OREGON’S STATEWIDE LAND USE PROGRAM: AN INSIDER’S 40-YEAR RETROSPECTIVE

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Planning in Oregon before SB 100

For many Americans in the 1830s and 1840s, Oregon was seen as the place where land and opportunity could be found. The well worn Oregon Trail from Independence, Missouri to Oregon City, Oregon was the path to start a new life by homesteading on federal lands. The creation of the Oregon Territory became law in 1848, 11 years prior to statehood. However, the granting of territorial status failed to provide procedures for settling land ownership disputes. All of the prior land laws of the earlier provisional government were declared null and void. This oversight was corrected in 1850 with the passage by Congress of the Donation Land Act, allowing residents to receive free land in their own names if willing to work for it.

The original Donation Law was followed by subsequent donation and homestead laws aimed at further securing titles which by the late nineteenth century witnessed the transfer of over 29 million acres to private land owners. What were expanses of deserts, range land, forests and fields became squared, surveyed parcels and city and country lots.

Soon after the turn of the 20th century the first city and county land laws began to appear in response to Oregon’s burgeoning growth. Other significant land planning steps were to follow. In 1913, Gov. Oswald West persuaded the state legislature to designate all Oregon beaches from the mouth of the Columbia River to the California border as a public highway and the entire beach between low and high tides became forever open to the public.

In 1919 and 1923 the state authorized cities to develop land use plans and regulations. However, it wasn’t until 1947 that similar planning authority was granted to counties to address the disorderly growth of urban fringe areas arising during and after World War II. Unlike earlier enactments for cities, the 1947 law required counties to enact zoning and other regulations to carry out their land use plans.

The concern over disorderly growth which began in the 1940s increased dramatically as more and more Oregonians began to view sprawl as an environmental threat seriously

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AERIAL VIEW: Once a small farm town, Forest Grove has grown and today sits on the western edge of the Portland metropolitan area and Willamette Valley. This aerial photos shows that the urban/agricultural boundary still persists. Photo by Amos Meron.

James Knight served on the staff of the Oregon Department of Land Conservation and Development from 1974 to 2003 when he retired. Along with working with a team of very talented, committed colleagues, these years afforded Knight a remarkable opportunity to be part of the start up, development and implementation of a state land use program that was and still is unique in the nation. He shares how Oregon laid the framework for statewide land use planning that still works to this day.
jeopardizing the state’s grand scenery and extensive forest and agricultural land. Somewhat surprisingly the major push for the state to respond to these problems came from farmers, not from city residents.

The focus of the farmers’ concern was the state’s prime agricultural land where about two-thirds of the state’s population resided. This area is the approximate 100 mile long Willamette Valley encompassing the Willamette River in western Oregon between the cities of Portland and Eugene, with the Coast Range on the west and the Cascade Mountains on the east.

In the early 1960s, in response to the growing threat from sprawl, the Oregon Legislature strengthened laws passed in the 1940s and 1950s aimed at protecting farmland. Specifically the legislature authorized counties to create exclusive farm use (EFU) zones. For farmers owning land zoned EFU, this legislation and subsequent revisions created strong incentives for farmers by setting property tax rates for their land based on its productive capacity as agricultural land, rather than its value for non-farm residential development. In return, non-farm uses allowed in EFU zones were sharply limited.

Unfortunately, to achieve such benefits, state planning laws at that time required counties to designate land for farm use in their adopted comprehensive plans before they could be zoned EFU. With considerable county opposition to land use planning, very little of rural Oregon was planned and zoned in the early 1970s.

Sensing that more was needed to bring about stronger local planning the legislature in 1969 passed Senate Bill 10 (SB 10). This law required every city and county to adopt a comprehensive land use plan and completely zone its jurisdiction by the end of 1971. Each community’s plan had to meet ten broad goals listed in SB 10. The law also authorized the governor to take over a local government’s planning and zoning if the city or county did not meet the 1971 deadline. SB 10 was the state’s first mandatory planning act, and was to become the basis for SB 100 approved four years later.

Enacting SB 100

While SB 10 was a major advance for Oregon land use planning, the bill failed to include a process and standards for ensuring that local plans and ordinances met the state’s goals and were coordinated. Gov. Tom McCall gave a stirring opening address to the 1973 legislature, that still resonates today. Here is a famous excerpt:

“Oregon is an inspiration even to those who do not come here to live. The story of the Willamette River – our ecological Easter – has evoked cries of “Hurray!” across the nation and in distant parts of the world. And we have heard, along with applause for Oregon, lamentation for other states where progress has felled prey to expediency.”

