



**Freight Rail Dependent Uses Advisory Committee
Summary Meeting Notes
May 23, 2018**

This document includes action items and summary meeting notes captured during the Freight Rail Dependent Uses Advisory Committee (FRDUAC) meeting held on Wednesday, May 23, 2018 at the CASEE Center in Brush Prairie, WA from 6:00-8:30 pm. The document includes key points from the discussion and does not provide a word for word transcription of the meeting. Please visit <https://www.clark.wa.gov/community-planning/freight-rail-dependent-uses-advisory-committee> for an audio recording.

About the Committee

The FRDUAC members were appointed by the Clark County Council on March 13, 2018 via Resolution No. 2018-03-05.

Advisory committee members present: Brittany Bagent (subbing for Max Ault), Dick Clairmont, Anne Lawrence, Lloyd Lycan, John Shaffer, John Spencer, Eric Temple (ex-officio), Daniel Weaver

Advisory committee members absent: Kent Cash, Sam Crummett/Erin Erdman, Eric Fuller, Ray Steiger (resigned)

Action Items

1. Revise 5/9 meeting notes with the recommended edit to the mining section, to clarify that in instances of two overlays on a site, one overlay could be implemented and then the site could be developed differently and employ the second overlay.	Planning staff	Share with group by EOD 5/30/18
2. Complete cross reference check on other code sections and add reference to the new FRDU overlay section where needed	Planning staff	As soon as work is complete. Provide status update at 6/6/18 meeting.

Bin List (list is cumulative and some items listed were mentioned at a previous meeting)

Item
1. Commodities – 90% of national freight rail vs. county code Table 40.230.085-1
2. Revisit question about slide #10 to address why Section 5 of ESB 5517 was reflected in the Rural and Natural Resource Element of the Comprehensive Plan
3. Revisit definition of “adjacent”
4. Address urban services
5. Revisit sewage (NAICS 22132) to decide if should be part of use table

Proposed Agenda Topics for Next Meeting

1. Development standards



- a. Finish dimensional standards table discussion
- b. Finish discussion on remaining development standards topics
 - i. Determine which, if any of the standards in 40.230.085 make sense for freight rail-dependent uses
 - ii. Determine if any other standards might apply
 - iii. Address compatibility with agriculture/resource protection
 - iv. Address urban services, including sewer
2. Amendment procedures
 - a. Develop an approach for amending the FRDU overlay map in the comprehensive plan
 - b. Confirm approach for amending the FRDU regulations in Clark County Code
3. Review and wrap-up
 - a. Complete cross reference check on other code sections and add reference to the new FRDU overlay section where needed
 - b. Run through wrap-up checklist to determine if/when work complete

Notes

- The group reviewed upcoming dates and additional meeting times:
 - Two additional meeting dates were added to the schedule in case they are needed:
 - The next meeting is scheduled for Wednesday, June 6th at 6pm at the Public Service Center 6th Floor Training Room, 1300 Franklin Street, Vancouver, WA 98666.
 - If needed, a Wednesday, June 20th meeting will be held 6pm back at the CASEE building in Brush Prairie, WA.
 - There is a Clark County Council work session on this project scheduled for June 13th at 11am in the Public Service Center, 6th Floor Training Room, 1300 Franklin Street, Vancouver, WA 98666. This meeting is to provide an update to the county council on where the group is at. José will be submitting materials for this meeting next week based on what the group gets through at this meeting, and will then provide updated information after the group's meeting on June 6th.
- The group reviewed and approved the May 9 meeting notes with one edit to the mining section on page 3, to clarify that in instances of two overlays on a site, such as a mining overlay and a freight-rail dependent use overlay, a site could first be mined, and then later developed for a freight-rail dependent use.
- The group reviewed the new batch of meeting materials.
- The group continued work on the FRDU use table and revisited items planning staff had questions about or additional information to share. For instance, the group clarified:
 - NAICS 22132, sewage treatment facilities, includes businesses such as sewage treatment plants. Storage of parts for sewer systems would fall under storage yards. The county's utility code, 40.260.240, covers the types of utilities permitted in any zoning district.
 - The group revisited retail bakeries, NAICS 311811, and retail sales of products fabricated on site (D. Retail Trade). The group landed on keeping the retail bakeries with a footnote and did not permit retail sales of products fabricated on site.
 - The group also discussed if there is a use someone wants and it is not on the use table, then they could request that the county update the use table.
 - The group revisited accessory uses and chose to keep them in the use table.
 - The group discussed the agriculture, forestry, fishing and hunting section of uses (NAICS 11), since these uses are already permitted on the underlying zones where FRDU is an option. The group discussed whether or not you can pursue any of the uses on the underlying zone when employing the overlay zone. The idea is that the freight rail dependent uses would be in addition to the uses permitted in the underlying zone, but the group could see potential use incompatibility issues.

