

# Planning for Natural Resources

## The Policies and Challenges of Oregon's Land Use Program in Protecting Natural Resources



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## Introduction

Oregon's adoption of a statewide land use planning program in 1973 grew from the public's recognition of the negative impacts of poorly planned growth and development on open spaces, natural resources, and quality of life. The statewide planning program invested much of its political capital in the protection of the state's farm and forest lands from sprawl; this protection has been one of the program's greatest successes. Yet, the preservation of farm and forest lands alone does not protect riparian and wetland areas from degradation or preserve biodiversity. The land use planning program plays a role in protecting Oregon's natural resources by requiring local governments make decisions about resource protection and include those policies in their land use plans. This paper discusses the most important statewide issues in planning for natural resources in Oregon. Two resource categories unique to certain regions of the state, the Willamette River Greenway and Coastal Areas, are the subject of specific statewide planning goals and will not be discussed in this paper.

The first part of this paper provides an overview of natural resources planning within Oregon's statewide land use program, focusing on Statewide Planning Goal 5. Secondly, it discusses the resources that merit the most attention from the planning program and the issues involved with each of these resources. Lastly, the paper outlines the major policy issues in natural resources planning in Oregon and provides a few recommendations for implementing successful programs in local communities.

## Natural Resources and the Oregon Statewide Planning Program

Oregon's land use planning program was established by the legislature in 1973 and requires cities and counties to adopt comprehensive land use plans and implementing ordinances. These plans must comply with the nineteen statewide planning goals, which address a range of issues important to Oregonians from citizen involvement to economic development to natural resources. The legislature created the Land Conservation and Development Commission (LCDC) to ensure that communities meet the statewide goals.

Natural resource protection is a component of several statewide planning goals. Healthy and functioning natural processes and habitats are necessary to support human populations; therefore, their protection is in the public interest and becomes a function of government. The incorporation of natural resources in the land use program results in local governments making the decisions and implementing policies regarding resource planning. Planning helps local communities to protect and enhance the economic, recreational, educational, and aesthetic values of their natural resources, and to preserve those values for future generations. It also reduces uncertainty about future development and allows cities to more accurately inventory buildable lands and direct urban development within the Urban Growth Boundary (UGB).

## GOAL 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

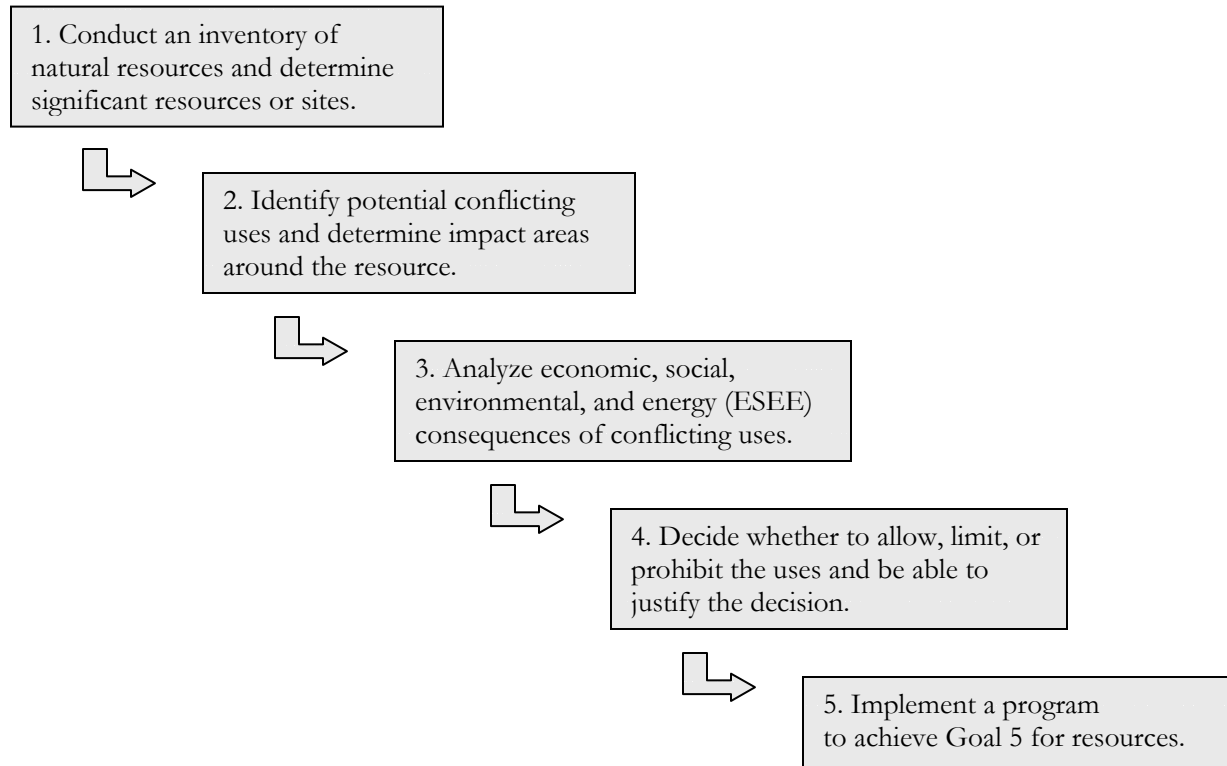
Goal 5, often known as the natural resources goal, is the statewide planning goal most explicitly designed to address the protection of natural resources. Goal 5 requires local governments to

“adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon’s livability.” Fifteen resource categories are listed under Goal 5 including: riparian corridors, wetlands, wildlife habitat, federal wild and scenic rivers, state scenic waterways, groundwater resources, approved Oregon recreation trails, natural areas, wilderness areas, mineral and aggregate resources, energy sources, cultural areas, historic resources, open space, and scenic views and sites.

The legislature adopted Goal 5 in 1974 and adopted the original rule governing its application in 1981 (OAR Chapter 660, Division 16). During the 1990’s, Goal 5 underwent a comprehensive review and revision process, resulting in new amendments adopted by LCDRC in 1996 (OAR Chapter 660, Division 23). The rule establishes procedures and requirements for complying with Goal 5 and requires local governments to use the new procedures in the next periodic review or when they amend land use plans or ordinances.

Goal 5 and its rule establish a five-step planning process for local governments as illustrated in *Figure 1* below. The first step is to conduct an inventory of natural resources within the local jurisdiction and determine significant sites based upon quality, quantity, and location information. Next, the local government must identify potential conflicting uses and determine an impact area for the resource site. The third step is an analysis of the economic, social, environmental, and energy (ESEE) consequences of those conflicting uses. Based upon the ESEE analysis, the local government must decide whether the resource should be partially or fully protected, or if the conflicting use should be allowed. The community must adopt a program to achieve Goal 5 for protecting that resource.

**Figure 1: Five-step planning process for Goal 5.**



Achieving compliance with Goal 5 can be a time-consuming, expensive, and controversial process for local governments. Many people point to the complexity of the process as one of the primary problems with Goal 5. A 2001 evaluation by the Committee on the Oregon Planning Experience (COPE) found that the complexity of the process was one of the major frustrations with the overall statewide planning program. Despite this criticism, Goal 5 actually relies on a very standard planning process consisting of an inventory of current conditions, identification of significant elements, analysis of issues, and a program for management. Pam Wiley in *“No Place for Nature: The Limits of Oregon’s Land Use Program in Protecting Fish and Wildlife Habitat in the Willamette Valley,”* describes Goal 5 as a “process goal.” She explains, “Although it requires that local governments identify significant natural resources and adopt programs to protect them, trade-offs can be made, and the kind of program that must be adopted to protect natural resources is unspecified,”(2001, p. 24). The 1996 revisions attempt to clarify and improve this process. Two of the most important changes to Goal 5 in the new rule are the insertion of different standards for different resources and the inclusion of safe harbor provisions.

### **Different Standards for Different Resources**

The revised Goal 5 rule emphasizes the inventory and protection programs of three primary resources: riparian corridors, wetlands, and wildlife habitat. The specific requirements for these three resources are discussed in more depth below. When determining which Goal 5 resources required more emphasis, LCDC considered the role and capabilities of the statewide planning program. Which resources does the program have the most ability to address and protect? Which resources are better addressed through the responsibilities of other state or federal agencies?

