

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 17, 1993
TAPES: 239 - 244 PLACE: Hearing Room
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TIME: 10:00 AM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn,
Vice-Chair Senator Joyce Cohen Senator Shirley Gold Senator Bob Kintigh
Senator Bob Shoemaker Senator Gordon Smith

STAFF PRESENT: Peter Green, Administrator Chris Warner, Research
Associate Sue Hanna, Legislative Counsel Pamella Andersen, Clerk

MEASURES HEARD: HB 3661

WITNESSES: BRUCE ANDERSON, OREGON STATE HOMEBUILDERS RICHARD
BENNER, DEPT. OF LAND CONSERVATION AND DEVELOPMENT KEVIN BIRCH ART
SCHLACK, ASSN. OF OREGON COUNTIES RUSS NEBON, MARION COUNTY PLANNING
DEPT. DON SCHELLENBERG, OREGON FARM BUREAU LOIS KENAGY, AGRICULTURE FOR
OREGON BILL MOSHOFSKY, OREGONIANS IN ACTION BRENT CURTIS, WASHINGTON
COUNTY PLANNING DEPT. ANTHONY BOUTARD, 1000 FRIENDS OF OREGON BRUCE
ANDREWS, DEPT. OF AGRICULTURE LARRY TROSI, OREGON FARM BUREAU

[--- Unable To Translate Graphic ---] These minutes contain materials
which paraphrase and/or summarize statements made during this session.
Only text enclosed in quotation marks report a speaker's exact
words. For complete contents of the proceedings, please refer to the
tapes. [--- Unable To Translate Graphic ---]

TAPE 239, SIDE A

005 CHAIR CEASE: Calls the meeting to order at 8:00 a.m. - Opens
the work session on HB 3661. WORK SESSION ON HB 3661

CHAIR CEASE: We have several amendments to discuss; I want to talk
about the marginal lands issue and then we will move to the right to
farm issue.

030 SEN BUNN, SENATE DISTRICT 15: Introduces the (-A58)
amendments, (EXHIBIT A). _ I have a lot of record which would
recognize lots lawfully created

prior to January 1, 1993; we would have many of the same exclusions, but
not for class three and four soils. _ On page two, line four there is
an exception recognizing that if

someone has continually owned the land for ten years preceding the
effective date, they would be allowed to build on those soils.

060 SEN. BUNN: Whatever date we pick, someone will continue to

feel victimized; really the point in the lot of record is that if your lot

was legally created and was buildable at the time it was created, the person should be allowed. _ Gives example to clarify.

CHAIR CEASE: What is the significance of the 1985 date?

101 RICHARD BENNER, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, (DLCD): By January 1, 1985, every county had acknowledged farm and forest

ordinances. _ Also by that date, the statute which required certain language be on

conveyance instruments had been in effect for a couple years. _ By 1-1-85 a purchaser should be aware that if they are buying land

in a farm or forest zone, they aren't necessarily entitled to a dwelling.

131 SEN. BUNN: The discussion of the Yamhill County case where there was a 20/40 zoning that changed to an 80 acre based on a court decision also

impacts. _ Section three is similar to section three of the (-A50) except that

it doesn't include the class three and four soils.

CHAIR CEASE: We don't cover the grass seed areas?

141 SEN. BUNN: That is correct. _ In section four, the sub one provisions were replaced with those in

Rep. Dell's bill; I'll direct those questions to Sen. Kintigh.

CHAIR CEASE: You retained the road of 1000 feet issue?

SEN. BUNN: The driveway of 1000 feet would apply to Western Oregon rather than Eastern Oregon.

155 SUE HANNA, LEGISLATIVE COUNSEL: Describes differences from the (-A50) amendments.

170 SEN. BUNN: That removal would allow an accessory dwelling on parcels less than 320 acres if someone can make the argument.

CHAIR CEASE: In paragraph D, line twelve; are there class one and two forest soils in Eastern Oregon?

SEN. KINTIGH: I would have to check.

CHAIR CEASE: We have the acreage issue, the roadway question, and the cubic feet issue, in terms of both Eastern and Western Oregon; I think

the 100 feet issue is significant.

195 SEN. BUNN: The concern of Rep. Baum, in relation to Eastern Oregon, was that 1000 feet on very large parcel might not be practical.

HANNA: 1000 feet isn't the only issue; it is what runs that 1000 feet. _ You have private driveways, county or state maintained roads and public access roads; there are three different standards.

217 SEN. BUNN: In section five the language from the bill that came to us has been substituted for the (-A50) amendments, (EXHIBIT B). _ On line twenty seven, section five, sub d deals with dwellings

located within a five protection district, then we go on to say something different; I think this was a mistake. _ The reason for substituting the language was that it appeared easier

to understand and use.

HANNA: If you have little clump of dwellings you don't need fire protection district, but you will have to arrange for some other kind of protection.

253 SEN. KINTIGH: There is an improvement on the water supply.

272 KEVIN BIRCH: It is preferable to us to work with the fire marshal; the (-A57) talks about us making the call on if someone needs to be in a

rural fire protection district. _ Our priority is resources and the Fire Marshall's is structures. _ We would recommend, as a substitute for rural fire protection,

residential sprinkler systems.

CHAIR CEASE: As you deal with the interface question in forests areas, the overwhelming concerns is fire question.

BIRCH: That is one, also, keeping the land in production.

303 SEN. SHOEMAKER: In Eastern Oregon how much of a problem is retaining production on private lands and how much of an imposition would this

proposal be?

BIRCH: I don't have figures from Eastern Oregon. _ When we get more than eight dwellings per section the amount of

non-stocked land increases.

SEN. SHOEMAKER: Would it make sense to consider some standard or figure that wouldn't take from the productivity of the land?

BIRCH: Our concern with that would be the first come first serve basis; at what threshold do we cut if off?

