

HOUSE COMMITTEE ON WATER AND ENVIRONMENT

April 7, 1999 Hearing Room D

1:00 P.M. Tapes 96 - 97

MEMBERS PRESENT: Rep. Jim Welsh, Chair

Rep. Jackie Taylor, Vice-Chair

Rep. Jason Atkinson

Rep. Richard Devlin

Rep. Juley Gianella

Rep. Deborah Kafoury

Rep. Jeff Kruse

Rep. Jeff Merkley

Rep. Susan Morgan

STAFF PRESENT: Kristina McNitt, Administrator

Danielle Hamilton, Administrative Support

MEASURE/ISSUES HEARD: HB 3026 Public Hearing

Presentation by Dr. Richard Stroup

HB 3028 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 96, A		
004	Chair Welsh	Calls the meeting to order at 1:15 p.m. Opens a public hearing on HB 3026.
<u>HB 3026 PUBLIC HEARING</u>		

010	Kristina McNitt	Committee Administrator. Gives a brief description of the bill.
015	Rep. Kruse	Explains that the bill will require amending in order to accurately represent the intent of the sponsors. Indicates that there is a problem with the concept of "overlay zones," in that they can be used as a "backdoor" method of making land use decisions. Asserts that such decisions should be based upon merit, adding that the use of multiple overlay zones creates "a lot of confusion." Argues that to allow methods of making land use decisions other than the one originally designed is bad public policy.
032	Chair Welsh	Inquires whether SB 100 is the originally designed method to which Rep. Kruse refers.
035	Rep. Kruse	Replies that it is.
038	Chair Welsh	Asks if Rep. Kruse has prepared amendments to the bill.
040	Rep. Kruse	Suggests that section 2, line 5 be amended to read "A county may not establish overlay zoning designations." Indicates that official amendments will be brought back to the committee at a later date.
050	Don Schellenberg	Associate Director of Governmental Affairs, Oregon Farm Bureau (OFB). Testifies in support of HB 3026 (EXHIBIT A). Indicates that he has testified previously against bills that would have a negative impact on farmers and ranchers, adding that HB 3026 takes a proactive approach by enhancing the ability of farmers and ranchers to produce their products. Compares farm, forest, and rural residential zones to city zoning practices. Asserts that farm use zones reduce the effects of interference by non-farm land use claims. Clarifies that farmers exchange their right to non-farm use of their land for the certainty that other land use laws will not inhibit farming practices. Mentions examples of interference that may occur as a result of the Goal 5 process.
100	Schellenberg	States that HB 3026 prohibits overlay or secondary zoning in Exclusive Farm Use (EFU) zones. Indicates that other non-agricultural resources would be protected according to statute. Says this will allow farmers and ranchers to determine whether a resource protection request made by a property owner will cause a conflict, with deference being given to farming activities. Indicates that OFB would support the changes discussed by Rep. Kruse.
140	Chair Welsh	Closes the public hearing on HB 3026. Introduces Dr. Richard Stroup, one of the originators of free market environmentalism. Indicates that Dr. Stroup is currently a Professor of Economics at Montana State University (MSU) and a Senior Associate at the Political Economy Research Center (PERC).
<u>PRESENTATION BY DR. RICHARD STROUP</u>		
185	Richard L. Stroup	Senior Associate, PERC (EXHIBITS B,C,D). Asserts that property rights and the market approach are the most productive way to handle many environmental problems. Praises the agency heads within the Department of Interior for their

