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PROPOSED COMPREHENSIVE PLAN AMENDMENT TO ESTABLISH TWO INDUSTRIAL LAND BANK AREAS

APPLICATION NARRATIVE

Proposed is the establishment of two Industrial Land Bank areas as an amendment to the Clark County Comprehensive Plan, in accordance with RCW 36 70a 367 This proposal does not expand any Urban Growth Area (UGA) to encompass the subject properties. The proposed Industrial Land Bank areas encompass two separate groups of parcels on either side of NE 117th Avenue (SR-503), and north of the Vancouver Urban Growth Area (VUGA), as described below

- The Ackerland property west of 117th Avenue encompasses Clark County tax parcels 196656, 198375, 198335, 198324, 198113, 198111, and 198082 (-000) The property totals 223 72 acres
- The Lagler property east of 117th Avenue encompasses Clark County tax parcels 198080, 198076, 198112, 198101, 198072, and 198075 (-000) The property totals approximately 378 71 acres

Related or previous permit activity

- 2004 Comprehensive Plan – Designated Ackerland and Lagler properties as Agricultural, with an Industrial Reserve Overlay applied to an area east of 117th Avenue that includes the Lagler property
- 2007 Comprehensive Plan – VUGA expanded to encompass both subject properties The largest Ackerland parcel was designated Railroad Industrial, with the smaller parcels remaining in Railroad Industrial Reserve The Lagler property was designated Light Industrial
- CPZ2009-00030 Annual Review – Both the Ackerland and Lagler properties were removed from the VUGA per Western Washington Growth Management Hearings Board (WWGMHB) determination dated May 14, 2008 and compliance order dated October 28, 2009 (Case 07-2-0027) Planning and zoning designations were reverted to those that existed with the 2004 Comprehensive Plan, including the Industrial Reserve designation that had applied to the Lagler property

Insert Applicant's Name, Address, Phone, Email

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  Vancouver, WA 98662
  360-254-8342

- Ackerland, LLC
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  Vancouver, WA 98662
  360-254-8342

Insert Applicant's interest in the property:

- Property owner

REVIEW OF APPLICABLE STATE AND LOCAL APPROVAL CRITERIA

RCW 36.70a.367 allows Clark County to establish two Industrial Land Bank areas, in rural areas outside of an established UGA, if it determines that the proposed area is suited for major industrial use due to proximity to transportation or resources, not limited for major industrial use by local factors, and the location is adjacent or close to an UGA (see RCW 36 70a 367 attached).

However, the designation of an Industrial Land Bank area must be coupled with the adoption of development regulations for review and approval of specific major industrial developments through a master plan process The regulations governing the master plan process shall ensure, at a minimum, that

- Urban growth will not occur in adjacent non-urban areas,
- Development is consistent with the county's critical areas development regulations,
- Required infrastructure is identified and provided concurrent with development phases,
- Transit-oriented site planning and demand management programs are specifically addressed,
- Provision is made for addressing environmental protection, including air and water quality,
- Inter-local agreements with agencies providing facilities or services to the approved master plan must be in place at the time of master plan approval,
- At least 90% of the total gross floor area in the development is used primarily by industrial and manufacturing businesses,
- Any commercial or service use is to meet the needs of employees, clients, customers, vendors, and others and may not be promoted to attract customers from the surrounding area;
- Non-Industrial businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses,
- Infrastructure facilities are provided, or impact fees paid, concurrent with development phases,
- Buffers are provided between the major industrial development and adjacent rural areas, and
- Provision is made to mitigate adverse impacts on nearby designated agricultural lands

Discussion

The current agricultural use of both the Ackerland and Lagler properties is as a dairy farm Current market conditions, rising labor costs, increasing environmental regulation, fewer local suppliers of dairy related goods and services, the recent relocation of cooperative dairy operations to the east of the Cascade mountains, and the difficulty of moving equipment and cows across and along NE 117th Avenue, which is an increasingly busy state highway (SR-503), have reduced the commercial viability and profitability of the existing dairy operations. In addition, increasing urban residential development south of 119th Street will likely result in an increase in complaints about the dust, noise, and odors of an active dairy farm operation (or any active farming operation)

Given the location of the properties, current plan designations on the properties in the general area, and their location adjacent to the edge of the VUGA, the "long-term commercial significance for agriculture" based on the eleven non-exclusive criteria listed in WAC 265-190-050, is limited While other agricultural uses may be viable and profitable for a period of time, the eventual demand for major industrial development locations and increased employment opportunities for a growing urban population limit their long-term utility as agricultural lands See also the discussion on de-designation of the land for agricultural use below

Designating the properties as Industrial Land Bank Areas now protects the lands from urban residential and commercial development pressures, and allows the master planning process to develop the lands as an employment hub between the Vancouver and Battle Ground urban areas to begin As a condition of approval, enhanced buffers and landscaping will be required around the perimeter of the properties to protect adjacent rural lands and urban areas, while providing a natural vegetated corridor along NE 117th Avenue as a visual transition and separation between the Vancouver and Battle Ground urban areas