SEN. SHOEMAKER: Other than that you are not significantly impacting the productivity of the land? BIRCH: That is what we see, less than four or more than eight and we

see a big difference.

CHAIR CEASE: Are there class one and class two timber lands in Eastern Oregon?

BIRCH: No, there are not. _ Submits and describes informative material showing stand

classification, (EXHIBIT C). _ The tables show private timber land, see Exhibit C.

406 SEN. BUNN: If there was a stocking requirement prior to issuing a building permit, would that take care of the majority of that problem?

BIRCH: No, we have that standard in place for tax programs, but there is nothing enforcing it.

430 SEN. KINTIGH: You are saying you are finding more un-stocked land in certain areas; are you not enforcing?

BIRCH: We are not selectively enforcing the Forest Practices Act enough. _ Describes sources of land being under productive. _ Part of the problem is that maybe we should be more selectively looking at where we enforce the Forest Practices Act.

474 SEN. KINTIGH: Are you taking into account the many natural openings in the forest in Eastern Oregon?

BIRCH: This is all data that comes from the forest survey in Western Oregon.

TAPE 240, SIDE A

034 SEN. BUNN: The residential fire sprinkler system is in the (-A58) amendments. _ Section seven was deleted by amendment, (minimum lot size); section

twenty nine, the sunset, was also deleted.

CHAIR CEASE: If we deleted the lot size and dropped classifications beyond one and two in the valley for agriculture, what impact would it have on the amount of lots available?

050 BENNER: There are two million acres in EFU zones in the valley. _ We have numbers from SCS on all the soil mapping in the valley; the hard part is how much is in EFU zones. _ Describing soils in the Valley; my guess is that out of the two

million acres of farm zones, maybe slightly more than half is prime unique class one or class two.

BENNER: Yesterday there was talk of class three and four wet soils; if you were to take the list of soils from the (-A50) soils and choose those that were wet, you would probably pick up most of the grass seed land that isn't in a class two soil. _ If you combine all class three and four soils in the Willamette

Valley, it comes to 1.6 million acres; some of that is prime soil; a lot of it is in forest zones.

SEN. BUNN: The only issue where ownership comes in is the exception on one and two, that there has been ten years ownership. 127 ART SCHLACK, LAND USE SPECIALIST, ASSOCIATION OF OREGON COUNTIES: Our interest here today is to ensure that a lot of record provision is

meaningful and workable at the local level. _ We are interested in ensuring that it is simple and easy to

administer at the local level and also to insure that the lot of record is a ministerial act. _ We are concerned that the (-A50) draft has provisions which would

require findings which would require notice and the ability to appeal and therefore we wouldn't have a ministerial act and we wouldn't have a lot of record.

157 RUSS NEBON, CHIEF PLANNER, MARION COUNTY: Displays a map of Marion County agricultural land. _ This map is the SCS map of prime and unique soils, (map unavailable

to staff).

174 NEBON: In the (-A57) amendments, (EXHIBIT D), we have ten areas where we are proposing changes from the (-A50) proposal.

182 CHAIR CEASE: We have the memo that the county had given us on five points and although we won't deal with that today, we will get back to

it.

NEBON: On line fourteen and fifteen of our proposal we have a similar provision using a January 1, 1993 date; the date of when an acknowledged EFU zone hit the ground varies. _ LCDC, in their secondary lands program, had requirements with regard

to contiguousness, ownership and other things, and the rules provided that January 1, 1993 was the date to make the determination. _ Argues for a simple straightforward date that we all have good data

on.

232 SEN. BUNN: On the date, at least the nine of the Willamette Valley counties would have used that date?

NEBON: And Jackson and Hood River. _ In zoning practice, land use decisions are made on basis of the

parcel, when you grant a variance, it goes with the property; you don't base your decisions on who has owned it for how long. _ We prefer to deal with whether or not the parcel was legally created

prior to that date, and not get involved in searching whether we are dealing with the first, second or third owner.

258 SEN. SHOEMAKER: Aren't title companies able to quickly do that?

NEBON: I would not agree, and there is considerable expense. _ line eighteen through twenty of the (-A57), our sub three is broader

and more inclusive than the (-A50). _ Our intent was to address the concern with wildlife habitat, flood

plains, greenways and everything else. _ We have no problems with applying those requirements, including

densities for wildlife habitats; that may lead us to the point where someone doesn't get a lot of record because the number of dwellings in an areas exceed the ODFW density recommendations. _ We have done it in one paragraph by saying they have to comply with

all the acknowledged comprehensive plan provisions instead of having a list of exclusions.

315 NEBON: Page two, lines two through six, should include a provision that made it clear that counties could adopt restrictions on lot of records

that are greater than in the bill.

341 SEN. KINTIGH: What would be some others you would like to exceed?

NEBON: Additional fire safety requirements, the declaratory statement requiring people file a deed restriction that they won't complain about farming and forestry activities in the area. _ Item 4; lines ten through twelve, the definition of high value farm

land is different; we have scaled it back in terms of soils identified.

387 CHAIR CEASE: What is the nature of the water issue in reference to irrigation in the valley. _ Are there crops that can be grown in the valley that don't need

irrigation?

NEBON: Yes; there are limited ground water areas and that precludes agriculturalists in the valley from getting additional irrigation wells.

_ Water is critical to high value agriculture.

CHAIR CEASE: Any suggestion that we open up half the valley to unlimited development isn't going to sell.

NEBON: I have the list of prime and unique class one and two soils based upon their not being irrigated.

470 SEN. SMITH: If you don't have irrigation to this land it will still be class one and two, but there will be some crops you won't be able to

grow without irrigation. _ This will limit their ability.

TAPE 239, SIDE B

032 NEBON: We have slope lands with 12 - 15 % slopes that are prime and unique in marion county and three categories that are wet that are in

the prime category. _ The committee needs to understand that these designations reach well

into the class three and partially into the class four in terms of what would be protected under our proposed definition.

