

A STUDY OF LAND-USE PLANNING AND POLITICS IN OREGON
IN 1988: THE COMPREHENSIVE STATEWIDE GOALS

by

GREGORY D. RINGER

A THESIS

Presented to the Interdisciplinary Studies Program:
Environmental Studies
and the Graduate School of the University of Oregon
in partial fulfillment of the requirements
for the degree of
Master of Science

June 1989

APPROVED: Dr. John H. Baldwin, Co-chair

Dr. Alvin W. Urquhart, Co-chair

An Abstract of the Thesis of
Gregory D. Ringer for the degree of Master of Science
in the Interdisciplinary Studies Program: Environmental
Studies

to be taken June 1989

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The Oregon Comprehensive Land Use Program of 1973 (Senate Bill 100) was one of the earliest attempts in the United States at coordinating local and state planning efforts in land use. Often considered a success, several other states have modeled their own programs after SB 100, such as Vermont and North Carolina. After fifteen years, however, there is increasing concern over the legislation's effectiveness in protecting those remaining lands considered to possess natural significance, such as farm and forest lands, and wetlands.

To measure the extent to which the goals have addressed

this issue, I interviewed land use planners in both the private and the public sectors. Local government records and comprehensive plans were also examined for consistency with the goals in their implementation.

The initial analysis indicates that desires to accommodate urban growth, rather than resource preservation, have been the predominant response by local governments to the goals.

VITA

NAME OF AUTHOR: Gregory Dennis Ringer
PLACE OF BIRTH: Fort Benning, Georgia
DATE OF BIRTH: August 7, 1951

GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:

University of Oregon
Appalachian State University
University of South Florida
Southern Oregon State College
University of Central Florida
Florida Technological University

DEGREES AWARDED:

Master of Science, 1989, University of Oregon
Bachelor of Arts, 1973, Florida Technological
University

AREAS OF SPECIAL INTEREST:

Environmental Planning
Natural Resource Geographic Information Systems

PROFESSIONAL EXPERIENCE:

Graduate Teaching Fellow, Department of Geography,
Oregon Institute of Marine Biology, Charleston, 1989

Community Development Administrator/Environmental
Planner, Western Piedmont Council of Governments,
Hickory, North Carolina, 1985-89

Special Studies Instructor (Computer Mapping
Applications), Center for Continuing Education,
University of Oregon, Eugene, 1988

Graduate Teaching Fellow, Department of Geography,
University of Oregon, Eugene, 1988

Graduate Teaching Assistant, Department of Geography,
Appalachian State University, Boone, North Carolina,
1985

Social Insurance Representative (GS-10), Social
Security Administration, US Department of Health and
Human Services, Holiday, Florida, 1977-85

AWARDS AND HONORS:

Loretta Showers Rossman Scholarship, 1989-90

PUBLICATIONS:

Ringer, Gregory D. A Land Development Concept Plan for
Caldwell County, North Carolina: An Analysis of
Population, Land Use Pressures and Development
Regulations. Hickory NC: Western Piedmont Council of
Governments, 1988.

ACKNOWLEDGEMENTS

I would like to extend my sincere appreciation to the following individuals for their assistance and support in the completion of this thesis--to Professors John Baldwin and Al Urquhart, for striving in their classrooms to evoke the passion of the urban community within which we live, and the supportive role that each of us can play in protecting our global ecosystem--there's no place left to go!

For my parents, and to G.T., who have come to love the wetlands as I do; and finally, my most sincere love and respect to my friend and wife, Barbara, who made it all seem worthwhile by sharing with me the following:

Now that you're here,
the word of the Lorax seems perfectly clear.
UNLESS someone like you
cares a whole awful lot,
nothing is going to get better.
It's not.

It's a Truffula Seed.
It's the last one of all!
You're in charge of the last of the Truffula Seeds.
And Truffula Trees are what everyone needs.
Plant a new Truffula. Treat it with care.
Give it clean water. And feed it fresh air.
Grow a forest. Protect it from axes that hack.
Then the Lorax
and all of his friends
may come back.

Dr. Seuss, The Lorax (1971)

DEDICATION

With deep gratitude and respect, I dedicate this thesis to the staff of 1000 Friends of Oregon, who generously gave of their time over and over again to help me compile the material and issues discussed in this manuscript, and who continuously strive to help others appreciate the need for a "sustainable land ethic" when making local land-use decisions.

For 1000 Friends, I offer the following:

The love of nature is happily increasing among us, and it therefore becomes all the more important to find means for safeguarding nature . . . Let us remember that the quantity of natural beauty in the world, the number of spots calculated to give enjoyment in the highest form, are limited, and are being constantly encroached upon . . . Let us think of the future. We are the trustees of the future. We are not here for ourselves alone. All these gifts were not given to us to be used by one generation, or with the thought of one generation before our minds. We are the heirs of those who have gone before, and charged with the duty we owe to those who come after, and there is no duty which seems clearer or higher than that of handing on to them undiminished facilities for the enjoyment of some of the best gifts that the Creator has seen fit to bestow upon his children.

James Bryce (1913)

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CHAPTER I

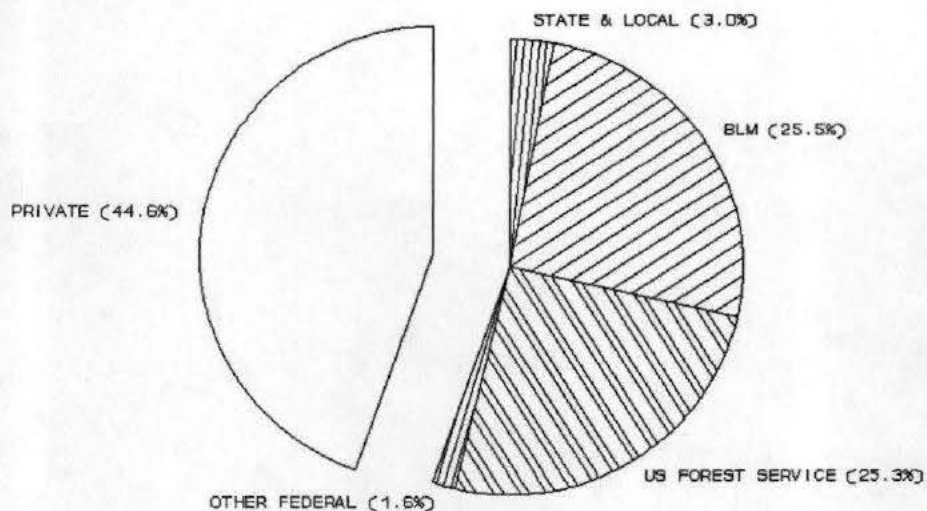
INTRODUCTION

Though not the first statewide plan in the country, Oregon's Comprehensive Land Use Plan is perhaps the most complete and comprehensive model for land-use planning in the United States.¹ It has evolved, in part, through a perception by residents of Oregon's beauty and natural resources. The current goals aim to protect the diverse environments of the state, from the rugged and isolated coast, to the populated Willamette Valley and beyond, to the sparsely settled sagebrush desert lands of Central and Eastern Oregon.

Emphasizing an integrated statewide approach in managing the multiple uses of land and natural resources, the plan is primarily oriented toward attempting to determine the location of future growth.² It recognizes that, unlike many other states, over 52% of the state's land is owned and managed by the Federal government; thus, responsibility and decision-making are shared among Federal, state and local governments (Figure 1).

Variations both in the types of growth occurring throughout Oregon and in the amount of such development, have created new demands and services to be provided by

Figure 1. Oregon Land Ownership (1987)



Source: Oregon Bluebook 87-88

local governments. Steps taken today to correct problems created by past growth may increase the attractiveness of communities for new growth; thus, careful thought must be given to the cumulative effects of managing growth through resource protection.

To understand fully where Oregon's land-use program is today, we need some appreciation of the state of planning in Oregon prior to 1973, when The Oregon Land Use Act (Senate Bill 100) was enacted.

History of Land Use in Oregon

Prior to 1973, the state's role in land-use planning was minimal at best, consisting primarily of enabling legislation which permitted local governments to regulate zoning restrictions on land within their jurisdictions; whether such a program was developed by a city or town was a matter of local discretion.³

The catalyst for enactment of a comprehensive statewide land-use plan came from increasing concern over unregulated development throughout Oregon. On the coast, open beachfront was being replaced by new condominiums and motels, particularly around Lincoln City; by the late sixties, over one-third of the tidal marshes in Coos Bay alone had been destroyed through dredge and fill operations.⁴

In the Willamette Valley, fears were rising over the increasing loss of farmland, which had declined by 34% in total acreage between 1960 and 1969.⁵ With 90% of the state's growth occurring in the valley, an estimated 10,000 acres of farmland were being converted to urban use each year.⁶

There was also considerable concern expressed by then-Governor Tom McCall about the illegal and fraudulent subdivision and sale of 43,000 lots on 160,000 acres in eastern Oregon, resulting in long-term environmental damage

to the fragile desert and rangelands.⁷ In 1973, in an address before the 57th Legislative Assembly of Oregon, Governor McCall described the problem as one of "sagebrush subdivisions, coastal 'condomania,' and the ravenous rampage of suburbia."⁸

The late sixties and early seventies found many Oregonians receptive to environmental issues, and several important bills were enacted which focused on protection of the state's natural resources. Some were collectively known as the "B Bills," and have since been emulated by other states. Among these were the "Bottle Bill," setting a minimum return deposit and banning pulltabs; a bicycle law setting aside one percent of highway revenues for construction of bikepaths; the "Beach Bill," which reconfirmed the state's coastline as public land; and a billboard removal law.⁹

Also included among the legislation passed was Senate Bill 10, enacted in 1969, which attempted to address some of the concerns expressed by residents of the Willamette Valley. Under this bill, all counties were required to prepare comprehensive zoning plans to protect agricultural and undeveloped land; failure to comply by 1972 would result in the governor developing local zoning plans.

Senate Bill 10 represented the nation's first attempt at statewide planning, and contained nine goals. However,

the bill was weak, lacked uniformity, and was insufficiently funded and enforced. Rising concern over land abuses led to increased initiatives in the legislature to do something about the problem, and in 1973, the issues converged into the MacPherson Bill, which was developed and passed as Senate Bill 100.¹⁰

1973: The Land-Use Legislature

Proposed by the Land Use Policy Action Group, the volunteer citizens group organized by Hector MacPherson, a State Senator and farmer from Junction City, Senate Bill 100 required all 242 cities and 36 counties in Oregon to develop and implement comprehensive land-use plans and regulations. Heavily favored by representatives from the Willamette Valley, the legislation was strongly opposed by the remainder of the state, which resented what was perceived to be state intrusion into local planning issues.¹¹

Also passed in 1973 were several other important land-related bills, including SB 101, "Farm Lands Entitlement," SB 487, "Real Property Subdivision and Land Partition," and House Bill 2232, "Preservation of Natural Areas." Senate Bill 101 allowed a bona fide farm owner to pay property taxes based on a lower "farm value," rather than the higher "subdivision values" being levied because of urban growth and encroachment, and further stated that the "preservation

of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources."¹²

Senate Bill 487 (and SB 1011, which passed in 1974, with revisions to SB 487) required all cities and counties to have a subdivision ordinance, and to review any projects where construction was proposed on four or more parcels.¹³ The fourth bill, HB 2232, encouraged the preservation of natural resource areas that were considered valuable for "habitats for plants and animals, and for preservation of . . . natural historic features."¹⁴ Since this act forbade the use of public funds to purchase such lands, its effectiveness depended upon the support of the public.

Passage of these interrelated bills provided a balanced and uniform approach for protection of agricultural and natural resource lands with the demands of urban development.

Notes

¹John M. DeGrove, Land, Growth & Politics (Chicago: Planners Press, American Planning Association, 1984), p. 235.

²Champoeg II-Oregon 2000 Commission, Oregon 2000: Preliminary Report of the "Oregon 2000" Commission, (Salem OR: Oregon 2000 Commission, January 1979), p. 19.

³Barbara Roberts, ed., Oregon Bluebook 87-88, (Salem OR: Oregon Secretary of State, 1987), p. 97.

⁴1000 Friends of Oregon, "A Decade of Growth," Landmark, 9 (1985): 3.

⁵DeGrove, Land, Growth & Politics, p. 236.

⁶Champoeg II-Oregon 2000 Commission, Oregon 2000, p. 11.

⁷DeGrove, Land, Growth & Politics, p. 237.

⁸Charles E. Little, The New Oregon Trail, (Washington: The Conservation Foundation, 1974), p. 7.

⁹Ibid.

¹⁰Governor's Task Force on Land Use in Oregon, Report to Governor Vic Atiyeh, (Salem OR: State of Oregon Printing Press, September 1982), p. 1.

¹¹DeGrove, Land, Growth & Politics, p. 244.

¹²Carolyn Gassaway, Oregon Plans the Land: A Guide to 1973-74 Land Use Law, (Portland OR: Oregon League of Women Voters, June 1974), p. 41.

¹³Ibid., p. 22.

¹⁴Ibid., p. 48.

CHAPTER II

THE OREGON COMPREHENSIVE LAND USE PLAN

Senate Bill 100 created a public policy-making board, the Land Conservation and Development Commission (LCDC), and its administrative arm, the Department of Land Conservation and Development (DLCD); subsequent legislation in 1979 created the Land Use Board of Appeals (LUBA).¹⁵ Although comprehensive in its application, this legislation did not result in the state taking over the local role in planning.

Rather, the bill specified planning concerns and statewide standards to be addressed by all of the cities and counties, and established a review process to ensure that approved plans are followed. Full authority was given to LUBA to review all governmental land use decisions, a measure intended to accelerate determinations in land use disputes, and provide consistency in applying the statewide goals to local plans.¹⁶

To help ensure that the aims of the bill were met, and that complementary land use laws were implemented at the state and local levels, 1000 Friends of Oregon was formed. Organized as a non-profit public service organization in 1975, this citizens' land-use watchdog group has a staff of attorneys and professional land planners engaged full-time

in the monitoring of city and county plans and land-use decisions reached throughout the state.¹⁷

According to 1000 Friends of Oregon, the basic elements of SB 100 were the ability to establish fixed boundaries between urban and rural use, thus preventing haphazard development; the preservation of agricultural and natural resource lands; providing predictability to the planning process; and the pre-identification and approval of industrial and commercial lands.¹⁸

Local governments are legally required to prepare local plans under state law; failure to have a plan acknowledged by LCDC could extend the review process for the local jurisdiction. Sanctions for noncompliance could include the issuance of an enforcement order, or special temporary injunction by LCDC, as well as a civil court order. A third option permitted the withholding of a local government's share of general revenue until satisfactory progress was made in developing the plan.¹⁹

The Statewide Planning Goals

Current standards for land-use planning are contained in nineteen goals known as the Statewide Planning Goals, or more commonly, "the goals."²⁰ These goals are quite detailed in their requirements, are mandatory and have the force of law (Appendix A). Eight goals were revised in 1983

and 1984 (among them, the four coastal goals), and eleven in 1988, resulting in more of an economic orientation, as the state suffered through major recessions.

