



**CLARK COUNTY WASHINGTON**

**COMMUNITY PLANNING**

TO: Clark County Council  
 FROM: Karl Johnson, Planning Commission Chair  
 PREPARED BY: Gary Albrecht, AICP, Planner III  
 DATE: November 12, 2019  
 SUBJECT: CPZ2019-00032 GMA COMPLIANCE RURAL INDUSTRIAL LAND BANK (RILB)

**PLANNING COMMISSION RECOMMENDATION**

On October 17, 2019, the Planning Commission voted (6/0) to approve the staff recommendation amending the Comprehensive Growth Management Plan text, plan map, zoning map, arterial atlas map, and Title 40 to remove the authorization for and all references to, the Rural Industrial Land Bank.

The proposed amendments are a response to the Growth Management Hearings Board Final Decision and Order (FDO) regarding the Rural Industrial Land Bank, [\[GMHB Case No. 16-2-0005c\]](#), three subsequent compliance orders issued by the GMHB, and the decision of the Washington Court of Appeals dated August 20, 2019. Below are brief descriptions of the proposed amendments. [See Exhibits 1 - 7].

| <b>Proposed Comprehensive Plan and Zoning Map Amendments</b>   |  |
|--|--|
| Amend the Comprehensive Plan designation of Rural Industrial Land Bank (RILB) and zoning designation of Light Industrial (IL) with a Rural Industrial Land Bank Overlay (IL-RILB) to the Comprehensive Plan designation of Agriculture (AG) and zoning designation of Agriculture (AG-20) on the following parcels: 198335000, 198375000, 196656000, 198111000, 198324000, 198112000, 198101000, 198075000, 198072000, 198080000, 198082000, 198113000, and 198076000. |  |

| <b>Proposed Arterial Atlas Map Amendments</b> |                  |   |
|---|------------------|---|
| <b>No.</b>                                    | <b>Amendment</b> | <b>Description</b>  |
| 1   | Delete           | At approximately NE 106 <sup>th</sup> Ave., delete a proposed commercial/industrial road, running north/south from NE 139 <sup>th</sup> St. to NE 149 <sup>th</sup> St.   |
| 2   | Delete           | At approximately NE 144 <sup>th</sup> St. and NE 114 <sup>th</sup> Ave, delete a proposed NE 144 <sup>th</sup> St. commercial/industrial road extension to the Chelatchie Prairie Railroad.   |
| 3   | Delete           | At approximately NE 110 <sup>th</sup> Ave. a proposed 2-lane minor arterial (M-2cb) from NE 134 <sup>th</sup> St. to NE 139 <sup>th</sup> St.   |
| 4   | Reclassify       | A road segment between NE 144 <sup>th</sup> St. and the intersection of NE 139 <sup>th</sup> St./NE 132 <sup>th</sup> Ave. from a 2-lane minor arterial (M-2cb) to a 2-lane collector (C-2).  |
| 5   | Reclassify       | A road segment of NE 134 <sup>th</sup> St. from a 2-lane minor arterial (M-2cb) to a 2-lane collector (C-2) between approximately NE 110 <sup>th</sup> Ave. to NE 132 <sup>nd</sup> Ave intersection.   |
| 6   | Modify           | A planned road extension at approximately NE 112 <sup>th</sup> Ave. from transitioning gradually from NE 139 <sup>th</sup> St. to NE 144 <sup>th</sup> St. returning to the prior alignment beginning further west at NE 102 <sup>nd</sup> Ave. connecting NE 139 <sup>th</sup> St. to NE 144 <sup>th</sup> St. |
| 7   | Modify           | A planned road extension at approximately NE 124 <sup>th</sup> Ave. from NE 119 <sup>th</sup> St. to NE 144 <sup>th</sup> St. returning to the prior vertical alignment instead of the serpentine westward alignment.   |

