

HOUSE COMMITTEE ON NATURAL RESOURCES ENVIRONMENT AND ENERGY SUBCOMMITTEE

May 19, 1993 Hearing Room D 1:00 p.m. Tapes 117 - 119

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

VISITING MEMBERS: Rep. Tim Josi Rep. Chuck Norris Rep. Liz VanLeeuwen

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

MEASURE CONSIDERED: Work Session - HB 3661

WITNESSES: KELLY ROSS, Oregon Association of Realtors DALE
RIDDLE, Land-Use Attorney ART SCHLACK, Land-Use Specialist,
Association of

Oregon Counties LOIS KENAGY, Agriculture for Oregon BLAIR BATSON, Staff
Attorney, 1000 Friends of Oregon GARY CONKLING, Brookside, Inc. BILL
MOSHOFISKY, Oregonians in Action JACK CHAPIN, Farmer RICHARD ANGSTROM,
Oregon Concrete and Aggregate

Producers Association

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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 117, SIDE A

005 CHAIR REPINE: Calls meeting to order at 1:10 p.m.

032 KATHRYN VAN NATTA, Committee Administrator: Reads into the
record a written response to questions previously asked in committee
from Richard Benner, Director of the Department of Land Conservation and
Development, dated May 18, 1993 (EXHIBIT A). Also reads into the
record a letter

from the Hanley Jenkins II, Planning Director of the Union County

Planning Department dated May 18, 1993 (EXHIBIT B), a letter in support
of HB 3661 from Jack Lewis, Real Estate Appraiser, dated May 14, 1993

(EXHIBIT C), a letter from Virgil Harper of Concerned Citizens for Smith

Rock Area regarding contradictions in HB 3661, dated May 18, 1993 (EXHIBIT D), a letter from Mel Marcus in support of HB 3661, dated May 19, 1993 (EXHIBIT E), a letter from Russell L. Lester in support of HB 3661, dated May 18, 1993 (EXHIBIT F), a letter from Judy Moore in support of OAR Amendments to Section 4 of HB 3661, dated May 18, 1993 (EXHIBIT G), a letter from ABC Realty in support of OAR Amendments to Section 4 of HB 3661, dated May 18, 1993 (EXHIBIT H), a letter from Marge Wrightson in support of HB 3661, dated May 18, 1991 (EXHIBIT I), and a letter from Sandy Wojack and five others in support of the OAR Amendments to Section 4 of HB 3661, dated May 19, 1993 (EXHIBIT J). Reviews Amendment Tracking document (EXHIBIT K), which is designed to assist the committee as we receive additional amendments.

074 REP. FISHER: Requests summation of the HB 3661 amendments.

079 VAN NATTA: Provides review of amendments to date.

111 REP. LUKE: You said there was no negative testimony on the -9 amendments?

115 VAN NATTA: There were only two members of the Environment and Energy Subcommittee present during the proponent's testimony. Defers question

to committee members who were present.

121 REP. DELL: There was no negative testimony, but it was an unanticipated amendment. It was very specific, and dealt with a situation in which a

private prison was attempting to be placed on good farmland. The argument was economic development versus the preservation of farmland.

135 REP. PETERSON: It dealt specifically with land in Morrow County. I would not feel comfortable voting on this without more testimony and

information.

146 REP. NORRIS: When was this meeting?

148 CHAIR REPINE: This occurred when the Republicans were in caucus.

150 REP. VanLEEUEWEN: What provisions are being made for re-seeded rangeland?

167 CHAIR REPINE: Defers to Rep. Baum. 198 REP. JOSI: In some areas, grasses have been eliminated on rangeland due to overgrazing,

and non-native grass species have been introduced which may exclude those areas from the "rangeland" definition.

210 REP. NORRIS: Recommends addition of "native or introduced" grass species to resolve the dilemma.

218 REP. FISHER: A lot of our farmland in Douglas County is nothing more than fertilized rangeland.

232 REP. NORRIS: Perhaps we could substitute "not normally subject to tillage."

246 CHAIR REPINE: We'll have legislative counsel check on this.

Requests testimony from proponents of the -2 amendments regarding lot of record.

