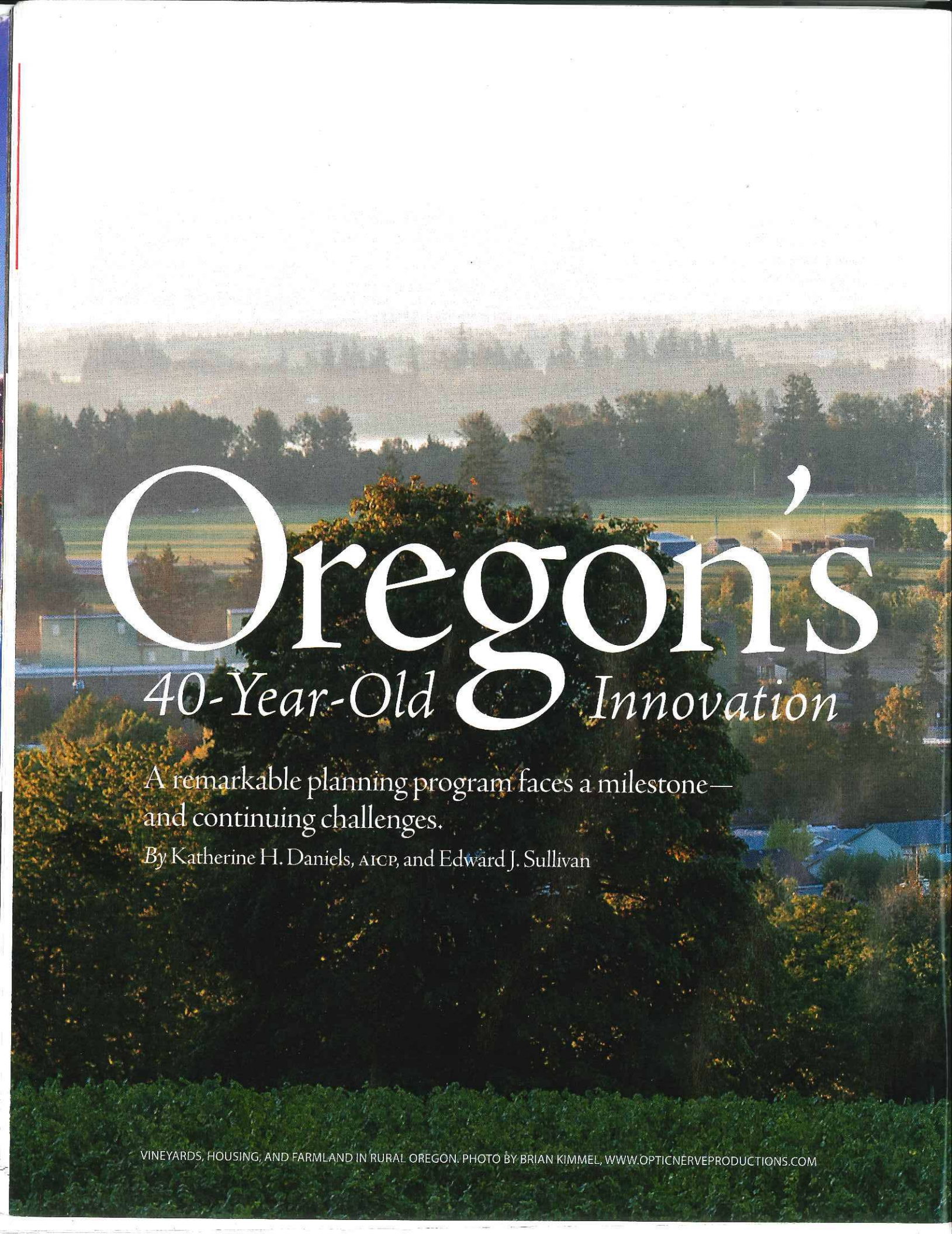


Oregon's 40-Year-Old Innovation

A remarkable planning program faces a milestone—and continuing challenges.

By Katherine H. Daniels, AICP, and Edward J. Sullivan

VINEYARDS, HOUSING, AND FARMLAND IN RURAL OREGON. PHOTO BY BRIAN KIMMEL, WWW.OPTICNERVEPRODUCTIONS.COM

AS OREGON APPROACHES THE 40TH ANNIVERsary of Senate Bill 100 and the creation of what has long been recognized as the nation's foremost statewide land-use planning program, that program continues to be tested. The most recent challenge comes from the city of Damascus, which is located within the Portland metropolitan urban growth boundary and has resisted urbanizing land within its city limits, effectively daring state and regional governments to come after it.

