

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 15, 1993 TAPES: 233 - 235 PLACE: Hearing Room E
TIME: 5:00 PM

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

GUEST MEMBERS: Representative Marilyn Dell

STAFF PRESENT: Chris Warner, Administrator Kus Soumie, Assistant

MEASURES HEARD: HB 3661 WRK

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 233, SIDE A

005 CHAIR CEASE: Calls meeting to order. (5:27 P.M.)

WORK SESSION ON HB 3661 WITNESSES: Dick Benner, Department of
Land Conservation and Development, (DLCD) Larry
Latchau, USDA Soil Conservation Service Rep Marilyn Dell, House District
29 Kevin Birch, Department of Forestry

005 CHAIR CEASE: Gives overview of present and future agenda for HB
366 1, (EXHIBIT A). - Gives overview of EXHIBIT A (section by section
review of proposed

amendments (-A50).

119 CHRIS WARNER, COMMITTEE ADMINISTRATOR: Presents overview of
proposed amendments to HB 3661 (-A50), see EXHIBIT A.

145 DICK BENNER, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT,
(DLCD): The frustration is that nobody really has data to tell how many
lots or parcels were created by what date; consequently, besides
getting

frustrated, they begin looking for a date which is chosen for the equity
effect it might have. - Describes reasoning for different dates.

195 SEN SMITH: What would be the disadvantage of 1993? CHAIR CEASE:
One question is how do we deal with the valley and how we

deal with an area like Eastern Oregon. - Whatever date we choose,
what would be the time frame for the

Department in determining what specific lots would be available in the
program?

BENNER: The effect of the bill is that, on it's effective date, someone
can walk up to the counter and say they want a lot of record dwelling

approval and the county could apply the law and tell the person if they were eligible or not right there.

CHAIR CEASE: What then becomes important is the restriction in statute?

BENNER: It can be immediately effective, but then you don't want to impose planning requirements that make that impossible. - If you are choosing the date to have an effect on the number that will qualify, you won't find the data to guide you.

257 SEN SMITH: Make it as current as you want; if you want to restrict people beyond that, do it with another mechanism, not the date; I don't like the sense that after 1985 someone is a land speculator. - I don't want to deal with it that way; it sends a policy statement that I am uncomfortable with.

CHAIR CEASE: Is it possible to have a different date for different reasons?

BENNER: Certainly; you would have to have a rationale.

282 CHAIR CEASE: It is clear that the prime, major agricultural base in the state is in the valley; in that sense, it is up to the state to preserve agriculture lands in the valley; the problem is different in the Eastern portion of the state.

BENNER: There is some data available to guide you about where some of these geographic areas are, much better than when a lot was created and who owns it.

316 SEN. SHOEMAKER: Is it really that difficult to track a land title?

BENNER: On a case by case basis, it is not that difficult.

CHAIR CEASE: The issue is that if you don't have that information up front, you won't know the implication on the land.

343 WARNER: Continues overview of Exhibit A (description of lot of record portion of proposed amendments HB 3661A -50).

364 CHAIR CEASE: Is there anything dealing with a particular area that has a lot of houses on prime farm land, with a lot or parcel in the center that hasn't been developed; what uses would be permitted?

BENNER: As I understand the bill, if it is still zoned EFU, and it qualified as high value farm land, it would be eligible for a farm dwelling or a hardship dwelling, but not for a lot of record.

399 WARNER: Describes sub section six, see Exhibit A.

410 BENNER: Overview of big game habitat components, see Exhibit A.
- Subsection seven tries to ensure that if the land is eligible for a lot of record dwelling, it is consistent with the policies in the acknowledged plan.

434 SEN. KINTIGH: Would the elk overlays I hear about in Eastern Oregon be an example, where this would preclude building on?

BENNER: Yes, it would be big game habitat, but it wouldn't necessarily preclude building on it. - Counties will often establish an overall density of development based on advice from Fish and Wildlife.

459 CHAIR CEASE: Clearly here we are dealing with the county's comprehensive plan.

BENNER: This isn't intended to eliminate those areas, it treats them as any other residents that would go into a big game habitat.

