

Oregon's Land Use Planning Program Farm and Forest Lands

**American Planning Association
Oregon Chapter (OAPA) White Paper
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Summer 2004**

Introduction

Agriculture and forest products are among Oregon's major industries, agriculture alone accounting for 9% of Oregon's gross state product and 8% of all Oregon jobs. According to Oregon Department of Agriculture statistics, the value of agricultural production in Oregon for 2003 was \$3.8 billion, and with an estimated \$9.2 billion total direct contribution to Oregon's economy by the agriculture and food processing industry it is the state's second-largest traded sector.¹

With regards to forestry, Oregon is the nation's leading timber producer, producing approximately 15% of the nation's total production for both lumber and panel board, according to 1994 estimates.² In terms of land use, Oregon has the third highest resource base, behind only Alaska and California, with an estimated 27.7 million acres of total forest land, both public and private.³

The long-term protection of farm and forestlands through exclusive farm use (EFU) zoning statutes and similar laws protecting forestry is a cornerstone of Oregon's land use planning program. As the data above suggests, these policies are based on the basic state interest of protecting agricultural and forestry lands as key economic and environmental resources.

¹ Johnson, Jim. "Oregon Agriculture: Not Just A Pretty Picture," PowerPoint presentation. Oregon Department of Agriculture, 2004.

² 1,000 Friends of Oregon, "Forest Protection." As viewed at <http://www.friends.org/ffr.html>, July 2004.

³ National Association of State Foresters, 2002 State Forestry Statistics. As viewed at http://www.stateforesters.org/statistics/FY02_Statistics/index.html, August 2004.

Purpose

This report outlines the major public policy issues regarding farm and forest land use in Oregon, demonstrates how they relate to the state's planning system, analyzes the successes and challenges the planning system has in addressing these issues, and identifies policy implications and recommendations for the future of farm and forest land planning in Oregon. Section One of the report provides the basic policy framework for farm and forestland use policy in Oregon. Section Two of the report details the key policy issues of the past and present, including conclusions and recommendations for future planning and policymaking. Section Three concludes the report with some final thoughts on the major achievements and future challenges of Oregon's unique planning approach to farm and forestlands.⁴

Section One: Policy Framework

In order to understand the key issues for farm and forest policy in Oregon, it is essential to first understand the context in which they originated. Land use regulations for private farm and forest lands are determined by a combination of interconnected policies, including statewide planning goals, zoning and other statutes, administrative rules, and court decisions. Together, these combinations of interconnected policies constitute the state's farm and forest programs: the Agricultural Land Use Policy and Oregon Forest Policy, respectively.⁵

Statewide Planning Goals

The statewide planning program originated in 1973 with the passage of Senate Bill 100, establishing the Land Conservation and Development Commission (LCDC), which established, through a broad public process, a series of major statewide goals for land use and development in Oregon. These statewide planning goals became the foundation for

⁴ The format and content of this paper is adapted primarily from various farm and forest papers produced by Ron Eber of the Oregon Department of Land Conservation and Development. As project mentor, Mr. Eber's input was central in the production of the report.

⁵ Refer to timeline in Appendix A for a summary of major policy developments for farm and forest planning from 1963 to the present day.

mandatory comprehensive planning for every city and county in Oregon. Oregon's farm and forestland policy frameworks are established in Goal 3 and Goal 4 of the statewide planning program developed by LCDC.

In addition to Goals 3 and 4, Goal 14 has a significant effect on farm and forest land development. Goal 14, "Urbanization," provides the direction for the establishment of urban growth boundaries (UGB) for every urban area in Oregon in order to separate urban and rural land uses. Although urban growth boundaries play an important role in farm and forestland use policy by protecting these lands from urban development, they are not covered in this paper.⁶

Goal 3: Agricultural Lands

Goal 3 requires the identification of "agricultural lands," as defined by the goal, and requires counties to permit or limit certain farm and nonfarm uses in order to protect these lands in perpetuity. It states that, "agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and the state's agricultural land use policy expressed in ORS 215.243 and 215.700."⁷

Goal 4: Forest Lands

Similarly, Goal 4 was adopted by LCDC in 1974 to conserve Oregon's private forestlands. Oregon Administrative Rule (OAR) 660-015-0000(4) describes the goal: "to conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture."

⁶ For more information on the role of urban growth boundaries in Oregon's land use planning system, please see the OAPA issue-paper on the subject.

⁷ OAR 660-015-0000(3). "Goal 3: Agricultural Lands," Oregon Statewide Planning Goals and Guidelines. As viewed at the Department of Land Conservation and Development website: <http://www.lcd.state.or.us/goalhtml/goals.html>, August 2004. See also, ORS 215.700 to 215.755.

Goal 4 requires the identification and zoning of forest lands, and requires counties to review certain non-forest uses according to LCDC administrative rule and the statutory forestland provisions. The LCDC rule (OAR 660, Division 6) and statutory provisions (ORS 215.700 to 215.755) set forth the dwellings and other non-forest uses allowed in forest zones. The goal and administrative rule also incorporate the statutory minimum lot sizes and standards for non-forestland divisions (ORS 215.263 and 215.780).

State Programs:

Agricultural Land Use and Oregon Forest Policy

State programs for the protection of farm and forestland emerged from the requirements of DLCD's statewide planning goals. A key characteristic of both programs is the identification and establishment of exclusive farm use (EFU) zones and similar forest zones.

