

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.

HOUSE COMMITTEE ON ENVIRONMENT AND ENERGY

February 27, 1991Hearing Room E 1:00 p.m. Tapes 57-60

MEMBERS PRESENT:Rep. Parkinson, Chair Rep. Whitty, Vice-Chair Rep. Burton Rep. Courtney Rep. Naito Rep. Norris Rep. Repine Rep. Van Leeuwen Rep. Watt

STAFF PRESENT: Kathryn VanNatta, Committee Administrator Karen Edwards, Committee Assistant

MEASURES CONSIDERED:SECONDARY LANDS PILOT PROGRAM - INFORMATIONAL MEETING

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TAPE 57, SIDE A

004 CHAIR PARKINSON: Calls the meeting to order at 1:07 p.m. Opens informational hearing on the Secondary Lands pilot program through the Department of Land Conservation and Development.

SECONDARY LANDS PILOT PROGRAM - INFORMATIONAL MEETING Witnesses:Susan Brody, Dept. of Land Conservation and Development Bill Blosser, Land Conservation and Development Commission Phil Ward, Dept. of Agriculture Ted Laurence, Dept. of Forestry Craig Greenleaf, Dept. of Land Conservation and Development Lynn Saxton, Land Conservation and Development Commission Russ Nebon, Association of Oregon Counties

018 SUSAN BRODY, DIRECTOR, DEPARTMENT OF LAND CONVERSATION AND DEVELOPMENT (DLCD): Discusses background and history on Secondary Lands pilot program: >Funds were requested last Legislative session to conduct pilot program - general consensus by a range of people for commission to do testing as opposed to rule making. >Ways and Means did not want to release funds until spending details were given to the Emergency Board. >Proposed rules were not to be adopted by the LCDC until the results of the pilot project were presented to the Legislature for review. 165 BILL BLOSSER, CHAIRMAN, LAND CONSERVATION AND DEVELOPMENT COMMISSION (LCDC): Secondary Lands pilot program status report. >Distributes proposed draft (EXHIBIT A). >Legislation would be helpful to define intent of secondary lands.

CHAIR PARKINSON: Weren't you supposed to have the results from the counties that participated in the pilot program by March?

BRODY: The results were completed last summer and fall: >Each county submitted a detailed report. >The third phase will consist of a proposal that is based on the information. >Could have some or all of the representatives of the pilot counties in to describe the program in greater detail.

197 REP. LIZ VANLEEUEWEN: Is this document (EXHIBIT A) the result of the pilot program?

MS. BRODY: Yes.

REP. MIKE BURTON: Mr. Blosser, what do you feel you need from us to clarify or change your proposal?

222 BLOSSER: We think this is what the Legislature wants us to do. If not, we do not anticipate making any rules until we hear from you. We have three options: >Silence. >Specific legislation. >Take certain parts of the bill and put those parts into statute.

REP. BURTON: What would be your preference?

246 BLOSSER: To go in the direction of the "VIDA Group". Take some of the key points and put them into statute. It would give some clarity.

REP. CHUCK NORRIS: Are you looking to us for consideration before you discuss this (EXHIBIT A) with Bill Blosser.

357 BRODY: No. The report that is attached is the result of previous commission meetings. The commission, along with staff, are asking for feedback from this committee before the report is submitted to the public hearing in March.

REP. NORRIS: Is this report based on the results of the pilot program?

BRODY: In a sense, yes. The individual county details of the pilot program results are not contained in this report.

BLOSSER: This report contains extracted information from the pilot counties. The counties may not have tested all of the given criteria and may not be able to give immediate secondary land information. Lane may be the only county that can give immediate information; everything is computerized.

396 REP. BURTON: In this report (EXHIBIT A), on page 27, clarify "Land Uses Appropriate For Secondary Resource Areas".

BRODY: There are terms that are used when referring to secondary lands: >Secondary lands is short term. >Secondary resource lands is long term. >Lands once identified would be used for resource purposes. >Smaller scale operations can be allowed on primary lands. For owner may want to use part of the land for farming and the other portion to live on. >Not commission's intention to make this a rural/residential opportunity. >Land would be made available for smaller resource purposes. REP.