RCW 36 70a 367 also requires findings that the proposed areas are suited for major industrial use based on proximity to transportation or resources, no local factor limitations for major industrial use, and that the location is adjacent or close to an urban growth area In addition, the designation of Industrial Land Bank areas must be coupled with adoption of development regulations for the review and approval of specific major industrial developments through a master plan process

CCC 40.560.010(G) specifies that Comprehensive Plan and Zoning Map Changes must be consistent with Growth Management Act (GMA) requirements, Countywide Planning Policies, The Community Framework Plan, the current *Comprehensive Growth Management Plan,* and any applicable capital facilities plans

Applicant submits that designation of the Ackerland and Lagler properties as Industrial Land Bank areas is consistent with applicable state and local goals, policies, and criteria, as discussed below The proposed designation of the Ackerland property and the Lagler property as Industrial Land Bank does conform with location criteria specified in the applicable RCW and WAC related to size and access to adequate transportation facilities

Primary access for future industrial development will likely be from NE 117th Avenue for both properties, but proposed roads indicated in the Arterial Atlas suggest that cross circulation alternatives may be available in conjunction with future development However, given the RCW 36 70a 367(3) stipulation that designation of an Industrial Land Bank area not cause or encourage urban growth to occur on neighboring non-urban properties, such options may be limited or constricted

Access for future major industrial development on either the Ackerland or Lagler properties is appropriate from NE 117th Avenue (SR-503) Access will be addressed more specifically as part of the required master plan process and site plan review Additional SEPA review of the master plan and future development or development types proposed will be required at that time

Mitigation of impacts on the continued use and viability of neighboring rural and agricultural lands, and the RCW 36 70a 367(3) stipulations, may require that proposed road corridors indicated in the Arterial Atlas not be improved all the way through any new major industrial development on the subject properties, and that frontage improvements be limited to 117th Avenue and NE 119th Street

Is the proposed area identified in the plan suitable for the proposed designation?

Yes The properties consist of relatively open, slightly rolling terrain with no major environmental restrictions These factors also made the lands suitable for agricultural use, such that they were designated Agricultural lands in the 20-Year Comprehensive Plan adopted in 2004, and zoned AG-20 However, in that plan, the Lagler property was also given an Industrial Reserve overlay designation and the Ackerland property was also partially designated Railroad Industrial Reserve, with the largest parcel not so designated even though it straddles the same railroad right-of way that serves the

smaller Railroad Industrial Reserve parcels to the south In 2007 both properties were approved by the County to be brought into the VUGA and designated for industrial use However, this action was appealed as an improper de-designation of agricultural lands and ultimately overturned by the WWGMHB, whose decision was supported by subsequent court decisions In response to the actions of the WWGMHB and the courts, the County removed the properties from the VUGA per WWGMHB determination dated May 14, 2008 and compliance order dated October 28, 2009 (Case 07-2-0027) This action caused the comprehensive and zoning designations on the land to revert to Agricultural designations with the Industrial Urban Reserve designation remaining on the property

Is there a lack of appropriately designated alternative sites within the vicinity?

Yes Given that the largest readily available industrial parcel in the County is 78 acres, the large size of the Lagler and Ackerland parcels would be attractive to major industrial developments that need a larger site in an area close to utility services and major transportation corridors On reviewing the data gathered in the Clark County Employment Land Inventory (9/27/2011), the CREDC Land for Jobs Committee concluded that there is a critical need to ensure an adequate supply of industrial land and recommended focusing on increasing the inventory of industrial land, protecting shovel ready industrial lands from other development, increasing the amount of shovel ready industrial land, and encouraging retention of larger parcel sizes which are essential to future employment of a growing population (Clark County Employment Land Inventory 9/27/2011, as attached)

Does the proposed map amendment respond to substantial changes in conditions in the surrounding area?

Yes The VUGA has expanded to abut the southern and southwestern edge of the Lagler property, and the southeastern corner of the Ackerland property High density residential and commercial projects have been developed, or are soon to be developed in these nearby VUGA areas Industrial reserve overlays already extend onto the entire Lagler property and the southern portion of the Ackerland property

Does it implement applicable Comprehensive Plan policies better than the current designation?

Yes Designation of both the Ackerland and Lagler properties as Industrial land Bank areas makes large parcels of land available for major industrial and employment development, and begins the master planning process to assure the lands are as "shovel ready" as possible

Approval of the proposed designation would implement that part of Comprehensive Plan Policy 9 3 1 that encourages industrial land banking of large sites and "future urban reserve areas" to preserve large parcels at key locations for future industrial sites (per RCW 36 70A 367) The size of both the Ackerland and Lagler properties exceeds the minimum 75 acre size stipulated in that policy

Approval of the proposed designation would implement that part of Comprehensive Plan Policy 9 3 2 that calls for designating sites for industrial use at locations that will be accessible from roadways of arterial classification or higher, potentially served with utilities, and free of major environmental constraints such as unsuitable soils, floodplains, archaeological sites, and wetlands

Finally, can the full range of urban public facilities and services be adequately provided to the subject properties in an efficient and timely manner to support industrial uses (i.e water, sewage, storm drainage, transportation, fire protection, schools, etc)?

