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A Review and Assessment**

by

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THE OREGON AGRICULTURAL PROTECTION PROGRAM: A REVIEW AND ASSESSMENT

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INTRODUCTION

Throughout its history, Oregon has had a progressive, environmentally oriented state government. From early actions, such as the declaration of state ownership of coastal beaches in 1911, to recent policies restricting disposable cans and bottles and fluorocarbon aerosol propellants, the state has established innovative policy precedents for the rest of the nation. Thus, it is not surprising that the state of Oregon has developed and implemented one of the most comprehensive programs to protect agricultural land resources.

The issue of agricultural land conversion emerged as an important land use question in the 1970s. Throughout the United States, state legislatures and municipal governments rushed to develop policy documents and implement measures aimed at reducing urban pressure on farmlands.¹ Most of these efforts, however, have been incremental in design. As a result, numerous subsequent studies suggest that their effectiveness has been minimal.² Oregon, on the other hand, chose to develop a clear statement of policy regarding the protection of agricultural lands and adopted a set of tools designed to provide comprehensive protection for farmlands. It is this unique approach to controlling farmland conversion that this paper addresses. In examining this program, discussion will focus on three areas of con-

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1. See R. CONROY, PRESERVING PRIME AGRICULTURAL LAND IN THE UNITED STATES (1978); W. TONER, SAVING FARMS AND FARMLANDS (1978); Collins, *Agricultural Land Preservation in a Land Use Planning Perspective*, 31 J. SOIL & WATER CONSERVATION 182 (1976); Miner, *Agricultural Preservation: A New Issue in Open Space Consideration*, 14 ENV'TL COM. 1 (1974).

2. See R. COUGHLIN, D. BERRY, K. BIERI, D. BOYCE, J. KOLHASE, E. LEONARDO, J. PICKETT, T. PLANT, B. STEVENS, A. STRONG, D. VINING & K. WALLACE, SAVING THE GARDEN (1977); H. GAMBLE, O. SAUERLENDER & R. DOWNING, THE EFFECTIVENESS OF ACT 319, THE PENNSYLVANIA FARMLAND AND FORESTLAND ASSESSMENT ACT (1977); J. KEENE, D. BERRY, R. COUGHLIN, J. FARNOM, E. KELLY, T. PLANT & A. STRONG, UNTAXING OPEN SPACE (1976); D. NEUMAN & E. PASOUR, AGRICULTURAL USE-VALUE TAXATION IN NORTH CAROLINA (1979); Gustafson & Wallace, *Differential Assessment as Land Use Policy: The California Case*, 41 J. AM. INST. PLANNERS 379 (1975).

cern: (1) the components of the Oregon farmland protection program and their significance within the program framework; (2) relative success or failure of the program; and (3) unique characteristics or attributes which Oregon is using to keep land in agricultural use. In exploring these issues, this paper will review and examine those factors which separate the Oregon experience from that of other states.

FARMLAND PROTECTION MEASURES

The Oregon approach for protecting agricultural acreage reflects an attempt at a balanced policy effort. While most state and local governments have opted for simple, indirect measures, most often tax incentives, to reduce farmland losses,³ the Oregon program is far more complex and innovative.

The cornerstone of the program is a formalized state policy for retaining agricultural land with an accompanying implementation strategy. This strategy recognizes that any land use regulation involves "winners and losers" and that in order to succeed the policy must mitigate the personal loss to those individuals giving up economic opportunities. This supposition is addressed by an integrated set of implementation techniques, which include incentives and subsidies for agricultural landowners as well as action-forcing mechanisms restricting land conversion.

