

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 17, 1991Hearing Room E 1:00 p.m.Tapes 123 - 126

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 MEMBER:Rep. Schoon Rep. Sunseri

PRESENT: Kathryn VanNatta, Committee Administrator Andy Sloop, Committee Assistant Sue Hanna, Legislative Counsel

MEASURES CONSIDERED: HB 3560 (PUB) HB 3074 (PUB)

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TAPE 123, SIDE A

06CHAIR PARKINSON: Calls the meeting to order at 1:08 p.m. Representatives Repine and Whitty not present and excused.

(Tape 123, Side A) PUBLIC HEARING - HB 3560 Witnesses:Rep. Schoon Sue Hanna, Legislative Counsel Dan McCulloch, South Salem Seventh-day Adventist Church Kelly Ross, Oregon Association of Realtors Bill Moshofsky, Oregonians In Action Greg Wolf, Department of Land Conservation and Development Jane Meyers, Oregon Forest Industries Council

12REP. SCHOON, DISTRICT 34: Introduces the bill.

(Rep. Repine arrives 1:10)

63>Public discontent exists in rural areas that are neither farm nor forest.

>Continual pressure on good farmland to subdivide.

>Counties can and should zone secondary lands.

>Protection of best farm and forestland should be increased and protection of marginal land should be reduced.

>HB 3560 closely resembles SB 91, and contains many elements -- including local technical advisory committees and appellate arbitration panels -- also found in HB 3570.

>The secondary lands issue will come down to secondary/primary land definition and degree of local/county control.

>HB 3560 bill only seeks to identify commercial farm/forest land and not secondary land designation criteria.

128 SUE HANNA, LEGISLATIVE COUNSEL: Gives overview and background of the secondary lands policy debate.

>Identification of secondary/primary land meaningless without agreement on uses of lands once they are designated.

>1983 Legislature developed "marginal lands" approach to identifying less productive land.

189 >Uses on "marginal lands" in the two counties that adopted the Marginal Lands Program are listed in ORS 215.213, while uses for counties that did not to implement Marginal Lands are listed in ORS 215.283. All proposed secondary lands bills in the 1991 Legislature repeal both of these sections of the Oregon Revised Statutes. Repealing these sections won't affect the 34 counties that did not implement Marginal Lands, while uses on marginal lands will be frozen in the two counties that did implement Marginal Lands programs.

217 >Harris case out of the Ninth Circuit Court is built into all 1991 secondary lands bills. The Harris case increased the level of required participation in consideration of zoning change proposals.

265 REP. SCHOON: Outlines differences between HB 3560, HB 3570 and SB 91.

>Must decide whether to identify commercial land, secondary land or both. Advocates identifying commercial resource land first, because it is easier to define, and then designating everything that is not commercial as secondary.

(Rep. Whitty arrives 1:35)

>Appeals process same in all three bills, so that if a county and the LCDC disagree on designation, their dispute goes to arbitration through the Dispute Resolution Commission.

352 REP. COURTNEY: Can commercial resource land always be primary and vice versa?

355 REP. SCHOON: Not necessarily, but primary and commercial are generally synonymous. There is general public understanding about what characterizes commercial land.

>Minimum lot sizes in the secondary lands bills varies: SB 91 = 20 acres; HB 3560 = 5 acres; HB 3570 = 10 acres.

419 VANNATTA: Notes that the 10-acre minimum lot size for secondary

lands under HB 3570 is allowed by administrative rule.

TAPE 124, SIDE A

07REP. SCHOON: Local technical advisory committee diversifies the decision-making process and contributes to a better overall process.

12HANNA: Explains general designation and appeal processes for HB 3560, HB 357 0 and SB 91 (EXHIBITS B AND C).

>Because of Harris case, have to have outside groups, including landowners, involved in process. That's why land-use decisions are appealable to LUBA after they are adopted by ordinance at county level.

60REP. BURTON: Who would have standing to appeal to LUBA?

64HANNA: That would be done according to standard appeal criteria, which are quite open.

68REP. BURTON: So how are individuals and groups other than LCDC and counties brought into the appeals process? Would the county ordinance process by which secondary lands would be designated govern how individuals would gain standing in the appeals process?

76HANNA: Yes.

78HANNA: Notes divergence in uses on secondary lands under HB 3560, HB 357 0 and SB 91.

>Use regulations reviewed under HB 3560 and SB 91, but not under HB 3570.

95CHAIR PARKINSON: Under the HB 3560 map review process, what prevents a "ping pong" effect of appeals between LUBA and localities?

