

SENATE COMMITTEE ON ENVIRONMENT & LAND USE

January 26, 2005
3:00 P.M.

Hearing Room B
Tapes 8 – 10

Corrected 10/18/05

MEMBERS PRESENT: **Sen. Charlie Ringo, Chair**
 Sen. Jason Atkinson, Vice-Chair
 Sen. Roger Beyer
 Sen. Ginny Burdick
 Sen. Frank Shields

STAFF PRESENT: **Matt Shields, Committee Administrator**
 Katie Lowry, Committee Assistant

MEASURES/ISSUES HEARD:
 SB 353 – Public Hearing
 Introduction of Committee Measures – Work Session
 SB 348 – Public Hearing
 SB 349 – Public Hearing
 Measure 37: Secondary Lands – 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 8, A		
005	Chair Ringo	Calls meeting to order at 3:06 p.m. Makes opening remarks. Opens public hearing on SB 353.
<u>SB 353 - PUBLIC HEARING</u>		
015	Harlan Levy	Senior Staff Attorney, Oregon Association of Realtors. Submits and highlights written testimony in support of SB 353 (EXHIBIT A) .
060	Chair Ringo	Asks if the language in bill is intended to notify a potential buyer about the potential use of the land or the potential use of the neighboring land.
065	Levy	Explains that this bill is designed to inform potential buyer about both.
070	Chair Ringo	Asks for a hypothetical scenario of how this bill would put people on notice.
075	Levy	Gives a hypothetical scenario.
080	Carrie MacLaren	Staff Attorney, 1000 Friends of Oregon. Makes opening comments regarding the concepts of this bill. Discusses prospective buyers and how Measure 37 affects ability to anticipate predictability of zoning. States support for concept, but indicates there are technical problems with bill.
110	Chair Ringo	Clarifies that there couldn't be a Measure 37 claim with a new purchaser.
115	MacLaren	Believes that the ability to remove, modify or not apply a land use regulation is tied to land use regulations enacted prior to date of acquisition. Articulates intent of the bill and states that the language is not clear.
130	Sen. Beyer	Asks for suggested language.
135	MacLaren	Reads recommended language for bill.
155	Levy	States no opposition to changing the language of the bill in order

		to get the bill as accurate as possible.
165	Sen. Beyer	Asks if Levy is attorney.
166	Levy	Confirms that he is.
170	Sen. Beyer	States concern that there are attorneys drafting this language for non-attorney people. Cautions that it needs to be done clearly.
180	Sen. Burdick	Explains that more specificity is necessary.
190	Lane Shetterly	Director, Department of Land Conservation and Development; Governor's Coordinator for Measure 37. Addresses Sen. Beyer's concern about language. Discusses the clarity of language and makes recommendations for specific language changes.
215	Chair Ringo	Asks witnesses to bring SB 353 back before the committee.
220	Chair Ringo	Closes public hearing on SB 353 and opens work session on introduction of committee measures.

INTRODUCTION OF COMMITTEE MEASURES – WORK SESSION

225	Matt Shields	Committee Administrator. Gives summary of Legislative Counsel (LC) Drafts: <ul style="list-style-type: none"> • LC 265 (EXHIBIT B) which converts Land Use Board of Appeals into Land Use Court of Appeals. • LC 1449 (EXHIBIT C) which clarifies exceptions to exclusive jurisdiction of Land Use Board of Appeals to review land use decisions and limited land use decisions.
230	Sen. Atkinson	MOTION: Moves LC's: 265, 1449 BE INTRODUCED as committee bills.
235	Chair Ringo	VOTE: 5-0-0 Hearing no objection, declares the motion CARRIED. NOTE: LC 265 printed as SB 432 LC 1449 printed as SB 431
240	Chair Ringo	Closes work session and opens public hearing on SB 348 and 349.

SB 348 and SB 349 – PUBLIC HEARING

245	Dave Hunnicutt	Executive Director, Oregonians in Action. Makes opening remarks. Explains bills and confirms that Dorothy English will be able to subdivide her land if these bills are passed. Asks committee to pass bills.
290	Chair Ringo	Clarifies difference between SB 348 and SB 349. Asks for clarification on number of parcels.
295	Joe Willis	Attorney, Schwabe, Williamson & Wyatt. Gives explanation about number of parcels.
305	Sen. Burdick	Wonders why this bill is necessary since Measure 37 was passed.
310	Willis	Discusses Multnomah County's response to Dorothy English's claim.
340	Sen. Burdick	States that the problem is that there is uncertainty about what Measure 37 does or doesn't do. Asserts that a problem with the ordinance is a problem with the ordinance.
355	Chair Ringo	States that a lot of people think that Measure 37 does not allow people to subdivide. Wonders if there will be litigation if the legislature does not do something.
360	Willis	Believes that Multnomah County wants to do this. Asserts that the language in Measure 37 does allow one to subdivide.
365	Chair Ringo	Explains the difficulty of understanding the legal uncertainties surrounding Measure 37.
380	Willis	Addresses Multnomah County's ordinance.