Incorporated in 2004 to maintain local control over growth, the city could be disincorporated if local residents and officials choose to take that path.

Yet, despite this and other program problems, challenges, and critics, Oregon's land-use planning program has been remarkably effective. There is no doubt that the state would look very different today without Senate Bill 100 and the four decades of planning it produced.

What's so special here?

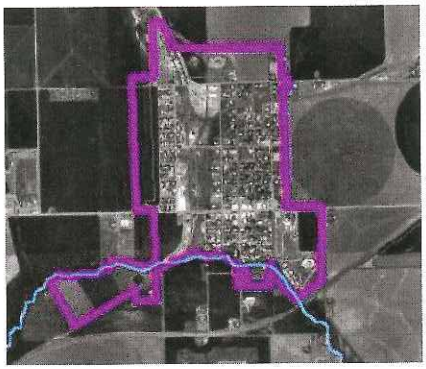
As in many other parts of the country, Oregon communities proactively plan for development by directing growth into urban areas where public services can be efficiently provided. What's unique about Oregon is the belief that it is equally important to plan for rural areas.

The state's 36 counties plan for their working farms and forests by extending protection against land divisions and development through the application of restrictive farm and forest zoning. In Oregon, working rural landscapes are not the "leftovers" of urban planning; instead, urban and rural planning are two sides of the same coin of effective growth management and economic well-being.

Planning for the rural landscape has yielded unexpected benefits over the years. Farm and forest zoning has helped revitalize many of Oregon's cities by forcing most development into urban growth boundaries. Farm zoning has supported a bounty of new vineyards, world-class wineries, and agritourism, all providing new streams of income for farmers.

The rate of loss of mid-sized to large Oregon farms between 1987 and 2007 was less than one-sixth the national rate, according to the U.S. Census of Agriculture, even though the state's population grew by 83 percent between 1970 and 2010 (from 2.1 million to 3.8 million).

In addition, large open land areas uncluttered with housing have helped make Oregon a leader in alternative wind energy production. Forest zoning has supported the development of a healthy tourism and outdoor recreation industry while reducing the threat of and losses from forest fires that plague other parts of the country where rural residences are on the rise.



McCall photo and map courtesy LCDC

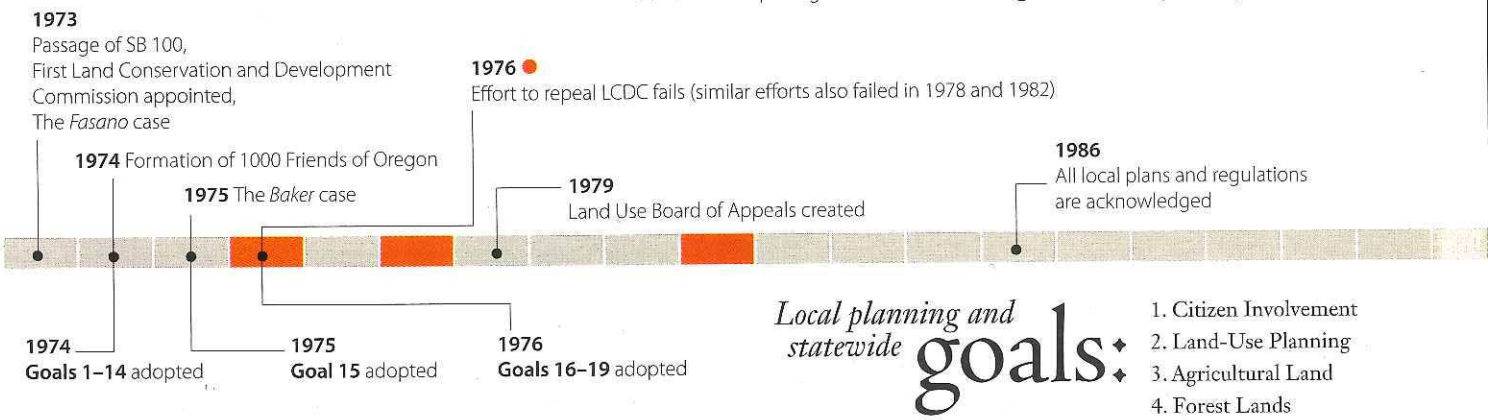
Even without the line on the map, the location of this urban growth boundary is obvious.

