Oregon's Department of Land Conservation and Development

Secondary Lands Backgrounder

Companion to February 5, 1999 legislative video.
Director, Dick Benner, Principal presenter.
Includes press briefing materials.

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Introduction

Oregon Department of Land Conservation and Development

February, 1999

To the reader:

Although frequently used to describe some of Oregon's countryside, "secondary lands" is a casual term not defined in Oregon law. We are guided principally by the law that requires the program to preserve the maximum amount of Oregon's agricultural land in large blocks. Changes to the program's basic legislation has led to some exceptions in the law that now allow for limited non-farm development in areas where it is thought to have no adverse effect on existing commercial farm and forestry operations, or agricultural land values. Inside, you will see several tables and charts that tell you just how much development of this kind has been allowed in recent years.

To some, however, the exceptions to our basic countryside protection laws should become the rule. They believe that development approvals should become available for any farm or forest land not rated as prime, or top quality.* They have historically referred to these areas as marginal, or "secondary lands." In their view, large areas of Oregon's countryside could fall under this category and should begin to be opened up to the development of houses, commercial areas, roads, and other infrastructure to support them.

Many others believe that these so-called marginal areas are highly productive for Oregon's agricultural economy and are essential components of efforts to control land-based sources of water pollution and protect our state's wildlife, including threatened and endangered fish populations that suffer when development occurs. They point out that many soils classified as "non-prime" may, with water or new agricultural production ideas, become highly productive agricultural areas.

Oregon's new wine-making industry is often given as an example of landscapes thought to be useless for commercial agriculture. Other examples include cattle raising areas in Eastern Oregon, wheat growing areas, coastal dairy land, and areas where Christmas tree farming occurs (to name only a few).**

Planners with the Department are finding that so-called "secondary lands" are often the lands outside of urban growth boundaries which are in between, or directly adjacent to commercial farm and forest operations. If developers were to convert these lands to other uses, they would present very real conflicts for farm and forestry operations and ultimately put these lands at risk. This can be the case in places like some parts of California where farmers are being forced off the land due to the nearby effects of poorly planned new housing and commercial development. The enclosed soils map depicts so-called "secondary soils" inter-leaved with prime soils in one Oregon county. Figure II.

Planning for Oregon's countryside and agricultural future is an important part of what we do. Please take some time to read through this primer on the "secondary lands" issue in the State of Oregon. If you wish to obtain a copy of the Secondary Lands Briefing video that explains these materials in detail, please contact the Communications Program of DLCD at 503-373-0050 x 266. We welcome your interest.

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* Based on soil conditions and other factors.

** See the photographic exhibit inside this booklet, labeled "Secondary Landscapes," Figure I.

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A chronology of the secondary, or marginal, lands issue

1983 Legislature approves the Marginal Lands Act that established trade-off between less regulation of lower quality marginal lands and improved protection for the best or primary resource lands. Only Lane and Washington counties adopt system. [Ch 826 Or Laws 1983 (SB237)].

- 1985 Legislature attempts but cannot pass new trade-off that would have restricted nonfarm dwellings in return for expanded lot-of-record provisions in exclusive farm use zones. Instead, the Legislature directs the Commission to "[c]onsider adoption of rules, amendments of the goals and recommendations for legislation that will provide a practical means of identifying secondary resource land and allow specified uses of those lands." [Section 11, Ch 811, Or Laws 1985].
- April 1985, Commission establishes Rural Lands Advisory Committee chaired by Stafford Hansell to "review whether the application of the exclusive farm use (EFU), marginal lands and lot-of-record statutes are effective in achieving the purpose of Statewide Goal 3, to 'preserve and maintain agricultural lands.'"
- 1987 Legislature requires Commission to "[a]dopt and submit a definition of secondary resource lands and uses permitted on secondary resource lands to the committee [JLCLU] by July 31, 1988."
- July 1988, LCDC adopts definition of "Secondary Lands" and draft proposal for the identification and the uses and densities allowed for primary and secondary resource lands.
- October 1988, LCDC begins process to amend statewide goals 3 and 4 to designate 'primary' and 'secondary' agricultural and forest lands and establish appropriate uses and densities for such lands.
- 1989 Legislature directs DLCD through budget notes to fund a Pilot Program for the testing of criteria to identify "secondary lands." Part of the note requires that the Commission will not adopt any proposed rules as part of this program until after they are presented to the "appropriate legislative review agency." [Ch 710, Or Laws 1989 (SB 5546)].
- January 24, 1990, Statewide Goal 4 is amended after many public meetings, workshops and hearings that began in October 1988. Work on Goal 3 is postponed. pending completion of the Farm and Forest Research Study.
- Early in 1990, the Legislative Emergency Board provides funds for the Commission to conduct an independent analysis of Oregon's productive farm and forest lands and specifically to determine what actions or conditions may diminish the quality and quantity of these farm and forest lands.
- April 1991, LCDC submits to Legislature report on Secondary Lands noting results of Pilot Program testing.
- June 1991, LCDC transmits to the Legislative Assembly the results of the Farm and Forest Research Study which concluded that Oregon's current system of land use planning was failing to provide adequate protection for farm and forest lands. The transmittal notes that the Legislature was currently considering several bills that dealt with issues addressed by the study and that the "study findings support approaches in Senate Bill 91 and House Bill 3560 to increase protection of commercial resource land." [Letter to John Kitzhaber, President of the Senate and Larry Campbell, Speaker of the House from Craig Greenleaf, Acting DLCD Director].
- 1991 Legislature does not adopt SB 91 or any bills regarding primary or secondary lands.
- August 1992, LCDC amends Goals 3 and 4 to distinguish between small scale resource lands, high-value and important farmland, and forest land. The amendments also establish separate standards for the uses allowed on high-value farmland from those under ORS Ch 215. Amendments are to be effective on August 7, 1993.
- December 1992, LCDC adopts new administrative rules for the identification of small scale resource lands, high-value and important farmland and forest land as well as the specific uses allowed on such lands to be effective on August 7, 1997.
- 1993 Legislature adopts HB 3661 establishing new lot-of-record provisions for farm and forest zones and directs LCDC to repeal goal and rule provisions regarding small scale resource lands. [Ch 792, Or Laws 1993].
- February 1994, LCDC amends Goals 3 and 4 and related administrative rules as directed by HB 3661 and establishes new provisions for uses allowed on high-value farmland more restrictive than those provided under ORS Ch 215.

Oregon's Agricultural Land Use Policy

(Adopted by Oregon's Legislature in 1973)

ORS 215.243

"The Legislative Assembly finds and 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 lands in exclusive farm use zones."

Resource Land Dwelling Policy

ORS 215.700

"The Legislative Assembly declares that land use regulations limit residential development on some less productive resource land acquired before the owners could reasonably be expected to know of the regulations. In order to assist these owners while protecting the state's more productive resource land from the detrimental effects of uses not related to agriculture and forestry, it is necessary to:

(1) Provide certain owners of less productive land an opportunity to build a dwelling on their land: and

(2) Limit the future division of and the siting of dwellings upon the state's more productive resource land."

Farming Area Development Statistics

Summary of Uses Allowed in EFU Zones

Introduction

State law first refers to Exclusive Farm Use (EFU) zoning in 1961 as part of legislation dealing with farm use assessment for farmland. The statutory EFU zone was established in 1963 and provided for five (5) basic nonfarm uses within this zone. These were educational, religious, recreational, utility services and meeting places for the local community. This initial list demonstrates that the allowed uses were those needed or that would directly serve the local agricultural/EFU area. As of the 1997 Legislative Session, about 48 nonfarm uses are now allowed.

Besides "farm use," the following nonfarm uses are allowed based on a review for compliance with certain prescribed standards.