All of the 242 city and 36 county governments in Oregon were required to submit their local plans to LCDC for review and approval. If found to conform to the Statewide Goals, the plans were then acknowledged as being in compliance. All of Oregon's local plans have now been acknowledged, a process requiring almost ten years to complete.²¹ The legislation also required a periodic review of each of the local plans by LCDC to ensure that the cities and counties continue in compliance.

The combined intent of the goals is to merge the needs of urban areas with those of agricultural and rural lands, and many consider the core of the program to be Goal 3 (Agricultural Lands) and Goal 14 (Urbanization)--protecting necessary farm and forest lands while accommodating urban growth pressures. By requiring incorporation into the comprehensive local plans, it was felt that communities would help ensure air and water quality, preserve agricultural and forest lands, provide adequate open and recreational space, encourage the optimal use of energy resources, and protect fragile ecosystems like the Willamette River Greenway and the Oregon coast.

Since its inception in 1973, Oregon residents have

rejected three statewide initiatives to repeal the program --in 1977, 1978, and 1982--indicating apparent strong public support for the goals contained in the statewide plan.

Notes

¹⁵ORS Chapter 197.

¹⁶Roberts, Oregon Bluebook 87-88, p. 99.

¹⁷Rich Holoch, Land-use Planner, 1000 Friends of Oregon, Portland OR, interview on November 25, 1988.

¹⁸1000 Friends of Oregon, "A Decade of Growth," p. 5.

¹⁹Oregon Land Conservation and Development Commission, Oregon's Statewide Planning Program (Salem OR: Department of Land Conservation and Development, February 1986), p. 2.

²⁰Ibid., p. 1.

²¹Roberts, Oregon Bluebook 87-88, p. 98.

CHAPTER III

THE POST-ACKNOWLEDGEMENT PHASE: IS SB 100 WORKING?

It has now been fifteen years since Senate Bill 100 was enacted, and local land-use plans acknowledged early in the process are currently undergoing their scheduled periodic review. Many in Oregon would contend that now is an ideal time to review the entire program, in order to see if the desired objectives are being realized.

Several in local government and the private sector argue that the goals of SB 100 have been excessively focused toward resource conservation, while ignoring a need to encourage economic growth as Oregon climbs out of its most recent recession.²² They feel that Goal 3 (Agricultural Lands), in particular, has retarded development and deterred new industry from relocating to Oregon because of its regulatory requirements. Proponents of the goal, however, want increased recognition of the tangible and intangible values of environmental resource protection, and strongly disagree that the goals have retarded economic growth in the state.²³

As evidence, they point to the results of the November 1982 vote on ballot Measure 6, which sought to repeal SB 100. Opposed by 1000 Friends of Oregon, which documented

that Oregon actually had gained, not lost industrial land since 1973, and assisted by Oregon's largest private employer (Tek-Tronix) and its largest developer, the vote was 55%-45% against repeal.²⁴

Various independent studies have examined the increasing disputes between resource land protection and further development. One such study, by the Oregon 2000 Commission, found natural resources to be the at the center of Oregon's economy, since the two dominant industries--lumber and wood products, and agriculture and food processing--were dependent upon the state's land, forests and water.

As stated in the report:

One of the fundamental implications is probable conflict between the new growth and the two historical mainstays of our economy--agriculture and forestry.

Continued urbanization and population growth have impacts far beyond the amount of land developed for residential, commercial and industrial purposes. Aside from the often noted effect of driving up nearby land values, there are other less quantifiable effects of growth and development. Agricultural and silvicultural producers often find their political voice diluted in public forums, as an area becomes more urban. Vandalism, restrictions on noise and dust, fertilizer, herbicide and pesticide application and many other direct and indirect conflicting forces build along with proximity to the city.

These conflicting forces can also build in places remote from the city itself. They are strong where the state's growing urban population spends leisure time--the scenic and recreational areas. Again the conflicting forces are a result of physically sharing the same area (e.g. second home development) and psychologically sharing it (e.g. expansion of wilderness areas). This difference in perspective is

complicated in Oregon by the fact that half of our land is owned and managed by the Federal Government. As a result, there are many who do not live here but exercise their public right to influence the use of the land, forests and water in the state.²⁵

A second report, issued in 1986 by the Commission on Futures Research regarding current and anticipated trends in Oregon, found that:

over the next 25 years, land use conflicts will likely grow more important . . . growth will bring increasing competition among the uses of the land.²⁶

It noted that the Oregon Economic Development Department, as if in support of 1000 Friends' position four years earlier, found there were almost 62,000 acres of industrially-zoned land in the state in 1986, more than enough to meet the anticipated demand for 50,000 acres through the year 2000.

The commission further determined that environmental resource protection programs do not inhibit economic growth, but instead, can represent a positive source of growth as Oregon and the Pacific Northwest move from an industrial economy to one of high technology, tourism and recreation. A long-range approach to land management was recommended, in which "trends of cooperation and citizen participation (were) important,"²⁷ as well as increased coordination of State and Federal policies for Federal lands, including the National Forests and Bureau of Land Management rangelands.

The conflicts have become more evident, as witnessed in

several land-use cases adjudicated by the Oregon Supreme Court in the last few years. In the following chapters, some of the more recent areas of contention--rural development on agricultural and forest lands, and the continued conversion of natural wetlands--will be examined in relation to the goals.

Keys to resolving the conflicts will require foresight and proper planning, which can both protect the natural environment and provide sufficient room for many types of industrial and commercial development.

Critical decisions will continually be required whenever progress conflicts with conservation of natural resources. The answer "must be clearly in favor of resources,"²⁸ unless there is a strongly identifiable public need for the development.

Notes

²²Ibid., p. 250.

²³DeGrove, Land, Growth & Politics, p. 290.

²⁴Ibid.

²⁵Champoeg II-Oregon 2000 Commission, Oregon 2000, p. 12.

²⁶Commission on Futures Research, Emerging Trends: New Oregon Perspectives for the Year 2010 (Progress Report), (Salem OR: Willamette University, 1986), p. 18.

²⁷Ibid.

²⁸William Q. Wick, ed., Crisis in Oregon Estuaries: A Summary of Environmental Factors Affecting Oregon Estuaries, (Corvallis OR: Marine Advisory Program, Oregon State University, nd), p. 3.

CHAPTER IV

URBAN OR RURAL LANDS?

The outstanding scientific discovery of the 20th century is not television or radio, but rather the complexity of the land organism. Only those who know the most about it can appreciate how little is known about it. The last word in ignorance is the man who says of an animal or plant--"what good is it?" The land mechanism as a whole is good whether we understand it or not. If the biota in the course of aeons has built something we like but do not understand, then who but a fool would discard seemingly useless parts? To keep every cog and its wheel is the first precaution of intelligent tinkering.

Aldo Leopold (1949)

In August 1986, the Oregon State Supreme Court ruled, in a suit brought by 1000 Friends of Oregon (1000 Friends v LCDC and Curry County), that a proposal for extensive development in a non-incorporated area of the county was not permitted under the state land use plan. Cited in the court's decision was the urban nature of the project in a low-intensity rural environment.²⁹

Last year, an association of county planning directors proposed a new Goal 20, which would "recognize existing rural development and provide for future rural development."³⁰ It would require an inventory of developed acreage, and would permit intensified use of the land by relaxing or removing many of the existing restrictions in Goals 3 and 14 (Urbanization).

Rural Development - Primary and Secondary
Resource Lands

These opposing approaches to "rural lands" management illustrate an area of increasing conflict over SB 100--the trend by counties to allow non-farm development in rural areas designated for agricultural and natural resource use, in apparent violation of the comprehensive county land plans and Goals 3, 4 (Forest Lands) and 14. Although the Court ruled in favor of 1000 Friends in 1986, it left to LCDC the formulation of procedural guidelines for building upon the 800,000 acres of rural land originally excepted from the state plan, because of pre-existing development.³¹

Supporters of the new Goal 20 feel development should be allowed to continue in those areas where it has already started, arguing that this will reduce pressure on other areas, and thereby enhance protection of natural resources and farmlands. Local officials want increased control over land-use decisions, and resent the role given the state.³² They point out that almost 16 million acres of farmland have now been preserved through agricultural designations, out of the 19.5 million acres available in Oregon, and 11% of the total EFU lands are located in the Willamette Valley alone.³³

These officials prefer a new rural land use designation based on (1) primary resource lands, on which no development

would be permitted, except for that directly related to farming and forestry operations, and (2) secondary lands, or marginal lands, where small subdivision and residential development would be permitted. Counties contend that current goals are limiting development by including non-productive land in farm and forest zones.

Roy Burns, chief land-use planner for Lane County, feels that higher intensity development should be permitted on the "secondary lands," because they are less economically productive for agricultural use, and adds that counties are forced to make land use designations based on a complex statewide plan.³⁴ In contrast, Stafford Hansell, Chairman of the Columbia Gorge Commission, argues that more stringent regulations are needed:

to protect good farm land from disappearing under houses and urban sprawl. It's devastating what it's doing to those areas.³⁵

A mapping survey by 1000 Friends appears to rebut the allegation that too much rural land is being kept out of development (Table 1). According to their data, over 90% of these "rural development lands" have already been excepted by counties from Goals 3 and 4, and over 95% is currently zoned for residential construction--a total of almost 750,000 acres of "built and committed exception areas statewide."³⁶

Thus, while counties may consider the issue to be one of a necessary "trade-off,"³⁷ as Burns put it, the net

TABLE 1. Farm/Forest Land Devoted to Residential Use (1986)
(Selected Counties)

<u>County</u>	<u>Rural Residential</u> (acres)
Clackamas	76,980
Coos	24,500
Crook	62,000
Deschutes	50,655
Douglas	34,713
Gilliam	-0-
Jackson	39,411
Josephine	63,342
Klamath	43,660
Lane	65,150
Multnomah	17,990
Washington	21,014
Total Statewide	740,724

SOURCE: 1000 Friends of Oregon, Portland OR.

effect will be the continued loss of existing farmland to new development.

To address this issue, the 1985 session of the Oregon state legislature required the LCDC to develop a policy regarding the identification and needs of "secondary lands," as a compromise between the counties and 1000 Friends of Oregon, the Farm Bureau, and Agriculture for Oregon.³⁸

Originally scheduled to be completed by 1987, LCDC has now been given until December 31, 1990 to "identify appropriate types of development for nonproductive rural lands," and to "consider regional diversity when making or reviewing land use decisions."³⁹

The Rural/Urban Development Policy Committee

Pursuant to the Court's order, the LCDC commissioned a statewide panel to assess the effects of comprehensive land use planning on rural land uses in Oregon since 1973. This "Rural Lands Advisory Committee" first met in November 1985, and among issues to be examined were the:

fate of those communities that exist in a kind of legal limbo . . . out of the reach of incorporated cities, beside backroads and rural highways, along river banks. They exist as clutches of homes, maybe a grocery store or a cluster of shops, a post office, a school, a cafe, a dot on the map.⁴⁰

Though these types of residential use may appear to represent minimal impacts to rural areas, the piecemeal nature of the development results in degradation of surrounding agricultural land. Negative impacts include an increase in local traffic, less land available for profitable farming and the loss of the "rural character"⁴¹ considered so desirable.

Perhaps the dominant problem facing planners and legislators lies in formulating an acceptable working definition to the question, "What is a secondary land?"⁴² A definitive delineation between primary and secondary lands is expected to be ready by mid-1989, containing the standards and procedures necessary for local governments to permit rural development. The thrust is expected to be toward allowing increased development in such areas.

Steve Gordon, one of the ten members of the rural policy panel and executive officer of the Lane County Local Government Boundary Commission, feels "there's a consensus emerging that there ought to be better treatment for those small communities,"⁴³ and believes that rural communities were ignored during preparation of the statewide plan.

Robert Liberty, staff attorney for 1000 Friends and also a member of the panel, believes otherwise. He argues that counties try to circumvent state control over rural development by allowing new construction in rural areas which possess urban characteristics, but are outside the communities' designated Urban Growth Boundaries. For him, it is a case in which the "counties have abdicated their responsibilities."⁴⁴

For example, the number of operating farms in Oregon (those with more than 20 acres in agricultural production) declined by 30% between 1959 and 1974, due to increasing conversion and loss of agricultural land.⁴⁵ Yet, this conversion ran counter to the guidelines of Goal 3, which state that "non-farm uses . . . should be minimized"⁴⁶ in Exclusive Farm Use zones.

There is concern that the rural lands policy committee is more interested in easing the perceived burdens of the county planners, who are over-represented through membership on the committee, than in preserving the remaining

farmland.⁴⁷ This alleged bias may have been instrumental in several rural issues receiving less attention than Paul Ketcham, Senior Planner for 1000 Friends, feels is warranted to understand the full extent of the problem.⁴⁸

Ketcham, also a member of the ad hoc group, considers the main issues which need to be addressed as:

- (1) Conflicts between rural residential development and farm uses;
- (2) Conflicts between rural residential development and forest management;
- (3) Demand for, and supply of, rural residences and homesites;
- (4) Impact on wildlife of rural development;
- (5) Provision of public services in rural areas;
- (6) Residential redevelopment to urban densities and provision of urban services at the urban fringe;
- (7) Rural commercial and industrial development.

Though he feels that prospects for Goal 20 are dead for the present, Paul Ketcham considers it probable that several amendments will be offered to Goals 3 and 4, seeking to loosen developmental restrictions on the secondary rural lands, while tightening up standards on the primary lands.⁴⁹

The Rural Lands

It has taken the committee eighteen months to reach a tentative decision to separate rural development into three categories, (1) unincorporated rural communities, (2) areas

near cities, and (3) other areas.⁵⁰

The first category recognizes those rural areas which are already basically unincorporated communities, such as Noti in Lane County, Nesika Beach in Curry County and White City in Jackson County. Draft guidelines specify that fewer restrictions will apply, and that such areas will be treated as small towns, in which growth and development can be allowed without impacting on surrounding farm and forest lands.

Areas near cities also tend to be developed to some extent, because of their proximity to urban growth boundaries, and the spillover from urban "sprawl." The committee has initially decided in favor of cooperative planning between the individual cities and counties, and any special districts servicing the area, with the aim of integrating any growth with the expansion needs of the adjacent Urban Growth Boundary.