282 KELLY ROSS, Oregon Association of Realtors: Testifies in support of the -2 amendments. The amendments (EXHIBIT L) are targeted towards a flaw

in the bill, and deal with Sections 3 and 4 regarding a quasi-lot of record provision. Any lot or parcel created after the adoption of the statewide planning goals (adopted before 1974) would be excluded from

this benefit. The amendments are consistent with the four lot of record bills introduced this session. Since these were drafted before the

Proposed Adopted version of HB 3661 was produced, changes regarding line citations, etc. will need to be corrected by legislative counsel.

317 In the proposed -2 amendments, Line 1 should be deleted; on Line 2, it should state, "delete lines 2 through 6" and on Line 11, it should

state, "delete lines 3 through 13."

340 REP. PETERSON: Do these amendments open everything up to the lot of record?

346 ROSS: Yes.

348 REP. BAUM: May this be used to site a farm enhancement dwelling?

356 ROSS: No, it would allow simply a dwelling under Sections 8, 9 or 10 of the bill. Starting on Line 12, it deals with small-scale primary

resource land, on which a farm enhancement dwelling could be sited.

Starting on Line 21, it addresses land which would otherwise qualify as secondary land and site a dwelling as though it were secondary.

379 DALE RIDDLE, Land-Use Attorney: In the -2 amendments, Page 1, Line 9 takes care of orchard land in Hood River, but this is a limited lot of

record.

Line 8 addresses lots that have been created since acknowledged comprehensive plans. Lines 9 and 10 deal with lots partitioned prior to comprehensive plans. What it means is that each one of those is a lot of record as long as there was a conveyance after the creation.

Explains "limited lot of record" which will protect innocent parties who mistakenly thought they had the right to build.

TAPE 118, SIDE A

017 REP. HOSTICKA: Aren't you referring to the language in Lines 3 and 4 regarding "contiguous lots of record"?

019 RIDDLE: In the new definition of tract, new language will address that. It means contiguous parcels as of January 1, 1993, so ownership changes cannot be retroactive.

035 REP. BAUM: If six family members own parcels of an orchard, how is that handled with this?

037 RIDDLE: The identification process under Section 3 will treat those as separate tracts, since they have separate owners. Those would qualify

under the -2 amendments. It may be designated as secondary land anyway, because it couldn't produce the income standards necessary to be primary land.

047 REP. HOSTICKA: What is the current law regarding access to property if there is no public right-of-way?

052 RIDDLE: Currently, everyone is entitled access to their own property.

083 CHAIR REPINE: Introduces HB 3661-4 amendments, which are sponsored by Rep. Van Leeuwen (EXHIBIT M).

093 VAN NATTA: The -4 amendments were contained in a house bill which received public hearings, and was later later referred to the House

Committee on Revenue from the Environment and Energy Subcommittee. It deals with farm and forest homesites, and the property tax valuation of acreage under a farm or forest homesite. It creates a new section 27(b) to deal with ORS 215.203, which defines "farm use," and sets up a framework for the taxation statutes to follow. Reviews changes to HB 3661 made by -4 amendments.

138 REP. VanLEEUVEN: Testifies in support of the -4 amendments. If we want to keep farmland and forestland whole, there is a provision in the law

that allows retired farmers to do a one-time separation of the farmland from the farm dwelling. I would prefer to keep this land in a

contiguous block.

156 REP. DELL: You are looking for a way that allows you to stay on your farm and not make the partition?

162 REP. VanLEEUEWEN: Yes.

174 VAN NATTA: Reads Section 27(b) regarding special assessment of farm or forest dwellings in the -4 amendments.

196 REP. PETERSON: Basically, this says that if you quit farming, you get a tax break anyway on your small parcel.

212 REP. VanLEEUEWEN: Only if we agree to not parcel off the property. 216 REP. PETERSON: Legally, it would not be a separate parcel?

218 REP. VanLEEUEWEN: Right. It would continue to be part of the farm.

220 VAN NATTA: Refers to Page 2, Line 21 regarding a change in use and special assessment.

243 REP. PETERSON: This sounds like a fairly radical tax change.

249 REP. LUKE: Some counties already do this. Others assess the acre under the homesite at the same rate as dwellings within the neighboring city.

259 REP. MARKHAM: Would this allow another dwelling to be built for tenant farmers, since the original farmer will be retired?

272 REP. VanLEEUEWEN: The accessory dwelling is already allowed in some instances.

284 CHAIR REPINE: My assumption is that it would not change existing law. A person would still have to go through the permit process.

