SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

DATE: July 26, 1993

TAPES: 258 - 263 PLACE: Hearing Room C

TIME: 7:30 AM

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

STAFF PRESENT: Peter Green, Administrator Chris Warner, Research Associate Pamella Andersen, Clerk Kus Sumie, Clerk

MEASURES HEARD: HB 3661, Work Session HB 2214, Work Session HB 3101, Work Session HB 2934, Work Session

[--- Unable To Translate Graphic ---] 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 258, SIDE A

005 CHAIR CEASE calls the meeting to order at 7:52 a.m., announces that members will be leaving for caucus and session, that the committee will reconvene in the afternoon, and opens the work session on HB 3661.

WORK SESSION ON HB 3661

SEN. BUNN explains that the HB 3661-A71 amendments dated 7/24/93 (EXHIBIT A) reflect the areas the committee worked on but did not necessarily reach a consensus on. On page 3, lines 7, 8 and 9 are trying to come up with a method for Class III and IV soils that were listed to allow a lot of record. If the lot were under 21 acres (and there are a lot of blanks), that is the general framework we would use. On page 5 is the issue of 160/320 on the acreage west and east. We have listed 200 acres instead of 160 acres. The 200 was not agreed to. The question of a length of a drive from a county and state road is listed as 1,500 feet. I think that was a consensus in the group--east and west

030 CHAIR CEASE: We had a work group meeting on Friday afternoon and the figures we are talking about are not figures that have been agreed to yet by this committee, but there was, in some cases, consensus in the work group.

035 SEN. BUNN: On the Smith case, the work group did not resolve the question of one percent, but Jackson County was placed with eastern Oregon for purposes of definitions and categories.

039 SEN. KINTIGH: What about Jefferson and Deschutes Counties?

039 SEN. BUNN: Deschutes, Jefferson and Crook stay with eastern Oregon, but the question of one percent growth needs to be dealt with. The work group rolled the three categories to two so western Oregon was

clear, but we have separated them back out so that in eastern Oregon we leave the "generally unsuitable" rather than Class IV through VIII.

047 CHAIR CEASE: There are a number of questions to resolve but we have to have the bill on the floor by Thursday.

053 CHRIS WARNER, Administrator: The -A79 amendments (EXHIBIT B) include some of the county stuff not yet in the bill.

054 CHAIR CEASE: And we need to review a couple of items on the 10,000 figure for the marginal lands issue.

056 CHAIR CEASE declares the meeting in recess at 7:55 a.m. until 3:00 p.m.

059 CHAIR CEASE calls the meeting back to order at 3:22 p.m., outlines the time lines for the committee meetings and work load, and opens a work session on HB 2214.

(Tape 258, Side A) WORK SESSION ON HB 2214

078 PETER GREEN, Administrator, calls members' attention to the HB 2214-A12 amendments (EXHIBIT C).

079 CHAIR CEASE, explains that HB 2214 is the air quality bill for the Portland metropolitan area, and that there were two issues at the last meeting.

088 MOTION: SEN. BUNN moves that the HB 2214-A12 amendments (EXHIBIT C) BE ADOPTED.

090 VOTE: CHAIR CEASE, hearing no objection to the motion, declares the motion PASSED.

095 FRED HANSEN: I think the -A12 amendments pick up both the conceptual amendments on the boundaries as well as the language on the study which is the new Section 6. Lines 1 through 16 (of the HB 2214-A12 amendments) merely pick up the language on the boundary, going back to existing law and referencing, as Sen. Bunn suggested, the authorities for boundary establishment under 2(a) and 2(b) of the existing law. Section 6 is the language that would direct the department to be able to do a study to identify alternatives for the collection of new vehicle fees or taxes established by the Legislative Assembly or by local government. Effectively, the study will be limited to alternatives that relate to motor vehicle fees to motor vehicle emissions. The idea is to have back before the 1995 session information about how insofar as pollution is various levels for different automobiles--is there a way to be able to tie it more directly to the amount of pollution that is created by a vehicle.

131 MOTION: SEN. BUNN moves that the HB 2214-A12 amendments BE ADOPTED.

131 VOTE: CHAIR CEASE, hearing no objection to the motion, declares the motion PASSED.

132 MOTION: SEN. BUNN moves that HB 2214 A-Eng., as amended, be sent to the Floor with a DO PASS recommendation.

134 VOTE: In a roll call vote, SENS. BUNN, COHEN, KINTIGH,

SMITH and CHAIR CEASE vote AYE.

142 CHAIR CEASE advises the committee that HB 2214 does have a referral to Ways and Means and that is not needed at this point because it is in the budget for the department.

145 MOTION: CHAIR CEASE moves that the committee request the removal of the referral of HB 2212 A-Eng, as amended, to the Ways and Means Committee.

147 MOTION: CHAIR CEASE, hearing no objection to the motion, declares the motion PASSED.

150 CHAIR CEASE closes the work session on HB 2214 and opens the work session on HB 3101 (Tape 258, Side A) WORK SESSION ON HB 3101

159 MR. WARNER explains that HB 3101 would establish a pilot program to allow conservation and enhancement of wildlife habitats pilot project in Marion and Polk counties. The bill would allow the citing of a single family residential dwelling in conjunction with this conservation and management plan. On page 2, in line 6, the proposed amendment would delete "is capable" and in line 7, delete "of qualifying and the approval". There was some concern about the "capable of qualifying". With the amendment it would state it must qualify for a farm or non-farm dwelling before a dwelling would be approved.

180 CHAIR CEASE: Then that would remove the objections to the bill.

183 MR. WARNER: After talking to Rep. Dell, it was clearly the intent that she felt in the House it must qualify for a farm or non-farm dwelling.

185 SEN. BUNN: Is it the intent that this would have to go through the process to receive approval, or that you would have to qualify but not actually have gone through the paperwork for a farm dwelling?

188 MR. WARNER: I believe this would mean you would have to qualify.

196 GREG WOLF: I believe it would need to qualify. We would need to go through that process to qualify for a farm dwelling prior to approval. I believe the issue is if you would qualify for the farm dwelling in lieu of doing the farm operation you could manage the property for wildlife habitat.

210 SEN. BUNN: Is there a requirement that there is follow through once the dwelling is built?

210 MR. WOLF: I believe there would not be a requirement to follow through.

208 SEN. GOLD joins the meeting.

240 CHAIR CEASE: I know there are objections to this bill. Out of courtesy to the sponsor I said we would look at it, but I don't want to put it out if it is going to come unraveled.

243 MR. WARNER: The bill does have a subsequent referral to Revenue.

249 SEN. BUNN: We may as well send it out and let the sponsor talk to Revenue.

254 CHAIR CEASE advises the committee to hold the bill and closes the work session on HB 3101.

256 CHAIR CEASE opens the work session on HB 2934.

(Tape 258, Side A) WORK SESSION ON HB 2934

260 MR. WARNER explains that Legislative Council is correcting the unbolding of existing statutory language and bolding of language being added in HB 2934 A-Eng., explains that the HB 2934-A3 amendments (EXHIBIT D) were received by the committee at the last meeting from Sens. Yih and Bunn.

290 SEN. COHEN expresses concerns about the basic bill: - "martini farms" - concern about association of this exemption with exemption for $500,000 to $1.5 million homes as a part of the whole operation - the rest of the taxpayers have to pay that much more for the schools.

310 CHAIR CEASE: This is an outright use provision in the EFU zone.

323 RON EBER, Department of Land Conservation and Development: This adds to the definition of farm use that you can get your farm deferral for this kind of operation. The only other thing suggested in the discussions was someway of defining "stable" or "training" to make clear that it was a bone fide stable operation and as a way to exclude some of the exhibition and events which has been a concern. The Horse Council didn't use those words.

346 SEN. COHEN: Even though the specific words are not in the bill today, it does it mean that I don't have a very legitimate reason to have that argument with my assessor?

354 MR. EBER: It is up to the assessor to determine if it is a bona fide farm operation. I am not sure the language changes that. There is language in the bill that allows the board and training of horses. It became confusing at the county planners level as well the assessors.

387 MR. WARNER: The board and training of horses is now allowed as a conditional use. This would take them out of the conditional use. I think the question arose whether some counties were interpreting it differently.

396 CHAIR CEASE: We have the proposed amendment from Sen. Yih and Sen. Bunn.

407 SEN. MAE YIH testifies in support of the HB 2934-A3 amendments (EXHIBIT D) which requires that straw be considered an agricultural product and that the storage of the agricultural product is for farm use. - notes the existing situation and how this amendment would help - leasees of the land own the straw and should be considered as owner of the agricultural products - in (K) of the -A3 amendment, after "land" add "in an EFU"

460 CHAIR CEASE: We will move on and bring this back later because it is important that the committee move on to the land use bill.

080 CHAIR CEASE: Are you familiar with the straw amendment?

081 MR. WOLF responds that he is not but acknowledges he will review

it.

488 CHAIR CEASE closes the work session on HB 2934.

TAPE 259, SIDE A

033 CHAIR CEASE opens the work session on HB 3661.

WORK SESSION ON HB 3661

CHAIR CEASE: The committee has a document that says HB 3661 with a number of items on it (EXHIBIT Q). Rep. Dell also asks for technical amendments. The committee will look at everything. The committee will begin with HB 3661-A71 dated 7/24/93 (EXHIBIT A). There are a section or two that need to be deleted because of action taken by the committee last Thursday and an addition that was left in. We will look at sections 46, 49 and 53. These are on the right to develop and we had agreed not to include these in this bill. We will just scratch them from the document.

071 MR. WARNER: Those are listed at the end of the list (EXHIBIT Q).

076 CHAIR CEASE: What is the issue on page 1, line 19?

065 SEN. BUNN: After "devise" add "or intestate". Rep. Dell suggested we need this language so that if someone doesn't have a will, it can still be covered. I don't understand the issue; I didn't go to law school.

091 CHAIR CEASE: Sue, is that an issue?

091 SUE HANNA, Legislative Counsel: What this would be saying is if someone inherited the property, they could qualify for a lot of record. If it was written in a will that, for instance, Senator Bunn gets this property, however, if a family member died without a will and he received the property through intestate succession, a procedure set up in the statute, that gave it to him he wouldn't notice any difference in the property except it probably would have taken him a little longer to get it, this would cover that instance where he received it through intestate succession. It is a logical change.

100 CHAIR CEASE: It would read, "By devise.." what is the language?

101 MS. HANNA: I think I will probably write "intestate succession", but I will look up the words and see exactly what they should be.

103 CHAIR CEASE: Is there any objection to adding this conceptually and having Sue get the appropriate language? Does everyone understand what the issue is?

194 ?COMMITTEE MEMBER?: It is the same whether you are given the lot through intestate succession or you acquire the lot?

106 MS. HANNA: By devise

106 SEN. BUNN: It is the same whether you have a will or don't have a will and you inherit it.

107 CHAIR CEASE: Anne, it is a question of whether it is in the will. You would be entitled even if it isn't in the will, is that right, Sue?

108 MS. HANNA: Yes.

108 ANNE SQUIER, Governor Robert's Natural Resource Advisor: I would raise the question whether that section is needed at all. It was originally inserted when the word "owner" had not been defined and what was desired was to pick up the people who might inherit within the family upon the death of the original owner. We now have everything down through grandchildren--I think it is a very, very broad definition of owner to include all conceivable family relationships. I don't feel strongly that it does any harm there; I think it superfluous. But if you add "intestate" I would hope that we would be very careful to confine that so it still is limited to some kind of family relationship and doesn't then pass to totally unrelated corporations or whatever else it might in an intestate situation. That would be my concern--that one is getting away from the concept here.

126 SEN. BUNN: I think we are less likely to see it go out of the family through this than through a will. I think it is improving the language and we don't need to delete it.

128 SEN. SMITH: I don't believe under intestate succession any corporation would get it any way. It goes through "consanguinity."

131 CHAIR CEASE: Is there any objection to accepting it and having Sue find the appropriate? Then we will accept that. Let's move on to the next item.

134 SEN. BUNN: Do you want to deal with just the amendments or questions?

134 SEN. COHEN: Are we on the first page?

CHAIR CEASE: We are on the first page.

134 MOTION: SEN. COHEN moves that the HB 3661-A68 amendments (EXHIBIT E) BE ADOPTED.

136 SEN. COHEN: The -A68 amendments are the preamble.

142 SEN. BUNN: I have amendments from the -A45 on. Do we have the first 44?

142 MS. HANNA: The first 45 amendments were made in the House and when it was engrossed into the A version, those amendments were taken care of. The Senate started at -A46. We number as the bill goes through regardless of which chamber it is in.

150 SEN. COHEN: It declares why we are doing lot of record because we are going to allow residential development for owners who have less productive resource land and we are going to protect the more productive resource lands.

154 CHAIR CEASE: Let me read it so everybody understands it. Does everyone have it? Okay. By doing the -A68, do all the other pieces still fit, Sue?

158 MS. HANNA: I believe so. This was prepared when we didn't have so many sections to the bill. I am not certain if this was meant to be a preamble in which case it would go before the whole bill, or if it is

meant to be a policy statement, in which case I would just put it in as a section.

165 CHAIR CEASE: Do you have a preference, Sen. Cohen?

165 SEN. COHEN: I think it does help us understand why we are going about--a policy statement is fine with me, rather than a preamble. I think it is important to understand why we are going into the lot of record and show people who are going to be not able to build on a lot of record that there is some rationale why we chose to say to them you can't build your house even though we are allowing other people to build on lots of records. There will be some in the valley on those higher class soils who are not going to be able to have a lot of record and I think this helps them understand why.

176 RICHARD BENNER, Department of Land Conservation and Development: It reads as a policy statement and ordinarily would go at the front.

178 CHAIR CEASE: I agree with that. Are there any objections to the motion?

181 SEN. BUNN: I am just stating a little concern. We still haven't resolved a major question of how we are going to deal with Class III and IV listed soils. If we consider those the high value and are excluding them, I don't agree with the policy. If we include them and consider them less productive resource land, I don't have a problem with it. I'm not objecting. I hope we get there.

189 CHAIR CEASE: Let's accept this and if later you think there is a need to revisit it, we can come back and do that.

192 VOTE: CHAIR CEASE, hearing no objection to the motion, declares the motion PASSED.

193 MR. WARNER: On page 2 of the -A71 amendments, in line 26 the question arose whether or not the word "extraordinary", which was in one draft, (should be inserted after "to"). It would read, "by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting.."

203 CHAIR CEASE: This is in reference to the kinds of issues that could be taken to the hearings officer. One work group has proposed to take that out, has it not?

207 MR. WARNER: I brought this to the committee to clarify that.

210 SEN. COHEN: Do we have all our committee members here today?

210 CHAIR CEASE: Sen. Gold should be here and Sen. Shoemaker has gone to Portland and should be here anytime.

214 CHAIR CEASE: Sue, if we were to take the sentence out about "extraordinary circumstances", give us a sense of what the difference would mean.

221 MS. HANNA: I am not sure it would make a difference because the test is due to circumstances inherent in the land or its physical setting. Different people could look at it in different ways. That is how this situation came up. One person had put in "extraordinary circumstances" and another said it was surplus language. A hearing

officer might find that the circumstance had to be a little more special with the word "extraordinary" in there. It has been in all the previous drafts. I thought it was supposed to be taken out and then there was a question of whether it was supposed to be in or out.

232 CHAIR CEASE: If you took this out, give me a sense of what you think the hearings officer would likely if he didn't have this kind of condition in there.

234 MS. HANNA: As a hearings officer I would be looking to the test whether the condition was inherent in the land or its physical setting and I don't think I would put too much reliance on the presence or absence of the word "extraordinary."

237 CHAIR CEASE: But you would put a heavy reliance on whether you had this section or not, would you not?

239 MS. HANNA: I would need this section to operate. The one word is not that crucial when your test is really whether those circumstances are inherent in the land.

242 MR. BENNER: I think the first time it was written it had the term "extraordinary" in there because it was using a typical variance ordinance in a city or county land use ordinance dealing with variances. It is either "extraordinary" or "extraordinary and unique" or "unique circumstances" that cities and counties write into their variance codes. That is why it was in there. I think there was talk of taking it out when it appeared that maybe it would be applied much more broadly than it is now in this draft because it would be used for Class III and IV soils, too, rather than just the I and II prime and unique. If you are asking what kind of difference it makes, you can probably figure that out for yourself. Put yourself in the shoes of a hearings officer and insert the term or delete it and it tells you what kinds of circumstances you are looking at. If you are looking for circumstances that are really unusual, or are they just ordinary circumstances but not generally applicable in the area.

265 CHAIR CEASE: Anne, do you want to add to that?

265 MS. SQUIER: As I had understood this section where it is not being used as a way of getting at Sen. Bunn's concern for the Class III and IV area, this was to be a very narrow circumstance, truly extraordinary and unique that would nonetheless allow a process to identify an example that was given to me something like a parcel that was described in the Corvallis area where the road had been relocated and cut off a three-acre triangle between the railroad and the road, no farm equipment could ever be brought in practically to farm it--it truly is something that could not be practically farmed in conjunction with other land or by itself. I think "extraordinary and unique" help solidify the fact that the last clause here do not apply generally to other land in the vicinity, is not just saying it is not the predominant circumstance of the land, it is truly the extraordinary and unique circumstance. On the other hand, I do support having some such relief valve in here because there are some parcels that are like that.

288 CHAIR CEASE: What is the wish of the committee?

289 SEN. COHEN: I would put it back in. We are going to have an exemption process.

292 MOTION: SEN. COHEN moves that on page 2 of the -A71 amendments, in line 26, after "to" insert "extraordinary".

294 VOTE: CHAIR CEASE, hearing no objection to the motion, declares the motion PASSED.

294 CHAIR CEASE: Let's move onto the next item on page 3.

296 MR. WARNER: On page 3, lines 8 through 10, is a biggie.

300 SEN. BUNN: I think we need to skip this one. We have a number of maps on the wall upstairs that I think we need to be able to look at when we talk about this. Do we have any language, Dick, to deal with the 75 percent.

305 MR. BENNER: I wrote some language like that last night and gave it to Sue. It doesn't appear in this draft, but there is language around that talks about a parameter test. That was the basis of my review of the maps in the caucus room.

311 CHAIR CEASE: We will come back to that when we have the maps and the language.

315 CHAIR CEASE: On page 4, line 27, is the issue of feet.

318 MR. WARNER: The question arose last time about the distance from a public road. We added the language "1,500 feet of a public road, excluding United States Forest Service and Bureau of Land Management roads." It would be 1,500 feet on both the west and east side as far as the access to the parcel.

325 CHAIR CEASE: The work group went over this and this is what they are proposing. As you recall, when we met last week we had a motion that accepted the 1,500 feet on the west side and left open the issue on the east side. The working group is now proposing that we accept the 1,500 feet for both east and west. That is correct, is it not?

