

HOUSE COMMITTEE ON LAND USE

June 08, 2005 Hearing Room 50

1:30 P.M. Tapes 121 - 123

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:

HB 3120 – Work Session

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
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TAPE 121, A

002 Chair Garrard Calls the meeting to order at 2:06 p.m. and opens a work session on HB 3120. Asks sponsors of the -3 amendments to come forward.

HB 3120 – WORK SESSION

056 Lane Shetterly Director, Department of Land Conservation and Development (DLCD). Introduces the panel and submits proposed amendments to HB 3120 to replace the -3 amendments (**EXHIBIT B**) and a summary of the document (**EXHIBIT A**).

097 Shetterly Discusses the work group and the goal of consensus. Mentions the attorneys who helped to draft the amendments.

104 Jon Chandler Oregon Homebuilders Association. Discusses the status of the amendments and the intent of the work group to address Measure 37 (M37) in workable, fair way while leaving the Oregon land use system in tact. Remarks that there is no compensation piece in these amendments and explains this issue would be addressed in separate legislation.

131 Chair Garrard Complements the group on this objective.

Dave Hunnicutt Oregonians in Action (OIA). Discusses his involvement with the process of developing the amendments and the high level of consensus on most parts. Urges the committee to listen to the detailed testimony of Gary Klein and Dan Cooper who will go through the draft more thoroughly and encourages consideration of the draft from the committee.

157 Rep. Nolan Expresses interest in seeing some representation of how these changes will effect Oregon communities and the parties involved, suggesting a map or some visual aide.

179 Shetterly Responds he will try to provide something while noting the difficulty of trying to quantify the effects of M37 and prospective claims.

Rep. Nolan Confirms that she would like information on current law, M37 and the proposed amendments.

208 Glenn Klein

Harrang Long, on behalf of League of Oregon Cities. Introduces Dan Cooper, General Counsel for Metro.

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| | Klein | Gives broad overview of what the amendments will do and notes intention to go over the summary (EXHIBIT A) . |
| 235 | Klein | Begins discussion of Section 1 dealing with “existing” M37 claims and the possibility of filing under “new” provisions. |
| 263 | Chair Garrard | Asks about why “new” and “old” claims would be treated differently with regard to the transferability issue. |
| | Klein | Responds that the new claims would be subject to other procedures. |
| | Chair Garrard | Verifies there are different procedures for different claims to be filed. |
| | Klein | Confirms this. References Section 26 which would make distinctions between claims made before March 15, 2005 and those after. Elaborates on how this would effect transferability. |
| 291 | Klein | Discusses provisions in Section 1 that relate to judicial review of pre-March 15, 2005 claims and elaborates on their reasoning. |
| | Klein | Notes they have made explicit the authority for state agencies to waive claims based on state statutes. |
| 327 | Klein | Talks about Section 3, related to definitions, noting they are similar to those in SB 1037 and the -1 amendments to HB 3120. |
| | Klein | Discusses Section 4 dealing with the scope of the M37 claim and details the provisions within. |
| 375 | Klein | Points to Page 2 of the summary and discusses possible additional exemptions. |
| | Chair Garrard | Asks if those exemptions would affect any claims made up to this point. |
| | Hunnicut | Responds that they do not know. |

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| 400 | Klein | Discusses Section 4 (3) and remarks on distinctions between provisions for retroactive and prospective claims. |
| 430 | Klein | Discusses Section 4 (4), which addresses how reduction of value should be determined and directs the Department of Administrative Services (DAS) to adopt administrative rules for this purpose. |

TAPE 122, A

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| 009 | Klein | Details Section 4 (5), dealing with authority of public entities to waive land use regulations. |
| 019 | Klein | Notes that Sections 5-7, starting on page 8 of (EXHIBIT B) , deal with the claims process and is similar to SB 1037 and the HB 3120 -1 amendments. |
| | Klein | Gives details of the claims process, noting multiple filing of claims, timelines and a list outlining what the contents of claims must be (Page 9, EXHIBIT B) . |
| 073 | Klein | Continues discussion of the claims process and mentions a cap for the amount public entities may charge. Outlines possibilities for determination of a complete claim. |
| 087 | Rep. Nolan | Asks about the status of a claim if a property owner submits an incomplete claim and says the claim is complete. |
| | Klein | Responds with details of how the process would continue. |
| 107 | Klein | Continues discussion of the process once the claim is determined to be complete. Details how notification process would work in Section 6 (2) found on (Page 11, EXHIBIT B) . |
| 139 | Klein | Notes exceptions in the timeline allowed for additions to the record for a claim. |
| 145 | Klein | Describes the process once the record is closed and the government makes a decision on whether or not the claim is valid. Notes possible barriers which may prevent development after a claim is deemed valid. |