With his words, the governor sought to convince the legislature and the public that approving SB 100, the revised version of SB 10, was vital for the state’s future. For those wishing to learn more about the beginning of the state land use program, read Sy Adler’s 2012 book, Oregon Plans – The Making of an Unquiet Land-Use Revolution.

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The final version of SB 100 passed both houses of the legislature by wide margins. Signing it into law on May 29, 1973, Governor McCall called it “the most momentous piece of legislation passed during my time here.”

Establishing framework

SB 100 established the underlying framework for today’s state land use program. Its drafting and passage were the result of the involvement of a broad array of individuals made up of attorneys, professional planners, legislators, elected state and local officials, environmental activists, business and other interest group representatives, farmers and citizens.

While protecting Oregon’s renowned beauty and livability was certainly a priority, supporters of SB 100 were equally worried about the future of the state’s economy and growing costs to the state’s taxpayers. Also significantly influencing the bill’s development were two highly regarded publications that advanced the view that land was more than a private commodity but should also be seen as a critical resource of interest to the public justifying state government regulation. These works were *The Quiet Revolution in Land Use Controls* (1972) by Fred Bosselman and David Callies and the *American Law Institute’s Model Land Development Code* (1974).

The backers of SB 100 knew that the state’s revised planning law had to ensure that the statewide interest—the interest affecting all Oregonians—would be properly addressed in local land use decision-making. The vehicle to accomplish this goal and the centerpiece of SB 100 and the state planning program was the comprehensive plan properly prepared and adopted by each local government. To make sure there was no misunderstanding, SB 100 defined the term comprehensive to mean “all inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan.”

SB 100 created the Oregon Land Conservation and Development Commission (the Commission) to carry out the law and the state planning program. The Commission is composed of seven citizen members appointed by the governor and confirmed by the state Senate. The act also established the Oregon Department of Land Conservation and Development (DLCD) to assist the commission and serve as its staff.

As its first major policy task, SB 100 gave the Commission until January 1, 1975 to adopt the statewide planning goals. Through these goals and their incorporation in city and county comprehensive plans, SB 100’s principal purpose of inserting the state’s interest in local plans is achieved.

Much has been written about the process, extensive public and interest group involvement, and intense testimony, debates, and arguments both directed to and among the Commission members about the intent, wording and implementation of the goals. The DLCD’s mailing list for proposed goals was around 100,000 and about 10,000 participants attended one or more of the goal development workshops held across the state in 1974.

For members of the small DLCD staff at that time, the latter half of 1974 was probably one of the most exhausting, frenetic, and for many of us, rewarding periods of our professional lives. And yet despite the demands of staffing countless goal workshops and meetings, processing the flood of workshop survey responses, supporting a number of technical advisory committees, and drafting and redrafting proposed goals language, the Commission met its one year deadline when it adopted Goals 1 – 14 on December 27, 1974.

Probably the most moving moment of that time was being present when outgoing Governor McCall, a Republican, and incoming Democratic Gov. Robert W. Straub sat side by side at the Commission’s final hearing in December and together urged the Commission to adopt the final draft of the goals.

The ten goals from SB 10 (1969) were strengthened and made more precise, and four new goals were added. A fifteenth goal was added for the Willamette River Greenway in December 1975, and four goals focusing on coastal issues and resources were adopted in December 1976.
The subject headings for the adopted 19 statewide planning goals included: (1) citizen involvement; (2) land use planning; (3) agricultural lands; (4) forest lands; (5) natural resources, scenic and historic areas, and open spaces; (6) air, water, and land resources quality; (7) areas subject to natural hazards; (8) recreational needs; (9) economic development; (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; and (19) ocean resources.

Key provisions of SB 100
1. Requiring that city and county comprehensive plans conform with the statewide planning goals and that the Commission review those plans for conformance
2. Requiring cities and counties to enact zoning, subdivision and other ordinances to implement their comprehensive plans
3. Declaring that all city and county comprehensive plans and implementing ordinances shall be in conformance with the statewide goals within one year from the date the goals are adopted by the Commission
4. Requiring each county governing body to coordinate all planning activities affecting land use within the county, including those of the county, cities, special districts and state agencies
5. Directing the Commission to coordinate the planning efforts of state agencies to assure their conformance with the statewide goals and compatibility with city and county comprehensive plans
6. Authorizing the Commission to review land use actions taken by a state agency, city, county or special district alleged to be in violation of the statewide planning goals
7. Requiring special districts to exercise their planning duties and actions affecting land use in accordance with the statewide planning goals
8. Directing the Commission to appoint a standing State Citizen Involvement Advisory Committee. (In 1977, the Legislature directed the Commission to appoint a similar standing advisory committee made up of local elected officials called the Local Officials Advisory Committee.)
9. Directing the Commission to review and recommend to the legislature designation of “areas of critical state concern”

Moving the Land Use Program forward
Following the adoption of the goals, the Commission and DLCD faced the daunting task of getting local governments to amend their comprehensive plans and land use regulations to conform with the statewide planning goals within one year. Even with state grant funds to aid cities and counties, the one year time limit was grossly inadequate.