The initial five nonfarm uses

1963

- Public and private schools
- Churches
- Public or nonprofit group parks, playgrounds or community centers
- Golf courses
- Utility facilities

Nonfarm uses added between 1973 and 1997

1973

- Forestry
- Commercial activities in conjunction with farm use
- Mining activities
- Private parks, playgrounds, hunting and fishing preserves and campgrounds
- Commercial power generating facilities
- Nonfarm dwellings

1975

- Personal use airports

1977

- Home occupations
- Temporary facility for the primary processing of a forest product
- Boarding of horses

1979

- Sanitary landfills approved by the Environmental Quality Commission or Department

1981

- Farm help dwellings for relatives
- Limited "lot-of-record" opportunity until July 1, 1985

1983

- Expands types of home occupations

1985

- Residential care homes in existing dwellings
- Raising greyhounds in Multnomah County
- Dog kennels
- Raising aquatic species
- Other buildings essential to the operation of a school
- Transmission towers over 200 feet

1987

- Expansion and modification of existing roads
- Replacement dwelling for building on National Historic Register
- Destinations resorts qualified under the statewide goals

1989

- Wineries
- Room and board arrangements in existing dwellings
- Creation of wetlands
- Seasonal farm worker housing

1991

- Cemeteries in conjunction with a church
- Living history museums in Marginal Land counties (Lane and Washington)

1993

- Farm stands
- Replacement dwellings
- Expansion of existing railroad landings
- Lot-of-record dwellings

1995

- Armed forces reserve centers within one-half mile of community college
- Riding lessons, training clinics and schooling shows in conjunction horse stables
- Utility facilities in existing road right-of-ways
- On-site filming and accessory activities
- Parking no more than seven log trucks

1997

- Propagating insects
- Sites for the takeoff and landing of model aircraft
- Conversion of existing building for temporary hardship dwelling
- Operations for the extraction and bottling of water
- Facilities for the processing of farm crops less than 10,000 sq. feet
- Expansion of existing county fairgrounds
- Guest ranches in Eastern Oregon

1997 Table N

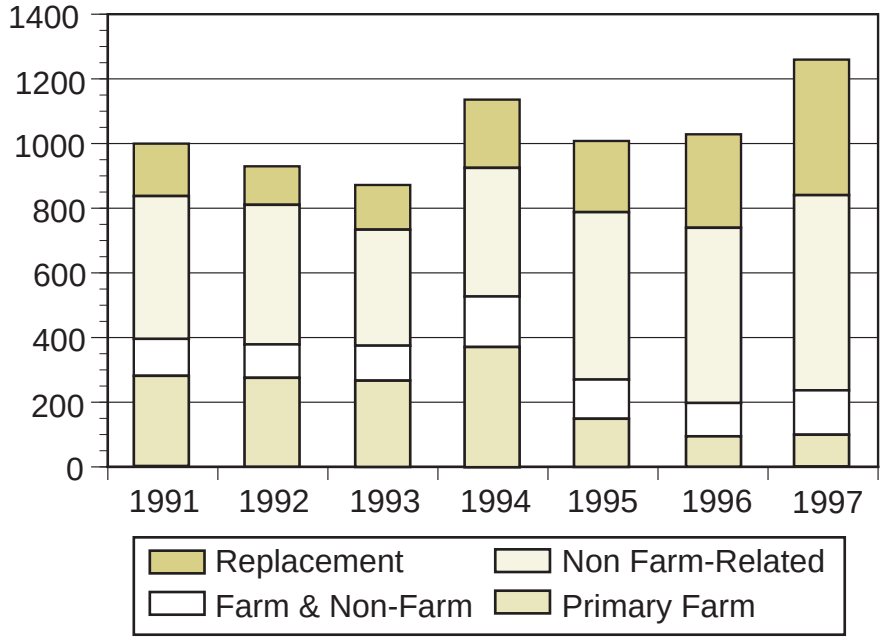
Other Uses Approved on Land Zoned for Exclusive Farm Use

(September '96 - August '97)

Use	# of Approvals 1996	1997	Average Acreage of Parcels Involved*
Accessory Use	68	47	434
Airstrip, Personal	-	2	108
Bed and Breakfast	2	5	276
Church	2	3	3
Commercial Activity with Farm Use	11	20	113
Dog Kennel	1	3	18
Farm Use	7	3	81
Golf Course	3	3	204
Historic Resource	-	-	-
Home Occupation	32	24	57
Horse Boarding	-	-	-
Mineral & Aggregate	20	22	197
NonConforming Use	4	1	5
Other Uses	33	64	-
Private Park	6	13	201
Public Facility	6	14	-
Residences	11	-	-
Roads	7	13	-
School	4	4	41
Special Use	3	-	-
Temporary Uses	6	12	88
Utility Facility	33	33	71
Variance	13	12	57
Total		**274**	**293**

* Total size of parcels on which the use was approved. In many cases the uses required only a small portion of the parcel. Average not included where information not provided for majority of decisions. +

New Dwellings Approved in Farm Zones



TYPE OF DWELLING	1991	1992	1993	1994	1995	1996	1997
"Replacement" To replace an old dwelling	162	119	138	211	289	106	419
"Not-Farm Related" Lot-of-Record & NonFarm dwellings	442	432	359	398	518	542	604
"Farm Related" For relatives and hired help	114	103	108	156	121	103	137
"Primary Farm" For person operating the farm	279	275	267	372	149	94	98
Total New Dwellings Approved in Farm Zones	**998**	**929**	**872**	**1,137**	**1,008**	**1,028**	**1,258**

Prepared by the Department of Land Conservation and Development (DLCD), Using Data Reported to DLCD by Oregon's 36 Counties
February 1999

Summary of Uses Allowed in Forest Zones

The Land Conservation and Development Commission's administrative rule (OAR Chapter 660, Division 6) provides four broad categories of uses that may be approved in a forest zone. These categories have been listed below with accompanying examples:

- **Uses related to and in support of forest operations.**

  Temporary forest labor camps

  Temporary portable facility for the primary processing of forest products

  Permanent facility for the primary processing of forest products*

  Permanent logging equipment repair and storage*

  Log scaling and weight stations*

- **Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment.**

  Farm use as defined in ORS 215.203

  Water intake facilities, canals and distribution lines for farm irrigation and ponds

  Unhabitable structures accessory to fish and wildlife habitat enhancement

  Caretaker residences for public parks and fish hatcheries

  Destination Resorts reviewed and approved pursuant to ORS 197.435 to 197.465*

  Private hunting and fishing operations without any lodging accommodations

  Private seasonal accommodations for fee hunting and fishing operations*

  Private parks and campgrounds*

  Public parks*

- **Locationally dependent uses, such as communication towers, mineral and aggregate resources, etc.**

  Utility facilities for the purpose of generating power*

  Mining and processing of oil, gas or other subsurface resources*

  Local distribution lines

- **Dwellings**

  Large tract*

  Lot-of-record*

  Template*

  Replacement of existing dwelling

  Temporary hardship dwelling*

* Denotes use requiring specific review by local jurisdiction. Not all uses allowed in a forest zone have been included with this information. Please refer to OAR Chapter 660, Division 6, for a complete list of uses and review standards.