BURTON: The term resource can mean access. How accessible are

secondary resource lands?

TAPE 58, SIDE A

017 BLOSSER: Through the governmental agencies, there is a semi-public or public process before a decision is made. The counties wanted to have the opportunity to review applicants and issue permits under special conditions. The counties would basically impose a conditional use permit.

REP. BURTON: Would you subject a private individual to standards that are different from those of a government agency if that individual wanted to develop a camp ground or park?

BLOSSER: Possibly.

REP. PARKINSON: If part of the Sahara desert was located in Oregon, would it be considered a secondary resource area if it met the criteria?

BLOSSER: If it met the criteria, it probably would.

REP. BURTON: There are primary lands with two designations. Then there is the middle area that does not grow anything which can be defined as land with other uses. Would this be considered accessible resource land?

REP. PARKINSON: All land is resource.

062 REP. PETER COURTNEY: Suppose no secondary land bill passes. What would you do?

BLOSSER: If nothing happens, we would adopt rules.

REP. VANLEEUEWEN: In this report (EXHIBIT A) I hope you have included something that implements deed restrictions on secondary lands. If not, conflicts will arise.

BLOSSER: The commission agrees. There are specific legislation provisions that address the right-to-farm and the right-to-forrest issues. We are not certain that we have the statutory authority to require a deed restriction. That is why it is appearing in legislative proposals.

125 PHIL WARD, DEPARTMENT OF AGRICULTURE: Discusses Department of Agriculture's role in Secondary Lands pilot program: >Program has been a coordinated process among state agencies. >Department of Agriculture has played a key role in the development of the program, is a member of the evaluation team, and has provided agricultural expertise.

REP. BURTON: Do the Commodity Commissions have some affect on the Department of Agriculture's efforts?

WARD: The Commodity Commissions are not a part of the agency structure. They are independent entities governed by state law.

REP. VANLEEUEWEN: How is the Department of Agriculture involved in land use planning?

WARD: We are involved because of the natural resource mandates.

REP. BURTON: The secondary lands resource issue can be seen as an

economic issue. Testimony has been heard in this committee that the state may be creating areas of development and losing agricultural lands. The Commodity Commissions may have ideas on economic development uses. Is there an opportunity for these groups to review this matter if the need arises?

183 WARD: We attempt to meet with the 28 Commodity Commissions on a regular basis. Land use is an interest and issue that is made known.

REP. PARKINSON: Are there soil and water conservation district personnel throughout the state?

WARD: There are 45 soil and water conservation districts in the state. Some districts voted not to have their areas made into soil and water districts. The vast majority is covered.

REP. PARKINSON: What position in the department would be knowledgeable in identifying primary or secondary land?

WARD: The Natural Resources Division.

245 TED LAURENCE, POLICY ANALYST, DEPARTMENT OF FORESTRY: Submits results of DLCD forest land tests (EXHIBIT B).

REP. PARKINSON: On the local level, the Department of Agriculture have soil and water conservation personnel all over the state. What is your equivalent?

LAURENCE: We have administrative forest protection districts. They cover all of the forest lands in the state with the exception of the lands owned by the federal government.

REP. PARKINSON: You have personnel that can look at a piece of timber and know whether or not it is prime timber?

LAURENCE: We can test to find out the quality of the soil and its productivity.

REP. PARKINSON: Would that person be qualified to test terrain and other things in a measurement other than cubic feet?

LAURENCE: Yes.

REP. PARKINSON: When the Land Conservation and Development Commission adopted their forestry rules, were you involved with that?

LAURENCE: Yes.

285 REP. LISA NAITO: Would you explain the other measurement that can be used besides cubic feet?

LAURENCE: Cubic feet is used to measure the soil productivity of timber. It is a consistent measurement and the information is readily available. Board feet is another measurement that can be used. Board feet has several different rules and is not always consistent.