333 MR. WARNER: That is correct.

333 CHAIR CEASE: Do we have any objections to that?

334 SEN. KINTIGH: I do. I think it needs to be more. There are bigger parcels over there and they reach back. Even the second parcel often times won't be there. I made up a sketch of how a section is subdivided in a public lands survey (EXHIBIT F). Maybe it will help people get the picture.

345 CHAIR CEASE: Are you talking largely about the east side, Sen. Kintigh?

SEN. KINTIGH: Yes. This shows how a section a mile square is divided into 40 acre blocks. Quite often the roads will run along the line. If a person's property is back, the two 40's, they would be out. It looks more logical if you allow a person who had someone in front of him with a quarter section to be able to have it. I suggest 3,000.

362 CHAIR CEASE: We will come back to that.

362 SEN. SMITH: He just said what I would say.

368 SEN. BUNN: I made the same agruement Sen. Kintigh did, but believed we were going to reach the point where we were not making ground and we needed to move on. At least with the 1,500 feet we did put it past the 40 acre parcel which took care of the worst concern. We still did not allow passage of 80 acres. I think at the time I said I didn't have a major problem with it but Sen. Kintigh would have to argue the issue because I was not extremely familiar with it. That is where we left it.

379 CHAIR CEASE: As we put this in the document, the bill, the tract is within 1,500 feet so that is the beginning of the tract, is it not?

386 SEN. KINTIGH: Yes.

387 SEN. BUNN: Yes, so basically we are talking about how long an easement you can have past one other property, assuming you have one property sandwiched between the public road and the tract in question for authorizing building. The other thing we did change was the original language which was a county or state road; it was the limit. We allowed any public road except specifically Forest Service roads and the Bureau of Land Management roads. So we do provide more flexibility with that in setting the 1,500--both east and west.

401 SEN. COHEN: Does that mean anybody's private road? I am sure it does. I really think I am opposed to your changing that because it means short of a federal forest road you can consider any other private road and I guess I am unwilling to go that far.

413 CHAIR CEASE: I remember we had a discussion, and maybe Anne can help us, about the meaning of the term "public road".

418 SEN. COHEN: A public road is anything anybody can drive on.

420 CHAIR CEASE: Is that correct, Dick?

421 MR. BENNER: A public road simply excludes private road.

424 SEN. COHEN: There is a larger definition of a public road than what we are talking about here.

426 MR. BENNER: A public road does not mean county maintained. It could be county-owned, but not maintained.

430 CHAIR CEASE: We have two issues: one is the definition and the second is feet.

432 SEN. SHOEMAKER: Under Section 3(2), the 320 acre or 200 acre exception, if you don't qualify under (1), you may qualify under (2) if you have a holding that is 320 or 200 acres. There is no requirement in that subsection of any road. I guess the question is whether there should be. But if it is the decision of the committee that there should not be, it seems to me that provides some relief from the 1,500 foot requirement because there is another category for fairly large holdings where no road is required.

TAPE 258, SIDE B

019 SEN. BUNN: I think the concern in (1) and (2) are very different. Subsection (1) is dealing with the very small, noncommercial operations and making sure they are not too far away from the road and (2) is

dealing with the large operators that have the major part of their time involved in the operation. There is not as much need to keep them near the roads as somebody with 20 acres might, for example.

025 MS. SQUIER: I think there are perhaps three issues. The distance--I believe at the end of your last Thursday work session, or on one of those days, there was general consensus that there ought to be a limitation that it was some how an all-weather surfaced road or something of that sort to give some concept that it had to be maintained to a level that would allow emergency vehicle passage, rather than just any road that a public person might go over.

032 CHAIR CEASE: You are absolutely right. That is what we said. We didn't have the language for it. But clearly, I think this term "public road" doesn't quite get at it, does it?

033 MS. SQUIER: No, it does not, Mr. Chair.

035 CHAIR CEASE: Sue, do you want to come up. We are talking about the term "public road."

037 SEN. BUNN: While she is looking for that-- I don't think we had any disagreement on the all-weather surface. We are talking about a dirt road or something you can only get through part of the year, but basically, if it is limited to a state highway or county road, the length needs to be longer in certain circumstances and it is kind of a tradeoff to say public road with a broader definition, but in less length. We can get it so closely defined that it is a real problem to get past any small parcel. 045 CHAIR CEASE: Sue, do you want to grumble on this definition issue?

044 MS. HANNA: When you are looking at the definition of roads, some of them are defined in the statutes. A county road means a public road under the jurisdiction of the county that has been designated as a county road under the statutes. "Public road" means a road over which the public has a right of use that is a matter of public record. So "public road" is much broader than county road or the state highway.

053 SEN. KINTIGH: Would it, or would it not include a private road that the owner makes open to anybody? Does that make it a public road?

056 MS. HANNA: I think you would have a problem with "a road over which the public has right of use that is a matter of public record."

058 SEN. KINTIGH: It would be deeded or was given as an easement?

058 MS. HANNA: I think there might be a number of ways over which could be a matter of public record, but I think an utterance would not be sufficient.

061 CHAIR CEASE: We didn't raise the issue last time about this. I think Sen. Cohen talked about it being an all-weather road. That would seem to exclude a minor gravel road which someone has into a piece of property. What kind of language can we use to get at that issue?

066 MS. HANNA: What kind of road do you want access to?

066 CHAIR CEASE: We want something that is going to all-weather, is open all the time and is available for everybody to use.

068 MS. HANNA: You could use "public road" but modify it as maintained in all weather. I am not sure how a county would use that as a test when someone comes in for a dwelling. I don't know how a county would determine it is an all-weather road. It is not a terms used in the statutes. I don't know how you determine if it is all-weather.

075 MR. BENNER: I think if you ask somebody in the county road department what "all-weather" meant they would say it is either paved or it is rocked. Perhaps you would just say that.

080 SEN. COHEN: I think there needs to be some language that goes back to either the condition of the road or you have to go back to "county" or "paved road." 082 SEN. BUNN: I suggest we go with the "paved or rocked and maintained."

083 CHAIR CEASE: Is that agreeable with everyone?

084 SEN. SMITH: I would amend that to say that in eastern Oregon to consider 2,000 feet.

085 CHAIR CEASE: Let me come back to the 2,000 feet.

086 MS. SQUIER: I just want clarity: "paved or rocked and maintained public road." Is that the intent?

087 CHAIR CEASE: I think that will do it. Is that agreeable? "paved or rocked and maintained public road." Sen. Smith is suggesting 2,000 feet for eastern Oregon?

090 SEN. SMITH: Yes.

091 CHAIR CEASE: Do you want to comment on that figure?

093 SEN. SMITH: I would only say I know this was an issue that the Chair in the House expressed repeatedly serious concern with--that there wasn't some distinction. One thousand feet for him was a big problem. I think by this definition plus 2,000 feet you have a salable deal. That may even generate a conference discussion on the issue.

098 SEN. BUNN: I wouldn't oppose Sen. Smith's motion, although I do think it is unfortunate that we can't at least get to the 26/40 so you get past an 80-acre parcel, but 2,000 decreases the problem in eastern Oregon where you do have larger parcels. We do need to remember the size of these parcels that we are creating is based on soil types. In eastern Oregon you will have larger parcel lots of record than in eastern Oregon typically.

106 SEN. SMITH: I am just trying to move it on and find some middle grounds and compromises.

108 MS. SQUIER: May I remind that before the work group session last week there had been some checking with a couple of the counties on the east side. In one case the observation was that the road patterns were such that it really wouldn't matter one way or the other. In the other case there was the affirmative statement that they would like to see a limit that would tie things to the road and 1,500 sounded fine and they just wanted to be able to avoid the circumstance of parcels that were going to be problems for emergency services, fire and things of that sort coming in under the lot of record. That was the basis for determining that 1,500 was a reasonable distance on the east side. I

have to say that discussion occurred before I had read the Dodd case that came out, I think on Friday from the Supreme Court (EXHIBIT G). I must say based on that, if anything, what I would feel is that if anything one would tighten the distance on the west side.

124 CHAIR CEASE: I think you need to explain what you are talking about in reference to the case and the significance of your comment that you ought to tighten instead of doing the reverse.

128 MS. SQUIER: I think perhaps someone from the department is better equipped to describe the case in detail. It is a case in which Hood River County had denied a forest dwelling to some persons who had purchased property, a 40-acre piece, in 1983. They challenged that denial based on a number of points. One was whether it, in fact, was necessary to have a dwelling on the parcel and then some constitutional challenges. The Oregon Supreme Court on Friday found that the county was well supported in its denial and did not have any problem with the constitutional questions, finding there was not some kind of expectation for a dwelling that there was any requirement to meet. But I believe either Mr. Benner or someone else from the department can give you a real sketch of the case if you would like.

142 SEN. BUNN: I think it is important to remember that Section 5 very adequately deals with at least the fire concern by requiring fire retardant roof, I think we've got a sprinkler system, we've got controls on the slopes, water on site and a number of other things. I think we have really taken care of that and it is not a major factor in deciding for eastern Oregon how long the drive way is.

149 CHAIR CEASE: Kevin Birch, would you come on up. We had this argument last time. It obviously has become a big issue. Last time we did agree on the 1,500 for western. I think the issue now is eastern and I think the question is whether the figure should be different for eastern than western. Do you have anything you want to add to this discussion?

155 KEVIN BIRCH, Oregon Department of Forestry: Technically, I don't think I have a lot to add. I did talk with a couple of planners on the east side to try to get myself a comfort level for what this would do. I specifically called Union County. They felt it was a fairly good idea to have some type of road standard involved. They thought it pulled back from areas and they were specifically concerned about emergency services and snow removal and those kinds of things and opening up areas that they didn't feel were serviceable. They thought they have used their road standard in the past to do the same sort of thing, but I could not pin him down on what he felt was a reasonable number, whether it was 1,000, 2,000, 3,000 or whatever. So all I can do is really tell you that the 1,500 feet allows you to jump over the top of a 40-acre parcel and include the parcel that is behind it, or an 80-acre parcel that is laid on its side. But it would not allow you to jump over the top of an 80-acre parcel. It is about 1,320 feet, is that correct, on the side of a 40?

176 CHAIR CEASE: We have a motion. Is there an objection to the motion? If not, we will accept the 2,000 for eastern oregon. We will accept the motion. Let's go on to the next item.

182 MR. WARNER: The next item is on page 5, line 8. The question was the size of the tract.

184 CHAIR CEASE: This is the tract for the forest timber land. You may recall the original -50 had 320 acres in eastern Oregon.

190 MR. WARNER: In the previous version it was 320 and in western Oregon it was 160.

192 CHAIR CEASE: We left it that way and the work groups argued it a bit and I think there was some concern that the 160 acres in western Oregon was too small. You may also recall that we, on Sen. Bunn's suggestion, provided for putting together different parcels to make an aggregate. From our previous motion, which was 160, we have now have in this document 200. Let me ask if any of the work group wants to talk about this. I would think Sen. Kintigh's views would be useful here and also Mr. Birch's. Let's have Mr. Birch come up so we can resolve this issue. The issue of eastern Oregon is not a question, but I think the western is.

206 SEN. BUNN: I think Rep. Baum argued there should be 160 east and west. I disagree with that, but I think there are some from eastern Oregon who feel that 160 is reasonable for both. I know there was some discussion in the working group about raising west and dropping east so they would match. I don't agree with that, nor do I agree with the 200 acres we came up with. I think we reached a good level before and once we have a discussion about it, we can find it is again the level we want to keep.

214 CHAIR CEASE: Sen. Kintigh, you spoke last time about this in reference to western Oregon in terms of what the impact would be on the ground. Let me ask you to respond to that again, and we may ask Kevin Birch to respond to it because I think we clearly need to get this resolved.

218 SEN. KINTIGH: I am not sure just what you were referring to.

220 CHAIR CEASE: We had the motion last time to make western Oregon at 160 acres. You had indicated what you thought was the situation in terms of people getting a home in acres, whether there was an opportunity, whether 160 was too much or what have you, and there seemed to be a sense on your part that 160 was probably as far as we should go. There was, I think, a suggestion in the work group that we put it at 240.

227 SEN. COHEN: We are now talking about aggregates, or single parcels?

230 CHAIR CEASE: We are talking about both in reference to western Oregon at this point, Sen. Cohen. There is no reason they couldn't be separate. They could be different figures if that is the wish of the committee.

233 SEN. KINTIGH: I think the first thing I want to point out is that tracts larger than 160 acres are not real common outside industrial, large ownerships. So it is not going to involve a lot of different tracts and it would be hard to acquire these. I would like to see this kept at a level that some younger families can have a chance, as some of us older people had, to acquire and build a tree farm. Many of the tree farmers I know started out with small tracts and added to. I know that was my case. So it gives people a chance to start out on a part-time basis. Last week we were talking about the part-time and Mr. Birch

seemed to look down on part-time farmers. I would like to point out that the current Oregon tree farmer of the year has won the western title. He is the top tree farmer in the western United States. He worked full time as a state policeman and worked and lived on his tree farm and was able to improve the land because he lived there and because he had a full time job. I would hate to see this kind of thing outlawed, so to speak. I think 160 acres would be max and I still come back to having some way for people to show their need and show the necessity of doing it so they can carry out their plans.

270 CHAIR CEASE: You might take a look at (3), line 9, on page 5.

272 MR. WARNER: Those are the dwellings Sen. Kintigh was referring to. It would preclude what is the test now for necessary and accessory dwelling.

276 KEVIN BIRCH: We don't look down on part-time tree farmers, nor do we think a dwelling necessarily improves the condition of the land. What we see in practice is that there are some small tree farmers that are doing an excellent job. But if we look at the whole, on average, as we put dwellings into the forest we change the value structure that is out there. And over time we see an erosion of what we think is stocked land. When we get greater than eight dwellings per section, we have gotten to the point where we have about half the land stocked with trees. That doesn't say the other half isn't being managed, but generally speaking we see real reduction associated with dwellings. There is also nothing stopping a landowner from managing the land without a dwelling. Until you get to the point where you have really large amounts of equipment, say you have Cat, several saws, sprayers, the kinds of things that go along with a real forest operation if you are doing your own harvesting, for example. Generally those people tend to be larger. They need a place for their equipment. They have an awful lot of time that they are spending on the parcel. If you look at an average 80-acre parcel situation, harvesting aside if you are not harvesting and over the course of the rotation, you are probably spending about an hour a day managing that 80-acre parcel. Or you can manage it intensively in an average of about an hour a day. That is not the kind of situation we think really warrants a dwelling. We are trying to come in with something we feel makes sense for an ownership of when does it get large enough that we think the addition of a dwelling is really a positive and will not change the character toward being a small independent unit that lacks cash flow and certain other things that we think are essential.

316 SEN. BUNN: You said with the 8 plus you had a problem with stocking, but if I recall right from your earlier testimony, for 0-4 you did not face a problem with impact of homes?

322 MR. BIRCH: When we have 0-4 dwellings per section, we can't statistically tell you there is a difference in the way it is being managed. The only thing I can tell you is when it gets greater than eight, it acts differently from that 0-4 category.

327 SEN. BUNN: At least on the 0-4 at one per 160-acre tract you are within the 0-4 range that you have not statistically identified a difference in.

330 MR. BIRCH: Correct. At build out, if you start with a raw section of land and divided it into 160-acre tracts that would be four. The other possibility is that you have some existing land use pattern

that is different from that. Maybe I have four dwellings in the section on 40's now and then I impose the 160, you might be past that four dwellings per section threshold. To give you some idea of how much land is involved, I really can't. 340 SEN. BUNN: At least on that one quarter section you are at a rate that has not been identified as a problem. That deals with one part of the bill. The other is the aggregate. There you could have a 60-acre and a 60-acre and something else. Do you see a reasonable approach on that to set a higher threshold on the aggregate and create a necessary and accessory that can be used as another filler?

349 MR. BIRCH: I cannot give you any kind of statistical underpinnings for doing something like that or for justifying, say, if you had an ownership of 320 acres versus an ownership of 160 acres, would that in fact be a better situation to add a dwelling in? Or, would we change their value structure in a given area by adding more dwellings? The only rule of thumb I can give you is generally speaking at about 160 acres you are about half time and at 320 acres you are full time. Whether you want to create one or two standards, is a policy decision.

366 SEN. BUNN: I am hearing from small woodland owners that their average is 100 acres. Whether it is or isn't, some are saying if we very intensively manage a high quality 80 or 100 or 120 acre operation, we ought to be able to use the necessary and accessory argument to show our plan and allow a home on that operation. Is that a valid claim?

374 MR. BIRCH: In the work we have done, I don't think that is large enough amount of hours involved when you are talking about 80 to 100 acres to need a dwelling where I would feel comfortable that it is necessary and accessory. Or into the situation where I would feel comfortable we are not going to impact the future use of the parcel by putting a dwelling on it.

385 SEN. BUNN: Even if it is Site Class I or II at 120 acres?

386 MR. BIRCH: Even if it is Site Class I or II at 120 acres I still think you can manage it in an average of a couple of hours a day.

399 SEN. KINTIGH: I think a couple of things are being overlooked here. While Mr. Birch may be able to make an argument there isn't enough work there to keep a person busy all the time. The fact you are there makes it easier to do the work. You have the matter of security for your equipment, your property and by just being there you will do more things than if you are not. As someone best put it, the best fertilizer for the land is the eye of the owner.

419 SEN. SHOEMAKER: Is there some way to get at this through the density perspective? Like putting a dwelling on an acreage of less than whatever we agree on? The number of houses within a square mile? If there were more than six, the dwelling would not be allowed? Would that be a standard we could apply? Then if you have holdings of different sizes, as opposed to a single tract, you just take a look at how many dwellings are within a half mile of that dwelling. Draw a circle around it and if it comes in at less than six or eight or whatever, you say okay and if it is more, you say you are too late.

440 CHAIR CEASE: Does anybody want to comment on that?

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016 MR. BIRCH: That is one policy option for you to consider. It takes into consideration the density of the dwellings. The only thing I would point out is you are creating a situation where it is first come-first serve as soon as you get into the policy of drawing a dividing line and cutting those things off at a certain point in time.

022 SEN. SHOEMAKER: What I am thinking about is if it was a single contiguous tract, you wouldn't have to apply that test, but if you are getting into holdings where you might be putting your house on a 20 that is part of holding of 160 or 200, then it might become relevant to take a look at what is going on out there. If there are already dwellings that would impact the protection you are concerned about, say--. I guess the first come-first served doesn't bother me.

030 SEN. BUNN: That would seem like a reasonable approach in light of the 0-4 having no statistical impact and over eight having identified impact. Because, again, I would argue that with a 160 acre block you have really prevented that impact, but if you have 40 acres plus three other 40's, it would be a different situation and it is reasonable to acknowledge that and protect them a little bit more.

036 CHAIR CEASE: Kevin, you are saying that whether you are talking about an aggregate or you are talking about one tract, you don't think making a distinction between acreage in those two categories has any bearing. Is that correct?