Several Goal 5 resources are managed under programs of other agencies. The new rule simplifies the process for local governments by allowing them to rely on state and federal programs for certain Goal 5 resources. These include wild and scenic rivers, Oregon scenic waterways, Oregon recreation trails, natural areas, wilderness areas, groundwater resources, and energy sources. In most cases, the rule requires local governments to designate resources identified by other agencies as significant and to be consistent with the management plans and protections already in place. For open space resources and scenic views and sites, no new inventories are required, but the Goal 5 process may be used when new sites are designated.

New procedures for mineral and aggregate resources are also included in the revised Goal 5. Aggregate resources refer to naturally occurring concentrations of stone, rock, sand and other materials used in road building. Local governments no longer have to inventory all existing and potential aggregate sites, but can determine significance of sites in response to individual plan amendment requests. The rule includes special provisions to protect high-quality farmlands from aggregate mining and to protect sites where mining will be permitted from future conflicting uses. The rule regarding significant mineral and aggregate resources was amended this June by LCDC. Aggregate resources are of a very different nature than the other Goal 5 resources and present a host of different conflicts and controversies. Therefore, this paper does not address the issues related to mineral and aggregate resources. For more information on the planning laws related to aggregate resources, see *Planning for Aggregate: A Guide to Planning for Aggregate Resources in Oregon* published by the Department of Land Conservation and Department (DLCD) and the Oregon Department of Transportation.

## **Safe Harbor**

A second important change in the new Goal 5 is the inclusion of a “safe harbor” option. Instead of going through the standard Goal 5 process illustrated in Table 1 above, local governments may implement safe harbor requirements for riparian, wetlands, and wildlife habitat resources. Adopting the safe harbor criteria ensures compliance with Goal 5 for that particular resource. For instance, instead of going through the standard inventory process for riparian corridors, a local government may determine the boundaries of significant riparian corridors using a standard setback distance from all fish-bearing streams and lakes.

The safe harbor option offers several advantages to local governments in exchange for adopting state standards. The safe harbor provision creates consistent and definitive standards throughout the state, increasing clarity, certainty, and equitability for local governments, property owners, and developers. It decreases the risk of litigation. Adopting safe harbor is also a lot less work. The option allows local jurisdictions to forgo expensive inventory and analysis processes, saving time and resources.

There are also trade-offs involved with this approach. The standard ESEE analysis leaves more room for subjectivity and interpretation. This subjectivity is viewed both as a positive and a negative. The ESEE analysis may give local jurisdictions more flexibility, which is favored by property rights advocates. The standard inventory and analysis may also be preferred by conservationists. As a one-size-fits-all approach, safe harbor is not tailored to site specific conditions and may not offer the best protection to resources or property owners. As safe harbor has been put into practice, the need for some adjustment has become apparent. For instance, the riparian safe harbor provision applies only to fish-bearing streams, yet in many localities intermittent streams provide valuable habitat. Safe harbor requirements are not necessarily sufficient to protect endangered fish and wildlife species under the Endangered Species Act (ESA).

Despite the mixed reviews, most planners agree that safe harbor provides a valuable option for local governments. Deciding which approach to apply when planning for Goal 5 resources depends upon local circumstances. The issues influencing this decision may include the extent of significant resources present in the jurisdiction, the level of public involvement, local politics, the availability of funding and staff resources, and the approach being used to comply with other statewide goals.

## **Other Natural Resource Goals**

Although Goal 5 provides the most explicit guidance for natural resources protection, several other goals also have implications for natural resources. Statewide Planning Goals 4 and 5 require preservation of farm and forest resources and Goal 14 helps to prevent sprawl. Together, these goals have contributed to the preservation of large tracts of habitat. Additional goals related to natural resources are described below.

### **Goal 6: Air, Water, and Land Resources Quality**

Goal 6 requires cities and counties to consider the effects of land-use decisions on the quality of the air, water, and land resources of the state. Although some guidelines for Goal 6 are included

with the goal, the provisions are very general. LCDC has not adopted an administrative rule to implement the goal. Goal 6 relies mostly on state and federal requirements for its implementation and requires jurisdictions to integrate compliance with federal and state regulation in their comprehensive planning process. Many planners doubt the potential for Goal 6 to protect natural resources, but working in concert with other goals it can provide a more powerful basis for protection.