| <b>Proposed Comprehensive Plan Text Amendments</b> |                          |  |
|--|--------------------------|--|
| <b>No.</b>   | <b>Element</b>           | <b>Description</b>   |
| 1  | Table of Contents        | Delete Rural Industrial Land Bank (RILB) from the Table of Contents, page i.   |
| 2  | Land Use                 | Delete Rural Industrial Land Bank (RILB) from Table 1.4 Rural Lands Plan Designation to Zone Consistency, page 31.   |
| 3  | Land Use                 | Delete Rural Industrial Land Bank (RILB) and associated text, page 36-37.  |
| 4  | Rural & Natural Resource | Delete County 20-year Plan Rural Industrial Land Bank goal and plan policies section 3.8, page 98.   |
| <b>Proposed Clark County Code Amendments</b>       |                          |  |
| <b>No.</b>   | <b>Title 40</b>          | <b>Description</b>   |
| 1  | 40.230.085               | Amend CCC 40.230.085 - Employment Districts (IL, IH, IR, BP, IL-RILB) to delete all references to RILB in subsection (B)(1)(d), Table 40.230.085-1 Uses, Table 40.230.085-1 footnote 10, Table 40.230.085-2 Lot Standards, Setbacks, Lot Coverage and Building Height Requirements, Table 40.230.085-2 footnote 7, subsection (D)(4) including Figures 40.230.085-1 and 40.230.085-2, and associate renumbering. |
| 2  | 40.520.070               | Amend CCC 40.250.070 – Master Planned Development to delete all references to RILB in subsection (B)(4) and (C)(1)(b)  |
| 3  | 40.520.075               | Amend CCC 40.520.075 – Rural Industrial Development Master Plan to delete all references to RILB and/or RCW 36.70A.367 in (B) and amend Section 40.560.010(J) to Section 40.560.010(H), and delete “with an IL-RILB overlay. Amend (C)(1) to amend Section 40.560.010(J) to Section 40.560.010(H), and delete “or land bank” and “for the land bank.”  |
| 4  | 40.560.010               | Amend CCC 40.560.010 – Plan Amendment Procedures to delete all references to RILB and/or RCW 36.70A.367 in (H), delete (H)(a)(2) Major industrial land banks (light industrial), and delete (H)(b)(2) Major industrial land banks (light industrial).  |

**BACKGROUND**

The Clark County 20-year Comprehensive Growth Management Plan 2015-2035 (2016 Plan) amended two Rural Industrial Land Bank (RILB) sites (Lagler and Ackerland adopted by Ord. 2016-04-03 and 2016-05-03, comprising of 13 parcels totaling approximately 602 acres) and reduced the minimum lot size for agriculture resource lands from twenty (20) acres to 10 acres (AG-20 to AG-10) with an optional cluster provision. The cities of Battle Ground, La Center and Ridgefield expanded their urban growth boundaries. [Ord. 2016-06-12]. Clark County Citizens United (CCCU), Futurewise and Friends of Clark County (FOCC) appealed the 2016 Plan to the Growth Management Hearings Board (GMHB). [Case No. 16-2-0005c].

2016 Prior to issuance of the GMHB decision, the cities of La Center and Ridgefield annexed approximately 57 acres and 111 acres, respectively, of land that had been de-designated from agricultural use.

2017 In its Final Decision and Order dated March 23, 2017 (FDO), the GMHB ruled on 25 issues raised by the appellants. The county prevailed on 18 issues, including the following:

1. All of CCCU's issues and arguments, including complaints about participation, timing, SEPA, property rights, density in the rural area, population projections and allocation, cluster remainders, designation of agricultural and forest resource lands, an alleged rural vacant buildable lands model and the background reports.

2. FOCC's issues about the Capital Facilities Plan and funding, critical areas ordinances, the RILB deadline and annexation.

The GMHB held that the county was noncompliant on certain issues raised by FOCC and Futurewise, based on the following reasoning:

1. Urban Growth Area (UGA) expansions – each of the cities had surplus lands and no need for an expanded UGA. The county and the cities also failed to take reasonable measures to address land use issues related to sizing for each UGA.
2. De-designations for UGA expansions by Ridgefield and La Center – the county failed to conduct an area-wide analysis of lands for these de-designations.
3. Urban reserve overlay – the GMHB described the overlay areas as “UGA enlargements.”
4. Up-zoning to greater density in the resource zones – the GMHB held that this action did not protect and enhance the agricultural and forest industries.
5. Only one comprehensive plan designation for rural lands (outside urban centers) – the GMHB found that having one comprehensive rural lands designation implemented by R-5, R-10 and R-20 zones was not compliant with GMA.
6. RILB creation – the GMHB held that the county had not identified the maximum size of the RILB as required by GMA.
7. De-designation for the RILB – The GMHB held that the de-designation of agricultural resource land had not been proper because:

*“WAC 365-190-050(5) states that the final outcome of a designation process should “result in designating an amount of agricultural resource lands sufficient to maintain and enhance the **economic viability of the agricultural industry** in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.” (Emphasis added) Here, the county reviewed four sites and selected 602 acres within one site that may or may not have a key role to play in the agricultural industry in Clark County or the area. The county in 2004 found this land had long-term significance for agriculture when it designated the land pursuant to the requirements of RCW 36.70A.170.” [FDO, page 78].*

*“..the county failed to complete an area-wide analysis of the impacts on the agricultural industry...” [FDO, page 41].*

*“...de-designation decisions did not comply with WAC 365-196-050 in which a countywide or area-wide study creates a ‘process that should result in designating an amount of agricultural resource lands sufficient to maintain and enhance **the economic viability of the agricultural industry in the county over the long term**’.” (Emphasis added) [FDO, page 42].*

The GMHB initially found that the plan was invalid only with respect to the de-designations for urban lands and the UGA expansions for the cities of Battle Ground, La Center and Ridgefield.

*“WAC 365-190-050(3)(c)(v) lists one criteria for designating agricultural land as ‘[r]elationship or proximity to urban growth areas,’ but this does not mean that every piece of land abutting an UGA must be converted to urban uses. The Legislature intended for counties and cities to identify, designate and conserve agricultural land in RCW 36.70A.060 and that jurisdictions ‘shall assure that the*

*use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with ...these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.’ The GMA was not intended to allow a domino effect of urbanization of parcel next to parcel. Carried to its logical end, natural resource lands would never be protected. Without designating and protecting natural resource lands, there is nothing to prevent the continuing loss of these lands.” [FDO, page 80].*

In response, the county adopted an ordinance on April 25, 2017 that suspended land divisions within lands designated Agriculture, Forest tier II and Rural, and zone changes within those lands pursuant to CCC 40.560.020. [Ord. 2017-04-14]. In June, that suspension was made permanent. [Ord. 2017-06-04]. On July 11, 2017, the county amended the 2016 Plan, zoning maps and county code as follows:

1. Returning resource designations and zoning to AG-20 and FR-40;
2. Returning rural comprehensive plan designations to Rural-5, Rural-10, and Rural-20.
3. Repealing the urban reserve use list.
4. Returning the Battle Ground UGA to its pre-update status.
5. Naming a maximum size of the RILB. [Ord. 2017-07-04].

2017 On September 26, 2017, the county amended the 2015 Buildable Lands Report in order to reflect recent development in Battle Ground, Ridgefield and La Center, and measures taken by those cities to achieve the densities projected for them. [Res. 2017-09-13].

2018 On January 10, 2018, the GMHB issued an Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidly, Stay Order and Supplement the Record (First Compliance Order). Concerning the minimum lot sizes on agricultural and forest lands, the GMHB found that:

*“With the county amendments in Ordinance 2017-07-04 regarding agricultural and forest lands, the Board finds and concludes that the county is now in compliance with RCW 36.70A.060 and RCW 36.70A.070.” [First Compliance Order, page 12].*

The GMHB broadened its determination of invalidity, stating that the county had taken no action to cure its noncompliance on the following issues:

1. The county had not demonstrated need for the UGB expansions in Ridgefield and La Center.
2. The county did nothing to cure the unlawful de-designations of agricultural lands that Ridgefield and La Center brought into their UGBs.
3. The county did nothing to cure the unlawful de-designation of 602 acres of agricultural land of long-term commercial significance (ALLTCS) for the RILB.

*“Clark County was before this Board in 2007 in a similar challenge of the county’s process to de-designate approximately 4,000 acres of ALLTCS, then expand urban growth area boundaries to encompass those newly de-designated lands, and then various cities within Clark County rapidly annexed the former ALLTCS. The annexations took place while this Board was hearing the case and before it could render its decision about the county’s ALLTCS de-designation process. Eventually, the Court of Appeals found some of the ALLTCS should not have been de-designated and attempted to address the timing of GMA appeals and city annexations, but our Supreme Court vacated that portion of the Court of*

*Appeals' decision which addressed the timing of appeals and annexations. [First Compliance Order, pages 13-14].*

*Here the Board is once again presented with a challenge of the county's process to change agricultural lands into urban or industrial lands. In 2016, as in 2007, the county de-designated ALLTCS abutting the cities of La Center, Ridgefield and Battle Ground as well as in proposed industrial areas. Then the county expanded the cities' UGAs to encompass the newly de-designated agricultural lands and designated two rural industrial land banks. And, as in 2007, while appeals were pending before this Board challenging the county's de-designation action, the cities rapidly annexed the former ALLTCS land from the expanded UGAs and zoned it for residential uses. The county and city processes have arguably denied recourse for challengers of ALLTCS de-designation. [First Compliance Order, page 14].*

