

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

April 10, 1991Hearing Room E 1:00 p.m.Tapes 112 - 114

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

MEMBERS EXCUSED:Rep. Whitty

VISITING MEMBERS:Rep. Miller

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

MEASURES CONSIDERED: HB 3343 (WRK) HB 3273 (PUB) HB 2702 (WRK)

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TAPE 112, SIDE A

00CHAIR PARKINSON: Calls the meeting to order at 1:12 p.m. Representatives Burton, Whitty and Courtney not present and excused.

(Tape 112, Side A) WORK SESSION - HB 3343 Witnesses: Beth Bridges, City of Eugene Dave Nelson, Oregon Seed Council Phil Ward, Department of Agriculture

15KATHRYN VAN NATTA, COMMITTEE ADMINISTRATOR: Gives progress report on the

measure. Notes addition of dash 9 amendments (EXHIBIT A) for consideration.

(Rep. Repine arrives 1:15)

25CHAIR PARKINSON: Invites testimony on the measure.

29BETH BRIDGE, CITY OF EUGENE: Explains dash 9 amendments (EXHIBIT A), which respond to concerns the city raised at last work session on the measure.

52DAVE NELSON, OREGON SEED COUNCIL: Testifies in support of the dash 9 amendments.

60PHIL WARD, DEPARTMENT OF AGRICULTURE: Testifies in support of the dash 9 amendments.

62MOTION:REP. NORRIS moves to adopt the dash nine LC 3472 amendments (EXHIBIT A) dated 4/10/91 to HB 3343.

67VOTE:Hearing no objection, CHAIR PARKINSON: so moves.

82CHAIR PARKINSON: Entertains motion on the bill.

84MOTION:REP. NORRIS moves that HN 3343 be referred to the floor as amended with a "do pass" recommendation, and that it be subsequently referred to the Ways and Means Committee.

93REP. NAITO: Is it true that a minority report cannot be filed when there is a subsequent referral to Ways and Means?

97CHAIR PARKINSON: Yes. That rule was established during the last session. "I don't think it's a good precedent or a good rule, but I am bound by it."

102 VOTE:In a roll call vote, the motion carries, with Representatives Courtney and Naito voting NAY, and Representatives Burton and Whitty excused.

110 CHAIR PARKINSON: Closes the work session on HB 3343 and opens public hearing on HB 327 3.

(Tape 112, Side A) PUBLIC HEARING - HB 3273 Witnesses:Frank Nims, Oregonians In Action

115 CHAIR PARKINSON: Notes that the chief sponsor of the measure is not present to testify. Closes public hearing on HB 3273 and opens public hearing on HB 2702.

(Tape 112, Side A) PUBLIC HEARING - HB 2702

(Rep. Burton arrives 1:23)

125 FRANK NIMS, OREGONIANS IN ACTION: Testifies that with "some selective surgery . . . HB 2702-4 can become a basis for resolving the secondary lands issue." (EXHIBIT F)

195 CHAIR PARKINSON: In this draft (EXHIBIT F) the 20 acre minimum lot size you object to would be for future partitioning.

200 NIMS: Even for future partitioning, we don't believe that any minimum should be established. There's no need for that. Also, the way the bill is written, there is no way that a house could be built on a lot which is created after the first of this year. (Page 19, lines 24-25)

230 CHAIR PARKINSON: Flags language (page 19, lines 24-25).

235 NIMS: Continues comments.

>The urban reserve concept doesn't have any place in a secondary lands bill. If the Legislature deems a need for urban reserve areas, that need should be addressed through a separate bill. If freeze tract of land adjacent to urban growth boundaries indefinitely, then property owners in those areas should receive some compensation for devaluation of their land.

>All lands that have been designated as "marginal" to date should be redesignated as "secondary" under any new secondary lands legislation.

>Proposed arbitration process expensive and possibly unnecessary.

253 CHAIR PARKINSON: The intention here is to prevent ping pong remands between local governments and LUBA.

356 CHAIR PARKINSON: Closes public hearing on HB 2702 and opens public hearing on HB 327 3.

(Tape 112, Side A) PUBLIC HEARING - HB 3273 Witnesses: Representative Randy Miller Frank Nims, Oregonians In Action Greg Wolf, Department of Land Conservation and Development Roy Burns, Lane County Planning Director

362 REP. RANDY MILLER: Testifies in support of the measure.

>Expecting amendments from Oregonians In Action that will improve it.

>Under current law, very easy to appeal land-use decisions.

