of my favorite presiding officers, not of my party, was an optometrist from Reedsport by the name of Jason Boe, and he was -- could be quite partisan, but he was a very able administrator, and that just shown through and so we were able to get the bills out and moved forward.

INTERVIEWER: What do you think it was that made people so willing to work together towards common goals?

CHIEF JUSTICE CARSON: Well, it was a kinder and gentler, to borrow a phrase -- a phrase from a past president -- a kinder and gentler time, and that was always kind of -- well, I won't say always the Oregon tradition, but it was our attempt to get -- to treat the legislature as a

living organism of state government, and it needed to be healthy, and it needed to be as nonpartisan as it could be. And so everybody worked hard. Not everybody, but almost everybody. I had no hesitancy of going to a democrat and seeking their vote on any bill, and there were times when I got more democratic votes than republican votes, as it should be.

INTERVIEWER: (Chuckling) So, I've got a little list of some key land use cases that made it to the Oregon Supreme Court.

CHIEF JUSTICE CARSON: Oh, good for you.

INTERVIEWER: Some of them are --

CHIEF JUSTICE CARSON: I should have done that research but I didn't.

INTERVIEWER: (Chuckling) Well, a couple of them were on the top of my head, but I had to look up others. But *Brentmar v. Jackson County*, that distinguished allowed uses from discretionary uses in EFU zones.

CHIEF JUSTICE CARSON: That was the wine -- well, there's one from there that was the big one that -- where they set up a -- it was a vineyard, which is okay in EFU, and wanted to put -- and did put in a tasting room or something like that.

INTERVIEWER: And events. That was the *Stoller* decision.

And that was after you left, I believe, but you kept up with it.

CHIEF JUSTICE CARSON: Well, there was one that was still there, because I had friends down at Medford. And --

INTERVIEWER: Oh, was that the *Craven* case?

CHIEF JUSTICE CARSON: Yes, I think it was.

INTERVIEWER: *Craven*. Before wineries were on an enumerated use in the EFU zone, they were -- you found that they could be reviewed as a commercial activity in conjunction with farm use.

CHIEF JUSTICE CARSON: Right. Yes. That's the one I remember.

INTERVIEWER: The *Craven*. And that indeed is a very important case for planners today in interpreting what a commercial activity in conjunction with farm use is.

CHIEF JUSTICE CARSON: I'm glad it went that way because that's now a major business all over Oregon.

INTERVIEWER: That's right. Then, of course, there was the Curry County case, *1000 Friends vs. LCDC*, the Curry County case in 1986 that established that urban uses are prohibited outside of the growth boundaries.

CHIEF JUSTICE CARSON: Okay. I don't remember that one, but --

INTERVIEWER: That was a big one. *Dolan v. City of Tigard*? Did that come to you, the exactions and forced improvements for -- for a commercial use in Tigard. The land owner was forced to create a bike path on the property.

CHIEF JUSTICE CARSON: Oh. Oh. Okay, yes.

INTERVIEWER: And it went up to the -- it was overturned at the U.S. Supreme Court.

CHIEF JUSTICE CARSON: That happens every now and then.

INTERVIEWER: Not too often.

CHIEF JUSTICE CARSON: Yes. I remember that. In order to get his land use he had to build a bike path.

INTERVIEWER: That's right.

CHIEF JUSTICE CARSON: And I think the evidence was nobody in his company rode a bike but he still had to do the bike path. And, yeah, that went on all the way up to the Supreme Court.

INTERVIEWER: Yes. It did, indeed. So -- so just coming from a more overall perspective, what do you believe have been the major accomplishments of Oregon's statewide land use planning program over the years?

CHIEF JUSTICE CARSON: Well, confessing that I've gotten -- since leaving active trial practice, and the Circuit Court and the Supreme Court, my impression of the land use planning is my own observations and reading the press and the few cases that we had, I think it was a grand adventure, and I think it has brought stability, it did then, and I think it still does, to development, but cautious planned development. So, I think it was the right step, and I think it's grown in strength, and it -- LUBA and the Commission have sometimes waffled a little bit, but that's true of all human endeavors. But I think, by and large, it's been very steadfast and has brought us to the point we are now and a strong land use program. I believe it to be strong. You could attest or disagree as the case may be.

INTERVIEWER: We're interviewing you today. (Chuckling)

CHIEF JUSTICE CARSON: (Chuckling) That's true. That's true.

INTERVIEWER: I don't want to prejudice you.