The structure of Oregon's agricultural land program is framed by two pieces of legislation passed in 1973, Senate Bill 100⁴ and Senate Bill 101.⁵ Senate Bill 100 (the Land Use Planning Act of 1973) authorized the development and implementation of a statewide land use planning policy. Charged with the responsibility for preparing and enforcing the policy was the Land Conservation and Development Commission (LCDC). Established by Senate Bill 100, the Commission is a seven-member lay body appointed by the Governor and confirmed by the Oregon Senate.⁶

On December 27, 1974, following 76 public hearings and workshops throughout the state, the LCDC adopted the *Statewide Planning Goals and Guidelines*.⁷ The 14 goals, which became effective

3. J. KEENE, D. BERRY, R. COUGHLIN, J. FARNOM, E. KELLY, T. PLANT & A. STRONG, *UNTAXING OPEN SPACE* (1976). See also Keene, *A Review of Governmental Policies and Techniques for Keeping Farmers Farming*, 19 NAT. RES. J. 119 (1979).

4. Now codified at OR. REV. STAT. § § 197.005-430 (Repl. 1979).

5. Now codified at *id.* § § 215.010-615 (Repl. 1979).

6. *Id.* § 197.030 (Repl. 1979).

7. OREGON STATE UNIVERSITY EXTENSION SERVICE, *THE 1973 LAND USE ACT* (1976).

January 1, 1975,⁸ established statewide goals and guidelines for comprehensive land use planning, environmental quality, natural hazard areas, cultural resources, recreation, economic development, housing, public facilities and services, transportation, energy conservation, urbanization, natural resource lands, and citizen involvement in the planning process.⁹ The term "goals" as used by the commission is, however, a misnomer when measured against the traditional use of that term in land use planning. These goals, rather than being general policy pronouncements, are mandatory statewide planning standards.¹⁰

Among the statewide goals, Goal 3 (agricultural lands) specifically addresses the issue of farmland conversion. It is entitled, "To preserve and maintain agricultural lands." Embodied in this goal is an explicit state policy to protect prime and valuable agricultural land from conversion unless there is a "demonstrated need consistent with LCDC planning goals."¹¹ The implementing mechanisms for this policy are included in other sections of the *Statewide Goals*,¹² as well as in the second major piece of farmland protection legislation, Senate Bill 101.¹³

Senate Bill 101 reasserted the use of exclusive farm use (EFU) zoning for comprehensive planning purposes, while also increasing the financial incentives for farm operators within these zones. The bill amended previous land use planning¹⁴ and tax¹⁵ measures which were passed in 1961. The new provisions expanded the land uses permitted in EFU zones¹⁶ and revised the use value tax assessment formula for agricultural acreage.¹⁷ EFU zoning gained real importance, however, under the new legislation because of the impact of Planning Goal 3. Goal 3 required that all prime or valuable agricultural land be inventoried and placed in the EFU zones. In setting this requirement, the authors of Goal 3 established detailed criteria defining valuable agricultural land:

AGRICULTURAL LAND—in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of

8. OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION, STATEWIDE PLANNING GOALS AND GUIDELINES (1975).

9. *Id.*

10. *Id.*

11. *Id.*, Goal 3 (agricultural lands).

12. *Id.*, Goals 11 (public facilities and services), 12 (transportation), and 14 (urbanization).

13. OR. REV. STAT. § § 215.010-.615 (Repl. 1979).

14. *Id.* § § 215.130, .203, .213 (1961).

15. *Id.* § 308.395 (1961).

16. *Id.* § 215.213 (Repl. 1979).

17. *Id.* § 308.395 (Repl. 1979).

predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.¹⁸

This all-encompassing definition of agricultural land has had the effect of placing most existing agricultural land and ranch land into EFU zones. The most pronounced impact of this requirement is in the Willamette Valley and other western Oregon counties where exclusive farm use zones take in a majority of the land area.¹⁹

Another provision of Senate Bill 101 was directed at slowing the haphazard fragmentation of farmland into subdivided parcels.²⁰ These larger scale subdivisions ("ranchettes") disperse urban development and activities in a scattered rather than contiguous manner. The impact of this type of development is to create a variety of indirect spillover effects which erode confidence in future agricultural viability and restrict normal farming operations.²¹ Under the new rules for EFU zones, county governing bodies are required to review all land divisions within EFU zones that create one or more parcels less than 10 acres in size. Subsequently, county commissioners can approve a land division only upon finding that it is consistent with the state agricultural land use policy.²²

