

Regional Problem Solving in Action: Lessons from the Greater Bear Creek Valley RPS Process

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I. Introduction

IN 1996, THE OREGON STATE LEGISLATURE PASSED HB 3482, which provided for the establishment of up to four pilot programs throughout the state to undertake a collaborative regional problem solving (RPS) process.¹ The Greater Bear Creek Valley RPS Process was the most highly visible and ambitious regional planning effort conducted under this legislation,² achieving apparent success³ when the Land Conservation and Development Commission (LCDC) issued an order approving the Greater Bear Creek Valley RPS Plan (Regional Plan) in March 2013.⁴ Though much must be done to implement such a plan, reaching

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1. Or. Laws Spec. Sess. 10-11 1996.

2. OR. REV. STAT. § 197.625-658 (2007).

3. There were other attempts to use the RPS process with differing levels of success. While requiring consensus was the undoing of similar RPS efforts in Lane and Polk-Yamhill Counties and the Josephine County RPS Process resulted in ordinances that were never adopted, there was a modest success for that process in dealing with growth and public facilities and services in Southern Deschutes County. See KMC, INC., SOUTH COUNTY REGIONAL COST/BENEFIT ANALYSIS REGIONAL PROBLEM SOLVING PROJECT FINAL REPORT (1997), available at <http://www.deschutes.org/DeschutesOrg/files/71/71d3ce43-4e14-4be2-9108-4dceaa381188.pdf>.

4. The Greater Bear Creek Valley RPS Process was subject to OR. REV. STAT. §§197.652-197.658 (2007). See Oregon Dep't. of Land Conservation and Dev.,

consensus among multiple local governments as to how to tackle common problems is itself an achievement. Consequently, understanding the factors behind the success of the Greater Bear Creek Valley RPS Process can provide important insight into the conditions necessary for a regional planning effort to reach a successful conclusion.

This paper begins by describing the history of the Greater Bear Creek Valley RPS Process (the "Process"). It then identifies and examines the factors behind the success of the Process before looking at the role of these factors in the successful resolution of two controversies that particularly threatened its ultimate success. Finally, the paper concludes with a discussion of the lessons these factors provide for future regional planning efforts.

The experience of the Greater Bear Creek Valley RPS Process demonstrates that a successful regional planning effort has four primary features: first, participants share a defined common purpose; second, the Process is structured so that participating jurisdictions were more comfortable with the Process;⁵ third, participants are able to rely on stable and cooperative technical staff, including a neutral, third party coordinator; and, fourth, regional and state leaders are sufficiently dedicated to seeing the Process through to a successful conclusion so that they are willing to make the necessary compromises.

II. The Greater Bear Creek Valley RPS Process

Due to the region's unique characteristics, Jackson County and the municipalities within it face a host of challenges when planning for long-term future growth. Almost sixty percent of the County's population is concentrated in seven cities located in the Greater Bear Creek Valley: Ashland, Talent, Phoenix, Jacksonville, Medford, Central Point, and Eagle Point.⁶ Other than the Portland Metro area, the Greater Bear Creek Valley has the highest concentration of incorpo-

Agenda Item 4, Mar. 14-16, 2012, LCDC Meeting 3-4 (Feb. 24, 2012), *available at* http://www.oregon.gov/LCD/docs/meetings/lcdc/031412/lcdc_agenda_2012-03.pdf [hereinafter Agenda Item 4]; Land Conservation and Dev. Comm'n of the State of Oregon, Project Approval Order 13-RPS-001830 1 (Mar. 7, 2013) [hereinafter LCDC Order].

5. At the same time, the Process must also provide for sufficient public, county, and state input, guidance, and oversight at appropriate stages.

6. ROGUE VALLEY COUNCIL OF GOVERNMENTS, GREATER BEAR CREEK VALLEY REGIONAL PROBLEM SOLVING PHASE ONE STATUS REPORT 1 (Nov. 15, 2001) [hereinafter RVCOG 2001 STATUS REPORT]. The Appendix to this article contains a map of Oregon showing the location of Jackson County, as well as a map of the Bear Creek Valley and vicinity.

rated cities within a designated metropolitan area in Oregon.⁷ The population of Jackson County has more than doubled from 1970 to 2005, with more than three-quarters of that population growth occurring within the Valley's municipalities.⁸

The region's geographic characteristics further complicate long-term growth planning. Over eighty percent of county land is in forest resource lands, and the federal government owns roughly half of those lands.⁹ In addition, the presence of the Cascade and Siskiyou mountain ranges along the Greater Bear Creek Valley constrains the land suitable for growth, as the Valley is only five miles wide at its narrowest point and ten miles wide at its widest point.¹⁰

Historic settlement and development patterns create additional challenges when planning for the region's long-term growth. Historic settlement patterns concentrated the County's population in the midst of the Valley's best agricultural lands.¹¹ While most of these population centers became the Valley's cities, significant residential development occurred in rural areas within active farmland.¹² These rural residential developments, sprinkled throughout valuable agricultural lands, often qualify as "exception lands" that are given second priority for inclusion within an urban growth boundary.¹³ Consequently, strict

7. Jackson County, Or. Greater Bear Creek Valley Regional Plan 1-2 (2009), available at <http://www.co.jackson.or.us/files/item%20308%20draft%20regional%20plan%20vol%201.pdf> [hereinafter Jackson County 2009 Regional Plan].

8. *Id.* at 1-1.

9. RVCOG 2001 STATUS REPORT, *supra* note 6, at 1.

10. Jackson County 2009 Regional Plan, *supra* note 7.

11. *Id.* at 1-3.

12. *Id.* The railroads for the area were more easily located in the valleys, where they both created jobs and were the impetus for urbanization as stations were set up along the lines.

13. RVCOG 2001 STATUS REPORT, *supra* note 6, at 3; Oregon Statewide Planning Goal 14 describes the function of an Urban Growth Boundary thus:

Urban growth boundaries shall be established and maintained by cities, counties and regional governments to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land.

OR. ADMIN. R. 660-015-0000 (14) (2006).

There must be sufficient land within the urban growth boundary to satisfy urban land needs for a twenty-year period. Land outside that boundary is generally "rural" in nature, described as:

Land outside urban growth boundaries that is:

- (a) Non-urban agricultural, forest or open space,
- (b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or
- (c) In an unincorporated community.

Oregon's Statewide Planning Goals & Guidelines, Definitions <http://www.oregon.gov/LCD/docs/goals/definitions.pdf> (last visited Mar. 8, 2014). Those who seek to maxi-

compliance with the statewide land use system actually results in the spread of urbanization into prime farmland in the region.¹⁴

Because its distinctive physical and cultural characteristics pose a number of challenges to traditional long-term growth planning under Oregon's land use planning system, the Greater Bear Creek Valley was ripe for an alternative, region-wide land use planning effort when the Legislature enacted the RPS statute. The RPS statute provided:

- (1) Local governments and those special districts that provide urban services may enter into a collaborative regional problem-solving process. A collaborative regional problem-solving process is a planning process directed toward resolution of land use problems in a region. The process must offer an opportunity to participate with appropriate state agencies and all local governments within the region affected by the problems that are the subject of the problem-solving process. The process must include:
 - (a) An opportunity for involvement by other stakeholders with an interest in the problem; and
 - (b) Efforts among the collaborators to agree on goals, objectives and measures of success for steps undertaken to implement the process as set forth in [Or. Rev. Stat.] 197.656.
- (2) As used in [Or. Rev. Stat.] 197.652 to 197.658, "region" means an area of one or more counties, together with the cities within the county, counties, or affected portion of the county.¹⁵

The text of the statute shows that the Legislature intended the RPS process to provide regional leaders with the tools to resolve their regional land use problems. One of the more important tools the Legislature provided in the RPS statute is a provision that allows LCDC to acknowledge amendments to comprehensive plans and land use regulations, or new land use regulations, that do not fully comply with the rules of the commission that implement the statewide planning goals, without taking an exception if certain statutory requirements are met.¹⁶ This flexibility would play an important role in the Greater Bear Creek

mize value of land for nonresource use prefer to have that land included in an Urban Growth Boundary, while cities similarly seek to maximize their tax base by such inclusion. OR. REV. STAT. § 197.298(1)(b) (2011).

14. RVCOG 2001 STATUS REPORT, *supra* note 6, at 3; Jackson County 2009 Regional Plan, *supra* note 7 at 1-4. Although the regional council of governments so contended, this statement is not necessarily accurate. See OR. REV. STAT. §197.298 (2013) (priorities of lands for inclusion within urban growth boundaries).

15. OR. REV. STAT. § 197.654 (2007).

16. OR. REV. STAT. § 197.656(2) (2007).

Valley RPS Process, both as an incentive to participation and in the development of the Regional Plan.¹⁷

A. *History of the RPS Legislation*

It seems as though the RPS legislation is tailor-made for the Greater Bear Creek Valley. This is because the Valley and its challenges at least partly inspired the statute.¹⁸ After eight years as president of the Oregon Senate, State Senator John Kitzhaber of Roseburg was elected governor in 1994.¹⁹ Because he was from rural Oregon, Kitzhaber was attuned to the Greater Bear Creek Valley's growing dissatisfaction with the statewide land use planning system when he was a candidate for governor in 1994.²⁰ After he was elected, Kitzhaber had the director of the Oregon Department of Land Conservation and Development (DLCD) meet with leaders in the Greater Bear Creek Valley to find a path forward to address the region's dissatisfaction with the state planning regime without compromising the integrity of the statewide land use planning system.²¹ As a result of these discussions, the RPS statute was enacted.²² Accordingly, it is not surprising that the region sought to undertake a RPS process.

The seeds of the Greater Bear Creek Valley Regional Process were planted before the Legislature enacted the RPS statute in 1996. The Rogue Valley Council of Governments (RVCOG) established a citizen-driven regional planning project entitled OurRegion in 1995 to address growth-related issues in Jackson County.²³ The project, which lasted three years, produced a number of studies projecting and recommending various long-term growth scenarios in the region.²⁴ However, the most important contribution of OurRegion was jump-starting the concept of a regional approach to land use planning in southern Oregon.²⁵ According to Michael Cavallaro, Executive Director of RVCOG,

17. Telephone Interview with Michael Cavallaro, Executive Director, Rogue Valley Council of Governments (July 29, 2013) [hereinafter Cavallaro Interview].

18. PETER A. WALKER & PATRICK T. HURLEY, *PLANNING PARADISE: POLITICS AND VISIONING OF LAND USE IN OREGON* 213 (2011).

19. Governor John A. Kitzhaber's Administration: Biographical Note, OREGON SECRETARY OF STATE, <http://www.sos.state.or.us/archives/pages/records/governors/guides/state/kitzhaber/bio.html> (last visited Mar. 3, 2014).

20. See WALKER & HURLEY, *supra* note 18, at 212.

21. See *id.* at 212-13.

22. See *id.* at 213.

23. Jackson County 2009 Regional Plan, *supra* note 7, at 1-5.

24. *Id.*

25. Tony Boom, *OneValley Aims to Coordinate Planning*, MAIL TRIBUNE, Jan. 25, 2001, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20010125/NEWS/301259997>.

OurRegion “made the topic of regional planning at least socially acceptable—you could say it in public and not get stoned to death.”²⁶

Following OurRegion, regional leaders’ growing interest in regional land use planning led to another important step toward the establishment of the Greater Bear Creek Valley RPS Process: the creation of the Multijurisdictional Committee on Urban Reserves (MCUR).²⁷ In 1992, LCDC adopted administrative rules that required the City of Medford to designate urban reserves.²⁸ Urban reserves are lands outside of an urban growth boundary (UGB) designated to provide for future expansion from 10 to 30 years beyond the 20-year period used to establish the UGB.²⁹ Once an urban reserve is established, the land within that urban reserve area is generally given first priority for inclusion within an urban growth boundary during expansion.³⁰ The City of Medford and Jackson County failed to agree on the designation of urban reserves, and Medford’s proposed urban reserve designation failed to pass in 1995.³¹ The MCUR was established in 1998 by the City of Medford and Jackson County (with the facilitation of RVCOG) to resolve this dispute.³² Because the growth issues facing Medford impacted their cities as well, MCUR membership was expanded to include representatives from Central Point, Eagle Point, Phoenix, Jacksonville, and unincorporated White City.³³ Although only Medford was required to establish urban reserves, the committee adopted a work plan in spring 1999 to establish 30-year urban reserves for Medford, Central Point, Eagle Point, Phoenix, and Jacksonville in an effort to coordinate urbanization patterns across the region.³⁴ In November 1999, LCDC revised its administrative rules to make the adoption of urban reserves voluntary.³⁵ Nevertheless, the members of MCUR decided to continue with their regional planning effort.³⁶ Based on this sustained interest in regional planning, DLCD invited the MCUR participants to apply for an RPS grant in December 1999.³⁷

26. Cavallaro Interview, *supra* note 17.

27. Jackson County 2009 Regional Plan, *supra* note 7, at 1-5.

28. Staff Report, City of Medford Planning Dep’t., RPS Regional Plan Adoption (CP-10-004) 1 (July 31, 2012) (on file with author) [hereinafter City of Medford Planning Dep’t.].

29. See OR. ADMIN. R. 660-021-0010(1), 0030(1) (2014).

30. See OR. REV. STAT. § 197.298(1)(a) (2013); OR. ADMIN. R. 660-021-0060 (2014).

31. City of Medford Planning Dep’t., *supra* note 28.

32. *Id.* at 2.

33. Jackson County 2009 Regional Plan, *supra* note 7, at 1-5.

34. *Id.*

35. RVCOG 2001 STATUS REPORT, *supra* note 6, at 10.

36. *Id.*

37. *Id.*

B. *The Process Commences*

RVCOG prepared the application for an RPS grant on behalf of the MCUR members, and DLCD awarded the region a Regional Problem Solving grant in April 2000.³⁸ Subsequently, the planning area for the project was expanded to include the cities of Talent and Ashland.³⁹ With this expansion, the planning area matched the boundaries of the Air Quality Maintenance Area (AQMA) and included every municipality in the Greater Bear Creek Valley plus Jackson County.⁴⁰ The Medford Water Commission, Metropolitan Planning Organization, Rogue River Valley Sewer Services, Rogue Valley Transportation District, and every school district and irrigation district in the planning area were also invited to participate.⁴¹ Finally, regional representatives from numerous state agencies joined the effort, including representatives from DLCD, the Oregon Department of Transportation, the Department of Environmental Quality, the Oregon Economic and Community Development Department, the Oregon Department of Housing and Community Services, and the Oregon Department of Agriculture.⁴²

The RPS Process began with the establishment of four committees: the RPS Policy Committee, the Technical Advisory Committee (TAC), the Resource Lands Review Committee (RLRC), and the project Citizen Involvement Committee (pCIC).⁴³ The Policy Committee oversaw management of the process and made the final recommendations that would eventually become the Regional Plan.⁴⁴ Committee membership consisted of voting members—generally elected officials representing each participating jurisdiction—and nonvoting members—generally representatives of participating local and state agencies.⁴⁵ Every decision required consensus, or unanimity, from the voting members.⁴⁶ The TAC consisted of technical staff from the participating jurisdictions and local and state agencies.⁴⁷ The TAC made recommendations to the Policy Committee.⁴⁸ The RLRC was composed of public and private rural resource experts and advocates and provided

38. *See id.*

39. *Id.* at 17.