99HANNA: That potential exists, but it is less likely because of the preliminary steps prescribed under the HB 3560 process. Under this process, there will be more instances in which LUBA will defer to the LCDC.

103 CHAIR PARKINSON: Isn't it historic that LUBA remands?

106 HANNA: LUBA follows statutes on remands. Under the HB 3560 process, there could still be a ping pong effect depending on how LUBA and counties conduct business.

126 REP. NAITO: Understand that once secondary land is designated under HB 357 0, that land can be developed with any of specified allowable uses. Under HB 3560, however, would regulation of uses be done through a different process?

130 HANNA: The land-use regulations under HB 3570 and HB 3560 are the same, but the appeals process of designation proposals is different.

300 REP. WHITTY: Section 9 (6) of HB 3560 specifies dwelling densities on secondary lands. After adoption of the secondary lands designation map, how does an individual create a five-acre parcel on secondary land?

305 REP. SCHOON: If zoning permits five-acre parcels, all the land-owner would have to do is apply to the county, as in an urban area,

for parcelization.

312 REP. WHITTY: So the commission would decide if such an application should be approved?

330 REP. SCHOON: Planned unit development, which allows for high density development, will remain in effect if secondary lands legislation is adopted this session. Also, the intent of all secondary lands is to prevent residential development of greater than one dwelling unit per 10 acres on secondary land. That's not to say that a property owner can't subdivide if the zoning of his land permits five-acre parcels.

340 REP. WHITTY: Obviously, the commission is not going to go all over the state to determine if there are "adverse impacts."

345 REP. SCHOON: Believe the "adverse impact" test applies only to planned unit development.

349 HANNA: Need to go back to ORS 215.283 pertaining to zoning. Not going to review these kinds of situations on a case-by-case basis.

360 REP. WHITTY: If there is a 20-acre plot designated secondary under one owner and this plan takes effect, can the owner split that plot?

365 HANNA: Can't answer without further study.

370 CHAIR PARKINSON: Intent of HB 3570, and believe in HB 3560 too, that counties would zone and administer secondary lands. Surmise that no parcelization would be automatically allowable because counties could zone some secondary land for exclusive farm use.

390 REP. WHITTY: So specific zoning is done in county plans, and those plans would be applied to development applications?

400 HANNA: Generally, yes.

TAPE 123, SIDE B

03REP. NORRIS: "I think we need to simplify this process."

07REP. VAN LEEUWEN: On page 2, line 15 of the bill, concerned about definition of "cropland". Almost any land can be cultivated. The question is what will it produce?

14REP. SCHOON: This definition was developed by the Department of Agriculture. Not intended to be used as designation criteria.

20REP. VAN LEEUWEN: On page 4, line 5 of the bill, concerned about designating "commercial resource lands in large blocks." What's "large".

27REP. SCHOON: That would be a county decision.

33REP. VAN LEEUWEN: And then in the next sentence, HB 3560 says counties "shall" appoint a local technical advisory committee. "Totally leaves out anybody who is a regular, commercial farmer or forester."

40REP. SCHOON: No objection to rounding out the composition of technical advisory committees.

46REP. VAN LEEUWEN: On section 4, lines 21 on down, why are those things being submitted to the Department of Agriculture and Forestry Department?

55REP. SCHOON: Don't have strong feelings about that section, but generally beneficial to have those departments review designation proposals before going to LCDC.

63REP. VAN LEEUWEN: The DOA doesn't really deal with land use.

65CHAIR PARKINSON: Block size is another decision point for discussion.

69REP. SCHOON: Notes that secondary lands bills list different uses on farm and forest lands.

>HB 3570 permits any commercial or industrial uses of secondary lands. SB 91 is more restrictive about uses and SB 3560 is between HB 3570 and SB 91.

>All three bills have identical right to farm and forest sections.

>All three bills differ slightly in approach to "fringe" issues and urban reserves. SB 91 designates urban reserves. HB 3560 leaves reserve option open for local governments to adopt and implement.

98>All three bills require identification of rural communities.

>Implementation date different in all three bills. HB 3570 has a specific implementation, while the other two do not.

>Secondary lands is a "solvable" problem. "Absolutely confident" that with hard work can overcome obstacles.

120 REP. BURTON: Going back to Section 3, who are representatives of "public interest" on technical advisory committees?

126 REP. SCHOON: County commissioners would decide that.

128 REP. BURTON: So representatives of public interest are not interest groups per se?

132 REP. SCHOON: That's correct.

136 HANNA: ORS Chapter 215 doesn't prescribe what individuals can do with land, but rather provides direction to counties about what can be allowed in their comprehensive land-use plans. So, counties can zone uses that are more restrictive than secondary lands legislation allows.