Oregon's Senate Bill 100

"There is a shameless threat to our environment and to the whole quality of life — unfettered despoiling of the land. Sagebrush subdivisions, coastal 'condomania,' and the ravenous rampage of suburbia in the Willamette Valley all threaten to mock Oregon's status as the environmental model for the nation. We are dismayed that we have not stopped misuse of the land, our most valuable finite natural resource.

We are in dire need of a state land-use policy, new subdivision laws, and new standards for planning and zoning by cities and counties. The interests of Oregon for today and in the future must be protected from grasping wastrels of the land. We must respect another truism: That unlimited and unregulated growth leads inexorably to a lowered quality of life."

Gov. McCall's opening address to the 1973 Legislative Assembly, January 8, 1973



Local planning and statewide goals:

1. Citizen Involvement
2. Land-Use Planning
3. Agricultural Land
4. Forest Lands

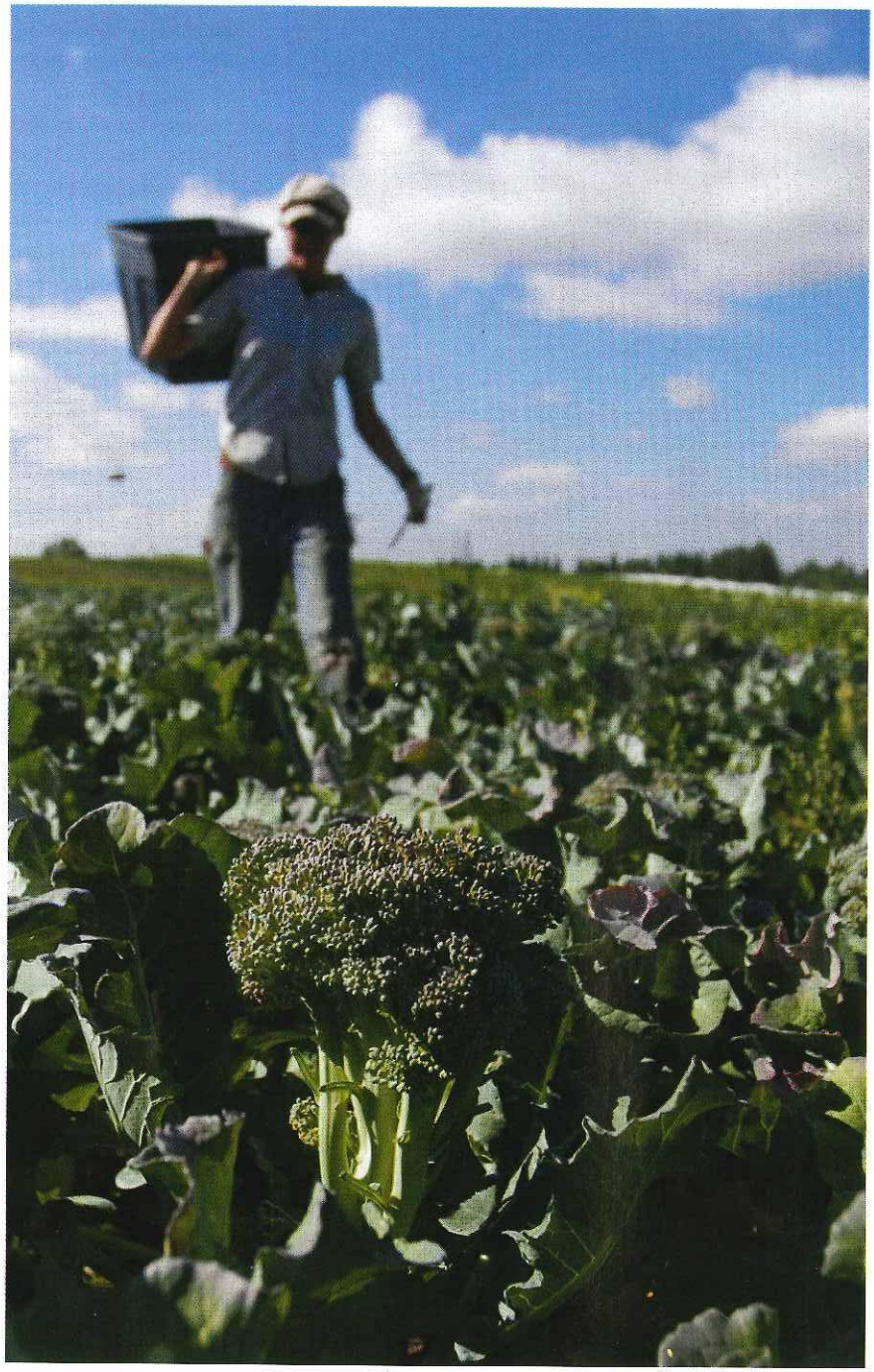


Photo by Brian Kimmel, www.opticnerveproductions.com; timeline Joan Cairney APA

An unexpected benefit of Oregon's legacy planning law has been an increase in agritourism.

A good start

The mid-1970s were full of optimism. Environmentalism, Watergate, and government in the sunshine were all popular themes. The prospects for the Oregon land-use program were no different. Preservation of resource lands and compact, nonauto-oriented growth were all the rage. The clarion call came from a popular Oregon governor, Tom McCall, who decried "sagebrush subdivisions" and "coastal condomania" and called for a state land-use program to provide state policy direction while retaining local planning and land-use regulation.

That program resulted from SB 100, passed in May 1973 and signed into law by Gov. McCall. Among its leading advocates were farmers, environmentalists, some local governments, and good government types. Coalitions supporting (as well as opposing) state land-use planning, and particular planning programs as well, have varied over the 40 years of the program.

In 1974 the Land Conservation and Development Commission, with the assistance of its staff in the Department of Land Conservation and Development, commenced an ambitious program to develop statewide policies, called "goals," that would bind state and local governments. These goals, and their implementing administrative rules (both authorized by statute), provided the legal basis for requiring local plans and regulations to meet state policy. Among those policies were two providing for a transparent planning process; three providing for the conservation of farms, forests, and other resources; and five addressing urbanization.

The heart of the state's planning program was the local comprehensive plan. That plan, when "acknowledged" (i.e., certified by LCDC to be in compliance with the goals), bound state and local governments in their regulations and actions, a unique