1997 Table K

Other Uses Approved on Land Zoned for Forest Use

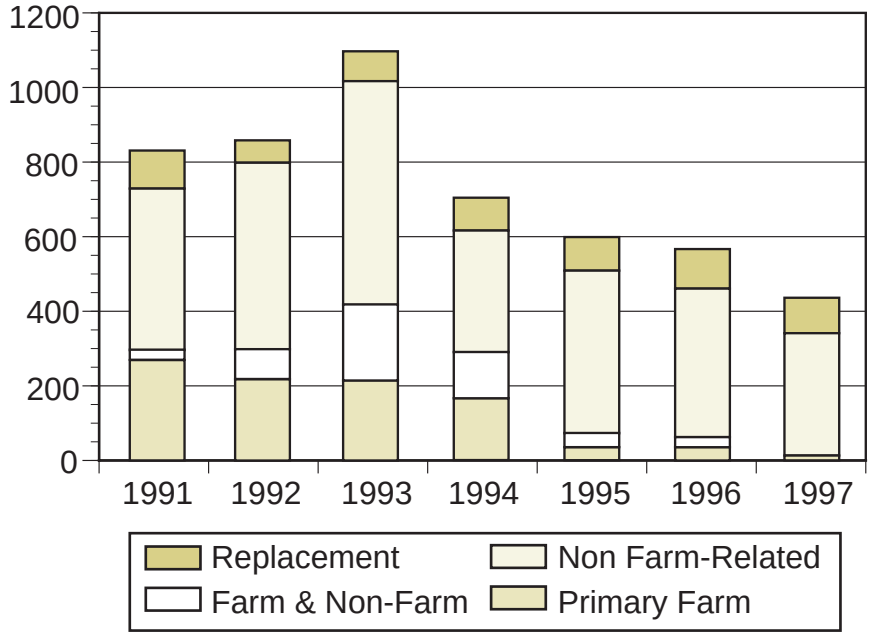
(September '96 - August '97)

Use	# of Approvals	Median Acreage of Parcels Involved*
Accessory Use	23	12
Commercial Activity	-	-
Dog Kennel	-	-
Farm Use	2	-
Home Occupation	4	8
Mineral & Aggregate	9	245
Nonconforming Use	2	-
Other Uses	24	18
Private Park	6	169
Public Facility	1	-
Roads	4	-
Special Uses	-	-
Temporary Uses	23	15
Utility Facility	31	72
Variance	5	5
Total	**134**	

(95-96)	94
(94-95)	123
(93-94)	88
(92-93)	102
(91-92)	97

* Total size of parcels on which the use was approved. In many cases the approved uses required only a portion of the parcel. Median not provided where there were less than three decisions.

New Dwellings Approved in Forest Zones



TYPE OF DWELLING	1991	1992	1993	1994	1995	1996	1997
"Replacement" To replace an old dwelling	102	60	80	88	90	106	95
"Not-Forest Related" Template, Lot-of-Record & NonForest (pre-1994)	433	500	600	326	436	398	328
"Forest Related" Necessary standard (pre-1994) Large tract (post-1994)	269	218	215	166	35	36	13
"Farm and Nonfarm" "Mixed" farm/forest zones	27	80	204	124	38	27	0
Total New Dwellings Approved in Forest Zones	**831**	**858**	**1099**	**704**	**599**	**567**	**436**

Prepared by the Department of Land Conservation and Development (DLCD), Using Data Reported to DLCD by Oregon's 36 Counties
February 1999

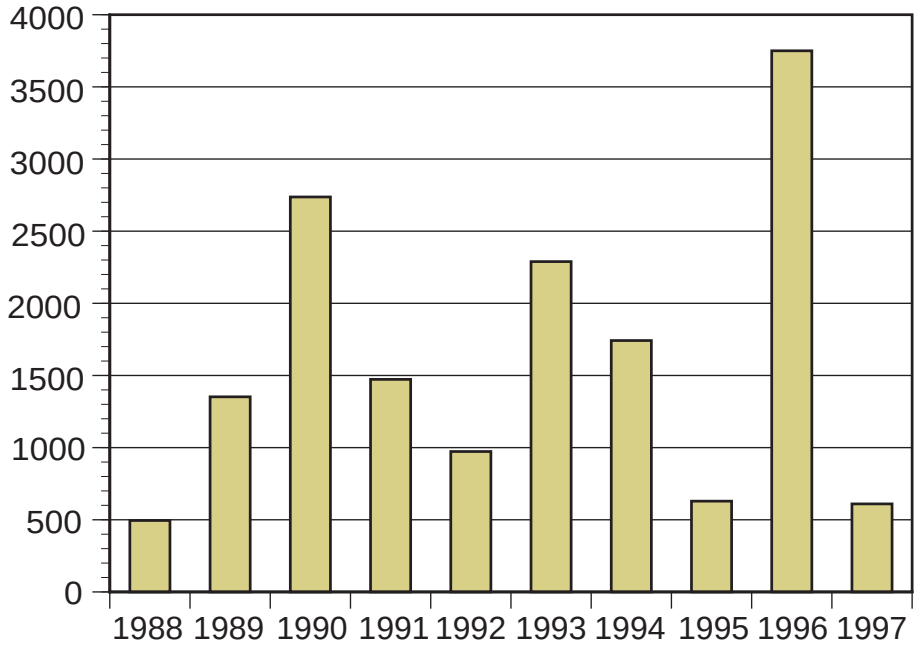
Aren't Cities the Biggest Threat to Farmland?

Some people believe our farmland protection laws "lock up" the less productive farm land while allowing cities to consume large amounts of prime farm land. Our statistics don't support that idea. During the ten years from 1987 through 1996, cities throughout the state added only 17,189 acres to their urban growth boundaries. That's only a two-percent increase of urban land area over an entire decade!

The biggest threat to farm land isn't from cities marching across the landscape. Our urban growth boundaries stop most of that. The biggest threat is from rural forms of development — houses, golf courses, quarries, RV parks, etc.

Urban Growth Boundary (UGB) Expansions, In Acres, 1988 Through 1997

(Department of Land Conservation and Development, February 1999)



- During the 10 years from 1988 through 1997, a total of 169 urban growth boundary (UGB) expansions were adopted.
- The total number of acres added to UGB's by those expansions was 16,050.
- The average number of UGB expansions per year was 16.9 (169 ÷ 10).
- The average acreage per expansion was 95 acres (16,050 ÷ 169). In other words, a typical UGB expansion is fairly small.
- The great majority of UGB expansions (in terms of both their number and acreage) occurred ***outside*** the Willamette Valley.
- These expansions amount to only a two-percent increase in the total land area within UGB's over a ten-year period. Conclusion? Despite Oregon's rapid growth in the 1990's, our cities have not been sprawling across the landscape.

Public Opinion

The Oregonian

Problems a product of system

by PAT KIGHT
Correspondent, The Oregonian

LEBANON—Hector MacPherson trudges along the muddy shoulder of Berlin Road east of town. He glances now and then at a creased Linn County planning map. He stops, shielding his eyes from the late winter sun and surveys the hilly terrain.

Scrub oak and sparse grasses cover a patchwork of fenced fields 10 or 20 acres each scattered with houses, small barns and work sheds. A solitary horse grazes nearby.

Oregon land use laws were never intended to lump this kind of property into the same category with the broad, rich bottom land farther west, MacPherson said.

He should know. A second-generation Linn County dairy farmer, MacPherson has been fighting since the 1960s to protect Oregon's richest farmland from urban encroachment. He served in the state Senate in the early 1970s and helped write Oregon's pioneering land use laws.

"I remember talking to L.B.Day," MacPherson said. Day, the late Republican senator from Salem, was among the key fighters in the battle to bring the entire state under a single system of land-use regulations.

"I asked him, 'Do you really want to set aside all of this land even marginal land for exclusive farm use?" MacPherson said. "His idea then was that we would take a look at all these areas and then take exceptions for the parts that really weren't suitable for commercial farming."

As it turned out, the process for gaining exceptions to the land-use rules was complicated. Counties responsible for enforcing the state laws came up with their own methods of separating goods land from the not-so-good. Some systems worked well, others did not.

Land that should never been declared prime farmland in the first place got tied up in a web of rules and restrictions. Some counties rankling under those rules let good farmland be divided and developed.

No one, it seemed, was satisfied with the system.

Complaints and confusion led the Legislature to demand a new land-use category. One that would apply to rural land suited neither for large-scale farming nor the urban-style development.

Although MacPherson left the Legislature in 1974, he has continued working to protect Oregon's farms. One way to do that, he now believes, is by allowing at least some development in areas such as Berlin Road.

