

STATE OF OREGON
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT



2015-2017 TECHNICAL ASSISTANCE GRANT

| AGREEMENT COVER SHEET | |
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| This cover sheet is informational and not a part of the agreement | |
| Offer Date: December 2, 2015 | |
| Grantee Rogue Valley Council of Governments 155 N. 1st Street P.O. Box 3275 Central Point, Oregon 97502 | Grant No. TA-17-151 |
| Project Title: Southern Oregon Regional Pilot Program in Douglas, Jackson, and Josephine Counties | |
| Grantee Representative Michael Cavallaro, Executive Director Phone: 541-664-6674 mcavallaro@rvcog.org | DLCD Grant Manager Josh LeBombard Phone: 541-414-7932 josh.lebombard@state.or.us |
| GRANT AMOUNT: \$194,000 | CLOSING DATE: May 31, 2017 |
| Last day to amend agreement: March 1, 2017 | |

Signature

Grantee shall return a signed agreement to DLCD by e-mail within thirty (30) days of the Offer Date. If not signed and returned without modification by Grantee within thirty (30) days of the Offer Date, the DLCD Grant Program Manager may terminate this offer of the grant award. Upon receipt of the Agreement signed by Grantee, the DLCD Grant Program Manager shall sign and return a digital copy of the signed document via e-mail.

List of Products

Task 3: Evidence of steering and technical committees' continued participation during the process of developing data, analysis, and program deliverables and a website accessible from the Grantee's and each Regional Partner's current website containing up to date information pertinent to the public, state agencies, and stakeholders regarding the Pilot Program.

Task 4: None

Task 5: None (see Task 7)

Task 6: Report on maps and GIS data for all mapping errors identified in Jackson County

Task 7: (1) Maps, data, and narrative showing the results of the carrying capacity analysis on the identified sample areas; (2) minutes of required meeting; and (3) A response to each item addressed in state comment letter

Task 8: Draft petition for rulemaking or project summary report

Grantee will provide all draft and final Products, including memos, reports, and maps produced by this grant agreement in a digital media format. The term "digital media" means a compact disc, digital video disc, USB flash drive, e-mail, or FTP submittal authorized by DLCD.

STATE OF OREGON
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

2015-2017 TECHNICAL ASSISTANCE GRANT
AGREEMENT

DLCD Grant Number: TA-17-151

RVCOG

This agreement (“Agreement”) is made and entered into by and between the **State of Oregon, acting by and through its Department of Land Conservation and Development**, hereinafter referred to as “DLCD,” and **Rogue Valley Council of Governments (RVCOG)**, hereinafter referred to as “Grantee,” and collectively referred to as the “Parties.”

1. **Effective Date and Availability of Grant Funds.** This Agreement is effective on the date on which every party has signed this Agreement and all required State approvals have been obtained (“Effective Date”). Unless earlier terminated or extended, this Agreement expires **May 31, 2017** (“Closing Date”). Grant Funds under this Agreement are available for eligible costs incurred beginning on the Effective Date and ending on the Project End Date provided in Exhibit A.
2. **Agreement Documents.** The Agreement consists of this agreement (without any Attachments) and the following Attachments, all of which are attached hereto and incorporated by reference:

- Attachment A: **Project Description and Budget**
- Attachment B: **DLCD Contact Names and Addresses**
- Attachment C: **Request for Product Payment Form and Instructions**
- Attachment D: **Office of the Governor State of Oregon Executive Order No. 12-07**
- Attachment E: **June 4, 2015 Letter from Department of Land Conservation and Development to Rogue Valley Council of Governments**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows: this Agreement without Attachments; the Attachments as listed, in descending order of precedence.

3. **Grant Funds.** The maximum, not-to-exceed, grant amount that the DLCD will pay to Grantee is **\$194,000** (the “Grant Funds”). Disbursements will be made only in accordance with the schedule and requirements contained in this Agreement, including Attachment A.
4. **Project.** The Project is described in Attachment A. Grant Funds shall be used solely for the Project described in Attachment A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by DLCD by amendment pursuant to Section 6 hereof. Grantee agrees to perform the Project in accordance with the terms and conditions of this Agreement.
5. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by

personal delivery or e-mailing to the Grantee's Grant Representative or DLCD's Grant Manager, as the case may be, at the address or number set forth in Attachment B, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice delivered by e-mail shall be effective on the day the party receives the transmission if the transmission was during normal business hours of the receiving party, or on the next business day if transmission was outside normal business hours of the receiving party. Any communication or notice given by personal delivery shall be effective when actually delivered.

6. **Amendments.** The terms of this Agreement will not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the Parties (or in the case of a waiver, by the party against whom the waiver is sought to be enforced). If the Grantee wishes to amend the Agreement, the Grantee must submit a written request, including a justification for any amendment, to the DLCD Grant Manager at least 90 calendar days before this Agreement expires. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before Grantee performs work subject to the amendment.
7. **DLCD Funds:** Grantee acknowledges and agrees that each disbursement of funds by DLCD under this Agreement is contingent on DLCD receiving sufficient funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow DLCD, in the exercise of its reasonable administrative discretion, to make the disbursement.
8. **Reporting:** At any time before the Closing Date, when requested by the DLCD Grant Manager, Grantee shall provide a written report on the status and progress of the Project within a mutually agreed timeframe.
9. **Payments:** DLCD payments to Grantee under this Agreement shall be made in accordance with the grant payment schedule described in the Project Description in Attachment A of this Agreement. Payment is contingent upon DLCD's acceptance of the Product(s) produced under the Agreement. Grantee agrees that reimbursement of all amounts requested by Grantee is contingent upon compliance with all the terms and conditions of this Agreement.
10. **Penalty:** Payments to Grantee may be withheld or reduced if DLCD determines that Project performance under this Agreement is unsatisfactory, or if one or more terms or conditions of this Agreement have not been met. The amount of Grant Funds withheld will be based on the best professional judgment of the DLCD Grant Manager and Grant Program Manager.
11. **Ownership of Product(s).**
 - a. **Definitions.** As used in this Section 11 and elsewhere in this Agreement, the following terms have the meanings set forth below:
 - i. **"Grantee Intellectual Property"** means any intellectual property owned by Grantee and developed independently from the Project.
 - ii. **"Third Party Intellectual Property"** means any intellectual property owned by parties other than DLCD or Grantee.

- iii. **“Product(s)”** means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Grantee is required to deliver to DLCDC pursuant to the Project and this Agreement, including but not limited to any Product(s) described in Attachment A.

- b. **Original Works.** All Product(s) created by Grantee pursuant to the Project and this Agreement, including derivative works and compilations, and whether or not such Product(s) is considered a work made for hire or an employment to invent, shall be the exclusive property of DLCDC. DLCDC and Grantee agree that such original works of authorship are “work made for hire” of which DLCDC is the author within the meaning of the United States Copyright Act. If for any reason the original Product(s) created pursuant to the Project is not “work made for hire,” Grantee hereby irrevocably assigns to DLCDC any and all of its rights, title, and interest in all original Product(s) created pursuant to the Project, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.

- c. **Upon DLCDC’s reasonable request,** Grantee shall execute such further documents and instruments necessary to fully vest such rights in DLCDC. Grantee forever waives any and all rights relating to original Product(s) created pursuant to the Project, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
 - i. **In the event that Product(s)** created by Grantee under this Agreement is a derivative work based on Grantee Intellectual Property or is a compilation that includes Grantee Intellectual Property, Grantee hereby grants to DLCDC an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Grantee Intellectual Property employed in the Product(s), and to authorize others to do the same on DLCDC’s behalf.

 - ii. **In the event that Product(s)** created by Grantee under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee shall secure on DLCDC’s behalf and in the name of DLCDC an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Product(s), and to authorize others to do the same on DLCDC’s behalf.

- d. **Grantee Intellectual Property.** In the event that Product(s) is Grantee Intellectual Property, Grantee hereby grants to DLCDC an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Grantee Intellectual Property, and to authorize others to do the same on DLCDC’s behalf.

- e. **Third Party Works.** In the event that Product(s) is Third Party Intellectual Property, Grantee shall secure on DLCDC’s behalf and in the name of DLCDC, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based

upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on DLCD's behalf.

12. Indemnity.

- a. **GENERAL INDEMNITY. SUBJECT TO LIMITATION OF STATE OF OREGON CONSTITUTION AND STATE OF OREGON TORT CLAIMS ACT.** GRANTEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS DLCD, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY FEES, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF GRANTEE OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.

- b. **INDEMNITY FOR INFRINGEMENT CLAIMS. SUBJECT TO LIMITATION OF STATE OF OREGON CONSTITUTION AND STATE OF OREGON TORT CLAIMS ACT. WITHOUT LIMITING THE GENERALITY OF SECTION 12.A,** GRANTEE EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD DLCD, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING ATTORNEY FEES, ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE PRODUCT(S) OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO DLCD BY GRANTEE THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR DLCD'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE GRANTEE WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

- c. **CONTROL OF DEFENSE AND SETTLEMENT.** GRANTEE SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 12.A OR 12.B; HOWEVER, NEITHER GRANTEE NOR ANY ATTORNEY ENGAGED BY GRANTEE SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL GRANTEE SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT GRANTEE IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL

PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

13. **Recovery of Grant Moneys.** Any Grant Funds disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement (“Misexpended Funds”) or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to DLCD. Grantee shall return all Misexpended Funds to DLCD promptly after DLCD’s written demand and no later than 15 days after DLCD’s written demand. Grantee shall return all Unexpended Funds to DLCD within 14 days after the earlier of expiration or termination of this Agreement.