Metro, the regional planning body for metropolitan Portland, is one of the few jurisdictions using Goal 6 to protect natural resources. In 1998 Metro adopted Title 3 to address water quality and floodplain management and implemented protective regulations limiting or mitigating the impacts of development activities. The approach was designed to address Goals 6 and 7, not Goal 5. To comply with Goal 5, Metro has completed the inventory, ESEE analysis, and selected a preferred habitat protection concept for fish and wildlife habitat. A final decision on the adoption of the habitat protection program is expected at the end of 2004. Through political will and their unique planning authority, Metro was able to use Goals 6 and 7 to limit development in riparian corridors.

### **Goal 7: Natural Hazards**

The purpose of Goal 7 is to protect life and property from natural disasters, not to protect natural resources. However, Goal 7 can be used to complement Goals 5 and 6 in the case of floodplain protection measures and offers opportunities for multi-objective projects and programs. Establishing riparian setbacks not only protects water quality and fish and wildlife habitat, but also reduces flood risk. Oregon's largest economic loss from natural disasters has resulted from flooding, presenting an additional economic argument for reducing development and maintaining or enhancing native vegetation in riparian areas.

### **Goal 15: Willamette River Greenway**

Goal 15 protects the corridor of land along the Willamette River, the boundaries of which are defined by statute. The goal requires the inventory of various resources, the protection of significant fish and wildlife habitats, and the establishment of a setback line. Local governments along the Greenway are required to incorporate parts of the approved Greenway Plan into their comprehensive plans and ordinances. The Greenway is unique because it crosses jurisdictional boundaries and shares implementation between state and local governments. The subject of Greenway planning warrants its own paper and due to the statewide scope of this one will not be addressed here.

### **Goals 16-19: The Coastal Goals**

Goals 16 through 19 establish planning standards for estuarine resources, coastal shorelands, beaches and dunes, and ocean resources. Coastal resources are an important and complex planning topic and present several different challenges from the natural resource topics discussed in this paper. The subject of planning for coastal resources warrants its own paper and due to the statewide scope of this one will not be addressed here.

## **Primary Resources in Land Use Planning**

The role of Oregon's land use program in protecting natural resources is one of its most controversial. The State's natural resources are subject to the authority of federal agencies such as the U.S. Forest Service and the Bureau of Land Management, state agencies such as the Oregon Department of Fish and Wildlife (ODFW) and Oregon Water Resources Department, and cities and counties. In amending Goal 5, LCDC sought to provide more guidance for the resources where land use planning has the most capability to implement protection and to streamline the process for resources where it makes more sense for other state or federal agencies to take the lead. As a result, the rule provides more emphasis on the inventory and conservation of three resources: riparian corridors, wetlands, and wildlife habitat.

### **Riparian Corridors**

Healthy and functioning riparian areas provide many values to communities including clean water, habitat for fish and wildlife, mitigation of high storm water flows, habitat connections with upland areas, and access to nature and recreation. The Goal 5 rule defines riparian areas as the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem. Riparian corridors are the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary. Local governments are required to inventory and determine significant riparian corridors and to develop a program to achieve Goal 5 using the ESEE analysis process. A list of activities that should be considered conflicting uses are included in the rule.

The rule includes two safe harbor provisions. Instead of the standard inventory process, a local government may determine the boundaries of significant riparian corridors using a standard setback distance from all fish-bearing lakes and streams as mapped by a set list of sources. The other safe harbor provision takes the place of the ESEE analysis. Instead, a local government may adopt an ordinance protecting significant riparian corridors as long as it includes certain requirements listed in the rule. Examples of these requirements are preventing permanent alteration of riparian areas and controlling the removal of riparian vegetation. The rule does not regulate grazing, fences, farm, or forest practices. Local governments may postpone determination of corridor boundaries on farm and forestlands until a permit is requested.

Riparian corridors may be the most controversial among the Goal 5 resources. DLCD struggles to achieve the minimum compliance from many jurisdictions, and the list of those in compliance is not long. The main issue with riparian corridors, as with much of natural resource planning, is one of property rights. There may be active opposition to regulations imposed on private property owners that reduce the development potential or economic value of their property. Although a few may argue against any regulations protecting resources, more often people agree upon some level of protection for streams and wildlife habitat. Many are opposed to a regulatory-focused approach, believing that private property owners will make the right decisions concerning their land if provided the information and resources to do so.

