

HOUSE COMMITTEE ON NATURAL RESOURCES ENVIRONMENT AND ENERGY SUBCOMMITTEE

February 15, 1993 Hearing Room D 1:30 p.m. Tapes 22 - 25

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 MEMBERS: Rep. Josi Rep. Norris

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

MEASURES CONSIDERED: Public Hearing on Land Use Concerns

WITNESSES: REP. JOHN SCHOON SUE KUPILLAS, Jackson County Commissioner

BEN BOSWELL, Wallowa County Court Commissioner GARY CONKLING, Beaverton School District BILL MOSHOFSKY, Oregonians in Action LOIS KENAGY, Agriculture for Oregon KELLY ROSS, Oregon Association of Realtors

FRED VAN NATTA, Oregon Home Builders Association ARTHUR SCHLACK, Association of Oregon Counties MIKE PROBST, Polk County Commissioner DON SCHELLENBERG, Oregon Farm Bureau KEITH BARTHOLOMEW, 1,000 Friends of Oregon

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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 22, SIDE A

PUBLIC HEARING ON LAND USE CONCERNS

005 VICE-CHAIR DELL: Calls meeting to order at 1:38 p.m. Explains intent of hearing is to bring forth land use concerns.

025 REP. JOHN SCHOON: During legislative interim, was a member of a land use working group put together by the Senate President and Speaker.

Land Conservation and Development Commission (LCDC) incorporated group's conclusions into new administrative rules. Urges committee to give new

rules adequate time to take effect. Cautions committee that Oregon is

losing thousands of acres of timber due to people living on tracts which border industrial forestland.

101 REP. HOSTICKA: Are you saying that if we want to save our old growth forests, we ought to encourage people to live there?

105 REP. SCHOON: You could probably use that as an amendment to your bill.

112 SUE KUPILLAS, Jackson County Commissioner: Presents written testimony (EXHIBIT A) with recommendations for change.

186 CHAIR REPINE: When public hearings were held in Medford regarding administrative rule changes, did the county participate?

190 KUPILLAS: No. I was a member of the Association of Oregon Counties' Land Use Committee which met with LCDC's director to discuss changes and participated in all of LCDC's hearings and discussions.

206 REP. BAUM: In Wallowa County we had the Forest Service and the Oregon Department of Fish & Wildlife reseed some burned areas, and they used

seed which contained Star Thistle. This plant causes paralysis of the mouth, which can cause starvation of the animals which eat it. Have you had this problem in Jackson County?

215 KUPILLAS: Yes. Describes Jackson County's efforts to eliminate Star Thistle.

228 REP. BAUM: As a county commissioner, do you have the resources to define secondary lands as a county?

231 KUPILLAS: Yes. Within our county, we have four distinct regions. We set up a Resource Lands Committee three years ago which identified our

secondary lands.

250 REP. NORRIS: Are you familiar with House Bill 3570's subjective criteria for counties? Are you advocating the same approach?

261 KUPILLAS: Yes.

278 REP. DOMINY: Questions dispute resolution by counties when property lies within two counties.

291 KUPILLAS: A dispute-resolution process would be used. Concludes testimony. 325 REP. PETERSON: I have heard that in the past, Jackson County gave away much of its prime farmland for development. Will this continue due to

public pressure?

344 KUPILLAS: We are looking at other alternatives, such as cluster developments.

369 REP. PETERSON: Does LCDC still think the county is meeting its rules and regulations to preserve remaining high-value farmland?

382 KUPILLAS: Questions whether LCDC understands high-value

farmland in Jackson County. The new rules do not fully define secondary lands.

394 REP. PETERSON: What would happen if counties had more control over land use, and local commissioners capitulate to strong public pressure to

incorrectly designate land?

400 KUPILLAS: That is a possibility. Expresses concern with LCDC rules which do not address unique conditions in Jackson County, which does not fit into eastern Oregon or western Oregon categories.

TAPE 23, SIDE A

033 CHAIR REPINE: Two years ago Jackson County worked with LCDC on a land use pilot program. Requests results of that program.