CHIEF JUSTICE CARSON: Yes.

INTERVIEWER: And what do you think have been the most serious challenges or setbacks the program has faced over the years?

CHIEF JUSTICE CARSON: Well, probably one of the strengths is also in the setbacks, and that is the chafing or the abrasion between local governments and state governments in making

uniform and consistent rulings and helping the law develop. It's been much better than it has been in error, but that's -- that's human nature that was a problem and probably still is.

INTERVIEWER: That was going to be my next question. Whether you think legislative actions, court actions and LCDC actions have maintained an appropriate balance between state and local government rules. Have we achieved that right balance yet?

CHIEF JUSTICE CARSON: I think so. But I'm not to be trusted, because I'm one of the bureaucrats on the State side, and that is my child, and my child has done very well. Thank you.

INTERVIEWER: (Chuckling)

CHIEF JUSTICE CARSON: So, I'd be more interested in what city councils and city planning and county planning units think is working.

INTERVIEWER: Good point.

CHIEF JUSTICE CARSON: But my observation was then it was brand new and we took away the autonomy -- the individualism of the county planning commissions and the city planning commissions, and it took their good faith and support to do it, and it lasted. It's not uniform and we didn't have to go in those days, we didn't have a referral or any kind of a petition to put it to a vote. I don't know what would have happened, although I keep going back to the fact that I think maybe not urban Oregonians, really urban -- we only had one urban center, Portland -- cared much about agriculture, but everybody else did. And so that was -- we had a good audience and that's what part of our success was, I think. But many of us grew up on a farm. My wife lived on a farm for a while. I didn't. I lived on Leslie Street all my life, but I picked beans

and berries and everything else. I spent my summers on a farm for many years and so we had an affinity for farm activity.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: And it meant something to us.

INTERVIEWER: And, of course, today agriculture still is the second most significant economic sector in the state.

CHIEF JUSTICE CARSON: Sure. Yes.

INTERVIEWER: Are there any important land use topics or policies that you think LCDC overlooked in developing the goals or any areas that have not gotten sufficient attention?

CHIEF JUSTICE CARSON: I think, initially, the answer would be yes. I can't put my finger on it but I think there were some that were overlooked, but I think it was brought to their attention over the years. And as far as I can tell, as I said, I'm not directly involved in it, they've done a fine job of addressing the goals, much better than other agencies of state, who ignore the problems sometimes. And, no, I think they've -- and I credit the aggressiveness of keeping up with it as people like L.B. Day and others that followed it.

INTERVIEWER: Um hmm. So, the farm and forest land protection has been a core element of the program of course.

CHIEF JUSTICE CARSON: Right.

INTERVIEWER: But also planning for development, including urban growth boundaries, housing, public facilities, transportation, economic-related development. Do you think the state's been successful in balancing those two sometimes conflicting goals?

CHIEF JUSTICE CARSON: They're almost always conflicting.

INTERVIEWER: (Chuckling) Almost always conflicting.

CHIEF JUSTICE CARSON: Yes. I'd say, yes. But again, that's in my DNA chains now. So, I'd be inclined to say, yes, we've all done a good job. But, no, I think it's an area of

conflict, but I think we have done a good job and have balanced, better than most, the conflict between cheap land and farm land and expanding population.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: And the infrastructure tends to suffer, but that's more of a dollar issue than it is a planning issue in my view.

INTERVIEWER: What are your views regarding the efforts of the land use watchdog group, 1000 Friends of Oregon, and some of the spin-off friends groups around the state?

CHIEF JUSTICE CARSON: It probably depends upon the issue. Some of the times, I would agree -- both in the legislature and thereafter, I would agree. I think, overall, that is one of the good models of how citizens can participate vociferously, actively, financially in shaping government. It was back in my day a very -- well, powerful is overstatement, but an important body that was following carefully what LCDC and the other organizations did and I think for the better. So, I'm glad we had them and -- or have them. I'd like to think we would have done -- both the legislature and the courts -- would have done the right thing, but it always helps to have somebody there who's smart, and they had several folks that were really smart, and knew land use planning, knew the law, helped make the law, and were not shy about sharing their view of what the courts ought to do, or what the legislature ought to do, or what the public ought to do. So, I think they tended to nag a little bit, if I remember correctly, but it was good and good for Oregon. So --

INTERVIEWER: Yeah. (Chuckling) And, of course, they were a watchdog group largely for DLCD.

CHIEF JUSTICE CARSON: Yes.

