

SENATE COLMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: June 16, 1993 TAPES: 185- 186 PLACE: Hearing Room C TIME:
8:00 AM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn, Vice-Chair
Senator Shirley Gold Senator Bob Kintigh Senator Bob Shoemaker Senator
Gordon Smith MEMBERS EXCUSED: GUEST MEMBERS: Rep Carl Hosticka STAFF
PRESENT: Peter Green, Administrator Chris Warner, Research Associate
Kus Soumie, Clerk Sue Hanna, Legislative Counsel MEASURES HEARD: SB
1008 WRK SB 753 WRK HB 2927 PUB - HB 2208 PPW SB 3149 PPW THESE MINUTES
CONTAIN MATERIALS WHICH PARAPHRASE AND/OR SUMMARIZE STATEMENTS MADE
DURING THIS SESSION. ONLY TEXT ENCLOSED IN QUOTATION MARKS REPORTS A
SPEAKER'S EXACT WORDS. FOR COMPLETE CONTENTS OF THE PROCEEDINGS. PLEASE
REFER TO THE TAPES.

TAPE 185, SIDE A

005 CHAIR CEASE calls meeting to order at 8:00 a.m.

PUBLIC HEARING ON HB 2927 WITNESSES: REP. LIZ VANLEEUEWEN, HOUSE DISTRICT
37 REP. SAM DOMINY, HOUSE DISTRICT 44 DAVE SCHMIDT, ASSOCIATED OREGON
COUNTIES PUBLIC LANDS COMMITTEE, COUNCIL OF FOREST TRUST LAND COUNTIES

006 REP. LIZ VANLEEUEWEN: Testifies in favor of HB 2927 (EXHIBIT A).
- HB 2927 does not undermine current legislation Senate Agnculture
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073 REP. SAM DOMINY: Testifies in favor of HB 2927 (EXHIBIT B). 130 DAVE
SCHMIDT: Testifies in favor of HB 2927 (EXHIBIT C). - Improvements this
bill would create include: timely protection of state listed species by
requiring development of state recovery plans where the federal
government has not adopted a plan; avoiding expensive duplication of
effort by making federal recovery plans aufficient; setting a higher
standard of verifiable scientific information for findings of fact;
permitting an incidental take process for species listed by the state
only - this will bring needed flexibility to manage landscapes for more
than one species; assessing social and economic impacts as part of the
listing process; providing an opportunity for scrutiny of the biological
and economic assessments by establishing an evidentiary hearings
process. - This bill strengthens and improves current ESA law.

WORK SESSION ON SB 1008

WITNESSES: DAVE NELSON, OREGON DAIRY FARMERS ASSN. PHIL WARD, DEPT. OF
AGRICULTURE

159 PETER GREEN: Draws committee's attention to the hand-engrossed copy
of the bill with the - 3 amendments (EXHIBITS D, E). These amendments
were proposed by Dave Nelson and would conform SB 1008 to some of the
provisions of SB 1010.

175 DAVE NELSON: SB 1008 is associated with SB 1010 which has been
reported out of the House Natural Resources Committee. -SB 1008
deals with formalizing the agreement between the Dept. of Environmental
Quality and the Dept. of Agriculture of the actual implementation of the
confined animal feeding programs in the state. -It differs from SB
1010 in that SB 1010 deals with general agriculture water quality,
whereas SB 1008 deals with the program area of confined animal feeding.
- Confined animal feeding restrictions were adopted by the

legislature in the 1987 session, and the program has been operating within the Dept. of Agriculture for the last five years. - SB 1008 formalizes that and makes some clarifications. It gives the Dept. of Ag the authority to enforce existing provisions of this program. The amendments to the language conform it to changes made by the House Natural Resources Committee to SB 101 0, so the programs are implemented and enforced in an identical manner. - Amendments proposed to lines 26-27 makes a violation begin from the time compliance has expired, rather than time of notice. If the Dept. of Agriculture issues a 30-day period of time for a dairyman to complete something, then the time of violation would begin at that time. - Another change, page 2, line 5, changes the maximum level of fine from \$5,000 to \$2,500 to make it conform to SB 1010. - On line 8, the legal owner is to be not)ified in any case where a civil penalty is to be applied.

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- Following line 21, language is inserted to state that notice of violation is not necessary if the violation is intentional or if a previous notice has been sent. This is at the request of the Dept. of Environmental Quality and the Dept. of Agriculture. - Line 23 deals with where fines collected by the Dept. of Agriculture shall be deposited and how they shall be used (educational programs on animal waste management).

294 CHAIR CEASE: Sen. Cohen preferred the money to go into the General Fund, but this committee agreed to this change in negotiations with SB 101 0, correct?

