

April 9, 2018

To the Freight Rail Dependent Use Advisory Committee:

At the outset, I would like to point out that it appears that, based upon the charge provided by the Council as set forth in the public participation resolution, this committee's job is solely to determine what are the FRDUs (i.e. what constitutes a FRDU), what products are to be included in that list and how to regulate those uses, and the collateral impacts of those uses, on the parcels that have been identified in the Phase I FRDU Overlay in the CP land use element.

There was quite a bit of discussion at the first meeting regarding whether this committee could revisit and, possibly, redefine "adjacent". However, that is not within the purview of this committee's purview for at least two reasons.

First, the definition of "adjacent" is irrelevant to creating development regulations for the lands that are in phase I. The County amended its comprehensive plan, and map, to specify the lands that are "adjacent" to the rail line. Therefore, those "adjacent" lands have been identified based upon the Council's adoption of the map that specified those parcels as being adjacent. As stated in the presentation by staff, the land use element of the comprehensive plan was amended to state:

#### Freight Rail Dependent Uses Overlay

This designation is implemented with an overlay zone ***that identifies parcels where freight rail dependent uses adjacent to the short line railroad may be permitted.***  
(emphasis supplied)

Thus the overlay zone has identified the parcels "adjacent to the short line railroad" where the freight rail dependent uses "may be permitted". Therefore, this committee's duties are do determine what, if any, FRDU should be permitted on the designated parcels and how those uses, if any, should be regulated, limited and/or developed.

Second, the above is consistent with the Council's charge to this committee adopted by resolution which is to draft development regulations for those freight rail dependent uses that the County ***has already deemed to be adjacent.*** Specifically, the charge to this committee is as follows:

The Council has charged the Freight Rail Dependent Use Advisory Committee to consider and recommend development regulations ***related to freight rail dependent uses*** to be adopted in 2018. The committee will review the oil classifications in RCW 90. 56.010, exclude energy

products and chemicals deemed hazardous, *build a list of uses from the bulk commodities that make up over 90% of rail freight, and use definition of Freight Rail Dependent Uses in ESB 5517 with particular emphasis on the terms "dependent on" and "makes use" of to refine list.*

See Resolution No 2018-03-05, Exhibit 2 at ll 16-21.

So given that charge to just create development regulations for the Freight Rail Dependent Uses on the parcels identified as "adjacent" on the map, the following questions are presented for the committee's consideration.

#### Questions for the Freight Rail Dependent Use Advisory Committee (FRDUAC)

1. Given the charge by the County Councilors, and the recent Comprehensive Plan Amendment, should the DRs being drafted by the Advisory Committee apply ***only*** to Phase I and, if not, how will the Committee determine the scope of a development regulation(s) that may be appropriate as to Phase I parcels, but may not be appropriate to all of the properties as yet unidentified by the Council along the rail line that will/could be impacted?
2. Related to that question, at the initial meeting, Mr. Weaver stated that the Railroad Advisory Board (which is supposed to be separate and distinct from the FRDU Advisory Committee) are not proposing to "hog" all the land along the entire existing railroad line. His statements seem to suggest that 5517 allows for more land to be developed than contemplated by the RRAB and certainly more than designated in the Phase I overlay. In addition, Mr. Shaffer asked "How many acres is reasonable to permit for anticipated demand?" As both Mr. Weaver and Mr. Shaffer are members of the RRAB, I think it is prudent to ask "has the RRAB specified lands along the rail line that should ***not*** be developed even if they are "adjacent" under the definition that has been used by the County to identify such lands?
3. Since the language of 5517 is "***may***", should the FRDU Advisory Committee identify property within the FRDU overlay that should be excluded from development as part of the drafting of the DRs? Ms. Carter mentioned that the "orange" property designated on the new CP map was not intended to have FRDU. Should that land be excluded by the DRs developed by this committee? Is this an even more important question given the fact that 5517 did not change the portion of GMA that states that each county planning under 36.70A has to continue to preserve and protect agricultural lands (See also WAC 365-196-815)?