	Chair Garrard	Asks if this situation would trigger another M37 claim.
	Klein	Responds negatively with one exception and elaborates on that circumstance.
	Chair Garrard	Asks if a local government made a decision in this circumstance if it would be binding on state agencies.
185	Klein	Responds affirmatively and gives an example.
208	Klein	Discusses Section 7 on (Pages 12-13, EXHIBIT B) which would allow for the joint filing of a land use application and a M37 claim and explains how the process would function.
237	Klein	Discusses Section 8 on (Pages 13-14, EXHIBIT B) detailing judicial review. Notes that anyone who is adversely affected can challenge or intervene in a portion of the proceedings.
268	Chair Garrard	Remarks on this provision and comments on testimony before the committee in the interim about parties with no standing in the land use decision intervening in the proceedings.
	Klein	Clarifies that they are including the participation of a party who is “adversely affected” and elaborates on the process.
290	Rep. P. Smith	Asks for an example of someone “adversely affected”.
	Hunnicut	States there are currently two standards, “adversely affected” or “aggrieved” and notes the distinction between them.
323	Chair Garrard	Updates Rep. Ackerman on their discussion.
	Klein	Continues detailing the process of judicial review including the appeals process.

TAPE 121, B

003	Klein	Talks about Sections 12 -13 dealing with the use of waivers and transferability summarized on (Page 3, EXHIBIT A) .
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049	Klein	Describes Sections 14 - 15 which have provisions for M37 claims within urban growth boundaries and the surrounding areas summarized on (Page 3, EXHIBIT A) .
	Rep. Nolan	Asks about Section 13 and for further explanation of the time period allowed for transfer.
061	Klein	Gives details of waiver transferability and describes an example.
066	Dan Cooper	Attorney, Metro. Adds a point on the waiver's transferability if the land is developed.
	Rep. Nolan	Acknowledges this point.
	Cooper	Describes finance ability as the problem they are trying to solve in this case.
	Hunnicutt	Gives a hypothetical example of waiver length.
102	Rep. Nolan	Asks for an explanation in the same example if the enacted date of the regulation were later.
	Klein	Gives details about the case and how long the property owner would have to file a claim and once obtaining a waiver, the length of development rights.
	Rep. Nolan	Verifies that every piece of property or property owner could be eligible to file a M37 claim on regulations enacted after Jan 1, 2006.
	Klein	Responds affirmatively, assuming the regulation restricts the use of property.
127	Rep. Nolan	Discusses the effects on the value of local and state government regulations and the length of valid waivers. Asks how the government could enact regulations and have certainty they could apply them.
	Klein	Remarks on discussions about this issue and asserts that not many regulations will fall outside of the exemptions that prohibit M37 claims. Speculates more time will be spent by governments analyzing possible effect of regulations on property values.

170	Rep. Nolan	Asks if these amendments address whether regulations will be considered in total or separately and asks how diminution of value will be determined. Gives the example of a package of regulations enacted by a local government some of which would create benefit while some may adversely effect property owners.
184	Klein	Defers to Cooper.
	Cooper	Responds he is uncertain.
	Rep. Nolan	States her interest in knowing eventually and not leaving the point open to interpretation.
	Klein	Notes that if the issue is addressed is it dealt with implicitly, not explicitly.
194	Rep. Ackerman	Asks if a co-owner is not a family member if they are still eligible to file a claim under the act.
	Klein	Responds affirmatively but only if all co-owners approve. Adds there will be no claim if all owners do not agree.
	Rep. Ackerman	Gives an example of how a waiver may be transferred and asks if his interpretation is correct.
	Klein	Responds that the bill language says that a waiver can be transferred for 10 years or up to 10 years after final decision and references (Page 16, EXHIBIT B) .
	Rep. Ackerman	Asks if his interpretation was correct.
	Klein	Confirms this.
	Hunnicut	Verifies Rep. Ackerman's testimony.
230	Rep. Ackerman	Clarifies his testimony. Asks if the issue of what type of recording should happen to identify what land is subject to the waivers is important.
	Klein	

Reports they have incorporated a change so that a waiver is not effective until it has been recorded with the county.