040 MR. BIRCH: The statistical information I can give you is based on density and that is what Sen. Shoemaker (inaudible). The explanation that I can give you for that is that we have changed the value structure of the area and we have changed the value structure on the parcel itself. In my opinion, and it is strictly opinion, if you went with a standard of 160 acres or 200 acres, or whatever number you pick, if it was an aggregate and it stayed together as an aggregate, you would be more likely to have a value structure associated with producing timber rather than a value structure associated with residential opportunities. Which is the change I believe we are making when go to that higher threshold.

052 SEN. BUNN: I am certainly not a timber expert, but I don't think you have a whole bunch of people going out buying 160 acres for a residence. I think, not being involved in timber, you can still see that somebody with 160 acres of timber that is going to live on it is interested in the timber industry. Somebody who wants to live out there is going to be looking at 20 acres, not the 160 acres. I think whether it is 160 or 200 acres, you are not changing it from residential. All you are doing is making it more difficult for the legitimate person involved in timber, even if it is part-time because they are getting into it to do that. We are not creating something where they are going to be chopped up for 160-acre homesites.

063 CHAIR CEASE: I remind you that last time we adopted a motion that put it at 320 for eastern Oregon and 160 for western Oregon and we made no distinction between one lot, one tract, or an aggregate. Does the committee wish to change those, or do you want to go ahead with those, or what do you want to do?

070 SEN. KINTIGH: Let's go with those.

070 CHAIR CEASE: Go with what we have already done?

070 SEN. KINTIGH: Yes, 160 and 320.

071 CHAIR CEASE: Anyone else on this?

072 SEN. KINTIGH: I feel that is a compromise.

075 SEN. COHEN: I would like an opportunity to vote no on that. You have 200 here before us. I would say the 160 should be a single piece rather than an aggregate.

078 CHAIR CEASE: Sen. Kintigh, would you be willing to accept 160 as a single piece and 200 as an aggregate?

081 SEN. KINTIGH: Let's go for it to keep it on the table.

082 SEN. BUNN: I don't have any sense from other members of the committee yet on what they feel about the necessary and accessory, but if that is one piece of it then I don't think there is nearly as much problem as going to 200. I think someone needs the option to argue if they have 120 acres that is type I timber land--that at least they have the opportunity to argue that under necessary and accessory. Then I think bumping up to 200 on the aggregate is not a problem at all.

089 CHAIR CEASE: So we have to deal with two issues then?

089 SEN. BUNN: If it is a major problem, I need to know it, but I haven't heard any committee members express a major concern with that.

091 MOTION: CHAIR CEASE moves to reconsider the motion we took last time which adopted 160 acres for western Oregon, and that the committee accept the figure of 160 if it is a single..

096 SEN. BUNN: On line 8, the figure would be 160 and on lines 19 and 21 it would be 200.

097 CHAIR CEASE: Does anyone have any objection to that change?

098 SEN. SHOEMAKER: I would like to see whether there is sentiment in the committee to apply a density standard to the holding.

102 CHAIR CEASE: Let me ask Kevin. How would you do that?

103 SEN. SHOEMAKER: When you apply for a building permit, you just take a look at what is out there.

104 MR. BIRCH: There are a couple of different ways that I could imagine doing that. One would be centering a 640 acre template on top of the subject parcel. The other one would be to say the section that the parcel fell in was above some threshold. I can imagine doing either system.

110 SEN. SHOEMAKER: Would there be a problem centering a template on it, a 640-acre template? Then you wouldn't have the problem of being near a section line and distorting things.

113 MR. BIRCH: They currently do that with a 160-acre parcel to find non-forest dwellings. I assume that is a finding the county could make. It would be a little harder for the individual landowner to know with

certainty whether or not they had a dwelling opportunity. 118 SEN. SHOEMAKER: I guess you could just go into the planning department and check it out.

118 SEN. BUNN: I don't have a problem with that if we drop that back to 160 and have the necessary and accessory. The more restrictions you put on, the more alternatives you need. Again, necessary and accessory is a critical part to fill the gaps we are creating.

123 SEN. SHOEMAKER: Necessary and accessory would cause you to get over the safe density. Maybe if you went down to six you might be able to have necessary and accessory and have a safe margin there.

127 MS. SQUIER: Leaving aside the question of the size, the discussion in this bill has been predicated on the combination of finding a size above which we would presume a forest dwelling was qualified and identifying the appropriate lot of record opportunities, and not applying a necessary and accessory test because of the number of ambiguities that has inherent in it and the problems of applying it. This is the first time I have heard discussion of reinserting that. For me, that would change the entire picture and I think it would detract greatly from the stated goal of this committee and that is to find a system that is simpler, that can be applied objectively, quickly and without a lot of opportunity for argument.

141 SEN. BUNN: Then, with that approach, I think it is important that we not have a template, we not have extra hoops to go through, that we simply say if 160 acres is the target for an operation that recognizes, you recognize it whether it is four parcels or one parcel, and if you don't have the other options, at least make the one very clear and objective.

147 CHAIR CEASE: We did have put on the table this issue of 160 in one spot and 200 in the other. Where are we on that?

147 SEN. BUNN: I would object to that if we are not going to pursue necessary and accessory.

151 MOTION: SEN. SHOEMAKER moves 160 in western Oregon provided that the density within a half mile measured in any direction from the proposed dwelling be not more than eight.

158 CHAIR CEASE: Let me put that out. I think Senator Bunn is correct that the more complicated we make it, the more difficult it is.

160 SEN. SHOEMAKER: I think there is still an objective test that can be applied at the planning department level. They just have to apply a template on it. It either passes or it doesn't. I don't think it requires any judgement.

163 CHAIR CEASE: Would you place the motion again, Sen. Shoemaker?

163 MOTION: SEN. SHOEMAKER moves that for western Oregon, we set the acreage at 160 in terms of holdings but require that the density that would result from the proposed dwelling would not be greater than eight with one-half mile measured around the proposed dwelling--one-half mile in any direction.

170 MR. BIRCH: I am trying mentally to find out how many acres are in a half-mile radius circle. It is about 3,000 acres.

174 SEN. BUNN: If a square mile is 640, a circle is smaller than that. So you can't have over 640.

179 MR. BIRCH: A square mile and a radius going one mile is a far different thing. I would suggest if you want to use that approach, use a square of 640 acres.

184 SEN. SHOEMAKER: That is fine.

184 CHAIR CEASE: Where are we on this, Sen. Shoemaker?

185 SEN. SHOEMAKER: I will go with the square.

187 MOTION: SEN. SHOEMAKER moves that in western Oregon we allow 160's, and that with the dwelling applied for, there not be more than eight within a template of a section centered on that dwelling.

194 CHAIR CEASE: Is there objection to the motion?

195 SENS. KINTIGH AND BUNN object.

197 SEN. KINTIGH: Probably most of the time it will not hurt too much. But say, for instance, if on the road near the person's property years ago somebody had put in a row of houses. You could pick up eight pretty easily. I don't see this happening a lot of times, but when it is hard and fast and no exceptions--

204 SEN. SHOEMAKER: That raises a question. Are we going to have an exception process that would be out beyond all these mechanical rules so that if you fall outside the mechanical rules you can still apply for an exception and if you can make a showing in a hearing that you are not disrupting the values we are trying to protect, it could be allowed.

209 SEN. BUNN: That is the necessary and accessory.

210 CHAIR CEASE: That is what we are getting rid of. There are objections, let's have a vote on the motion.

212 MOTION: In a roll call vote, SENS. COHEN, SHOEMAKER, and GOLD vote AYE. SENS. SMITH, BUNN, KINTIGH and CEASE vote NO.

222 CHAIR CEASE declares the motion FAILED.

229 SEN. BUNN: Assuming we have the 160/160, I will make the motion that we substitute on lines through 11 the necessary and accessory dwelling.

234 MR. WARNER: By deleting (3), necessary and accessory would remain on the books. Is that right?

335 SEN. BUNN: I believe so. Sue, does that sound right?

236 CHAIR CEASE: We were trying to get away from that in terms of simplicity. What would that put us back to?

238 SEN. BUNN: I think that says that anyone who is operating with less than 160 acres western or 320 eastern for a forest dwelling has the ability to go in and present their forest management plan and argue on those circumstances they should be allowed a forest dwelling. I think

that is the way it works.

246 CHAIR CEASE: So you are using the 160 in both lines 8 and 19?

247 SEN. BUNN: Yes.

248 CHAIR CEASE: Is there objection to the amendment?

249 SENS. COHEN AND SHOEMAKER object.

VOTE: In a roll call vote, SENS. SMITH, BUNN, KINTIGH, vote AYE. SENS. SHOEMAKER, COHEN, CEASE vote NO. SEN. GOLD is EXCUSED.

258 CHAIR CEASE declares the motion FAILED.

266 SEN. BUNN: We are back at the 160 western and 320 eastern.

268 CHAIR CEASE: Not quite. I had moved for reconsideration and as I recall there was no objection to that so we are back to zero.

269 MOTION: SEN. BUNN moves that we adopt the 160 western Oregon in lines 8, 19 and 21. Both the single tract and the aggregate would be set at 160.

276 CHAIR CEASE: You wouldn't make a distinction between the aggregate and single tract.

277 SEN. BUNN: No. I am basing that on the value we are setting as what is acceptable as the threshold for a forestry operation.

280 CHAIR CEASE: Is there any comment on that?

281 MS. SQUIER: The discussion last Friday was of 200 for the single tract holding and 240 for the aggregate for the reason, among other things, that the argument against the larger figure, such as 320 or 240 is there are very few of those available particularly in western Oregon for a person to acquire. When you remove that and you are allowing a person to pick noncontiguous parcels in a two-county area, I believe it is very well justified to try to chose an acreage that is closer to the full-time acreage because you are after all saying that the individual then can locate a dwelling on one of those parcels to manage the others. Frankly, I think the 160 is a very low amount even for the unified parcel, but certainly when you are going to the aggregation where you may pick up 40 and 80 and another 80, I think a higher figure is well justified and I would urge the committee to consider the 240 figure that I believe was the figure the work group had come up with on Friday, although, certainly not all agreed to it.

310 MOTION: SEN. BUNN moves 160 for a single tract and 200 for aggregates, assuming we will work those over in conference committee.

315 CHAIR CEASE: You withdrew the previous amendment and at this point it is to have 160 on a single tract and 200 on an aggregate. Is there any objection to that? 319 SEN. SHOEMAKER objects.

320 SEN. KINTIGH: Anyone who can afford 200 acres or more is probably not going to be interested in going out there and tree farm.

335 VOTE: In a roll call vote, SENS. KINTIGH, SMITH, BUNN, COHEN and CHAIR CEASE vote AYE. SEN. SHOEMAKER votes NO. SEN. GOLD is

EXCUSED.

343 CHAIR CEASE declares the motion PASSED.

345 CHAIR CEASE: We will move on to the next item.

345 MR. WARNER: Sue would like to make an additional comment on (b) of Section 5 wording. There is some question as to whether or not that gets us where we wanted to go.

352 MS. HANNA: The language on page 5, lines 19 through 23, was put together to get the idea across. I hadn't quite finished it. I am concerned that the kind of recording we require on deeds needs more work. I am afraid I am not going to be able to get all of that work done. I will have to have it done by midnight tonight if I am going to have it typed and ready for you tomorrow. I suggest, and I have discussed this with a couple of members, on line 20, after "proof of" it needs to be a non-revocable deed restriction. I have a few more language changes, but the basic thing I would like to do is put another paragraph in that reads, "The Land Conservation and Development Commission shall adopt rules that provide for a standard format to carry out paragraph (b) of this subsection." We don't know exactly what we are going to need to create these deed restrictions. This is a new area we are venturing into and I would rather take the time to work on it with the AG's office through rule writing. As long as the idea is there, this seems to be what you want to do. We are talking about the format for carrying this out.

379 CHAIR CEASE: Does anyone have any objection to that?

380 SEN. KINTIGH: No objection. Just a question of Sue. Where a person is buying the land on a land sales contract, for the purpose of this, would it be the same as a deed?

385 MS. HANNA: As long as that was recorded in the county records it would be. It would probably be quite unwise to buy it on a land sales contract without recording it. 393 MS. SQUIER: In the work group there were two concepts that (b) was trying to get at. One was that there would be non-revocable deed restrictions properly recorded in order to preclude future building rights on the other pieces. But the other concept was that those other pieces also not be available to be sold and used again for an aggregation for another dwelling somewhere else.

401 CHAIR CEASE: That was the understanding of the committee, was it not?

403 MS. HANNA: That is the extra language I am fussing with here.

405 CHAIR CEASE: So you are going to work on the language under (b) and add a third subsection to provide for the commission by rule to adopt the format?

407 MS. HANNA: Yes.

408 CHAIR CEASE: Let's move on to page 15, line 20.

413 MR. WARNER: This deals a lot with the repeal of the marginal lands provisions for all but the two counties. There was a concern brought up earlier today about repealing of the marginal lands

provisions and we excluded counties from adopting the lot of record if they chose to keep the marginal lands--Washington and Lane Counties. The question came up, could they adopt a lot of record for forest purposes since marginal lands deal only with exclusive farm use. That is a question the committee needs to look at in the bill.

427 CHAIR CEASE: Let me ask Brent to come up. The figure of $10,000 was brought up and moving that to $20,000. We were going to check that out. It turns out that both counties that have marginal lands are agreeable to that. Is there any objection to moving the 410,000 to $20,000? If no, we will accept that.

437 MOTION: CHAIR CEASE moves that the $10,000 be increased to $20,000.

442 CHAIR CEASE: Brent, do you want to comment on this issue? We had earlier accepted a motion or agreed that those two counties that currently have marginal lands could stay there, move on to the lot of record or they could go back. But the point is it does not include timberlands. Is that right?

TAPE 260 SIDE A

020 BRENT CURTIS, Planning Manager, Washington County: Currently ORS 215.213 and 215.283 talk about exclusive farm use provisions. To my knowledge, this is the first time that you include forest provisions under the statute. Originally when we in Washington County talk about and testify too you about marginal lands it is the ability to keep marginal lands under ORS 197.247 and then link that to ORS 215.213. Marginal lands previously has not been associated with forest lands. In Washington County, you can't designate forest lands marginal. However, under this legislation, you are now for the first time providing for so much more rigorous rules in state statute for how you deal with forest lands. I want to be clear that we will now have to come under those rules and we don't want that to be a circular and thus because we have to comply with your law, take us out of marginal lands. I think the discussion previously was on the farm side we would either have to take either a lot of record or stay the way we are. On the forest side we now would have to comply with whatever law you establish and is implemented by the department.

036 SEN. COHEN: How would it affect you to bifurcate this issue and allow you to be lot of record in forest lands that do not apply to marginal lands, or do you believe you still want to go through the necessary and accessory issues in Washington County? I am sure that is going on there--necessary and accessory, right?

042 MR. CURTIS: As I testified previously, under the existing rules which are necessary and accessory rules, we issue no forest-related dwellings and we don't issue nonforest-related dwellings either. On the forest side we have a stability there. No dwellings are being created and no parcels are being created. It is on the farm side that we seek the clarity and wish to have the option to maintain the program.

049 SEN. COHEN: So you feel leaving marginal lands current status on both issues. Do we need to make it clear that this also applies to forestry. For marginal lands, counties are totally out of this bill.

053 CHAIR CEASE: But they don't use marginal lands for timber. Isn't that what you are saying?

054 MR. CURTIS: That is right.

054 SEN. COHEN: I am proposing that we extend that and say they have the status quo all around. 056 MS. HANNA: That is the way it is drafted. Brent brought the concern to me that he did not want that. He wanted, if the option should come up that they should want to site a forest lot of record dwelling, that wouldn't then preclude them from ever using the marginal lands again. So I do have some language if you choose to go in that direction. But he did want the option of using the forest land lot of record.

062 CHAIR CEASE: Are you saying if you use the forest land lot of record you would not be doing marginal?

063 MR. CURTIS: That would be my proposal. The reason I propose that is on page 34, (2) of Section 29 says that we have to site dwellings only under the provisions of this law. This law would now provide the regulatory authority for forest lands contrary to what we have now.

069 CHAIR CEASE: So you want the opportunity for lot of record in either category?

070 MR. CURTIS: We wish to preserve the status quo on the farm side. On the forest side, this will be new regulatory authority. It will control that and we will be required to come under this section of the law. The cauldron is if we do, under the previous section we lose our ability to stay marginal. We simply want to break those two.

076 SEN. COHEN: We can also fix it so you don't come under the forest side of this act, too. I gather from you that you want to have it both ways on this one, a little bit.

080 MR. CURTIS: If I am giving that impression, it is one I am falsely signaling. I want to be clear that by complying with whatever rules you set on the forest side that I don't take myself away from the policy decision which you have already provided me. That is to stay within the marginal land category. Right now I fall under the forest goal, Goal 4, and the rules. It is my understanding this legislation will supersede that.

086 SEN. COHEN: We could say this legislation will supersede that except for Washington and Lane County who happen to be under the marginal lands statutes and we will also let them stay under the goal category they are now operating under. We could fix it either way. I am just trying to figure out which way we ought to fixing it.

091 CHAIR CEASE: Am I right in understanding you, you want to make to sure whatever we do here on the timber side that it doesn't impact marginal lands on the agricultural side.

093 SEN. COHEN: That is not a question. I am trying to get to the bigger issue for me which is do you want to maintain the status quo operating the forest lands as you have been, and if you do we can also allow that to continue and not have this bill as it applies to the lot of record in forest land apply to counties that are operating marginal lands in other circumstances.

100 MR. CURTIS: I think the board would suggest that I provide for as many opportunities for the county to analyze as possible. That would be

to provide for the new lot of record provision. I simply was trying to at minimum hold the existing line that didn't take us out of the marginal land category.

105 CHAIR CEASE: There is no objection from our committee to allow them to do that, is there?

105 There were no objections.

105 CHAIR CEASE: We will go with that. That is the understanding. Sue, have you gotten the understanding that we have agreed there is no problem in doing what they want to do?

108 MS. HANNA:

107 CHAIR CEASE: Okay.

108 SEN. COHEN: I haven't understood what they want to do. They want to have their cake and eat it, too.

112 CHAIR CEASE: They don't want to lose their marginal status because they have to do something on the timber side.

113 SEN. COHEN: My question is, do we want to make them do something on the timber side? They haven't decided yet what they want to do on the timber side.

115 CHAIR CEASE: My understanding is they are going ahead with the statute on the timber side, but they want to be sure it doesn't jeopardize their marginal side. Isn't that right?

116 MR. CURTIS: Yes.

117 CHAIR CEASE: So we understand they will be able to do that. Is there anything else we need to do on the marginal side?