4. Mr. Shaffer also observed that he did not think ***any*** of the parcels in Phase I would be developed. Given Mr. Shaffer's position on the RRAB and his observations, plus the residential development that already exists around the current properties in the Phase I overlay and Ms. Carter's statement that the orange shaded area should be excluded, it seems that a fundamental question is whether the drafting of development regulations is premature?
5. Since this legislation is supposedly for Freight Dependent Rail Uses, does that mean that the DRs should exclude the creation of trucking corridors to bring product to and from the development(s)? At the initial meeting there was discussion about whether products would be brought in or out of the new developments by trucks. Yet the amendments to the transportation element of the Comprehensive Plan is specific to freight rail, NOT TRUCKS. See presentation at slides 12-13. In other words should the DRs restrict FRDU to goods and products that can be brought solely in and out by rail and, if not, how does the committee justify creating increased truck transport corridors through the various neighborhoods to and from any FRDU development on parcels designated in the overlay? Secondly, how will the Committee create those corridors in light of the current Capital Facilities Plan and Transportation Elements of the Comprehensive Plan?
6. Will the committee determine what products, if any, can be banned/barred/excluded? *Ex Officio* Temple, in a recent e-mail to the County Councilors, unequivocally stated that the County was precluded from barring any product from being on the rail line because such a ban or bar would violate the Commerce Clause. If that is the case how is this committee, or is this committee, going to carry out the charge given to them by the Councilors, which requires them to exclude "***energy products and chemicals deemed hazardous***"? According to the man who runs the company who has the lease for all of the freight rail traffic, the use of the line to haul certain products such as hazardous wastes and materials, explosive chemicals, fossil fuel and oil based products cannot be excluded. His position is in direct contravention of the Council's charge. If Mr. Temple is correct, how will the committee square the Council's charge with Mr. Temple's legal challenge and, will the committee allow the uses Mr. Temple says it must? If the committee agrees with Mr. Temple, how will the committee make any development regulations consistent with state and federal laws regarding the transport, storage and use of ***energy products and chemicals deemed hazardous***. Secondly, as the County has leased the use of the rail lines to the Portland Vancouver Junction Railway (Mr. Temple), if there is damage/harm caused as a result of transporting, storing or using ***energy products and chemicals deemed hazardous*** that Mr. Temple states are not banned, who will be liable for the damages in light of an accident----

the county, the industry (land developer and/or business owner on the developed land) or the PVJR? Should the DRs address liability and, if so, should the contracts between the County and PVJR (Mr. Temple) be available to the Committee as part of their packets? Do DRs need to address whether the developments have to execute specific insurances and/or bonds to cover the costs of potential damages?

7. Ostensibly, 5517 is limited to "FRDUs" (however that term is ultimately defined by this committee and, ultimately by the County Councilors). Therefore, should there be a restriction on the deeds that prevents the developer of the land to sell it to another person or entity that is ***not*** going to use it for FRDU? It seems since the legislation appears to create an exemption to GMA specifically for FRDU, then deed restrictions on the use of the land in perpetuity, like conservation easements etc, should be required by the DRs.
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8. *Ex Officio* Temple at the initial hearing last month unequivocally stated that there would only be one train a day and its speed would never exceed a 10 mph limit. Therefore it seems that specific restriction should be written into the DRs as a restriction on the use of the rail line to serve the development(s). In addition, should there also be a limit on the number of cars per train? Certainly, if there is only one train per day with 10 cars at 10 mph, that is different than one train per day with 50 or 100 cars. Currently, at 850 cars per year (Mr. Temple's number), it is at approximately 2-3 cars per day on average. Should the DRs set limits on the amount of freight rail traffic that should be allowed?
9. Will the DRs set standards for compatible uses to the lands within the overlay, for buffers to residential/resource/agricultural land, for restrictions on traffic trips per day and/or per hour into and out of the developments (i.e LOS) on the existing roadways (or should the developments be required to improve the current infrastructure to accommodate the development(s) impact) and should the DRs address the size of impervious surfaces such as parking areas per development and/or the number of employees?
10. Clark County Councilors and CREDC have publicly stated that this is a "jobs" bill. Will the DRs include a provision that the development(s) and "uses" will have to have a certain amount of "living wage jobs" and, if so, how will the DRs define Living Wage jobs--  
<https://alum.mit.edu/slice/mit-living-wage-calculator-why-higher-wages-help-everybody?>
11. Should each and every member of the committee disclose any and all financial interests they possess in the development of lands?

12. Mr. Fuller discussed the terms “balance”, “meld” and “compatible” when trying to address the fact that 5517 allows for development on resource lands and GMA goals (36.70A.040 and WAC 365-196-815 which requires counties to adopt development regulations that assure the conservation of agricultural, forest and mineral lands of long term commercial significance). How will the committee create criteria for their DRs, which will reconcile these two, seemingly competing, goals?

I will be interested to see how the committee addresses these issues, especially given that drafting legislation is exceedingly difficult and the committee now has three meetings to draft the legislation.

Best Regards,

David T. McDonald

**From:** [Kim O'Hara](#)  
**To:** [Alvarez, Jose](#)  
**Subject:** FRDU comments for the Advisory Committee meeting, 4.18.18  
**Date:** Thursday, April 12, 2018 10:26:45 PM

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Dear Mr. Alvarez -

I have read through the letter to the Councilors from David McDonald and I would like to offer my comments.

