



Oregon

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January 12, 2017

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Josh LeBombard, Southern Oregon Regional Representative

SUBJECT: **Agenda Item 6, January 25-27, 2017, LCDC Meeting**

SOUTHERN OREGON REGIONAL PILOT PROGRAM

I. AGENDA ITEM SUMMARY

Executive Order 12-07 established a “Pilot Program for Regional Farm and Forest Land Conservation” (also known as the Southern Oregon Regional Pilot Program (SORPP)). The executive order, among other things, requires the Department of Land Conservation and Development (department) to submit a final report on the project to “the Governor and appropriate committees of the Oregon House of Representatives and Oregon Senate.” The department has prepared the report but has not yet transmitted it to the Governor and Legislature. Attachment A. The department will present the report to the commission. No commission action is required.

For additional information about this report, please contact Josh LeBombard, Southern Oregon Regional Representative at 541-414-7932 or josh.lebombard@state.or.us.

II. BACKGROUND

In September 2016, department presented to the commission a status report on SORPP. The commission also heard testimony from the participating counties and public on the item. The staff report for that meeting is available [here](#). In the report, the department focused on higher-level topics such as procedures, funding, and regional characteristics, which led to the conclusion that no consensus was reached among the counties on a regional definition of non-resource land. The commission requested additional follow-up regarding outcomes of the program and how it could inform similar planning efforts in other parts of the state. The report to the Governor and legislative committees includes the higher-level elements as well as some of the key technical takeaways from the SORPP process.

ATTACHMENTS

A. Report to the Governor and Legislative Committees



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DATE TBD

TO: Kate Brown, Governor
Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
Ken Helm, Chair, House Energy and Environment Committee
Brian Clem, Chair, House Agriculture and Natural Resources Committee

FROM: Jim Rue, Director
Josh LeBombard, Southern Oregon Regional Representative

CC: Members of the Senate Environment and Natural Resources Committee
Members of the House Energy and Environment Committee
Members of the House Agriculture and Natural Resources Committee

SUBJECT: **Report on Executive Order 12-07 (Southern Oregon Regional Pilot Program)**

SOUTHERN OREGON REGIONAL PILOT PROGRAM

BACKGROUND

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

[D]irect 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).

The “three Southern Oregon counties” include Douglas, Jackson, and Josephine counties. The “certain state agencies” include the departments of Land Conservation and Development, Agriculture, Fish and Wildlife, Forestry, and Water Resources.

After the issuance of the EO, the counties and state worked together to develop a work plan. In November 2012, the Rogue Valley Council of Governments (RVCOG), on behalf of the

counties, signed a [grant contract](#) for the 2011-2013 biennium, which outlined tasks and expectations for the project.

The grant contract outlined the tasks necessary to complete the project, including project structure, background research needs, and substantive outcomes. The scope of work included:

- Assessment of lands currently zoned for farm and forest use (“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
- Assessment of mapping errors in existing comprehensive plans
- Carrying capacity analysis for lands considered for re-designation
- Preparation of a petition to the Land Conservation and Development Commission (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 much of the background research. Additionally, Douglas County submitted its assessment of resource lands. 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 [second grant contract](#) was prepared and signed by the RVCOG in October 2013.

At the end of the 2013-15 biennium and the end of the second grant contract, Jackson and Josephine counties submitted assessments of their resource lands. Additionally, Douglas County submitted its carrying capacity analysis of lands it considered for re-designation. The department issued a [second coordinated state agency letter](#) responding to the counties’ submittal.

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

The counties submitted the final products by June 30, 2016. The final products included an assessment of mapping errors and carrying capacity analysis for Jackson County, and 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 was an acceptable product to close out the contract if a petition for rulemaking was not completed. In addition, at the commission hearing on this item in September of 2016, Douglas County submitted a [minority report](#) expressing its position on the closure of this project. The final products can be found at: <http://www.soregionalpilot.org/>.

ANALYSIS

As indicated in the final chapter of the *Project Summary Report*, the EO followed an unfruitful attempt at legislation. The intent of the legislation was primarily to create more opportunities for rural residential development; the EO, however, was oriented towards appropriate farm and forest land conservation. The counties have previously indicated that, given the opportunity, they would have created a regional project that differed from both what was proposed in the legislative attempt and what was included in the EO. Nevertheless, the intent of the legislative effort carried over to this project.

Without collaboration with the state, the counties prepared and submitted a “problem statement” to the commission in July 2012 that reflected the legislative focus of creating more rural development opportunities and, to a large degree, set the tone and parameters for this project. This statement said, in part:

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” utilizing existing authority in statute and rule. The counties could have created new or extended existing rural residential areas, reduced minimum lot sizes for some farm or forest zones, streamlined the process to allow farm dwellings, or pre-designated certain areas for forest dwellings. 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 alternative farm or forest land designation, alternative minimum farm parcel sizes, or a non-resource land designation. Utilization of one of these paths may have required changes to administrative rule.

The counties chose to utilize this process to create a regional definition of non-resource land. The *Project Summary Report* states, at p. 24:

[T]he 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.

The EO had high expectations for the level of analysis required to justify regional variation. For instance, the EO stated:

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 and forest uses; (b) will not significantly interfere with the 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 (EO, p. 4).

Some of those expectations went above and beyond the standard type of analysis typically required through Oregon land use planning processes. This was a stumbling block – to what extent the counties would be required to perform original analysis versus falling back on information in their existing comprehensive plans (which are largely outdated).