14. **Termination:**

a. **DLCD’s Right to Terminate at its Discretion.** At its sole discretion, DLCD may terminate this Agreement:

- i. **For its convenience** upon thirty (30) days’ prior written notice by DLCD to Grantee;
- ii. **Immediately upon written notice** if DLCD fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow DLCD, in the exercise of its reasonable administrative discretion, pay for the Product(s) or Task(s) hereunder; or
- iii. **Immediately upon written notice** if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the DLCD’s financial assistance under this Grant Agreement is prohibited or DLCD is prohibited from paying for the Product(s) or Task(s) hereunder from the planned funding source.

b. **DLCD’s Right to Terminate for Cause.** In addition to any other rights and remedies DLCD may have under this Agreement, DLCD may terminate this Agreement immediately upon written notice by DLCD to Grantee, or at such later date as DLCD may establish in such notice, or upon expiration of the time period and with such notice as provided below, upon the occurrence of any of the following events:

- i. **Grantee is in default** because Grantee institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- ii. **Grantee is in default** because Grantee commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform any of its obligations under this Agreement within the time specified herein or any extension thereof, or so fails to pursue its work hereunder as to endanger Grantee's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after DLCD's notice, or such longer period as DLCD may specify in such notice.

c. **Grantee’s Right to Terminate for Cause.** Grantee may terminate this Agreement with written notice to DLCD upon the occurrence of the following events:

- i. **DLCD is in default** because DLCD fails to pay Grantee any amount due pursuant to the terms of this Agreement, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice; or
 - ii. **DLCD is in default** because DLCD commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and DLCD fails to cure such failure within thirty (30) calendar days after Grantee's notice or such longer period as Grantee may specify in such notice.
- d. **Return of Property.** Upon termination of this Agreement for any reason whatsoever, Grantee shall immediately deliver to DLCD all of DLCD's property (including without limitation any Product(s) or Task(s) for which DLCD has made payment in whole or in part) that is in the possession or under the control of Grantee in whatever stage of development and form of recordation such property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Grantee shall immediately cease all activities hereunder, unless DLCD expressly directs otherwise in such notice of termination. Upon DLCD's request, Grantee shall surrender to anyone DLCD designates, all documents, research or objects or other tangible things needed to complete the Product(s) or Task(s).
- e. **Termination** under Section 14 shall be without prejudice to any claims, obligations, or liabilities either party may have incurred prior to such termination.
15. **Failure to Comply:** If a party fails to comply with any of the requirements or conditions of this Agreement, the other may, without incurring liability and without termination of the Agreement as provided above, refuse to perform further pursuant to this Agreement. If Grantee fails to comply with any of the requirements or conditions of this Agreement, DLCD shall make no further disbursement of Grant Funds to Grantee and Grantee shall upon demand by DLCD promptly repay DLCD all unexpended Grant Funds and Grant Funds expended in breach of this Agreement as provided in Section 13.
16. **Accounting and Fiscal Records:** Grantee shall maintain its fiscal records related to this Agreement in accordance with generally accepted accounting principles. The Grantee shall maintain records of the receipt and expenditure of all funds subject to this Agreement for a period of six (6) years after the Closing Date, or for such longer period as may be required by applicable law or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Accounting records related to this Agreement will be separately maintained from other accounting records.
17. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between DLCD (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to

the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

18. **Closeout report:** The Grantee shall submit a closeout report to DLCD within thirty (30) days after the termination of the grant or the Closing Date of this Agreement whichever is earlier. The closeout report shall be on a form provided by DLCD.
19. **Closeout Payment:** Disbursement of any remaining Grant Funds will be made upon submittal of all required Product(s), up to and including those required for the final reimbursement, and a signed DLCD closeout report form acceptable to DLCD. DLCD shall authorize payment to the Grantee within ninety (90) days of such submittal if all required Product(s) or Task(s) are submitted and accepted by the DLCD Grant Manager after review for compliance with the Agreement.
20. **Closeout Penalty:** DLCD reserves the right to reduce or withhold final payment if a closeout report is not submitted to DLCD within the thirty (30) days referenced in Section 18.
21. **Subsequent funding:** Eligibility for subsequent funding to the Grantee is contingent upon receipt of the closeout report as referenced in Section 18.
22. **Audit:** The Oregon Secretary of State, Attorney General of the State of Oregon and the Director of DLCD or any other duly authorized representative of DLCD shall have access to and the right to examine any records of transactions related to this Agreement for six (6) years after the final disbursement of Grant Funds under this Agreement is authorized by DLCD.
23. **Appropriate use of funds:** Grant Funds shall not be used for any purpose other than for completing the Project in accordance with the Project Description and Budget in Attachment A.
24. **Amendments:** Amendments must be facilitated by the DLCD Grant Manager. An amendment to this Agreement may be initiated at any time during the grant period, but must be received at the DLCD Salem Office at least ninety (90) days prior to the Closing Date and be signed by all parties on or before sixty (60) days prior to the Closing Date.

25. By signing this Agreement the Parties each represents and warrants that it has the power and authority to enter into this Agreement and that the Agreement is executed by its duly authorized representative. By signing the document, Grantee agrees to comply with the terms of this Agreement.

Grantee: RVCOG

Grant No. TA-17-151

| | | |
|---|------------------------------------|-------------------------|
| Print Name of Authorized Official For the Grantee Michael Cavallaro | Title Executive Director | Date 12/21/15 |
| Signature of Authorized Official For the Grantee  | | |

Grantor: State of Oregon, acting by and through its Department of Land Conservation and Development

| | | |
|--|---|--------------------------|
| Approved for Legal Sufficiency, Oregon Department of Justice Cynthia Byrnes E-mail on file at DLCD | Title Assistant Attorney General Tax and Finance Section General Counsel Division | Date 12/1/2015 |
| Print Name of DLCD Grant Program Manager Rob Hallyburton | Title Community Services Division Manager | Date 12/28/15 |
| Signature of DLCD Grant Program Manager  | | |

PROJECT PURPOSE STATEMENT

Introduction

Utilizing the direction provided in Attachment D, Office of the Governor State of Oregon Executive Order No. 12-07, Douglas, Jackson, and Josephine counties (“Regional Partners”) will analyze identified strategies that may allow appropriate variation in what lands must be planned and managed as farm and forest lands in Douglas, Jackson, and Josephine counties. Grantee will provide administrative coordination and grant related support. The program consists of three major phases.

Phase 1

Analysis of regional definitions and criteria for farm and forest lands, to explore:

- a. Alternative forest land designation, including revised methods for the authorization of dwellings;
- b. Alternative farm parcel size opportunities; and
- c. Designating non-resource lands.

Phase 2

This phase will include:

- a. The identification of mapping errors made in the acknowledgement process; and
- b. An analysis of the appropriate level and types of uses on the carrying capacity of the land of pursuing the approaches listed above, as outlined in Attachment D: Office of the Governor State of Oregon Executive Order No. 12-07.

Phase 3

Preparation of a petition for rulemaking to LCDC or a project summary report if information necessary to prepare a petition is not completed.

PROJECT OVERVIEW AND MANAGEMENT

Overall administrative coordination of the Project will be the responsibility of the Grantee as assisted by the DLCD Grant Manager. The specific duties of the Grantee will include:

- a. Providing general administrative support to the Regional Partners, especially in terms of ensuring consistency with the requirements and timeline of Executive Order 12-07 and its implementation plan as agreed upon by DLCD and the Regional Partners;
- b. Setting up and maintaining a listserv or other appropriate list with the help of each county. The list(s) will contain the name, mailing address, city, state, email address to send notice of meetings and pertinent information to the public;
- c. Establishing and maintaining a central website for the project, incorporating specific information and work products from each county on an ongoing basis; and
- d. Serving as the project grant administrator, submitting reimbursement requests and work products to DLCD, and providing the individual counties with their scheduled reimbursements.

Advisory Committees

The Project will employ a Steering Committee (SC) comprised of at least one county commissioner and one planning director from each county and a technical advisory committee (TAC) composed of local government staff, state agency staff, and others identified by the SC and TAC.

See Task 3 of in the “Schedule, Products, and Budget” section of this Attachment A for more details on the advisory committees. Additional representatives from other affected agencies and organizations may serve as recommended by the planning directors.

The SC and TAC will meet on a regular basis to review technical analysis and recommendations prepared by the Regional Partners. Individual TAC members will be responsible for communicating with officials from their respective jurisdictions and to assure that policy issues are incorporated into technical work at the appropriate time and in the most effective way.

Agency Role

DLCD will provide financial, administrative and technical assistance. DLCD supports the collaborative, regional approach envisioned in the Project and agrees to work equally and fairly with each jurisdiction to help assure that state and local interests are optimized. DLCD recognizes the Regional Pilot Program Project will inform, but will not bind, future land use decisions of the cooperating jurisdictions.

Grantee Role

The Project will use Grantee’s services to perform technical analysis related to identifying any issues that are not being resolved among the three jurisdictions and Grantee is expected to make sure the Project is on time and will be completed as planned. If necessary, and if requested by a Regional Partner, Grantee may attend meetings of the SC, TAC, or other Project-related meetings. Grantee will establish and maintain a website (see subtask 3.d in the “Schedule, Products, and Budget” section of this Attachment A).

