

The Legal Environment for Hardwood Lands in California¹

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Abstract: Intensified use of California's hardwood lands is evolving rapidly. With these changes come clashes over the appropriateness of various land uses and, in some cases, regulatory efforts to control some of these activities. The legal environment facing hardwood landowners is a confusing mix of state, Federal, and local measures. This paper first describes and compares the legal environments facing hardwood land owners as defined by Federal, state and local policies, and secondly identifies some of the causal factors that have contributed to the current legal environment, particularly at the local level.

Attention has recently focused on the use and management of California's hardwood resources and hardwood lands. While once characterized by low use and low value, California's increasing population and suburban expansion have served to focus new demands on hardwood lands. Concerns today focus upon (1) the decline of hardwood stocking caused by increased tree removals and limited regeneration success, and (2) the decline in the number of acres of hardwood land as caused by conversion of these acres to industrial, residential, and agricultural uses.

The use of California's hardwood lands is evolving rapidly. With these changes come clashes over the appropriateness of various land uses and the policies and regulations intended to guide them. Yet the legal environment facing hardwood landowners is a confusing mix of state, Federal, and local measures that has until now, remained undescribed.

The purpose of this paper is two fold: first, to describe the legal environment facing hardwood land owners as defined by Federal, state, and local policies and regulations, and secondly, to describe some of the causal factors that have contributed to that legal environment, particularly at the local level. The information presented here is a summary of a larger report prepared for the California Division of Forestry and Fire Protection as part of the Integrated Hardwood Range Management Program (Doak and others, 1988). Case studies and background information that could not be presented here are contained in that report.

METHODS

Because of the complex nature of the legal environment for hardwood lands, this study required the review and analysis of a broad range of data. Federal and state statutes, policies and programs providing the framework of the current legal environment were inventoried and examined. Policies were characterized as to (1) whether they were regulatory, educational, or incentive in nature, (2) how they were implemented, (3) the level of transference of property rights from the private to the public sector, (4) the level of transference of resources from the public to the private sector, and (5) the relative effect on hardwood stocking or hardwood land use. This inventory of state and Federal statutes was then combined with profiles of the primary organizations [e.g., Board of Forestry, Department of Fish and Game] that work within this legal framework.

Next, local ordinances and other restrictive policies regarding hardwood tree removal were inventoried and analyzed. Phone interviews were conducted with county and city personnel throughout the state and relevant documents were collected and examined. This inventory aided in the selection of case study counties and in the eventual development of a typology of local ordinances and policies affecting hardwoods and hardwood lands.

Finally, six case study counties, Monterey, Nevada, San Diego, Tehama, Tulare, and Ventura, were selected for an in depth investigation of causal factors stimulating the regulation of hardwood cutting. The regulatory environments in these case study counties were investigated in three ways. First, diverse variables describing the economic, ecologic, and demographic conditions of the case study counties were examined, as was the relative presence of Federal and state government in local affairs (as suggested by e.g., number of Federal and state employees, grants, expenditures).

Each case study county was then visited and studied in depth through extensive interviews with planning directors, and other persons with interests or influence in local land use decisions. Ordinances, code books, and planning documents were also extensively reviewed. The information collected on these county visits lead to the clarification of county regulatory histories, the identification of conditions leading to regulation, and notable similarities and differences within and between counties.

Lastly, the local, state, and Federal legal environments were described and compared. Causes of variation were analyzed both statistically and heuristically for each case study county. Greater detail on these analyses is available in Doak and others, 1988.

¹Presented at the Symposium on Oak Woodlands and Hardwood Rangeland Management, October 31 - November 2, 1990, Davis California.

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A DESCRIPTION OF THE LEGAL ENVIRONMENT

The legal environment created by the state and Federal governments has developed for different reasons than that created by local governments and similarly is implemented through different mechanisms. Financial and manpower resources also greatly vary between Federal, state and local jurisdictions. These factors, combined with divergent policy objectives, history of policy development and varying implementation capacities, create a confusing array of regulation that any hardwood landowner must face.