298 PHIL WARD: I believe that is correct. 300 DAVE NELSON: The final amendment prevents a "stacking" of fines - the last fine would be offset by the Dept. of Agriculture in reducing or eliminating the first fine. 312 CHAIR CEASE: That wouldn't apply if the violation were different? 315 DAVE NELSON: No. 325 CHAIR CEASE: I expect to concur with SB 1010. 311SEN KINTIGH: There is a problem in my district regarding waste from dog confined. Could this research help with this problem at some point? 340 PHIL WARD: We haven't worked with dog situations, and I'm not sure dogs fit into the definition, unless there is a waste water disposal facility. MOTION: Chair Cease moves adoption of the -3 amendments to SB 1008. VOTE: Hearing no objection, the amendments are adopted. MOTION: Chair Cease moves SB 1008 as amended. with a "do pass" recommendation. VOTE: In a roll call vote the motion passes, 6 - 0. Sen. Cohen excused. Sen. Kintigh will carry the bill on the Floor

WORK SESSION ON SB 7S3

WITNESSES: DIANA GODWIN, AMERICAN WASTE MANAGEMENT BILL COX, PORTLAND LAND USE ATTORNEY

404 PETER GREEN: Draws committee's attention to proposed amendments (-4, -5, -6) (EXHIBIT E;). The -4 amendments adds some limitations to the territory not eligible for a composter.

415 CHAIR CEASE: As sponsor, there is a concern regarding the placement of a composting facility

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within an urban area. There was an amendment to clarify that an urban area meant within a mile of an urban development, not just a residence.

435 PETER GREEN: The 4 amendments are Sen. Cease's and limit it to the urban growth boundary. The -5 are Sen. Cease's and limit it to the metro area. The -6 amendments are from Diana Godwin which have land use implications and allows certain types of composting facilities on EFU land.

TAPE 186, SIDE A

041 DIANA GODWIN: The -5 amendments would prohibit the DEQ from granting a permit for a mixed municipal or domestic solid waste composting facility located within a mile of an urban growth boundary that is within the boundary of the Metropolitan Service District. The 4 amendment would limit the permitting of such a facility within the urban growth boundary of any urban area of the state (EXHIBIT G). - We have been working with Yamhill County, which is concerned about limiting their authority to make a local decision about the use of a composting facility. - The -6 amendments do the same thing as the -5 amendments but also add an amendment to section 4, to amend ORS 215.283, which deals with permitted uses in EFU zones, to allow the siting of a composting facility. I have faxed this proposal to the Farm Bureau and they have no concerns. 074 BILL COX: This is an emerging technology. If we are going to eliminate it from being placed in certain areas, we should assist it in being placed elsewhere. If we limit placement to nonurban areas statewide, we may be being overly restrictive. - Another difference between the 4 and -5 amendments appears in sub(b). The 4 amendments include in the prohibition, within a mile of a rural community. Those areas do not have acknowledged comprehensive plans. This seems overly restrictive. - A composting goal is partial reclamation of landfills. Some existing landfills may be within this one mile radius, and we wouldn't want to limit that opportunity. - EFU land seems to be the best site. 091 CHAIR CEASE: Reviews what various amendments would do. 135SEN BUNN: Declares conflict of interest; living within a mile of a landfill that could be composted could influence me. 143 CHAIR CEASE: This adds to a long list of permitted uses within the EFU zone. 170 SEN. GOLD: Would this apply in Lane and Washington Counties? 161SUE MANNA: ORS 215.283 only applies to non-marginal lands counties. ORS 215 .213 applies to marginal lands counties (Lane and Washington Counties). Both statutes would need to be amended.

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182 CHAIR CEASE: If the -5 amendments were adopted, then that portion of Washington County that is within the Metropolitan Service District would be affected. Wouldn't the -6 amendments allow siting within any EFU zone? 187 SUE MANNA: Yes, except for Washington and Lane County.

201 SEN COHEN: I am very opposed to -6 amendments and will explain why at a later time. 206 SEN SHOEMAKER: I don't understand; if solid waste composting is offensive, why would we want to protect the people of Portland but no other community?

