Coping with Platted Lands Problems in Oregon

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Early in the history of what is now Oregon, growth was encouraged and viewed very positively. During the early years of European settlement, the Donation Land Act gave free land to families or individuals for merely settling in the Oregon country, and railroad companies promoted the virtues of the region as a way to encourage people to settle on their vast land holdings. Beginning in the 1930s, dams were built and power companies were established to market electricity. The intent was to lure businesses, industry, and people to the Northwest (Benner 1998). As a result of these and other efforts, the state experienced steady growth and development for several decades.

In recent years, the positive images associated with growth and development began to change, particularly during the 1960s and 1970s, largely because of negative impacts on the environment. Some of the more significant problems included environmental degradation from intense development along the coast, pollution of the Willamette River, loss of farmland to scattered subdivisions and commercial strips along highways, and the rapid subdivision of range and farm land east of the Cascades within “sagebrush subdivisions” (Benner 2004).

As growth and development continued in various parts of the state, one particularly significant concern was associated directly with land and the rapid pace at which it was being subdivided. Land subdivision and land speculation were occurring not just in Oregon but all across the country, as land-development companies exploited the American dream to own vacation or retirement home sites or to speculate on land as a good investment. In many cases, developers subdivided land and created potential home sites long before any development could be absorbed by the local economy and without consideration of most of the important aspects of land development. A good example of such premature subdivision occurred in Florida from 1916 through 1925, when speculative activity created...
enough subdivided lots within a ten-mile radius of Miami to accommodate two million people (Vanderblue 1927). Speculative subdivision, while most significant in Florida, has occurred in many other locations including along the Front Range of the Rockies in Colorado, near Austin and Houston in Texas, in parts of the desert southwest, in northeastern Pennsylvania in the Poconos, in central Oregon east of the Cascades, and others (Sussna and Kirchhoff 1971; Stroud 1995). The concentration of subdivision activity in Oregon, particularly in the relatively dry rangeland east of the Cascades and along the coast, is the focus of this research.

During the 1960s and 1970s, the proliferation of prematurely subdivided lots was particularly troubling to then Oregon Governor Tom McCall and became a significant factor in his decision to initiate Senate Bill 100, Oregon’s progressive statewide planning program. Unfortunately, problems associated with platted land are not limited to the relatively large “sagebrush subdivisions” such as Juniper Acres and River Ranch east of the Cascades. Platted lots are also found on “fruit farms” such as Eola Walnut Groves in the Willamette Valley (Eber 2003; MacLaren 2003), in antiquated subdivisions of Columbia Acres and Hillcrest in the hills northwest of Portland (Higgins 2003), and within high-amenity resort developments such as Salishan along the coast. The magnitude of the rush to carve up land was brought into focus in 1972 when Governor McCall ordered the Department of Revenue to study subdivision activity east of the Cascades. The study found that some 160,000 acres had been subdivided into 43,000 parcels (Uhrhammer, 1973). That study, now more than thirty years old, serves as an indicator of the extent of the platted lands problem that began years ago as part of what is often referred to as “the Great Oregon Land Rush.” Problems associated with the subdivision and development of some of Oregon’s most aesthetically pleasing landscapes for recreational and speculative purposes have been particularly significant. In another study, it was found that amenity-oriented interstate land sales subdivisions occupy more than 95,000 acres in Oregon, including concentrations east of the Cascades in Crook, Deschutes, and Klamath counties and along the coast. These amenity land developments have been subdivided into over 82,000 lots and range in size from less than 100 acres to more than 5,000 acres (Stroud, 1995).

