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TESTIMONY

Oregon Farm Bureau

HB 3367

Senate Committee on Environment and Natural Resources

May 20, 2015

Chair Edwards and Members of the Committee:

Oregon Farm Bureau urges you to support HB 3367. HB 3367 would codify existing law requiring recreational trails to go through the conditional land use permitting process, ensuring that local farmers have a forum through which to address any impacts the proposed recreational trail would have on their operations.

By way of background, the Oregon Farm Bureau is a voluntary, grassroots, nonprofit agricultural organization representing Oregon's farmers and ranchers in the public and policymaking arena. As Oregon's largest general farm organization, its primary goal is to promote educational improvement, economic opportunity, and social advancement for its members and the farming, ranching, and natural resources industry as a whole. Today, Oregon Farm Bureau represents over 7,000 member families professionally engaged in the industry and has a total membership of over 60,000 families.

HB 3367 closes a significant loophole in existing land use law. Current law is not clear whether recreational trails are permitted outright in farm use zones, or whether they must have a permit from the local governing body before they are constructed. HB 3367 clarifies that recreational trails require a land use permit. The permit process gives neighboring landowners a forum to provide evidence on impacts to their farming operations from the project, and requires the local governing body to make a finding that the project will not significantly increase the cost of farming practices or force a significant change in farming practices in the area impacted by the project.

Under ORS 215.283(1)(i), reconstruction or modification of public roads or highways is permitted outright in EFU lands. ORS 215.283(3) applies to other types of transportation development, and requires local land use approval. Through rule making, DLCD has authorized "bikeways, footpaths and recreation trails not otherwise allowed as a modification or part of an existing road" to proceed without a goal exception. See OAR [660-012-0065\(3\)\(h\)](#). This provision has created confusion as to whether construction of bikeways, footpaths, and recreational trails requires local land use approval. DLCD recently clarified that it interprets current law to require a conditional use permit. HB 3667 codifies that interpretation and clarifies that development of new recreational trails, even within existing rights of way, are required to go through the conditional use process.

Oregon Farm Bureau believes it is appropriate to require recreational trails within existing rights of way to go through the conditional use process. In the last several years, we have seen a movement toward using the "rails to trails" concept to transition old railroad rights of way to recreational trails. The difference between railroad use through farmland and recreational trail use through farmland is significant, and farmers must be provided with a forum to raise concerns about conflicts before a trail is constructed.

In areas devoted to agricultural use, farming uses include irrigation, tilling, spraying, and harvesting crops. Putting a recreation trail through the middle of these operations creates a host of concerns and issues that are not present with railroad or motor vehicle use. Recreation areas are typically viewed by the public as places of solitude, set apart from any activities that require intensive land management. People travel either by foot or bicycle on recreational trails, putting them in much closer contact with the farming operations than the railroad or motor vehicle use, and creating a much higher likelihood of conflict. Recreational trails also create a much larger risk for trespass onto private farmland. This bill is designed to ensure that all new recreational trails on EFU land, regardless of the previous use of the land, are subject to the conditional use process, so that farmers can raise any concerns about conflicts and compatibility before the trail is constructed.

We understand that Metro will be offering amendments that would require a conditional use permit only when condemnation powers are used to acquire the property that the trail will be located on. These amendments are contrary to existing law, and would deny farmers the ability to raise impacts with projects that have the potential to significantly impact their operations. These amendments would be particularly troubling for the several "rails to trails" projects that are proposed throughout Oregon, as those projects often occur through the purchase of railroad rights of way, and do not require any negotiation or consultation with the neighboring landowners whose property would be impacted by the trail. Given the significant impacts these projects can have on farming operations, it is critical that farmers have the ability to raise concerns about impacts from the paths before the paths are constructed, enabling the county and project proponent to design the project to avoid or mitigate those impacts.

Thank you for the opportunity to provide testimony on this important issue. Please contact Mary Anne Nash with any questions about this testimony.