Variation In Levels of Police Power

Local policies affecting hardwood lands tend to be strict applications of police power while state and Federal policies are more likely to involve some level of compensation in exchange for increased public control over private land use. This tendency is modeled in figure 1. Local regulations tend to fall along a line parallel to the vertical axis, while state and Federal policies more often fall along the diagonal line, representing an exchange of land use discretion for an equal value of benefits.

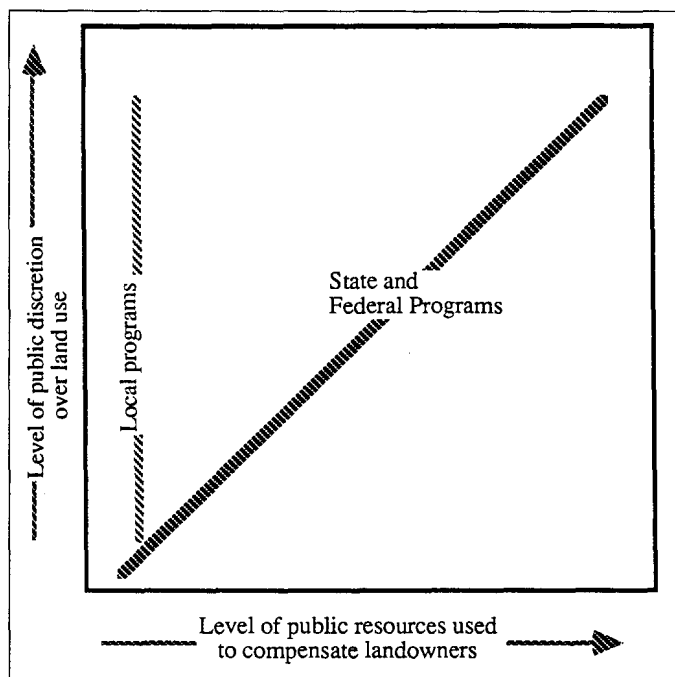


Figure 1—Local Policies v. State and Federal Policies.

Variation in Breadth of Focus

State and Federal law also tends to provide a framework within which various local laws emerge, but the actual promulgation of local statutes, generally reflects local issues and site-specific economic, demographic, physiographic, and ecologic factors. Often, local ordinances are somewhat narrowly focused on local land-use issues rather than addressing the larger resource issues involved. Resulting local land use controls may preserve trees and hardwood lands by restricting development and preserving open space, but they are generally not designed to protect related ecosystems.

Similarly, ecological factors such as soil stability, erosion, and sedimentation, as well as aesthetic factors like visual quality, and historic significance may emerge as the issues that precipitate local regulation. But when voiced by resource professionals or planning staff alone, these issues are not likely to result in regulation. Instead, regulation occurs only when concern for these issues is shared by a coalition of community interest groups that can apply their combined political muscle to the issue at hand. Development and agricultural groups usually share anti-regulatory values, and together they can often squelch, or at least modify, proposed regulations. Unless negatively affected by the incident, agricultural operators and developers will generally join to oppose most forms of county-wide hardwood land regulation. Thus, the necessary coalitions are often difficult to assemble on a county-wide level, but may be successful at more local levels, as evident in the measures adopted in area plans (Monterey County), and special zones (Scenic Resources Protection zones in Ventura County).

Many state and Federal programs affect hardwoods indirectly by influencing the overall viability of agricultural operations on hardwood lands. But these programs may have widely differing effects on hardwood retention as they are rarely designed with hardwoods in mind. For example, programs that reduce the cost of land ownership, such as the California Land Conservation Act [also known as the Williamson Act] which provides mechanisms for tax relief to encourage the continuance of agricultural land uses—or programs that increase the revenue opportunities available to landowners—such as the Ranching for Wildlife Program, which encourages improved wildlife habitat management on private land while creating opportunities for increased income from hunting—may provide incentives to retain hardwood land in large ownerships. Similarly, other programs may encourage the maintenance of hardwoods by providing a disincentive for converting land to agricultural uses by increasing the costs of such operations. For example, the sodbuster provision of the 1985 Federal Farm Bill [Title 12 of The Food and Security Act of 1985, Public Law 99198], was designed to discourage agriculture on highly erodible land but may also encourage the retention of hardwoods. Conversely, water supply projects that encourage new agricultural development on hillsides may diminish the extent of hardwood lands.