Yes Electricity and water are available to both properties from Clark Public Utilities NW Natural gas

has a pipeline in 117th Avenue which is utilized by the current dairy operation Telephone and refuse services are generally available in the area Sanitary sewer service is not yet available to the area, but preliminary plans have been prepared for the site in cooperation with Clark Regional Wastewater District to assure that service and capacity is available when needed (see attached maps)

CCC 40.560.010 Plan Amendment Procedures was amended in 2004 (Ord 2004-09-02, Exhibit 11) to incorporate the RCW 36 70a 367 allowance for Industrial Land Banks and Major Industrial Developments in rural areas outside of any UGA and to specify County criteria for such major industrial map changes Prior to formally proposing such designations, the CCC 40 560 010(J) requires the county to inventory available urban industrial land, consult with affected cities regarding the proposed designation, make a preliminary assessment that approval criteria are met and that the proposed location is superior to other potential rural sites, and negotiate any needed interlocal agreements with affected cities and service providers

The Columbia River Economic Development Council (CREDC) has inventoried available urban industrial lands and found a significant lack of large parcels for major industrial development (see Economic Development discussion below and attached CREDC report)

As part of the SEPA review process, RCW 36 70A 367, *and prior to formal notice regarding a public hearing date, the County and the applicant will consult with affected cities (Vancouver, Battle Ground) regarding the proposed designation and negotiate the necessary interlocal agreements with those two cities and affected service providers If the County agrees that the approval criteria is met and that the proposed location is superior to other potential rural sites, the formal notice regarding a public hearing date can be issued*

A formal application for Major Industrial Land Bank zone change, signed by the affected property owners, is required before the County can process the related comprehensive plan amendment. A proposed Major Industrial Land Bank must be for a minimum of one hundred (100) acres

The applicant has coordinated with the County to initiate the proposed Major Industrial Land Bank comprehensive plan amendment upon receipt of an application for a rezone to the specified Major Industrial Land Bank IL zone

Approval of this designation and zone is subject to CCC40 520 07 regarding Master Plan Development A concomitant rezone agreement (development agreement) is required, which at a minimum assures compliance with all statutory requirements and criteria, including limitations on non-industrial uses in RCW 36 70A 367(2)(k) The Comprehensive Plan designation would be "Major Industrial Land Banks (Light Industrial)" and the zone would be "Major Industrial Land Banks (IL)"

CCC 40.560.010(Q) stipulates that this request for the designation of two Major Industrial Land Banks are legislative actions, is subject to public hearing and the Type IV procedures of CCC 40 510 040 The proposed comprehensive plan amendments are subject to applicable review criteria in CCC 40 560 010 as summarized and discussed above and below

CCC 40.560.010(S) requires that the County review the cumulative impacts of all prospective comprehensive plan changes The county shall analyze and assess the following to the extent possible:

1 The cumulative impacts of all plan map changes on the overall adopted plan, plan map and relevant implementing measures, and adopted environmental policies,
2 The cumulative land use environmental impacts of all applications on the applicable local

geographic area and adopted capital facilities plans, and

3 Where adverse impacts are identified, the county may require mitigation Conditions which assure that identified impacts are adequately mitigated may be proposed by the applicant and, if determined to be adequate, imposed by the county as a part of the approval action

It appears that for the 2014 Comprehensive Plan Amendment cycle there are no proposed requests to convert land owned adverse to an industrial designation the creation of a rural industrial land bank on the Lagler parcels will inform the updated 2016 GMA Plan.

CCC 40.520.070 Master Planned Development establishes Master Plan requirements and processes to promote coordinated and cohesive site planning and design of large sites that will occur over an extended period of time, and provide a means of streamlining and consolidating development review processes For large sites, intensive and integrated master planning review may occur earlier within the development process, lessening the scope of piecemeal review later as individual developments occur

Through consolidation of review processes, a level of predictability can be provided to project applicants, the county and the community at large regarding the nature and type of development which will occur in the future, especially on large sites Through development of flexible standards, promote and facilitate quality development of larger sites in an integrated and cohesive manner that provides for functional design, linkages between, and consistency among, a mix of individual uses and structures

The Clark County CodeCounty's Master Planned Development code (CCC 520 070) was amended by December 18, 2012 Ord 2012-12-14 to include provisions for master planning of light industrial areas The detailed requirements of RCW 36 70a 367, summarized above, are not specifically addressed However, the minimum standards and criteria in the County code do not conflict with the RCW standards and do provide a good framework for addressing the state requirements as part of a code amendment processed in concert with the proposed Comprehensive Plan amendment and rezone

Section F of the Master Plan Development code does allow the proposal of new development standards to be considered as part of the master planning process The applicant proposes to work with County staff to develop standards that satisfy both state and local requirements, for inclusion in the master plan and a Concomitant Rezone Agreement

As detailed above, RCW 36 70a 367 requires findings that the proposed areas are suited for major industrial use based on proximity to transportation or resources, no local factor limitations for major industrial use, and that the location is adjacent or close to an urban growth area In addition, the designation of Industrial Land Bank areas must be coupled with adoption of development regulations for the review and approval of specific major industrial developments through a master plan process

APPLICABLE GMA GOALS

Reducing Sprawl: How does this proposal reduce the inappropriate conversion of undeveloped land into sprawling, low-density development?

