

HOUSE COMMITTEE ON LAND USE

February 02, 2005 Hearing Room 50

1:30 PM Tapes 11 - 12

MEMBERS PRESENT: Rep. Bill Garrard, Chair

Rep. Gordon Anderson, Vice-Chair

Rep. Mitch Greenlick, Vice-Chair

Rep. Robert Ackerman

Rep. Mary Nolan

Rep. Patti Smith

Rep. Mac Sumner

STAFF PRESENT: Sam Litke, Committee Administrator

Lindsay Luckey, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

Measure 37 Update – Informational Meeting

Lane Shetterly, DLCD

Richard Whitman, DOJ

Goal 9 and Industrial Lands – Informational Meeting

Margaret Kirkpatrick, LCDC

Ann Beier, LCDC

Lynn Beaton, ECDD

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/# Speaker Comments

TAPE 11, A

001 Chair Garrard Calls the meeting to order at 1:37 PM and opens an informational meeting.

MEASURE 37 UPDATE – INFORMATIONAL MEETING

006 Lane Shetterly Director, Department of Land Conservation and Development. Introduces Richard Whitman and makes opening remarks.

011 Shetterly Updates committee on status of Measure 37 claims.

021 Shetterly Wants to clarify communication with local governments on the record. Provides committee with correspondence to counties **(EXHIBIT A)**. Describes weekly meetings with various organizations to discuss issues relating to Measure 37.

030 Chair Garrard Wants Shetterly to specifically address issues with counties. Notes that as several counties begin their claims process, one issue that has arisen is filing with the state and the county. Announces that the county position has been to follow ORS 197.646

040 Shetterly References a letter from December 23, 2004 **(Page 3, EXHIBIT A)**. Emphasizes that it is a joint letter from DLCD, Association of Oregon Counties (AOC) and League of Oregon Cities (LOC) and deals with that issue.

073 Shetterly Continues, asserting that after analysis of the measure text, the question of where to file is unclear to all parties. Because of this, the position of the DLCD has been to advise claimants to file claims at both levels.

100 Shetterly States that until there is clarification from the legislature or the courts, DLCD will continue with this advice.

102	Shetterly	Adds that all claims are valid.
104	Chair Garrard	Asks what the response from Jackson County was when DLCDC gave this advice.
111	Shetterly	Answers that he has not yet spoken with Jackson County but that he is traveling there soon. Adds that their advice has remained consistent from the beginning. Believes that Jackson County's process is consistent with the advice given jointly by the DLCDC and AOC.
125	Chair Garrard	Asks for an explanation and definition of each of 3 options available for a governing body making a decision on a claim.
130	Shetterly	States that the first option is to pay compensation. In lieu of this, the choices of the government are to "modify", "remove" or "not apply" the regulation. Says that the term "not apply" seems straightforward, "modify" would be an amendment to an ordinance, and "remove" in this sense is unclear and is not a "term of art".
145	Chair Garrard	Notes the reason for emphasis on this issue is that one of the most contentious points of Measure 37 is the transferability of claims which may be effected by the option a government uses in their determination.
151	Richard Whitman	Oregon Department of Justice. Repeats the alternatives for a government once a claim is determined to be valid. Elaborates on the term "remove" and gives his "working assumption" that it would repeal a law.
171	Whitman	Makes reference to the Chair's comment that transferability will depend on type of relief granted. Points out that if a law is repealed, it would not apply to anyone including a future owner of a particular piece of property.
176	Chair Garrard	Asserts that if a government entity repeals a regulation, it would in essence transfer with the property.
179	Whitman	Agrees and reiterates that it is his "working assumption" and further clarifies. Contends that many questions must be resolved through litigation or legislative clarification on Measure 37.
192	Chair Garrard	Asks if it is his opinion that Measure 37 is not definitive enough in those areas.