390 Chair Ringo Addresses Hunnicutt. Asks if these bills are a reasonable thing to do to help Dorothy English.

395 Hunnicutt Discusses the provision in Measure 37 for a person to refer to the judiciary process to resolve disputes. Expresses that Mrs. English does not have a lot of time to wait.

420 Mike McArthur Executive Director, Association of Oregon Counties (AOC). Explains that in the land use system the state defines the broad policy that is implemented by the county. Sees these bills as a way of the state making specific decisions in the local government. Urges committee to think it through before supporting this type of land use action.

470 Stephanie Soden Multnomah County Public Affairs Office. Introduces Derrick Tokos to outline policy concerns for Multnomah County for SB 348 and 349.

TAPE 9, A

030 Chair Ringo Agrees that legislation designed for a few people is not good policy, but wants to be flexible. Gives example of a bill passed from a previous session.

040 Derrick Tokos Principal Planner, Multnomah County. Submits and highlights written testimony in opposition to SB 348 and 349 (**EXHIBIT D**). Sees this legislation as a way to circumvent Measure 37.

080 Sen. Beyer Asks if there are other lands that this might apply to besides the Dorothy English property.

083 Tokos Offers to return information to the committee.

089 Chair Ringo Closes public hearing on SB 348 and SB 349 and opens public hearing on Measure 37, Secondary Lands.

MEASURE 37: SECONDARY LANDS - PUBLIC HEARING

095 Ronald Eber Farm and Forest Land Specialist, Department of Land Conservation and Development (DLCD). Submits and highlights written testimony (**EXHIBIT E**). Gives history overview. Discusses:

- Secondary lands
- Jurisdiction and implementation
- Oregon has provisions established for development on lands of lesser quality
- Oregon’s process for identifying lands

155 Sen. Atkinson Asks if DLCD recognizes the phrase “secondary lands.”

160 Eber Clarifies that DLCD recognizes this phrase. Explains that DLCD does recognize that there are lands of different qualities and the system allows for more development on these lands than on higher quality lands.

170 Sen. Atkinson Asks if allowing development on secondary lands instead of on high value farm land really works in rural Oregon.

175 Eber Believes it does.

176 Sen. Atkinson Believes that in rural Oregon the prime farm land is getting paved while what is considered secondary farm land remains untouched.

180 Eber Addresses disagreement. States that as a general rule this has worked.

190 Sen. Atkinson States that as a general rule this has not worked in Southern Oregon.

195	Chair Ringo	Asks Sen. Atkinson what would work.
200	Sen. Atkinson	Believes a regional approach is necessary. Discusses differences between Southern Oregon classification and Willamette Valley classification. Believes the system causes more frustration than workability.
220	Sen. Beyer	Believes it is easier to develop on flat land, which is farm land. States that the best farm land is being paved over. Remarks that it is also evident in the Willamette Valley that the system is working exactly the opposite of how it is supposed to work.
240	Sen. Burdick	Discusses previous committee. States that there is a huge difference of opinion. Discusses political pressure and states that this is a very complicated issue.
275	Sen. Beyer	Agrees with Sen. Burdick. Discusses labeling lands. Discusses inequities and intent of Measure 37.
295	Eber	Comments on concerns raised by Sen. Atkinson. States that this is a different issue than the secondary lands issue.
315	Sen. Atkinson	Asserts that this is not separate from his concerns. Reiterates that this system does not work. Believes that it is not one side that wants to pave Oregon and one side that does not. States that Oregonians are frustrated because this system does not work. Addresses Measure 37.
365	Chair Ringo	Stresses that this is one thing that Oregonians are frustrated with. Hopes that specifics can be discussed.
385	Eber	Offers assistance to committee on this subject matter.
395	Dave Hunnicutt	Oregonians In Action. Submits Land Use Planning Goal 3: Agricultural Lands and Land Use Planning Goal 4: Forest Lands (EXHIBIT F) .
420	Chair Ringo	Asks if there is going to be a suggestion or a proposal.
425	Hunnicut	Confirms that there will be. Discusses the classification of lands. Submits Excerpt from U.S. Department of Agriculture Conservation Service (EXHIBITS G) and Soil Classification Table (EXHIBIT H) .
TAPE 8, B		
065	Hunnicut	Urges committee to look at defining agricultural land. Gives suggestions for definitions of agricultural land.
110	Sen. Beyer	Asks about Goal Four (EXHIBIT F, Page 2) .
115	Hunnicut	Suggests language to be deleted. Specifies that this is about commercial forest land.
125	Duane Weeks	Resident, Canby. Introduces himself and shares his background. Discusses land classes, productivity and perceived understanding of these different lands. Believe there are two problems: <ul style="list-style-type: none"> • Definition of prime farm land and the process of updating maps. • Explains that a septic feasibility permit is needed to build a house. Discusses process and suggests the idea of sewage treatment plants. Asks body to approve this idea.
295	Sen. Atkinson	Asks witness to summarize opinions on secondary lands.
305	Sen. Shields	Wonders how to get from here to there. Asks how to make land use planning more logical.
310	Weeks	Relates example.
325	Sen. Shields	Asks about soil.
330	Weeks	Verifies type of soil and gives another example of a plot of land with its own sewage treatment plant.