The “platting” of land is the formal procedure taken by landowners to officially record maps of land subdivision. Recording of plats consists of filing the appropriate survey maps with the municipal-
ity or county involved and showing that all existing requirements (if any) have been fulfilled. Platted lands (also referred to as pre-platted subdivisions, obsolete subdivisions, or antiquated subdivisions) create a complex set of problems that vary depending on the location and size of the development, the nature of the land that has been platted, the character of the lots, and the availability of basic services. Some pre-platted lots are too small to meet minimum lot-size requirements for on-site wastewater treatment facilities (septic tanks, for example). Others are poorly drained, some to the point of being underwater for much of the year, while others occupy dry sites and have no source of fresh water. No physical improvements were made by the promoters of some lands, which are subdivisions in name only—paper subdivisions. Others have become modern-day boom-towns and are facing expensive retrofits to provide even the most basic urban infrastructure. In some cases, subdivisions have been created in locations that are designated for farm use with no provisions to accommodate residential uses. For these and other reasons, the platted lands quandary looms in some locations as the most significant stumbling block to orderly growth (Stroud and Spikowski 1999). Because problems associated with platted lands are so widespread and many of the problems are difficult to resolve, more research is needed to determine the current extent of the problem and to find possible solutions to the many troublesome land-use issues that have been created within and surrounding premature subdivisions (or platted lands). This research examines some of the more significant platted lands issues in Oregon and uses case studies to illustrate the specific nature of some of the problems that have been created. One of the case studies provides an example of a possible solution to a vexing land-use issue.

**Pertinent Land-use Legislation**

Positive signs that planning was a major concern appeared with the passage of Senate Bill 10 in 1969. SB 10 required every city and county in the state to have a comprehensive land-use plan that met state standards. Even though the law was weak and failed to establish an effective enforcement mechanism, it sowed the seeds for Senate Bill 100 that was to follow.

In 1973, Governor McCall made his now-famous speech to the legislature, castigating “sagebrush subdivisions, coastal condo mania, and the ravenous rampages of suburbia.” He requested legislation
establishing a statewide program for land use planning. After much discussion and lengthy debate, an extraordinary piece of land use legislation (Senate Bill 100) was adopted. The new land use law was approved and signed by Governor McCall on May 29, 1973. It created the Land Conservation and Development Commission (LCDC) and the Department of Land Conservation and Development (DLCD). Their first major task was to establish statewide planning goals to guide growth and development in the state and to govern local land-use plans. It was the beginning of a statewide planning program that was enacted as The Oregon Land Use Act. The program was designed to conserve farm and forest lands and coastal and other natural resources, to encourage efficient development, and, among other things, to coordinate the planning of local governments and state and federal agencies. Standards for land use planning are set forth in nineteen statements formally called the Statewide Planning Goals (Oregon Department of Land Conservation and Development 2001). Rather than representing vague statements and unclear objectives, goals as applied here are very specific, detailed, and mandatory, and they have the force of law. The original law remains intact, but numerous initiatives, adjustments, and refinements have been made in subsequent years (MacLaren 2004).

Prior to 1970, the state’s role in land use planning was minimal, with local governments planning and zoning largely at their discretion. Some counties had very effective plans and land use ordinances while others had none at all. This inconsistency changed with Senate Bill 100, which specified planning concerns that had to be addressed, set statewide standards that local plans and ordinances had to meet, and established a review process to ensure that those standards were met. Compliance and review processes are managed through three organizations—the Land Conservation and Development Commission, the Department of Land Conservation and Development, and the Land Use Board of Appeals. Each city and county is required to submit for review its comprehensive plan and associated land-use regulations to the state Department of Land Conservation and Development. A hearing is then held before the Land Conservation and Development Commission. Two main forces compel cities and counties to seek approval of their plans. First, acknowledgment (approval) is required by law (Oregon Statute 197.175). Second, cities and counties that have not had their plans approved are subjected to a much more rigorous land-use review procedure. After approval, local governments need only consider their own local standards; the statewide goals are considered to be embodied
in the approved local plans (Oregon Department of Land Conservation and Development, March 2001).