197	Whitman	Responds that he has no opinion regarding its definitiveness and is working to implement Measure 37. Concedes there are difficulties in determining voter's intent.
200	Chair Garrard	Asks what part of the intent of the voters is in question.
204	Whitman	Replies that there have been many questions raised in the public, among them, who may decide to "not apply" a certain law.
214	Chair Garrard	Invites Shetterly to answer as well.
216	Shetterly	Refers to a previous joint meeting with the Senate Environment and Land Use committee in which other witnesses raised similar concerns and questions.
221	Chair Garrard	Contends that the questions were raised primarily by groups that opposed Measure 37.
225	Shetterly	Responds that they were not all in opposition but that many groups were neutral to Measure 37. Gives examples of groups who remained neutral.
233	Rep. Ackerman	Submits his opinion that if no action is taken by the legislature Measure 37 will be tied up in litigation and ultimately ineffective. Believes this will deny owners rights and go against the will of people. Questions the panel if they think it would be helpful to set certain minimum statewide standards in the claims process and court procedures.
254	Shetterly	Expresses that further clarification on Measure 37 would help the functioning of the measure. Gives examples of differences in local processing of Measure 37 claims. Concludes that some differences have caused confusion and that "to the extent that uniformity makes interpretation of the measure easier and cleaner to apply, I think that could work to the benefit."
272	Rep. Anderson	Asks if the term "repeal" would apply to land use regulations put into place after 1971 up until today.
278	Whitman	Responds that if a statute were repealed it would presumably apply to everyone including those who come forward in the future.

289	Rep. Anderson	Confirms that it would not be a temporary removal but a total removal of the law.
292	Whitman	Answers that in distinguishing “removal” from the other options under Measure 37, it would probably be permanent.
293	Chair Garrard	Confirms that there aren’t such things as a “permanent removal” or a “temporary removal”.
297	Whitman	Responds affirmatively.
301	Chair Garrard	States that Multnomah County is the only local government that has said Measure 37 doesn’t apply to subdivisions. Says that Measure 37 defines “land use regulation” to include local government subdivision ordinances. Asks if they agree with the interpretation of Multnomah County.
311	Whitman	Responds that they aren’t prepared to definitively conclude whether partition and subdivision laws are encompassed within Measure 37 claims. Concedes that in Measure 37 the definition of land use includes land division ordinances which “suggests an answer that may be not in line with the position that Multnomah County has reached” although no conclusion has been reached.
326	Chair Garrard	Ask if there is anything in writing concerning the transferability of claims.
330	Whitman	Responds that there is nothing in writing yet. Says they are expecting written clarification from the Governor’s counsel who gave the State’s opinion on the issue.
339	Chair Garrard	States the difficult position the DLCDC agency is in. Stresses need for definitions of these elusive terms. And asks if they can expect this from the Department soon.
352	Shetterly	Responds that what the Chair is asking for is legal interpretation of the measure as it comes from the Department of Justice (DOJ). Notes that it’s been helpful to see concerns with real claims rather than hypothetical questions. Stresses that although all the state agencies must follow the legal advice of the DOJ, their interpretation will not be definitive or binding and still open to court challenge.
394	Chair Garrard	Asks Mr. Whitman how fast the DOJ will issue opinions.

- 402 Whitman States that they are working quickly. Believes that state decisions on claims will come out in a month or two. Emphasizes that the DOJ is not planning to issue a comprehensive interpretation of Measure 37. They will give advice on how to carry out the measure.
- 428 Chair Garrard Asks why the DOJ is not planning to deal with those issues.
- 430 Whitman Responds that it is a practical matter. Notes number of claims and the expectation that there will be litigation in near future although unsure if it will be at the state or local level. States that they haven't issued definitive statements because they will probably be overtaken by court opinions or legislative action.

TAPE 12, A

- 027 Chair Garrard Has difficulty accepting the DOJ's position of waiting for court decisions and asserts that they are "dodging responsibility".
- 032 Whitman Points to the other leadership offered in working with cities and counties to carry out the measure with consistency.
- 048 Shetterly Stresses the amount of time and work consumed with the first task of creating and amending the claims process.
- 058 Chair Garrard Empathizes and also emphasizes the importance of time. Notes the approaching deadline for claims. Asks if the counties and cities will be given enough time.
- 068 Shetterly Clarifies that claims are currently being processed and progress is being made in the aforementioned weekly meetings with cities and counties.
- 075 Whitman Elaborates that they are constantly addressing issues of how to carry out the measure.
- 080 Chair Garrard Thanks for clarification. Asks for future updates on progress.
- 085 Rep. Sumner References the earlier comment that claims should be filed at the city, county and state level. Asks for an example of county law or city ordinance that was not directly resultant from SB 100 (1973).

