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An Agricultural Law Research Article

## **Oregon Agriculture and Land-Use Planning**

by

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# OREGON AGRICULTURE AND LAND-USE PLANNING

BY  
TIM BERNASEK\*

*Agriculture is vital to Oregon's economy. A strong agricultural industry in Oregon requires a quality land base designated for agricultural uses. This essay argues that an effective statewide land-use planning system would preserve the economic health of Oregon agriculture while maximizing private property interests. The essay addresses sources of conflict that have arisen in Oregon's current land-use planning system. Finally, the essay will propose improvements to the current land-use system and regulatory environment designed to enhance the prosperity of Oregon's agricultural industry.*

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## I. INTRODUCTION

Both land-use planning advocates and opponents cite various reasons to support or oppose the system of land-use planning that has been implemented in Oregon over the past thirty years. Orderly development, environmental protection, property rights, open space, transportation corridors, and affordable housing are only a few examples. This essay will focus on economic arguments as the basis of support for a system of

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statewide land-use planning. Specifically, this essay will focus on agriculture's impact on the state economy, and will argue for a system of land-use planning that designates land for agricultural uses as an important factor in maintaining the health of Oregon's agricultural economy. In addition to enhancing agriculture's viability, proper planning does in fact maximize private property interests. Finally, this essay will discuss sources of conflict that have arisen in the current model of land-use planning and suggest improvements for this system.

I should make it clear at the outset: the arguments laid out in this essay are mine. For most of my professional career, I have been privileged to represent the Oregon Farm Bureau Federation, the largest general agricultural association in the state. Without a doubt, many of the arguments I advance are the result of conclusions reached after wrestling with land-use planning issues on behalf of my client. However, I have not asked for, nor have I received the Farm Bureau's endorsement of the observations laid out in this essay.

## II. BACKGROUND

Oregon agriculture continues to be a major player in Oregon's economy. Given its position as one of the top industries in the state, policymakers should focus on creating a regulatory environment conducive to maintaining, if not strengthening, agriculture's viability. To be clear, non-economic arguments could be made for preserving agriculture's presence in Oregon, like maintaining rural heritage, preserving open space, and others. However, these arguments will not be made here. Agriculture's position as one of the top industries in the state alone warrants policies, including sensible statewide land-use planning, that will enhance its position in the state's economy for years to come.

In spite of growing conventional wisdom that agriculture is part of some bygone era in Oregon and is fading as a presence in the state's economic picture, a few key statistics show this is simply not the case. Agriculture is the second largest industry in Oregon behind technology, accounting for over \$4 billion dollars annually in direct farm input<sup>1</sup> and over \$11 billion dollars in total economic activity to the state.<sup>2</sup> Nine percent of Oregon's jobs are connected to agriculture.<sup>3</sup> Approximately 9.5 % of Oregon's gross state product (GSP) is attributable to agriculture.<sup>4</sup> Agriculture is not just a major component of Oregon's rural economy. The majority of the Port of Portland's total tonnage of exports, about sixty percent, is agriculture sourced from Oregon and other states.<sup>5</sup>

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<sup>1</sup> Or. Dep't of Agric., *Value of Oregon Agriculture Topples \$4 Billion Mark*, AGRIC. Q., Fall 2005, at 5, available at [http://www.oregon.gov/ODA/docs/pdf/pub\\_0509aq.pdf](http://www.oregon.gov/ODA/docs/pdf/pub_0509aq.pdf).

<sup>2</sup> Or. Dep't of Agric., *Oregon Agriculture: Industry Overview*, AGRIC. Q., Winter 2004/2005, at 2, available at <http://oregon.gov/ODA/docs/pdf/news/0412aq.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Press Release, Or. Dep't of Agric., *Urban Oregon Proclaims Appreciation of Ag* (Sept. 30, 1998), [http://www.oda.state.or.us/information/news/1998/city\\_proclamation.html](http://www.oda.state.or.us/information/news/1998/city_proclamation.html).

On any given day, one could peruse the major daily newspapers in Oregon and find stories about efforts underway to build upon the state's high-tech sector.<sup>6</sup> Given its position as the top industry in the state, this is both understandable and appropriate. Agriculture too, as the second-largest player on the state's economic stage, warrants increased initiatives to maintain and strengthen its position. As will be discussed more fully below, sensible land-use planning policies that preserve and protect land for agricultural production are a vital component of, and must be a part of, any strategy to maintain a strong agricultural sector.