The Ackerland property is adjacent to a designated Railroad Industrial Reserve area and the Lagler property is adjacent to the VUGA Designating the properties as Industrial Lank Bank in the Comprehensive Plan assures that the land will be available the land for non-residential, non-commercial, major industrial development in accordance with a master plan that buffers surrounding uses and separates two urban areas Retail commercial development or multi-tenant office parks are

specifically prohibited by the enabling legislation Given the RCW 36 70a 367(3) stipulation that designation of an Industrial Land Bank area not cause or encourage urban growth to occur on neighboring non-urban properties, the required master plan will need to address limitations on access into or from surrounding rural areas, avoidance of urban style road improvements on adjacent rural roads, and enhancement of buffer setbacks and landscaping to reinforce the visual separation along SR-503 between the Vancouver and Battle Ground urban areas

Economic Development: How does this proposal encourage economic development consistent with the adopted comprehensive plan, promote economic opportunity for all citizens of this state, especially for unemployed and disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of natural resources, public services and public facilities.

The Clark County Employment Land Inventory, published by the CREDC on September 27, 2011, indicates that there are 70 potential industrial sites in the County (including sites within its cities), ranging from 21 to 500 acres, but only 19 of the 70 sites are over 50 acres In addition, only 13 of the 70 sites are developable within 18 months or less, and only 7 of these are already zoned for industrial use Those 13 sites range from 21-78 acres, which indicates a lack of large properties readily available for major industrial development

Designating these properties as Industrial Lank Bank in the Comprehensive Plan reserves the land s for non-residential, non-commercial, major industrial and manufacturing use, which increases the County's chances of recruiting a major employer requiring a large parcel of land for its operations

Designating both the Ackerland and Lagler properties as Industrial Land Bank reserves two very large properties adjacent to the VUGA for major industrial development as employment centers and allows for increased use of the Chelatchie Prairie Railroad which traverses the western portion of the site Such action would set in motion a process to define the development regulations for a master planning process necessary for the properties to be readily available for major industrial development within 18 months or less

Natural Resource Industries: How does this proposal maintain and enhance natural resource-based industries, including agricultural. Does it encourage the conservation of productive agricultural lands, and discourage incompatible uses.

The enabling legislation for Industrial Land Banks (RCW 36 70a 367) requires that the designation must be coupled with adoption of development regulations for review and approval of specific major industrial developments through a master plan process Those regulations must at least ensure that urban growth will <u>not occur in adjacent non-urban</u> areas, that <u>buffers are provided</u> between the major industrial development and adjacent rural areas, and that <u>provision is made to mitigate adverse impacts on designated agricultural lands</u>, forest lands, and mineral resource lands

On December 14, 2012, Clark County adopted code amendments specific to Major Industrial Developments and the Industrial Land Bank designation (CCC 40 560 010) and also amended its Master Planned Development regulations to create a framework for development and adoption of standards specific to Industrial Land Bank areas in accordance with the RCWs (CCC 40 520 07)

Designating these properties as Industrial Land Bank would likely take pressure off of other better situated agricultural properties to convert to industrial or urban uses in the future The 2007 Comprehensive Plan, as amended in2012, indicates that the acreage at issue represents approximately 1 5 percent of the lands currently zoned for agriculture in Clark County

APPLICABLE CLARK COUNTY COMPREHENSIVE PLAN GOALS AND POLICIES

The Clark County 20-Year Plan, and its Land Use Element, provides the detailed policies for managing growth consistent with the mandates of GMA and the direction of the Community Framework Plan

One Comprehensive Plan goal is to designate Industrial Reserve Area overlays (IRAs) adjacent to designated Urban Growth Areas to preserve opportunities for the future siting of larger industrial uses, or concentrations of such uses, by limiting premature land parcelization and development of incompatible uses that could preclude later industrial development and related employment

The current proposal to designate two large properties as Industrial Land Bank areas fulfills this goal since the designation is intended to preserve lands for future major industrial development Similar to Comprehensive Plan policies for establishing IRAs (Policy 1 6), the criteria for designating industrial land banks require a regulated master planning process that resolves land use and environmental impacts, transportation, and other infrastructure issues prior to approval of any major industrial development The timing of that industrial development is recognized as depending on market conditions

Comprehensive Plan agriculture goals and policies (3 4) also focus on maintaining, enhancing, and encouraging long-term productive use of agricultural lands, minimizing incompatibilities with adjacent uses, supporting land trades that result in consolidated agricultural ownership, encouraging maintenance of agricultural lands in current use property tax classifications, working with agricultural landowners and managers to identify and develop other incentives for continued farming, encouraging agricultural as a clean industry with tax breaks, right to farm laws, purchase or transfer of development rights, and other economic strategies to support farming practices

In addition, this policy stipulates that land use activities within or adjacent to agricultural land shall be located and designed to minimize conflicts with agricultural activities and management Public services and utilities should be designed to prevent negative impacts on agriculture and allow for continued resource activity