SEN. KINTIGH: What is the criteria for unique?

NEBON: I don't know the technical definition; in marion county, the Labish area is classed as unique soil, and is pretty valuable farm land.

061 SEN. KINTIGH: And it would be totally unsuitable for building.

SEN. GOLD: Joins the meeting.

NEBON: If you included the irrigation factor, the lands that would qualify, in Marion County it would add close to fourteen thousand acres.

073 SEN. SHOEMAKER: Your proposal would exclude class three and four which is irrigated and quite productive?

NEBON: The classifications are done on the potential of the soil with and without irrigation, as a criteria.

SEN. SHOEMAKER: What about crops?

092 NEBON: What you get into on those three and four's is pasture and grass seed. _ If you have declaratory statements, and other limitations, the

tendency is to have large ownership and the proportion of lot of record in that area will be less as there is more desirability for parcelization. _ I'm not concerned about the few lots of records.

135 NEBON: I am trying to limit it to the white areas, (referring

to map unavailable for the record). _ The other aspect that further restricts who qualifies in our

proposal is how you compute who qualifies; gives example.

169 NEBON: I have suggested a critical mass concept; at some point a parcel has enough high value land that it will probably going to qualify for a farm dwelling. _ It is folks with poorer soils on smaller parcels that have less

options, so I have suggested that if you have more than ten acres of high value soil, you shouldn't be entitled to a lot of record.

183 SEN. BUNN: How may parcels will you be opening up in your county?

NEBON: I don't know; if this data isn't in a computer system you can't calculate what drops out and comes in.

SEN. BUNN: We get information about millions of acres; it would be helpful to get estimates.

204 SCHLACK: Gives example from Polk County. _ It is going to be extremely difficult to get that definitive

information as to how many lots would qualify within any jurisdiction in Oregon at this point.

235 NEBON: On page two, line twenty two, we tweaked one of the numbers on the (-A50) proposal on the forestry side. _ In the LCDC rules they were seeking to block up lower quality forest

lands, and 5000 worked well in that context. _ There is a different philosophy with lot of record; there is a

middle category in the (-A50) proposal where no dwellings are allowed at all so that timber owners and managers will buy the land. _ 5000 is a pretty low ceiling with that kind of policy statement; we

have bumped that up to 6800.

307 SEN. KINTIGH: Not many forest investment people would be interested in land producing less than 85 cubic feet; there is not a large enough

return.

NEBON: On page three, line two, instead of 320 acres, we've proposed

160 in Western Oregon, as the upper ceiling. _ In lines five through seven, there is a provision that ensures the

prohibition against dwellings doesn't eliminate the ability to get a farm dwelling with a mixed farm/forest dwelling. _ Item eight is on lines fifteen and sixteen; we are suggesting that

there is an administration aspect to the stocking requirement and if we are dealing with a parcel less than ten acres in size, there is so

little to stock I think we are going through an unnecessary exercise. _ Item nine on the same page; there are certain requirements the

dwelling has to meet in forest zones; we have taken the (-A50) proposal criteria, making them clear and objective, if they weren't.

368 NEBON: Item number ten relates to page five, between lines two and three; in the (-A50) there is a provision that says counties can no

longer create any new non-farm parcels and we deleted that provision. _ On page fifteen we get into the issue of what the Smith Case did to

the criteria for non-farm dwellings, (generally unsuitable). _ The Smith Case took away the one zoning tool I had in the farm zone

to let off pressure and allow the use of those lands not historically an important part of commercial agriculture in Marion County.

425 NEBON: The criteria for non-farm dwellings relate to existing parcels, being able to put a dwelling on a portion of a larger parcel and the

ability to carve out a piece. _ Most of what we approve for non-farm dwellings is on poor soil,

existing lots. _ If you look at where we made the cut, it restores Smith for most of

Eastern Oregon and for Southern Oregon, but limits it on better soils.

TAPE 240, SIDE B

033 SEN. BUNN: On page fifteen, your effort to deal with Smith is one statewide standard?

NEBON: Yes.

CHAIR CEASE: But it is on classification, so the impact could be different from one region to another?

NEBON: Yes; the further away from the valley, the higher the proportion of poorer soils per county.

038 SEN. SMITH: Is that a better idea than a bifurcated approach, not repealing it in some counties, but repealing it in others?

NEBON: There is a lot of tightening going on between what you folks are doing and what the commission is doing; the result will be much tighter restrictions on these lands.

060 CHAIR CEASE: Is there a need for a way by which you can make exceptions to get at the particular types of situations?

SEN. COHEN: Joins the meeting.

NEBON: There is always criteria; it is a difficult area to get into.

SEN. SHOEMAKER: Is there some way to create a safety valve by use of an exceptions process?

NEBON: I would suggest retaining the ability to approve non-farm dwellings in existing parcels, subject to notification to the department so that when we had a legitimate case we could do it.

CHAIR CEASE: Aren't you also in danger of opening up a new battleground.

NEBON: I am looking for fewer, smaller battlegrounds.

095 SEN. SHOEMAKER: We could then include objective criteria; I would deny, subject to an exception overcoming, rather than the other way.

NEBON: We would support and encourage that; our concern is that the term "generally unsuitable" is a vague criteria and not everyone interprets that the same. _ You could make it more clear and objective by dividing it into high

value and non-high value, with a limited provision in the high value section.

116 SEN. BUNN: In section fourteen sub d, we are back to question of when irrigated; I'm concerned when water resources says the Willamette basin is closed to new water rights. _ Is that land not subject to being kicked out as if irrigated it

would be a higher class.

NEBON: I excluded land that if irrigated would qualify. _ Until we have made determination that we can't get water to those, I

will hesitate until we have better information on what the water situation is.