479 WARNER: Describes subsection eight, see Exhibit A.

TAPE 234, SIDE A

038 SEN. BUNN: This language wouldn't do anything to prevent a boundary change later would it?

BENNER: I don't believe so; it sounds like you are describing a lot line adjustment.

046 WARNER: Section three defines high value farm land; describes amendments, see Exhibit A.

055 SEN BUNN: Why do we need both a and b; why not say classed by 1 or 2?

BENNER: Around the state the mapping of soil depends on the irrigation of soil and thus water rights.

073 WARNER: Describes subsection two.

SEN SMITH: I feel that subsection two and three are unnecessarily broad.

WARNER: On page five, line twenty three to twenty six, crops is defined.

BENNER: The application of this would mean that the crop land in the state wouldn't be eligible for lot of record, but the land in EFU zones, that aren't cropland, would be eligible.

121 WARNER: Continues to describe section three.

BENNER: (In response to Sen. Bunn) No one can tell you where the soil mapping units are in an EFU zone. - Class 3 and 4 soils make up 43 percent of soils in the Willamete Valley.

WARNER: Describes subsection five, then section four.

223 SEN BUNN: It doesn't appear that the definition of tract takes into account public roads; it would seem reasonable to say "except for

division by public road".

BENNER: This definition of tract isn't effected by public roads.

246 WARNER: Continues, see Exhibit A.

SEN. COHEN: Would sub three be termed as "tightening"?

BENNER: For tracts that don't qualify under (1) and those not eligible under (3) wouldn't have the opportunity for dwellings.

275 WARNER: Describes section five; there are conditions on single family dwellings. - Describes section six.

SEN. BUNN: Do we specifically not want to include pasture and rangeland?

BENNER: That would be the effect.

350 SEN SMITH: I would like to see that included in the bill.

370 WARNER: Describes section seven, (minimum lot sizes).

SEN. BUNN: How many counties now have the eighty acre minimums in EFU zones?

BENNER: I'd have to look into that; on the Eastern side of the mountain minimum lot sizes tend to be 160 - 320 and on the West side they tend to be smaller, 20, 40, 80 and a couple of 160.

SEN BUNN: Under sub two, the counties that had a 20 or 40 would have to start over to adopt minimum lot sizes?

403 BENNER: The rules concluded that those counties who did acknowledge minimum lot sizes would be able to hold onto those; those that didn't

would have to go through the exercise of determining what the minimum lot size should be. - The criteria for a dwelling approval is different from those that

regulate the creation of new parcels.

470 SEN. SMITH: I think at a minimum we should grandfather in some of these.

SEN. BUNN: If you can argue that 40 acres is a viable farming operation, why set a minimum of 80 acres?

BENNER: Because the process of approving a lot and the process of approving a dwelling aren't associated with one another.

TAPE 233, SIDE B

BENNER: Subsection two is intended to help; gives example in Hood River County.

062 WARNER: Overview of Section eight through twenty seven.

CHAIR CEASE: What does this do to counties that already have the marginal lands approach?

BENNER: The effect would be to repeal those provisions of the act; those two counties would no longer apply the provisions in the EFU statute to uses and land divisions.

087 WARNER: Continues with section twenty eight.

105 BENNER: If there is something in our rules that is inconsistent with the bill, those rules would have no effect; the department and

commission say the minimum lot size must comply with Goal 3 language or you have to go through the process of justifying it; we would revise the rules on the timing.

124 WARNER: Section twenty nine; describes.

BENNER: Offers maps for members to look at to assist in comprehension of proposed amendments.

138 CHAIR CEASE: Gives meeting times and corrections.

BENNER: Shows and explains to committee members map of MPA (multi purpose agriculture) zones; describes maps.

SEN. COHEN: We have no maps of Eastern Oregon?

BENNER: It is difficult for those counties to produce this kind of map.

275 REP. MARILYN DELL, HOUSE DISTRICT 29: Presents written testimony on HB 3661A -50; summarizes testimony, EXHIBIT B. - The lot of record is so narrowly drawn in the (-50) amendments,

few owners will qualify.