In an effort to reduce the negative impact of these stringent regulations on farm operators, Senate Bill 101 also assigned a variety of direct and indirect financial benefits to agricultural landowners. These advantages include: (1) the assessment of land for tax purposes within EFU zones at use value rather than market value;²³ (2) an exemption from any new benefit assessments or special ad valorem

18. OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION, *supra* note 8, Goal 3 (agricultural lands).

19. Pease & Jackson, *Farmland Preservation in Oregon*, 34 J. SOIL & WATER CONSERVATION 256 (1979).

20. OR. REV. STAT. § 215.263 (Repl. 1979).

21. See R. COUGHLIN, D. BERRY, K. BIERI, D. BOYCE, J. KOLHASE, E. LEONARDO, J. PICKETT, T. PLANT, B. STEVENS, A. STRONG, D. VINING & K. WALLACE, *SAVING THE GARDEN* (1977); W. TONER, *SAVING FARMS AND FARMLANDS* (1978).

22. OR. REV. STAT. § 215.263(3) (Repl. 1979).

23. *Id.* § 308.370 (Repl. 1979).

tax levies by special service districts (i.e., sewer or water districts) except for the farm dwelling and one acre surrounding it;²⁴ (3) the calculation of state inheritance tax on agricultural lands at farm use value;²⁵ and (4) a prohibition on local governments' enacting laws, ordinances, restrictions, or regulations which would unreasonably restrict or regulate farm operations or structures.²⁶ These provisions greatly increase the probability of continuing agricultural use within EFU zones by protecting farm operations from urban-oriented regulations and assessments while providing financial incentives to farmers. In particular, changes in state inheritance taxes for farmland removed a financial burden often responsible for attrition of the family farm.

The final element in the Oregon farmland protection program also comes from the *Statewide Planning Goals and Guidelines*. As noted earlier, Planning Goal 3 deals explicitly with agricultural resources. Goal 14, which addresses urbanization, complements and strengthens the state policy to protect agricultural lands. Goal 14 requires that all municipal governments establish urban growth boundaries to identify and separate urbanizable land from rural areas. The establishment and future expansion of these boundaries must be based on the following factors:

- (1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- (2) Need for housing, employment opportunities, and livability;
- (3) Orderly and economic provision for public facilities and services;
- (4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- (5) Environmental, energy, economic and social consequences;
- (6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- (7) Compatibility of the proposed urban uses with nearby agricultural activities.²⁷

Once established, the urban growth boundary forms a precise limit to urbanization. The integrity of the boundary is maintained by police power regulations and by public facility expenditures and locational decisions.

The agricultural lands and urbanization goals, taken together, con-

24. *Id.* § 308.401 (Repl. 1979).

25. *Id.* § 118.155 (Repl. 1979).

26. *Id.* § 215.253 (Repl. 1979).

27. OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION, *supra* note 8, Goal 14 (urbanization).

stitute a regional land planning concept which takes in a large part of Oregon, especially in the heavily populated Willamette Valley. The urbanization goal creates defined areas for long-range growth contiguous to existing cities and towns of all sizes, while the agricultural lands goal encompasses all prime or valuable agricultural acreage. The agricultural land and urban growth policies thus cover most of the land in the state suitable for either human settlement or agriculture.

As has been noted, however, the strict land use controls associated with Oregon's *Statewide Planning Goals and Guidelines* do not constitute the entire farmland protection program. Rather, the impact of these regulations on farmers is tempered by the financial benefits and by protection from urban spillover effects provided by Senate Bill 101. In this way, the Oregon policy is more balanced in its assignment of costs and benefits associated with agricultural land protection. Moreover, the program is made more attractive to a larger segment of the population.

POLICY EVALUATION

The level of success that a public policy has attained must be measured along several lines. A first and most important indicator is policy effectiveness. Has Oregon's public policy action succeeded in reducing the quantity of prime agricultural land converted to urbanization? Has there been a significant reduction in the amount of farmland isolated and lost from production by non-contiguous urban growth?