Agricultural Land Use Policy

Along with the creation of Goal 3, the Oregon legislature developed the state's first "Agricultural Land Use Policy" in 1973. (ORS 215.243). This came in the form of SB 101, which was a major rewrite of the state EFU provisions, setting policy, adding to the nonfarm use list and for the first time allowing nonfarm dwellings. The Agricultural Land Use Policy outlined the state's interest in protecting agricultural lands and provided a basic framework to do so through the farm use tax deferral system and EFU zoning designation.

The following bullets provide a brief summary of the main elements of the state's Agricultural Land Use Policy:

- Agricultural land is an important natural and economic asset to all the people of this state;
- Preservation of a maximum amount of agricultural land, in large blocks, is necessary to maintain the agricultural economy of the state;

- Expansion of urban development in rural areas is a public concern because of conflicts between farm and urban activities; and
- Incentives and privileges are justified to owners of land in exclusive farm use zones because such zoning substantially limits alternative uses of rural lands.

The economic and environmental importance of agricultural lands as a vital public interest is established as a policy statement; the policy recognizes agriculture as a key industry in Oregon and in turn identifies agricultural land as a “vital natural and economic asset for all the people of this state.” Preservation of maximum amounts of this land, in large blocks, is determined to be necessary for maintaining the agricultural economy of the state. The policy notes the potential conflict between farm and urban activities caused by urban development in rural areas, and establishes that “incentives and privileges are justified to owners of land in exclusive farm use zones because such zoning substantially limits alternatives to the use of rural lands.”

In order to execute this preservation program across the state, a number of supporting policies had to be established, including clear and fair definitions and standards for appropriate land uses on a variety of agricultural lands. Ronald Eber, Oregon Department of Land Conservation and Development’s (DLCD) Farm and Forest Lands Specialist, comments, “these policy statements clearly set forth the state's interest in the preservation of agricultural lands, the means for their protection (EFU zoning) and establish that incentives and privileges (i.e., tax benefits) are justified because of the limits placed upon the use of the land.”⁸

⁸ Eber, Ronald. “Oregon’s Agricultural Land Protection Program,” presented to the 2001 Oregon Planning Institute, University of Oregon. Oregon Department of Land Conservation and Development. According to the Oregon Agricultural Statistics Service in 2002.

EFU zones: As noted in the introduction, the EFU zoning designation is the cornerstone of Oregon’s Agricultural Land Use Policy. The EFU designation makes possible the identification of agricultural lands and limits land uses and development opportunities to those that support commercial agriculture. Specifically, EFU zones are characterized by the following basic land use regulations:

- Limited Dwellings
 - Primary and Accessory Farm Dwellings on Commercial Farms
 - Nonfarm Dwellings on Lands Not Suitable for Farm Use Under Various Standards
 - Temporary Hardship
 - Lot-of-Record (ownership and productivity)
- 50 Nonfarm Uses Under Various Standards if Compatible
- Large Parcel Sizes (80/160 acres)

As detailed in Section Two of this report, the major planning issues facing Oregon’s agricultural land planning emanate from the guidelines of this zoning category. The most significant issues include identifying and designating EFU lands, and establishing appropriate land use and development guidelines, particularly with regard to the development of new dwellings.

Oregon Forest Policy

Like the Agricultural Land Use Policy resulting from Goal 3, Oregon's forestlands protection program is based on a policy framework of similar statutory and administrative rule provisions, the forest lands goal, and LUBA/Court opinions and interpretations. While, 215.243 addresses farmland only, ORS 527.630 is the forestland equivalent.

In Oregon, private forestlands are protected primarily by two state agencies; the Oregon Department of Forestry oversees that actual management of the forestland base through the Forestry Program for Oregon and Forest Practices Act (FPA), while the protection of the forestland base from the conversion to other non-forest uses falls under the jurisdiction of LCDC.

Main elements of Oregon Forest Policy include the following principles:

- Forests make a vital contribution to Oregon; and
- To encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land.
- Consistent with sound management of soil, air, water, fish and wildlife resources; and
- To ensure the continuous benefits of those resources for future generations of Oregonians.

Forest Zones: Through Oregon’s land use program, forestlands are protected from conversion to rural or urban uses and other conflicting non-forest uses by the use of forest zones based on statutory and administrative rule provisions modeled after the EFU zone for farmland. Key characteristics of the forest zone designation include:

- Limited Dwellings
 - On Large Lot (160 + acres)
 - Template (clusters)
 - Lot-of-Record (ownership & productivity)
- 50 Non-Forest Uses Under Various Standards
- Large Minimum Size for New Parcels (80 acres)

At present, about 8.2 million acres (29.7%) of private land in Oregon are included in forest zones under Statewide Planning Goal 4. An additional 2.3 million acres (8.1%) of private land is included in mixed farm and forest zones under OAR 660-006-0050.⁹

While the goals and subsequent policies that govern land use decisions are separate for farm and forest lands, there are a number of overlaps in the policy approaches, reflecting the interdependence of protecting both farm and forest resource bases. The policy framework and program components for agriculture are essentially the same for forestry but the degree of specificity is different. The two types of land are treated separately

⁹ Department of Land Conservation and Development. “Oregon’s Forestland Protection Program,” 2004.

