

SENATE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Subcommittee on
Land Use

FEBRUARY 24, 1993

Hearing Room 137 4:30 p.m.

Tapes 3 - 4

MEMBERS PRESENT: Sen. Ron Cease, Chair Sen. Bob Shoemaker Sen. Gordon
Smith MEMBERS EXCUSED: None STAFF PRESENT: Chris Warner,
Administrator Debi Garrigues, Committee Coordinator Pamella Andersen,
Committee Clerk MEASURES CONSIDERED: Informational Meeting: Overview
of Secondary Lands WITNESSES: 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 3, SIDE A

004 CHAIR CEASE: Calls the meeting to order at 4:38 p.m. - Mr. Benner
will take us through the secondary land issue.

011 RICHARD BENNER: Briefly reviews last session's information.
- Notes charts he will reference. - The rules do four principle
things: - reclassify all agricultural land into high value farmland,
important farmlands and small-scale resource lands; - reclassify some
forest lands as small scale resource land; - increase protection for
high value farmland; - reduce protection for small scale resource lands.
- Reviews second chart: small scale resource or important farmland or
high value land 048 - Defines small scale resource land.
- These do not affect other lands such as residential.
054 - Delineated the "blocking requirement." - Critical mass is
necessary for zone designation. - The Commission lowered the
threshold of "small scale" to 160 acres. 085 CHAIR CEASE: Are you really
dealing with the whole concept of the right to farm?

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BENNER: That's correct. - Clear and objective standards have been chosen
by the Commission to distinguish between small scale and the remaining
lands. - They determined that was easier on the forest side rather than
on the agricultural as there are only two basic forest crops. - This
approach was the one recommended by the special committee that met six
months at the call of the Speaker and the Governor. 114 - Lists
criteria by which "small scale" is determined.

SEN. SHOEMAKER: Do blocking requirements still apply?

128 BENNER: Yes. - Continues listing criteria by which "small scale" is
determined.

CHAIR CEASE: It this for both east and west?

139 BENNER: Yes. - Notes third test. - There is a relationship between
the size of a tract and its productive capability. - The committee
developed a threshold below which would be small scale. - On the western
side, the Commission determined 5000 cubic feet of production a year
would be the maximum to remain small scale. - Provides methods by which
small scale can be determined for differing situations. - On the eastern
side, the production-per-year maximum figure is 3000 cubic feet. - There
was great divergence of opinion on the production amounts. 206 - The
Commission took the recommendation of Association of Oregon Counties for

the western and eastern Oregon figures. - Mapping was done in various counties. - Mentions important point on the blocking requirement and how to make determinations on which adjacent lands affect a parcel and in what way.

254 CHAIR CEASE: Which counties did you look at?

BENNER: Relists counties mapped.

264 CHAIR CEASE: Oregonians in Action seem to believe this new process is a fraud. How do you account for that?

BENNER: Our view is that is not correct. - We reviewed a mapping of the south Salem hills and the Silver Falls State Park area. The results were consistent with our intent. - 1000 Friends is not accurate in saying the door is open to millions of acres of resource land being converted to small scale. - A letter from Douglas County offers the poor results they received using the system. Our office will be performing a review.

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326 SEN. SMITH: I received a letter from Morrow or Wheeler County where they stated the rules were a fraud.

BENNER: We saw that letter. - We notified the eleven counties that were required to protect their high value farmland and told them monies existed for them to perform mapping. Many requests have since been received.

363 CHAIR CEASE: Are the people in Douglas County misinterpreting the rules?

BENNER: Some counties are disposed toward making the rules work, and others are not making a good faith effort to apply them. - It would be helpful to have a third-party pilot testing program.

393 SEN. SMITH: Representative Baum represents the same county as I and they are really upset about these rules. They felt they were set up when the hearings were held. 411BENNER: I feel that is very unfair to the Commission. - Union County had a strong influence on the outcome of the rules and is ready to implement them. - The Commission worked very hard with the eastern counties to determine the noncommercial land. 440 - I heard Commissioner Boswell tell the House committee they applied the rules and only 500 acres qualified. I don't believe that. You can't apply the rules that quickly.

SEN. SMITH: Those county commissioners have great sway with the agricultural and forest community causing me to be bombarded by concerned people.

453 CHAIR CEASE: People are frustrated with the process and consequently, things have gotten "out of hand." Have Department personnel been to the Union County area recently?

TAPE 4, SIDE A

BENNER: We have regular communications with the Union County Planner.

- A presentation to Umatilla County realtors revealed they thought there was more to the rules than they were led to believe. They intended to encourage their county to implement them. - Another feature of forest land is each county can establish a local technical resource committee which will review soil mapping units. If they are believed erroneous they can determine what the soil rating ought to be.

