



# Oregon

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TO: Land Conservation and Development Commission

FROM: Josh LeBombard, Southern Oregon Regional Representative

SUBJECT: **Agenda Item 3, September 22, 2016, LCDC Meeting**

## **SOUTHERN OREGON REGIONAL PILOT PROGRAM FINAL REPORT**

### **I. AGENDA ITEM SUMMARY**

Kelly Madding, Jackson County Development Services Director, and Keith Cubic, Douglas County Planning Director, will provide a briefing to the Land Conservation and Development Commission (commission) on the final submittal of products for the Southern Oregon Regional Pilot Project (SORPP).

For additional information about this report, please contact Josh LeBombard, Regional Representative at 541-414-7932 or at [josh.lebombard@state.or.us](mailto:josh.lebombard@state.or.us).

### **II. BACKGROUND**

[Executive Order 12-07](#) (EO), issued on May 10, 2012, provided funding and direction to establish a “Pilot Program for Regional Farm and Forest Land Conservation.” The purpose of the EO was to:

...direct certain state agencies to work with three Southern Oregon counties...in developing a pilot program that allows appropriate 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...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. (EO, p. 2).

After the issuance of the EO, it took a while for the three counties (Jackson, Josephine, and Douglas) to develop a work plan and for the counties and the state to agree on the work plan. In November 2012, the Rogue Valley Council of Governments (RVCOG), on behalf of the three counties, signed a [Grant Contract](#) for the 2011-2013 biennium which outlined tasks and expectations for the project.

The grant contract outlined eight tasks necessary to complete the project. Tasks 1 through 4 focused mainly on project structure and background research such as public participation and information management, project organization, compilation of background data, and map production. Tasks 5 through 8 were more substantive. Task 5 focused on the assessment of resource lands in order to determine whether there was land in each county that should be considered for alternative forest land designation, alternative farm parcel-size opportunities, or to be re-designated to non-resource land. Task 6 provided for an assessment of mapping errors. Task 7 included a carrying capacity analysis for lands considered under Task 5. Task 8 covered the preparation of a petition to the commission or a project summary report in lieu of a petition.

By the end of the 2011-13 biennium and the end of the grant contract, the three counties submitted Tasks 1 through 4. Additionally, Douglas County submitted Task 5. The Department of Land Conservation and Development (department) issued a [coordinated state agency letter](#) responding to the counties' submittal.

With carryover funding provided by the legislature for the 2013-15 biennium to complete the remaining tasks, a [new grant contract](#) was prepared and signed by the RVCOG in October 2013. The new grant contract mostly mirrored the previous grant contract but provided for some modifications to the work products and expectations based upon ongoing discussions between the counties and the state. The differences were outlined in a [May 2014 report](#) to the commission.

By the end of the 2013-15 biennium and the end of the grant contract, the three counties still had not completed all of the tasks associated with the project. The three counties submitted Task 5. Additionally, Douglas County submitted Task 7. The department issued a [second coordinated state agency letter](#) responding to the counties' submittal.

The remaining unspent funding was reallocated by the legislature for the 2015-17 biennium to complete the remaining tasks. A [grant contract for this biennium](#) was executed on December 28, 2015. The contract called for the remaining three tasks to be submitted by June 30, 2016.

The counties submitted the final products by June 30, 2016. The final products include Task 6 and 7 work for Jackson County, Task 7 work for Douglas County, and Task 8 work, which consisted of a [Project Summary Report](#), on behalf of all three counties. The *Project Summary Report* is a summary of all work done on the project and per the grant contract was an acceptable product to close out the contract if a petition for rulemaking was not completed. The final products can be found here: <http://www.soregionalpilot.org/>.

### **III. DEPARTMENT ANALYSIS**

As indicated in the final chapter of the *Project Summary Report*, the EO followed an unsuccessful attempt at legislation. The intent of the legislation was primarily to create more opportunities for rural residential development; the EO, however, was oriented more towards farm and forest land conservation. The counties have previously indicated that, had they been able to create a regional project, it likely would have differed from what was proposed either in the legislative attempt or the EO. Nevertheless, the intent of the legislative effort carried over to this project.

The “problem statement” submitted by the counties at the July 2012 commission meeting reflected that and, to a large degree, set the tone and parameters for this project.

The broad scope and definition of farm and forest lands, together with the lack of Statewide Planning Program recognition of rural development, has created a regulatory environment that has constrained a rural lifestyle. An examination of farm and forest lands, recognizing that non-resource areas exist in southern Oregon, may provide an opportunity to address this issue.

There are many ways the counties could have approached creating “regional variation” through this project. Utilizing existing paths, the counties could have created new or extended existing exceptions areas, rezoned existing resource land to other resource zones, extended use of existing open space zones, developed smaller minimum lot sizes for resource zones in subregions (“go-below”) or extended use of existing go-below, utilized the farm dwelling capability test or created an extended use of the test, analyzed the build-out potential for forest template dwellings, or made changes to existing non-resource plan and zone provisions. These options would likely not have required any changes to administrative rule or statute.

Alternatively, the counties could have created regional variation through the use of new paths such as creating an alternative forest land designation, alternative farm parcel size opportunities, or a non-resource land designation. Utilization of one of these paths may have required changes to administrative rule or statute.

Chapter 7 of the *Project Summary Report* indicates that the counties elected to utilize this process to attempt to create a regional definition of non-resource land.

The three participating counties soon came to the conclusion that creating new regional farm and forest definitions was an unrealistic task. The resources attached to the Executive Order and its associated timelines were not sufficient to carry out the analysis necessary for creating regional definitions. As such, the participating counties focused on attempting to create a regional definition of non-resource lands. Each county currently has its own definition of non-resource lands but each expressed that the process had been used very little and with little success.