091	Shetterly	Gives example and differentiates between sites outside and inside urban growth boundaries.
101	Rep. Sumner	Gives his understanding that things such as height restrictions are not covered under Measure 37. Asks for clarification.
105	Shetterly	Responds he's not certain, but gives a possible hypothetical situation in which a claimant could use height restrictions as a basis for a claim.
112	Rep. Smith	Asks what will happen to claims after 6 months.
115	Shetterly	Responds that they will have evaluated all the claims within 180 days. Notes that the text of the measure answers the question after 6 months which would be that the property owner has cause of action against the state for damage and attorney fees. Reiterates that they have no plan to let any claims go over the 180 day mark.
131	Chair Garrard	Ask how prepared the agency currently is to make decisions of claim validity.
132	Shetterly	Replies that they are in the process and are on track. Suggests some questions that remain including where decision making capability lies between the DLCD and Land Conservation and Development Commission (LCDC) regarding LCDC goals or administrative rules as well as where decision making authority lies in removing or not applying state statutes.
154	Rep. Ackerman	Asks if the DLCD's perceived role is to process the claims against state and not in guiding the legislature for statewide standards.
160	Shetterly	Believes that principal role is to resolve claims within 180 days. Notes that DOJ interpretations are binding to the department but not on cities and counties, so they will lead by example and share legal analysis but the final interpretation is up to the cities and counties.
178	Chair Garrard	Suggests it might be better if those in state land use planning positions make those decisions than circuit courts who haven't for 35 years.
183	Shetterly	Says the answer is yes, but that most questions that are arising are not planning questions but rather legal questions.

188	Rep. Greenlick	Airs his concern about Shetterly’s earlier comment on the issue of statutes. Doesn’t believe that an administrative arm has the authority to waive a statute enacted by the legislature.
202	Whitman	Responds that this is one of the central issues. Begins background of land use authority.
212	Rep. Greenlick	Clarifies the area of his concern stating that he thought it was Shetterly’s testimony that if the claim is against state, a possible resolution would be to waive a statute. Wonders if the administrative arm has the authority to do this action.
220	Shetterly	Responds that that is still an unresolved area and that DLCD still has a question as to how much authority they would have.
225	Whitman	Explains the text of Measure 37 lists state statutes among “land use regulations” that can give rise to claims. Elaborates on the process a claim would go through and the problem that arises when, lacking funds to pay for the claim, the governing body must choose to remove, modify or not apply. Reiterates that this is a central issue to work through and notes its importance to the Jackson County situation.
260	Rep. Greenlick	Repeats concern that a state agency should not have the authority to decide on state statutes.
277	Whitman	Describes the reason for bringing up the issue. Gives two consequences: <ul style="list-style-type: none"> • If after 180 days, there has been no legislative action to apply or the state doesn’t have the authority to remove the statute, then claimants can go to court and get compensation. • If there is no authority to waive the statute, there is a chance that the claim can be invalidated because there was no diminution of value.
300	Whitman	Lists what types of issues are involved including: fiscal terms, property owners, state v. local concerns.
307	Rep. Greenlick	Adds that it’s a constitutional issue as well.
308	Whitman	Concludes by reiterating the magnitude of the issue.

- 310 Shetterly Referring to the question of timeliness, repeats that they are evaluating claims currently but submits that if it is decided that DLCD does not have the authority to waive a state statute, they will probably request a bill to clarify this point.
- 323 Rep. Greenlick Wonders if that is an issue the Committee should take up rather than waiting on the Attorney General.
- 327 Chair Garrard Thanks the panel.
- 332 Shetterly Comments on importance of open dialogue. Concludes that if they “need legislative help to get there [they] will not be afraid to ask.”
- 340 Garrard Closes the informational meeting on Measure 37 Update and opens informational meeting on Goal 9 and Industrial Lands.