OUTCOMES

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.* (emphasis added)

The counties developed many criteria to be used in the identification of non-resource lands and the carrying capacity analysis. Some of these criteria were agreed upon by the three counties and the state. Some of them were agreed upon by the counties while state concerns remained. Many of them worked well for one county but were problematic for the others.

Agricultural Land

The work toward differentiating agricultural land from non-resource land was largely completed. This had a lot to do with the detailed definition of agriculture in administrative rule and statute. The counties agreed that non-resource lands are lands that do not have high value or Class I-IV Natural Resource Land Conservation Service (NRCS) agricultural soils with irrigation when irrigation is either present or practicably available. It was also largely agreed to that Animal Unit Month (AUM) data should be included in an analysis which defines non-resource land. This is something not required by rule or statute but is an important measure of grazing viability. The specific threshold for AUMs was not developed, however.

There was some disagreement on whether viticultural areas (per ORS 195.300) should be excluded from consideration as non-resource land. Furthermore, there was no agreement on whether existing farm uses and farm units should be considered. In this case the Oregon Department of Agriculture recommended that land that is part of a larger farm unit, which on its own would qualify as non-resource, should be excluded as it contributes to agricultural production.

Forest Land

The differentiation between forest land and non-resource land was a bit more difficult for the counties and the state to develop. This has a lot to do with the ambiguity of the current definition of forest land:

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources (OAR 660-015-0000(4)).

While Douglas County was adamant that the definitions of forest land from the existing county comprehensive plans should be used, the other two counties seemed to coalesce around a definition which was more consistent with what the Oregon Department of Forestry promoted – an NRCS soils forest productivity rating of less than 50 cubic feet per acre per year. However, during this process it was discovered that a significant number of the soil types in the three counties lacked a forest productivity rating. Per administrative rule, this triggers analysis into additional data sources. While the additional analysis is fairly straightforward, not all of the counties completed the additional analysis.

Additionally, the counties did not complete a full carrying capacity analysis, which was meant to address the portion of the forest land definition which conserves those “other” forested lands that maintain soil, air, water and fish and wildlife resources but which may not have a high productivity rating.

Other Lands

Many criteria regarding fish and wildlife habitat were agreed to by the counties and the state, including the use of more recent data than what is found in the existing county comprehensive plans. However, this pilot program seemed to highlight the awkwardness of how the state land use system protects fish and wildlife species and compliance with the endangered species act. Specifically, in attempting to address impacts to specific species, often the bigger picture gets overlooked. As such, the state proposed consideration of the Conservation Opportunity Areas found in the Oregon Department of Fish and Wildlife’s Wildlife Habitat Conservation and Management Program as a way to protect natural habitats in a way likely to benefit a wider range of organisms than conservation actions developed for a single species. For instance, in Southern Oregon, oak savannahs provide critical habitat, are in diminishing supply, and are not generally protected by existing plans.

While the counties immediately balked at the use of the opportunity areas, the state believes that a good conversation was started. Unfortunately, this matter was also left unresolved by the conclusion of the project.

Wildfire Hazard

The counties proposed future annexation into a fire district as a condition for future residential development on properties that 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, the state commented that they alone do not adequately mitigate the effects, including cost, of allowing additional development in wildfire-prone areas. The state offered a few suggestions such as only allowing new development in areas where development above a certain density already exists and requiring clustering of dwellings on potentially smaller than minimum lot sizes as further mitigation. Unfortunately, no substantial additional work was done on this subject before the conclusion of the project.

Community Buffers

The use of one-, two-, and three-mile buffers around communities was proposed to establish eligibility as non-resource land. This technique proved to be overly simplistic and problematic for some of the counties. As stated in the *Project Summary Report*:

[T]he 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).

Water Resources

Consideration of the availability of potable water proved to be a difficult task. This was due to intermittent well log data, lack of regional studies, and the overall hydrologic environment in Southern Oregon. As such, it was determined that any analysis of potable water availability would need to be conducted on a property-by-property basis.

LESSONS LEARNED

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.

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,” lack of collaboration on the problem

statement with the state, the focus on one “problem,” the 3.5-year duration of the project, and lapses in work to renegotiate the contract may have also contributed.

Process and Clarity of Objectives

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.

Furthermore, a framework could provide more clear expectations on the transparency and level of public participation. Each county was criticized for either not making information available in a timely way or not conducting meetings in an open and welcoming manner.

Scope

The geographic area of any future pilot project “region” should be chosen carefully. Generally, the more jurisdictions involved, the more challenging it will be to successfully conclude a project. This is especially true if the jurisdictions have a wide range of staffing capacity and ability to manage a large project. Additionally, the diversity of a region must be looked at carefully. A region should have more similarities than differences. Consideration should be given to developing a region that aligns more with the defined problem than with jurisdictional boundaries. This would mean developing a general problem statement prior to defining the geographic area.

A maximum duration should be established, whether through the RPS process or some other mechanism. A maximum timeframe of two years with a possible extension of one year, contingent upon progress, would 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. Such an accelerated timeframe requires adequate funding, of course.

Many of the county responses to the second coordinated state agency letter indicated that the level of work requested could not be completed during the project. The counties found that much of this work was 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, for example, the assurance that sustainable carrying capacity levels will be maintained on a county or region-wide basis.

Resources

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 3.5 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 among the three counties.

Additionally, much of the work required in the EO was never attempted (*e.g.*, analysis of fiscal impacts to local and state government) or, as mentioned earlier, was not concluded. 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 of items directly related to non-resource lands.

For instance, Jackson County devoted a substantial amount of time toward 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.