Project Meeting Materials

Any written materials prepared by Grantee shall be provided to each of the Regional Partners in electronic format (PDF and Word) one week prior to any scheduled SC or TAC meetings or both. All written materials and pertinent information for each SC, TAC or county meeting shall be provided to Grantee for upload to the regional Grantee-maintained website. Minutes or summaries from these meetings shall be provided by Regional Partners to Grantee in electronic format within a reasonable time period for upload to the regional website.

Each of the Regional Partners shall prepare meeting agendas and summaries for each SC or TAC or county meeting. The county where the meeting is held shall distribute, where appropriate, meeting materials electronically to project committee members at least five (5) days prior to any scheduled meeting.

Project Schedule

The schedule identified in “Schedule, Products, and Budget” section of this Project Description will be observed. DLCD may require an amendment to this Agreement if the timeframes in the schedule are not satisfied.

Expectations for All Written and Graphic Products

All reports and Products will be delivered to the DLCD Grant Manager according to the schedule provided in this Project Description.

All reports, studies, and other documents produced under the Project must bear the statement in Project Requirement 3, below.

Grantee and the consultant will provide all draft and final Products, including memos, reports, and maps produced by this grant agreement in a digital media format. The term “digital media” means a compact disc, digital video disc, USB flash drive, e-mail, or FTP submittal authorized by DLCD.

PROJECT REQUIREMENTS

Grantee agrees to carry out the Project and submit Products in accordance with the requirements in this section.

1. Grantee will produce and submit to DLCD those Products as specified in this Agreement and this Project Description and Budget.
2. Grantee will provide copies of all final Product(s) produced under this Agreement to DLCD in the manner described in this Project Description.
3. All reports, studies, and other documents produced under the Project must indicate on the cover or the title page an acknowledgement of the financial assistance provided by DLCD by bearing the following statement: “This project is funded by Oregon general fund dollars through the Department of Land Conservation and Development. The contents of this document do not necessarily reflect the views or policies of the State of Oregon.”
4. Grantee will identify the location of the originals of any Product(s) if a copy is submitted to DLCD or if the product is one-of-a-kind document.
5. Grantee will provide all letters, memos, reports, charts, products and maps produced under this grant agreement in a digital media format.
6. Any final draft product (e.g., ordinances, maps, websites, databases, supporting documents, and photographs) shall be a hearings-ready draft approved by a resolution of the governing body and shall be accompanied by a report in detailing why the product was not adopted and a time frame for the future adoption of the product.
7. Any notice issued by Grantee that is eligible for reimbursement under ORS 215.503 – Notice to county property owners for costs incurred for Measure 56 – is not reimbursable under this Agreement.
8. Grantee will coordinate and provide notice to DLCD; Regional Partners; the Oregon departments of Agriculture, Fish and Wildlife, Forestry, and Water Resources; and any other interested agencies, and organizations of public meeting(s), workshop(s), work session(s), and/or hearing(s) to develop, review or approve products prepared under this Agreement.

9. Grantee will consult with the DLCD Grant Manager in the development of Products and provide an opportunity for timely review of all draft Products.
10. Grantee will submit a written status report at the request of the DLCD Grant Manager at any time outside of the payment schedule in addition to the reports submitted with Attachment C.
11. DLCD will provide no more than one interim payment before the Closing Date and a final payment. Payments will be made only upon submittal of qualifying Product(s) and progress report(s) in accordance with the terms of Attachment C to this Agreement. The report(s) must describe the progress to date on each Task(s) or Product(s) undertaken during the billing period. Other written or verbal progress reports will be provided upon reasonable request by the DLCD Grant Manager.
12. Payments under this Agreement will be reduced if Task(s) or Product(s) or both Task(s) and Product(s) scheduled to be completed are not completed by the timeline provided in the Project Description. DLCD's payment obligations under this Agreement are conditioned upon DLCD's receiving funding, appropriations, limitations, allotments or other expenditures authority sufficient to allow DLCD in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement.
13. If a new comprehensive map or zoning map is created or an existing map is revised or updated, the Product(s) must be submitted in an electronic form compatible with Environmental Systems Research Institute's (ESRI) file formats (coverage, shapefile or geodatabase).
14. Geospatial data should be free of topological errors and metadata must comply with the current State of Oregon Metadata Standards accessible at <http://www.oregon.gov/DAS/CIO/GEO/pages/standards/standards.aspx>, "Oregon GIS Data Standards." The projection of the data may be determined by the jurisdiction. All data should have the projection defined with the dataset and must be documented in the metadata.
15. DLCD may display appropriate Product(s) on its web interface including corporate GIS data generated under this Agreement and any additional data provided that is not specifically restricted into state agency databases, acknowledging that Grantee and agents of Grantee are not responsible for the accuracy of such data. DLCD may also share the data specifically generated under this Agreement with other agencies and organizations, as this is data that DLCD owns as Product(s) under Grant Agreement Section 11.
16. While Grantee has entered into intergovernmental agreements with the Regional Partners for the Regional Partners to perform some of the Project, the Grantee is solely responsible to DLCD for timely completion of the Project. Grantee shall require the Regional Partners to perform those parts of the Project related to the Regional Partners. Grantee shall monitor the Regional Partner's continued compliance with the project. Grantee shall incorporate appropriate provisions in the subcontracts permitting it to enforce the Regional Partners compliance with the project's requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the project is in full force or pursuing legal action to enforce the requirements.

SCHEDULE, PRODUCTS, AND BUDGET

The work performed under this grant is a continuation of work completed under two previous grants (TA-COG-13-176 and TA-OL-15-001) and includes all tasks not completed under the previous grants. In order to provide uniformity with the former scopes of work, task numbering for this Grant Funds maintains the same sequence: Tasks 1 and 2 from the original grant were completed, so this Grant Agreement begins with Task 3.

PHASE 1

Task 3: Ongoing Project Administration and Oversight.

Grantee and Regional Partners shall:

- a. Maintain regular communication with the Grantee, the Regional Partners, DLCD, other state agencies, and each other during the course of organizing and carrying out the Pilot Program.
- b. Maintain Steering Committees comprised of one county commissioner and the planning director from each county to oversee the progress of the Pilot Program and report to respective boards of commissioners.
- c. Maintain a consistent message regarding the progress and content of the Pilot Program.
- d. Maintain information available via the Web regarding the progress of the Pilot Program, public participation opportunities, and data and materials developed under this grant.
- e. Maintain a technical advisory committee for its respective county to review data and information and provide comments and recommendations to the County and Regional Partners regarding the completeness and accuracy of data and other tasks as the Regional Partner County assigns. To present a balanced approach, the committee shall include but not be limited to, local members with expertise in the following fields: farming, ranching, forestry, special districts, mining/aggregate, economic development, land use, and city government. The committee shall also include ex-officio members from DLCD, members from the Oregon Departments of Agriculture, Fish and Wildlife, Forestry, Land Conservation and Development, Transportation, and Water Resources; and affected Indian Tribes. DLCD will ensure participation by other State Agencies.
- f. Maintain a uniform method and format to create and disseminate data and information generated by the Regional Partners.

Task 3 products:

- 3-1 Regional Partners provide evidence of steering and technical committees' continued participation during the process of developing data, analysis, and program deliverables.
- 3-2 Website accessible from the Grantee's and each Regional Partner's current site containing up to date information pertinent to the public, state agencies, and stakeholders regarding the Pilot Program.

Task 3 Timeline: Effective Date of Agreement through Closing Date

Task 3 Budget: \$0

Task 4: Data Acquisition - Mapping and Associated Data

See the description of this task in the TA-OL-15-001 Agreement. This task was completed during the 2013-2015 biennium.

Task 4 Timeline: Complete

Task 4 Budget: \$0. Budget for Tasks 7 and 8 may be used to pay for work completed as part of TA-OL-15-001.

Task 5: Assessment of Resource Lands

See the description of this task in the TA-OL-15-001 Agreement. This task was completed during the 2013-2015 biennium.

Task 5 products: See description in the TA-OL-15-001 Agreement. Items were prepared and delivered under TA-OL-15-001. However, the state responded to the submittal in a letter (Attachment E).

Task 5 Timeline: Complete. However, a response to each item addressed in the letter from the state (Attachment E) is required prior to or in conjunction with submittal of Task 7 work products.

Task 5 Budget: \$0

PHASE 2

Task 6: Assessment of Mapping Errors

Jackson County shall, in consultation with appropriate state agencies, use GIS guidelines described in Special Conditions 15 to 17 to analyze lands currently designated for farm and forest use to identify any mapping errors made in the acknowledgement process consistent with ORS 215.788-791.

Task 6 product:

Report on maps and GIS data for all mapping errors identified in Jackson County. If Jackson County finds that significant mapping errors do not exist in the county, then a report summarizing such will suffice.