#### IV. OUTCOME

No consensus was reached among the three counties on a regional definition of non-resource land. As stated in the *Project Summary Report*:

...after the assessment of resource land task was completed and the counties began the carrying capacity analysis, it became clear that the differences in soils, topography, geography, and land use patterns were insurmountable barriers to a single non-resource lands zoning definition. For example, the criteria used in the Task 5 report to identify candidate lands restricted lands to only those within three miles of an Urban Growth Boundary, Urban Unincorporated Area, Rural Community, or Rural Service Center. While this criterion makes perfect sense for Douglas County, the candidate lands diminish for Josephine and significantly diminish for Jackson County due to the land use patterns of each county. Jackson County and Josephine Counties have 10 or less Rural Areas or Rural Service Centers and Douglas County has over 20 (*Project Summary Report*, p. 8).

Since consensus was not reached, the state agencies have not prepared a coordinated response to the recent product submittal. Rather, as explained later, the products may be used by individual counties to submit individual proposals to the department and commission, at which time the agencies will prepare a coordinated response. For the purposes of this briefing, the department offers a more general perspective of the products and process.

The counties agreed upon many criteria to be used in the identification of non-resource lands and the carrying capacity analysis. These included the following:

##### Non-resource Lands Criteria Agreed Upon by the Counties:

Criteria for the identification of candidate non-resource lands:

- Lands that are not high value or Class I-IV NRCS agricultural soils
- Lands that are not NRCS Class I-IV with irrigation when irrigation is either present or practicably available
- Lands that are not designated as commercial forest lands by the county comprehensive plan
- Lands that are not within urban development designations (e.g., urban growth boundaries, urban reserves, etc.)
- Lands that are not within public ownership

Criteria have been identified within Task 7, carrying capacity:

- Lands identified as “Sensitive Big Game Habitat”
- Lands that did not produce a sufficient acreage to qualify for any potential division or dwelling
- Lands identified as Coastal Resources (Wetlands, Estuaries, Shorelands, Beaches & Dunes – Douglas County only)
- Lands that are designated critical vernal pool habitat

- Lands that are designated steep slopes
- Lands poorly suited for fire protection services
- Lands that have insufficient access

Generally, the state commends the effort made by the counties and finds that the work leading to the proposed non-resource land definition and carrying capacity criteria is valuable for future planning projects. As indicated in the coordinated state agency letters, state agencies have concerns and questions about particular identification criteria and believe additional work is still required to thoroughly analyze carrying capacity on a county- or region-wide basis, consistent with the EO.

## V. RECOMMENDATIONS

The counties identified differences in the physical characteristics of the counties (soils, topography, geography, and land use patterns) and inadequate funding as the main factors that contributed to the lack of consensus on a regional non-resource definition. The department would add that the early identification of a problem statement, the focus on one “problem,” and the 3.5-year duration of the project may have also contributed.

To provide more clear parameters, it might behoove the state to consider any future regional projects such as this under the context of the Regional Problem Solving (RPS) statute (ORS 197.652-659). The statute provides a framework for process and participation and provides a timeframe for completion of work.

Having a framework for the development of a problem statement or multiple problem statements, potential solution(s), and scope of work would likely assist any future participants in setting forth a work scope that can reasonably be completed within the time allowed.

Additionally, a maximum duration should be established, whether through the RPS process or not. The recommendation would be to set a maximum timeframe of two years with a possible extension of one year. Limiting the amount of time allowed could reduce the chance of staff and elected official turnover during the process, thus increasing the chance of project success. It could also provide motivation to keep a project from stalling. During the duration of this project, Josephine County experienced an entire staff turnover (including four separate planning directors) and Jackson County lost its liaison commissioner.

The EO and subsequent grant contracts required an ambitious amount of work. A total of \$350,000 was allocated to the counties to accomplish this work. After over three and a half years of intermittent work on this project, the counties have unequivocally stated that it was an inadequate sum to accomplish all of the expectations laid out in the EO and subsequent grant contracts, especially considering the money was split between the three counties.

Many of the responses to the second coordinated state agency letter found in Chapter 3 of the *Project Summary Report* indicate that the level of work requested could not be completed at this time. The counties recommend that much of this work is not feasible on a county-wide basis and

should be addressed during property-by-property review of requests for re-designation to non-resource land. In many cases the department disagrees. While some of the analysis could appropriately be postponed and performed on a case-by-case basis, a case-by-case analysis cannot provide the assurance that sustainable carrying capacity levels will be maintained on a county- or region-wide basis.

Additionally, much of the work required in the EO was never attempted (*e.g.*, analysis of fiscal impacts to local and state government) or was not concluded (*e.g.*, analysis of effects on fire protection). Additional funding could have resulted in some of these larger-scale analyses to occur.

**More to Come?** While SORPP did not culminate in a regional product, Douglas, Josephine, and Jackson counties have the opportunity to continue with the work performed under SORPP. That individual-county work may translate into a submission to the department and commission on items directly related to non-resource lands.

For instance, Jackson County devoted a substantial amount of time towards Task 6, Assessment of Mapping Errors. This effort evolved into a proposed refinement of its existing non-resource zone and identification of lands that meet the refined definition.

In the case of Josephine County, this effort may translate into work on other items identified through this process as needing modification. Future effort will be made between the county, department, and other state agencies to find an intermediate minimum parcel size between large-lot resource zoning and rural residential zoning, consider a different method of permitting dwellings in deer winter range, and better define forest productivity.

## **VI. ATTACHMENTS**

- A. [Jackson County Tasks 6 and 7](#) - Assessment of Mapping Errors and Carrying Capacity Analysis
- B. [Douglas County Task 7](#)- Carrying Capacity Analysis