120 SEN. BUNN: Not on the marginal, but in the same area on page 15, on line 20, after the word "mining" inserting "crushing or stockpiling". Apparently you have a situation where you can mine, crush and process rock, but if you mine, crush and stockpile it, it is somehow not covered. I think we need to clarify that question of stockpiling or cover it just as well as making concrete on the site.

130 CHAIR CEASE: Sue, how would this change it?

130 MS. HANNA: I believe this arose because of a case. This is one of those cases where we assumed this is what the law said, but the court said that is not what the law said. All I will do is in line 20, after "Mining" insert ", crushing or stockpiling aggregate."

134 CHAIR CEASE: Does anyone have a problem with that? Okay, we will accept that.

135 SEN. BUNN: This one is completely out of place, but I talked to you about it.

137 MOTION: SEN. BUNN moves to include Section 77 from the original A-Engrossed bill which is the historic preservation designation dealing with property owner consent.

141 VOTE: In a roll call vote, SENS. KINTIGH, BUNN, vote AYE. SENS. COHEN, SHOEMAKER, SMITH and CHAIR CEASE vote NO. SEN. GOLD is EXCUSED.

149 CHAIR CEASE declares the motion FAILED.

151 CHAIR CEASE: The next item is on page 17, beginning at line 22 gets into the Smith case. Why don't we have a summary on the Smith case in reference to what we did last time. This is a big issue.

159 MS. HANNA: I would like to make a few comments on the Smith case because I will need to change this draft from what you see. In the Smith case, as I pointed out before, there are two aspects. Those where you decide to put a dwelling on a large existing parcel and you are just going to put it over on the side that is not too good. The other aspect of the Smith case is where you can have a land division, where you divide off a chunk of the not-so-good parcel. You will see under subsections (3) and (4) are where we have the existing parcel, although the language at the moment is missing in this draft. On subsections (5) and (6) is where we deal with the land division. The language is also missing on that. But that is the only thing that distinguishes these paragraphs so we have to put it back in. In (3) you are basically talking about western Oregon with a little side trip as usual for existing parcels. Subsection (4) is talking about eastern Oregon with a modifier for existing parcels. Subsection (5) is western with new parcels. And (6) is eastern with new parcels. You have pulled counties a bit hither and yon and there were probably some policy decisions. I think these folks can discuss that.

182 CHAIR CEASE: Sen. Bunn, do you want to comment on what we did last time. We put all these into two categories, did we not? Instead of three layers, we had two layers.

185 SEN. BUNN: Dick, did we split that back out to three? Or are we still at two layers?

187 MR. WARNER: I believe we attempted in this draft to try to do that.

187 SEN. BUNN: To go back to three?

MR. WARNER: Correct.

188 SEN BUNN: Where we left the committee last time, we had two layers and we had agreed on three of the four categories. That was non-farm dwelling in the Willamette Valley on IV through VIII soils and no new parcels. Those were two of the four categories. Then western and eastern Oregon were rolled together in non-farm dwellings allowed on IV through VIII. The fourth part of it was a new dwelling allowed on IV through VIII with a question of the one percent growth. Since that time there was concern that we should split eastern and western Oregon up again because of the generally unsuitable language being better suited for eastern Oregon. So in essence Smith would be reversed in its entirety for eastern Oregon with the question of the one percent for new parcels. I don't think there was much controversy one way or the other whether eastern was in or out, but there was definitely controversy over the one percent.

204 MR. WARNER: The work group also added Jackson County to eastern Oregon.

206 MS. HANNA: I have come up with one other question. While you were doing this, one of the reasons for using the generally unsuitable test for eastern is because you have a large parcel and when we were talking about the Class IV through VIII, you would have to be 100 percent. But in this case I see you have left the predominantly IV through VIII. So I am not sure what the difference is between western and eastern. We use different language, but how predominantly Class IV through VIII is different from unsuitable, I couldn't explain that.

216 CHAIR CEASE: Indicate to me why from the work group there was a sense of going back to the three areas.

218 SEN. SMITH: I think whether you want two approaches or three approaches, they get you to the same place. I don't have a strong feeling about that. Whatever the department thinks is alright. Where I do have a strong feeling is the one percent growth.

222 MR. BENNER: It seems to me that you can simplify this a bit by distinguishing the Willamette Valley from the rest of the state and simply go back to the situation as it was before Smith. That is, the test for non-farm dwellings, except in the Willamette Valley, would be the generally unsuitable test. On that point you wouldn't have to make a distinction between Eastern Oregon and Western Oregon. You would simply be distinguishing between the Willamette Valley and the rest of the state. So for at least for non-farm dwellings on existing parcels, you really only need two classes, Willamette Valley and the rest of the state. Then you get to a different point when you are talking about the creation of non-farm parcels. You probably should pay more attention to that because you are talking about the creation of new parcels for non-farm dwellings.

238 CHAIR CEASE: I am trying to remember what we did last time. We did part of this and didn't finish it. So I think the record will show at this point that we are trying to resolve this. Let's deal with the non-farm dwelling first.

242 SEN. BUNN: Is there a problem with the approach that we took last time. It is kind of a toss up because they get us to the place. Does the language we have from last time workable? Or do we need to change that so we are back to generally unsuitable?

247 MR. BENNER: Do you mean changing from IV to VIII to generally unsuitable?

248 SEN. BUNN: Yes.

248 MR. BENNER: That is what I recommend that you do.

249 SEN. BUNN: So instead of rolling eastern Oregon into western, we roll western into eastern on the chart we had before.

250 MR. BENNER: Correct.

251 CHAIR CEASE: Are we talking about non-farm dwellings?

251 MR. BENNER: Just the dwellings, not the new parcels.

252 CHAIR CEASE: So what are you proposing, Sen. Bunn?

254 SEN. BUNN: We have no question on new parcels in the Valley. I don't think anyone has advocated creating the new parcels.

258 CHAIR CEASE: I think that is how we have already taken action--no new parcels in the Valley.

260 SEN. BUNN: So the question is whether or not we have a growth rate so that if a county had a one percent growth rate in the previous year, they are excluded from new parcels.

265 SEN. COHEN: What do you mean excluded from new parcels? Do you mean they are excluded from the policy to allow new parcels?

265 SEN. BUNN: That is right. If they had less than a one percent growth rate, they could have new parcels and in essence Smith has been reversed in its entirety for those non-valley counties. If it has had over a one percent growth rate, then we are at the point we are arguing. My belief is that Smith should be reversed for all those outside the Valley. Others have argued that we need some kind of a controlling device on the faster growing counties. Although, I think the state is growing at two percent.

276 SEN. COHEN: We have gotten rid of in the draft all the big game habitat overlays and all that. You have dumped it all out, is that it?

281 CHAIR CEASE: No, we haven't.

283 SEN. SMITH: The reason I feel so strongly about this is I think there is a bi-partisan feeling for the goal to provide the protection in the Willamette Valley, but to provide the safety valve for other areas of the state that support the policy of providing protection for the Willamette Valley. When you consider that nearly 80 percent of eastern Oregon is already public land, it is not exactly a prescription for claustrophobia to suggest that we get rid of this growth rate thing.

295 CHAIR CEASE: How did the department respond to that issue prior to the decision in the Smith case in reference to new parcels?

302 MR. BENNER: For the creation of new non-farm parcels?

CHAIR CEASE: Yes.

304 MR. BENNER: Our field folks and review people in the Salem office would receive notice of applications to create non-farm parcels. We would review them to the extent we had the resources to do it and when we saw one we thought was not consistent with an acknowledged ordinance, we would participate in the local process and maybe appeal. As you know, we get reports from counties about their activities over a 12-month period. So we publish a report every year that says what the level of activity is. There are a couple of counties where the numbers of new non-farm parcels seems to us to be quite high and we have worked with those counties, tried to understand what is going on there. Those counties have been Deschutes, Jackson, Clackamas--those are the counties that have the highest numbers of these and there are different reasons why there are high numbers in those counties. We have been concerned about the rate of non-farm parcel creation in some counties.

326 SEN BUNN: Didn't your department introduce a blanket repeal of Smith in eastern Oregon?

328 MR. BENNER: Yes, SB 130.

329 SEN. BUNN: And that was based on at least in the east it wasn't perceived as a major problem. If I recall right, Deschutes had 13 of these partitions the last year.

332 MR. BENNER: In 1992 (there were 13 partitions). The numbers had gone down in Deschutes County. That was before Smith. Overall the numbers on the east side of the mountains are considerably lower than the numbers on the west side of the mountains on the creation of new parcels.

340 CHAIR CEASE: We had looked at the figures. I think those are fairly telling. What was the bill you had introduced that would have returned it prior to the Smith case?

342 MR. BENNER: SB 130 was introduced by the department at the beginning of the session. It addressed marginal lands and the Smith case. The proposal was to restore the law to a pre-Smith condition on the east side of the mountains, but not on the west side of the mountains.

349 CHAIR CEASE: At this point are we still talking about the whole state and not just the Valley?

352 SEN. SMITH: Yes, unless we go back to some kind of a three-tier system.

353 CHAIR CEASE: If you do not exclude for this purpose any of the counties east of the mountains, that is, you take all of eastern Oregon back to the pre-Smith situation, would there still be an argument to do that for the rest of the state minus the Valley? Would you still need to make a distinction here before the growth counties and the others in western Oregon minus the Valley?

361 MR. BENNER: I think if you were going to make a distinction based on growth rates, I don't know why you wouldn't be looking at fast growing counties west of the mountains as well as fast growing counties east of the mountains.

365 CHAIR CEASE: The question is, does it make sense at this point? Your bill would have done this in eastern Oregon and you had not made a distinction in terms of Deschutes or any other fast growing county. I am asking you, if that is the case in eastern Oregon, what is now the case in western Oregon minus the counties in the Valley?

373 SEN. COHEN: Are you getting to a flat out allowing a kill-Smith in eastern Oregon and then a prohibition in western plus a fast growing western Oregon?

378 CHAIR CEASE: That is the question, Sen. Cohen. Keep in mind we are excluding now the Valley counties, they are separate and we dealing with them differently. We are talking about if you do not have fast growth counties in eastern Oregon for purposes of Smith, you simply go back to where you were prior to the court case.

384 MR. BENNER: There was no notion in the bill we introduced in the beginning of session about a limitation on either side of the Cascades for the creation of new farm parcels. However, when we introduced that

bill there was also no idea that we would be here today talking about a lot of record law. There has been a change in circumstances from January 1 to today.

394 CHAIR CEASE: I understand that, but let me ask you about Deschutes. As we looked at those figures prior to the Smith case and afterwards, it shows in terms of Deschutes County even though the growth rate is the highest east of the mountains, that the number of new parcels that are actually went through was very small.

401 MR. BENNER: In 1992, it was 13.

403 CHAIR CEASE: What I am trying to figure out, and I don't get a very satisfactory answer, is on the Smith case, at least for eastern Oregon, and I am trying to get a sense of whether that is true for the rest of the state minus the Valley, whether we are arguing about nits and gnats and picks and tats. That is what I am trying to get at and I get no satisfactory answer from anybody.

412 MS. SQUIER: At the risk of being told this is also not a satisfactory answer, and I realize I am taking that risk, I would like to say I think the proposal the department put forward was based on our general tendency to say eastern Oregon-lower growth rate, more space, less problems. Western Oregon we think of the Valley. We think of the growth and I-5. I think that in the process of both the discussion that have gone on throughout this session on HB 3661 and in the process of looking specifically at the Smith case with a great deal more care we have recognized the important question is, where is the pressure for additional parcels for non-farm purposes likely to be the greatest and where can we least afford to continue to nick away at the general pattern within the farming areas. The one percent proposal, I think, is a more realistic way of going at dividing the places where you want to create more parcels freely and the places where we can no longer afford to do that than simply saying the ridge of the mountains separates those two things.

443 CHAIR CEASE: What if we had an approach that said, since we have agreed already that we would have no new non-farm parcels in the Valley, that we go back prior to the Smith case for eastern Oregon and put a percent growth on western Oregon minus the Valley? Which could be two percent, three percent--I don't know what would be appropriate. What would be appropriate?

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017 SEN. SMITH: Let's deal with the first part of the question first. Let's deal with eastern Oregon first.

019 CHAIR CEASE: I think everyone seems more comfortable talking about three regions. Is that correct?

021 ?MEMBER?: Where are we putting Jackson County?

021 CHAIR CEASE: We have to figure that out. We have to put it someplace. If we have Jackson County as part of western Oregon, then I think if we have a percent it would probably come under that percent arrangement. Would it not? Let's do it that way. What about eastern Oregon?

027 SEN. SHOEMAKER: What difference does it really make?

027 CHAIR CEASE: I have asked that question many times and I always get no real answer.

030 SEN. COHEN: Some of us care a lot about creating extra parcels. That is the basic premise for getting into this whole bill. Part of what you get by saying you get a lot of record is to say no more new parcels in the Valley.

034 CHAIR CEASE: We are talking about eastern Oregon only. We have already agreed no new non-farm parcels in the Valley. Everybody seems to be on board to go back to the period prior to the Smith case. The question was whether you excluded from that any of the growth counties, which if you used one percent you would have three counties--Deschutes, Jefferson and another.

043 MOTION: CHAIR CEASE moves that for eastern Oregon we go back to the period prior to the Smith case.

045 VOTE: CHAIR CEASE, hearing no objection, declares the motion PASSED.

047 CHAIR CEASE: We have already agreed to say no new non-farm dwelling parcels in the Valley. So let's talk about the rest of the state, what we call western Oregon, excluding the Valley. Are there any thoughts on that.

049 SEN. SMITH: I would ask the same question that Senator Shoemaker asked for eastern Oregon. As long as we have protected the Valley, I don't get it.

053 SEN. COHEN: Because there are a lot of counties within commuting distance to the metropolitan area that you would be creating more parcelization and more problems for the same thing we had in a bill earlier today which is air pollution. I think I have given enough on the lot of record piece that I still don't want to have further slicing up into new parcels within the commuting area of the metropolitan counties so we create additional problems by making new parcels there.

063 SEN. SMITH: Could we maybe make the difference as it relates to the metropolitan area and not include southern Oregon. Include southern Oregon as part of eastern Oregon and then take western Oregon which I see as the coastal counties close to the Portland area.

068 SEN. COHEN: Folks commute an hour and a half these days.

069 CHAIR CEASE: If you were to take western Oregon and exclude the Valley and said we would go back prior to Smith except for the growth counties, what counties would we be talking about?

073 MS. SQUIER: You would be speaking of a number of coastal counties. I am not sure. It depends on what the growth measure is.

075 CHAIR CEASE: If it were two or three percent, what would you end up with?

076 MS. SQUIER: I don't have those figures, Mr. Chair.

077 MR. BENNER: Jackson, Josephine, Curry counties.

079 CHAIR CEASE: If you had two percent, would it include those three?

080 MR. BENNER: I think so.

081 SEN. BUNN: It seems to me if the state growth rate is two percent, if we want to come up with a percentage to say three percent so we are clearly identifying the fast growing counties, that is a reasonable percentage and then we decide who to apply it to. My argument would be to apply it now to western Oregon, move this bill and deal with it later.

088 CHAIR CEASE: Then what are you suggesting, Sen. Bunn?

088 SEN. BUNN: That the third category of western Oregon be the three percent. Use the language we had before, but we input the growth figure of three percent.

091 CHAIR CEASE: Can we accept that?

091 SEN. SMITH: Could we specify that Jackson and Josephine Counties are part of eastern Oregon?

094 CHAIR CEASE: The three percent growth rate would catch them.

101 SEN SHOEMAKER: Why does it matter outside of the valley?

103 CHAIR CEASE: It is a very valid question, Sen. Shoemaker.

105 SEN COHEN: I think we do have problems of fast growth and being able to accommodate that. Splitting up land for speculation at this point doesn't make me pleased in Jackson County, Coos County, or Curry County or Josephine County or anywhere in Oregon because I think that is what you get when you talk abut the ability to create new parcels overlaid on the fact that we are giving everybody who already has a lot a house. Even in those counties where you have pretty good parcelization already, before I move away from this I would like to see a parcelization of some of those counties to see how much we are opening up now and then we are going to split off some more.

117 SEN. SHOEMAKER: We still have our minimum acreage requirement. You can't parcelize below whatever minimums we set and you still have lot of record.

124 MS. SQUIER: There are three points I would like to make. First, it is my understanding when you use this mechaniSM for getting a non-farm parcel carved off it is not subject to any particular minimums. I would ask the department to correct me if I am wrong. Second, I think the reasons for concern are that one is splitting these parcels off of farm parcels, generally, often in areas that are in farm use and one is creating a change in the pattern of land use in increments over time. Third, every time that occurs one is increasing the pressure for or the costs of adequate servicing of those areas. And fourth, maybe increasing the conflicts with existing farm activities in the area. Although the test would screen against those, we have all seen how "incrementally" over time those things do stack up and interfere with the production in farming areas.

138 SEN. SHOEMAKER: You are saying the minimum lot size would not apply to this? 138 MS. SQUIER: Right.

CHAIR CEASE: It doesn't apply to this.

141 SEN. COHEN: If you have a rock pile, you can do it.

142 MR. WARNER: It is only generally unsuitable land that this would affect. So that does not affect the creation of new parcels under the minimum lot size.

144 CHAIR CEASE: Is there objection to going with the three percent for western Oregon?

147 SEN. SMITH objects.

146 CHAIR CEASE: How about two percent? Is three percent too high?

147 SEN. BUNN: If the state growth rate is two percent average, I don't think it is fair to call a county fast growing because it is average.

150 SEN. SMITH: I don't know. I think the Portland metropolitan area does that.

151 SEN. BUNN: Whether it is the Portland metropolitan area or not, it is still no more than 40 percent of the state. The average overall is two percent. I don't think it is unreasonable to reverse Smith completely, but if we are going to limit it, I think we need to make clear it is fast growing, and that is above the state average.

157 CHAIR CEASE: We have some other big issues and we need to move on.

158 MS. SQUIER: If I could make a suggestion, I understand Sen. Bunn's concern. Would it be possible for us to identify the growth rate for the areas outside the Valley plus one percent, or whatever it might be, and set that as the....?

163 CHAIR CEASE: We can get some information from Portland State population center and come back to this tomorrow. Let's do that and go on to the second side of this issue, which is the siting of the dwellings.

168 SEN. BUNN: Isn't that already done?

169 CHAIR CEASE: Let's just make sure. I think it is. Give us your understanding of it.

172 MS. HANNA: Dwellings in the Willamette Valley on the IV to VIII--is that plain IV to VIII, or is that "predominantly composed of?" It is my understanding it is plain IV to VIII because that is the only way you distinguish from the other one.

176 SEN. BUNN: My understanding is if you have a 50-acre field and you have a 5-acre out of that Class I soil that is Class VI soil, you can site a non-farm dwelling on that five acres of Class VI even though the soil is predominantly Class I or II. Because the part you are putting it on is the unsuitable as we are defining IV through VIII.

