



Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

M E M O R A N D U M

August 30, 1977

TO: Interested Parties
FROM: Harold F. Brauner, ^B Director
SUBJECT: COMMON QUESTIONS ABOUT GOAL #3;
AGRICULTURAL LANDS

Enclosed are some common questions and answers about the Agricultural Lands goal. This paper was approved for distribution by the Commission at its August 5th meeting.

This paper is not intended to be a legal or technical analysis but rather is to provide general information about agricultural land preservation and to help explain goal #3 on Agricultural Lands. It is suitable for distribution to the general public, planning commissions and citizen involvement committees.

Also included (blue paper) is a mock-up of the Oregon Revised Statutes pertaining to agricultural land preservation and exclusive farm use zoning as amended by the 1977 Legislature.

Additional copies are available from the Department. If you have any questions, please contact Ronald Eber who is responsible for agricultural land issues, at 378-4926.

RE:cf

Enc:

cc: Judges; Chairman of County Board of Commissioners;
County Coordinators; Planning Directors; and
Oregon Soil and Water Conservation Commission

COMMON QUESTIONS ABOUT STATEWIDE PLANNING GOALS

These questions and answers reflect common concerns about the statewide goals being expressed throughout Oregon. They are not intended to be highly technical responses, but rather statements of general policy for the application of the statewide goals. They should be considered as suggested ways to apply the statewide goals, and do not preclude other methods which also achieve the broad purposes of the goals.

Your comments, suggestions or alternatives to what is presented are very welcome.

Department of Land Conservation and Development
1175 Court Street NE
Salem, Oregon 97310
378-4926

COMMON QUESTIONS ABOUT GOAL #3
AGRICULTURAL LANDS

1. WHY PROTECT OREGON'S AGRICULTURAL LANDS?

Agricultural land is the resource foundation for Oregon's second largest industry, and its preservation has been a concern of Oregonians for many years. To protect Oregon's farmlands, the 1973 Legislative Assembly enacted an "Agricultural Land Use Policy." This policy declares that:

- (1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.
- (2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.
- (3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

- (4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land, and with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such land in exclusive farm use zones. (ORS 215.243)

Oregon's Statewide Planning Goal #3, Agricultural Lands, "To preserve and maintain agricultural lands," carries out this policy. Agricultural land no longer can be viewed as unused space, left-over and available for development. Providing special protection to Oregon's agricultural land is necessary because it is the non-replaceable foundation for crops and livestock. Agricultural land should be viewed as a primary resource in its own right.

2. WHAT ARE AGRICULTURAL LANDS?

Agricultural land includes:

- 1) Lands classified by the U.S. Soil Conservation Service (SCS) as predominately Class I-IV/I-VI soils;^{1/} and
- 2) "Other lands" in different soil classes which are suitable for farm use ^{2/} taking into consideration:
 - soil fertility
 - suitability for grazing
 - climatic conditions
 - existing and future availability of water for farm irrigation purposes
 - existing land use patterns
 - technological and energy inputs required;
 - and
 - accepted farming practices

^{1/} In Western Oregon Class I-IV soils; and in Eastern Oregon Class I-VI soils. (Also see DLCD technical paper on the "Land Capability Classification System"

^{2/} See definition of "farm use" in ORS 215.203 (Attachment A)

"Other lands" also includes land which is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

These additional "other lands" may be adjacent to or intermingled with, the lands of predominately SCS Class I-IV/I-VI soils. In many instances, these lands may contain forest and other areas suitable for grazing as well as areas that could be converted to growing cultivated crops with the addition of irrigation. SCS, local Soil and Water Conservation Districts, farmers and other knowledgeable people can assist in identifying these "other lands" suitable for farm use.

The SCS soil capability classification is found in published soil survey reports where only soil survey field mapping sheets are available, capability information can be provided by SCS. If these are not available, the SCS general soil map and report should be used. This material is available at your local SCS office.

3. HOW DO YOU DETERMINE WHICH AGRICULTURAL LANDS ARE TO BE PRESERVED?

Several basic steps may be used to determine which lands are to be preserved.

First: Identify all agricultural lands;

-SCS Class I-IV/I-VI soils and "other lands"

Second: Subtract the agricultural lands no longer available for farm use;

- Lands physically developed or built upon;
and
- Lands which have been irrevocably committed to urban or rural non-farm uses or where the land obviously cannot be reclaimed for farm uses.

This Yields:

- undeveloped and uncommitted agricultural lands to be preserved by the comprehensive plan and the Exclusive Farm Use Zone (EFU).

During the preparation or update of the comprehensive plan, the exceptions process is used to determine the nature and extent of the "development" or "commitment" of agricultural land. The exception process is set forth in Goal 2 and provides the public with opportunities to be involved in these important decisions. This is discussed below.

4. WHAT SITUATIONS REQUIRE AN EXCEPTION TO GOAL #3?

In a recent Petition for Review 3/, the Land Conservation and Development Commission reaffirmed its position that agricultural land is to be preserved by the comprehensive plan and exclusive farm use zone (EFU), unless an exception is taken to Goal 3, using the process established in Goal 2.

3/ Petition for Review, Opinion and Order; LCDC No. 75-006; March 2, 1977

The exceptions process is used to set forth the factors and reasons for determining that certain agricultural lands may be in one of the following two categories of land: (1) land no longer available for farm use; or, (2) agricultural lands needed for future urban or rural non-farm uses.