042 KUPILLAS: I am not convinced the results of the pilot program were used by LCDC in their package.

045 CHAIR REPINE: Is there anything in any of the pilot programs that was included in the administrative rules?

047 KUPILLAS: I did not do a comparative analysis, but I did not see anything from Jackson County in those rules.

049 CHAIR REPINE: Asks whether HB 3570 would have been beneficial for local governments.

054 KUPILLAS: Yes. Believes LCDC has a role in outlining framework for use by local governments, and holding periodic reviews to determine whether local governments have met those guidelines. The new rules are more

intrusive.

065 REP JOSI: What happens if local governments are not complying?

074 KUPILLAS: Local governments and LCDC would have to discuss differences in interpretations. Objects to intrusion into the local process even

before land-use decisions are made. Describes land-use application process.

146 BEN BOSWELL, Wallowa County Court Commissioner and Oregon State Grange Overseer: Presents written testimony (EXHIBIT B). Since Wallowa County

has only five hundred acres which could be designated secondary lands, the county chooses to not implement LCDC administrative rules.

293 CHAIR REPINE: Observes similarity of testimony of that of previous witness. Can Wallowa County address public concerns and still answer to LCDC?

306 BOSWELL: Yes, if we protect due process and equal access.

348 GARY CONKLING, Beaverton School District: Presents written testimony (EXHIBIT C) regarding the need to strengthen schools and land-use

planning coordination.

TAPE 22, SIDE B

002 REP. DOMINY: Do we best achieve that with state or local controls?

005 CONKLING: Believes LCDC has provided good outline as to how state law might influence community activity.

020 REP. DOMINY: Will the proposed rules help?

023 CONKLING: There has not been enough attention regarding the introduction of schools districts into the planning process in a

non-intrusive way.

031 CHAIR REPINE: Has the Beaverton School District introduced a bill which addresses this concern?

035 CONKLING: Yes.

036 REP. HOSTICKA: Asks whether school districts are required to provide transportation for students.

037 CONKLING: Within limits, it is up to individual districts. Districts with funding problems are forced to reduce transportation funding.

Describes justification for new school in Beaverton due to higher population density from the proposed Westside Light Rail.

058 BILL MOSHOFSKY, Oregonians in Action: Gives testimony in opposition to proposed LCDC administrative rules. Presents written testimony (EXHIBIT D) on proposed changes to land use planning, and OIA's legislative

agenda.

203 REP. DELL: Requests comments regarding Urban Growth Boundary Program (UGB).

209 MOSHOFSKY: We are helping to appeal LCDC's urban reserve program and the inflexibility of the UGB Program. Recommends that LCDC return to

long-range planning.

242 REP. DELL: Yamhill County was given lottery funds for a study which determined that the county was a good location for a destination tourist resort. After two years, the county is still searching for an

acceptable location under land-use laws. 257 MOSHOFSKY: There are currently too many limitations which make such projects almost impossible to implement. For example, the requirement

to restrict such sites to locating more than three miles from high-value farmland does not make sense.

264 REP. DOMINY: Asks whether witness knows how much value in economic development Oregon has lost and what impact that may have on state

taxes, including property taxes.

266 MOSHOFSKY: I have only anecdotal information. The Department of Economic Development never participates in land-use planning. The

average irrigated farm value of land in Bend is two hundred forty-five dollars an acre. No one can make a living by farming in Deschutes County. If those acres were allowed to be divided into five-acre parcels, they could be worth five or ten thousand dollars an acre.

339 REP. JOSI: Requests definition of "matters of statewide concern" regarding HB 2715.

345 MOSHOFSKY: Local governments ought to be able to proceed on their own regarding Goal 5 concerns, such as wildlife habitat, scenery, the

aesthetic resources. LCDC should only be concerned with more significant problems.

376 REP. PETERSON: If we allowed growth in rural areas, do you believe Oregon would maintain a suitable amount of farmland and forestland?

389 MOSHOFSKY: Yes, if we protect our better land and solve our development problems with realistic regulatory programs.

TAPE 23, SIDE B

005 REP. PETERSON: Does your definition of prime farmland fit the recently-discussed high-value farmland?

014 MOSHOFSKY: Except for the first part of LCDC's prime and unique Class I and II soils. Then there is a grab bag of other land that is cultivated cropland that is very ill-defined. We feel that the Class I and II

soils should be left in EFU status. The other land should become secondary, with some flexibility for counties. Out of sixteen million acres of so-called prime land, only four or five million are cropland. The remaining acres are for grazing, and should be considered low-value

and available for other uses, subject to reasonable regulations.