This proposal, if approved, would result in the de-designation of two large agricultural properties in favor of Major Industrial Use However, RCW 36 70a 367 requires that adjacent and nearby agricultural lands <u>must be protected from interference</u>, which could affect continued normal use of the lands for production of food and agricultural products This requirement can be included in the master planning process such that mitigation is included in the master plan Mitigation can include expanded and enhanced L5 type landscaped buffers around the perimeter of the properties, height limitations, not requiring the extension of new roads through the properties, and avoiding or minimizing urban style road improvements on the existing roads abutting the properties (except for NE 117th Avenue and NE 119th Street south of the Lagler property)

WAC 365-190-050 Classifying and designating agricultural resource lands

The Ackerland and Lagler properties have for many years been designated as Agricultural resource lands in the 2004 Comprehensive Plan based on an analysis of three primary factors

1 The land was not already characterized by urban growth based on WAC 365-196-310 criteria
2 The land was being actively used for agricultural production (Lagler Dairy)
3 The land was considered to have long-term commercial significance for agriculture based on the non-exclusive criteria listed in WAC 265-190-050 Those criteria consider soils classifications, availability of public facilities and services, adequacy of roads, tax status, transfer of development rights policies, UGA proximity; predominant parcel size; settlement patterns, compatibility and intensity of nearby uses, history of area development permits, alternative use land values, and proximity to markets.

In 2007 both properties were approved by the County to be brought into the VUGA and designated for industrial use However, this action was appealed as an improper de-designation of agricultural lands and ultimately overturned by the WWGMHB, whose decision was supported by subsequent court decisions In response to the actions of the WWGMHB and the courts, the County removed the properties from the VUGA as described above and reverted the land use designations back to those previously approved in the 2004 Comprehensive Plan including the industrial urban reserve designation, which to this day includes the Urban Industrial Reserve Overlay

In 2004 the Lagler property was designated as Agricultural (AG-20) However, an Industrial Reserve overlay was also applied to the area at the same time, signaling that the lands should be reserved for future industrial use The Ackerland property was also designated Agricultural (AG-20) in 2004 A Railroad Industrial Reserve overlay, bracketing the Chelatchie Prairie Railroad track, was applied to adjacent small parcel Rural lands, including some parcels currently in Ackerland ownership, immediately south of the largest Ackerland parcel

The Chelatchie Prairie Railroad is a 33-mile short line railroad, with connections to the BNSF tracks line is owned by Clark County government and operated by the Portland Vancouver Junction Railroad Company, a private operator The Chelatchie Prairie Railroad track passes through the center of the largest parcel of the Ackerland property The line is being aggressively marketed by the operator, the County, and CREDC as a transportation asset for industrial development along its corridor (See attached map)

In addition, the Lagler property is adjacent to the VUGA and the Ackerland property is adjacent to the Railroad Industrial Reserve area in Clark County, which will become part of the VUGA at some time in the future Changing the designation and zone to Industrial Land Bank now provides the level of certainty needed for preliminary master planning to move forward and the lands to be quickly available for a major industrial use Agricultural use of the property could still continue until such time as a major industrial use is approved for development in accordance with the pre-approved master plan It may also continue afterwards in areas designated for growing crops

When a future industrial use needs a very large parcel of land with railroad access, the Ackerland property is the most important candidate Designating the Ackerland property as Industrial Land Bank allows continued use of the land for agriculture, while reserving the area for future major industrial development as need arises, in accordance with the pre-approved master plan

As part of the Application for a Comprehensive Plan Amendment to create a rural industrial land Bank, it is also necessary that the County de-designates the land as agriculture

The Lager Property is characterized as agricultural land This requires that the land be de-designated to allow the rural industrial land designation to attach

In Lewis County v Western Washington Growth Management Hearings Board, 157 Wash 2d 448, 139 P.3d 1096 (2006), the Washington Supreme Court described at some length how "agricultural land" is properly determined/characterized and discussed the factors to be considered in designating property as agricultural land under the criteria of WAC 365-190-050 In Lewis, the Court assessed the manner in which the WWGMHB evaluated Lewis County's designation of agricultural lands for conservation under the GMA and remanded the case to the Board to determine whether, using the correct definition of agricultural land, the County's designation of agricultural land complied with the GMA

After reviewing the County's staff report which explained how it had identified agricultural lands to be conserved, the Board concluded the County had failed to comply with the GMA The Board stated that the GMA defines the requirements for designating natural resource lands based on the characteristics of the lands and noted that the legislature did not tie the designation of agricultural lands to economic conditions but to the characteristics of the land Lewis, 157 Wash 2d at 496 The County appealed the Lewis County Superior Court's confirmation of the Board's decision and the Washington Supreme Court granted direct review

The Court determined that, because the parties in Lewis offered contrary definitions of agricultural lands, both of which the Court decided were incorrect, it had to first identify the correct definition of "agricultural lands" under the GMA The GMA defines agricultural land as "land primarily devoted to the commercial production of dairy vegetable, or animal products or of . hay, straw or livestock, and that has long-term commercial significance for agricultural production " Lewis, 157 Wash 2d at 499, citing RCW 36 70A 030 (emphasis added) The Court went on to say, "(T)hus, the legislature established that agricultural lands are those which (1) are 'primarily devoted to' commercial agricultural production, and (2) have 'long-term commercial significance' for such production " RCW 36 70A 030 (2) The Court then described what these terms mean