2004–07
Oregon Supreme Court overturns Measure 7. Passage of measures 37 and 49 regarding "just compensation" for land-use regulations

2000
Passage of Measure 7 mandating government compensation to landowners for reducing property values

2005–08
"Big Look" (review of state land-use program)

5. Open Spaces, Scenic and Historic Areas, and Natural Resources
6. Air, Water, and Land Resources Quality
7. Areas Subject to Natural Disaster and Hazards
8. Recreational Needs
9. Economy of the State
10. Housing
11. Public Facilities and Services
12. Transportation
13. Energy Conservation
14. Urbanization
15. Willamette River Greenway
16. Estuarine Resources
17. Coastal Shorelands
18. Beaches and Dunes
19. Ocean Resources

Windsurfing on the Columbia River near Hood River, Oregon.

concept in the U.S.

The Oregon Supreme Court's decisions in *Fasano* (1973) and *Baker* (1975) held that the local comprehensive plan governed land-use regulations and actions (as SB 100 would also provide) and that small-tract zone changes are quasi-judicial, so that basic rules of fairness apply. Later adjustments to the program dealt with change by requiring periodic review of local plans and regulations and post-acknowledgment plan amendments, known as PAPAs, so that changes to plans and land-use regulations are reviewed against the goals.

Oregon's land-use program evolved in providing for separate rural and urban policies. In rural areas outside urban growth boundaries, the state adopted strong measures for the protection of farm and forest lands, identified according to soils and other criteria. The program also recognized existing lands already committed to or developed for nonresource-related development.

Inside urban growth boundaries, local governments were required to plan for residential, commercial, and industrial land needs for a 20-year period and to justify those projected needs. Moreover, infrastructure to support those urban uses must be part of local plans and regulations. The biggest bone of contention was the establishment and change of urban growth boundaries, which came to have a significant effect on the value of real property inside versus outside the boundary.

In those heady early days, there were state funds for grants to local governments to undertake planning and develop land-use regulations, and by 1986, every city and county in the state had acknowledged comprehensive plans and regulations that realized the goals "on the ground."

The program enjoyed broad early support: Owners of working farms and forests liked the protections of their lands, home builders liked the requirement that local governments provide sufficient buildable land zoned for housing for all income groups, and conservation groups (such as the newly founded land-use watchdog group, 1000 Friends of Oregon) liked the process for realizing state policy through administrative review and, if necessary, litigation to enforce those policies.

