

November 15, 2017

Mr. Steve Morasch, Chair
Clark County Planning Commission
PO Box 5000
Vancouver, Washington 98666-5000

Dear Chair Morasch and Planning Commissioners:

Subject: Comments on Phase I Freight Rail Dependent Uses Policies and Overlay.

Sent via email to: communityplanning@clark.wa.gov

Thank you for the opportunity to comment on the on the Phase I Freight Rail Dependent Uses Policies and Overlay. 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. We have members across Washington State including Clark County. We have several suggestions to improve the proposed policies and overlay.

Freight rail dependent uses are only allowed adjacent to short line railroads

RCW 36.70A.060(1)(a) provides in relevant part that “[a]ny 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.”¹ Similarly, RCW 36.70A.108(2) provides that “[a]ny 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.070.² 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.”

Both provisions require that the freight rail dependent uses be on land or lands adjacent to shore line railroads. Adjacent means “‘abutting’ or ‘touching.’”³ This limitation makes sense since the legislative findings for the bill authorizing these uses stated that one of the purposes is to “alleviate strains on government infrastructure elsewhere” and that “there is a need for counties and cities to improve their planning under the growth management act to provide much needed infrastructure for freight rail dependent uses adjacent to railroad lines.”⁴

¹ Underlining added.

² Underlining added.

³ *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 791, 193 P.3d 1077, 1089 (2008).

⁴ Wash. Laws 2017 3rd Special Session Chapter 18 § 1.

However, both the overlay and the proposed policies allow freight rail dependent uses “on parcels” rather than land adjacent to the short line railroads as RCW 36.70A.060(1)(a) and RCW 36.70A.108(2) require. So, the overlay map should be limited to lands adjacent to a short line railroad. The policies should also be limited to lands adjacent to the short line railroad. Policy 3.9.2 should be modified to read as follows with our additions single underlined and our deletions single struck through:

3.9.2: Freight rail dependent uses will be allowed on lands adjacent to a short line railroad parcels with a freight rail dependent use overlay and where such uses minimize impacts on adjacent rural and resource uses.

A policy should protect adjacent agricultural, forest, or mineral resource lands from impacts that would interfere with their continued use

RCW 36.70A.060(1)(a)’s requirement that the county’s development “regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals” remains in effect. So, the county should adopt a policy to assure that freight rail depended uses do not interfere the continued use of adjacent agricultural, forest, or mineral resource lands for these natural resource uses. Buffers to prevent overspray and other natural resource impacts would be helpful as would measures to protect adjacent resource uses from noise, trespass, and other adverse impacts. We recommend the following policy with our additions single underlined:

3.9.4: Freight rail dependent uses shall be designed and incorporate measures, such as buffers, to ensure that the uses do not interfere with the continued use of adjacent agricultural, forest, or mineral resource lands. Freight rail dependent uses shall not interfere with ground and surface waters that adjacent agricultural, forest, or mineral resource lands rely upon.

A policy should encourage freight rail dependent uses within urban growth areas

Freight rail dependent uses may be allowed both inside and outside urban growth areas.⁵ So we recommend adding a policy encouraging freight rail dependent uses in the parts of urban growth areas appropriate for rail depended industrial and manufacturing uses. We recommend that the overlay be expanded to include those urban growth areas. Because most residents and public facilities and services are within urban growth areas, those are the better locations for those uses.

3.9.5: Freight rail dependent uses shall be encouraged in parts of the urban growth area suitable for industrial and manufacturing uses.

⁵ RCW 36.70A.030(9).

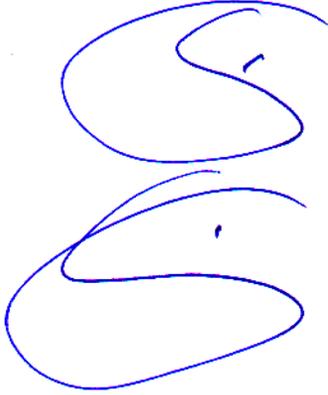
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Thank you for considering our comments. If you require additional information, please contact me at telephone 206-343-0681 Ext. 118 and email tim@futurewise.org

Very Truly Yours,

A handwritten signature in blue ink, consisting of two stylized, overlapping loops that resemble the letters 'S' and 'T'.

Tim Trohimovich, AICP
Director of Planning & Law

cc: Dr. Oliver Orjiako, Community Planning Director via email
oliver.orjiako@clark.wa.gov
Ms. Christine Cook, Clark County Prosecutor's Office - Civil Division via email:
Christine.Cook@clark.wa.gov