although DLCD has recognized and allowed for mixed farm and forest zones (legally they are still considered forest zones, especially with regard to farm assessment because they allow more uses than allowed in a farm zone under ORS Chapter 215) in order to cover the overlap (see OAR 660-033-0145 and 660-006-0050 and 0055). As another example, while SB 101 was for EFU only and not forest policy, HB 3661 dealt with both types of lands but in different sections or subsections.¹⁰

Key similarities between the Agricultural Land Use Policy and Oregon Forest Policy include the following:

- Policy to protect for farm and forest use
- Inventory of farm and forest lands
- Zones specifying allowed uses
- Minimum parcel sizes - no subdivisions
- Conversion standards
- Incentives and complementary benefits
- Urban and rural growth management

Over the past 30 years, the framework for protecting farm and forestlands has been revised and expanded, as policymakers continue to confront a myriad of complex policy issues. Oregon's statewide planning structure utilizes a number of different policy approaches, including LCDC's statutory and administrative rule provisions, along with subsequent LUBA and other court opinions and interpretations, in order to create a changing, adapting set of policies for farm and forestland use. Together, this dynamic body of policy comprises the state of Oregon's agricultural and forestlands protection programs.

¹⁰ The definitions of farm use and forest use generally are exclusive. Farm and Forest zones allow both types of uses, as they are considered compatible. When lands meet both definitions for EFU and Forest zone status, DLCD is not particular about how zoned (see OAR 660-006-0015(2)).

Section Two – Key Policy Issues

This section explores in detail the key public policy issues for agricultural and forest land use planning in Oregon. Because agriculture and forest planning are governed by similar policy approaches, many of the most significant issues are the same for both farm and forestland planning. For example, identifying secondary or marginal lands and permitting new dwellings are key policy issues for both farm and forest lands. While some of the issues focus primarily on Oregon’s agricultural land use policy, many of the issues are common to forestland policy as well; in these instances specific attention is given to the forestry context of the issue at hand. Each topic includes a description of the issue and policy developed to address the issue, concluding with a consideration of the implications of the policy for the state’s planning program and recommendation for future policy where appropriate.

Policy Issue #1: Identifying Agricultural Lands

Establishing a clear definition of agricultural lands is the first step in Oregon’s statewide planning program protecting agricultural lands, and the first point of contention. The first key issue concerns the basis for how these lands are defined. Eber notes, “one of the most controversial parts of Oregon’s program has been its definition of agricultural land.”

Oregon’s definition of land to be protected is broader than the federally defined ‘prime farmlands’ and is based on objective, scientific data – soil type classes – as opposed to trends in the agricultural economy or the management approaches of the individual farmer. Goal 3 defines agricultural lands as primarily NRCS Class I-IV soils in western Oregon and includes I-VI soils in eastern Oregon. These soil classes, as well as ‘other lands suitable for farm use,’ constitute the lands to be inventoried and preserved according to Goal 3. The policy also defines ‘high-value farmlands’ in order to identify the most productive lands to be given the highest levels of protection. These ‘high-value farmlands’ are all the ‘prime, unique, Class I and II soils.’¹¹

¹¹ ORS 215.710 incorporated into Goal 3 rule.

The approach to identifying and defining forestlands is based on a similar site classification system, linking the quality of the forest base with the level of development permitted. For both farm and forestlands, after completion of the resource inventory, local governments must determine whether the land is in fact available for farm use and thus subject to protection, or whether it has already been committed to nonfarm uses, due to surrounding development, parcelization, available services, and other factors.

Standards for Marginal or Secondary Lands

Along with a definition of agricultural lands to be preserved, the determination and management of “marginal” or “secondary” lands is an important policy issue. Although these lands are covered under the broad definition of agricultural lands in Goal 3, the issue of whether these lands should be subject to the same land-use restrictions has been a key point of contention since the inception of Goal 3. Over the course of the last 30 years of public discussion and policymaking, many have suggested that these lands be designated and zoned separately from prime farmlands in order to provide greater opportunities for rural development. The Legislature and LCDC have made a number of attempts and considered a number of approaches for defining and separating marginal or secondary lands from prime farmlands in the zoning designation process. Defining and identifying these types of lands has proven to be a controversial policy issue.

Attempts to define, identify, and designate marginal or secondary lands have occurred three times, in 1983, 1988, 1992, and 1993. A brief summary is provided in the bullets below.

- **1983:** Marginal Lands Act establishes first working definition for identification and designation of marginal and secondary lands. Establishes trade-off between less regulation of lower quality ‘marginal lands’ and improved protection for best or primary resource lands.¹²
- **1988:** LCDC adopts general definition of “secondary lands” and a draft proposal for identification of and permitted uses and densities on primary and secondary resource lands.

¹² See former ORS 197.247. Only adopted by Lane and Washington counties.

- **1992:** LCDC uses 1988 definitions and framework to adopt amendments to goals 3 and 4 allowing for the separate designation of small-scale resource lands from high value and important farmland and forestland. Separate standards are established for allowed uses on high-value farmland from those under ORS Chapter 215.
- **1993:** The passage of HB 3661 includes requirement to repeal the Marginal Lands option (ORS 215.316).