Significant initiatives to eliminate state oversight of local land-use plans have been made, including three instances in which the voters were asked to repeal SB 100. In each initiative, the repeal was rejected by Oregonian voters, each time by a greater margin of rejection (Hallyburton 2004). Despite a deep recession that was blamed on planning, the third and last statewide effort to repeal SB 100 was defeated in 1982. This is not to imply that changes have not been made to the land use bill. In 1983, for example, an important change occurred when the Legislative Assembly relaxed the standards for approving an exception (a rezoning request, for example). This opened the door for local governments and landowners to negotiate solutions to planning problems unforeseen by statewide planning legislation, and, among other things, moderated the requirements for securing Land Conservation and Development Commission approval of plans (Nelson 1985; see also Oregon Statute 197.732). In 1991, the DLCD adopted a new rule to integrate land use and transportation planning in order to increase transportation choices in cities, and in 1993 the legislature passed a complex and controversial bill (HB 3661) affecting how farm and forest lands are to be protected (see Oregon Statute, HB 3661). The new legislation allowed more development on “less productive” lands and less on the “more productive” lands and directed development to locations outside the Willamette Valley. HB 3661 prompted some analysis by DLCD/LCDC concerning the protection of high-value farmland, particularly in terms of “farm dwellings.” As a result, in 1994 the commission adopted new rules for interpreting “farm dwellings” and prohibited other nonfarm uses on high-value farmland. These measures have strengthened portions of SB 100, particularly in regard to high-value farm and forest lands (MacLaren 2004).

In 1995, the legislature considered more than seventy bills to weaken SB 100. Most of these were defeated, and Governor Kitzhaber vetoed the rest. Other attempts to weaken SB 100 were rejected by the legislature in 1997 and, in 1998, the legislature celebrated the 25th anniversary of Senate Bill 100, Oregon’s planning program (Oregon Department of Land Conservation and Development 2001). In 2001, HB 3326 weakened SB 100 by allowing up to two land divisions below the minimum lot size on land that was “generally unsuitable for agriculture” (see Oregon Statute, HB 3326). Even if these provi-
sions were always applied correctly, such nonfarm dwellings can have significant adverse impact on the surrounding farms and the agricultural land base (MacLaren 2004). This is particularly troublesome since the vast majority of the dwellings built in farm zones are nonfarm dwellings, often built on lots that were platted years ago. It is a concern both in terms of land fragmentation and conflicts between farm and nonfarm dwellings. This issue is particularly pertinent in areas where farm land has been subdivided, platted, and sold as potential home sites before SB 100 was adopted (MacLaren 2004). This particular problem is an important focus of this research and will be discussed in more detail in the case study on Juniper Acres. There have been no other significant changes to SB 100 since 2001, and in 2003 the governor and the legislature celebrated the 30th anniversary of this landmark legislation (Hallyburton 2004). Unfortunately, a new voter initiative is being supported by an anti-land-use-planning group and is expected to appear on the November 2004 ballot. This initiative, if passed, would require local governments to compensate land owners if current land use regulations diminish the value of the land for development purposes (Benner 2004; MacLaren 2004).