There is a great deal of disagreement over what type of land management should be applied to the third category. 1000 Friends prefers that these "other areas" be rezoned during the required periodic reviews to increase minimum residential lot sizes to 5 to 10 acres per home, with new restrictions on commercial development. A recent report notes that there are 240,000 acres of rural lands already zoned for residential development in LCDC-acknowledged

plans, ranging in size from 1 to 2.5 acres per house, and construction as approved on this acreage would result in a "California-type sprawl."⁵¹

1988 Revisions to Goals 3 and 14

On February 17, 1988, the Oregon Land Conservation and Development Commission adopted several amendments to the statewide goals, including Goal 3 (Agricultural Lands), and Goal 14 (Urbanization). Goal 3 now states quite clearly that it is intended to "preserve and maintain agricultural lands,"⁵² by providing open-space or transitional-use buffers between urban and farmlands.

An emphasis on retaining certain productive lands for agricultural purposes, rather than for residential use, is evidenced in the requirement that the following factors be considered before any conversion can be approved:

- (1) The potential environmental, energy, social, and economic consequences of the alteration;
- (2) A demonstrated need for the conversion which is consistent with the language and intent of the goals;
- (3) Documentation that no suitable alternative is available to locate the proposed project or use;
- (4) The scale and use of the new project must be compatible with surrounding agricultural land uses, and must not adversely impact upon them;
- (5) Class I through IV Soils must be retained for farm use only.⁵³

Allowable farm and non-farm uses, which were contained

in Oregon Revised Statutes 215.203 and ORS 215.213(2)(3) respectively, were enlarged to include non-farm uses in ORS 215.283(2)(3). The amended Goal 3 further allow designation of certain farmlands as marginal lands, which can be converted to residential use if the planning requirements of Goal 2 (Land Use Planning) are adhered to by the local government.⁵⁴

The desire of cities to accommodate growth beyond their urban boundaries was also facilitated, by amending Goal 14 to make vacant land within the Urban Growth Boundaries available for expansion needs. Planners were "encouraged" to designate sufficient amounts of land around their city limits as "urbanizable" for future needs, and to utilize all available land within municipal boundaries before expanding infrastructure services and facilities onto such lands, in order to ensure an orderly means of urban growth.⁵⁵

Local comprehensive plans are not subject to the revised Goals 3 and 14 until they undergo their scheduled periodic review.

Lane County's Rural Lands and the Oregon Supreme Court

Rural development in Lane County recently became much more difficult, due to a decision handed down by the Oregon Supreme Court in March, 1988. In 1000 Friends of Oregon v LCDC (Lane County), a case considered to have major

implications statewide, the Court addressed the increasing conflict over counties permitting development on farm and forest lands, in exception to statewide land use goals. Although the court's ruling specifically applied only to Lane County, the law will affect other counties with similar language in their rural land use plans.

Lane County's comprehensive plan was finally acknowledged by the LCDC in September 1984, after the County had satisfactorily responded to several objections and concerns expressed during earlier reviews. Disappointed that the approved plan contained standards considerably weaker than those already enforced by the Planning Department under the recommendations outlined in Lamb v Lane County, and unable to reach a settlement, 1000 Friends appealed to the Oregon Court of Appeals.⁵⁶

The Appeals

The main objection cited by 1000 Friends of Oregon centered on relaxed requirements for rural residential development, which the group felt would facilitate parcelization and development within rural forestlands, a total of over one million acres, or one third of the total land area in Lane County.⁵⁷ In pursuing legal recourse before the Oregon Court of Appeals, 1000 Friends expressed concern over the classification almost 800,000 acres of

privately held forest land in Lane County into F-1 or F-2 forest zones.

On the 142,000 acres zoned F-2, dwellings could be constructed "if necessary for"⁵⁸ forest management, as established in Lamb v. Lane County. The County's new standards allowed construction on as little as 10 acres of land, a policy which many felt would open rural lands to further urbanization.⁵⁹

Plaintiffs also questioned the methodology used to determine minimum lot sizes on F-1 forest lands. Lane County had established 40-acre minimums, based on a survey from tax rolls, even though such data had already been shown to have no direct correlation to the minimum acreage needed to profitably operate a viable, small commercial farm.⁶⁰

Judicial review was further sought as to the merits of Lane County's use of 20, 30 and 40-acre minimum lot sizes in the EFU zones, and its application of the Forest Practices Act to document compliance with Goal 5, in lieu of local legislation.

The Supreme Court's Decision

The Oregon Court of Appeals, in a decision rendered in 1987 in 1000 Friends of Oregon v. LCDC (Lane Co), upheld the plaintiff on all of the above issues, except for the appeal of the criteria contained in the County's standards for land divisions.⁶¹ The Land Conservation and Development

Commission's acknowledgement of the exceptions granted by the Lane County to Goals 3 and 4 was also reversed, as the Court found LCDC to have failed to comply with its own regulations.⁶²

On November 3, 1987, 1000 Friends appeared before the Oregon Supreme Court to argue their case against the LCDC, Lane County and the Oregon Forest Industries Council. The Court found the principal conflict to be over Goal 4, which seeks to "conserve forest lands for forest uses,"⁶³ and more specifically, whether Lane County failed to adhere to the statewide goals by allowing construction on forest lands.

The first issue to be decided was whether LCDC should be permitted a "measure of judicial 'deference'"⁶⁴ in interpreting Lane County's ordinance for compliance with the land goals. Several characteristics were cited by the Court in its consideration of the degree of preference to be accorded a governmental agency in applying its own rules, including expertise in the subject matter, and political authority or legislation which specified its role and responsibilities.⁶⁵

The Court found that the language in the goals require a very comprehensive process to be followed when forest lands are impacted upon by development. Since the County could not establish that dwellings should be routinely justified for management purposes on small parcels, it was

found to be in non-compliance with Goal 4. In addition, LCDC was faulted for its acknowledgement of the County's Land Use Plan, based solely on the presence of a forest management plan, without further documentation or requirements.⁶⁶

In ruling upon the merits of the County's exceptions to Goals 3 and 4, which totaled more than 63,000 acres (100 square miles), the Supreme Court took the position that counties have consistently had "the burden to demonstrate the validity of (their) exceptions."⁶⁷

The flexibility provided local governments through the exception process was not intended to become a routine matter of facilitating urban growth in the rural areas, but rather, to deal with isolated parcels that could not support the goal which applied to contiguous areas, and which would apply to the particular site.

In its remand decision, Lane County was ordered to demonstrate conclusively that lands excepted from Goals 3 and 4 had a consistent history of use such that application of the goals would be impractical.⁶⁸

A fourth challenge concerned the construction of "woodlot dwellings on forest land."⁶⁹ The Court reviewed the requirements of Lane County Ordinance 16.211, which allowed this type of development if in conformity with the requirements of Goal 3 for such lots on farm lands. In reaching a decision, the Court questioned the County's logic

in zoning for farm uses on forest lands, and the LCDC acknowledgement of such zoning.

The Land Conservation and Development Commission argued that the requirements of Goals 3 and 4 were interchangeable, and that it had the power and freedom to apply either goal, based on its own discretion, a position the judges found to be "go(ing) too far."⁷⁰ Nothing in the statutory requirements, nor the legislative history of the goals, supports the agency's assertion that conversion of farm and forest lands and uses is permitted "depending on economic conditions and other factors."⁷¹

Thus, in six out of seven issues on appeal, 1000 Friends of Oregon prevailed, losing only on the issue of reimbursement for legal fees and costs.

Implications of the Court's Decision

The issues before the Court were, to a great degree, the direct result of LCDC's failure to define clearly what excepted uses are permissible under Goal 4. By leaving the situation ambiguous, the Oregon Land Conservation and Development Commission has caused the courts to become the arbiter in disputed land-use cases, resulting in inconsistent interpretations, and thus, variances in the application of exceptions from the goals.

Robert Liberty, staff attorney for 1000 Friends of

Oregon, testified before the Joint Interim Committee on Land Use on April 12, 1988 regarding the Supreme Court's decision. In his opinion, the decisions on Goal 4 were less than clear in establishing a final determination of whether dwellings could be built on forest lands if found to meet the "necessary" and "accessory" tests set out in Lamb v. Lane County. However, he felt that the ruling did establish that mere submittal of a written forest management plan, as Lane County required, was inadequate to satisfy the requirements of the goal.⁷²

At his appearance, Liberty testified that three "benchmark" cases regulating development on rural lands, and decided by the Court, only furthered the confusion, by providing "inconsistent holdings and different analytical approaches (which) encouraged and reflected an ad hoc method of interpreting Goal 4."⁷³ This confusion and apparent weakness in the statewide goals was blamed, in part, for the Lane County Planning Department adopting the more lenient standards for rural development in 1984, after having previously adhered to the more stringent provisions outlined in the Lamb decision.⁷⁴

For the present, Lane County is working with the Oregon Department of Land Conservation and Development (DLCD) to develop an interim dwelling standard for rural areas, which is necessary before the County's Comprehensive Land-Use Plan

can be reacknowledged. The tentative draft allows for construction of a dwelling on forest lands (Goal 5) if "necessary for and accessory to commercial forest management."⁷⁵

Based on the Supreme Court's decision, the DLCDC and Lane County have attempted to arrive at a workable definition specifying which types of dwellings may be considered legally "necessary for and accessory to" commercial timber management, and thus, permitted to be constructed on private forest lands.

Using as a model one which was apparently adopted and approved during Yamhill County's periodic review, Lane County will have to extensively document any exceptions allowed, and detail why such lands cannot be used for farming or commercial forestry, before permits can be issued to build on rural lands.⁷⁶

Until such time as the final draft is submitted and approved, "(t)he comprehensive plan and land use regulations of Lane County (are deemed to) require additional planning work in order to be considered by the Commission to be in compliance with the Statewide Planning Goals."⁷⁷

Notes

²⁹Harry Esteve, "Rural Land Use Laws May See a Change," Eugene (Oregon) The Register-Guard, 23 February 1988, p. 1B.

³⁰Ibid., p. 2B.

³¹1000 Friends of Oregon, "LCDC Committee Grapples with Rural Development Limits," 1000 Friends of Oregon Newsletter 11 (Winter 1987): 1.

³²Ibid.

³³DeGrove, Land, Growth & Politics, p. 267.

³⁴Harry Esteve, "County to Consider Land Use Changes," Eugene (Oregon) The Register-Guard, 2 March 1988, p. 2B.

³⁵Harry Esteve, "New Land Use Plan Draws Fire," Eugene (Oregon) The Register-Guard, 16 December 1988, p. 2B.

³⁶Robert Liberty, "Mapping a Flood of Development," Landmark 3 (Spring 1986): 24.

³⁷Esteve, "County to Consider Land Use Changes," p. 2B.

³⁸Richard P. Benner, "The Search for Secondary Lands," Landmark 3 (Summer 1986): 3.

³⁹James F. Ross, Director, Recent Land-Use Legislation (House Bill 2758), (Salem OR: Oregon Department of Land Conservation and Development, December 10, 1987), p. 4.

⁴⁰Esteve, "Land Use," p. 2B.

⁴¹Ibid.

⁴²Paul Ketcham, Senior Planner, 1000 Friends of Oregon, Portland OR, interview on October 21, 1988.

⁴³Steve Gordon, Senior Program Manager, Lane Council of Governments, Eugene OR, interview on March 3, 1988.

⁴⁴Robert Liberty, Staff Attorney, 1000 Friends of Oregon, Portland OR, interview on March 3, 1988.

⁴⁵Champoeg II-Oregon 2000 Commission, Oregon 2000, p. 14.

⁴⁶Oregon Land Conservation and Development Commission, Oregon's Statewide Planning Goals 1985, (Salem OR: Oregon Department of Land Conservation and Development, 1985), p. 6.

⁴⁷Robert Liberty, Staff Attorney, 1000 Friends of Oregon, "Observations and Recommendations Concerning the Development of Policy for Built and Committed Exceptions and Nonresource Areas," testimony before the Land Conservation and Development Commission on February 17, 1988, (Portland OR: 1000 Friends of Oregon, 1988), p. 2.

⁴⁸Ibid.

⁴⁹Paul Ketcham, Senior Planner, 1000 Friends of Oregon, interview on October 21, 1988.

⁵⁰1000 Friends of Oregon, "LCDC Grapples," p. 2.

⁵¹Ibid., p. 8.

⁵²Mitch Rohse, Information Officer, Oregon Land Conservation and Development Commission, Salem OR, interview on March 9, 1988.

⁵³James F. Ross, Director, Recent Amendments to the Statewide Planning Goals (Salem OR: Oregon Department of Land Conservation and Development, April 19, 1988), p. 10.

⁵⁴Ibid., p. 11.

⁵⁵Ibid., p. 22.

⁵⁶7 Or LUBA 137 (1983).

⁵⁷1000 Friends of Oregon, "Lane County's Plan Remanded," Landmark 11 (Spring 1987): 27.

⁵⁸Robert Liberty, Staff Attorney, 1000 Friends of Oregon, testimony before the Joint Interim Committee on Land Use on the Oregon Supreme Court Decision in 1000 Friends of Oregon v. LCDC, Lane County and OIFC (issued March 29, 1988), (Portland OR: 1000 Friends of Oregon, April 12, 1988), p. 3.

⁵⁹1000 Friends of Oregon, "Lane County's Plan Remanded," p. 29.

⁶⁰Ibid.

⁶¹83 Or App 278, 731 P2d 457 (1987).

⁶²Mary Bauman, ed., Reports of Cases Decided in the Supreme Court and the Court of Appeals Advance Sheets 7, (Salem OR: Publications Section, Supreme Court Building, March 22-30, 1988), p. 387.

⁶³Ibid.

⁶⁴Ibid., p. 388.

⁶⁵Ibid.

⁶⁶Ibid., p. 397.

⁶⁷Ibid., p. 410 (see also Curry Co., 301 Or at 513-15).

⁶⁸Ibid., p. 411 [see also ORS 197.732 (1)(a) and (b)].

⁶⁹Ibid., p. 398 (see also ORS 215.213, which lists the permitted uses in Exclusive Farm Use zones).

⁷⁰Ibid., p. 401.

⁷¹Ibid.

⁷²Robert Liberty, Staff Attorney, 1000 Friends of Oregon, testimony on April 12, 1988, p. 4.

⁷³Ibid., p. 7 (the three "benchmark" cases that he refers to are Shadybrook Environmental Protection Association v. Washington County, Publishers Paper v. Benton County, and Lamb v. Lane County).

⁷⁴Ibid., p. 8.

⁷⁵William Van Vactor, Lane County Counsel, and Roy Burns, Lane County Planning Director, "Lane County's Response to Supreme Court Opinion, 1000 Friends v. LCDC and Lane County," memo to the Lane County Board of Commissioners, dated April 13, 1988.

⁷⁶Ibid.

⁷⁷Conclusion from the draft DLCD limited acknowledgement order to Lane County, in the matter of the remand of Lane County's Comprehensive Plan and Land Use Regulations, pursuant to ORS 197.251, and under the Commission's Rule on Remand or Reversal OAR 660-03-050.