### III. AGRICULTURAL LAND AVAILABILITY IS CRITICAL TO SUSTAINING AGRICULTURE INFRASTRUCTURE

As discussed above, agriculture is a major component of Oregon's economy. For the agricultural sector to survive, there must be land available upon which agricultural products can be produced. Some agricultural sectors require large blocks of land relative to economic output, like wheat, grass seed, and livestock, while other sectors require less land relative to economic output, like nursery stock. However, taken as a whole, the agriculture segment of the economy requires unhindered blocks of land designated for agricultural production to survive and thrive.<sup>7</sup>

Land-use planning, done properly, will recognize this need for large blocks of land designated for agricultural production. Why is it that agriculture requires these large zones for its survival? Perhaps one of the best ways to illustrate this need in agriculture is to compare it to what is happening in one of the other major sectors in Oregon's economy.

Much has been made lately of economic "clusters," particularly in support of Oregon's growing high-tech sector. The argument is that, to attract and maintain a base of high-tech companies, clusters of similar companies and support structures are required.<sup>8</sup> Support institutions like engineering programs are necessary to educate a local workforce to fill the

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<sup>6</sup> See, e.g., Christian Trejbal, *The Buzz about Bend is Drawing High Tech Crowd*, USA TODAY, Apr. 26, 2005, available at [http://www.usatoday.com/tech/news/2005-04-26-tech-in-bend\\_x.htm](http://www.usatoday.com/tech/news/2005-04-26-tech-in-bend_x.htm) (describing efforts by planning officials in Bend, Oregon to develop a high tech industrial park and University center); Aimee Curl, *Halo LSI Comes from New York to Settle in the Sunset Corridor*, DAILY J. COM., Aug. 17, 2004, [http://www.findarticles.com/p/articles/mi\\_qn4184/is\\_20040817/ai\\_n10046984](http://www.findarticles.com/p/articles/mi_qn4184/is_20040817/ai_n10046984) (last visited January 22, 2006) (reporting on a family-run technology business's relocation from New York to Oregon); Fred Leeson, *Renewal Zone Proposed to Help Siltronic Expand*, OREGONIAN, Oct. 14, 2004, at B1 (describing how Portland proposed an industrial urban renewal district that would help pay for a site expansion of a silicon wafer manufacturer).

<sup>7</sup> See Thomas L. Daniels & Arthur C. Nelson, *Is Oregon's Farmland Preservation Program Working?*, 52 J. AM. PLAN. ASS'N 22, 23 (1986) (asserting that proliferation of smaller "hobby" farms fragments land holdings and hinders expansion of commercial farms and consolidation of parcels into commercial farm units).

<sup>8</sup> See Ted Sickinger, *Business Group Identifies Strengths*, OREGONIAN, Nov. 13, 2002, at E1 (reporting on a business group's analysis of Oregon's existing and emerging high-tech economic "clusters").

jobs required to fuel this sector.<sup>9</sup> “Shovel ready” land has been called for to allow companies that make up these clusters to easily locate and develop.<sup>10</sup>

The clustering concept is also vital in the agricultural sector. Admittedly less glamorous than its high-tech counterparts, clusters of agricultural operations are required to develop the infrastructure necessary to maintain itself and grow. For example, grass seed growers clustered in the southern Willamette Valley attract seed cleaners, where seed is cleaned and stored.<sup>11</sup> Farm implement dealers will locate to service those agricultural producers in the area.<sup>12</sup> Land zoned exclusively for these farm uses is necessary to allow these clusters to develop.

When non-farm uses invade these clusters or farm zones, the agricultural infrastructure is weakened. Just like “blight and decay” erode urban commercial and residential areas, “sprawl” erodes agricultural areas.<sup>13</sup> When farmland is replaced with homes and non-farm businesses, conflicts increase and costs of production increase for agricultural producers.<sup>14</sup> Once farmland is lost, it rarely, if ever, reverts back to agricultural production.<sup>15</sup> Returning to the above example of the grass seed cluster in the southern Willamette Valley, if sprawl is allowed to invade these zones, the economies of scale associated with large blocks of grass seed fields are reduced. As less and less land is producing grass seed, seed cleaners go out of business or consolidate. Fewer cleaners require producers to travel farther to deliver their seed, increasing both transportation costs and traffic congestion. As overall production becomes more costly, the increased competitive disadvantage creates a spiral toward more inefficient production.