Case Studies: Examples of Problems Associated with Platted Lands

As stated earlier, Oregon is experiencing developmental pressure from a number of different sources. The combination of suburbanization pressures in the Willamette Valley, subdivision of rangeland to the east, and urban sprawl and recreational development along the coast prompted increased interest in controlling land use beyond the local level (Eber 2003; Jackson 1981). While Oregon’s comprehensive planning is intended to combat some of the developmental mistakes of the past, the program has done little to remedy many of the problems associated with the platted lands issue (Hallyburton 2003). One of the most significant problems is the growth potential associated with pre-platted subdivisions, many of which are located in places where growth is either prohibited under current law or undesirable because of environmental constraints. Three “land development” projects have been selected for analysis. These include Salishan Resort, along the coast in Lincoln County; Black Butte Ranch, in Deschutes County; and Juniper Acres, in western Crook County (Figure 1).
Salishan Resort, one of the most exclusive amenity-oriented subdivisions along the entire Oregon coast, provides an example of why planning after the fact is often ineffective. Salishan began in 1962 on property with over two miles of ocean frontage, long before land use planning and subdivision regulations had been established. This 600-plus acre resort is developed on property extending south from the Siletz River along an active fore-dune and to the east up the slopes of the coastal mountain range. On the east side of U. S. Highway 101 is Salishan Hills, the location of 169 lots, 83 single-family detached homes, and 55 condominiums (Crandall 2003). Salishan amenities include a golf course, tennis courts, community club and swimming pool, an upscale lodge, several parks, and access to the Pacific Ocean and Siletz Bay. A general layout of the Salishan development on both sides of U. S. Highway 101 is depicted in Figure 2.
Figure 2. General layout of Salishan Resort including the Salishan Spit and Salishan Hills. (Source: Adapted from map provided by Salishan Leaseholders, Inc., 2002.)
The property on the ocean side of U. S. Highway 101 is managed by Salishan Leaseholders, Incorporated, and includes the active foredune, referred to locally as the Salishan spit, where over 100 lots with ocean frontage are located (Trunt 2003). There are also 233 “interior” and Siletz Bay lots west of the highway. The lots with direct frontage along the Pacific Ocean are particularly vulnerable to storm surges and severe beach erosion. Even though most foredune lots have been riprapped to help stabilize the property, the spit remains a very environmentally sensitive location that is under constant assault from the sea. Most of the riprapping was done between 1969 and 1985 at the expense of the lot owner and consisted of a twenty-five-foot wall of large boulders built near the high-water mark. Today, the wall is buried under eight feet of sand, as the height of the spit continues to increase year after year. Ironically, this accumulation of sand has even blocked the view of the ocean for some oceanfront property owners. If the accumulated sand is removed, as some lot owners have done, it leaves the lot even more vulnerable to storm surges. Water tends to funnel into these lots where the sand has been removed. Naturally, all lots along the spit are susceptible to erosion during storms, even if sand has not been removed. Fortunately, most of the high winds at Salishan are from the southeast and blow across the spit and out to sea. On rare occasion, however, the spit is hit by a major storm with winds from the west. These storms can be particularly destructive. Occasionally, an ocean surge tops the dune, and in one instance, a log in the surge water was thrown through the window of a beach-front home. On another occasion, a partially constructed home on the spit was completely destroyed during a storm. These examples point to the dynamic nature of the spit and indicate that it is not a stable location for homes. Perhaps a better land-use plan would have been to protect the spit from development and not carve it up for the private use of a few individuals. If it had been left undeveloped as a resource for all property owners at Salishan to use, it would have appreciated the value of all the non-beach-front lots, provided an excellent site for beach access and recreational use, avoided the problems associated with beach erosion and the destruction of beach front homes, and provided a natural barrier or buffer during storms (Trunt 2003, 2004).

Development of such an unstable site would not be allowed today under the comprehensive planning program. Since this property was developed before Senate Bill 100 became law, lots continue to be resold and homes built on property not particularly suitable for
construction. This illustrates the significance of environmental management and land use planning whereby suitable sites can be identified and places such as active spits, fragile estuaries, and other environmentally sensitive zones can be designated as open space or, at the very least, excluded from intensive development (Bondy 2003).

**Black Butte Ranch**

Black Butte Ranch is a recreational subdivision that was also established prior to the statewide planning program, on a 1,830-acre parcel of land east of the Cascades in Deschutes County, a few miles northwest of Bend. Advanced planning by the developers, along with a somewhat less environmentally sensitive location, have helped to alleviate many problems. Unlike many older, land-extensive, raw-land-sales subdivisions, developers of Black Butte Ranch made a substantial investment in infrastructure and rapidly sold and developed the property. Of the 1,253 lots that were subdivided and sold, only 43 remain undeveloped. Approximately 100 condominiums have been built and there are 1,100 single-family-detached homes. This high-amenity resort, centered in a picturesque mountainous setting and featuring a lake, four swimming pools, seventeen tennis courts, and two eighteen-hole golf courses, is not without environmental problems. As the resort continues to attract more and more people to a semiarid mountainous setting, developmental pressures will continue to increase. Providing an adequate water supply for an increasing population in a relatively dry environment could be one of the developer's greatest challenges. With the statewide land-use planning program now in place, the subdivision of additional lots outside the original land area of Black Butte Ranch can be more closely scrutinized and even prohibited if resources are deemed inadequate to meet future demands, or if nonfarm dwellings are not compatible with forest or agricultural uses. It seems that expansion is not likely since the current developers are content to manage the existing facilities and supervise the development of the forty-three remaining privately owned vacant lots. The ongoing management strategy for the property is outlined in the Master Design for Black Butte Ranch. The Black Butte Ranch Association (a property owners association) and the Architectural Review Committee help monitor day-to-day operations and play an important role in setting standards and assuring compliance and in making sure that the highest aesthetic qualities are maintained (Jack 2004).
Juniper Acres
A more troublesome situation exists at Juniper Acres, a 5,700-acre subdivision in western Crook County (Figure 3). This remote, dry rangeland property has no power lines, no phone lines, no water, or any other urban services. Despite these limitations, the property has been subdivided into over 500 “10-acre home sites.” Juniper Acres is already home to approximately forty families, and more are anxious to build homes and become permanent residents. These families prefer the peace and quiet found in a rural, rustic location over the more hectic pace found in urban settings. Although there are hundreds of vacant parcels and much open space, there is a problem. According to state land-use law, this land is designated for farmland (Exclusive Farm Use Zone), and nonagriculturally related