CHAPTER V

WETLANDS: DEVELOPMENT AND CONVERSION

In these waters lies the very past of the planet. Like the primeval rock toward which they cut their way, the waters preceded life itself, were in fact the stew in which the molecules of creation coalesced to become something, intelligence in the slime. They have always been here, will always be here, sucked into the sky, molded into pearl-white piles of condensation, dropped down and frozen, held, trapped in the fountainheads that keep them ready to sustain the future as they have nurtured the past. The fountainheads we also call the preserved lands, the tangle of root and moss, stone and soil that contrive an alliance to suspend liquid animation until the heated weight of spring sends the waters bursting free to find the sea again. When we let them, when we let them.

Earth, air, fire, and water--the four elements of classical times--come together to make a world. Without any one of these, there would be no such world, and without the fourth element there would be little more than a desiccated cinder marking its time around the sun. It is obvious but necessary to say it again and again: in all its forms--as ancient glacial ice, as new-formed droplets, as trickles, creeks, rivers, ponds, and lakes, as aquifers suspended in the earth itself--this fourth element, this water, is not merely a decoration of life, it is life itself.⁷⁸

Wilderness, Fall 1987.

"You don't have to be a biologist to recognize the importance of wetlands. By now it's just common sense."⁷⁹

Seward Prosser Mellon, President, The Richard King Mellon Foundation.

Oregon has about 45,000 acres of tidal wetlands remaining in the coastal and Columbia River systems, consisting of estuaries, tidal pools, inner dune marshes and swamps along river mouths; this figure does not include freshwater wetlands found in the rest of the state.⁸⁰ To many people, this would represent useless land, suitable only for dredging and filling, and in fact, almost 500,000 acres of wetlands are lost in the US each year through population growth needs and urban sprawl.⁸¹

A recent report from the US Environmental Protection Agency's Regional Office in Seattle indicates that wetland losses were no less severe in Oregon, especially around Eugene, Portland, Warrenton, Hillsboro and Washington County.⁸² Along the Oregon coast, over 11,000 acres of estuarine wetlands alone have been lost since 1978, representing more than one thousand acres per year.⁸³

The Oregon Nature Conservancy conducted a study in 1987 on the extent of wetlands remaining in the state, and found that only 30% of the remnants could be considered to remain in a natural, or native state, while 70% of those identified were determined to be non-native, or manmade artificial wetlands (Appendix B).⁸⁴

Among the most productive ecosystems in the world, many beneficial "services" are provided by these "wet lands" (Table 2). Unfortunately, the values a community derives from a viable wetland may be difficult to quantify

TABLE 2. Natural Wetland Values

FISH AND WILDLIFE VALUES

Fish and shellfish habitat
Waterfowl and other bird habitat
Furbearer and other wildlife habitat

ENVIRONMENTAL QUALITY VALUES

Water quality maintenance
Pollution filter
Sediment removal
Oxygen production
Nutrient recycling
Chemical and nutrient absorption
Aquatic productivity
Microclimate regulator
World climate (ozone layer)

SOCIO-ECONOMIC VALUES

Flood control
Wave damage protection
Erosion control
Groundwater recharge and water supply
Timber and other natural products
Energy source (peat)
Livestock grazing
Fishing and shellfishing
Hunting and trapping
Recreation
Aesthetics
Education and scientific research

SOURCE: US Fish and Wildlife Service, Wetlands of the United States: Current Status and Recent Trends, Washington DC (1984)

economically, and thus, little interest is evoked at the local level in preserving natural wetland areas. However, the contributions are very tangible, and include erosion and sedimentation control, drinking water replenishment and flood control, water quality improvement, and habitats for wildlife and coastal fisheries.⁸⁵

In recognition of such anthropocentric benefits, local governments have evidenced a positive trend over the last few years in their approach to managing wetlands, based on the increasing awareness that they are a valuable, and increasingly endangered, natural resource. For example, former President Carter noted in his Environmental Message of 1977 that:

(t)he lasting benefits that society derives from wetlands often far exceeds the immediate advantage their owners might get from draining or filling them. Their destruction shifts economic and environmental costs to other citizens . . . who have no voice in the decision to alter them.⁸⁶

An economic analysis of the quantifiable values of a natural coastal marsh wetland system in the United States, conducted by the noted ecologists J. Gosselink and Eugene Odum, determined that, based on "tangible resource properties," and irrespective of aesthetic values, the monetary "value of an intact (wetland is) calculated to be \$82,940 per acre."⁸⁷

Because of such natural and fiscal values, the EPA has sought a reduction of "at least 50%"⁸⁸ in the amount of

wetlands lost in the Pacific Northwest each year.

Federal/State Responsibilities Under Section 404

Oregon's statewide plan is considered to be more comprehensive in its regulation of wetlands than is required by federal law under Section 404 of the 1972 Clean Water Act. Most notably, it requires full review by the Oregon Division of State Lands (DSL) of any wetlands covered by the national permitting system, resulting in a greater degree of regulatory enforcement than exhibited by the US Army Corps of Engineers (COE).⁸⁹

Section 404 is the primary means of wetland protection at the Federal level, although aimed at ensuring water quality, and not wetlands management per se. It states that:

from a national perspective, the degradation or destruction of special aquatic sites, such as . . . wetlands, is considered to be among the most severe environmental impacts covered by these guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.⁹⁰

All activities permitted by the Corps of Engineers in Oregon, which would result in the discharge of fill or other dredged material into United States waters, are reviewed by the US Environmental Protection Agency's Region 10 office in Seattle to ensure conformity with Federal water legislation. Policy guidelines for the region follow those contained in

the agency's Statement of Policy on Protection of Nation's Wetlands (38 FR 10834, March 10, 1973).⁹¹

To ensure that the existing quality of a natural wetland is maintained, the EPA seeks to:

minimize alterations in the quantity or quality of the natural flow of water that nourishes wetlands and to protect wetlands from adverse dredging or filling practices, solid waste management practices, siltation or the addition of pesticides, salts or toxic materials arising from nonpoint source wastes and through construction activities, and to prevent violation of applicable water quality standards from such environmental insults.⁹²

Administrative responsibility for state waters is delegated to the Division of State Lands through the "Removal-Fill Law."⁹³

The Oregon Removal-Fill Law

Designed to "conserve, protect and manage Oregon's water resources for the benefit of present and future generations,"⁹⁴ the law was enacted in 1967 to control removals, and updated in 1971 to include fills. State water resources are defined as including "all natural waterways, including wetlands;"⁹⁵ permit requirements apply "only up to the line of non-aquatic vegetation of wetlands."⁹⁶

The Division of State Lands reviews all applications and issues permits to remove or fill within these waters. In deciding whether or not to approve a particular permit, the agency considers several general criteria, including

public need, alternatives to the project, and the potential effects to the viability of the affected wetlands site.

Oregon recently proposed to the US Environmental Protection Agency that the DSL assume control of the '404' program from the US Army Corps of Engineers, for non-navigable waters and adjacent wetlands.⁹⁷ If allowed, Oregon will become the second state in the nation to be delegated such authority.⁹⁸

Such a suggestion is favored by Ralph Rogers, Regional Wetlands Ecologist for the EPA in Portland. He perceives a lack of "environmental ethics" in the Corps, limiting the agency's ability to perform an adequate environmental impact evaluation on a project, and considers the Corps to be more concerned with "how fast the applications can be processed and the permits issued,"⁹⁹ than with wetland protection measures.

One concern he has with the state's assumption of the '404' program, though, is that it is still subject to the political power of the governor over the DSL, leaving it's effectiveness dependent upon "personalities."¹⁰⁰ Also of concern is the fact that 98 to 99 percent of the approximately 1,000 fill permits filed each year are routinely approved, because "(t)he state doesn't want wetlands regulations to deter developers."¹⁰¹

Goal 5 and the Wetlands

Paul Ketcham, Senior Planner for 1000 Friends of Oregon, believes that Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) is not protecting wetlands, and recommends that the LCDC look at this issue in depth.

He advocates a change either in policy, or in the regulatory role at the Oregon Department of Land Conservation and Development, and considers this a complicated issue due to the multiple layers of jurisdiction involved in the planning process. According to him, 1000 Friends of Oregon would prefer that DSL take the lead, at least in the rural areas of the state, and that the State legislature appropriate sufficient funds to assist local governments in improving wetland identification abilities.¹⁰²

Paul Ketcham notes that Goal 5 neither requires protection of upland habitats, nor the establishment of buffers along wetland areas, although it does require "impact areas" to be identified (a practice rarely followed). In his opinion, the lack of a comprehensive wetlands inventory, as well as a failure to consider the cumulative impacts of continued wetland losses, make local identification and enforcement efforts difficult.¹⁰³

He also finds fault with the lack of specific criteria to be used by local governments when weighing development

versus protection of a wetlands area, since the generalized standards and the lack of trained staff at the local level often result in insufficient detail and information to support their decisions.

Don Oswald at LCDC agrees with Ketcham's assessment of the goal's failure to adequately protect natural wetlands, stating that Goal 5 has a "lot of process, but not much specificity."¹⁰⁴ He adds that the goal is too ambiguous in both substance and in its application by state agencies.

In his view, Goal 5 should not be considered an overall management program, but rather, a series of integrated pieces which need to be looked at together. He added that, although LCDC began the process of including wetlands in periodic reviews 1-1/2 years ago, it is "still in limbo,"¹⁰⁵ and tied down.

Development-oriented decisions at the local level often do not include Federal and state regulatory requirements, nor do local governments have the specialized personnel necessary to properly identify significant wetlands. Thus, there is an ongoing need for the public and governmental agencies to become involved in the identification of wetlands.

Both Paul Ketcham and Don Oswald feel that there is no coherent policy at the LCDC-level as to what should be included in the comprehensive plan regarding natural

resource lands, nor is there much interest in strengthening wetlands protection, and so, responsibility continues to be left at the local level for coordination of wetland-use plans. Ketcham noted that LCDC has given a low priority to resolving Goal 5 differences, and has no staff member currently assigned to this area.¹⁰⁶

Ralph Rogers at the EPA feels that the Division of State Lands has abdicated responsibility for wetlands protection by leaving it to the counties and LCDC to develop and implement resource protection programs under Goal 5.¹⁰⁷ He considers a major weakness of Goal 5 to be the degree of discretion left to local officials, who often prefer multiple use over protection of wetlands (the Jackson-Frazier wetlands in Benton County being considered an excellent example).¹⁰⁸

Whether a particular wetland site is identified and protected depends most often on the motivation of the local officials, or the degree of public concern expressed. Administrative guidelines in the goal allow social and economic considerations to justify development if they outweigh environmental concerns.¹⁰⁹

Rogers concurs that the DLCD fails to see the current situation as a serious problem, and considers "two state agencies (DLCD and DSL) using separate definitions to be inconsistent."¹¹⁰ In his view, this dichotomy has resulted

in incomplete inventories at the local level, a situation compounded as many communities use the more stringent criteria to administratively delineate areas as "insignificant," and thereby, preclude environmental protection requirements.¹¹¹

A Wetlands Inventory

The lack of a comprehensive statewide inventory of wetlands is considered to be a major weakness of Oregon's programs, according to Ken Bierly, Wetlands Specialist with the Division of State Lands.¹¹² He noted that the closest thing at the present time lies in the fill-and-permit records at DSL. Until quite recently, protection was not a high priority, and "the state's policy was to drain wetlands and convert them to agricultural uses"¹¹³, an approach which has resulted in only isolated parcels remaining of these significant natural resources.

Although Goal 5 requires all freshwater wetlands and "water areas" to be inventoried by local governments as part of their comprehensive plans, and Goal 16 (Estuarine Resources) mandates that estuaries and "associated wetlands" will be recognized and protected for their unique "environmental, economic and social values,"¹¹⁴ there is no uniform statewide definition to be used by local governments in identifying a wetland.¹¹⁵

Agency Definitions of Wetlands

Instead, there are currently several possible definitions that local planners may use to document the presence (or absence) of wetlands (Appendix C). They include:

- (1) The first, used by the LCDC in its review of the local plans, where excess water is the dominant factor;¹¹⁶
- (2) A second, favored by the DSL and the US Army Corps of Engineers, which is more regulatory in nature. It requires the land to be submerged under water long enough each year to produce soil and vegetation particular to an aquatic environment; water, soil, and plants must all be found to be considered a wetland;¹¹⁷ or
- (3) The broader biological and ecological definition preferred by the US Fish and Wildlife Service. The main difference from those used by the DSL and COE lies in the fact that the presence of any one of the characteristics (hydrology, soil or vegetation) can qualify the site as a wetland.¹¹⁸

The first two classifications are primarily regulatory in nature, whereas the third is a comprehensive biological definition.¹¹⁹ Because of its more liberal interpretation, the USFWS also includes non-vegetated sites as wetlands, such as tidal mud flats, making it "more inclusive and more sensitive toward the natural processes that occur in water-dominated areas."¹²⁰

Each of the agencies involved in wetland management in Oregon develops policy recommendations, in part, by using the same primary reference sources. Among the more

important are Wetland Plants of the State of Oregon and the recently-released National List of Plant Species that Occur in Wetlands: 1988 National Summary, both published by the US Fish and Wildlife Service for use in identifying wetland vegetation, and The Hydric Soils of the State of Oregon, the US Department of Agriculture's guide for wetlands soils identification.¹²¹

Variances in policy and management applications arise from the different levels of emphasis each agency places on certain characteristics of wetland areas. The state's failure to specify a single standard in the statewide plan has complicated efforts at successfully monitoring the condition of the remaining wetlands and riparian habitats.

Each of the definitions in use by the regulatory agencies includes vegetated wetlands, accounting for almost 93% of the total acreage in the nation (another 4% is classified as open water ponds, leaving only 3% as non-vegetated lands, including coastal mud flats, beaches, and shores). Thus, the issue should not be the differences in defining a wetland; rather "it should be the differences in the field application of the definitions."¹²²

The National Wildlife Inventory

As a possible first step toward development of a uniform wetland database, the US Fish and Wildlife Service

recently released a partial list of significant wetlands throughout Oregon to be included on the National Wetland Inventory.¹²³ This project is approximately 55% complete for the state, with another 20% to be added during the 1989-90 fiscal year; mapping resolution is primarily at a scale of 1:24,000.¹²⁴

Lands contained on the NWI are identified by use of a biological definition, and are ecologically similar. Five "systems" of wetlands are identified:

- (1) Marine lands, exposed to waves and currents, and dominated by tidal forces;
- (2) Estuarine, partially enclosed by land;
- (3) Riverine, which includes all wetlands within a freshwater channel;
- (4) Lacustrine, associated with permanent lakes and reservoirs, and intermittent lakes and tidal lakes with ocean-derived salinity of less than 0.5%;
- (5) Palustrine wetlands, including all non-tidal sites dominated by trees, shrubs, emergent mosses or lichens (marshes, swamps, bogs, fens, meadows, and prairies).