>Abhorrent that many land-use decisions can be defeated by legal maneuvering rather than merit.

>This bill says that beyond notice of intent to appeal, appellants must have "direct and substantial interests in the decision".

420 REP. NORRIS: What's the definition of "person" in this case?

425 REP. MILLER: Could be individual or corporation. Need to look at legitimacy of interest being advocated and whether it is directly tied to the case.

TAPE 113, SIDE A

15REP. NORRIS: What land-use activist organizations be "persons" under this proposal?

18REP. MILLER: Yes.

20REP. NORRIS: Does the phrase "direct and substantial interest" already have a legal definition?

22REP. MILLER: "Substantially aggrieved and affected" is what courts have talked about. Again, the language in this proposal may not be right.

25REP. NORRIS: "We think in terms of well they hear it, they smell it, they see it, it affects their income, but in the minds of some they figure an onslaught on their psyche might be under this category. And even though they live in Jacksonville, and the issues in Umatilla County

they are psychologically offended by this, and they're out there to protect the great Western Civilization."

35REP. MILLER: This bill is aimed at narrowing range of appellants. Welcomes alternative language.

47CHAIR PARKINSON: Your language may actually broaden scope for appeals.

53REP. MILLER: But besides showing up at the right place at the right time, appellants also have to show direct and substantial interest.

59REP. NORRIS: On line 13, would the word "tangible" add anything to the words "direct and substantial"?

63REP. MILLER: Could. I think you're on the right path.

66REP. WATT: What about language so that if an individual were to lose an appeal and subsequently refile based on the same grounds, they be liable for the court costs if the second appeal resulted in a second loss?

79REP. MILLER: Could adopt the "English Rule", under consideration in the House Judiciary Committee, which would allow prevailing parties to be reimbursed for all legal expenses.

91NIMS: Generally support concept and attempt of this bill. (EXHIBIT J)

101 CHAIR PARKINSON: This appears to be a higher appeal standard.

105 NIMS: That's the intent.

115 GREG WOLF, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT: Testifies in opposition to the measure.

>This issue addressed in HB 2261. (HB 2261 has been passed by Ways and Means and will be going to House floor)

>Approach in HB 3273 raises constitutional questions about individual rights and judicial review. Better to limit scope of appeals at LUBA level.

157 REP. BURTON: How would this bill affect attempt to re-appeal a non-frivolous case?

170 WOLF: By limiting scope of review at LUBA, only germane appeal issues will be successful. In other words, this would limit ability of individuals to bring appeals just to keep a case in litigation.

182 CHAIR PARKINSON: This bill wouldn't address just limited land-use decisions, though, would it?

183 WOLF: This would limit the people who could appeal.

185 CHAIR PARKINSON: Under any land-use decision? Would this cover any situations that HB 226 1 would not?

190 WOLF: This is a different approach to deal with the same issue of frivolous appeals.

195 CHAIR PARKINSON: You didn't answer my question. It looks like HB 3273 affects any kind of land-use appeal.

200 WOLF: Believe that is correct. HB 2261 categorizes decisions within urban growth boundaries and those that are subject to LCDC's Goal 5 outside urban growth boundaries.

205 CHAIR PARKINSON: So HB 3273 is more encompassing and broader than HB 226 1?

207 WOLF: Yes.

208 ROY BURNS, LANE COUNTY PLANNING DIRECTOR: County doesn't have position on this yet, but presume the issue of standing is too broad.

280 CHAIR PARKINSON: Closes public hearing on HB 3273 and re-opens public hearing on HB 270 2.

(Tape 113, Side A) PUBLIC HEARING - HB 2702 Witnesses: Roy Burns, Lane County Planning Director

285 ROY BURNS, LANE COUNTY PLANNING DIRECTOR: Testifies in opposition to the measure. (EXHIBIT K)

TAPE 112, SIDE B

14CHAIR PARKINSON: Could you be more specific about what policy direction the Legislature should give to LCDC on secondary lands?

17BURNS: Direct LCDC to implement the current secondary lands package.

20CHAIR PARKINSON: Even though we don't know exactly what that is yet?

23BURNS: May never know. Need to get on with it.

28CHAIR PARKINSON: Doesn't Lane County have quite a few exception lands?

30BURNS: Lane County had more than 68,000 acres of exception lands when originally acknowledged by LCDC in 1984. That exception was challenged by 1000 Friends of Oregon because there was not substantial evidence in the record to support the exceptions. That challenge was remanded from the Supreme Court, and we have spent two years and more than \$700,000 in writing reams of paper to prove the obvious. In the end, we are down to rezoning approximately 1,500 acres of that original 68,000 acres into farm or forest land. Exception lands depend on when a county went through the acknowledgement process and how much objection they receive when proposed. The exceptions process is not a planning tool; it is a way of identifying the status quo and containing it.

