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The politics of marginality in Wallowa County, Oregon: Contesting the production of landscapes of consumption

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A B S T R A C T

The state of Oregon's (USA) land use planning framework has long been characterized by tensions between state and local authority, between traditionally-defined "urban" and "rural" concerns, and between the competing interests of various landowners. An examination of Wallowa County, Oregon's implementation of House Bill 3326, a 2001 law giving counties the power to define certain agricultural lands as "marginal," and therefore exempt from restrictions on subdivision and development, illustrates the ways in which these tensions become magnified as rural communities attempt to govern private land use in the context of rural restructuring. Implementation of HB3326 highlighted the tensions between landowners interested in capitalizing on development opportunities afforded by HB3326, neighboring producers concerned about interference from future amenity migrants, and existing amenity migrants with interests in protecting their rural idyll. Contestations over nonfarm development took place in the context of a strong agricultural community identity, concerns about the effects of economic restructuring on producers, and local resistance to the rural gentrification process. The process of defining marginality came to encompass not only technical issues of land productivity, but also broader community contestations over the continuation of traditional land uses and the legitimacy of various actors to govern private land.

1. Introduction: of wastrels and yeomen

In a 1973 speech supporting an expanded state role in the regulation of residential development on private land, Governor Tom McCall of Oregon, USA warned that "The interest of Oregon for today and in the future must be protected from the grasping wastrels of the land." By "grasping wastrels" McCall meant the well-financed developers of sprawling suburbs within the populated Willamette Valley, condominiums along the coast, and rural subdivisions in the more lightly-populated southern and eastern parts of the state (Robbins, 2006). Caught in the midst of this political clash between the power of the state of Oregon and the power of real estate developers were rural landowners themselves—including family farmers, ranchers, and non-industrial private forest owners—for whom the prospect of land use restrictions carried multiple and conflicting implications. Fearful of the effects of unchecked suburban sprawl on agriculture, several Willamette Valley farmers played central roles in crafting Oregon's early statewide land use policy and in building political support for its passage. At the same time, the freehold estate has long been plagued by tensions between land as a productive asset and land as a speculative commodity, as Thorstein Veblen observed nearly a century ago (Veblen, 1923). Consequently, restrictions on the freedom to subdivide and develop land are typically framed by farmers and other landowners as threats to the exchange value of landed property (Freyfogle, 2003; Liffmann et al., 2000).

As recent state policy changes have devolved a measure of authority over land use governance from the state to the county level, contestations over land use and property rights have likewise shifted to more local levels. Here we examine Wallowa County, Oregon's efforts to resolve tensions between rights of development and the protection of agricultural operations (and the "open space" amenities the latter provide) within the context of amenity-driven rural restructuring. In particular, we focus on the county's experience implementing House Bill 3326, a 2001 revision to state land use law allowing counties to permit a limited amount of

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subdivision and development on rural lands deemed marginal or "generally unsuitable for agriculture."

2. Rural land use governance

2.1. Policy background

The state of Oregon has long been known for its statewide land use planning framework, which goes farther than any other American state in attempting to protect agricultural and forest land from residential development (Abbott et al., 1994; Gosnell et al., 2011; Walker and Hurley, 2011). Oregon first asserted state authority over county and city land use decisions in 1969 via Senate Bill 10, which required both zoning and land use planning for all local governments (Groll, 1982). The more comprehensive Senate Bill 100 was passed four years later, largely on the basis of public and political support from the densely-populated Willamette Valley and over the objections of most rural Oregonians and their elected representatives (Knaap, 1994). Some of the key components of the framework created by SB100 include the requirement for counties and cities to designate urban growth boundaries, outside of which subdivision and residential development of resource lands are strongly regulated, and the creation of a state-level Land Conservation and Development Commission (LCDC) authorized to set statewide goals and oversee goal compliance by local entities. The overall thrust of the Oregon model is aimed at concentrating development within core urban areas, preventing subdivision and development on agricultural and forest lands, and protecting key natural, scenic, and historical resources through a power-sharing arrangement between the state, counties, and municipalities (Gustafson et al., 1982; Knaap, 1994). Continuing political support for this statewide land conservation policy has come largely through a coalition of "strange bedfellows" (cf. Pincetl, 1992), primarily a subset of agricultural producers concerned about the loss of productive land to sprawling development aligned with urban populations interested in conserving rural scenery and "open space" (Knaap, 1994; Slavin, 1994; Walker and Hurley, 2011).

