

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Subcommittee on
Land Use

FEBRUARY 17, 1993 Hearing Room 137 4:30 p.m. Tapes 1 - 2
MEMBERS PRESENT: Sen. Ron Cease, Chair Sen. Bob Shoemaker Sen. Gordon
Smith MEMBERS EXCUSED: None STAFF PRESENT: Chris Warner,
Administrator Pamella Andersen, Committee Clerk MEASURES
CONSIDERED: Informational Meeting: Overview of Land Use Issues
WITNESSES: Rep. John Schoon Richard Benner, Director, Department of
Land Conservation and Development _ _ _ 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.

TAPE 1, SIDE A

004 CHAIR CEASE: Calls the meeting to order at 4:37 p.m. - Delineates
his goals and intentions for the upcoming meetings. - First meetings
will deal with the secondary lands issue. - Interested parties will then
be invited to offer testimony on their concerns. - Invites
Representative John Schoon to testify.

028 REP. SCHOON: Offers report on history of the land use issue and the
activities of the interim Joint Land Use Committee. - Urges members
to consider where land use issues were two years ago. - Notes Polk
County's plan developed to protect forest lands. The plan was not
accepted. - Agrees with the farm representative on the county
committee who believes rural land ought to remain rural even if not used
for farming. - A definition of a small farm has not been determined,
causing them to remain considered an illegitimate use of the
countryside. - We need to take a fresh look at the problem, returning
to the basic intent of protecting forestry and farm economies, and
identifying true commercial forest areas. 075 - Let the counties
zone the rest. We might want to place minimum acreage requirements on
other rural lands. 076 SEN. SHOEMAKER: Joined the meeting at 4:43 p.m.
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077 CHAIR CEASE: Had you given up on the small farms? REP. SCHOON:
No, I thought the small farms could be accommodated quite easily in
lands other than commercial. - Last session the issue was not resolved
due to conflicting interests. - During the interim a, work group
continued to address the issue, learning a great deal. 098 - Lists
members of the work group. - The deadlines prevented us from reaching
closure. 107 CHAIR CEASE: How much more time was needed?

REP. SCHOON: People at both ends of the spectrum probably would not have
agreed on a middle ground. Some of us could have formed a solution in 30
minutes.

113 SEN. SMITH: Will you eventually share with us what your agreement
would have been?

CHAIR CEASE: We need a sense of what is missing.

130 REP. SCHOON: We decided there ought to be three tiers of
agricultural lands with prime lands requiring increased protection. - We
would not permit non-farm dwellings on that prime land. - Notes middle
tier and permitted uses for that land. - Third tier covered secondary,
or small resource lands. 148 SEN. SMITH: That determination would be

made locally?

REP. SCHOON: Land would be identified by a local technical committee appointed by the county commissioners.

153 CHAIR CEASE: How is that related to the determination of the other two categories? Who would select those? REP. SCHOON: Either way it worked would be acceptable. If local government made determinations, those would be subject to the Department. CHAIR CEASE: Would land currently class)ified as EFU not fall into any of those three categories? REP. SCHOON: No, it would not. There are already procedures for establishing areas with too high a density. 178 SEN. SMITH: What was the philosophical reason for disagreement? Restate the definition of the middle tier. REP. SCHOON: They feel use of land should be according to free choice of the owner. Lands other than prime should be used as determined by the owner. - Restates definition of middle tier.

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- Notes specific road he uses that has commercial vineyards, which he would now define within the middle tier, but which has changed over time.

200 SEN. SMITH: Would the determination of tier take place at the state or local level?

REP. SCHOON: That was not clearly determined for prime land. - Whoever did would pretty much come up with the same area. 225 - We didn't conclude whether there should be two or three tiers for timber. - We were told that BLM and industrial owners are not cutting up to the edges of their property because they do not want to fight with their neigHBors that have small acreage. - Those who move next to forested areas plant trees to receive the deferment rather than to harvest them. - We need to determine what size makes a parcel industrial and how much production should be allowed before it is determined industrial or suitable for a home.

269 CHAIR CEASE: Are you saying some industrial owners were making their own judgments in leaving a buffer zone? REP. SCHOON: Yes, and that is cutting into thousands of acres. SEN. SMITH: To resolve this issue would it be necessary to combine ideology from both extremes?

283 REP. SCHOON: When the final decision is made it won't be the result of people at two extremes who are protecting their ideology. CHAIR CEASE: What you are saying is who should participate versus who should make a judgment. REP. SCHOON: The Department apparently took most of the determinations made and incorporated them into the hearings and rul~ making process. 308- I would expect secondary lands to be possible in every county, with eastern and southern Oregon given greater latitude in their land use. 320 CHAIR CEASE: You were providing substantially greater differences region to region?