"It's a compromise," he admits. "We need to loosen the restrictions on some of this land—the least productive land—so we can tighten them up on primary lands."

MacPherson served on the state's Rural Lands Subcommittee charged with helping formulate a secondary lands policy. The task force finished its work last spring, but MacPherson has remained close to the debate and expresses cautious hope that the rules being developed will do what they are meant to do.

He worries that the state's emerging regulations will be too complex, particularly for counties with limited planning budgets and manpower. He would like to see rules that can be applied simply and fairly anywhere from the Willamette Valley to the rangeland of Eastern Oregon.

And he fears that some may see the new rules as a green light for increasing exploitation of Oregon's fertile countryside.

"The whole idea is to take the pressure off the farmland," he said, looking down the hills toward fields turning green with spring wheat. "The main goal is not to open up more land for development."

THE SUNDAY OREGONIAN, FEBRUARY 7, 1988

THE NORTHWEST

Solution said near to farm vs. marginal land debate

Oregon coalition wrestles critical land-use problem

By PAT KIGHT
Correspondent, The Oregonian

After years of controversy Oregon may be on the verge of settling one of its most difficult land-use debates—how to separate the best farm and forest land from that which is only marginally productive.

A coalition of state policy-makers, county planners and university researchers is racing toward a summer deadline to define so-called "secondary resource lands" and come up with a dependable, fair way to manage them.

Their aim is to protect the state's most productive land from conflicting development while casting restrictions on land not really suitable for crops, trees or grazing.

Acting on orders from the 1985 Legislature, the Land Conservation and Development Commission is putting together a new system for identifying secondary land and allowing limited development there.

It is the second time this decade that the state has tried to settle the resource lands debate. The first effort—a "marginal lands bill" adopted by the 1983 Legislature—is almost universally seen as a failure.

Critics say that bill was both too vague and too hard to carry out. Worse, they say, counties were given the option of applying the law. Only two—Lane and Washington—did so.

Although it is not yet clear whether the new system will be mandatory, the people drafting it hope it will prove so attractive and easy to use that planners across the state will embrace its provisions.

As it now stands, Oregon land-use law recognizes only two categories of resource land: farm and forest. Together those zones encompass most of the rural land in Oregon—about 24 million acres.

But there is no statewide provision for deciding which areas are truly important for resource uses and which might be better used for, say, rural homesteads.

Each of Oregon's 36 counties has been left to find its own way of dealing with that question. The result, state planners say, is a confusing patchwork of rules that encourages too much rural development in some counties and virtually prohibits it in others. Besides being unfair, critics say, the haphazard system leads to costly appeals and lawsuits.

The new system taking shape now would let rural property owners know where they stand by setting objective standards for classifying and managing their land according to those who are writing the rules.

Work on those standards began in October 1985 with the creation of a Rural Lands Advisory Committee led by then-LCDC Chairman Stafford Hansell of Hermiston. The committee included farmers, ranchers, government land-use specialists, local planners and representatives of such diverse groups as 1000 friends of Oregon and Associated Oregon Industries.

When it finished its work last April, the committee had generally agreed that:

- Oregon needs a new simplified system for rating soils and their ability to produce crops.
- Development—including housing—should be sharply curtailed on prime resource land.
- The state needed a measurable method of separating primary land from secondary.

There the matter sat for the summer and fall while LCDC along with much of state government, was reorganized under Neil Goldschimdt's administration.

In October, facing a July 1988 deadline for finishing its secondary lands plan, the reorganized LCDC returned to the project. In the meantime the Association of Oregon County Planning Directors had developed its own proposal.

Those proposals relied on complicated mathematical equations that sought to balance soil classifications, parcel sizes, ownership and other factors to determine how good land was.

Enter James Pease, a professor of geography at Oregon State University and land-use specialist for the OSU Extension Service. Pease had previously done field tests in seven Oregon counties of the new soil classification system.

In December he approached Ron Eber, rural lands specialist for the state of Land Conservation and Development and offered to help simplify and test the secondary lands system.

Within days the two men had met with the county planning directors and put together a new, simpler plan based on elements of the state and county proposals.

The LCDC gave Pease a grant to test the hybrid standards, and see whether they work when applied to real parcels. Pease and his OSU graduate students will head into rural Lane and Linn counties later this month to start those tests.

Eber said that he was beginning to see light at the end of the secondary lands tunnel.

"I haven't felt this hopeful in quite a while," he said. "The department has always believed that agriculture land and forest land were too broadly defined. The attitude has always been, 'We'll refine this later.' No one envisioned that later would be 10 or 12 years."

Marvin Gloege, Linn County planning director and co-chairman of the County Planners' Secondary Lands Committee, said his group would be glad to settle the issue. Counties spend too much time and money on resource land cases, he said. "As long as there is this pressure to keep reviewing secondary lands, there will be more pressure on the primary lands. We've got to get this settled," Gloege said.

The Legislature's Joint Land Use Committee is scheduled to meet Tuesday to discuss the matter of housing on rural resource lands. Pease's students will wrap up their tests by mid-March and an LCDC subcommittee is debating what uses should be permitted on secondary lands.

By the LCDC's April meeting, Eber said, those issues should all be tied together into a secondary lands policy that will be ready for public review.

The Oregonian

Checklist proposed for classifying lands

Soil quality, parcel sizes and conflicts with neighboring farms and forests— these are the elements of a proposed system for identifying Oregon's secondary resource lands.

The system, developed by state and county planners, is being tested in February and March by Oregon State University researchers.

"The problem we've faced is how do you develop measurable criteria you can apply statewide in a state as complex as Oregon?" said James Pease, the OSU geography professor leading the study.

Among other things, Pease is trying to come up with a system that will be simple enough for local planners and landowners to use and understand.

An earlier draft developed by the Land Conservation and Development Department was so complicated that Pease's best graduate students couldn't figure out how to make it work. "They read it probably 50 times," he said, "and then they had to call LCDC and ask what it meant."

The latest version of the system relies on several elements to determine whether a rural area should be classified as primary or secondary land. They include:

+ Soils: Using a new system developed by OSU Professor Herb Huddleston, soils are classified as high, medium, or low productivity. With rare exceptions, high-level soils would automatically become primary lands. Medium- and low-quality soils might be eligible for secondary classification, depending on other factors.

+ Size: Pease will look at parcel sizes within given areas. Areas already broken up into small parcels (for instance 10 acres) will be considered for secondary farm designation. The minimum parcel sizes will vary according to whether the land is being used for farms, forestry or pasture land.

+ Conflicts: Even if it is otherwise suitable for secondary classification, a particular parcel might remain primary if development there would conflict with neighboring farm or forestry practices. In some cases leaving an underdeveloped buffer area might be enough to cancel out those conflicts.

+ History: Even if a parcel meets the size, soil and conflict tests, it would remain primary land if in recent years it had housed a ranch, farm or forest operation that grossed more than a certain dollar amount each year. Counties would use local review teams to help track a parcel's history.

Several issues remain to be debated, according to Ron Eber, the state's rural land specialist.

Once lands are designated secondary, what kind of development will be allowed? One proposal would give each secondary parcel the automatic right to one dwelling— and at the same time would remove dwellings rights from most primary farmlands.

Should the new rules be mandatory or optional? Local governments want a choice. Such groups as 1000 Friends of Oregon believe the rules will be useless unless they are put into effect statewide.

Should secondary land be identified all at once through county commission action, or should the rules apply case by case when property owners seek permission to develop their land?

Once the secondary land rules are in place, what new restrictions will be imposed on primary resource lands?