330 CHAIR CEASE: We can let the commission rules go into effect or take action to prevent it; I would say that there is still room for loosening what is in the (-50) amendments.

REP. DELL: The stocking requirements in the (-50) amendments could require stocking on large parcels of very poor forest land and that would be counter productive. - You need to make a distinction in the combining of lots as far as

building on them. - There is no distinction of does "crop" mean all of the parcel or

part of it? - A possible limitation is being within a 1000 feet of roads; you

could end up with some silly distinctions unless you give that

additional work. - Under no new divisions, keep in mind it doesn't mean the high

value land, but everything zoned EFU, there will be no division

for non-farm dwellings.

458 LARRY LATCHUA, USDA SOIL CONSERVATION SERVICE: Gives background.

SEN. KINTIGH: How accurate are these maps when you deal with large tracts?

LATCHUA: Soils do vary significantly over short distances, but in the scale we mapped for the Willamette Valley we can usually map out contrasting soils down to about five acres.

TAPE 234 SIDE B

035 LATCHUA: You could have a small tract that is different than this map because of limitations. - Gives overview of soil and farmland categories.

084 CHAIR CEASE: We aren't talking about a lot of land within the Urban Growth Boundary, (UGB), within the Valley are we?

BENNER: Some think that the UGB takes up too much land, but they don't take up that much of the Valley; a larger portion of those soils are in forest zones than in UGB's. - There is one map I can show you that shows where various soil

mapping units fall.

SEN BUNN: Questions on types of soils.

BENNER: Describes different types of soil and land.

167 SEN. BUNN: If the maps are wrong and the owner can show that, it doesn't matter because we are declaring that this is what we will use?

CHAIR CEASE: We will need to have a mechanism to deal with that kind of thing.

BENNER: There is probably some doubt, in subsection five, as to if there is that kind of opportunity.

181 SEN KINTIGH: Are we talking about acreage or soil type?

BENNER: Acreage, the area.

188 CHAIR CEASE: It will be more difficult to determine what would be available under lot of record.

BENNER: There is a greater percentage of land zoned EFU in the Valley which would be high value farm land than in other parts of the state.

237 SEN. BUNN: In Eastern Oregon the parcels that are buildable could be in pasture or rangeland and it seems like we might be concentrating the

availability further away from the roads.

BENNER: You see fewer parcels and lots out there, but I think you would see the same pattern of proximity to roads. SEN. BUNN: Would requiring the homes to go on pasture or rangeland,

rather than cropland, put them further away from services?

BENNER: Yes, to some extent, but it isn't a uniform pattern.

261 CHAIR CEASE: In reference to the lands that could be used for lot of record around here, what is the relationship to the Smith case or

reversal of the Smith case, as it represents only Eastern Oregon?

BENNER: The effect of this bill would be to allow a lot of record dwelling on an existing piece of ground, assuming it was eligible; those might be some of the same lots and parcels that, but for the Smith case, would have been eligible for a non-farm dwelling.

CHAIR CEASE: We would want to reverse the Smith case?

BENNER: You can't rely upon the lot of record dwelling because it wouldn't get to the creation of new parcels for non-farm dwellings. - Our rules are aimed at identifying those lands which aren't making a significant contribution to commercial agriculture; they authorized the creation of new twenty acre tracts on those lands. -

A lot of land in Eastern Oregon would qualify under those rules.

CHAIR CEASE: Why is there so much objection to those rules?

BENNER: Today Linn County came in with their tests and the County Planner said he was surprised that the rules worked as well as they did.

346 CHAIR CEASE: Lot of record is trying to get at the problems of those who already have lots, but in the other case the approach is totally

different?

BENNER: It is very different; the difference is that with our rules someone has to go out and apply a test and identify those lands in a planning exercise and then they need to be reviewed by the agency and the commission where as this, to the extent that you are precise in the bill, is effective upon adoption and someone can walk up to the counter and find out if they are eligible or not. - It would save the counties a great deal of money.

