

## SENATE COMMITTEE ON ENVIRONMENT & LAND USE

May 10, 2005  
8:00 A.M.

Hearing Room 343  
Tapes 88 - 91

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

**MEMBER EXCUSED:** Sen. Ginny Burdick

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

**MEASURES/ISSUES HEARD:**  
SB 863 – Public Hearing  
SB 538 – Work Session  
SB 1037 – 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
<b>TAPE 88, A</b>		
005	Chair Ringo	Calls meeting to order at 8:04 a.m. States that SB 290 will not be heard today. Opens public hearing on SB 863.
<b>SB 863 – PUBLIC HEARING</b>		
020	Don Schellenberg	Oregon Farm Bureau. Introduces those at the witness table. Explains SB 863. Submits written testimony in support of SB 863 ( <b>EXHIBIT A</b> ).
040	Schellenberg	Submits and reads written testimony of Bruce Andrews in support of SB 863 ( <b>EXHIBIT B</b> ).
056	Dave Vanasche	Farmer; Member, Washington County Farm Bureau. Submits pictures of dwellings on his farm ( <b>EXHIBIT C</b> ). Relates personal story.
080	Larry Wells	Resident, Marion County. Says that he has torn down two of these types of houses and lived next to two of these types of houses. Relates personal story.
101	Sen. Beyer	Asks Mr. Vanasche if he intends to file a Measure 37 claim.
102	Vanasche	Replies that he bought the property in 1996.
104	Sen. Beyer	States that there was a house there and the witness had the right to build on it when he purchased it.
105	Chris Crean	Committee Counsel. Says that there were statutes and regulations in place dealing with replacement dwellings in 1996. Assumes that the regulations that existed in 1996 are the same ones that are on the books today.
108	Vanasche	Believes that to be true. States that there are a lot of old dwellings in Washington County. States that these dwellings are an eyesore.

115	David Tonges	Farmer. Gives background information on his farm. Submits pictures of dwellings on his farm <b>(EXHIBIT D)</b> .
133	Chair Ringo	Appreciates witnesses' testimony. Closes public hearing on SB 863 and opens work session on SB 538.
<b><u>SB 538 – WORK SESSION</u></b>		
	Matt Shields	Committee Administrator. Submits SB 538-1 amendments <b>(EXHIBIT E)</b> and SB 538-2 amendments for the record <b>(EXHIBIT F)</b> .
145	Chair Ringo	Asks for explanation of the -1 amendments and the -2 amendments.
150	Ron Eber	Farm and Forest Land Specialist, Department of Land Conservation and Development. Says that the guest ranch legislation began in 1997 and has allowed guest ranches in Eastern Oregon to be approved. Believes that SB 538 is an attempt to improve on this legislation.
158	Chair Ringo	Says that SB 538 in its original form would remove the sunset. Verifies that the -2 amendments extend the sunset to 2010.
160	Eber	Replies correct. States that there would be an extension of the sunset and a continuation of the reporting requirement to allow monitoring of the program.
164	Chair Ringo	Asks if there is any reason to adopt the -1 amendments if the -2 amendments are adopted.
166	Shields	Believes that the -1 amendments only extend the sunset to 2010.
167	Chair Ringo	Verifies that the -2 amendments extend the sunset and impose the mentioned reporting requirement.
169	Eber	Replies correct.
173	Sen. Atkinson	<b>MOTION: Moves to ADOPT SB 538-2 amendments dated 03/29/05.</b>
		<b>VOTE: 4-0-1</b>
		<b>EXCUSED: 1 - Burdick</b>
	Chair Ringo	<b>Hearing no objection, declares the motion CARRIED.</b>
175	Sen. Atkinson	<b>MOTION: Moves SB 538 to the floor with a DO PASS AS AMENDED recommendation.</b>
179	Sen. Ben Westlund	Represents Senate District 27. Makes comment. <b>VOTE: 4-0-1</b>
		<b>EXCUSED: 1 - Burdick</b>
189	Chair Ringo	<b>Hearing no objection, declares the motion CARRIED.</b>
		<b>SEN. WESTLUND will lead discussion on the floor.</b>
190	Chair Ringo	Closes work session on SB 538 and opens public hearing on SB 1037.
<b><u>SB 1037 – PUBLIC HEARING</u></b>		
194	Chris Crean	Committee Counsel. Submits SB 1037-2 draft amendments <b>(EXHIBIT G)</b> . States that this proposal has been submitted to Legislative Counsel (LC) and that this is what will be discussed today. Submits summary of the -2 draft amendments <b>(EXHIBIT H)</b> .
204	Crean	Discusses the -2 draft amendments <b>(EXHIBIT G)</b> . Summarizes Section 1 titled Tract of Record.
208	Crean	Explains Section 4 titled Measure 37. Discusses subsection 3.
227	Crean	Discusses Section 4 (5).
245	Crean	Discusses Section 4 (8).
260	Crean	Discusses Section 6.
288	Crean	Discusses Section 7 (15) and (17).