Individual sites are differentiated by morphology and hydrology, and can be further subdivided by tidal flow and stream gradient differences.¹²⁵

Unfortunately, the NWI omits many areas that are less than 4 acres in size, and does not distinguish many of the forest wetlands from forested uplands, nor those in urban areas, where the problem is especially severe. The lack of a high-resolution scale, and its generalized locational

data, limit application of the NWI as an effective tool at the local planning level.¹²⁶

The main advantage of the National Wetlands Inventory for city and county governments lies in its establishment of a preliminary database of wetlands at the local level, based on biological and ecological criteria, something that Paul Ketcham, with 1000 Friends of Oregon, advocates.¹²⁷ What he considers essential for the goals to become more effective in protecting wetlands is an inventory of remaining natural wetlands on a scale suitable for use at the local level, yet comprehensive in its identification of areas to be protected.

To undertake such a project on a statewide basis would require a significant amount of funding, as well as the hiring of specialized personnel, primarily biologists, at the local level. It would also require a recognition that funding a wetlands protection program is as vital as any economic development program, in terms of return to the community.

The State Wetlands Management Work Group

Since proponents of a more liberal policy in wetlands management argue that economic growth at the local level has been frustrated by adherence to the goals, the Division of State Lands formed a working task force in July 1988, to

examine the issue. The group is made up of representatives from state and local governments and resource-management agencies, and environmental groups.

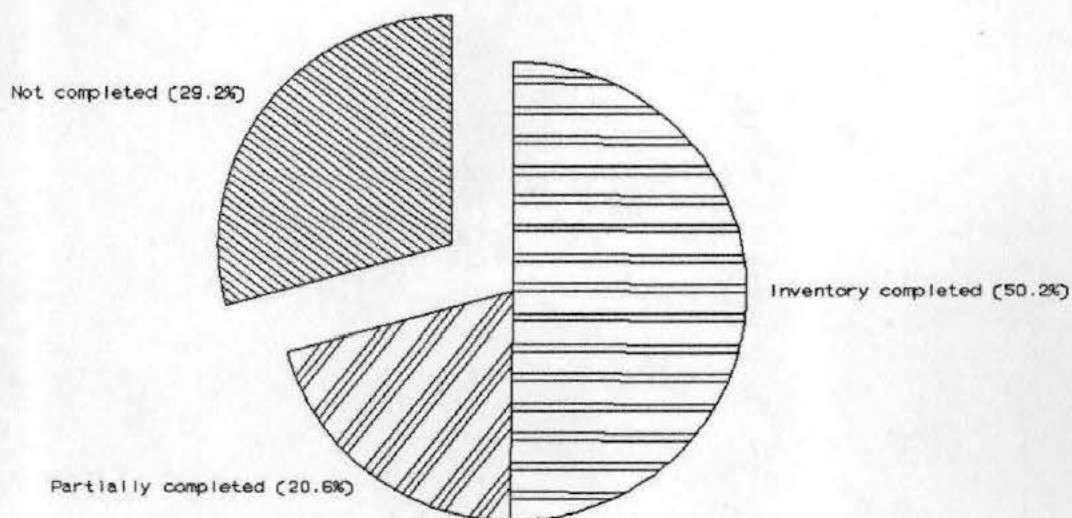
Members are charged with the goal of documenting the impacts of residential and agricultural growth on existing wetlands in Oregon, and the effects of Goal 5 in regulating such development. A final report is to be issued in early 1989, which will provide regulatory and administrative recommendations for wetlands management throughout the state.¹²⁸

Vic Affolter, Director of the Tillamook Department of Community Development, and a member of the Wetlands Management Task Force, contacted all thirty-six county planning directors in August 1988, and solicited feedback regarding local experiences with implementation and enforcement of Goal 5 policies and wetland issues (Appendix D). Twenty-six counties responded, representing 72% of the total.¹²⁹

Initial results indicate that counties have had a variety of experiences in identifying and developing wetland protection packages within their jurisdictions, and further, the time-frame in which individual local plans were first acknowledged by LCDC played an important part in the degree of variance (Figure 2).

An overwhelming consensus was expressed for additional

Figure 2. Goal 5 and Local Wetland Inventories (1988)



Source: Vic Affolter, Director, Department of Community Development, Tillamook, Oregon, September 26, 1988.

protection measures if the counties do "not have to administer (the) requisite regulations,"¹³⁰ and have the opportunity to defer to the state or Federal government for site-specific determinations.

A major weakness of the current Goal 5 statutory requirements lies in their "reactive" approach to specific site proposals or alterations. This often leads to inconsistencies with local comprehensive plans, according to Vic Affolter and Lorna Stickel, also a member of the

Wetlands Management Task Force.

Based on the responses provided by the county planning departments, both feel that a new approach in regulating wetlands is necessary. They consider it essential that a regulatory process be developed by which:

property owners and perspective buyers can determine in advance if they have a regulated wetland on their property and the extent to which they can alter that wetland, if at all.¹³¹

To address this area of concern, the task force has recommended that the state provide the remaining funds needed (approximately \$100,000) to complete the National Wetlands Inventory in Oregon. Ken Bierly, Wetlands Specialist at DSL, feels that this information should then be integrated into the state Geographic Information System, and made available at the county level, by adapting it for use on county tax assessors' maps and records.¹³²

In meetings held with the Wetlands Management Task Force and DSL, several unresolved issues were identified, including a lack of resources and expertise in identifying significant wetlands at the local level. Most of the non-urbanized counties do not have the financial, technical, or political capabilities to enact and manage comprehensive wetland protection programs, leading to an urban/rural split in administration.¹³³

As part of the proposed new wetland management policy, the task force is examining implications of the state taking

over the wetlands inventory program, thus preempting the counties identification role. However, increased responsibilities would be delegated to the local governments to regulate all wetland activities beyond dredge and fill operations.

In addition, the proposal by DSL to assume the permitting powers now assigned to the US Army Corps of Engineers, and increased coordination with the US Environmental Protection Agency on regional permitting procedures and wetland interactions, would allow Oregon to develop a highly integrated system of wetland management and enforcement policies.¹³⁴

Local Efforts in Wetland Management

Although the state has yet to initiate a comprehensive wetlands protection program, there have been successful initiatives toward development and implementation of wetland identification programs at the local level. Two of the more notable have occurred in the metropolitan Portland and Eugene areas.

Lane County

The Lane Council of Governments, along with the cities of Eugene and Springfield, contracted with a biologist in the spring of 1988 to assist in identifying and inventorying

wetlands throughout the west Eugene metropolitan area. Undertaken as part of the periodic update of its land use plan, Eugene is also developing mitigation policies and measures to monitor replacement wetlands.

Kenny Stine, L-COG project manager, said that the \$15,000 allocated for the inventory could present a financial problem for local governments. He noted that funding for a similar project would depend upon local priorities, and added that L-COG was hoping for some assistance from the Corps of Engineers or the DSL.¹³⁵

The need for a comprehensive local wetlands inventory was made quite clear recently when:

(t)he future of industrial development in . . . Eugene (was) swamped by the discovery of substantial wetlands that fall under federal and state protection for their wildlife and plant habitats.¹³⁶

Large areas of vacant land in west Eugene, which had been identified previously as suitable for industrial development, were now found to possess significant wetlands which threaten to disrupt the city's plans for industrial expansion (as has already happened to one company, Spectra-Physics, Inc.).

What has made the situation particularly frustrating for Spectra-Physics was the encouragement that it received from city officials to develop at its particular location, in order to help promote economic development on the west side of Eugene. Unfortunately, the city failed to determine

whether the site contained any wetlands, and it was not until the initial stages of the inventory mapping project that more than six acres of wetlands were discovered by Esther Lev, the biological consultant hired by the metro government.¹³⁷

Altogether, 760 acres of wetlands have now been identified in west Eugene, of which 120 are currently protected as natural resource areas along the Bertelsen Slough and Willow Creek (the remainder is zoned for industrial or commercial use).¹³⁸ Ken Bierly, Wetlands Specialist for the Division of State Lands, stated that the DSL is aware of "the circumstances they (Spectra-Physics) find themselves in and will act accordingly."¹³⁹

He noted that lands annotated in the inventory were identified through the more comprehensive US Fish and Wildlife definition, using vegetation as an indicator, and added that the DSL had not made a final decision as to the significance of this particular site.

The Division of State Lands and the Corps of Engineers are responsible for issuing any necessary permits for the proposed development onto the wetlands, and mitigation would be required for any lands lost on an acre-for-acre basis. To do so, the city planning staff estimates that it will cost \$240,000 to replace the wetlands on which the company intends to expand.¹⁴⁰

Scientific Resources, Inc., an environmental consulting corporation based in Lake Oswego, Oregon, is assisting Spectra-Physics in obtaining permits for the proposed fill activity, and in delineating and evaluating the wetlands site for mitigation purposes. The firm is also working with the Lane Council of Governments in developing a regional wetland management planning program, which would ensure the "compatibility of Spectra-Physics (and future) mitigation plans with regional needs."¹⁴¹

Policy advice for the wetlands inventory is provided by a Natural Resource Advisory Committee, which appears to be "pro-development"¹⁴² in membership. After adopting an implementing ordinance, the committee will review the map and a report on each of the sites in the inventory, and determine which wetland definition is to be used in compiling the inventory; preliminary indications are that the committee will rely upon the Corps of Engineers definition, rather than the more extensive US Fish and Wildlife Service one.¹⁴³

To assist Eugene in ascertaining the environmental value of each of the identified wetland sites, the EPA recently awarded the city a \$50,000 grant, the first of its kind in Oregon. Steve Gordon, Senior Program Manager for the L-COG, stated that the funds will be used to establish a pilot program for preserving freshwater wetlands, and to

delineate more precisely the boundaries of the 760 acres of wetlands found during the initial inventory process, since most of the sites lie on land already zoned for industrial use.¹⁴⁴

The funds will be used to hire biological consultants to further examine those wetlands found, in terms of hydrology, soil composition, and vegetation characteristics. Upon completion (sometime in the fall of 1989), the data will be used to demarcate wetland areas to be protected from residential and industrial development.

The Director of the Department of Land Conservation and Development, James Ross, feels that such a program could prevent a "major environment versus economy battle in Oregon. Dealing with wetlands issues in advance can help resolve (the) conflict"¹⁴⁵ between economic development and growth, and environmental protection efforts.

Enhanced protection for wetlands could also be offered through adoption of a new Natural Resources zone for lands with biological or recreational significance. Eugene voters turned down a proposed ordinance to create such a zone in November. Stimulus for the new zone arose after the City and the University of Oregon announced plans to develop a research park on riparian lands within the Willamette Greenway, despite evidence that the facility could be located elsewhere with less adverse impact to the

environment.

A draft ordinance to create a "Natural Resource Overlay Zone" has recently been completed for consideration by the Eugene City Council. Based upon a study of similar ordinances in other urban areas in the Northwest, the draft follows the general outline of Portland's program, which is designed to regulate site development, rather than prescribing limitations on land-use.¹⁴⁶

Three natural resource overlay zones are defined, taking into account variances in the level of protection necessary for individual wetland sites. The Open Space Zone allows development if compatible with the natural environment of the area; limited development is permitted in Conservation Zones; and no development is allowed in the third category, Natural Resource Protection Zones, which are considered to be lands with "such significant value that development would have a detrimental impact."¹⁴⁷

A transitional zone, extending from 25-50 feet in depth, would also be established adjacent to each of the overlay zones, in order to provide a protective buffer around the natural resource areas. In addition, the proposed ordinance recommends that the City of Eugene adhere to the more inclusive USFWS wetlands definition, rather than opting for the more conveniently-administered Corps of Engineers' definition.¹⁴⁸

The City is also considering funding for a "wetland bank,"¹⁴⁹ similar to that recently enacted at the state level (refer to the following subchapter on Recent Legislation, page 68, for further information on the Oregon Wetlands Mitigation Bank).

Lane County has also indicated a willingness to fund a "mini-update" of the Metro Area General Plan, which would target potential industrial sites in the Eugene-Springfield metropolitan area. The land-use plan update, estimated to cost around \$20,000, would also identify those wetland areas requiring protection under Federal guidelines, and thus, excluded from commercial or industrial development.¹⁵⁰

Portland Metro Area

A second example of local initiative concerns the Portland Metro area, where the City of Portland has also been recently involved in updating Goal 5 of its plan.¹⁵¹ Illustrating the concern of city officials in developing an effective wetlands management program for the metropolitan area, an ad hoc group of interested urban planners and officials requested that the University of Oregon's Bureau of Governmental Research and Services examine problems associated with Goal 5 at the 1988 Oregon Planning Institute conference held in Eugene in September.

The Portland City Council also adopted a new set of

environmental regulations early in 1988, designed to balance economic development needs with the protection of natural resources, including wetlands and other bodies of water. To be implemented through an "environmental concern zone" classification, the new rules are designed to complement development and protection by creating two overlay land-use designations.

The first, considered "conservation concern" zones, are those where "important values have been identified, but . . . development is permitted if done in such a way to protect remaining resources and mitigate lost resources."¹⁵² "Environmental natural" lands, the second designation, are sites containing natural resources which have been accorded a high value; development is limited in these areas. Portland is expected to apply the new zone to several industrial areas within the Columbia River Corridor.

Mike Houck, Urban Naturalist for the Audubon Society in Portland, has also proposed an Urban Wildlife Refuge System for the city, which would serve as a citywide wildlife habitat. Such a reserve would be developed as part of the comprehensive park plan for Portland, and would "guarantee land preservation"¹⁵³ in the metropolitan area.

While the concept has potential as an apolitical tool to be used by cities in the management and use of natural resource lands within their boundaries, it has not been

integrated into the statewide land use process, which Houck considers "too political."¹⁵⁴ Correctly used, wildlife habitat designations could serve as a vehicle for cities to "effect protective ownership"¹⁵⁵ of lands remaining in a natural state.

Mitigation of Wetlands

Associated with the lack of information on exactly how much of Oregon's wetlands remain in a natural state is the failure to undertake a systematic study of ecological resources lost when native wetlands are converted to other uses.