141 SCHLACK: There will be another amendment dealing with the question of marginal lands, and would like to address that when it appears. _ Secondly, the counties would question the date in the (-A50)

amendments that would repeal lot of record decisions; having a window will create a lot of applications and a lot of manufactured homes being placed, to be replaced later with a stick built home. _ We would support the deletion of the repeal section.

180 UNIDENTIFIED WITNESS: I represent a county that has extensive areas many of which are class three and four soils, grass seed areas.

SEN. KINTIGH: Do you get much pressure to open that up?

UNIDENTIFIED: No, we do within the county for rural development, but not in the grass seed areas.

196 CHAIR CEASE: Are there many lot of records in your area?

UNIDENTIFIED: They aren't extensive.

208 DON SCHELLENBERG, OREGON FARM BUREAU: Submits (-A60) amendments, (EXHIBIT E). _ This state is divided into at least two distinct parts; notes the

logical parts, the Eastside and the Westside.

SEN. SHOEMAKER: We have heard Southern Oregon is different too.

SCHELLENBERG: That is true to an extent; we would like to design a system that would have one set of conditions for the valley and another for outside the valley, making that clear. _ That was the main purpose for introduction of the (-A60); we would

like to see if fairly restrictive inside the valley and outside the valley, not all that restrictive.

253 CHAIR CEASE: This is a recognition that the valley has the greatest pressure for development?

SCHELLENBERG: Yes; we would want the good farmland protected in any case. _ We support tighter restrictions inside the valley even on lesser

quality of farm land because of higher residential situations.

274 SEN. SMITH: Wouldn't it be worth adding, for the record, that where you have the high volume of the most productive farm land and there is also the greatest amount of parcelization that has occurred, there are

smaller parcels and farms, which if broken up much more could impact the farm practices?

SCHELLENBERG: I would agree.

290 SEN. BUNN: Do you feel that rather than create new lots, if you had someone that has been there ten years that will temper that some?

SCHELLENBERG: Yes; there is logic to that. _ Farm bureau policy does support the prohibition of non-farm

dwelling in EFU zones. _ In ORS 215.293, which the (-A50) amendments address, it says a

county governing body "may" require...; we would encourage changing "may" to "shall".

342 SEN. SHOEMAKER: If we adopted the right to farm provision bill we wouldn't need to change this?

SCHELLENBERG: That may be true, I don't know.

353 SCHELLENBERG: We really support the land evaluation site assessment, (LESA) concept. _ We think determinations need to be made on a combination of

information. _ We support minimum lot size, but support the change of language to

include "not less than" prior to the sizes listed.

388 SEN. BUNN: Why force the 40's to 80 and not force the 120's to come down to 80?

SCHELLENBERG: Our language does not remove the paragraph that says that counties can have a lower minimum lot size, we aren't suggesting

counties have to go up to that if they can show they can still meet the goals and criteria.

402 SEN. BUNN: We have counties now that haven't acknowledged lot sizes of 40 acres, why should we wipe that out?

SCHELLENBERG: You have to go inside and outside the valley; maybe you need to break it down further. _ You should probably be able to have multiple minimum lot sizes

within a county.

SEN. BUNN: We are going to say "start over, its eighty for everybody";

that is creating a lot of controversy. 429 SCHELLENBERG: Our policy supports minimum lot sizes, but it doesn't say what the minimum lot sizes should be.

440 LOIS KENAGY, AGRICULTURE FOR OREGON: I would like to talk about the issue of the date and the question of fairness. _ Gives history of parcelization of farms into forty acre lots for

residences. _ From 1985 on, it should be clear that ownership in an EFU zone

doesn't grant either a farm dwelling or a non-farm dwelling.

TAPE 241, SIDE A

033 SEN. BUNN: Haven't most counties tried to set their lot size based on a lot necessary to allow a farm dwelling?

KENAGY: I can't speak to the motivation; I do know that in Benton County there were intense discussions on minimum lot sizes.

SEN. BUNN: Most arguments have been the minimum lot size should support an average farming operation.

KENAGY: Dealing with the reality of expectations, Benton County went with no minimum lot size because we couldn't come together; we trust the county commissioners and planners to make the decisions. _ Notes a specific court case which related to division of eighty

acres. _ Another factor is that the land prices per acre tends to be twice as

high for small parcels than larger parcels.

128 SEN. SMITH: What do you think about the idea of letting the date float from county by county?

KENAGY: I haven't thought much about it; I think 1985 might cover that. _ On the lot of record issue, the Bunn/Smith proposal is too inclusive; it would be frightening to be so inclusive. _ The county's proposal, the (-A57) amendment, changing the "unsuitable" for specific soils is creative.

167 KENAGY: There needs to be some place where steam can be let off, for unusual cases; there should be an option for the counties to send those requests to a DLCD hearings officer who would confer. _ This could sunset, just to address the unfairness and emergency cases.

197 SEN. SHOEMAKER: Even with that, criteria would be necessary?

KENAGY: Perhaps the commission could develop the exception criteria.

223 SEN. SHOEMAKER: You are suggesting we establish policy in statute and then delegate to the commission?

KENAGY: Trying to figure out how land use can be fair, having a place where those decisions, in rare cases, can be made away from the county politics, would make it more manageable. 242 KENAGY: The right to farm issue is important, but the important issue is that farmers not have interference from the other people; we don't want horses riding over wheat fields or children playing in our haystacks...

SEN. BUNN: Doesn't a requirement for a number of years of continuous ownership help that?

KENAGY: I'm not sure; it doesn't quite fit.

277 SEN. COHEN: Attaching another qualification to a non-farm dwelling siting, having one criteria for non-farm dwelling placement could be

whether or not you have owned the property for some time.

SEN. BUNN: It can be an exception or an additional requirement, either way.

KENAGY: Would you be satisfied with eight years? _ The present owner

may have owned the property for ten years, but the

there are concerns with the sale to someone else and the replacement dwellings.

