

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

March 13, 1991 Hearing Room E 1:00 p.m. Tapes 76 - 79

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

VISITING MEMBERS: Rep. Barnes Sen. Kitzhaber

STAFF PRESENT: Kathryn VanNatta, Committee Administrator Andy Sloop, Committee Assistant

MEASURES CONSIDERED: HB 2571 (PUB)

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TAPE 76, SIDE A

007 CHAIR PARKINSON: Calls the meeting to order at 1:18. Representatives Burton and Courtney not present and excused.

(Tape 76, Side A) PUBLIC HEARING- HB 2571 Witnesses: Rep. Barnes Bill Moshofsky, Oregonians In Action Sen. Kitzhaber Frank Nimms, Oregonians In Action Dave Smith, Oregonians In Action Martha Pagel, Natural Resource Policy Advisor to the Governor Elsie Werth, Oregon Women For Agriculture Wester Cooley, Deschutes County Farm Bureau Barry Bushue, Multnomah County Farm Bureau Wane Giesy, Monroe Mildred McWhorter, Jackson County Farm Bureau Ralph Schmidt, Silverton Wallace Cegauske, Roseburg Attorney Ralph Core, Blue River Gordon Emory, Silver Lake Rancer Carol Harman, Corvallis Citizen Wayne Johnson, Oregon State Grange Art Labach, Oregon State Grange Shirley Deandorff, Corvallis Dan Ralston, Beaver Creek Betty Heininge, Aurora John Chambers, Boring Don Duhrkopf, Small Woodlands Association TC Fisher, Dallas

15 KATHERYNE VANNATTA, COMMITTEE ADMINISTRATOR: Reads letters on HB 2571 into the record (EXHIBIT A), as well as written testimony from the Oregon Forest Industries Council (EXHIBIT B)

30 REP. JERRY BARNES, DISTRICT 72: Urges serious consideration of the

measure.

>Oregon's land-use system needs a mid-course correction.

>Advocates local control.

>Need to look at impact on land-use that other state agencies have, such as the Department of Fish and Wildlife. Many agencies, in effect, take land.

>State land-use goals need to be more balanced. Those who established the planning system didn't intend goals to have varying weights.

>LCDC shouldn't be abolished, but needs to be adjusted.

>Prime farm and forest land should be protected, but one size doesn't fit all when it comes to Oregon land use.

>Land-use should be based simply on productivity, not the "highest and best use".

>Must insert higher degree of "fairness, equity and Oregon common sense" into the land-use system.

103 BILL MOSHOFSKY, OREGONIANS IN ACTION: Explains the bill. (EXHIBITS C, D, E, F AND G)

>OIA has been working on legislative reform of Oregon's land-use system for the last two years.

>HB 2571 provides mid-course corrections within the framework of the existing system and reflects the original intent of the planning system.

188 REP. WATT: You said parts of the system you are proposing would be subject to oversight by LCDC. Can you explain that?

(Rep. Courtney arrives 1:35)

192 MOSHOFSKY: Under this bill, LCDC would oversee matters of statewide concern.

231 REP. NAITO: Let me get this straight, you're saying some land isn't productive for farm and forest so it should be taken out of production, yet that same land should continue to qualify for tax deferral as productive land?

240 MOSHOFSKY: If land has been zoned for farm or forest to date, that status should continue until the use of that land changes. There may be situations where it might appear to be inequitable to do that, but maybe that is only fair because owners of that kind of land have been denied alternative uses for so many years.

371 REP. NORRIS: As I understand you, any tract of forestland under 160 acres could be considered secondary, regardless of productivity?

380 MOSHOFSKY: That's right. However, any uses on that land could not interfere with uses on adjoining prime forestlands. We believe the primary concern, with respect to the secondary lands discussion, are larger blocks of forestland. There needs to be some kind of a minimum size to make this work properly.