*In the present case, while the Petitioners challenged the validity of the annexations themselves (Issue 7), the Board concluded it lacked jurisdiction to rule on that question. The Board did, however, find the county out of compliance with the GMA on Issue 5 (unwarranted UGA expansions) and Issues 10 and 19 (non-compliant de-designation of ALLTCS)." [First Compliance Order, page 14].*

The county appealed the unfavorable aspects of the FDO, and later, the First Compliance Order. Ridgefield and La Center, and the two affected property owners also appealed these decisions. CCCU appealed the FDO with respect to all of its issues. FOCC and Futurewise appealed the First Compliance Order's findings of compliance regarding Rural and Resource minimum lot sizes. All of these appeals were consolidated, and were transferred to the Court of Appeals.

On July 23, 2018, the county filed its second Compliance Report.

In its Second Order Finding Continuing Noncompliance (Second Compliance Order) dated October 17, 2018, the GMHB ruled as follows:

*"Based upon review of the July 23, 2018, County Statement of Actions Taken to Achieve Compliance, the Growth Management Act, prior Board orders and case law, having considered the arguments of the parties offered in the briefing and at the compliance hearing, and having deliberated on the matter the Board Orders:*

- The county's motions to rescind, modify or dismiss Issues 5 and 10 [regarding UGA's] are denied.*
- The county's motion to Stay Issue 19 [regarding the RILB] is denied.*
- Clark County is in Continuing Noncompliance with RCW 36.70A.060 and WAC 365-190-050 regarding 602 acres of former ALLTCS that were designated as Rural Industrial Land Banks.*
- Clark County is in Continuing Noncompliance with RCW 36.70A.110, RCW 36.70A.115, and RCW 36.70A.215 of the GMA by failing to take any corrective legislative action to address the noncompliance relating to the Urban Growth Areas of the Cities of La Center and Ridgefield.*
- The March 23, 2017, Determination of Invalidity remains in full force and effect....*
- Invalidity remains in full force and effect as stated in the Board's January 10, 2018 Compliance Order...." [Second Compliance Order, page 13].*

2019 On April 26, 2019, the county filed its third Compliance Report and Motion for Order to Stay or Rescind Determinations of Noncompliance and Invalidity.

In its Order Granting Stay for Issues 5, 10 and 19 and Re-enforcing Invalidity (Third Compliance Order) dated July 9, 2019, the GMHB ruled on the following:

*“Based upon review of the Final Decision and Order, the First and Second Order Finding Continuing Noncompliance, the county’s recent Compliance Report and the Growth Management Act, prior Board orders and case law, having considered the arguments of the parties offered in the briefing and at the compliance hearing, and having deliberated on the matter the Board Orders:*

- *Compliance regarding Issues 5, 10, and 19 is stayed until a final appellate decision is rendered and a mandate has been issued.*
- *The March 23, 2017, Determination of Invalidity remains in full force and effect, invalidating the UGA expansions for the cities of Ridgefield and La Center.....*
- *The following parts of the 2016 Clark County Comprehensive Plan continue to be invalid and invalidity remains in full force and effect as stated in the Board’s January 10, 2018, Compliance Order: De-designation of ALLTCS on 57 acres near the La Center UGA and 111 acres near the Ridgefield UGA...*
- *.... De-designation of ALLTCS on 602 acres underlying two Rural Industrial Land Banks....” [Third Compliance Order, pages 4-5].*

The Court of Appeals on August 20, 2019 ruled that all issues regarding the county’s UGAs designations for the cities of Ridgefield and La Center are moot. The court stated that the county has no ability to plan for the annexed land, and that the GMHB cannot compel the county to take action to come into compliance regarding that land. The court granted FOCC’s motion to dismiss the county’s petition for judicial review of the FDO’s ruling that the de-designation of agricultural land on 602 acres underlying the two Rural Industrial Land Banks was out of compliance with the state’s Growth Management Act, but did not dismiss the county’s appeal of the First Compliance Order. In footnote 13, the court noted *“even if we were to consider this argument, our review of the record here reveals that the Board did not err.”* [[Clark County v. Growth Management Hearings Bd., Wn. App. \(2019\), pages 25 and 51](#)].