"As always when you're involved in planning and politics, there are a lot of loose ends," Eber said. "But I think we're working towards something that represents both a good planning trade-off and a good political trade-off."+

The Oregonian

Compromise may be possible in land-zoning debate

A property rights group is pushing for scrub lands to be designated "secondary" and thus available for development

Thursday March 18, 1999
By Robin Franzen of The Oregonian staff

Familiar battle lines were drawn Thursday in the recurring legislative debate about rezoning millions of acres of Oregon's protected farm and forest land for development. But private-property advocates pushing a pro-development bill opened the door for early compromise, saying they were willing to be flexible if the result was new statewide land-use maps distinguishing high quality lands from scrub lands.

By pressing forward with Senate Bill 99, Oregonians in Action, the nonprofit property rights group, intended to pick up the highly charged "secondary lands" discussion right where it dead-ended last session, with the death of a carbon-copy Senate bill on the House floor.

Farmers and other landowners on both sides of the fence lined up before the Senate Water and Land Use Committee to offer the same praise and criticism that has dogged the secondary lands concept for more than a dozen years.

Some studies show Oregon's land-use planning system has protected and prevented development of tens of thousands of acres of marginal farmland at the same time population growth is eating up buildable land inside cities.

"We are frustrated because we believe there is a huge amount of farmland that is miszoned," said Larry George, executive director of Oregonians in Action. "That forces growth onto land that is flat and well-drained, the prime farmland," he said.

However, Blair Batson, a lawyer for 1000 Friends of Oregon, referred to the bill as a "misguided missile," arguing that it would designate lands as secondary based on its sponsor's own, flawed criteria and do nothing to increase protections for prime farmland. She said laws passed in 1993 already give landowners the opportunity to build on lands that are truly nonproductive for farming.

"If folks want to live in a state where low-density rural residential development rolls on for hundreds of miles across productive ranches, timber and other agricultural operations, they can move east, and they can move south, without demanding that of Oregon," she argued.

As drafted, the bill would require the Oregon Department of Land Conservation and Development to mapproductive farmlands, which the bill defines as all prime farmland, land consisting predominantly of the top two soil classes, plus unique lands and all lands currently in crops. Critics say, by default, lands not mapped under the proposed criteria -- as many as 25 million acres statewide, including land suitable for wine grapes -- would be classified as secondary. The Oregon Winegrowers Association opposes the bill.

"One of our industry's appealing qualities is that we use hillsides with lower quality soils," the association argued in written testimony. Senate Bill 99 "paints with too broad a brush what constitutes secondary lands and thereby jeopardizes our ability to acquire and bring into cultivation new vineyard land to produce the grapes our expanding industry requires."

Committee chairman Sen. Veral Tarno, R-Coquille, doesn't expect the bill to go forward as drafted and said he would propose forming a compromise committee.

"It may come back in a changed form, or it may not come back at all," he said, acknowledging Gov. John Kitzhaber's strong concern about the proposal. "We may push a bill out of committee to the floor if we think we have the votes, but we'd like to amend it first."

The Oregon Farm Bureau supports the secondary lands concept but not the current proposal, which its lobbyist argued would designate all of Eastern Oregon's rangeland as "secondary," allowing residential development that could conflict with existing ranching operations.

The Oregonian

Farmland laws are sowing bitter debate

Preservation legislation from the 1970s keeps some landowners from building houses on "secondary lands," which might not be farmable anyway

Monday, October 19 1998
By Robin Franzen of The Oregonian staff

In 1986, Dean and Cindy McGregor bought two acres near a bend in the Willamette River for their dream house, a custom design with huge windows and lots of bedrooms. But when Cindy McGregor began to worry about her five children playing near the water, the Wilsonville couple put their building plans on hold and didn't get back to them for almost a decade.

Only by then, it was too late.

While the McGregors were busy raising their family, Oregon's farmland preservation rules constricted further, making it nearly impossible to build a house on their fertile bottom lands and cutting its $80,000 purchase value almost in half. Yet given the property's small size, its steep slope to the river and the surrounding mix of small parcels, rural homes and pricey estates, the idea that it could be farmed seemed far-fetched, too.

"I feel so stupid," Dean McGregor said on a recent visit to the wooded land he wants Clackamas County to rezone for development. "I'm in the real estate business, and I missed the opportunity to build."

In the past two decades of state-mandated land-use planning, Oregon has wrapped a quarter of the state, or roughly 16 million acres of land, into development-restricted farming preserves designed to protect the state's $3.6 billion farm industry. But as population growth has swollen cities out to their urban growth boundaries, for some the crux of the farmland preservation debate has become not so much whether we've zoned enough land, but whether we've zoned too much by incorporating poor-quality soils and small, potentially unfarmable parcels such as the McGregors'.

`It's a debate that Bill Sizemore, the Republican gubernatorial candidate, has seized upon in his race against Gov. John Kitzhaber, the Democratic incumbent and front-runner, and that studies suggest could involve tens of thousands of acres of marginal land statewide.

Even some defenders of Oregon's land-use system say that broad-brush zoning methods used by counties two decades ago resulted in marginal lands' receiving the same level of protection as the most productive farmland.

In some cases, counties rushing to meet state-imposed deadlines for submitting land-use plans "eyeballed" their farm zones, said Ron Eber, the state's rural lands specialist. In others, land was lumped into farm zones under pressure from landowners who wanted to keep automatic farm tax breaks. Or it was lumped in simply because detailed soil surveys that might have indicated poor or sloping soils weren't completed or didn't exist.

Commonly referred to as the debate about "secondary lands," this issue is the most agonizing, complex and politically divisive aspect of farmland preservation in Oregon. Its the place where philosophical and technical disagreements about what land should be developable and what shouldn't meet in a thorny, confusing tangle.

"The bottom line is, the highest and best use of one's property is a right that every owner should have available to them," Sizemore said. "I believe that if we don't adopt a secondary-lands policy in this state, within five years the people of Oregon will be willing to throw out our land-use laws because of the higher (housing) density forced upon their neighborhoods."

If he loses his bid for governor on Nov. 3, Sizemore said, he will use Oregon's initiative process to push for less restrictive, locally controlled land-use planning by repealing statewide planning mandates. He submitted a similar initiative earlier this year but withdrew it in July.

Kitzhaber said a secondary-lands program can give away too much. "It's easy to talk about, but it's not easy to do," said Kitzhaber, who favors strengthening existing land-use policies. Some methods "would have allowed development on land that now supports some of our best pinot."

Growth will intensify debate During the next two decades, the debate threatens to become even more contentious, as more than 500,000 people are expected to move to the Portland area. Almost a third will live in cities and rural areas outside Portlands already strained urban-growth boundary, according to projections by the regional government, Metro. That, in some minds, could mean opening more rural land for development through the adoption of secondary lands.

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The idea is simple: Filter out the tiny, sloping, rocky, nonproductive or largely developed farmlands from the truly valuable ones. Rezone those lands for housing or other uses so that lesser-quality and heavily subdivided or developed parcels are lumped together in ways that make sense and do not interfere with commercial farming.

It's one way Oregon could create an outlet for growth it knows is coming. In the view of some experts, its the missing piece that could add more fairness and refinement to an imperfect rural land-use system that's already survived three attempts to repeal it.

However, the reality of separating the better lands from lesser ones is exceedingly difficult. After nearly a dozen go-arounds in the Legislature, a grim stalemate exists between preservationists and pro-development interests. Preservationists, led by the land-use watchdog group 1000 Friends of Oregon, scorn the secondary-lands concept as giving away precious resource lands and potentially ripping huge holes in the state's protective blanket of farm zoning.

Development interests, led by the private-property rights group Oregonians in Action, argue that the McGregors and other such Oregonians have essentially had their land's buildable value taken away unconstitutionally and that, left unaddressed, secondary lands could be the loose stitch that unravels Oregons land-use planning system. Of all the private rural land in Oregon, they note, 97 percent is under restrictive farm or forest zoning.