322 REP. SCHOON: Yes. - We have yet to hear from the counties on use of the program because they haven't had an opportunity to try it. - If it doesn't work, I support returning to identifying prime agricultural and forest lands and let the counties determine the remainder.

345 CHAIR CEASE: Under some definitions of prime agricultural land, 1.2 million acres of prime have been identified. Would you recommend the State control that and turn the remainder over to the counties?

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REP. SCHOON: Not all the rest. - Gives example of grass seed land used in commercial operations but not considered prime in terms of soil type, etc. - Gives example of eastern Oregon land used for commercial ranching.

SEN. SHOEMAKER: What role did the work group see for LCDC oversight?

361 REP. SCHOON: We generally believe that LCDC would have to approve the plan.

CHAIR CEASE: Did the group discuss the issue of the complexity of process and procedures?

REP. SCHOON: We did to some extent. Most of the discussion surrounded criteria. - Senator Cohen has orchard land and Jerry Barnes lives in a rural area. We were confident a local committee could make a determination. You have to leave it to those people who live there and are local experts.

410 CHAIR CEASE: Would you leave it to them to determine the criteria?

REP. SCHOON: In their own county, yes.

SEN. SHOEMAKER: If you leave the criteria up to local control, how much room is there for LCDC oversight to protect against abuse?

422 REP. SCHOON: It is a question of where do you draw the line and what do you establish as criteria for them to review. - Parcel income levels were considered. - My preference was for the local technical committee to make the decision.

455 SEN. SHOEMAKER: So you think the scales are evenly balanced in most counties?

REP. SCHOON: I believe that. A lot of people like the protection land use affords.

TAPE 2, SIDE A

REP. SCHOON: My local farmers don't want secondary lands anywhere in the county. They don't want the intrusion or the complaints about dust, spray and noise.

015 CHAIR CEASE: Notes conversation with representatives of the Farm Bureau the previous week who don't want the Legislature interfering with secondary lands. SEN. SMITH: There is a real distinction between farmers in the valley and those in eastern and southern Oregon. This is not an issue in Pendleton. 032 CHAIR CEASE: In Washington County, which has

the finest agricultural land in the State, the land continues to disappear due to developments. - The farmers in your area are really farming on secondary lands?

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039 REP. SCHOON: It depends on what you think when you drive down the road. On one side you'll see one use and something completely different on the other. CHAIR CEASE: Don't secondary groups such as orchards and vineyards want protection too? REP. SCHOON: I believe so. 050 CHAIR CEASE: I'm not sure there is agreement even on what is causing the dissatisfaction. REP. SCHOON: Senator Smith is right. In eastern Oregon the problem is completely different. 057 SEN. SMITH: If you could aggressively identify prime farmland, you would remove this as an issue in eastern Oregon. CHAIR CEASE: We will ask the county association to report on their resolution which addresses lands of State significance and other lands. - Requests Richard Benner offer additional background and review the nature of what the Commission has done to date on secondary lands. 078 RICHARD BENNER: (introduces EXHIBITS A and B) - Reviews contents of Exhibit A. 100 - Provides history of the problem and immediate events that led to adoption of the new rules. 143 - The Legislature determined in the 1960's that a completely voluntary process would not be adequate. CHAIR CEASE: The legislature was Republican at that time. The Democrats have been viewed as the strong land use proponents. 160 BENNER: Two important actions were taken that year: the passage of Senate Bills 100 and 101. - Reviews the effects of those bills. 189- The State's agricultural land use policy was a significant part of SB 101. 205- Notes movement from a voluntary to required program and general direction to specific direction. - In 1975, LCDC adopted the agricultural lands goal (Goal #3). - Lists noteworthy specifics of the goal. - The definition of agricultural lands was based upon a soil survey. - Land division provisions were not clear and objective. 254 - There was initial litigation as a result of the definition of agricultural land. - Notes specific instance when eastern Oregon farmers recommended definitions be expanded to include soil classes V and VI. The Commission responded and added it to the goal. - The Commission made cross-reference with respect to uses to the statutory exclusive farm use zone which impacted all 16 million acres and made them subject to the same uses no matter what kind of land. 308 - Goal 3 was implemented in 1976. - Individual agency interpretations were being made and court cases were being heard, causing a movement from the general to the specific.

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360 - States two problems that emerged: Misuse of valuable land and overprotection of mediocre land. - Counties alerted the Commission to lands termed "phony forest zones" that should be treated differently

than agricultural lands. - Gives example in mid-1980's of counties approving 1652 dwellings in exclusive farm zones. According to the farm census, the number of farms dropped during those years. - Legislature funded a study by the Commission of what was happening in farm zones. - Findings of the report indicated many farms were approved but very little farming was taking place.