397 SEN KITZHABER: Testifies in opposition to the measure. (EXHIBIT H)

TAPE 77, SIDE A

55REP. PARKINSON: "Senator, while you are here, I have commented publicly, on several occasions, that you have been working and you are committed this session to doing work and helping with secondary lands, and I certainly appreciate that."

63MOSHOFISKY: Contrary to what Senator Kitzhaber said, this bill would not open rural land to development. Oregonians In Action wants constructive compromise.

68FRANK NIMMS, OREGONIANS IN ACTION: Presents land-use facts and figures for the state to put issue into perspective. (EXHIBIT E)

>Of the 26 million acres of private land in the state, roughly 16 million are zoned for exclusive farm use. Another 9 million acres is forestland. This leaves about 4 percent of the state's land for other uses.

>Less than 2 million acres of prime land in state. Most is used for crops, a little for pasture and almost none for range.

>Oregon has very little Class I soil. Most cropland in Oregon is Class II, III and IV. Range land is almost all Class VI and VII soils.

>US Commerce Department data show smaller tracts of land are actually more productive than larger tracts. In fact, about one third of the cropland in the Willamette Valley yields about half of the total crop. This land should continue to be protected. Eastern Oregon, by contrast, has lots of land but not very much production.

(Rep. Burton arrives 1:55)

122 MOSHOFISKY: Gives section-by-section analysis of the bill. Reviews definitions of prime farm and forest lands and impacts on productivity of implementing HB 2571. (EXHIBITS C AND D) Notes that there is no way of calculating the impact of exempting parcels that are less than 160 acres from the secondary lands designation process.

209 MOSHOFISKY: Describes proposed planning process. (EXHIBITS C AND D) Protecting prime farm and forest lands is a matter of statewide concern and would remain under the jurisdiction of LCDC under HB 2571.

260 MOSHOFISKY: Reviews proposed regulation of uses on secondary lands, tax status of secondary lands, and additional provisions to resolve conflicts in resource areas. (EXHIBITS C AND D)

318 DAVE SMITH, DIRECTOR LEGAL AFFAIRS, OREGONIANS IN ACTION: Reviews preliminary results of a study, initiated by the Legislature in 1989, to examine, among other things, whether there is a relationship between growth and pressure on primary resource lands, and, if there is, to determine the conflicts and costs associated with this pressure.

>There is no significant empirical evidence that development and increased density around forest lands increases the level of conflicts among adjacent uses.

>With respect to farmland, there is a relationship between development pressures and conflicting uses, but the most apparent conflicts, like drifting dust and herbicide spraying, are not as significant as initially thought.

TAPE 76, SIDE B

10REP. BURTON: Are you saying highways would be allowed as a priority use on prime farmland, and that this is an insignificant change?

15MOSHOFOSKY: Yes. It's not insignificant, but we should have had it a long time ago. There ought to be more flexibility in planning than there is. Today, virtually every piece of rural land is zoned EFU, which means you can't build a highway on any rural land in the state.

36SMITH: Currently, there are a myriad of highway projects that are permitted or conditional uses on EFU land by the operation of the state's existing agricultural lands law. All HB 2571 does is add one more category of highway use to that listing. Given that repair of existing highways is already allowed, it may not be "terribly unreasonable" to add new highways into that same category. With regard to environmental impacts of highways, all new highways have to go through federal environmental impact processes and meet federal requirements.

50REP. NAITO: Highways may cut a viable parcel of prime farm land into two parcels and turn it into secondary land.

55MOSHOFOSKY: "It may well. That's a good conclusion. Again, this thing about balancing interests is what this is about." If there is a need for transportation infrastructure, it is not unreasonable to give up some land to meet that need, particularly given the fact that in the United States there are 61 million acres of cropland nationally that is not being used. Further, the US Department of Agriculture projects that by 2030 the country will need 43 percent less cropland than it is using today. Can't justify not allowing building of highways.

162 SMITH: Elaborates on existing statutes that provide precedent for providing compensation for taking of land.

184 REP. NAITO: If your group advocates compensation when private property is taken for public gain, would it also advocate that the public be compensated when a private property owner benefits from up zoning?