40. *Id.*

41. Jackson County 2009 Regional Plan, *supra* note 7, at 1-4.

42. *Id.*

43. *Id.* at 1-6 to 1-7.

44. *Id.* at 1-7.

45. *Id.*

46. Interview with Kate Jackson, former City Council Member, City of Ashland, in Ashland, Or. (June 29, 2013) [hereinafter Jackson Interview].

47. Jackson County 2009 Regional Plan, *supra* note 7, at 1-7.

48. *Id.*

recommendations concerning the quality and viability of agricultural lands considered in urban reserve proposals.⁴⁹ Finally, the pCIC was comprised of citizens tasked with providing the TAC and Policy Committee with recommendations on community buffer areas and open space.⁵⁰

Early on in the process, the objective of the Process was described as planning for the next 50 years of growth in the Greater Bear Creek Valley.⁵¹ By December 2002, the participants refined the focus of the Process to answering the question: what could this valley be like with twice the population we have today?⁵² Reflecting this idea, the process was advertised as “NOW x 2.”⁵³ According to Cavallaro, the decision to use the flexibility provided by the then authoritative statute⁵⁴ to plan for a doubling of a population rather than the planning period required under LCDC’s administrative rules was “a masterstroke.”⁵⁵ Although population forecasts projected that the region’s population would double within approximately 50 years, focusing on a target population rather than planning period had the benefit of providing greater stability when planning the total amount of urban reserve land needed and designating those reserves.⁵⁶

49. *Id.*

50. *Id.*

51. Boom, *One Valley*, *supra* note 25.

52. ROGUE VALLEY COUNCIL OF GOVERNMENTS, NOW X 2: PLANNING FOR TWICE OUR POPULATION 2 (Dec. 6, 2002).

53. *Id.*

54. OR. REV. STAT. § 197.656(2) (2007).

55. Cavallaro Interview, *supra* note 17. Michael Cavallaro observed that he believed the benefit of this approach was that it fully counteracted the very low opinion many in the region had for long-term population forecasts, and that it was a much more intuitive concept to grasp for people in the region. It also did provide stability, but more in the sense of making the plan independent of the future’s unforeseen circumstances that would impact current population forecasts. Whether the population eventually doubled by 2040 or 2060, the plan would still be the plan. E-mail from Michael Cavallaro, Executive Director, Rogue Valley Council of Governments (Oct. 29, 2013) (on file with author) [hereinafter Cavallaro Communication].

56. Jackson County 2009 Regional Plan, *supra* note 7, at 1-9. While there is no doubt the use of the planning period as the background for planning projections rather than a population forecast that could later be disputed was good politics and gave the feeling that the Rogue Valley was indeed “different” and outside the perceived syndrome that LCDC had a “one size fits all” approach, it is quite possible that the use of the population projection would have had the same result. Greg Holmes, Regional Representative for 1000 Friends of Oregon, Personal Communication with authors, Nov. 14, 2013, [hereinafter Holmes Communication]. It may be argued that the technical analysis would likely have led to the same conclusions. A fifty-year population projection as required by LCDC for the urban reserves process, as opposed to a doubling of the current population that, by pure coincidence is projected to take about fifty years came to about the same conclusion.

In the Phase One Status Report released in late 2001, the Policy Committee identified and the participants agreed to three problems to be solved in the Process, which were later reiterated in the Greater Bear Creek Valley RPS Agreement (Participants' Agreement) and the Regional Plan.⁵⁷ The first problem identified was the lack of a mechanism for coordinated regional growth planning.⁵⁸ The second problem identified was the loss of valuable farm and forest land caused by urban expansion.⁵⁹ The third and final problem identified was the loss of community identity in the region.⁶⁰ The resolution of these problems would help guide the remainder of the Process.

C. Goals and Techniques

The RPS statute requires the participants to agree upon regional goals for resolution of each regional problem that is the subject of the Process.⁶¹ To address the first problem, the participants agreed to manage future regional growth for the greater public good.⁶² The Phase One Status Report had noted that a mechanism for collaboration needed to be established “without infringing on individual jurisdiction authority and/or autonomy.”⁶³ In the Participants' Agreement signed in 2009, the participants agreed to “optional implementation techniques” to achieve this goal, including coordinated periodic review, ten-year RPS review, coordinated population allocation,⁶⁴ and greater coordination with the Rogue Valley Metropolitan Planning Organization (MPO).⁶⁵ To address the second problem, the participants agreed to

57. RVCOG 2001 STATUS REPORT, *supra* note 6, at 4.

58. *Id.*

59. *Id.* at 5.

60. *Id.* at 6.

61. OR. REV. STAT. § 197.656(1) (2009).

62. Staff Report, City of Talent, Dep't of Planning & Cnty. Dev. (Apr. 8, 2010), available at <http://talent.govoffice2.com/vertical/sites/%7BAA1CCE57-8F49-4306-B28A-3A526BAB71E9%7D/uploads/%7BDB0FD3DC-32B8-4D34-82BA-8967CEB C7614%7D.PDF> [hereinafter Talent Staff Report].

63. RVCOG 2001 STATUS REPORT, *supra* note 6, at 4.

64. At the time, counties were responsible for estimating future populations, as well as allocating population among its cities and unincorporated area. See OR. REV. STAT. § 195.025-.034 (2013). This proved to be difficult, so the Oregon legislature in 2013 gave much of that power to the Portland State University Population Center. See 2013 Or. Laws, Ch. 575 2013. In the RPS process, population totals and allocations were “on the table” for discussion.

65. Talent Staff Report, *supra* note 62, at 4-5. MPOs commenced as a transportation planning agency. As explained by the Oregon MPO Consortium:

Metropolitan Planning Organizations grew out of a need to manage growing federal investments in transportation that came on the heels of the Federal-Aid Highway Act. The Act, signed by President Eisenhower on June 29, 1956, authorized the

conserve resource and open space lands for their important economic, cultural, and livability benefits.⁶⁶ The participants agreed to achieve this goal by establishment of long-range urban reserves to serve a doubling of the region's urban population, thereby protecting non-designated lands from urbanization; regional agricultural buffering standards; and critical open space area preservation through the optional establishment of community buffer areas to preserve separation between communities.⁶⁷ Finally, to address the third problem, the participants agreed on an objective to recognize and emphasize the individual identity, unique features, and relative comparative advantages and disadvantages of each community within the region.⁶⁸ The participants agreed to achieve this goal through the establishment of community buffers, critical open space area preservation, and allocating the projected need for residential and employment lands among the participants based on their comparative advantages.⁶⁹

Following the release of the Phase One Status Report, the participants began a nearly decade-long process of identifying and selecting land for inclusion in urban reserves. Using the flexibility provided by the RPS statute,⁷⁰ the participants used a different selection process than that provided for in LCDC's Urban Reserve Rule.⁷¹ This process began at the city level in each of the participating cities in late-2001 and would continue through 2003.⁷² In 2003, Ashland became the only participating city to decide that it would not designate any urban reserves.⁷³ After the cities identified potential urban reserves, the TAC

federal government to pay 90% of the cost of the Interstate Highway system. The Federal-Aid Highways Act of 1962 added a transportation planning requirement: As a condition for receiving federal transportation funding, urban areas with populations of 50,000 or more were to engage in "continuing, comprehensive, and cooperative" transportation planning.

Oregon MPO Consortium, ABOUT OMPOC, <http://www.ompoc.org/about.html> (last visited Mar. 3, 2014).

66. *Id.* at 6.

67. *Id.*

68. *Id.*

69. *Id.* at 6-7. In addition, the contiguous cities of Medford and Phoenix required design standards for the proposed urban reserve areas. E-mail from Josh LeBombard, Southern Oregon Regional Representative, DLCD, to Ed Sullivan, (Nov. 4, 2013) (on file with author) [hereinafter LeBombard Communication].

70. OR. REV. STAT. § 197.656(2) (2009).

71. Jackson County 2009 Regional Plan, *supra* note 7, at 3-14.

72. *Id.* at 1-19 to 1-22.

73. *Id.* at 1-22. No city outside the Portland region is required to establish urban reserves and may accommodate growth by increasing density within an existing Urban Growth Boundary.

and Policy Committee developed a draft Regional Plan and the Participants' Agreement, which were largely completed by late 2009.⁷⁴

Beginning in late-2008, the city councils of the participating cities held formal votes to decide whether to sign the Participants' Agreement.⁷⁵ In December 2008, the Jacksonville City Council voted to reverse an earlier decision to sign the Participants' Agreement until the Regional Plan was finalized.⁷⁶ After Jacksonville stood firm in the face of an ultimatum to decide whether to sign the Participants' Agreement, by March 2009, the Policy Committee deemed the failure to sign the participation agreement as a sign that the City of Jacksonville would no longer be part of the RPS Process.⁷⁷ In any event, the Jacksonville City Council voted to withdraw from the Process shortly thereafter.⁷⁸ Although some argued that Jacksonville's withdrawal meant the end of the Process under the language of the RPS statute, DLCDC recommended the participants continue with the effort due to Jacksonville's relatively small size and non-central location among the participating cities.⁷⁹ In December 2009, the remaining jurisdictions signed the Participants' Agreement.⁸⁰

In 2010, the process began for the adoption of the Regional Plan.⁸¹ Jackson County took the lead at this stage, and the Jackson County Planning Commission (JCPC) began over a year of hearings on amendments to the County's comprehensive plan and land use ordinances necessary to implement the Regional Plan.⁸² In 2011, the Planning Commission formally recommended the Board of Commissioners adopt the Regional Plan with a few amendments.⁸³ Subsequently, the Jackson

74. City of Medford Planning Dep't., *supra* note 28, at 2.

75. See *Medford City Council Approves Regional Problem Solving Plan*, MAIL TRIBUNE, Nov. 21, 2008, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20081121/NEWS/811210320>.

76. Tony Boom, *Jacksonville Council Takes Another Look at RPS Plan*, MAIL TRIBUNE, Dec. 11, 2008, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20081211/NEWS/812110333>.

77. Cavallaro Communication, *supra* note 55.

78. Tony Boom, *Jacksonville Says No To RPS Committee*, MAIL TRIBUNE, Apr. 30, 2009, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20090430/NEWS/904300335>.

79. Damian Mann, *RPS Process Might Collapse Without Jacksonville*, MAIL TRIBUNE, June 24, 2009, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20090624/NEWS/306249879>.

80. Talent Staff Report, *supra* note 62, at 1

81. City of Medford Planning Dep't., *supra* note 28, at 2.

82. *Id.*

83. *Id.* The County strategy at the end of the RPS process was to accommodate potential challengers if possible, so that the resulting product would not be challenged. Cavallaro Communication, *supra* note 55.

County Board of Commissioners adopted the Regional Plan with some of the recommended amendments.⁸⁴

For the Regional Plan to be formally acknowledged by LCDC, the cities, Jackson County, and LCDC were all required to approve the same Regional Plan.⁸⁵ To avoid having the cities amend their comprehensive plans to include the applicable Regional Plan elements only to have LCDC then reject portions of the Plan, the Jackson County Board of Commissioners requested that LCDC informally review the Regional Plan before the cities moved to formally adopt it.⁸⁶ In March 2012, LCDC informally reviewed the Regional Plan and recommended only eight revisions.⁸⁷ Jackson County subsequently adopted the changes suggested by LCDC, and the cities then adopted the amendments to their comprehensive plans and land use ordinances necessary to implement the Regional Plan.⁸⁸ In September 2012, the County submitted the final decisions to LCDC for acknowledgement, and in November 2012, LCDC conducted a public hearing on the Plan.⁸⁹ The Commission issued an order approving the Regional Plan in March 2013, thereby successfully concluding a 12 year process.

III. Factors for Success

How did the Greater Bear Creek Valley RPS Process become a successful regional planning effort conducted under the RPS structure? Future regional planning efforts would benefit from understanding the factors behind the Greater Bear Creek Valley's success. Interviews with key players in the Process suggest four broad reasons for its success: 1) the existence of a common purpose; 2) a structure that allowed the participating cities to feel comfortable with the process while providing for public, county, and state input, guidance, and oversight at appropriate stages; 3) the existence of stable and cooperative technical

84. City of Medford Planning Dep't., *supra* note 28, at 2.

85. *Id.*

86. Telephone Interview with Josh LeBombard, Southern Oregon Regional Representative, DLCD (July 11, 2013) [hereinafter LeBombard Interview]. LeBombard served as Senior Planner for Jackson County Development Services throughout Jackson County's consideration and adoption of the Regional Plan. He subsequently took a position as Southern Oregon Regional Representative for the Department of Land Conservation and Development and provided staff support to LCDC during its review of the Regional Plan.

87. Oregon Dep't. of Land Conservation and Dev., Agenda Item 9, Nov. 15, 2012, LCDC Meeting 1 (Oct. 24, 2012), available at http://www.oregon.gov/LCD/docs/general/jackson_co/Item_9_Jackson_Co_RPS.pdf [hereinafter Agenda Item 9].

88. *Id.*

89. LCDC Order, *supra* note 4.

staff upon which the participants could rely, including a neutral, third party coordinator; and, 4) perseverance by key decision makers and technical staff to see the Process through to its conclusion.

A. *A Spirit of Common Purpose*

Southern Oregon has long considered itself to be different than the rest of Oregon, especially the populous Willamette Valley that dominates state politics.⁹⁰ Many in the region believe the state land use planning system is not workable in southern Oregon. Consequently, regional leaders are historically distrustful of state interference in local land use planning and some local leaders may have doubts over the lawfulness and efficacy of planning in the first place or state involvement in what are perceived to be “local” matters. These views provided the participants with a common purpose: a desire for greater regional autonomy in land use planning. Because this common purpose served as an incentive for the jurisdictions to participate in the Process and reach a successful conclusion, it played an important role in the success of the Greater Bear Creek Valley RPS Process.

Many in the region consider Oregon’s statewide land use planning system to be ill suited to southern Oregon. Marian Telerski, former Talent mayor and Policy Committee member, shares this sentiment:

[P]robably the reason many of us indulged in this was that . . . there was a point where people around here began to think that those land use laws were best suited for the Willamette Valley and no one had really looked at the Rogue Valley and said, “[y]ep, this is going to work here.”⁹¹

Hank Williams, Central Point Mayor and former Policy Committee member, does not hold back in his assessment of the state land use planning system: “I think it’s really a lousy law.”⁹²

The region’s jurisdictions therefore had a common incentive to participate in the process because, from 1996 forward, the RPS statute⁹³ offered the promise of flexibility from the allegedly onerous state land use planning rules. According to Cavallaro, this provision was crucial to the region’s interest in regional problem solving: “[c]ertainly, the carrot of flexibility from the state [administrative] rules, that was a

90. See WALKER & HURLEY, *supra* note 18, at 209-12.

91. Telephone Interview with Marian Telerski, Former Mayor, City of Talent (July 16, 2013) [hereinafter Telerski Interview]. Michael Cavallaro also found that many in Southern Oregon found their region exceptional *vis a vis* the rest of the state, and so deserving of special consideration. Cavallaro Communication, *supra* note 55.

92. Telephone Interview with Hank Williams, Mayor, City of Central Point (July 12, 2013) [hereinafter Williams Interview].