032 - Illustration of Jackson County's experience.

SEN. SMITH: Would you agree this is complex? Is there a more user-friendly system?

053 BENNER: Yes, this is complex. - The House passed HB 3170 in the 1991 session. Factors such as slope, rainfall, etc. were used to determine secondary lands. Following that system through culminates in a review .

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by LCDC of the county's determination. What is the criteria for the county? There is no guidance from the bill. The Commission has no basis for review. - If a farm group is unhappy with a decision, what is the basis for their petition? - Without specific criteria, this would end up in court.

087 SEN. SMITH: If this system is simpler, it may be more saleable.

BENNER: Our experience in trying to define this is the counties want real guidance to preclude their wondering if their determination is going to be overridden.

109 SEN. SMITH: Is there an overriding state interest when you get beyond the prime land? Why does LCDC have to review the counties' decisions? BENNER: If the State protects the prime what is left? - Illustration of ranches on the North Umpqua. Does the State have an interest in protecting those ranches? They have told the State they want protection by this program. 133 SEN. SMITH: Can't they get help from the county?

BENNER: If the counties are able to designate the land as small scale, they will. - Provides hypothetical situation of rancher and his ranching neighbor or who no longer wishes to ranch, but wishes to become small scale. Notes how he will be impacted.

SEN. SMITH: Is there "right to farm" legislation in place that would protect him from whatever might be built there?

145 BENNER: I don't know that you can write "right to farm" legislation to prevent a suit from being brought against someone. It doesn't protect people from the conflicts brought against them by their neighbors. - This is less severe for cattle country than for crop country.

158 CHAIR CEASE: I don't we think we have developed a process that will remove a large amount of conflict. - If you assume the State set the

criteria for counties to determine land classifications, what would be your sense of what would happen? Wouldn't you expect great variations?

189 BENNER: We have the State criteria laid out in standards. Defines "standards." - A "criterion" is not that clear and is not a standard. - If you want to move away from a standard or criterion, you would maximize flexibility at the local level.

210 CHAIR CEASE: I don't think there is any system that will be devised that will remove all the conflict.

SEN. SMITH: My sense is we ultimately need an expanded definition of "prime land" to protect the valley and have only the two categories.

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- Most states don't have this and seem to manage. - It would give people in the country a sense of autonomy over land use in their area.

CHAIR CEASE: I agree. Some counties would be anxious to do it and some would not.

245 SEN. SHOEMAKER: Does the mapping program offer promise of demonstrating to both sides that these standards can be applied without creating a disaster?

260 BENNER: It would help answer the question of whether there is any land which qualifies. But for many that is not the question. Rather, they want to know why we do it this way in the first place. - The mapping will go a long way to respond to that question. - We are trying to distinguish between the State's commercial farm and forest land base and the remainder that has been swept in under Goals 3 and 4. - Mentions Earl Pryor of eastern Oregon who provoked the addition of soil classes V and VI. - People look to the Agricultural Lands Goal to prevent commercial and residential uses from being placed adjacent to their land.

316 SEN. SHOEMAKER: You can use the mapping system to create a consensus in the middle.

BENNER: It should respond to that. If there is some quirk in the rules that prevents proper application, the Commission can revise the rule. Those can be adjusted between sessions.

327 CHAIR CEASE: Can you give us a sense of the variety of complaints?

BENNER: A number of people have told us they don't care about secondary lands. They want lot of record relief. They want to build a house. - If you could relieve that problem you wouldn't need secondary lands. - Goals 3 and 4 would remain over-broad and include land that is not worthy of protection. - You could try to relieve the problem creating the greatest pressure: those who get no answer for building on a farm or forest parcel. - Range land (including Jackson County) is treated a little like forest land with more than one way to qualify as small scale resource land. 384 - Notes a specific method by which land may be

determined small scale. - A second way to qualify is through a combination of your parcel size and productivity. 400 - A third test is if the tract is not part of commercial agriculture. - Gives illustration in Wasco County.

TAPE 3, SIDE B

BENNER: Crop and pasture lands were the most difficult for which to develop clear and objective tests. - Tests were performed in Benton and Linn counties with unsatisfactory results. 011 - The Commission moved toward what the counties were urging, approaching a local technical resource committee who would identify the noncommercial crop land and pasture land in the county.