221 BILL COX: The limited scope of the amendments is due to our client's belief that the case that has come to our attention is not reflective of the industry and emerging technology. The second reason, is that in discussing this with the non-metropolitan area, they believe that "those smells exist in the farm community, anyway." With some of the new technology the smell is minimal. Farm land is improved by composted material. 265 SEN. SHOEMAKER explain why landfill reclamation is desirable. Once a landfill is full, is it noxious in some way? 262GODWIN: There is always a danger of ground water contamination from landfills. To reclaim some of that organic material for beneficial uses, such as the generation of heat through the deposition process, would also be useful. Before any of these operations begins, it must go through the permitting process through DEQ. This includes local land use compatibility statements. MOTION: Chair Cease moves to adopt the -4 amendments. Should "rural community" be changed to "rural center?" 314 SUE MANNA: There are a variety of ways to describe rural areas. We could say "rural community or rural center." Rural center would be a smaller area. 370 SEN. COHEN: The -4 amendments allow composters on EFU land. The -6 amendments invite such citations. 388 SEN. SHOEMAKER: There was testimony that some landfills that could be composted are within urban growth boundaries, then the -4 amendments would prohibit composting those landfills. 400 SEN. BUNN: This is just as offensive to people who live in rural communities as those in urban areas. 410 GODWIN: Rural communities can also protect themselves through the DEQ permitting process. The -4 amendments preclude the opportunity for a local community to decide to allow this use.

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SB 66 recognized composting as part of the solid waste management hierarchy.

434 CHAIR CEASE: I will discuss this with DEQ and Metro; I don't think it should be allowed as an outright use.

444 SEN. SHOEMAKER: Unless it can be shown that composting can be done in an inoffensive manner, the committee should adopt the ~ amendments. The -5 amendments favor one UGB over others, and it isn't fair.

MOTION: CHAIR CEASE moves adoption of the -4 amendments, and that the bill be sent to the Floor with a "do pass" recommendation.

VOTE: The motion passes 6 - 0; Sen. Kintigh excused. Sen. Bunn declares a potential conflict of interest.

TAPE 185, SIDE B

038 CHAIR CEASE: Sen. Kintigh would you care to vote on SB 753?

040 KINTIGH Yes.

VOTE: Sen. Kintigh votes "aye" to send SB 753 as amended to the Senate Floor with a "do pass" recommendation.

043 CHAIR CEASE: The Chair asks for unanimous consent to allow Sen. Gold to vote on SB 1008. Hearing no objections, the vote is allowed.
VOTE: Sen. Gold votes "aye" to send SB 1008 as amended to the Senate Floor with a "do pass" recommendation.

PUBLIC HEARING: HB 2208

WITNESSES: PHIL WARD, OREGON DEPT. OF AGRICULTURE NAN DEWEY, OREGON VETERINARIAN MEDICAL ASSN.

040 PHIL WARD: Explains the bill (EXHIBIT H). The veterinarians wanted to review the program in two years to see if it was functioning as planned.

095 SEN. SHOEMAKER: What is this all about?

099 PHIL WARD: A session ago, the bill instituted a requirement that anyone who sells a veterinary medicine in Oregon they register that product with the Dept. of Agriculture and pay a fee of \$65 a product. This registration falls primarily on out-of-state companies. This provides funding to the animal health program in Oregon.

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108 CHAIR CEASE: Notes referral to Ways and Means Committee.

109 SEN. KINTIGH: How is the money used? 112PHIL WARD: This program is responsible for insuring that we don't have animal disease problems that "get away from us." Oregon recently secured a "brucellosis free" status and that is a first for Oregon, as a result of this program. We are currently looking at tuberculous in cattle. 124 NAN DEWEY: Testifies in favor of the bill EXHIBIT 1). We requested the two-year sunset.

WORK SESSION: HB 2208

MOTION: Sen. Kintigh moves HB 2208-B to the Senate Ways and Means Committee by prior referral with a "do pass" recommendation.

VOTE: The motion passes 7 - 0.

PUBLIC HEARING ON HB 3149

WITNESSES: REP. CARL HOSTICKA, HOUSE DISTRICT 40 PAUL RIES, OREGON DEPT. OF FORESTRY BILL EDMONDS, PACIFICORP

150 REP. CARL HOSTICKA: Testifies in favor of HB 3149 and HB 3389 (EXHIBIT ~. - Trees can affect the micro-climate, reducing the "heat island effect" in urban areas. - It is an entirely voluntary program. - We focused on areas where it would be cost effective in terms of energy conservation. - Funds collected through a utility would be spent on that utility's service area. - There is a cap on administrative costs. - If no one participates in the program by Dec. 1999, it will sunset. -

Enters into record additional testimony (EXHIBIT K). 254 PAUL RIES:
Testifies in favor of HB 3149 (EXHIBIT L). 266 BILL EDMONDS:
Testifies in favor of HB 3149 (EXHIBIT M). 296 CHAIR CEASE: This will
be scheduled for a work session on Friday.

