



**OREGON PROPERTY OWNERS
ASSOCIATION**

**Senate Committee on Natural Resources and Wildfire
Opposition Testimony on SB 78**

Thank you for the opportunity to provide comments today in opposition to SB 78. The Oregon Property Owners Association has represented Oregon property owners before the Legislature, local governments, state agencies and Oregon courts for nearly 40 years, with more than 12,000 contributors across the state, including all 36 Oregon counties.

As I indicated yesterday, advocates have been given three hearings to state their case for this bill – two interim committee hearings lasting over an hour just prior to the session, and a 12-minute presentation yesterday. Despite receiving a promise that I would be given an opportunity to present at least 10 minutes of rebuttal testimony before this bill was scheduled, I was given 90 seconds to testify, and committee members were not allowed to ask questions of any of the witnesses. I would have been happy to answer them.

As promised, attached is an article I published earlier this year addressing claims made by the proponents of this bill. I've heard these same tired arguments for nearly 30 years, made by the exact same handful of people who attended yesterday's hearing. Knowing that they would come up again this session, I decided to answer all of them. If you want to fully understand the issue, please take the time to read the attached article.

Finally, I ask the committee to take a moment to reflect on this bill, offered with no advance notice, no work group discussion, and no effort at collaboration. We have represented rural families for decades, including those who have lost their homes to fire, wildfire, or other natural disaster. You have a member on your committee who has suffered such a tragedy.

I can tell you from experience that the families we've represented who have experienced this loss have been traumatized. Some have lost everything they own. Some have lost loved ones. Just last year we represented a family who lost their daughter and two grandchildren in an electrical fire that destroyed their home.

To think that a county planner is going to have to tell someone in this position that the “farmland preservation advocates” believe that their home was too big and they can't put it back is unbelievably cruel and inhumane, and the furthest thing from the legislature’s mind when establishing our land use laws. Just once I'd like to see one of the “farmland preservation advocates” tell a traumatized family that “saving farmland” is more important than letting them rebuild their home and try and recover from their grief. A little perspective would help.

Of course, we know this is never going to happen because the “farmland preservation advocates” have never had to look in the faces of a family in this situation or try to explain why they believe their 2,501 square foot home is an “elite estate,” or a “McMansion.” Instead, they mock and denigrate them because they aren’t “real farmers’ and should live in an apartment in town.

In the meantime, the “farmland preservation activists” force the county planners to deliver this absolutely unbelievable news. The planners have to do this knowing that they had absolutely nothing to do with creating the policy, and most want nothing more than just to approve the replacement dwelling application and let the family heal. No wonder the counties oppose this bill.

To have the legislature rubber stamp this callous “me first” attitude would be the icing on the cake. Some of you represent districts impacted by the 2020 Labor Day wildfires. You must have talked to your constituents who lost their homes, and I’m sure you felt their pain. How would they feel knowing that you want to decide how big their home can be, and that those families with a home greater than 2,500 square feet are going to be told to pound sand because of policies you’ve set?

And to hear people claim that this has anything to do with Tom McCall or Senate Bill 100 sickens me. Go back and read SB 100 before saying this.

Thank you for the opportunity to submit these comments. We’re happy to answer any questions you may have.