		intelligence and hard work, but disagrees that a centralized approach is the best method of environmental protection. Asserts that property rights allow the owner to use property in any manner he sees fit, so long as it does not adversely affect others, such as by polluting a nearby stream. Says that conflicts between landowners may be resolved through mutual agreement.
235	Stroup	Discusses the issue of salmon protection. Says that fishing rights in Scotland are owned privately and are tradable, meaning that a fisherman would have legal recourse against a polluter that is killing fish. Asserts that the system effectively prevents pollution through the assertion of property rights. Explains that in situations where there are exchanges of fishing rights, the low bidder effectively sells his or her right to the high bidder.
295	Stroup	Discusses the privatization of religion within the United States. Indicates that Massachusetts and Connecticut both had public churches at the turn of the 19 th Century. Explains that the transition from public to private churches resulted in an increase in church attendance and congregational budgets. Argues that privatization allowed for specialization, which in turn allowed the consumer to seek out a congregation that was the best fit for them. Suggests that the same benefits could be achieved in the area of wilderness protection.
350	Stroup	Discusses the benefits of market arrangements in comparison to centrally directed solutions. Indicates that the demand for environmental quality, like the demand for luxury automobiles, is directly correlated to income level, meaning that richer people can and will sacrifice more for environmental quality. Asserts that the demand for environmental quality is also directly correlated to the cost of the benefit gained, in that citizens will "buy" more protection of the environment if it can be supplied at a more reasonable cost.
400	Stroup	Concludes that the best way to protect the environment is to increase the absolute wealth of the population and reduce the cost of environmental benefits. Argues that with few exceptions, property rights protection is the most cost-effective method of producing environmental benefits.
TAPE 97, A		
012	Stroup	Discusses the efficiency of private production. Calls attention to the fact that East Germany has a great deal more pollution than West Germany. Asserts that the fact that free market economics and environmental health are tied together throughout the world is attributable to the property rights model. Offers a comparison between the East German Trabant and the West German Volkswagen as illustration. Indicates that PERC has several proposals for market solutions to environmental problems.
058	Rep. Atkinson	Requests clarification regarding the difference between a fishing right and a fishing license.
070	Stroup	Replies that the people of Scotland and England own the fish, with the government acting as trustee. Says the right to fish out to the middle of the stream is held by the landowner, unless he or she sells that right. Indicates that fishing in Scotland therefore requires a license from the government and

		permission of the landowner.
086	Rep. Atkinson	Submits that the difference described is similar to that between a right and a navigability law in the United States.
089	Stroup	Replies that the landowner owns the right to fish from a boat on the stream adjacent to his property as well. Compares fishing rights in Scotland to hunting rights in Eastern Oregon.
095	Rep. Atkinson	Asks Stroup if he feels pollution vouchers and environmental tax credits are efficient and just.
106	Stroup	Replies that the old Clean Air Act was very insufficient, in that its focus was on the technology used to control pollution, rather than the pollution itself. Adds that factories under the act were not allowed to use alternative methods, even if they would result in zero emissions. Asserts that the new Clean Air Act is more efficient in reducing sulfur dioxide, but says there is no scientific or medical rationale for the emissions limits they have set. Concludes that the voucher system has worked in the past, but must be used more effectively in the future.
137	Rep. Atkinson	Mentions that Oregon has experienced problems in its dealings with the National Fisheries Service (NFS) with regard to salmon policy. Asks Stroup to provide an analysis of the NFS.
156	Stroup	Offers examples of successful protection of endangered species and their habitats prior to the passage of the Endangered Species Act. Indicates that such success stories were the result of bird lovers working privately in concert with landowners to protect species such as the wood duck and the blue bird. Submits as a comparison the federally protected red cock-head woodpecker, the protection of which is monitored by federal biologists who have no incentive to consider the needs of private landowners. Argues that this arrangement produces much larger, more intrusive, and less efficient protection zones. Suggests that landowners could instead be paid to provide necessary resources for the protection of species.
206	Stroup	Acknowledges that the blame for such intrusive policies should not fall to the agency directors who are prosecuting their mission, but rather to the system that allows the methods to be used. Reiterates that agency heads have "tunnel vision" when it comes to pursuing their goal, which is admirable and positive, but must be held in check for the public good.
237	Chair Welsh	Summarizes that a monetary value is assigned to a species or habitat on a piece of property, to be paid to the landowner in exchange for protecting that species or habitat. Suggests that choices could then be made as to where to spend resources for species protection.
265	Stroup	Submits that locations must be picked more carefully, as should be the restrictions enforced in each location. Indicates that this could be achieved through a budgetary process that required allocation choices to be made. Asserts that if biologists were given the necessary incentive to do such research, there

