

Jackson County Farmland Conservation Program

***A Proposal to Include a Mechanism to Conserve Farmland
through the Greater Bear Creek Regional Problem Solving Plan***

*Submitted to the Jackson County Planning Commission on February 24, 2011
by Rogue Advocates, a 501(c)(3) non-profit organization dedicated to preserving
farmland, forestland and open space in Jackson and Josephine counties*

Why is a Farmland Conservation Program Needed for the Bear Creek Valley?

According to the American Farmland Trust, every minute of every day we lose two acres of farmland to sprawling development in the United States. Oregon has a better record than most of the country, thanks to its strong land use system. Unfortunately, however, Jackson County has not fared as well. Between 1987 and 1997, for example, Jackson County lost 17.5% of its agricultural land base, while the rest of Oregon lost only 2%.¹ With a projected doubling of the population in the county in the next 50 years, development pressure on farmland will only intensify.

At the same time that farmland faces growing development pressure, an interest in farming, particularly small-scale farming, is surging. The market value of agricultural products sold in Jackson County grew from \$54,000,000 to \$79,000,000 between 2002 and 2007.² During that same time, direct market sales (i.e., farmers' markets, community supported agriculture programs and farm-to-school or farm-to-restaurant sales), which are heavily favored by small farms, grew by 700% in Jackson County. Agriculture is the second largest sector of the state's economy, and Jackson County plays a vital role in its continued viability. Therefore, it is critical that Jackson County ensures that the land base for commercial farming activity remains intact.

The county is not without strong policies to protect agricultural land. Like all counties across Oregon, Jackson County must follow state law, which requires that the maximum amount of our limited supply of agricultural land be preserved and maintained for farm use (see Statewide Planning Goal 3 and ORS 215.243). Furthermore, the county's own comprehensive plan includes an Agricultural Element, which expresses the same policy. The comprehensive plan includes requirements such as, "When Urban Growth Boundaries or Growth Management Agreements are expanded or otherwise revised, growth into agricultural areas shall be avoided." (pg. 8-11, emphasis added).

The Greater Bear Creek Regional Problem Solving plan was an opportunity to create even stronger policies to protect county farmlands. It emerged from a process called "Our Region," which contemplated the accommodation of future growth in a way that also proactively preserved our best remaining farmlands. (See Attachment B). RPS appeared quite promising at first, with one of its three goals being: "Conserve resource and open space lands for their important economic, cultural and livability benefits."³ Guiding policies under this goal included 1) establishing policies and laws that "implement the shared vision of maintaining a commercially viable land base for agriculture" and 2) exploring "strategies to increase the viability and profitability

¹ *Our Region Final Report*, quoting a Mail Tribune article from Jan. 24, 2000.

² These figures do not take into account the "multiplier effect," which calculates that for every dollar spent locally, 3-4 times that amount of economic activity is actually generated locally.

³ Greater Bear Creek Valley Regional Plan, 1-11.

of resource lands.” Although this goal is still in the RPS draft plan, it is largely being ignored.

Background on Farmland Mitigation Programs

Many cities and counties across the country have enacted ordinances that tie development to the preservation of farmland. In other words, whenever farmland is developed for urban uses, the local government requires mitigation for the loss of farmland that the development causes. This scheme is similar to wetlands mitigation banking, which occurs in Oregon and around the country. The City of Davis, California administers such a program, and was the first in the nation to create a program of this type.⁴ In Davis, whenever farmland is developed, the developer is required by city ordinance to set up a conservation easement on farmland adjacent to the parcel to be developed. In lieu of setting up an easement, the developer may pay a fee to the city, and the city in turn sets up the easement using the fees to cover the costs associated with setting up the easement. The ratio for mitigation is 2:1, so for every acre of farmland developed, two acres of farmland elsewhere must be preserved.⁵

It is important to note that through the Davis program and all other mitigation programs around the country, only those farmers who are interested and willing to establish conservation easements on their land participate in the program. No farmer is forced to participate. Many farmers come forward volunteering their land to be put in a conservation easement because it is financially beneficial for them to participate.