GOAL 9 AND INDUSTRIAL LANDS – INFORMATIONAL MEETING

- 360 Tom Gallagher Urban Developers Coalition. Introduces his topic of Industrial Lands Project and intention to give historical overview. Introduces prepared statement (**EXHIBIT B**). Refers to (**Page 1, EXHIBIT B**) relating to the long and short term supplies of industrial and commercial land.
- 375 Gallagher References (**Page 2, EXHIBIT B**) relating to previous studies and legislation.

TAPE 11, B

- 010 Gallagher Discusses the Industrial Task force and past legislation.
- 030 Gallagher Summarizes (**Page 2, EXHIBIT B**) relating to “market-ready sites” and HB 2011 (2003).
- 060 Gallagher Reiterates research done and urges bills of action, not research, for the coming session. Mentions two bills in Legislative Counsel. And urges the formation of a work group to discuss the bills and make changes.
- 087 Margaret Kirkpatrick Vice-chair, Land Conservation and Development Commission (LCDC). Outlines discussion of economic development plans.

112	Kirkpatrick	Gives a broad overview of the department and the Governor's directive. Reiterates the caliber of research done but few changes made to implement the findings.
131	Kirkpatrick	Outlines the first main area of focus as the land supply issue. Discusses the shortage of industrial land and efforts to amend Goal 9: Economic Development to help local governments identify "prime industrial land" and take steps to protect it. Also discusses encouraging regional cooperation.
157	Kirkpatrick	Identifies the second main area of focus as the permitting process. Comments on complaints about the multiple permitting process. Announces there are concepts in Legislative Counsel to address this problem.
185	Ann Beier	Planning Services Division Manager, LCDC. Begins an update on action taken since the passage of HB 2011 (2003).
197	Beier	Notes five tasks directed by HB 2011. Submits "Protecting Prime Industrial Land for Job Growth" Report (EXHIBIT C). Discusses shortage of industrial land.
230	Beier	Describes efforts to implement Goal 9 and help local government with the process.
249	Beier	Discusses grant funding for local economic development.
268	Beier	Elaborates on revisions to Goal 9 administrative rule. Has found that local government plans are not frequently updated. Trying to streamline process and make clearer expectations.
288	Beier	Concludes by asking for legislative help in creating a process to help determine where to put economic developments.
310	Chair Garrard	Gives the witnesses a commendation.
340	Lynn Beaton	Manager of Central Operations Division, for Economic and Community Development Department. Notes there are two main actions the department has taken to implement HB 2011. Submits the "Economic Development Strategy for Oregon" (EXHIBIT D).
355	Beaton	

Discusses the development of a state certified program to identify ready industrial land.

- 378 Chair Garrard Asks how many requests they've had for the described service.
- 380 Beaton Answers that there has been 22 certified sites and references map and list of sites (**EXHIBIT D**).
- 400 Beaton Notes the uniqueness of Oregon's certified industrial land program.
- 410 Beaton Explains differentiations between standard sites and opportunity sites. States that HB 2011 directed their department to identify 25 sites that would be highly marketable.
- 430 Beaton States her concurrence with the opinions of witnesses before. Notes that land use can help economic development in that it provides certainty in zoning. Identifies a problem when zoning becomes outdated.

TAPE 12, B

- 025 Chair Garrard Asks about the average size of desired industrial sites.
- 029 Beaton Responds they look for lots 50 acres or larger and preferably over 100 acres.
- 030 Chair Garrard Asks if infrastructure must be present.
- 032 Beaton Responds that its very helpful.
- 033 Chair Garrard Asks about airport and transportation.
- 035 Beaton Says the department certifies by types as their needs are different.
- 039 Chair Garrard Requests that Tom Gallagher organize a work group and report back to Committee to introduce legislation.
- 050 Tom Gallagher Responds affirmatively

EXHIBIT SUMMARY

- A. Measure 37, DLCD Correspondence, Lane Shetterly, 8pp.**
- B. Goal 9 and Industrial Lands, prepared statement, Tom Gallagher, 3 pp.**
- C. Goal 9 and Industrial Lands Report, Ann Beier, 49 pp.**
- D. Goal 9 and Industrial Lands, Economic Development Strategy, Lynn Beaton, 44 pp.**