

HOUSE COMMITTEE ON LAND USE

April 11, 2005 Hearing Room 50

1:30 P.M. Tapes 58 - 59

MEMBERS PRESENT: Rep. Bill Garrard, Chair

Rep. Gordon Anderson, Vice-Chair

Rep. Mitch Greenlick, Vice-Chair

Rep. Robert Ackerman

Rep. Mary Nolan

MEMBER EXCUSED: Rep. Patti Smith

Rep. Mac Sumner

STAFF PRESENT: Sam Litke, Committee Administrator

Lindsay Luckey, Committee Assistant

MEASURES/ISSUES HEARD:

HB 3310 – Public Hearing

HB 2616 – Public Hearing

HB 3351 – Public Hearing

HB 2619 – Public Hearing

HB 3313 – Public Hearing

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 58, A		
003	Chair Garrard	Calls the meeting to order at 1:39 p.m. and opens a public hearing on HB 3310.

HB 3310 – PUBLIC HEARING

012	Sam Litke	Committee Administrator. Introduces HB 3310.
	John Van Landingham	Chair, Land Conservation and Development Commission (LCDC). Discusses the Interim Committee on Periodic Review Reform and submits their report to the 2005 Legislature (EXHIBIT A). States that HB 3310 would implement the recommendations of the committee although the -1 amendments will be needed before the bill is ready. Describes the history, process and problems with periodic review. Reports there are 6 recommendations detailed in the report and makes mention of a minority report.
078	Lane Shetterly	Director, Department of Land Conservation and Development (DLCD). Remarks on the effects of the proposed -1 amendments and how they will better target the use of periodic review to keep comprehensive plans up to date.
	Rob Hallyburton	Community Services Division manager, Department of Land Conservation and Development (DLCD). States his availability to answer questions.
090	Rep. Greenlick	Asks if the amendments to HB 3310 reflect the recommendations of the committee, if DLCD will support the bill.
	Shetterly	Responds affirmatively.
	Chair Garrard	Closes the public hearing on HB 3310 and opens a public hearing on HB 2616.

HB 2616 – PUBLIC HEARING

- Sam Litke Committee Administrator. Explains HB 2616. Submits fiscal statement (**EXHIBIT B**).
- 122 Dave Hunnicutt Oregonians in Action. Speaks in support of HB 2616 although it needs some work. Discusses lands zoned either farm or forest land outside of urban growth boundaries (UGB) and the need for more non-resource zones. Outlines the two options he expresses support for as having local governments rezone areas or allowing property owners to come in on a case by case basis to change the designation of their land. Reports that amendments need to be prepared that will alter the criteria in definitions of agricultural land and forest land in the Land Conservation and Development Commission (LCDC) rules.
- 183 Rep. Greenlick Expresses his understanding of the concept of HB 2616 with large plots of land but asks if as the bill is written a property owner could ask to rezone very small plots within a larger plot.
- Hunnicuttt Responds that that is not the intent and expresses willingness to adopt language that would specify a certain percentage or some similar test before land would apply. Remarks that an alternative would be to have counties rezone but that would create a fiscal impact.
- 219 Rep. Anderson Asks for an illustration of what one or more rural zones might be termed.
- Hunnicuttt Responds that it would depend on the county but recommends “non-resource zone”.
- Chair Garrard Asks for Hunnicutt to contact the committee when the amendments are ready to be heard.
- Lane Shetterly Director, Department of Land Conservation and Development (DLCD). Remarks that the Department will wait to testify until there are amendments but states their position that miszoned property does not advance the goals of the land use system.
- 247 Marge Easley League of Women Voters of Oregon. Submits and reads testimony in opposition to HB 2616 (**EXHIBIT C**).
- Don Schellenberg Oregon Farm Bureau. States agreement with Hunnicutt regarding reasons for the bill in that the biggest problem is the definition of

agricultural land in Goal 3 combined with lack of resources to correctly map lands. Issues support for having counties map land but notes difficulty in determining proper criteria. States concern with the “case-by-case approach”.

Chair Garrard Asks what agricultural products are produced on non-resource land.