While the above example may be a bit simplistic, it is illustrative of the impact non-farm uses have on agricultural production. While in private practice, I represented many clients faced with the dilemma that they could no longer maintain a viable agricultural operation because of the loss of agricultural infrastructure, but were precluded from using their land for other uses due to rigid application of zoning rules. Some of the high-profile

<sup>9</sup> See Ted Sickinger, *State Must Risk to Keep Edge*, OREGONIAN, Feb. 4, 2003, at A1 (suggesting that in order to keep its high-tech sector competitive, Oregon must continue to build on its knowledge base through the work of entrepreneurs, established employers, and educational institutions).

<sup>10</sup> See Exec. Order No. 03-02, 42-4 Or. Bull. 5 (Apr. 1, 2003), available at <http://governor.oregon.gov/Gov/pdf/ExecutiveOrder03-02.pdf> (creating an Industrial Lands Taskforce to implement the “Shovel Ready” lands initiative).

<sup>11</sup> Oregon Seed Council, Oregon Grown Grass Seed, Producing the World’s Finest Grass Seed, <http://forages.oregonstate.edu/organizations/seed/osc/brochures/producer.html> (last visited Jan. 22, 2006).

<sup>12</sup> *Id.*

<sup>13</sup> See GERRITT KNAPP & ARTHUR C. NELSON, *THE REGULATED LANDSCAPE, LESSONS ON STATE LAND USE PLANNING FROM OREGON*, 126-27 (2d ed. 1993) (detailing five common conflicts between farmers and urban residents).

<sup>14</sup> See David Berry, *Effects of Urbanization on Agricultural Activities*, GROWTH & CHANGE, July 1978, at 2, 3 (listing specific impacts of intrusion of non-farm and urban uses into previously agricultural areas, such as nuisance regulations, increased taxation, pollution, induced crop damage, malicious crop destruction, and use of eminent domain).

<sup>15</sup> See Daniels & Nelson, *supra* note 7, at 23-24, 26 (stating that hobby farmers increase agricultural land values, decrease parcel sizes, and generally do not rent land to commercial farmers—all factors leading to irreversible conversion of agricultural lands).

examples of problems with land-use planning are the result of poor local decisions rather than with the system as a whole. The point for policymakers to understand and consider is this: with international competition, agriculture in Oregon and the United States will not just happen because it has always happened.<sup>16</sup> Planning for agricultural uses of land is just as critical as it is in other non-agriculture industries like high-tech. In addition to land designated to support agricultural production, the regulatory environment necessary to support agriculture on these lands must also be addressed, but more on that later.

#### IV. PROPERTY RIGHTS ARE MAXIMIZED THROUGH PROPER PLANNING

If we as a state want to maintain our agriculture base, we will need to plan accordingly by designating land to support an agriculture infrastructure. Like the proverbial elephant in the room, any discussion of planning requires a discussion of property rights and property rights maximization. Aren't there winners and losers in any planning discussion? Doesn't planning inherently require some to lose their "property rights"?

Without getting into a cerebral, esoteric discussion of defining property rights and to whom these rights belong, I am going to simply state my point of view. First, private property rights are an inherently important foundation of our social order, and the ability to use one's property in a manner that the owner desires should be a foundational goal of any regulation affecting the use of land. Second, history is replete with examples of failed governmental policies whose end was to regulate land and private property to maximize the social interest at the expense of private self-interest.<sup>17</sup> While there has always been and will continue to be a tension between self-interest and the social good, government policy can at best help foster enlightened self-interest with its ancillary benefits to the social order. Planning, as an instrument of government policy, must focus on maximizing property rights (the ability to use one's land as that person sees fit), and policy-makers must therefore be content with the benefits to the social order that will come from this type of regulation.

It would be understandable, yet incorrect, to conclude that the best planning is that which plans the least. If real property could be segregated and contained to the point that what one does with his or her property would have no effect on what other adjoining land owners do with their property, then this premise might have merit. However, it is clear that this hypothetical construct is no more than that, hypothetical. Since one landowner's use of land does affect what other landowners can do with their land, the best way to maximize property rights (i.e., the ability to use one's

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<sup>16</sup> See Gail Kinsey Hill, *A Way of Life in Flux*, OREGONIAN, Nov. 10, 2004, at A1, available at <http://www.oregonlive.com/columbiagorge/oregonian/related.ssf/?special/oregonian/nine-states/part5.html> (discussing challenges to Eastern Oregon wheat farmers from changing international conditions).