295	Crean	Discusses Section 8.
302	Crean	Discusses summary of the -2 draft amendments <b>(EXHIBIT H)</b> .
320	Crean	Continues discussion of the -2 draft amendments <b>(EXHIBIT G)</b> . Discusses Section 11, Section 12, Section 15, Section 14 and Section 13.
365	Crean	Discusses Section 16.
375	Crean	Discusses Section 17 and Section 18.
410	Crean	Discusses Section 20 and Section 22.
427	Crean	Discusses Section 24 and Section 25.
443	Crean	Discusses Section 26.
<b>TAPE 89, A</b>		
018	Crean	Discusses Section 28.
034	Crean	Asks if Chair Ringo wants to discuss the measure in the House which would raise revenue for the state. States that it is not yet drafted.
035	Chair Ringo	Responds that it will be a House Bill that will specify certain revenue raising measures when new development occurs because of Measure 37 claims.
038	Crean	States that SB 1037 generates compensation revenues for cities and counties, but not the state, and the House Bill is intended to create a revenue mechanism for the state.
045	Sen. Beyer	Asks about language “retroactive” in the summary of the -2 draft amendments <b>(EXHIBIT H)</b> .
048	Crean	Explains. Refers to Section 50 of the -2 draft amendments <b>(EXHIBIT G)</b> .
054	Lane Shetterly	Director, Department of Land Conservation and Development. Makes comments on the -2 draft amendments and states that his testimony will be more general. Discusses: <ul style="list-style-type: none"> <li>• Results of a state-wide land use survey</li> <li>• Quantity of claims received across the state</li> <li>• Evaluation of claims</li> <li>• Application of Measure 37</li> </ul>
105	Shetterly	Discusses transferability of rights.
140	Shetterly	Discusses authority for waiving of state statutes.
180	Shetterly	Discusses Measure 37 claims.
215	Chair Ringo	Asks if witness has an estimate of the total dollar amount for the claims received.
217	Shetterly	Replies that he does not know for sure. Estimates hundreds of millions of dollars in terms of claims for compensation and explains. States that, because of a lack of an identified compensation fund, the DLCD is proceeding on the assumption that they will be waiving claims.
228	Chair Ringo	Verifies that is assuming DLCD has the authority to waive.
229	Shetterly	Replies yes. Commends the committee for their work.
237	Dave Hunnicutt	Oregonians in Action (OIA). Comments on workgroup that has worked on Measure 37. States that OIA opposes the -2 amendments, however OIA believes that it is important to continue this discussion, so they would support moving a form of SB 1037 to the House and amending it there.
304	Chair Ringo	Understands that there are provisions of the -2 draft amendments that the witness finds unacceptable. Asks witness if he believes