Referencing City of Redmond v Central Puget Sound Growth Management Hearings Board, 136 Wash 2d 38, 959 P 2d 1091 (1998), the Court reiterated the decision it had made in that case that "land is primarily 'devoted to' commercial agricultural production 'if it is in an area where the land is actually used or capable of being used for agricultural production' and that a landowner's intended use of land is not conclusive " Lewis, 157 Wash 2d at 500 (emphasis added) In Lewis, the Board had partly relied on this language in concluding that Lewis County improperly excluded certain lands from the description of "capable of being used" for farm production but the Board had neglected to determine whether the land in question also had "long-term commercial significance" for farm production Lewis, 157 Wash 2d at 500 Accordingly, the Court then discussed which lands have "long-term commercial significance" for farm production

The GMA states that long-term commercial significance "includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, *in consideration with* the land's proximity to population areas, and *the possibility of more intense uses* of the land " RCW 36 70A.030 (10) (emphasis added). Lewis, 157 Wash.2d at 500 In view of this definition, the Court concluded (Lewis County) must do more than simply catalogue lands that are physically suited to farming They

must consider development prospects (the "possibility of more intense uses") in determining if land has the enduring commercial quality needed to fit the agricultural land definition Lewis, 157 Wash 2d at 501 The Court cited, with approval, Manke Lumber Co v Diehl, 91 Wash App 793, 959 P 2d 1173 (1998), *review denied*, 137 Wash 2d 1018, 984 P 2d 1033 (1999), in which reliance had been placed on WAC 365-190-050, a Washington Department of Community, Trade and Economic Development regulation designed to guide counties in determining which agricultural lands have "long-term commercial significance "

WAC 365-190-050 (3) states lands should be considered for designation as agricultural resource lands based on three factors.

(a) The land is not already characterized by urban growth as determined by reference to WAC 365-196-310 – Urban Growth Areas

(b) The land is used or capable of being used for agricultural production based primarily on its physical and geographic characteristics since some operations are less dependent on soil quality than others, including some livestock production operations

In determining whether the lands are used or capable of being used for agricultural production, counties and cities are to use the land-capability classification system of the USDA Natural Resources Conservation Service which includes map units described in published soil surveys

(c) The land has long-term commercial significance for agriculture

Subsection (3)(c) of the WAC states that, in addition to assessing which agricultural lands have "long-term commercial significance", counties are also to consider the combined effects of proximity to population areas and the possibility of more intense uses of the land using the following nonexclusive criteria, as applicable

1 the classification of prime and unique farmland soils as mapped by the Natural Resource Conservation Service,

2 the availability of public facilities, including roads used in transporting agricultural products,

3 the tax status, including whether the land is enrolled under the current use tax assessment under chapter 84 34 RCW and whether there is the ability to purchase or transfer land development rights;

4 the availability of public services,

5 relationship or proximity to urban growth areas,

6 predominant parcel size,

7 land use settlement patterns and their compatibility with agricultural practices;

8 intensity of nearby land uses,

9 history of land development permits issued nearby,

10 land values under alternative uses, and

11 proximity to markets

The Lewis Court summarized its findings by saying that, based on the plain language of the GMA and its interpretation in City of Redmond, *supra*, held that agricultural land is land

(a) not already characterized by urban growth,

(b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36 70A 030(2), including land in areas used or capable of being used for production based on land characteristics, **and**

(c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses

The Court also went on to state that counties "may consider the development-related factors enumerated in WAC 365-190-050 (1) in determining which lands have long-term commercial significance " Lewis, 157 Wash 2d at 502 Additionally, the Court noted that,

> "(B)ecause the GMA does not dictate how much weight to assign each factor in determining which farmlands have long-term commercial significance, and because RCW 36 70A 030 (10) includes the possibility of more intense uses among factors to consider, it was not 'clearly erroneous' for Lewis County to weight the industry's anticipated land needs above all else If the farm industry cannot use land for agricultural production due to economic, irrigation or other constraints, the possibility of more intense uses of the land is heightened RCW 36 70A030(10) permits such considerations in designating agricultural lands " Lewis, 157 Wash 2d at 503

Lewis was subsequently cited by the Washington Supreme Court in City of Arlington v. Central Puget Sound Growth Management Hearings Board, 164 Wash 2d 768, 193 P 3d 1077 (2008), in which the Court heard an appeal by the City of Arlington, Snohomish County, and a landowner who were contesting the Board's determination that the County could not re-designate land from agricultural to commercial.