- The group decided to keep agricultural uses in the table, just in case there is confusion about underlying zone uses and the overlay.
- The group revisited the topic of having a footnote associated with each permitted use that clarifies that the use also needs to meet the definition of freight rail-dependent use.
 - The group agreed to add a sentence before the use table that says something like: “Uses in the table shall be consistent with the freight rail definition below,” instead of a footnote on each line item.
 - This option would be a unique case, as it is not typically seen in code.
 - A similar sentence could be included in the rail use plan section of code too.
 - The group noted they might need footnotes associated with accessory uses, to acknowledge they are only allowed in conjunction with a permitted use.
- The group discussed the meaning of conditional uses.
 - Conditional uses are usually those uses with additional impact and the conditions help mitigate those additional impacts.
 - The conditional use review process is similar to the permitted use review process, but it is a way of trying to take care of, buffer and mitigate those impacts.
 - Typically the applicant will propose conditions, such as mitigation measures to deal with the impacts. During the review process, staff considers those and tries to decide if they are enough or if additional mitigation is necessary.
 - Conditional uses start as staff review, however, anyone can ask for the review process to go in front of a hearing’s examiner. A hearings examiner would consider the proposed conditions to determine if they are sufficient to address the impacts.
 - In some circumstances, the county may need to ask an applicant for additional studies/information on certain impacts, and there can be costs associated with that.
 - Regarding performance standards: if a use is permitted on the use table, then the performance standards need to be met. If a use is conditional, you could potentially put conditions on a use in addition to the items listed in the performance standards.
 - The group decided to use an approach of reviewing the existing industrial use table and discuss items that are conditional in any of the other existing industrial zones. Some of the existing industrial zones are light industrial while others are heavy industrial and the group will need to decide what the freight rail dependent use overlay zone is: light, heavy, or a blend of both.
 - Staff noted conditional uses in rural and resource zones. For instance, schools and churches are conditional in all rural zones.
 - The group decided to take a break and then hear public comment.

Public Comment

- **Public Comment:** The speaker is with Clark County Citizens United. I have been reviewing various documents regarding the bill, including the intent of the bill, the overlay, Clark County’s ordinance, ESB 5517, and the work sessions. I’m just going to pick out items here. The ordinance says: “it is to improve mobility and access for the movement of goods and services on the short line railroad to enhance and promote economic opportunity throughout the county.” Also: “allocate or reserve corridor capacity for land use that is likely to produce family wage jobs.” That was the goal of the ordinance. There’s no comment within any of this ordinance regarding trails, and yet the Parks Department is asking for \$2.5 million from the county in order to provide trail access. So that is a big concern for CCCU. And this Exhibit 2, this is also county advisory committee, and it says: “permit freight rail dependent uses on parcels adjacent to the railroad if adopted by the county councilors, such uses would allow rural, agriculture and forest zoned lands.” There has been no discussion about any of these resource lands and how they really apply to what the bill was actually proposed for, for rural lands to have economic viability. There is a large section in the GMA that talks about economic viability in the rural areas that are not experiencing economic viability; that is Clark

County right now. ESB 5517, implementing process scenario one and scenario two: one is based on considering all 33-miles of the rail line consistent with the language of 5517. And then your implementing process scenario two is development regulations. In what I'm seeing, you're not really following ESB 5517. Here is an example: in your alternative scope of work, you consider from Brush Prairie south. That whole 33-miles of line is talked about in the conversation when the bill was passed in the legislature. And 33-miles is consistent with other documents too. In a document that was handed out here, it says you are excluding zone R5. The council has tasked the Freight Rail Dependent Advisory Council to provide input on implementing the law. This Senate bill report also talks about it, Lynda Wilson also talks about it. And, the Parks Department has other plans for this rail line. So, somehow, you have got to get your heads together. The reason you are sitting at the table is to create jobs. So, hopefully that's what's going to happen.