Most planners agree that emphasizing non-regulatory approaches, such as tax incentives, land acquisition, or landowner education programs is essential to the successful implementation of a riparian protection program. Many landowners along streams are interested in restoration

projects if provided technical assistance and/or funding. Watershed councils or soil and water conservancy districts may be involved with restoration programs that work with local landowners. Collaboration with a local watershed council helps to cross jurisdictional boundaries and create regional partnerships with businesses, non-profit organizations, citizens, and other local governments.

A second major issue in riparian corridors is planning for salmon species listed by the Endangered Species Act (ESA). Local jurisdictions may be held liable under the ESA for permitting development activities that result in harm to a threatened or endangered species and fall outside the provision for an incidental take allowed by section 4(d), a section 7 consultation, or a section 10 permit of the ESA (DLCD, 2001). The Goal 5 safe harbor for riparian corridors requires a 50-foot setback from fish-bearing lakes and streams and a 75-foot setback from all streams with an average annual stream flow greater than 1,000 cubic feet per second (cfs). These standards are not strict enough to remove liability for local governments under the ESA; however, the National Marine Fisheries Service (NMFS) has not been forthcoming with the acceptable federal setback for salmon protection.

Instead of the salmon listing serving as an incentive for local governments to implement riparian protection programs, the conflict between state and federal standards has slowed Goal 5 compliance in some cases. The lack of certainty provided a few jurisdictions a reason to postpone the expensive and political process of complying with the Goal 5 riparian provision until an acceptable standard is determined. Other jurisdictions moved forward based upon the state standards, the only ones currently established, expecting that clarity will not be reached soon due to national politics and the de-emphasizing of the ESA by the current administration. State and federal agencies should reach consensus on an acceptable setback standard to provide local governments with the support and clarity needed to implement riparian corridor protections.

Another issue for cities with riparian areas near or within downtown is to achieve the balance between riparian protections and a vibrant urban waterfront. A last concern with the riparian corridors provision is that it requires only maintenance not enhancement of riparian vegetation. If vegetation is already mowed down or grazed to the banks, ordinances only preserve these conditions. This is an important area for voluntary restoration or incentive programs to target.

## **Wetlands**

Wetlands are found across the state and provide a range of benefits, including water quality protection, flood control, groundwater recharge, and wildlife habitat. A wetland is defined as an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. On the federal level, permit decisions for dredging and filling wetlands are made under the Army Corps of Engineers section 404 program. At the state level, requirements for wetland planning are determined by DLCD and the Department of State Lands (DSL). DLCD establishes the procedural requirements and DSL provides technical standards and assistance.

In the wetland provision of Goal 5, cities are required to conduct and adopt a Local Wetlands Inventory (LWI) according to guidelines established by DSL instead of the standard inventory

process. An LWI is a comprehensive survey of all wetlands in the UGB. Counties must coordinate for areas that are outside of the city limits but inside the UGB or for any urban unincorporated communities (UUC). Areas outside of UGBs or UUCs do not require new inventories or the Goal 5 process, but must adopt the statewide wetland inventory and notify DSL about any proposed development affecting inventoried wetlands. This removes considerable burden from counties by allowing them to substantially defer to DSL for the protection of wetlands.

The LWIs are followed by an ESEE analysis of conflicting uses and a protection program for resolving those conflicts. Often the protection program includes a zoning ordinance that protects the most significant wetlands. Instead of the standard ESEE process, the local government can adopt safe harbor, which requires the protection of all significant wetland resources. Although this approach avoids the expensive analysis process, it is also less flexible and less tailored to local community values. Cities also can combine the safe harbor and standard Goal 5 processes. In this approach, the safe harbor is applied as much as possible, but the standard process may be used to resolve conflicts with particular wetland units. The safe harbor protection ordinance will meet the requirements for coastal shorelands protection under Goal 17. Local jurisdictions may also create a wetland conservation plan (WCP) following the requirements of DSL, and an approved WCP complies with Goal 5.

One of the most significant issues in wetlands planning is the high cost of the inventories, which is largely due to the level of expertise and time required to conduct them. Many cities do not have the financial resources for LWIs and funding sources are limited. In the past some funding has been available through grants from the Oregon Watershed Enhancement Board (OWEB), DSL, and DLCD during periodic review.