Clark County has not filed a motion for the Court of Appeals to reconsider its decision, and has not filed a petition for review with the Supreme Court of the Court of Appeals decision. Futurewise filed a motion for reconsideration, which the Court of Appeals denied on September 25, 2019, and it has until October 25, 2019 to file a petition for review with the Supreme Court. CCCU has filed a petition for review with the Supreme Court.

The proposed amendments respond to the Growth Management Hearings Board FDO, the three compliance orders, and the Court of Appeals decision regarding the Rural Industrial Land Bank. They are intended to bring the Comprehensive Growth Management Plan 2015-2035 into compliance with GMA.

## **SUMMARY OF PUBLIC INVOLVEMENT PROCESS**

The proposed amendments were sent to the Department of Commerce pursuant to RCW 36.70A.106 on September 10, 2019 and were posted on October 2, 2019 to the Clark County Community Planning website. On September 30, legal notice for the October 17 Planning Commission hearing and a Notice of Determination of Non-Significance and SEPA Environmental Checklist were published in the Columbian and the Reflector newspapers. Planning Commission held a work session on October 3,

2019, and a hearing on October 17, 2019. On October 28, 2019, a legal notice was published for the Council Hearing. Public comments are posted on the website.

## **APPLICABLE CRITERIA, EVALUATION AND FINDINGS**

The proposed amendments are intended to return the Comprehensive Plan text, plan map, zoning map, the arterial atlas and the Clark County Code Title 40 to the last GMA compliant status in effect before the county established the RILB. The Agriculture (AG-20) designation was in effect prior to the adoption of the RILB, and had been ruled compliant with GMA previously. Because, this is a unique process, findings demonstrating compliance with all of the criteria are located after section H.

### **A. The proponent shall demonstrate that the proposed amendments is consistent with the Growth Management Act (GMA) and requirements, the countywide planning policies, the Community Framework Plan, the Comprehensive Plan, City Comprehensive Plans, Applicable Capital Facilities Plans, and official population growth forecasts. [CCC 40.560.010(F)(1)].**

#### **Growth Management Act (GMA)**

The GMA goals set the direction for the county in adopting its framework plan and comprehensive plan policies. The GMA lists thirteen overall goals in RCW 36.70A.020 and WAC 365-190-050 plus the shoreline goal added in RCW 36.70A.480(1). The goals are not listed in order of priority. The GMA goal that applies to the proposed action is Goal 8.

Goal 8. "Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses." [RCW 36.70A.020(8)].

In addition to Goal 8, the following RCWs and WACs demonstrate that the proposed amendments are consistent with the GMA.

Based on a set of summary requirements such as population criteria, county and cities are required to conform to the requirements of RCW 36.70A.040.

"(b) the county and each city located within the county shall designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forestlands, and mineral resource lands and protecting these designated critical areas, under RCW **36.70A.170** and **36.70A.060**;" [RCW 36.70A.040(3)(b)].

State law requires a county or city to designate natural resource lands and critical areas where appropriate.

"(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;" [RCW 36.70a.170(1)(a)].

Natural resource lands and critical areas are a requirement of RCW 36.70A.060. These development regulations include the conservation of agricultural lands, assurances that the use of adjacent lands to

agriculture shall not interfere with the continued use, in accordance with best management practices, and agriculture lands adjacent to short line railroads may be developed for freight rail dependent uses.

The standard of review for comprehensive plans and development regulations are in WAC 365-196-040. State approval is not required in the adoption process, appeals are filed with the Growth Management Hearings Board (GMHB), and if challenged, a county does not have to prove compliance although “the record” must be provided to the GMHB.

Washington Administrative Code indicates counties must classify and designate agricultural resource lands. Designating agricultural lands should be based on three factors: 1. Land is not characterized by urban growth; 2. Land is capable of agricultural production; 3. Land has long-term commercial significance for agriculture. [WAC 365-190-050].

Comprehensive plan amendment procedures are in WAC 365-196-640. The comprehensive plan may be amended more frequently than once every year under certain circumstances.

“To resolve an appeal of the comprehensive plan filed with the growth management hearings board; or” [WAC 365-196-640(3)(b)(vi)].

