

Sept. 14, 2011

Jackson County Board of Commissioners
Jackson County Courthouse
10 South Oakdale, Room 214
Medford, Oregon 97501

Re: Greater Bear Creek Regional Problem Solving, File No. LRP2009-00010

Dear Jackson County Board of Commissioners,

Rogue Advocates is a non-profit organization with the mission of creating a more livable and sustainable Rogue Valley region. Central to our group's vision is the conservation of our region's limited and irreplaceable supply of farmland.

Our organization has participated in the public hearing process of the Greater Bear Creek Problem Solving process (RPS) over the last year and a half and we again provide testimony, this time to voice support of the most recent RPS resolutions of both the Ashland and Talent City Councils. Please see our specific comments below:

Talent City Council's RPS Resolution:

On behalf of our organization and our members, we support Talent City Council's September 7, 2011 motion to accept the Jackson County Planning Commission's recommendation to remove TA-2 (other than the small 2 acre portion needed for transportation purposes) from the RPS plan. Based on the facts that this parcel is valuable RLRC land and that multiple citizens living adjacent to TA-2 object to the inclusion of this parcel for future urbanization, we formerly recommended that this parcel be removed from the plan. We are pleased that the Jackson County Planning Commission and Talent City Council have also recognized this and hope that the Board of County Commissioners will also support this decision.

Ashland City Council's RPS Resolution:

We also support Ashland City Council's resolution on RPS, which was passed on August 16, 2011. While we support all points of the Council's resolution, we focus on the city's recommendation to include the Farmland Conservation Program in the RPS plan.

The Farmland Conservation Program (FCP) is a program that our organization has proposed with the assistance of farmers, farm advocacy groups and concerned citizens over the course of many months. The FCP is an attempt to mitigate the loss of farmland that will occur through RPS as thousands of acres of Exclusive Farm Use (EFU) land is urbanized. It uses the mechanism of the conservation easement to achieve this. Rogue Advocates and our partners developed this proposal as a way to ensure that RPS more adequately accomplishes its primary goal of conserving resource lands. Without such a program, the plan lacks any affirmative protection for farmland and does not meet Goal 2 of

the RPS plan, which is to conserve resource lands. Background on the program as well as the program itself can be found in the Jackson County Planning Commission Public Hearing Record on pages 1638-1650.

We encourage the Board to review the FCP, and to raise any questions or concerns with us about the program. A number of questions and concerns about the program were raised during the Jackson County Planning Commission hearings, and we have addressed these issues in additional testimony, which can be found on pages 1710-1713 and 2201-2226 of the Jackson County Planning Commission Public Hearing Record. If upon reviewing this information you still need additional information, we would be happy to clarify anything about the program with the Board.

We will not spend the Board's time repeating in detail information that is already provided in the record about the FCP, but will instead highlight pertinent information in the record to help the Board determine whether the program should be included in the RPS plan:

- **Support from the Community:** The Farmland Conservation Program has ample backing from the community, evidenced by multiple letters of support in the record. These support letters can be found in the following locations in the Jackson County Planning Commission Public Hearing Record: 1343-44, 1518, 1519, 1657, 1658, 1662, 1663, 1678, 1679, 1680-81, 1682, 1706, 1707-08, 103-04, 2105 and 2108-2111.
- **Support from the former Jackson County Board of County Commissioners:** The former Jackson County Board of County Commissioners supported the concept of the FCP, as shown by the letter on page 2066 of the Jackson County Planning Commission Public Hearing Record (this copy is unfortunately nearly illegible so we include a copy with this testimony). Former Commissioner David Gilmour still supports such a concept, as seen in his personal letter of support for the FCP on page 1707-08 of the record.
- **An affirmative farmland protection policy is still needed for RPS:** Although the Planning Commission did not include this proposal or any affirmative farmland protections in its recommendations to the Board there is still a clear need for affirmative protections if RPS is to meet at least the spirit of the law and Goal 2 of the plan to protect farmland and invigorate farming in the region.

Our organization has also been aware of many of the failings of RPS that the Planning Commission Chair Greene thoroughly outlined in his Minority Report (BoC record pp. 477-480). This mitigation proposal, if adopted by RPS, would help rectify one aspect of the problem of farmland loss in the region by including truly affirmative farmland protection in RPS. However it would not directly address the still unsupportable amount of farmland RPS continues to include for urbanization since it would only directly conserve farmland outside of Urban Reserve areas.