When a wetland inventory and protected land designations are not in place, a city may have significant resource sites included in its buildable land supply. These sites may not have been developed thus far because of physical constraints, such as wetlands. Completing a wetland inventory and plan, allows for more certainty and shorter decision-making times, both positive outcomes for local governments, developers, and property owners.

Lastly, on both a national and state level agricultural activities are largely exempt from wetland protection regulations. Agricultural development has been responsible for the majority of historic wetland conversions. One way to mitigate these losses may be through incentive and assistance programs to landowners. The national Wetland Reserve Program allows landowners to enroll in a 30-year or a permanent easement to restore and protect wetlands. This program was very successful, reaching enrollment capacity. Similar education and incentive programs are needed to protect natural resources on agricultural lands, an area which is not addressed by the land use program.

In January of 2004, DLCD and DSL published the *Oregon Wetland Planning Guidebook* to help local governments meet the Goal 5 requirements for a community to develop a wetland protection plan. For more information and to obtain a copy of the guidebook, go to the DSL website, [http://www.oregonstatelands.us/wetland\\_guidebook.htm](http://www.oregonstatelands.us/wetland_guidebook.htm).

## **Wildlife Habitat**

The preservation of wildlife habitat cannot be separated from the preservation of human habitat. Governments plan for the protection and enhancement of wildlife habitat to protect natural systems and biodiversity. By implementing wildlife habitat programs, local governments can help minimize new listings on the ESA and avoid legal liability. In Goal 5, wildlife habitat is defined as an area upon which wildlife depends in order to meet their requirements for food, water, shelter, and reproduction. Examples of these areas are wildlife migration corridors or nesting sites. The rule requires local governments to conduct the standard inventory process, determine significant habitat, and develop programs to protect these areas. Current inventory information must be obtained from ODFW and other state and federal agencies and include information on threatened and endangered species, sensitive bird site inventories, and state wildlife species or habitats of special concern.

Instead of the inventory process, local governments may opt to use the safe harbor criteria. Safe harbor allows the government to consider wildlife, but not fish, and to determine significant habitat as areas where certain pre-defined conditions are present. For instance, habitat documented to perform a life support function for a wildlife species listed by the federal government or the state as threatened, endangered, or sensitive must be designated as significant, as should habitat documented to be essential to achieving the policies or objectives in a wildlife species management plan of ODFW.

Although some cities have upland wildlife habitat to plan for, more often the significant habitat remaining in urban areas occurs in riparian or wetland areas and is addressed by those provisions. As a result, planning for wildlife habitat is mainly a rural issue addressed by county governments. Most counties were acknowledged in compliance with Goal 5 in the past, and so have some habitat protection in place. They may not have revisited compliance since the 1996 amendments and may find property rights issues make new habitat protections difficult. Also, certain habitat types are threatened primarily by logging or conversion to agriculture; land uses that are not regulated by Goal 5.

On public lands, wildlife habitat protection is regulated by federal or state agencies. On private lands in rural areas, minimum lot size regulations are in place. The larger lot sizes result in fewer landowners being involved, helping to reduce controversy. State and industrial forestlands are subject to the Oregon Forest Practices Act, administered by the Oregon Department of Forestry (ODF). This allows local governments to rely on ODF for protection of Goal 5 resources on state and private forestlands that might otherwise be affected by timber harvest. There is not an equivalent agricultural practices act, leaving much of the State's most sensitive habitat areas unregulated in terms of vegetation management or grazing in riparian areas. Although, this may not be an appropriate role for the land use planning program, it should be better addressed through other state agencies or voluntary programs by aiming to involve landowners in education, protection, and enhancement projects.

For a variety of reasons many jurisdictions address riparian and wetland resources before wildlife habitat. As mentioned previously, most wildlife habitat in cities occurs in riparian and wetland areas and is protected through those provisions. Threats to wildlife habitat often are related to farm and forest uses, which local governments are not required to regulate. In

addition, riparian and wetland areas present greater restrictions on development, and so there is greater incentive to identify and regulate these areas to reduce uncertainty concerning developable lands. The ESA and endangered salmon also add pressure to address riparian corridors more immediately.