Schellenberg Discusses difficulty in determining what is “good land” and states position that the land be kept in large blocks. Expresses willingness to work on amendments with Hunnicutt.

Rep. Greenlick States understanding that farmers on EFU (exclusive farm use) land have a property tax system based on the farm productivity. Asks if the property tax base would change if some parcels were rezoned as resource use and asks if his members would be okay with that.

Schellenberg Responds that they would be okay. Says it is one of the most critical parts of the zoning activity. States that farm use assessment is based on the ability to produce and the value may change when other uses become available.

Chair Garrard States this would be a boon to farmers in his area because of the relationship between amount produced and water available.

Rep. Anderson Asks if he is correct in stating that there is a limit of \$80,000 earned income to build a home on 160 acre parcels.

TAPE 59, A

Schellenberg Responds that that is not correct. Outline three different criteria that would allow one to build a home on “other than high value farmland”.

030 Rep. Anderson Notes that there are very few farms in his area that would meet the criteria described so there are some properties that should not be considered EFU.

Elon Hasson Submits written testimony in opposition to HB 2616 on behalf of Carrie MacLaren (**EXHIBIT D**) and briefly summarizes its contents.

Rep. Ackerman Asks if he views the goals exception process as essential to this bill. Restates asking if it is the goal to create a new classification of land,

one could do it with out waiving the exception process as stated in Line 13.

- Hasson Responds he is unsure and offers to return with information.
- Rep. Greenlick Comments that this bill effects all counties and expresses concern about the effects within the Washington County and suggests possible amendments to exclude the Willamette Valley.
- Chair Garrard Suggests taking up this issue with Hunnicutt. Closes public hearing on HB 2616 and opens the public hearing on HB 3351.

HB 3351 – PUBLIC HEARING

- Sam Litke Committee Administrator. Introduces HB 3351.
- Rep. Derek Kitts HD 30. Reports that HB 3351 is the result of a constituent’s case brought forward by Oregonians in Action. References the “North Plains bill” from a previous session and notes that HB 3351 will address the other side of the issue.
- 120 Dave Hunnicutt Oregonians in Action (OIA). Speaks in support of HB 3351. Discusses the priority statute 197.298 which defines classes of land that should be included in an urban growth boundary (UGB). References Line 20 on page one of the bill through line 3 on page two. Enumerates the four priorities and explains how HB 3351 will amend the current procedure.
- 176 Rep. Greenlick Asks if the definition of “rural residential area” in line 9-17 is a new definition or if it is as defined in other parts of statute.
- Hunnicutt Responds that he believes this is the definition found with in Land Conservation and Development Commission (LCDC) administrative rules and adds that he does not believe there is a statutory definition of “rural residential area”.
- Rep. Greenlick Asks if by adding a definition to statutes, it will change the effect of other statutes related to rural residential areas.
- Hunnicutt Responds negatively explaining that HB 3351 specifically provides on Line 5, Page 1 “as used in this section”.

215 Bob Jossy Resident, Hillsboro. Submits and reads written testimony explaining their situation and the need for HB 3351 (**EXHIBIT E**). References a map of his property and the zoning code (**Page 3, EXHIBIT E**).

295 Larry Derr Counsel for Jossy. Submits written testimony explaining HB 3351 (**EXHIBIT F**). Reports that there is no opposition from North Plains or LCDC for the bill. Reviews the Jossy situation and the compromise HB 3351 provides. References Rep. Greenlick's earlier question about the language of "rural residential area" and states it was taken from LCDC administrative rules. Discusses possible amendments from LCDC to Goal 14. Notes the exclusion of the Metro UGB. Reports that the bill would be self-executing and elaborates.

TAPE 58, B

Rep. Nolan Asks Derr if he knows how much land would be effected or have its status changed by HB 3351.

Derr Responds that it is he has no knowledge of land beyond the Jossy property because LCDC has not yet approved another UGB expansion under this scenario. Adds that with changes that LCDC is proposing to make, they are anticipating additional cases in the future.

Rep. Ackerman Asks if it is likely with the zone change, that there is a Measure 37 claim.

