

HOUSE COMMITTEE ON NATURAL RESOURCES ENVIRONMENT AND ENERGY SUBCOMMITTEE

February 3, 1993 Hearing Room D 1:30 p.m. Tapes 13 - 14

MEMBERS PRESENT: Rep. Bob Repine, Chair Rep. Marilyn Dell Rep. Sam Dominy Rep. Bill Fisher Rep. Carl Hosticka Rep. Dennis Luke Rep. Bill Markham Rep. Nancy Peterson Rep. Ray Baum

MEMBER EXCUSED:

VISITING MEMBER: Rep. Norris

STAFF PRESENT: Kathryn Van Natta, Committee Administrator Karen McCormac, Committee Clerk

COUNSEL PRESENT: Suzanne Hanna, Legislative Counsel

MEASURES CONSIDERED: Informational Meeting

Secondary Lands Issue Overview - Department of Land Conservation and

Development

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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 13, SIDE A

005 CHAIR REPINE: Calls the meeting to order at 1:34 p.m.

065 SUZANNE HANNA, Legislative Counsel: Explains relationship between state and federal rules, laws, statutes, and constitutions (EXHIBIT A). The

legislature can grant some of its authority to state agencies to adopt rules. When this occurs, the legislature cannot adopt legislation to amend rules.

235 REP. NORRIS: Could we usurp the entire area currently covered by administrative rules?

240 HANNA: That is correct.

259 REP. NORRIS: If we were not in session, could we not do anything to change administrative rules?

261 HANNA: The legislature exercises a certain oversight right now. Our office is required to review every administrative rule, every building

code. When they are found to be outside statutory authority, they are brought to the Legislative Counsel Committee, which determines what it will recommend to the legislature. Currently nothing can occur during the interim.

282 REP. BAUM: It is the intent of the members of this committee to finally resolve these secondary lands issues - to comprehensive it all in one

bill.

322 REP. DOMINY: Could we allow committees during the interim to review administrative rules?

335 HANNA: Under the existing constitution, that cannot be done. That's why there is a constitutional amendment which would allow for this.

347 REP. DOMINY: The only other way for the legislature to change rules is to make the rule effective date at the next legislative assembly?

352 HANNA: That's what the Land Conservation and Development Commission did with the Secondary Lands Rule.

389 RICHARD BENNER, Department of Land Conservation and Development: Presents testimony (EXHIBIT B), including a handout distributed on

February 1 which compares LCDC Administrative Rules and HB 3570, LCDC's 1990 LCDC Statewide Planning Goals, Oregon's Statewide Planning Program, HB 3570 from the 1991 Oregon Legislative Session, and pertinent administrative rules.

TAPE 14, SIDE A

BENNER: Continues testimony.

374 CHAIR REPINE: Did the 1992 LCDC Task Force fail because of the six-month time limitation?

379 BENNER: No. We may have achieved a consensus if there was more time, but it still would have been difficult.

388 CHAIR REPINE: Who served on the task force?

390 BENNER: Three legislators and perhaps five other people representing various interests. The task force was not intended to represent all

interests.

397 CHAIR REPINE: Was the task force initially reaching a consensus?

403 BENNER: There was consensus among everyone about the approach. The problem occurred when we tried to determine how much forestland should

be designated as small-scale resource land.

431 REP. HOSTICKA: Is the emphasis on gaining consensus part of the problem or the solution?

TAPE 13, SIDE B

006 BENNER: My experience is that consensus can be achieved regarding basic objectives, but when there is need to agree on the definition of best

lands or less productive lands, there can be a great deal of disagreement.

013 REP. HOSTICKA: Should a consensus be sought or should there instead be an attempt to achieve a working majority to enable progress?

015 BENNER: We tried to work toward a consensus as much as possible.

019 REP. DOMINY: The task force's goal was to define secondary lands. Did the task force break down when trying to define this? What was the

mission statement?

024 BENNER: To resolve the issues regarding agricultural and forest land protection including the identification and protection of secondary

lands.

041 REP. DOMINY: So they basically did not accomplish their mission?

042 BENNER: That is correct.

044 CHAIR REPINE: During the 1991 session, counties, which participated in the pilot program on secondary lands, came to the Environment and Energy Committee and said that although their reports had not yet been filed or reviewed, the commission had already reached their own findings.

051 BENNER: I'm not sure I can address that.

053 CHAIR REPINE: The Jackson County Commissioner was somewhat upset that the report was completed even before they had submitted their

findings.

056 BENNER: I do not know. The designation of secondary lands (small-scale resource lands) under

both HB 3570 and the new administrative rules is voluntary by county. However, the rules require eleven counties to protect their high-value farmland. Our rules also state that if counties voluntarily designate small-scale resource lands, they must protect their high-value farmland too.