The City of Eugene is currently updating the Metro Plan and addressing Goal 5. Eugene, Springfield, and Lane County have worked as a region to complete the Metropolitan Natural Resource Study, focusing on the Goal 5 resources of riparian areas, wetlands, and wildlife habitat. The wetland inventory is now under DSL review, and Eugene recently adopted the Riparian and Upland Habitat Inventory. Eugene took a different approach to Goal 5 in a number of ways. First, the metropolitan region planned for all three primary Goal 5 resources at once. Although this may be a longer process, it is much more comprehensive, saves time and money in the long run, and is more effective in identifying common goals and opportunities. Secondly, each jurisdiction will adopt the inventory first and the protection program later. This approach is recommended for wetlands plans, because of the long time span between the completion of the inventory and the adoption of a protection program. Landowners may balk at seeing their property designated as significant on the map. Adopting the inventory first, allows the community to address these issues upfront, which may result in a smoother adoption of the subsequent program.

## **Policy Issues**

Oregon's land use planning program has been successful in addressing natural resources in many ways, including involving local citizens, preventing development on productive resource lands, and establishing a process for local governments to recognize and make decisions about significant resources. The program also faces several challenges in planning for natural resources. The primary policy issues are summarized below:

- **Inventories** – Conducting the inventories required by Goal 5, especially comprehensive and high quality ones, is a long and expensive process. The hardship the inventory process poses depends upon the quantity and type of resources in the jurisdiction and the quality of existing maps and databases. State and federal agencies are important resources when going through the inventory process. Most planners find the coordination and support in technical information, expertise, and accommodation to local circumstances from state agencies, such as ODFW, DSL, and DLCDC, to be invaluable in completing the Goal 5 inventory process.

Funding sources remain one of the biggest obstacles. Producing acceptable and defensible science and information can be another obstacle. Jurisdictions may complete the inventory process, but face controversy over the results. There are usually landowners who dispute whether the resource on their property meets the definition of significance. A landowner appealed the City of Eugene's designation of a significant riparian corridor along his property. LCDC upheld the City's designation, finding that a local government must be able to rely upon a definition and not determine significance on a site-by-site basis.

- **Buildable Land Supply** – In Oregon's land use planning program, development is allowed to occur within UGBs, and cities must plan for a 20-year supply of buildable land for jobs

and housing of all types. If cities do not have wetland and riparian protections in place, these areas may be designated for development. Goal 5 protection programs may force communities to make difficult decisions regarding the removal of sites from the buildable land supply.

- **Periodic Review** – Local governments are required to address Goal 5 compliance during next periodic review. In some cases, several years will elapse before jurisdictions are required to update their comprehensive plans and ordinances to meet the new Goal 5 standards. Since the passage of Senate Bill 543 in 2001, cities with populations less than 2,500 and counties less than 15,000 are exempt from review, but not from goal compliance. Periodic review can be financially costly for local governments and there are pressures to de-emphasize this process. However, only a limited number of jurisdictions begin periodic review each year, allowing DLCDC to focus resources on those jurisdictions. Periodic review is an essential component of Goal 5 implementation. If it is weakened, compliance with the goal would be further delayed and denuded.
- **Local Government Compliance** – Generally, LCDC does not impose consequences when local governments fail to meet compliance deadlines, but instead sets a new deadline. The absence of consequences reduces the incentives for timely compliance. Noncompliance may be due to inaction on the part of a local government or because of a high level of controversy within the community that prevents program adoption. Repeating the intensive Goal 5 process after compliance is not met the first time can be frustrating for planners and local officials. While communities struggle with compliance, sensitive ecological areas may be lost to development.

The COPE evaluation indicated that two of the major criticisms of the statewide planning program are the one-size-fits-all approach and the concentration of control at the state level. Pressures for more control at the local level have increased with Measures 7 and 36, and LCDC is unlikely to impose state standards on local governments who miss Goal 5 compliance deadlines. The administrative rule does allow local governments to adopt limited interim protection measurements for certain areas to prevent irrevocable damage to resources, while the community is completing the ESEE or adopting a compliance program.