56CHAIR PARKINSON: If LCDC were granted authority over secondary lands, it could rezone many of the undeveloped exception areas back to resource lands, couldn't it?

60BURNS: LCDC has vast authority, but the issue on exception lands is separate from secondary lands. The issue on exception lands arises out of a 1000 Friends court case against Curry County. The Supreme Court ruled that LCDC needs to define rural uses so that there won't be urban uses on rural lands. This is likely to be almost as much of an issue for Oregonians as secondary lands.

81CHAIR PARKINSON: Lane is one of few counties that has used the 1983 Marginal Lands statute. HB 2702-4 doesn't repeal Marginal Lands, but believe other secondary lands bills under consideration do repeal the Marginal Lands statutes. What would repealing Marginal Lands do to Lane County?

80BURNS: We opposed Marginal Lands because it gave with one hand and took away with the other. We implemented Marginal Lands, however, because exclusive farm use standards were more precise and clear, so decisions were better and appeals fewer. Also, knew we would end up with almost no marginal lands in Lane County.

110 CHAIR PARKINSON: Were you able to use the parcelization outline in Marginal Lands?

115 BURNS: Not extensively. Under 2,000 acres ended being designated as marginal lands in Lane County.

120 CHAIR PARKINSON: Lane County has, in effect, a Forestry Board rule regarding non-forest dwellings that would kick in 30 days after any secondary lands legislation is passed. What's your opinion of that?

125 BURNS: We have been approving non-forest dwellings in areas that would, for the most part, be considered secondary lands by most definitions. If secondary lands legislation is adopted, we would issue non-forest dwellings consistent with the legislation.

140 CHAIR PARKINSON: How much of Lane County's forestland would be designated as secondary with the 50 cubic foot test?

145 BURNS: There's also a parcelization test in LCDC rule which would capture some lands in excess of the 50 cubic foot test. SB 91 doesn't deal with this.

153 REP. BURTON: Is Lane County saying that it has adopted a set of standards for secondary resource lands, and that uses on secondary lands should be left to local and county governments?

165 BURNS: No such standards exist in the state. We do, however, have two kinds of forest zones, one of which is managed according to administrative rules under LCDC Goal 4. Some language similar to secondary lands are included in these administrative rules and allow non-forest dwellings on resource lands.

200 REP. BURTON: If there really are some good resource land-use efforts underway in the state, will legislative attempts at secondary lands undermine those attempts? Should we grandfather effective existing local processes?

225 BURNS: Counties are asking the Legislature to establish a process that will allow planning to continue. The Legislature may not be in a good position to define primary or secondary lands.

323 CHAIR PARKINSON: Has Lane County used a technical committee to identify secondary lands?

328 BURNS: There are always decision points. Local farming and forestry experts bring knowledge to land-use issues.

332 CHAIR PARKINSON: Would you be in favor of a technical committee starting the identification and designation process, as proposed in HB 2702?

336 BURNS: Lane County has already established some fundamental assumptions through LCDC's secondary lands pilot program and through the county's Land Evaluation and Site Assessment (LESA) system.

350 VANNATTA: Could you explain the LESA system.

356 BURNS: LESA is a methodology for evaluating the productivity of a given parcel of land. It developed out of the Soil Conservation Service. Soil scientists at Oregon State University have expanded this system to apply to forests. LESA would be eligible as an alternative system that would fit under LCDCs secondary lands proposal and believe would fit under HB 2702.

388 REP. NORRIS: Is your opposition to HB 2702 and HB 91 philosophical or technical?

TAPE 113, SIDE B

02BURNS: Primarily technical from the standpoint that the work that LCDC ultimately adopted was the result of extensive technical field evaluation that was supported by a state review of state agencies charged with resource land management. Philosophically, the Legislature should set public policy framework and then make sure that state agencies implement that policy.

20REP. NORRIS: The Legislature shouldn't be involved in micromanagement, but the issue needs to be settled.

25BURNS: The issue can be settled through policy direction. Getting into micromanagement considering all of the uses allowed by statute in exclusive farm use zones.

39REP. COURTNEY: Would Lane County lose local control as result of any of the secondary lands proposals under consideration this session?

45BURNS: Not sure, but that has happened traditionally.