SB100 continues to provide the overall framework for land use within the state, although a series of legislative actions and ballot initiatives since 1973 has shifted the balance of power between the state, local governments, citizenry, and property owners (Pease, 1994). The most visible and significant of these changes was Measure 37, an anti-"takings" ballot initiative passed in 2004 which effectively pre-empted many land use controls by requiring monetary compensation—or a waiver of regulation—for any loss in property value resulting from restrictions on development enacted since the time of purchase[1] (Hunnicut, 2006; Jackson and Kuhlken, 2006; Walker and Hurley, 2011). Measure 49, a legislative referral passed by Oregon voters in 2007, nullified much of M37's effect even as it created new, more limited, avenues for subdivision and development by long-time landowners and retained some of the anti-"takings" components of its predecessor. That Oregonians were not of one mind regarding such issues is demonstrated by their voting patterns on these two measures: M37 passed with 60.6% of the statewide vote in 2004; three years later, M49 garnered 62.6% of the popular vote. In Wallowa County these figures were 63.5% and 49.6%, respectively.

In a separate process in 2001, the Oregon legislature passed House Bill 3326, under which counties can authorize landowners to split off up to two nonfarm parcels and dwellings on parcels currently zoned for "exclusive farm use" (EFU).[2] In order to qualify for subdivision and development under HB3326, the lands to be divided and developed must comply with three general criteria: 1) the addition of nonfarm dwellings must not interfere with, nor increase the cost of, agricultural or forestry activities in the surrounding area; 2) the cumulative impacts of the proposed and potential future nonfarm development must not "materially alter" the stability of land use patterns in the surrounding area; and 3) the lands to be divided and developed must be "generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract." Counties that choose to opt-in to the HB3326 authorities retain wide latitude to determine what lands are deemed marginal ("generally unsuitable") for agriculture and forestry.[3]

2.2. Governance, rural restructuring, and property rights

While the case of HB3326 is specific to the state of Oregon and its local governments, it exemplifies tensions related to agricultural landscape change—and struggles over the identity of rural communities—taking place across the globe. These contestations occur in the context of processes of rural restructuring and shifting forms of land use governance characterized by an enhanced role for local actors (Gurran et al., 2007; Stanley et al., 2005; Warner, 2003; Woods, 1998). Such shifts have arisen from multiple interrelated processes: the perceived ineffectiveness of centralized or corporatist models of environmental governance (Baker and Kusel, 2003; Krishnaswamy, 2005); the decline of productivism as a regulating force within the postfordist transition (Lowe et al., 1993; Marsden et al., 1993); and as a specific manifestation of the overall triumph of neoliberal ideologies and governance frameworks in the U.S. and elsewhere (Lockie et al., 2006; McCarthy, 2005; Stanley et al., 2005). Although under-theorized in the U.S., patterns of rural restructuring across economically developed nations share many broad similarities (Gosnell and Abrams, 2011; Nelson, 2001), particularly in terms of the creation of uneven rural terrains characterized by diverse economic activities, patterns of migration, and land use expectations, onto which a range of governance frameworks are mapped (see, e.g., Flynn and Lowe, 1994; Holmes, 2006; Marsden, 1998, 1999; Murdoch et al., 2003). In this context, land use planning becomes "an important institutional arena where struggles to define the meaning of the natural environment and how communities structure their relations with nature take place" (Hurley and Walker, 2004, p. 1532).

In Oregon, HB3326 devolved a measure of private land governance from state to county levels at a time when many rural communities across the state were struggling to define new economic and cultural identities following the decline of traditional sectors, particularly forestry and agriculture. Remote and traditionally resource-dependent communities like Wallowa County

[1] Oregon forestry and agriculture interests were divided on Measure 37, with the Oregon Cattlemen's Association and most timber corporations campaigning in favor of the ballot measure and several wine growers' associations, nurseries, and local farm bureaus campaigning against it.

[2] Note that this was not the first time that the state allowed exemptions for marginal EFU lands; a 1983 law, modified in 1985, directed the LCDC to establish standards for defining marginal lands. As Pease (1994) describes, the various interest groups monitoring this process evaluated the marginality definition more by political considerations than by scientific adequacy.

[3] Oddly, HB3326 provides a very specific definition of marginality for cases where the remaining EFU parcel is at least 40 acres (16.2 ha) but smaller than the county-defined minimum parcel size (160 acres or 64.7 ha for Wallowa County) after accounting for the loss of the nonfarm parcels. In cases where the remaining EFU parcel is equal to or greater than the minimum parcel size, counties have wide discretion to define standards for marginality. Nonfarm subdivision of land under HB3326 is prohibited on parcels less than 40 acres.