

Appendix I

Agency and Public Review Comments & Responses

From: [Harman, Chuck](#)
To: [Shawn Moore](#)
Cc: [Koch, Janis](#)
Subject: RE: District GSP - Public Health Approval Process
Date: Monday, June 11, 2018 12:36:17 PM
Attachments: [CCPHrvwCRWWDCompGenSewerPlanJune2018.docx](#)

Shawn – Attached are my notes from my review of the Comprehensive General Sewer Plan (CGSP).

I do have a few questions, but nothing that precludes our concurrence with the CGSP.

I did list some items for actions between our agencies around the Septic Elimination Program and spill reporting/notification. I have placed these on my to do list to work with CRWWD and will contact you in the future to discuss them.

Thank you for the opportunity to review the CGSP.

Please let me know if you have any questions or need any additional input from us.



Chuck Harman
Program Manager
CLARK COUNTY PUBLIC HEALTH DEPARTMENT

360.397.8019 360.831.5876 (CELL)



From: Harman, Chuck
Sent: Thursday, June 07, 2018 2:50 PM
To: 'Shawn Moore'
Cc: Koch, Janis; Wolfe, Roxanne
Subject: RE: District GSP - Public Health Approval Process

Hi Shawn – I have nearly completed my review. So far it all makes sense to me and I've assembled a few notes and comments.

I should be able to get those to you tomorrow.



CRWWD Comprehensive General Sewer Plan – Clark County Public Health Review

June 11, 2018

Review Notes:

Chuck Harman, Program Manager II
Clark County Public Health (CCPH) Department, Environmental Public Health

Summary:

CCPH reviewed the Clark Regional Wastewater District (District) Comprehensive General Sewer Plan (CGSP) at the request of the District. The scope of our review was to evaluate those aspects of the CGSP that had potential public health impacts or intersected with CCPH programs. During our review CCPH noted any significant errors, omissions or unclear descriptions. In addition we have commented on and/or made recommendations for edits to the plan or actions that we determined would improve aspects of the plan and future District operations as they relate to public health protection.

The scope of our review did not include detailed analysis of the engineering and financial models used to develop the Capital Improvement Plan (CIP), nor the methods used to project system usage and local demographics.

Below are our detailed notes, suggested edits, and recommendations made during our review. CCPH appreciates the opportunity to review and comment on the CGSP and looks forward to continuing a cooperative and collaborative relationship with the District to ensure safe and health-protective management of wastewaters in Clark County.

Conclusion:

Based on the scope of our review, CCPH concurs with and supports the CGSP and CIP. There are some detailed recommended edits in the detailed review notes. There are also some recommended actions described that CCPH will work with the District on separately.

CCPH Detailed Review Notes:

1. In Abbreviations, “MOV” should be “motor operated valves”. This is an apparent typographic error.
2. Figure 1.1 is not in the report I received. However, the information is provided through other figures. You do not need to send me the figure.
3. Figure 1.3 – I don’t know if there is a standard for presenting the gravity sewer pipe history (i.e. age), but I was wondering if it would be possible to see a map showing the age of the existing gravity sewer.
4. Section 1.6 , third bullet – “per capital” (twice used) should be “per capita”.