### **Community Framework Plan**

Community Framework Plan (Framework Plan) provides guidance to local jurisdictions on regional land use and service issues. The Framework Plan encourages growth in centers, urban and rural, with each center separate and distinct from the others. The centers are oriented and developed around neighborhoods to allow residents to easily move through and to feel comfortable within areas that create a distinct sense of place and community. The applicable policies are to ensure the conservation of agricultural lands and protect those lands from interference by adjacent uses which affect the continued use, in the accustomed manner, of the lands for production of food, and agricultural products. Community Framework Plan policies applicable to this proposal include the following:

\*\*\*\*\*

3.1.3 Identify agricultural land on parcels currently used or designated for agricultural use and provide these parcels special protection.

3.1.5 Encourage the conservation of large parcels which have prime agricultural soils for agricultural use and provide these parcels special protection.

\*\*\*\*\*

### **Countywide Planning Policies (CWPP)**

The GMA, under RCW 36.70A.210, requires counties and cities to collaboratively develop Countywide Planning Policies (CWPP) to govern the development of comprehensive plans. The WAC 365-196-305(1) defines “the primary purpose of CWPP is to ensure consistency between comprehensive plans of counties and cities sharing a common border or related regional issues. Another purpose of the CWPP is to facilitate the transformation of local governance in the urban growth areas, typically through annexation to or incorporation of a city, so that urban governmental services are primarily provided by cities and rural and regional services are provided by counties.”

Policy 3.0.2 “The county and each municipality shall cooperate to ensure the preservation and protection of natural resources, critical areas, open space and recreational lands within and

near the urban area through adequate and compatible policies and regulations.” [CWPP, page 90].

### **Comprehensive Growth Management Plan 2015-2035 (2016 Plan)**

The 20-Year Comprehensive Growth Management Plan contains many policies that guide urban form and efficient land use patterns. The most relevant goals and policies applicable to this application are as follows:

**“Goal: To maintain and enhance productive agriculture lands and minimize incompatibilities with adjacent uses.**

#### **3.5 Policies**

- 3.5.1 Agriculture lands as designated in the Comprehensive Plan Land Use Map shall be managed primarily for the conservation of long-term commercial significant agriculture lands for productive economic use.
- 3.5.2 Primary land use activities on agriculture lands are commercial agriculture management, agriculture-related uses, temporary worker facilities, forest activities and other non-agriculture related economic activities relying on agriculture lands.
- 3.5.3 Those areas with Agriculture Comprehensive Plan designations shall have a residential density of one dwelling unit per 20 acres (AG-20).
- 3.5.4 Clustering of parcels is allowed consistent with platting and zoning requirements and the Clark County Code.
- 3.5.5 Those areas with Agriculture/Wildlife Comprehensive Plan designations shall have a residential density of one dwelling unit per 160 acres (AG/WL).
- 3.5.6 Agriculture activities shall be encouraged by:
  - limiting residential development in or near agricultural areas;
  - limiting public services and facilities which lead to the conversion of agricultural lands to non-resource uses;
  - maintaining public roads in capital improvement plans to accommodate the transport of agricultural commodities;
  - cooperative resource management among agricultural land owners, environmental groups, state and federal resource agencies and federally recognized Native American tribes for managing the county's public and private agricultural lands;
  - supporting land trades that result in consolidated agricultural ownership;
  - encouraging the maintenance of agricultural lands in current use property tax classifications, including those classifications as provided for in RCW 84.34 and CCC Chapter 3.08;
  - working with agricultural landowners and managers to identify and develop other incentives for continued farming; and,
  - encouraging agricultural land use as a clean industry incorporating tax breaks, right to farm, purchase of development rights, transfer of development rights and other economic means and develop strategies to support farming practices.
- 3.5.7 Minimum parcel size should be adequate to allow reasonable and economic agricultural use.
- 3.5.8 Special purpose taxing districts and local improvement districts in lands designated in the 20-Year Plan for agricultural use will only be used when the services or facilities

provided by the special purpose district or local improvement district through taxes, assessments, rates or charges, directly benefit those agricultural lands.

- 3.5.9 Land use activities within or adjacent to agricultural land shall be located and designed to minimize conflicts with agricultural management and other activities on agricultural land, to include the following:
- residential development adjacent to agricultural land shall be approximately buffered from agricultural activities;
  - public services and utilities within and adjacent to designated agricultural areas should be designed to prevent negative impacts on agriculture and allow for continued resource activity;
  - notification shall be placed on all plats and binding site plans that the adjacent land is in resource use and subject to a variety of activities that may not be compatible with residential development.
- 3.5.10 Agricultural activities performed in accordance with county, state and federal laws should not be considered public nuisances nor be subject to legal action as public nuisances.” [2016 Plan, page 95].