The answers to these questions are incomplete. Aggregate statewide data for farmland change and dynamics is not available at this time. The 1979 *Census of Agriculture* will, however, remedy this situation.²⁸ The census will provide an excellent data source for examining the relative impact of the current state policy since its adoption in 1973.

The data on policy effectiveness available at this time is limited to individual situations in which agricultural protection policies have been tested at the local level. This data, which comes primarily from the Willamette Valley, has for the most part shown that local governments are working toward compliance with policies for farmland protection.

A number of recent judicial decisions have clarified the legal issues surrounding administration of the agricultural land policy, thereby

28. At the time this manuscript went to the printer, the 1979 *Census of Agriculture* was not available. It is scheduled to be published soon.

buttressing the resolve of local planning officials implementing the policy. For example, the 1976 appeals court action in *Joyce v. City of Portland*²⁹ upholding the downzoning of over 800 acres of land from low-density residential use to agricultural and forestry zones has had an enormous statewide impact. Similarly, the 1979 appeals court decision in *Still v. Board of County Commissioners*³⁰ stating that rural residential development was not a legitimate factor overriding the greater goal of protecting agricultural resources has judicially affirmed the use of EFU zoning and urban growth boundaries.³¹ With strong support from the state judiciary, local planners are taking actions like the recent denial of a rezoning request for over 200 acres of prime agricultural land within the Corvallis urban growth boundary.³² While the results of local actions provide at best only a partial view of farmland preservation efforts, they are important as they reflect the impact of the state farmland protection program in those areas where the policy is being actively tested.

A second test which may be used to assess public policy success is the degree of public acceptance and support for a policy action. Without solid citizen backing, even the most thorough and comprehensive governmental action will soon suffer from poor implementation and eventual disapplication or repeal. Unfortunately, modern American planning is littered with examples of comprehensive plans and zoning ordinances which have met the fate of public distrust or disinterest.

Viewed from this second perspective, the Oregon agricultural protection program must be seen as an unqualified success. Since their development, the *Statewide Planning Goals and Guidelines*, including the agricultural lands goal, have enjoyed widespread support. For example, a survey conducted by county officials in politically moderate Linn County found that 90 percent of the respondents favored "preserving good farmland for farm use."³³ Public opinion and interest in protecting prime agricultural land and "family farms" is very strong, especially in the densely populated Willamette Valley.

An aggregate measure of public support for Oregon's strong land planning legislation with its explicit agricultural protection policy is best represented by election results on a series of initiative measures designed to repeal Senate Bill 100 and earlier land use planning legislation. Under Oregon's liberal initiative mechanism, attempts to

29. 24 Or. App. 689, 546 P.2d 1100 (1976).

30. 42 Or. App. 115, 600 P.2d 433 (1979).

31. Pease & Jackson, *supra* note 19, at 258.

32. Corvallis Gazette Times, Feb. 8, 1977, at 1, col. 4.

33. *Id.*, Mar. 12, 1977, at 2, col. 1.

repeal land use planning laws occurred in 1970, 1976, and 1978.³⁴ In each election, however, supporters of planning were winners, with victory margins increasing from 10 percent (55 to 45 percent) in 1970 to 22 percent (61 to 39 percent) in 1978.³⁵

A comparison of the most recent initiative attempts in 1976 and 1978 aimed specifically at repealing Senate Bill 100 shows that voter backing for Oregon's planning program is increasing and becoming more geographically diversified. In the 1976 initiative, voter support was concentrated in urban and suburban areas, primarily in the 10 Willamette Valley counties, with the proposed repeal winning in 17 rural counties.³⁶ The results of the 1978 initiative, however, show the vote for repeal dropped by four percent, with the increased voter support for Senate Bill 100 coming from counties located outside the Willamette Valley.³⁷ Moreover, the supporters of repeal carried only six out of 36 counties in the latest election.³⁸

