

HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON AGRICULTURE AND FORESTRY

March 19, 1993 Hearing Room D 1:00 p.m. Tapes 33 - 36

MEMBERS PRESENT: Rep. Liz VanLeeuwen, Chair Rep. Ray Baum Rep. Marilyn Dell Rep. Sam Dominy Rep. Bill Fisher Rep. Tim Josi Rep. Dennis Luke Rep. Bill Markham Rep. Chuck Norris

STAFF PRESENT: Catherine Fitch, Committee Administrator Sue Nichol, Committee Clerk Sue Hanna, Legislative Council MEASURES

CONSIDERED:

HB 2899 - Public Hearing HB 3087 - Public Hearing HB 3128 - Public Hearing HB 2408 - Public Hearing HB 2935 - Public Hearing

WITNESSES: Jerry Lidz, Assistant Attorney General Sen. Rod Johnson, District 23 Rep. John Schoon, District 34 Bill Moshofsky, Oregonians in Action Dave Smith, Oregonians in Action Ruby Ringsdorf, Oregon State Grange, West Amazon Basin Landowners Association, Inc. Carol Fisher, West Amazon Basin Landowners Association Marvin Ringsdorf, West Amazon Basin Landowners Association John McCulley, Oregon Cattlemen's Association Polly Owen, Oregon Cattlemen's Association Julie Brandis, Oregon Small Woodland's Association Clyde Ramsay, Oregon Small Woodland's Association Bob Maley, Tree Farmer Don Duhrkopf Helen Irvine Phillip Fell, League of Oregon Cities Milo Mecham, League of Oregon Cities Larry Trosi, Oregon Farm Bureau Paul Meyerhoff II, Oregon Department of Transportation [--- Unable To Translate Graphic ---]

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. [--- Unable To Translate Graphic ---]

TAPE 33, SIDE A

008 CHAIR VanLEEuwEN: Calls the meeting to order at 1:15.

049 JERRY LIDZ, Assistant Attorney General: Gives overview of constitutional takings issue.

073 Both federal and state constitutions prohibit the government from taking land without compensation.

Most of the law in this area comes from the United States Supreme Court. The Supreme Court deals with these issues on an "ad hoc" case by case basis.

087 Fifty years ago the Supreme Court said that a regulation may constitute a taking if it goes too far. That doesn't tell you very much.

089 It is rare that a regulation that does not physically "take" the property would be required to be compensation.

093 For instance, it is never a taking for the government to prevent a property owner from causing harm to other people or other people's

property. It is not a taking to zone property restrictively, even if the zoning restricts or limits the market value of that property. The Court has upheld a zoning regulation that reduced the property value up to 85% or more.

109 In the early 1980's the Supreme Court tried to develop a more specific standard for what would be a taking. In one case, it decided that it

would deem a regulation to be a taking of property if, either the regulation diminishes the value of the property and it serves no legitimate state interest, or if the regulation deprives the owner of all economically viable use of the land.

118 It is little help to the landowner that the regulation must serve a legitimate state interest. State governments have full power to pass

any law they wish. So a broad range of interests are recognized as being legitimate uses.

125 In practical terms, the question has boiled down to, does the state regulation deprive the owner of all economic use of the land?

140 If a government regulation involves the government permanently occupying or physically invading land, or authorizes such an invasion, that will

be a taking.

167 The Supreme Court, in the Lucas Case, ruled that it was a taking because the owner was deprived of all economically beneficial uses.

185 REP. JOSI: Did Mr. Lucas receive full compensation?

187 LIDZ: South Carolina had the option to either pay full compensation or to rescind its regulation, and then pay him for the value he lost during the time the regulations were in place.

195 In Oregon, the law is basically the same. Oregon uses slightly different terms but is parallel. 205 Oregon Supreme Court, currently, has three cases pending. We don't know when those decisions will be reached.

214 Reads opinion by Justice Lindy. Regulation for a public policy is not equivalent to taking for a public use, even if the regulated property is land.

238 These bills depart from current constitutional law. That doesn't

mean you can't pass these bills.

259 CHAIR VanLEEuwEN: People's needs must be taken into account.

270 You seem to be taking the side of the establishment and I think that that's what the people out there are upset with.

275 LIDZ: My objective is to give as objective analysis as possible.

292 These bills will represent positions that have not succeeded in cases before the Supreme Court.

305 CHAIR VanLEEuwEN: These bills are different than the court's interpretation of the Constitution?

311 LIDZ: Yes.

313 REP. DOMINY: Have any other states adopted similar bills?

319 LIDZ: The only instance I know of is HB 2935, which is the one that directs the Attorney General's office to develop guidelines. Arizona

has adopted a similar bill.