A Program for Jackson County

We are proposing a program for Jackson County that is modeled after the City of Davis program. To carry out the program, we request that the language in Attachment A is inserted into Chapter 5 of the RPS plan.

Additional Notes

Funding the Conservation Easements:

Ultimately through this program the burden will be on the landowner/developer of the EFU land within the URAs that is being developed for non-agricultural uses to set up the easement and shoulder the costs for it. This expense can be significantly reduced, however, through cost-sharing and other incentives in the following ways:

- Developers can recoup easement costs by adding them proportionally to the sale price of the units in the development. The per-unit cost would vary, but would be substantially lower as density of development was increased. This

⁴ The City of Davis administers this program, rather than it being administered at the county level, because Davis is split between two counties – Yolo County and Solano County – and because the city had the political will and strong local support to create this program.

⁵ The City of Davis began with a 1:1 ratio but has since strengthened it, requiring a 2:1 mitigation ratio and removing the option of paying an in-lieu fee.

provides an incentive to achieve another goal of the Plan: increasing residential densities and the efficient use of urban land.

- Since this would be a regional policy, no individual developer would be at a disadvantage when developing URA lands;
- Federal matching funds are available through the Natural Resources Conservation Service's Farm and Ranchland Protection Program (FRPP) for conservation easements. In 2010 California received \$3 million dollars from the NRCS for conservation easements;
- Only land in the URAs that is actually developed is required to be mitigated – this may motivate developers to develop smaller portions of their land, leaving the rest in agricultural production and incentivizing more efficient development;
- This program envisions two options for developers: 1) Work directly with a landowner to set up a conservation easement or 2) Pay an "in lieu" mitigation fee to the county or its agent, which will then be used to set up the easement. By negotiating directly with a willing landowner, the developer may be able to set up an easement in a more cost-effective manner than through simply paying the fee. This is because the fee would be by the county, whereas a landowner interested in setting up an individually negotiated easement may agree to a lower price.

Creating a Flexible Market:

While this program relies on regulation to establish its existence and set the rate of mitigation fees, its two-mechanism approach creates a flexible market for the trade of conservation easements between developers and qualifying farmland owners based on the supply and demand for easements. This approach creates an incentive for both developers and conservation easements sellers to negotiate terms that benefit both parties. Some of these benefits are:

- Developers can negotiate terms with easements sellers on various payment plans that do not require full payment at the time of purchase of easements. Thus a developer would not have to incur the total cost of easements up front. Ultimately developers will recoup these costs as they would be included in the sale price of the development;
- Developers can purchase easements from qualifying farmland outside of URAs that they already own, or they can purchase qualifying farmland at anytime to be held in reserve for easements;
- The mandatory purchase of easements will more equitably distribute the substantial economic benefit that comes from having resource land included within a URA while permanently protecting farmland and the region's agricultural economy.

Creating an Affordable Supply of Farmland

One often cited obstacle to entering the agricultural field is the lack of affordable farmland in our region. The program we are proposing would help create a supply of relatively less expensive farmland. The reasoning is that farmland that already

has easements on it will NEVER be able to be developed, and the present owners will have already taken the profit for that tradeoff. It might then have the effect of lowering the price of that farmland (at least relative to the price of land that does not have an easement on it). This is to the benefit of the continuation of farming in the valley—helping new farmers or those that want to expand get onto land.

In Summary

Agriculture, and the jobs in associated industries that depend on it, is a critical and growing part of a viable and sustainable economy for Jackson County. Current local land use policy, proposed RPS policy and the market together fail to account in any directly quantifiable and meaningful way for the real long-term costs of farmland loss in our region. The result is that all too often the rather shortsighted interests of the market dominate our shared regional view. The result of this failure to fully include farmland loss in the RPS equation is that farmland conversion appears to be an unavoidable and acceptable consequence of economic and social progress.