<sup>17</sup> An example is rent control. See Edgar O. Olsen, *Is Rent Control Good Social Policy?*, 67 CHI.-KENT L. REV. 931, 935-44 (1991) (outlining the failure of rent control ordinances to achieve their stated objectives, and the burdens they thus place unnecessarily on landlords).

land as the landowner sees fit) is to ensure that all landowners have an understanding of how their land and the land of their neighbors can be used. If property owners take ownership of land with full knowledge of what they and their neighbors can do with their land, their property rights and those of their neighbors are maximized. Again, this should be the goal of land-use regulation.

## V. SOURCES OF CONFLICT

Applying this theory of property rights maximization to the world in which we live is, of course, no easy task. For one, our world is dynamic and the needs for property and its uses change with time. This inherent truth ensures that no matter what the regulation and no matter what the use of land, there will always be some conflict. However, identifying some of the key sources of tension allows for a discussion of solutions that will help minimize conflict while maximizing property rights.

### *A. Implementation of Current Planning*

Any comprehensive land-use planning program such as 1973's Senate Bill (SB) 100<sup>18</sup> will produce winners and losers.<sup>19</sup> A goal of SB 100 was to maximize property rights through effective planning as discussed above.<sup>20</sup> There were discussions of the need to compensate those landowners who would lose some of their property rights as a result of planning.<sup>21</sup> The long-term benefit to individuals and society that would result from settled expectations of the use of land would have some short-term costs. Although the need to address these short-term costs was identified, when it came time to "pay the piper," policy makers collectively shrugged their shoulders and passed the bill down to future generations.

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<sup>18</sup> S.B. 100, 73d Leg., Reg. Sess. (Or. 1973), available at <http://www.oregon.gov/LCD/docs/sb100.pdf>

<sup>19</sup> See KNAPP & NELSON, *supra* note 13, at 199 (discussing interest group winners and losers from implementation of Oregon's Statewide Planning Program).

<sup>20</sup> See S.B. 100, 73d Leg., Reg. Sess., at 1 (Or. 1973), available at <http://www.oregon.gov/LCD/docs/bills/sb100.pdf> (finding that "[u]ncoordinated use of lands within this state threaten the . . . prosperity . . . of the people of this state").

<sup>21</sup> The Senate listed as one of the responsibilities of the then-newly-formed Joint Legislative Committee on Land Use,

implementation of a program for compensation by the public to owners of lands within this state for the value of any loss of use of such lands resulting directly from the imposition of any zoning, subdivision, or other ordinance or regulation regulating or restricting the use of such lands. Such recommendations shall include, but not be limited to, proposed methods for the valuation of such loss of use and proposed limits, if any, to be imposed upon the amount of compensation to be paid by the public for any such loss of use . . . .

S.B. 100, 73 Leg., Reg. Sess., at 6 (Or. 1973) available at <http://www.oregon.gov/LCD/docs/bills/sb100.pdf>; see also CHARLES E. LITTLE, THE NEW OREGON TRAIL 24 (1974) (stating that compensation for landowners economically affected by the newly adopted statewide planning legislation was to be an urgent topic for the 1975 Oregon legislative session).

Given this neglect by policymakers to live up to their end of the deal, it should not be a surprise that measures aimed to redress these wrongs have sprung up (Measure 7 in 2000 and Measure 37 in 2004), and have been popular with the voters of Oregon.<sup>22</sup> Poll after poll shows land-use planning is popular with Oregonians.<sup>23</sup> At the same time, polls show that government should compensate landowners for the costs incurred as a result of the loss of property rights inherent in such planning.<sup>24</sup>

As the old adage goes, the ends do not justify the means. While the “ends” of comprehensive land-use planning are noble and in the long-term will (if properly implemented) maximize property rights, this goal does not justify the unfair taking of property rights in the short-term. This is what the voters of the state are saying loudly and clearly through the initiative process and I believe this chorus will only grow until some of the fundamental issues of unfairness in how the current planning system has been implemented are addressed.