5. Section 3.3.1, 2nd paragraph (pg 3-19) – this final sentence includes reference to “special circumstances (i.e schools and documented health hazard areas).” What are examples of health hazard areas?
6. Section 4.4.1, page 4-4, last paragraph – When explaining reasons for allocating sewer funds for sewer extension projects, the document cites “reducing environmental impacts of septic systems”. CCPH requests that this reference be removed or more specifically explained. Our reasons for this request are as follows –
 - a. This wording implies that septic systems create negative environmental impacts. CCPH recognizes that older, poorly-maintained or failed systems can release untreated or partially treated wastewater that could threaten surface or subsurface waters. However, an appropriately designed, well-maintained septic system will have little impact on surface or groundwater.
 - b. Our On-Site Septic System (OSS) Program, developed through State and Local code and guidance, includes required inspections of all systems to ensure ongoing Operation and Maintenance (O&M), a compliance process for systems with deficiencies or failures, and a review of all septic system siting and system design to treat wastewaters to levels protective of groundwater. Minimum lot size requirements ensure that high density development could not utilize OSS for wastewater treatment.
 - c. CCPH is not aware of any confirmed cases where septic systems have impacted surface or groundwater at a larger than property-sized scale typically caused by failure, poor maintenance or older, under-designed systems. CCPH, through our Operation and Maintenance Program and complaints process investigates and takes action when there are septic system failures that threaten surface and groundwater.
 - d. Properly sited and maintained septic systems can actually serve as a more sustainable approach to water management by returning water to aquifers.
7. Section 6.4.2 – “VBLM” appears to be an acronym, but is not spelled out in this section or included in the glossary or abbreviation sections of this document.
8. Section 9.4 Sewage Spill Response Plan –
 - a. CCPH would like to be notified of spills or sanitary sewer overflows (SSOs) that present a public health threat where wastes are present in areas that could cause direct exposure. I suggest that we include CRWWD in the development of a protocol that we are working on with City of Vancouver to address spills that pose a public health threat. CCPH’s role would be notification of the public and potentially posting of areas or water bodies where wastes have discharged.
 - b. Does the District file a report with the Washington Environmental Report Tracking System (ERTS)?
9. Appendix G – Septic Elimination Program
 - a. CCPH will be updating our approach and coordination for the septic elimination program with the District. This includes CCPH reporting requirements for septic abandonment reports and outreach/communications of those requirements.
 - b. What information was used to create the “heat maps” in this appendix? What was the date that this data was generated?



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June 22, 2018

Chuck Harman, Program Manager II
Clark County Public Health (CCPH) Department, Environmental Public Health
1601 E 4th Plain Blvd
Building 17, 3rd Floor
Vancouver, WA 98661

RE: District Response – CCPH Detailed Review Notes

Thank you for taking the time to review the Clark Regional Wastewater District (District) Comprehensive General Sewer Plan (CGSP). The District has reviewed your email and letter dated June 11, 2018. We are pleased that CCPH concurs with and supports the CGSP. We are also committed to continuing a cooperative and collaborative relationship with Clark County Public Health (CCPH) which will be to the benefit of the residents of Clark County and the environment.

Consistent with your comments, the narrative in the CGSP has been edited to provide clarity, definition and/or fix typographical errors as requested. The District's response to each of the specific comments from CCPH is explained in greater detail in **Attachment A** to this letter. The District agrees to work with CCPH to address those action items which CCPH recommended for further and/or future coordination and cooperation. The District is committed to being an active partner with CCPH.

Thank you again for reviewing the CGSP. If you have any further questions, please do not hesitate to contact me. The District looks forward to continued engagement with the CCPH.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shawn Moore", is written over a horizontal line.

Shawn Moore
Assistant Manager



Attachment A

CCPH Review Comments and Responses

The County Public Health detailed review notes and comments on the CGSP are stated below in italics. The District responses follow each comment, explaining either the basis for the item in the plan or the action that has been taken.

CCPH Detailed Review Notes:

- 1) *In Abbreviations, "MOV" should be "motor operated valves". This is an apparent typographic error.*
 - The reference to MOV has been corrected in the Abbreviations

- 2) *Figure 1.1 is not in the report I received. However, the information is provided through other figures. You do not need to send me the figure.*
 - Fig 1.1, Service Area Map, has been included.

- 3) *Figure 1.3 – I don't know if there is a standard for presenting the gravity sewer pipe history (i.e. age), but I was wondering if it would be possible to see a map showing the age of the existing gravity sewer.*
 - There is no adopted standard for presenting the pipe history. The District chose to use the chart included in the plan to simply reinforce a summary level understanding of pipe age. A map was considered, but the detail afforded by an 11x17" map wasn't sufficient to convey the information. The District has pipe installation dates in GIS and the data has been used to prepare such a map. A copy of the map will be provided to CCPH under separate cover.

- 4) *Section 1.6, third bullet – "per capital" (twice used) should be "per capita".*
 - The population references have been corrected to appropriately represent "per capita".

- 5) *Section 3.3.1, second paragraph (pg 3-19) – this final sentence includes reference to "special circumstances (i.e. schools and documented health hazard areas)." What are examples of health hazard areas?*
 - The specific reference to "documented health hazards" makes use of the language from County Code, UDC 40.370.010(E). The District's broader comment, in general, is intended to refer to the exceptions which are granted to allow for service outside of the urban growth area. Consistent with 36.70A.110(4) RCW, the exceptions are

“those limited circumstances shown to be necessary to protect basic public health and safety and the environment”. Such a designation or determination would be made by CCPH, prior to County authorizing District to provide service. Elsewhere, the County uses the term “imminent health hazards” in the ‘Framework Plan Policies 6.2.0’.