These provisions were ultimately repealed following the adoption of HB 3661 in 1993, which directed LCDC to repeal the goal and rule provisions concerning separate designation of small-scale resource lands. HB 3661 established new lot-of-record provisions for farm and forest zones, a statutory definition of ‘high-value’ farmland, new standards for nonfarm dwellings, and described the uses allowed on less productive resource lands. Currently, lower quality lands zoned EFU are eligible for greater levels of nonfarm development as identified on a case-by-case basis in the course of reviewed specific land use applications for nonfarm uses.

Conclusion

The use of scientific data to establish clear standards for defining agricultural lands is a key element of Oregon’s agricultural protection program, as it minimizes the opportunity for conflict over the status of lands that are based on more subjective standards. The inventory of all farmlands based on the land’s resource capability as opposed to a farmer’s management skills, Eber explains, is necessary because “state and local economies not only depend on the best or prime farmlands but also need the not-so-prime lands as well.” The use of details soils data also makes it easier and more efficient for local governments to identify relevant farmlands.

Mitch Rohse, former President of the Oregon Chapter of the American Planning Association (OAPA), notes the importance of the secondary lands issue thusly, "The statutory provisions for nonfarm dwellings create what amounts to a de facto secondary lands program. Basically, they say you can put new nonfarm dwellings on land that is 'generally unsuitable' for agricultural production, which is precisely what Oregonians In

Action (OIA)...always claim is missing from the our planning system. In short, we have a secondary lands program and have had ever since 1973. It's just not labeled 'secondary lands'."¹³

Policy Issue #2:

Allowed Farm/Nonfarm And Forest/Non-Forest Uses

The next major public policy issue, after defining and identifying agricultural lands, concerns establishing standards and regulations for how these land are to be used; specifically, determining permissible farm and nonfarm uses. The statutes for the Exclusive Farm Use (EFU) zone originally included six nonfarm uses when first established in 1963. The basic nonfarm uses included dwellings in conjunction with farm use. The number of allowed farm and nonfarm uses has proliferated over the past three decades of policymaking; after the conclusion of the 2003 Legislative Session, there are now over 50 nonfarm uses allowed in an EFU zone, including educational, religious and recreational use.¹⁴ This increase in nonfarm uses has been a major source of concern from policymakers and the public. Specifically, there is concern for the cumulative long-term impact from the increase in allowable nonfarm uses.

Oregon's agricultural land use program provides guidelines for acceptable farm and nonfarm uses on EFU lands by not allowing conflicting uses (ORS 215.296). Nonfarm uses are subject to local land use approval, and must prove that they will not force a significant change in farm or forest practices on surrounding lands. These approval standards also favor locating nonfarm uses on less productive farmlands. Moreover, lands with nonfarm use approval often do not qualify for farm use tax assessment.

As in farm zones, there are over 50 different types of uses allowed in local forest zones (See OAR 660-006-0025). Some of these are directly related and supportive of forest management activities, i.e. primary processing of forest products, and some are not. All

¹³ Rohse, Mitch. Email communication, June 24, 2004.

¹⁴ ORS 215.213 and 215.283.

of these require local land use approval and the largest or more intensive must demonstrate that they will not force a significant change in or significantly increase the cost of accepted farming or forest practices on agricultural or forest lands and will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel (OAR 660-006-0025(5)).

Conclusion

This policy approach attempts to reconcile key conflicting interests for both farm and forest policy. According to Eber, allowing some nonfarm uses addresses the fact that within farm zones there are “small areas that can accommodate a rural use or dwelling on a small lot without affecting an area’s overall farm character” in a way that minimizes the impact of nonfarm development on agriculture and rural communities.

Assessing the effectiveness of the agricultural protection program must include an analysis of the accumulative effect of the approved uses in EFU zones. Eber believes that the availability of new data through GIS mapping may help determine if nonfarm uses are meeting the goal of not having an accumulative effect on surrounding farming practices. One example of needed research is The Agricultural Infrastructure Project, still in planning, which intends on using a collaborative effort to determine the impact of development on surrounding farms.

Policy Issue #3: New Dwellings

As Eber notes, “without question, the siting of dwellings is one, if not the most, controversial type of use subject to approval in an EFU zone.” While the basic statutes have remained unchanged since 1963, the interpretation and implementation of these standards have varied significantly overtime throughout Oregon. The statutory standard states that dwellings on EFU zoned land be “customarily provided in conjunction with farm use” (ORS 215.283(1)(f)). Due to the advent of a variety of permitted dwellings and uses, decision makers have had the difficult task of distinguishing between farm and

nonfarm dwellings through close scrutiny of how the proposed dwelling is actually “provided in conjunction with farm use.”

The Oregon Court of Appeals determined in 1984 that the language ‘in conjunction with farm use’ implies that the parcel had to be currently employed for farm use before the approval of a farm dwelling could be made. This addressed the previously existing issue of dwellings approval based on a “promise to farm” and required an existing farm operation before a building permit for a home could be issued.

In order to further limit the number of approved dwellings established on EFU lands, LCDC added to its Goal 3 rule in 1986 the Oregon Supreme Court’s interpretation from 1983 that ‘farm use’ implies that “the day-to-day activities on the subject land are principally and patently directed to achieving a profit in money through the farm use of the land.”¹⁵

Eber notes that despite these efforts, LCDC annual reports found that many farm dwelling approvals continued to ignore the determinations required by the Goal 3 updates; “concerns continued to be expressed to the legislature and LCDC about the number of farm dwellings that were being approved that were not connected to any farm activity.” This prompted an independent analysis commissioned by the Legislature in 1989, which found that “the large majority of the tracts on which new farm dwellings had been approved were not contributing very much to commercial agriculture.” Eber continues, “seventy-five percent of the dwellings approved were part of ‘farms’ that grossed less than \$10,000 dollars and about 37% earned nothing.”