Task 6 Timeline: To be completed by Grantee by **June 30, 2016**

Task 6 Budget: \$28,000 (for Jackson County)

Task 7: Carrying Capacity Analysis

Regional Partners shall:

- a. Using GIS guidelines as described in Project Requirements 13 and 14, establish common factors or criteria, in accordance with Office of the Governor State of Oregon Executive Order No. 12-07, section 5 (Attachment D), to determine the appropriate level and types

of uses for lands eligible for consideration for alternative forest land designation, alternative farm parcel size opportunities, or to be re-designated to non-resource land. The factors or criteria shall be applied to sample areas in each county. The number, size, and location of the sample areas shall be representative of all land identified for consideration in Task 5. Data utilized to create all maps identified in Task 4 of the contract for **Grant No. TA-COG-13-176 and TA-OL-15-001** and identified in Task 4 of this Grant Contract are to be used in Task 7. Additionally, the Task 7 analysis will include the following data:

1. Douglas County:
 - i. Animal Unit Months (AUM) to be provided by the Department of Agriculture;
 - ii. The most recent and relevant wildlife and habitat data provided by Department of Fish and Wildlife (ODFW), such as Big Game Habitat, Threatened and Endangered Species (and other Goal 5 resources), Conservation Opportunity Areas, and wetlands; and
 - iii. Steep slopes
 2. Jackson County:
 - i. Animal Unit Months (AUM) to be provided by the Department of Agriculture;
 - ii. The most recent and relevant wildlife and habitat data provided by ODFW. Include a summary table identifying the data source and date of each GIS data layer;
 - iii. Northern spotted owl suitability, which includes non-federal ownership from data provided by ODFW;
 - iv. Sensitive nest sites from data provided by ODFW
 3. Josephine County:
 - i. Animal Unit Months (AUM) to be provided by the Department of Agriculture;
 - ii. The most recent and relevant wildlife and habitat data provided by ODFW, including Conservation Opportunity Areas. Include a summary table identifying the data source and date of each GIS data layer;
 - iii. Northern spotted owl suitability, which includes non-federal ownership from data provided by ODFW;
 - iv. Sensitive nest sites from data provided by ODFW
- b. Prior to Task 7 product submittal, conduct at least one noticed public meeting in Douglas County, Jackson County, and Josephine County, at which public comment is allowed.

Task 7 products:

- 7-1 Maps, data, and narrative showing the results of the carrying capacity analysis on the identified sample areas.
- 7-2 Minutes of required meeting.
- 7-3 A response to each item addressed in the letter from the state (Attachment E) is required prior to or in conjunction with submittal of products 7-1 and 7-2 above. The response shall include whether and to what extent the items from the State were considered.

Task 7 Timeline: To be completed by Grantee by **June 30, 2016**

Task 7 Budget: \$103,000

P1: Interim Payment 1

Reimbursement of up to **\$131,000.00** upon submittal of products listed in Tasks 6 and 7 and additional products, maps, and data required for Task 4, and a signed Attachment C, DLCD Interim Reimbursement Form, acceptable to DLCD.

Submit each of the work products on digital media to the Grant Manager and the Grant Administrative Specialist to addresses listed in Attachment B, DLCD Contact Information.

Send Attachment C, Interim Reimbursement Form, and accompanying products to the Grant Administrative Specialist. Payment will not be made until all materials are received in the Salem Office and approved by DLCD.

PHASE 3

Task 8: Preparation of Petition for Rulemaking or A Detailed Project Summary Report

Regional Partners shall:

- a. Utilize products from prior tasks to prepare a petition to the Land Conservation and Development Commission for rulemaking. The petition for rulemaking shall contain all products identified in the previous tasks as well as a summary of additional county-specific and regional tasks necessary to implement new rules.
- b. If a petition for rulemaking is not complete, then a project summary report will suffice. The project summary shall contain all products identified in the previous tasks as well as a summary of additional local/regional tasks necessary to complete a petition for rulemaking and to implement new rules.

Task 8 product(s): Draft petition for rulemaking or project summary report as described above.

Task 8 Timeline: To be completed by Grantee no later than **June 30, 2016**

Task 8 Budget: \$63,000

FP: Final Payment

Reimbursement of up to **\$63,000** and the balance of the previously unused Grant Funds from P1 for this grant award upon submittal of the product listed in Task 8 (Petition or Report); and a signed Attachment C, DLCD Final Reimbursement Form, acceptable to DLCD.

Submit, no later than May 31, 2017, the product on digital media to the Grant Manager and the Grant Administrative Specialist to addresses listed in Attachment B, DLCD Contact Information.

Send Attachment C, Final Reimbursement Form, and the accompanying products to the Grant Administrative Specialist. Payment will not be made until all materials are received in the Salem office and approved by DLCD.

Budget Summary

| | |
|--|-------------------|
| Task 1 – N/A | N/A |
| Task 2 – N/A | N/A |
| Task 3 – Ongoing Project Administration and Oversight | \$ 0 |
| Task 4 – Data Acquisition - Mapping and associated data | \$ 0 |
| Task 5 – Assessment of Resource Lands | \$ 0 |
| Task 6 – Assessment of Mapping Errors | \$ 28,000 |
| Task 7 – Carrying Capacity Analysis | \$ 103,000 |
| Task 8 – Petition for Rulemaking or Project Summary Report | <u>\$ 63,000</u> |
| TOTAL | \$ 194,000 |

Attachment B

DLCD TA Grants Agreement Contact Information for RVCOG Grant TA-17-151

For questions regarding the scope of work of your grant, please contact:

Grant Manager:

Josh LeBombard
Southern Regional Solutions Center
100 E Main Street, Suite A
Medford, Oregon 97501

Phone: 541-414-7932

E-mail: josh.lebombard@state.or.us

Grant Program Manager:

Rob Hallyburton
DLCD Salem Office
635 Capitol Street N.E., Suite 150
Salem, Oregon 97301-2540

Office: 503-934-0018

Mobile: 503-931-7823

E-mail: rob.hallyburton@state.or.us

For questions regarding the agreement, submittal of products, and payments, please contact:

Grants Administrative Specialist

Larry French
DLCD Salem Office
635 Capitol Street N.E., Suite 150
Salem, Oregon 97301-2540

Phone: 503-934-0054

E-mail: DLCD.GFGrant@state.or.us

Attachment C

Department of Land Conservation and Development (DLCD) 2015-2017 Request for Interim Reimbursement / Final Closeout

| | | | |
|--|---|--|---------------------------------------|
| Grantee Name RVCOG | | Grant No. assigned by DLCD TA-17-151 | Final Payment Yes No |
| Grant Agreement Start Date From (date): _____ | Grant Agreement Close Date To: May 31, 2017 | Period covered by this Payment From: | Period covered by this Payment To: |
| <i>DLCD Grant Expenditures</i> | <i>DLCD Grant Expenditures</i> | <i>DLCD Grant Expenditures</i> | <i>DLCD Grant Expenditures</i> |
| Transactions | Previously Reported | This Payment | Cumulative |
| 1. Salaries and Benefits | | | |
| 2. Supplies and services | | | |
| 3. Contracts (see instructions) | | | |
| 4. Other (provide list & explain) | | | |
| 5. Total (add lines 1-4) | | | |
| <i>Local Contributions (if applicable)</i> | | | |
| 6. Salaries and Benefits | | | |
| 7. Supplies and services | | | |
| 8. Contracts | | | |
| 9. Other | | | |
| 10. Total (add lines 6-9) | | | |
| 11. Payment requested (from line 5) | DO NOT WRITE IN THIS SPACE | | DO NOT WRITE IN THIS SPACE |
| 12. Certification: I certify to the best of my knowledge and belief that this report is correct and complete and that all expenditures are for the purposes set forth in the award document. I further certify that all records are available upon request, and the financial records will be retained for six years after the final payment. | | | |
| 13. Typed or Printed Name and Title | | 14. Address where payment is to be sent | |
| 15. Signature of Authorized Certifying Official | | 16. Date Payment Submitted | |

Do Not Write Below This Line

FOR DLCD USE ONLY

Do Not Write Below This Line

| | | | |
|---|-----------------|-----------------|---------------|
| <u>DLCD CERTIFICATION</u> | | | |
| I certify as a representative of the Department of Land Conservation and Development (DLCD), that the Grantee: | | | |
| _____ Has met the terms and conditions of the grant and that payment in the amount of \$ _____ should be issued | | | |
| _____ Has not met the terms and conditions of the grant for the reasons stated on the attached sheet, and payment in the amount of \$ _____ should be issued. | | | |
| Signature of DLCD Grant Manager | | Date | |
| Signature of DLCD Program Manager | | Date | |
| BATCH # | DATE | VOUCHER# | DATE |
| PCA# | OBJECT # | VENDOR # | AMOUNT |

**Department of Land Conservation and Development
2015-2017 Planning Technical Assistance Grant Agreement
Interim Reimbursement and Closeout Form Instructions**

General and line-by-line instructions for completing the Request for Interim Reimbursement/Final Closeout form are provided herein.

General Instructions and Reminders

- This form may be completed by hand or typed on paper or completed in Microsoft Word. If you need a Word file, please contact Larry French at DLCD.GFGrant@state.or.us. In any case, submit the form with the grant Product(s) electronically, as called for in the Agreement.
- This form is used for all reimbursement requests – interim or final.
- It is important that you retain documentation of expenditures as provided in paragraph 16 of the Agreement, which provides that records be maintained for at least six years after the final payment has been received by the grantee.
- Interim and final reimbursement requests must not include work performed prior to the Effective Date of this Agreement (generally the date the Agreement is signed by DLCD) and not after the Closing Date of this Agreement.

Completing the Form

Please show *total actual expenditures only* of DLCD grant award and local contributions.

First row: DLCD will complete the Grantee Name and Grant Number. In the Final Payment box, highlight or circle “No” for interim payments and “Yes” for final closeouts.

Second row: DLCD will complete Agreement start and close dates. Complete the “Period covered by this payment” The form includes separate boxes for “from” and “to.” Please complete both. These dates must accurately depict the dates the work for the reimbursable expenditure was incurred. If there are any applicable limits on these dates, they will be provided in the payment descriptions in the “Schedule, Products, and Budget” section of the Agreement.