290 REP. DELL: Under existing law, a retired farmer has the right to partition their land, and the remaining land will begin as a "new" farm.

305 REP. FISHER: When you retire, do you still retain ownership of the land, and is it still taxed in the same way?

311 REP. VanLEEUEWEN: They're taxing our one acre as if we had moved into town.

327 REP. HOSTICKA: Where is this bill in the Revenue Committee?

331 REP. VanLEEUEWEN: It is scheduled for a hearing today.

364 REP. NORRIS: Do we want to deal with the taxation issue in this bill as well?

380 REP. VanLEEUEWEN: Are there not areas of the bill which also have revenue impact?

409 REP. BAUM: We're going to have some indeterminate revenue

impacts. We tried to make the tax deferral status neutral.

455 CHAIR REPINE: The purpose of this meeting is to clarify the intent of each of the amendments.

TAPE 117, SIDE B

015 VAN NATTA: The HB 3661-5 amendments (EXHIBIT N) are at the request of Association of Oregon Counties. These amendments would increase the

membership of the Land Conservation and Development Commission from 7 to 9 members. It specifies that two of the nine members shall be elected

city officials, and that two members shall be elected county officials.

030 ART SCHLACK, Land-Use Specialist, Association of Oregon Counties: Testifies in support of the -5 amendments. These amendments are

essentially HB 3625, and a public hearing was held in the Environment and Energy Subcommittee. These amendments are intended to strengthen the relationship between local government and the state land-use planning process. Local government would still be a minority in the composition of the commission.

053 REP. PETERSON: What has been the representation from cities or counties over the last five or ten years?

061 SCHLACK: There is one local government representative on the commission, and currently is a county representative.

073 VAN NATTA: The HB 3661-7 amendments (EXHIBIT O) deal with Section 9 of the bill, which describes uses allowed on forestland.

106 KELLY ROSS, Oregon Association of Realtors: Testifies in support of the -7 amendments. A timber cycle is approximately 30 - 60 years, and we

had concerns about the harvest of that upon maturity. We questioned whether this would be binding for subsequent property owners. We were also concerned about a situation in which someone who wills an entire parcel to a conservation group, which would force them to clearcut the property when trees reached maturity.

There was some data presented yesterday regarding owner-occupied timber tracts with higher harvest rates than non owner-occupied tracts.

147 VAN NATTA: The HB 3661-8 amendments are from the Oregon Association of Realtors (EXHIBIT P), and deal with Section 11 of the bill, which is

about dwelling siting standards.

174 REP. FISHER: Wasn't a section reference left out of Page 1, Line 3 of the -8 amendment? It states, "A dwelling sited under section or 10 of

this 1993 Act...".

177 VAN NATTA: The bill proponent may wish to cite a correction.

199 REP. LUKE: Does this take the forest fire and forest siting out of the farm area?

204 VAN NATTA: As written, this amendment states that you'll have the dwelling siting standards in Section 10 of the bill, and that in Section 8, you only have to sign a statement that you are aware of farm and

forest practices nearby. As to the intended purpose, I defer to the proponent of the amendments.

237 REP. FISHER: On Line 11 of the -8 amendments, does "spark arrester" mean a lightning rod?

242 ROSS: In response to your first question regarding an omission on Page 1, Line 3, Rep. Fisher is correct. Legislative counsel was trying to

get these amendments out as quickly as possible, which is how the error occurred. Basically, these amendments substitute fire siting standards

adopted by LCDC in their Goal 3 and 4 rules. Submits copy of Existing

Fire Siting Standards in LCDC Administrative Rules (EXHIBIT Q). The amendments allow those who cannot locate in a fire district to work with a local body to derive alternate means to protect their dwelling.

280 CHAIR REPINE: What are spark arresters?

283 ROSS: Spark arresters are a cap or a screen which fit over a chimney.

296 REP. FISHER: The amendments should require a spark arrester for each chimney.

299 CHAIR REPINE: Suggests witness clarify language regarding spark arresters with legislative counsel.

307 DALE RIDDLE, Land-Use Attorney: The spark arrester language is from the Uniform Building Code.

349 VAN NATTA: The HB 3661-9 amendments (EXHIBIT R) add a "use" to Section 8 of the bill regarding uses on farmland. Currently, correctional and

training institutions are not an allowed use in exclusive farm use

zones. The amendments add a new use for large-scale primary farmland as a conditional use. With a hearing at the county level, a correctional

and training institution could be a conditional use in large-scale primary farmland. The rest of the amendments address Page 19 of the bill, excluding the correctional and training institutions from being carried forward into forestland.