93. OR. REV. STAT. § 197.656(2) (2007).

very strong positive for them.”⁹⁴ Telerski agrees: “I think that we all wished to tailor [the state land use laws] a little bit to the Rogue Valley.”⁹⁵ Says Jim Lewis, former Jacksonville Mayor and current Jacksonville City Council member, “[e]verybody saw this as a way to unburden the process of land use. So I think there was buy in from everybody on that.”⁹⁶ Jackson, former Ashland City Council member, notes, “I liked the project from the beginning because I believe regional government can save all local governments a lot of money and time.”⁹⁷ Kelly Madding, Jackson County Development Service Director, believes Jackson County also “saw the benefit that the cities saw.”⁹⁸ “Then it was basically a put up or shut up moment,” says Cavallaro, Executive Director of the Rogue Valley Council of Governments.⁹⁹

The major product to come out of the RPS Process was the designation of urban reserve areas for five of the six cities that participated.¹⁰⁰ Only Ashland chose not to designate urban reserves.¹⁰¹ For the rest of the cities, the opportunity to designate urban reserves through the RPS Process was a major incentive to participate because of the promise of flexibility from LCDC’s Urban Reserve Rule and the availability of funding, at least initially.¹⁰² According to John Adam, a city planner first in Talent and now Medford, the City of Medford “was strongly motivated to enter a process in which it could modify the [administrative] rules while respecting the purposes of the Statewide Goals” due to its inability to establish urban reserves in 1995 successfully while following the “priority of lands” rule.¹⁰³ Former Mayor of Talent Telerski explains Talent’s desire to designate urban reserves through the RPS process: “[w]e knew how difficult it is to go through

94. Cavallaro Interview, *supra* note 17.

95. Telerski Interview, *supra* note 91.

96. Telephone Interview with Jim Lewis, City Councilor, City of Jacksonville (July 29, 2013) [hereinafter Lewis Interview].

97. Jackson Interview, *supra* note 46. Regional government was also a controversial topic in Jackson County and the Process focused on the agreement of participating local governments in lieu of a regional government planning process more reminiscent of the Portland area under OR. REV. STAT. §§ 268.380-393 (2007). Holmes Communication, *supra* note 56.

98. Telephone Interview with Kelly Madding, Director, Jackson County Development Service (July 12, 2013) [hereinafter Madding Interview].

99. Cavallaro Interview, *supra* note 17.

100. LeBombard Interview, *supra* note 86.

101. Jackson Interview, *supra* note 46.

102. Cavallaro Interview, *supra* note 17.

103. E-mail from John Adam, Planner IV, City of Medford Planning Dep’t., to Andrew Ainsworth, Student, Lewis & Clark Law School (July 11, 2013, 04:59 p.m. PST) (on file with author) [hereinafter referred to as Adam Interview]; OR. ADMIN. R. 660-021-0030(3) (2013).

that whole process with LCDC and we thought, as a region, it might be a little easier.”¹⁰⁴ Adam notes:

[T]he cities had a strong motivation for it [the RPS process] to succeed: an urban reserve is a valuable resource in a state where the UGB amendment process is as simple as trying to thread a needle while running in the Kentucky Derby. An urban reserve where every acre is of equal priority (until you conduct a Goal 14 boundary location analysis) is a lot easier to deal with.¹⁰⁵

Hank Williams, Mayor of Central Point, seized the opportunity to designate urban reserves for Central Point. “I was accused of wanting everything in the urban reserve,” he says.¹⁰⁶ He saw the RPS process, and specifically urban reserves, as an opening to help owners of agricultural land get out from under the yoke of the state land use planning system and provide Central Point with more land to develop.¹⁰⁷ Thus, the participants had a very real incentive to participate in the Process and see it through to a successful conclusion.

Additionally, regional leaders’ critical view of state government in general and the state land use system tended to lead them to view the state with suspicion. For the municipalities, Jackson County was viewed similarly. This distrust gave the participants another reason to make the process work. “To a certain extent, [the key] was finding the common enemy,” says Kate Jackson, a former Ashland City Council member and Chair of the Policy Committee.¹⁰⁸ Cavallaro explains: “[t]here is this, it’s less now but it’s still very much there, heavy suspicion of the state’s motives, a lot of resistance to what the region considers outside control, outside intervention, forcing cities to do what they may not [want to] do.”¹⁰⁹ Meanwhile, Jackson notes, because the County did not like the state land use laws, they had a “miserable history in land use” and “did not have a good attitude about negotiating with the cities about the urban growth boundaries.”¹¹⁰ Consequently, “nobody trusted the County at the beginning.”¹¹¹ Jackson explains how this shared distrust impacted the participants’ interest in a regional planning effort: “[t]here were several common enemies. For the region, at first, the cities realized that together they could talk to the County. But then the County also realized that with the cities they

104. Telerski Interview, *supra* note 91.

105. Adam Interview, *supra* note 103.

106. Williams Interview, *supra* note 92.

107. *Id.*

108. Jackson Interview, *supra* note 46.

109. Cavallaro Interview, *supra* note 17.

110. Jackson Interview, *supra* note 46.

111. *Id.*

could talk to the state. The state was the enemy.”¹¹² A common distrust of the state and county helped to galvanize interest in regional self-determination, and the RPS Process offered that opportunity.

“[T]here was a noticeable spirit of common purpose,” says John Adam.¹¹³ That common purpose—a desire for greater regional autonomy in land use planning—drove the jurisdictions to participate in the Process and provided them with an incentive to reach a successful conclusion. Consequently, the existence of a common purpose was an important factor in the success of the Greater Bear Creek Valley RPS Process.

B. *The Structure of the Process*

Not surprisingly, the structure of the Greater Bear Creek Valley RPS Process was significant to its success. The participants largely had to construct the structure of the Process as they went through it.¹¹⁴ Four aspects of the structure that resulted seem particularly essential to the Process’s success: 1) the requirement of consensus; 2) allowing the participating cities to lead the Process initially; 3) the state’s provision of guidance throughout the Process; and 4) the public’s more limited participation in the development of the Regional Plan. These aspects of the structure allowed the participating jurisdictions to take ownership of the Regional Plan, forced them to cooperate and compromise, and reduced the risk that the Process would be derailed at its later stages. Consequently, it was important that the Process was structured so that the municipalities were comfortable with the Process while providing for sufficient public, county, and state input, guidance, and oversight at appropriate junctures.

1. CONSENSUS

Because it had the potential to allow one dissident to derail the entire Process, it may seem counterintuitive that the success of the Greater Bear Creek Valley RPS Process is in part due to the requirement that the ultimate product evolve from consensus. The Policy Committee thus sought to reach consensus on every decision. However, the practice of requiring consensus built an atmosphere of cooperation and compromise that contributed to the successful conclusion of the process.¹¹⁵ Marian Telerski explains:

I think there was pretty much an attitude of respect that each jurisdiction would choose where they wished to grow or not In my perspective, even though

112. *Id.*

113. Adam Interview, *supra* note 103.

114. Cavallaro Interview, *supra* note 17.

115. See LeBombard Interview, *supra* note 86.

one city or another wished to open their boundaries to more land or more interpretation of the land use laws than other cities wished, I think we all had the right to review and vote yes or no on people's choices, and I think that was extremely powerful.¹¹⁶

In addition to the practice of consensus, the participants decided that each jurisdiction would have an equal vote.¹¹⁷ Telerski argues, “[a]nother reason I think we were successful was that each city regardless of their size had one vote. So if you represented Talent, you had a vote.”¹¹⁸ Jim Lewis, former Jacksonville Mayor states, “[t]here was discussion at the outset about whether there would be weighted votes, that sort of thing, but it fell away.”¹¹⁹ What resulted was a “pretty egalitarian” process.¹²⁰ Josh LeBombard, former Jackson County planner and current DLCD Southern Oregon Regional Representative, explains how the need to cooperate and compromise to reach consensus impacted the overall success of the Process:

[T]hey really invested in relationships. So, they really got to know one another . . . And regardless of what would've happened with RPS as far as it completing successfully like it did or if it imploded, those relationships would have stayed, and that's a very, very positive thing for the region and for the process, and that's a big reason why it stuck together.¹²¹

By providing the Process's leaders with an incentive to build personal relationships among one another, the requirement of consensus increased the level of cooperation and compromise in the Process and, consequently, its likelihood of success.

Not all of the participants agree that the decision to require consensus was positive. Hank Williams explains his view:

I would like to get rid of the consensus where you had to have 100 percent agreement and make it maybe two thirds . . . because it's a handicap to getting it done. Because it gives one “no” vote control. So the control is in the minority, not in the majority. And we're supposed to be majority rule.¹²²

However, Williams recognizes that consensus forced the participants to compromise, even if he, as Mayor of Central Point, does not recognize the benefits of compromise. “It was down to ‘take what you can

116. Telerski Interview, *supra* note 91.

117. *See id.*

118. *Id.*

119. Lewis Interview, *supra* note 96.

120. *Id.*

121. LeBombard Interview, *supra* note 86. LeBombard was a local planner who, at the end of the RPS Process, became the regional field representative for DLCD in Southern Oregon, which appeared to have a good effect on the credibility of the Process and the confidence of local governments in that Process.

122. Williams Interview, *supra* note 92.

get.’ It was better than nothing.”¹²³ Kelly Madding of Jackson County Development Service suggests that it was not so dire, as most cities got most of what they wanted.¹²⁴ Yet, consensus did force the participants to appreciate what they got out of the Process even if they made some uncomfortable commitments and made some compromises—the result outweighed all those commitments and compromises, suggested Josh LeBombard.¹²⁵ Accordingly, requiring the Policy Committee reach consensus on every decision was an important factor in the successful conclusion of the Process because it forced the participants to cooperate and compromise.

2. CITIES FIRST

Jackson County did not assert itself in a leadership role during the initial RPS Process. This County position allowed the cities to take the lead and was an important factor in the successful conclusion of the Process, as it allowed the cities to take ownership over the Regional Plan. At first, the cities led the development of the draft Regional Plan through the Policy Committee even though the County did have influence as a voting member of the Policy Committee because consensus was required. However, the County did not exercise “its more traditional role” and take the lead until the participants were prepared for it to begin the process of adopting the amendments to its comprehensive plan and land use ordinances necessary to implement the Regional Plan.¹²⁶ Michael Cavallaro describes the County’s role initially: “It wasn’t a total lack of presence—the County was definitely a presence that was felt at the Policy Committee—it’s just that it wasn’t sort of a structural influence, it was an individual influence on the TAC and occasionally at the Policy Committee.”¹²⁷

The County’s limited structural influence at the outset probably eased city concerns that the RPS Process was a threat to their autonomy and allowed them to take ownership over the outcome. Kate Jackson illustrates:

The Lane Council of Governments tried to write an RPS for their area. . . but the way they did it didn’t work. The Council of Governments with its expert planners wrote the proposal and presented it to the cities, and the cities said, “no, no, no, it’s not ours, we don’t want anything to do with it.”¹²⁸

123. *Id.*

124. See Madding Interview, *supra* note 98.

125. LeBombard Interview, *supra* note 86.

126. Madding Interview, *supra* note 98.

127. Cavallaro Interview, *supra* note 17.

128. Jackson Interview, *supra* note 46.

Given the history of distrust between some of the participating cities and Jackson County, it was especially unlikely that the cities here would accept a plan they did not develop themselves. Cavallaro explains:

Initially, when things were really bad between the County and city [of Medford], one of the comments that the city mostly, but not just the city, made was that, “Why should we do this? When we get to the end isn’t the County just going to ambush us anyway and trash it?” So, I think initially it was probably quite strategic for the County to take a back seat.¹²⁹

Kelly Madding as a County Development Service planner agrees that the County was wise to allow the cities to take the lead initially:

I think it was a delicate dance and if the County had been more involved than we were, or exerted more influence than we did, it could have been more detrimental to the project. And so I think the way it worked out was probably for the best in terms of the project getting adopted and acknowledged.¹³⁰

Thus, the County’s willingness to allow the cities to lead the Process initially was an important factor in the Process’s success because it allowed the cities to take ownership over the Regional Plan.

The state also permitted the cities a fair degree of autonomy initially.¹³¹ Although Oregon gave the participants guidance throughout the Process, its representatives did not serve as voting members on the Policy Committee.¹³² Cavallaro explains the state’s role on the Policy Committee:

In fact, there were a couple of instances where there were votes on whether the state agencies should have a vote when these different growth areas were voted on by the policy committee, and several of the state agencies said, no we don’t want a vote. Now, it was really sort of symbolic because in the end the agencies had to sign off on it, but I think probably now that I look back on it that was probably a good decision. At the time I was nervous about it, but it was probably the right decision to make because in the end everybody knew they had that power at some point. And I think they were pretty good about making their opinions known, putting it in the form of an opinion about what might work and what probably wouldn’t work. That was good.¹³³

While the state agencies’ decision to serve as nonvoting, advisory members on the Policy Committee may have made the state’s presence largely symbolic, this decision was important to the success of the Process because those agencies were required to participate in some form and the fact they could not vote gave the participating cities the opportunity to formulate a plan over which they could take ownership.

129. Cavallaro Interview, *supra* note 17.

130. Madding Interview, *supra* note 98.

131. See Cavallaro Interview, *supra* note 17.

132. *Id.*

133. *Id.*

3. CONTINUAL STATE GUIDANCE

Support and guidance from state agency staff, both formally and informally, throughout the Process was also crucial to its success because it allowed the participants to develop a plan that the state was likely to approve. Cavallaro believes the state initially awarded the region an RPS Grant in the hope that the RPS Process might help to improve the historically contentious relationship between the jurisdictions in the region and DLCD.¹³⁴ In his view, the state “wanted to see it succeed as long as it didn’t open up Pandora’s Box.”¹³⁵ According to Cavallaro, “[t]hey were very concerned about seeing something come out of southern Oregon that would be problematic for the state land use system. But being as contained as it was. . . very carefully contained inside, they were eventually comfortable that [RPS] wouldn’t have wider application.”¹³⁶ Cavallaro explains how the state’s support impacted the success of the Process:

It was crucial that the state gave guidance all the way through the process. It let the jurisdictions know what may or may not work because the state was also worried about playing the bad guy in the end, and everyone was concerned about the state not weighing in early enough that they could realize what they needed, probably needed to change or not.¹³⁷

Over the course of the Process, the state provided comments formally during TAC meetings, informally at Policy Committee meetings, and outside of the process through personal discussions with decision makers.¹³⁸ Cavallaro makes clear, “[b]oth informally and formally it was absolutely critical that there was an ongoing conversation with DLCD and the jurisdictions.”¹³⁹

LCDC’s willingness to conduct an informal review of the Regional Plan prior to its formal adoption at the county and city levels was also important to the success of the Process because it allowed the participants to make the adjustments necessary to obtain state approval in a time- and cost-saving manner.¹⁴⁰ Theoretically, before LCDC would review an item like the Regional Plan, the County and all six cities would have adopted the Plan and the accompanying amendments to their comprehensive plans and land use ordinances.¹⁴¹ The “worst case

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. LeBombard Interview, *supra* note 86.