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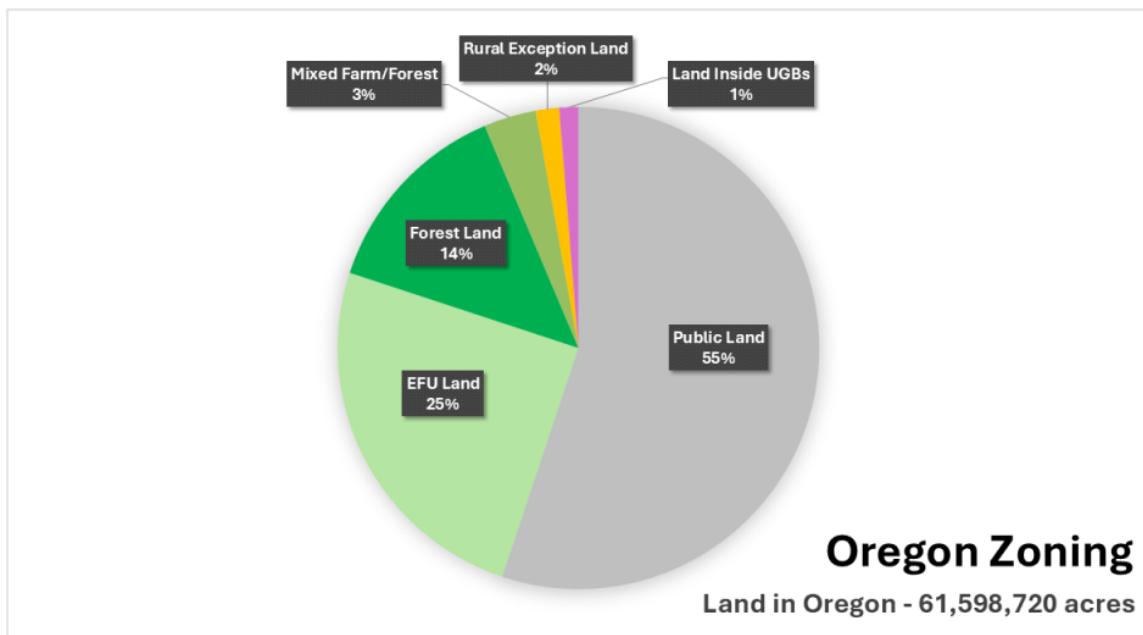
Last week, the Oregon Senate Committee on Natural Resources and Wildfire held an informational meeting on “Farm and Forest Land Loss in Oregon.” Unfortunately, the committee heard [two presentations replete with partial data and analysis](#) designed to cause alarm and convey the belief that there is an existential threat to the existence of Oregon agriculture.

We certainly don’t mind talking about farmland loss in Oregon. But if the Legislature is serious about the issue, they need to know the entire picture, not just part of it.

I know this is a long article, but I have heard the same people say the same thing about “farmland loss” for 30 years, and it just isn’t true. So, I am going to go through every single red herring that I’ve heard over the years and answer every last one of them.

Q: How much land in Oregon is zoned for farm/forest use?

Nearly all of it. Look at this pie chart showing land ownership/zoning in Oregon:



Remembering this pie chart is the key to understanding this issue. There are four big takeaways from the chart, which uses data from [DLCD's Farm and Forest Report](#) and other public sources:

1. Over half of all land in Oregon is publicly owned, primarily by the federal government.
2. Only 1.5% (approximately 1 million acres) of land in Oregon is inside urban growth boundaries (UGB), where the state directs all urban development. The other 98.5% are

rural or publicly owned. That means nearly all industrial, residential, and commercial use in Oregon occurs on only 1.5% of Oregon's land.

3. There are approximately 26.3 million acres of privately owned land zoned for natural resource use – 15.5 million acres zoned for exclusive farm use, 8.5 million acres zoned for forest use, and 2.3 million acres zoned for both farm and forest use.

4. 96% of all privately owned rural land (land outside UGB's) is zoned for farm, forest or mixed farm/forest use.

In short, when you get outside of town in Oregon, almost every acre of land is going to either (1) be owned by the government, or (2) be zoned as farm or forest land.

Remember this fact as you continue through the article.

Q: Are we losing land zoned for farmland?

A little, but not much, and this is to be expected. Since 1985, the first year that every Oregon county had adopted and approved exclusive farm use zones, 99.7% of the land that was originally zoned EFU (farmland) is still zoned as farmland. Approximately 43,000 acres of land that was zoned EFU in 1987 has now been rezoned to other urban or rural uses (including expansions of the UGB). The remainder is just as it was 40 years ago.

We're doing even better on forest land – 99.9% of original forest zoned land is still zoned forest.

At the rate Oregon is going, we'll run out of farmland in 14,884 years. Just in time for the next ice age.

Q: I've heard that Oregon allows a lot of “non-farm uses” in their farm and forest zones. Are these interfering with farm use?

Occasionally, but hardly ever. There are nearly 60 “non-farm” uses allowed in EFU-zones. You can find the list of them here: ORS 215.283, ORS 215.213.

To be clear, just because something is a “non-farm use” that doesn’t mean it isn’t related or integral to farming.

For example, farm product processing facilities, farmstands, and agritourism activities are all “non-farm” uses. Several dwellings that are allowed in conjunction with farm use, including farmworker housing, are also “non-farm” uses. If you want to see the best example of “farm uses” and “non-farm uses” coexisting, just head out to your local winery for a vineyard tour and then a glass of their pinot.

The 1973 legislature (the same legislature that approved Senate Bill 100, which created our land use system) divided the non-farm uses into two categories. The first list include uses that a county must allow, if the property owner meets the requirements. The second list are “conditional uses” that a county can allow, if it chooses to do so. However, in order to receive approval for one of these non-farm uses, the property owner is required to demonstrate that the use “will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.”