Although, most state-level hardwood protection on private lands to date, has occurred as an indirect consequence of other policy—such as the Williamson Act which was implemented in

response to concern over the loss of prime farm land—current concern for the hardwood resource as voiced by citizens, counties and resource professionals has initiated consideration at the state level. Currently the State of California, through the Board of Forestry, has adopted a hardwood policy focusing on research, education and monitoring. The research for this paper (Doak and others, 1988) was funded by the State and is part of that effort.

Urban Versus Rural Focus

A major contrast between state/Federal and county policies and regulation is that county policies are generally limited to urban or urbanizing areas while state and Federal programs are focused on rural areas beyond the urban fringe. Because they tend to be urban-oriented, local tree-specific ordinances—or even open space policies—tend not to affect large expanses of undisturbed woodland and may result in resource islands rather than any great amount of contiguous open space. In turn, however, the site-specific, urban nature of local policies limits interference in the economic livelihood of most rural agricultural operations.

Inter and Infra-county Regulatory Differences

The propensity of counties to regulate hardwood land use varies measurably both between and within counties. Monterey County, for example, has a wide array of instruments that affect tree cutting such as local tree-cutting ordinances, land clearing ordinances, open space programs, and hillside development restrictions that affect hardwood land use. In contrast, Tehama County's regulatory structure addresses little more than basic agricultural zoning.

Within an individual county, tree removal ordinances tend to be site-specific, and rarely extend county-wide. Only three counties have ordinances with county-wide restrictions: Los Angeles, San Bernardino, and San Mateo. Other county ordinances apply restrictions only in particular zones. Monterey County's several area specific tree ordinances, for example, still leave the majority of hardwood land free of tree removal restrictions. The application of other county ordinances and policies similarly varies from site to site depending on the type of land use activity to be regulated. Agricultural exemptions, which are common in many types of local ordinances, further complicate the picture.

In summary, the state and Federal legal environment for hardwood lands generally differs from the local legal environment in the following ways:

- Local controls tend to be site-specific while state and Federal programs are resource specific;
- State and Federal programs generally focus on rural land use while local policies affecting hardwoods are usually limited to urban, suburban or developing areas;

- Many state and Federal programs offer landowners some compensation for increased public discretion over land use while local statutes are usually strictly regulatory;
- The state and Federal programs that affect hardwood lands often do so by influencing the economic viability of certain land use activities.

CAUSES OF VARIATION WITHIN THE LEGAL ENVIRONMENT

Changes in the local legal environment are generally precipitated by incidents of tree cutting or development that negatively affect people other than the land owner. In contrast, changes in the Federal or state regulatory environments are more likely to be initiated by shifts in national interests, such as economic factors, than by the degradation of the hardwood resource itself.

Although large scale tree removal often results in public outcry, extensive but discrete degradation of hardwood-related ecosystems may not. This is particularly evident in situations where dispersed residential development is hidden by retention of extensive tree cover, as is common in the foothills of the central Sierra.

While a major cutting/development incident may be necessary to precipitate change in the local legal environment for hardwood land, it is not a sufficient force in of itself. Instead, the eventual implementation of restrictive policy depends upon a political bargaining process involving community agricultural, development, and residential interests as well as planning staff and resource professionals. The creation and adoption of policy thus often reflects the relative influence of these interest groups and their perceptions of both the proposed statute and the incident that precipitated the proposal.

Incidents of tree cutting or development are most likely to occur along land use margins and are usually precipitated by changes in economic conditions. When the economic environment affecting a land ownership changes, then the likelihood of change in land use increases. The relatively low value of hardwood land, traditionally used as range, makes it susceptible to land use changes and potential conflict, especially when located near urban centers.

Whether or not a tree cutting or development incident leads to a change in the local regulatory environment depends on:

- 1) The spatial distribution of land uses and hardwood lands within each county [spatial factors]; and
- 2) The resultant bargaining between organizations affected by the incident [organizational factors].