For example, a significant number have been drained and converted to agricultural use, even though a federal study for the US Environmental Protection Agency documented that it was unprofitable to do so. According to their analysis, which compared the total cost of draining, filling, and grading wetlands, with the gross farm receipts generated by farming on the converted land, the net cost to the farmer exceeded \$800 per acre.¹⁵⁶

When considering economic development proposals, local governments will often permit a developer to mitigate destruction of natural wetlands through construction of an artificial one, or intensification (enhancement or enlargement) of part of the existing one. In Oregon,

mitigation policy is based on "types" of wetland, where numeric values are assigned to the different types, and multiplied by the total amount of available acreage for each class, in order to derive a total value for replacement purposes.¹⁵⁷

However, there is a lack of hard evidence on how successful such replacements are, in terms of ecological productivity and biological functioning.¹⁵⁸ A study conducted under the auspices of the University of Exeter in England found that, "(i)f accepted, the concept of 'mitigation' puts at risk all pristine wetland areas."¹⁵⁹

The US Environmental Protection Agency is studying mitigation compensation efforts at the Environmental Research Laboratory in Corvallis. Mary Kentula, in the wetlands research program, has compiled results and recommendations into a policy paper currently undergoing review at EPA, and expected to be made available to the public in late 1988.¹⁶⁰

At the present time, the EPA uses the Wetland Evaluation Technique in the Pacific Northwest to determine whether a restored or created wetland has succeeded in developing natural biological functions. Probability values are assigned to various functional characteristics of wetlands, such as water recharge abilities, sediment and erosion control, fish and wildlife potential, and

recreation. Approval of mitigation measures, and monitoring of replacement wetlands by EPA, is based upon a comparison of the values of the original wetland versus those of the new or expanded one.¹⁶¹

A report prepared by The Nature Conservancy for the US Department of Interior, regarding the need to preserve diversity in natural ecosystems, found that:

(m)ost natural systems have been working in essentially their present form for many thousands of years. On the other hand, greatly modified, man-dominated systems have not worked very reliably in the past and, in significant respects, do not do so at present.¹⁶²

As Paul Ketcham noted, 90% of the Columbia River estuaries are shown as having a natural designation, while only 5% is shown as developable--however, there is no information regarding the productivity of that 5%, as compared to the 95% being preserved. It is possible that the least productive wetlands are the ones being protected, a matter of great concern when one realizes that almost half of the tidal marshes, and nearly three-quarters of the tidal swamps originally found along the lower Columbia River, no longer exist because of human activities.¹⁶³

If Ketcham's concerns are valid, the state is continuing to suffer a loss of productive wetland habitats. He considers it a major weakness of Oregon's land-use program that the state does not require consideration of the cumulative impacts and losses suffered when a naturally

functioning wetland is converted or replaced.

For Paul Ketcham, the following questions remain to be answered by LCDC:

1. Are the total number of wetlands remaining the same, or are mitigation efforts still resulting in a continued loss?
2. What amount of time is required for an artificial wetland to become productive?
3. How productive are the wetlands that are artificially developed, in terms of productivity and habitat?

Ken Bierly at the DSL feels that the recent enactment of the statewide Wetlands Mitigation Bank will raise public perceptions of the importance in identifying and protecting wetlands, and allow the state to develop priorities for wetland acquisition. His perception is that Oregon is now providing greater emphasis in this area, especially in freshwater wetlands.¹⁶⁴

Ralph Rogers, with the Regional EPA office in Portland, disagrees, saying that he considers Oregon's mitigation policy to be set up for coastal intertidal wetlands, and not those in freshwater or subtidal waters.¹⁶⁵

Until such disagreements can be resolved, there will be continuing reservations as to the effectiveness of the legislation creating the Wetlands Mitigation fund, and Oregon's commitment to protecting its endangered wetlands.

Recent Legislation

The 64th Assembly of the Oregon State Legislature passed several bills which strengthened wetland protection from development. Two of the more important, in terms of land development and wetlands, were House Bills 3382 and 3396.

House Bill 3382, enacted at the request of The Wetlands Conservancy, and the Wetlands Management Innovation Project at the Northwestern School of Law, created the Oregon Wetlands Mitigation Bank revolving fund, to be used for the improvement and protection of existing wetland habitats;¹⁶⁶ HB 3396, "Forestry Land-use Practices," requires the Board of Forestry to ensure the protection of natural resources in any timber project, including significant wetlands and sensitive bird nesting, roosting and watering sites.

On the negative side, HB 2950, the "Omnibus Land Bill," restricted the definition of "wetlands," to exclude privately owned land which had been artificially created (manmade) after acknowledgement of the local government's comprehensive land use plan.¹⁶⁷ A second bill, which would have weakened protection for wetlands, did not make it out of committee to the floor for debate.

This bill, HB 2493, sponsored by State Representatives Verner Anderson and Bill Markham, and Senator John Brenneman, would have deleted wetlands from the definition

of waters in Oregon subject to the fill and removal law. Listed as wetlands in the proposed legislation were swamps, marshes, bogs and similar areas flooded or inundated with water, and supporting vegetation adapted for saturated soil conditions.¹⁶⁸

Although HB 2493 failed to make it to the floor, it further represents an ongoing attempt by some state legislators to allow conversion of productive wetlands for development, in spite of the increasing recognition of their ecological and biological values.

Notes

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⁷⁹Sue E. Dodge, ed., "A Common Sense Approach," The Nature Conservancy News 36 (December 1986/January 1987): 8.

⁸⁰Ralph Thomas Rogers, "Our Vanishing Wetlands," Wild Oregon 13 (Winter 1986-87): 10.

⁸¹Conservation Foundation, State of the Environment: A View toward the Nineties, (Washington: The Conservation Foundation, Inc., 1987), p. 145.

⁸²Ralph Rogers, Regional Wetland Ecologist/Wildlife Biologist, US Environmental Protection Agency, Portland OR, interview on March 4, 1988.

⁸³Wick, Crisis in Oregon Estuaries, p. 3.

⁸⁴Jimmy Kagan, Heritage Program Coordinator, The Oregon Nature Conservancy, Portland OR, interview on October 21, 1988.

⁸⁵Rogers, "Our Vanishing Wetlands," p.10.

⁸⁶Edward Maltby and R. Eugene Turner, "Wetlands are not Wastelands," Geographical Magazine 55 (January 1983): 12.

⁸⁷J. Gosselink and E. Odum, The Value of the Tidal Marsh, (Baton Rouge: Center for Wetlands Resources, Louisiana State University, 1974), p. 201.

⁸⁸US, Environmental Protection Agency, Region 10 Environmental Management Report Update, (Seattle: US Government Printing Office, 1986), p. 38.

⁸⁹Rogers, "Our Vanishing Wetlands," p. 10.

⁹⁰Nevin Holmberg, "Protection as a Form of Management for Estuarine Wetlands: The Section 404 Regulatory Program and its Impacts on Estuarine Wetlands," The Ecology and Management of Wetlands, Volume 2: Management, Use and Value of Wetlands (Portland OR: Timber Press, 1988), p. 45.

⁹¹Ernesta B. Barnes, EPA Regional Administrator, US Environmental Protection Agency--Region 10: 404 Mitigation Policy, (Seattle: US Environmental Protection Agency, September 4, 1985), p. 2.

⁹²Ibid.

⁹³The Community Workshop, An Analysis of Fill and Removal Activities in the Oregon Estuaries, (Eugene OR: Department of Planning, Public Policy and Management, University of Oregon, March 1985), p. 36.

⁹⁴Oregon Division of State Lands, Oregon's Removal-Fill Permit Program, (Salem OR: Oregon Division of State Lands, n.d.), page not numbered.

⁹⁵Ibid.

⁹⁶Ibid.

⁹⁷Ralph Rogers, EPA Regional Wetlands Ecologist/Wildlife Biologist, interview on March 4, 1988.

⁹⁸US, Environmental Protection Agency, Region 10 Environmental Management Report Update, p. 38.

⁹⁹Ralph Rogers, EPA Regional Wetlands Ecologist/Wildlife Biologist, interview on March 4, 1988.

¹⁰⁰Ibid.

¹⁰¹Ann Portal, "Wetlands May Bog Down Industry," Eugene (Oregon) The Register-Guard, 11 September 1988, p. 4A.

¹⁰²Ibid.

¹⁰³Paul Ketcham, Senior Planner, 1000 Friends of Oregon, interview on March 3, 1988.

¹⁰⁴Don Oswald, Wetlands Coordinator, Oregon Land Conservation and Development Commission, Salem OR, interview on March 3, 1988.

¹⁰⁵Ibid.

¹⁰⁶Paul Ketcham, Senior Planner, 1000 Friends of Oregon, and Don Oswald, Wetlands Coordinator, Oregon LCDC, interviews on March 3, 1988.

¹⁰⁷Michael C. Houck and Ralph Thomas Rogers, "Wetlands: Dirt Cheap and Disappearing," Landmark 8 (Fall 1984): 16.

¹⁰⁸Ralph Rogers, EPA Regional Wetland Ecologist/
Wildlife Biologist, interview on March 4, 1988.

¹⁰⁹Ibid.

¹¹⁰Richard P. Benner, "Wetland Plan Bogs Down," Landmark
2 (1985): 29.

¹¹¹Houck and Rogers, "Wetlands: Dirt Cheap and
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¹¹²Ken Bierly, Wetlands Specialist, Oregon Division of
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¹¹³Portal, "Wetlands May Bog Down Industry," p. 4A.

¹¹⁴Oregon Land Conservation and Development Commission,
Oregon's Statewide Planning Goals 1985, pp. 7 and 16.

¹¹⁵Ibid.

¹¹⁶Ibid., p. 24.

¹¹⁷Ken Bierly, Wetlands Specialist, Oregon DSL,
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¹¹⁸Don Oswald, Wetlands Coordinator, Oregon LCDC,
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¹¹⁹Benjamin Harrison, Assistant Regional Wetlands
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¹²⁰Ken Bierly, Wetlands Specialist, Oregon DSL,
Interoffice memo to the Wetlands Management Work Group on
the draft Oregon Wetlands Management Program (Salem OR:
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¹²¹Ken Bierly, Wetlands Specialist, Oregon DSL,
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¹²²Bill Wilen, National Wetlands Inventory Coordinator,
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¹²⁵John H. Montanari, "Planning and Organizing for Large Wetland Resource Inventories," The Ecology and Management of Wetlands, Volume 2: Management, Use and Value of Wetlands, (Portland OR: Timber Press, 1988), p. 65.

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¹²⁸Paul W. Ketcham, Senior Planner, "Oregon's Approach to Freshwater Wetland Management--Is it Working?" 1988 Oregon Planning Institute Papers (Eugene OR: Bureau of Governmental Research and Service, University of Oregon, 1988), p. C3.32.

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¹³⁰Ibid.

¹³¹Memo from Vic Affolter to County Planning Directors, dated September 26, 1988, p. 2.

¹³²Ken Bierly, Wetlands Specialist, Oregon DSL, interview on October 27, 1988.

¹³³Ibid.

¹³⁴Interoffice memo to the Wetlands Management Work Group, October 2, 1988, p. 11.

¹³⁵Kenny Stine, L-COG Wetlands Project Manager, interview on March 7, 1988.

¹³⁶Portal, "Wetlands May Bog Down Industry," p. 1A.

¹³⁷Ibid.

¹³⁸Ann Portal, "City to Seek Outside Aid for Wetlands," Eugene (Oregon) The Register-Guard, 12 October 1988, p. 1B.

¹³⁹Ibid., p. 4A.

¹⁴⁰Ibid.

¹⁴¹Steve Gordon, L-COG Senior Program Manager, interview on November 8, 1988.

¹⁴²Ibid.

¹⁴³Ibid.

¹⁴⁴Ann Portal, "Eugene Awarded Grant for Wetlands," Eugene (Oregon) The Register-Guard, 14 December 1988, p. 2B.

¹⁴⁵Ibid.

¹⁴⁶Julie Fischer, "Wetlands in Eugene: Proposal for a Zoning Ordinance," paper presented to the Land Use Planning class, University of Oregon, Eugene, 14 December 1988, p. 30.

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¹⁴⁸Ibid., p. 22.

¹⁴⁹Portal, "Wetlands may bog down industry," p. 4A.

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¹⁵⁶Freshwater Foundation, "There's No Profit Draining Marshes," US Water News 4 (September 1987): 4.

¹⁵⁷Paul R. Adamus, "Criteria for Created or Restored Wetlands," The Ecology and Management of Wetlands, Volume 2: Management, Use and Value of Wetlands, (Portland OR: Timber Press, 1988), p. 371.

¹⁵⁸ Paul Ketcham, Senior Planner, 1000 Friends of Oregon, interview on March 3, 1988.

¹⁵⁹ Edward Maltby, "Wetlands for the Future," Geographical Magazine 55 (December 1983): 627.

¹⁶⁰ Mary Kentula, Wetlands Researcher, US Environmental Protection Agency Environmental Research Laboratory, Corvallis OR, interview on October 28, 1988.

¹⁶¹ Adamus, "Criteria for Created or Restored Wetlands," p. 370.

¹⁶² David Ehrenfeld, The Arrogance of Humanism, (New York NY: Oxford University Press, 1981), p. 184.

¹⁶³ Rogers, "Wetlands: Dirt Cheap and Disappearing," p. 15.

¹⁶⁴ Ken Bierly, Wetlands Specialist, Oregon DSL, interview on March 3, 1988.

¹⁶⁵ Ralph Rogers, EPA Regional Wetlands Ecologist/Wildlife Biologist, interview on March 4, 1988.

¹⁶⁶ ORS 541.550-541.595, July 1987.

¹⁶⁷ Chapter 729, Oregon Laws 1987, Amends ORS Chapter 197.

¹⁶⁸ 64th Oregon Legislative Assembly, House Bill 2493 Summary, (Salem OR: Legislative Assembly of the State of Oregon, 1987), p. 2.

CHAPTER VI

ADDITIONAL AREAS OF CONCERN

Conversion of farm and wetlands for residential development is a major problem in Oregon, despite allegations by county officials, such as Lane County's Roy Burns, who argues that "there are people who want to live (on 20 acres of forested land), and we have to accommodate it."¹⁶⁹ Absent a determination by the LCDC as to what land uses are excepted on farm and forest lands, the issues faced by Lane County are going to recur as other counties undergo their periodic reviews.

Supplemental conflicts concern (1) inconsistent application of land-use regulations and permit process by local governments, primarily at the county level, and (2) increasing use of forest land, covered by the Forest Services Act, and thus, excepted from control under the State's Land Use Plan.

Studies by 1000 Friends of Oregon have shown that more than 95% of the applications submitted between July 1985 and June 1986 for new home construction in EFU zones were allowed by county officials; an in-depth analysis of the permitted exceptions documented that more than 70% were improperly approved.¹⁷⁰ In addition, a study of riparian

lands in Eastern Oregon conducted by 1000 Friends in 1985 found that the Oregon Forest Practices Program failed to protect such habitats, and the wildlife they support, from commercial timber management and harvesting.¹⁷¹

Subsequent studies by the Oregon Environmental Council in 1987 found that continued intensive grazing, forestry, and agricultural development have exacerbated the decline in viability and natural functioning of riparian zones in Eastern Oregon. The failure to require any consideration of "the cumulative impact of the incremental removal of the tree canopy on the riparian zone"¹⁷² in ongoing forest practices was considered to be a major deficiency of forest land management programs in the state.