141. *Id.*

scenario” was that the County and all six cities would adopt the Regional Plan only to have LCDC remand on one or more issues, which would force all the jurisdictions to undertake the Process again.¹⁴²

To save time and expense, the participants devised an alternative process. First, Jackson County held their formal public hearings and adopted the Regional Plan.¹⁴³ Jackson County then requested that LCDC informally review the Regional Plan and provide the participants with feedback before the individual cities undertook the process of adopting the Regional Plan.¹⁴⁴ LCDC agreed and provided the participants with eight recommendations for revision.¹⁴⁵ Subsequently, Jackson County reopened its public hearings and adopted all of the Commission’s recommendations.¹⁴⁶ Following the County’s final adoption of the Plan, the participating cities held their formal public hearings and adopted the amendments to their comprehensive plans and land use ordinances necessary to implement the Regional Plan.¹⁴⁷

After the County and the cities all adopted the necessary amendments, LCDC formally reviewed the Regional Plan in November 2012.¹⁴⁸ Josh LeBombard, former Senior Planner for Jackson County, explains LCDC’s formal review of the Plan:

[A]t that point [LCDC] had already vetted the plan. They had already heard different testimony from different concerned citizens, and they addressed it to the extent that they thought the items needed to be addressed, so by the time it came to the Commission for a formal public hearing there were only two objections, and one of them was for a specific piece of property inside the city of Talent . . . and then there was just more of a general commentator. So the Commission didn’t even really need to address or make any changes to address any of those objections at that last hearing.¹⁴⁹

Thus, in addition to saving the participants’ time and expense, LCDC’s willingness to informally review the Plan prior to formal adoption by all the participants probably prevented the Process from being derailed at

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* Among those recommendations, DLCD suggested eliminating an urban reserve area, appointment of a County task force to study impacts of loss of agricultural lands by Urban Growth Boundary Amendments, increase the committed residential density in Medford from 6.5 to 6.6 gross dwelling units per acre between 2010 and 2035 and from 7.5 to 7.6 gross dwelling units per acre from 2036 to 2060, protect certain lands for industrial uses, and to provide a mechanism to justify the addition of certain lands to one of the cities. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* In addition, these two objections were not “valid” (i.e., correctly implicating an applicable criterion for review). LeBombard Communication, *supra* note 69.

the last moment. The state's continual guidance and support throughout the Process was critical to its success because that guidance allowed the participants to develop a plan that the state was more likely to approve.

4. LIMITED PUBLIC INFLUENCE

The public's opportunity for and level of participation during the Greater Bear Creek Valley RPS Process has been hotly debated.¹⁵⁰ There were participation opportunities at the beginning of the Process.¹⁵¹ However, the bulk of the Regional Plan was developed at the Policy Committee level where there was more limited public influence.¹⁵² The public's limited influence in the development of the Plan was the function of the scarce opportunities for formal public participation in the Process, general public antipathy, the scope and complexity of the planning Process, the length of the Process, and RPS leaders' increasing resistance to public interference with the adoption of the Regional Plan as the Process moved towards conclusion,¹⁵³ perhaps because the Process could unravel. There were public participation opportunities both before and after this stage of Plan development, which were

150. See Conde Cox, Op-Ed., *RPS is a Threat to Open Government*, MAIL TRIBUNE, Feb. 1, 2009, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20090201/OPINION/902010340>; Kate Jackson, Op-Ed., *RPS is Open, Follows State Statutes*, MAIL TRIBUNE, Feb. 8, 2009, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20090208/OPINION/902080333>.

151. While there was ample citizen participation at the beginning of the Process, it was not as extensive as the plan was assembled and discussed. The complete draft plan was subject to extensive hearing opportunities; however, by that time it had grown so complex that few people who did not participate in its formulation understood it. LeBombard Communication, *supra* note 69.

152. Michael Cavallaro, Executive Director of RVCOG, fiercely defended the public process surrounding the plan, contending:

[First, b]oth the pCIC and the RLRC were citizen based. The pCIC stopped working when it did because too many of the members got tired of participating (we actually worked the committee too hard in retrospect), but the RLRC continued for several years after that until it completed its responsibilities. Second, no mention was made of all the open houses and public hearings during the process, which probably totaled upwards of 200 over the course of the process, the vast majority of which occurred in the evening. Third, it wasn't just 1000 Friends that had heavy influence on the process (a member of 1000 Friends participated in almost every TAC meeting from the beginning of the process), but Rogue Advocates and the WISE project (made up of the region's irrigation districts) managed to influence the outcome of the process. Finally, [some] of the people quoted. . . were well known in the region for their unyielding hostility to the process.

Cavallaro Communication, *supra* note 55.

153. The 1000 Friends representative in this Process noted that most Policy Committee meetings were at 7:30 a.m., offered little opportunity for public input and participants, when given that opportunity, were not met by enthusiasm, led to a conclusion of limited public influence. Holmes Communication, *supra* note 56. Most of the frequent participants were institutional, such as 1000 Friends. LeBombard Communication, *supra* note 69.

sufficient to meet citizen participation requirements. However, the limited public influence in the actual development of the Regional Plan may well have been a significant factor in the Process's success.

The Greater Bear Creek Valley RPS Process had only one formal citizen involvement effort, the pCIC, and it largely concluded its work in 2003 at the end of Phase One.¹⁵⁴ Most of the pCIC's work consisted of identifying open spaces that should be preserved, also known as Critical Open Space Areas (COSAs) in the Regional Plan.¹⁵⁵ Pat Acklin is a professor at Southern Oregon University in Ashland and was a member of the pCIC. Acklin says, "[a]bout that time [the RPS Phase One Status Report was issued] we finished our work and they sent us home and we never got called again. There was no citizen involvement element after this initial effort."¹⁵⁶ From roughly late-2001 through 2003, the cities held open houses, public hearings, and public work sessions at the planning commission and city council levels to identify the lands they would include in their urban reserve area proposals.¹⁵⁷ However, Acklin notes, "[t]here weren't any big visioning sessions for the general public that might have created a following."¹⁵⁸ Instead, the general public was largely unaware of or uninterested in the Process.¹⁵⁹ She explains the public apathy: "[u]nless you had land involved, or unless you were on a planning commission or a city council, . . . most people don't go to public hearings."¹⁶⁰ Acklin states, "[a]bsent [1000 Friends of Oregon], I don't know that anybody else was watching or paid a lot of attention."¹⁶¹ Thus, the absence of a sustained, formal citizen involvement effort contributed to a general indifference among the public that limited its influence in the Process.

Professor Acklin also attributes public apathy to the local newspaper's limited coverage of the Process. "If you just had to view life through what they wrote about us in the *Mail Tribune* you wouldn't get a very big picture," she argues.¹⁶² Hank Williams views the lack of newspaper coverage as a positive: "[o]ne of the good things, the paper got tired of covering [the RPS]. So they didn't cover it after a

154. Telephone Interview with Patricia Acklin, Associate Professor of Geography, Southern Oregon University (July 22, 2013) [hereinafter Acklin Interview].

155. *Id.*; Jackson County 2009 Regional Plan, *supra* note 7, at 1-12.

156. Acklin Interview, *supra* note 154.

157. Jackson County 2009 Regional Plan, *supra* note 7, at 1-19 to 1-22.

158. Acklin Interview, *supra* note 154.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

couple of years, so we didn't have a community uprising."¹⁶³ RPS leaders did try to increase public awareness of the Process by publishing an insert in the *Mail Tribune* in December 2002 explaining the project and its accomplishments to date.¹⁶⁴ The Regional Plan notes, "[w]ithout any doubt, the insert was the single most effective strategy to increase the profile of RPS among the general public and to establish the basic structure and philosophy of the Process."¹⁶⁵ However, for an endeavor that would not ultimately conclude until 2013, having 2002 serve as the high watermark for public interest until 2013 warrants an inference that there was not a sustained public interest or influence over the course of the Greater Bear Creek Valley RPS Process. In any event, individual local governments and those with a high degree of personal or institutional interest continued to participate.

The public's participation in the development of the Regional Plan was further limited by the time at which the Policy Committee held its meetings: Thursdays at 7:30 a.m.¹⁶⁶ The TAC and Policy Committee did much of the work to develop urban reserves and the Regional Plan.¹⁶⁷ About their meetings, Acklin says, "[i]f you have a job, that's not exactly a user-friendly time to have all of your meetings. So, when they had say, a TAC meeting or the government official meeting, they were at these obscure times, which I thought mitigated all but the devoted and retired from attending anything."¹⁶⁸ Thus, the participants were effectively limited to government employees and officials and those with financial interests in the property being discussed; the general public could not afford to attend.¹⁶⁹ Josh LeBombard concurs with Professor Acklin's assessment:

There was a lot of criticism that it wasn't a very open process, that there were a lot of meetings over a decade or so but those meetings weren't very open to the public. Technically, they were, the public could participate, but they were held very early in the morning during the week, and there was just a real big criticism that the citizens' voices weren't heard.¹⁷⁰

Kate Jackson notes that some local governing bodies in the area regularly meet during working hours, suggesting that the meeting times of

163. Williams Interview, *supra* note 92.

164. Jackson County 2009 Regional Plan, *supra* note 7, at 1-22.

165. *Id.*

166. Acklin Interview, *supra* note 154.

167. *Id.* The TAC meetings were generally held in mid-afternoon on weekdays. Holmes Communication, *supra* note 56.

168. Acklin Interview, *supra* note 154.

169. *Id.*

170. LeBombard Interview, *supra* note 86. On the other hand, Michael Cavallaro notes that there were open houses and public meetings at night. Cavallaro Communication, *supra* note 55.

the Policy and TAC Committees were hardly unusual.¹⁷¹ However, that these critical meetings were scheduled at an inconvenient time for the public further suggests that there was limited public influence in the development of the Regional Plan.

The language of the Participants' Agreement signed by the participating jurisdictions in late 2009 also suggested public participation in the development of the Regional Plan was a low priority. The Participants' Agreement provides, "[s]ignatories to this Agreement agree to abide by a Plan developed under Regional Problem Solving, as adopted by Implementing Signatories into their comprehensive plans, and acknowledged by the State of Oregon."¹⁷² It further provides, "[t]he adopted Plan shall be what is adopted as a result of Jackson County's comprehensive plan amendment process."¹⁷³ Community leaders from the City of Jacksonville cited this language, which seemingly binds each signatory jurisdiction to adopt the Regional Plan that results from the County's comprehensive plan amendment process regardless of its substance, as the primary reason they were against Jacksonville signing the Participants' Agreement.¹⁷⁴ Conde Cox, Jacksonville resident and *Mail Tribune* columnist wrote "[b]y railroading through every city council in the region an agreement that says every city is formally bound to the deal at the very time they sign up and that no amendments are possible without unanimity, the RPS policy committee has effectively cut the public out of the process."¹⁷⁵ In a guest editorial responding to Conde Cox's column, Kate Jackson disputed both that the Participants' Agreement could legally bind the signatory jurisdictions to adopt the Regional Plan and that it cut out the public.¹⁷⁶ However, as Linda Meyers, then a Jacksonville City Council member, noted in a subsequent guest editorial, signing the agreement before city-level public hearings on the final Regional Plan adopted by Jackson County "would render public input irrelevant" during those

171. E-mail from Kate Jackson to authors (Nov. 25, 2013, 21:49 PST) [hereinafter Jackson Communication].

172. Greater Bear Creek Valley Reg'l. Problem Solving Agreement, 3 (2008), available at http://www.rvcog.org/rps/Jurisdiction%20Deliberations%20Packet_2008/Participants%20Agreement/RPS%20PA%2011-4-08%20BOC%20Approved%20Changes2CLEAN.pdf. This provision reflected the statutory requirements of OR. REV. STAT. § 197.656 for consensus in the adoption of the final product.

173. *Id.*

174. Linda Meyers, Op-Ed., *Regional Problem Solving has Gone Astray*, MAIL TRIBUNE, Apr. 7, 2009, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20090407/OPINION/904070302>.

175. Cox, *supra* note 150.

176. Jackson Interview, *supra* note 46.

hearings.¹⁷⁷ Some suggest that the Participants' Agreement did have the effect of limiting public influence and interference in the Process following the County's final adoption of the Regional Plan in 2012, as every signatory jurisdiction subsequently adopted the Plan without amendments.¹⁷⁸ As a practical matter, however, amendments to the Plan would have extended the Process and potentially made the plan more vulnerable to further challenges. Moreover, unless there was agreement on the final product, there would be no Regional Plan.

While the Jackson County Planning Commission and Jackson County Board of Commissioners held over a year of public hearings on the Regional Plan during the comprehensive plan amendment process, the evidence suggests that there was not much participation from the public (other than those who had a particular stake in the outcome) during those hearings.¹⁷⁹ During the County's formal adoption process, Josh LeBombard in his capacity as Senior Planner for Jackson County Development Services attempted to "make up for some at least perceived deficiency from a public meeting standpoint" up to that point.¹⁸⁰ While he was able to make some adjustments to the Plan in response to groups like 1000 Friends of Oregon, he was constrained by "the cities having certain kinds of demands or requests and requirements of things that they are willing to budge on and things that they aren't" after the years they spent developing the Plan.¹⁸¹ These negotiations were largely between government officials and certain public interest groups, suggesting that the general public did not exert much influence over the development of the Plan during the County's public hearings.

Former Ashland City Council member Kate Jackson questions how the Greater Bear Creek Valley RPS Process could have encouraged greater, informed involvement by the so-called "general" public. She notes that the issues facing local governments "are often complex and thus require diligence on the general public's part to understand."¹⁸² While governing bodies can appoint citizens to advisory committees and commissions as one method of addressing this constraint and encouraging continuous input from the "general" public, Jackson argues that these appointees often develop or represent specific points of view

177. Meyers, *supra* note 174. While not unique to Jacksonville, these comments were not the view of most of the participants and there was no citizen involvement challenge made as a result of the Participants' Agreement.

178. Agenda Item 9, *supra* note 87.

179. City of Medford Planning Dep't., *supra* note 28, at 3.

180. LeBombard Interview, *supra* note 86.

181. *Id.*

182. Jackson Communication, *supra* note 171.

on those bodies.¹⁸³ Thus, whether a committee represents the general public is dependent on the appointing authority's willingness and ability to appoint a range of views.¹⁸⁴ Jackson's comments suggest that the pCIC, even if it had continued meetings throughout the entire duration of the Process, may not have been as effective at representing the general public as some, for instance Professor Pat Acklin, might contend. Furthermore, Jackson highlights the fact that the Policy Committee "was a deliberate if unique version of representative government."¹⁸⁵ Because the members of the committee were answerable to their respective constituencies, the general public could influence the Process as they could the legislative process generally. While Jackson raises important questions about the appropriate degree and structure of public involvement in local government, the evidence suggests that the general public's influence in the development of the Regional Plan at the local level was limited.