### B. Regulatory Reform

Some of the most vocal proponents for change in our land-use system have come from rural Oregon and involve land zoned for exclusive farm use.<sup>25</sup> At the same time, some of the most supportive voices for our current land-use system have come from producers, particularly those in the Willamette Valley, where development pressures are among the greatest in the state.<sup>26</sup> Pitched battles have been fought over the past decade in the Oregon Legislature over issues such as lot of record on high-value farmland, appropriate permitted and conditional uses on exclusive farm use land, and many similar issues.<sup>27</sup>

It has been both interesting and frustrating to participate in these discussions where many proponents and opponents often appear to see the

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<sup>22</sup> Ballot Measure 7 (Or. 2000); Ballot Measure 37 (Or. 2004).

<sup>23</sup> See Nohad A. Toulan, *In My Opinion: Arnold Cogan, Forging a New Land Use Vision for Oregon*, <http://www.oregonlive.com/commentary/oregonian/index.ssf?base/editorial/111710137083760.xml&coll=7> (last visited Jan. 22, 2006).

<sup>24</sup> *Id.* (discussing 2005 poll results which, while supporting land-use planning, also evidence a strong desire to protect private property rights).

<sup>25</sup> See *Measure 37 Will Boost Oregon's Economy and Tax Revenues*, LOOKING FORWARD (Oregonians in Action Education Center, Tigard, Or.) Sept.–Oct. 2004, at 5, available at <http://oia.org/LookingForwardSept-Oct2004.TL.pdf> (arguing that Measure 37 would allow reasonable economic use of Exclusive Farm Use zoned lands unduly burdened by the Oregon statewide planning program); *Measure 37 Will Allow Wise Use of Rural Acreage*, LOOKING FORWARD (Oregonians in Action Education Center, Tigard, Or.) Sept.–Oct. 2004, at 9, available at <http://oia.org/LookingForwardSept-Oct2004.TL.pdf> (highlighting that “much of the mizoned [sic] land is in eastern Oregon”).

<sup>26</sup> See Michael Rose, *Agriculture Officials Examine Fallout of Measure 37*, STATESMAN J. (Salem, Or.), Dec. 10, 2004, at 1B, available at <http://statesmanjournal.com/apps/pbcs.dll/article?AID=/20041210/BUSINESS/412100327> (quoting denunciation of Measure 37 from the Oregon Agricultural Alliance, an organization of larger farms, ranches, and nursery operators).

<sup>27</sup> See 1000 Friends of Oregon, *Questions and Answers about Oregon's Land Use Program: Farmland Protection*, available at <http://www.friends.org/issues/downloads/qa/farmland.pdf> (noting that “every legislative session brings more efforts to allow more non-farm uses on land zoned for farming”).

world from two different, and equally faulty, extremes. Too often the debate involving agriculture tries to separate the need for land from the regulatory environment, and vice versa. Proponents of land-use planning for agriculture argue that without the land, nothing else matters. Others say the current regulatory environment concerning labor, water, tax, and transportation is so burdensome that without relief, the land is useless for agricultural purposes. For agriculture to survive, it requires land designated for agricultural uses and a regulatory environment that allows producers to compete in our global economy.

With Oregon's minimum wage among the highest in the country and the world, options for growers to use their land for profitable agricultural pursuits is in jeopardy.<sup>28</sup> Increased competition for water between agricultural producers and municipalities also narrows the options for growers in their quest to continually maintain viability.<sup>29</sup> The list goes on. While it is true that without land to grow crops, the agricultural economy will shrink, it is equally true that pressure to loosen restrictions on land aimed at keeping it in agricultural production will increase if landowners are unable to use the land profitably in the manner for which it is zoned. Either of the above examples will result in a weakened agricultural economy and thus a weaker Oregon economy.

## VI. SOLUTIONS

As is often the case, it is easier to point out problems than to come up with specific and concrete solutions. While the sources of conflict are certainly more detailed in their entirety than described above, so too are the solutions that will be proposed below. However, I will attempt to provide three concrete solutions that, if enforced, will go a long way toward successfully implementing a land-use planning system that maximizes private property rights and enhances the agricultural sector of our economy.