- **Public Comment:** The speaker is with Clark County Citizens United. I believe the success of implementing ESB 5517 is being seriously limited and the result won't look like what the bill intended at all or will be just a shadow of what was intended, and that is to create thousands of jobs in the rural areas. If you go back to the legislation and listen to the conversation that went on prior to its adoption, it was about good family-wage jobs in the rural areas. I don't feel like the door is being swung wide open to a bigger and wider perspective. I think the approach is being taken of a very narrow view. We have been at all of your meetings and not once have I heard a conversation about prospective jobs that would be created or what the potential is here. If this business was eliminated, or if this one was brought in, how many good jobs is that going to create? How is it going to impact our community, the rural areas? You go back to the bill, it's about creating jobs in agro, forestry and mineral lands. We have spent time looking at this map [1/4 mile extent map], it was first proposed to go just 500 feet out from the rail line, now this is a 1/4 mile, but maybe 1/3 of it can't be used. And I think you need an honest discussion from the staff about the purpose of the land out in the rural areas. You have Brush Prairie right up here just waiting to be developed. I think you need to have an honest discussion about which perspective you are going to take. Will you have a narrow view or a wide-ranging view, throwing open all opportunities? What was the intent of this bill? How are you moving forward to spur economic growth with the way that you are going?
- **FRDUAC Comment:** Wanted to point out that when we started this process, the goal was to include all 33 miles and I think this was just the first step. I think their concerns are warranted but this is the first step, toe in the water. The rest of the land that they are talking about is something we can do next year or the year after. We talked about a 2-year, \$400,000 study to get it all done. It was a high hurdle.
- **Public Comment:** The Governor requested a Department of Commerce write a report that is due 2022. I figure, we're almost at 2019 right now, he wants to know the number of jobs this bill has generated coming out of Clark County and the state is watching the returns on this.
- **FRDUAC Comment:** It is a capitalist system, we don't control who hires who. We are trying to follow the law, the way it was written and I think we came to do exactly that. I would like to agree with the earlier comment that we are just getting started. I don't think we are trying to eliminate anything. We are trying to make it work with the restrictions that we have.
- **Public Comment:** But you don't have any restrictions, it is a wide-open bill. Why was the overlay not brought into Brush Prairie? **Staff Comment:** When we created this, we wanted to stay within the environmental analysis we had done for the 2007 Comprehensive Plan, which showed much of the area as light industrial but did not include the Brush Prairie Rural Center.. **Public Comment:** So there weren't any studies for Brush Prairie when those businesses were created? Was it too long ago? **Staff Comment:** The environmental analysis we have was from the 2007 comprehensive plan and we brought in a huge swath of land into the urban growth boundary to be industrial in this area. So we tried to stay within that area and Brush Prairie was not included in that. **FRDUAC Comment:** And there was a short timeline.

Notes (continued)

- The group reviewed the draft use table and looked across the other industrial zones, to decide where conditional uses make sense for FRDU.
- For chemical manufacturing, staff clarified that you could have different conditions for different chemicals.
- For conditional uses, the county generally assumes the use is allowed and staff will look for ways to buffer or mitigate for the neighbors. To completely deny a conditional use permit is not what we typically expect. If two uses were incompatible, then you would not want to allow it.