6) *Section 4.4.1, page 4-4, last paragraph – When explaining reasons for allocating sewer funds for sewer extension projects, the document cites “reducing environmental impacts of septic systems”. CCPH requests that this reference be removed or more specifically explained. Our reasons for this request are as follows –*

- a) *This wording implies that septic systems create negative environmental impacts. CCPH recognizes that older, poorly-maintained or failed systems can release untreated or partially treated wastewater that could threaten surface or subsurface waters. However, an appropriately designed, well-maintained septic system will have little impact on surface or groundwater.*
- b) *Our On-Site Septic System (OSS) Program, developed through State and Local code and guidance, includes required inspections of all systems to ensure ongoing Operation and Maintenance (O&M), a compliance process for systems with deficiencies or failures, and a review of all septic system siting and system design to treat wastewaters to levels protective of groundwater. Minimum lot size requirements ensure that high density development could not utilize OSS for wastewater treatment.*
- c) *CCPH is not aware of any confirmed cases where septic systems have impacted surface or groundwater at a larger than property-sized scale typically caused by failure, poor maintenance or older, under-designed systems. CCPH, through our Operation and Maintenance Program and complaints process investigates and takes action when there are septic system failures that threaten surface and groundwater.*
- d) *Properly sited and maintained septic systems can actually serve as a more sustainable approach to water management by returning water to aquifers.*
 - The reference has been restated to read “reducing environmental impacts of **failing** septic systems”. As stated, on-site systems that are sited, designed and maintained well can be effective systems. Consistent with County framework plan policies in the comprehensive plan, the District is generally just seeking to promote the extension of sewer service throughout the urban area.

7) *Section 6.4.2 – “VBLM” appears to be an acronym, but is not spelled out in this section or included in the glossary or abbreviation sections of this document.*

- VBLM refers to the Clark County ‘Vacant Buildable Lands Model’. The acronym has been added in the abbreviations.

8) *Section 9.4 Sewage Spill Response Plan –*

a) *CCPH would like to be notified of spills or sanitary sewer overflows (SSOs) that present a public health threat where wastes are present in areas that could cause direct exposure. I suggest that we include CRWWD in the development of a protocol that we are working on with City of Vancouver to address spills that pose a public health threat. CCPH's role would be notification of the public and potentially posting of areas or water bodies where wastes have discharged.*

- Standard District operating procedures state that CCPH is to be notified for any spill where there has been 500 gallons or more of sewage discharged, or where the impact of the spill is ongoing, where the site, following clean up, may present a continued health risk, or the spill is in close proximity to the general public, or wastewater entered a public waterway or stormwater system discharging into a public waterway. In general, staff are directed that if we need to put up any type of temporary signage, fencing or warning tape, CCPH is to be notified.

b) *Does the District file a report with the Washington Environmental Report Tracking System (ERTS)?*

- The District has been notifying Ecology and providing them information via phone, email and mail.

9) *Appendix G – Septic Elimination Program*

a) *CCPH will be updating our approach and coordination for the septic elimination program with the District. This includes CCPH reporting requirements for septic abandonment reports and outreach/communications of those requirements.*

- CCPH engagement is appreciated. In accordance with prior communications, the District has directed staff to no longer provide any inspection or witnessing of septic tank decommissioning. Staff is directed to refer the property owner to CCPH regarding the requirements for proper abandonment. District will continue to provide CCPH with a copy of the District side sewer permits for existing residences, following connection to public sewer.

b) *What information was used to create the “heat maps” in this appendix? What was the date that this data was generated?*

- The District used a combination of parcel, septic and VBLM data from Clark County GIS and cross-checked that information with the District customer database. The particular map referenced was created in June 2017. Additional studies and mapping were completed to inform the selection of the near-term SEP capital

projects and estimate the overall scope of the program, but which were not included in the CGSP. If of interest, this information can be shared with CCPH. The District would like to further engage with CCPH so that we can ensure that the investments are being made in those areas which will provide the most benefit. The effort in 2017 was an abbreviated study, but a more in depth look at the Septic Elimination Program is intended in the near future. CCPH could provide a lot of value to that process.