Given the fact that small parcels earning less than \$10,000 are not considered commercial operations and contribute less than 2% to Oregon’s agricultural economy, LCDC developed a gross income standard for farm dwellings in 1992. At that time the standard was a \$40,000 gross income test for the approval of dwellings on parcels of high-value

¹⁵ Capsey v. Department of Revenue 294 Or 455 (1983)

farmland, which was raised to \$80,000 for high-value farmland and \$40,000 for non high-value farmland following the passage of HB 3661 in 1993.

HB 3661: Legislative Compromise

The Oregon legislature added to the framework of the Agricultural Land Use Policy in 1993, changing the requirements to Goals 3 and 4 in the process, in order to regulate the division of and the siting of dwellings on agricultural lands. Specifically, the legislature gave owners of less productive land the opportunity to build a dwelling on their land while limiting opportunities to build dwellings on more productive resource lands, and limited the future division of more productive resource lands (ORS 215.700).

House Bill 3361 also affected forest policy. The 1993 Legislature directed the Commission to conform Goal 4 and its administrative rule to the new provisions of HB 3661. This bill established the types of dwellings allowed on forestland and established minimum lot sizes for forest zones.

In forest zones, dwellings are allowed for five different reasons and include lot-of-record dwellings, large-lot dwellings, template dwellings, temporary hardship dwellings, and replacement dwellings, as defined below. Some of these are similar to those allowed in farm zones.¹⁶

- **Lot-of-Record Dwellings:** “Lot-of-record” dwellings may be approved on lots that have been in the same ownership since 1985 and have a low capability for growing merchantable tree species.
- **Large-Lot/Ownership Dwellings:** ORS 215.740 provides for regional approval standards for dwellings on ownerships of different sizes in western and eastern Oregon. In western Oregon, the tract must be larger than 160 contiguous acres or 200 non-contiguous acres. In eastern Oregon, it must be larger than 240 contiguous acres or 320 non-contiguous acres.

¹⁶ Department of Land Conservation and Development (DLCD), “Oregon’s Forest Land Protection Program,” 2004.

- **Template Dwellings:** “Template” dwellings may be approved based on the amount of development (dwellings and parcels) within a 160-acre “template” centered on the parcel.
- **Replacement Dwellings:** A "replacement dwelling" is a new site-built house or manufactured home that replaces an older dwelling on a parcel. The older dwelling must be demolished, converted to a non-residential use, or moved if it is a manufactured home.
- **Temporary Hardship Dwellings:** A "temporary hardship dwelling" is usually a manufactured home placed on a parcel temporarily for reasons of a specific hardship (usually medical). Typically, the hardship dwelling houses an ill or elderly relative of a household member who lives in the main dwelling on the property.

Conclusion

For farmland, the gross income test exemplifies Oregon’s emphasis on clear, objective, and easily applied standards. While the definition of high-value farmland is based on an objective soil classification system, the farm dwelling classification is based on a stricter gross income test, one that fulfills the original intent of promoting agriculture as a key state industry. The gross income test continues to be both a national model for land designation and one of the most hotly contested elements of Oregon’s agricultural policy. While the gross income test is a model for how farm related dwellings can be allowed in a farm zone, it doesn’t deal with how lands are ‘designated.’ Current forest policy employs a more traditional template test for dwellings as opposed to an income test, linking the level of allowed development to the overall forest quality (based on site classification).

Mitch Rohse comments that, "the big issue in farmland protection is and always has been the number of new dwellings allowed on farmland. There will be disagreement on how many is too many, but I believe the number is far higher than most people realize. I also believe that the number is pretty much what it would have been if we had not had a statewide planning program. In effect, the program has affected the quality, not the quantity, of development on farmland, forcing the new dwellings onto less productive

lands and limiting their potential to interfere with nearby agriculture.” Eber suggests the possibility that both quality and quantity of development on farmland is affected by the statewide planning program, as the available data indicates a steady decline in the total number of dwelling approvals from 1994 to 2002.¹⁷

Policy Issue #4: Permitting Nonfarm and Non-forest Dwellings

In 1973, Senate Bill 101 authorized certain nonfarm dwellings on lands zoned for Exclusive Farm Use. The provision required that these single-family residential dwellings met basic review standards, including compatibility with farm uses as per the intents and purposes laid out in ORS 215.243; non-interference with accepted practices on adjacent farmlands; no disruption to the stability of the overall land use pattern, and situation on generally unsuitable land for the production of farm crops and livestock.

These initial review standards were the subject of much contention and court interpretation, particularly the requirement that the parcel be “generally unsuitable” for farm use. The standards remained relatively unchanged until the passage of HB 3661 in 1993, which defined “generally unsuitable” to include Class IV through VIII soils in the Willamette Valley, and also explicitly prohibited the creation of new parcels for nonfarm dwellings in the Willamette Valley. Further revisions were made in 2001 through amendments to ORS 215.263 adopted HB 3326 with the intent of establishing nonfarm dwellings as the exception to the norm of EFU lands by making approval for them difficult to obtain. HB 3326 limits the number of parcels eligible in the future to be divided for nonfarm dwellings and establishes narrow, objective standards for the division of any nonfarm parcels determined to be unsuitable for farm use and forest use.