PUBLIC HEARING ON HB 2927

WITNESSES: ESTER MCEVOY, NATIVE PLANT SOCIETY GLEN SPAIN, PACIFIC COAST
FEDERATION OF FISHERMEN'S ASSOCIATIONS

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marks repeat a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes. Senate Agriculture and Natural
Resources June 16, 1993 8:00 AM Page 8 ANDREW HYMAN, FOREST CONSERVATION
COUNCIL MIKE PIETI, WESTERN COUNCIL OF INDUSTRIAL WORKERS

343 ESTER MCEVOY: Testifies in opposition to HB 2927. - Provides
background on state's endangered species bill. - The Dept. of
Agriculture and the Dept. of Fish and Wildlife have developed unbiased
sources of information for both the federal and state agencies and
provides efficient means for protection and conservation of endangered
plant and wildlife. - HB 2927 will change the original intent of the
1987 law, undermining progress that has been made to date. The weakening
of the state Endangered Species Act will prevent the state from getting
ahead of the federal listing "curve." - We should be trying to keep
species off the list; the amendments to HB 2927 will keep species on
the list, and headed for extinction. - Under HB 2927, native wildlife
will have to be proven to be indigenous, a term that could be challenged
by lawyers and may prevent species from being listed. - HB 2927 creates
unrealistic time frames for listing species within required recovery
plans for new listings within 24 months. In order to get verifiable,
scientific information, it may require two full field seasons. - HB 2927
changes the scientific basis for listing species. State listing can only
take place after socio-economic impacts are considered. - The bill sends
a message that the state does not support or look forward with its state
endangered species program. - Ecosystem health is signaled by the
diversity of plant and animal communities.

TAPE 186, SIDE B

015 GLEN SPAIN: Testifies in opposition to HB 2927 (EXHIBIT N).
079 ANDREW T HYMAN: Testifies in opposition to HB 2927 (EXHIBIT O).
148 MIKE PIETI: Testifies in support of HB 2927. - HB 2927 would
greatly improve the Endangered Species Act. - Frivolous appeals are
locking up lands, hindering the economy. - HB 2927 would ensure that
species are protected without unreasonably jeopardizing the state's
economy and a way of life for thousands of families. - More input from the
public will be allowed. - An economic-social impact study will be
required; this is a critical improvement to current law. 198 CHAIR
CEASE: The hearing will be concluded on Monday. - Adjourns the meeting
at 10:00 a.m.

* Additional testimony submitted; see "Exhibit Log."

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EXHIBIT LOG:

A - testimony, SB 753, Rep. VanLeeuwen, 2 pas. B - testimony, HB 2927, Rep. Sam Dominy, 3 pas. C - testimony, HB 2927, Dave Schmidt, 1 pg. D - hand-engrossed bill, SB 1008, staff, 2 pas. E - proposed amendments, SB 1008, staff, 2 pas. F - hand-engrossed bill and amendments, SB 753, staff, 12 pas. G - hand-engrossed bill, SB 753, Diana Godwin, 5 pas.. H - testimony, HB 2208, Phil Ward, 1 pg. I - testimony, HB 2208, Nan Dewey, 1 pg. J - testimony, HB 3149, Rep. Carl Hosticka, 3 pas. K - testimony, HB 3149, Rep. Carl Hosticka, 60 pas. L - testimony, HB 3149, Paul Ries, 2 pas. M - testimony, HB 3149, Bill Edmonds, 6 pas. N - testimony, HB 2927, Glen Spain, 9 pas. O - testimony, HB 2927, Andrew Hyman, 3 pas. P - testimony, HB 2927, Rep. Lisa Naito, 2 pas. Q - testimony, HB 2927, Louise Bilheimer, 1 pg.

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SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: June 16, 1993 TAPES: 187-190 PLACE: Hearing Room C TIME:
6:00 PM

MEMBERS PRESENT: Senator Ron Cease, Chair Senator Jim Bunn, Vice-Chair
Senator Joyce Cohen Senator Bob Kintigh Senator Bob Shoemaker Senator
Gordon Smith MEMBERS EXCUSED: Senator Shirley Gold

STAFF PRESENT: Peter Green, Administrator Chris Warner, Research
Associate Kus Soumie, Clerk Sue Hanna, Legislative Counsel Jim
Scherzinger, Legislative Revenue Officer MEASURES HEARD: HB 3661
THESE MINUTES CONTAIN MATERIALS WHICH PARAPHRASE AND/OR SUMMARIZE
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MARKS REPORTS A SPEAKER'S EXACT WORDS. FOR COMPLETE CONTENTS OF THE
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TAPE 187, SIDE A

005 CHAIR CEASE calls meeting to order at 6:15 p.m.

PUBLIC HEARING - HB 3661 WITNESSES: GREG WOLF, LCDC REP. RAY BAUM, HOUSE
DISTRICT 58 MIKE EVANS, LAND USE CONSULTANT KENT HOWELL, LANE COUNTY
LAND USE PLANNER