**B. The proponent shall demonstrate that the designation is in conformance with the appropriate locational criteria identified in the plan purpose statement of the zoning district. [CCC 40.560.010(F)(2)].**

Agriculture (AG-20) designation contain lands that have the growing capacity, productivity; soil composition and surrounding land use to have long-term commercial significance for agriculture and associated resource production. [2016 Plan, page 37].

CCC 40.210.010 Forest, Agriculture and Agricultural-Wildlife Districts (FR-80, FR-40, AG-20, AG-WL).

A. Purpose.

1. Agriculture 20 District. The purpose of the Agriculture 20 district is to encourage the conservation of lands which have the growing capacity, productivity, soil composition, and surrounding land use to have long-term commercial significance for agriculture and associated resource production. [CCC 40.210.020].

Quality soils are a primary factor in classifying and designating agricultural resource lands ([Figure 22A](#) and [Figure 22B](#)). The following factors aid in determining whether lands are used or capable of being used for agricultural production. [WAC 365-190-050].

- tax status,
- the availability of public facilities,
- the availability of public services,
- relationship or proximity to urban growth areas,
- predominant parcel size,
- land has long-term commercial significance for agriculture,
- land classification of prime and unique farmland soils as mapped by Natural Resources Conservation Service,
- land use settlement patterns and their compatibility with agricultural practices,
- intensity of nearby land uses,
- history of land development permits issued nearby,
- land values under alternative uses and



**E. Where applicable, the proponent shall demonstrate that the full range of urban public facilities and services can be adequately provided in an efficient and timely manner to serve the proposed designation. Such services may include water, sewage, storm drainage, transportation, fire protection and schools. Adequacy of services applies only to the specific change site. [40.560.010G(5)].**

The proposed amendment is outside of the urban area. There are no urban facilities and sewer is not provided on the proposed site.

**F. Arterial Atlas** - Arterial Atlas amendments shall be accomplished through the changes initiated and approved by the county. These changes may occur as part of the periodic review update to occur consistent with RCW 36.70A.130, or as part of annual changes to the plan once per calendar year, or as part of emergency amendments which may be brought forward at any time, subject to applicable provisions of this chapter.” [CCC 40.560.010(L)(1)]. “Required Criteria. Arterial Atlas amendments may be approved only when all of the following are met:

- a. There is a need for the proposed change;
- b. The proposed change is compliant with the Growth Management Act;
- c. The proposed change is consistent with the adopted comprehensive plan, including the land use plan and the rest of the Arterial Atlas;
- d. The proposed change is consistent with applicable interlocal agreements; and
- e. The proposed change does not conflict with the adopted Metropolitan Transportation Plan.” [CCC 40.560.010(L)].

The proposed Arterial Atlas amendments amend the map to reflect the GMA compliant road network classification prior to the adoption of RILB. See Exhibit 5.

**G. Clark County Code** - The Clark County Unified Development Code, Title 40 (CCC), consolidates all development-related regulations, land use zoning, critical areas, and environmental protection. CCC is required to be consistent with the 20-year Comprehensive Growth Management Plan. Amendments to CCC respond to a substantial change in policy, better implements applicable comprehensive plan policies, or reflect changes in federal/state law. The proposed amendments reflect the elimination of the RILB as shown in Exhibit 7. [CCC 40.560.010(K)].

**H. Consideration of Out-of-Cycle Amendments** - CCC 40.560.010(B)(6) Amendments that may be reviewed and acted upon outside the annual amendment cycle are subject to the review criteria established in this chapter, and are limited to the following:

\*\*\*\*\*

- d. To resolve an appeal of a comprehensive plan adoption or amendment filed with the Growth Management Hearings Board or a court of competent jurisdiction pursuant to RCW 36.70A.300.

\*\*\*\*\*

The comprehensive plan may be amended more frequently than once every year under certain circumstances.

“To resolve an appeal of the comprehensive plan filed with the growth management hearings board; or...” [WAC 365-196-640(3)(b)(vi)].

\*\*\*\*\*

The proposed amendments to the Comprehensive Growth Management Plan text, plan map, zoning map, arterial atlas map, and Title 40 to remove the authorization for and all references to, the Rural Industrial Land Bank are a response to the Growth Management Hearings Board Final Decision and Order (FDO) regarding the Rural Industrial Land Bank, three subsequent compliance orders issued by the GMHB, and the decision of the Washington Court of Appeals dated August 20, 2019.