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¹⁷ Refer to the tables in Appendix B for a summary of the number of new dwellings approved in farm zones and forest zones from 1994 to 2002.

¹⁸ Section 3 Oregon Laws Chapter 704, 2001

Conclusion

The importance of this dwelling approval process is that nonfarm and non-forest development is limited and sited in a way to minimize its impact on agriculture and forestry and thus protects the primary use, farming and forestry within the respective zones. Determining if development, including the siting of nonfarm and non-forest dwellings, is happening on lower quality lands as intended, through the use of GIS data and mapping, is a primary recommendation for future farm and forest policymaking (see conclusion for Issue #3).¹⁹

A specific challenge for the future of forest policy concerns the allocation of resources for wildfire management in areas with dwellings. Fire management, as well as cutting techniques, are very different for forestlands with dwellings than they are for those without dwellings. Mike Rupp, of the Federal Emergency Management Agency, Region X, notes that there is a growing tension between the interests of residents in forest areas and individuals who believe resources for wildfire management should not be devoted to protecting rural residential development. This issue will certainly be played out in future policy debates over dwelling standards and regulations.²⁰

Policy Issue #5: Land Divisions and Minimum Lot Sizes

The continued parcelization of farmland into smaller and smaller parcels is another one of the most difficult policy issues Oregon faces in agricultural land protection, requiring effective policy to establish land division and minimum lot size standards. Oregon's policy framework has always operated under the intent of protecting agricultural land in large blocks. Goal 3 originally carried no statewide minimum for lot sizes, due to the varied acreage needs between small intensive farm operations and large dryland ranches. Instead, Goal 3 stated that land divisions and minimum lot sizes be 'appropriate for the continuation of the existing commercial agricultural enterprise' of the area. Due to this vague language, parcelization into smaller and smaller "farm" plots continued to be

¹⁹ Eber, Ron. Interviewed June 11, 2004.

²⁰ Rupp, Mike. Interviewed July 28, 2004.

approved until a major review of the land statutes in 1993, when the legislature established statewide minimum lots sizes of 160 acres for rangeland and 80 acres for farm partitions. LCDC approves smaller parcel sizes when counties are able to demonstrate that the plot promotes ‘commercial scale’ farm operation. With regard to forestland, there is a minimum lot size of 160 acres for new parcels.

Eber describes the current statutes governing land division and minimum lot sizes:

Small parcels less than the minimum are allowed for a nonfarm dwelling when the remaining parcel will be larger than the specified minimum. A parcel less than the minimum also may be divided for nonfarm dwellings if **both** new parcels meet clear and objective standards establishing that **both** new parcels are not suitable for farm or forest use. No parcels created after July 1, 2001 may be divided to create parcels for nonfarm dwellings. [See HB 3326, Oregon Laws Chapter 704, 2001]

This policy pertains to nonfarm dwellings and not for other uses, or agriculture and forest resource uses.

Conclusion

This policy highlights the efforts of policymakers to strike a balance between the high demand for rural development and the public interest of conserving forest and agricultural land in parcels large enough to be economically competitive.

Public Policy Issue #6: Conversion Standards

Despite the many rules and regulations aimed at keeping prime agricultural land zoned for farm use, there are still unique instances where this land may be converted for development. Land identified and zoned for agricultural use may be designated through a plan or zone change for nonfarm development (residential, commercial, or industrial) through the procedures and findings of the “exceptions process.” According to Eber, 200,000 of the 750,000 total acres designated for rural residential, commercial, or industrial development in Oregon are located on the highly productive Willamette Valley soils.

If agricultural land is already built on or committed to nonfarm uses it need not be zoned EFU. If agricultural land is not yet committed, but wanted for a non-arm use not allowed in an EFU zone, a detailed justification is required, known as a reasons exception. The criteria needed to justify conversion of uncommitted prime agricultural land for nonfarm use in an EFU zone includes reasoning for why the proposed use needs to be sited in a rural resource area, demonstrated lack of alternative locations on non-resource lands, detailed findings regarding the impact on and compatibility with area farm and forest operations.

The rate of forestland conversion to urban and low-density residential uses has dropped dramatically and the change has occurred in areas planned for such conversion; i.e. within urban growth boundaries and rural development zones. Furthermore, the land showing an increase in density (new dwellings) has decreased, and about 70% of the dwellings being approved are in areas of existing high density where forest management is less likely to occur. The high-density areas only include 5% of the private forestland base while 75% are free or relatively free of any impacts from rural development (low density category).

Conclusion

One important aspect of this policy is that the justification for conversion cannot be based on housing market demands and costs nor can it be based on assumed continuation of past growth projections and population distributions. Eber believes this subordination of the free play of the marketplace in favor of broader public policy objectives is a unique and key element of Oregon's agricultural and forest protection programs.

Section Three – Final Thoughts

This section concludes the report by summarizing the major achievements of farm and forestland policy in Oregon and identifies key challenges for the future.

Major Achievements

Oregon's Statewide Land-Use Planning Program is considered by many to be one of the strongest and most effective methods in the nation. Much of the credit is due to the success of the agricultural protection program, which has protected approximately 15.5 million acres of land under the EFU zone.