182 CHAIR CEASE: Let's have people comment here because people are shaking their heads.

186 MS. SQUIER: I think that is right--the dwelling must be on the Class IV through VIII soil.

CHAIR CEASE: Right.

188 MS. SQUIER: This is with no parcelization.

189 CHAIR CEASE: Okay.

190 MS. HANNA: I will be changing my language then to better reflect that so the dwelling will be on the portion of lot or parcel that is IV through VIII.

192 CHAIR CEASE. Okay.

192 SEN. BUNN: Eastern and western Oregon are both generally unsuitable.

195 CHAIR CEASE: The rest of the state.

195 MS. HANNA: Yes. The remainder is unsuitable. What you are doing for parcels is none in the Willamette Valley and western Oregon we would be going to an unsuitable test or IV through VIII test for those that aren't outside that percentage of growth.

200 SEN. BUNN: I believe the understanding was unsuitable.

201 MS. HANNA: Okay, unsuitable and then I will write a section for the growth rate with a blank line and you will have everything there but that percent. 204 CHAIR CEASE: Okay. Coming back to the earlier item?

204 MS. HANNA: Yes, I am just trying to get an idea of what I am drafting.

205 CHAIR CEASE: Any further questions on this? Okay. Let's move on.

208 CHAIR CEASE: I though we had taken care of that on page 40. I thought we had taken that out.

209 MR. WARNER: We had. And I just wanted to assure Senator Shoemaker that on the next draft it will be gone. It is page 40, line 13. The committee decided before to take "apparent" out.

218 CHAIR CEASE: We have taken care of forest and marginal lands. Let's take a look at the right to farm part which starts at Section 35. We had pretty well resolved this. We had three questions that Sen. Springer had raised and we had agreed not to accept two of those and one we were working on because we felt it had merit. What about the language on that one issue, Sue?

232 MR. WARNER: In line 19, the question was "customarily utilized."

234 CHAIR CEASE: Not line 19.

234 MR. WARNER: It is line 17. The word "necessary." They had included the word "customary" in the original draft on page 35. The existing ORS says "is necessary." The draft before this said

"customary" and a term that was more agreed to is "a generally accepted, reasonable and prudent method." The question arose that just because it is customary doesn't necessarily mean it is prudent or responsible. I think that was the concern.

243 CHAIR CEASE: What about this language, Sen. Shoemaker?

244 SEN. SHOEMAKER: I think it is okay.

245 CHAIR CEASE: Does anyone else have objection to the language? Any other problems in the right to farm at this point.

248 SEN. SHOEMAKER: We are not going to change the serious physical injury. We are going to provide for attorney's fees to the prevailing party essentially.

251 CHAIR CEASE: I think that is what we agreed to do last time, we weren't going to change those because on the one side we said if you change the language on the medical side you could get a bloody hand and you would have a case. We thought the definition we had was probably appropriate. Wasn't that right?

257 SEN. SHOEMAKER: Yes.

259 CHAIR CEASE: Is there anything else on the right to farm that anyone wants to bring up at this point? Let's go with it at this point.

262 MR. WARNER: I think we have talked about the next issues. The deletion of Sections 46, 49 and 53. We discussed the right to develop issues.

265 CHAIR CEASE: We decided not to go with those. We weren't making a judgment on those. We simply said at this juncture in time, we did not have time to deal with those. So we said little bird go away.

270 SEN. BUNN: I don't think we have in the past discussed the sunset. I would suggest we remove the sunset, line 26 on page 51.

279 MS. SQUIER: I would argue that when one gets to whatever it is, 13, 15, 18 years from the time a person purchases a parcel, one gets past the equity argument that we are trying to address in this lot of record bill and that it is wise to have a sunset so that at some point we move on and know that the development pattern we have is the one we can rely on.

288 SEN. BUNN: There are two things. First, once we have set up the lot of record, I think setting a sunset would tend to push people to take advantage of it when they otherwise might not build, which is not a healthy approach. The second is as time goes by there are going to be fewer and fewer qualifying lots of record as those transfer ownership. The third part is we have said in those sections 2-6 the standards for building a forest dwelling not tied to a lot of record and they would be also be repealed with this. I think when you combine those three, we are working hard to come up with something that is fair. It will be used less and less as time goes by and repealing it in 1999 does not seem necessary.

302 MOTION: SEN. BUNN moves to eliminate the sunset.

VOTE: CHAIR CEASE, hearing no objection, declares the motion PASSED.

306 CHAIR CEASE: I think you have some good arguments there, Sen. Bunn. Obviously, the Legislature could add that any time in the future.

310 MR. WARNER: If we can quickly go back to Section 47 on page 45. In this section there were some housekeeping issues that we wanted to take a look at. On page 47, line 4, "for an appeal under ORS chapter 197, 215 or 227--" this is part of the right to develop. I think this was something agreed to by all parties and somebody more legal can talk about better.

324 CHAIR CEASE: I guess we had better have this explained. Sue, can you explain what this is?

325 MS. HANNA: These statutes have appeals at the local level, when there is an internal appeal. We are not talking necessarily to LUBA. This just adjusts that and says the county shall set them by ordinance for all the appeals. In some respects the statute was a little narrow and we have just made it more consistent by saying 197, 215 and 227, but we have also taken out some of the detail.

337 CHAIR CEASE: Is this part of the issue raised by the counties, or not?

339 MR. WARNER: Apparently not.

340 CHAIR CEASE: Does any of the county representatives want to come up?

348 ART SCHLACK, Land Use Specialist, Association of Oregon Counties: This language would give us more discretion in terms of fees and is something we would support. It is not, however, one of the five points we raised.

354 CHAIR CEASE: Does anyone have any objection to it?

368 DALE BLANTON, Department of Land Conservation and Development: You may recall at one of your hearings last week I noted this section is a corrective section to ORS chapter 92, that is the subdivision law. What this language does is it authorizes jurisdictions to take advantage of the limited land use decision opportunity that was created through HB 2261 last session. It does that in two ways. One is by changing the word "shall" to "may" in terms of an appeal of a subdivision or partition decision to the governing body, they can now process subdivision and partitions--or they could process under this bill under the limited land use decision criteria. The language on appeal fees eliminates language that conflicts with the provisions adopted last session that are in Chapter 227 for cities and 215 for counties. The ability to charge a fee and the transcript and appeal fees section in these sections was not eliminated because there was not a clear cross reference. We simply missed it last session. This reference not to those other provisions of Chapter 227 and 215 would let those provisions operate the way they were intended.

403 CHAIR CEASE: So there is no objection to this?

405 MS. SQUIER: May I make a query, Mr. Chair? I have a vague recollection that the detailed language with respect to the reasonableness of the fees and some of the limitations on them came in not very long ago into the statutes in response to some specific

problems. I would ask if taking that out is a vital part.

412 CHAIR CEASE: I am trying to get a sense of where this came from.

417 MR. BLANTON: The operative language governing fees is now in Chapter 227 and 215. There are limits on that. It authorizes fees that are reasonable but not more than the actual cost of the appeal and there are still limitations on that. But instead of retaining this conflicting section in Chapter 92, we let those other chapters operate as was intended.

425 CHAIR CEASE: So as it is, it is fine. We will accept it.,

427 MR. WARNER: Section 48 is language dealing with the same issue and I just wanted to confirm that, Dale.

430 MR. BLANTON: Section 48 deals with partitions.

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011 CHAIR CEASE: The big items we have left. We have the issues raised by the counties in their memorandum two weeks back. One of those is the composition of the commission and there are provisions in here. We have their four other items and then we have questions of how this bill relates to the rules, which we have to talk about. Then we have the big issue on the maps and the issue we passed over earlier. Then we have some technical amendments. Is there anything beyond those?

022 MS. HANNA: There is one small item on page 41, lines 22 and 23. We have come up with better language to say the second thing that carries over some language. You wanted to include activities of a county that were done pursuant to periodic review. The language in 22 and 23 doesn't quite do it. I have some new language I can put in your next draft that does it a little better. 028 CHAIR CEASE: That would take care of the intent of the committee?

028 MS. HANNA: Yes. It doesn't change the intent at all. In fact, I think it conforms the language to the intent.

031 MS. SQUIER: I think there are several other items that ought to have your attention. I believe there was some consensus that you wanted to take a look at the Tillamook County dairy lands and I believe the Tillamook County Creamery Association has gathered some information and has some suggestions.

035 CHAIR CEASE: I believe Senator Cohen has raised that and I was trying to figure out a way to protect that land and since it is different classes of soil, there is no way we could really list them. I understand the definition of "unique" is really based on certain classes, isn't it?

039 MS. SQUIER: I believe that is correct, Mr. Chair, but as I say I believe Tillamook County Creamery Association has generated a listing of soils that would identify those lands.

041 CHAIR CEASE: Do you have that?

041 MS. SQUIER: I may have it, but I believe they are here.

043 CHAIR CEASE: We are going to take a look at the Tillamook County

lands issue, whether they ought to be listed.

049 MIKE SIMMS, Tillamook County Creamery Association: The proposed amendments (EXHIBIT H) that I have here regarding soils in Tillamook County is fairly cut and dry. It would add to the language on pages 3 and 4 regarding the soil classifications. It is in Section 3. On line 21, strike "if outside the Willamette Valley", and add in the various subclassifications certain types of soils in subclassifications IIIe and IIIw and IVe and IVw. Those soils are named in the proposed amendments.

061 SEN. BUNN: Why strike outside the Willamette Valley instead of putting "if outside the Willamette Valley in Tillamook County?" Because all of a sudden you have grasped all the rest of western Oregon and brought it into a new round of discussions.

065 SEN. COHEN: I think we can take care of that in drafting.

067 CHAIR CEASE: What I think we need to resolve is whether we want to, as a committee, include the soils that would take care of Tillamook County, and if we do, we leave it up to the drafter to take care of it.

069 SEN. BUNN: I think we ought to make a new section between (2) and (3) to deal with Tillamook County. My concern is we have been negotiating continually on this and I don't want to find that by listing the Tillamook County soils that we pick up a whole new group of soils in the Valley, or we pick up counties not intended.

07 CHAIR CEASE: We can ask the drafter to do that. I understand what you are saying. You want to be sure it is limited to Tillamook County.

075 SEN. BUNN: Right. If we are trying to address their concern, that is fine, but I don't want it to spill over.

076 SEN. SHOEMAKER: For the record, I think we should be clear there are no other soils in the state comparable to those Tillamook County soils. If there are any, we certainly should catch them, too.

081 SEN. COHEN: You have Astoria here and there are some areas that may not be in Tillamook, but could be in Lincoln County. I don't know where the lines go in the area of Neskowin and all that because you are part Lincoln and part Tillamook.

086 CHAIR CEASE: If you add Lincoln County, (inaudible)

087 SEN. SHOEMAKER: I am just trying to find out as a matter of fact, are there other intensively pastured dairy lands along the coast of this state. If there are, should we not give them the same protection?

090 SEN. BUNN: As long as we keep looking for this group and this group--we have already locked up 95 percent of the land under the lot of record with the exceptions we've got. We can continue this until we have locked up 99 percent. We may as well just quit. I find it very frustrating that we keep expanding what we are locking up and we haven't figured out what we are opening up yet. I would argue we have yet to identify anything in the Valley that is open.

098 CHAIR CEASE: We are not dealing with the Valley here. I think at this point we should have the drafter put this in there and not worry about any other area for the moment. Can we go with this?

101 SEN. SHOEMAKER: I am worried about other areas. If there are other such areas along the coast, I think we ought to protect them.

103 SEN COHEN: I think they have gone to a lot of trouble to identify these soils and wherever they are, I am willing to support it at this point. If you have half a dozen acres that fall over into some other county, I don't want, just by the use of Tillamook County, throw out the whole soil classification. These are very specific in terms of the kinds of soils and if 20 or 100 acres go into some other county, then I would like to not limit it explicitly.

112 SEN. BUNN: If you look at the soil classification, for example, we have already got a number of them listed.

115 SEN. COHEN: I think adding a few more there doesn't hurt anybody.

116 SEN. BUNN: I think it does hurt a whole bunch of folks because whether you are identifying the Willakenzie or you are looking at the Jory soils, we don't know right now by listing those--I believe the Jory soil is the wine areas around Yamhill County--what is the impact on those soils very common in Douglas County. What are we doing to that county by listing them. And are we listing dairy land? Probably not, we are probably listing pasture land that we would like to have available as a lot of record. I am concerned if we want to deal with a specific situation, we be very careful to target it because otherwise we are just spilling over and we don't even know the impact.

126 MS. SQUIER: Let me tell you what I think is being asked here. It may not be as broad as being read. If you assume it is going to be applied west of the Coast Range, what it would do is add a list of soils that would include the Hambre, the Knappa, the Meda and on down. It would not include Jory, it would not include Quatama, it would not include Willakenzie. This was just naming those because that is where it would appear in the series. It is a fairly narrow set of soils that were identified as the dairy soils.

136 SEN. KINTIGH: Can you tell me, are all these suitable for building if a person would desire to, or would most of them generally not be suitable because of drainage, lack of structural integrity or poor septic tanks. Are there things like that that would throw them out anyhow and they wouldn't even be up for grabs.

142 MR. SIMMS: As roughly as I can explain this, in some cases, particularly on some of the low lands in the Tillamook and Coquille Valleys and in some of the lower lying valleys in the coastal areas, yes, there would be other locations particularly on the terraces just above the low lands where there may be pasture lands falling in these categories that would be suitable for building. It would depend on the specific locations.

149 SEN. KINTIGH: Some of them could be.

151 SEN SHOEMAKER: The descriptions of these soils sound very place specific. So when you are talking about Hembre soils--let's take the Nehalem soil, are you going to find Nehalem soil other than in and around Nehalem?

157 SEN. KINTIGH: A soil name is where it was found and the first description of it was written by the soil scientist. Similar soils are found elsewhere, yes.

164 CHAIR CEASE: Where are we on this issue? Are we saying if we say Tillamook County, obviously that is too limited, isn't it. You don't want to say Tillamook County.

167 MR. SIMMS: No, Mr. Chair, because we are looking not only at Tillamook County, but at pasture lands in the dairy areas of Lincoln and Clatsop counties and down further on the south coast in the Coos and Curry county areas.

170 CHAIR CEASE: Should we make reference to these types of soils as used for dairy purposes? And west of the Coast Range. It is a way we can tie it down so we don't limit it to Tillamook, but you limit it to the purposes and it is in the Coast Range and west. Can we try that?

176 SEN. BUNN: Don't we have enough limits in the bill? Do we have a whole bunch of lots of record that are going to pop up and be developed in these areas?

179 CHAIR CEASE: I don't think so, but I don't know.

181 SEN. BUNN: You've got those on the fringe areas. Do we want to block those on the fringe areas?

185 CHAIR CEASE: Dick Benner, come up here. Let me ask the committee. Is there a need to put this in at all?

188 SEN. COHEN: I would move to put it in because of the testimony we heard. We heard some farmers who came from that area who said this land should not be built on. I am persuaded on behalf of citizen testimony that it is worth putting it in here.

192 SEN. BUNN: I am not going to object if we put in Tillamook County. I don't want to put in Lincoln and a number of others where you may have the soil type but not as intense dairy industry and potentially more need for a lot of record in the transition areas. I'm not as interested in locking them up as Tillamook. Tillamook has a much better demonstrated need than the wholesale coast based upon Tillamook County soils.

199 CHAIR CEASE: Could we put in here the list of these soils and say, "soils that are currently used for dairy purposes west of the Coast Range?"

204 SEN. COHEN: Actually, "currently used for dairy purposes" does make a difference. If they are not used for dairy purposes, then they are still...

205 SEN. BUNN: That is better language because if we are trying to protect the dairy pasture...

208 CHAIR CEASE: Alright, let's go with that.

211 CHAIR CEASE: Are the counties and the department ready to consider... Anne, go ahead.

214 MS. SQUIER: On page 3, I believe lines 12 to 14 are now superfluous and should be deleted because they were originally inserted as an opportunity to address the concern that the committee is now addressing by trying to find a test by which dwellings could be located

on Class IIIe and IVe soils. I believe, Sen. Bunn, originally there had been some thought there would be a way to look at the mixed farm and forest zones.

227 SEN. BUNN: If we eliminate that, where is the other language that accommodates the mixed? I thought we specifically included this for mixed farm-forest.

231 CHAIR CEASE: Let's ask Sue, the drafter, because she put all this together. Anne, you go over the reason for eliminating it and then let's have Sue respond in reference to Sen. Bunn's concern.

233 MS. SQUIER: Again, my understanding of it had been that was one of the alternative approaches that was talked about as a way addressing Sen. Bunn and Rep. Dell's concerns that in a place like Yamhill County, one was not getting very much opportunity for a lot of record dwelling and that by some shifting of which test is applied, it might be more open. I believe since then the committee and the work group discussions had moved toward identifying the Class IIIe and Class IVe soils in attempting to get a template kind of test that would allow some lot of record opportunity on those soils and therefore (4) ought to be deleted.

248 CHAIR CEASE: Sen. Bunn had an issue. Can you respond to it, Sue?

250 SEN. BUNN: I thought the counties were the ones who brought the issue forward stating they needed to maintain something to deal with the mixed farm-forest. Isn't this the only language that deals with the mixed farm-forest?

253 MS. HANNA: That is correct.

255 SEN. BUNN: I don't think we have eliminated the need if property is a combination--it goes one or the other--because the main part we have been working on in the agricultural area is very different from the forestry and the county would need the ability to look at either option depending on the parcel.

261 MR. BENNER: We are really talking about two different problems. One is since you have a farm test and a forest test, and since there are a few zones out there where there is both farming and forestry going on extensively, not just little intrusions but are genuinely mixed use zones, which test should a county apply? Initially, this section was aimed at helping those counties decide which test to apply. There really aren't very many of those zones that were acknowledged by the department and by the commission as being genuine mixed use zones. Then when the discussions started in the work group about the hill soils, we thought we might be able to identify additional zones that are not genuinely mixed use zones but do cover a lot of the hills in the Willamette Valley and if we could figure out a way to identify those zones, we might be able to address the concern that there are going to be situations in those hills where you ought to have a lot of record dwelling but you weren't going to be able to because the high value farmland soils were going to sweep up into those hills, that maybe we could identify that set of zoning districts and say take your choice of tests in those zoning districts. Those are the two different ways that have been talked about using it. I think we do need to give counties some guidance who have these genuinely mixed use zones about which test to use. It is probably appropriate that they be able to choose. But since the working group has now decided to pursue a different way of addressing those hill

soils and also since we found it frustrating we were not able to figure out a way of defining these other zones in a way that we wouldn't end up sweeping in some lands or excluding some lands unintentionally. I don't think we should use the language on 8, 9 and 10 to do that second thing.

297 SEN. BUNN: I don't know if the language is great, but I do think we need something for the mix. If you've got 30 acres and that is 25 acres forestry and five acres of pasture, if we don't have this language, I think you might create an arguable situation that under a 20-acre set you disqualify it where under forestry it would be qualified. Somehow we need to figure out what is it if it is a little bit of each.