323 SEN. BUNN: Notes McKay family that has a century farm that was to be torn down and replaced rather than remodelling, but found they had to

remodel rather than replace.

KENAGY: Conjecture; if they wanted to take a farm dwelling and make it a non-farm dwelling and that is the problem we see in the replacement issue.

SEN. BUNN: That is a legitimate problem, but there needs to be a balance when someone can't legitimately replace their dwelling.

351 KENAGY: This is not the highest priority; our priority is the protection of farm land for farm use and the reduction of non-farm

intrusions in farming areas.

SEN. SMITH: If a dwelling already exists, I don't see where we are impacting the goal of preserving agriculture by permitting them to replacement a dwelling.

387 SEN. SHOEMAKER: If you have a farm dwelling and sell it to someone who wants to build a palace and have a non-farm use and they grandfathered

in because there was a farm dwelling there, you've created the whole right to farm problem.

KENAGY: Part of the problem has been misuse of that statute.

407 BILL MOSHOFSKY, OREGONIANS IN ACTION: The farm bureau and Oregonians in Action don't represent all the people in Oregon. _ We agree with the date and the ten acres idea and the definition of

high value. _ We oppose the minimum lot sizes in (-A50) amendments and we oppose

the elimination of marginal lands (EXHIBIT F). _ We also believe the Smith case needs to be dealt with and like the

county's idea on that.

437 SEN. BUNN: Are you comfortable with the counties approach on irrigated and non-irrigated?

MOSHOFSKY: I think the concept has merit; "generally unsuitable" is

vague and difficult to deal with. _ On the minimum lot size, until there is a meaningful secondary land

program, we think it is premature to establish state dominated minimums. The counties should be establishing the minimum lot sizes.

455 MOSHOFSKY: Regarding the 1993 date, in our experience, many LUBA cases have come "down the pike" long after 1985, which have stripped people of what they thought was their right to have a dwelling.

SEN. SMITH: If we have the 1985 date and the exemption process, would that address your concern?

TAPE 242, SIDE A

022 MOSHOFSKY: There may be some help in that respect. But we feel the 1993 date would take into account those situations such as "necessary

and accessory" ruling on forest land where people who thought they could have a dwelling on forest land were denied, long after 1985. _ The 1993 date would not allow a significant number but would "hit"

many of the deserving cases. _ The requirement that the present owner had to own it "back then"

should be eliminated. It would be difficult to track ownership.

047 CHAIR CEASE: I would like to have comments on the marginal lands issue, with reference to the two counties that have it.

052 BRENT CURTIS, PLANNING MANAGER, WASHINGTON COUNTY: Washington County is one of the two marginal land counties. _ In 1983 the legislature enacted a marginal lands bill. It was the

state's first attempt to look at the issue of primary and secondary lands and strike a balance. _ Washington County used that opportunity, as well as Lane County.

That process provides for the designation of marginal lands and also links to a special set of use provisions that are found in ORS 215.213. _ Requests for those counties that have this process, to allow them to

continue to continue to use that model. _ Currently, Washington County does not have pressure on it for more

opportunities to build. The broad land use system now in place is working well in Washington County. _ Provides documentation of current building permits activity in

Washington County (EXHIBIT G). _ The challenge for the state and Washington county over the next 20

years will be to do a better and better job within the urban growth boundary (20% of the land). _ We expect 110,000 more people and 100,000 jobs over the next 20

years. _ Statistics show that few agricultural dwellings being built

in our

county; the existing system seems to work. We should keep this system. _ If we are concerned about the erosion of the farm base, the question

of dealing with urban growth over the next 20-50 years is crucial. _ The region is in the process of undertaking a comprehensive

transportation/land use/urban growth study. The outcome of this study will affect Washington County farm and forest land more than any change in the model. _ We want to direct our attention to the urban questions. _ The urban services agreements required under SB 122 and the school

facility planning work required under SB 908 are vital, as well. 224 SEN. COHEN: If you continue your model, and we "overlay a lot of record?" do we do damage to your planning goals?

231 CURTIS: If you enact a lot of record provisions I feel confident that we will have to change our land use ordinances to affect these lot of

record provisions. We will have to preclude certain abilities that we have now. A good many people will be incensed about the proposed changes, and will require resources from us.

248 SEN. COHEN: Are you suggesting that we exempt Washington County from this bill?

250 CURTIS: I am suggesting that Washington and Lane Counties keep its marginal land status, and allow those two counties to decide whether to opt into lot of record. The county commissioners examined the original

HB 3661, and was cautious about changing a process that works well now.

326 SEN. COHEN: This seems a possible option.

330 DICK BENNER, DLCD: One of the features of the marginal lands law was a lot of record component. One of the reasons the -A50 deletes marginal

lands was because there would be a new lot of record to replace the old. The two counties that are able to designate marginal lands, have actually designated little marginal land. _ The EFU statute provides for two sets of uses. The bone on

contention in ORS 215.213 is that it authorizes farm dwellings upon a demonstration that they were capable of producing \$10,000 worth of income. This isn't much. _ The people concerned about marginal lands are concerned about the

income standard and other counties opting into the marginal lands approach. If the Commission's rules are not put into place - if there are no secondary lands, no small scale resource lands - then marginal lands will become more attractive to the 34 counties not using it now. _ That is the concern in leaving the marginal lands law on the books.

404 SEN. SHOEMAKER: Other counties could be prevented from going to marginal lands. How would Washington County feel about increasing the

\$10,000?

410 CURTIS: The Board has never considered this, so I don't know. _ There are two kinds of EFU land in Washington County - EFU which is the valley floor, and AF20 which are the foothills. Those are the areas

eligible for marginal land designation. The marginal land process is

pretty restrictive - there's only about 300 acres, total, in Washington County. _ We think these are secondary lands. _ Under the lot of record approach, people simply get building permits

for qualifying secondary lands. Here, at least, people are contributing to the farm economy.