### *A. Address Property Owners' Concerns Over Loss of Property Rights*

As discussed above, many property owners have been left "holding the bag" as the statewide land-use planning system has been implemented over the past thirty years. In spite of assurances, made early on in the process, that landowners would be compensated for the losses resultant from

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<sup>28</sup> See Oregon Farm Bureau, State Legislative Agenda, [http://www.oregonfb.org/action/local\\_ppi.shtml](http://www.oregonfb.org/action/local_ppi.shtml) (last visited Jan. 22, 2006) (arguing that "if [Oregon's Minimum Wage Law] doesn't change, many family farms won't be able to afford to stay in business"). *But see* News release, Oregon Center for Public Policy, Oregon Agriculture Harvests Bumper Income, (Sept. 7, 2005), available at <http://www.ocpp.org/cgi-bin/display.cgi?page=nr050907agincome> (arguing that "the record net income for all of agriculture undermines the Oregon Farm Bureau's attack on the minimum wage").

<sup>29</sup> See Editorial, *The Bottom Line of Global Warming*, OREGONIAN, Oct. 24, 1005, at D06 (arguing that Oregon needs to find new economic opportunities in light of how farmers are facing water shortages, and that these water shortages will affect all parts of Oregon's economy).

changes in land-use law, by and large these promises have gone unfulfilled.<sup>30</sup> As Measures 7 and 37 have made clear, voters are saying that now the time has come to pay the piper.

What does this "payment" entail? It is no secret that there is not enough money to compensate all landowners who lost value when some of their property rights were taken as our system of land-use planning was implemented. However, to a property owner who is faced with fewer options to exercise on their land, this lack of money is no solace. The only way to practically deal with this situation is to do two things. First, a compensation program must be developed and funded to keep vitally important lands, whether they are agricultural lands or other lands, used in the manner for which they were zoned. Second, if situations arise where compensation is not possible, policymakers should allow landowners to use their land in a manner that was allowable at the time they acquired the property.

This proposed solution is not new. Hours of testimony in the 2005 Legislative Session addressed these issues.<sup>31</sup> The one concept that most sides appeared to embrace was that from here forward, landowners should be compensated for restrictions imposed on their land.<sup>32</sup> The tough part is grappling with how to redress those landowners who have faced restriction on their land from the time of SB 100 up to now.<sup>33</sup> The price that may have to be paid to the detriment of the agricultural infrastructure is, in some instances, allowing development that is not ideally suited for agricultural pursuits.

### *B. Reduce the Cost of Regulatory Compliance*

A significant portion of land that has been subject to Measure 37 claims is in Exclusive Farm Use (EFU) zones.<sup>34</sup> Without a doubt, a number of these claims would have been filed regardless of the health of the agricultural economy. However, it would be naïve at best to assume that there is no connection between the difficulty in making a reasonable livelihood in agriculture and the filing of claims under Measure 37.

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<sup>30</sup> See S.B. 100, 73d Leg., Reg. Sess., §24(4) (Or. 1973), available at <http://www.oregon.gov/LCD/docs/bills/sb100.pdf> (calling for the Joint Legislative committee on Land Use to "[s]tudy and make recommendations to the legislative Assembly on the implementation of a program for compensation by the public to owners of lands . . . for the value of any loss of use of such lands resulting directly from the imposition of any . . . regulation regulating or restricting the use of such lands").

<sup>31</sup> See Edward Sullivan, *Paths Not Taken, Oregon's Response to Measure 37*, [http://law.wustl.edu/landuselaw/Statutes/OR\\_M37\\_Sullivan.htm](http://law.wustl.edu/landuselaw/Statutes/OR_M37_Sullivan.htm) (last visited Jan. 22, 2006) (discussing the chaotic legislative response to Measure 37 during the 2005 Oregon legislative session).

<sup>32</sup> See Laura Oppenheimer, *Blueprint Drawn for Land Use Overhaul*, OREGONIAN, May 11, 2005, at A01 (noting that under the proposed legislation even claims on high value farmland could be made for new future regulations).

<sup>33</sup> *Id.* (noting the problems both sides of the debate had with the bill's provisions for compensation regarding past regulatory actions).

<sup>34</sup> See Washington County, *Ballot Measure 37*, <http://washtech.co.washington.or.us/measure37/> (last visited Jan. 22, 2006) (showing that of the 404 claims filed as of October 24, 2005, 151 have been filed for lands zoned Exclusive Farm Use (EFU)).

Innovation has done a great deal to keep American agricultural producers competitive with growers throughout the world. However, innovation has its limits. For example, the costs of competing internationally with countries that have a very low minimum wage, if any minimum wage at all, are catching up with producers in Oregon who are paying among the highest minimum wage in the world.<sup>36</sup> As discussed above, the minimum wage, which increases annually in Oregon based on inflation, is just one of many layers of regulation that are making it increasingly difficult for Oregon growers to maintain their operations. The ripple effect is that the next generation of producers are deciding not to return to the farm. Even those family members who want to stay in agriculture are being forced out by the factors discussed above.