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 black ink, appearing to read "Sue Marshall". The signature is fluid and cursive, with the first name "Sue" written in a larger, more prominent script than the last name "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

PDR 9556 - 002009

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



COMMISSIONERS
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Denny Kiggins
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Phone (360) 750-5876 Fax (360) 750-7570 www.crwwd.com

December 26, 2018

Sue Marshall
President
Friends of Clark County
PO Box 156
Ridgefield, WA 98642-0156

Re: Public Comments - CPZ 2018-00020

Thank you for taking time to submit written comments on the proposed amendments to the capital facilities element and Appendix E of Clark County's comprehensive plan, related to the Clark Regional Wastewater District (District) Comprehensive General Sewer Plan (GSP), CPZ 2018-00020. The provision of sewer service is an important element in managing growth and protecting public health and the environment. The District shares your interest in ensuring that the community grows in a manner which is in conformance with local and state regulations. As stated below, the comments regarding the provision of sewer service to the Rural Industrial Land Bank (RILB) and the Freight Rail Dependent Use Overlay (FRDUO) areas have been addressed in the County's proposed comprehensive plan amendments and in the District's GSP.

Planning Commission Public Hearing

The Clark County Planning Commission conducted a public hearing on the matter on December 6, 2018. Written comments had been received in advance from two parties, Friends of Clark County and Futurewise. Both comment letters addressed the issue of sewer service to the RILB and the FRDUO areas. Both parties also recommended that the County either delay action on the proposed amendments or deny that portion of the amendments specific to the RILB and FRDUO areas. A representative from Friends of Clark County was also in attendance at the hearing and provided oral comment. A complete record of the hearing is available on-line at: <https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>.

Proposed County Comprehensive Plan Amendments

The County and District have been working together to ensure the proposed amendments were presented in a manner consistent with local and state regulations. Prior to the Planning Commission hearing, the contemplated capital improvements for the RILB and FRDUO areas were removed from the County's proposed comprehensive plan amendments. As was explained by County staff to the Planning Commission, the County would therefore have to take additional action to further amend the comprehensive plan if it were to decide to allow sewer service to be extended to the RILB and FRDUO areas. Having understood this condition, the Planning Commission recommended approval of the amendments to the County Council.



GSP Framework

The GSP provides a framework for managing the collection system to meet the present and reasonably foreseeable future needs of the community. The District had "studied" the feasibility of providing service to the RILB and FRDUO areas as studying the provision of service to these areas is consistent with the requirements of RCW 57.16.010(2). Technical information regarding the feasibility of extending service and whether or not capacity is available would inform and facilitate discussions on the matter. It was understood that the decision as to whether sewer service would be provided has not been made and that there were broader planning and land use issues which remained to be addressed before making such a decision. As such, the FRDUO and RILB were represented as "Study Areas" in the GSP. The plan also clearly stated that service to the RILB and FRDUO areas had not been authorized nor did adoption of the GSP authorize such service (refer to GSP Section 3.3.1 for specific language). Furthermore, the plan reiterated that GMA compliance had to be demonstrated prior to the County authorizing the District to extend service within the RILB and FRDUO areas.

Again, thank you for providing public comment on the matter of CPZ 2018-00020. The proposed amendments promote consistency across the County and District's comprehensive plans and provide for the capital facilities to extend service within the urban growth area. If a future decision is reached regarding the extension of service within the RILB and FRDUO areas, subsequent County action to approve additional comprehensive plan amendments would be required.

Sincerely,



Shawn G. Moore, PE
Assistant Manager

cc: Oliver Orjiako, Director, Community Planning, Clark County
Christine Cook, Senior Deputy Prosecuting Attorney, Clark County



816 Second Ave, Suite 200, Seattle, WA 98104
p. (206) 343-0681
futurewise.org

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>.

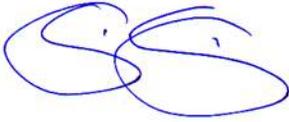
⁷ Jake Thomas, *Lawyer says Chelatchie rail lease not valid: He claims deal with business in violation of county code* *The Columbian* (Nov. 25, 2018) accessed on Dec. 5, 2018 at: <https://www.columbian.com/news/2018/nov/25/lawyer-says-chelatchie-rail-lease-not-valid/>.