TAPE 241, SIDE B

020 SEN. BUNN: Who are these people? Are they people who build a house on a 20-acre lot and can easily put together a plan to grow \$10,000 worth

of crops, or is it someone who has a small farming operation on marginal land?

025 CURTIS: That's a crucial question; there are some of both. _ The applicants do not get a building permit until the crop is

planted.

035 SEN. BUNN: States concern that the system favors the rich who don't care about their farm product over a poor farmer.

042 CURTIS: Some would argue that is the case. There a number of legitimate farmers.

047 SEN. BUNN: I don't think current state policy helps young farmers get started.

051 CURTIS: Adds that information contains the size of the parcels; there are large parcels. There are legitimate farming activities.

060 CHAIR CEASE: Recesses for a half hour lunch.

065 CHAIR CEASE: Calls the meeting back to order.

076 ANTHONY BOUTARD, 1000 FRIENDS OF OREGON: Begins by describing the lands eligible for the lot of record provision. _ The -A50 amendments contain the most comprehensive descriptions of

the lands excluded from the lot of record provision. _ This is much less protective; it will open up much more land than

presently allowed under the LCDC rules. It is not an equivalent trade. _ The LCDC rules adopted in December, which we were critical

of, did

protect lands in commercial production. That was their intent. _ There is no similar policy included under this lot record provision. _ As a consequence, land for the 2 of the top 5 agricultural commodities of this state are not explicitly protected.

137 CHAIR CEASE: How do we compare the impact of the lot of record approach, compared with the rules.

148 BENNER: It is really difficult to do that kind of comparison. _ The -A50 amendments's aim is at soils in the valley, and crops

outside the valley, which is not all commercial agriculture. What would be left is pasture land and range land, both commercial and noncommercial. _ That is too simple a comparison of the two approaches. The rules

make an effort to distinguish the commercial from the noncommercial. _ The -A50 amendments will have the effect of authorizing dwellings on

tracts that are in and among commercial farm and forest land. _ The -A50 amendments do not authorize the creation of additional

parcels, whereas our small scale resource lands do. It is inevitable that the creation of such parcels would have some indirect effect on the balance of commercial lands.

181 CHAIR CEASE: That issue will be of concern.

182 BENNER: Anthony Boutard makes a good point regarding the policy differences regarding distinguishing between the commercial and

noncommercial lands. The policy that many people are looking for regarding lot of record is based on equity notions.

193 SEN. COHEN: Expresses desire to hear more about how the bill effects the cattle and dairy industries.

201 BOUTARD: Prime and unique soils in Tillamook County do not cover the EFU zone. Certain lands are "capital intensive" to maintain the farm

lands, such as orchards and cranberry bogs, and they come under a "crop" description. Pasture lands in Tillamook don't.

222 SEN. COHEN: Asks about irrigation.

225 BENNER: I don't believe those lands are irrigated.

228 SEN. COHEN: How would we define them differently, if we tried to do that?

230 BENNER: We tried to do that; some of the dairy land is a class 2 soil. _ We posed the question to SCS, could they identify soil mapping units

which were limited to the dairy lands, and they could not. It might result in being overly broad.

244 SEN. SHOEMAKER: Could you define them as unique?

248 BENNER: My understanding of the unique soils is that although the USDA can give you a definition of what a unique soil is, the only soils that get defined this way are those identified on a local basis - its done by a committee within county. _ The Labish soils were identified as unique by action of a local farm

body. _ Statewide there are only about 5,000 acres of "unique" soil.

261 SEN. COHEN: I would like to hear from Tillamook County eventually.

269 SEN. KINTIGH: There are only 2 soils in Marion County that are identified as unique.

259 BOUTARD: The other concern we have describing eligibility has to do with the 3,000-5,000 cubic foot threshold; there's not clear rationale. _ We are also concerned about the "1000 feet from the road" issue. It

makes more sense to have it abutting the road. We haven't heard any rationale for that; fire fighters prefer the dwelling to be close to the road.

300 ADMIN. WARNER: Clarifies that it is the tract, not the dwelling that has to be 1,000 feet from the road.

290 BOUTARD: One thousand feet is very far from the road. _ High and critical fire areas should not have cited additional

dwelling. _ Dwellings should not be cited in high and critical fire areas, and

there should be criteria developed to define such areas. _ The Dept. of Forestry can do this, but there is some reluctance to

do this on their part. An alternative is to prohibit the house from being sited on a steep slope. One of the amendments propose a 30-degree slope. _ Another exclusion that is needed is in areas with limited supplies

of water; new residents go after water that is needed by agriculture. _ Additional residential areas should not interfere with game

populations. _ Regarding lot of record, it is important to identify the target

group.

403 SEN. SHOEMAKER: Earlier today, there was testimony that 8 dwellings per square mile would not impact productivity. How about wildlife?

412 BOUTARD: In most cases, when counties set their big game winter

range regulations, they looked at the question of land divisions rather than

development. They range from 40 - 160 acres. The counties addressed

this issue, and if you are going to have these lot of record provisions they revisit this issue and make sure that they are not threatening the big game winter range resources. _ The lot of record is an equity issue. It's important to have a

clearly identified target - what problem is being addressed by this legislation. _ We support the idea that the land is acquired by 1978 and still

owned. There is good policy background for that. We would recommend no date later than the local county plan was acknowledged.

TAPE 242, SIDE B

044 SEN. BUNN: Do you really believe that people understood clearly by the time the county adopted the plan that if they had a 20 and 40 acre

parcel they didn't have a right to build on that parcel?

055 BOUTARD: I think Yamhill County's plan was acknowledged in 1983, and after that point they should have known that. It is incumbent on

landowners to know the rules and regulations affecting your property.

Realtors and county officers should apprise the people buying the land.