093 REP. PETERSON: If Jackson County chose not to identify small-scale resource land, and they had some high-value lands, what would the

remaining lands be?

095 BENNER: They would be defined as important farmland. Identifying secondary lands under HB 3570 requires the consideration of sixteen

factors, such as parcelization, slope, etc. LCDC Administrative Rules require a series of standards or criteria. Both HB 3570 and the rules require an LCDC review of a draft product before adoption. Outlines additional differences between HB 3570 and the rules.

190 REP. LUKE: Another difference between HB 3570 and LCDC rules is that you could change those rules?

197 BENNER: That is correct - with the exception that new uses could not be added to existing uses of secondary lands. The rules reclassify everything into high-value farmland, small-scale

resource land or important farmland. We increased protection on high-value farmlands and reduced protection for small-scale resource land.

260 REP. LUKE: Clarify what is meant by "increased" or "reduced" protection.

264 BENNER: In the exclusive farm use statute, there is a list of non-farm uses which can be authorized in a farm zone. For example, the rules

provide that on high-value farmland, golf courses could only be approved through the exceptions process.

To envision the magnitude of the rules' effect, there are approximately nine million acres which are currently in forest zones. As a result of

the implementation of the rules, some of those acres will be identified as small-scale resource land. There are approximately sixteen million

acres of farmland in exclusive farm use zones. Under the new rules, some acreage will be designated high-value farmland or small-scale

resource land, and the rest will keep their current designation of important farmland.

296 CHAIR REPINE: Are the nine million acres of forestlands private or public?

297 BENNER: Public.

300 REP. PETERSON: If we have sixteen million acres of farmland, how much might be designated high-value?

304 BENNER: It is difficult to know at this point. Based on testing done while the rules were under consideration, probably ten to twelve million acres of farmland will be unaffected by the new designations. And

perhaps one million acres of forestland will be affected.

332 CHAIR REPINE: Do the farmland designations have different tax status?

335 BENNER: Yes. If someone lives in a qualified exclusive farm use zone, they can get the farm value assessment without meeting an income test.

Conversely, if they are not in a farm use zone, they must meet an income test. Small-scale resource land is defined as a one hundred sixty-acre block

of less productive farmland, less productive grazing land, less productive forestland. Small-scale resource land could also be 160 acres surrounded by exceptions, urban land or small-scale resource land.

384 REP. BAUM: I noticed that the criteria seems to be "less than" one hundred sixty acres - most tracts in my region are closer to eighty to

one hundred sixty acres. Was the reason for "less than" to exclude most of the areas which would otherwise qualify?

TAPE 14, SIDE B

031 BENNER: There is always the dilemma of being "just under."

036 REP. HOSTICKA: Requests definitions of "block" or "tract" or "plot" of land and their significances.

037 BENNER: The differences are very significant. "Lots" are generally created by subdivision, "parcels" are created by partition, and "tract" is defined as something different from lot or parcel, but could be two

lots or parcels owned by the same person. A "block" is probably made up of parcels and lots.

070 REP. DOMINY: How do we resolve the difference between eastern and western Oregon? How would we find one hundred sixty acres

anywhere in

the Willamette Valley which would be defined as "small-scale"?

083 BENNER: Forestland blocks are identified only after an analysis of soils. Counties will use existing soils maps and identify those units

which fall below specific thresholds. The predominating soil type will identify the land designation.

105 REP. DOMINY: Does "predominating" mean fifty-one percent?

106 BENNER: Yes.

107 REP. NORRIS: Questions property size and designated land identification.

115 BENNER: The rules do not require eligibility for small-scale resource land if someone owns one hundred sixty acres or more. Someone else may

own five acres or one thousand acres and still be eligible. We are ensuring that smaller tracts, to be designated small-scale resource land, must be around small-scale resource land to make up the one hundred sixty acres. Describes small-scale forestland and farmland determinations.

251 REP. LUKE: Who makes the determination?

255 BENNER: This information is in soil surveys produced by the Department of Agriculture, which provides the soil capability classification,

septic suitability, etc.

263 REP. MARKHAM: Does the Department of Forestry use that for land assessment?

269 BENNER: County comprehensive plans are already based upon this system.

316 REP. LUKE: What dividing line is used to separate eastern from western Oregon?

317 BENNER: We use the statutory definition - the Cascades, with a couple of exceptions. Hood River County is considered western Oregon, and

Jackson County is considered western Oregon for forestlands, but eastern Oregon for farmlands.

340 CHAIR REPINE: Adjourns meeting at 3:16 p.m.

Submitted by:

Reviewed by:

Karen McCormac  
Administrator

Kathryn Van Natta Assistant

EXHIBIT LOG:

A - Organizational Chart - Suzanne Hanna - 1 page B - LCDC  
Testimony and Informational Material - Richard Benner - 172 pages