Public Comment

- **Public Comment:** When you say something that produces an odor is conditional, what happens if you can't get rid of the odor? What kind of confidence do we have that mitigation would remove the threat to the surrounding areas? **Staff Comment:** The performance standards in the current industrial code has two basic sections: "(1) The odor abatement for the project shall comply with the best available control technology for odor control; and (2) The emissions will not exceed SWCAA General Regulations." We would probably consider a study from the applicant and then get additional input on an odor issue. **FRDUAC Comment:** The county could require monitoring and could require copies of the monitoring report. **Public Comment:** If the requirement is that you cut down the horrible odor by 50%, that's not going to work for the people who live there. It seems like an item that will cause odor should be eliminated from the use table rather than saying it's ok and hoping it works out. **FRDUAC Comment:** Does a conditional use permit require public input? **Staff Comment:** Any review process allows for public comment. **FRDUAC Comment:** So it wouldn't be a closed-door decision? The residents would have an opportunity to provide input.
- **Public Comment:** Is there ever a time when the county turns down or refuse a conditional use permit? If you are not able to contain those odors, would the county be able to deny that? **Staff Comment:** Potentially yes. We also can revoke the permit after the fact. **Public Comment:** Is there a circumstance when an odor is not controllable, can it be denied? **Staff Comment:** Yes, it is possible. The criteria for conditional use are in section 40.520.030. It includes a set of criteria we would look at, though some are pretty general. It says: "The responsible official may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the interests of the surrounding properties or neighborhood, or the county as a whole." Then it lists conditions for consideration. **FRDUAC Comment:** There are criteria laid out in the performance standards that address odor, that the applicant needs to meet, but is it enough? **FRDUAC Comment:** From my experience out at the port, you can't smell the transfer station that is about 100-feet from the dike trail. **Staff Comment:** If the county were to a conditional use permit, "The responsible official must find that the establishment, maintenance or operation of the use applied for will not be significantly detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of the proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the county" (CCC 40.520.030). I think we could find an application does not meet this criteria. It is not super specific about how they wouldn't meet the criteria, but if the impacts were going to be too great, then either staff or the hearings examiner would find under that criteria that the conditional use shouldn't be allowed.

Notes (continued)

- The group discussed if they had met the council's charge of addressing hazardous chemicals in the use table. The group discussed that hazardous chemicals included on the use table are all conditional uses.
- A revised draft of the use table based on the group's conversation at this meeting is attached.
- The group started discussing the development standards section of code. They primarily worked off of two documents:
 - Document on blue paper: a staff developed draft based primarily on the current county industrial code.

- This version removes items not related to FRDU such as the section specific to business parks.
 - Under section C, staff added language about resource industries.
 - This version includes street standards from the RILB-specific code language and includes landscaping language from the RILB. At the last meeting the group discussed using industrial code landscaping language because it seemed more applicable to smaller parcels, whereas the RILB involved a huge site.
 - Section F, performance standards, is straight from the industrial code and addresses odor, light and glare, etc. The group was ok keeping those as written.
 - Document on grey paper: this code language was submitted by Eric Temple and includes his suggestions.
- The group began discussing the dimensional standards table.
 - There was a proposal for no minimum or maximum area of the new zoning district.
 - The group discussed minimum lot size
 - The group noted that neighbors have requested a minimum lot size provision.
 - PVJR noted that 10-acres is consistent with CREDC evaluation of potential customers and calls received by the railroad.
 - Staff noted that lot size implies dividing land and we may want to change the language to something like minimum site development area or building envelope. The underlying zone will have implications on how lots can be divided.
 - For instance, if the underlying zone is AG-20, a property owner would not be able to divide their land into parcels less than 20-acres.
 - Also of note, there are many nonconforming lots with this zoning.
 - The group considered if there were no minimum lot-size. It is possible the larger lots could be subdivided into smaller lots. The group discussed if that is what they want to see in the FRDU overlay, or if maintaining larger lots is preferred.
 - One viewpoint is: if a small lot has a proposed freight-rail use, wouldn't we want them to be able to develop? If the lot couldn't accommodate the setback requirements, then it would not work.
 - In a CREDC employment lands study, the smallest sites studied were 20-acres. However, the CREDC does receive inquiries about smaller sized parcels too.
 - An alternative suggestion is for larger minimum parcel sizes. Setbacks take up space, and larger lot sizes would encourage larger developments that could concentrate impacts. No minimum or a small minimum size could lead to only small projects.
 - The group discussed subdivision.
 - Right now there is no requirement that you would have to come in with your site plan for a development with a land division proposal. If we have to make some sort of finding that this is a rail dependent use, in essence, you would be requiring that those two things come in together.
 - The county wouldn't be able to approve a land division for less than 20-acres unless the applicant showed they were implementing rail-dependent use and doing both of those things at the same time. If the applicant did the site plan review and land division together, we would need a provision so that the land division goes through with the site plan review to make sure the land division doesn't go forward without the site plan. Without that, it could be used for residential development.
 - If someone has a 100-acre lot and wants to subdivide it into 5-acre pieces, county staff would need to ask about lot subdivision in some way. Either, you could have a minimum lot