068 SEN. KINTIGH: A person who has had a parcel of land for some time does not check on its status regularly. The average person doesn't think

about this until they are ready to build.

078 SEN. SHOEMAKER: The person who has owned the property for a long period is protected; I am concerned about a land buyer. The land buyer needs

to know the limits of what can be done with the property. _ There is a balance between the state's interest and long time

property owners. New owners are outside the equation.

092 SEN. BUNN: There have been situations where counties and the state have disagreed and people have talked to the county and received different

interpretations from the state's. They made a good faith effort and

relied on the county planning office.

100 BOUTARD: Once the lot of record issue has been settled, it is important to eliminated non-resource land divisions. They are problematic and

introduce more problems in the forest and farm zones. _ We have a concern about "sagebrush divisions" in Eastern Oregon,

particularly in Deschutes County. Where you have extensive subdivisions there should be an up-front planning exercise to see of adequate public services can be provided to those lands.

136 SEN. COHEN: Your comments were not specifically addressed to the -A50 amendments. Do the -A50 amendments address your concerns?

145 BOUTARD: I'll ask Blair to get back to you.

146 CHAIR CEASE: Let's discuss the right to farm issue.

151 BRUCE ANDREWS, DIRECTOR, DEPT. OF AGRICULTURE: Last week we discussed proposed amendments on the right to farm (EXHIBIT I). _ In section 32 the phrase, "pesticide drift not subject to state or

federal regulation" was deleted. The pesticide issue is dealt with in section 33(5). This removes the pesticide discussion from the right to farm discussion.

205 SEN. SHOEMAKER: I had several questions as I reviewed the -A47 amendments. _ There is a reference to people who live "near forest land" who must

accept the conditions commonly associated there with. Why the reference to "or near forest land or an existing farm?" If those are not zoned for farm or forest use, should the same right to farm rules apply?

211 ANDREWS: Unless it is in the exception area discussed earlier, not a part of EFU that we've determined is agricultural land, and we want to

keep it that way because of exceptions.

223 SEN. SHOEMAKER: So even if it is in an exception area or within an urban growth boundary, the right to farm rules would still apply?

229 SEN. COHEN: We need to determine where we are intending to have it - near a zoned area? We could give the Dept. of Agriculture what it is

asking for without the "near a forest land or existing farm" language and put "near a zoned area."

228 LARRY TROSI, OREGON FARM BUREAU: The intent of the -A51 amendments is to begin to restrict the enlargement of an agriculture operation and

reduce the effects of some agricultural practices.

269 SEN. SHOEMAKER: The proposed language doesn't seem to accomplish that intent.

270 SEN. COHEN: I agree with Sen. Shoemaker. _ If we have urban growth boundaries and we are trying to use the land

for residential purposes within an urban growth boundary, and that is the designated use, I don't want to eliminate existing farmers. One would want to give residential use preference within the urban growth boundary.

260 CHAIR CEASE: If you argue that you want to control the growth within the urban growth boundary, so you don't put unnecessary pressure to

increase the urban growth boundary, you would in effect, protect farms within the boundary differently than those beyond the boundary.

303 TROSI: We are limiting those practices later in the bill.

312 SEN. BUNN: Language in section 33 addresses this; "no farming or forest practice occurring outside an urban growth boundary..."

320 SEN. COHEN: Repeats concern regarding the language "near..."

346 SEN. KINTIGH: Can you propose any solutions to the problem of existing farm within the urban growth boundary? 355 ANDREWS: It really is a problem, especially when the farmer begins his operations when his land is outside the UGB. _ My sense was that he ought to be afforded protection, as long as

that person owns the land and he is farming the land, because the rules have been changed on him.

379 SEN. COHEN: A person farming within the UGB will have the opportunity to develop the land; a person in EFU doesn't have that option.

400 SEN. BUNN: We need to take into consideration farmers within the UGB who don't want to subdivide. There should be some consideration for

allowing an existing operation to continue.

440 SEN. SHOEMAKER: In section 33 of -A51 amendments, I would suggest "no farming or forest practices occurring on land zoned for farm or forest

use outside an urban growth boundary shall give rise..." The language there now is too broad.

458 CHAIR CEASE: Do you want to keep that development within the UGB? I don't see how you can protect those farms within the UGB the same way as those farms beyond the UGB.

469 ANDREWS: Part of the debate is how fast do these urban growth boundaries expand?

489 CHAIR CEASE: The Alpenrose Dairy is within the UGB, and at some point he land becomes so valuable that they can't afford to keep it

agricultural anyway.

TAPE 243, SIDE A

040 SEN. SHOEMAKER: As I recall, within an UGB you have "urban lands" and "urbanizable lands." _ A decision is made, as the urban land fills up, to put the

"urbanizable land" within an "urban" category. Maybe we could draw our distinctions along those lines. When you are urbanizable you might still have this protection, but once the land has been recategorized as "urban" the protection falls away.

049 SEN. BUNN: Suggests protecting operations within an UGB the same as those beyond the UGB as long as its operation does not change.

064 CHAIR CEASE: We can put that on the table as a possible consideration.

073 SEN. SHOEMAKER: Suggests changing the wording in section 33(2) to protect organic farmers. Change line 14, so that it reads, "Subsection

1 shall not apply to a right of action or claim for relief seeking damages or damage to crops or for death or serious injury." You shouldn't withdraw a right of action for nuisance or trespass or damage to crops for another farmer's activity.

094 SEN. COHEN: Most objections to the right to farm concept are organic farmers. _ I agree with the Sen. Shoemaker's proposal.

102 ANDREWS: I wouldn't like to distinguish between organic farmers and other methods of farming. _ Crop damage would often involve negligence, which is already

covered. 111 CHAIR CEASE: Could we have clearer examples of practices that would affect organic farmers.