REP. PARKINSON: Can board feet be converted into cubic feet?

LAURENCE: It would vary depending on the size of the timber.

REP. BURTON: Does it have to do with the density of the wood?

LAURENCE: It is the saw milling process that changes the measurement of the wood.

335 CRAIG GREENLEAF, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT (DLCD): Describes major elements of the Secondary Lands pilot program.

REP. PARKINSON: Out of the six test counties in the pilot program, could you tell us how many found secondary lands?

GREENLEAF: All found some elements of the program that worked for them. Each county gave input on how the program could be improved.

REP. PARKINSON: Were the concerns from the counties uniformed? or different?

389 GREENLEAF: Issues relating to forest management, range and crop lands were common among the counties.

REP. JOHN WATT: You stated you were directed to do this pilot program from the last Legislative session. Wasn't there a problem with secondary lands prior to that?

GREENLEAF: Yes. In 1983 the Legislature passed the Marginal Lands bill which was used to determine secondary lands. That program was only used by two counties. During the 1985 Legislative session, the commission looked at secondary lands in more detail.

434 REP. WATT: Can you tell me why your department has not come up with a resolution to the secondary lands issue?

TAPE 57, SIDE B

006 GREENLEAF: It has been difficult to achieve consensus: >There are diverse circumstances and conditions throughout the state. >There are scientific distinctions that have to be used to arrive at a decision. >There are technical issues that have to be addressed.

LYNN SAXTON, LAND CONSERVATION AND DEVELOPMENT COMMISSION: The commission came up with the secondary lands proposal in 1986: >There was political concern based on what the proposal would look like. >The Governor's office suggested that the secondary lands issue be set aside entirely. >A proposal was presented to the Governor's office requesting the commission do a pilot project to permanently resolve this issue.

051 GREENLEAF: We have prepared a flip chart that describes some of the major elements that we have in the secondary lands program: >Soil capability - commission has relied on this element to define the resource lands in the state.

>Have tried to distinguish soils that are more or less productive for commercial uses. >Have used technical advisory committees. >Parcelization - a fragmented land base provides less of an opportunity to proceed with long-term resource management of a particular property. >Have tried to incorporate standards that constitute a fragmented land base as a means of determining lands which are primary and secondary. Discusses other objectives of the commission's proposal: >Maintain consistency with the commission's definition of secondary lands. >Identify farm, forest and range lands that are secondary. >Provide a

framework for counties to identify their diverse needs and differences.

REP. WATT: When you say framework, is that one frame work for all of the counties or 36 different frameworks?

109 GREENLEAF: We would like to build a secondary lands program with a single framework that is accommodates the regional differences and provides local criteria options for counties to pursue that are not necessarily represented in state criteria. Continues to discuss state objectives: >Ensure ability to continue land resource management of secondary lands and provide the ability to buffer negative impacts to prevent long-term management conflicts. >Provide a more diverse list of uses of secondary lands. >Provide a clear process for distinguishing secondary lands. >Provide for land use activities and levels of development that are consistent with the resource management objectives. >Create a non-resource lands category; lands that do not meet the qualification for either farm or forest lands. >Minimum lot sizes have been used as a tool for identifying and protecting farm and forest lands.

REP. PARKINSON: What does minimum lot size mean?

162 GREENLEAF: An appropriate size of lot area for continued use within a particular zoning designation. >Rural/residential areas are typically 2 1/2 to 5 acres. >Minimum lot sizes for agricultural areas are determined by existing land forms and the presence of parcelization. >Lot sizes are set through local and county comprehensive plans and vary throughout the state by the commission. >In the proposal, secondary lands would have a minimum lot size of 20 acres with some variation, depending on the circumstances. We want to distinguish secondary lands from the rural areas.

REP. VANLEEUEWEN: You speak as if you are looking for huge areas of land that are in one block that you would specify as secondary lands rather than the smaller acres within the farm and forest zones that are not productive. What are you looking for?