155 CHAIR PARKINSON: That is in keeping with the intent of HB 3570 to allow counties to administer secondary lands.

165 DAN McCULLOCH, SOUTH SALEM SEVENTH DAY ADVENTIST CHURCH: Proposes amendments (EXHIBIT D).

204 KELLY ROSS, OREGON ASSOCIATION OF REALTORS: The OAR hasn't taken a position on HB 3560.

>Have developed list of general concepts that would support and those which it would oppose. These match closely with decision points that

Chair Parkinson has proposed.

>Identification should be geared toward highly productive commercial land, with all other land being secondary. Too complicated and burdensome to identify secondary lands.

>Identification process should be locally driven. State should set general framework for designation process.

>Instead of "large blocks" should use "blocks of appropriate size" or other flexible language.

>Should let counties define minimum lot size.

>Concerned about limiting non-farm dwellings only to Eastern Oregon.

>Concerned about language referring to "average density". Could put some people at disadvantage when trying to build.

>Concerned about giving special weight in designation process to historical use of land.

>Concerned about "necessary and accessory" standard for farm dwellings.

331 REP. NORRIS: Do you see this as an improvement over the present situation?

335 ROSS: Yes, if change "necessary and accessory", continue to allow applications for non-farm dwellings, and careful about weight given to historical use of resource land.

340 CHAIR PARKINSON: You didn't address rural residential zoning and urban reserves.

344 ROSS: The only way that rural residential zones would be affected under HB 3560 is if they are in what is considered a rural community, and those are in a "limbo situation" in light of a recent Curry County court decision. Adoption of the "rural communities" language in HB 3560 would clarify how rural residential zones are handled.

365 BILL MOSHOFSKY, OREGONIAN IN ACTION: Raises objections to HB 3560 (EXHIBIT E).

TAPE 124, SIDE B

12REP. WHITTY: On page 4, line 3 of the bill, practically everything that grows in my district would qualify as "marketable timber".

255 REP. NORRIS: If this bill passed as written, would we be better or worse off than we are today?

258 MOSHOFSKY: Worse. Hardly any secondary land would be designated.

270 GREG WOLF, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT: Offers general comments on HB 3560.

>Acknowledges Rep. Schoon's effort to bring participants in the secondary lands debate together.

>More similarities than differences among HB 3560, HB 3570 and SB 91.

Hopeful for resolution this session.

>LCDC wants legislative direction on secondary lands, with as many specifics as possible.

>Reserves official comments for commission review.

300 CHAIR PARKINSON: What do you mean by "specific direction".

304 WOLF: Specific designation criteria to minimize potential for deviation from legislative intent.

339 JANE MEYERS, OREGON FOREST INDUSTRIES COUNCIL: Advocates promoting forest production consistent with the Forest Practices Act, and avoiding conflicts between forestry and residential development on forestlands. (EXHIBIT F)

TAPE 125, SIDE A

39REP. NORRIS: Points are well taken, but are they land-use or building code?

41MEYERS: Both.

52REP. BURTON: You are suggesting creation of new taxing districts to support public services on forestlands. That could lead to little cities on that forestland.

66CHAIR PARKINSON: Ms. Meyers appears to be talking only about fringe areas, so some of her testimony is valid and some isn't in the context of secondary lands.

72MEYERS: Understand that there is not a requirement for large blocks of secondary land in HB 356 0. If one dwelling is built in the middle of a commercial forest operation, it would have an impact on that operation.

80REP. NAITO: Would you prefer some kind of blocking so that dwellings built in fringe areas adjacent to forestlands would not pose a threat to the forest industry?

84MEYERS: Yes. There has been objection to dwellings being established as islands in the middle of commercial forests. This bill is not clear about what land would be designated as secondary and what structures would be allowed adjacent to forestlands.

93REP. WHITTY: Intrusion on the forest industry's ability to harvest trees is a two way street. Timber companies invade on rights of residents who have lived in forests historically. Spraying and logging practices in water sheds, in particular, are problems.

123 CHAIR PARKINSON: Closes public hearing on HB 3560 and calls break at 3:12. Reconvenes at 3:36 and opens work session on HB 3074.

(Tape 125, Side A) WORK SESSION - HB 3074 Witnesses:Rep. Sunseri Phil Fell, League of Oregon Cities Greg Wolf, Department of Land Conservation and Development Russ Nebon, Association of County Planners

136 REP. SUNSERI, DISTRICT 22: Proposes amendments (EXHIBIT G).

154 REP. REPINE: Why are you proposing to set aside 30 percent of county lands for manufactured housing instead of 20 percent as originally proposed?