Finally, although both LCDC's informal and formal review of the Regional Plan provided opportunities for public comment, neither demonstrates a high degree of public influence over final approval of the Plan. During LCDC's informal review of the Regional Plan, it did receive twenty comment letters and recommended eight revisions based on those comments.¹⁸⁶ As previously mentioned, Jackson County adopted all of these recommendations.¹⁸⁷ However, for a Plan that was in its twelfth year of development and impacted the long-term growth of six cities and a county, the fact that LCDC recommended only eight revisions based on only twenty comments suggests that the public did not have much influence in the Plan's final approval.¹⁸⁸ Additionally, only two objections to the Regional Plan were submitted during LCDC's subsequent formal review, and both were denied.¹⁸⁹ Then Senior Planner LeBombard admits that because LCDC had already vetted the Plan during its informal review, "[t]he Commission didn't even really need to address or make any changes to address any of those objections at that last hearing."¹⁹⁰ This attitude, which

183. *Id.*

184. *Id.*

185. *Id.*

186. Agenda Item 9, *supra* note 87, at 3.

187. *Id.* at 4.

188. Most of these eight comments were from public agencies and institutional participants, such as 1000 Friends, who were frequent and experienced participants. LeBombard Communication, *supra* note 69.

189. Agenda Item 4, *supra* note 4, at 2.

190. LeBombard Interview, *supra* note 86. Additionally, those objections were not "valid" and were thus not required to be addressed. See LeBombard Communication, *supra* note 69.

was probably shared by other officials, reveals that there was both exhaustion over the long planning process and that local governments and the state had resolved most issues of concern.

C. *Technical Staff*

The Greater Bear Creek Valley RPS Process may also have concluded successfully because RPS leaders could rely on stable and cooperative technical staff throughout the process. First, the technical staff serving the various jurisdictions during the Process was relatively stable (particularly compared to the elected officials), which provided needed continuity to the Process and allowed the staff to form working relationships. Second, RVCOG was willing to serve as the coordinator of the Process, a neutral party that could facilitate cooperation between the various participants.

Many of the key players believe the Process would have failed but for the dedicated and relatively stable technical staff. While there was a high degree of turnover among elected officials over the length of the Process, there was substantial continuity of technical staff.¹⁹¹ The stability of the technical staff was important to the success of the Process because it provided a source of institutional knowledge necessary to educate new policy leaders as they became involved and kept the Process moving forward. Regional planner Michael Cavallaro explains:

Luckily, the TAC was fairly stable, because it's like an army with a sergeant, the noncommissioned officers are critically important. The political leadership—that was a problem. There were a number of times when a lot of energy had to be expended not only in bringing people up to speed on the process because it was just a tremendous amount of information at any one time, but a number of times it was a process of having to convince people that this was a worthwhile endeavor, to sell them on it.¹⁹²

Without a stable technical staff and that source of institutional knowledge, it would have been difficult for newly elected or appointed officials to participate in the Process immediately, thereby drawing out the length of the Process or sinking it altogether.

Because of this reality, Senior Planner LeBombard argues that the relationships between technical staff from the various jurisdictions and agencies are particularly important:

I would stress the relationships between the technical folks especially go a long way because the technical folks don't turn over as fast as the policy folks do, and the

191. See Lewis Interview, *supra* note 96; LeBombard Interview, *supra* note 86; Williams Interview, *supra* note 92.

192. Cavallaro Interview, *supra* note 17.

technical folks are relied upon very heavily by the policy folks at every different level with a big project like this. If you can build good relationships between those technical folks and have them thinking about things not just from an individual city perspective but from a regional perspective, from a county perspective, it definitely helps a lot to be able to endure a long process such as this.¹⁹³

LeBombard notes that technical staffs that have those longstanding relationships are able to help “bridge the gap” between policymakers from different jurisdictions when they “say certain things that rub the others the wrong way.”¹⁹⁴ Planner for the City of Medford John Adam agrees, arguing that a necessary condition for the success of an RPS process is “[t]he ability of staff from multiple jurisdictions having the willingness to work together toward a regional purpose and to carry their elected officials along”¹⁹⁵ Because it provided continuity to the Process and allowed staff to form working relationships, the stability of the technical staff contributed to the successful conclusion of the Process.

RVCOG’s role as the primary coordinator of the Greater Bear Creek Valley RPS Process was also critical to the Process’s success because its perceived neutrality allowed it to foster cooperation among the participants. Like other technical staff from the jurisdictions and agencies participating in the Process, RVCOG provided an important source of stable knowledge throughout the Process. However, RVCOG also served the critical role of neutral third-party facilitator. Many of the key players agree that the Process simply would have failed without RVCOG’s support. Mayor Marian Telerski claims, “[t]he biggest reason [the process was successful] was the persistence of the Rogue Valley Council of Governments as a neutral facilitator over all that time”¹⁹⁶ She notes, “[W]e all hugely depended on the COG and Michael Cavallaro for the staffing, for the neutrality with which he tried to imbue the entire process”¹⁹⁷ Kelly Madding agrees that the COG’s neutrality and level of support was necessary for the Process’s success. Madding explains:

First, I think the project manager needed to be someone outside of the jurisdictions. I don’t think this would’ve worked as well if the county had been the project manager, for a variety of reasons. I think that it almost had to be someone neutral. And while the COG isn’t totally neutral, they aren’t one of the jurisdictions that had skin in the game. I think that there would’ve been no jurisdiction that could’ve devoted

193. LeBombard Interview, *supra* note 86.

194. *Id.*

195. Adam Interview, *supra* note 103.

196. Telerski Interview, *supra* note 91.

197. *Id.*

the kind of time that the COG devoted to this project either. The county couldn't have nor could any city have I don't think, to be the project manager and to run herd on all of this. I'm not sure the project would've succeeded without some third party and the COG was perfect.¹⁹⁸

Thus, the COG's unique ability to facilitate cooperation between the jurisdictions was integral to the successful conclusion of the Process.

The COG's perceived neutrality also allowed it to serve as confidant and advisor when jurisdictions had questions and concerns about the project. Mayor Telerski says, "Michael [Cavallaro] always urged us, if we felt there was a problem or if there is something you don't understand, come in and talk about it. That door was always open."¹⁹⁹ Michael Cavallaro notes that there were many of moments at which the Process could have fallen apart: all participants were subject to momentary "nervous breakdowns."²⁰⁰ With the exception of Jacksonville, the COG played a role in successfully resolving each jurisdiction's concerns, as they all considered at one time or another to "pick up their ball and go home." For example, in 2004, the mayor and city council of Phoenix discussed withdrawing from the Process over concerns about losing its autonomy.²⁰¹ Cavallaro organized a group of officials and staff involved in the Process to attend a Phoenix City Council meeting and address Phoenix's concerns.²⁰² Unlike Jacksonville, Phoenix's departure would have meant the end of the Process because it is located along the Interstate Five corridor in the middle of the rest of the participants.²⁰³ This example demonstrates that the COG's ability to respond to and quell the concerns of the various jurisdictions was crucial to the successful conclusion of the Process.

198. Madding Interview, *supra* note 98.

199. Telerski Interview, *supra* note 91.

200. Cavallaro Interview, *supra* note 17.

201. See Buffy Pollock, *Phoenix Ponders Regional Planning Effort*, MAIL TRIBUNE, Mar. 15, 2004, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20040315/BIZ/303159997>; Buffy Pollock, *Phoenix Officials Air Concerns Over Problem-Solving*, MAIL TRIBUNE, Mar. 16, 2004, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20040316/BIZ/303169993>.

202. Telerski Interview, *supra* note 91.

203. Jackson Interview, *supra* note 46. According to the then Jackson County Planning Director, Alwin Turiel, Phoenix was concerned over future development opportunities in the I-5 Corridor adjacent to the City. No one could promise Phoenix that it would get what it wanted, but could only pledge that the rest of the participants were aware of that city's concerns and would work with it. That approach was successful in retaining Phoenix in the Process. E-mail from Alwin Turiel, Jackson Cnty. Planning Dir., to authors (Nov. 11, 2013) (on file with authors) [hereinafter Turiel Communication].

The COG's willingness to staff the Process with little funding also contributed to the Process's success. Cavallaro explains:

We spent very little money on the COG and sometimes on support staff but mostly most of the money didn't come to us. I guess one more critical piece of this is that we were willing to do that for the region, to deal with the process without costing much ourselves. If you're looking for a reason it succeeded, that was a big one. Because if you would've had to pay for this, for all the hours put into this, it would've been impossible.²⁰⁴

The Process likely would have failed but for the participation of a neutral coordinator, and RVCOG was willing to serve in that role without a high level of funding. The Greater Bear Creek Valley RPS Process participants' heavy reliance upon both RVCOG and other technical staff demonstrates that the existence of stable and cooperative technical staff, including a neutral coordinator, was integral to the successful conclusion of the Process.

D. *Failure Is Not an Option*

Many of the key players argue that a major factor in the successful conclusion of the Greater Bear Creek Valley RPS Process is simply that failure was not an option. Specifically, they note that too much was riding on the success of the project—time, money, and ego—to allow it to fail. John Adam explains: “[a]t some point it had gone on long enough that I think many blanched at the idea that it might fail and so were motivated to make the compromises that needed to be made for it to reach a successful conclusion. That’s the cynical take.”²⁰⁵ Josh LeBombard, who joined the Process in its later stages, notes, “[t]he people that were involved with this for a decade before I got it were very invested in getting something of an outcome, coming to some kind of conclusion.” Jacksonville City Council member Jim Lewis agrees, “[t]here was too much sweat, too much time, too much money to let it blow up.”²⁰⁶ Says Cavallaro, “I think we were fortunate in that early on the personalities involved were fairly large and it became something that was sort of a matter of honor or ego or status or whatever but they didn’t want to see it collapse.”²⁰⁷ Because regional leaders had too much invested in the Process to allow it to fail, they were committed to seeing the Process through to a successful conclusion. That commitment undoubtedly contributed to the Process’s even-

204. Cavallaro Interview, *supra* note 17.

205. Adam Interview, *supra* note 103.

206. Lewis Interview, *supra* note 96.

207. Cavallaro interview, *supra* note 17.

tual success by encouraging the participants to make the necessary compromises to achieve that success.

Central Point Mayor Hank Williams argues that it was not just the local jurisdictions that could not afford to allow the project to fail the longer it continued: “I think that the reason regional problem solving succeeded was that it had taken so long and DLCD, the department in Salem, would be embarrassed about holding things up and . . . they decided that they needed a success. And so I think they would’ve approved about anything”²⁰⁸ Williams believes this sentiment also explains why 1000 Friends of Oregon did not challenge the Plan. Williams postulates:

[1000 Friends of Oregon] decided that it was going to happen and they got behind it. I think they just decided that politically—and they’re political—that they didn’t want to be the person that threw all this effort over because it would’ve really upset the head of the Oregon DLCD.²⁰⁹

Because the amount of time, money, and ego put into the Process precluded failure from being an option, RPS leaders’ commitment to reach a successful conclusion played an important role in the eventual success of the Greater Bear Creek Valley RPS Process by encouraging the participants to make the necessary compromises to achieve that success.

In conclusion, there are at least four broad reasons the Greater Bear Creek Valley RPS Process became the first regional planning effort conducted under the RPS structure to successfully conclude. First, leaders shared a common purpose. Second, the Process provided for input, guidance, and oversight at appropriate stages from state, local, and public parties. Third, the participants were able to rely on stable and cooperative technical staff, including a neutral, third party coordinator. Fourth, key decision makers shared a commitment to see the Process through to its conclusion, which encouraged them to make the compromises necessary to reach that goal.

IV. The Factors in Action

A number of controversies arose over the course of the Greater Bear Creek Valley RPS Process that threatened its successful conclusion.

208. Williams Interview, *supra* note 92.

209. *Id.* To be fair, 1000 Friends had multiple concerns with the plan, but worked through the Process and was ultimately convinced it should not oppose the plan. If it had done so, the legal abilities of that organization may well have caused a different result at LCDC or in the courts. LeBombard Communication, *supra* note 69.

Those controversies that may have prompted one or more participating jurisdictions to withdraw from the Process or spurred a party to appeal the final Regional Plan were particularly threatening because both scenarios had the potential to be fatal to the Process. Consequently, the resolution of controversies of this nature was critical to the successful conclusion of the Process. This section looks at two particularly threatening controversies—those surrounding the City of Jacksonville’s withdrawal from the Process and the residential density commitments agreed to in the Regional Plan—to illustrate the role of the factors identified above in the successful resolution of these controversies and, consequently, the successful conclusion of the Process.

A. Jacksonville’s Withdrawal

The City of Jacksonville’s withdrawal from the Greater Bear Creek Valley RPS Process threatened to kill the entire effort.²¹⁰ For reasons explained below, the resolution of the controversy surrounding Jacksonville’s withdrawal was crucial to the successful conclusion of the Process. The resolution of this controversy was made possible because the participants shared a common purpose, key decision makers refused to accept failure, and the state was willing to provide continual guidance to the local participants. Accordingly, the resolution of this controversy illustrates the importance of these factors in the successful conclusion of the Process.

As previously discussed, the participants of the Greater Bear Creek Valley RPS Process were attracted to the RPS process in large part because the RPS statute offered flexibility from LCDC’s administrative rules implementing the statewide planning goals. However, that flexibility was contingent upon compliance with nine requirements specified in RPS statute.²¹¹ One requirement in particular hung over the Process. The RPS statute provided, in pertinent part:

[T]he commission may acknowledge amendments to comprehensive plans and land use regulations, or new land use regulations, that do not fully comply with the rules of the commission that implement the statewide planning goals, without taking an exception, upon a determination that:

(a) The amendments or new provisions are based upon *agreements reached by all local participants*, the commission and other participating state agencies, *in the collaborative regional problem-solving process*].²¹²

210. See Damian Mann, *Jacksonville’s Hesitation Puts Regional Growth Plan at Risk*, MAIL TRIBUNE, Sept. 18, 2008, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20080918/NEWS/809180331>.

211. OR. REV. STAT. § 197.656(2) (2007).

212. OR. REV. STAT. § 197.656(2) (2007) (emphasis added).

Thus, all the local participants in the Greater Bear Creek Valley RPS Process, along with LCDC and the other participating state agencies, had to agree on changes and additions to comprehensive plans and land use regulations for flexibility to be available under the statute. Because the participants relied upon the availability of this flexibility when writing the Regional Plan, the withdrawal of a single local participant would effectively render the Regional Plan dead on arrival. As a result of this reality, each local participant had a veto for all practical purposes.

In April 2009, Jacksonville threw the Process into a tailspin by withdrawing from the effort.²¹³ City leaders aired numerous concerns with the Process in the months leading up to the city's withdrawal. According to former Senior Planner Josh LeBombard, Jacksonville "had some very strong opinions about growth and about density and certain things that didn't necessarily jive very well with what the state considers to be efficient development and what the region was kind of thinking as well."²¹⁴ Jacksonville City Council member John Dodero told the *Mail Tribune* that the city wanted future city lands to have a density of two residential units per acre to create a village pattern with more density downtown and less in outlying areas.²¹⁵ Jacksonville's desire to seek substantially lower densities than those called for by state land use rules caused friction between it, other participants, and the state.²¹⁶ As a result, John Dodero argued that Jacksonville was "thwarted in its attempt to create buffer areas and protect farmlands around its borders."²¹⁷ When the participating jurisdictions began the process of signing the Participants' Agreement in the second half of 2008, Jacksonville's fears about losing its autonomy and identity came to a head.²¹⁸ Linda Meyers ran for the Jacksonville City Council and won in the 2008 election on the plank of opposing the Greater Bear Creek Valley RPS Process.²¹⁹ She criticized the Process as a "land

213. Boom, *Jacksonville Says No*, *supra* note 78.

214. LeBombard Interview, *supra* note 86.

215. Tony Boom, *Jacksonville to Reconsider Adding Future Growth Area*, *MAIL TRIBUNE*, Feb. 19, 2008, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20080219/NEWS/802190323>.