The Court adopted the criteria in Lewis as the standard for review It stated that the Board must find compliance (with the GMA) unless it determines that a county action is clearly erroneous in view of the record before it and in light of the goals and requirements of the GMA RCW 36 70A 320(3) Further, to find an action "clearly erroneous", the Board must have a "firm and definite conviction that a mistake has been committed " Arlington, 164 Wash 2d at 778 The Court also looked to Lewis for the definition of "agricultural land" for GMA purposes and to WAC 365-190-050(1) for determining which lands have " long-term commercial significance" Arlington, 164 Wash 2d at 780, 781

In reviewing the basis for the Board's decision, the Court noted that it found evidence in the record supporting the County's determination that the land in question did not have long-term commercial

significance for agricultural production and consequently determined the Board erred in not deferring to the County's decision to redesignate the land for urban commercial use

The Court noted the Board's reliance on information in reports provided by County sources, e g , the Snohomish County Planning and Development Services (PDS), along with the Draft Supplemental Environmental Impact Statement ("DSEIS") and a USDA soils report, all of which sharply contrasted with testimony relied upon by the County. The PDS conclusion that the land should continue to be classified as agricultural land was based on an analysis of the property under the criteria set forth in WAC 365-190-050(3)(c)(ii) through (xi), i e., availability of public facilities, tax status, availability of public services, proximity to urban growth areas, land use settlement patterns, predominant parcel size, intensity of nearby uses, history of development permits issued, land values under alternative uses, and proximity of markets Almost without exception, the PDS supported retention of the land as agricultural land On the other hand, the landowner appellant in Arlington hired a consulting firm to conduct a similar analysis employing the same WAC criteria, that consultant came to the opposite conclusion

Arlington, 164 Wash 2d at 786 and 787

The Board had dismissed the appellant's consultant's analysis out of hand calling it to be "reflections, if not direct expressions, of 'landowner intent'" and assigned it "the appropriate weight " Arlington, 164 Wash 2d at 788 However, the Arlington Court found the Board had incorrectly relied on City of Redmond, *supra*, in dismissing the consultant's evidence and stated that, "(A)ll City of Redmond holds is that a landowner cannot control whether land is primarily devoted to agriculture by taking his or her land out of agricultural production It does not say the Board may dismiss evidence supporting the County's position if it was obtained at the request of an interested party " The Court went on to say that, "(T)o the extent the evidence supports the County's conclusion that the land was not of long-term commercial significance to agricultural production, and we find that it does, the Board would be required under the GMA to defer to the County and affirm its decision redesignating the land urban commercial " Arlington, 164 Wash 2d at 788

Below we explore whether there are facts related to the Lagler property which, based on the Case law and the Washington Administrative Code that support our client's de-designation proposal

Subsequent to Arlington, a case arose out of Clark County resulted in findings that was not favorable to Clark County generally and Lagler in particular It should be noted, however, that the Court's findings, based on WAC 365-190-050, can be different now since that WAC was revised after the facts of the case arose Clark County Washington v. Western Washington Growth Management Hearings Review Board, 161 Wash App 204, 254 P 3d 862 (2011) involved 19 parcels of land which Clark County removed from the status of "agricultural lands of long-term commercial significance" (ALLTCS) after having identified those same lands as having long-term commercial significance for the agricultural industry only three years earlier The Board affirmed the County's decisions with respect to certain of the parcels and deemed the County's decision as to the remaining ones to be noncompliant with the GMA and, therefore, invalid

When the matter came to the Court, the Board's decision, Lewis, *supra*, and RCW 34 05 570(1)(a) (Administrative Procedures Act) were reviewed The Court noted the burden of proving the propriety of the de-designations was on the County

The appellant (John Karpinski) argued that the County erred in its decisions because (1) the parcels still qualified as ALLTCS, (2) the County violated the GMA by improperly considering economic factors when it

decided to de-designate the parcels, and (3) the County improperly included lands not characterized by urban growth into UGAs Ultimately, the Court affirmed the Board's decision with respect to some of the parcels and remanded to the Board for further consideration on those which remained

The Court of Appeals referred to the Washington Supreme Court decision in Lewis, *supra*, summarizing the working definition of "agricultural land" under the GMA as land

(a) not already characterized by urban growth[1],

(b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A 030(2), including land in areas used or capable of being used for production based on land characteristics, **and**

(c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses,

Clark County, 161 Wash App. at 231 – 232

Perhaps significantly, it should be noted that WAC 365-190-050, as presently enacted, does not include the wording referenced in Clark County that, "(C)ounties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by (a) the availability of public facilities, (j) proximity of markets " Instead, the current version of WAC 365-190-050(3)(c) now states, "(I)n determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable· (i) The classification of prime and unique farmland soils (xi) Proximity to markets " (Emphasis added) Accordingly, in our analysis we provide facts to support our argument for de-designation, the portion of Clark County which would appear to require consideration of the ten listed criteria is not applicable and the term "nonexclusive" allows Lagler the opportunity to introduce other factors which would support de-designation

In summary, it appears that, in order to change his property's current agricultural land use designation, Mr Lagler will have to show that the property no longer meets the three requirements set out in WAC 365-190-050 – Agricultural Resource Land, so that the de-designation does not adversely impact designated agricultural lands, a requirement of RCW 36 70A 367 These three requirements cover the criteria which comprise the three-prong test in Lewis

A the land is now characterized by urban growth as that term is defined to counter WAC 365-190-050(3)(a) The Lagler property now touches the Urban Growth Boundary of the City of Vancouver. There is a retail shopping center just southwest of the Lager property at the newly urbanized intersection of 119th Street and SR 503 (117th Ave) There is a multifamily residential project just immediately south of the

[1] The GMA defines "urban growth" as "typically require(ing) urban governmental services" which, according to former RCW 36 70A 030(20) (2005) includes storm and sanitary sewers, water, street cleaning, fire and police protection, public transit and other public utilities The GMA also defines "(c)haracterized by urban growth" as "land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth " Former RCW 36 70A 030(18) Clark County, 161 Wash App at 240 "Urban growth" is defined in part as "growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber " Former RCW 36 70A 030(18)