310 MS. SQUIER: May we try to come to some language that would make clear Sen. Bunn's point? That is that if you have a parcel that is mixed use, the test that is applied to it could be forestry in any case, but it could only meet the agricultural test if it was really in a predominant use because otherwise the entire forest portions of some of those zones which are the upper forested areas would all fail to meet the soil tests of the agricultural test and would all be open.

320 SEN. BUNN: I don't think that is a problem. We are setting much more stringent requirements on the agricultural.

MS. SQUIER: I think it can be written that way. It is not written that way now.

322 CHAIR CEASE: Can we agree to write it that way?

322 SEN. BUNN: My main concern is that we have the option so if it is a small piece of agricultural, it can drop under the forestry more than the other way.

324 CHAIR CEASE: Let's do that.

325 SEN. KINTIGH: It is a concern of mine, too. The mixed tracts, I think back when I came there, it was about half forest and half cleared land. In this case, where would I be?

329 CHAIR CEASE: I think we can go with what you are talking about. Sue, do you understand what is being said?

334 MR. WARNER: Maybe we can explain one more time, for me.

334 MS. HANNA: I could use one more time. Go to it.

335 MR. BENNER: I will try to regurgitate what we are saying. I would also throw in a bit of gratuitous advice that if you are trying to keep this simple, then I think you will be making a mistake. You will remove some of the clarity and objectivity if you apply a test case-by-case depending upon the current use of the tract in any zone. You are gong to come a long ways away from the clarity and objectivity. If we are just talking about those mixed use zones, then it seems to me the appropriate test to apply in the mixed use zone perhaps ought to depend on what the current use. But I don't think you ought to introduce a choice into a farm zone or forest zone because then you are really going to complicate it for the landowner and the county and everybody else. You are going to remove a lot of the certainty. By and large, when you look at the Valley almost all of the land in a pure forest zone is in forestry use. The great majority of land in the big farm zones in the

Valley is in farm use. Where you get into the mixture--woodlot pastures and what not, those are in those mixed use zones.

363 SEN. BUNN: Then it would seem reasonable to just say it will be determined based upon the predominant use of the tract.

365 MR. BENNER: In a mixed use zone?

SEN. BUNN: Yes.

367 CHAIR CEASE: I think that is what Anne was saying.

368 MR. BENNER: We can come up with a set of words that identify the mixed use zones based on how they were acknowledged.

372 SEN. BUNN: But if you have a mixed use zone and there are two farms of 30 acres and one is 20 acres agricultural and 10 forest and the other is 20 forest and 10 agricultural...

378 SEN. COHEN: He (Mr. Benner) is saying it is okay to have the choice as long as it remains in the mixed use zone.

380 SEN. BUNN: I didn't think so. That is fine with me. But if that is not what he said and he is saying we don't want the choice, then I would argue....

383 SEN. COHEN: He doesn't want the choice on farm use exclusive or forest exclusive.

385 SEN. BUNN: My argument is that we should just state that the predominant use of that particular tract or parcel, not the predominant use of that area. So if one farm is predominantly forest, it goes under forest. If the neigHB oring farm is predominantly agricultural, it goes under agricultural.

391 CHAIR CEASE: Isn't that what you were saying, Anne. That the predominant use..

393 MS. SQUIER: That is correct. The one point I would throw out is that really ought to be measured as of the date of this act. In other words to look at the what the uses are at this time, rather than afford the opportunity to harvest the time and then apply it.

399 SEN. COHEN: Do we preface this whole thing by saying if a property lies within a mixed use zone, as identified by a, b, c, and d, whatever that means, either an approved comprehensive plan or whatever, then you will choose based on current usage as of a date.

412 MS. HANNA: In lines 12 through 14, before the period insert, "as appropriate for the predominant use of the tract" and if you want to put the date, put "on 1/1/93".

416 MR. WARNER: You have to say in mixed use zones, right?

417 MS. HANNA: No, don't say mixed. The language already means mixed.

428 SEN. KINTIGH: If a person does have 75 or 100 acres of farm land in a forest zone, are they farm or forest?

434 MR. BENNER: In order for that tract to qualify for a lot of record, it would have to meet the forest test and it would be based on the woodlands suitability and the size of the tract.

439 SEN. KINTIGH: Even though there may not be a tree on it; it may be cleared land?

440 MR. BENNER: A tract that size probably would not qualify for a lot of record dwelling because of its size anyway. It may be eligible for a farm dwelling.

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015 MR. WARNER: We do have some language that has been agreed upon about replacement dwellings.

016 CHAIR CEASE: Let's look at the replacement dwelling language. Who has been working on this?

021 MR. WARNER: The department and the counties have both been in on this.

027 MR. BLANTON: We have been working on the concept of replacement dwellings with the counties. This is a concept that came out of the commission's work on its forest rules. This amendment (EXHIBIT L) would insert that concept into exclusive farm use zones in both ORS 215.213 for marginal lands counties and 215.283 for the remainder of the counties. It would go in the (1) list of uses which are the outright uses. Basically the concept here is that alteration, restoration or replacement of lawfully established dwellings, and then it list some characteristics of those dwellings--has intact exterior walls and roof structure, has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system, has interior wiring for interior lights, has a heating system, and in the case of replacement, the dwelling being replace is removed, demolished or converted to an allowable non-residential use within three months of completion of the replacement dwelling. Those are a lot of words. The intent here was and the example that was used in the commission's process was if someone has a manufactured dwelling or mobile home and they lawfully established that and subsequent to its establishment decided they wanted to replace it with a stick-built structure, they ought not have to go through further review. This makes that replacement as long as the mobile is eventually taken off or converted to some other non-residential use, that is an acceptable situation.

049 CHAIR CEASE: This would be a vast improvement over the current situation, wouldn't it?

050 MR. BLANTON: Yes.

051 SEN. BUNN: Does a wood stove qualify as a heating system?

051 MR. BLANTON: There has been some talk about what a heating system would be. Yes, a wood stove would be a heating system. I might also note that the idea here of alteration is not a use alteration; it is a structural alteration. That should be noted for the legislative history here.

057 MR. WARNER: The one thing that Dale mentioned that we need to emphasize is this does need to be added to 215.213 in the drafting

magic, however that happens. Since that is being repealed under the bill, we would also like to make that change to the marginal lands provisions for Washington and Lane Counties so they will be able to do this as well. 061 CHAIR CEASE: But this proposed amendment would do both of those?

061 MR. WARNER: It doesn't say it here, but it needs to also be added to 215.213.

061 MS. HANNA: On the amendment, in line 3, there are some blank lines. If you go to the bill, you put this in on page 15, line 11. The other section you are amending is 215.130. So it is in Chapter 215.

073 MR. WARNER: Do we need to amend 215.213?

074 MS. HANNA: Yes, I will do some more creative stuff. You have something I have done, Section 29 on marginal lands. I will stick that in there.

076 MOTION: CHAIR CEASE moves that the HB 3661-A76 amendments BE ADOPTED and that the drafter insert it where appropriate in the bill.

079 VOTE: CHAIR CEASE, hearing no objection to the motion, declares the motion PASSED.

083 CHAIR CEASE: Are the counties and the department ready on the items in the earlier memo. Are we ready to deal with those?

085 MR. WARNER: I believe we should take a look at the -A78 (EXHIBIT K) and -A79 amendments (EXHIBIT B).

099 CHAIR CEASE: We will go over those. I think the part on the composition of the commission is in -A71 (EXHIBIT A). Are the other items in the memo in the -A78 and -A79 amendments?

103 MR. SCHLACK: We had five points we raised issue. Two of those are in the -A71 draft. One additional one that deals with the review of the court cases is in -A77 (EXHIBIT J).

120 CHAIR CEASE: Why don't you go ahead with the -A77.

121 MR. SCHLACK: The -A77 amendment, on page 1, lines 19 through 22, provides that LCDC would provide a review of decisions by the Land Use Board of Appeals, the Court of Appeals or the Supreme Court within 120 days of their decisions to determine if there needs to be an amendment to a goal or the administrative rule to deal with the interpretation that the court has handed down. This would provide an opportunity for local governments to communicate with the commission and for the commission to review those court cases where there has been an interpretation of goals or administrative rules. We would anticipate there are half a dozen of these types of decisions yearly where the commission would need this kind of review. We do not anticipate it would be a major impact on the department from a budgetary standpoint. We have discussed the items with the director and I believe we are in accord.

140 MR. BENNER: We have had some discussions with the counties about this. The idea they have advanced is a good one. We try to do this, have historically tried to do this, but we have not done it in a formal way. It has been informal and within our resources. This would make it

a more formal process for the department and for the commission. We have told the counties that probably means that we would probably have to devote some resources to doing it. We have noted in the Governor's budget there is a position which we have called a small-scale resources land position. The intent was that person would help us implement the small scale resource land rules. If this bill passes and there are no small scale resource land rules, then we would not need that person to do that work. Assuming we can hold onto that FTE to do this work and what we expect will be some other work flowing from this legislation, then I think we can cover this work without asking for any additional resources.

163 CHAIR CEASE: I think there was about a half a million dollars for HB 3661 as it came out of the House.

164 MR. BENNER: The fiscal impact for HB 3661 as it came out of the House. That is correct.

165 CHAIR CEASE: It is also true that if the bill passes either as we have done it or from a conference committee, if the hearings officer is accepted, we would have to fund that, too. But it seems in that figure of one-half million there should be some maneuverability, depending on how we move on this. So you are suggesting in reference to this item you would need resources, too.

171 MR. BENNER: That is right, yes.

172 CHAIR CEASE: But there is no objection to the approach otherwise?

172 MR. BENNER: That is correct.

173 CHAIR CEASE: Does anyone have any concerns or questions about -A77 amendments (EXHIBIT J)?

MOTION: CHAIR CEASE moves that the HB 3661-A77 amendments BE ADOPTED.

174 VOTE: CHAIR CEASE, hearing no objection to the motion, declares the motion PASSED.

174 CHAIR CEASE: Let's go on to the next one.

177 MR. SCHLACK: The -A78 amendment (EXHIBIT K) deals with the topic of appeals by the director of DLCD of certain types of land use permits which are issued by the county and where the department does have the ability to appeal those today. This also goes hand in hand with the proposal dealing with the individual notice of permit application for farm and non-farm dwellings that we discussed earlier.

186 CHAIR CEASE: As I remember, you were talking about some trade off.

187 MR. SCHLACK: The two were coupled. If the department didn't have the ability to appeal those limited types of permit applications, the notice wouldn't be necessary and the counties still would give a semi-annual reporting to the department as is currently required. We do that right now. On page 1 of the HB 3661-A78 amendments, lines 23 and 24 clarifies that the director may not seek review by the Land Use Board of Appeals of a land division or dwelling approval in an acknowledged exclusive farm or forest zone. We recast the language to be very specific as to what types of land use permits the director would not

have the ability to appeal to LUBA. Then on page 3--in discussing this mater with the department, there has been concern that if the department director did not have the ability to appeal some of these types of permits, that they need to utilize an enforcement procedure. An enforcement procedure is one which the counties believe the department should utilize. The department feels that procedure is somewhat cumbersome and difficult. So we have tried to develop an expedited process by which a stay could be entered into by the department upon concurrence by a majority of the commission. I would note that in Section 57, and the department and the counties have discussed the language, the concept was given to Legislative Counsel. There are two pieces here that need to be added. One, the concept is that if somebody petitions the department or the department director believes there is a pattern of practice that a county has been approving land use permits contrary to the adopted comprehensive plan and implementing ordinances. The department director would get the signature or sign off from a majority of the commission and upon receiving a concurrence by a majority of the commission that a stay would be issued in that jurisdiction and that jurisdiction could not issue any more permits under those provisions of their local ordinances. We also discussed that a pattern of practice would be three instances or cases or more. Those two items are not included in Section 57(1).

In Section 57(3) there was discussion with respect to the withholding of state revenue rather than a fine, which we concurred with that concept. The amount of the state revenue that would be withheld, we were discussing and I am surprised to see the upper range in here because we were talking about $1,000 and it could go up. But we would feel more comfortable $2,500 as being a max. We don't believe $2,500 would be something that a county would pass on to an applicant. The $10,000 seems a little high. Conceptually we agree and would support this concept as an expedited method to get into an enforcement order.

265 SEN. COHEN: What you said doesn't jibe with what I read.

263 MR. SCHLACK: That is correct. In our discussions we understood the commission has the ability to withhold certain state funds; they do not have the ability to levy a fine. So this would be some details of language which would need to be clarified.

271 CHAIR CEASE: Are you suggesting they ought to have the authority to levy a fine.

272 MR. SCHLACK: A fine if it is appropriate or withhold other state revenue that counties normally give, which LCDC has the ability to do. Either one of those would be appropriate.

275 CHAIR CEASE: Let's have Dick come up because we have to decide one way or the other. What do you think, Dick?

278 MR. BENNER: The current law authorizes the commission to order a withholding of funds, but it limits the use of those funds. The funds withheld are supposed to be used to pay for the remedy that the commission imposes in the enforcement order. What that usually means, and I think this has only happened once or twice in the seventeen years of the program, is if the commission decides that for a four-month or a one-year period an outside-of-the-county hearings officer needs to review some set of land use decisions over a period of time. We have to pay for that hearings officer, maybe it is $1,000 a month. The withheld revenues would be applied to defraying the cost of that. It is not used

as a fine in any sense of the word.

297 CHAIR CEASE: In your sense, is that preferable to the fine arrangement?

298 MR. BENNER: No. I am suggesting this would be different. This would say that if the commission, at the conclusion of the enforcement order proceeding were to find that the county had approved a land division or a farm dwelling in violation of its acknowledged plan, the commission would impose a withholding of revenue. It would not be for the purpose of defraying any commission cost; it would be in the nature of a fine against the county for violating its acknowledged plan.

310 SEN. COHEN: I think if we are going to do a fine, we could do $2,500, but if we are going to talk about withholding revenue (inaudible).

313 CHAIR CEASE: I agree with that. We could say either a fine of $2,500 or withholding revenue of up to 10.

318 MS. HANNA: Are we talking about enforcement orders in just this particular instance, or all of them?

324 SEN. COHEN: This is a tradeoff for saying you can't go to LUBA, you have to enforce it yourself and then you can have some leverage on how you do it.

328 MR. BENNER: I think if you are moving in that direction, the language on page 3 ought to say, "the commission shall impose" to try to remove some of the politics from the process and leave it to the commission when it goes through the proceeding and hears the arguments to decide how large that withholding or the fine ought to be.

337 CHAIR CEASE: I think we are going to have to put a maximum figure here. Nobody is going to accept leaving it up to the commission even though I think they would be reasonable about it. I think we should set a fine of not more than $2,500. The other piece of it would be the withholding of funds. Do you want to put that at $10,000?

346 MS. HANNA: I was afraid this is what you were working on. Before you go off setting a number, I want to suggest I have a little problem with lines 7 through 11. If the director determines that a local government is engaged in a pattern of practice of issuing for land divisions or dwelling approval, the director may impose this temporary stay. What we are saying here is if Dick leaves the department and I become director and I am having a bad day, I can impose a stay. It doesn't provide for any procedure at all. We have talked about this concept in the past and I have spent a lot of time with the AG working through how we are going to do this. This is not an easy area. We are talking about a whole procedure of what happens when we have a county that is getting out of line. Do we go to the director? What kind of procedure should the director be invoking? Then how long a time is it?

369 SEN. COHEN: Would this refer to the APA?

369 MS. HANNA: That is what you have now and that proceeding is so long and drawn out that there are continuing violations. That is what they want to get around--the continuing violations. I did work on some new language today but did not bring it in with me. I just talked to one of the DLCD staff members (it wasn't Dick) and I suggested we change

so that the director can determine if local government has engaged in a pattern of practice and that stay will only last 60 days. Here you have until the next commission meeting. We don't know when that is going to be. At least block it down to 60 days and it is non-renewal. Then you change the section that the commission shall review the stay issued by the director and in line 14, may either sustain the director's decision or remove. I would have the commission make the decision to continue it, rather than it being just the director's decision. I think it will take care of some of the legal problems that way. This is kind of a touchy area.

395 CHAIR CEASE: What does the committee want to do? I take it that the counties and the department haven't quite worked this out yet. Is that correct?

399 MS. HANNA: They probably thought they did.

402 SEN BUNN: If on line 18 we replace the $10,000 with $2,500, does that do anything to get us moving?

404 CHAIR CEASE: It helps.

405 SEN. COHEN: I think Sue's language is important, too. We have to put some side boards around it and some beginnings and some ends and some limits on how long the stay lasts.

410 SEN. BUNN: I would suggest the $2,500 language, Sue's language and tomorrow we can figure out if it is close enough.

413 CHAIR CEASE: I think we are on track with accepting this kind of general approach, but we need to have more specific language and tie this down. Is there a general sense of that?

417 SEN. SHOEMAKER: $2,500 and then $10,000?

418 SEN. COHEN: No. Just $2,500. Then we leave the withholding of funds as you currently have it. We haven't tampered with the authority to withhold funds on other kinds of enforcement. We are just talking here about a pattern.

435 SEN. SHOEMAKER: Is there a problem if you do levy a $2,500 fine and pass that on to the developer and they just figure that is cheap at the price?

440 SEN. BUNN: If this is an on-going pattern, the county is going to have to face getting nailed with it. I am assuming they can't pass it on to the developer retroactively. They are taking a gamble that they are doing it right or they are going to be hit with $2,500 a whack for how ever many they have built up over this time period. I don't think it is simply a matter of building in a $2,500 fee and say you are paying this because we are violating the rules. I don't think it works that way.

453 SEN. SHOEMAKER: You wouldn't do it quite that way, but you might say in the event a fine is levied because of this land division, the applicant will reimburse the county for that fine. It doesn't concede to doing it wrong; it just acknowledges perhaps you are.

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025 MR. BENNER: I suggest there be a provision that says the county can't pass that fine or assessment on to the applicant.

028 CHAIR CEASE: Is there any objection to that? I think that makes sense. Okay, let's do that.

028 MS. SQUIER: I just want to say I hope there is latitude for Sue to work to try to be sure this stay provision doesn't turn into a pre-enforcement order contested case which would mean nothing ventured, nothing gained.

032 CHAIR CEASE: I agree with that. Sue was going to do that anyway. Weren't you, Sue?

033 MS. SQUIER: And I would also strongly feel if you choose to go this way, there has been little debate about the merits of taking out the agency's ability to appeal those individual actions, but if you do decide to go that way, I would think the fine or withholding ought to be in a range up to $10,000--if you want to do it $2,500 to $10,000--to account for those situation where there may be the same kinds of things other agencies look for--repeat performances, etc.

045 SEN. SHOEMAKER: I think if you push it very high, you are getting into that area where a fine is becoming more criminal than civil.