An even clearer evidence of support for farmland protection is found in the 1978 election results from two counties, Deschutes and Hood River. In both areas the state's discretionary authority for protecting agricultural land was applied prior to the 1978 election, setting off a local controversy.³⁹ In Deschutes County, state officials ordered the county to implement zoning measures for agricultural land to protect it from residential development. In Hood River County, state planners arbitrated a long-standing dispute over the location of the urban growth boundary for the city of Hood River; the state planners sided with local officials proposing a restrictive, non-sprawling growth boundary. The 1978 initiative election results from both counties showed overwhelming public support for Senate Bill 100. Voters rejected repeal by nearly a two-to-one margin in Hood River County and an even larger margin in Deschutes County.⁴⁰

UNIQUE PROGRAM CHARACTERISTICS

If we view the Oregon approach for protecting farmland as a policy success, then we must consider the factors which have contributed to this accomplishment. Why has Oregon succeeded in enlisting public support and reducing land conversion, while other states have

34. Pease & Jackson, *supra* note 19, at 258.

35. The Portland Oregonian, Nov. 27, 1978, at A-15, col. 4.

36. *Id.* at A-15, col. 5.

37. *Id.*

38. *Id.*

39. *Id.* at A-15, col. 6.

40. *Id.*

failed? The answer to this question is found in the attitudes and tradition of Oregonians and in the particular characteristics of Oregon's agricultural protection program.

In many ways, the current farmland preservation efforts are linked to the conservationist and populist attitudes which have marked Oregon's government.⁴¹ Historically, Oregonians have displayed a persistent concern for natural resource utilization and active grass-roots government. This tradition aided the adoption of strict land use regulations and eased public acceptance of the farmland protection mechanisms.

More importantly, however, the Oregon program possesses a number of unique features. In this regard, six major differences in program elements or attributes are evident when the Oregon program is compared with agricultural land protection programs in other parts of the United States. These characteristics will be discussed below.

Long-Term Program Development

The Oregon program does not represent an entirely new, quickly formalized attempt to control agricultural lands. Rather, the state's efforts to reduce farmland conversion began in 1961. A series of legislative acts provided precedents for the passage of Senate Bills 100 and 101. Earlier Oregon attempts at controlling farmland conversion include a 1961 enabling statute for exclusive farm use zoning,⁴² a greenbelt law,⁴³ and a rigorous differential assessment act passed in 1963.⁴⁴

The result of this extended period of development is reflected in the broad policy approach adopted to control farmland transition. From early restricted attempts to assist agricultural landowners, decision makers have been able to evaluate policy effectiveness and public support. Those actions which lacked policy support or success were modified. Policy actions which appeared potentially valuable were explored. In this way, Oregon has been able to evolve a comprehensive policy for protecting agricultural acreage. Characteristically, administrative and legislative review of the current policy continues, with ongoing refinements and adjustments.⁴⁵

41. W. ROBBINS, *THE OREGON ENVIRONMENT* (1975).

42. OR. REV. STAT. § 215.203-.233 (1961).

43. *Id.* § 271.710-.750 (1967).

44. *Id.* § 308.370-.406 (1963).

45. OREGON STATE UNIVERSITY EXTENSION SERVICE, *CHANGES IN LAND USE PLANNING STATUTES BY THE 1977 OREGON LEGISLATURE* (1978).

Widespread Involvement in Program Implementation

The Oregon program was developed to include active participation by all levels of government (state, county, and municipal) as well as the public in protecting agricultural land. Policy-making responsibilities are held by state government, but policy implementation and regulatory decisionmaking are carried out by local governments. At all levels of the process, active citizen involvement through advisory boards and public hearings is required.⁴⁶ The state courts have further strengthened requirements for citizen input in a number of strongly worded decisions.⁴⁷

Oregon's vertically integrated policy structure means that all governmental units have responsibilities and opportunities to participate in and influence agricultural land use decisionmaking for their communities. Conversely, poor enforcement or implementation of agricultural land policy is reduced by oversight from higher levels of government.

Program and Policy Clarity

The Oregon program has explicitly stated planning goals and objectives and is an integrated component of the state land use program. In contrast, farmland protection in many areas is viewed as an ad hoc addition to statewide planning efforts. Statewide policy for farmland protection is nebulous. Thus, planners and community officials may have a tendency to view farmland preservation as secondary or less important to their programs. In Oregon, however, the protection of agricultural lands has a clear position of importance that ranks with economic development, transportation needs, and housing requirements as a priority land use issue. With clear policy direction, misinterpretation of land use goals for farmland is minimal.