Eber notes that the link between zoning and special tax treatment is essential to the success of Oregon's comprehensive planning due to the balance it strikes between public and private interests in the use of agricultural lands. The preferential tax treatment supports the private interests of the farmer by economically assisting his or her efforts to keep the land in agricultural production, while the zoning restrictions on nonfarm use of the farmer's land assures that the public interest of preserving agricultural land for agricultural use is being met.

This unique policy approach is not only successful in theory, but has been found to be effective in practice. According to the 2001-2002 EFU and Forest Report, the major policy changes made in 1993 are achieving the intentions of ORS 215.700 statutory policy to strike a balance between better protecting the state's more productive resources lands and providing opportunities for dwellings on less productive resource lands. Additionally, survey results from the COPE report indicate almost unanimous recognition amongst key stakeholders that the Statewide Planning Program is working particularly well in protecting farmland and encouraging compact growth.²¹

The following bullets outline the results of the Agricultural Land Use Policy and Oregon Forest Policy in terms of total land protection according to DLCD estimates in 2004.

- | | | |
|---------------|--------------------|-------|
| • Farm | 15.5 million acres | 55.8% |
| • Forest | 8.2 million acres | 29.7% |
| • Farm/Forest | 2.3 million acres | 8.1% |

²¹ Toulon, Nohad A. An Evaluation of Planning in Oregon, 1973 – 2001: A Report Submitted to The Oregon Chapter of the American Planning Association By The Committee on the Oregon Planning Experience (COPE). November 2001. As viewed at <http://www.oregonapa.org/COPEreport.pdf> on June 23, 2004.

• Rural Dev.	886,500 acres	3.2%
• Other Rural	105,000 acres	0.4%
• UGBs	787,900 acres	2.8%
• All Private Land	27.7 million	100.0%

Future Challenges

Maintaining existing standards for protection of Oregon’s farm and forestland will continue to require significant political effort. The American Farmland Trust believes that “Oregon’s Statewide Planning Program continues to be under political attack through slow legislative ‘erosion’ from an ever-growing list of exceptions to the ‘exclusivity’ of farm zones, as well as through Oregon’s especially active and accessible initiative process.”²²

Ballot Measure 37 is a current example of this effort to undo existing policy by establishing the EFU and forest zone designations as a de facto takings, forcing government to pay owners, or forgo enforcement, when land use restrictions reduce property value.²³ While the appropriate policies are in place according to the perspective of the American Farmland Trust and 1,000 Friends of Oregon, the strength of development interests suggest that these policies will continue to be the center of political debate in the future. In this way, it is likely that many of the key issues already addressed in the three decades of farm and forest land-use planning will continue to be revisited as the key issues of the future.

Three policy recommendations supported by American Farmland Trust include: (1) protecting farmland from development using PACE programs; (2) assuring environmental stewardship on agricultural lands through improved farm management practices by increasing financial support for farmer’s environmental stewardship; and (3) supporting economic development for agriculture that helps create economically self-sustaining agricultural communities.

²² American Farmland Trust, as viewed at <http://www.farmland.org/pnw/index.htm>, July 2004.

²³ Take A Closer Look Committee, as viewed at <http://www.takeacloserlookoregon.org/>, August 2004.

The use of conservation easements to help protect farm and forest lands may be a key opportunity for the future. Currently, southern Oregon is one of four national areas eligible for USDA Grassland Reserve Program funding, which pays ranchers and farmers for placing native grassland areas into conservation easements. Similar “purchase of agricultural conservation easements (PACE) programs are gaining legislative attention at the state-level in the Pacific Northwest. In 2003, the Oregon Legislature adopted HB 2754, authorizing conservation districts to hold agricultural conservation easements.

Ultimately, it remains to be seen whether the benefits provided by Oregon’s agricultural protection policies are sufficient to achieve the overall intent of the program, namely, protecting commercial agriculture. As Eber states, “Zoning land for farm use no more creates farms than zoning land for industry creates a factory.” In addition to protection of the agricultural land, other programs are needed to strengthen the agricultural economy. Eber suggests programs to encourage on farm processing, special loans for equipment and land improvements, as well as new crop research and marketing studies.

The framework established by LCDC is empirically proven to be an effective structure for identifying and addressing key policy issues through rule-making. However, determining whether the correct policy decisions were made through this structure is an inherently difficult question to answer, because the consequences of the policies are realized over the long-term. It may take years before we fully understand whether the policies enacted to protect and promote agriculture are meeting their intended goals, as it will take years to see the cumulative effects of piecemeal development on the rural landscape.

The Oregon Chapter of the American Planning Association thanks Ron Eber for his assistance advising on development of this paper.

Appendix A: Policy Timeline

The following timeline provides a brief summary of the major policy changes affecting farm and forestland planning in Oregon.²⁴

Land Use and Tax Statutes (1963 to 1973)

1963: Exclusive Farm Use (EFU) zoning is introduced as legislation. Marks the first policy regulating the use of lands zoned for agricultural use.

1969: SB 10 requires each city and county to undertake planning and zoning.

SB 100 and 101: The Birth of Agriculture and Forest Protection (1973 to 1993)

1973: Oregon's first *Agricultural Land Use Policy* (ORS Chapter 215.243) is established as part of ORS Chapter 215, the State's "County Planning, Zoning, Housing Codes."

