

HOUSE COMMITTEE ON
NATURAL RESOURCES

Hearing Room
1:30 PM Tapes - 7

MEMBERS PRESENT:

Rep. Veral Tarno, Chair
Rep. Terry Thompson, Vice-Chair
Rep. Tony Corcoran
Rep. Bill Fisher
Rep. Tim Josi
Rep. Leslie Lewis
Rep. Dennis Luke
Rep. Lisa Naito
Rep. Check Norris
Rep. Judith Uherbelau
Rep. Larry Wells
Rep. Jim Welsh

MEMBER EXCUSED:

STAFF PRESENT:

Mark Bauer, Committee Administrator
Paula Hird, Committee Assistant

MEASURES HEARD: HB 2080 Public Hearing
 HB 2081 Public Hearing
 HB 2113 Public Hearing
 HB 2114 Public Hearing

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 3, SIDE A

013 CHAIR TARNO: Calls meeting to order at 1:34 p.m.

Opens PUBLIC HEARING on HB 2080.

Witnesses: Christine Cook, Attorney, 1000 Friends of Oregon
Dick Benner, Director, Department of Land and Conservation Development

025 CHRISTINE COOK, Attorney, 1000 FRIENDS OF OREGON: Testifies in favor of
HB 2080. (EXHIBIT A)

050 DICK BENNER, DIRECTOR, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT:
Chapter 183. Testifies in favor of HB 2080.

080 REP. CORCORON: "Are there any other limitations for a person having

standing in a contested case hearing?"

085 BENNER: "Yes, there are." Sites statutory limitations, DLCD rules Administrative Procedures Act and Attorney Generals Model Rules.

105 Closes PUBLIC HEARING on HB 2080.

Opens PUBLIC HEARING on HB 2081.

Witnesses: Dick Benner, Director, Oregon Department of Land Conservation and Development

112 DICK BENNER, DIRECTOR, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT:

Testifies in favor of HB 2081. Refers to Section 1, 197-840, Line 11, A, B.

160 -continuing testimony

172 -In response to CHAIR TARNO, states periodic reviews are held "at least every ten years, not more than every 4 years".

183 REP. JOSI: "What happens if a county or jurisdiction does not comply with the ten year rule?"

186 BENNER: Statute provides proceedings for enforcement. Responds to REP. Fisher's question of time limitations.

237 REP. NORRIS: "What will we be missing if we just abolish the periodic review and just let the counties run their show?"

240 BENNER: Comprehensive review of the adequacy of a plan to accommodate change over a period of years, assure accounting for changes and conditions.

274 REP. CORCORAN: Asks for clarification of changes in Section 2.

283 BENNER: 197-825
other 197's

CHAIR TARNO:

Lines 21 and 22 - Adding LCDC

Line 23, addition of 197-251, 197-628 to 644, statutory citations for the acknowledgment process and period review process

306 Closes PUBLIC HEARING on HB 2081.

Opens PUBLIC HEARING on HB 2113

Witnesses: Cheri Unger, League of Women Voters
Bill Moshofsky, Oregonians in Action
Christine M. Cook, Attorney, 1000 Friends of Oregon
Mickey Killingsworth, President, Jefferson County Farm Bureau
Leslie Elliott, Culver, Oregon
Virgil T. Harper, Terrebonne, Oregon
Phillip Feld, League of Oregon Cities
Clif Kenagy, Kenagy Family Farm, Albany, Oregon
Richard Angstrom, OCAPA

323 MARK BAUER, ADMINISTRATOR, HOUSE COMMITTEE ON NATURAL RESOURCES: Notes for the record written testimony against HB 2113 received from CHRISTINE CRAWLEY of ASHLAND and SUSAN HUNT of ASHLAND. (EXHIBITS B & C)

346 -Testimony from Crawley and Hunt also pertains to HB 2114.

389 MICKEY KILLINGSWORTH, PRESIDENT OF JEFFERSON COUNTY FARM BUREAU: Testified in opposition to HB 2113. (EXHIBIT I)

401 REP. LUKE: Asks if she is speaking for herself or the Farm Bureau.
KILLINGSWORTH responds that she is speaking for the Farm Bureau.