TAPE 118, SIDE B

030 REP. PETERSON: Yesterday the Farm Bureau testified that they opposed the use of prime farmland for this.

037 REP. FISHER: Requests clarification of -9 amendments.

044 CHAIR REPINE: A correctional or training institution would only be permissible on potential farmland, and proponents would have to go

through their county commission for specific consideration.

056 VAN NATTA: Lines 5 through 8 are a quick way of saying those could not be sited in any area which is zoned or designated "farm-forestland." It limits the correctional or training institutions to land zoned or

designated as farmland.

057 REP. JOSI: Why the exclusion of "farm-forestland"?

066 VAN NATTA: William Cox, the sponsor of the amendments, has a specific site in mind, which is in Morrow County.

073 LOIS KENAGY, Agriculture for Oregon: We would oppose enlarging the number of uses on primary farmland. I understand the LCDC is working

with Morrow County to get an exception to make that land available, so there is no need to change the law to make that possible.

087 BLAIR BATSON, Staff Attorney, 1000 Friends of Oregon: There is no need for this amendment now. The county simply needs to go through the

reasons exceptions process. Staff from the Department of Land Conservation and Development is assisting in that process.

097 VAN NATTA: The -10 amendments (EXHIBIT S) amend Section 32 of the bill, and deals specifically with the Von Lubken v. Hood River County case.

The language is a combination of language from Mr. Coleman and Ed Sullivan, and deals with amendments to comprehensive plans.

130 GARY CONKLING, Brookside, Inc.: Testifies in support of the -10 amendments. Section (3)(a) puts into place the chronology regarding

land-use amendments prior to acknowledgement. Section (3)(b) is more substantive, and clarifies the intent of the original provision.

161 VAN NATTA: The HB 3661-11 amendments (EXHIBIT T) address the lot of record issue. I don't know if anyone is currently supporting this

version of the lot of record. It is currently being redrafted.

189 REP. BAUM: The amendments will be rewritten, since they need further clarification.

210 CHAIR REPINE: Will the new version reflect both the -2 and -11 amendments?

212 REP. BAUM: One can always hope.

217 REP. DELL: Do committee members see the -11 amendments as a lot of record with a specific kind of limitation? I'm referring to the

requirement of three houses within one mile.

234 REP. HOSTICKA: Does this impacted area definition have any relationship to any established principles, or was it just thought up by someone as a good idea?

240 CHAIR REPINE: I think it's a reflection of LCDC rules.

243 BILL MOSHOFSKY, Oregonians in Action: We will be submitting another amendment which more accurately shows what a lot of record is. The

problem is that lots of record apply to those lots that were created prior to a certain date, rather than after. We're going to propose a date, using October 19, 1984, which was the date before the last goal was adopted. If there is concern about subdivisions, an attempt must be made to devise a rational approach.

300 VAN NATTA: The HB 3661-13 amendments (EXHIBIT U) come from testimony we received around 11:00 p.m. last Thursday from Jack Chapin and his son.

The issue is aggregate mining on farmland. These amendments have been drafted at request of Rep. Hosticka at the request of the Chapins, and amend ORS 215.296. Describes effects of amendments on HB 3661 and present statutes.

379 REP. HOSTICKA: The purpose of the amendments was to try to prevent gravel mining on high-value farmlands.

393 REP. LUKE: Do the -13 amendments and the -17 amendments

conflict? 396 VAN NATTA: I have seen nothing in writing on the -13 or the -17 amendments, so I cannot answer that question.

406 JACK CHAPIN, Farmer: Testifies in support of -13 amendments. These amendments are also presently a Senate bill which would stop the

destruction of prime farmland. When a gravel company comes in, they destroy lakes and habitat which are gone forever. There are alternate sources, such as quarry rock. Under current law, a gravel company can buy land, put an overlay buffer zone on neighboring farms, and restrict crops grown and buildings built. There is no need for this preferential treatment.

TAPE 119, SIDE A

031 REP. DOMINY: Do the -17 amendments contradict your amendments?

035 CHAPIN: I believe the -17 amendments address only forestland. I don't think mining should be considered a forest practice.