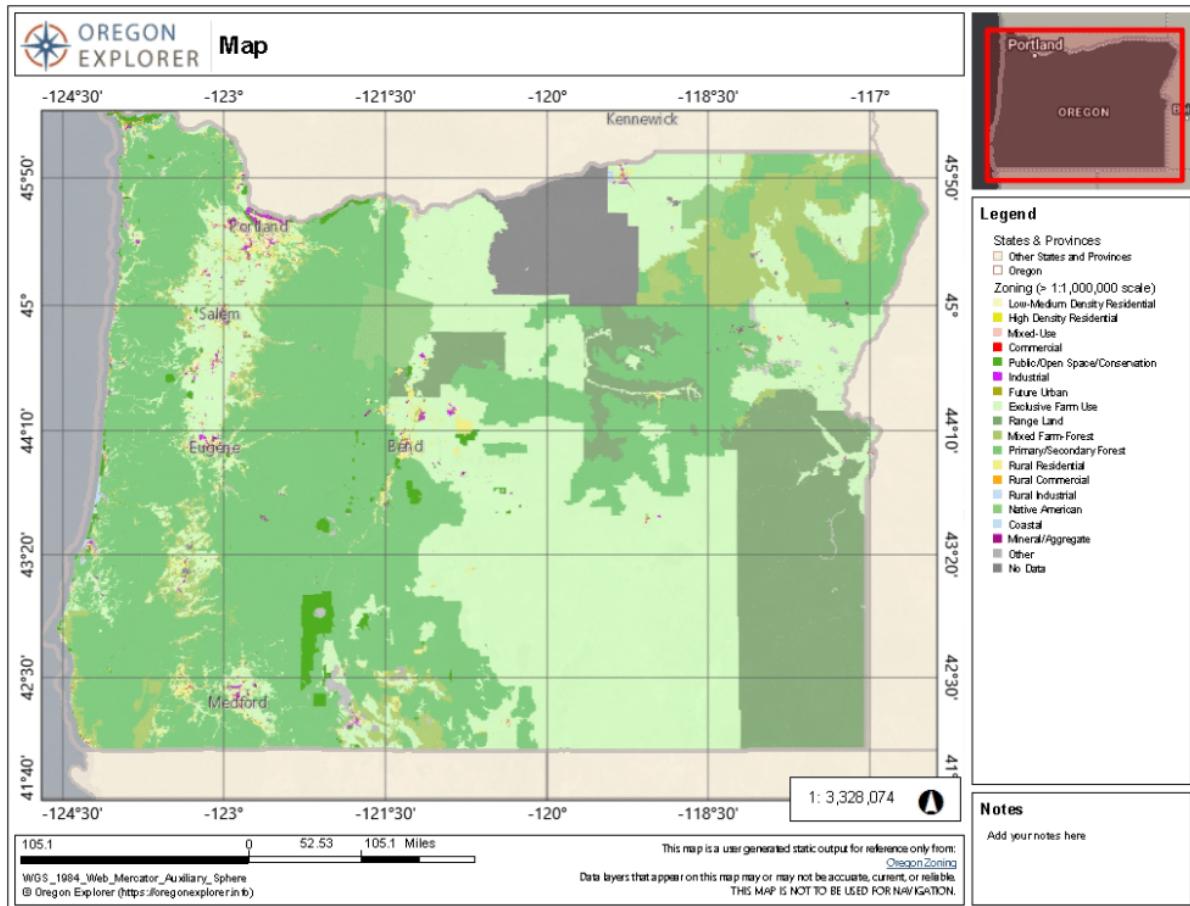
In other words, even if a county chooses to allow one or more of these conditional uses, they are very difficult to approve because the property owner must show that the proposed use won’t interfere with farm or forest activity in the area.

Finally, there are “non-farm dwellings” allowed in EFU zones, but only on poor quality farm soils, and only if the proposed dwelling will not (1) significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use, and (2) will not materially alter the stability of the overall land use pattern in the area. This is an even more stringent test than any of the uses listed above.

Q: Why does Oregon allow so many non-farm uses in EFU zones?

Because everything in rural Oregon is zoned as farmland or forestland! Look again at the pie chart and remember the four takeaways. Oregon has managed to zone everything (well, almost everything – over 96%) outside of cities as farmland or forest land. That means that any non-farm use in rural Oregon is going to be on farmland or forest land. A rock pit? That’s going to be on farm or forest land. A landfill? Same. A campground? Farm or forest. Farmhouse? That too.