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,



Tim Trohimovich, AICP, WSBA No. 22367
Director of Planning & Law



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December 26, 2018

Tim Trohimovich
Director of Planning & Law
Futurewise
816 Second Ave, Suite 200
Seattle, WA 98104

Re: Public Comments - CPZ 2018-00020

Thank you for taking time to submit written comments on the proposed amendments to the capital facilities element and Appendix E of Clark County's comprehensive plan, related to the Clark Regional Wastewater District (District) Comprehensive General Sewer Plan (GSP), CPZ 2018-00020. The provision of sewer service is an important element in managing growth and protecting public health and the environment. The District shares your interest in ensuring that the community grows in a manner which is in conformance with local and state regulations. As stated below, the comments regarding the provision of sewer service to the Rural Industrial Land Bank (RILB) and the Freight Rail Dependent Use Overlay (FRDUO) areas have been addressed in the County's proposed comprehensive plan amendments and in the District's GSP.

Planning Commission Public Hearing

The Clark County Planning Commission conducted a public hearing on the matter on December 6, 2018. Written comments had been received in advance from two parties, Friends of Clark County and Futurewise. Both comment letters addressed the issue of sewer service to the RILB and the FRDUO areas. Both parties also recommended that the County either delay action on the proposed amendments or deny that portion of the amendments specific to the RILB and FRDUO areas. A representative from Friends of Clark County was also in attendance at the hearing and provided oral comment. A complete record of the hearing is available on-line at: <https://www.clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>.

Proposed County Comprehensive Plan Amendments

The County and District have been working together to ensure the proposed amendments were presented in a manner consistent with local and state regulations. Prior to the Planning Commission hearing, the contemplated capital improvements for the RILB and FRDUO areas were removed from the County's proposed comprehensive plan amendments. As was explained by County staff to the Planning Commission, the County would therefore have to take additional action to further amend the comprehensive plan if it were to decide to allow sewer service to be extended to the RILB and FRDUO areas. Having understood this condition, the Planning Commission recommended approval of the amendments to the County Council.

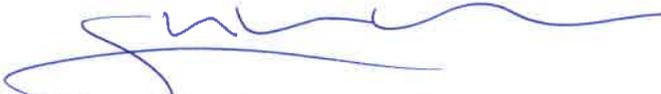


GSP Framework

The GSP provides a framework for managing the collection system to meet the present and reasonably foreseeable future needs of the community. The District had "studied" the feasibility of providing service to the RILB and FRDUO areas as studying the provision of service to these areas is consistent with the requirements of RCW 57.16.010(2). Technical information regarding the feasibility of extending service and whether or not capacity is available would inform and facilitate discussions on the matter. It was understood that the decision as to whether sewer service would be provided has not been made and that there were broader planning and land use issues which remained to be addressed before making such a decision. As such, the FRDUO and RILB were represented as "Study Areas" in the GSP. The plan also clearly stated that service to the RILB and FRDUO areas had not been authorized nor did adoption of the GSP authorize such service (refer to GSP Section 3.3.1 for specific language). Furthermore, the plan reiterated that GMA compliance had to be demonstrated prior to the County authorizing the District to extend service within the RILB and FRDUO areas.

Again, thank you for providing public comment on the matter of CPZ 2018-00020. The proposed amendments promote consistency across the County and District's comprehensive plans and provide for the capital facilities to extend service within the urban growth area. If a future decision is reached regarding the extension of service within the RILB and FRDUO areas, subsequent County action to approve additional comprehensive plan amendments would be required.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shawn G. Moore", with a long horizontal flourish extending to the right.

Shawn G. Moore, PE
Assistant Manager

cc: Oliver Orjiako, Director, Community Planning, Clark County
Christine Cook, Senior Deputy Prosecuting Attorney, Clark County



Planning Commission Recommendation

TO: Clark County Council
FROM: Steve Morasch, Planning Commission Chair
PREPARED BY: Jose Alvarez, Planner III
DATE: January 8, 2019
SUBJECT: CPZ2018-00020 COMPREHENSIVE GROWTH MANAGEMENT PLAN 2015-2035 POLICY AND CORRESPONDING TEXT AMENDMENTS (CHAPTER 6 Capital Facilities Element and Appendix E)

PLANNING COMMISSION RECOMMENDATION

On December 6, 2018, the Planning Commission voted 7 to 0 to approve the staff recommendation to amend the Comprehensive Growth Management Plan 2015-2035 Capital Facilities Element and Appendix E to reflect the update to Clark Regional Wastewater District Comprehensive General Sewer Plan (GSP).