216. *See id.*; Mann, *supra* note 210. However, as appears below, Jacksonville changed its position as the result of the 2008 election and advocated higher densities in proposed urban areas, which would have the effect of reducing the amount of land to be urbanized over the planning period. Holmes Communication, *supra* note 56.

217. Mann, *supra* note 210.

218. *Id.*

219. Lewis Interview, *supra* note 96.

grab” that failed to conform to the purposes of the statewide Planning Goals and opposed signing the Participants’ Agreement before Jackson County adopted the Regional Plan through its comprehensive plan amendment process.²²⁰ After her election, the Jacksonville City Council voted in December 2008 to delay signing the Participants’ Agreement, reversing an earlier decision in October to sign the agreement.²²¹ After going back and forth with the other participating jurisdictions for a few months, Jacksonville ultimately withdrew from the Greater Bear Creek Valley RPS Process in April 2009.²²²

After Jacksonville initially expressed reluctance to sign the Participants’ Agreement, the Policy Committee rightly grew concerned that Jacksonville would withdraw and effectively end the Process because of the requirement of the RPS statute.²²³ Hoping to avoid this scenario, the Policy Committee defined “participants” for the purposes of that statute in the Participants’ Agreement to mean “those jurisdictions and agencies that elect, by signing this Agreement, to implement the regional solutions to the regional problems identified” in the Agreement.²²⁴ Furthermore, the Participants’ Agreement provided for both “Implementing Signatories” and “Supporting Signatories.”²²⁵ “Implementing Signatories” were defined as those participants who agree to amend their comprehensive plans to adopt the Regional Plan adopted by Jackson County, and “Supporting Signatories” were defined as “those participants which will otherwise support the implementation of the adopted Plan.”²²⁶

By including these provisions in the Participants’ Agreement, the Policy Committee attempted to provide two alternative avenues through

220. Linda Meyers, Letter to the Editor, *RPS Plan Falls Short*, MAIL TRIBUNE, Oct. 2, 2008, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20081002/OPINION/810020321>; Meyers, *supra* note 174.

221. Boom, *Jacksonville Council Takes Another Look*, *supra* note 76.

222. Boom, *Jacksonville Says No*, *supra* note 78. Linda Meyers’ Jacksonville City Council campaign was based on skepticism of the RPS Process and the proposed plan, as it existed at the time. Her election tipped the balance of an already skeptical Jacksonville City Council and Ms. Meyers assumed a leadership position on this issue from the day of her election. The change in the City of Jacksonville’s position on RPS was sudden, but was equally predictable, given the City’s history of participation in the Process and Ms. Meyers’ role in the change of the Jacksonville position. E-mail from Greg Holmes, S. Or. Planning Advocate, to authors (Nov. 18, 2013 12:50 PST) (on file with author) [hereinafter Holmes Supplemental Communication].

223. Cavallaro Interview, *supra* note 17; Mann, *supra* note 210; OR. REV. STAT. § 197.656(2)(a) (2007).

224. Greater Bear Creek Valley Reg’l. Problem Solving Agreement, *supra* note 172, at 2.

225. *Id.*

226. *Id.*

which the Process could satisfy the requirement that “all local participants . . . in the collaborative regional problem-solving process” agree upon the Regional Plan if Jacksonville withdrew.²²⁷ If Jacksonville decided not to sign the Participants’ Agreement as an “Implementing Signatory,” it could be an agreeable “participant” in the Process by signing as a “Supporting Signatory.” Alternatively, if Jacksonville chose not to sign the Participants’ Agreement in any capacity, it would not be considered a “participant” in the Process for purposes of the RPS statute under the Participants’ Agreement’s definition of that term.²²⁸ In a letter to Josh LeBombard during the JCPC’s hearings on the Regional Plan, DLCD stated that it also believed the flexibility provided by the RPS statute remained available to the Greater Bear Creek Valley RPS Process because “the statute does not define participant, whereas the Participant’s Agreement does define a participant as a jurisdiction or agency which signs the agreement.”²²⁹

After Jacksonville’s withdrawal, 1000 Friends of Oregon argued that flexibility under the RPS Statute was no longer an option for the participants in the Greater Bear Creek Valley RPS Process.²³⁰ In a letter to the JCPC, Greg Holmes, Southern Oregon Planning Advocate for 1000 Friends of Oregon, wrote, “[t]he record of this process dating back to its inception in the year 2000 makes it clear that Jacksonville was, until its forced removal and subsequent voluntary withdrawal in 2009, a ‘participant in the collaborative regional problem-solving process.’”²³¹ He contended that the participants’ attempt to define “participants” as only signatories to the Participants’ Agreement was impermissible in light of an Oregon Court of Appeals case, *Polk County v. DLCD*.²³² Holmes argued that the Oregon Court of Appeals concluded in that case that Yamhill County’s withdrawal from an RPS

227. OR. REV. STAT. § 197.656(2)(b) (2007).

228. OR. REV. STAT. § 197.656(2)(a) (2007).

229. Letter from John Renz, S. Or. Reg’l. Representative, DLCD, to Josh LeBombard (May 21, 2010), (on file with the Jackson County Planning Office).

230. See Letter from Greg Holmes, S. Or. Planning Advocate, 1000 Friends of Or., to Don Greene, Chair, and Members of the Jackson Cnty. Planning Comm’n. (June 3, 2010) (on file with author).

231. *Id.*

232. 112 P.3d 409 (Or. Ct. App. 2005), *vacated and remanded on other grounds*, *Polk County v. DLCD*, 176 P.3d 123 (Or. 2007).

Process with Polk County meant that an agreement was not reached by all the local participants as required by the RPS statute.²³³

In *Polk County*, Polk County, Yamhill County, and other jurisdictions participated in a seven-year RPS process to address growth in a region encompassing the communities of Grande Ronde, Valley Junction, and Willamina.²³⁴ Yamhill County and Willamina—located in Yamhill County but with an urban growth boundary that extends into Polk County—withdraw from the RPS process before a regional agreement could be entered into by all of the participants.²³⁵ Subsequently, LCDC terminated the RPS process after determining that Yamhill County’s decision to withdraw from the process meant that an agreement under the RPS statute had not been reached by all local participants.²³⁶ In challenging that decision, Polk County argued that the RPS statute, which requires that the process “offer an opportunity to participate” to all local governments within the region, “does not require that all participants in the process remain active from beginning to end.”²³⁷

In response, the Oregon Court of Appeals stated that the “difficulty with that argument is that it overlooks” the use of the word “all” in the RPS statute.²³⁸ The court noted, “[i]n this case, the planning problems for which the RPS was convened inextricably involved Yamhill County.”²³⁹ Therefore, when Yamhill County withdrew, the collaborative portion of the RPS effort ended.²⁴⁰ However, the court concluded that it “need not decide whether, as Polk County asserts, the reference in the RPS statute to ‘all local participants, the commission and other participating state agencies’ could be construed to mean only those participants that are necessary or critical to an RPS process” because “the proposal adopted by Polk County is not the product of an agreement aimed at resolving the problems that were identified for regional problem solving.”²⁴¹ As a result, the court held that LCDC did not err in finding that the flexibility offered by the RPS Statute

233. See *id.*; Damian Mann, *RPS Process Might Collapse Without Jacksonville*, MAIL TRIBUNE, June 24, 2009, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20090624/NEWS/306249879>; OR. REV. STAT. § 197.656(2)(a) (2007).

234. *Polk County*, 112 P.3d at 412.

235. *Id.* at 413.

236. *Id.*

237. *Id.*

238. *Id.* at 414.

239. *Id.*

240. *Id.*

241. *Id.*

was no longer available to Polk County following Yamhill County's withdrawal.²⁴²

The issues raised by Greg Holmes' contentions on behalf of 1000 Friends of Oregon forced the other participants to argue that *Polk County* was distinguishable from the situation that faced the participants of the Greater Bear Creek Valley RPS Process upon Jacksonville's withdrawal. They argued that, unlike in *Polk County*, the planning problems for which the Greater Bear Creek Valley RPS Process was convened did not "inextricably" involve Jacksonville. As previously mentioned, the participants identified these problems as being (1) the lack of a mechanism for coordinated regional growth planning, (2) the loss of valuable farm and forest land caused by urban expansion, and (3) the loss of community identity in the region.²⁴³ The remaining participants in the Process argued that these planning problems could still be resolved through the Process because Jacksonville is a relatively small city, has a small population, and is geographically set off from the rest of the participating jurisdictions.²⁴⁴ Thus, the Regional Plan that the remaining participants would agree upon eventually would be the product of an agreement aimed at resolving the problems that were identified for regional problem solving.²⁴⁵ DLCD agreed that Jacksonville's withdrawal could be distinguished from Yamhill County's withdrawal in *Polk County* because of Jacksonville's relative size compared to the regional effort.²⁴⁶ Consequently, the state determined that Jacksonville's withdrawal was not fatal to the Greater Bear Creek Valley RPS Process.²⁴⁷ But perhaps a decisive factor in this dispute was the change wrought by the 2009 Oregon Legislature to amend the RPS enabling legislation to prevent a dissenting member from exercising an effective veto over the resulting plan because of a disagreement.²⁴⁸ While this change was prospective, and did not affect the Jackson County RPS Process, it did strengthen the DLCD position, which indicated that the state would not place an ob-

242. OR. REV. STAT. § 197.652(a) (2007).

243. RVCOG 2001 STATUS REPORT, *supra* note 6, at 4-6.

244. Jackson Interview, *supra* note 46.

245. *Polk County*, 112 P.3d at 414.

246. *See* Mann, *supra* note 79.

247. Volume I, Chapter 1 of the resulting plan resolved the conflict as follows:

While Jacksonville's involvement in the process was desirable, the region determined that their involvement was not necessary or critical to the remaining seven jurisdictions being able to address the regional problems identified in the Greater Bear Creek Valley Regional Problem Solving Process.

Agenda Item 4, *supra* note 4, at 25.

248. 2009 Or. Laws, ch. 837 2009.

stacle in the way of the Process, but also made participants more cautious about objections.

A number of the factors identified above contributed to the successful resolution of the controversy surrounding Jacksonville's withdrawal from the Process. The existence of a common purpose—greater regional autonomy in land use planning—and the commitment of key decision makers to see the Process through to its conclusion provided the remaining participants with an incentive to devise a strong argument justifying why Jacksonville's withdrawal was not fatal to the Process. Furthermore, Oregon's willingness to provide guidance throughout the Process ensured that the region's efforts would bear fruit even if the Process continued in Jacksonville's absence.

B. Residential Density Commitments

Public interest groups skeptical of the Greater Bear Creek Valley RPS Process forcefully and consistently argued that the draft Regional Plan released in 2009 did not adequately provide for the efficient use of land.²⁴⁹ Specifically, these groups criticized the participating cities' residential density commitments for the future development of their existing UGBs and proposed urban reserve areas as being inadequately low.²⁵⁰ They contended that these low residential density commitments resulted in the unnecessary inclusion of large amounts of agricultural lands in the proposed urban reserves in contravention of the statewide planning goals.²⁵¹ Additionally, they argued that the residential density commitments would hinder the development of a viable public transportation system in the future.²⁵² The participants would have left the final Regional Plan vulnerable to a legal challenge, thereby jeopardizing the successful conclusion of the Process, if they failed to address these concerns adequately.²⁵³ Fortunately, all four factors of successful implementation contributed to the successful resolution of the controversy surrounding the residential density commitments in the Regional Plan. Consequently, the resolution of this con-

249. See Holmes Supplemental Communication, *supra* note 222.

250. See *id.*

251. See *id.*

252. See Memorandum from Paige Townsend, Senior Planner, Rogue Valley Transp. Dist., Serving Proposed Urban Reserve Areas with Transit, DLCDC Record 1818 (Apr. 6, 2010); Memorandum from Paige Townsend, Senior Planner, Rogue Valley Transportation District, Analyzing Land Use for Transit Viability, DLCDC Record 1990 (June 3, 2010) (noting that an average residential density of 7 dwelling units per gross acre would be needed to support an intermediate level of local bus service, defined as one bus every half hour).

253. Jackson Interview, *supra* note 46.

troverly demonstrates the importance of these factors to the successful conclusion of the Greater Bear Creek Valley RPS Process.

The Regional Plan projects the participating cities' future residential land demands as a function of their allocated future population growth, future employment growth, and assumptions for the average people per household and average dwelling units per gross acre in each city.²⁵⁴ To calculate the future residential land demand, the participants commissioned a housing needs analysis for the region.²⁵⁵ The participants developed two target densities for each city, one lower and one higher, to be used in this calculation.²⁵⁶ The 2009 draft Regional Plan noted that the target densities were developed to provide for a realistic range of residential land need over the horizon of this Plan.²⁵⁷ Based on these assumptions, the Housing Needs Analysis projected the residential land demand that would determine the amount of land cities would include within the proposed urban reserve areas for housing.²⁵⁸ Figure 1 below shows the target densities and resulting residential land demand.

**Figure 1: Residential Density Commitments
& Land Demand²⁵⁹**

		Ashland	Talent	Phoenix	Medford	Eagle Point	Central Point
Existing UGBs	Density (DU/Gross Acre)	5.28	5.65	6.00	5.20	5.20	5.50
	Lower Density (DU/Gross Acre)	N/A	6.20	6.20	6.50	6.40	6.00
Proposed URAs	Resulting Land Demand (Acres)	N/A	239	374	2,650	751	1,038
	Higher Density (DU/Gross Acre)	N/A	7.50	7.50	7.87	7.74	7.26
	Resulting Land Demand (Acres)	N/A	198	309	2,189	621	858

The Participants' Agreement required the participating cities to achieve only the lower density, higher land need residential densities

254. Jackson County 2009 Regional Plan, *supra* note 7, at 2-10.

255. *Id.*

256. *Id.* at 2-10 to 2-11.

257. *Id.* at 2-11.

258. *Id.* at 2-12.

259. *Id.* at 2-10 to 2-12.

listed in Figure 1 when including urban reserve land in future UGB expansions.²⁶⁰ The 2009 draft Regional Plan notes:

[It is] clear that even fairly significant changes in residential density have relatively small effect, in proportion to the total need, on ultimate residential land needs necessary to satisfy the Regional Plan's population allocations. Specifically, using the lower density assumptions resulted in a residential land need of approximately 5,051 acres, while the higher density assumptions yielded a residential land need of approximately 4,174 acres. The difference of the two assumptions is approximately 878 acres.²⁶¹

However, the 2009 draft Regional Plan also states, “[e]ven though the participating cities have only committed to the lower density targets, both the low and high density targets are reasonable for long-range urban planning processes and are within accepted ranges for urban residential development expectations.”²⁶² Public interest groups critical of the low residential density commitments seized upon this statement when arguing for the adoption of the higher density targets in the Regional Plan.