008 CHAIR CEASE: Explains expected schedule for hearing HB 3661, and
asks staff to explain the bill. 026 CHRIS WARNER: Draws committee's
attention to section by section overview (EXHIBIT A). - Sections 1-13
deal with primary and secondary lands. - Sections 14 deals with the
right to farm. - Three different court cases were involved in this bill.
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- Section 1 contains the policy statement. ORS 215.243 is the current
policy statement that is repealed in the bill (EXHIBIT A). - Section 3
is the beginning of the substantive part of the bill. This specifies
options (EXHIBIT A). Option 1 [section 3(2)] deals with farm and
forestland, small-scale and large scale. - Option 2 [section 3(3)]
refers to the technical advisory committee which reviews decisions made
regarding Option 1. - Option 3 would be the current rules, as they were
adopted in December by the Commission. Option 4 would be if a county
chose not to "do this" and they chose not to do the rules. That would
not include the nine Willamette Valley counties, Hood River and Jackson
County.

093 SEN SHOEMAKER: If the bill were to pass, each county could adopt
one of these four options? 100 WARNER: That is my understanding.
Repeats options for clarification. - Describes Option 1 in detail
(EXHIBIT A). The county may identify and segregate resource lands into
three categories using the criteria set forth. "Farmland, large-scale
primary" is defined as being able to produce \$80,000 of annual income if
in Western Oregon, or \$50,000 if located in Eastern Oregon. -
"Forestland, large-scale primary" would be those forests capable of
producing 27,200 cubic feet of merchantable timber a year and 50 cubic
feet per acre a year in Western Oregon, and 27,200 cubic feet and 20
cubic feet per acre of merchantable timber in Eastern Oregon. -
"Farmland, small-scale primary" are Western farms capable of producing
between \$40,000 \$80,000 a year in gross income, and Eastern farms
capable of producing between \$20,000 \$50,000 a year in gross income. -
"Forestland, small scale primary" are those Western forests capable of
producing between 15,500 and 27,200 cubic feet of merchantable timber

per year and 50 cubic feet per acre per year, and Eastern forests capable of producing between 6,400 and 27,200 cubic feet of merchantable timber per year and 20 cubic feet per acre per year. 215 CHAIR CEASE: What were these specific figures based on? 216 REP. RAY BAUM: Figures were based on prior testimony. The \$40,000 figure for primary land is what the Agriculture Dept. testified would be a commercially viable farm. 228 WARNER: Continues section by section description of HB 3661. - "Secondary farmland" are Western farms capable of producing less than \$40,000 a year in gross income, and Eastern farms capable of producing less than \$20,000 a year in gross income. - "Secondary forestland" are Western forests capable of producing less than 15,500 cubic feet of merchantable timber per year and Eastern forests capable of producing less than 6,400 cubic feet of merchantable timber per year. - "Large scale primary range land" is land capable of producing sufficient forage to support 100 animal unit months per year. - "Small-scale primary range land" is capable of producing sufficient forage to supporting between 25 and 100 animal unit months per year. - "Secondary range land" is land not capable of producing sufficient forage to support 25 animal

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unit months per year. - The bill describes how these numbers are arrived at. - At the top of page 5, section 3(a) is the technical advisory committee language which is authorized to make modifications of criteria for the local area. - Page 6 describes the technical advisory committee's role. - Section 4 sets forth that resource land shall be designated in blocks. 284 CHAIR CEASE: Blocking would only apply to options I and 2? 285 WARNER: Yes. Continues reviewing section 4, noting that it refers to lot of record and minimum lot sizes. - Section 6 deals with the submission and review of materials submitted to the Commission and the Department. - Section 7 deals with county appeals of Commission decisions. - Section 8 deals with uses of any area zoned as large-scale primary farmland, small-scale primary farmland, and secondary farmland both conditional and nonconditional. 340 - Draws committee's attention to document, "Farm Uses" and "Forest Uses" (EXHIBIT A). - Section 9 is similar, but deals with forest land. - Section 10 sets forth allowable uses for large-scale primary farm-forests/land. - Section 11 deals with dwellings, and fire issues. - Section 12 deals with what happens at the conclusion of appeals. - Section 13 contains reference to laws and rules to follow until a county complies with this Act. - Section 14 is an "add to" section.

TAPE 188, SIDE A

060 WARNER: Sections 15-20 all deal with "right to farm" and "right to forest." - Section 25 imports definitions from Chapter 197. - Section 26 deals with replacement dwellings. - Section 27 is a re-written adoption of state-wide criteria. - Section 27(a) was a house bill, and deals with horses. - Section 28-31 pertains to taxes, and Jim Scherzinger will explain that. - Section 32 deals with what is referred to as the "don Lubken decision." 113 CHAIR CEASE: Sue Hanna will explain that later. 117 WARNER: Sections 33-34 contain conforming language and repeals old sections of the law. - Section 35 speaks to reports that must be made regarding applications approved and denied. - Section 36 deals with land owners who wish marginal land designation.