020 Derr Responds that there is probably not and elaborates on why the land would not apply.

Rep. Ackerman Asks if the zoning now is for any residential uses at all.

Jossy Responds that the zoning is "agriculture five" and "rural residential five" meaning one can build a house on 5 acres.

Derr Adds that those are two separate zones.

040 Rep. Greenlick Remarks that in the existing statute it is not explicitly stated that "having passed up" the use of exception land in one UGB expansion would prohibit its use in the next UGB. Adds that the testimony seems to say that at one time there was a reasonable expectation that the property would be taken into the UGB and that expectation no longer exists.

	Derr	Responds that in this situation the city has made their position very clear and were endorsed by LCDC.
068	Bob Rindy	Department of Land Conservation and Development (DLCD). Notes LCDC rule regarding minimum lot sizes and discusses expansion of UGB for use of industrial land. References a bill that will be brought forward to address expanding UGB for a specific purpose. Mentions uncertainty on the applicability of this bill to certain lands and wishes to amend their written testimony for this purpose.
111	Rep. Ackerman	Asks if Rindy views HB 3351 as a mandate to extend the UGB to include the rural residential area contemplated by the bill.
	Rindy	Responds that he does not see it that way, but remarks that he is concerned about the language on Lines 16-17 on page 2 as to whether that requires the county to approve 2 acres even if they don't want to.
	Rep. Ackerman	Continues, asking if this is not a mandate to include this land within the UGB, what value the subdivision of 2 acres or more is. Asks if the land is not within the UGB, how one would extend infrastructure to these lots.
	Rindy	Responds that generally in this area, lots are served by septic tanks when if they pass "perc tests" and use well water when available.
132	Rep. Greenlick	Remarks that when this bill is heard again, he would like to hear more from DLCD on what exactly will be effected beyond the property discussed.
147	Art Schlack	Association of Oregon Counties (AOC). Raises concerns about not making the proposed action for the counties voluntary and dealing with rural development opportunities in lands outside UGB in the context of Measure 37. Urges committee to do a comprehensive review or an omnibus bill on Measure 37 rather than making individual adjustments.
	Chair Garrard	Closes the public hearing on HB 3351 and opens a public hearing on HB 2619.

HB 2619 – PUBLIC HEARING

Sam Litke Committee Administrator. Introduces HB 2619.

- 223 Ross Day Director of Legal Affairs, Oregonians in Action. Notes authorship of HB 2619 and reviews the legislative history of HB 2619 as HB 2689 in the 2003 session. Explains the bill and emphasizes that it will effect land that is not resource land.
- 271 Marge Easley League of Women’s Voters of Oregon. Reiterates her previous testimony on HB 2616 and notes firm opposition to HB 2619. Submits testimony in opposition to HB 2619 **(EXHIBIT G)**.
- 299 Rep. Anderson Asks what burden is placed on local government when the land in question is private land.
- Easley Responds that someone has to decide what criteria will categorize land and that responsibility will fall to the local governments.
- Rep. Anderson Asks if she would consider it a burden on the private land owner who has land that can not be used for farm, forestry or anything else.
- Easley Responds that something needs to be done to correct this but HB 2619 is not the right approach because it would superimpose a new goal that would take precedence over old goals.
- 320 Harlan Levy Senior staff attorney, Oregon Association of Realtors. Testifies in support of HB 2619 and reviews the support for the concept in the past. Points to Lines 4 and 5 and notes this is the “Rural Planning and Economic Development Act.” Stresses that HB 2619 is a permissive bill and elaborates on its effects. Discusses development plans that were prohibited or modified until they became unviable and explains how this sparked legislation.

TAPE 59, B

- Levy Continues testimony, describing the intent of HB 2619. Urges support of HB 2619.
- 032 Glenn W. Gross Urban Planning Administrator, City of Salem. Testifies in opposition to HB 2619 for major fiscal concerns.
- Bob Rindy Department of Land Conservation and Development (DLCD). Submits and summarizes written testimony HB 2619 which raises concerns of the department on behalf of Lane Shetterly **(EXHIBIT**

H). Notes that DLCD is working on amendments to administrative rules and are dealing with these issues.