336 The Courts would not ignore legislation passed. The Courts will do their best to enforce them. Our office will advise state agencies.

350 REP. JOSI: Would these bills pass the constitutional test?

353 LIDZ: Yes. They are a full employment program for lawyers. It's hard to tell how many lawsuits will be propagated by these bills.

TAPE 34, SIDE A

004 CHAIR VanLEEuwEN: Opens public hearing on the bills.

PUBLIC HEARING ON HB 2899, 3087, 3128, 2408 AND 2935

023 REP. LUKE: Can you explain cases of courts upholding taking away 85% of the value of the land? What kind of cases were they?

032 LIDZ: One was a zoning case.

045 I asked to comment separately on HB 2935 because it is the one bill of these five on which the Department of Justice has asked me to take a

position on. We do oppose this bill.

088 The purposes of HB 2935 mirror what our office does already.

091 The task of developing guidelines is daunting.

125 CHAIR VanLEEuwEN: Do you see any good points in the bill?

128 LIDZ: I think the principles that are listed in Subsection 2, page 2 should be considered by governments when they take action.

147 REP. DOMINY: How long would it take to do an analysis of the bill?

151 LIDZ: I don't know. It would take more than an hour.

160 HB 3087 and 3128 would be a substantial change in regulations for which governments would have to pay. It appears that the purpose is to pay

for reduced property value caused by certain regulation.

180 The public purposes that lead agencies to restrict grazing or to restrict removal of marketable timber are purposes that have been

assigned to the agencies by the U.S. legislature. There is an ongoing debate on what should be the extent of regulations on private land to protect the public interest.

205 REP. LUKE: Do you see a difference in a regulation in effect when the property was purchased, and a regulation made later?

210 LIDZ: Yes.

222 In HB 3087, Section 4 is the "out." It gives the exception. The second two of these exceptions are taken from Supreme Court decisions. The

exceptions differ from current law.

235 HB 2408 would presumably apply to setback requirements.

271 HB 2899 would compensate for any reduction in fair market value of property resulting from regulation.

287 These bills do meet some needs that many citizens feel, but they will be difficult to administer, will involve litigation and will be very

expensive to administer.

290 CHAIR VanLEEUWEN: What if a constitutional amendment was passed to cover this?

295 LIDZ: It would have the same effect.

313 SEN. ROD JOHNSON, District 23: Testifies in favor of HB 3128 and 308 7. Neither of the constitutions protect citizens from regulatory takings.

372 REP. JOHN SCHOON, District 34: This topic needs to be addressed as the government has been taking property from people. I would stress that

the writers of the constitution would be appalled at the rate that this has been happening.

TAPE 33, SIDE B

010 SEN. JOHNSON: The constitutional protections are virtually worthless as shown in the Lucas case. The average person can't afford this type of

legal action.

031 This is a beginning point to stop the government from taking anything they want, whenever they want it.

052 The government should pay for the loss of these uses.

061 REP. DOMINY: Would you elaborate on future laws you referenced? Is your law (HB 3087) retroactive?

071 SEN. JOHNSON: I'm referring to new laws passed after the first of next year.

075 REP. DOMINY: If the rule is already there, but now is first implemented, would that be covered?

080 SEN. JOHNSON: It would refer only to rules adopted after this date.

085 REP. DOMINY: There is a gap between when the rule is made and when it is implemented.

090 REP. JOHNSON: Implementing and adoption are separate.

092 REP. DOMINY: Defining those issues will keep lawyers busy.

097 SEN. JOHNSON: We are trying to get some legislation passed, so we excluded any zoning regulations from the specific government actions

addressed by the bills. We chose specific uses to be included.

162 REP. NORRIS: What about the practical application of this?

169 REP. SCHOON: The government should be able to figure it out if they feel the need to take people's land. I believe this will keep them from taking land.

193 REP. MARKHAM: If a government doesn't have the money to work out the details, they won't grab the land.

203 BILL MOSHOFSKY, Oregonians in Action: Testifies in favor of HB 289 9. Summarizes testimony in Exhibit A.

319 DAVE SMITH, Oregonians in Action: Testifies in support of HB 2899.

TAPE 34, SIDE B

030 REP. NORRIS: Are you familiar with Noland versus California Coastal Commission?

032 SMITH: Yes, that is how we argued this case.

056 The bills specifically exempt actions where the government is acting to protect the public health or safety, including water quality.

094 MOSHOFSKY: The fiscal impact is on our minds. We believe that governments can mitigate liability by allowing the development to

proceed.