228 GREENLEAF: We will probably find both kinds of circumstances which may be considered secondary lands. Another major element, local and county, we have in the proposal is a role for technical advisory committees: >Local committee would advise county on areas that might be appropriate for secondary lands designation. >Review some of the decisions or suggestions made by the state's technical advisory committee.

312 GREENLEAF: Discusses public safety and areas that would not be identified as secondary lands: >Hazardous sites, former landfills, radioactive sites, and areas of extreme fire hazard - exempt from secondary lands designation. > Commission has reviewed what uses ought to occur with regard to secondary lands. >Distinction between public and private owned parks - privately owned parks usually have a defined purpose for use.

REP. PARKINSON: After the secondary lands definition has been identified, why can't the state let counties decide which lands to restrict? Why should this be a matter of statewide concern?

382 GREENLEAF: Various uses of land have different qualities which could cause counties to be in conflict with resource management.

REP. PARKINSON: Decision making, after secondary lands have been identified, should be given to elected officials, the people would have some recourse.

BLOSSER: There are reasons why we have not given counties full authority for secondary land uses: >The Legislature has wanted to define the uses of primary lands. >There are key issues of statewide concern.

TAPE 58, SIDE B

046 REP VANLEEUEWEN: How does the agency or commission look at the secondary lands use program? Do you feel it will improve Oregon's overall land use program once it is established?

BRODY: The system will be improved if we can distinguish between less productive and more productive lands.

076 GREENLEAF: The secondary lands proposal contains a provision that lots of record in existence could have a single family dwelling constructed on property that is identified as secondary lands and would not be subject to the existing standards that are applied to farm or forest dwellings.

REP. PARKINSON: This would only be on secondary lands not primary?

GREENLEAF: That is right.

REP. REPINE: Is there a smaller parcel of an original lot of record in those type of lands where some counties have large setback requirements and buffering conditions? And would it still meet the ability to be used as the original lot of record if there is conflict with those setbacks that were designed for larger parcels?

093 GREENLEAF: There is a proposal that tries to suggest that we would adjust setbacks in a way that smaller lots could be used if the larger setback did not work.

REP. NORRIS: Real world considerations should go into minimum lot sizes.

GREENLEAF: We have had a number of counties us peculiar minimum lot sizes.

REP. NORRIS: If we were to set the minimum lot size at 20's, 40's, or 160 's, we may want to include any contiguous land as a center of an adjoining roadway. It is something to think about to ease the situation in the future.

118 REP. REPINE: In regards to lots of record, what about self-implied overlay zones like fish and wildlife? Would things like this be in place over the lots of record?

GREENLEAF: Yes. We have tried to be as consistent in not requiring a reanalysis of those issues.

REP. REPINE: What effect would this proposal place on wildlife inhabiting a 20-acre rural residential parcel?

GREENLEAF: We have tried to look at that issue and not have the counties reevaluate where they stand on habitat protection. When it comes to the individual property owner, we don't want to limit the minimum lot size without taking these issues into consideration.

REP. REPINE: You say that you don't want to burden the counties with reevaluation, but when we get into another state agency that has placed mandates on the overlaying of zoning areas, is it fair to go back to those agencies for reevaluation?

GREENLEAF: We have provided flexibility for counties that choose to undertake that type of analysis and evaluation.

209 REP WHITTY: Can you tell me what this report means (EXHIBIT B)? Now that hasn't got anything to do with soil testing or the ability to grow trees. All it has to with is whether a dwelling can be cited?

GREENLEAF: This is the report Ted Lorenson prepared. What we have is a series of tests that were applied under this concept of parcelization. There were two techniques employed: >One measured parcels that were present. >The second tested parcels present and dwellings. We chose not to count the dwellings present, just the parcelization that was present as an indicator of the fragmented land base.

256 REP. WHITTY: The number of dwellings present within a certain parcelization test determines whether the land is classified as secondary or primary?

GREENLEAF: That was determined under the pilot program. We decided the parcelization present would be a sufficient indicator of a fragmented land base.

WHITTY: Whether or not dwellings are on it?