The final addition to the program was the Land Use Board of Appeals, a specialized agency to deal with most legal land-use disputes involving local governments and the land-use program. LUBA has strict timelines for case resolution and significant precedential effect, and it earns respect from the appellate courts that review appeals of LUBA decisions.

Course corrections

Not every Oregonian has been a fan of the program. The city of Damascus is simply unwilling to grow. Damascus has refused to accept the idea of urban densities, requires all plans be put to a popular vote, and is considering disincorporation or requesting that portions of the city be removed from the UGB.

However, resistance to the program is nothing new. Many rural landowners and property rights advocates have lobbied for the repeal of or major changes to the program from the beginning. For the first 20 years, county governing bodies would often approve rural homes on resource lands. Opponents and advocates succeeded in making adjustments to the program in nearly every legislative session and through LCDC rule making.

Some adjustments respond to litigation and case law, resulting in greater specificity in statutory and rule definitions and criteria. While frustrating to those who want a simpler process, increasing program complexity is largely the result of a heavily adjudicated program and the continuing efforts of some to find paths that would permit more development on resource land than the law allows.

Other adjustments have increased the effectiveness of the program in protecting working farm and forest landscapes by requiring clear and measurable review criteria. In some legislative sessions, efforts at increased effectiveness and greater fairness have been combined as a set of trade-offs. For example, a statutory minimum lot standard of 80 acres was adopted for most farm and forest land divisions, while special allowance was made for smaller minimums in some farm areas, as well as an allowance for "lot of record" dwellings and family health-hardship dwellings.

These are in addition to provisions for farm operator and farm help dwellings, nonfarm dwellings on unproductive soils, and nearly 50 other allowed uses. Further, the legislature recognized regional differences in soil productivity by creating stricter review criteria on high-value farmland, and by relaxing review criteria in parts of the state with lower resource value.

Even so, program opponents looking for more than incremental adjustments wanted to see wholesale changes. By 2003—30 years

Photo by Basil Childers/*New York Times*

into the statewide planning program—there had been no statewide evaluation or broad look at the program, its effectiveness, and its impacts. Forces were at work on a shake-up.

A wake-up call

Program opponents were stymied. They could not win on a vote to repeal or eviscerate the program. They could not pass legislation over a gubernatorial veto. They could not control the adoption of administrative rules detailing implementation of the goals. Instead, in 2000 they turned to an indirect attack at the ballot box with Measure 7, a state constitutional amendment requiring governments to reimburse landowners when regulations reduce property values. Measure 7 passed, but the Oregon Supreme Court overturned it in 2004, saying it violated the state constitution on technical grounds. Then came Measure 37, asking voters either to "make government pay just compensation" for alleged reductions in land values attributable to land-use regulations that were enacted after land was acquired, or to roll back zoning regulations to those in effect at the time land was acquired.

That general proposition struck a responsive chord with voters, who were influenced by an ad campaign offering an incomplete story of Dorothy English, an elderly woman who owned land just outside Portland and who could not divide and give portions of her land to her children. But the result of Measure 37 was chaos for state agencies and local governments. Anyone could make a claim. There was no requirement to document the extent of losses or provide basic property information.

As local governments could not afford to pay compensation, the result was several thousand claims for "loss of value." To remedy this, in 2007 the legislature successfully referred Measure 49 to the voters, terminating Measure 37 claims but still providing substantial relief to claimants, mostly in the form of an allowance for up to three additional housing units per claim. The crisis was averted, at least temporarily.

The land-use program had not been reviewed since its inception and the call went out to undertake that review. After the passage of Measure 37, that review was finally authorized by the legislature in its appointment of a "Big Look" task force (2005–2008). However, this effort was doomed from the start because the committee had little communication with DLCD. The resulting analysis was incomplete, poorly informed, and uninspired, and the legislature ultimately changed very little of the program.

Responding to new needs

The "Big Look" aside, LCDC and DLCD have in recent years placed growing emphasis on community outreach and assistance and less stress on the agency's traditional regulatory role, seen as a part of the natural evolution of a program that has moved from an active role in implementing the statewide planning goals to an administrative, oversight phase and "helper" role.

While legitimate criticism has been levied at perceived program rigidity, in the last few years DLCD has introduced several new initiatives intended to produce new planning tools and approaches, respond thoughtfully to new types of development,

Photo by Leah Nash/*New York Times*

The state is a leader in wind energy production, thanks to the availability of open land.