		would be sufficient resources to protect species with little or no impact on the landowner. Compares the system to the "rent-a-pothole" system used for wetlands and waterfowl preservation.
287	Chair Welsh	Indicates that the "wetlands banking" system in place in Oregon is similar to the "rent-a-pothole" system mentioned by Mr. Stroup.
295	Stroup	Mentions that the "rent-a-pothole" program can, for a fraction of the cost, provide protections similar to more intrusive federal wetlands policies. States that landowner cooperation is usually easy to solicit when dealing with non-listed species. Says that it is not necessary to dedicate private lands entirely to the preservation of the species. Reiterates that a rights exchange system would reduce the bickering between environmentalists and landowners.
337	Chair Welsh	Opens a public hearing on HB 3028.
<u>HB 3028 PUBLIC HEARING</u>		
348	Rep. Kruse	Indicates that amendments are being prepared for HB 3026. Says that HB 3028 deals with many of the same issues. Proposes that the committee amend HB 3028 by removing the bold language on lines 15-17 and the word "welfare" on line 15. Indicates the latter change would eliminate a vague term that does not contribute to the definition of the terms "health and safety."
380	Rep. Taylor	Expresses disagreement with the assertion that welfare is a vague term. Acknowledges that the term has a negative connotation related to government provision but asserts that the welfare of the citizenry is the primary duty of the legislature.
TAPE 96, B		
002	Jon Chandler	Director of Governmental Affairs, Oregon Building Industry Association (OBIA). Testifies in support of HB 3028. Expresses support for the amendments proposed by Rep. Kruse. Mentions that the word welfare was used by courts in Iowa to "basically eliminate right-to-farm protections there." Submits that health and safety would be sufficient.
032	Bob Rindy	Representative, Department of Land Conservation and Development (DLCD). Offers to consult with the legal counsel for DLCD regarding the effect of the proposed amendments. Says that Goal 5 may include mineral, aggregate, and energy resources, but that most are wetlands and wildlife habitats. Indicates that there are rules that restrict vegetation removal, which may restrict farming. Says that removing the word welfare will prevent restriction of farming practices to protect fish or wetlands.
070	Chair Welsh	Inquires whether there is a definition of welfare in statute.
074	Rindy	Replies that he is unaware of such a definition. Indicates that the terms health,

		safety, and welfare are the basis for local zoning law. Mentions that many Eastern Oregon counties allow zoning ordinances prohibiting fences over six feet in height in an elk migration corridor, which clearly deals with welfare.
087	Rep. Gianella	Requests an example of restricting vegetation on land.
092	Rindy	Indicates that lands near spawning habitats, referred to as riparian zones, are to be kept in their original condition. Says that the restriction is meant to prevent development, but that it may also hinder growing or grazing down to the river.
110	Don Schellenberg	Associate Director of Governmental Affairs, OFB. Testifies in support of HB 3028 (EXHIBIT E). Indicates that OFB supports the amendments proposed by Rep. Kruse, due to the broadness of the term welfare. Expresses concern regarding the implications of the term, saying that someone may feel that keeping cattle in pens is an abuse of their "psychological welfare."
157	Chair Welsh	Asks Mr. Schellenberg if he knows whether welfare is defined in statute.
158	Schellenberg	Replies that he does not know of any such definition.
160	Art Schlack	Representative, Association of Oregon Counties (AOC). Indicates that the proposed amendment alleviates AOC concerns regarding the bill. States that local governments are required by state or federal rules to institute land use regulations that place limits on property. Refers to riparian corridors for salmon as an example. Says it is "extremely unusual" for a local government to zone a riparian corridor in an EFU zone without an overlay. Expresses concerns regarding the elimination of overlay zones.
211	Rep. Gianella	Asks for a description of the difference between primary and overlay zones.
215	Schlack	Replies that primary zoning district, such as EFU zones, have historically allowed an overlay zone to enforce additional restrictions on a portion of the larger zone.
231	Rep. Gianella	Wonders if there are two different authorities in charge of the respective zones.
239	Schlack	Replies that the same agency has authority over both zones. Indicates that there are two sets of regulations, with the overlay zone being subject to both the EFU zone requirements and any additional requirements of the overlay.
247	Rep. Gianella	Concludes that AOC wants to maintain the ability to use overlay zones.
251	Schlack	Expresses concern regarding the restriction of overlay zones, especially those related to riparian lands. Submits that it would be easier to maintain the additional restrictions of an overlay zone than to re-zone an entire area for the protection of riparian lands.