History has clearly shown that without government intervention on behalf of the public the marketplace fails every time to include and capture these types of values until after the farmland is gone and the viability of its associated local industries and jobs have evaporated. We therefore believe it is the responsibility of this regional plan and our public servants to create an effective and affirmative policy as part of this regional plan that realistically includes our viable and growing agricultural industry in its long-term plan and we further recommend that this Farmland Conservation Program is the simplest and most effective way to do that.

Attachment A – Proposed Plan Language

1. Farmland Conservation Strategy

A. Purpose and Findings

1. The purpose of this section of the RPS plan is to implement a strategy to permanently protect agricultural land located within the Greater Bear Creek planning area of Jackson County but outside of designated Urban Reserve Areas (URAs). Jackson County has determined that the permanent protection of these agricultural lands will yield a significant public benefit to the people of Jackson County and therefore this strategy is designed to carry out Goal 2 of RPS, which is to conserve resource lands in this region.

B. Definitions

1. Agricultural Mitigation Land: Agricultural land on which a farmland conservation easement may be established. All agricultural mitigation land is located within the Farmland Conservation Zone.
2. Applicant: The person or entity that applies for annexation of land to be developed.
3. Conservation Easement: A legal mechanism for permanently protecting resource lands, which confers tax incentives and other monetary benefits to the owner of the land on which the conservation easement is established. All conservation easements described in this program must satisfy the terms and conditions for conservation easements as described in ORS 271.715 et. seq. or successor provision, “Conservation Easement Statute.”
4. Conservation Easement Holder: A “qualified organization” under the federal tax provisions relating to conservation easements, 26 CFR 1.170A-149(c), that is responsible for ensuring that the land on which the conservation easement is established is being managed according to the terms of the conservation easement agreement. The holder of the easement is typically a land trust.
5. Farmland Conservation Committee: The committee formed by Jackson County and made up of volunteers who are residents of Jackson County, which will oversee the Farmland Conservation Program and make recommendations concerning which agricultural lands to conserve through this program.
6. Farmland Conservation Easement: The specific type of conservation easement to be established in this program. A non-possessory interest in Exclusive Farm Use (EFU) zoned land that permanently protects the land from being developed for non-agricultural uses, but allows the owner of this farmland to retain all other prior ownership rights of the land.
7. Farmland Conservation Zone: The area of land to be designated by the Farmland Conservation Committee, in which all mitigation lands will be located. This zone is to prioritize lands in close proximity to UGBs and URAs, which is most threatened by urban development. Highest priority for inclusion in the zone shall be given to RLRC identified lands not included in any URAs.

8. RLRC Land: EFU land that the Resource Lands Review Committee found during the Greater Bear Creek Regional Problem Solving (RPS) process to be part of the region’s commercial agriculture base. These lands are generally irrigated, Class 1 or Class 2 soils and have other characteristics making them especially valuable as agricultural land.
9. Qualifying Organization: A nonprofit public benefit 501(c)(3) corporation operating for the purpose of conserving and protecting land in its natural, rural or agricultural condition. These entities are typically land trusts.
10. Urban Growth Boundaries or “UGBs”: Land that has been designated for future growth over the next 20 years. All cities within the Greater Bear Creek area have existing UGBs.
11. Urban Reserve Areas or “URAs”: Land that has been designated through the Greater Bear Creek Regional Problem Solving process for future growth over the next 50 years. These lands must be annexed into city limits before urban development may occur.

C. Mechanisms for Conserving Farmland:

At the time that RPS is adopted by Jackson County and all other participating jurisdictions, an agricultural mitigation strategy as outlined in this section shall become applicable:

1. Before EFU zoned land within any designated Urban Reserve Area (URA) is annexed for development, this loss of farmland shall be mitigated through the permanent protection of farmland outside of but in close proximity to any URA areas in Jackson County.
2. Farmland shall be permanently protected through one of the following two mechanisms:
 - a. The applicant for annexation shall establish a farmland conservation easement, as defined in Section B, on a parcel of land referred to as “agricultural mitigation land” within the designated Farmland Conservation Zone, as defined in Section B; or
 - b. In lieu of establishing a farmland conservation easement, the applicant for annexation shall pay a “mitigation fee” to Jackson County or a qualifying organization as designated by the county, which will be used to establish a farmland conservation easement in compliance with this program’s terms.