To address this situation, the 1977 legislature granted DLCD the authority to recommend to the Commission time extensions beyond the one year deadline and to approve “continuance” orders to permit local governments to comply with the goals through multiple submissions. The legislature also renamed the Commission's goal conformance determination with the term, “acknowledgment of compliance.” Once acknowledged, a local government would be relieved of the task of making goal compliance findings for every discretionary land use decision that came before it. Despite the statutory changes and the financial and technical assistance by DLCD, bringing local plans and regulations into compliance took longer than expected.

The need for more time was due to a combination of factors including heavy work load demands on DLCD's small review staff, analyzing the many complex issues contained in local plans and ordinances, and responding to objections from local governments to DLCD's written acknowledgment reports. Numerous objections both to local government plan documents and DLCD staff reports submitted by interest groups, state and other local agencies, and citizens also had to be addressed.

Then various legal, policy and political issues helped ensure consistent goal interpretation and application across Oregon while at the same time being sensitive to differences in local government size, location, population, economy, staff capability and planning issues. Dealing with resistance by some local elected officials and staff to comply with the statewide goals and other requirements of the land use program also slowed the acknowledgment process.

Moreover, DLCD and the Commission had to face occasional subtle (and sometimes not so subtle) pressures from state legislators and the Governor's Office to hurry the review process along and find ways to acknowledge plans even if certain “minor and technical” goal requirements were not fully met. So for these and other reasons, what SB 100 originally stipulated was to take only one year, in fact took ten years to 1986 to fully acknowledge all 36 counties and 242 cities and the regional urban growth boundary for the Portland metropolitan area.

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EVOLUTION OF OREGON’S LAND USE PROGRAM SINCE 1973

Besides the review and acknowledgment of local comprehensive plans, a number of other important actions and decisions by the Commission, DLCD, and other agencies and organizations have occurred since 1973. Together these actions have resulted in a steady evolution of the original SB 100, codified as Oregon Revised Statute (ORS) 197. The Commission has amended various statewide goals, and also adopted and revised a number of administrative rules to implement land use statutes, goal requirements and administrative procedures. In addition, decisions by the state’s appellate courts and almost every session of the Oregon Legislature since 1973 have resulted in important modifications of the land use program.

1973/1975

In two landmark decisions, Fasano v. Washington County (1973) and Baker v. City of Milwaukie (1975) the Oregon Supreme Court upheld state law that county and city comprehensive plans were superior and were to be implemented by their respective zoning, subdivision and other land use regulations. In Baker, the court described the local comprehensive plan as a constitution for the community’s land use decision making. In Fasano, the court also found that small-tract zoning changes were different from legislative amendments to the plan, judging them to be “quasi-judicial” in nature and therefore subject to greater judicial scrutiny and rules of fairness.

1979

The Oregon Legislature created the Land Use Board of Appeals (LUBA). LUBA was formed to consolidate the review of legislative and quasi-judicial land use decisions of local governments, state agencies, and special districts. This was done in order to remove the review of local land use decisions from state circuit courts where reviews were lengthy, costly and heard by judges who rarely dealt with land use cases. However, LUBA does not exercise authority in areas delegated to the Commission including the adoption and administration of the statewide goals and rules and the acknowledgement and periodic review of local government comprehensive plans and land use regulations.

1975

Upon leaving office, Governor McCall co-founded the land use watchdog organization 1000 Friends of Oregon to oversee, advocate and litigate on behalf of the state’s land use laws, statewide planning goals and the land use program.

1976

Voters defeated three ballot measures, BM 10 (1976 and 1978) and BM 6 (1982), intended to repeal or severely scale back the state planning program.