165 REP. SUNSERI: 30 percent is more consistent with existing statutes.

177 REP. REPINE: How was it determined that 30 percent is the number needed to benefit communities?

186 REP. SUNSERI: All counties look at this issue differently. We wanted to get a percentage of residential land available on which mobile homes could be sited.

197 REP. REPINE: I have a letter that encourages provisions for mobile home parks in the state land-use periodic review regulations. Are you considering an amendment to that effect.

201 REP. SUNSERI: Such a provision might not go through periodic review for 10 years and we need action on this as soon as possible. There are long lines of people waiting to get into mobile home parks because there isn't enough space available. Consequently, mobile home space rents are skyrocketing.

213 CHAIR PARKINSON: Seems like we pass legislation every session with the same effect as this. Why is this happening?

218 REP. SUNSERI: Difficult to get local compliance with state mandates, and sometimes there are practicality problems.

230 CHAIR PARKINSON: Would it be better to address this through local ordinances?

230 REP. SUNSERI: Not sure that it's possible for the Legislature to force local planning compliance because there are many ways to give appearance of compliance without actually complying.

237 HANNA: There were four bills related to manufactured housing last session, but none of them specifically addressed the issue of land availability for siting of manufactured housing.

254 REP. NAITO: How would this affect development inside the Portland urban growth boundary, where less than 30 percent of the total land remains available for development?

275 HANNA: This bill says: take all land currently zoned for residential development inside urban growth boundaries and zone 30 percent of that land to allow for siting of mobile home parks. In drafting this, concerned about ability to implement it, but the DLCD has indicated it does not have any problems with this. Mobile home parks include any facility with four or more mobile homes, so possible to develop parks in small undeveloped residential land. Also possible that developed land that is vacated could be made eligible for redevelopment with mobile home parks.

311 REP. WHITTY: Communities are different. Some have tight urban growth boundaries and require/desire different amounts of manufactured housing. There are some cities where it would be impossible to accomplish 30 percent goal proposed under amendments.

331 REP. SUNSERI: Notice that the bill sets land aside to "allow" for



siting of mobile home parks. It doesn't require that 30 percent of residential land in urban growth boundaries be developed with mobile home parks.

358 HANNA: We're talking about zoning, not what's built. A crafty planner could rezone existing single family neighborhoods and meet this requirement without ever building any mobile home parks.

380 REP. WHITTY: If a city does not comply with this now, and zones available land to allow for mobile home parks but does not build a single mobile home park on that land, would that city then comply with this measure?

389 HANNA: If a city's zoning ordinance allows for 30 percent mobile home parks, regardless of what's on the ground, the zoning ordinance is in compliance.

398 CHAIR PARKINSON: How is the 30 percent in the bill related to current practices?

401 REP. SUNSERI: Current rule allows for anywhere between 5 and 35 percent of available residential land to be zoned to allow for mobile home parks.

TAPE 126, SIDE A

00REP. NORRIS: Questions limiting scope of the bill to rental property for manufactured housing or mobile homes.

08REP. SUNSERI: The shortfall in Oregon is parks to accommodate manufactured housing already sold but not placed.

15REP. COURTNEY: If cities had infill and placement ordinances pertaining to mobile homes, would there be a need for this bill?

28REP. SUNSERI: Probably not. The problem is that's not being accomplished across the state. There are more problems now than ever with city planners trying to zone mobile home parks.

45REP. VAN LEEUWEN: Would it be more acceptable to committee members if went back to original 20 percent?

47CHAIR PARKINSON: Don't know, but would like testimony from the League of Oregon Cities.

68PHIL FELL, LEAGUE OF OREGON CITIES: Cities and counties have complied with comparable legislation approved by the Legislature during last several sessions. Portland has redone ordinances to make manufactured housing allowable in all residential areas.

90CHAIR PARKINSON: Do you agree with the mobile home vacancy rates cited by Rep. Sunseri?

93FELL: More or less, but don't agree that availability of land is the root problem.

96CHAIR PARKINSON: But most people don't want to locate their mobile homes on individual lots, either because they can't afford to or because they want the security and community associated with a park. What's the

solution?

100 FELL: Submits that better approach would be subsidizing manufactured housing.

105 CHAIR PARKINSON: Could it be excessive system development fees or hookup charges that are stopping mobile home development in some cities?

108 FELL: It can't be according to legislation passed last year that established a process to set fair and equitable system development fees.

149 REP. BURTON: Part of the problem is that cities and counties simply don't like manufactured housing. Don't know if can correct attitudes through law. Also, how many local/county jurisdictions designate land for mobile home parks?