Is Oregon Relevant to Other States?

Each state has its own history, cultural and political traditions, and character. No land-use system is completely transferrable. Still, the Oregon system has some elements worth copying:

THE REQUIREMENT OF A DETAILED, BINDING LOCAL PLAN. As planning nears its second century in the U.S, it is amazing that most states still focus almost exclusively on zoning.

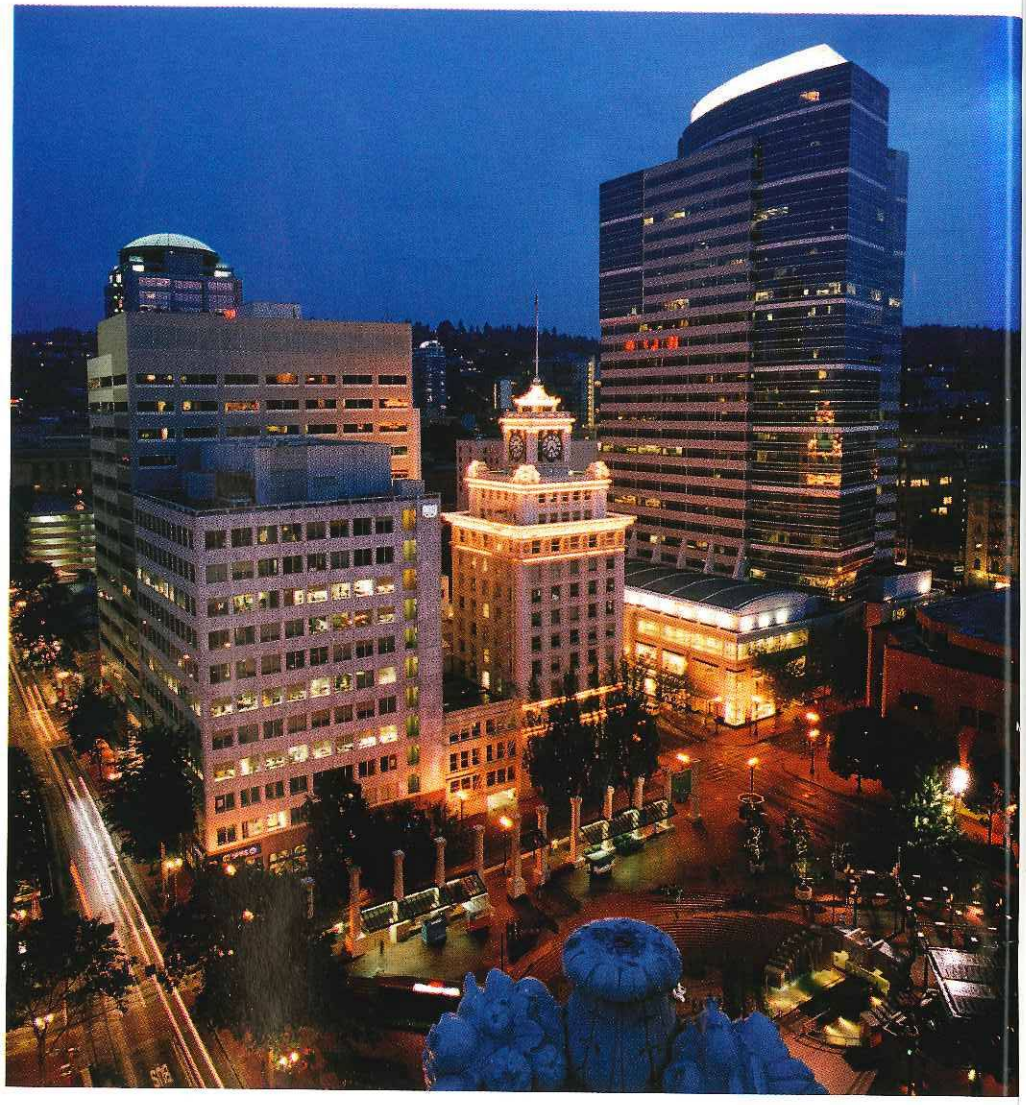
STATE PARTICIPATION IN LAND-USE POLICY. Oregon's LCDC sets and implements state land-use policy.

A STATE PLANNING AGENCY WITH TEETH. LCDC sets policy and examines local plans for compliance with those policies, with available enforcement options, if needed.