140 CHAIR CEASE: Beyond Washington and Lane County? 142 GREG WOLF:
Upon request from a property owner, a county may designate land that
meets the criteria as marginal land.

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150 SEN. COHEN: Not only has secondary lands law been reworked, but
marginal lands too?

160 WARNER: Sections 37-46 replace existing law with sections 8, 9,
10 of this bill. 168 REP. BAUM: This is conforming language to fit
the changes in the bill. If a county doesn't choose any option allowed
under this bill, it must follow existing law. 190 WARNER: Section 47
deals with the modification and approval criteria for dwellings on
resource land. - Sections 48-49 is conforming language for marginal
land. - Section 50 refers to dispute resolution. - Section 51 requires
that when the decision is made, the department has to conform their
rules within 120 days. - Section 52 is conforming language for income
requirements on farm land. - Section 53-66 is conforming language. -
Section 67 adds two members to the Commission. Section 68 is related. -
Section 69 limits DLCD's ability to appeal permits. - Section 70
prohibits state agencies, bodies or commissions from appealing to LUBA,
unless they are the applicant. - Section 71 is conforming. Section 72 is
"add to" provision. - Section 73-75 pertains to the Clark Decision. -
Section 76 is urban reserve. - Section 77 refers to historic properties.
- Sections 78-120 are conforming sections. - Section 121 contains the
effective date. 334 CHAIR CEASE: We will have Sue Hanna explain the
court decisions. 342 SUE MANNA: Section 32 pertains to the case, Von
Lubken v. Hood River County. It is easy to understand from looking at
the language in section 32; prior to LCDC taking action to acknowledge,
an applicant can go forward based on a plan amendment or land use
regulation. ORS 197.610 and 197.615 require that the director be
notified before certain actions are taken on a plan, unless it doesn't
involve a goal. It gives a county discretion to not notify LCDC, if a
goal isn't involved. 368 CHAIR CEASE: What was at issue in the Von
Lubken case?

370 MANNA: I have not reviewed the case in many weeks; it involved a
golfcourse and LCDC had not completed its action. Rep. Baum is quite
familiar with the case.

360 REP BAUM: LCDC had not acknowledged the changes, but LCDC wasn't
objecting. Sometimes the acknowledgement process takes years, and hangs
projects up.

368 MANNA: This language would allow the county to go ahead; however
a court could issue a stay.

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- Section 25 is an attempt to cross reference the definitions, and
should not be controversial. - Smith v. Clackamas County deals a court

decision that required the land be unsuitable for a farming, then a dwelling could be sited. There was uncertainty whether the whole piece of property had to be unsuitable, or just the portion where the dwelling would be.

428 CHAIR CEASE: How would you define the property?

429 MANNA: That is why section 25 is included. - If a county adopts section 1-12 of the bill, under options 1 or 2, the Smith problem isn't an issue. Option 2 would take some time; the sponsors wanted to overrule the Smith decision during the pendency of that application process [section 13(201. - If a county opts for option three, the rules are "frozen" as they are now.

TAPE 187, SIDE B

035 MANNA: Explains how the statutes will probably look when printed. - Option 4, proceeding under LCDC rules, provides two options: one, to identify secondary lands, and two, (if you are one of the chosen counties) to identify the high value lands. Both options are on lines 34 and 35 on page 21. - Section 73, page 53, pertains to the "Clark Decision;" a local government's interpretation of its plans and regulations and was addressed by LUBA. This section codifies Clark, although it could be argued that it goes beyond Clark.

073 CHAIR CEASE: What did the Clark decision do?

074 GREG WOLF: The Clark decision tilted in deference to the local interpretation of their plan.

082 MANNA: Section 75 takes that same reasoning and applies it to the Commission. Those are the only cases involved to my knowledge.

089 CHAIR CEASE: An issue that needs to be examined is the relationship between the state agency and the local government. I question the state role when counties are given so much discretion.

097 MANNA: The tax statutes need to be in place for everyone, under all options (page 26), particularly the farm deferment statutes which are based on zoning. The focus of this bill was not to drastically affect the farm or forest tax statutes; there are minor effects. ORS 215.213 was adopted as a tax statute - land use planning didn't exist then. The statutes told a county what activities were allowed on farm land and still maintain a special assessment. Sections 27 and 27a are virtually identical, but one pertains to Sections 1-12 (options I and 2) and the other to those who opt for the existing process. 138

CHAIR CEASE: As the zoning is changes, and those options are available to change the zoning, the bill retains the tax exemptions for property owners?