## **FINDINGS**

The current use of the site is an active dairy farm. The Laglers Dairy Farm is one of the largest dairy farms in the county and has been doing business for approximately 44 years. The site is currently in the county's Open Space Farm and Agriculture Program and qualifies for lower assessed value and lower taxes.

- A. The proposed amendments are consistent with the GMA, Community Framework Plan, Comprehensive Plan, and Countywide Planning Policies. The policies ensure the preservation, protection, and conservation of agricultural lands; protecting those lands from interference by adjacent uses which affect the continued use, in the accustomed manner, of the lands for production of food and agricultural products.
- B. The proposed map amendments are in conformance with the appropriate locational criteria identified of the zoning district. The site is surrounded by Agriculture (AG-20) designated lands that complement the existing farm uses. The site meets the GMA definition of long-term commercial significance for agricultural production and the agriculture designation criteria set forth in RCW 36.70A.040(3), RCW 36.70A.170, RCW 36.70A.060(1)(a), WAC 365-190-040, and WAC 365-190-050.
- C. The proposed map amendments are suitable for the proposed designation and ensure the preservation, protection, and conservation of agricultural identified lands. The site meets the GMA definition of long-term commercial significance for agricultural production.
- D. The proposed land use amendment (b) better implements applicable comprehensive plan policies than the current map designation. (see A and B above).
- E. The proposed amendment is outside of the urban area. There are no urban facilities and sewer is not provided on the proposed site.
- F. The proposed Arterial Atlas map amendments revert to the previously adopted Arterial Atlas map prior to the adoption of the Rural Industrial Land Bank and is consistent with the criteria under CCC40.560.010(L). This action is consistent with the GMA, applicable interlocal agreements, and the Metropolitan Transportation Plan.
- G. The Title 40 amendments shown in Exhibit 7 are consistent with the Comprehensive Plan and better implements applicable comprehensive plan policies.
- H. The proposed out-of-cycle amendments to the Comprehensive Growth Management Plan text, plan map, zoning map, arterial atlas map, and Title 40 are to remove the authorization for and all references to, the Rural Industrial Land Bank.

The site was designated as agriculture lands in 1994 consistent with the Growth Management Act, reaffirmed in the 2004 Comprehensive Plan adoption. In 2009, the county re-designated the site as

agricultural land of long-term commercial significance, [Ord. 2009-12-15] and on March 24, 2010, the GMHB held that the re-designation complied with GMA.

The above evaluation and findings comply with all applicable criteria and with the Growth Management Hearings Board Final Decision and Order regarding the Rural Industrial Land Bank, three subsequent compliance orders issued by the GMHB, and the decision of the Court of Appeals dated August 20, 2019.

**RECOMMENDATION AND CONCLUSIONS**

Based on the information and findings presented in this report and in supporting documents, the Planning Commission forwards a recommendation of **Approval** to Clark County Council. The proposed amendments respond to the Growth Management Hearings Board FDO, the three compliance orders, and the Court of Appeals decision regarding the Rural Industrial Land Bank. They are intended to bring the Comprehensive Growth Management Plan 2015-2035 into compliance with GMA.

The table below lists the applicable criterion and summarizes the findings for CPZ2019-00032.

| <b>COMPLIANCE WITH APPLICABLE CRITERIA</b>  |                |                              |
|---|----------------|------------------------------|
| Criterion for Map/Policy/Text Amendments  | Criteria Met?  |                              |
|   | Staff Report   | Planning Commission Findings |
| A. Consistency with GMA & Countywide Policies   | YES            | YES                          |
| B. Conformance with Location Criteria   | YES            | YES                          |
| C. Site Suitability and Lack of Appropriately Designate Alternative Sites                                       | YES            | YES                          |
| D. Amendment Responds to Substantial Change in Conditions, Better Implements Policy, or Corrects Mapping Error. | YES            | YES                          |
| E. Adequacy/Timeliness of Public Facilities and Services.   | YES            | YES                          |
| F. Consistent with Arterial Atlas amendment criteria.   | YES            | YES                          |
| G. Consistent with Clark County Code.   | YES            | YES                          |
| H. Consistent with criteria for Out-of-Cycle amendments.  | YES            | YES                          |
| <b>Recommendation:</b>  | <b>APPROVE</b> | <b>APPROVE</b>               |