D. Requirements for Both Mechanisms 1 & 2:

Whether the annexation applicant conserves farmland through establishing a farmland conservation easement or through paying a mitigation fee, the following requirements apply:

1. The farmland conservation easement that is established must satisfy the terms and conditions for Conservation Easements, as defined in Section B and be approved by the Jackson County Planning Commission;
2. If the land to be annexed for development is EFU zoned land, one times as many acres of agricultural land shall be protected as was changed to a non-agricultural use in order to mitigate the loss of agricultural land;

3. On EFU zoned land that has also been designated as “RLRC” land, two times as many acres of agricultural land shall be protected as was changed to a non-agricultural use in order to mitigate the loss of agricultural land;
4. Mitigation shall only be required for that portion of the land which no longer will be designated EFU land, including any portion of the land used for park and recreation purposes, roads and infrastructure.

E. Requirements for Mechanism 1 – Establishing a Farmland Conservation Easement:

The following requirements apply only when the applicant chooses to conserve farmland through establishing a farmland conservation easement:

1. The applicant shall find a landowner located within the Farmland Conservation Zone, as defined in Section B, who is interested in having a farmland conservation easement established on his or her property;
2. The applicant shall work with the landowner and a qualifying organization, as defined in Section B, to establish a farmland conservation easement;
3. The applicant shall pay the landowner an amount that the applicant and landowner negotiate together for the establishment of the farmland conservation easement;
4. The applicant shall also pay an “Agricultural Stewardship Fee” to the holder of the easement (i.e. the qualifying organization), to be held in a separate Stewardship Fund, in an amount necessary to cover the costs of administering, monitoring and enforcing the conservation easement in perpetuity.
 - a. This amount shall be determined by the holder of the conservation easement based on calculating the size of fund necessary to produce at a 3% interest rate an annual amount equal to the reasonable assessment of the cost of monitoring and documenting the condition of the property on an annual basis;
 - b. The holder and annexation applicant may also stipulate to other stewardship funding arrangements, such as receipt of a transfer fee on sale of property in lieu of immediate payment;
 - c. All such stewardship funds and arrangements shall be approved by Jackson County to ensure their adequacy for the long-term protection of the property.

F. Requirements for Mechanism 2 – The “Mitigation Fee”:

The following requirements apply only when the annexation applicant chooses to conserve farmland through payment of a “Mitigation Fee”:

1. The use of a mitigation fee as the mechanism for conserving farmland must be approved by the Jackson County Planning Commission;
2. The method for determining setting mitigation fees will be developed by the Farmland Conservation Committee, and approved by the Jackson County Planning Commission, prior to the start of this program.
3. All mitigation fees shall be set at an amount high enough to cover the following:

- a. Payment to the landowner on which the conservation easement is established;
- b. An "Agricultural Stewardship Fee," which will be used to monitor and protect the agricultural land so conserved; and
- c. The county's or qualifying organization's estimated cost of legal, appraisal and other costs, including staff time, to acquire property for agricultural mitigation.

G. Comparable Soils and Water Supply

1. The agricultural mitigation land shall be equal or better in soil quality to the agricultural land whose use is being changed to non-agricultural use;
2. The agricultural mitigation land shall have equal or better water supply (i.e. through irrigation rights) to the agricultural land whose use is being changed to non-agricultural use.