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141 MANNA: Generally speaking, to the extent they have special assessment now, they will continue to have special assessment; that was the goal. 136 SEN COHEN: If a county grants a landowner a "marginal land" status, how does that affect their farm deferment? 152 REP. BAUM: If the land fails to meet the minimum income test, the land could

lose its exemption. 169 JIM SCHERZINGER: Reviews revenue impact statement (EXHIBIT C). - The major tax effect is in sections 28 and 28a. They are mirror sections. - - If a county opts to go with these new provisions, and creates a primary secondary land classification, there will be some people who were in an EFU zone, qualified for a farm use assessment without meeting an income test. Some of these people will no longer be in a primary zone, but a secondary zone. The way the bill is written, it's only those properties in the primary zone that automatically qualify for farm use assessment without meeting an income test. Any land in a secondary zone will have to meet the income test that covers land outside an EFU zone. - Section 28 states that, in those counties that do opt for the new provisions, if by that choice that will not force lands that had been primary to meet an income test. The assessment would continue until some part of the property is disqualified because it is no longer in farm use or if a dwelling is built on the property. You could switch part of the land into farm use if it met the income criteria. ! 233 SEN SMITH: When the land changes status, is there any recapture provision? 239 SCHERZINGER: Under current law, if you are in an EFU zone, and you become disqualified for special assessment, then you are subject to paying ten years of back taxes. Under current law, if the zoning was changed by the county from EFU zone, then the back taxes are canceled. An owner could develop the property then without paying any back taxes or qualify for special assessment via an income test. Under this bill, if the county changes the zoning so the land is classified as secondary, the land continues to have the farm assessment without an income test and those back taxes are not canceled. If later the land was disqualified, the back taxes would have to be paid. 284 SEN. SMITH: It's a market check, rather than a regulatory check, on development. An owner won't sell unless the development would pay those costs and provide a return on the land.

285 SCHERZINGER: It's a question of the circumstances. The purpose of the farm use assessment is to keep a farmer operating a farm, not necessarily land preservation. 281 SEN SMITH: Shouldn't tax law reinforces our land use goals?

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287 REP BAUM: Tax law is included in the bill to encourage people to keep the land in production. 298 MANN: "The Greening of Oregon" was written by Ed Sullivan and discusses tax policy and land use policy and where they diverge (EXHIBIT E). 330 SEN. COHEN: If an owner requests a marginal land designation, does the owner automatically drop off? 342 SCHERZINGER: There are provisions in EFU law, where you may get permission to build if the land isn't good farm land. In that case the farm use assessment is canceled and the back taxes are paid. Not sure how marginal lands are treated. - The stabling and training provisions in the bill make stables eligible for farm use assessment; some property that hasn't been eligible for this assessment will be eligible under this Act. The tax effect is not clear. Most commercial stables are already under farm use assessment. 413 REP BAUM: HB 2934 deals with this subject and clarifies that tax issue.

430 SEN. COHEN: Requests that Scherzinger find out the assessment category for the Martini Farm area.

434 SCHERZINGER: A Clackamas County assessor noted that he was only aware of one commercial operation that wasn't currently receiving farm use assessment.

450 RAY BAUM: Testifies on HB 3661 (EXHIBIT D).

TAPE 188, SIDE B

165 SEN COHEN: If counties chose different options, then farmers in the same community will be operating under different regulations. Why did you make the farm use different?

200 REP BAUM: The land use needs of Harney County are different from the needs of Washington County. It was difficult to chose one model that would fit all counties.

210 SEN. COHEN: If land is zoned EFU then it should be maintained for farm use, regardless of the county.

212 REP. BAUM: The uses are the same under any option, with the exception of the caretaker exception, which allows forest companies to have a caretaker residence. - Introduces Mike Evans, a Springfield land use consultant and Kent Howell, a Lane County land use planner.

230 MIKE EVANS: Has assisted Rep. Baum in the technical components of the bill. - The intent of the bill was to be moderate, and if anything, leans in the direction of land preservation. Secondary lands have been dealt with since 1983.