TAPE 4, SIDE A

003 KILLINGSWORTH: In response to inquiry by REP. LUKE, explains why she is
unhappy with local control.

030 REP. CORCORAN: Is fair to say that your opposition has to do with
subsection C, local government final decision.

031 KILLINGSWORTH: Opposes Subsection C and Subsections 2 through 4.

047 REP. WELSH: Subsection 2, section 1. Interprets changes to mean that
appeals may be made only by individuals effected by the decisions. A
person who "was not a stockholder"

062 KILLINGSWORTH: "My question would be, when do I prove that I suffer or
did not suffer."

083 REP. WELSH: Request's overview of HB 2113 by the administrator. BAUER
states there is little background and refers to original drafters.

131 REP. NAITO: Recommends that we schedule a meeting overview history of
the land use system. Discussion by REPS. JOSI, THOMPSON, FISHER, THOMPSON
and UHERBELAU supporting informational session for clarification.

165 BILL MOSHOFSKY, OREGONIANS IN ACTION: Testifies in favor of HB 2113.
(EXHIBIT D)

192 MOSHOFSKY: Explains intent of HB 2113.

243 Courts require to take an oath or affirmation of what they say is true.

They can be tried for perjury. Credibility to the process.

254 REP. FISHER: Responds regarding previous testimony.

260 MOSHOFSKY: Narrow the scope of inquiries to those people impacted
otherwise nothing ever.

275 -In response, REP. NAITO expresses concern about keeping "the little
guy out of the system".

325 REP. UHERBELAU: Questions about language in the statute.

340 REP. UHERBELAU: If you referred to is right out of the federal
statutes, if you could furnish the particular statutes to the committee
members so that we can do some review.

344 MOSHOFSKY: Yes I will do that. I understand that this is a complex
issue and we would be willing to provide further detail.

351 REP. WELSH: Sections 3 and 4 of the bill on testifying. On the county
level and on the city level we would have a swearing of an oath.

353 MOSHOFSKY: That's correct.

355 REP. THOMPSON: I am a little bit worried when I see what I understand
here

and believe me I am a novice in this area and I am willing to
catch up quick, but when I see situations where citizens cannot come from
out of the area.....for example coastal property.

400 MOSHOFSKY: We are talking about quasi-legislative decisions, we are
not talking about the plan...We are not talking about the legislative
process, county or city as acting as a legislature and making laws and
passing ordinances. We are trying to get back to what was the intent of

this system of land use.

403 REP. LUKE: The idea of most of your bills is to speed up the process, but who would decide who has standing? Would LUBA decide?

410 MOSHOFSKY: Well ultimately yes.

413 REP. LUKE: O.K., so if somebody disagreed with LUBA's decision their opportunity would be to go to court to force LUBA to allow them in to have standing. So in some cases this would actually delay the process because if LUBA were being sued in court, LUBA could not conduct their hearing. Is that correct?

425 MOSHOFSKY: It is true but, it does tend to discourage people from doing that.

430 REP. LEWIS: Asks a question to clarify some of these issues. Does this apply to classic judicial as opposed to legislative hearings and I felt that that would have clarified it for some of the people in the audience as well as for members of the panel, however, you have already done that. As a member of the planning commission, when you deal with a legislative issue that concerns....

440 REP. LEWIS: Continues with clarification on member questions. ...changing your comprehensive plan or zoning in general, every one would be involved in those kinds of hearings.

TAPE 3, SIDE B

018 REP. LEWIS: Continues regarding those who are not impacted by an individual land use decisions.

030 KILLINGSWORTH: Most local farmers do not have the money or time to pursue land use decisions in court.

057 MOSHOFSKY: Responds.

056 REP. JOSI: I would like to get an idea on the scope of the problem. How many local decisions have been made? How many decisions have been appealed?

064 MOSHOFSKY: Does not have number. We are mostly talking about anecdotal and the chilling effect to appeal has on the whole process.

066 REP. JOSI: So you really don't know how the big the problem is?

070 MOSHOFSKY: Does not have the specifics regarding the number of appeals.

074 REP. JOSI: When you supply the number of appeals, how many of the people should not have been there?

083 MOSHOFSKY: I will do that.

084 REP. UHERBELAU: How do you know what the original intent of the bill?

091 MOSHOFSKY: Representations of the proponents of the bill.

104 LESLIE ELLIOTT, CULVER, OREGON: Testifies against HB 2113. (EXHIBIT J).

In response to REP. LEWIS, ELLIOTT describes farming experience and answers other questions.

