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December 6, 2018

Mr. Steve Morasch, Chair
Clark County Planning Commission
c/o Sonja Wiser, Program Assistant
Clark County Community Planning
PO Box 9810
Vancouver, Washington 98666-9810

Dear Chair Morasch and Planning Commissioners:

Subject: Comments on CPZ2018-00020 Clark Regional Wastewater District: A proposal to amend Clark County Comprehensive Plan, Capital Facilities Element and Appendix E Capital Facilities Plans Review and Analysis Element to reflect the update of the Clark Regional Wastewater District Comprehensive General Sewer Plan
Sent via email to: sonja.wiser@clark.wa.gov

Thank you for the opportunity to comment on CPZ2018-00020. For the reasons documented below, we urge the Planning Commission to either recommend denial of the portions of amendment CPZ2018-00020 authorizing the extension of sewer services outside of the urban growth areas (UGAs) or wait until either the “rural industrial land banks” or the “freight rail dependent uses” are authorized in Clark County.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has supporters throughout Washington State including Clark County.

Parts of amendment CPZ2018-00020 will allow the Clark Regional Wastewater District to extend sewer service outside the UGAs to serve the “rural industrial land banks” and the areas where freight rail dependent uses may or may not be allowed.¹ The Growth Management Hearings Board has held three times that the “rural industrial land banks” are illegal because the land banks continue to meet the criteria for agricultural lands of long-term commercial significance.² While we recognize

¹ Clark Regional Wastewater District, *Comprehensive General Sewer Plan Clark County Planning Commission Power Point Presentation* p. 11 & pp. 19 – 20 (Nov. 15, 2018) accessed on Dec. 5, 2018 at: <https://www.clark.wa.gov/sites/default/files/dept/files/community-planning/General%20Sewer%20Plan%20Power%20Point.pdf>.

² *Clark County Citizens United, Inc., Friends of Clark County, and Futurewise v. Clark County*, Western Washington Region Growth Management Hearings Board (WWRGMHB) Case No. 16-2-0005c, Final Decision and Order (March 23, 2017), at 75 – 82 of 101 accessed on Dec. 5, 2018 at: <http://www.gmhba.gov/Global/RenderPDF?source=casedocument&id=5601>; *Clark County Citizens United, Inc. v. Clark County*, WWRGMHB Case No. 16-2-0005c, Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidation, Stay Order, and Supplement the Record (Jan. 10, 2018), at 23 – 26 of 29 accessed on Dec. 5,

that Clark County has appealed these decisions, for reasons of procedural and substantive law the County's appeals are unlikely to result in the Board's decisions related to the "rural industrial land banks" being reversed. Since the deadline for designating industrial land banks has passed, they cannot be redesignated as "rural industrial land banks" if the Board's decision is reversed.³

In addition, the Growth Management Hearings Board has also made a determination of invalidity for the "rural industrial land banks."⁴ This means that Clark County cannot approve permits to allow the construction of sewer facilities or any other public facilities and services within the "rural industrial land banks" until the determination of invalidity is reversed or lifted.⁵ This is the case whether the county claims the sewer facilities are authorized by a "rural industrial land bank" or the "freight rail dependent uses."

As to the areas where the "freight rail dependent" uses were proposed, the Clark County Board of Councilors has postponed action on that proposal until next year.⁶ There are also serious questions as to whether the railroad lease is legal.⁷ In my legal opinion, it is not. At this time, it is unknown if "freight rail dependent uses" will ever be authorized outside the urban growth areas in Clark County. Even if they are authorized, the parts of the Growth Management Act that authorize freight rail depended uses, if they are ever approved by Clark County, do not authorize the extension of urban governmental services, such as sewer lines, outside the UGAs.⁸ If the county approves the "freight rail dependent uses," extending sewer services outside the UGAs is still not authorized.

Therefore, it is premature to amend the Clark County comprehensive plan to extend the Clark Regional Wastewater District sewer service area outside the UGAs. So, we recommend the Planning Commission recommend denial of this part of proposed CPZ2018-00020. Or the County should propose action the service area expansions outside the UGAs until the rural industrial land banks are authorized and the determinations of invalidity are lifted or the county approves the freight rail dependent uses for at least some part of the County and decides it wants to roll the legal dice on authorizing sewer service to these areas.

2018 at: <http://www.gmhb.wa.gov/Global/RenderPDF?source=casedocument&id=6033>; *Clark County Citizens United, Inc. v. Clark County*, WWRGMHB Case No. 16-2-0005c, Second Order Finding Continuing Noncompliance (Oct. 17, 2018), at 13 – 14 of 15 accessed on Dec. 5, 2018 at:

<http://www.gmhb.wa.gov/Global/RenderPDF?source=casedocument&id=6271>.

³ RCW 36.70A.365(5), (6) accessed on Dec. 5, 2018 at:

<http://app.leg.wa.gov/RCW/default.aspx?cite=36.70A&full=true#36.70A.365>.

⁴ *Clark County Citizens United, Inc. v. Clark County*, WWRGMHB Case No. 16-2-0005c, Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidity, Stay Order, and Supplement the Record (Jan. 10, 2018), at 26 – 27 of 29.

⁵ RCW 36.70A.302(3)(a).

⁶ *Clark County Council extends meeting timeline regarding freight rail dependent uses* (10/30/2018) accessed on Dec. 5, 2018 at:

<https://www.clark.wa.gov/community-planning/clark-county-council-extends-meeting-timeline-regarding-freight-rail-dependent>.

⁷ Jake Thomas, *Lawyer says Chelatchie rail lease not valid: He claims deal with business in violation of county code* *The Columbian* (Nov. 25, 2018) accessed on Dec. 5, 2018 at: <https://www.columbian.com/news/2018/nov/25/lawyer-says-chelatchie-rail-lease-not-valid/>.

⁸ RCW 36.70A.030(9); RCW 36.70A.060(1)(a); RCW 36.70A.108(2).

Clark County Planning Commission Re: CPZ2018-00020
December 6, 2018
Page 3

Thank you for considering our comments. If you require additional information, please contact me at telephone (206) 343-0681 Ext. 102 and email: tim@futurewise.org.

Very Truly Yours,



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Director of Planning & Law