119 TROSI: Organic farmers could harm other farms with their practices as well; this should "cut both ways."

131 SEN. COHEN: This language should cut both ways.

141 SUE Hanna: The right to farm and right to forest proposals passed the legislature virtually untouched last session. _ It was only during the interim they began to fall apart. _ We spent hours with the Farm Bureau's attorneys and the Dept. of

Agriculture. There are all kinds of constitutional issues. _ Calls attention to the fact that an existing operation may not

change its operation, but may change a small component of how it is done that may adversely impact the growing residential area. _ Farmers wanted to prevent going to court, but fact-based language

leads one to court. It isn't easily resolved. There are often holes in the legislation.

225 CHAIR CEASE: We want organic and inorganic farmers on the same

footing.

251 SEN. BUNN: Reviews earlier concern regarding the word "near."

253 Hanna: I will review this.

270 CHAIR CEASE: While you are doing that, please consider the issue of whether farmers need less protection if they are within the UGB.

283 Hanna: I don't know if that has been tried here; there was an Arizona case where they don't deal with urban growth boundaries, per se. I

would argue in court that the farmer within an UGB should have less protection.

302 SEN. BUNN: If we don't adopt that protection, and do adopt right to farm legislation that specifies a right to farm outside the UGB, are we creating a worse than status quo situation for those within the UGB?

307 ANDREWS: Section 34 addresses limiting complaints and rights of action for areas inside an UGB but outside a city.

323 Hanna: Suggests a work group work on this issue to bring back to committee.

333 SEN. SHOEMAKER: There is an initial policy question; then get into the legal implications of that question. We need to decide in committee how we want the policy to be, then decide if we can do that.

342 CHAIR CEASE: It seems the pesticide issue has been eased substantially on page 3.

342 SEN. SHOEMAKER: You shouldn't be insulated from liability from a practice that is ultra hazardous or unusually dangerous [section 33(2)]. Do pesticides get at that totally?

351 Hanna: No; pesticides do not get at that totally. That language contains legal terms of art. Grass seed burning is ultrahazardous,

under case law.

381 SEN. COHEN: What if a farmer burns down a neighbor's house while field burning. Would the neighbor have recourse with this wording?

382 TROSI: Yes; it would be negligent, and it would be ultrahazardous.

387 Hanna: Page 2, line 22 "done in a reasonable and prudent manner" used to be my example. If you burned on a windy day, there would be an

argument that you weren't being reasonable and prudent.

419 SEN. SHOEMAKER: Do you think that language covers every ultrahazardous practice?

422 Hanna: There could be; I'm not sure all of those potential practices.

437 ANDREWS: We've tried to insert all applicable laws; overall we are looking at loosening up the land use laws, and will create more avenues

for conflict. We have to reduce the conflict as much as possible. This is a good faith effort.

TAPE 244, SIDE A

030 CHAIR CEASE: If the intent of land use is to protect the forests and farms of this state, and recognize there will be increasing conflict,

the policy should clearly be supportive of basic practices involved in agriculture.

040 ANDREWS: We think A-51 is as close as we are going to get to this. We have tried to build those parameters in.

046 SEN. COHEN: Section 34 isn't clear. Does it say that the same privileges apply to an existing, nonconforming use within an urban

growth boundary?

053 ANDREWS: Yes; but not within the city limits.

056 Hanna: Subsection (4) tries to get at the issue raised by Sen. Bunn; outside an UGB you can have a ten acre farm and expand it to a 100 0-acre farm and it is still protected. Inside an UGB, and you have a ten acre

farm, you can't increase it. That involves real facts.

072 SEN. SHOEMAKER: It makes sense to limit this protection to land zoned for farm or forest use outside an UGB. If you are not zoned for farm or forest use than you shouldn't expect protection. Inside the UGB you

have nonconforming use exceptions.

083 SEN. BUNN: What kind of zoning outside the UGB that we don't want to protect?

090 SEN. SHOEMAKER: There might be towns which have farms within the town, that are only zoned residential, and you would not want to protect those farming practices from nuisance actions.

100 SEN. BUNN: What about land zoned industrial with farming taking place on it? _ Section 34 takes care of the concern I have, but questions section

33.

127 ANDREWS: Some of this discussion is theoretical. The economics of the growth of the area is going to determine how long that land will be used as farm use. If you grant that exemption, and it becomes a problem, the fair market price will move that land in another direction.

142 SEN. SHOEMAKER: In section 35, the attorney fees provision, the way that is written, the only defendant can get attorney fees. The language needs to be changed so that either party may get attorney fees.

160 SEN. COHEN: I agree.

163 SEN. BUNN: There were a number of other bills we didn't do that with.

172 Hanna: The memo was written a month ago, but it covers the concerns of equal protection and due process (EXHIBIT I).

178 SEN. COHEN: You've have taken care of most of those concerns in -A51?

180 Hanna: Yes.

180 BRUCE ANDERSON, OREGON STATE HOME BUILDERS ASSOCIATION: Requests to participate in the work group, with respect to the right to farm within the UGB.

212 CHAIR CEASE: The discussion will be continued on Monday. _
Closes the work session on HB 3661. _ Adjourns the meeting at 3:45 p.m.

Transcribed by,

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EXHIBIT LOG:

A - proposed amendment, HB 3661-A58, staff, 28 pgs. B - proposed amendment, HB 3661-A50, staff, 30 pgs. C - testimony, HB 3661, Kevin Birch, 2 pgs. D - proposed amendment, HB 3661-A57, staff, 28 pgs. E - proposed amendment, HB 3661-A60, staff, 2 pgs. F - proposed amendment, HB 3661-A50, Bill Moshofsky, 7 pgs. G - testimony, HB 3661, Brent Curtis, 3 pgs. H - proposed amendment, HB 3661-A51, staff, 7 pgs. I - Memo, HB 3661, Sue Hanna, 2 pgs. J - letter, HB 3661, Norma Grier, 2 pgs.