1977

The U.S. Secretary of Commerce approved Oregon’s Coastal Zone Management Program (OCMP) which was the second in the nation to be judged as meeting the federal 1972 Coastal Zone Management Act. The OCMP as administered by DLCD rests upon three principal components: 1) the 19 statewide planning goals; 2) the acknowledged comprehensive plans and land use regulations of coastal cities and counties; and 3) state laws, rules and agency programs applicable to Oregon’s coastal resources and communities.
agencies’ programs affecting land use would comply with the statewide goals and be compatible with acknowledged comprehensive plans.

1992

The Commission adopted amendments to State Goals 3 and 4 pertaining to the identification, designation and protection of farm and forest lands and small scale resource (secondary) lands. In 1993, the legislature adopted a comprehensive bill (HB 3661) to revise land use provisions for the protection of farm and forest lands, to permit lot-of-record dwellings on such lands, and directed the Commission to repeal its rules providing for the designation of small-scale resource lands. In 1994, the Commission adopted rules to implement HB 3661 and to provide additional protection for high-value farmland.

1993

The state Transportation and Growth Management Program (TGM) was established. TGM is a partnership between the Oregon Department of Transportation and DLCD. TGM is a non-regulatory program where participation by local governments is voluntary. TGM supports local efforts to improve transportation options, boost economic vitality and enhance community livability throughout Oregon. TGM is funded primarily by funds from the Federal Highway Administration of the U.S. Department of Transportation.

1996

The legislature with the support of Gov. John Kitzhaber added a section to ORS 197 to establish a collaborative regional problem solving process. The process requires the participation of all affected local governments, a negotiation process that includes DLCD and other affected state agencies, and an outcome which meets at least the minimum purposes, if not all the requirements, of applicable Commission administrative rules.

2000

Oregon voters approved ballot measure BM 7 which amended the state constitution either to compensate property owners when a land use regulation caused a devaluation of private property, or to permit a waiver of the regulation at of the time the property was acquired by the owner. The measure was immediately appealed to the State Supreme Court which ruled the measure unconstitutional and it never took effect.

2004/2007

Voters passed BM 37, which unlike BM 7 was a statutory, not a constitutional provision. It, like BM 7, provided for either compensation of land owners if a regulation restricts the use of private property and reduces its market value, or in lieu of compensation, the local government responsible for the regulation was authorized to remove, modify or not enforce the regulation. Because local governments could not afford to provide compensation as required by BM 37, the result was the submittal of thousands of claims for “lost value.”

To respond to this situation, the 2007 legislature developed and referred BM 49 to the voters who approved it. BM 49 nullified BM 37’s claims but still provided substantial relief to claimants, mostly in the form of allowance for up to three additional dwelling units per claim. BM 49 also allowed landowners the ability to seek compensation for any new state or local land use regulation enacted after January 1, 2007 that restricted residential uses of real property.

2009/2011

DLCD proposed enabling legislation to allow intermunicipal transfer of development rights programs. Additionally, DLCD approved rules to promote commercial wind and solar energy siting, and to guide these uses on less productive land.

2012

DLCD in coordination with the Governor’s Office began preparing legislation to streamline the urban growth boundary amendment process. DLCD also began working with three southern counties to explore the feasibility of region-specific rules for protecting farm and forest land in response to long-standing requests for additional regional consideration.

2013

In January, the Commission approved the Oregon Territorial Sea Plan. This area extends from the ocean shore out three miles and falls under the state’s proprietary jurisdiction.

The legislature approved two land use bills. One shifts the issuance of population forecasts for planning from counties to Portland State University. The other establishes an alternate method for reviewing and amending urban growth boundaries for cities outside the Portland metro area.
Reasons for Oregon’s success

What are the basic features that define the Oregon land use program? Are any of these attributes transferable to other states? These questions have been addressed by Ed Sullivan, probably Oregon’s most prominent land use attorney, in an article coauthored with Katherine Daniels, DILC’s farm and forest specialist, in the American Planning Association’s magazine, Planning. A brief summary of their views are below:

- An explicit requirement that every Oregon city and county enact a detailed, legally binding local comprehensive plan and implementing zoning and land division regulations.
- That the state’s interest (both policy and procedural) be incorporated into local plans and regulations. In Oregon this interest is set forth in state statutes, the statewide planning goals, implementing administrative rules, applicable court decisions, and reflect the results of citizen participation and coordination with other affected local, regional, state and federal agencies, and where applicable, tribal governments.
- Oregon law explicitly requires the protection of the state’s agricultural and forest lands.
- The Commission is directed by state law to review local plans and ordinances, including subsequent amendments, for compliance with the goals and other applicable state requirements. Where appropriate, the Commission has enforcement authority to compel local compliance which was often exercised during the ten year acknowledgment process.
- Housing needs within every urban growth boundary must be identified and local policies and ordinances adopted to allow for the provision of sufficient dwelling types and densities to meet the needs projected in the local plan.
- Cities and their adjoining county or counties mutually agree and adopt a single, site-specific urban growth boundary which separates “urban lands” (including incorporated city territory) from surrounding rural lands consisting of areas of sparse settlement where urban growth is not expected or planned for.
- In Oregon, land use decisions cannot be ad hoc, but must be based on existing policies set forth in the local comprehensive plan and applicable state statutes and court rulings. Oregon law also requires in the case of quasi-judicial land use decisions, correct procedures must be followed including notice to affected parties, opportunity to be heard, and a sound, reasoned explanation for decisions made in light of the facts in the case and the laws to be applied.
- Finally, Oregon has an administrative hearings body (LUBA) that functions like an appellate court and hears appeals of almost all land use decisions.

Three overall observations by Knight

1 Oregon’s statewide land use program is still functioning and forward looking 40 years since the passage of SB 100. Over many years, the actions and decisions of governors, legislators, courts, state agencies, local governments and residents have done much to shape, expand and focus the scope, direction and objectives of the program.

Yet despite this complexity, the land use program’s 1973 fundamental framework still remains basically unchanged. The state’s land use interest as expressed in the statewide planning goals has been incorporated and continues to be fulfilled through the implementation and amendment of acknowledged city and county comprehensive plans and implementing regulations.

And on the ground, the results of the program are very substantial gaining Oregon much attention and acclaim around the country. Probably the program’s two most impressive, widely known accomplishments are the protection of the agricultural and forest lands and the adoption of urban growth boundary around each of the state’s cities and a regional one for the Portland metropolitan area.

2 Moving into the 21st century, Oregon’s planning program like many long standing governmental initiatives must address new challenges.

- Oregon must further identify, articulate, and where appropriate, modify the state’s interest in land use planning without overlooking and taking for granted the long-standing land use obligations to and relationships with cities, counties and the Portland metropolitan area.

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• Forty years after the enactment of SB 100, a new generation of Oregonians are in charge. Through broader, enhanced, more effective outreach and communication efforts, Oregon needs to do more to inform residents about the land use investments and accomplishments that have been made and what issues lie ahead. Greater outreach is particularly critical to reach our young people, the future citizens and voters of Oregon.

• The Oregon Legislature, working with the governor, state agencies, local and tribal governments and other affected organizations and citizens should enact legislation to require a comprehensive evaluation of the state land use program on a fixed schedule (for example every five years). Part of this evaluation should be a review and adjustment of the state’s strategic vision.

• Oregon should establish a coalition of public and private higher education institutions to assist in the periodic evaluation of the state planning program, conduct coordinated land use and other research projects, and provide expanded curriculum offerings for students interested in pursuing careers in Oregon dealing with land use, growth management, community development and natural resource planning and management.

3 Working on the planning program has given Knight many things to be grateful for, including having a challenging, very rewarding professional career in public service plus a wonderful life in beautiful Oregon. He cherishes the most:

- An opportunity to work with a group of very talented, hard working colleagues and to share with them the building of the most successful state land use program in the United States. In his recent book, Sy Adler superbly captures this unique staff relationship Knight and his comrades shared working at DLCD:

“The continuing stream of legislative challenges and ballot measures created turmoil for LCDC (the Commission), as the agency’s existence, its programs, and staff positions were continuously contested in an intensely politicized atmosphere. DLCD staff experienced the tension on a daily basis; they bonded tightly in response to it. The agency during the early years was a mostly flat organization; the relative absence of hierarchy engendered a sense of solidarity among staff members and between staff and agency managers.”

- The personal values of staff members were aligned with the work they were doing. They took great pride in the statewide land-use program and their roles in it.

- Knowing that he has had a direct role along with others in making the future of Oregon better in terms of environmental protection, growth management, protecting agricultural and forest land, coastal planning, promoting economic development, addressing community transportation, public facility and housing needs, and contributing to the state’s overall livability.

AUTHOR’S NOTE: Knight offers his gratitude to those intrepid land use pioneers whose leadership, skills, and abiding affection for Oregon made the enactment of SB 100 a reality, especially the invaluable contributions of Gov. Tom McCall and State Senators, Hector Macpherson and Ted Hallock. Finally, he owes much to his family for standing by him.

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Sources for more information:

1. DLCD web page address: www.oregon.gov/lcd/pages/index.aspx