203 MOSHOFOSKY: "We don't think that's called for. There's no constitutional requirement . . . We aren't calling for widespread compensation for all down zoning."

222 SMITH: It's worthwhile to note that compensation is not something new. In fact, federal courts are recognizing compensation for unreasonable taking of property. What this does is statutorily bring Oregon into conformance with federal law. This would put the Legislature into the position of establishing this standard instead of the courts.

253 MOSHOFOSKY: There could be fiscal implications here because we are going to kick cases all the way to the Supreme Court if necessary to get action on this issue.

284 MOSHOFSKY: Reviews notification improvement provisions, appeals, and other provisions to achieve balance. (EXHIBIT C)

TAPE 77, SIDE B

07REP. NORRIS: I got a fair amount of mail on this. There seemed to be a pattern to it. There must have been some "jump starting" here. Do you have any contingency plans that would help in developing a secondary lands package that can make it all the way through both chambers of the Legislature?

16MOSHOFSKY: We're realists, and have never indicated there would never be any amendments. We think our proposal is reasonable. The media has written that this bill is dead on arrival. We hope and expect this committee to give serious consideration to this bill. "If we don't get this this session, we'll be right back next session. This is not a one-shot proposition . . . 1000 Friends of Oregon has done a good job of lobbying, of education, and have dominated decision making in the Legislature for the last 16 years, and there really has not been a counterforce."

36REP. NAITO: You say LCDC has spent too much time focusing on protection of farm and forest land and not enough on economic development, yet it seems farming and forestry are the biggest components of our economic base.

49MOSHOFSKY: There are millions of acres that really are not a significant part of the agricultural base. The state is trying to preserve something that really shouldn't be preserved, and denying alternative uses of that land. "For example, we feel that some of this less productive land might be broken up into five-acre or ten-acre parcels that would be more hillside view properties that people from California, other places, might want to come and retire here, and enjoy that, and bring with them their IRAs, their stocks and bonds and assets to be available as an economic base to the community." HB 2571 does not impair the state's economic base.

83MARTHA PAGE, GOVERNOR'S OFFICE: Urges the committee to oppose the measure. (EXHIBIT J)

135 REP. PARKINSON: It's encouraging that the governor's office is committed to resolving this issue this session.

153 REP. NORRIS: I hope the governor is aware of the breadth and depth of disaffection rural people have for the land-use system.

161 REP. WATT: In the last paragraph of your written testimony, you say "the farm and forest economy of this state are of utmost concern to the Governor." What about the people? We have a situation today where we are subsidizing farmers not to grow and we're locking up forestland.

170 PAGEL: The Governor's staff is considering the welfare of the people in its deliberations on secondary lands. I did not intend to overlook or belittle that point.

182 REP. NAITO: Census has shown that population has declined in rural areas in the last 10 years and increased in urban areas. Do you have a sense of housing needs in rural areas?

192 PAGEL: We would need to ask other agencies to give a complete

answer to that question, but the Governor is concerned about rural housing needs.

197 REP. BURTON: Previous testimony today indicated that creating view lots for Californians with IRAs would help the economy. Questions how much urban characteristics should be pushed out into rural areas. Oregon is an agricultural state.

223 PAGEL: We see the economy tied very much to farm and forest uses, and there is a need to consider other uses. There seems to be a consensus now that there is a need to preserve prime land at the intersection of urban and rural areas.

250 REP. PARKINSON: Calls for break at 3:00 p.m. Reconvenes as subcommittee at 3:12.

253 VANNATTA: Reads letters and testimony into the record.

277 ELSIE WERTH, OREGON WOMEN FOR AGRICULTURE: Testifies in support of the measure. (EXHIBIT Q)

318 REP. WATT: There was previous comment that this bill would make Oregon wide open to urban sprawl. Do you think that would happen?