OFIC

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Oregon Forest Industries Council

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May 20, 2015

RE: OFIC Supports HB 3367, Without Amendment

Members of the Senate Committee on Environment and Natural Resources,

The Oregon Forest Industries Council is a trade association representing more than fifty large forestland owners who own and manage roughly 5,000,000 acres of forestland throughout the State of Oregon. We write today in support of HB 3367, which would require a conditional use permit ("CUP") for new recreational trails sited on lands zoned exclusive farm use. The impacts of recreational trails can be significant when routed through intensively managed farming and ranching operations, including conflicts with equipment and livestock, dust and noise impacts, and trespass and vandalism issues. While we believe that recreational trails presently require a CUP on EFU lands, the statute is not clear, and rules promulgated by the Department of Land Conservation and Development are ambiguous. HB 3367 would provide important clarity and prevent future litigation.

We urge you to support the original version of HB 3367, without amendment, and ensure that landowners have a voice in the process of siting recreational trails that may impact their operations.

Heath Curtiss
General Counsel and Director of Government Affairs
Oregon Forest Industries Council



EX **Oregon**

Kate Brown, Governor

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MEMO

TO: Oregon Counties and Trail Providers

FROM: Katherine Daniels, Farm and Forest Lands Specialist

SUBJECT: Review Process for Trails as Transportation Facilities in EFU zones

DATE: May 19, 2015

Counties and others have made inquiries as to the required land use review process for trails in Exclusive Farm use (EFU) zones. The question is whether trails are allowed outright or subject to discretionary review. Whether proposed as part of a park or as a transportation facility, trails in EFU zones require a review against the compatibility criteria of ORS 215.296. While trails as transportation facilities aren't specifically identified as an allowed use in statute, ORS 215.213(10) and 215.283(3) state that "other transportation facilities" not allowed under subsections (1) and (2) "*may be established, subject to the approval of the governing body or its designee*" subject to either (a) the adoption of an exception or (b) "*ORS 215.296 for those uses identified by rule*" of LCDC.

The wording "*may be established, subject to the approval of the governing body or its designee*" indicates a discretionary review and is identical to the lead-in wording for the lists of uses in ORS 215.213(2) and 215.283(2) – sometimes referred to as the lists of conditional uses. The reference to "*ORS 215.296 for those uses identified by rule*" of LCDC specifically indicates that the uses listed in rule require review against ORS 215.296.

OAR 660-012-0065, "Transportation Improvements on Rural Lands," addresses transportation improvements and facilities that are allowed in rural areas, including not just EFU zones but also forest, rural residential and other rural and nonresource zones. Section (3) of the rule provides that a specific list of improvements and facilities, including use (h), "*Bikeways, footpaths and recreation trails not otherwise allowed as a modification or part of an existing road...are consistent with Goals 3 and 4.*" Section (5) states that in EFU and forest zones, certain of the listed uses, not including trails, "*shall, in addition to demonstrating compliance with the requirements of ORS 215.296,*" comply with additional criteria. This statement indicates that, in EFU and forest zones, all listed uses not subject to the additional criteria, including "bikeways, footpaths and recreation trails," are subject to the ordinary ORS 215.296 criteria. There is no specific reference to ORS 215.296 in OAR 660-012-0065(3) because the list of uses applies to all rural zones, not just EFU.

The ORS 215.296 review process can occur as part of either a quasi-judicial or a legislative review. Including planned trail facilities in the county's Transportation System Plan is the

preferred approach because it facilitates broad community input and better coordinated planning of multiple properties. We recommend that counties taking this approach ensure that individual landowners along a proposed trail route be notified to ensure that any potential conflicts with agricultural practices can be identified and evaluated.

Additional questions have arisen regarding rights-of-way and road modification and how they affect trail reviews. While established ROWs may minimize some aspects of review, they can still raise issues regarding potential farm conflicts. Trails that involve modification of public roads and highways in an existing ROW are an outright use in EFU zones, while trails that involve other existing ROWs, such as for railroads, involve ORS 215.296 review. Following is the department's interpretation of the correct local review process:

1. A new trail or trail link in a new ROW: ORS 215.296 review
2. A new trail or trail link in an existing non-roadway ROW: ORS 215.296 review
3. A new trail or trail link that is part of a road modification in a new ROW: ORS 215.296 review
4. A new trail or trail link that is part of a road modification in an existing roadway ROW: ORS 215.213(1)(k) or 215.283(1)(i)