031 REP. LUKE: After reading SB 100 [1973], do you believe a county was supposed to take into account another county's comprehensive plan?

038 MOSHOFSKY: I don't think so.

042 CHAIR REPINE: Calls for a recess at 3:00 p.m. Reconvenes meeting at 3:31 p.m.

046 LOIS KENAGY, Agriculture for Oregon: Presents written testimony (EXHIBIT E).

117 REP. LUKE: What is the size of your farm and what crops do you grow?

122 KENAGY: We farm about 350 acres which are primarily row crops such as corn, beans and squash, which are processed by the NorPac Canning

Company. We also grow wheat and alfalfa crops for rotation. To utilize so-called wasteland along the river, we have cattle.

132 REP. DELL: Questions small farms as an integral part of Oregon's agriculture.

138 KENAGY: Many existing farms are making an economic contribution and provide an opportunity for a rural lifestyle. The percentage of dollars going into the Oregon economy is very minimal. Farms which are large

enough to support a family are the farms which provide economic stability to the agricultural community. In Benton County, there are hundreds of thousands of acres of exceptions land, designated R-5 or R-10. Our concern is that people who are supporting the economy have protection for their own land.

168 REP. DOMINY: Requests opinion regarding parcelization restrictions.

180 KENAGY: Neither my husband and nor I are the offspring of farmers. Describes initial rental and eventual purchase of small land parcels

throughout the 1950s and 1960s. Our family farm is making a good economic contribution, and we do not plan to divide the property.

218 REP. DOMINY: Do other farmers feel the same way?

221 KENAGY: Agriculture for Oregon has just developed a new policy (EXHIBIT F), which recommends that farmland should be preserved for farm use. In Germany, the land is now so divided among heirs that commercial

farming must be performed over many parcels owned by different landlords, which is not the way farming should be.

256 KELLY ROSS, Oregon Association of Realtors: Presents written testimony (EXHIBIT G), suggesting improvements to the land-use planning process.

363 REP. LUKE: When you refer to "SWAT teams" providing assistance to rural areas in siting economic development areas, are you suggesting this be

outside the urban growth boundary?

367 ROSS: Sometimes urban growth boundaries have not changed in twenty years, and it is often impossible to find a site within the boundaries.

388 REP. HOSTICKA: What could we expect if the legislature made major revisions to laws pertaining to secondary lands?

392 ROSS: I would hope the legislature would adopt something fairly close to rules adopted by LCDC. The Association of Oregon Counties has

submitted to the committee a detailed list of specific changes to those rules, and that should be the starting point.

414 CHAIR REPINE: Is it also the intent for "SWAT teams" to assist rural communities like Vernonia to negotiate with industry which might

otherwise leave the area due to zoning restrictions? 417 ROSS: Yes. And it does not necessarily have to be reactive; it could also be proactive to help these areas to review ordinances, etc. to

facilitate project siting.

426 REP. NORRIS: Questions whether witness refers to all administrative rules in third paragraph (EXHIBIT G).

433 ROSS: Yes.

TAPE 24, SIDE B

040 FRED VAN NATTA, Oregon Home Builders Association: Presents written testimony (EXHIBIT H), recommending changes to land-use process.

164 REP. DOMINY: If we ended up with legislation which stated, "Generally speaking you could not have a tax deferral," everyone would want to be

in the non-general category. Will another term be used?

173 VAN NATTA: The farm tax deferral bill is not yet out because attorneys have not been able to agree precisely on the terminology. Assures

committee the word "generally" will not be in bill, but for now it

provides the flexibility to accommodate parcels which will fall into the development category, but protects those which will not.

210 ARTHUR SCHLACK, Association of Oregon Counties: Presents Resolution 93-B1 and recommended improvements to LCDC program as written testimony (EXHIBIT I).

236 MIKE PROBST, Polk County Commissioner: Suggests resubmission of SB 100 [1973], which advocates citizen input and local land-use control.

318 REP. DOMINY: What is your intent to adopt a rule which would not allow the amendment of more than one rule in one year? Rules are usually

connected to other rules, which would also need to be changed.