Rep. Ackerman Asks for clarification of a point on unlimited transferability.

Klein Elaborates on circumstances for waivers to continue. Gives an example.

Rep. Ackerman Explains his interpretation.

255 Rep. Nolan Verifies her understanding of when someone would be able to act on their waiver.

Klein Explains that the waiver itself will not become valid until it has been recorded on the property and the timeline begins.

Rep. Nolan Verifies this is at the owner's initiation.

Klein Confirms this.

293 Cooper Reiterates their intention on this section.

290 Klein Discusses Section 14 dealing with additional criteria for valid M37 claims inside urban growth boundaries (UGB).

327 Rep. Ackerman Asks if the types of regulations mentioned have restricted the property use and can be waived.

Klein Describes how the process would work in this section.

Rep. Ackerman Restates his question.

Rep. Nolan Comments this would apply just within UGBs.

Cooper Discusses Section 15 (**Page 17, EXHIBIT B**) and outlines reasons for creating provisions for M37 claims on lands just outside UGBs.

390 Cooper Outlines the process of establishing "study areas" for future UGB expansions.

TAPE 122, B

012	Cooper	Points out that the ultimate decision on UGB expansion will be made consistent with current law.
	Chair Garrard	Asks how long this would be in effect.
	Cooper	Responds 2015 and elaborates on their reasoning. Suggests setting up an interim committee to deal with this and other issues.
038	Chair Garrard	Asks if under this provision multiple owners would be able to merge onto a single M37 claim.
	Cooper	Responds negatively.
	Chair Garrard	Asks how arbitrary the decision of a 15 year period was.
	Cooper	Clarifies that it is 10 years.
	Rep. Nolan	Comments that it parallels the 10-year waiver period.
058	Cooper	Explains the reasoning for the date.
	Chair Garrard	Asks how often the UGB has been expanded within the Metro district.
	Cooper	Responds three or four times since 1997.
	Chair Garrard	Comments the process happens often.
	Cooper	Agrees and makes comments on other UGB expansions.
096	Cooper	Discusses Sections 17-18 which include provisions for rural areas. Describes the tract of record provision and limits on retroactive claims for property outside UGBs.
189	Chair Garrard	

Notes there are different types of septic systems and asks if the provisions discussing limitations on development take this into account.

Cooper Responds that they leave that determination up to the health regulation mechanism. Outlines what is not allowed with regards to septic systems.

210 Cooper Adds that the septic tank and well issue apply in all land outside of UGB land. Details provisions for cluster developments.

250 Hunnicutt Adds that in Section 18, retroactive claims made under the *Forest Practices Act* would also be eliminated.

Cooper Explains that on Section 18 4(c) (**Page 20, EXHIBIT B**) does not represent what he said because the drafting is incomplete.

269 Rep. Anderson Comments on their intention which he did not read in M37 and suggests limiting the size of parcel rather than limiting the number of dwellings.

Hunnicutt Responds that most applications will not be for more than 100 units outside of UGBs and explains that OIA is comfortable with the provisions in this section.

314 Rep. Anderson Asks for explanation about provisions not supportive of new technologies.

Cooper Responds that their intention was not against new technology, but against higher density development. Explains the reasoning for their limitations.

344 Rep. Anderson Discusses his preference for new technology for safety reasons.

Hunnicutt References HB 2705 which addressed this issue.

Rep. P. Smith Asks Hunnicutt why there is a cap on development.

Hunnicutt Responds that the cap provides assurance to those who are concerned about the scale of development outside UGBs.

396	Klein	Explains that Sections 19-20 are conforming amendments. Discusses Sections 21-25.
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TAPE 123, A

012	Klein	Reports he previously discussed Section 26 and explains that Section 27 adds an emergency clause.
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	Chair Garrard	Makes announcements and adjourns the meeting at 3:56 p.m.
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EXHIBIT SUMMARY

A. HB 3120, summary of -3 amendments, Lane Shetterly, 4 pp

B. HB 3120, proposed replacement of -3 amendments, Lane Shetterly, 25 pp