193 REP. LEWIS: What kind of farming do you do?

194 ELLIOTT: Names crops.

199 REP. LEWIS: Do you feel it is proper for a farmer who does not live near by to appeal a conditional use application you filed?

212 ELLIOTT: Yes.

219 REP. FISHER: Comments regarding a personal experience. Addresses the zoning practices and those who are inputting situations so that they can control their land and every thing else within sight and hearing distance.

250 ELLIOTT: The system is good the way it is.

260 REP. CORCORAN: Asks if there other economic issues in farming that would be adversely affected by changes such as this? ELLIOTT responds to problems involved when urban and agriculture interface.

309 REP. LUKE: Addresses the rising costs of housing.

322 VIRGIL T. HARPER, TERREBONNE, OREGON: Testifies in opposition to HB 2113 and HB 2114. (EXHIBIT F)

TAPE 4, SIDE B

044 CLIF KENAGY, FARMER , BENTON COUNTY: Testifies against HB 2113. Responds to comments by REP. LEWIS.

093 continues... it doesn't help me much.... it also effects Norpac cannery and the farmer members...

134 REP. FISHER: I think still the point is being missed. This does not change zoning or use of the land . This is where the land use has been determined by the proper process.

159 CHRIS UNGER, LEAGUE OF WOMEN VOTERS: Testifies against HB 2113. Section 3 and 4 (EXHIBIT K)

208 REP. LUKE: Do you see anything in our current land use laws that can be made easier?

234 UNGER: We need to look at that.

258 CHRISTINE COOK, 1001 FRIENDS OF OREGON : Testifies in opposition to HB 2113. (Exhibit H)

300 continues with her opposition...

350 COOK: Continues regarding Sections 3 and 4. These sections may place unnecessary hurdles for people who would like to present written testimony because of the inherent difficulty in participating in these types of hearings in general.

409 REP. FISHER: How does taking an oath of telling the truth make something more difficult?

412 COOK: Responds regarding the filing of a land use application and the professional help available to the developers; however, the public person only has 10-15 days to prepare their testimony. It becomes an impediment to the opponent who may not have access to the professional sources that the proponent may have.

TAPE 5, SIDE A

015 REP. UHERBELAU: Refers to page 3C regarding attorney's fees.
Discussion with COOK regarding page 3, 14A.

040 COOK: Responds to membership inquiry by REP. LUKE.

067 REP. NAITO: Language may prevent neighborhood associations from
opposing developments in their neighborhoods.

080 COOK: Agrees it is a possibility. That neighborhood associations and
farm bureaus would be in "grave danger".

091 REP. LEWIS: Comments that experience on Planning Commission see mainly,
developers but individuals.

104 REP. JOSI: Fears creating one legislation may create a problem that is
even bigger. My question to you Ms. Cook deals with page 1, line 14. Who
decides who fits that standard?

114 COOK: Argued first in front of LUBA, petitioner must state why
requirement is satisfied. (requirements A & B) Adding requirement C would
alter short direct resolutions drastically.

121 REP. JOSI: If we enact line 14, LUBA makes the final ...any recourse
for a person who thinks their wrong. Discussion with COOK and REP. WELSH.

163 COOK: This refers to ORS 40.320. I assume such a swearing would be
done by a clerk. As far as written testimony that is a "giant question".

177 REP. UHERBELAU: Addresses expense of appeals with comments from COOK.

203 REP. NORRIS: Legal definition, line 14, potential for injury. Suggests
MOSHOFSKY could cover this issue.

225 MOSHOFSKY: Not concrete in definitions, would like to return for
in-depth discussion.

243 REP. NORRIS: Will defer any further questions regarding injury.
MOSHOFSKY offers to return for further discussion.

256 PHILIP FELD, LEAGUE OF OREGON CITIES: Testifies in favor of 2113 and
2114. Will work will committee concerning language.

CHAIR TARNO: Confirms reference is to page 1, line 14

275 REP. NAITO: Would increase the power of the county to make decisions?

279 FELL: Limitations of suits filed. We are most interested in the urban
growth boundaries. What can be done and what cannot be done. Responding
to REP. LUKE inquiry regarding counties states his interest is with urban
growth boundaries.

