



FRIENDS of CLARK COUNTY
TOGETHER WE THRIVE
PLANTING THE SEEDS FOR RESPONSIBLE GROWTH

Dec. 6, 2018

Mr. Steve Morasch, Chair
Clark County Planning Commission
Public Service Center
1300 Franklin Street
Vancouver, WA 98660

RE: CPZ2018-00020 COMPREHENSIVE GROWTH MANAGEMENT PLAN 2015-2035
POLICY AND CORRESPONDING TEXT AMENDMENTS (CHAPTER 6 Capital Facilities
Element and Appendix E)

Dear Chair Morasch and Planning Commission Members:

Thank you for the opportunity to comment on the proposal to amend the Capital Facilities Element of the Clark County Comprehensive Plan. I am here on behalf of Friends of Clark County to urge the Planning Commission to deny portions of amendment CPZ2018-00020 authorizing extension of sewer services outside the urban growth areas.

The elements of the proposal that seek to serve areas outside of the UGA that concern us are the “Rural Industrial Land Bank” (RILB) and proposed freight rail dependent use (FRDU) overlay zone.

First, the RILB was included in the 2016 Comp Plan and Growth Management Hearings Board has ruled that the RILB designation does not comply with the Growth Management Act. The Hearings Board further imposed an Order of Invalidity on the RILB designation. The County has requested that the Hearings Board reconsider that decision and they have declined to accept the County’s invitation. The issue is currently pending in the Washington Court of Appeals. It is therefore not appropriate to be funding a wastewater connection until the county comes into compliance with the GMA.

Second, the proposed FRDU overlay has not yet been adopted by the County Council. There has not even been a public hearing on the overlay zone. Large questions loom – What is the geographic size of the overlay? It has fluctuated wildly. What are the industrial uses that will be allowed? Does the authorizing legislation for FRDU even allow for the extension of wastewater services outside of UGAs?

Under SB 5517, the authorizing legislation, page 16, lines 9 through 17 states:

Any county located to the west of the crest of the Cascade mountains that has both a population of at least four hundred thousand and a border that touches another state, and any city in such county, may include development of freight rail dependent uses on land adjacent to a short line railroad in the transportation element required by RCW 36.70A.070. Such counties and cities may also modify development regulations to include development of freight rail dependent uses that do not require urban governmental services in rural lands.

Whether or not urban services can be extended to rural lands will likely be a point of contention even if the Council's decision is to extend those services. It is my understanding that Ms. Cook has advised the Council that GMA prohibits urban services in this area. In addition, the attached e-mails show that Mr. Peterson and, then City Planner for Battle Ground, both agree that GMA prohibits putting urban services in the area designated by FRDU and no language of SB 5517 overcomes language in the GMA that would prohibit what is being proposed (see attached e-mails). Even with language which might attempt to clarify that prior to those study areas being served by the district, the County should not be planning for, and potentially charging ratepayers for, a plan that will require complete compliance with the requirements of the GMA and RCW 57.16.010(7).

Also, there is uncertainty regarding who, and to what extent, it would be required to move from a well and septic system service on their rural lands to paying the high cost of hooking up to a public sewer, possibly later, water system which could cost between \$5,000-\$60,000 to hook up depending on the address.

Thus, any decision to commit over \$4 million dollars of public funds toward industrial development outside of the UGA is premature and frankly undermines the public's hope that the decision process and their comments will be taken into honest consideration and that this is not just a done deal.

Imagine, if this was your neighborhood, your home, your greatest asset overshadowed by so much uncertainty and the decision to proceed with sewer lines to the project was already made in advance of approval of zoning and overlay decisions. It is not fair to this community and not considerate of the public's trust that their tax dollars will be wisely spent.

Again, we urge you to remove the RILB and FRDU overlay areas from this comp plan amendment.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sue Marshall".

Sue Marshall, President
Friends of Clark County.

From: [John Peterson](#)
To: [Barnett, Jerry](#)
Cc: [Robin Krause](#)
Subject: RE: 5517
Date: Friday, November 17, 2017 8:45:43 AM

I don't think the issue is so much one of equity...we are always extending the system and we have frameworks for developers to pay for line extensions and new users to pay connection charges as a buy in to the system. The issue is more of a legal prohibition under GMA that sewer service is intended to be confined to urban areas to support urban densities. It is about drawing a bold line between urban and rural with sewer falling only on the urban side of the boundary as I understand it.

John M. Peterson, P.E.
General Manager | Clark Regional Wastewater District

From: Barnett, Jerry [<mailto:Jerry.Barnett@clark.wa.gov>]
Sent: Friday, November 17, 2017 8:41 AM
To: John Peterson
Cc: Robin Krause
Subject: RE: 5517

Thanks John. Wouldn't conveying/treating sewage in these areas have to be disproportionately subsidized by customers in the urban areas?

From: John Peterson [<mailto:JPeterson@crwwd.com>]
Sent: Friday, November 17, 2017 8:35 AM
To: Barnett, Jerry
Cc: Robin Krause
Subject: RE: 5517

Hi Jerry,

Thank you for thinking of us. Like Jeff, I want to first disclaim my status as a non-attorney. If this discussion ever gets to a more formal stage, we would be happy to engage our legal counsel and provide an official response.

Understanding that context, from my perspective, I think Jeff's comments are accurate. There is a clear prohibition for extending sanitary sewer service outside of urban areas, as was confirmed here in Clark County through the legal processes around the Cowlitz Tribe's casino project at the La Center Junction. Sewer is an urban service and, as such, the District would not be in a position to extend service along the rail line once it left the urban growth boundary areas.

Let me know if you need more...