		the general approach is in the right direction.
307	Hunnicutt	Replies yes and explains.
326	Chair Ringo	Says that the -2 amendments contemplates either moving land currently designated as exclusive farm use (EFU) of soil types Classes VII and VIII to non-resource land, or leaving that decision to the counties. Says that would apply to property owners even without a Measure 37 claim and it would give counties more say over what will happen to the land in their own counties. Asks witness to comment on this.
337	Hunnicutt	States that the secondary lands issue is the biggest flaw in the current land use planning system and explains. Says that because this issue is being addressed in SB 1037, it reflects the notion that Measure 37 and the underlying issues that led to its passage are being looked at. Says that Measure 37 cannot be looked at in a vacuum.
367	Chair Ringo	Discusses compensation mechanism proposed in SB 1037 with the -2 draft amendments. Says that the -2 draft amendments reference a House Bill that will contain a separate compensation mechanism. Asks if witness is prepared to advocate for a compensation mechanism.
377	Hunnicutt	Replies yes. Discusses text of Measure 37. Believes that compensation needs to be a part of any legislation that is passed. Discusses sources for revenue.
411	Chair Ringo	States that compensation was a fundamental part of Measure 37.
412	Hunnicutt	Replies yes.
<b>TAPE 88, B</b>		
002	Sen. Beyer	Asks witness to go through the -2 draft amendments and share which parts he likes and dislikes.
003	Hunnicutt	States that would take a long time.
006	Chair Ringo	Asks Sen. Beyer if it would be acceptable for the witness to meet with him and go through the -2 draft amendments item by item.
007	Sen. Beyer	Replies that would be fine.
008	Sen. Shields	Hopes the witness would be willing to do the same for him at some point.
009	Hunnicutt	Replies yes.
010	Sen. Shields	Realizes that it will take a lot of time. States that he can meet at the same time as Sen. Beyer.
011	Chair Ringo	States that Sen. Atkinson wants to sit in on the meeting also.
012	Sen. Beyer	Points out that would be a quorum.
013	Chair Ringo	Asks witness to give the committee the two minute version.
017	Hunnicutt	States that this list may not be inclusive.
019	Sen. Shields	Clarifies that witness will work from the draft dated 05/06/2005.
020	Hunnicutt	Replies yes. Discusses: <ul style="list-style-type: none"> <li>• Section 4 (3) ( j ) and (h)</li> <li>• Section 4 (1)</li> </ul>
040	Chair Ringo	Comments that many people say that 10 percent is too low for a threshold and that it should be at least 25 percent.
045	Hunnicutt	Discusses: <ul style="list-style-type: none"> <li>• Section 4 (5) (c) and (a)</li> <li>• Section 6 (3)</li> </ul>
063	Crean	States that in Section 6 (3) (h) there are statutes contained in ORS 561. Asks witness if that is in the draft he has.

064	Sen. Beyer	States that there is not an (h) on the draft.
065	Crean	Comments that is what he submitted to LC.
066	Hunnicut	Makes comment. Discusses: <ul style="list-style-type: none"> <li>• Section 7 (3) (f)</li> </ul>
084	Chair Ringo	Asks witness to point out the parts that he likes.
085	Hunnicut	Replies okay.
087	Sen. Beyer	Points out that the witness has not gotten through all the parts he doesn't like yet.
088	Chair Ringo	States that the witness made it clear that this list was not inclusive.
089	Hunnicut	Discusses: <ul style="list-style-type: none"> <li>• Transferability issue and litigation</li> <li>• Secondary lands</li> </ul>
115	Chair Ringo	Asks Sen. Beyer if he would like the witness to continue going over the parts that need work. States that he wants this to be a productive discussion.
117	Sen. Beyer	States that he wants the witness to highlight the parts he doesn't like.
118	Chair Ringo	Asks witness to continue highlighting parts of the -2 draft amendments that he believes need work.
121	Hunnicut	Discusses: <ul style="list-style-type: none"> <li>• Definitions of retroactive claims outside of the urban growth boundary (UGB) and distinction between types A, B and C farm land</li> <li>• Retroactive forest land issues</li> <li>• Elimination of claims from January 1 forward</li> <li>• Retroactive claims inside the UGB</li> </ul>
153	Sen. Beyer	Refers to Section 4 (3) (k). Mentions that witness did not comment on this specifically and asks if that is something he supports.
158	Hunnicut	States that is something the OIA would support reluctantly.
163	Sen. Shields	Appreciates witness' testimony. Mentions that witness stated that he wants to get a form of SB 1037 moved to the House. Asks if witness would like to work on it more in the Senate before sending it to the House.
168	Hunnicut	Discusses timeline.
190	Chair Ringo	Concurs with witness. States that even though negotiation is still happening, it is time to allow the House to begin working on it.
203	Art Schlack	Association of Oregon Counties (AOC). Commends Chair Ringo for his efforts. Believes the -2 draft amendments are headed in the right direction. Discusses process and quantity of claims in specific counties. Submits and discusses written testimony <b>(EXHIBIT I)</b> .
250	Chair Ringo	Asks if the counties discussed the idea of a threshold.
251	Schlack	Replies no. States that there are a number of elements in the -2 draft amendments that the AOC has not discussed. Discusses: <ul style="list-style-type: none"> <li>• Process</li> <li>• Tract of record</li> </ul>
295	Linda Ludwig	League of Oregon Cities (LOC). Thanks Chair Ringo for all of his work on SB 1037 and states that the LOC endorses the effort.