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- In workshops, the Commission developed a criterion for use by the committees. - Delineates criterion. 025 - Explains how one would test this on their property. 043 SEN. SMITH: The people who would be aggrieved if their property was not so designated would be those who just want to build a house for "Grandma and Grandpa." - What if we carve out an exception for a single family dwelling? - Subdivision tracts are what we don't want to encourage. 055 BENNER: Using this test, an area of relatively small tracts will qualify as small scale, allowing you to bypass the dwelling problem. SEN. SMITH: Leave that as it is and include another exception for single family dwellings. BENNER: If you review an assessor's map, you will discover how many parcels are small enough on which to build a home. Farmers will not want housing authorized on all those parcels. 085 SEN. SHOEMAKER: Would there be a different response east of the mountains?

BENNER: Maybe if you keep away from the crop areas.

SEN. SMITH: Wouldn't those areas be designated prime anyway?

BENNER: Only if the county elects to go small scale.

SEN. SHOEMAKER: If you create that exception in the valley you have opened up the floodgates. East of the mountains the pressure wouldn't be there.

099 BENNER: That is generally true. - The growth pressures tend to follow the interstates as well as metropolitan areas and higher employment areas. - Counties with low growth rates don't have much pressure and there would be a rational basis for treating them differently. 118- The rules allow counties to have technical resource committees. - Lists responsibilities of the committees.

CHAIR CEASE: Hasn't there been contention over the creation of these bodies?

BENNER: Yes. - 1000 Friends and some farm groups believed this gave too much discretion to the counties, allowing good land to be lost.

CHAIR CEASE: These people would be appointed by county commissioners?

BENNER: Yes. The rules specify the kinds of persons that would be appointed; people with technical expertise.

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CHAIR CEASE: Have any of these groups been appointed?

135 BENNER: Douglas County used an advisory committee. - The Planning Director there stated there was land that qualified but the committee chose not to designate it as small scale.

SEN. SMITH: If we return to the concept of two tiers, expand the definition of "prime," relegate the remainder to the local jurisdiction and use the concept of the House bill with language that holds up under legal scrutiny, are there other states that would be instructive to us in how to classify standards for the counties?

153 BENNER: Yes. - Wisconsin has a fairly successful program with agricultural districting. They create incentives and penalties. It is a largely voluntary program. - The California program is very unsuccessful. - There are a number of states using systems similar to Oregon's but uniquely tailored to their circumstances. - The National Agricultural Lands Study of 1981 has a comparison of state programs. - The American Farm Land Trust would be a good resource for such information.

196 SEN. SMITH: The House approach last time has merit if we can define with greater specificity. BENNER: I believe there is no right or wrong way to do this, but something had to be implemented immediately. - The Commission wanted the Legislature to review the rules before they became effective should there be better recommendations. CHAIR CEASE: Land use is a technical area with which few legislators are familiar. 228 - You reference going back to the courts. What is the normal argument against using the courts for this? BENNER: Offers example of New Jersey following the Mountain Laurel Case. - New Jersey did not have Oregon's Goal 10 which requires local zoning to authorize a wide range of housing types appealing to different income levels. - In this case, the court developed its own rules applicable to the counties through the court system, resulting in a mess. 262 CHAIR CEASE: The court was acting as administrator and legislator, all in one. BENNER: I am concerned about how one makes the decision of what qualifies as secondary land. - Another good "exceptions" model is the Commission did not give the counties a formula, resulting in cases going all the way to the Supreme Court. - Some of those cases are still unresolved. - Lists continuing cases in various counties. 310 CHAIR CEASE: A system for dealing with conflict is needed, as the conflict itself cannot be

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removed. My guess is as the State grows, conflicts will become more severe.

336 BENNER: Representative Dell has worked with realtors in Yamhill County to develop data indicating how many tracts are in farm and forest zones in Yamhill County. - We need a sense of how many and where they are and see the effect of having a house on each parcel.

367 SEN. SMITH: Has the House finished their study of this?

CHAIR CEASE: I don't think so. The Republican caucus met yesterday to discuss it in depth. They remain unsure of the nature of the problem. We will dovetail with them. - We will continue these informational meetings for awhile. - We do have some bills that we will review later.

406 SEN. SMITH: Where is Governor on this?

CHAIR CEASE: She has made it clear if the Legislature develops a bill that would do major damage to the State's land use program, she will veto it. - There is an interest in dealing with the substance of the issue. - I don't think the two bodies want to spend a lot of time working on this if she might not approve. - There is no settlement of what the major issue is. - Last session, the House and Senate both passed bills, but never reached a settlement.

TAPE 4, SIDE B

005 CHAIR CEASE: Adjourns the meeting at 6:05 p.m.

Submitted by, Reviewed by, Pamella Andersen Chris Warner
Clerk Administrator

EXHIBIT LOG - No exhibits were submitted .

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