Meanwhile, basic disagreement about whether the criteria for secondary lands should be limited to soil type or extended to slope, parcelization and other tests, keeps officials from even generally estimating how many marginal acres there are lying in wide swaths or tucked away in pockets, surrounded by better soils. They only suspect that dry, rocky Eastern Oregon would have the greatest numbers of acres, while the fertile but populous Willamette Valley would have fewer but more hotly contested parcels.

"It's a Pandoras box, and we need to be real careful," said Eber, the Department of Land Conservation and Development's foremost expert on secondary lands. "Once you've called something secondary, it's never going to get protected again."

No compromise in sight

Current rules would require the McGregors to earn $80,000 in gross farm income annually in order to build a house on their land, a virtual impossibility given the parcels small size. Not even Eber, a farmland preservation enthusiast, thinks the McGregors' desire to build is unreasonable.

Whether the McGregors' lush but tiny piece of ground in Clackamas Countys Peach Cove neighborhood could ever be designated secondary land, however, is a moot point for now. Oregon does not have a secondary lands program. Nor has the state been able to devise a model for identifying and quantifying secondary lands that hasn't fallen short in somebody's eyes.

"We felt it threw in too much agricultural land," said Clackamas County's planning director, Doug McClain, of one 1990 study that pinpointed about 900 acres o secondary croplands there. "We had a potential loss of productive lands."

The 1993 Legislature repealed an unpopular and short-lived program allowing limited development of small-scale farm parcels. In its place, it put a new concept called "lot of record." Still in effect and not the least bit helpful to the McGregors, this law gives landowners who purchased their property before 1985 a "grandfathered" right to build a house on their land.

Private-property rights advocates didn't like the new law any better and continued to push for full-fledged secondary lands in the 1997 Legislature. Their bill asking for $800,000 for mapping of secondary lands, based on their own criteria, died on the House floor under the threat of a Kitzhaber veto.

The issue will undoubtedly rise again in 1999, a prospect that makes some observers applaud and others roll their eyes at another colossal waste of time and land.

James Pease, professor emeritus of resource geography at Oregon State University, thinks that there is a useful place for secondary lands within the existing statewide land-use planning program.

"We have erred somewhat on the side of preservation by taking a broad-brush approach. If you are standing from a distance looking at the Oregon program, yes, we are way ahead of everybody else," he said. "But if you get up beside it, there are still some inequities and conceptual and technical problems that could be improved."

For now, the McGregors' only option is to try to rezone their property for rural-residential use under a waiver to Oregon's agricultural protection statutes. So far, they haven't taken that route, mainly, Dean McGregor said, because the county told them the fight could cost thousands, and they could still lose if they can't prove that there is a need for more housing in the area and that more houses would not hurt farming.

It's a high hurdle, one that a Clackamas County planner, Mike McCallister, doubts the McGregors' proposal could clear.

"That whole area is great farmland," McCallister said, referring to Peach Cove, which 20 years ago was dotted with small specialty-crop farms. "I can't imagine our county commissioners being in favor of it or our county

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staff supporting such a recommendation." A broad blanket of protection Oregonians in Action thinks the intent of the 1973 Legislature was to protect only prime farmland, 1.9 million acres representing the best of the best. Sizemore also favors that approach. However, lawmakers did not limit the protection to prime farmland. Rather, they put heavy security around "a maximum amount of the limited supply of agricultural land," a policy that eventually restricted development on 16 million acres of land statewide.

In the Willamette Valley, soils ranking in the top four of eight distinct quality classes get protection; in the arid, cattle-grazing lands of Eastern Oregon, its the top six.

Lawmakers went a step further by putting development restrictions on other lands needed to buffer agriculture.

Yet state officials think the number of landowners caught in a McGregor-style land-use noose is comparatively small, although they have no statistics to back up tha point. Even without a secondary-lands policy, they say, many of these situations could be remedied if counties would only seek agricultural protection waivers, or exceptions, more often than they do. To date, the state has approved about 800,000 acres as exceptions areas, most of them zoned for rural-residential uses.

Oregonians in Action, however, thinks the McGregors' predicament is common. The solution, according to Larry George, the group's executive director, is setting aside more land for rural-residential development instead of "beating up on the little guy who has 40 acres and wants to build a house."

Under current rules, there is one additional way of potentially building a house on farmland --as a nonfarm dwelling. This type of house is allowed if landowners can show that their parcels consist predominantly of soils on the bottom four rungs of the federal soils scale and that the house will not impinge on farming.

This option is a tough climb, too, as the state intended it to be.

The McGregors don't have a prayer. Their land is second-tier quality. Even if their soils weren't top-flight, the federal soil survey commonly used by counties to determine a parcels soils makeup could hamper their application. If it showed the soils were too fertile to build on, and the McGregors disagreed, the thousands of dollars it would cost to challenge the survey would fall squarely on them. And that's despite the fact that the survey has a scale that even its producer, the Natural Resources Conservation Service, says is too broad to be used in house-siting decisions.

Conservationists think that despite its limitations, the soil survey should be the final determinant in such matters. Allowing landowners to challenge the survey by paying for independent soils analyses carries the potential for abuse by consultants willing to skew findings to get a house for their clients, they say, even though the state requires the use of state-sanctioned soils scientists in some circumstances.

"The demand for rural housing is so high and the land base is so limited, (the rules) will be pushed to the max," said Blair Batson, a lawyer for 1000 Friends, which opposes new nonfarm dwellings in the Willamette Valley. One example: a real estate agent who, though untrained in soil science, conducted soil tests on behalf of his client in Wasco County.

1000 Friends also opposes efforts to extend the soil-survey appeals process to other types of farmland-related development. Currently, appeals of the survey are not allowed in any types of cases, including cases in which a survey classification of high-value soils affects a landowners ability to build a farmhouse. "We think it was an idiotic change in the law that started ooking site by site at soil classifications," Batson said. "It defeats the purpose of preserving large blocks of land."

Secondary-lands supporters think that in addition to increased fairness, a secondary-lands program could cut through some of that red tape by clarifying ahead of time where development can occur. In the meantime, however, the debate festers.

In the orchard lands of Jackson County, Ron Meyer, a third-generation pear grower, would like to develop part of his land with "mini-farms" and houses needed in the booming outskirts of Medford. Instead, he will retire before long, rip out his trees and let his land lie fallow, just like the McGregors.