A major concern of our organization and its members is the potential negative impacts that the eventual urbanization of farmlands included in RPS will have on the long-term viability of commercial agriculture in the region. Unfortunately, RPS as currently drafted, has failed on numerous occasions to take full advantage of opportunities to limit the loss of farmlands, especially RLRC identified high value farmlands, as mandated by state law for a regional problem solving process. This has occurred even though reasonable alternatives have existed and much public testimony supporting the conservation of farmland wherever possible has been heard (see Chair Greene comments outlining RPS shortcomings, record pp. 477-482). We believe that these problems need to be rectified for RPS to truly be a regional plan.

- **Decision to exclude FCP in RPS major reason why Commissioner Greene voted against recommendation to approve RPS plan:** Planning Commissioner Greene voted against recommending approval of the RPS plan, and one of the primary reasons for his vote was because it does not include a plan to mitigate the loss of farmland. Commissioner Greene’s Minority Report expressing this concern can be found on page 476 of the Jackson County Board of County Commissioners Public Hearing Record.
- **Legality of the program:** During the Planning Commission hearings, a concern was raised about whether such a program was legal, or instead, could be considered an unconstitutional “taking.” We answered this question, explaining that mandatory conservation easements are in fact not takings, and including a court case that dealt with this very issue. You may view our comments and the decision on pages 2201-2226 of the Jackson County Planning Commission Public Hearing Record.
- **This proposal is not a new concept, but is central to the early vision of RPS:** Our Region, the precursor to RPS, proposed a farmland conservation zone overlay to protect the most important agricultural lands in Jackson County. The FCP proposes a different mechanism to achieve this same goal but the overall concept remains the same. Affirmative protection of farmland originated as a central goal of RPS and unless a plan such as the FCP is included in RPS, RPS fails to achieve its primary mission. See pages 1651-56 of the Jackson County Planning Commission Public Hearing Record to view the Our Region Final Report.

Additional Points to Consider:

- **Impact on development:** Because RPS focuses on how and where we will accommodate future population growth in our region, an obvious question about the FCP is: “How will this impact the ability of developers to build commercial and residential stock in our region?” A concern of the Planning Commission is that it would be another obstacle for development, leading some members of the Commission to conclude that it is a bad idea. However, the information we have received from the City of Davis, California, which in 1995 enacted the first of this type of program in the nation, is that their program does not appear to have negatively impacted development in their area (See attached explanation from

Jimmy MacLeod). While Jackson County is not Davis, California, the situation there should provide some assurance to the Board that development would likewise not be negatively impacted here if this program were enacted.

- **Article on importance of permanent agricultural mitigation programs:** The Planning Commission raised a question concerning the need for such a program when Oregon's land use system is in place to protect farmland. We include an excerpt from an article by land use and environmental law professor, Ann Mudge, who explains why permanent protection such as the kind seen in our FCP is imperative to the long-term protection of agriculture.
- **At a minimum, a request to further study the FCP is warranted:** The Planning Commission determined not to recommend inclusion of the FCP in the RPS plan largely because too many unanswered questions about the program remained. While it is true many of the details of the program are yet to be determined, these questions, if studied, can be answered in due course. If the Board is not comfortable recommending inclusion of the program as is, we hope that the Board would at least recommend that the FCP be studied by the county for future inclusion if not in RPS, then at least in the county's economic element of the comprehensive plan.

Thank you for the opportunity to present this testimony to the Board, and please do not hesitate to contact us with additional questions or concerns about our proposed program. We are hopeful that the Board will support this program as a way to ensure that RPS meets its intended goal of conserving farmland in Jackson County, which is sorely lacking in the current version of the RPS plan.

Yours truly,

/s/ Sarah Vaile

Sarah Vaile
Staff Attorney/Program Coordinator, Rogue Advocates

Analysis of Davis, California’s Development Activity after their Farmland Conservation Program was Enacted, by Jimmy MacLeod, Executive Director of Rogue Advocates

We believe the statistics below from Davis Building Dept. on building permits issued in Davis tend to support the statement by Sustainability Director Mitch Sears that Davis’ easements program has not been “...a primary driver in the level of building activity” in the City and that the Davis’ Measure J, Davis citizens right to vote on new development that impacts farmland and the recession have had a more direct effect on the rate of development. This information was in response to an email sent by Rogue Advocates to Mitch Sears asking for data regarding the effects if any the Davis easement program has had on development in that city.