- a. Land no longer available for farm use: When agricultural land is no longer available for farm use, the full findings, ordinarily required for an exception, are not necessary. The finding that the land has been (1) physically developed or built upon, or that the land has been (2) irrevocably committed to non-farm uses, is the only information necessary to support a valid exception. However, how much of the land is considered as "physically developed or irrevocably committed" must be set forth with the facts supporting the designation of "developed" or "committed."

The Commission has not defined "physically developed or irrevocably committed" preferring to leave that decision, on the nature and extent of these areas up to people more familiar with the particular situation. Whether or not land is in fact no longer available for farm use, will depend on the situation at the specific site and the factors

dealing with areas adjacent to it. People in the area need to be involved in this determination. The exact nature and extent of the areas "physically developed or irrevocably committed" must be clearly set forth as the justification for the exception. The specific area(s) must be shown on a map and keyed to the appropriate findings of fact.

- b. Lands needed for non-farm uses: If a city or county determines there is a need to use agricultural lands for either an urban or rural non-farm use, the justification is set forth in the city or county's comprehensive plan as an Exception. This includes agricultural land that is inside an urban growth boundary when establishing or changing the boundary or agricultural land used for rural residential or service center areas. The information justifying the Exception includes a complete statement of the compelling reasons and facts for allowing specific agricultural land to be allocated for non-farm uses. The following reasons are set forth in the plan:
- a) why these other uses should be provided for;
 - b) what alternative locations within the area could be used for the proposed uses;
 - c) what are the long term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;
 - d) a finding that the proposed uses will be compatible with other adjacent uses.^{4/}

^{4/} Goal 2, Part **, Exceptions. For a complete explanation see the Common Questions on the exceptions process.

5. ARE ALL THE AGRICULTURAL LANDS PRESERVED BY THE COMPREHENSIVE PLAN TO BE PROTECTED BY THE EFU ZONE?

Yes:

The EFU zone is the implementation method required for the preservation of agricultural lands that are identified in comprehensive plans. The Legislative Assembly, beginning with enactment of the "Greenbelt" law in 1961, has emphasized the need to protect Oregon's valuable agricultural lands. The EFU zone balances public and private interests in the use of agricultural land. The Legislative "Agricultural Land Use Policy" states that since EFU zoning substantially limits alternative uses of agricultural land, incentives and privileges are justified in order to hold such land in EFU zones.5/

The statute establishes an exclusive farm use zone which defines "farm use;" sets forth permitted and conditional non-farm uses; requires public review of all divisions of land under 10 acres in size; and, disallows any restrictions upon accepted farming practices. The statutes also provide that agricultural lands, when devoted exclusively to farm use shall be valued for property and inheritance tax purposes upon the basis of such farm use, and exempts the landowner from certain special district tax assessments.6/

5/ ORS 215.243(4)

6/ See the attached statutes for Legislative Policy and other statutory provisions related to the protection of agricultural land

6. ARE NON-FARM OR NONCONFORMING USES PERMITTED IN AN EFU ZONE?

Yes:

Oregon's Legislative Assembly has clearly set forth permitted and conditional non-farm uses allowed in an EFU zone.^{7/} Non-conforming uses also have been allowed, for "the lawful use of any building, structure or land at the time of the enactment of any zoning regulation or amendment thereto," even though they are not in conformity with the zoning regulation. However, "such non-conforming uses shall not be increased, changed or resumed after a period of interruption or abandonment except in conformity with such provisions as the zoning regulations may provide."^{8/} If a non-conforming use is unintentionally destroyed it can be reestablished. Thus, the area zoned EFU may include uses existing at the time the EFU zone was applied even though they may not be permitted as new uses.

The 1977 Legislative Assembly approved an amendment which allows, not requires, counties to place existing development found at the interior of an exclusive farm use area into the appropriate non-farm zone. This amendment was made so that existing non-farm uses can continue without being put in a non-conforming status.

The Legislature's intent was that such non-farm zones be placed only on the land which is physically developed

^{7/} ORS 215.213

^{8/} ORS 215.130(4)

and actually used by the non-farm use. It was not their intention to include large parcels of undeveloped agricultural land in the non-farm zones even though owned by the same individual.

7. ARE MINIMUM LOT SIZES REQUIRED?

No:

Agricultural acreage needs in Oregon vary from large wheat ranches to small intensive farming operations. A statewide minimum lot size would be impractical. If a local minimum lot size is established, it is to provide the acreage necessary for the continuance or creation of a viable farm unit which is appropriate for the type of farming practiced in the area. Minimum lot sizes can also vary for different agricultural areas within a jurisdiction. Minimum lot sizes may be established for specific non-farm uses allowed in the EFU zone in order to limit the actual amount of agricultural land lost to production. The city or county governing body would establish minimum lot sizes.

SPECIAL NOTE:

Local jurisdictions should be careful when utilizing minimum lot sizes. The purpose of a minimum lot size is to assure that an adequate amount of agricultural land is available for farm use. A minimum lot size is not meant to be the primary implementation measure

for the protection of agricultural land. Primary protection of agricultural land is provided by Oregon's Agricultural Land Use Policy (ORS 215.243); Statewide Planning Goal 3; the comprehensive plan; and the EFU zone. If the jurisdiction's intent is to protect agricultural lands from subdivision and partition by using a large minimum lot size, it may be better to prohibit subdivisions in an EFU zone and have land partitions limited to the permitted and conditional non-farm uses. This eliminates having agricultural lands divided into the minimum lot size and having the burden placed on local government to decide whether or not these lots are adequate for farm use. The continual division of agricultural land into smaller and smaller units poses a serious threat to an agricultural area's overall stability and productivity.

RE;krm/MC
7/13/77