INTERVIEWER: To make sure that the executive branch was adequately implementing new legislation.

CHIEF JUSTICE CARSON: Yes. They would -- well, there was every now and then when they felt (Chuckling) somebody was going off base.

INTERVIEWER: That's right. Were there any other organizations that you think played a significant role, either positively or negatively, towards the development of the program?

CHIEF JUSTICE CARSON: I can't think of any right now. 1000 Friends, of course, I think we all knew that those who were distracters used to call them 1000 Fiends.

INTERVIEWER: (Chuckling)

CHIEF JUSTICE CARSON: And I probably shouldn't say that but, no, I don't -- there were others. There were those who were on issues but I don't recall them with any specificity. So --

INTERVIEWER: Um hmm. There are some who feel that the Department, DLCD, needs to do more to make the program more equitable and fair and politically stable. Do you feel that additional work needs to be done in this area?

CHIEF JUSTICE CARSON: Number one, the buzz words that you use, which weren't your words, or maybe they were but I don't think they were, cloud the issue. And we're seeing that now in all kinds of issues that kind of cloud the real issue. And, so, I'm just not well-enough informed to say they're doing a great job or they're not doing a good job at all.

I have no sense that they're failing. So, I can put a mark on the positive side.

INTERVIEWER: Well, of course, Measure 37, and then Measure 49, were intended to provide more fairness for land owners who felt that they were caught by the program and not able to develop. And then, of course, the legislature authorized a lot of record provision also for people who held land, at of the time of acknowledgment, and were caught by zoning regulations.

CHIEF JUSTICE CARSON: Right.

INTERVIEWER: So, there had been some effort to provide equity and fairness, but not everybody --

CHIEF JUSTICE CARSON: Agrees.

INTERVIEWER: -- agrees that that was enough.

CHIEF JUSTICE CARSON: That's right.

INTERVIEWER: So -- and, of course, there have been several measures that were passed over the years. But, of course, Measure 37 and 49, were the ones that really had most effect. Do you think that Oregon's land use planning program achieved what was originally envisioned in 1973?

CHIEF JUSTICE CARSON: I do.

INTERVIEWER: Okay. All right. What are your thoughts about the future of Oregon's land use program? Do you think -- or what do you think should be done over the next 40 years to address some of the critical challenges that lie before us, such as population growth, the economy, climate change, the environment, affordable housing and so on?

CHIEF JUSTICE CARSON: Well, that was -- is difficult for me. All our outcomes -- I think it would be folly for us to think that we could land use plan our way out of the economy and -- transportation is one issue. For years, I think, we've had a good Department of Transportation or Highway Department. And, so, unlike many other states where a legislative career was measured by the miles of asphalt that were used in your district during your term, and I cite the State of Washington as an example back in my day, that was not the history in Oregon, in my view. But our transportation system is struggling. It's -- if you've been reading the letters to the editor and

once you retire you do tend to read those more often, squabbles going on about Portland's a fun city and Salem isn't.

INTERVIEWER: (Chuckling)

CHIEF JUSTICE CARSON: And there was a letter this morning that said somebody was critical of our Cottage Street no parking and one-way streets. We ought to be more like Portland. And I read that and I thought, ah, where is he living?

And that's kind of what the letter to the editor said. What's he talking about? He hasn't been to Portland for a while --

INTERVIEWER: No.

CHIEF JUSTICE CARSON: -- because they have parking problems, they have one-way streets and their congestion is horrible. And that's what we have. Salem has always had congestion problems, before we two-way -- we have wide streets. You know, if you lived in Eugene you have, what, a 50-foot right-of-way downtown. We have 99 feet.

INTERVIEWER: Um hmm. Oh.

CHIEF JUSTICE CARSON: And when those were platted, that was 99 feet of mud. And so Eugene has those very narrow streets and they went to one-ways very early and we had the big 99-foot streets that now are one way and I think that's fine. I remember one chief of police that I think came from the LA area, and couldn't understand how less traffic Salem had when the exit and entrance counts didn't indicate that we had had that much traffic.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: And what I believed to be true then, I don't think it's so true now, and then in part the shopping centers have corrected that, and that is that we used to drive around the block until we found a parking spot in front of a place we were going to go shop, and

that creates an awful lot of congestion just going around and around and around. And I guess that's why after a long time, I don't know this, the City of Salem changed that one block between Liberty and Commercial that was a two-way on State Street, and in front of Jackson Jeweler, and it used to be one way eastbound. Now one-half of it is westbound and one half is eastbound. And, I guess the city council has some commercial need, because the next street up, of course, Court Street, is -- is westbound. So, it still controls, but I -- so to answer your question, I don't know what the answer is going to be. They are going to be difficult. I think infrastructure is going to be a real problem, bridges. As I mentioned earlier, I worked for the -- Luther Jensen, who was the district bridge engineer, when I was in college, and so a lot of our bridges were built with that vintage and we built very good bridges, I think, and -- but they're getting old. So, that's a -- that's going to be a problem.