H. Eligible Lands

1. Farmland conservation easements may only be established on parcels within an area that the Farmland Conservation Committee designates as the "Farmland Conservation Zone." This zone is to include farmlands that are within the RPS study area, that are in close proximity to the Greater Bear Creek Regional Problem Solving Urban Reserve areas (URAs), and that are at high risk of development pressures and non-agricultural use conflicts;
2. It shall be the policy of Jackson County that farmland conservation easements are to be established on large parcels of agricultural land, and contiguous parcels of protected farmland are to be preferred. Through this program, twenty (20) acres of land is to be the minimum size parcel on which a conservation easement may be established, unless:
 - a. The entire mitigation required for a project is less than 20 acres; or
 - b. The agricultural mitigation land is adjacent to larger parcels of agricultural mitigation land already protected.

I. Other Requirements of Conservation Easements:

1. All owners of the agricultural mitigation land shall execute the conservation easement instrument;
2. The instrument shall be in recordable form and contain an accurate legal description setting forth the description of the agricultural mitigation land;
3. The instrument shall prohibit any activity that substantially impairs or diminishes the agricultural productivity of the land, as determined by the Farmland Conservation Committee. The landowner shall continue to hold all previous rights and responsibilities contained that are ascribed to the EFU designation under Oregon's land use laws and county ordinances;
4. The instrument shall protect any existing water rights and retain them with the agricultural mitigation land, unless Jackson County determines that the legal transfer of such water rights to other protected mitigation land maximizes the overall protection of agricultural resources;

5. Jackson County shall be named a beneficiary under any instrument conveying the interest in the agricultural mitigation land to a qualifying entity;
6. All conservation easements shall be perpetual in duration. Therefore, except as provided in subsection 7 of this section, the qualifying entity or the county shall not sell, lease, or convey any interest in agricultural mitigation land which it shall acquire. If in the opinion of the easement holder circumstances arise in the future that render the purpose of the easement impossible to accomplish, the following applies:
 - a. The farmland conservation easement may only be extinguished or terminated by the holder, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction brought by holder and joined by Jackson County;
 - b. The amount of proceeds, after satisfaction of prior claims, to which the holder shall be entitled upon any sale, exchange or involuntary conversion of all or a portion of the property subsequent to such extinguishment or termination shall be the proportionate amount of the proceeds based on the proportion of the total fair market value represented by the development value as described above at the time of extinguishment;
 - c. The holder shall use any proceeds received under the circumstances described in this Section to acquire interests in other agricultural mitigation lands in Jackson County, as approved by Jackson County and provided within this section of the plan;
 - d. Any funds not used for this purpose within 36 months of their receipt shall be remitted to Jackson County in the manner described above for mitigation funds;
7. If any qualifying organization owning an interest in agricultural mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to Jackson County or another qualified holder as approved by Jackson County.

J. Jackson County Farmland Conservation Committee

1. Jackson County will create a Jackson County Farmland Conservation Committee, which will consist of appointed volunteers from the county's agricultural community (i.e. farmers, members of farm advocate groups and citizens concerned with our local agricultural community).
2. It shall be the duty and responsibility of the Committee to exercise the following powers:
 - a. To adopt rules of procedure and bylaws governing the operation of the advisory committee and the conduct of its meetings;
 - b. To create the Jackson County Farmland Conservation Zone;
 - c. To promote conservation of agricultural land in Jackson County by offering information and assistance to landowners and others;
 - d. To recommend tentative approval of mitigation proposals to the Jackson County Planning Commission;

- e. To certify that the agricultural mitigation land meets the requirements of this program; and
 - f. To ensure the occurrence of appropriate monitoring of all farmland conservation easements created under this program and to review and monitor the implementation of all management and maintenance plans for these lands and easement areas.
3. All actions of the Farmland Conservation Committee shall be subject to the approval of Jackson County Planning Commission.

K. Annual Reporting

Annually, beginning one year after the adoption of the RPS plan, Jackson County's Planning Director shall provide to the Jackson County Planning Commission an annual report delineating and assessing activities undertaken pursuant to the requirements of the Farmland Conservation Program. The report shall list and report on the status of all lands and easements acquired under this plan.