A large part of these problems can be attributed to a political process which emphasizes "economic development" of the land; Lane County is not alone in having routinely issued permits for residential and commercial development on rural lands prior to the Supreme Court's decision. The situation is compounded by an administrative agency which has failed to follow its own procedural requirements, and a regulatory system dependent upon the judicial branch to interpret the extent of its application.

In addition to the rural and wetland issues discussed in the preceding chapters, there are other increasing conflicts over land use in Oregon.

Though Senate Bill 100 was intended to coordinate planning efforts between the state and local governments, an exception permits state agencies to disregard local plans when implementing certain projects (best exemplified by the Division of State Lands, which routinely does what it wants in state forests). Fortunately, HB 2758, the "Coordination and Rural Lands" bill, which passed in 1987, requires all state agencies to be in compliance with local plans by 1991.¹⁷³

In addition, the state government continues to exhibit an increasing trend to overrule county governments, and provide additional exceptions to the EFU goal, when a state project is involved, such as the unsuccessful bid for the Supercollider project. Senate Bill 389, "Siting of Super Collider," provided full exemption for this project from, not only the statewide land use goals, but also "the jurisdiction of both LCDC and LUBA and from compliance with any city, county or special district zoning requirements or comprehensive plan."¹⁷⁴

This same attitude was exhibited in the passage of HB 3092, "Siting of Correctional Facilities" (1987 Oregon Laws, Chapter 321). Enacted to remedy delays in the siting of correctional facilities because of established land use procedures, the bill effectively preempts communities from avoiding or delaying construction of such projects through

1990, when it will sunset.

Options under consideration for regulating development subsequent to 1990 include (1) amending Goal 11 to require that local governments consider "facilities of statewide or regional significance" in their comprehensive plans, or (2) mandating that special siting requirements for correctional facilities be included in the land use statutes found in ORS Chapter 197.¹⁷⁵

If enacted, local governments in targeted regions could find themselves:

required to designate adequate size, location, and service level to respond to the needs identified in the state's corrections plan. LCDC would require that local governments comply with the new requirements within a year, based on the compelling necessity to respond to urgent needs of the corrections system.¹⁷⁶

Another area of conflict is rising along the Columbia River area over passage of the Columbia River Gorge Scenic Act of 1986. Enacted by the US Congress to provide a protective mechanism for more than 285,000 acres in the Columbia River gorge, the Act is a combined land-use management project between the US Forest Service, and Oregon and Washington states.

Advocates of the Act express concern over the role and responsibilities given the US Forest Service in designating permitted land uses in the designated scenic area, rather than the US National Park Service, which is considered to be more "environmental" in its outlook on land use.¹⁷⁷

In addition, there have been conflicts between counties and the Commission as to the proper application of land-use planning laws in residential construction and subdivision development in the gorge, although Oregon's local governments are considered to be more stringent than those in Washington state.¹⁷⁸

In each of these areas of contention, local governments and state agencies will find it necessary to recognize that:

Oregon's statewide planning program has not resolved all the problems associated with (land use) siting. It is not at all clear, however, that Oregon faces a dramatic need for new laws or devices with which to expedite the siting of . . . facilities. Oregon should not rush to change its . . . procedures until we know the extent and the causes of the problem.¹⁷⁹

Notes

¹⁶⁹Larry Bacon, "Official Wants New Goal for Rural Lands," Eugene (Oregon) The Register-Guard, 6 May 1988, p. 2B.

¹⁷⁰Henry Richmond, Executive Director, 1000 Friends of Oregon, Portland OR, letter dated April 21, 1988, p. 2.

¹⁷¹Paul Ketcham and Robert Stacey, Jr, Analysis of Oregon's Forestry Program for Compliance with Statewide Goals, (Portland OR: 1000 Friends of Oregon, 1985), page not numbered.

¹⁷²Mary L. Hanson, Riparian Zones in Eastern Oregon, (Portland OR: Oregon Environmental Council, 1987), p. 58.

¹⁷³Chapter 555, Oregon Laws 1987, Amends ORS Chapter 197.

¹⁷⁴Chapter 356, Oregon Laws 1987.

¹⁷⁵Peter Watt, Bureau of Governmental Research and Service, University of Oregon, Eugene OR, interview on November 15, 1988.

¹⁷⁶Peter K. Watt, Policy Options for Siting Correctional Facilities, prepared for the Governor's Task Force on Corrections Planning, (Eugene OR: Bureau of Governmental Research and Service, University of Oregon, 1988), p. xv.

¹⁷⁷Columbia Gorge Coalition, "Congress Passes Gorge Legislation," Gorge Winds (Winter 1986-87): 4.

¹⁷⁸Meg Roland, "Grappling with the Gorge: Land-use Woes Plague the Columbia," Pacific Northwest 23 (January 1989): 19.

¹⁷⁹Mitch Rohse, Information Officer, State Measures to Expedite the Siting of Regional Public Facilities: The Issue of "Supersiting" in Oregon, (Salem OR: Oregon Department of Land Conservation and Development, August 5, 1988), p. 4.

CHAPTER VII

CONCLUSION

The survival of man may depend on what can be learned from the study of extensive natural ecosystems.

H. E. Wright (1974)

We are the custodians of life in the universe, and the only plausible vector by which life may propagate . . . (i)t is becoming clear that we cannot survive, psychologically or physically, without the rich web of other lives around us.

Frederick Turner (1988)

Although Oregon's land-use planning process may be touted as one of the top ten in the nation in its protection of the natural environment, there has been no systematic mechanism established to measure the loss of wetlands and agricultural lands throughout the state since 1973.¹⁸⁰ While residents may feel that they are being converted at an increasing pace, or conversely, that there are sufficient areas remaining in a natural state, the perception is often based on examples of degradation and preservation at the local level, which are then applied to the state as a whole.

Attempts are being made, however, to address some of the problems discussed in the preceding chapters, primarily through development and implementation of geographic database systems, and land acquisition programs.

Geographic Information and Data Collection

One of the major problems facing land-use planners throughout Oregon is the lack of a centralized method for the collection and review of the land use data contained in the permit records provided by the local governments. In addition, that data which is available in the county reports is related solely to the use of Exclusive Agricultural Zones, with each county responsible for preparing the information in its own format.

Dr. James Pease, a Professor in the Department of Geography at Oregon State University, attempted to obtain state funding several years ago to establish a statewide database system to correlate the information furnished by the counties. He intended to compile the information in the reports, currently stored in boxes in at LCDC in Salem, into a geographically-based Land Use Evaluation Project, which could provide a uniform method of tracking land use in the counties.¹⁸¹

Completion of such a geographic information system would provide state and local officials with a comprehensive overview of the extent of land-use conversions in the last fifteen years. Despite the perceived need and value of such a system, the proposal of \$400,000 was denied for insufficient funding.

As if to emphasize the importance of such a centralized

data system in effective land management programs, several state agencies are currently compiling their own systems. For example, the Department of Environmental Quality is digitizing a massive database on water quality in Oregon, while the Columbia Gorge Commission is using the ARC-INFO software program to determine optimal land uses.

Unfortunately, the data contained in these various systems is not at a scale suitable for use by county and city planners.¹⁸² The Division of State Lands has recommended that wetlands data contained on the National Wetlands Inventory be reduced in scale so as to be applicable at the local level (using a scale of 1 inch = 400 feet).¹⁸³

Wetlands

The Oregon Nature Conservancy (TONC) recently received a \$15,000 grant to initiate development of an aquatics identification and locational system. The funds were provided by the Conservancy's Regional Office as seed money for a proposed three-year project to inventory important wetland areas throughout the state, a project which is expected to cost approximately \$90,000.

If funded in full, TONC proposes to:

- (1) Develop and implement a wetlands classification system;
- (2) Rank wetlands by type;
- (3) Identify remaining areas of significance;

- (4) Add all such areas into the Natural Heritage database, which is woefully lacking in information on significant natural wetlands; and
- (5) Develop a management program for the preservation and protection of wetlands on private and state lands.¹⁸⁴

Administration of the proposed project would be shared jointly between TONC, the Oregon Division of State Lands, and the Parks and Recreation Division. The DSL manages the wetlands program in Oregon, and the Parks Division administers the Land and Water Conservation Fund (LWCF) program, which proponents advocate as the source of the additional monies necessary to implement the project.

To date, the state has failed to allocate funds to match those provided by The Oregon Nature Conservancy; without adequate financing, The Conservancy is unable to proceed with such an ambitious project on its own limited resources.

However, the Parks and Recreation Division of the Oregon Department of Transportation did recently implement its own Wetlands Priority Plan. Developed in conjunction with the DSL and the US Fish and Wildlife Service, the plan was designed as part of the Statewide Comprehensive Outdoor Recreation Plan. This priority list of significant wetlands will be provided to counties for planning purposes, as well as serve to identify and rank wetlands to be voluntarily acquired by the state, through funds available from the

Federal Emergency Wetlands Resources Act of 1986, PL 99-645.¹⁸⁵

Secondary Lands

Dr. Pease contracted with LCDC in early 1988 to prepare a Secondary Lands Model, which could be used to provide a measurable means of identifying rural lands not well-suited to agriculture. The model, completed in June after six months of design and verification testing, compiled data from soil, vegetation and tax lot maps (among others) into new baseline evaluation maps.

The "Secondary Lands Draft Model" provides a means of identifying and evaluating potential secondary lands in both Eastern Oregon and the Willamette Valley, taking into account regional variations in the types of soil and agricultural operations found in different parts of the state. Selection criteria is done by using mapping units based on tax ownership lots of less than 20 acres in size, adjacent to public roads or Urban Growth Boundaries, and possessing soils considered to be low or medium in suitability for crop production.¹⁸⁶

Blocks of land found potentially suitable for development as secondary lands are then filtered through a "past use test." Under this usage test, evidence of past or current commercial agricultural operations producing a

minimum annual income of \$40,000 is required for the property to be designated as primary, and therefore, excluded from further development (Table 3).

TABLE 3. Summary of Secondary Lands
(1988)

County	Total EFU and Forest Acres	Secondary Lands (acres)	
		Before Past Use Test	After Past Use Test
Lane	968,969	17,748	5,834
Linn	800,000	22,229	20,453
Union	594,081	34,841	34,541 ^a 5,907 ^b

^aAll qualifying secondary lands

^bSecondary lands within 1/4 mile of a public use road

SOURCE: Dr. James R. Pease, Department of Geography,
Oregon State University, Corvallis.

Use of the land-use modeling program, and the resultant maps, is intended to serve as an alternative to the typical "seat of the pants" approach practiced by many communities, by providing a standardized database of land types and uses suitable for application at the local level.¹⁸⁷

Funding

Failure by the state to fund a centralized data information system comes in spite of the fact that many consider the lack of such a program to be the major handicap in accurately measuring the effectiveness of the goals in protecting natural and agricultural areas throughout Oregon.

Dr. Pease noted that "there is not enough money"¹⁸⁸ at the State level to develop and implement the type of comprehensive database needed by local governments. What would be necessary, to make such an information system effective, is an extensive data collection effort at a scale sufficiently detailed enough for county officials (such as one based on tax lots).

In fact, the situation has not really improved since a report issued in 1979 by the Oregon 2000 Commission found that:

(t)he state has more to do in developing information about what is occurring in the state, analyzing the effect of what is occurring and making that information known. Examples of what we need to know but do not know are numerous . . . what future population size the cities and counties of Oregon are planning and spending for . . . how much of the water from our rivers and streams is already spoken for and reserved for all time . . . how much farmland is being lost to urban development . . . part of what we need is more organization of the information already collected.

Without an effective way to transmit the information we can never be sure that state and local agency actions are working toward the same ends.¹⁸⁹

Almost a decade later, this information gap remains

largely unaddressed.

Land Acquisition and Taxation

There are ongoing efforts within the state, however, to address land-use conflicts through the purchase of ecologically-sensitive lands, such as those carried out by The Oregon Nature Conservancy, and through special tax incentives.

For example, TONC is scheduled to receive a grant for \$11,000 for the acquisition of wetlands in Oregon, as part of a negotiated settlement between the Oregon Chapter of the Sierra Club and Electronic Controls Design, a company based in Mulino. The Sierra Club Legal Defense Fund sued ECD when it was found to have violated its discharge permit 253 times between September 1982 and April 1988. If approved by the court, ECD will pay an additional \$34,000 to various environmental organizations for public education on riparian zone improvements and related water-use issues.¹⁹⁰

Paul Ketcham, Senior Planner for 1000 Friends of Oregon, also feels that it is necessary to go beyond the regulatory framework to preserve endangered farmlands and wetlands, and supports the development of tax incentive programs "so that monetary incentives exist for property owners to maintain wetlands in natural conditions."¹⁹¹ He considers the agreement reached between The Oregon Nature

Conservancy, the City of Eugene, and private landowners for managing the Willow Creek wetlands to be an ideal model, where deed restrictions and density limitations have been effectuated to ensure preservation of the area.

Another approach is exemplified by the Riparian Tax Incentive Program, enacted in 1981, and administered by the Oregon Department of Fish and Wildlife. Property tax exemptions are given to private landholders who agree to maintain or improve riparian lands on their property. However, a study by the Oregon Environmental Council in 1987 found that this program apparently has not provided the degree of financial compensation necessary for wider involvement, and it recommended that additional "(i)ncentives . . . be developed in consultation with the agricultural community."¹⁹²

Recommendations

As the information in this manuscript indicates, the passage of Senate Bill 100, and its subsequent amendments, has done much to promote orderly growth in the state's urban areas, while attempting to maintain the ecological and biological diversity of natural resource lands. It has not, however, represented a panacea for preventing or overriding evidence of mismanagement at the county level.

Land use planning occurs within a political framework,

and is, therefore, subject to pressures from divergent groups in the community. In order to ensure conformity and equality in regulating development, it is essential that the state and local governments cooperatively develop an inventory of primary resource lands, and once identified, actively work towards protecting these sensitive and endangered lands.

Training should be implemented at the local level, which would instill a recognition and appreciation of the need for a balanced resource management program. This course of action would help ensure that development projects consider, not only the economically "tangible" values often associated with new jobs and industries, but also the very real benefits of resource preservation to the city or town.

Too often, local officials will afford great weight to the promises of new jobs and increased tax revenue often associated with urban and industrial growth, yet fail to consider the associated costs of natural resource replacement and loss to the community. Proper consideration of such costs will provide a true "cost-benefit ratio," and may often outweigh the perceived economic benefits.

What is necessary in Oregon now, for those concerned with land-use planning and applications, is an enhanced degree of awareness at the state and local levels, which would accord to the preservation of our farms and wetlands,

the same values (social and economic) that are attributed to their exploitation.

The comprehensive Oregon statewide land-use goals provide a starting point.

Notes

¹⁸⁰"Oregon Ranks Near Top of Environmental List," Eugene (Oregon) The Register-Guard, 24 February 1988, p. 3B.