INTERVIEWER: And what about climate change? Does our program, our land use planning program need to be thinking about that?

CHIEF JUSTICE CARSON: Surely. I'm a denier. So, I'm less moved by that, which is contrary to the media, and I realize it, and others, but the interesting part is that the effect of the -- let's assume for this conversation it's cyclical, and that is the ice cap grows, and it will diminish over decades. We'll have warmer summers sometime and colder winters sometime. That has an effect on what we do in Oregon. We're not much of a financial capital. As you indicated, we're agriculture, we're also forest land. Most of our stuff is outdoors and I saw an interesting -- I never thought about it, but it was a report on television this morning, about how the red wine and the California vineyards are better the last year or two because of the drought. And the story goes that -- two things, one, the grapevines average about six feet into the ground, and they now go down about 12 feet looking for water, and the fruit is smaller, but it is richer and more fruity.

INTERVIEWER: Interesting.

CHIEF JUSTICE CARSON: So, it's actually changed the taste of wine. So, yeah, that makes a difference. Climate change, because it does change, has an impact -- droughts -- -- I went to college in California. It's not a good model for-- for reaction, yes, for planning, no, and so I think that it will make a difference and we may have to change. There may be things that we can't grow any more, or there may be things that are even better, and we can compete more with France or someplace else.

INTERVIEW: Um hmm.

CHIEF JUSTICE CARSON: And I don't think there's a role for government in that, I'd quickly add, but we have to be on our toes, yeah.

INTERVIEWER: So, Oregon has grown substantially, since the start of the land use planning program, and more than half the people who live here now weren't here when the program was begun.

CHIEF JUSTICE CARSON: Um hmm.

INTERVIEW: Do you think that the Department and others should be undertaking any kind of particular outreach efforts to communicate to the public the value of the program? You see relatively few articles in the newspaper anymore, relatively few editorials, unless there's some controversial topic that involves the agency. Should we be doing something more?

CHIEF JUSTICE CARSON: I've thought about that, because I'm unhappy with what the printed media, particularly, is doing. I remember the days when there was a Capitol Journal Newspaper and the Oregon Statesman. I think the coverage of the legislature is better, but almost everything else, except maybe sports, but almost everything else has moved to the human interest side, which is informative and helpful, and well-written in many cases, but it doesn't advance

planning in my view, or foreseeability of problems and solutions. So -- and it's going to get worse. I got a notice today -- we took a little magazine, published by the Consumer Reports, called Smart Shop, and we didn't like it. It told you what products to buy, more than Consumer Reports does. A little card saying they're discontinuing Smart Shop because it was expensive to do and not enough people followed it. And they also advised us that they're moving more to digital -- by that I mean electronic, I'm still back a decade or two -- they're moving to digital and abandoning some of their printed publications.

That's not good news to me. I'm of the old school that I have a hard time reading at length from the computer.

So, if it goes to digital, we'll be less informed than we are today, I think.

INTERVIEWER: Interesting.

CHIEF JUSTICE CARSON: Now, the younger people coming up, who are computer competent -- maybe, but the computer has also deprived interest. I don't see a young person sitting down at a computer and studying land use planning laws.

They don't do it when it's published in the paper and I don't see them doing it just because it's now electronic. So, we -- we do have an information problem. Can the Department do more? The answer is always, yes, but --

INTERVIEWER: Could schools do something? (Chuckling)

CHIEF JUSTICE CARSON: Well, before your department gets your nose in that, in schools, I'd like to have a -- get civil law and the Constitution into schools, and -- so, they understand how this is all supposed to work. And not just Oregon. I got a good education, I think, from Salem Public Schools. But we learned more about things that were in front of us --

INTERVIEWER: Civic --

CHIEF JUSTICE CARSON: Yeah.

INTERVIEWER: -- issues? Um hmm.

CHIEF JUSTICE CARSON: And I think our granddaughter, they live in Anchorage, she told me how many times they've watched, what is it? Gore's -- something Inconvenient?