Look at this map. If the state is going to require counties to label everything outside of town as “farmland” or “forest land”, then every rural use is going to be sited on farmland or forest land. It’s as simple as that.



Q: If we prohibited non-farm uses from going on farm or forestland, where would they go?

Nowhere. They wouldn't be sited and built because the state calls almost all rural property farmland or forestland. If they can't be sited on farmland or forestland, they can't go anywhere. That's the point.

To say that some of these uses should never go on farmland ignores the reality that nearly all of the non-farm uses are rural and remote by nature (campgrounds, rural fire facilities), or are limited by nature to a specific location (mines, rock pits, geothermal facilities), or have some relationship with farm or forest activities (farm dwellings, dude ranches, commercial activities in conjunction with farm use, farm stands, farm processing, timber processing).

Q: Why does the state allow non-farm uses on farmland or forestland if those uses can be located in town?

Because most of the uses have very little impact on farming and sometimes it makes more sense to locate them in rural areas. Take a landfill, for instance. You could put a landfill in town but that's not going to be too popular with Oregonians, especially since the farmland preservation laws force nearly all Oregonians to live in town.

Golf courses are another example. You can locate a golf course in town (and towns have grown around many of our existing golf courses), but since Oregon requires all rural land to be zoned as farmland or forestland, the limited supply of land in town is better suited for desperately needed housing, industrial or commercial uses, not golf courses. Locating a golf course on farmland has far less impact on Oregon agriculture than it does if it's located in town and wasting hundreds of acres that would otherwise be used to provide housing that young families could afford.

Q: What are the most controversial uses allowed on farmland?

Solar and wind farms, non-farm dwellings, agritourism, and home occupations. According to those who do not like “non-farm uses” on farmland, solar farms are unpopular because they take up a lot of land that could otherwise be used for farming. They are controversial with both conservatives and farmland preservation advocates from the environmentalist camp. Non-farm dwellings are controversial because the farmland preservation advocates argue there’s no reason for people who aren’t working in natural resource jobs to live in the country, and because they take farmland out of production, are occupied by people who complain about farm activities on neighboring farms, and raise the price of farmland.

Agritourism is controversial because some farmers don’t want intrusion in rural areas from the public and claim that the public interferes with their farming activities, while other farmers say agritourism and other non-farm activities (vertical integration) are critical to generating enough income to keep the farm operations going. For the same reasons, home occupations are controversial because they bring people out to rural areas from town, and they are used to establish outdoor events like weddings and reunions.

Q: Is there any evidence that non-farm dwellings hurt the agriculture industry?

Absolutely none. Non-farm dwellings are already limited exclusively to poor quality farmland, must demonstrate that they won’t significantly impact farm activities on neighboring farms, must prove that they will not “alter the stability of the overall land use pattern in the surrounding area, and people who live in them are barred by Oregon’s “right to farm” laws from challenging their neighbor’s accepted farm and forest practices. In other words, they are extremely difficult to obtain. There is no evidence that non-farm dwellings take land out of farm production, convert land to other uses, or raise the price of farmland.

Moreover, Oregon only approves approximately 100 non-farm dwellings statewide each year, a number that has held steady for years. Given that Oregon needs to produce 36,000 homes each year just to keep up with demand, this is a very tiny drop in a very big bucket, especially when you consider that the current system of farmland preservation means that nearly all 36,000 homes are supposed to be sited on a very tiny fraction of Oregon land. Have you seen the new homes in town? You think new homebuyers really want to pay \$700,000 at 6% interest for the privilege of being able to stick their hand out their kitchen window and touch their neighbor's house? You know why new houses are like that? Because we're "saving farmland".

Look at the pie chart again. As long as Oregon puts all of its rural areas off-limits for housing, we will never meet the needed housing targets.

Q: Is there any land outside of Oregon cities that isn't considered farmland or forest land?

Yes, a little. The remaining 3% of privately owned rural lands are zoned for various uses, primarily rural residential, rural industrial, and rural commercial. These areas were zoned based on their development patterns in the days before Senate Bill 100 and reflect areas that already had non-farm uses at the time our statewide planning system was created.

Additionally, there are some areas in Oregon where the soils are so poor that they are virtually unfarmable. These parcels are so bad that they do not meet LCDC's definition of "agricultural land" or "forest land," meaning that the state does not consider them to be farm land or forest land. Nevertheless, most of these parcels have been zoned EFU. Property owners have a process for correcting this mistaken zoning.

Q: Is it harder for young people to begin farming?

Absolutely. Farmland prices are rising, making farmland more expensive to purchase. But that's not anything unexpected. Oregon has a housing crisis because young people in town can't afford to buy land/homes. Young people do not have strong purchasing power in this economy.