Public policies that increase regulatory costs on producers are making agricultural production more costly and have exacerbated the property rights conflict.<sup>36</sup> If growers are able to make a reasonable return on their operations, then there will be less pressure to do something else with the land. In our global economy, as the costs of production and regulatory compliance rise, without additional income, agricultural producers will look to other uses for their land since land is often the single greatest asset most agricultural producers hold.

Policymakers must come to terms with this reality and reduce the costs of regulatory compliance facing agricultural producers. Although volumes could be written describing specific reforms in detail, the following are two examples. As discussed above, the automatic indexing of the minimum wage is one of the most significant costs of regulatory compliance facing agricultural producers in Oregon. Policymakers should either eliminate the automatic index to the minimum wage or provide a tax credit to agricultural producers for the annual inflationary increase.

Another significant impediment is the so-called "death tax."<sup>37</sup> Many agricultural producers are "land rich but penny poor." Most of their estate's value is tied up in the land. When the estate tax is assessed to agricultural lands, many beneficiaries are forced to sell some or most of the land just to pay the taxes. This loss of land can imperil the viability of the operation. The loss of viable operations can result in pressure to find other non-agricultural uses of the land. For this reason the death tax should be abolished or reformed. The examples could go on. The important point to consider is that regulation does not occur in a vacuum. The costs associated with regulation on agricultural operations does in fact put pressure on the land-use system.

### *C. Regionalize LCDC*

While statewide goals are an important component of land-use planning, the centralization of administrative rules to advance these goals has caused unnecessary conflict and confusion throughout the state.<sup>38</sup> The

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<sup>35</sup> See Oregon Farm Bureau, *supra* note 28.

<sup>36</sup> *Id.*

<sup>37</sup> OR. REV. STAT. § 118.005 et. seq. (2005).

<sup>38</sup> See *Findings of Fact: Hearing on Land Use Before the House Interim Committee on Land*

refrain about centralized land-use planning rules that has been echoed often throughout the state is true, given Oregon's diverse geography; one size does not fit all.

Currently the Land Conservation and Development Commission (LCDC) is comprised of six regions throughout the state. Beyond the fact that each of the regions has a seat on LCDC, there is little real meaningful responsibility associated with these regions.<sup>39</sup> The legislature should pass legislation that would create "regional LCDC's" with the responsibility for adopting rules for each of the different regions. Although statewide goals would remain, it would be up to each region to interpret these goals and implement rules to meet them for their specific region. Statewide administrative rules, beyond those that would provide for a uniform process of rule adoption (procedural rules), should be abolished in favor of these local rules.

In addition to reducing the cost of regulatory compliance and redressing past infringement on property rights, regionalizing LCDC will help maintain a reasonable land base for agricultural purposes by giving regions a stronger hand in the planning process. Statewide land-use planning requires a balance between overall statewide goals and local implementation of the rules required to meet those goals.

## VII. CONCLUSION

Agriculture is a major player in Oregon's economy and contributes mightily to the economic engine that drives this state. One of the key requirements to a healthy agricultural economy is a land base that is designated to maintain and foster the agricultural infrastructure to keep this engine of the economy moving. Proper planning to maintain the land base necessary for agriculture will enhance, rather than reduce property rights. Unfortunately, there have been many examples where individual property rights have been impinged upon as our current system of land-use planning has been implemented. In order to move forward and provide the kind of planning that is necessary to maintain Oregon's agricultural economy, these inequities must be addressed. Reducing the costs of regulatory compliance and restructuring how our statewide land-use planning system is administered will also help minimize conflicts associated with statewide planning.

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*Use Review*, 72d Leg., Reg. Sess. (Or. 2004), available at <http://www.oregoncranberry.net/october/House%20Land%20Use%20Committee%20findings%20of%20fact.pdf> (recommending better management by LCDC to recognize regional differences between western and eastern Oregon).

<sup>39</sup> The original version of SB 100 in 1973 would have established fourteen regional planning districts, but was scrapped because it was believed that such district Boards would have too much authority over existing local governments. H. JEFFREY LEONARD, *MANAGING OREGON'S GROWTH, THE POLITICS OF DEVELOPMENT PLANNING* 9-10 (1983).