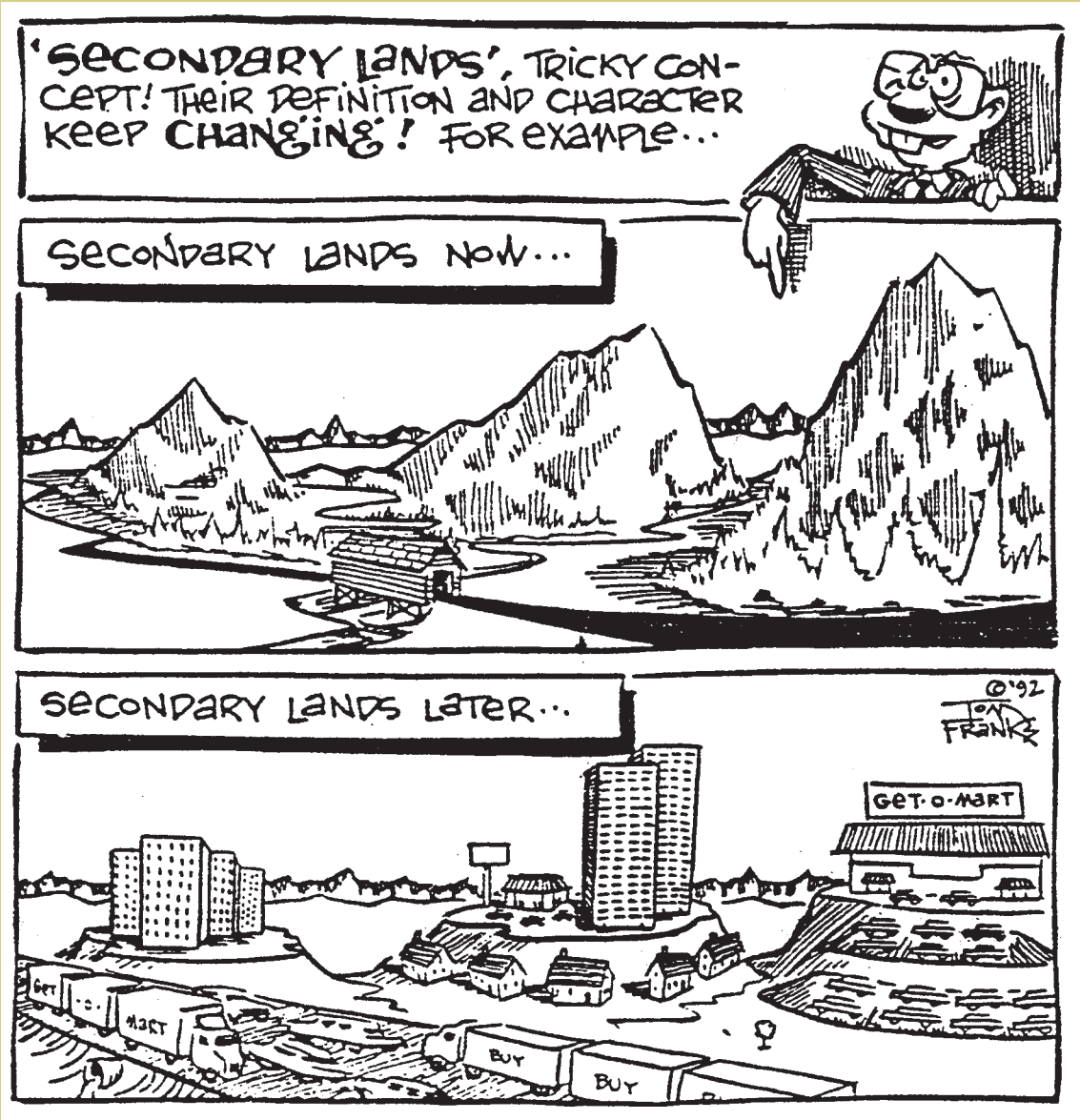
His land is zoned exclusively for farm use, and the state considers it unique because of its ability to bear fruit. After years of falling prices and a glutted pear market, however, Meyer says getting out of farming is his only real choice, although a few of the big, niche-market growers are surviving, even expanding, by buying smaller failed operations.

"The return on pears doesn't justify continuing, but the state says I have to farm," Meyer said. "By losing our property rights, we don't have the ability to use our land assets the way we want."

A 1990 secondary-lands study in Jackson County showed as much as 10 percent of the tested acreage would potentially qualify as marginal. While it's unclear if Meyer's parcel would, he clearly thinks it should. The state takes a longer view. Officials say that while markets fluctuate, society will always need productive land.

In the future, Meyer's land might be profitable for farming once again. Already there are signs of an industry on the rebound. But that doesn't help Meyer make money now, he said. "It's not a pretty sight down here. A lot of people's retirement was locked up in the land."

Albany ***Democrat Herald***, November 7, 1992



Recent Legislative Activity

Oregon
John A. Kitzhaber, M.D., Governor

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635 Capitol St. NE, Suite 200
Salem, Oregon 97301-2540
Phone (503) 373-0050
Director's Fax (503) 378-5518
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February 18, 1999

TO: The Honorable Veral Tarno
Chair, Senate Water and Land Use Committee

FROM: Richard Benner, Director
Department of Land Conservation and Development

RE: Senate Bill 99

The department has serious concerns about the need for and cost of preparing maps of "secondary lands" as defined by Senate Bill 99. The bill would require the department to have a private contractor prepare an inventory of "secondary lands" and a map for each county in Oregon. We have three basic problems with this bill:

1. The proposed inventory criteria will mis-identify commercial farm and forest lands as secondary lands;

2. The costs of the inventory will be high; and

3. The mapping is not needed because current land use laws include extensive provisions for identifying less productive or impacted lands for rural residential development.

Inappropriate Inventory Criteria

The proposed inventory criteria will inappropriately define a large amount of productive commercial farm and forest land as "secondary land." These proposed criteria for defining "secondary lands" ignore the productive capabilities of many of Oregon's rural resource lands. In so doing, they would open up large areas of the Oregon countryside to development that would potentially conflict with existing commercial farm and forest operations. Both the Oregon Departments of Agriculture and Forestry will address their respective problems with the proposed mapping criteria.

Costly Mapping

Senate Bill 99 will require the creation of a data base limited to the preparation of 36 county-wide maps of "secondary lands" based on just one definition of what these lands might be. The cost of assembling the data base and preparing these maps will be $2.5 to 5 million dollars. However, the data base to do this will not be flexible enough to allow testing alternative criteria or to remap all or part of any county. Previous experience with tests of other mapping criteria have shown us that you will end up with a set of maps that will not work uniformly in all regions of the state. As we have already pointed out, the proposed mapping criteria will mis-identify commercial resource lands as "secondary," and ensure the need to redo the maps at additional expense. Thus, you will not have the information or data base you need to evaluate the current designations of rural farm and forest lands.

Oregon's Land Use Laws Already Provide for Rural Residential Development

Current land use laws provide a variety of ways to identify lands, commonly called secondary lands, for rural residential nonfarm development. These include exceptions under ORS 215.732; lot-of-record dwellings under ORS 215.705; nonfarm dwellings under ORS 215.284; forest lot-of-record and template dwellings under ORS 215.720 and 215.750; and the designation of "non-resource land" that does not qualify as agricultural or forest land under statewide goals 3 or 4. These provisions include standards that recognize the varied development patterns and the distinct regional differences in the productivity of the resource lands around the state.

The 1993 Legislature in HB 3661 chose to use these methods to allow rural residential dwelling opportunities instead of an expensive and controversial statewide inventory and rezoning of the 25 million acres of rural farm and forest lands in Oregon.
Each of these methods provides rural residential opportunities, while at the same time other aspects of the land use program protect the high-value and other important resource lands that are critical to Oregon's farm and forest economies.

Exceptions

About 750,000 acres have been designated for rural residential development under the existing exception standards. Since 1989, an average of 350 acres per year have been redesignated from EFU to other nonfarm uses through exceptions.

Lot-of-Record and Nonfarm Dwellings

As a result of Legislative action, lot-of-record dwellings have been allowed on non high-value farmland since 1993 to certain longstanding owners. Since that time, over 440 new dwellings have been approved.

The opportunity for siting a nonfarm dwelling on a parcel or portion of a parcel "generally unsuitable for the production of farm crops or livestock" has been allowed since 1973 under ORS 215.284. These are the most common type of dwellings approved in an EFU zone. Such approvals may be based on "terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of tract." This process has provided for thousands of new dwellings in EFU zones since 1973. In the last reporting period (1996-97), 348 new dwellings were approved. Since 1993, a total of 1439 new dwellings have been approved (See Table 1, attached). These dwellings cannot be approved without first determining that the dwelling will not significantly increase the cost of or interfere with nearby farm practices or forest practices or upset the stability of the land use pattern in the area. The parcel or portion of a parcel cannot be considered unsuitable if it can be reasonably put to farm or forest use in conjunction with other land.

Forest Lot-of-Record and Template Dwellings

These provisions allow for dwellings on small parcels of nonproductive forest land or those forested parcels already impacted by nearby development. Since 1994, 1,096 template dwellings and 206 forest lot-of-record dwellings have been approved on forest lands (See Table 2, attached).

Non Resource Lands

Finally, at least 43,700 acres have been determined to be "non resource lands" because they are not agricultural or forest lands as defined by the statewide goals. These non resource lands are primarily in Klamath, Douglas, Lane and Clatsop counties. An additional 7,000 acres have just been designated by Crook County.