GREENLEAF: Whether or not the dwellings are present. There are two ways we would identify secondary land. The state's criteria process: >Begins with an evaluation examination analysis of crop, forest and range land areas within a county. >The county would conduct the analysis of all areas and would present the results on a map. >Would determine whether or not there were existing commercial operations present. >Would exclude areas that are unsafe for building. >Would look for large blocks of secondary land that is zoned for rural, residential or non- resource zoning purposes. This proposal has 320 acres as a block size.

308 REP. VANLEEUEWEN: What are we talking about that makes it 320 acres in a block?

GREENLEAF: We are talking about different types of properties that would amount to 320 acres.

REP. VANLEEUEWEN: Secondary lands can only be identified if there is a block of 320 acres? Or are we talking about smaller acreage?

BLOSSER: The pilot program has decided that secondary lands should not be designated where the size of the area being designated is smaller than 320 acres. If you were looking for a situation where you are far away from the city and wanted a 20 acre land parcel, the proposal we have now would not allow that. It would say you would need to have 320 acres of land around that parcel to avoid the conflicts issues.



355 REP. VAN LEEUWEN: You have even more of a conflicts issue when you go to that big of an area that begins to spread where you would have more people than if you have people moving in on smaller secondary pieces of land.

BLOSSER: This issue has been debated at great length. Our concept was to have all of the conflicts grouped together rather than having them spread out all over.

REP. VANLEEUEWEN: You are ignoring the type of lands that are out there.

BLOSSER: The underlying questions that need to be debated are how do you assure that primary farm and forest uses can continue at a commercial operation? And what is it we need to do to make them viable? In the Willamette valley or any other part of the state, if you took a square mile of land you could find parcels that are lousy land. You could find enough of those that you would have a measles approach to secondary lands, spotted all through. You would have enough of those where you would create conflicts of a great magnitude that could not continue. People would be complaining and suing.

408 REP. VANLEEUEWEN: Chairman Blosser was probably not in the room when restrictive deeds were discussed.

BLOSSER: The problem we have had with that is restrictive deeds do not prevent someone from suing.

REP. PARKINSON: A large blocking up of acreage is one of the most controversial issues in the secondary lands proposal.

TAPE 59, SIDE A

005 GREENLEAF: Continues discussing state criteria: >Need to examine the small area of primary land that would be identified under this process. It may not be feasible to continue the management in that particular part of the county. >Once all of the results were obtained, the commission would review both the maps and zoning that were applied within the county and look for other planning issues that would arise in this context. >That proposal would be approved and reviewed by the commission, and the county would go back and apply those regulations and zoning through comprehensive plan and zoning ordinance amendments. >Under this process, the county would propose what local criteria best identify secondary lands.

>Would identify conflicts with state criteria.

036 REP. REPINE: You stated counties could proceed with their own alternative plan. Then you also stated they would have to demonstrate why the state criteria would not be applicable. How difficult of a test is that? It could take an eternity.

GREENLEAF: We did not want to make the process endless. We felt it was necessary to utilize state criteria to have a baseline for comparison.

REP. REPINE: It sounds like we are really trying to make an effort to accept and understand the counties philosophy of the criteria.

GREENLEAF: A key feature of the counties has been to recognize the diversity within this state. We have gained a lot of knowledge through the pilot program with the help of the counties. In earlier drafts we

had a general set of criteria which the counties could elaborate on and go through on their own. The counties were concerned about the vagueness of this proposal.

074 REP. PARKINSON: There are counties that want more subjective criteria as opposed to objective criteria.

GREENLEAF: It has been suggested to use both ways. Some like the convenience of the pre-wrapped package. Some would prefer to have more of a locally decided process. We have tried to build in both of those alternatives into the commission's proposal. The results would be given to the commission that would be applied through the program that counties would utilize for rezoning. Rep. Parkinson has proposed to have binding arbitration placed in a bill to prevent counties from having to wait forever on a decision. In conclusion, recognition of regional differences in regards to secondary lands throughout the state is a key feature to any proposal.