Mandatory Participation

Participation in the Oregon farmland protection program is mandatory. Local governments and individual owners of prime agricultural acreage do not have a choice about joining the program; the legislation itself⁴⁸ has effectively eliminated that option. One important impact of this coercive characteristic is that any opposition to the policy based on equal protection arguments is mitigated. All

46. OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION, *supra* note 8, Goal 1 (citizen involvement).

47. See *Fasano v. Board of County Comm'rs*, 264 Or. 574, 507 P.2d 23 (1973).

48. OR. REV. STAT. § 197.250 (Repl. 1979).

agricultural landowners are subject to the same planning rules and collect the same benefits. As a consequence, the probability of political favoritism or corruption through the use of exceptions or exemptions in local planning decisions is reduced substantially.

Comprehensive Allocative Policy

The Oregon strategy for farmlands is a comprehensive allocative policy. As in other states, agricultural interests are provided with incentives and financial subsidies for maintaining active agricultural units. These rewards are not, however, without responsibilities. Oregon agricultural landowners are expected to continue agricultural land uses. In order to insure these results, tough regulatory policies are in effect. It is this latter element that makes for policy balance. In other states, the typical farmland protection program confers material benefits without imposing tradeoffs (i.e., costs) on beneficiaries. The result is a weak policy instrument which lacks balance and may be inherently flawed. Oregon's allocative policy, however, insures that landowners derive no benefits without meeting their obligations under the farmland protection program.

Attention to Program Beneficiaries and Interest Groups

Land use policies and planning are a result of politics—a politics dominated by organized interest groups which form coalitions for and against an action.⁴⁹ The allocative policy adopted by Oregon represents an attempt to mobilize a coalition of interest groups supportive of agricultural protection goals. This was done by formulating a policy which appealed to and distributed benefits to a coalition of groups. Included in this coalition are three politically active but divergent groups: farmers and ranchers, urban and neighborhood interests, and environmentalists. Beyond the obvious financial benefits to agriculturalists, urban and neighborhood interest groups view farmland protection as a natural complement to their efforts for urban revitalization and redevelopment. Farmland protection restricts suburbanization and reorients governmental attention to existing urban areas. Finally, environmental interest groups recognize the value of existing agricultural lands from a variety of perspectives, including open space, energy efficiency, and natural system processes, and therefore support the protection of the resource.

Thus the Oregon program, with its mixture of financial rewards and tight regulations, distributes to each interest group at least a sig-

49. K. GOODWIN & B. SHEPARD, STATE LAND USE POLICIES (1974).

nificant portion of the group's desired objectives. The result is a policy with a broad, amorphous coalition of supporters ranging from the Grange and the National Farmers Organization to civil rights groups and the Audubon Society. United in this effort, they constitute a powerful political force.

CONCLUSION

The early results of the Oregon agricultural protection program suggest that this approach may provide a worthwhile model for other states. Land use data, although limited, indicates that many communities have been successful in reducing farmland conversion. These findings are complemented by wide public support for the state's tough land use policy and regulations. These circumstances contrast sharply with the empirical evidence surrounding farmland protection efforts in other states.

While it is impossible to replicate the historical traditions which have contributed to the development of Oregon's program, the critical components of the policy could be applied in other states. The Oregon program controls farmland conversion through a combination of regulatory mechanisms and financial benefits to agricultural landowners. This strategy is designed to equalize the costs associated with farmland preservation and, at the same time, to insure the participation of agriculturalists. The potential effectiveness of this approach would seem to be much greater than the results produced by indirect controls used in other states.

Finally, while the farmland protection strategy developed by Oregon is not a panacea, it must be viewed as more successful than other programs. This measure of success reflects the commitment of Oregonians to protecting their agricultural economy. Without active public support, no policy can keep land in agricultural use.