In a letter to the JCPC in June 2010, 1000 Friends of Oregon expressed its ongoing concerns with the participants' low residential density commitments. Greg Holmes, Advocate for 1000 Friends of Oregon, explained in the letter:

There are two places where density projections come into play. First is the assumption that, while the Urban Reserves will build out at densities that are slightly higher than those in the built areas of the UGB today, the unbuilt portions of the current UGB will develop at current average densities. This assumption is inconsistent with Goal 14 and the related administrative rules and statutes.

Second is the assumption that only the lower of the two density targets will be used in calculating land needs. According to the Draft Plan, the “high density targets are reasonable for long-range urban planning processes and are within accepted ranges for urban residential development expectations.” However, the cities have only committed to achieving the lower density targets and the land demand calculations are based on those lower density targets. This assumption is counter to the requirements in [Oregon Administrative Rules] 660-021-0030 that inclusion of land within an urban reserve be based in part on “a determination that there are no reasonable alternatives that will require less, or have less effect upon, resource land.” It also violates Goal 3 of the Statewide Planning Goals.

By the project's own admission, there are such reasonable alternatives. According to the Draft Plan, implementing this alternative would result in a reduction of nearly 800 acres of land needed for Urban Reserves—which would clearly result in a requirement for less or have a lesser effect upon agricultural land.²⁶³

260. Greater Bear Creek Valley Reg'l. Problem Solving Agreement, *supra* note 172, at 8.

261. Jackson County 2009 Regional Plan, *supra* note 7, at 2-11.

262. *Id.* at 2-10.

263. Letter from Greg Holmes, *supra* note 230, at 2002 (internal citations omitted).

Two other public interest groups, Rogue Advocates and Friends of Jackson County, consistently echoed 1000 Friends of Oregon's concerns.²⁶⁴ If their concerns were not adequately addressed, these groups probably would have brought a legal challenge against the final Regional Plan that could have jeopardized the success of the Process.²⁶⁵

As articulated in Holmes's letter, the public interest groups argued that the low residential density commitments for the urban reserves were unlawful because the high density commitments discussed in the draft Regional Plan provided a "reasonable alternative" that would result in less agricultural land being included within the proposed urban reserve areas.²⁶⁶ Oregon law generally provides for the protection and preservation of agricultural land. Statewide Planning Goal 3 states, "[a]gricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy"²⁶⁷ Furthermore, the relevant Oregon administrative regulation sets forth the standard process for determining which lands can be included within urban reserve areas and provides, in pertinent part, "[i]nclusion of land within an urban reserve shall be based upon the locational factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land."²⁶⁸ "Resource land" includes Goal 3 "agricultural lands" and Goal 4 "forest lands."²⁶⁹ Finally, the RPS statute provided, in relevant part,

If, in order to resolve regional land use problems, the participants in a collaborative regional problem-solving process decide to devote agricultural land or forestland, as defined in the statewide planning goals, to uses not authorized by those goals, *the participants shall choose land that is not part of the region's commercial agricultural or forestland base*, or take an exception to those goal's pursuant to ORS 197.732.²⁷⁰

Thus, even under the flexibility of the RPS process, participating jurisdictions do not have *carte blanche* to designate agricultural lands for future development. Consequently, there was a high likelihood that a legal challenge to the final Regional Plan, if left unchanged from the 2009 draft, would have been successful.

264. See Letter from Jimmy McLeod, Executive Director, Rogue Advocates, to Mayor Stromberg, DLCDC Record 2497 (June 9, 2010) (on file with author); Letter from Brent Thompson, President, Friends of Jackson County, to Jackson County Planning Commission, DLCDC Record 1991 (June 2, 2010) (on file with author).

265. Jackson Interview, *supra* note 46.

266. Letter from Greg Holmes, *supra* note 230, at 2002.

267. OR. ADMIN. R. 660-015-0000(3)

268. OR. ADMIN. R. 660-021-(2) (emphasis added).

269. See OR. ADMIN. R. 660-021-0010(2) (2013); OR. ADMIN. R. 660-004-0010(1)(a) and (b) (2013).

270. OR. REV. STAT. § 197.656(6) (2007) (emphasis added).

Fortunately, actors at the city, county, and state levels shared the public interest groups' concerns about the residential density commitments and were able to force sufficient adjustments to the draft Regional Plan and prevent a legal challenge. The state's early and continued involvement in the process was important in this regard. In a letter to the former Jackson County Senior Planner, Josh LeBombard, during the JCPC's hearings on the 2009 draft Regional Plan in May 2010, DLCD reiterates the conditions necessary for its eventual approval of the Regional Plan:

While we realize the cities have only committed to the lower density high land need scenario, we believe this is a weakness in the plan which is out of tune with the real future needs of the cities. We would like to remind the region that LCDC Chair Van-Landingham commented that his support would be dependent on the plan demonstrating future efficient urban land use. Toward that end, to demonstrate an efficient use of land and avoid a potential issue with LCDC, we suggest the region either incorporate a commitment to Transit Oriented Development in the Plan—OR—commit to the high density (low land need) planning scenario of 7.26 and higher.²⁷¹

Following this statement, participating cities in the Greater Bear Creek Valley RPS Process were on notice that their residential density commitments needed adjustment if the Process was to reach a successful conclusion.

Throughout the Process, the City of Ashland repeatedly expressed its concerns with the amount of agricultural lands included in other cities' proposed urban reserve areas. In a letter to the Policy Committee in November 2007, the Ashland City Council expressed its support for the Process but requested that participants commit to higher residential densities.²⁷² Then Mayor John Morrison wrote, "[b]y directing communities within the region to first enact land use incentives to achieve greater densities on existing lands within established urban growth boundaries, a reduction in the total land acreage committed for urban reserves could likely be achieved."²⁷³ Clearly, the participants ignored this request by only committing to the lower density, higher land need scenario in the Participants' Agreement.

In June 2010, prompted by its own concerns and those expressed by the public interest groups, the Ashland City Council adopted a resolution supporting Jackson County's adoption of the draft Regional Plan as amended with six recommended provisions.²⁷⁴ Among these is a

271. Letter from John Renz, *supra* note 229.

272. Letter from John Morrison, Mayor, City of Ashland, to Greater Bear Creek Reg'l. Problem Solving Policy Comm., DLCD Record 2467 (Nov. 15, 2007) (on file with author).

273. *Id.*

274. City of Ashland, Resolution No. 2010-21 (June 30, 2010), available at <http://www.ashland.or.us/Files/2010-21.pdf>.

recommendation that the Regional Problem Solving Plan incorporate a commitment to apply land use strategies “that increase target densities and promote a healthy mix of land uses that influence greater use of a full range of transportation options (i.e. walking, cycling, transit and rail).”²⁷⁵ Specifically, the resolution states, “[p]articipants should commit to a higher target density, lower land need scenario of approximately 7.26 dwelling units per acre (as suggested by DLCD), which would provide densities more conducive to supporting a successful regional transit system.”²⁷⁶ The resolution also recommends that participants should commit to a meaningful increase in the average density within an existing urban growth boundary prior to any expansion into urban reserve areas.²⁷⁷ The resolution further stated, “the City of Ashland believes that the adoption of the higher density/lower land need planning scenario and a more accurate population allocation will reduce the total amount of land needed to accommodate future urban growth, and would allow a reduction in the amount of high value farm land included in the proposed urban reserve areas.”²⁷⁸

The position taken in the Ashland resolution presented a significant threat to the RPS Process. Because Ashland’s withdrawal would have been fatal to the Process, the other participating jurisdictions had to address its concerns adequately if they wanted the Process to succeed. Kate Jackson notes that the Ashland City Council, on which she served, “almost skunked the whole thing.”²⁷⁹ She explained, “Ashland was carrying forward its attitude that it ought to be able to tell other cities what they were [going to] do. And that the other cities were growing too much as well, even though we didn’t want to.”²⁸⁰ Council member Jackson commented that the City of Ashland took the position, perhaps erroneously, that it was already so compact it was superior to the other cities.²⁸¹ However, Ashland’s decision to use its leverage to force the other participating jurisdictions to reassess their residential density commitments was a significant factor for the success of the entire Process. In a letter to the JCPC in August 2010, 1000 Friends of Oregon expressed its support for the amendments requested by the Ashland City Council in its June 2010 resolution.²⁸² Jackson notes that the fact “we actually

275. *Id.* at 2440.

276. *Id.*

277. *Id.*

278. *Id.* at 2441.

279. Jackson Interview, *supra* note 46.

280. *Id.*

281. *Id.*

282. Letter from Greg Holmes, S. Or. Planning Advocate, 1000 Friends of Or., to Jackson Cnty. Planning Comm’n., (Aug. 4, 2010) (on file with author).

responded enough to 1000 Friends' demands that they didn't sue us over it" was critical to the successful conclusion of the Process.²⁸³

Josh LeBombard played an integral role in addressing the concerns over the residential density commitments and the amount of agricultural land included within the proposed urban reserve areas.²⁸⁴ In a September 2010 memo to the JCPC explaining proposed edits to the 2009 draft Regional Plan, LeBombard noted that DLCD, Ashland, the Rogue Valley Transportation District (RVTD), and the public had requested that the participants commit to higher residential densities in the Regional Plan.²⁸⁵ In the memo, LeBombard stated that the residential density commitments in the 2009 draft Regional Plan "may pose a risk to acknowledgement of the RPS Plan and/or may result in a successful appeal of the RPS Plan."²⁸⁶ LeBombard wrote, "[m]oreover, it appears that these commitments are fairly arbitrary."²⁸⁷ When interviewed, LeBombard explained, "[i]n fact, what we found out really was that the densities that [the cities] committed to weren't really based on anything tangible from a technical standpoint, it was more just the policymakers speculating on what they thought the cities could commit to."²⁸⁸

In his memo to the JCPC, LeBombard argued that the residential density commitments should be both "realistically achievable" and "based upon reasonable information."²⁸⁹ Consequently, LeBombard recommended that the density commitments be based upon the safe harbor provisions in the Oregon Administrative Rules because "[b]asing density commitments on these provisions provides a rational approach towards demonstrating the commitment to efficient urban form."²⁹⁰ LeBombard proposed basing the density commitments for Medford, Eagle Point, and Central Point on an administrative rule, which provides, in pertinent part:

(h) As an alternative to the density safe harbors in subsection (f) and, if applicable, subsection (g), of this section, a local government outside of the Metro boundary may assume that the average overall density of buildable residential land in the urban area for the 20-year planning period will increase by 25 percent

283. Jackson Interview, *supra* note 46.

284. LeBombard Interview, *supra* note 86.

285. Memorandum from Josh LeBombard, Senior Planner, Jackson Cnty., Or. Dev. Servs., Proposed Edits to the RPS Plan, DLCD Record 2624-25 (Sept. 10, 2010) (on file with author) [hereinafter LeBombard proposed edits].

286. *Id.* at 2625.

287. *Id.*

288. LeBombard Interview, *supra* note 86.

289. LeBombard proposed edits, *supra* note 285, at 2625-26.

290. *Id.* at 2626.

over the average overall density of developed residential land in the urban area at the time the local government initiated the evaluation or amendment of the UGB.²⁹¹

Thus, LeBombard proposed density commitments that were 25 percent greater than the overall density of developed residential land in those cities.²⁹² LeBombard proposed basing the residential density commitments for Phoenix and Talent on a different provision in the administrative rule, which specifies adequate densities based upon a city's population.²⁹³ LeBombard explained that the existing overall density of developed residential land in Phoenix and Talent is artificially high because of the prevalence of mobile home parks in those cities, so commitment to a density 25 percent greater than that would have been unrealistic.²⁹⁴ Figure 2 below shows the density scenarios in the 2009 draft Regional Plan and the revised density commitments based upon the safe harbor provisions of Oregon Administrative Rule 660-024-0040(8).

Figure 2: Revised Density Commitments (DU/Gross Acre)²⁹⁵

Scenario		Ashland	Talent	Phoenix	Medford	Eagle Point	Central Point
Existing UGBs	2009 Draft—Density	5.28	5.65	6.00	5.20	5.20	5.50
	March 2011 Draft—Committed Density	6.6 ²⁹⁶	6.60	6.60	6.50	6.50	6.90
Proposed URAs	2009 Draft—Lower Density	N/A	6.20	6.20	6.50	6.40	6.00
	2009 Draft—Higher Density	N/A	7.50	7.50	7.87	7.74	7.26
	March 2011 Draft—Committed Density	N/A	6.60	6.60	6.50	6.50	6.90

291. OR. ADMIN. R. 660-240-0040(8)(h) (2013).

292. LeBombard proposed edits, *supra* note 285, at 2626. The other participants realized that, because of its population size, Medford could not be forced to comply with the safe harbor provisions and that, without a commitment by all parties, the Process could fall apart. Holmes Communication, *supra* note 56.

293. LeBombard proposed edits, *supra* note 285, at 2626; *see generally* OR. ADMIN. R. 660-024-0040(8)(f) (2013) (describing how to determine housing needs and densities).

294. LeBombard proposed edits, *supra* note 285, at 2626.

295. Jackson County 2009 Regional Plan, *supra* note 7, at 2-10 to 2-12; LeBombard proposed edits, *supra* note 285, at 2625.

296. *See* Memorandum from Josh LeBombard, Senior Planner, Jackson Cnty., Or. Dev. Servs., List of Amendments Proposed to RPS Plan by JCPC, DLCDC Record 3923 (Sept. 13, 2011) [hereinafter Sept. 2011 Proposed Plan Amendments] (noting that a

Additionally, in response to the public's criticism that using existing built densities as an assumption for future buildout of existing rural Urban Growth Boundary areas did not demonstrate an efficient use of land, LeBombard recommended amending the Plan to require the cities to commit to the specified densities in both the proposed Urban Reserve Areas as well as the existing rural Urban Growth Boundary areas.²⁹⁷ This adjustment ensured that future UGB expansions under the Regional Plan would be consistent with Goal 14, the purpose of which is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.²⁹⁸ Goal 14 provides, in relevant part:

Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.²⁹⁹

By increasing the residential density commitments for the future development of land within the existing UGBs, LeBombard put the participating cities in a position to demonstrate that their land needs cannot reasonably be accommodated on land already within their UGBs when they attempt to expand their UGBs in the future. As Greg Holmes, Southern Oregon Planning Advocate for 1000 Friends of Oregon, noted to the JCPC, "DLCDC has consistently held that the demonstration that there are no alternatives that will require less, or have less of an impact upon, resource lands must include consideration of increasing densities and an analysis of the infill and redevelopment of land inside the existing UGBs."³⁰⁰

Critics of the residential density commitments in the 2009 draft Regional Plan were largely pleased with LeBombard's recommended amendments. In a letter to the JCPC in April 2011, Greg Holmes wrote that 1000 Friends of Oregon supported the majority of the amendments

density commitment for the City of Ashland's existing UGB was added by the Jackson County Planning Commission).

297. *Id.* In addition, the plan allowed for the density commitment to be offset by increased density within the city limits of the affected city. *Id.* at 3925. The effect of this provision was to encourage infill and redevelopment and to discourage the possibility of creating a "doughnut" of higher peripheral densities around a low density core. LeBombard Communication, *supra* note 69.