350	Weeks	Believes there needs to be some reorganization of how decisions are made.
365	Rebecca Boyle	Resident, Oregon City. Submits written testimony (EXHIBIT I). Makes opening remarks. Expresses concerns about impact on water resources. Expresses concern that the water supply will be depleted if neighbors develop land to the fullest extent possible. All of her neighbors are eligible to file Measure 37 claim. Expresses concern that there are no protections for water resources.
TAPE 9, B		
030	Sen. Shields	Believes that this is not off topic, that all land use concerns are related.
035	Sen. Atkinson	Points out that the secondary land debate doesn't work the same everywhere in the state. Asks how deep the drill was for the second well.
045	Boyle	Responds almost 200 ft.
050	Sen. Shields	Comments about population and limited number of water resources.
060	Carrie MacLaren	Staff Attorney, 1000 Friends of Oregon. Submits and highlights written testimony (EXHIBIT J).
085	Chair Ringo	Remarks about complaints of land being mislabeled.
090	MacLaren	Comments that land can be re-designated if a landowner does not believe it is zoned properly.
095	Chair Ringo	Asks who in County who has authority to re-designate land.
096	MacLaren	Explains process for land re-designation.
100	Chair Ringo	Addresses a specific example given by Hunnicutt and asks if that can be re-designated.
105	MacLaren	Confirms that it could. Addresses specific portions of land. Suggests committee look at what kind of crops are grown in Oregon.
120	Sen. Beyer	Asks question regarding rezoning process and what to do if neighbors do not like it.
125	MacLaren	Explains that the process involves notifying neighbors. Informs that the decision can go to Court of Appeals.
135	Sen. Beyer	Asks how many years this takes and how many of these cases 1000 Friends has contested.
140	MacLaren	Shares that 1000 Friends is concerned with rezoning.
155	Sen. Beyer	States that it seems like a fairly simple process, but contends that it involves years and thousands of dollars.
160	Chair Ringo	Asks if there are times when it works smoothly.
170	MacLaren	Refers to Figure 1 of (EXHIBIT J). Gives statistics on vineyards. Discusses classification of soils. Remarks on the urban growth boundary.
230	Harlan Levy	Senior Staff Attorney, Oregon Association of Realtors. Introduces himself. States that Measure 37 is an opportunity for the legislature to deal with secondary lands. States that this is the absence of planning on resource lands which resulted in serious economic issues for the state.
280	Levy	Urges committee to pass planning legislation and return local control to County Commissioner. Concludes testimony.
300	Chair Ringo	Asks if there is a bill drafted.
302	Levy	Verifies that there is not a current bill, but offers to work with the committee to do so.
305	Chair Ringo	Asks if there have been bills drafted in past sessions.

306	Levy	Speaks about previous bill.
315	Chair Ringo	Asks if there is a concept paper relating to bill from last session.
316	Levy	Offers to bring it in.
325	Art Schlack	Policy Manager, Association of Oregon Counties (AOC). Introduces himself. Discusses conservation of agricultural land and process of identifying secondary lands. Discusses approach to classifications and suggests re-examining by a legislative process on a county by county basis. States that this will address some of the Measure 37 issues.
420	Chair Ringo	Asks witness to articulate what process he doesn't want to go through again.
423	Schlack	Explains that the AOC has not been able to identify secondary lands. States that it isn't a question of what lands are secondary lands but what is not exclusive farm or forest land.
450	Chair Ringo	Asks what this committee should do.
455	Schlack	Recommends giving counties flexibility and to re-examine lands.
470	Chair Ringo	Expresses uncertainty about what witness wants this committee to do.
TAPE 10, A		
040	Schlack	Asks committee to provide direction and funding.
050	Chair Ringo	Closes public hearing on Measure 37, Secondary Lands and adjourns meeting at 4:58 p.m.

EXHIBIT SUMMARY

- A. SB 353, written testimony, Harlan Levy, 2 pp**
- B. Introductions, LC 265, Staff, 146 pp**
- C. Introductions, LC 1449, Staff, 2 pp**
- D. SB 348 and SB 349, Derrick Tokos, 2 pp**
- E. Measure 37, written testimony, Ronald Eber, 5 pp**
- F. Measure 37, land use planning goals, Dave Hunnicutt, 2 pp**
- G. Measure 37, excerpt, Dave Hunnicutt, 1 p**
- H. Measure 37, table, Dave Hunnicutt, 11 pp**
- I. Measure 37, written testimony, Rebecca Boyle, 4 pp**
- J. Measure 37, written testimony, Carrie, MacLaren, 12 pp**