047 CHAIR CEASE: Assuming the counties have done what they have done and you had such a provision in the statutes, how many times would it have been used?

051 MR. BENNER: Historically, there have been 24 or 25 enforcement orders total, not all of them have involved counties. In the last year and one-half to two years we have done two. One was actually settled before it got to the enforcement order stage. The other is Jackson County. In that proceeding the hearings officer found, and the commission accepted the findings, that something in the nature of 10 to 15 individual land use decisions involving farm or forest uses did violate the acknowledged comprehensive plan. I would anticipate if this went forward and we did not have the opportunity to appeal individual decisions, you might expect to see more activity on the enforcement order side.

065 SEN COHEN: We are talking about $2,500 for each land division or dwelling issued in violation. If you find that levying this fine is not good enough, you will come back next session and get it up to $10,000.

072 CHAIR CEASE: Are we alright knowing we are going to move with this at this point so Sue has direction from the committee. We will approve this tomorrow, but we have to have it in the shape we want because of the time factors.

077 MR. SCHLACK: These fines or reduction in revenue occur after an enforcement order has been issued and the county continues to issue permits that would be in violation.

081 MR. BENNER: That is not my understanding. My understanding was that--the way these things start is there is an allegation that land use decisions have been made in violation of an acknowledged plan. There is a process and at the conclusion of the process a decision is made that yes or no there have been violations. The assessment here would be based on the findings that the law has been violated. It would not be

prospective. It would be based on the decisions that were made that violated the law. It would not happen until the end of the process--until the enforcement order process is terminated.

100 SEN. BUNN: Dick, would you anticipate any difference in the fine based upon a blatant violation or a close call.

104 MR. BENNER: I expect there would be if they are arranged here.

105 SEN. SHOEMAKER: I would hope that this wouldn't suggest that after an enforcement order is entered by the commission if they then go ahead and continue to violate the enforcement order that the only thing you can do is levy the fine. I hope we have some more serious things than that if they are doing that.

110 SEN. COHEN: We talked earlier and nobody argued with me that this doesn't take away from any of their existing authority which says they can withhold funds if somebody violates an enforcement order.

113 SEN. SHOEMAKER: I think it should be very clear this is not exclusive of any other remedy that the law may provide for a knowing violation of an order or a stay.

115 CHAIR CEASE: I think we need to make that clear. This is something in addition to what we currently have in statute.

118 MR. BENNER: There is a budget implication here. We would need a limitation to receive those funds and expend them.

120 SEN. COHEN: Can they go though the General Fund?

120 MR. BENNER: We don't have a limitation to receive them.

122 SEN. COHEN: I want to be very clear about this. No other agency that does fines, do the fines go to the corpus of the agency and I believe we want to make it clear that the fine goes to the General Fund. It doesn't go to your budget.

125 CHAIR CEASE: If we make the notation, I assume that would be the case. Do we know where we are going with it, Sue? Anne, are you on board here?

136 MOTION: CHAIR CEASE moves this in concept and asks that Sue provide the language.

142 MS. HANNA: I will continue to set this up as a separate amendment and it will have a new number.

147 MR. SCHLACK: The last item is actually in HB 3661-A66 (EXHIBIT R). -A78 and -A79 are parallel and if you are going to pursue -A78, you would not need to pursue -A79. The -A66 amendment on lines 4 through 6 would remove the requirement for individual notices on farm and forest dwellings and also for the land divisions within exclusive farm use districts. We would continue to do the semi-annual reporting to the department. This goes hand in hand with the -A78 amendment dealing with the appeals.

188 MR. WARNER: The remaining parts of the -A66 were covered the last time.

197 MR. SCHLACK: We have already dealt with the other aspects of the -A66. They are either in the -A71 draft or we have talked about them previously.

201 MR. BENNER: On the -A66, if we are talking only about the notice requirement, then if you decide to proceed with -A78, which talks about the appeals process and enforcement order process, then we don't need those notices any more. However, if you choose not to do the -A78, then we would say you would not want to do the -A66, at least that part of -A66.

210 CHAIR CEASE: All we are doing to this bill is first piece that is on page 7, line 25. Isn't that correct?

213 MR. WARNER: That is correct at this point. Mr. Benner did mention that we would only be doing this in terms of if we were going to do -A78. If we are not doing -A78, we need to take a look at doing this again.

219 CHAIR CEASE: We have made a decision and given it to Legislative Counsel. Obviously they are connected. We understand that. Is there a problem with the amendment on page 7, line 25? Okay, let's accept it.

223 CHAIR CEASE: Let's move to the commission composition. Coming back to the -A71 amendments, which is the big item. And we have to get into the big question of soil classifications. Then I want to ask Sue to talk about the relationship between this bill and the rules. I know there are some technical amendments. Is there any other piece we have not gone over once we finish these parts? 232 MS. SQUIER: There are some minor things.

236 CHAIR CEASE: Let's put those at the end. Take a look at the -A71 amendment on the composition of the commission on page 51, lines 11 and 12. The only change made here was, and it doesn't change the size of the commission, it adds a provision that at least one member shall be an elected county official at the time of appointment and Section 52 says "The commission shall reflect the membership composition described in ORS....as amended by Section 51 of this Act, by December 31, 1994."

256 MR. WARNER: In considering that day, we would like to look at the staggering of the membership now. That is an issue I don't think we have discussed. I would like to bring that back to the committee after we see what the procedure is.

262 CHAIR CEASE: You may have a person up who the Governor may want to reappoint. We don't want to impact on that so we need to take a look at that. Sue, do you think we can deal with that? If we provide that the membership doesn't change, it should have one city and one county official, we need to deal with the time frame. Can we take a look at that tomorrow?

268 MS. HANNA: That is Section 52. Is there a problem with it?

271 CHAIR CEASE: If we make this applicable December 31, 1994, it would mean immediately next year there would have to be an appointment of a city official, wouldn't there.

273 MR. WARNER: We wanted to make sure someone was up at that point and someone midterm would not have to be booted.

276 MS. SQUIER: I would like to reiterate my strong concern with this. I do not think any strong case has been made for the change. For the very reasons you were just referring to with the potential adjustment in a short time frame it is one more constraint on selecting the person best suited to represent the interest of the state on a state land use commission. I would strongly urge that the committee let this one go.

285 SEN. BUNN: Not liking the prospect of a veto, I would just as soon drop this one and fight for the rest of the bill.

289 SEN. SHOEMAKER: I don't want this.

291 SEN. KINTIGH: I am not going to fight for it. 291 CHAIR CEASE: Alright, if you don't care we are not going to worry about it. Let's forget that part then.

293 CHAIR CEASE: The next big item is the soil classifications and the issues attached to it. What do we have to have in front of us to deal with this.

299 SEN BUNN: Do we have the working copy -A0114 (EXHIBIT M). We don't need it. I can tell you where I think we are as far as discussions. I will read some language that isn't perfect. This is stating that in the Class III and IV soils that are listed in the Willamette Valley that a lot of record would be allowed if the track is smaller than 21 acres, is bordered at least ____ percent (and the bill has 75 but there will be a discussion on the percent) of its perimeter by tracts that are smaller than 21 acres and the rest of the language (I think we have agreement) with at least two dwellings within one-half mile of the tract. Is that what we talked about, Dick?

322 MR. BENNER: We have brief discussion over here of maybe looking at the maps with a quarter of a mile, I thought.

323 SEN. BUNN: Okay.

325 MR. BENNER: We really need to look at the maps on that to see what happens.

MR. WARNER: We do have maps that we can host.

328 SEN. BUNN: Thirteen hundred twenty feet was the figure we were talking about when we were talking about how far around. The idea is to say when you've got typically 20 acres or less, (we use 21 because in parcel division you don't end up with exactly 20) that are not alone out among farm land but they are in an area with other smaller parcels. There is fairly strong disagreement on how much surrounding parcelization there needs to be. I am not sure, once we look at the maps, if there is any major disagreement over that two homes and how you identify that. The language "two homes on adjoining tracts" may be a little narrow but I think we can deal with that one.

345 CHAIR CEASE: How do we best proceed? Do you want to look at the maps? We need to come to some resolution of this.

347 SEN. BUNN: I think the map of the red hills is the best one to demonstrate. (maps being set up)

Members looking at maps pending the return of Chair Cease.

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005 SEN. BUNN: (explaining layout of parcels on map) These are the identified parcels based upon a similar scheme we were talking about with three of them being rejected. This parcel, based on the size of the surrounding parcels, this parcel and this parcel.

008 SEN. KINTIGH: These are under 21?

008 SEN. BUNN: Yes, this is 10 acres, this is eight acres and I am going to use these two as examples. This is on a county road but it is surrounded on all sides by larger parcels. No percent of it is a parcel 21 acres or under. So it would have zero percent. This, for example, is surrounded by a number of smaller parcels so it would have 75 percent. This one qualifies based on a 67 percent figure. I am arguing for a 25 percent figure. This is the example I will use: at a 25 percent figure you are excluding this parcel, which is surrounded by larger ones. This parcel is right next to a heavily developed area, but it would be excluded based on a 50 percent figure. My argument is if you have a square lot, one side of that square lot is adjacent to other small parcels, then you should allow a lot of record because you are not cutting into a new area. You are already in an area where you have impact in the agricultural area. This parcel and this parcel are already impacted by this area and are getting a negative effect. The concern about changing the word in the proposal was when I realized this parcel--there are not homes for whatever reason on these two. So it would just be an odd situation. They would be excluded. You save 1,300 feet which draws your circle (400 feet/inch). This is Yamhill County, the Dundee area, a heavily developed area. Most areas would be much less impacted and would be less likely to be approved.

We have two other maps. Anne and I may have different views of it, but this is my view of the worst case scenario.

040 SEN. BUNN continues explaining the parcels on the maps but due to background conversations Sen. Bunn's explanation is not audible.

Committee members informally continue to discuss the maps.

086 MR. WARNER: Mr. Chair, should we reflect for the record what we have learned?

087 CHAIR CEASE: Yes, we should reflect that. Sen. Bunn, what did we learn from all that?

090 SEN BUNN: I am going to deal with conceptual amendments. These three sentences shouldn't be too tough, but I will break them into pieces. The first part is the 21 acres or less in the listed Class III and IV soils and the second part is that there be at least ___ dwellings within one quarter mile of the tract in question. We may use the dwellings to adjust once we can look at some more maps. But I think that is a way to narrow it. The main concern is that the tract is bordered on at least ___ percent of its perimeter by tracts that are smaller than 21 acres. And I will, with the other two, move 25 percent. That would provide that at least one side of that property must be bordered by other small tracts.

105 CHAIR CEASE: Comments, corrections from the committee? Anne Squier or Dick Benner?

106 MS. SQUIER: I would like reaction to my reaction. I am concerned about making it just 25 percent because that looks only at one side of the parcel. When one is out in some of the less developed areas I think we need to look at the nature of the parcels on all three sides and only when they are all below 21 acres. Do you want to open up for a dwelling that land? This 25 percent wouldn't get at it. The 25 percent, I believe, Sen. Bunn, was to get at the situation such as that middle parcel that abuts a whole string small parcels that have houses on them and his question is why should that one not get a house close to the road when it is so near others. If the committee believes it is appropriate to address that parcel, but perhaps not the parcel above it, it is, I think, perhaps better to get at it with an alternative test, leaving something that would be something along the lines of 75 percent or two-thirds of the perimeter under 21 acres and two dwellings on the adjacent parcels for the bulk of the test. But for this kind of situation, some density of dwellings centered on that parcel, a fairly high density. Here, just looking visually if you looked at a quarter mile with seven or eight dwellings (I don't know what the number should be) but I think that would limit the potential impact of simply using the 25 percent.

132 SEN BUNN: I don't have any disagreement with that except the 75 percent. In Dick's figures I think we are looking at 67 percent because if you don't have a square parcel, if you are up against the road and then across the road is a large parcel, you are kicked out. But I would also suggest that rather than requiring three of the sides, that you require two of the sides. Because if you are bordered on two sides by other small parcels I think there needs to be more flexibility. I wouldn't have a problem going to two sides on a small parcel. If you fail that, then say so many homes within a certain distance.

142 MS. SQUIER: Partly because the parcels are not always rectangular or square and partly because there are parcels that interface into very large holdings on two sides, I think it should be a perimeter that begins to enclose the parcel. I have no problem with two-thirds to take care of the fact that some parcels are not square but are rectangular. I think when someone just looks at two sides and 21 acre parcels on either side, that probably is not enough if the other two sides abut 100-acre parcels.

152 SEN BUNN: They may also abut thirty acre parcels, twenty-five acre parcels. I think it would drop back to 50 percent if it is not a square parcel. That still is not going to deal with it, but it gives a lot more flexibility.

156 CHAIR CEASE: It is clear if you look at this map.

158 SEN. BUNN: The point I am coming to is on the Valley floor (this isn't the Valley floor, we've got virtually nothing on the Valley floor). This is on the foothills in a very chopped up area to start with. You have very few parcels that don't already have a home on it. Then you have to look at whether or not they qualify under the lot of record so we are not creating a hugh problem. But it is a little bit difficult when the county planning department has to tell these two that are within a quarter mile of each other, you qualify and you don't. (points out parcels on map)

170 SEN. SHOEMAKER: Anne was suggesting you have an alternative test and that is there is a fair number of dwellings, seven or eight within a

quarter of a mile, then you could fall back to 25 percent.

174 SEN. BUNN: This map is not representative of most of the nine counties. This is heavier developed than most, therefore the eight homes won't apply, whether it is in Polk County or even the McMinnville area. You are going to have fewer parcels and they are going to be surrounded by other small parcels, not necessarily on all sides. And they normally won't qualify with the eight homes within a certain distance. I think if you have somebody on two sides of you that are small parcels, that is the kind of thing we are talking about for lot of record. Again, this is the Class III and IV soils. This is not the Class I, II, the prime nor the unique so we have kicked out 95 percent of it before we get to this point. I just think we are going too far excluding parcels and we are not allowing, under my proposal, a parcel to go in where it is in the middle of farm land. It is where it has some other small parcel next to it on at least one side and I would even accept two with the language of another alternative for several houses. 193 CHAIR CEASE: What do you want to do with this issue? This is the heart of the proposal.

194 SEN. KINTIGH: I support Sen. Bunn.

195 SEN. SMITH: I support Sen. Bunn.

196 CHAIR CEASE: Is the only issue we have left, the two sides question?

200 MR. WARNER: For my own clarity, we are talking about lots less than 21 acres, a quarter mile distance there are a number of homes? Is that correct? Is this an "or" test so if there are eight homes or if there is a bunch of small parcels?

205 SEN. COHEN: That is after you get to the question of 25, 75 or 50.

207 SEN. BUNN: The first part as I proposed it had three tests, all of which it had to pass. It had to be under 21 acres. It had to be bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres and it had to have ___ dwellings within a quarter mile of the tract. That was the motion. I think Anne's effort was to create a second standard with a higher percentage and two dwellings that are adjacent to the tract, and if it failed the three tests, the 21 acres, the 67 was the figure she had, and the two dwellings. Then if it failed based upon the 67 percent, it could qualify based upon x number of homes within x distance. I have said it a couple of times, but the goal is to not stick a new dwelling out in the middle where there are no others, but when you have two homes close by and you've got at least on one side other small parcels, you are not dropping it out in the middle.

236 SEN. KINTIGH: You are not increasing interference with agriculture. That is the issue here.

239 CHAIR CEASE: We have a motion and I am anxious to move on before we all die.

244 MR. BENNER: Could I suggest this be written up with blanks in it so nobody gets killed and at some point tomorrow we continue to look at this and some other maps. At that point perhaps the committee can feel more comfortable about the numbers it inserts about the percentage of the perimeter, the number of dwellings and the distance.

250 CHAIR CEASE: Let's do that. Let's draft it up and leave the blanks. It is my intent for this committee to meet at 3:00 (tomorrow).
256 SEN. BUNN: There are two different ideas. Anne's idea and my idea. I would suggest that we vote on one of those two and put it in. We may want to adjust the figures just as we argued the 160/320 issue before, but get a draft based upon one of those two.

263 SEN. COHEN: I think the -A0114 amendment is different. I may disagree with you about the final percentage, but I think this is a bit more straight forward than the triplicate test. I would prefer to embark on this route and then argue about whether we talk about 25, 50 or 67.

272 CHAIR CEASE: Can we agree on having the amendments drawn up leaving the blanks? Yes, let's go with that.

274 SEN. BUNN: Is that instead of two adjoining houses, ___ houses within a quarter mile?

275 SEN. COHEN: At least tracts have dwellings on them. That is fine with me.

279 SEN. BUNN: The problem with that language is if the two small tracts next to you don't have a home, but everything else around it does, if there are a number of homes around it that qualify, it is still the same concern.

284 SEN. COHEN: I see. So are you suggesting to amend the -A0114 amendments to put some distance in there?

286 SEN. BUNN: Right. And I think the distance was a quarter mile. So at 1,300 feet you are very close and then it is just a question of how many homes in a quarter mile equal two homes touching to get the same concern.

291 CHAIR CEASE: We will get that and fill in the holes. I think we have an appropriate approach. Let's work on the figures.

294 MS. HANNA: Can I read what will have holes in it? The tract is bordered on at least ___ percent of its perimeter by tracts that are smaller than 21 acres and at least two tracts within ___ mile had dwellings on them on the effective date of this 1993 Act.

302 MR. WARNER: Instead of the two dwellings, it should be ___ dwellings.

303 SEN. BUNN: We can use ___ dwellings within a quarter mile or two dwellings within ___ miles.

315 MS. SQUIER: In the discussion on Friday with respect to this section, I believe the discussion was focusing on the IIIe and IVe soils--those soils that are in the hills, not the IIIw and IVw soils on the bottom land. I would hope that the committee would consider modifying (a) on line 5 of page 3 to say, "identified in Section 3(3)(a) or (c) of this 1993 Act." That is pointing to those IIIe and IVe soils, rather than the IIIw, IVw which are on a flat land and are generally the grass seed soils. My reason is that in all the discussion that I have heard that talked about the need for this additional opportunity for lot of record dwellings has been focused on the areas in the hills where

there is already a good deal cut up and developed land. I think we should be specific.

335 SEN BUNN: I strongly disagree with that. In the working group we did talk about that as one option. In fact to simplify the method so that we just had under 21 acres in the IIIe and IVe you had a lot of record. That was not acceptable. It is kind of like--if we can find one simpler method for the IIIe and IVe, that is fine, but we have got to go through a whole bunch of hoops, those same hoops should apply to the Valley floor. Remember, we have already excluded almost everything. If you can recall the map of Marion County, there was virtually nothing on the Valley floor once you excluded the Class I, II, prime and unique. We are only down to some specified III's and IV's. Many of those are going to be too wet for a home any way and those that are not too wet that are a Class IV, in particular, are not high value land for grass seed anyway.

