



# Oregon

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July 1, 2012

**TO:** Land Conservation and Development Commission

**FROM:** Jim Rue, Acting Director  
Michael Morrissey, Policy Analyst

**SUBJECT:** Agenda Item 6, July 19, 2012, LCDC Meeting

## **Executive Order 12-07, A Pilot Program for Regional Farm and Forest Land Conservation**

### **I. SUMMARY**

The purpose of this agenda item is to brief the commission on action required by Executive Order 12-07, and on action taken by the department and by Douglas, Jackson and Josephine counties since the issuance of the order on May 10, 2012.

### **II. BACKGROUND**

Executive Order (EO) 12-07 follows legislative activity in the 2011 and 2012 sessions. Then, two bills, HB 3615 and HB 4095 were introduced which would have given Douglas, Jackson and Josephine counties the ability to recommend new, regional definitions to Statewide Planning Goals, 3-Farmland, and 4-Forestland, to LCDC. Though ultimately these bills were not adopted, they would have allocated money to the three counties, and to several state agencies, to support the work necessary to propose the regional goal definitions, map affected lands and develop standards for development on the lands no longer designated as resource lands.

The Governor's Office was involved in discussion with legislative leadership in both sessions, with regard to deliberations on these bills, and at the end of the 2012 session agreed to issue an executive order that mirrored, though not completely, key aspects that were contained in the prior proposed legislation.

EO 12-07 directs that the department will make available legislatively approved \$350,000 to the three named counties, should they elect to proceed with the project, and collaboratively work with them to prepare material necessary for a petition for rulemaking to the commission no earlier than July 1, 2013. \$200,000 is also made available to the department for assistance by

state agencies, including DLCD, with this project. These funds are available only through the 2011-13 biennium (June 30, 2013), and if additional funds are needed to complete the material needed for submission of a rulemaking petition, or necessary for the counties to implement the new rules, if adopted, they would need to be sought from, and allocated in, the 2013 legislative session.

Unlike the prior proposed legislation, the Executive Order does not limit activity to modification of the definitions of Goals 3 and/or 4. The purpose is stated clearly on page 2 of the EO:

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 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.

The EO then details the steps that counties and state agencies should follow in preparing a petition for rulemaking to LCDC. At the most basic level, there are two products that must be included in the petition: 1) proposed criteria for rezoning resource lands to non-resource (farm or forest or farm/forest) designation, and for retaining farm and forest lands in the area designated to be covered by the rule; and 2) provisions relating to lands that are rezoned to non-farm or non-forest uses that assure such lands are planned and zoned for types of uses and at levels that meet identified carrying capacity standards in section 5 of the EO.

Department staff recently met with county commissioners and planning staff in Roseburg and Grants Pass, to brief representatives of all three counties and to hear their concerns, intentions and goals. Some themes expressed by county commissioners at those meetings include concern about the costs of the project and money available for it, especially in light of the economic realities facing those counties. Jackson and Josephine counties indicated a need for more time to frame issues and intended outcomes of the project, before they are ready to join Douglas County in forming a truly regional framework from which to work. Douglas County highlighted a concern that they be able to “opt out” prior to submission of a petition for rulemaking, at any time after the rulemaking had begun, or after its conclusion. The counties also expressed concern about the energy and time that might be taken by appeals related to the rulemaking, including amendments to comprehensive plans.

The department indicated that it awaits the counties’ framing of their individual and collective objectives and formally electing to move forward. The counties understand the necessity of that work and have already made plans for future meetings.

**III. DEPARTMENT RECOMMENDATION**

The department recommends that the commission review the staff presentation, take public testimony and give direction to staff.

Attachments

Executive Order 12-07



**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



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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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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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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.

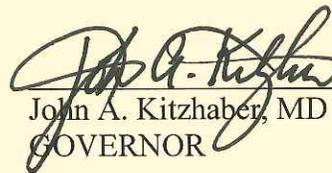


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9. DLCD will report to the Governor and the appropriate committees of the Oregon House of Representatives and Oregon Senate on or before January 1, 2014 on the status of this program.

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



  
John A. Kitzhaber, MD  
GOVERNOR

ATTEST:

  
Kate Brown  
SECRETARY OF STATE