290 RICHARD ANGSTROM, OREGON CONCRETE AND AGGREGATE ASSOCIATION: Testifies
in favor of 2113.

300 Continuing testimony from ANGSTROM.

320 Continuing testimony from ANGSTROM.

TAPE 6, SIDE A

020 ANGSTROM: Examples of non-factual information. Concerns on page 3,
lines 41 and 42. What it might say and what it might not say.

043 Further discussion of 2113 from ANGSTROM.

055 REP. UHERBELAU: Question regarding "injury".

066 ANGSTROM: We seldom create the type of traffic problems that you are talking about.

083 REP. THOMPSON: Can you give me an example of the kind of a lie that would be used.

087 ANGSTROM: Back it up with factual substantiating information.

107 REP. NAITO: Have you been successful or not in getting locations. How is your industry doing overall. ANGSTROM responds that they are successful, overall; because LCDC steps in and says that you are not properly applying the law. We have not cited anything without their direct involvement.

135 REP. LUKE: Initiates discussion over how the costs of attorney fees are covered with comments from ANGSTROM and REP. FISHER.

180 ROBERT BALDWIN, RETIRED LAND USE PLANNER: Refers to new item c, line 14. Testifies against HB 2113.

213 CHAIR TARNO: Closes PUBLIC HEARING on 2113.

Calls for a 10 minute recess.

227 Return from recess at 4:22.

Opens PUBLIC HEARING on HB 2114

Witnesses: Liz Frenkel, Sierra Club of Oregon
Bill Moshofsky, Oregonians In Action
Christine Cook, 1000 Friends of Oregon
Dick Benner, DLCD
Mikey Killingsworth, Jefferson Co. Farm Bureau
Don Shellenburg, Oregon Farm Bureau

230 MOSHOFSKY: OREGONIANS IN ACTION. Explains why they are coming in with the bill. Senate Bill 100 in 1973 that would provide state level control. (EXHIBIT E)
Feels little land use planning is going on in the state. What uses are permissible on it.

250 MOSHOFSKY: Would restore basic intent of SB 100.

275 Limit LCDC, local significance to local government.

320 Addresses Lines 7, 8.

411 Addresses Section 5 to the committee.

TAPE 5, SIDE B

007 MOSHOFSKY: Continuing clarification of HB 2114.

042 MOSHOFSKY: Sub-section 3 of section 6, lines 12 and 13 of page 6. New member of LCDC also feels that there is too much Micro-managing of local government. We are not opposed to the system, we want to restore what we think was the original intent of it to make it work better.

045 REP. NAITO: You're saying that everything should be local unless it's an identified thing in the bill as a statewide concern. Why not look at

the state as a whole and why not have a statewide system of transportation to enhance the economic future and instead of limit the state to a major transportation system, i.e., I-5, I-84 etc. I am totally confused about what you're trying to do here. "I think the ramifications of what you're proposing even as I look at this one, this one proposal are enormous."

064 MOSHOFSKY: There are enormous ramifications. We define major to be "having significant impacts on two or more counties...." Effects only LCDC.

081 REP. NAITO: Light rail is progressing fine to my knowledge.

084 MOSHOFSKY: Concept of services, like water.....many people have been misled.

091 REP. UHERBELAU: Perceives many ambiguities. Refers to Page 1. Primary farm land whereas "primary" is not defined. Why long term consequences are proposed to be deleted?

095 Line 21, page 4 refers to Chapter 215, County planning chapter. Why has that been brought in as new to the process? I can't really connect it to what you are trying to do here.

124 MOSHOFSKY: I think it's very relevant. Implies that including citizens is not taking care of private property owners. High time to consider regulatory reform.

143 Line 24-35, page 2, in which it is time to consider the rights of private property owners.

150 REP. WELSH: Did you spend some time conferring with county commissioner?

152 MOSHOFSKY: Not in an organized way, but have been conferring over the last several years.

160 REP. LEWIS: You mentioned no one's ever recovered a dime. Discusses Supreme Lucas vs. South Carolina.

167 MOSHOFSKY: In Oregon, there has been no recovery. Referral to Lucas case in South Carolina.

192 REP. UHERBELAU: Just a point of clarification, this is not a "takings" bill is it? MOSHOFSKY replies no, that it is addressed in another bill.

201 MICKEY KILLINGSWORTH, JEFFERSON COUNTY FARM BUREAU: Line 30, page 1 [EXHIBIT I]

248 KILLINGSWORTH: Additional testimony regarding LCDC and against HB 2114.

265 CHAIR TARNO: You kind of keyed on primary farm and forest land as being kind of vague, would it help if we had a better definition of what is prime vs. secondary?.