- *Senate Bill 100* establishes Land Conservation and Development Commission (LCDC), requiring every city and county to prepare and adopt a comprehensive plan and implement land use measures in accordance with statewide planning goals.
- *Senate Bill 101* establishes framework for EFU zone and distinguishes between allowed farm and allowed non-farm uses.

1974: First 14 of LCDC's statewide planning goals are adopted. *Goals 3 and 4* establish the protection of agricultural and forest lands as a vital economic interest of the state of Oregon.

1981: Oregon Legislature passes a '*right to farm law*' (revised 1993) to provide some limitation on a farmer's nuisance liability for regular farming practices.

1983: *Marginal Lands Act* establishes the first working definition for the identification and designation of marginal lands (later called secondary lands). Establishes a trade-off between less regulation of lower quality 'marginal lands' and improved protection for the best or primary resource lands. This provision was ultimately repealed with the adoption of HB 3661 in 1993.

²⁴ Adapted from: Eber, Ronald. "Oregon's Agricultural Land Protection Program," presented to the 2001 Oregon Planning Institute, University of Oregon. Oregon Department of Land Conservation and Development.

1984: The Oregon Court of Appeals determines that the statutory language ‘in conjunction with farm use’ means that parcels must be ‘currently employed for farm use’ before a new farm dwelling is approved.

1986: LCDC requires that a new farm dwelling cannot be approved on a parcel unless ‘the day-to-day activities on the subject land are principally and patently directed to achieving a profit in money through the farm use of the land.’

1988: LCDC adopts a general definition of “secondary lands,” and a proposal for the identification of and the possible use and densities to be permitted.

1992: LCDC adopts amendments to goals 3 and 4, allowing for the separate designation of small-scale resource lands from high value and important farmlands as well as from forestlands.

Legislative Compromise (1993 to present)

1993: *HB 3661* is adopted by the Legislative Assembly which establishes:

- New lot-of-record provisions for farm and forest zones,
- A statutory definition of ‘high-value’ farmland,
- New standards for nonfarm dwellings, and limitations for nonfarm dwellings in the Willamette valley.
- The uses allowed on less productive resource lands, and
- A repeal of the goal and rule provisions regarding the separate designation of small-scale resource lands.
- Legislature establishes a statewide minimum lot size for farm related partitions of 80 acres and for rangeland of 160 acres.
- Repeal of Marginal Lands provisions, except for those already established in Washington and Lane Counties.

1994: LCDC develops the current gross income standards for the approval of farm dwellings.

2001: *HB 3326* establishes new standards for nonfarm dwellings. No parcels created after July 1, 2001 may be divided to create parcels for nonfarm dwellings.

2002: The *2001-2002 EFU and Forest Report* shows that policy changes made in 1993 by the Legislature (*HB 3661*) and by the Commission (implementing rules) are achieving the statutory

policy in ORS 215.700 to: (a) better protect the state's more productive resource lands; and (b) provide opportunities for dwellings on less productive resource lands.

2003: Legislative Session continues to expand allowed nonfarm uses in an EFU zone from six in 1963 to over 50 by 2003.

Appendix B: New Dwellings in Farm and Forest Zones

Table 1: New Dwellings Approved in Farm Zones

TYPE OF DWELLING	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTALS (% of Net)
Primary Farm ORS 215.283(1)(f)	372	149	94	98	68	88	77	81	76	1103 (17%)
Accessory Farm Dwelling ORS 215.283(1)(f)	122	64	54	57	35	53	36	29	27	477 (8%)
Family Farm Help ORS 215.283(1)(e)	34	57	49	78	77	59	43	38	48	483 (8%)
Temporary Hardship ORS 215.283(2)(L)	105	154	122	131	126	105	105	115	104	1067 (17%)
Lot-of-Record ORS 215.705	68	120	123	129	131	94	80	78	91	914 (14%)
Non Farm ORS 215.284	225	252	299	340	205	208	227	203	279	2238 (36%)
Net New Dwellings	926	796	741	833	642	607	568	544	625	6282
Replacement ORS 215.283(1)(s)	211	220	289	419	361	354	307	276	333	2770 (31% of Total)
Total Dwellings Approved In Farm Zones	1137	1016	1030	1252	1003	961	875	820	958	9052

Source: Department of Land Conservation and Development (DLCD)

Table 2: New Dwellings Approved In Forest Zones

TYPE OF DWELLING	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTALS (% of Net)
Forest Template ORS 215.750	368	309	252	276	264	277	281	237	218	2629 (72%)
Large Lot ORS 215.740	7	9	36	13	13	16	19	21	15	149 (4%)
Lot-of-Record ORS 215.720	23	68	63	52	78	46	41	47	33	451 (12%)
Temporary Hardship ORS 215.755(2)	58	55	43	45	40	52	37	35	41	446 (12%)
Net New Dwellings	456	441	394	386	395	391	378	340	307	3675
Replacement ORS 215.755(1)	88	90	106	95	90	85	81	91	93	819 (18% of Total)
Total Dwellings Approved In Forest Zones	542	531	500	481	485	476	459	431	408	4494

Source: Department of Land Conservation and Development (DLCD)

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The COPE report is a comprehensive evaluation of Oregon's statewide planning program, including survey responses from policymakers and other stakeholders on the effectiveness and status of Oregon's planning goals.