51REP. COURTNEY: Marion County is concerned that the Legislature is going to take away local control that exist today, yet heretofore local and county governments have given the impression that they've been deprived of control. It may be that local control means something different than counties being able to make their own decisions.

73BURNS: Lane County believes elements of local control can be maintained working through LCDC. However, potential exists for local decision making to be preempted. HB 2702 does appear to leave more to local discretion than other bills being considered this session. The LCDC also allows for local decision making. If the Legislature establishes a process that only gives local government the option of saying no, it's not much of a decision process.

96CHAIR PARKINSON: Are you saying that a bad situation could be made worse by this Legislature?

98BURNS: That potential always exists.

103 CHAIR PARKINSON: With all of the local control that exist now, how come local property owners complain so much? Is it easier for counties to pass the buck to LCDC?

110 BURNS: Judicial review and administrative rule revisions tend to change what is allowed so that what starts out as acceptable becomes unworkable.

142 CHAIR PARKINSON: "The fringe thing is beginning to be a sexy thing." Shouldn't that be addressed through agreement between metro cities and counties?

150 BURNS: Yes. That has been done in some cases already. What the Legislature may be asked to do is solve the Portland problem.

182 REP. NORRIS: There is unrest among citizens who are occupying, attempting to use and paying the taxes on land, so that "sort of excuses our looking over this technocratic barrier." You also suggested that "statutory vacuums" could lead to bad judicial decisions. That seems to be inconsistent with your objection to including a detailed list of allowable and permitted land uses in secondary lands bills.

194 BURNS: Statutes attempt to specify uses in farm zones but no statutes, rules or laws are that simple.

223 CHAIR PARKINSON: Calls break at 2:52. Reconvenes at 3:16. "Do the fringies want to testify?"

234 JOHN CHANDLER, COMMON GROUND: The term "fringies" comes from the Vida group process during which some of the issues involved the urban fringe areas around the state. In particular, the term "fringie" refers to blurring between urban and rural uses in rural residential exception areas. With regard to the "fringie" portion of HB 2702, there are other parts of the state that could benefit from similar treatment, specifically a volunteer approach by local government to zone urban reserves for future urban growth.

299 CHAIR PARKINSON: Has the City of Eugene already done this?

301 CHANDLER: Believe they have done something similar. Medford, Bend and possibly other cities may be moving toward local intergovernmental agreements to deal with fringe issues.

322 CHAIR PARKINSON: The clamor over the fringe issue has been coming only from Portland. That's why the 2702-4 amendments specifically address Portland. Why should the state mandate something that local governments already have authority to do?

330 CHANDLER: This bill wouldn't mandate anything, but there is an issue of state concern, so the state might want to provide tools to deal with this problem.

354 CHAIR PARKINSON: Closes public hearing on HB 2702.

373 REP. COURTNEY: "The magnitude of this thing is huge. . . I'd like some sign of how much warning we're going to be given on this thing and what we're doing here."

390 CHAIR PARKINSON: "I can't give you a clear answer." Because of magnitude, however, the bill can't go to floor without "extensive

amendments". This bill is not a "fast track."

400 CHAIR PARKINSON: Adjourns the meeting at 3:25.

Submitted by: Reviewed by:

Andy Sloop Kathryn VanNatta Committee Assistant Committee
Administrator

EXHIBIT LOG:

A -Dash 9 Proposed Amendments to HB 3343 - Beth Bridges, City of Eugene - 1 page
B -Fiscal Analysis of HB 3343-3 Proposed Amendments - Legislative Fiscal Office - 2 pages
C -Fiscal Analysis of HB 3343-7 Proposed Amendments - Legislative Fiscal Office - 2 pages
D -Notice of No Revenue Impact of HB 3343-3 Proposed Amendments - Legislative Revenue Office - 1 page
E -Notice of No Fiscal Impact of HB 2702 - Legislative Fiscal Office - 1 page
F -Dash 4 Proposed Amendments to HB 2702 - Environment and Energy Committee - 67 pages
G -Testimony on and proposed changes to HB 2702-4 Amendments - Frank Nims, Oregonians In Action - 10 pages
H -Notice of No Fiscal Impact of HB 3273 - Legislative Fiscal Office - 1 page
I -Notice of Nor Revenue Impact of HB 3273 - Legislative Revenue Office - 1 page
J -Testimony and Proposed Amendments to HB 3273 - Oregonians In Action - 1 page
K -Testimony on HB 2702-4 Amendments and Analysis of Proposed Secondary Lands Legislation - Lane County Board of Commissioners - 6 pages