360 CHAIR CEASE: Let's hold that issue. The committee wants to speak about it tomorrow. We have a couple other items we have to deal with tonight. We've got our approach here and I think the question of the soils we can get at tomorrow unless you want to resolve it right now. Alright, let's do that. Let me remind you we will start at 3:00, we go to the Floor at 4:30. We still have a number of items.

I would like to bring the counties back up because I understand there is some problem with the way we approached -A78. Let's review that and see where we are on it so we don't block that in and have people not on board with it.

383 MR. SCHLACK: Based on our understanding of where the committee is pursuing the -A78 amendments, we would request that you delete those.

392 CHAIR CEASE: You want this whole section deleted and not deal with it all?

393 MR. SCHLACK: The -A78's dealing with the appeals. The cost is way too high.

397 SEN. COHEN: So we don't interfere with the director going to LUBA?

397 MR. SCHLACK: That is correct.

399 CHAIR CEASE: So we will leave the ability of the director to go to LUBA alone?

400 MR. SCHLACK: Yes.

400 CHAIR CEASE: Is that agreeable with the committee? Sue, do you understand that? It is going to ease your problem for tomorrow.

404 MS. HANNA: Yes. I like that.

408 SEN. SMITH: If the counties want to withdraw their proposal, it is withdrawn.

410 CHAIR CEASE: What does that mean when we move from the table? Is everybody going to start grousing, or what does it mean? What are people unhappy about other than this at this point? I take it that the make-up of the commission is a concern.

423 MR. SCHLACK: Of the five items that AOC brought to your attention for consideration, the composition of the commission was probably number one. The director's appeals was number 2. What is of concern to us with respect to the -A78 is when we came to the understanding or the realization that the withholding of revenue or the fines would be applicable to those cases by which the enforcement order was based on. It was our understanding in our discussions with the department that the withholding of revenue would only be on those action where a county had continued to violate their own ordinances after an enforcement order had been issued. That it would not include those three cases, if that were the case, that the enforcement order was based on. That is a major departure from the discussions we had. At that point we will live with the appeals and deal with this another day.

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023 CHAIR CEASE: I know the parties have spent time on this. I am having a hard time it figuring out. After you spend that much time, there shouldn't be that much disagreement between the two sides on what that meant. What can the committee do to make it workable but not what we apparently did on this item. We can talk about the commission composition in a bit. What do we need to do with -A78 to deal with the issue? It seems to me that regardless of what happens to the lot of record, what you are dealing with in this area in terms of relationships are important to deal with in any case, aren't they? I think we need to do that.

035 MR. BENNER: I am sorry there was some misunderstanding between my position and the counties' position, but it was my position all along that whatever fine or withholding of revenue would be based upon the actual decisions that brought the decision to the enforcement order in the first place. I think what the counties are asking, and what their apparent understanding was is that--let us say there is a pattern of decisions from a county, four or five of them, that precipitates an enforcement order proceeding and it comes to the commission and the commission decides to impose an enforcement order, the only thing the commission can do is say we find you have violated the law, now don't do it again. What the counties would then say is if they do it again, the commission could in another proceeding, in some kind of additional proceeding impose a penalty. That, to me, is not worth giving up the present authority we have to appeal individual decisions. It is very similar to the current enforcement order authority we have where we find violations, we get to the end of the process and the only thing we can do is say don't do it again. I suppose if the county continued to do it again, we could go to circuit court and seek some sort of contempt order and a fine if need be. As it has been reformulated here, it isn't a very attractive substitute for our current ability to appeal individual decisions.

054 SEN BUNN: Is there some way that a provision could be included for notice so that you can give them notice of intent to fine if they follow through and they have the option of backing off so they are not completely vulnerable? They go through these decisions and if they go through them in good faith and there is a disagreement of interpretation, is there some relief mechaniSMthat you can notify and they can say they will back off on this until they figure it out?

061 MR. BENNER: I think the actual practice would be we learn about a decision that in our estimation violated the acknowledged plan. We

would express a concern at that point to the county after we learned of the one. So there would be a warning at that point that they shouldn't apply their ignorance in this fashion. We couldn't act until there was a pattern.

068 CHAIR CEASE: I think Sen. Cohen is suggesting to Sen. Bunn that you build in a warning notice. Can you do that?

069 MR. BENNER: We could.

069 SEN. COHEN: Then you could proceed with the fines.

070 CHAIR CEASE: If they don't pay any attention to the notice.

070 MS. SQUIER: I would point out that part of this is taking away the notice to the department of these individual actions. For them to have to give a warning notice, seems to me to be making it impossible for them first to know what is going on and then requiring they have to give notice before they act.

075 SEN. BUNN: Unless somebody else has some good idea, it seems like the department and the counties can go back and see if they figure it out. If not, it is gone.

077 CHAIR CEASE: I think that is what we will do at this time. We have to either get it resolved or leave it out. What about the commission? I had suggested the other day, which I thought was a perfectly reasonable suggestion that you leave the commission at the same size, but you have a provision for selection of one elected county official and one elected city official. People seem willing to buy that. 086 SEN. SHOEMAKER: Who did?

086 CHAIR CEASE: The counties are willing to accept it as a compromise. Their proposal in the bill that comes to us from the House will enlarge it to nine people, two city and two county. I think that is totally unreasonable. What I am suggesting is a compromise. Otherwise what you are suggesting is that it is not possible for the Governor to find a couple local government people who are qualified to sit on the commission. There is one now. Still the Governor selects who she wants to appoint and the Senate still confirms. I know a lot of local government people out there that I think would do a good job. I don't know what the problem is.

098 SEN. KINTIGH: I will support that concept.

099 CHAIR CEASE: I think we have to provide something here that would be some sort of comfort. I think it does that. I don't think it does damage to the seven. The most important thing is the seven.

102 SEN. SHOEMAKER: If you had the present Governor, I wouldn't be concerned. We may well have a governor who is against LCDC. I don't like to do anything that would tend to tilt it against what we are trying to accomplish with statewide land use goals. I don't see what is wrong with the present system. The reason we have all this is because in the past some counties have knuckled under to the desire to help their county advance economically and overlooked the importance of protecting the land. That is why we have state land use controls. If you start eating away at that by allowing the very parties that don't like state control to be on the state control commission, it seems to me you are undermining the whole purpose of the statewide land use

controls.

117 CHAIR CEASE: I understand your concern but seems when you have a major conflict like this, either you say you live with one side and the hell with the other side or you try to figure it out. As far as protection from future governors, you aren't going to protect anything from future governors. We have battled again and again in this whole process over a number of things. One is symbolism, which is part of this building, and over nit and gnats and picks and pats. If this, what I call a minor change, would bring some comfort level to the people involved, then I would say do it. I don't think it is a major change as long as the governors involved feels they can select all high people. As to the other issue we just had, I would hope the two sides can resolve that tomorrow so we can move on with this. I think I would agree with the proposal. I didn't agree with the proposal that came from the House. What is being proposed here is a substantial difference and I don't think it harms the commission at all.

155 CHAIR CEASE: What do you want to do with the commission issue? Do you want to hold that for tomorrow, too? I will make a motion.

157 MOTION: CHAIR CEASE moves that we provide for one county official and one city official and that Sue work out the overlapping time frame.

161 VOTE: In a roll call vote, SENS. SMITH, BUNN, GOLD, KINTIGH and CHAIR CEASE vote AYE. SENS. SHOEMAKER and COHEN vote NO.

166 CHAIR CEASE declares the motion PASSED.

167 CHAIR CEASE: On the issue of -A78, we will work on that tomorrow and see what we can come up with so we don't leave it hanging in the wind. There are a couple of other items we need to do tonight. One is the issue of the relationship between the bill and the rules. Then we have some technical amendments. 190 MS. HANNA: When we are talking about rule writing authority and granting it to a state agency, we are getting into the area of separation of powers. In the case of LCDC, there was a very broad grant of rule writing authority that was given to them initially to adopt goals and go forth and do good with those goals. Since then the Legislature has decided to cut back in specific areas. A good example of this is destination resorts. A couple of sessions ago we decided to do that.

When the idea first came up, the counties brought in how they would like the destination resort goal amended. This cannot be done under separation of powers. You can't amend an agency's rules. You either go in and occupy the whole field or you take away all their rule writing authority, or something of that nature. As far as amending them, you can't do that, except in very specific areas. We have made an attempt in Section 28. There are different ways in which those rules can be done. Basically we have occupied the area and said you can't identify high value farm land because we have done it for you, but maybe we should let you identify high value farm land for other purposes but you can't for siting dwellings because we are doing it for you and here it is in this bill. That is the approach we have tried to take in Section 28. Don't identify secondary. Don't identify small scale. You will notice we have said don't try to site dwellings on high value except as we have done it here.

224 There are different ways we can approach this to ensure that we

keep certain aspects of the rule writing authority. It is very desirable to keep certain aspects of the rule writing authority or I would have this bill packed with definitions. They already have an irrigation definition. It is just fine and I don't think it bothers the committee at all. I would rather not have to put it in this bill and not have to try to totally occupy this whole area the way we did destination resorts because it took up quite a bit of time and space. That is where you are now.

232 Just where do you want to put the commission's rule writing authority with respect to this issue? But you can only do it very generally. You are not going to be able to say "and rule so and so, put a not in front of that".

236 CHAIR CEASE: Earlier I had talked about the lot of record as an addition to the rules. We have been proceeding, however, as the lot of record as a substitute for the rules. How do we have any assurance that if the bill becomes law and you have a lot of record that the commission's rules are still in effect and you have two different approaches. How do you prevent that.

249 SEN. SMITH: (inaudible)

259 MS. HANNA: You can go ahead and can say they won't do small scale farm land or secondary. That is going to take out a large chunk of what raised a lot of concerns about the rules. You are going to put in a mechaniSMin its place to identify that. Probably where the discussion comes in is what else can they restrict on high value farm land. We have only addressed dwellings in this bill. So because you haven't addressed other activities with respect to high value farm land--

269 SEN. COHEN: Have we reversed the issue of partitions?

270 MS. HANNA: Yes. In any area where you have specifically addressed something, you have overridden the rules. How do you want them to fit together because there will be remaining appropriate areas for them to write rules under this bill. There is one Rep. Dell and I are going to discuss when we are finished with this. We are going to desperately need some rule writing authority in that area.

279 CHAIR CEASE: I don't want to take away their rule making authority. That is the problem. But we want to say that these particular set of rules, that's the problem, too, isn't it?

281 MS. HANNA: I think you can probably hear from Dick on some of the specifics on this. I just wanted to give you some perspective that just doing this bill, and it doesn't matter who writes the bill, you either occupy the entire area or you are going to fit in with their rules. In everything that has been done, it is a matter of fitting in, to some extent, with the rules.

288 MR. BENNER: It has been our understanding from the time you started to work on this bill when it came over from the House that you were going to be looking at a lot of record solution to the small scale resource land problem and that if you passed such a bill then the commission would go about the work of repealing its small scale resource land rules. Whether you tell us to do it or not, if you pass this bill, that is what I will ask the commission to do. Because I believe the small scale resource lands would be inconsistent with what you have done here.

305 SEN. COHEN: Maybe we don't need to do anything.

306 CHAIR CEASE: We don't want to take away your rule making authority.

307 MR. WARNER: Could we mention the small scale resource and the secondary lands?

308 MS. HANNA: We can definitely eliminate those and if I can work with Dick to get exactly the right words that I want so that I am not getting into where they need to work with high value farm land, but we are still allowing those dwellings that you have been working on. I can probably do that this evening and have it for you tomorrow.

316 CHAIR CEASE: Can we do that? I think it is clear the committee does not want to impair the commission's ability to make rules. Let's work on that.

323 REP. MARILYN DELL, House District 29: I will limit my comments to one or two really quick ones. On the -A71 amendments, page 5, line 19, is the subsection that deals with the person who is aggregating parcels having to file a deed restriction. That is the kind of provision that always sounds easier than it is once you start thinking about it really means. For example, you can't just simply file something like that if you have a mortgage or loan. Your lender gets involved in this. There is also a question of what process we are going to actually use for this recording and what process we are going to use to keep track of the list of parcels that are pledged so they can't be used again.

343 CHAIR CEASE: I think this is one we talked about earlier and I think Sue mentioned the language had to change and then she was talking about adding a third section which would provide that the commission, by rule, could provide a format.

348 REP. DELL: I think in talking with Sue that is what we have come up with. We are suggesting now that you could use pretty much the language that is in there with the exception on line 22 when it references "building rights" you want to make sure what you are talking about is dwelling, residential. You don't want to keep people from building barns, etc. Then if you added that the wording of the deed restrictions, the mechanisms of the recording, the procedure under which counties keep a record and the notice to subsequent purchasers shall be prescribed by rule.

361 MS. HANNA: We have been working on this.

363 REP. DELL: I have a question on page 6, line 29. We are talking about what an owner is. We are saying it can be a business entity owned by any combination. I think you probably meant to say any one or combination. You don't need two family members to do that.

One other issue. I think it is a mistake to have the hearings officer from the Department of Agriculture. I recognize the political....

377 CHAIR CEASE: The hearings officer is not from the Department of Agriculture. The hearings officer is attached to the Department of Agriculture.

381 REP. DELL: I will amend my comments to say I think it is a

mistake to attach the hearings officer to the Department of Agriculture. There will be fees paid. Those are going to be budgetary items associated with land use planning that are going to be dealing with an agency other than the agency that usually does it. I can see the political reasons for doing that, but I think there are complexities in bringing another department in any way into this process.

390 CHAIR CEASE: Let's take a look at that. It's fair if we put those fees into the General Fund. It won't make a difference. We can take another look at that.

404 MR. WARNER: There is one additional technical amendment that I won't worry with now. We are still working on the details. It was included in the stuff that Dale and Chandler brought forward. We will bring that to you tomorrow.

407 CHAIR CEASE: We will look at the hearings officer, the other technical amendment, you are working on the format of the deeds and stuff, we have the issues you are working on with the department to fill in the blanks.

414 SEN. BUNN: I think Dick will come back with maps, but I think we will argue the point tomorrow.

415 CHAIR CEASE: What else did we agree to hold over?

418 MS. SQUIER: These are all quite minor, but I would like to raise them. The last time you met you changed the slope upon which a forest dwelling could be sited to 40 percent. Forty percent is above the extreme fire hazard reading steepness. There is a document called "Planning for Survival" from 1988 published jointly by the Forest Service, BLM, Department of Forestry, etc. that says houses should not be located on hillsides steeper than 30 percent and containing flammable fuels, meaning forest stuff. I would like for you to think about whether you would like to reconsider that. I don't have the pamphlet here tonight but I can have it here tomorrow.

434 CHAIR CEASE: Can you make note of that for tomorrow?

439 SEN. KINTIGH: Was it 30 percent and?

439 MS. SQUIER: Thirty percent and containing.

440 SEN. KINTIGH: If the fuels are removed, then it is okay? I am just asking.

445 MS. SQUIER: I understand. But the point is that this is a dwelling that would be sighted in an area that is to be stocked fully for forest. The second point is also in the forest area. I understand the committee's reluctance to get rid of the idea if there is not a protection district, a contract will have to do. I am not going to re-argue that. I would suggest you insert a concept and I can give Sue language that says if the dwelling is not in a fire protection district, the applicant come in and show that they have at least asked to be included within the nearest one there is.

458 CHAIR CEASE: Please make a note of that.

461 SEN. KINTIGH: When you go into a fire district, the reduction you get in insurance will come pretty close to paying the taxes for the

district. There is pretty good incentive for a land owner to get into a district.

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025 MS. SQUIER: On page 20 of the draft, Section 14(8), I simply want to say I don't think it gets to the desired results. I believe what the committee desired here is something that would say, "If a single family dwelling is established under Sections 2 to 5 (that is a lot of record dwelling) no additional dwelling may later be sighted under the non-farm--" It has an additional phrase in front of it, but I think it turns it into a snake with its tail...

034 CHAIR CEASE: We will make note of that one.

035 SEN. BUNN: I am a little bit concerned not about the particulars, but just that we get into a whole bunch of detail and we just get lost in it.

036 CHAIR CEASE: We won't get lost. We will pick them up very quickly, resolve them and move on.

043 MS. SQUIER: On page 2 there is qualifier in (g). I think it needs some editorial work and I would like to work with Sue to make it clearer that you are not restraining by this language rather than...

047 CHAIR CEASE: Alright, that is fine as long as we are not changing the meaning.

047 MS. SQUIER: Finally, there was discussion in a number of your hearings about sage brush subdivisions in eastern Oregon that the counties may not have identified at this point and a concern where there is that kind of parcelization there should be a mechaniSMto assess whether you can afford to parcelize and allow dwellings that much without too much for cost of services for the county or whatever. The suggestion I think was made to you was to have the commission review to see whether the services could be provided. I don't think there was any receptivity to that. Nonetheless, I am concerned that the statute as presently set up doesn't give the county a lot of ability if it does wish to constrain, that is to say we are not going to do lot of record here because this is too dense for our ability to service. They can't do that except on a case-by-case basis. I would like to suggest some language that makes very clear that counties, where they choose for reasons such as services, can make decisions that say...

061 CHAIR CEASE: You want to come up with some language that would allow the counties to do it, not the commission.

062 MS. SQUIER: Right. Just so the counties have that clear authority and can rely on it.

064 CHAIR CEASE: If you can draft that, we can look at it tomorrow. Anything else? We will be meeting at 3:00 tomorrow. I think we are getting pretty close to being done. It would be my intent to get the bill out tomorrow and when it goes to the Floor we will divide it for people to carry.

070 CHAIR CEASE thanks everyone for attending and declares the meeting adjourned at 8:25 p.m.

Transcribed by:

Annetta Mullins Committee Assistant Dec. 3, 1993

EXHIBIT LOG:

A HB 3661-A71 proposed amendments, staff, 51 pp B HB 3661-A79 proposed amendments, staff, 6 pp C HB 2214-A12 proposed amendments, staff, 2 pp D HB 2934-A3 proposed amendments, staff, 1 p E HB 3661-A68 proposed amendments, staff, 1 p F HB 3661, land section drawing, Sen. Kintigh, 1 p G HB 3661, Dodd case summary, Anne Squier, 2 pp H HB 3661, proposed amendments, Mike Simms, 1 p I HB 3661-A76, proposed amendments, Dale Blanton, 3 pp J HB 3661-A77 proposed amendments, Schlack, 2 pp K HB 3661-A78 proposed amendments, staff, 3 pp L HB 3661, proposed amendment, Sue Hanna, 1 p M HB 3661-A0114 proposed amendment, Sen. Bunn, 1 p N NOT USED O NOT USED P HB 3661, letter from Dept. of Forestry, staff, 7 pp Q HB 3661, staff outline of unresolved issues, staff, 1 p R HB 3661-A66 proposed amendment, Schlack, 8 pp