		Believes that the -2 amendments move SB 1037 in the direction that it needs to go. Discusses:
		<ul style="list-style-type: none"> <li>• Language of federal exceptions</li> <li>• Making a stand alone chapter in the statutes for the -2 amendments rather than adding it to ORS 197</li> <li>• Claims process and judicial review process</li> <li>• Parking compensation claims for a specified period of time</li> <li>• Compensatory mechanism bill that may be drafted in the House</li> </ul>
365	John Chandler	Oregon Home Builders Association. Thanks Chair Ringo for his efforts. Believes this is going in the right direction. Mentions Mr. Hunnicutt's testimony and discusses looking at underlying reasons for the passage of Measure 37. Discusses SB 82 (2005). Believes the land use laws need to be addressed.
<b>TAPE 89, B</b>		
008	Chandler	Discusses: <ul style="list-style-type: none"> <li>• Federal exemptions</li> <li>• Exemption for scenic waterways and adjacent lands</li> <li>• Category I farm land definition</li> <li>• Category II farm land definition</li> <li>• Definition of clustering</li> <li>• Category III farm land definition</li> <li>• Language about land inside the UGB</li> <li>• Language about urban fringe land</li> <li>• Compensation mechanism</li> <li>• Disqualification for coming out of farm use</li> </ul>
100	Chair Ringo	Asks why this is too rigorous.
101	Chandler	States that is not his issue.
102	Chair Ringo	States that he will ask Don Schellenberg.
103	Chandler	Responds.
104	Chandler	Discusses: <ul style="list-style-type: none"> <li>• Applicability clause</li> </ul>
108	Chair Ringo	States that part of the goal is to help resolve some of the uncertainties of Measure 37. Believes that should be done for all claims and not just ones that fall after a specified applicability date. States that he doesn't have any interest in resolving some ambiguities for a group that will not be subject to SB 1037.
118	Chandler	Makes comments. Discusses clarifying ambiguities.
126	Chandler	Discusses: <ul style="list-style-type: none"> <li>• Necessity for clarity of state versus local responsibility</li> </ul>
140	Bob Stacey	Executive Director, 1000 Friends of Oregon. Thanks Chair Ringo for his efforts on Measure 37. Thanks Chair Ringo for work on the -2 draft amendments which fix some of the problems in the -1 amendments. Discusses: <ul style="list-style-type: none"> <li>• Tract of record</li> </ul>

		<ul style="list-style-type: none"> <li>• Evaluation methodology</li> <li>• Concerns for permanent changes to Oregon land use planning laws</li> <li>• Waivers and compensation mechanism</li> <li>• Vineyards, filbert orchards, Christmas tree farms and other farm operations on the Willamette Valley hillsides</li> </ul>
235	Stacey	Discusses: <ul style="list-style-type: none"> <li>• Marginal lands</li> <li>• Outcomes obtained by OIA as a consequence of SB 1037</li> <li>• Threshold</li> <li>• Application of Measure 37 and Measure 37 claims</li> </ul>
305	Stacey	States that it is not clear whether continued implementation of Measure 37 or implementation of SB 1037 would be the worse outcome. Discusses recommendations made by the DLCD regarding Measure 37 claims. Discusses the Hoff claim in Clackamas County. Discusses the Benton claim in Hood River. States that the 800 lots on 250 acres claimed by that property owner will change into a couple of 20 acre land divisions.
328	Chair Ringo	Verifies that witness said two 20 acre land divisions.
330	Stacey	Responds.
336	Stacey	Discusses: <ul style="list-style-type: none"> <li>• Test sample on lands affected by Measure 37</li> <li>• Belief that Measure 37 violates the Oregon Constitution</li> </ul> Offers willingness to work with committee.
<b>TAPE 90, A</b>		
004	Jessica Hamilton	Legislative Affairs Director, Oregon League of Conservation Voters. Submits and reads written testimony highlighting concerns with the -2 amendments ( <b>EXHIBIT J</b> ).
030	Chair Ringo	Asks if Chris Crean agrees with the statement that some non-resource lands would be eligible for subdivision down to two-acre parcels without a Measure 37 requirement.
031	Crean	Replies no and explains. Says that it will be true under the clustering provisions.
034	Hamilton	Says that she will take a look at that. Continues reading written testimony.
108	Chair Ringo	Appreciates witnesses' testimony.
112	Ed Sullivan	Resident, Portland. Thanks committee for SB 1037. Believes that all parties involved need a bill, the question is what kind of bill. Refers to Section 4(1) and Section 4(2) of the -2 amendments and discusses evaluation.
145	Sullivan	Discusses issues that come up in the evaluation process: <ul style="list-style-type: none"> <li>• Distinction made between regulations adopted prior to December 2, 2004 and those adopted after this date</li> <li>• Threshold</li> <li>• Language in Section 4 (2) "entire lot or parcel"</li> <li>• Date in Section 4 (2)</li> </ul>
200	Sullivan	Hopes that both chambers will support SB 82 (2005).