In general, cutting or development incidents are more likely to evolve into increased regulation when:

- 1) Trees are perceived as scarce. Ventura County, for example, has limited tree cover and local ordinances focus on preserving the few remaining native species.

2) The greater the erosion potential, as a function of slope and soil type, of hardwood lands. Monterey County's oak ordinance, for example, originated from concern over soil erosion resulting from the clearing of oaks from a steep sandy hillside.

3) The area contains unique trees. The massive valley oaks of the City of Visalia are a focus of civic pride and are protected by ordinance.

4) The pattern of development is more fragmented. Many ordinances emerge from incidents in areas where agricultural activities are juxtaposed with residential use.

5) Residential interest groups are relatively affluent, well educated, and politically powerful. Restrictions are more common in the affluent coastal areas of Monterey and Ventura Counties than in the interior rural, agricultural regions of these counties.

6) The traditional coalition between development and agricultural interests deteriorates.

7) Resource professionals find a coalition with politically powerful residential interest groups. Local resource professionals often have considerable expertise in proposing and designing environmental controls, but they have little direct power and cannot effect policy implementation without gaining support from other local interest groups.

The process of change in the various legal environments affecting hardwood land follow a similar basic pattern. First, an incident—whether a visible tree removal, shifts in the economy, or a professional report—is perceived to be a significant issue by individuals or groups with access to political power, and the issue is brought before a legislative authority (e.g., Congress, local board of supervisors, or state legislature). This authority, may decide either to act or not to act. Action may result in change in regulation or policy, or a decision to study the matter. Study, in turn, may lead to change or to no action. This simple pattern is demonstrated in figure 2.

In summary, Federal, state and local policies create a complicated legal environment for California's hardwood landowners. The complexity of this environment is compounded by the tremendous variation between and among counties. Changes in this legal environment are generally precipitated by an incident of tree cutting or development, but while an incident may be necessary for change, it is not sufficient in of itself. The interaction of the spatial and organizational variables inherent to local situations will define when a cutting or development incident will lead to public uproar, whether or not an ordinance or policy will result, and where and to what intensity the ordinance will be applied.

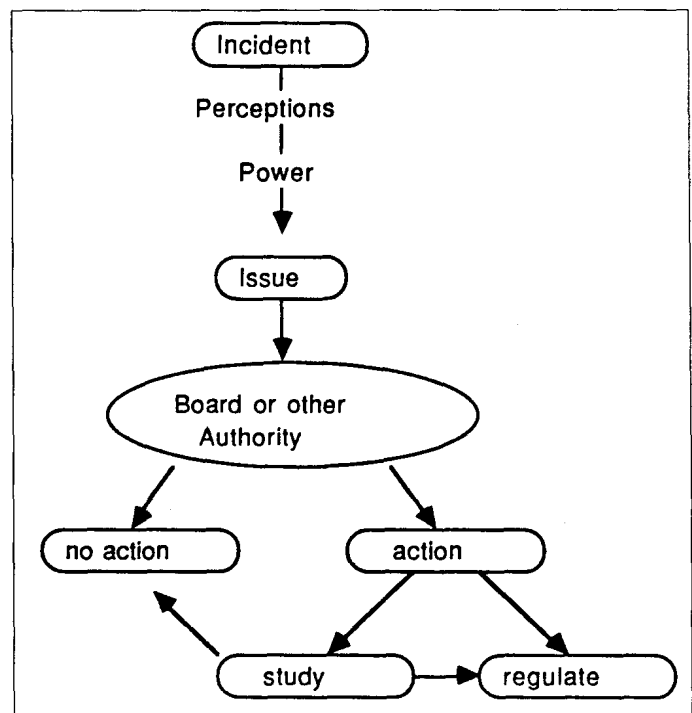


Figure 2—Pattern of Change in Legal Environments for Hardwood Lands.

ACKNOWLEDGMENTS

This research was funded by the California Division of Forestry and Fire Protection, as part of the Integrated Hardwood Range Management Program.

REFERENCES

Doak, Sam, Kass Green, Sally K. Fairfax and Sharon Johnson, 1988. The Legal Environment for Hardwood Land Ownerships in California, Forest and Rangeland Resources Assessment Program (FRRAP).