- 079 Don Schellenberg Oregon Farm Bureau. Submits and reads written testimony raising concerns and suggesting amendments to HB 2619 **(EXHIBIT I)**.
- Chair Garrard Remarks on the Farm Bureau’s change in direction in their recent neutrality on bills with suggestions for improvement. Enters Lynn Beaton’s, Oregon Economic and Community Development Department, testimony in opposition to HB 2619 as written into the record **(EXHIBIT J)**.
- Linda Ludwig League of Oregon Cities. Outlines the cities’ concerns as encouraging counties to designate uses outside of UGBs and infrastructure impacts. Notes this bill has more broad impacts than similar bills. Reports concern with HB 2619 without narrowing its impacts.
- 150 Elon Hasson 1000 Friends of Oregon. Submits testimony on behalf of Mary Kyle McCurdy in opposition to HB 2619 **(EXHIBIT K)**.
- Chair Garrard Asks Levy, Schellenberg and Day to make changes and bring the bill back before the committee. Closes the public hearing on HB 2619 and opens a public hearing on HB 3313.

HB 3313 – PUBLIC HEARING

- Sam Like Committee Administrator. Introduces HB 3313.
- 205 Dave Hunnicutt Oregonians in Action. Discusses the “forest template test” and explains the situation of a template line drawn through a dwelling excluding the dwelling. Outlines the subsequent court cases and resulting legislation of HB 3313. Comments that there is only one known property effected and discusses amending the language.
- Chair Garrard Comments on schedule conflicts of Kathleen Worman, the property owner, and notes that after amendments are received they will have another hearing.
- Hunnicutt Stresses that while he does not know of other properties effected, it is not designed to effect only one property.

312	Rep. Anderson	Poses a hypothetical situation with a template that has six dwellings to be within it, but the sixth has no portion within it and asks how you declare the sixth is actually partially in.
	Hunnicut	Responds that if no portion of the dwelling is within, it would not count.
	Rep. Anderson	Asserts that is what the bill states and asks if this is the portion that will be amended.
	Hunnicut	Responds that the language needs work.
	Rep. Nolan	Asks Hunnicutt for a distinction about when he thinks counties should have decision making authority and when the state should intervene.
	Hunnicut	Responds that in most cases local control is best but asserts that in this case the county goes beyond what most people consider to be common sense.
354	Rep. Nolan	States that in the case Hunnicutt cites, the county could have said, "it has to be six" and then in order to change that ruling, you would have to change their number.
	Hunnicut	Responds that the county could have said it was six, and if they had said it was six then their client would not have gone through court proceedings. States it was an irrational decision that needs to be fixed.
	Rep. Nolan	Asks if the County's regulation is ambiguous.
	Hunnicut	Responds affirmatively and states that it is because of the word "within" and lists possible interpretations for the word in context.
	Rep. Nolan	Asks if it is fair to say that they are trying to help people not present claims or request permits under ambiguous language.
	Hunnicut	Responds that in this case they are trying to help property owner who has been irrationally denied a dwelling.
	Chair Garrard	Closes the public hearing on HB 3313 and adjourns the meeting at 3:28 p.m.

EXHIBIT SUMMARY

- A. **HB 3310, Report from the Interim Committee on Periodic Review Reform, John VanLandingham, 62 pp**
- B. **HB 2616, fiscal impact statement, staff, 1 p**
- C. **HB 2616, written testimony, Marge Easley, 1 p**
- D. **HB 2616, written testimony, Elon Hasson on behalf of Carrie MacLaren, 1 p**
- E. **HB 3351, written testimony, map of property and zoning code, Bob and April Jossy, 4 pp**
- F. **HB 3351, written testimony, Larry Dell, 1 p**
- G. **HB 2619, written testimony, Marge Easley, 1p**
- H. **HB 2619, written testimony, Bob Rindy, 2 pp?**
 - I. **HB 2619, written testimony, Don Schellenberg, 1 p**
 - J. **HB 2619, written testimony, Lynn Beaton, 2 pp**
- K. **HB 2619, written testimony, Elon Hasson on behalf of Mary Kyle McCurdy, 1 p**