384 CHAIR CEASE: How much will this really cost over time?

BENNER: The cost of implementation of HB 3661 in Lane County would be 1/4 million dollars. - Depending in the system in use the cost would vary from county to county. - We thought the cost would range from three to six million dollars.

433 CHAIR CEASE: I think that either we go with some kind of lot of record or leave it with the rules; those rules won't do much for those who

already have lots of record, will they?

BENNER: It would if they fall within or qualify small scale resource land.

CHAIR CEASE: Those rules would release more land than people realize, but not in a way that will remove the frustration and tension of those with lot of record now.

BENNER: It is fair to say that those folks who think they should be able to build should be able to; if either formulation doesn't reach them they will still be unhappy.

478 SEN. BUNN: Why do we need to specify irrigated or non-irrigated on class one and two?

LATCHUA: In Eastern Oregon there are many class four soils mainly because they are in a low rain fall area and without irrigation they aren't productive. - If you add water, they are highly productive.

TAPE 235 SIDE A

044 LATCHUA: For soils in our data base we will show an irrigated and a non-irrigated capability and also we will indicate if it is prime when

irrigated or not.

SEN. BUNN: The record doesn't show the water right, so how do you know?

BENNER: You can't get the answer from the soil survey alone.

SEN. BUNN: Is irrigated "ever irrigated" or "capable of irrigation"?

BENNER: Irrigated; there is a reference to aerial photographs.

SEN SHOEMAKER: If the land were irrigated, it would rise to the higher status?

BENNER: Clarification of process for classification of soil. - Discussion of Sub B (soil classification).

106 LATCHUA: An example is that much of the land in Eastern Oregon is on wheat fallow; without irrigation quite a bit is class four, but if

irrigated, could be class two.

SEN. SMITH: It needs to be flexible enough to recognize that a lot of those irrigated acres that make class two soil will, in all probability, lose water soon. - Discussion on classification and reclassification of soils in

relation to water rights now and in the future.

147 KEVIN BIRCH, RESOURCE PLANNING SECTION, DEPARTMENT OF FORESTRY: Looking at this bill, you can't separate the lot of record problem from the

necessary and accessory problem. - You had a question about timber cruise and we would change that to

stocking survey, in section 5(a). - The fire standards here are generally excellent; most of these

standards are currently in Goal 4.

180 BENNER: "D" on lines 27 - 30 is also not in our rules, on page 4.

SEN. KINTIGH: "I", line 12, page 5; what would be your understanding of the primary and secondary fuel breaks?

BIRCH: We've worked out advice for the counties; it has to do with slope factors and the kinds of fuel out there. - We start with about thirty feet of protected area around the house. - The second area is an additional area cleared of fuels in the down slope direction.

SEN KINTIGH: Line 11, page 4; this simply says the board shall establish these.

BIRCH: Under the Forest Practices Act most everything is conifers, except alder, unless you have a written plan.

245 BIRCH: Describes the necessary and accessory standard.

SEN. COHEN: Do you think the draft, as you see it here, would help that?

BIRCH: We are looking at trying to find those lands most conflicted and those where the values are more toward rural values; this loosens that up, trying to get more lands into that category. - This also probably strengthens what the necessary and accessory standard would be, although I could argue that 320 acres is close to what the commission meant.

325 SEN. COHEN: We've heard that under the current circumstances you are driving people out to the 300 plus plots of land and allowing necessary and accessory, which are often in the middle of the large commercial tracts then if you would loosen up the 20 acres a bit.

BIRCH: I don't think this exasperates that; the 3000 and the 5000 are designed to pull in the smaller parcels; this is an attempt to loosen up on that lower end. - In my opinion the 320 acre standard is an attempt to keep the larger parcels managed by someone who really has a timber interest.

379 CHAIR CEASE: We are adjourned. (7:50 P.M.)

Transcribed by, Reviewed by,

Kimberly Burt Peter Green Assistant Administrator

EXHIBIT LOG:

A - HB 3661: Proposed (-50) amendments and informative material
submitted by staff, pp 34 B - HB 3661: Written testimony submitted by
Rep. Dell, pp 3