The next section of the form includes columns for itemizing each expense category:

- **“DLCD Grant Expenditures, Previous Reported”** column -- should be blank if the submission is Payment 1. If the request is for a second or later interim payment or final closeout, enter the sum of previous payments in this “Previously Reported” column.
- **“DLCD Grant Expenditures, This Payment”** column – captures and identifies expenditures for the products that are currently being submitted for review and payment.
- **“DLCD Grant Expenditures, Cumulative”** column – simply the total of the two previous columns.
- **“DLCD Grant Expenditures, Transactions”** – Complete items 1–4 as applicable and item 5, total in the “Previously Reported” column if applicable and in the “This Payment” column. Complete previous and current local contributions in items 6–9 and the total on line 10 if applicable. Local contribution does not include expenses reimbursed by the grant. It is included to provide DLCD with accurate information regarding the cost of projects and/or products completed in compliance with this grant. This category includes both in-kind and cash contributions.
 - **1. Salary and Benefits** includes the grantee’s staff time, including Other Personnel Expenses. Receipts are not required with this report submission.

- **2. Supplies and Services** include allowable grantee supplies used for completion of grant products. Receipts are not required with this report submission.
 - **3. Contracts** include consultants, attorneys, and any company or individual hired by the grantee to conduct grant work. This category does not include employees of the grantee, but rather an individual or entity that invoices the grantee for services rendered. Information required for the closeout report includes name, address, phone number, and e-mail address of the payee. If there are multiple entities, please provide the amount of grant funds allocated for the reimbursement of each.
 - **4. Other** - Provide a brief explanation and cost breakdown for amounts listed as “Other.” Receipts are not required. Note: Grantee travel expenses are not eligible for reimbursement.
 - **5. Totals** – Sum the categories of grant expenditures in the Previously Reported, This Payment, and Cumulative columns. The Total payments at closeout cannot exceed the maximum amount in paragraph 3 of the Agreement.
- Re-enter the payment request from line 5 “DLCD Grant Expenditures This Payment” on line 11.

Certification: Be sure to read and understand the information in item 12 prior to signing the form.

- A legible name and title is required in cell 13.
- A mailing address, including city and zip code, where payment should be sent must be provided in cell 14.
- The signature under “Signature of Authorized Certifying Official” must be of the person taking responsibility for the accuracy of the information contained in the form.

Before a payment can be issued, *all grant products, required documentation, and the signed reimbursement request form* must be received, accepted, and reviewed by the grant manager and grant program manager, subject to the requirements contained in the Agreement.

Please follow the payment schedule as identified in the Grant Agreement when submitting a request for payment or closeout.

A **signed cover letter**, completed and signed **reimbursement request form**, and completed **Products** can be submitted in one of the following ways: (1) the preferred method – an e-mail with PDF files sent to the Grants Administrative Specialist at DLCD.GFGrant@state.or.us, or (2) via the DLCD FTP site (contact Larry French for instructions at 503-934-0054) or (3) a CD or DVD mailed to the address for Larry French in Attachment B of the Agreement. If none of these options are possible, mail the relevant documents to:

Grants Administrative Specialist
 Department of Land Conservation and Development
 635 Capitol St. NE Suite 150
 Salem, OR 97301

**EXECUTIVE ORDER NO. 12-07****A PILOT PROGRAM FOR REGIONAL FARM AND FOREST LAND
CONSERVATION**

Oregon's land use program has successfully conserved important farm and forest lands, helping to maintain the key roles of agriculture and forest products in the state's economy (the second and third largest industries in Oregon). Almost all of the lands devoted to farm or forest uses in Oregon in the mid 1980s are still planned for those uses today. In contrast, Washington, California and Idaho have lost substantial amounts of farm and forest lands to urban and rural sprawl.

Rural development, if not carefully managed, can lead to substantial public costs. The major driver of the high (and increasing) cost of fighting wildfire is the cost of protecting rural residences. Police, schools, roads and social services also can be more difficult and expensive to provide to scattered residences in rural settings. Rural development can interfere with forest and some farm operations as a result of conflicts over pesticides, noise, truck traffic and other normal aspects of farming and forestry. Research by the Oregon Department of Forestry shows that once there are more than about four homes per square mile, forest lands typically are managed less for timber operations and more for their residential real estate value. Dispersed rural development also puts stress on drinking water supplies, leading to conflicts over groundwater, and has led to significant water pollution problems in places like South Deschutes County. Finally, dispersed rural development adversely affects wildlife and fish habitat, and has led to declines in big game, and conflicts over hunting and fishing access.

Oregon is a great place for growing food and fiber. There are, however, significant variations between different regions of the state in terms of the types of farming and forest uses that are best suited for the landscape, and in the economic returns from farming, forestry and ranching. The flat, fertile fields of the Willamette Valley differ from lands in the Rogue and Umpqua valleys and lands along Oregon's coast. High value crop areas in parts of Central Oregon irrigated from the Crooked and Deschutes Rivers differ from the high plateau wheat fields in the northern part of the state. Livestock operations in Baker Valley differ from ranching operations on drier lands in Harney and Malheur counties. In some areas, lands currently planned for resource uses have little direct value to their owners for those uses.

For all these reasons, there are both state and local interests in how rural lands are planned, what uses are allowed on them, and the intensity of those uses. Some counties have planned rural areas for nonresource uses. Other counties have an interest in developing region-specific criteria for what lands are planned for





EXECUTIVE ORDER NO. 12-07
PAGE TWO

resource uses, and allowing lands that do not meet those criteria to be used for non-resource uses. Any county or region-wide conversion of resource lands to non-resource designations must proceed with care, and include consideration of how the affected lands will be used. The process for considering such changes must provide for wide-scale public involvement, and include an analysis of costs, benefits and likely outcomes.

The purpose of this executive order is to direct certain state agencies to work with three Southern Oregon counties, if those counties elect to participate, in developing a pilot program that allows appropriate additional regional variation in what lands must be planned and managed as farm and forest lands. Lands that are no longer planned and managed as farm and forest lands will still need to be planned for sustainable types and levels of uses, so that the economic, fiscal and environmental effects of dispersed rural development (described above) are considered and kept at a level that is acceptable to both the state and to affected local governments (including cities and districts in the area under consideration), and consistent with the carrying capacity of the land.

The three counties that may participate in the pilot project are: Jackson County, Douglas County, and Josephine County. This executive order stems from the decision of the Legislative Assembly, in its 2012 session, to provide some funding for initial work by the counties interested in taking on this effort. The understanding between legislative leadership and the Governor was that the Governor would issue this executive order, setting out how this pilot effort will proceed. The final cost of the program will depend on how many counties elect to participate, the criteria that LCDC develops for resource and non-resource lands, and the analyses and processes that the counties use to make decisions.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Department of Land Conservation and Development (DLCD) will make \$350,000 in funds appropriated through SB 5701 available to Jackson, Josephine and Douglas counties, if those counties elect to participate. DLCD will enter into one or more grant agreements with the counties that agree to complete the technical studies, mapping and preparation of materials required for preparing a rulemaking petition to the Land Conservation and Development Commission (LCDC), which petition may not be submitted to LCDC prior to July 1, 2013. If a petition is submitted by two or more of the counties, LCDC may initiate





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PAGE THREE

rulemaking for the purpose of considering a new, regional, approach to what lands must be planned and zoned for farm or forest uses

2. Prior to initiating the rulemaking, DLCD will determine whether the proposed new rules are likely to require amendments to statewide land use planning goals 3 (Agriculture) or 4 (Forestry). If the agency determines that one or more amendments to goal 3 or goal 4 are likely to be required, LCDC will initiate the process as an amendment to the statewide land use planning goals, as well as the implementing rules, necessary for the anticipated pilot project to proceed.
3. In the grant agreement or agreements providing funding to the counties under paragraph 1 of this executive order, DLCD will ensure that the counties undertaking this work confer with DLCD about the intended scope and outcomes of the pilot project before they begin work and before they submit the rulemaking petition. The purpose of conferring is to ensure that the counties understand the agency's practical and policy concerns so that the petition is more likely to be successful. LCDC will initiate rulemaking under this executive order only if two or more of the counties formally agree to participate in the pilot project, which agreement must, at a minimum, include the county's commitment to work with DLCD and other participants in the rulemaking to develop collaboratively the proposed rules for consideration by LCDC. This rulemaking is intended to be a collaborative process, between the state and the counties electing to participate in the pilot program.
4. The proposed rules developed for LCDC's consideration will be designed so that lands that are functionally important to the types of farming and forest operations that occur, or that are likely to occur in the future, within the area that would be covered by the rules, are retained in farm or forest planning and zoning designations. In developing proposed criteria for rezoning for consideration by LCDC, DLCD will work with the county or counties in question, as well as local farming and forest interests. DLCD also will seek input from the Oregon Department of Agriculture, the Oregon Department of Forestry, and the Oregon Water Resources Department in developing the proposed criteria. To the extent possible, DLCD may provide funding to the other agencies involved in this effort using funds available under SB 5701 or other funds appropriated for that purpose by the legislature.