These questions raised by Mr. McDonald are valid and deserve to be addressed by the committee and the Councilors. There are far too many unknowns going forward about how to structure these regulations and given the timetable (3 more meetings) it is absolutely ridiculous to think that the committee can address these issues and arrive at an agreed-upon set of DRs in the currently allotted timeframe.

Defining adjacent lands seems to be worthy of several meetings all by itself. How will you prevent sprawl? Why was the "orange" area added to the railroad overlay at the last minute? And does that mean the orange area will not be developed? How will you safeguard development from happening if that area was never intended to be a part of the overlay? And why on earth are we proceeding with DRs if, as Mr. Shaffer observed, none of the parcels in Phase 1 would be developed? Shouldn't you then be discussing the parcels that will ACTUALLY be developed? Where are those parcels? Their needs might be wholly different from the current overlay area.

Mr. Temple seems to think that his trains can haul anything along the line, which is in direct opposition to what the committee has stated in its proposals. Namely, that certain hazardous materials and chemical products are expressly excluded from being carried on this line. Which approach is the one that the council will take? And will that choice be protected by DRs?

What if an accident happens along the line? Who is responsible for damages to both the land, the rail and the people involved?

Further, what happens if a parcel designated in the overlay is sold (and developed as a FRDU parcel) and sold again to someone who does not want to use it for freight rail dependent uses? Can it revert back to agricultural land? How will you safeguard that change?

The request that each member disclose any and all financial interests that they possess regarding the development of the lands along the overlay route should absolutely be mandatory.

It seems to me that more and more questions are popping up as the committee delves further into this project. There also seems to be a fractured time line for how to answer these questions. I would advise that more time be allotted to this committee to allow for a much more thorough analysis of these issues raised by Mr. McDonald and other issues that will certainly arise going forward.

Sincerely,  
Kimberley O'Hara  
Vancouver, WA

## Proposed Definition Changes

Adjacent	<p>Parcels that <del>are close to or lying near</del> <del>abut</del> the short line railroad <del>or are located within 500 feet of the railroad</del> <u>identified in the overlay zone.</u></p> <p><i>Comment: The RCW does not say “abutting” or “immediately adjacent and the overlay map operationalizes the definition of adjacent.</i></p>
Dependent on	<p><del>Determined, influenced, or controlled by the short line railroad.</del> Relying on, <u>preferring</u> or requiring <del>the aid or support of</del> <u>access to transportation services of</u> the short line railroad.</p> <p><i>Comment: The CREDC data identifies preferred or non-preferred access to rail services. The railroad cannot determine, influence or control the freight rail dependent uses.</i></p>
Fabrication	<p>To make; create. To construct by combining or assembling <del>diverse, typically standardized</del> parts.</p> <p><i>Comment: Definition is commonly understood and not necessary.</i></p>
Freight rail dependent uses	<p>Buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods (excluding coal, liquefied natural gas, or “crude oil” as defined in RCW 90.56.010) where the use is dependent on and makes use of an adjacent short line railroad. <u>Such facilities are both urban and rural development.</u></p> <p><i>Comment: Definition is inconsistent with RCW unless urban and rural development is added. The definition is operationalized by the use table.</i></p>
Makes use of	<p>The act of using the short line railroad; <del>the application or employment of the short line railroad for a purpose. The condition or fact of being used. The permission, privilege, or benefit of using the short line railroad. The power or ability to access use the short line railroad. A customer of the short line railroad. The quality of being suitable or adaptable to the short line railroad; usefulness. Application or employment of the short line railroad.</del></p> <p><i>Comment: Carloads can vary from customer to customer of the railroad and at different times of the year.</i></p>

Overlay zone                      A zoning district which is applied over one or more previously established zoning districts, establishing ~~additional or stricter standards and~~ criteria for covered properties in addition to those of the underlying zoning district.

*Comment: Remove “additional or stricter standards” as it could be “different” or “less stringent” depending on the criteria.*

Processing                         A series of operations performed in the making or treatment of a product.

*Comment: Definition is commonly understood and not necessary.*

Short line railroad                Railroad lines designated Class II or Class III by the United States surface transportation board (36.70A.030(19)).

*Comment: Definition is commonly understood and not necessary.*

Storage                             The act of storing goods or the state of being stored

*Comment: Definition is commonly understood and not necessary.*

Transport                         To move or carry (goods, for example) from one place to another; convey.

*Comment: Definition is commonly understood and not necessary.*