325 WERTH: No.

342 WESTER S. COOLEY, DESCHUTES COUNTY FARM BUREAU: Testifies in support of

the measure. (EXHIBIT R)

TAPE 78, SIDE A

65REP. NORRIS: You made a comment about returning water rights to streams from farm land that would be rezoned under this bill. Did you assume that would be an automatic result of redesignation?

74COOLEY: No. However, under current water rights law, if land that is not contiguous to a water right is abandoned, rezoned, or otherwise taken out of agricultural production, a landowner loses his water rights. That's a plus under this bill, because land would get used the way it should and the demand for water would be eased.

80REP. PARKINSON: Opens full committee meeting.

83BARRY BUSHUE, MULTNOMAH COUNTY FARM BUREAU: Testifies in support of the measure.

>Current zoning regulations use arbitrary boundaries and classifications that designate most rural land for exclusive farm use. Consequently, farmers have become unwitting guardians of land that is depreciated and limited in use.

>Many farmers can't build adequate structures on farms to meet their needs, including housing, because of EFU restrictions.

>Farmers face many restrictions, but have no alternatives for their land.

>The agriculture community must have greater land-use flexibility.

>There is a shortage of farmers, and the farming community needs incentives to endure.

>Some secondary lands are marginally productive, but if they are necessary to the viability of a farm, they should be eligible for tax deferral.

>Most farmers have made long-term commitment to their land and do not want to sell, develop or alter their land.

158 WAYNE GIESY, MONROE: Testifies in support of the measure.

>"Most businesses today have too damn many restrictions."

>HB 2571 won't take prime timberland out of production.

>Draws attention to congressional bill (EXHIBIT S) addressing compensation for takings.

242 MILDRED McWHORTER, JACKSON COUNTY FARM BUREAU: Testifies in support of the measure. (EXHIBIT T)

305 RALPH SCHMIDT, SILVERTON: Testifies in support of the measure.

>Speaks to the "lot of record" issue.

>Recounts personal land-use experience in which his property was devalued almost entirely overnight due to SB 100.

>Oregon needs compensation provisions for zoning or rezoning that is, in effect, taking.

>Oregon needs to make land available for building.

380 REP. VAN LEEUWEN: Do you have a problem with attaching a restrictive clause to marginal lands so that if homes are built on that land, new residents won't object to farming practices on adjoining lands?

405 SCHMIDT: I'd have to think about that a little bit.

TAPE 79, SIDE A

03WALLACE CEGAUSKE, ROSEBURG ATTORNEY: Testifies in support of the measure.

>LCDC solved easy questions in establishing land-use system, but have waffled on difficult question of how to identify resource lands.

>The time has come for the Legislature to solve the secondary lands problem.

>Without a secondary lands definition, everything is at a standstill.

>If rural areas don't diversify, they're going to draw increasingly heavily on social service resources, and urbanites are going to have to pay for that.

103 RALPH CORE, BLUE RIVER: Testifies in support of the measure.

>Citizen involvement in the land-use process has evaporated into nothing.

>There is a misconception that if forestland is designated as prime it will automatically grow trees. In fact, primary designation discourages productive farming because it is too prescribed.

>There is also a misconception that land designated as secondary will automatically spawn condominiums.

>Advocates local control. LCDC should manage state concerns.

220 GORDON EMORY, SILVER LAKE RANCHER: Testifies in support of the concept of the measure, but recommends amendment to 160-acre criteria for secondary land designation.

280 CAROL HARMAN, CORVALLIS: Testifies in support of the measure.

>Farm or forest land that is designated as secondary under HB 2571 should continue to receive tax deferral to encourage continuation of farming or forestry. Notes that deferral only applies until property is taken out of farm or forest use.

365 WAYNE JOHNSON, MASTER, OREGON STATE GRANGE: Testifies in support of the

measure, particularly compensation provision for taking. (EXHIBIT T)

425 ART LABACH, LOBBYIST, STATE GRANGE: Rural residents pay for living in the country. The only way to lower costs of public services is to increase density.