TAPE 1, SIDE B

008 - Lists events leading to rule changes. - In 1985 the Rural Lands Advisory Committee was developed. 026 CHAIR CEASE: Is there a motive to make more land available for development? What is driving this legislation? 030BENNER: There were many players and many motives. - Lists some apparent motives. - Two principle motives are to identify the less productive land and open it up for residential development and to identify a class of lands where small farms can be encouraged. - A definition of secondary lands was required in 1987 to be reported to the Joint Legislative Committee on Land Use. 050 - The Legislature determined to test ideas in a pilot program. A report was offered to the Legislature in 1991. - After the 1991 Legislature failed to pass legislation, the Commission received conflicting instructions from the Governor and Speaker that resulted in the work group's efforts for six months during 1992. - Hearings were held that focused particularly on forest lands.

093 CHAIR CEASE: Begin discussion on the rules to give a sense of the parameters within which you are operating.

102 BENNER: We are trying to identify the land not likely to contribute to commercial agriculture or forestry and treat that differently particularly with respect to residences, and try to identify the most important land and see if there are some uses currently authorized that can be eliminated. CHAIR CEASE: Tell us what the statute currently permits. 120 BENNER: The statute lists between 25 and 30 conditional uses.

CHAIR CEASE: The biggest problem is the cumulative effect.

BENNER: The Commission set out to address both problems. - It recognized agriculture and forestry take place in Oregon at different scales of operation. 155 - Clear and objective standards cannot be maintained concurrently with the maximizing of

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flexibility and discretion at the local level.

167 CHAIR CEASE: Are you saying the more discretion and ambiguity, the more court cases?

BENNER: Yes.

SEN. SMITH: Is the criticism that this is too complex valid?

BENNER: I have heard the new rules are ~ difficult for a lay person to understand. - We tried to pin down what small scale forest land is by

referencing the inventory of soils. Very few people understand cubic feet per acre. - We are seeking to develop criteria that is objective, scientific and not subject to abuse.

194 SEN. SMITH: Would it be better if we made secondary issues subject to a local technical committee?

BENNER: There are benefits and disadvantages to being flexible. - There was concern that these rules would be expensive to implement. Forestry is comparatively easy to implement, whereas on the farmland side, where more discretion has been built in, it will be a lot more difficult and expensive. 212 SEN. SHOEMAKER: What is the risk to the State of allowing the local technical committees free reign? What will we lose? BENNER: The risk is in the implementation process if there are no parameters or limitations on the exercise of that discretion. Interest groups will be complaining about what the committees determine and will then approach the Commission with a revision request. What basis will the Commission have for review of what the county has done? The case would then proceed to court where there would also be no guidelines for making a determination. 242 SEN. SHOEMAKER: What harm is there to the State if the county errs? 271 BENNER: There are only about 2 million total acres of prime land in Oregon. - Gave examples of commercial agriculture taking place on other than prime land: The Dalles, Yamhill County wine grapes, grass seed. SEN. SHOEMAKER: Could this be tied in to a history of farm use? 310 BENNER: The middle category is what's left after you segregate what is of high value and probably includes 12 million acres. - Examples include grazing land in Douglas County and the mixed farm operations in the foothills of the coast range. CHAIR CEASE: One of the problems appears to be valuable land is not necessarily located in the place you want it. 345 - What about nurseries? Are those on prime land?

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BENNER: Those are frequently inside boundaries and tend to be on pretty good land. - Douglas County is not experiencing growth at this time, but as the State grows, those areas along the I-5 corridor will experience the most growth and the cattle industry in this area will be impacted. - Would it be appropriate to break those cattle ranches into 20 acre parcels?

370 CHAIR CEASE: Land use issues impact where people can live and the financial structure of the area. It shouldn't be too surprising we have the conflict we have.

390 SEN. SHOEMAKER: In metropolitan areas there are urban growth boundaries that don't relate to land quality. Is there any sense in considering rural growth boundaries without regard for whether the land is commercially agricultural but for the purpose of directing growth?

408 BENNER: The Commission is in the process of developing a new set of rules for rural unincorporated communities. - Gives example of Pacific City. - These rural communities don't have a special place in the Oregon planning scheme. - Right now, everything in a rural community goes through an exception process if it is on good soil.

TAPE 2, SIDE B

030 CHAIR CEASE: Discontinue testimony at this point. Specifics will be addressed next week. In the aggregate industry, most high quality product is in new prime agricultural areas. We will have specific bills at some point.

043 CHAIR CEASE: Adjourns the meeting at 6:10 p.m.

Submitted by, Reviewed by,

Pamella AndersenChris Warner Clerk Administrator

EXHIBIT LOG:

A LCDC's New Goals and Rules on Agricultural and Forest Land, Richard Benner, 60 pages B Agricultural Land Use Policy, Richard Benner, 1 page C Letter opposing Department of Land Conservation and Development budget, Robert L. Liberty, 2 pages (This FAXed letter was received after the meeting and forwarded to committee members.)

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