PROPOSED ACTION

The proposal is to amend the Comprehensive Growth Management Plan 2015-2035 Capital Facilities Element and Appendix E to reflect the update to Clark Regional Wastewater District Comprehensive General Sewer Plan (GSP). The district has studied several areas consistent with the requirements of RCW 57.16.010(2), which requires the District to consider “present and reasonably foreseeable future needs” of the sewer system. Two of these areas, the Rural Industrial Land Bank and the 2016 Ridgefield UGA expansion, are in litigation. The third area is the Freight Rail Dependent Use Overlay. The district has determined there is sufficient capacity to serve the study areas. However, the County has not determined that these study areas are in compliance with the provisions of RCW 36.70A.110 and extension of sewer service will be prohibited until the County makes that determination. These areas are not included in the 6-year CIP. For the County to adopt the GSP by reference, any projects and or costs related to the study areas must be removed from the GSP 20 year list of projects. Below is the language from the GSP that addresses the study areas:

GSP Service Area & Land Use - Study Areas (pg. 3-12)

The District has studied the following areas as part of this Plan (Study Areas), consistent with the requirements of RCW 57.16.010(2), which requires the District to consider “present and reasonably foreseeable future needs” of the sewer system. (See Maps 2-1712A, B & 3-602A, B). This Plan establishes that the District sewer system has adequate capacity for the Study Areas and that sewer service is feasible for the Study Areas. Because Clark County has not yet approved sewer service for the Study Areas, the District cannot currently extend sewer service to the Study Areas. If Clark County

(and or the local government with jurisdiction if applicable) approves sewer service for a Study Area, the District then will have authority to extend sewer service to the Study Area. Clark County's and or the local government's approval must be consistent with the requirements of RCW 36.70A.110 and RCW 57.16.010(7), which states in part that: "The general comprehensive plan [of the District] shall not provide for the extension or location of facilities that are inconsistent with RCW 36.70A.110."

Exhibit 3 contains the language in the GSP that addresses the study areas. The proposed amendments to the Comprehensive Plan are attached in Exhibit 1 and Exhibit 2.

BACKGROUND

A Comprehensive General Sewer Plan (CGSP) provides a comprehensive aid in managing and operating a system of public sewers and coordinating expansions, upgrades and renewal of the collection system infrastructure for the next 20 years. The CGSP serves as a guide for policy development and decision making, providing information on the plans for improvements to the sewer system within the District's service area. The CGSP satisfies the requirements for a general comprehensive plan (GCP) and a general sewer plan (GSP). The GCP is prepared in accordance with the requirements of RCW 57.16.010. The GSP is prepared in accordance with the requirements of RCW 90.48.110 and WAC 173-240-010, 173-240-020, and 173-240-050.

SUMMARY OF PUBLIC INVOLVEMENT PROCESS

A draft of the proposed amendments to the Comprehensive Growth Management Plan 2015-2035 Capital Facilities Element and Appendix E was sent to the Department of Commerce on September 11, 2018 under RCW 36.70A.106. Clark Regional Wastewater District took lead agency status and published a Notice of Determination of Non-Significance and SEPA Environmental Checklist on May 4, 2018. A legal notice was published for the Planning Commission hearing on November 21, 2018.

December 6, 2018 Friends of Clark County submitted comments concerned with the extension of sewer service outside of the UGA to serve the Freight Rail Dependent Use Overlay and Rural Industrial Land Bank.

December 6, 2018 Futurewise submitted comments concerned with the extension of sewer service outside of the UGA to serve Freight Rail Dependent Use Overlay and the Rural Industrial Land Bank.

APPLICABLE CRITERIA, EVALUATION AND FINDINGS

CRITERIA FOR COMPREHENSIVE PLAN POLICY OR TEXT CHANGES

The amendment shall meet all the requirements of and be consistent with the Growth Management Act (GMA) and other requirements, the countywide planning policies, the Community Framework Plan, the comprehensive plan, local comprehensive plans, applicable capital facilities plans and official population growth forecasts. [CCC40.560.010(N)(2)(a)].