- **Agricultural Practices** – The Goal 5 rule does not require local governments to regard agricultural practices as conflicting uses during the ESEE analysis process. Yet, much of the remaining sensitive habitat occurs on farms and forestland. Historically, the land use program has not regulated land management (as opposed to land uses) outside of urban areas. On commercial forestlands, ODF does this through the Oregon Forest Practices Act. There is no comparable agricultural practices law. The protection of critical habitat areas requires the involvement of agricultural landowners. The role of the statewide planning program in this area may be limited both legally and politically. A variety of land use tools, such as public or private land trusts, tax relief, and landowner education program are more viable approaches.
- **Limited Protection** – Through the ESEE analysis local governments may decide to allow conflicting uses, apply limited protection, or fully protect significant resource sites. Often, full protection may not be legally or politically feasible and so limited protection is applied.

Under limited protection, disturbance or degradation to significant and sensitive areas may still occur. Wiley recommends that state and local governments pay more attention to the design, implementation, and monitoring of conditions applied to development in limited protection areas, so that this designation results in as little loss in resource value as possible.

- **Property Rights** – The issue of private property rights has become a central legal and political issue in land use policy, particularly in relation to environmental regulations. How far does public interest, and thus the government’s authority, extend in imposing constraints on the use of private property to promote community objectives and ensure quality development? In the 1970’s, local government’s planning and regulatory capabilities were strengthened in response to the growing environmental movement. After the 1990’s, land use regulations have come under closer scrutiny from legal challenges and legislative directives. As a result, planning for natural resources has become a more challenging task in recent years. However, outspoken opponents of planning and natural resources regulation only represent one side of the argument and are not necessarily properly informed on the purpose and opportunities presented by the regulatory capabilities of local governments. Although little research has been done on the topic, there may be cases where natural resource protection programs actually enhance property values.

In the short article, “*The Property Rights Challenge: What’s a Planner To Do?*” Irving Schiffman offers several guidelines for implementing planning policies in the current legal and political environment. He recommends for planners and policy-makers to know the law and keep informed of the true scope of their authority to regulate. Other recommendations include being prepared to justify development conditions and expanding the range of implementation techniques from which a community can select.

## Conclusions

Several common recommendations emerged from the research and interviews conducted for this paper. The recommendations are primarily from the perspective of planners in local communities working to implement natural resource programs, but they hold several implications for state policy. These recommendations are outlined below.

- Be able to articulate why planning for natural resources is important to the community. Planners and local officials need to frame arguments to represent a broad range of community values. For instance, water quality is valued by many community members and can be emphasized to gain support for riparian protections. Planners need to understand the issues involved and be able to justify the rationale for significance designations and for particular management strategies to the public and to LCDC.
- Involve people from the beginning – Instead of a reactive approach, local governments should be proactive and straightforward in defining and communicating their planning process. By involving people from the beginning, they can work to invest the public and landowners in the process and encourage the stewardship of resources.

- No ordinance by public committee – Although the public needs to be involved from the beginning of the process, crafting an effective ordinance in a timely manner requires experts and decision-makers. Public committees may be used in an advisory capacity to provide input and review, but should not be used to create an ordinance by consensus.
- Emphasize non-regulatory approaches – In the current environment of public resistance towards additional government regulations, non-regulatory approaches are a way to build a stronger base of citizen support for resource protection. Landowner education and incentive programs can increase participation in stewardship and resource management on private property. Forming partnerships with watershed councils or land trusts and using a diversity of implementation strategies, such as conservation easements, transfer of development rights, cluster zoning, and public acquisition, provides local governments with more flexibility in achieving resource goals. A combination of the carrot and the stick approaches is essential for effective Goal 5 programs.
- Consider planning for all resources at the same time – When planning for natural resources, local governments should consider all goals relating to natural resources at the same time, as well as all Goal 5 resources at the same time if possible. Such comprehensive planning allows local governments a more holistic and inclusive approach that minimizes oversight and conflict and maximizes common objectives and opportunities. The following statement from DLCD’s *Water Quality Model Code and Guidebook* pertains to water quality, but is also applicable to other resources, “The best way to address water quality is not to rely on one or two goals but to recognize that most of the goals are in some way related to water quality, and when used in concert they form a powerful basis for water quality ordinances,” (2001).
- Political willpower is a necessity - The importance of commitment and strong leadership from local planners, decision-makers, and elected officials cannot be overestimated in implementing successful natural resource programs.

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