162 FELL: Don't know exactly how many jurisdictions have designated land for mobile home parks.

164 REP. BURTON: So we really don't know what's going on out there? Thought the state did an inventory on this a few years back.

172 GREG WOLF, DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT: We have done inventory of mobile homes, but not of the success rate of infill bill passed by the last Legislature.

175 REP. BURTON: How about mobile home parks?

178 WOLF: Again, don't have that number here but can get it.

180 REP. BURTON: Should be able to see if mobile homes are accounted for in city and county plans.

185 REP. WHITTY: A city like Lake Oswego might have a problem with something like this because land values make development of mobile home parks prohibitive. How would something like this apply in a place like that?

198 FELL: Valid point. Not sure exactly how this would apply.

220 WOLF: The DLCD would have no problem implementing this bill, but believe the 30 percent level needs justification. Current planning system gives flexibility to tailor housing to community needs.

234 RUSS NEBON, ASSOCIATION OF COUNTY PLANNERS:

>Most new mobile home park development going to occur where cities can annex parcels large enough to accommodate parks that can be developed at competitive price.

>Can be tough to match developable land available for mobile homes with development interests and consumer needs.

>Some communities still considering how they feel about manufactured homes.

>Encourages committee to invite mobile home developers to share perspective on issue.

>Recommends committee direct DLCD to update its housing needs evaluation

to identify if communities are dragging their feet in designating land for mobile home parks.

324 WOLF: The department did that work for the last Legislature and it took a lot of time. Willing to do additional studies if the committee is inclined to approve additional funding.

338 REP. NORRIS: Phil, speaking from the cities' point of view, how do you think we should approach this?

345 FELL: Process is already in place to deal with this. No objection to suggestion that DLCD do further evaluation of local zoning efforts to accommodate mobile home parks.

350 REP. COURTNEY: How many of Oregon's 242 cities have ordinances like Salem's pertaining to mobile home parks and infill?

360 FELL: Will get that information.

371 CHAIR PARKINSON: "Something's obviously broke."

376 REP. WHITTY: "I don't know how to fix it, but I see it as a nice way to extend some urban growth boundaries."

389 CHAIR PARKINSON: "There's an interesting little dynamic starting to go work that I don't think any of us have adjusted to yet -- Measure 5 . . . I'll bet a lot of projects are going to get approved a lot quicker in the future than they got approved in the past." Tax bases in the future are going to depend on new revenue generated by new development and improvements.

TAPE 125, SIDE B

06CHAIR PARKINSON: This bill probably should have been referred to the Committee on Housing and Urban Development. Don't think committee feels this bill will work the way it is drafted.

13REP. SUNSERI: Concerned that we just heard "a lot of bureaucratic nonsense." The need is there. OK to go back to old language, but need to have something in place that causes cities to respond to need for more affordable housing.

29CHAIR PARKINSON: Agrees. Aresystem development fees being abused?

34REP. SUNSERI: Yes.

36CHAIR PARKINSON: And that would be why these don't "pencil out" as the League of Oregon Cities testified?

40REP. SUNSERI: Yes. Cost of land has increased to such a degree that people can't buy single family dwellings anymore. The average home price in the Portland area is \$100,000. "We've got to begin to break loose, or we're going to have people in the streets."

57REP. BURTON: Agrees about need.

>Perhaps could amend bill to include undeveloped commercial land, in addition to undeveloped residential land. Such an amendment would reduce pressure to approve conditional use permits for mobile homes on commercial property.

>Could loan to Housing Committee to develop context for review.

>"This should not just die here."

76CHAIR PARKINSON: Agrees.

78REP. SUNSERI: No problem loaning. In principle, we ought to be able to work this out.

85CHAIR PARKINSON: Closes work session and adjourns at 4:28.

Submitted by:      Reviewed by:

Andy Sloop            Kathryn VanNatta Committee Assistant      Committee  
Administrator

EXHIBIT LOG:

A            -Notice of Possible Revenue Impact of HB 3560 - Legislative Revenue  
Office - 1 page B            -Section Analysis of HB 3560 - Committee Staff - 8  
pages C -HB 3560 Secondary Lands Designation and Appeal Process Flow  
Chart - Committee Staff - 1 page D            -Proposed Amendments to HB 3560 -  
Dan McCulloch, South Salem Seventh-day Adventist Church - 1 page  
E            -Major Objections to HB 3560 - Bill Moshofsky, Oregonians In Action  
- 3 pages F            -Testimony on HB 3560 - Jane Meyers, Oregon Forest  
Industries Council - 3 pages G    -Proposed Amendments to HB 3074 - Rep.  
Sunseri - 1 page