Figure 3. Location of Juniper Acres, Juniper Canyon, and Prineville in Crook County, Oregon. (Source: Crook County GIS, 2003.)
homes are allowed only under tightly prescribed circumstances (Oregon Statute, 215.203).

The DLCD and Crook County planning officials worked diligently to resolve this important and rather vexing land-use issue in the area known as Juniper Acres. The dilemma first surfaced in 1999 when dwelling proposals in Juniper Acres prompted concerns and even challenges by members of the local community (primarily from ranchers living near Juniper Acres) and state agencies.

During the spring of 2000, Crook County and DLCD agreed to jointly fund a planning project with the specific intent of developing a solution for Juniper Acres. This project, which lasted for several months, was designed to gather input from a variety of sources, including a professional consultant and an advisory committee to assist in developing recommendations. The advisory committee held several meetings that were facilitated by the county’s consultant. Numerous Juniper Acres property owners were included on the advisory committee as part of an attempt to ensure that all sides had representation (Jinings 2001).

Crook County solicited extensive public testimony in numerous meetings and hearings. An important part of these meetings and hearings included DLCD participation and testimony. DLCD’s advice and testimony was centered around a few simple understandings, including the idea that it is in the best interest of the county and its citizens to establish a threshold for development that will not result in a demand or need for costly public facilities and services, the belief that growth and development will not result in undue impacts to commercial livestock grazing operations relying on surrounding rangeland areas, and the notion that growth and development should not compromise other resources, such as the wildlife habitat of the area. It was also concluded that members of the Juniper Acres community have chosen to live in this location because of open space, solitude, and a frontier atmosphere that they cherish. Inappropriate levels of development would erode this landscape and take with it the very characteristics sought and enjoyed by existing property owners (Jinings 2001).

DLCD observed that most parties, with perhaps a very few exceptions, agree with the basic tenets outlined above. Moreover, most, if not all, of the participants in the project agree that a full build-out of Juniper Acres is not feasible and is not expected. The focus or
main point of the project, then, is to determine how many dwellings may be established before irreparable damage is done to this fragile, dry environment. The alternative that is suggested will furnish protection for all involved parties and remain legally plausible.

Crook County officials decided to deal with the issue of level of development of Juniper Acres in two ways. The first step was to establish a maximum number of dwelling units that would be permitted in Juniper Acres. The second was to set up a transfer of development credits program. The county set a limit of 150 new residences at Juniper Acres with no more 25 homes permitted the first year (2001) and 10 dwellings per year after that until a maximum of 150 is reached (Zelinka 2003, 2004). Another important part of the solution is a transfer of development credits (rights) program. Juniper Acres was designated as a sending area and Juniper Canyon, located south of Prineville, has been designated as a receiving area (see Figure 3). Owners of property at Juniper Acres may sell the development rights to their lot and retain all other rights of ownership. The development rights may be purchased and used to increase the density permitted in the receiving area at Juniper Canyon (Crook County Zoning Regulations 2001).