¹⁸¹Dr. Jim Pease, PhD, Professor, Department of Geography, Oregon State University, Corvallis OR, interview on October 31, 1988.

¹⁸²Ibid.

¹⁸³Bierly, Interoffice memo to the Wetlands Management Work Group, page no numbered.

¹⁸⁴The Oregon Nature Conservancy, "The Nature Conservancy to Initiate Statewide Wetlands Project," The Nature Conservancy (Summer 1988): 3.

¹⁸⁵Oregon Division of State Lands, Oregon Wetlands Mitigation Bank Act of 1987, (Salem OR: Environmental Permits Section, Oregon Division of State Lands, July 1987), p. 1.

¹⁸⁶James R. Pease, PhD, Designation of Secondary Farm and Forest Lands: Model Design and Testing, (Corvallis OR: Department of Geography, Oregon State University, June 30, 1988), pp. 1-3.

¹⁸⁷Dr. Jim Pease, OSU Geography Department, interview on October 31, 1988.

¹⁸⁸Ibid.

¹⁸⁹Champoeg II-Oregon 2000 Commission, Oregon 2000, p. 36.

¹⁹⁰Carol Lieberman, "Oregon Lawsuits Settle," Oregon Conifer 11 (November/December 1988): 2.

¹⁹¹Ketcham, Oregon's Approach--Is It Working?, p. C3.40.

¹⁹²Hanson, Riparian Zones in Eastern Oregon, p. 29.

APPENDIX A

OREGON'S COMPREHENSIVE STATEWIDE PLANNING GOALS

(Adopted December 27, 1974)

Goal 1: Citizen
Involvement

Requires local governments to provide opportunities for public input and participation in developing the local plans, and the establishment of a local oversight committee to encourage citizen involvement.

Goal 2: Land Use Planning

Requires all local plans to follow certain procedures, and to be based on a factual database of various land-use elements. Also requires each city or county to have ordinances in place to zone land and regulate subdivisions, in order to implement the goals.

Goal 3: Agricultural Lands

Very precise in its definition of what constitutes "agricultural land," using soil classifications. Recognizes the economic value of farmland to the state. Requires all local governments to inventory and "preserve and maintain" any such identified lands through zoning and

regulations; a companion statute defines the exceptions permitted in an Exclusive Farm Use (EFU) zone.

Original exceptions included commercial activities in conjunction with a farm use; mining; parks, golf courses and campgrounds; commercial utility facilities; and single-family homes (among others), if compatible with farm use, and in compliance with other conditions set by the local government.

A continuing increase in exceptions allowed on EFU lands is creating many of the problems facing Oregon land-use planners in 1988, as discussed in this paper.

Goal 4: Forest Lands

Similar to Goal 3 in its precise definitions and requirements, this goal requires policies and ordinances that "conserve forest lands for forest uses." Unlike Goal 3, however, there is no complementary statute listing permissible exceptions.

Goal 5: Open Spaces,
Scenic and Historic Areas,
and Natural Resources

Twelve resources are protected by definition; missing by name are wildlife habitats, mineral resources, wetlands and waterways. Sets up a goal to inventory specified natural resources in an area, and to assign a value to that resource.

If found to be a significant resource, the local government can 1) preserve it; 2) allow a use considered to be more important, even if the resource will be harmed; or 3) implement a balance between development and protection of the resource.

It is up to the local government to evaluate and adopt the preferred alternative.

Goal 6: Air, Water and Land Resources Quality

Requires consistency between local plans and state and Federal regulations in such areas as air quality and ground-water pollution.

Goal 7: Areas Subject to Natural Disasters and Hazards

Permits development in areas with natural hazards, such as floodplains or on steep slopes, subject to safeguards (such as floodplain zoning).

Goal 8: Recreation Needs

Requires each community to assess its recreational

needs, and to address them. A revision of this goal in 1984 included standards for destination resorts, which were also added as an allowable exception to EFU's in Goal 3.

Goal 9: Economy of the State

Oriented toward diversification of the state's commercial and industrial base; requires an inventory by each jurisdiction of available land for commercial and industrial development.

Goal 10: Housing

Requires that housing be available to meet varying income needs and desires (single-family detached, multifamily and mobile homes, for example). Prohibits discrimination in housing through a companion statute.

Goal 11: Public Facilities and Services

Intended to ensure that adequate services were available to meet a community's growth needs and capacities; services include sewage, water, police and fire protection.

Goal 12: Transportation

Aim is to provide a convenient and accessible transportation system.

Goal 13: Energy

Emphasizes conservation of energy in development.

Goal 14: Urbanization

Each city must now establish an Urban Growth Boundary (UGB), which will identify and separate urban and rural agricultural land uses. Services are to be provided only within the UGB, and not outside, thus channeling growth inward, and limiting urban sprawl.

Lists seven factors to be considered in designating a UGB, and four criteria to be considered for converting resource or agricultural land to urban use.

(Adopted December 6, 1975)

Goal 15: Willamette Greenway

Continues to recognize the value of the Willamette River, and its adjacent farm lands and open spaces.

Administration policies for the 150-foot greenway buffer that extends along both sides of the Willamette River, from Dexter Dam and Cottage Grove, to the Columbia River (a distance of almost 300 miles).

(Adopted December 18, 1976)

Goal 16: Estuarine Resources

Classifies the 22 major estuaries into four

management categories: natural, conservation, shallow-draft development and deep-draft development, based on maximum potential. Lands uses are regulated under each management classification.

Goal 17: Coastal Shorelands

Applies to a specified area, between the ocean beaches and the Coastal Highway (State Route 101).

Designates certain land areas to be fully protected, such as saltwater marshes, and what types of development are permitted; also establishes management plans for resource areas within the coastal shoreland.

Goal 18: Beaches and Dunes

Sets standards for building on coastal dunes, and addresses the drawdown of groundwater from aquifers, and alterations to the dunes.

Goal 19: Ocean Resources

Regulates ocean dumping and dredging, and the discharge of waste into the ocean. Primarily affects state agencies.

Source: Oregon Land Conservation and Development Commission, Salem, Oregon.

APPENDIX B

A SAMPLING OF NATIVE OREGON WETLANDS

Klamath Marsh (23,000 acres, Klamath County)

Privately-owned marshlands, in process of being acquired by The Nature Conservancy (TNC). Contiguous to the Klamath Forest National Wildlife Refuge (NWR), and the headwaters of the Williamson River. Habitat for thousand's of waterfowl, including sandhill cranes, and both a nesting and migrating habitat for Canada Geese and numerous duck species.

Warner Basin (14,000 acres, Lake County)

Privately-owned marshlands, also being acquired by TNC. Adjacent to the proposed 30,000-acre Warner Potholes Area of Critical Environmental Concern (ACEC). Mosaic of emergent marshlands and wind-sculpted dunes provide habitat for up to 50 species of migratory waterfowl, including the white pelican, white fronted and snow geese, whitefaced ibis and the long-billed curlew. Threatened by headwater impoundments and diversions to meadowland in the South Warner Valley.

Clear Lake Ridge (3,000 acres, Wallowa County)

In process of being acquired by TNC. Grasslands and lakes.

Ebell Creek (Baker County)

Private gift to TNC. Preserve-quality riparian community.

Williamson River (1,100 acres, Klamath County)

In process of being acquired by TNC. A 3-mile stretch of river just south of the Klamath Marsh.

Blind Slough Swamp (1,000 acres, Clatsop County)

Spruce and cedar swamp on the Columbia River near Astoria.

Crump Lake (6,000 acres, Lake County)

Owned by State/private/BLM. Lake, marsh and upland complex supporting nesting waterfowl (white pelicans, Canada geese and several species of ducks). Also supported are sandhill cranes and shore birds, as well as antelope, mule deer, and mountain sheep. Threatened by drainage and agricultural development.

Darlingtonia Serpentine Seepage (3 acres, Josephine County)

Private ownership. Serpentine marsh area, possessing a unique endemic flora and fauna (very rare). Grassy glades adjacent to the National Forest boundary. Threatened by real estate development.

McFaddens Marsh (350 acres, Benton County)

All of the swallows that inhabit the Willamette Valley are found here, along with occasional Vaux's swifts and purple martins. Traditional wintering-over area for Dabbling ducks and dusky Canada geese. Recommended for inclusion into the William L. Finley National Wildlife Refuge.

Bastendorf Bog (10 acres, Coos County)

Managed by TNC. Coastal sphagnum bog containing largest population of Giant Western Bog Lilies (under consideration for Federal listing).

Lower Table Rock/Kelly Slough (207 acres, Jackson County)

Acquired by TNC for inclusion into the Jackson County Bear Creek Greenway Project. Beautiful bayou-like channels and sloughs. Habitat for Northern bald eagles and a great blue heron rookery on the Rogue River.

Metolious River Preserve (7.5 acres, Jefferson County)

Private gift to TNC. Woodland and spring-fed river surrounding a pristine island. Bog and virgin mixed coniferous forest. Western tanager, goshawk, MacGullivray's warbler, Harlequin duck, and river otter all sighted here.

Gold Lake Bog (4 acres, Lane County)

Managed by the US Forest Service. Sphagnum bog lakes, now part of the Three Sisters Wilderness Area.

Cox Island (187 acres, Lane County)

Managed by TNC. Salt marsh island in the Siuslaw River near Florence. Excellent salt marsh shorebird and waterfowl habitat.

Rain River (141 acres, Tillamook County)

Acquired by TNC, and managed as a waterfowl habitat by the Rain River Preserve Committee. Coastal salt marsh, freshwater sloughs, and marshlands.

Sandy River Gorge (410 acres, Multnomah County)

Managed by TNC. Six miles of riparian wildlife habitat along the Federally-designated Wild and Scenic Sandy River.

APPENDIX C

DIFFERENCES IN FEDERAL WETLANDS DEFINITIONS

Emergency Wetlands Resources Act of 1986 (PL 99-645)

Defines a "wetland" as having a predominance of hydric soils, and inundated or saturated by surface or groundwater frequently enough to support a prevalence of hydrophytic vegetation typically adapted for life in such conditions.

Swampbuster Provision--Food Security Act of 1985
(PL 99-198)

Wetlands are considered to be the same as those identified above, excluding "converted wetlands."

US Fish and Wildlife Service (adopted 1980)

Includes transitional lands between aquatic and terrestrial ecosystems with water at or near the surface, and containing one of the following: (1) supports predominantly hydrophytes at least part of the year, (2) the substrate is predominantly undrained hydric soil, or (3) at some time of the growing season, the nonsoil substrate is covered or saturated with water. Includes non-vegetated lands, such as tidal mud flats and rocky beaches and shores.

US Army Corps of Engineers (published in the Federal Register, 1982)

Flooded or saturated lands which support vegetation typically found in saturated soil conditions. Includes swamps, marshes, bogs, and similar areas as wetlands.

US Environmental Protection Agency (published in the Federal Register, 1980)

Uses the same definition as the Corps of Engineers.

SOURCE: US Department of Interior, National Wetlands Inventory National Coordinator, Washington DC, 1987.

APPENDIX D

GOAL 5 AND WETLANDS MANAGEMENT

AT THE LOCAL LEVEL

Note: The following responses were provided by Planning Directors of 26 counties in Oregon, out of 36 total. An initial questionnaire was mailed August 2, 1988, and replies were tabulated and made available for review on September 26, 1988. Numbers may not total 100%, due to a lack of response to some questions.

1. The Goal 5 Administrative Rule requires that local governments determine which wetlands are important enough to be included on their plan inventory.
 - (a) 46.2% of the jurisdictions had completed such an inventory in full at the time of their local plan acknowledgement, and another 19% were partially completed.
 - (b) Of the 26.9% who had not done so, 8 out of 10 counties still lack wetland inventories in their comprehensive plans.
 - (c) The total amount of wetlands shown in the local plans ranged from 0-31 sites per plan, with a maximum of 35,485 acres identified in one county.
 - (d) Information for identifying wetlands was obtained primarily from the Oregon Department of Fish and Wildlife (57.9%), with additional assistance provided by the US Fish and Wildlife Service, Oregon Division of State Lands, US Army Corps of Engineers, US Forest Service, and the Natural Heritage Program.
 - (e) Slightly more than 50% of the respondents felt that these sources were adequate for their purposes.
2. Goal 5 also requires that local governments identify conflicts with inventoried wetlands and develop a program which protects certain of these sites.
 - (a) 53.8% had completed such a program at the time of

their local plan acknowledgement, and another 7.6% were partially complete.

- (b) Of those who had not done so at the time of the initial acknowledgement, none has subsequently completed the required program.
3. Problems encountered by jurisdictions in fulfilling the wetland protection responsibilities required by Goal 5 included:
- (a) Inconsistent definitions of a wetland site;
 - (b) Inadequate inventory data at the local level;
 - (c) Inadequate staff (both personnel numbers and expertise);
 - (d) Lack of a clear direction from State and Federal agencies;
 - (e) Conflicts with agricultural land uses and needs.
4. Most of the county planning directors did not feel that periodic review had imposed any new significant wetland identification or protection burdens; however, substantial differences and inconsistencies were noted in LCDC's review of individual county plans.
5. Only 38.5% knew if the wetland inventory in their plan differed significantly from those protected by DSL or Federal agencies; 7 of the 10 counties responding felt that the differences presented problems in regulating land use in their jurisdictions.
6. Almost 62% felt it was important to have a complete inventory of protected wetlands available at the local permit counter for the public to review; 6 of the 10 counties that did not agree possess little or no wetlands in their jurisdiction.
7. A full 50% of the planners did not feel that local officials should be required to make requisite wetland determinations, even if adequate training was available; the majority of those who disagreed represented urban areas.
8. When asked whether they preferred a Goal 5/Forest Planning Act approach, where counties are preempted from regulating wetlands, 46.2% answered no, and 26.9% answered yes.

9. Given the option of deferring to a state or Federal agency for a wetland determination, and regulation of protected sites, 92% were in approval, and the remainder did not know--none of the planning directors opposed deferral as an option.
10. When it came to funding wetland protection efforts, 38.5% favored the use of taxes and land purchases over regulation by the local government, 15.4% were opposed, and the rest were unsure as to which option they preferred.
11. Over 69% felt it would aid wetland protection efforts in their jurisdictions if board members, planners, and others involved in land use decision-making were better informed as to the value of wetlands.
12. When discussing mitigation options, 61.5% were opposed to any policy which mandated full replacement of wetland losses, so as to prevent a net loss (such as the requirement by the US Environmental Protection Agency for a 1-for-1 acre replacement policy).
13. Almost 42% opted for some form of Federal and/or state control over wetland protection, while 38% felt that local governments should be given primary responsibility, either alone or jointly with the state.

SOURCE: Vic Affolter, Director, Department of Community Development, Tillamook, Oregon, and Ken Bierly, Wetlands Specialist, Oregon Division of State Lands, Salem, Oregon.

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