- size to match the underlying zone, or you would need an alternative process or requirement to make sure that subdivision doesn't happen without the freight rail development.
 - It would be possible to have multiple tenants with one parcel owner.
- The group circled back to 10-acres as a minimum (need to confirm with group if this is lot size or site development area). The group tentatively agreed to use this number and discussed revisiting it later, if needed.
- The group discussed building height and setbacks.
 - There was a suggestion of a maximum building height of 100 feet and using the existing footnotes.
 - There was also a suggestion of tying the setback distance to building height, using a sliding scale.
 - There is a footnote in the industrial code about building height limited to 60 feet for parcels on the perimeter of the district or on parcels adjacent to residential districts. Buildings on perimeter parcels may be up to one hundred (100) feet in height if the setback is increased to the building height.
 - The group discussed no setback from the rail and/or no landscaping along the rail line and how to address the impacts to the property on the opposite side of the railroad from that development.
 - The group discussed starting the next meeting by revisiting the dimensional standards table, and addressing the item above.
- The group also discussed thinking through/discussing scenarios of how this will all play out and fit together.

Public Comment

- **Public Comment:** I would like to confirm I understood what I heard. Because of the AG-20 underlying zone, you could not buy less than 20 acres unless it is already a non-conforming site that is less than 20-acres. And, if you buy 20 or more acres, you could subdivide it into 10-acre parcels, minimum, for freight rail dependent use tenants. So, if you have a 50-acre lot, the maximum you could have is five 10-acre sites. However, if a person currently owns 5- or 10-acres, which is nonconforming, if they sell to a company that wants to build on it, they can do that. **FRDUAC Comment:** Agreed with summary of conversation.
- **Public Comment:** I guess I need to be clarified too because 90% of our parcels are nonconforming in Clark County. It kind of becomes a moot point. These parcels over here are 2.5 acres [quarter mile extent map]. Also 50% of the overlay is 2.5-, 3-acres and so forth. So, how does that work? **Staff Comment:** if you have a legal, nonconforming use, you can do whatever is allowed in that zone. It is in the code. **Comment:** It's in the code, but that can be changed. Also, United Grain Silos is massive but very contained, it may not be on even 5-acres. Some of the things you are talking about, I agree not having a minimum, it's a moot point, really. If you are able to use the nonconforming lots, it doesn't matter. And in your overlay you have here, you have some 20-acre zoning here, but very few would be able to use it, the railroad overlay. There are homes here and here on the map, in your overlay, there's a bunch of land for parks, and then the county owns another parcel that's almost all in the overlay. And then there's some of these parcels have three overlays and some of these other parcels are rural industrial land bank but you aren't including portions of that, so that doesn't do anybody any good. As we see it, in researching every single one of these parcels, which is what we did to see the zones and sizes and ownership, you will have very little to use on this railroad. This should be a very large area that includes Brush Prairie and the rural industrial land bank.

Next Steps

- Staff reviewed the "what's left?" checklist, on yellow paper, and discussed working through the rest of the development standards items next time and discussing amendment procedures. Staff will also do some cross-

checking, to see what other code sections will need to reference the new code FRDU code section or mention the FRDU overlay map.

- The next meeting is scheduled for Wednesday, June 6th at 6pm at the Public Service Center 6th Floor Training Room, 1300 Franklin Street, Vancouver, WA 98666.