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PAGE FOUR

5. The proposed rules developed for LCDC's consideration will be designed to include provisions relating to lands that are rezoned to non-farm or non-forest uses (non-resource lands), that assure that such lands are planned and zoned for types of uses and at levels that: (a) will not significantly interfere with nearby farm or forest uses; (b) will not significantly interfere with the future urbanization of nearby cities; (c) are sustainable in terms of fiscal impacts to local and state government, including affected districts; and (d) are sustainable in terms of their effects on water supplies, transportation, water quality, fire protection, wildlife, and fish and wildlife habitat. The rules also must be consistent with existing legislative policy, including the policies expressed in ORS 197.005 to .010, 215.243, 215.700, and ORS 527.630.
6. DLCD will work with other state agencies, and affected local governments and interests in developing proposed rules that reflect the considerations described in this paragraph to assure that newly allowed uses do not exceed the carrying capacity of the lands. To the extent possible, DLCD may provide funding to the other agencies involved in this effort using funds available under SB 5701 or other funds appropriated for that purpose by the legislature.
7. If LCDC adopts rules establishing the pilot project described in this executive order, DLCD may provide funding to the counties participating in the pilot to assist them in implementing the pilot program by amending their respective comprehensive plans and zoning designations and codes in a manner that complies with the new rules.
8. DLCD must review any comprehensive plan or zoning amendment adopted by a county under this pilot program, including any amendments adopted as post-acknowledgment plan amendments subject to review by the Land Use Board of Appeals. If DLCD determines that the amendments do not comply with applicable statutes or rules, it will notify LCDC and may file an appeal of the amendment.



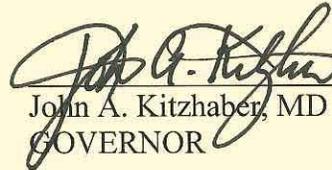


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PAGE FIVE

9. DLCD will report to the Governor and the appropriate committees of the Oregon House of Representatives and Oregon Senate on or before January 1, 2014 on the status of this program.

Done at Salem, Oregon, this 10 day of May, 2012.




John A. Kitzhaber, MD
GOVERNOR

ATTEST:


Kate Brown
SECRETARY OF STATE





Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



June 4, 2015

Michael Cavallaro
Rogue Valley Council of Governments
155 North 1st Street
Central Point, OR 97502

RE: Southern Oregon Regional Pilot Program- Response to Task 5 submittal

Dear Mr. Cavallaro,

Thank you again for the recent submittal of work on the Southern Oregon Regional Pilot Project (SORPP). This is the first regional submittal of work this biennium and therefore our first opportunity to formally comment on the project since October 17, 2013.

This letter provides coordinated comments from the participating state agencies in response to the materials submitted to the department in the original submittal on February 23, 2015 and in the amended submittals on April 14 and June 2, 2015 for SORPP Technical Assistance grant (no. TA-OL-15-001).

The comments below are in response to the proposal to consider 68,575 acres of resource soils in Douglas County, 3,664 acres of resource soils in Josephine County, and 13,551 acres of resource soils in Jackson County as non-resource or "candidate land". The comments are separated into those which apply to Task 5 (Assessment of Resource Lands) and to the upcoming Task 7 (Carrying Capacity Analysis). The Task 5 comments are in response to the recent submittal of the Task 5 Report, including the amendments. Please use these comments to further refine the proposal. The Task 7 comments are meant to provide clarity and direction as to what is expected by the State in regards to the forthcoming work.

Task 5 (Assessment of Resource Lands)

1. Agricultural Land Definition. The current approach has not taken into consideration the complete definition of agricultural land. Per Oregon Administrative Rule (OAR) 660-033-0020 the definition includes:

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

As such, adjacent and intermingled lands and existing farm uses and farm units need to be considered. Adjacent and intermingled land and land with existing commercial farms should be excluded as non-resource land. Additionally, land part of a larger farm unit, which on its own would qualify as non-resource, should be excluded. This analysis should take into consideration ownership (typically derived from county assessment data) and leasing/operation patterns (typically derived from aerial photography). The current soils based approach does not provide enough information to analyze farm activity. The Department of Agriculture has digitized field/crop boundaries. While this data set does not represent complete farm units, it can be used as a starting point in this analysis. We will send this data to the counties shortly.

2. Viticultural areas. The definition of the Southern Oregon and Umpqua Valley viticultural areas in ORS 195.300 should be used in the Task 5 analysis. Land meeting the definition should be removed from consideration as non-resource lands. Executive Order (EO)12-07, item 4 (page 3) states: “lands that are functionally important to the types of farming and forest operations that occur, or that are likely to occur in the future, ... are retained in farm or forest planning and zoning designations.” If a County believes that some of the land which meets the definition in ORS195.300 should not be used as a non-resource filter, then a specific justification shall be included.

It appears, based upon the amended Task 5 submittal, that each County has now removed from consideration as non-resource land all viticultural areas. If this is the case, this comment has been addressed.

3. AUM data. In order to address OAR 660-033-0020(B) cited above, it is essential that Animal Unit Month (AUM) data be included in the non-resource analysis. See additional details from our October 17, 2013 letter. This is appropriately addressed in Task 5 since it is part of the definition of agriculture. As outlined in the Grant Contract, additional funding for this work is available from the Task 7 funds.

Counties should consult with local ranchers/farmers and OSU Extension to examine the character of existing ranching operations and determine an appropriate justifiable threshold and applicability of the AUM data. Additional data which may be helpful

includes farm tax deferral status and the analysis from Item 1 above. In lieu of the counties determining a justifiable AUM threshold, the Department of Agriculture is willing to develop a threshold for use in differentiating resource and non-resource land.

4. Irrigation. Please explain whether the ability to irrigate property was taken into consideration as part of this process. For instance, was land within an established irrigation district treated differently than land outside of an irrigation district?
5. Parcel based approach. Currently the non-resource analysis submitted is based upon soils data rather than parcel/tax lot information. The analysis should be parcel/tax lot based. Item 1 above provides one reason for this. Additionally, there is no way to distinguish between publicly and privately-owned land unless parcel/tax lot information is analyzed. Resource land under public ownership should not be considered as “candidate land” through this process.

Furthermore, it is our understanding that the result of this process, if successful, would be to change the comprehensive plan designation for properties which qualify as non-resource land from resource to a non-resource designation. If this is still the case, a parcel/tax lot based analysis is required. If this is no longer the case, please inform us of a change to the approach.

6. Forestland Productivity Standard. The current proposal for forestland productivity is not consistent between the three counties. Per the amended Task 5 Report, both Jackson and Josephine counties are proposing NRCS soils with a forest productivity rating of less than 50 cubic feet per acre per year (cf/ac/yr) to be non-resource land while Douglas County is proposing using 85 cf/ac/yr as the threshold¹. As we’ve discussed previously, the Oregon Department of Forestry opposes anything above 50 cf/ac/yr as a productivity threshold for identifying commercial forest viability or “resource” versus “non-resource” land given that it is significantly higher than prevailing accepted measures of productive commercial forestland.

Biologically, commercial tree species start growing on lands capable of producing 20 cf/ac/yr. This biological threshold is the difference between land suitable for growing commercial species like pine and Douglas-fir versus non-commercial species like juniper and low value hardwoods. A threshold above 50 cf/ac/yr ignores the capacity of lands with productivity greater than 20 cf/ac/yr to support commercial forest management.

¹ While Josephine County’s submittal indicates 72cf/ac/yr as the defining productivity rating, no soils proposed as non-resource soils are above 50cf/ac/yr, making their approach consistent with Jackson County’s.

Supporting this position are multiple examples of recognized lower productivity standards currently used to identify commercially viable forestland (see Table 1).

Table 1. Accepted Commercial Forest Productivity Standards

| Productivity Threshold | Use | Entity |
|-------------------------------|------------|---|
| 20 cf/ac/yr | Current | - United State Department of Agriculture (USDA) - Forest Inventory Analysis (FIA), United States Forest Service (USFS) - United States Department of Interior (USDI) – Bureau of Land Management (BLM) |
| 20 cf/ac/yr | Current | - Oregon Forest Practices Act (OFPA) |
| 40+ cf/ac/yr | Current | - Oregon Land Use Board of Appeals (LUBA) – West Side |

USDA and USDI – Definition of Forestland and Timberland

The USDA recognizes the FIA forest land definition. According to the FIA forestland includes lands that are at least 10 percent stocked by forest trees of any size, or land formerly having such tree cover, and not currently developed for a nonforest use. FIA further differentiates forestland between timberland and nontimberland based on forest productivity for growing commercial crops of wood. Forest productivity is determined by FIA as the culmination of mean annual increment of fully stocked natural stands. FIA considers forest land nationally and in Oregon with productivity below 20 cubic feet/acre/year to be nontimberland, unsuitable for growing commercial crops of timber; forest land with productivity of 20 cubic feet/acre/year is considered to be timberland, economically suitable for growing commercial crops of timber. The USDA Forest Service and USDI Bureau of Land Management use 20 cf/ac/yr as the dividing line for commercial forest management.

Oregon Forest Practices Act

Oregon Forest Practices rules require reforestation of harvested forest land which is capable of annual wood production of at least 20 cubic feet/acre/year at culmination of mean annual increment, cubic foot site class 6 or better. The State of Oregon has consistently used a threshold of 20 cf/ac/yr to define commercial viable forestland in eastern Oregon, and has either used a 20 or 50 cf/ac/yr threshold to define commercial viability in western Oregon. Current Forest Practices Act Reforestation Rules (OAR 629-610-0010) requires reforestation on any land capable of producing 20 cf/ac/yr after a timber harvest has occurred.

Land Use Board of Appeals (LUBA)

In 2009, LUBA considered a case (ruling No. 2009-089) concerning forestland and addressed productivity standards for commercial forestland. In this case LUBA made the

following findings to establish a standard for commercial forestry in western Oregon which begins at 40 cf/ac/yr.

“Our cases suggest that land with a productivity of less than 20 cf/ac/yr may be unsuitable for commercial forest use unless there are factors that compensate for the land’s relatively low productivity. But land in a middle range from a low of approximately 40 cf/ac/yr to a high of approximately 80 cf/ac/yr is unlikely to be unsuitable for commercial forest use unless there are additional factors that render those moderately productive soils unsuitable for commercial forest use. Rural land with a wood fiber productivity of over 80 cf/ac/yr is almost certainly suitable for commercial forest use, even if there are limiting factors.” Id., slip op at 10-11 (footnote omitted).