326 SCHLACK: One of the counties' concerns is that LCDC is adopting administrative rules which require major work to be undertaken by local governments. There needs to be a period of time in which we are not

either changing the rules or making additional requirements.

348 REP. DOMINY: So a "rule change" refers to a group of rules adopted for secondary lands?

349 SCHLACK: Yes.

350 REP. DOMINY: Questions proposed membership of LCDC Board.

353 SCHLACK: We want to expand the commission and have two members represent the cities and two members represent the counties. A list of

potential members would be selected by the Governor.

375 PROBST: I think the number of members needs to be geographically balanced. 408 REP. DELL: Clarify why the LUBA decision only applies until counties have a hearing. Are you willing to accept LCDC's judgment providing you can be heard?

423 PROBST: Currently if LUBA or the courts make a decision on one piece of property, it affects the entire state. This recommendation at least

provides the opportunity for a hearing.

TAPE 25, SIDE A

000 DON SCHELLENBERG, Oregon Farm Bureau: Presents written testimony (EXHIBIT J).

043 CHAIR REPINE: Requests clarification of secondary land deferral.

052 SCHELLENBERG: As long as land usage remains unchanged, why change the land status?

058 REP. FISHER: Requests elaboration.

072 SCHELLENBERG: Secondary lands are in EFU zones. Farmers in those



zones currently receive automatic farm use assessment and do not need to meet an income test. If the land is rezoned as secondary land, it will lose

the automatic farm use assessment. Farmers can apply for continued farm use assessment by meeting an income test. Our proposal recommends

leaving farmers in the automatic farm use assessment until an action is taken which necessitates a change, such as building a dwelling or

downsizing the parcel below the minimum lot size. The decision would

then be made by the farmer instead of by the government.

120 KEITH BARTHOLOMEW, 1,000 Friends of Oregon: Presents letter from the Bureau of Land Management to the Josephine County Planning Office

regarding dwelling restrictions on land adjacent to BLM forestland

(EXHIBIT K). Recommends committee give new rules a trial period of one

biennium. Concerned that there has been no definitive study on the

relationship between land-use planning and the state's economy.

238 REP. LUKE: There have been some suggestions today about the need for some restrictions in the appeal process if a proposed project meets the zoning and comprehensive plan goals. Does your group support these

restrictions?

250 BARTHOLOMEW: Agrees with the principle that more of the land-use decision-making process should be made during the planning process and

not during the permitting process. The reason for having a statewide

land-use program is to focus the attention of communities and regions on how they want their area to look in the broad perspective. If you view

an area on a property-by-property basis, the NIMBY syndrome develops

("Not In My BackYard"). Outlines organization's past support of

destination resort provisions, including the difference between the

legislature's intent and Jackson County's interpretation.

290 REP. LUKE: Do you believe counties should take into account the farmland of adjacent counties when proposing their plans?

296 BARTHOLOMEW: In establishing a land-use planning program, I think the state is looking out for all the lands of the state, not only individual counties. 299 REP. LUKE: In one particular case, the adjacent county had not inventoried its lands, and people in one jurisdiction, who had done

planning, were restricted because an adjacent county had done no

planning.

308 BARTHOLOMEW: Comments that nothing in law which would prohibit a county from making determination about land in another county.

325 CHAIR REPINE: Adjourns meeting at 4:47 p.m.

Submitted by:

Reviewed by:

Karen McCormac  
Administrator

Kathryn Van Natta Assistant

EXHIBIT LOG:

A - Testimony on Land Use Concerns - Sue Kupillas - 1 page B -  
Testimony on Land Use Concerns - Ben Boswell - 1 page C - Testimony  
on Land Use Concerns - Gary Conkling - 4 pages D - Testimony on  
Land Use Concerns - Bill Moshofsky - 2 pages E - Testimony on Land  
Use Concerns - Lois Kenagy - 2 pages F - Policy Statement:  
Agriculture for Oregon - Lois Kenagy - 1 page G - Testimony on Land  
Use Concerns - Kelly Ross - 2 pages H - Testimony on Land Use  
Concerns - Fred Van Natta - 1 page I - Testimony on Land Use  
Concerns - Arthur Schlack - 3 pages J - Testimony on Land Use  
Concerns - Don Schellenberg - 2 pages K - Bureau of Land Management  
Letter - Keith Bartholomew - 2 pages