TDR© programs have the potential to reduce the density in one location where development is undesirable or infeasible and increase the density in another location where services are available and where growth and development are desirable. Despite this potential, TDR programs are seldom successful. To date, only a few transfer credits have been sold (Moore 2003, 2004). Absence of market (or a need for the credit) is often a major stumbling block for these programs. In Crook County, for example, there is ample land available for sale and there is no real need to purchase a TDC.

Whether or not Crook County has succeeded in resolving problems associated with development in Juniper Acres remains to be seen. It is particularly beneficial for the county to have taken the bold step of setting a cap on development at Juniper Acres so that lot owners and local officials know what to expect in terms of total build-out as well as annual development rates. Unfortunately, the TDC program has experienced extremely limited success since there is little or no market for purchasing development rights at the present time. Moreover, residents living in and near the “receiving area” are opposed to the higher densities. Even though the TDC program has shortcomings, it is at least “on the books” and available for use in
the future. Its use will more than likely increase if the availability of land suitable for home sites becomes limited.

Summary
This paper has shown quite a contrast in subdivision style in Oregon, from high-amenity settlements such as Salishan and Black Butte Ranch to "sagebrush plats" where no amenities and services are provided. Regardless of the setting from coastal to high-and-dry rangeland, pre-platted subdivisions create significant land-use planning problems that are not adequately addressed by Senate Bill 100.

At Salishan, for example, the problem is not absence of amenities and services but rather is the subdividing and selling of lots for home sites in an inappropriate location. The active fore-dune is the site of over 100 home sites, many of which have homes. This unstable sand dune at the water's edge should have been preserved for the enjoyment of all. Instead, it has become a prime location for "choice lots" that sell for $300,000 or more. Apparently, the developer could not resist the opportunity to make a substantial profit from the sale of these environmentally sensitive lots situated along the edge of the Pacific Ocean. As a result, property owners along the spit are in a constant battle to protect their property from the ongoing assault from the ocean. Moreover, the spit has been taken out of the public domain and is now available for the exclusive use of Salishan property owners and their guests. Since Salishan is a gated community, there is no direct public access to the ocean within Salishan property.

At Juniper Acres, a completely different set of problems is found. First of all, the county had to resolve the issue of whether or not to allow nonagricultural homes in what the state had designated as an Exclusive Farm Use Zone. After a protracted and expensive effort, the county came up with a solution. It is hoped that the solution will serve as a model for other counties with similar problems. Even though only one other county in Oregon has adopted a similar model at the present time, it does serve as an example of what can be done. It is essential for counties to decide how much development should be allowed within these platted lands and establish a cap or a maximum number of housing units that will be allowed, just as Crook County did with Juniper Acres. Another interesting concept that was adopted by Crook County is a transfer of development credits (rights) (TDC) program, which can serve as a mecha-
nism for shifting development to more desirable locations. Whether or not a TDC program is a useful solution remains to be seen. It does offer possibilities for controlling development densities and could work in counties where there is limited land available for future development. The concept may be particularly useful for counties where there is a dire need to direct growth and development to some locations and limit growth and development in other areas.

Oregon has taken the lead in adopting and implementing statewide planning legislation and has an innovative program designed to protect the state’s vital resources. Unfortunately, this legislation does not directly address problems created by the premature subdivision of land. As with the approach used at Juniper Acres, each platted lands issue must be considered on a case-by-case basis to deal with some of the complex and often site-specific problems associated with these obsolete subdivisions. Issues associated with property rights and grandfather clauses are particularly troublesome to resolve. It is hoped that state and local officials will learn from their mistakes and use some of the more feasible options available to help resolve platted lands problems. Even if funds are not available for lot acquisition and subdivision redesign, other less-expensive options are available, including the techniques that were implemented at Juniper Acres in Crook County. The cap or limit on development and the TDC program in Crook County will not resolve all the problems associated with platted land, but it will at least help direct growth to more desirable locations and manage the rate of growth in less suitable areas.

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