The Douglas County proposal is clearly not consistent with the aforementioned thresholds identified in Table 1. Table 2 below illustrates a breakdown of forest productivity in relation to the total soils proposed as non-resource. As shown, the vast majority of soils (90.2%) considered as non-resource soils by the three counties fall into the category of unrated- presumably under 20 cf/ac/yr².

Table 2. Non-Resource Soils Breakdown (Acres)

| County | Total: Proposed Non-Resource Soils | Soils between 50 and 85 cf/ac/yr | Soils between 20 and 50 cf/ac/yr | Soils under 20 cf/ac/yr* |
|-----------|------------------------------------|----------------------------------|----------------------------------|--------------------------|
| Douglas | 68,575 | 4,309 | 0 | 64,267 |
| Jackson | 13,551 | 0 | 4,063 | 9,488 |
| Josephine | 3,664 | 0 | 0 | 3,664 |
| Total | 85,790 (100%) | 4,309 (5.0%) | 4,063 (4.7%) | 77,419 (90.2%) |

*No Rating provided by NRCS data. Further analysis is necessary to verify productivity. See comments under item 7 below.

Therefore, considering commercial forest and other forest values, we recommend that the region adopt a 20 cf/ac/yr threshold to differentiate resource from non-resource land in regards to forestland. At a minimum, we recommend that Douglas County reduce the forest productivity threshold to 50 cf/ac/yr to be consistent with Jackson and Josephine counties and to be more consistent with currently used thresholds. As shown in Table 1, this would affect only 6% of the total amount of land proposed by Douglas County (4,309/68,575).

7. Lack of NRCS productivity data. It appears that soils lacking a forest productivity rating in the NRCS soils data were considered to be non-resource land. This was not discussed

² See comments under item 7.

in the Task 5 Report. Before it is concluded that the these soils have a low forest productivity rating: 1) NRCS should be consulted to determine if subsequent soils data is available for each county³ and 2) the proper data procedures identified in OAR 660-006-0010 must be followed:

(2) Where NRCS data are not available or are shown to be inaccurate, other site productivity data may be used to identify forest land, in the following order of priority:

(a) Oregon Department of Revenue western Oregon site class maps;

(b) USDA Forest Service plant association guides; or

(c) Other information determined by the State Forester to be of comparable quality.

(3) Where data of comparable quality under subsections (2)(a)-(c) are not available or are shown to be inaccurate, an alternative method for determining productivity may be used as described in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes, Number 3 April 1998, Updated for Clarity April 2010."

For the purposes of applying OAR 660-006-0010, it may only be possible to utilize the Department of Revenue (DOR) data described in (2)(a) above. Table 3 below provides a conversion chart to use for determining potential yield based upon the DOR land class. Essentially, a classification of FX or unrated equate to less than 50 cf/ac/yr.

Table 3. DOR Land Class Potential Yield (cf/ac/yr) Conversion

| Site Class | I | | | II | | | III | | | IV | | | V | | | | |
|---|-----------|-----|-----|-----------|-----|-----|-----------|-----|-----|-----------|----------|---------|---------|----|---------|------|------|
| Site Index 100 year tbl | 210 | 200 | 190 | 180 | 170 | 160 | 150 | 140 | 130 | 120 | 110 | 100 | 90 | 80 | 70 | 60 | 50 |
| Site Index 50 year tbl | 160 - 136 | | | 134 - 122 | | | 120 - 110 | | | 108 - 102 | 100 - 90 | | 88 - 76 | | 74 - 50 | | < 50 |
| DOR Land Class | FA | | | FB | | | FC | | | FD | FE | | FF | | FG | | FX |
| Potential Yield Cu/Ft/Ac | 225+ | | | 224 - 164 | | | 164 - 120 | | | 119 - 85 | | 84 - 50 | | | 49-20 | < 20 | |
| USDA Cu/Ft Prod. Class and State Forest Survey Class | 1 | | | 2 | | | 3 | | | 4 | | 5 | | | 6 | 7 | |

8. IRR. Josephine County originally proposed using a conversion of Internal Rate of Return (IRR) to NRCS Soils (cf/ac/yr) productivity. This is not the correct method to use. Standard NRCS soils data is available and use of it would be consistent with what the

³ Even though not explicit, it appears that Jackson County has already done this.

other two counties have done and would not require any conversion factor. The Oregon Department of Forestry opposes using stand level economic analysis techniques, like IRR, to define the commercial viability of the land for zoning purposes. Unlike physical measures such as productivity, these types of economic analysis are based on assumptions about future costs and revenues, and can be manipulated to produce a predetermined outcome. IRR can be a useful tool for financial analysis, but not for determining if forest land is or is not adequate for commercial forestry which by nature is identifiable based on measurable physical characteristics more so than assumptions which are subject to variability and are indeterminate, absent significant assumption. Moreover, the assumptions chosen for the Josephine County IRR system produce a standard similar to the 85 cf/ac/yr threshold, which we believe eliminates productive forestland from being zoned for commercial uses.

This appears to have been corrected based upon the revised Task 5 submittal but is important to consider if the IRR system is proposed to be relied upon at some point later in this process.

9. Community Buffers. The candidate lands as proposed fall within 3 miles of Urban Growth Boundaries, Urban Unincorporated Areas, Rural Communities and Rural Service Areas. Please explain why buffering of these areas, in particular Rural Communities and Rural Service Areas meets the intent of EO12-07. Specifically, please discuss what uses other than residential exist in each of these communities and how those other uses may be utilized by potential additional residents. If determined to not meet the intent of EO12-07, we recommend the counties consider reducing or eliminating the buffering distance for Rural Communities and Rural Service Areas.

Task 7 (Carrying Capacity Analysis)

1. Wildfire. The existence of structures, particularly dwellings, can significantly alter fire control strategies and can increase the cost of wildfire protection by 50-95%.⁴ Specifically, “an increase in fire suppression costs of \$31,545 if two homes instead of one were within 6 miles of the wildfire. By comparison... an increase of only \$319 if 100 homes instead of 99 were within 6 miles of the wildfire”.⁵ More than half of wildfires in the Northwest and more than 80% of wildfires in Northern California are human-caused⁶. Additionally, the cost of the State of Oregon’s catastrophic fire insurance policy has

⁴ <http://headwaterseconomics.org/wphw/wp-content/uploads/fire-costs-background-report.pdf>

⁵ http://headwaterseconomics.org/wphw/wp-content/uploads/ORfire_Manuscript_Jan12.pdf

⁶ http://www.fs.fed.us/rm/pubs/rmrs_gtr299.pdf

dramatically increased in the previous year and future availability is in jeopardy due to the recent escalation in wildfire fighting costs.⁷ Additional landscape fragmentation would exacerbate the costs and risks associated with wildfire. Lastly, the Land Conservation and Development Commission (LCDC) has raised this item as a concern repeatedly in regards to SORPP.

As we understand it, the counties will be requiring future annexation into a fire district, as a condition for future residential development on properties which qualify as non-resource land. While inclusion into an existing fire district and associated requirements (i.e. standard fuel-breaks) aid in potentially reducing the possibility of catastrophic wildfires, they alone do not adequately address the requirement of EO12-07, which requires that “lands are planned and zoned for types of uses and at levels that... are sustainable in terms of their effects on... fire protection”. Therefore, Task 7 will need to go further to analyze and potentially mitigate the effects of allowing additional development in wildfire prone areas. Specifically, we offer the following suggestions:

- a. Review status of existing fire districts to determine whether they are still functioning and have the capacity to expand. This item was raised at a Douglas County Technical Advisory Committee meeting.
 - b. Review for existing development patterns and only allow new development in areas where development above a certain density already exists.
 - c. Require clustering of dwellings on potentially smaller than minimum lot sizes (e.g. between 2-5 acres) assuming the average density does not exceed 1 dwelling per 40, 20, 10 acres in the respective buffers. In this case a deed declaration would be required on the remainder to limit further development.
2. Winter Range/Big Game. The Oregon Department of Fish and Wildlife (ODFW) recommends that properties designated as winter range/big game habitat should be precluded from conversion to non-resource lands.
- a. Douglas County. ODFW recommends that all Sensitive and Peripheral Big Game Habitat Overlays be precluded from consideration of non-resource designation. ODFW has concerns with the proposed development densities within deer and elk habitat for Douglas County. The Peripheral Big Game Habitat overlay is an important transitional area and currently a protective buffer to the Sensitive Big Game Habitat Overlay. If the development densities increase in these areas, there may be a significant impact to big game populations and other wildlife species.

⁷ http://www.oregonlive.com/pacific-northwest-news/index.ssf/2015/04/lloyds_of_london_offers_oregon.html

This in turn can increase the amount of damage complaints received from property owners in those areas.

The Task 5 submittal indicates that land within the Sensitive Big Game Habitat was precluded from consideration as non-resource land. The Douglas County Comprehensive Plan establishes a maximum density of 1 dwelling per 80 acres for Sensitive Big Game Habitat and 1 dwelling per 40 acres for Peripheral Big Game Habitat (Natural Features Element, pg. 6-8). To maintain consistency with those established maximum densities, Douglas County should, at a minimum, maintain the current approach which precludes the Sensitive Big Game Habitat from consideration as non-resource land. Additionally the minimum lot size for non-resource land within the Peripheral Big Game habitat should be no lower than 40 acres to ensure the density standard will not be breached.