Davis’ easement program began in 1995. Analyzing the numbers from the data below, the years 1985 to 1994, prior to the easement program being enacted, yield the average number of permits issued per year as 415.2. For the years 1995 to 2000, which span from the beginning of the easement program’s implementation to the year before Measure J, was enacted, the yearly average of issued permits increased to 611 permits per year. This is a nearly 50% increase in permits issued per year over the previous years.

For the years 2001 to 2007, which span the date Measure J was enacted through the recession, the number of issued permits clearly declined and the yearly average was 188.9 permits per year, or roughly 50% fewer permits per year issued than between 1985 and 1994. The last three years, which include Measure J and the recession, speak for themselves.

From this data there is certainly no sign of diminished development activity coinciding with the easements program. If anything, there is a significant increase in development up to Measure J. Though no final conclusions can be drawn from this limited picture, at the very least it raises no immediate red flags indicating that mandatory easements policies for farmland protection in Davis have stifled development there.

Building Permits Issued For New Residential Units
(Source: City of Davis Building Division)

<u>Year</u>	<u>Total Units</u>
1985	313
1986	65
1987	834
1988	147
1989	183
1990	747
1991	597
1992	451
1993	458
1994	357
1995	223
1996	464
1997	442
1998	1013
1999	954
2000	570
2001	206
2002	307
2003	277
2004	135
2005	250
2006	104
2007	43
2008	27
2009	27
2010	21

Excerpt from **Impact Fees for Conversion of Agricultural Land: A Resource-Based Development Policy for California's Cities and Counties** by Anne E. Mudge, 66 *ECOLOGY LAW QUARTERLY*, Vol. 19:63.

*Note: citations omitted for ease of reading.

Local governments have achieved some protection of agricultural land through traditional zoning techniques, such as restrictions on use, imposition of minimum parcel sizes, and limitations on residential density. However, while traditional techniques purport to impose "permanent" controls, in practice they have protected farmland only until enough pressure has been exerted to rezone the land for urban uses. Land use restrictions can be lifted at any time by a vote of a city council or board of supervisors. Often, this rezoning occurs without consideration of the land's agricultural value.

Although changes in zoning may reflect current political will and result from market forces, the ease with which agricultural rezoning can take place today fails to account for either the environmental or longterm economic costs of converting this limited resource. The environmental costs of agricultural land conversion include loss of open space as a visual resource and source of growth control, loss of wildlife habitat, loss of vegetation's potential to convert carbon dioxide to oxygen and increased urban run-off of rain water. The economic costs include longterm unavailability of land for the future production of food and fiber. Such costs, much like the costs of air pollution created by automobile use, are not reflected in the current price of using the resource. In economic terms, such costs become externalized. Thus, by failing to place conditions on the rezoning of agricultural land in order to protect its long term viability, it is all too easy to prematurely convert agricultural land under political pressure. Additionally, because some of the costs of conversion are externalized from the market price, the market does a poor job of making consistently rational conversion decisions.

The rate of conversion of agricultural land and its inadequate protection through traditional zoning techniques have encouraged local governments to consider new ways to address the problem.⁶ One consideration is a new kind of impact fee levied on development. These innovative impact fees-sometimes called agricultural conversion or farmland mitigation fees-are intended to mitigate the environmental impacts of the loss of agricultural land, particularly prime agricultural land, near urban centers.

Like traditional agricultural zoning practices, farmland impact fee programs recognize that some conversion of agricultural land for urban purposes is both necessary and desirable to accommodate population growth. However, the advantage of agricultural impact fee programs in conjunction with zoning techniques is that they offer methods that compensate for the loss of the resource by permanently protecting agricultural land as an irreplaceable environmental resource. Once converted to urban uses, farmland is permanently lost. It can only be "replaced" by returning fallow land to active cultivation or by converting forests, meadows, and other open space to agricultural uses. Traditional zoning has failed to protect agricultural lands or compensate for their loss as a natural resource. The goal of such fee programs is to allow limited development of agricultural land while requiring that developers pay for the true environmental costs of the loss of agricultural land. The tradeoff inherent in such farmland mitigation fee programs is the permanent conversion of certain farmland in exchange for the permanent or at least longterm protection of other land.