138 Survey shows widespread support for compensation (Exhibit B).

171 RUBY RINGSORF, Oregon State Grange, West Amazon Basin Landowners Association, Inc.: Testifies in favor of HB 2935 (Exhibit C).

230 CAROL FISHER, West Amazon Basin Landowners Association: Testifies in favor of HB 2935.

313 REP. LUKE: Are they taking your land for wetlands?

318 FISHER: Yes. Also used for stormwater runoff, research and development for native plants.

354 CHAIR VanLEEUEWEN: I think the definition of a "wetland" is more stringent on the state level than on the federal.

367 RINGSORF: We have been impacted, suddenly, in our area.

377 MARVIN RINGSORF, West Amazon Basin Landowners Association: Would like to see provision in final bill compensating for partial taking.

TAPE 35, SIDE A

006 In HB 2935, items that were for public health and safety were exempt, but that has to be proven.

015 REP. LUKE: In Deschutes County they're even counting small stock ponds as wetlands.

023 JOHN MCCULLEY, Oregon Cattlemen's Association: Submits written testimony from Sharon Beck (Exhibit D).

040 POLLY OWEN, Oregon Cattlemen's Association: Testifies in support of HB 2935. Reads Exhibit E.

045 REP. BAUM: Have you reviewed the other bills up today?

050 MCCULLEY: We have looked at those bills and are supportive of the bills brought up by Rep. Schoon and Sen. Johnson. HB 3128 would be a more

comprehensive view of the problem.

080 JULIE BRANDIS, Oregon Small Woodland's Association: Testifies in favor of compensation in general, perhaps a combination of these bills.

140 CLYDE RAMSAY, Oregon Small Woodland's Association: Excessive regulation curtails production as the communists have found out. Supports the

concepts of these bills. Believes they would best be funded through tax credits.

189 BOB MALEY, Tree Farmer: Proposes conservation easement plan (Exhibit F).

388 DON DUHRKOPF: Testifies in favor of the bills in a combined form.

TAPE 36, SIDE A

013 Heavy burden is placed on local governments. State agencies should have guidelines as to what qualifies for regulatory compensation.

028 In HB 2935, the affected property owners should be notified.

070 REP. LUKE: Would you rather have compensation, or the use of your land?

072 DUHRKOPF: Wants compensation and property ownership.

098 HELEN IRVINE: Testifies in favor of the bills.

260 PHILLIP FELL, League of Oregon Cities: Testifies against the bills.

278 MILO MECHAM, League of Oregon Cities: Opposes the bills because of the costs to local government. Doesn't believe the bills are necessary.

318 Many regulations by local governments are mandated by state or federal actions. The cost, however, would be borne by the local governments.

346 REP. DOMINY: Do you really believe there is enough protection for individuals?

361 MECHAM: The constitution provides for compensation if they've lost all value.

379 REP. DOMINY: What about new rules that reduce the value of my property? What kind of remedy do I have?

385 MECHAM: Under current law, there are instances where you could receive some compensation.

TAPE 35, SIDE B

055 LARRY TROSI, Oregon Farm Bureau: Testifies in favor of HB 3128 and HB 3087.

168 REP. DELL: How can you determine compensation?

177 TROSI: That's a difficult question to answer.

196 REP. DELL: Is it contradictory that you are in favor of this legislation and yet be a strong proponent of land use regulations that

impose restrictions on other uses.

200 TROSI: Our philosophies are based on existing law. Will later submit testimony. (Exhibit G)

246 PAUL MEYERHOFF II, Oregon Department of Transportation: Testifies with concerns about the bills. (Exhibit H)

Meeting adjourned 4:30.

Also submitted for the record: testimony from Keith Bartholomew representing 100 0 Friends of Oregon. (Exhibit I)

Submitted by:

Reviewed by:

Sue Nichol
Administrator

Catherine Fitch Clerk

EXHIBIT LOG:

A - HB 2899 - Testimony - Dave Smith - 6 pages B - HB 2899, 3087, 3128, 2408, 2935 - Information - Bill Moshofsky - 1 page C - HB 2935 - Testimony - Ruby Ringsdorf - 1 page D - HB 2935 - Testimony - Sharon Beck - 1 page E - HB 2935 - Testimony - Polly Owen - 1 page F - HB 2899 - Information - Bob Maley - 3 pages G - HB 3128 - Testimony - Larry Trosi - 2 pages H - HB 2408, 3087, 3128 - Testimony - Paul Meyerhoff II - 3 pages I - HB 2408, 2899, 2935, 3087, 3128 - Testimony - Keith Bartholomew - 2 pages