INTERVIEWER: Inconvenient Truth?

CHIEF JUSTICE CARSON: Inconvenient Truth. Taught it to all the classrooms. So, I've always declared myself to be a little more conservative than that, but if that's their idea of civic, then we're doomed. I don't think it is, but, yeah, I think on balance we have a really good education system. And some children do very well in the system and many don't.

And, of course, we have a fresh culture and a fresh population of people that have not had the advantages of the people who went to kindergarten here or grade schools here.

INTERVIEWER: Um hmm. On the other hand, I'll just offer this, having worked in the program for some years, and then been gone 23 years and been back for several years, the program is a lot less controversial now than it was then. There's a lot -- there seems to be a lot higher degree of acceptance --

CHIEF JUSTICE CARSON: Oh, I think so.

INTERVIEWER: -- on the part of local government.

CHIEF JUSTICE CARSON: Oh, yeah.

INTERVIEWER: And that certainly has -- has been noticeable --

CHIEF JUSTICE CARSON: Oh, yeah.

INTERVIEWER: -- on the part of someone who's been gone for so many years.

CHIEF JUSTICE CARSON: Well, I would credit that to -- a lot to LCDC, and to your department and others, because we don't have to walk many steps from where we're seated right

now to go to agencies that have really blown it with credibility with the public. You know, like the one kitty corner over there, where they refunded -- what was it, two or three years ago some Oregonian filed a tax refund for hundreds of thousands of dollars and they paid it. You know, it's like, how many, 40 million? Maybe as many as 40 million federal employees, past and present, all their information has been hacked. And so it -- I think your department has done well, and several others have, but there are some around here still saying we need more money. And, yeah, that would help but --

INTERVIEWER: We have always had a small department.

CHIEF JUSTICE CARSON: Oh, you always have.

INTERVIEWER: There are 55 people and there's been kind of a bond, I think, and --

CHIEF JUSTICE CARSON: Um hmm.

INTERVIEWER: -- and kind of an idealism among a lot of us.

CHIEF JUSTICE CARSON: Well, you had the good leadership early on and I think that just --

stayed with you. And so I think -- the fight's never over, I don't mean to sound uppity about it, because misfortune could befall us, but I think it's confronted an awful lot of things, a huge increase in prices, and survived that. And all the kinds of transportation problems we still have and service problems. Cities and counties and the state are doing, I think, a good job.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: Could do better. Doing a good job.

INTERVIEWER: Well, is there anything I haven't asked you that you would like to --

CHIEF JUSTICE CARSON: You've been -- you sure --

INTERVIEWER: -- talk about?

CHIEF JUSTICE CARSON: -- put a lot of good time in this. I'm impressed.

INTERVIEWER: (Chuckling)

CHIEF JUSTICE CARSON: I learned more from this interview than -- than you did.

INTERVIEWER: Anything else you'd like to add or any other thoughts or reflections that you have on your work in your career or observations about the program?

CHIEF JUSTICE CARSON: I think not, Katherine. I -- you've done a very good job of working the problem together and helping me get through it. I think we've come a long ways, but I think it's been a mission for those, I think -- I don't say "you" necessarily, to make the thing work, the thing being land use planning. And, you know, that's a touchy subject in any day and any week in any place because you're talking about private property, at least in this country, and yet, I think local and state have done an excellent job of explaining to the public why it's in all our interest, to have some sense of this land use planning. And also participation. You get a lot of people coming to public meetings in Stayton or Philomath or wherever it may be to talk about land use planning. And that's great.

INTERVIEWER: Um hmm.

CHIEF JUSTICE CARSON: It gets a little heated at times but it's good, too.

INTERVIEWER: Well, Chief Justice Carson, this has been a real treat.

CHIEF JUSTICE CARSON: (Chuckling) Well, thank you.

INTERVIEWER: I thank you so much for taking the time to -- to talk with me today.

CHIEF JUSTICE CARSON: Well, thank you.

INTERVIEWER: Let me shake your hand.

CHIEF JUSTICE CARSON: Thank you, Katherine.

INTERVIEWER: Thank you, so much.

CHIEF JUSTICE CARSON: Well, I've enjoyed it and I wish I'd had more research -- I'd taken more research so I could have been more responsive to your questions.

INTERVIEWER: Well, you were -- you were wonderful.

CHIEF JUSTICE CARSON: You helped me a lot by leading me along.

(Concluded)