047 REP. MARKHAM: How can you gravel the roads in forestland if you don't do some mining?

050 CHAPIN: It's a question of where the gravel is taken from. But to call mining a "forest practice" is a play on words.

062 REP. FISHER: Have you ever been involved in aggregate removal?

064 CHAPIN: One of the farms I bought had an existing gravel operation, but I closed it as soon as I could.

087 REP. DELL: How did you obtain the data for your amendments?

089 CHAPIN: I worked with the Farm Bureau to develop the list of counties. A similar list has been compiled by LCDC.

095 VanLEEUWEN: Why was Lane County not included?

098 CHAPIN: It's a large county, and to include it would involve taking in a lot of area we didn't want to touch.

147 CHAIR REPINE: We will not be discussing the -15 or the -19 amendments today.

160 RICHARD ANGSTROM, Oregon Concrete and Aggregate Producers Association: Testifies in opposition to the -13 amendments. These amendments would

basically ban mining of concrete aggregates in the Willamette Valley.

To not allow aggregates on Sites 2 and 3 does not leave much remaining land. You're telling us to go to the hills, which would put us out of business.

210 Testifies in favor of the -17 amendments (EXHIBIT V). Describes current requirements to site an aggregate operation. We are not the major user

and consumer of farmland. Over the past three years, only 20 acres of new aggregates have been sited. Out of 250,000 acres of prime farmland in Marion County, we will use less than 2,000 of those acres within a 100-year period.

246 REP. VanLEEUEWEN: Do the -17 amendments only apply to forestland?

250 ANGSTROM: Yes.

270 REP. FISHER: Are you primarily addressing groundrock or shale?

276 ANGSTROM: Forestland offers basalt-type rocks. We select areas which meets construction standards. The problem with going into forestlands

is identifying where the high-quality sites really are.

319 LOIS KENAGY, Agriculture for Oregon: Testifies in favor of the -4 amendments. Commends Rep. VanLeeuwen for commitment to keeping farmland contiguous. Agrees with Rep. Hosticka that Page 1, Lines 17 through 18

should be deleted. Also urges committee to delete reference to "employee" on Page 1, Line 22.

364 CHAIR REPINE: CLOSSES WORK SESSION ON HB 3661

Adjourns meeting at 3:20 p.m.

Submitted by:

Reviewed by:

Karen McCormac
Administrator

Kathryn Van Natta Clerk

EXHIBIT LOG:

A - HB 3661 Testimony - Richard Benner - 5 pages B - HB 3661 Testimony - Hanley Jenkins - 3 pages C - HB 3661 Testimony - Jack Lewis - 3 pages D - HB 3661 Testimony - Virgil Harper - 1 page E - HB 3661 Testimony - Mel Marcus - 1 page F - HB 3661 Testimony - Russell Lester - 1 page G - HB 3661 Testimony - Judy Moore - 1 page H - HB 3661 Testimony - ABC Realty - 2 pages I - HB 3661 Testimony - Marge Wrightson - 1 page J - HB 3661 Testimony - Sandy Wojack - 1 page K - HB 3661 Amendment Tracking List - Staff - 2 pages L - Proposed -2 Amendments to HB 3661 (LC 3145-1), 5-10-93 - Staff - 2 pages M - Proposed -4 Amendments to HB 3661 (LC 3145-1), 5-13-93 - Staff - 5 pages N - Proposed -5 Amendments to HB 3661 (LC 3145-1), 5-13-93 - Staff - 2 pages O - Proposed -7 Amendments to HB 3661 (LC 3145-1), 5-14-93 - Staff - 1 page P - Proposed -8 Amendments to

HB 3661 (LC 3145-1), 5-14-93 - Staff - 1 page Q - Existing Fire Siting Standards in LCDC Administrative Rules - Kelly Ross - 1 page R - Proposed -9 Amendments to HB 3661 (LC 3145-1), 5-14-93 - Staff - 1 page S - Proposed -10 Amendments to HB 3661 (LC 3145-1), 5-14-93 - Staff - 1 page T - Proposed -11 Amendments to HB 3661 (LC 3145-1), 5-14-93 - Staff - 2 pages U - Proposed -13 Amendments to HB 3661 (LC 3145), 5-17-93 - Staff - 6 pages

V - Proposed -17 Amendments to HB 3661 (LC 3145-1), 5-18-93 - Staff - 1 page