John M. Peterson, P.E.
General Manager | Clark Regional Wastewater District

From: Barnett, Jerry [<mailto:Jerry.Barnett@clark.wa.gov>]

Sent: Thursday, November 16, 2017 10:45 AM
To: Robin Krause; John Peterson
Subject: FW: 5517

Gentlemen,

Below is Jeff Swanson's dissent on SB5517. I wanted to share it and also get any feedback you may have.

Thanks,

Jerry

From: Jeff Swanson [<mailto:Jeff.Swanson@cityofbg.org>]

Sent: Wednesday, November 15, 2017 12:07 PM

To: Barnett, Jerry

Subject: FW: 5517

Just FYI...

Jeff Swanson
City Manager
office (360) 342-5005



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From: Jeff Swanson

Sent: Wednesday, November 15, 2017 12:07 PM

To: 'Eric Temple' <etemple@pvjr.com>

Cc: amber.carter@comcast.net

Subject: RE: 5517

Hi Eric,

The City of BG is definitely on board. We supported both House and Senate versions of the bill early in session. The issue comes down to what the final bill allows, technically speaking.

I'm not trying to make "perfect" the enemy of "good enough", however the issue is significant enough that I felt I needed to raise the concerns. I recognize that the likelihood of an appeal to whatever the County implements is high, but feel that the recommendation of the RRAB and Subcommittee is clearly inconsistent with both the GMA and the bill language that became effective law, and, if adopted by the County unnecessarily increases the exposure to litigation.

The problematic language is in RCW 36.70A.108(2), which reads:

Any county located to the west of the crest of the Cascade mountains that has both a population of at least four hundred thousand and a border that touches another state, and any city in such county, may include development of freight rail dependent uses on land adjacent to a short line railroad in the transportation element required by RCW 36.70A.070. **Such counties and cities may also modify development regulations to include development of freight rail dependent uses that do not require urban governmental services in rural lands.** (emphasis added)

RCW 36.70A.030(20) defines "urban governmental services" as:

"Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

RCW 36.70A.030(18) defines "rural governmental services" as:

"Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

The reference to RCW 36.70A.110(4) is:

In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

In my unwashed opinion this says if a county or city wants to include development of freight rail dependent uses it may do so provided they do not require urban governmental services in rural lands. This is the major flaw in the final implementation of SB 5517 compared to the Rural Industrial Land Bank (RILB) approach: the RILB essentially designates a rural area for industrial development where provision of urban governmental services is allowed under the GMA, effectively creating an urban growth boundary around the land bank for this purpose. Where the County is having difficulty in the RILB approach is with respect to the de-designation process for resource land, in this case ag land. SB 5517 addresses the de-designation challenge by stating freight rail dependent uses are allowed on resource lands (like ag), but by itself does not address this issue of urban governmental services provided outside of urban growth areas except to the extent it seems to prohibit that.

The point could be made, "well, these are resource lands, not rural lands." However, resource lands are not "urban", making them a subset or type of "rural land", subject to the prohibition in SB 5517. Regardless of intent, this is the language in the law, and would be interpreted consistently with the

rest of the GMA and related case law.

In my mind an ideal fix would be to insert language from SB 5517 into both RCW 36.70a.365 and RCW 36.70a.367. This language from the bill would work:

Any county located to the west of the crest of the Cascade mountains that has both a population of at least four hundred thousand and a border that touches another state, and any city in such county, may adopt development regulations to assure that agriculture, forest, and mineral resource lands adjacent to short line railroads may be developed for freight rail dependent uses.

This would address both the de-designation issue and the urban governmental services issue because it would be done under the RILB statutes. It should be palatable to Futurewise because it narrows the broad scope of SB 5517 and provides for quality economic development, not just more houses and commercial uses. The steeper hill to climb would be to modify RCW 36.70A.108(2) striking problem language to read:

Any county located to the west of the crest of the Cascade mountains that has both a population of at least four hundred thousand and a border that touches another state, and any city in such county, may include development of freight rail dependent uses on land adjacent to a short line railroad in the transportation element required by RCW 36.70A.070. Such counties and cities may also modify development regulations to include development of freight rail dependent uses ~~that do not require urban governmental services in rural lands.~~

This would maintain the broad scope of SB 5517, and the definition of freight rail dependent uses as both urban and rural in RCW 36.70A.030(9) would likely provide a sufficient basis for Clark Public Utilities and Clark Regional Wastewater District to provide services to those areas, though it would still probably come under appeal because the permissiveness is not more explicit. But, Futurewise would probably fight that approach vehemently.

Remember, I only play a land use attorney on TV periodically (although that series was cancelled)... I'm not an actual attorney, just a paid actor. 😊

Jeff Swanson
City Manager
office (360) 342-5005



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From: Eric Temple [mailto:etemple@pvjr.com]
Sent: Tuesday, November 14, 2017 8:19 AM

From: John Peterson
Sent: Thursday, November 09, 2017 2:26 PM
To: Shawn Moore; Robin Krause
Subject: FW: ESB 5517 Freight Rail Dependent Uses

Something to be aware of here...my general understanding is that there were legislative changes made this year that were intended to support better use of potential industrial developments along rail corridors. Clark County is working to implement a framework to leverage the short line rail options here in Clark County. I have had one person ask me if we were planning to sewer the entire rail corridor and I reminded that person of the GMA related framework around sewer service being largely limited to the UGA's with only specific exceptions allowed. If either of you have a more precise understanding of the intent or the possible connection to the District, please keep me in the loop...thank you.

John M. Peterson, P.E.
General Manager | Clark Regional Wastewater District

PDR 9556 - 002934