Additionally, Oregon land use law doesn't help them. For example, our land use laws prohibit land zoned as farmland or forestland from being divided into any parcel smaller than 80 acres. It also prevents a farmer from building a home on their farm until they earn at least \$80,000 in farm income for two consecutive years. How is a young person supposed to obtain a bank loan to buy so much land and build a home?

We could fix this if the legislature wanted to do so. But the farmland preservation advocates don't want this to happen.

Q. Do all these non-farm uses raise the price of farmland?

No. The farmland preservation advocates complain that the non-farm uses allowed on farmland raise the price of farmland. There is absolutely no evidence of that.

It is certainly true that farmland prices have risen significantly over the last decade. But guess what – so have housing prices! In fact, in most cases, housing prices have risen faster than farmland prices.

In the five-year period between 2017-2022 (the time period that the farmland preservation advocates use to measure the rise in farmland prices), housing prices increased by 52% in the Portland/Metro area, 63% in Hood River, 71% in Salem, 79% in Bend, 75% in Boardman, 79% in Baker City, and 72% in Wallowa.

The increase in farmland prices has nothing to do with non-farm uses, and everything to do with the fact that land prices are rising across the board.

Q. What about replacement dwellings – do they hurt farmland?

Of course not. A replacement dwelling is just that – it replaces an existing dwelling that was already there. Any impact of the dwelling on farmland has already been felt, and that is likely none.

What the farmland preservation advocates argue is that replacing small homes with large homes increases the price of farmland. This is highly misleading. The price of the property may rise if a small home is replaced with a larger home, but that price increase is all reflected in the home itself and the land surrounding the home, which is valued and taxed separately from the farm acreage. The farm acreage value doesn't change at all.

More importantly, replacement dwellings apply to any type of rural dwelling, including homes occupied by farm operators and farmworkers. Imagine being told after your home burned down that the farmland preservation advocates decided that you couldn't put it back, or that you couldn't build a home bigger than 2,500 square feet, even if the home you lost was 3,500 square feet. That's what they advocate.

What's strange about this issue is that if the farmland preservation advocates believe that big houses are a problem in farm zones (and “big” apparently means anything over 2,500 square feet), then why do they only care about replacement homes? Why don't they be honest and come out and tell rural property owners that no house in rural Oregon can be larger than 2,500 square feet?

Q: If the legislature restricts non-farm uses, will it lower farmland prices?

No, but it will certainly make it more difficult for farmers to keep their farms in operation, as their ability to generate money from their farm operation will decline, which also impacts their borrowing ability.

Q: According to the U.S. Census of Agriculture, over 600,000 acres in Oregon were converted to non-farm uses between 2017-22. What does this mean?

The USDA sends the Census of Agriculture to any place, urban or rural, that they believe produced and sold, or normally should sell, at least \$1,000 or more of agricultural products. There is zero correlation between what is considered a “farm” by USDA and Oregon land use law.

Even the American Farmland Trust (AFT), one of the most strident environmental organizations and a staunch advocate for farmland preservation, warns the public about misreading the Census:

“Net changes in land in farms can be misleading. They provide one measure of the extent of agricultural activity, but do not tell us what is happening to the resource base. Decreases in land in farms do not necessarily indicate conversion; rather, they show that land has been taken out of active production.”

A far more reliable factor, according to AFT, is their “Farms Under Threat” publication. So how does Oregon fare in that publication?

According to AFT, [Oregon ranks 46th out of the 50 states in “threat to farmland”](#), trailing only South Dakota, Montana, Nebraska and Wyoming. And strangely enough, none of those states have top-down statewide planning like Oregon, urban growth boundaries, state land use goals, or anything else like Oregon. Somehow they seem to manage.

The best indicator, of course, is DLCD’s own numbers highlighted above, which show that Oregon is NOT losing EFU zoned land. We do not have a problem here.

In fact, we overprotect farmland to the detriment of other uses, including housing, mining, industrial development, high-tech, and other uses that would reduce housing prices for young families, employ thousands of Oregonians in high-wage industries, and create opportunities in parts of the state where jobs are desperately needed.

Finally, as AFT notes, the “conversion” numbers from the Census of Agriculture really illustrate one thing only – that land is no longer being farmed. If we really want farmers to keep farming, which OPOA cares deeply about, we need to give farmers more opportunity and options, not less. Like any industry, if farmers can’t make money, they won’t farm. Further limiting their options makes it harder to make money. That’s the wrong solution.