270 KILLINGSWORTH: I'm not sure this bill is needed. I'm not sure it provides protection. Putting it at the local level is not solving the problem.

325 Further discussion by KILLINGSWORTH with comments by REP. LUKE.

TAPE 6, SIDE B

004 REP. LEWIS: How, in your area would you define prime farmland?

007 KILLINGSWORTH:Water is the key. And I wouldn't define it by crop.....

Testimony submitted but did not speak: Leslie Elliott, Virgil Harper, Cliff Kenagy.

037 LIZ FRENKEL, OREGON CHAPTER SIERRA CLUB: Testifies against HB 2114.

074 This bill tends to deregulate...state wide goals with implementation at the local level, that was the dream. This bill is contrary to that fundamental concept.

086 REP. LEWIS: Comments on effects of bill regarding local goals and county statewide goals.

100 FRENKEL: Basically turns the implementation.....to LCDC. We do have a large number of our members who are personal property owners.

112 REP. LUKE: What I find frustrating is when a county does a pretty good job and...has something up & running, projects are stopped, because the commission decides

115 FRENKEL: Not getting what you want, the burden often winds up being on the system.

144 REP. LUKE: Fundamental change, I suppose, depends on which side you're on. Does an unelected body have the right to change direction in mid stream and force?

159 CHRISTINE COOK, ATTORNEY FOR 1000 FRIENDS OF OREGON: Testifies in opposition to 2114 [EXHIBIT G & H].

199 Continues discussion.

270 REP. NORRIS: Expresses that testimony from this witness is inappropriate. Disapproval from Rep. Lewis also.

285 COOK: Does not mean to impune Committee's integrity or the integrity of local government officials. Apologize for misconceptions.

287 Continues with discussing effect on farm and forest land, companion HB 2117. Comments on HB 2117.

365 Our organization feels that this bill is ill advised.

384 DICK BENNER, DIRECTOR OF THE DEPT. OF LAND CONSERVATION AND DEVELOPMENT:

Testifies in opposition to HB 2114. Urban growth boundary is the real bedrock of the program.

390 BENNER: Section 1, regarding the idea of residential development. There is a need to deal with urbanization and residential development.

417 CHAIR TARNO: You have alluded to the objectives in HB 2114 as posing a problem. Could you draft something for the Committee to look at, for example what kind of impact you would have, Line 9 through 31 where the impacts are discussed?

432 BENNER: Responds positively to the request of him to draft or have something drafted that would illustrate the impact on LCDC.

TAPE 7, SIDE A

024 DON SHELLENBERG, OREGON FARM BUREAU: Provides testimony in opposition to HB 2114. We will withhold our support until the bill will not produce a situation where we would be removing productive farm land from farm zones.

[EXHIBIT Q]

035 CHAIR TARNO: Adjourns meeting at 5:32 PM

Submitted by, Reviewed by,

Paula Hird Mark Bauer
Committee Assistant Committee Administrator

EXHIBIT SUMMARY:

A - Testimony on HB 2080 - Christine Cook - 1 page
B - Testimony on HB 2113 - Christine Crawley - 1 page
C - Testimony on HB 2113, HB 2114 - Susan Hunt - 1 page
D - Testimony on HB 2113 - Bill Moshofsky - 2 pages
E - Testimony on HB 2114 - Bill Moshofsky - 2 pages
F - Testimony on HB 2113, HB 2114 - Virgil L. Harper - 2 pages
G - Testimony on HB 2114 - Christine Cook - 3 pages
H - Testimony on HB 2113 - Christine Cook - 2 pages
I - Testimony on HB 2114 - Mickey Killingsworth- 2 pages
J - Testimony on HB 2113 - Leslie Elliott - 1 page
K - Testimony on HB 2113 - Cheri Unger - 1 page
L - Testimony on HB 2080, HB 2081, HB 2113, HB 2114 - Kelly Ross - 2 pages
M - Testimony on HB 2114 - Michael S. McCarthy - 1 page
N - Testimony on HB 2114 - Judson M. Parsons - 1 page
O - Testimony on HB 2114 - Diana Gardner - 1 page
P - Testimony on HB 2113 - Chris Fuller - 1 page
Q - Testimony on HB 2114 - Don Schellenburg - 1 page