Summary

Senate Bill 99 uses inappropriate criteria to identify commercial farm and forest lands as secondary lands, . There is no need for an expensive, one-time statewide inventory and mapping of the 25 million acres of rural farm and forest lands in Oregon. Current land use laws include adequate provisions for the identification of less productive or impacted lands for rural residential development while also protecting the high-value and other important resource lands that are critical to Oregon's farm and forest economies.

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

Senate Bill 99

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Natural Resources Committee)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Establishes criteria and procedures for identifying secondary lands.

Directs Department of Land Conservation and Development to initiate inventory of secondary lands. Specifies that department must contract with private party to conduct inventory.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to land use; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1)(a) The Department of Land Conservation and Development shall cause to be conducted an inventory of secondary lands in this state. The inventory shall include a map of each county, showing the location of secondary land in the county. The inventory need not include detailed findings of fact, but shall set forth in summary the conclusions supporting identification of secondary lands.

(b) According to the applicable provisions of ORS 279.005 to 279.111, the department shall contract with a private entity to conduct the inventory described in this subsection. Prior to selecting a contractor under this subsection, the department shall present all bids received from prospective contractors to the Emergency Board for review by the board. The presentation shall include a summary of each bid and any recommendations regarding selection.

(2) Secondary land is land:

(a) Outside an urban growth boundary;

(b) That is not commercial cropland or commercial forestland as described in this section;

(c) For which an exception has not been approved pursuant to ORS 197.732; and

(d) That is not federal land.

(3) Commercial cropland is land:

(a) That is predominantly composed of soils that are classified prime, unique, Class I or Class II;

(b) That:

(A) In 1996, 1997 or 1998 was employed in farm use as defined in ORS 215.203, except ORS 215.203 (2)(b)(E), for the production of crops for market or research purposes, other than nonirrigated pasture or nonirrigated grass hay; and

(B) On the effective date of this 1999 Act, is listed by the United States Department of Agriculture in the soil database for each county as capable of producing at least 75 percent

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

LC 2069

of the average per acre production of any one of three leading crops, in acres, in the county in 1998 as set forth in the County Agricultural Statistics Report of the Oregon State University Extension Service;

(c) In Tillamook County that in 1996, 1997 or 1998 was used as irrigated pasture for livestock production or as nonirrigated pasture for livestock production or dairy operations;

(d) Not used in the production of commercial crops because it is in a farm-related government program, such as an annual commodity acreage adjustment program, a conservation reserve program or any other federal conservation program; or

(e) That, in 1996, 1997 or 1998 was predominantly employed in growing grapes, cranberries or Christmas trees.

(4) Crops grown on commercial cropland include but are not limited to field, seed or nursery crops, aquaculture, berries, fruit, Christmas trees, nuts, vegetables, specialty crops, grapes or mechanically harvested forage crops other than nonirrigated grass hay. Crops grown on commercial cropland also include specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(5) Commercial forestland is land that:

(a)(A) Is used predominantly for growing commercial tree species recognized under rules adopted under ORS 527.715; or

(B) If harvested after January 1, 1985, would be restocked either with commercial tree species or be subject to reforestation requirements; and

(b) Is larger than 20 acres and:

(A) Contains predominant forest soils productivity of more than:

(i) Eighty-five cubic feet per acre per year in western Oregon, except in Josephine and Jackson Counties;

(ii) Fifty cubic feet per acre per year in Josephine and Jackson Counties; or

(iii) Thirty cubic feet per acre per year in eastern Oregon; and

(B) Is capable of producing at least the following amounts of wood fiber per year that are permissible to harvest under ORS 527.610 to 527.770:

(i) Five thousand cubic feet in western Oregon; or

(ii) Four thousand cubic feet in eastern Oregon.

(6) In areas that are predominantly commercial cropland or commercial forestland, secondary lands shall be identified only in blocks larger than 80 acres. An 80-acre block may include land identified as an exception area under ORS 197.732 (1)(a) and (b) or land within an urban growth boundary. However, the exception area or land within an urban growth boundary included as part of the 80-acre block shall not be identified as secondary land.

(7) For purposes of this section, soil classifications and soil databases refer to data in use on the effective date of this 1999 Act by the United States Department of Agriculture based on determinations under the department's Agricultural Capability Classification System.

SECTION 2. Section 1 of this 1999 Act is added to and made a part of ORS chapter 215.

SECTION 3. This 1999 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 1999 Act takes effect on its passage.

FISCAL IMPACT STATEMENT FORM

MEASURE # SB 99

Please indicate the fiscal status of the measure, complete the form, and return one copy each to the Legislative Fiscal Office (LFO) and the Budget and Management Division (BAM). Please send supporting worksheets to the Legislative Fiscal Office.

XX Fiscal: analysis given below. If unable to estimate costs or revenue, explain fully under "Comments" below.

No fiscal impact to the agency or state and local governments.

Effect on Expenditures (By Fund):	1999 - 2001	2001 - 2003
PERSONAL SERVICES (fund)	$SEE ATTACHED.	
OPE @ 37% (fund)		
TOTAL PERSONAL SERVICES		
SERVICES & SUPPLIES (fund)		
TOTAL SERVICE & SUPPLY		
GRAND TOTALS		

Effect on Revenue (By Fund):	1999 - 2001	2001 - 2003
	$SEE ATTACHED.	

Positions/FTE:

Governor's Budget: Is the proposal anticipated in the Governor's Recommended Budget?
Yes XX No

Ballot Measure 30: Does the proposal have any effect on cities, counties, or special districts?
Yes XX No

Comments: (Include assumptions for cost or revenue per unit and number of units, if applicable.)
SEE ATTACHED COMMENTS.

PRELIMINARY ESTIMATES ARE BASED ON INFORMATION FROM STATEWIDE GIS CENTER. DEGREE OF COST VARIES WITH EACH COUNTY'S IDENTIFICATION AND LEVEL OF INFORMATION OF SECONDARY LANDS ACCORDING TO THE LANGUAGE IN SB99.

Agency: #66000 DLCD
Date: 2/2/99
Phone: (503) 373-0050 x 227

Prepared by: Caren Ann Cianciabella
Title: Administrative Services Manager
Fax: (503) 378-6033

SB 99 FISCAL IMPACT SUPPORTING INFORMATION:

	LOW	HIGH
SECONDARY LANDS INVENTORY BY COUNTY		
PHASE 1 = DEVELOP STATEWIDE SECONDARY LANDS INVENTORY LISTING (WHERE AND WHAT)	$ 35,000 -	35,000
PHASE 2 = INVENTORY EACH COUNTY ($10,000-20,000 X 36 COUNTIES)	360,000 -	720,000
PHASE 3 = INVESTIGATION AND/OR GROUND SURVEY OR SAMPLING OF EACH COUNTY ($20,000-40,000 X 36 COUNTIES)	720,000 -	1,440,000
PHASE 4 = CREATE STATEWIDE MAP INVENTORY BY COUNTY ON DIGITIZED FORMAT (GIS) ($40,000-80,000 X 36 COUNTIES)	1,440,000 -	2,880,000
TOTALS	$2,555,000 -	5,075,000

THIS ONLY PRODUCES THE INVENTORY. FURTHER WORK ON ADJUSTMENTS OF CRITERIA, QUICK RETESTING AND DEVELOPMENT OF VARIOUS SCENARIOS (SUCH AS THE NUMBER OF POSSIBLE LOTS AND DWELLINGS THAT COULD BE EXPECTED UNDER ALTERNATIVE DEVELOPMENT STANDARDS) WOULD REQUIRE ADDITIONAL FUNDING.

THE FISCAL IMPACT FOR DLCD TO MAINTAIN AND ADJUST THE DATA WOULD BE $192,313 (GENERAL FUND) FOR 1 FTE AND EQUIPMENT.