- b. Josephine County. Given the current County winter range maps, ODFW recommends that all winter range be precluded from conversion to non-resource designation. There are approximately 185,069 acres of private property within the 3 mile buffer outlined in the Task 5 report. 73,910 acres are encumbered by winter range protection, which leaves 111,159 acres (60% of the three mile buffer) for consideration as non-resource land under the current winter range mapping.

If the county chooses not to consider winter range as a screen to preclude non-resource conversion, ODFW recommends maintaining the current density standard. The Josephine County Rural Land Development Code establishes a maximum residential density for areas within winter range of 32 homes per 2 square miles (Section 69.220), or 1 home per 40 acres. Unfortunately, this density standard has recently caused conflict between adjacent development projects and has introduced uncertainty into the land use planning system. ODFW recommends the county apply a minimum lot size of at least 40 acres to maintain consistency with the existing density standard and avoid the uncertainty in the current density standard.

Another option for Josephine County is to work with ODFW to amend the current winter range zoning overlay during the timeframe of this process. The County may consider adopting new Goal 5 maps that accurately reflect ODFW's current winter range data and help alleviate some confusion with the current density standard. We understand that the County is under fiscal and staffing constraints. Therefore, if Josephine County is interested in this mapping effort, ODFW is

available to collaborate and offer technical assistance. To assist the project, ODFW would need a description of the Goal 5 update process and approximate timeframe.

- c. Jackson County. ODFW recommends that all land within the Deer and Elk Habitat overlay in Jackson County be precluded from the conversion to non-resource designation.

The amended Task 5 submittal indicates that land within both the Especially Sensitive Winter Range and Sensitive Winter Range were precluded from consideration as non-resource land. This is consistent with the minimum lot sizes established in the Jackson County Land Development Ordinance required within the Especially Sensitive and Sensitive Winter Ranges, and is supported by ODFW.

It does not appear that Jackson County used the Other Winter Range layer as a screen. This layer does not have a specific minimum lot size; however, Jackson County Land Development Ordinance states that “Other Winter Range units may be divided according to the prevailing minimum parcel/lot size for the zoning district”. If the County designates lands within these areas as non-resource, ODFW recommends the County consider adopting a minimum parcel size and other site specific standards (see item 7 below), in addition to the current winter range protections to build within 300’ of an existing road or driveway.

3. Conservation Opportunity Areas. Executive Order (EO) 12-07, item 5 (page 4) indicates that the process for designating non-resource lands will assure that “such lands are planned and zoned for types of uses and at levels that: (c) are sustainable in terms of their effects on water supplies, transportation, water quality, fire protection, wildlife, and fish and wildlife habitat.” The Conservation Opportunity Areas (COAs) developed through the Oregon Conservation Strategy provide a very useful tool for utilization in this process. A COA is defined as “those areas where the likelihood of successful conservation is strongest, and the conservation needs of wildlife and their habitats would be best met”.⁸ COAs “capture a larger number of species by casting a wide net over the landscape. Conservation actions focused on the maintenance of natural habitats are likely to benefit a wider range of organisms than conservation actions developed for single species. It is the best way to maintain diverse and healthy wildlife communities. In addition, conserving larger areas of terrestrial or freshwater habitat preserves system-

⁸ http://www.dfw.state.or.us/conservationstrategy/docs/document_pdf/c-appendices_4.pdf

wide ecological processes critical to the viability of the ecosystems and the survival of wildlife species inhabiting them”.⁹ Although developed as a non-regulatory tool, the COAs address a number of the items required in the EO, which cannot be wholly addressed through a species-specific approach. As such, it is recommended that land within the COAs be removed from consideration as non-resource land.

4. Regional ODFW Comments. Non-resource land designation can have significant impacts on the management of fish and wildlife. This includes significant impacts to fish and wildlife habitat, including fragmentation of habitat corridors, introduction of non-native plant species, disturbance during biologically sensitive seasons (e.g., fawning) and increased social conflict, including damage complaints and restrictions on hunting and fishing access. ODFW is concerned about the potential impacts to management of fish and wildlife resources from non-resource conversion, without an adequate compatibility.

ODFW is especially concerned about the potential increase for wildlife damage associated with increased development pressure and habitat fragmentation. For example, southern Oregon has some of the highest bear densities in the state. This is both a wildlife resource and ODFW staffing resource concern to address the damage complaints. Increasing development in rural areas will exacerbate this problem and limit the ability of ODFW to resolve these issues. Residential development in rural areas increases the amount of forage available to wildlife through watered landscaping, gardens, compost piles, and bird feeders, while limiting wildlife management tools used to address conflict, such as hunting. ODFW staff currently spends considerable time responding to social conflict between property owners and wildlife species.

5. ODFW has previously requested that the counties include a data dictionary to describe the source of the various layers used in the mapping. Please provide a table for each county that clearly identifies the data used in these analyses to determine NR land designation. For example, ODFW requests clarification on:
 - a. The term “Significant Wetlands” needs to be defined. Is the base layer the National Wetlands Inventory? Does this include vernal pools?
 - b. What data was used for the Federally Protected Sites?
 - c. Mapping of all Class I and II streams should be incorporated into the analysis;
 - d. Was the marbled murrelet and Band tailed pigeon data considered in this analysis? ODFW recommends including the Oregon Department of Forestry’s District bird layer and the spotted owl suitable habitat layer.

⁹ http://www.dfw.state.or.us/conservationstrategy/docs/document_pdf/A_4.pdf

6. ODFW recommends that any property completely encumbered by Goal 5 protections, such as vernal pools or sensitive nest sites, be precluded from conversion to non-resource zoning. For example, ODFW recommends avoiding the creation of tax lots that would force residential construction to occur within the required setback for a great blue heron rookery or other sensitive resource.
7. ODFW recommends that the counties consider ODFW's Wildlife Habitat Conservation and Management Program¹⁰ to provide additional incentive to landowners for conserving native wildlife habitat. This tax incentive program does not replace existing habitat protections (e.g., Goal 5), but it is a coordinating program and useful tool to provide willing landowners a tax incentive.
8. Per EO12-17, it is essential that avoidance and minimization to fish and wildlife habitats be considered. The following list of site-specific conditions could help maintain the proper functioning of local ecosystems. ODFW recommends the county consider adopting ordinances or voluntary measures that will:
 - a. Provide compensatory mitigation for impacts to fish, wildlife and habitat resources as a result of development actions, consistent with the goals and standards as outlined in the ODFW Fish and Wildlife Habitat Mitigation Policy;
 - b. Implement appropriate site specific conditions to avoid and minimize impacts to Conservation Opportunity Areas, Strategy Habitat and Strategy Species mapped in the counties, as identified in the Oregon Conservation Strategy (e.g. mature oaks);
 - c. Conserve site specific natural resources such as rare plants, legacy oak trees, down wood and standing snags;
 - d. Cluster development to retain as much open space as possible. This is also consistent with the comments under item 1- "Wildfire"- above. This may include requiring construction within a certain distance of a road or by requiring a certain percentage of the land remain in a contiguous natural condition;
 - e. Develop restrictive covenants associated with new developments, such as wildlife friendly fences to avoid injuries and exclusion fencing for landscaping, and language banning or discouraging feeding of wildlife;
 - f. Ensure structures, roads and other infrastructure does not further constrain the movement of waterways within their natural floodplain, as well as impede wildlife connectivity;
 - g. Ensure that all newly constructed waterway crossings comply with ODFW fish passage standards.

¹⁰ <http://www.dfw.state.or.us/lands/whcmp/index.asp>

9. Protected Aggregate Sites. Lands adjacent to or within a certain proximity to protected aggregate sites should be removed from consideration to avoid future conflicts.
10. Steep Slopes. Remove all parcels entirely consisting of slopes of >25%.
11. Floodway. Remove all parcels entirely consisting of floodway.
12. Other- Douglas County. The consideration of important coastal resources (Goals 16-18) does not appear to have been mapped or considered in the evaluation on non-resource designation. Per EO12-07, other resource values, such as fish and wildlife populations and their habitats beyond Goal 5, are required to be considered in this process.
13. Other- Jackson County. ODFW recommends avoidance of the following areas:
 - a. Critical Vernal Pool Habitat
 - b. Ecologically significant areas, which reflect unique and important natural resources that should also be considered during the carrying capacity analysis. Some of these sites, such as the Nature Conservancy areas, should be used as a screen to preclude development. Other data such as the Siskiyou Salamander or nest site locations could be used as a flag requiring survey work before development could occur. Unfortunately, some of the data used to generate this layer is now out of date. For example ASC90-10 includes 40 nest sites provided by ODFW, but this data is likely out of date. A newer reference, such as ODF's District Bird layer (buffered by the appropriate distance) could be used instead.
14. Other- Josephine County. ODFW recommends that the county consider protection for the unique Serpentine soils, which provide habitat for rare plant species. Measures could include surveys and site-specific setbacks in areas likely to hold rare plants.

Regards,



Josh LeBombard

Southern Oregon Regional Representative; Department of Land Conservation and Development

cc: Keith Cubic- Douglas County; Kelly Madding- Jackson County; Dennis Lewis- Josephine County; Ivan Gall- Oregon Water Resources Department; Joy Vaughan- ODFW Wildlife Division; Jim Rue, Rob Hallyburton, Katherine Daniels- DLCD; Doug Decker, John Tokarczyk- Oregon Department of Forestry; Jim Johnson, Katy Coba- Department of Agriculture