274	Philip Fell	Representative, League of Oregon Cities (LOC). Acknowledges that welfare is a vague term, but mentions that even the Supreme Court has used it in situations requiring a balance of regulations. Asserts the term may not be as vague as has been assumed, and implores the committee to investigate further before taking action to eliminate it from the bill.
294	Chair Welsh	Expresses surprise that so much significance is given to the term when there is no concrete definition of the word.
299	Phil Fell	Concurs with the chair, adding "we know it when we see it."
302	Rep. Kruse	States that the Oregon Revised Statutes list several things in reference to farming practice, including compliance with applicable laws. Asserts that the elimination of the word welfare would not reduce the responsibility to comply.
342	Chair Welsh	Closes the public hearing on HB 3028 and reopens the public hearing on HB 3026.
<u>HB 3026 PUBLIC HEARING</u>		
354	Graig Greenleaf	Deputy Director of Transportation Development, Oregon Department of Transportation (ODOT). Submits proposed amendments to HB 3026 (EXHIBIT F). Indicates that ODOT has an interest in the issue as both a consumer and manager of aggregate sites.
388	Rep. Kruse	Mentions that he met earlier with ODOT and agrees with the need to address their concerns.
396	Bob Rindy	Representative, DLCD. Indicates that the proposed amendments alleviate some of his concerns. Says that Goal 5 is designed to protect a variety of resources, including wetlands, endangered species, and riparian lands. Says the bill prohibits counties and local governments from protecting those resources. Refers to overlay zones as a type of "shorthand," in that they prevent the need for entirely new zones for a parcel of land. Expresses concern that passage of the bill would result in the creation of new zones by counties and cities with similar function to the current overlay zone. Asserts there would thus be nothing gained from passage of the bill and that the tool should therefore not be eliminated.
TAPE 97, B		
032	Rep. Kruse	Asks if jurisdictions would need to go through the same process to create a new zone as they would to create an overlay.
038	Rindy	Replies that the process would be the same, as an overlay is technically considered to be an amendment to an existing zone.
039	Rep. Kruse	Asks if there is any restriction to the number of overlays allowed on a particular

		piece of ground.
042	Rindy	Replies that he is unaware of any such restriction, although he has never seen an example of multiple overlays.
044	Rep. Kruse	Submits that if the process is the same then the jurisdiction should go ahead and re-zone the piece of land, so as to eliminate the confusion to those who do not understand the process.
052	Rindy	Reiterates that overlays offer a type of "shorthand." Offers an example of power lines on his land.
058	Rep. Kruse	Replies that the example given is an easement, which is acceptable use for a particular zone. Says that not all property owners are well-versed in land use laws, which is a primary reason those laws should be simplified.
067	Rep. Gianella	Requests clarification whether the changes to the bill to which Mr. Rindy referred were those proposed by Rep. Kruse.
070	Rep. Kruse	Replies that they are the same changes, adding that they have been submitted to Legislative Counsel for finalization.
077	Rep. Merkley	Offers an example of transit corridor overlays near airports and suggests that a large number of such overlays could require a great number of different zoning designations. Mentions that some overlays come and go, which is why periodic change is easier using overlays than totally readjusting the zone.
095	Rindy	Concurs with Rep. Merkley's example. Indicates that multiple zones should be avoided by the use of overlays.
110	Rep. Kruse	Asserts that the use of multiple overlays does, in effect, create the same number of zones.
111	Rindy	Concurs with Rep. Kruse, adding that it is merely a "labeling convention."
112	Rep. Kruse	Submits that it is a labeling convention for the convenience of the bureaucracy at the expense of the public.
115	Rep. Merkley	Says that one advantage of overlays is that they make it easy to keep track of the base zones in the community.
124	Rep. Kruse	Wonders why it is any different to have multiple base zone designation than to have multiple overlay designations. Maintains that the general public would have an easier time understanding zones than overlays.

131	Rep. Gianella	Asks Rep. Kruse for an example of farm ground that would require overlays.
136	Rep. Kruse	Replies that the Oregon Department of Fish and Wildlife (ODFW) might propose overlays for species protection, for example. Reiterates that the bill is not suggesting a change in land use, but rather a change in the system used to define it.
142	Rindy	Suggests that the bill should be clear in its definition of "overlay." Offers a mining zone as an example. Mentions that there is no definition of overlay in statute.
151	Chair Welsh	Concurs that the definitions should be clarified. Mentions that there will be no hearings on HB 2406 and 2838 during this meeting. Adjourns the meeting at 3:00 p.m.

Submitted By, Reviewed By,

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Transcribed By,

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EXHIBIT SUMMARY

A ñ HB 3026, testimony, Don Schellenberg, 2 pp.

B ñ Presentation, informational materials, Richard Stroup, 4 pp.

C ñ Presentation, informational materials, Richard Stroup, 6 pp.

D ñ Presentation, informational materials, Richard Stroup, 6 pp.

E ñ HB 3028, testimony, Don Schellenberg, 1 p.

F ñ HB 3026, testimony, Craig Greenleaf, 2 pp.