AN URBAN-RURAL POLICY. Rural lands are available for resource uses and occasional sparse settlements. Urban lands are the focus for development and use of infrastructure funds.

EXPECTATIONS OF FAIR LOCAL PROCEDURES. Oregon has uniform standards for the timing and content of notice for local decisions, procedural requirements for those decisions, and a structure for appeals.

THE LAND USE BOARD OF APPEALS IS AN ADMINISTRATIVE AGENCY THAT FUNCTIONS LIKE AN APPELLATE COURT AND HEARS ALMOST ALL LAND-USE CASES, SUBJECT TO APPELLATE REVIEW. LUBA has clear standards for its review (jurisdiction, constitutionality, substantial errors in procedure, interpretation, and substantial evidence). That process works.



The Oregon law focuses growth in the urban realm, like downtown Portland.

Photo by Susan Seubert; www.sseubert.com

improve access to data, and reduce red tape. Some examples:

NEW TOOLS. In 2009 and 2011, DLCD sponsored enabling legislation to allow and promote intermunicipal transfer of development rights programs.

ALTERNATIVE ENERGY. In 2009 and 2011, DLCD adopted rules to facilitate commercial wind and solar energy siting, guiding these uses onto less productive land.

DATA MANAGEMENT UPDATE. In 2011, DLCD adopted a five-year plan and obtained staffing to overhaul and update the department's data organization and collection systems and to improve local and citizen access to planning information.

STREAMLINING URBAN GROWTH BOUNDARY AMENDMENT. In 2012, LCDC, in coordination with the governor's office, began preparing legislation to streamline the urban growth boundary amendment process.

REGIONAL PILOT PROGRAM. In 2012, DLCD began working with three Southern Oregon counties to explore the development of region-specific rules for protecting farm and forest land, responding to long-standing requests for additional regional consideration.

Challenges and recommendations

The Oregon planning program is versatile, but it still has serious shortcomings. Some of those continuing program challenges and some possible solutions include:

COMPLEXITY. One result of a statewide planning program is that there is a tendency to go directly to the state legislature to solve problems. The Oregon statute books are peppered with one-off solutions, while legislators complain that the program is "too complex." A bit of self-denial or working things out without legislation would be beneficial. A recodification of statutes and rules to better organize complex laws is also in order.

FUNDING. Oregon followed California in limiting property taxes, and planning now competes with schools and police for increasingly scarce local and state tax dollars. Lack of funding has prevented most counties and many small cities from updating

ATV riders speed across the dunes at the Sand Dunes Frontier in Florence.

Photo by Shira Springer/*The Boston Globe*

their comprehensive plans and ordinances and has led to the layoffs of numerous planners. There may be no realistic short-term solution here.

PERIODIC REVIEW. It is a great idea to review and update plans periodically, but that can be controversial and costly, prompting the legislature to exempt smaller cities and counties from the process altogether. Four decades later, many of these plans and regulations are out of date and in need of review.

LOCAL RESISTANCE. Outside the Portland Metro area, there is often resistance to the increased density required by compact urban growth boundaries, as well as the usual NIMBY reaction to change. In rural areas, local enforcement of farm and forest zone restrictions is primarily complaint-based. New initiatives and an emphasis on community assistance should be well-received.

ORPHAN RESOURCES. Statewide Planning Goal 5 includes a list of 12 natural and cultural resources that it seeks to preserve. Only one (mineral resources) has a powerful constituency, while wetlands, scenic rivers, and open spaces lack advocates. Additional protections are needed for these environmental resources.

A FULL REVIEW OF THE PROGRAM. Just as periodic review is a good idea for local plans, a thorough and well-informed review of the state's planning structure is needed as well.

EDUCATION AND OUTREACH. Fully half of the state's residents were not here in 1973 and many of them are only marginally aware of the program, the work that has gone into maintaining it, and its benefits. Well-crafted proposals from program opponents, such as Measure 37, play well with the public, even with voters who support planning. A proactive effort to communicate the program's benefits is needed to ensure the program's long-term support.

Future prospects

To see the obvious success of the state's land-use program over the past 40 years, one has only to drive through Oregon's Willamette Valley and take note of the remarkable extent of uncluttered, open working farm and forest landscapes that are close to compact urban areas. However, the continued success of the program will depend on its continued relevancy.

That means the program must respond to the state's growing population, economic realities, and cultural shifts in proactive ways. ■

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