120 REP. REPINE: Through the pilot program and the counties represented, what is your perception of the average Oregonian relative to land use, planning and involvement?

GREENLEAF: That has been a growing condition in the state. There is knowledge about the program that is understood by the people of Oregon.

REP. REPINE: Did you find anything that would indicate the groups of citizens who worked on the pilot projects would do something that would adversely affect their counties?

GREENLEAF: We had people come forward expressing concerns about the pilot program and the proposals being made at community meetings. No matter what approach you take, there is always going to be someone who disagrees.

169 RUSS NEBON, ASSOCIATION OF OREGON COUNTIES: In 1983, we looked at an attempt to come up with a simple formula for secondary lands with no success. In 1985, we returned to the Legislature for a definition and formula for secondary lands.

REP. PARKINSON: In 1985 and 1987 this committee or the Legislature did not do any extensive land use legislation to identify secondary lands, did we?

NEBON: In 1985 a rider was put in a bill to identify secondary lands. The commission has presented a statewide definition of secondary lands (EXHIBIT C) that everyone would agree on. The beauty of this document is that it factors in local circumstances that affect crop, forest, and range lands. There are factors built into this showing that counties will be treated on the basis of the given data.

245 REP. WHITTY: In my district, in the winter time, there are a lot of land slides. We would like to have some consideration for the fact that we are different. In trying to define secondary lands are we going to try and find the positive elements? Or are we going to go through the process of finding reasons why we can't identify these lands? Secondary lands need to be identified from a positive point of view.

NEBON: Secondary lands can be used as a planning tool. The issue here is how much commercial agriculture do we want to protect with the EFU

zones? We were granted exceptions. What we are doing now is taking fragmented and low production lands and subtracting from the primary farm zones. That is why it is important that we have this type of program.

REP. WHITTY: Lets make sure that this time when we set out to identify secondary lands we do it with a real desire to succeed.

REP. VANLEEUEWEN: Did Russ just indicate to us that all of the counties are in agreement with the 320 block size?

NEBON: Union, Lane and Deschutes counties all have a high level of comfort with the proposal that has been developed from the pilot program. The level of comfort for Clackamas County may not be as high. Coos County wants to use the optional process without having to apply the statewide criteria anywhere in the county. The commission told Coos County if an adequate representation of all of the land issues were addressed and presented on maps and the system is approved by the commission, it could be used. Jackson County is not comfortable with this package.

TAPE 60, SIDE A

020 REP. BURTON: Once you get to the point of having these lands designated, how comfortable will counties feel? Counties have told me that they did not want to deal with these issues. They would prefer to have the state deal with them to remove the political pressure they would feel locally to make some kind of decision. When does the state remove itself and let the local jurisdictions deal with these issues?

NEBON: The important distinction here is when the commission adopts the zoning for secondary lands it will be in the commission's rules. These rules will basically be like the statewide criteria.

067 REP. BURTON: You make me nervous when we talk about putting lists into law. Lists have a tendency to be changed. If we have to change these lists every Legislative session, it becomes political.

REP. PARKINSON: My impression was that you did not want to rely on the state.

NEBON: This process gives counties two options: >To go along with the Land of Conservation and Development proposal. >Propose local control and local options upon approval by the commission

087 REP. VANLEEUEWEN: Feels goals and guidelines are being used politically in the proposal.

NEBON: The system proposed tries to be flexible.

167 REP. PARKINSON adjourns meeting at 3:58 p.m.

Submitted by:      Reviewed by:

Karen Edwards    Kathryn VanNatta Assistant    Committee Administrator

EXHIBIT LOG:

A            -            Report on Secondary Lands (Dept. of Land Conservation and Development) - Bill Blosser (LCDC) - 18 pages B -            Evaluation of Secondary Lands pilot test program (Dept. of Forestry) - Ted Laurence (Dept. of Forestry) - 24 pages C -            Secondary Lands purpose statement (Dept. of Land Conservation and Development) - Russ Nebon (Association of Oregon Counties) - 3 pages