205	Don Schellenberg	Oregon Farm Bureau (OFB). States that he did not have the -2 amendments, so his references may be inaccurate. Submits and reads written testimony highlighting parts of the -2 amendments that the OFB likes and dislikes <b>(EXHIBIT K)</b> .
322	Crean	States that Sections 20 and 22 are separate sections, one for cities and one for counties, and would be codified in different ORS chapters.
324	Schellenberg	Thanks Mr. Crean for the clarification. Concludes reading written testimony. Discusses special farm use assessment. Asks if the recapture of the farm use assessment portion of the -2 draft amendments only applies to claims other than for a dwelling.
369	Chair Ringo	Understands that any land that is pulled out of farm or forest deferral will be recaptured, even for a single dwelling.
370	Crean	States that it would have to be pursuant to a Measure 37 claim. States that if the dwelling was established under a lot of record provision then it would not be subject.
378	Schellenberg	Believes that would be fair. Supports recapture concept, but believes that ten years is the appropriate time frame.
384	Chair Ringo	Verifies that witness wants to keep the time frame at ten years.
385	Schellenberg	Confirms this and explains further. States that the OFB will withhold their opinion on SB 1037 until there is a final bill.
397	Chair Ringo	Says that he will go over these concerns item by item with staff.
<b>TAPE 91, A</b>		
001	Lynn Lundquist	President, Oregon Business Association. Submits report titled "Oregon Land Use Statewide Survey" <b>(EXHIBIT L)</b> . States opposition for SB 1037 and explains. Addresses the comment that voters did not know what they were voting on when they voted for Measure 37.
023	Lundquist	Discusses classification of lands as proposed in the -2 amendments. Believes that there are some problems in Category I and Category II. Opines that there are some areas that will be more restrictive than before Measure 37.
027	Chair Ringo	Clarifies that witness means in moving to Category III.
028	Lundquist	Replies no and explains. Believes there needs to be some consideration for growing seasons.
040	Lundquist	Discusses land use planning in Oregon. Believes that letting go of Measure 37 is not appropriate. Discusses putting measures on the ballot multiple times and offers an example.
075	Chair Ringo	Makes closing remarks. Closes public hearing on SB 1037 and adjourns meeting at 10:26 a.m.

## **EXHIBIT SUMMARY**

- A. SB 863, written testimony, Don Schellenberg, 1 p**
- B. SB 863, written testimony of Bruce Andrews, Don Schellenberg, 1 p**
- C. SB 863, pictures, Dave Vanasche, 6 pp**
- D. SB 863, pictures, David Tonges, 1 p**
- E. SB 538, -1 amendments, Staff, 1 p**
- F. SB 538, -2 amendments, Staff, 1 p**
- G. SB 1037, -2 draft amendments, Staff, 34 pp**
- H. SB 1037, summary, Staff, 4 pp**



- I. SB 1037, written testimony, Art Schlack, 2 pp**
- J. SB, 1037, written testimony, Jessica Hamilton, 3 pp**
- K. SB 1037, written testimony, Don Schellenberg, 3 pp**
- L. SB 1037, report, Lynn Lundquist, 44 pp**