TAPE 78, SIDE B

64JOHNSON: The Grange is willing to work with the committee to resolve the secondary lands dilemma.

68SHIRLEY DEANDORFF, CORVALLIS: Testifies in support of the measure.

>HB 2571 addresses secondary lands appeals and compensation for taking.

>Can't take citizen's property and expect the state to remain vital.

116 DAN RALSTON, BEAVERCREEK: Testifies in support of the measure.

>Relates personal frustration of trying to subdivide land. 178 BETTY HEININGE, AURORA: Testifies in support of the measure. (EXHIBIT U)

262 JOHN CHAMBERS, BORING: Testifies in support of the measure. >Tells personal land-use horror story.

330 DON DUHRKOPF, DALLAS RESIDENT AND MEMBER OF SMALL WOODLANDS ASSOCIATION: Urges support for the measure. (EXHIBIT V)

>HB 2571 address right to appeal and compensation for takings.

>HB 2571 is revenue neutral.

TAPE 79, SIDE B

10TC FISHER, DALLAS: Testifies in support of the measure.

57REP. PARKINSON: Congratulates Nimms and Moshofsky on effective presentation.

61REP. NORRIS: Notes that no citizens testified against the bill, and that the Senate President and the Governor's Office did testify against it. Also notes that both the Senate President and the representative from the Governor's Office said that protection of farm and forest lands is an essential component of the state's economy.

67REP. PARKINSON: Closes public hearing on HB 2571 and adjourns at 4:50.

Submitted by: Reviewed by:

Andy Sloop Kathryn VanNatta Committee Assistant Committee
Administrator

EXHIBIT LOG:

A -List of Letters On HB 2571 - Committee Staff - 1 page
B -Testimony on HB 2571 - Oregon Forest Industries Council - 1 page
C -Explanation of HB 2571 - Oregonians In Action - 6 pages
D -Analysis of Secondary Land Issue With Critique of LCDC Secondary
Land Proposals - Oregonians In Action - 5 pages E -Graphs of Oregon
Zoning and Land Uses - Oregonians In Action - 6 pages F -"The Timber
Resources of Western Oregon -- Highlights and Statistics" by Donald R.
Gedney of the United States Forest Service - Oregonians In Action - 6
pages G -1990 Oregon County and State Agricultural Estimates,
prepared by Oregon State University Extension Service - Oregonians In
Action - 16 pages H -Testimony on HB 2571 - Senator John Kitzhaber -
4 pages I -Testimony on HB 2571 - Martha O. Pagel, Governor's Senior
Policy Advisor for Natural Resources - 6 pages J-Testimony on HB
2571 - Keith Bartholomew, 1000 Friends of Oregon - 2 pages
K -Testimony on HB 2571 - Fred Morgan, Glendale Farms, Inc. - 1 page
L -Testimony on HB 2571 - Betty Beaudry, Beaver Creek - 1 page
M -Testimony on HB 2571 - Richard Holoch, Resource Conservation Trust
Fund - 11 pages N -Testimony on HB 2571 - Clinton Reeder, Oregon
Wheat Growers League and Umatilla County Planning Commission - 17 pages
O -Testimony on HB 2571 - Kelly Ross - Oregon Association of Realtors
- 2 pages P -Testimony on HB 2571 - Elsie Werth, Grand Ronde - 1 page
Q -Testimony on HB 2571 - Wester Cooley, Deschutes County Farm Bureau
- 2 pages R -Excerpt From Congressional Record on the Private
Property Rights Act of 199 1 - Wayne Giesy, Monroe - 13 pages
S -Testimony on HB 2571 - Wayne Johnson, Oregon State Grange - 4
pages T -Testimony on HB 2571 - Mildred McWhorter, Elk Creek - 1 page
U -Testimony on HB 2571 - Betty Heininge, Aurora - 4 pages
V -Testimony on HB 2571 - Don Duhrkopf, Dallas - 3 pages