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- The problem with finding a solution to the problem of secondary lands is that it didn't accurately identify the perception of the people of secondary resource lands. - The bill contains major components of these past activities, such as marginal lands legislation, recent administrative rules, LCDC pilot program, and current law. - The system couldn't be corrected simply; it required a comprehensive analysis of Goals 3 and 4. Prime land was inadequately protected in most instances, and less productive lands was overly protected and resulted in owner hardships. This jeopardized the land use system and created animosity from those hurt by the system. - The solution was a correct identification of secondary lands. Secondary lands are resource lands, but are lands that impacted by existing uses, dwellings, parcelization, and so forth, to the extent that they do not have the same value for commercial forest or farm production. - If a bill allows more dwellings in rural areas, then there has to be a method to protect the primary resource lands and limit the dwelling placement in some way. In this bill, secondary lands must maintain a division standard of 20 acres on the West side, 40 acres on the East side, to maintain the size of the parcel so they can continue to produce agricultural and forest products. - Persons who are going to construct dwellings sign a covenant, recognizing that they are locating in a farm or forest zone and agree not to object to activities that normally take place in those zones. - It does maintain the tax incentive program and contains siting standards for safety.

360 SEN COHEN: Is there reference in the bill to development along

transportation corridors? 362 EVANS: That is inherent in the mapping process, and is not specified in the bill. The state criteria begin on page 3, section 3.

405 REP. BAUM: This would occur in the blocking process, section 4, pages 6-7. 417 EVANS: Although dwellings will be allowed they are farm or forest related dwellings and they have criteria they must meet. - The bill provides additional protection of primary source land; no more creation of smaller non-farm, nonforest land parcels; it requires a large minimum parcel size.

442 KINTIGH: What land does that apply to? 445 EVANS: There's a specific parcel size required within the secondary lands category - 20 acres on the West side, 40 acres on the East side. In the primary category, the minimum parcel size is the same as the threshold that was used to designate it as farm or forest land. Gives example.

TAPE 189, SIDE A

037 EVANS: An important point to note is that the remaining goals remain intact. Goals 5, 11, 12 are unaffected. 047 KENT HOWELL: We have tested Lane, Benton, Douglas, Jackson, Clackamas, Coos, and

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Union Counties (refers to maps) under the bill criteria, as to what category land would be classified. Because of blocking and parcelization, the transportation corridor is followed. - Farm land in Lane County shows a similar pattern - the land that is falling out of secondary lands are the smaller parcelized areas, many of which already have a dwelling and are along existing transportation corridors. - We are not introducing secondary lands in the prime areas.

097 CHAIR CEASE: It would be helpful to be able to compare the situations as created by HB 3661 and the Commission rules that are scheduled to be adopted in August. 119 BAUM: Included in your packet (EXHIBIT D) is a list of questions that need to be asked of anyone who claims to have mapped land under the rules. 131 HOWE: In Union County, we did test predominantly farm, forest, and rangeland areas. This bill does not change rangeland criteria. Lands that are falling out as secondary lands are limited to smaller parcels, most with dwellings on them, adjacent to exception areas. - Details Benton County and Clackamas County in same way; a similar pattern emerges. - Lane County land, under this bill, is accurately represented. 196 REP BAUM: We are available for questions. 203 SEN SMITH: As planners, are the income numbers the right numbers? There seems to be interest on the Senate side to mesh the bill with LCDC proposed rules. This would be done through the income amount. What if those income amounts were changed? 219 HOWE: The numbers are important, but if you take those indices by themselves they are not defensible. In relation to the 160 acre blocking test, the land use patterns that result distinguish between the prime and secondary lands. The numbers can be adjusted. 255 SEN SMITH: Are these rules less complicated than the LCDC rules? 262 HOWE: Much less complicated; it is important to have clear and objective standards. Existing rules have a great deal of subjectivity built into them. 282 SEN KINTIGH: I know this area and the maps

reflects the land accurately. 290 SEN COHEN: Explain the blocking process; how will we avoid a house sited on a large rural prime tract?

302 HOWE: Cites example. A parcel that qualifies as secondary land must have adjacent to it a 160 acres of similarly qualifying secondary land, so it stays prime. For a large-scale designation the test remains the same as existing LCDC rule.

334 SEN. COHEN: What kind of criteria does lot of record need to avoid siting houses in the middle n the middle Senate Agriculture and Natural Resources June 16, 1993 8:00 AM Pap 10

of prime resource land?

337 REP BAUM: This could be done by soil type or by requiring farm and forest enhancements. Secondary land rules have so many subjective criteria they don't accomplish the task.

363 SEN COHEN: My focus will be on what the criteria is for a limited lot of record.

393 CHAIR CEASE adjourns the meeting at 8:30 p.m.

Submitted by: Reviewed by:

Janet McComb Peter Green Assistant Administrator

EXHIBIT LOG:

A - bill analysis, HB 3661, staff, 14 pas. B - testimony, HB 3661, Dorothy Anderson, 2 pas. C - revenue impact statement, HB 3661, staff, 1 pg. D - testimony, HB 3661, Rep. Baum, 18 pas. E - article, HB 3661, Sue Hanna, 14 pas.

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