

SENATE COMMITTEE ON WATER AND LAND USE

April 1, 1997 Hearing Room C

8:30 AM Tapes 50 - 51

**MEMBERS PRESENT:**

Sen. Veral Tarno, Chair

Sen. Bob Kintigh, Vice-Chair

Sen. Ginny Burdick

Sen. Ted Ferrioli

Sen. Bill Fisher

Sen. David Nelson

Sen. Thomas Wilde

**STAFF PRESENT:**

Mark Volmert, Administrator

Nancy Masee, Administrative Support

**MEASURE/ISSUES HEARD:**

SJR 16 Work Session

SR 3 Public Hearing and Work Session

SB 431 Public Hearing and 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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 50, A</b>		
004	Chair Tarno	Calls meeting to order at 8:30 AM
<b><u>SJR 16 WORK SESSION</u></b>		
005	Chair Tarno	Asks for a motion to transfer SJR 16 to the Senate Committee on Agriculture and Natural Resources

006	Sen. Kintigh	<b>MOTION: Moves SJR 16 to the Senate Committee on Agriculture and Natural Resources WITHOUT RECOMMENDATION to passage.</b>
007		<b>VOTE: 5-0</b> <b>AYE: In a roll call vote, all members present vote Aye.</b> <b>EXCUSED: 2 - Burdick, Wilde</b>
	Chair Tarno	<b>The motion CARRIES.</b>
008	Chair Tarno	Opens public hearing on SR 3

**SR 3 PUBLIC HEARING**

017 Chair Tarno Asks if there is anyone who has not testified on SR 3 that would like to. Hearing none, closes public hearing on SR 3. Opens work session on SR 3.

**SR 3 WORK SESSION**

021 Mark Volmert Committee Administrator, gives background on SR 3

028 Sen. Kintigh: **MOTION: Moves SR 3 be sent to the floor with a BE ADOPTED recommendation.**  
**VOTE: 5-0**

029 **EXCUSED: 2 - Burdick, Wilde**  
**Hearing no objection, declares the motion CARRIED.**  
Chair Tarno **SEN. TIMMS will lead discussion on the floor.**

031 Chair Tarno Closes work session on SR 3; opens public hearing on SB 431

**SB 431 PUBLIC HEARING**

042 Chair Tarno Asks if anyone who has not testified on SB 431 would like to now

049 Charlie Swindells 1000 Friends of Oregon, urges against SB 431. He says this bill won't work, and relates Land Use Board of Appeal's (LUBA) procedures

102 Swindells Explains the term "colorful defense." Illustrates a land use decision based on the law applied.

125 Swindells Explains the Clark decision. Gives example of building height limitations.

214 Swindells Continues on the unworkable standard in SB 431; urges committee to not pass this bill.

273 Swindells Continues on the concerns in SB 431 affecting LUBA and the Clark rule  
Continues on LUBA decisions

\* Remanding because findings missing

360 Swindells \* Local government's job to judge on policy

\* LUBA is prohibited from interpreting local government's interpretation

402 Dale Senior Policy Analyst, Department of Land Conservation and  
Blanton Development; gives background on SB 431

**TAPE 51, A**

013 Blanton Continues on -2 amendments; LUBA's decisions based on record submitted. SB 431 changes role of LUBA which now conducts hearings based on the record submitted to it. LUBA would be forced under SB 431 to conduct a hearing and make a judgment on a local plan's standard and whether it would have resulted in a different decision.

026 Sen. Burdick Asks if LUBA is prohibited now from conducting evidentiary hearings

029 Blanton In some instances LUBA conducts evidentiary hearings

034 Sen. Burdick Asks if more cases would be appealed to the Court of Appeals

038 Blanton Responds that he does not know, but it is likely

044 Sen. Nelson Asks if there is suggested language to carry out what the bill intended

047 Blanton Says he has to guess at the intentions of sponsors. If a case is remanded to local government, the current role of LUBA is to review rather than decide. The department tends to believe LUBA's role as a reviewer is proper.

067 Chair Tarno Comments on the role of LUBA

072 Blanton LUBA does not make findings or judgments based on the application of the standards to a decision. An example of local government approving subdivisions, appellants can appeal this decision to LUBA. Local government is the decision maker unless there is some obvious discrepancy in their decision.

098 Chair Tarno Asks for questions, hearing none; asks Mr. Campbell for the -2 amendments effects

Victory Group, comments on LUBA's decision required before remanding; why does the landowner pay the penalty; reasons why SB 431-2 was submitted are

100 Larry Campbell \* LUBA is being used by those who do not want land use changes

\* Local government does not properly document their actions

135 Campbell Does not see landowners being treated properly today

141 Sen. Ferrioli Comments on scope of review of LUBA; remanding of issues need to be based on substantive issues; do not remand if there will be no change

167 Campbell Says they thought SB 431 a simple issue requiring simple remands that will make a change for the better for citizens

- 175 Sen. Ferrioli Comments on statute that gives LUBA additional fact finding rights at any time in its process
- 182 Sen. Wilde Asks if changing statute 197.829 sub 2 was considered
- 200 Campbell Says they did not want to deal with issues not affecting decisions at the local level; continues on improper treatment of citizens on land use issues
- 204 Chair Tarno Asks for more discussion. Hearing none, closes public hearing on SB 431, and opens work session on SB 431

**SB 431**  
**WORK**  
**SESSION**

- 223 Sen. Fisher **MOTION: Moves to ADOPT SB 431-2 amendments dated 3/11/97.**  
**VOTE: 6-1**
- 224 Chair Tarno **AYE: 6 - Ferrioli, Fisher, Kintigh, Nelson, Wilde, Tarno**  
**NAY: 1 - Burdick**
- Chair Tarno **The motion CARRIES.**
- 225 Sen. Fisher **MOTION: Moves SB 431 to the floor with a DO PASS AS AMENDED recommendation.**  
**VOTE: 5-2**
- 226 Sen. Fisher **AYE: 5 - Ferrioli, Fisher, Kintigh, Nelson, Tarno**  
**NAY: 2 - Burdick, Wilde**
- 228 Chair Tarno **The motion CARRIES.**
- SEN. FERRIOLI will lead discussion on the floor.**
- 248 Chair Tarno Closes work session on SB 431 and adjourns meeting at 9:25 AM

Submitted By, Reviewed By,

Nancy Masee, Mark Volmert,

Administrative Support Administrator

**EXHIBIT SUMMARY**

**A - SB 431, written testimony, Charlie Swindells, 2pp**

**B - SB 431, -1 amendments, staff, 1 p**

**C - SB 431, -2 amendments, staff, 6 pp**

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