298. OR. ADMIN. R. 660-015-0000(14) (2013).

299. *Id.*

300. Letter from Greg Holmes, S. Or. Planning Advocate, 1000 Friends of Or., to Don Greene, Chair and Members of the Jackson Cnty. Planning, LRP2009-00010 Greater Bear Creek Reg'l. Problem Solving (RPS) Plan March 24, 2011 Revised Draft Plan, DLCDC Record 3715 (Apr. 5, 2011) (internal citations omitted).

suggested in the March 2011 Staff Draft and believed these changes made the Plan stronger and more defensible.³⁰¹ Holmes noted that the one assumption that had the greatest impact on the amount of land necessary for urban reserves was the assumed density of development, both in the existing urban growth boundary and of the new urban reserves.³⁰² Thus, 1000 Friends of Oregon was supportive of the increased residential density commitments because the change reduced the amount of resource land necessary for urbanization.³⁰³ Figure 3 below compares the residential land demand based upon the residential density commitments in the 2009 Draft Regional Plan and the revised density commitments.

Figure 3: Revised Residential Land Demand (Acres)³⁰⁴

Scenario	Ashland	Talent	Phoenix	Medford	Eagle Point	Central Point
2009 Draft—Lower Density	N/A	239	374	2,650	751	1,038
2009 Draft—Higher Density	N/A	198	309	2,189	621	858
March 2011 Draft	N/A	199	416	2,369	719	767

While 1000 Friends of Oregon supported the changes, Holmes did note three problems with the proposal to use the safe harbor provisions of the administrative rules to calculate the residential density commitments. First, he criticized Medford, the largest city in the region, for committing to the lowest proposed density.³⁰⁵ Second, he noted that the proposed densities were still below the 7.0 dwelling units per gross acre that RVTD stated is necessary to support viable public transportation.³⁰⁶ Third, he argued that using the twenty-year safe harbor for a fifty-year plan would not meet the requirements for future

301. *Id.* at 3709.

302. *Id.* at 3714. In the end, 1000 Friends supported the Plan. Turiel Communication, *supra* note 203.

303. Letter from Greg Holmes, *supra* note 300, at 3715.

304. Jackson County. 2009 Regional. Plan, *supra* note 7, at 2-10 to 2-12; Memorandum from Josh LeBombard, Senior Planner, Jackson County, Or. Dev. Servs., Revised Draft RPS Plan, DLCD Record 3355 (Mar. 15, 2011) [hereinafter LeBombard 2011 Proposed Draft RPS Plan].

305. Letter from Greg Holmes, *supra* note 282, at 3716; *see also* OR. ADMIN. R. 660-024-0040 (2013).

306. Letter from Greg Holmes, *supra* note 282, at 3716.

UGB expansion because there would be at least two UGB expansions into the Urban Reserve areas in the next fifty years—one for the next twenty years, and one for the twenty after that.³⁰⁷ Therefore, Holmes argued that the safe harbor methods should be applied twice—once for the first UGB expansion, and again for the second.³⁰⁸ Otherwise, Holmes said, the assumption is that density will increase for the first amendment, but not for the second expansion.³⁰⁹ Holmes also noted that calculating the densities twice would result in fifty-year average densities above the 7.0 units per gross acre recommended by RVTD and almost reach the higher target densities in the 2009 draft Regional Plan.³¹⁰

The JCPC adopted Josh LeBombard's recommended amendments to the residential density commitments with one further adjustment.³¹¹ The Commission recognized the merit to the argument that the safe harbor density provisions are intended for use when amending UGBs, which have a twenty-year lifespan, and agreed to use the safe harbor provisions to calculate the density commitment for the first twenty-five years of the Regional Plan and increase the density commitment by another fifteen percent for the second twenty-five years of the Regional Plan.³¹² Figure 4 shows the resulting residential density commitments for the proposed urban reserve areas.

Figure 4: Revised Density Commitments for Proposed URAs (DU/Gross Acre)³¹³

Time Period	Ashland	Talent	Phoenix	Medford	Eagle Point	Central Point
2010-2035	N/A	6.60	6.60	6.50	6.50	6.90
2036-2060	N/A	7.60	7.60	7.50	7.50	7.90

While the adjustments to the cities' residential density commitments did not attain the level originally sought by the public interest groups,

307. *Id.* (internal citations omitted).

308. *Id.*

309. *Id.* at 3716.

310. *Id.* at 3717.

311. *See* Sept. 2011 Proposed Plan Amendments *supra* note 296, at 3924-25.

312. *Id.*; Agenda Item 4, *supra* note 4, at 19. These performance indicators were used to meet provisions of Statewide Planning Goal 14, Urbanization, which require efficient use of land within urban growth boundaries. Email from John Adam, Medford Planning Director, to authors (Nov. 15, 2013) (on file with authors).

313. *See* Sept. 2011 Proposed Plan Amendments, *supra* note 296, at 3925.

the City of Ashland, or DLCDC, they appear to have addressed the concerns of these parties sufficiently. As Kate Jackson noted in an October 2011 letter to the JCPC urging the adoption of the revised Regional Plan, “[t]he important thing now is to adopt a Plan that the State will accept and that does not draw an immediate legal challenge.”³¹⁴ She notes with approval that the Plan should withstand review now because it utilizes the safe harbor provisions to calculate the residential density commitments.³¹⁵

When the Regional Plan was before LCDC for informal review in March 2012, 1000 Friends of Oregon and Rogue Advocates submitted comments criticizing the City of Medford’s residential density commitments.³¹⁶ Specifically, 1000 Friends of Oregon proposed that Medford’s residential density commitment be increased to 7.0 dwelling units per gross acre for the time period of 2010-2035 and to 8.1 dwelling units per gross acre for the time period of 2036-2060.³¹⁷ In response, DLCDC noted:

Utilizing the safe harbor provisions to develop a minimum density for Medford was useful in that the minimum density determined (6.5 gross du/acre) is based upon supportable data rather than policy. However, since Medford has a population over 25,000, it is not allowed to utilize the safe harbor provisions at the time of an UGB amendment.³¹⁸

Instead, DLCDC suggested that LCDC recommend that Medford’s residential density commitment for the time period of 2010-2035 be increased to 6.6 dwelling units per gross acre to match the overall needed density for all housing specified in Medford’s housing element.³¹⁹ Additionally, DLCDC suggested that Medford’s density commitment for the time period of 2036-2060 be modified from 6.6 to 7.6 dwelling units per gross acre.³²⁰ DLCDC noted that these changes would slightly reduce the amount of urban reserve land needed, but would not trigger a need for Medford to reduce its amount of urban reserve land.³²¹ LCDC ultimately recommended that Medford’s residential density commitments be increased to 6.6 dwelling units per gross acre for the time

314. Letter from Kate Jackson, Chair of RPS Policy Comm., to Jackson Cnty. Bd. of Comm’rs. DLCDC Record 4073 (Oct. 5, 2011).

315. *Id.*

316. *See* Agenda Item 4, *supra* note 4, at 17-19.

317. *Id.* at 18.

318. *Id.* at 19.

319. *Id.* at 19-20.

320. *Id.* at 20. The staff report recommending this number was later revised to 7.6 dwelling units per gross acre LeBombard Communication, *supra* note 69.

321. Agenda Item 4, *supra* note 4, at 20.

period of 2010-2035 and 7.6 dwelling units per gross acre for the time period of 2036-2060.³²² Jackson County amended the Regional Plan accordingly.³²³

All four factors identified above contributed to the successful resolution of the controversy surrounding the residential density commitments provided for in the Regional Plan. First, the existence of a common purpose provided the participants with an incentive to resolve the controversy, namely preventing an almost-certainly-fatal legal challenge to the Regional Plan. Second, the confluence and alignment of interests during the Process allowed necessary public, county, and state input at a point where the cities were willing to accept that advice. Third, technical staff such as LeBombard (as well as the technical staff for the various cities) was vital to the development of the revised residential density commitments. Finally, key decision makers' dedication to concluding the Process successfully facilitated the compromises necessary to resolve the controversy.³²⁴

V. Lessons for the Future

The factors behind the success of the Greater Bear Creek Valley RPS Process can provide valuable lessons for regional planning, both within the structure of the regional problem solving process and more generally. Specifically, these factors suggest that a regional planning effort should include four primary features to increase the likelihood of its success. First, regional leaders should define a common purpose. Second, the process should be structured so that the smallest participating jurisdictions feel comfortable participating while simultaneously providing for public, county, and state input, guidance, and oversight at appropriate junctures. Third, participants should be able to rely on stable and cooperative technical staff, including a neutral, third party facilitator. Finally, regional and state leaders should be dedicated to seeing the process through to a successful conclusion so that they are willing to make the necessary compromises to achieve success.

A. *Define a Common Purpose*

The Greater Bear Creek Valley RPS Process demonstrates that it is important for regional leaders to share a common purpose when engaging

322. Agenda Item 9, *supra* note 87, at 4.

323. Agenda Item 4, *supra* note 4, at 21.

324. Even so, plan approval was controversial and nearly unsuccessful, especially in places such as Eagle Point, where local issues nearly resulted in non-concurrence. Holmes Communication, *supra* note 56.

in a regional planning effort. For leaders in the Greater Bear Creek Valley, that purpose, in its broadest sense, was regional autonomy. Both supporters and detractors of Oregon's statewide land use planning system in southern Oregon sought a more flexible, regional approach to land use planning. The experience of the Greater Bear Creek Valley RPS Process suggests that a long-term regional planning effort is more likely to succeed when regional leaders define a common purpose near the beginning of the effort, as it will help to facilitate cooperation, compromise, and perseverance among the participants.

The current RPS statute, which was significantly amended in 2009, is an attempt to implement this idea.³²⁵ The RPS statute requires that jurisdictions interested in entering into a RPS process identify the land use planning problems to be addressed through the process and submit the proposed work scope to LCDC for its approval.³²⁶ Additionally, the RPS provides that the participants must agree to regional goals to address the problems identified in the work scope after LCDC approves the proposal.³²⁷ If the success of the Greater Bear Creek Valley RPS Process is any indication, future efforts at regional problem solving should have a better chance at success if participants identify and adhere to a common purpose at the beginning of an RPS process.

B. *Structure the Process Properly*

The Greater Bear Creek Valley RPS Process also demonstrates that a successful regional planning effort should be structured to provide for sufficient public, county, and state input, guidance, and oversight at appropriate junctures, thus allowing each jurisdiction to have an ownership interest in the process. The Greater Bear Creek Valley RPS Process provides an example of such a structure. First, the voting members of the Process's decision-making body, the Policy Committee, were composed of elected representatives from the jurisdictions themselves. Second, the Policy Committee functioned in an egalitarian manner: each jurisdiction, regardless of size, had an equal vote, and unanimity was required for every decision. This structure allowed the jurisdictions to feel comfortable that they retained sufficient control over the Process and, as a result, their own sovereignty. It also forced the jurisdictions to truly collaborate, as a single "no" vote could end the Process and leave everyone empty-handed. In addition

325. See 2009 Or. Laws ch. 873 2009.

326. OR. REV. STAT. § 197.652(4) (2013).

327. OR. REV. STAT. § 197.654(1) (2013).

to the structure of the decision-making body, the sequence in which the Regional Plan was developed forced the cities to take ownership over the Regional Plan. This ownership of the Plan provided the cities with an incentive to see the Process through to its conclusion.

The Greater Bear Creek Valley RPS Process lasted thirteen years. Current law allows for only a three-year process.³²⁸ One of the principal reasons for success in this case was that the participants knew that they were in the Process to secure agreement of parties with multiple interests. It takes time for participants to appreciate the concerns of the multiple jurisdictions involved.³²⁹ Three years may not be sufficient for these purposes.

The Greater Bear Creek Valley RPS Process shows that for a structure to be conducive to success, the state needs to be willing to provide formal and informal guidance throughout the process so that the participants can ensure their final product is in the best position to be approved by the state at the end. It is particularly helpful if the state is willing to informally review a draft Regional Plan prior to its adoption by the County and municipalities. Finally, the experience of the Greater Bear Creek Valley RPS Process indicates the public's participation should be considered at the beginning of a regional planning effort, as it was in the Bear Creek Valley, with the intent of providing guidance to policy leaders. However, the opportunity for citizen involvement should remain throughout the process.³³⁰ These aspects of the structure of the Greater Bear Creek Valley RPS Process provide an example of a regional planning effort that provides for adequate public, county, and state input, guidance, and oversight at appropriate stages of the process, along with an ownership interest for all participants, large and small.

328. OR. REV. STAT. § 197.652(5)(a).

329. See Cavallaro Interview, *supra* note 17.

330. The citizen involvement element was also given greater emphasis at the end of the Process, particularly in hearings before planning commissions and governing bodies, to deflect criticism that participation opportunities were insufficient. Holmes Communication, *supra* note 56. By that time, however, the plan had been formulated. As a result of his own extensive experience in the RPS Process, Josh LeBombard concluded that a successful lesson learned could be as follows:

1. At the outset, focus public involvement on the basic element of visioning.
2. Provide freedom to cities to develop a Plan which compliments visioning.
3. Provide public involvement at limited (crucial) points along the way.
4. Provide public involvement once the entire Plan has been compiled but acknowledge that the complexity at this point will dissuade most folks from participating.

LeBombard Communication, *supra* note 69.

C. Employ Stable and Cooperative Technical Staff

The Greater Bear Creek Valley RPS Process shows that a regional planning effort has a better chance to succeed when the participants can rely on stable and cooperative technical staff, including a neutral, third party coordinator. Although unrealistic in many situations, it is particularly helpful if the coordinator is willing to staff the planning effort at little or no cost. As the Greater Bear Creek Valley RPS Process illustrated, regional Councils of Governments can serve as the ideal coordinator because they are capable of facilitating communication and cooperation between local municipalities, counties, and the state. Ultimately, a regional planning effort should be able to rely upon stable technical staff that can serve as a source of institutional knowledge and foster cooperation among the participants.

D. Commit Leaders to Concluding the Effort

Finally, regional and state leaders should be sufficiently committed to seeing the process through to the conclusion so that they are willing to make the compromises necessary to do so. In the Greater Bear Creek Valley RPS Process, decision makers at the local, county, and state levels eventually had too much invested in the Process—time, money, and the desire for a legacy—to accept failure. This reality forced them to make the compromises necessary for the Regional Plan to be approved by all the jurisdictions and the state. Because the RPS statute now prohibits a RPS process from exceeding three years plus a one-year extension on a showing of good cause, future RPS processes will probably not last twelve years.³³¹ In any event, participants in future regional problem solving efforts may not be motivated to commence the process if they perceive the amount of time and money expended as excessive.

VI. Conclusion

These four factors were all present in the Greater Bear Creek Valley RPS Process, and the evidence suggests that they likely contributed to its success. Consequently, the success of the Greater Bear Creek Valley RPS Process allows an inference that a regional planning effort has a much better chance of success if these four conditions are present. However, it is also possible that the success of the Process was the

331. OR. REV. STAT. § 197.652(5) (2013).

result of a unique confluence of people, timing, and events that cannot be replicated in the future. Without a common purpose, comfort of all participants in the process, a stable and cooperative technical staff, and a commitment by participants to see the process through, the Greater Bear Creek Valley RPS Process may go down as the last successful regional planning effort under the RPS statute.

APPENDIX



Courtesy of http://en.wikipedia.org/wiki/Jackson_County,_Oregon#mediaviewer/File:Map_of_Oregon_highlighting_Jackson_County.svg; labeling by the author.