Growth Management Act (GMA)

The GMA goals set the general direction for the county in adopting its framework plan and comprehensive plan policies. The GMA lists thirteen overall goals in RCW 36.70A.020 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 12.

Goal 12 speaks directly to public facilities and services to “ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below established minimum standards.” [RCW 36.70A.020(12)].

RCW 36.70A.110(4) Comprehensive Plans - Urban Growth Areas

(4) 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.

WAC 365-196-415 Capital Facilities Element

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

- (a) Summarize this information within the capital facilities element;
- (b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and
- (c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

Finding: The proposed amendments reflect CRWWD’s updated general sewer plan and are consistent with the provisions of the GMA.

Community Framework Plan

The 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 Community Framework Plan policies applicable to this proposal include the following:

Goal 6.0 notes “the need for capital facilities to accommodate expected growth and establish policies to ensure that these facilities are available when development is occupied and to provide for the extension of public utilities to new development in a timely manner.”

[Framework Plan, page 18] The following capital facilities and utilities policies apply to the proposed action:

6.1.0 Major public and private expenditures on facilities and services (including libraries, schools, fire stations, police, parks and recreation) are to be encouraged first in urban and rural centers.

6.1.1 Establish level-of-service standards for capital facilities in urban and rural areas. [Framework Plan, page 18].

6.2.0 Public sanitary sewer service will be permitted only within urban areas, except to serve areas where imminent health hazards exist.

These framework plan policies are implemented by Clark County Code 40.370.010 Sewerage Regulations. It is the purpose of this section to further the public health by providing clear rules for when connection to public sewer is required or prohibited.

Finding: The proposed amendments reflect CRWWD's updated general sewer plan and are consistent with the Community Framework Plan policies.

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 6.0.15 states "Plans for providing public utility services shall be coordinated with plans for designation of urban growth areas, rural uses and for the transition of undeveloped land to urban uses."

Policy 6.1.2 states "The primary role of Clark County regarding service provisions shall involve the planning and delivery of regional, rather than urban, services. It is the policy of Clark County that, in general, cities or special service districts are the most appropriate units of local government to provide urban governmental services and that, in general, it is not appropriate that urban governmental services be extended or expanded to 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."

Finding: The proposed amendments reflect CRWWD's updated general sewer plan and are consistent with the policies in the Community Framework Plan and the Countywide Planning Policies.

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: Ensure that necessary and adequate capital facilities and services are provided to all development in Clark County in a manner consistent with the 20-Year Plan.

- 6.1.1 Continue to plan for and provide capital facilities and services as necessary to support development consistent with the 20-Year Plan and coordinate and facilitate the planning and provision of such facilities and services by other public or private entities.

- 6.1.7 Clark County incorporates by reference the sewer and water Capital Facilities Plans of the Clark Regional Wastewater District, Clark Public Utilities and the City of Vancouver. The county should review future changes to these Capital Facilities Plans on an ongoing basis to ensure that consistency with county capital facility and land use plans is maintained.

Goal: Provide sewer service within urban growth areas efficiently and at least public cost.

- 6.3.8 Extension of public sewer service shall not be permitted outside urban growth areas, except in response to documented health hazards; or to provide public sewer to regional park facilities, K-12 public schools, in designated rural centers; or where the county has contractually committed to permit public sewer connection.

- 6.3.9 Sewer service plans shall be coordinated with the 20-Year Plan policies and maps, including urban growth area designations.

Finding: The proposed amendments reflect CRWWD's updated general sewer plan and are consistent with the Comprehensive Growth Plan policies.

RECOMMENDATION AND CONCLUSIONS

Based on the information presented in this report, the Planning Commission forwards a recommendation of **APPROVAL** to Clark County Councilors to adopt the Comprehensive plan amendments (Exhibit 1 and 2) and the GSP by reference including the amended language (Exhibit 3). Any projects and or costs related to the study area shall be removed from the GSP 20 year list of projects.

COMPLIANCE WITH APPLICABLE CRITERIA		
Criterion for Policy/Text Amendments	Criteria Met?	
	Staff Report	Planning Commission Findings
Consistency with GMA	Yes	Yes
Community Framework Plan	Yes	Yes
Countywide Planning Policies	Yes	Yes
20-Year Comprehensive Plan	Yes	Yes
Capital Facilities Plan	Yes	Yes
Recommendation: Approval	Yes	Yes