Legal property There are residential subdivisions nearby The intersection at 119th Street to the southwest is in a multiphase widening and improvement project to accommodate urban growth at the northern end and the VUGA

As the VUGA continues to develop just south of the Lagler property, incompatibilities have begun to develop SR 503 (117th Ave) has been substantially widened and improved These improvements now impede the ability of the Lagler farm to transport feed and livestock to and from the east and west portions of the Lagler farm An additional incompatibility has developed. The Lagler farm must adhere to the requirements of the Dairy Nutrient Management Act, which involves a lagoon on the property, a specific area of the property designated for use in the nutrient management system This lagoon area is located near the multifamily project mentioned above As additional land is developed just south of the Lagler property and within the VUGA, this issue will exacerbate,

B although the land is currently used for agricultural (dairy) production, based on its physical and geographic characteristics including any relevant information the USDA Natural Resources Conservation Service Field Office Technical Guides (WAC 365-190-050(3)(b)(ii)), it should no longer be so utilized

Soil types aside, the Lagler property has declining value for dairy production according to the Analysis of the Agricultural Economic Trends and Conditions in Clark County, Washington preliminary report by Globalwise, Inc dated April 16, 2007 (Globalwise Report) prepared for Clark County Since 1984, the number of dairies in Clark County has dropped from 84 to 7 The reasons for this will be discussed in more detail in Section C below

The soil types on the property are conducive to growing crops However, as indicated in the Globalwise Report, as of 2002 the average size farm was 44 acres and the median size was 20 acres The Globalwise Report identifies 145 farms in Clark County with an aggregate acreage of 3,115 acres There may be additional smaller farms. In 2005, there were 10 farms producing berries, 46 farms 1,622 acres producing vegetables, and tree fruit farms are all but non-existent

The need for large parcels of farm land in Clark County is a thing of the past

The Applicant proposes as mitigation for loss of agricultural land that a certain amount of acreage for small organic (non-dairy)farms be set aside as part of the master plan process required in RCW 36 70A 367

C the land does not now have long-term commercial significant for agriculture considering the eleven nonexclusive criteria listed at WAC 365-190-050(3)(c)(i) through (xi).

The Lagler farm at its current size and use as a dairy farm does not have long term significance for agriculture As indicated above, smaller portions of the farm may remain viable for growing organic crops.

The following addresses the criteria of Lewis

1 There are prime soils suitable for agriculture on the site,

2 Public facilities in the vicinity of the Lagler property are now more suitable for urban development than farming and the expansion of public services to an urban level is beginning to cause urban development to encroach to the edge of the Urban Growth Boundary which is adjacent across 119th from the Lagler property.

3 Almost all agricultural land including the Lagler property, take advantage of the current use classification allowed under law It is difficult to understand why this is a critical factor in decisions to de-designate agricultural land

4 Public services are available to the Lagler property and the transportation portion of those services has become a detriment to farming. The improvement of SR 503 (117th Avenue) to Urban Arterial Standards has made it difficult for equipment and cattle to cross this Arterial

The Applicant has spent a great deal of time and effort working with Clark Regional Wastewater District to develop a plan to provide sewer to the facility See concept map for sewer in the additional material attached to this application

5 As indicated previously in this application, Urban Development is encroaching on the Lagler property to the south, southwest and west The Urban Growth Boundary is adjacent across 119th Avenue Urban development, including a new multifamily project is beginning to occur

Adjacent to the west across SR 503 (117th Avenue) and adjacent to the south on the west side is land zoned for both commercial and industrial development The Chelatchie Prairie Railroad line crosses a portion of the Ackerland property on the west across SR 503 (117th Avenue) and adjacent to the south on the west side The approval of this Application on the west side will allow an expansion of the Clark County's rail industrial overlay to the balance of the west side of the Akerland property to take advantage of freight rail uses through that portion

There is also a large retail center southwest of the Lagler property and adjacent to the above described commercial and industrial property on the west side of SR 503 (117th Avenue) This center has a regional draw form the Orchards area and from Battle Ground, contributing to a significant increase in traffic along the SR 503 (117th Avenue) Urban Arterial creating incapability with farm activity crossing the Arterial as is necessary for the dairy operation

6 As indicated and inferred in the Globalwise report, farming activity the size of the Lagler and Ackerland properties is no longer viable for farming in Clark County The Globalwise Report (Page 26) indicates changing conditions have impacted the land required by the County's Agricultural Boundaries

As indicated in the Globalwise report and notwithstanding the availability of productive soils and the excellent quality and yield of crops produced, such crops are no longer viable to produce in Clark County. It has become much more difficult to establish long term commercially stable agricultural production The inclusion of a portion of the land in the rural industrial land bank for agriculture will be done so at a price that will support smaller organic farming activity

7. See comments in regards to criteria 5 as set forth above The primary issues involve the increasing inability of farming activity to cross SR 503 (117th Avenue) safely and the odor from the Nutrient Lagoon that exist on the southern end of the Lagler property.

8 See comment in criteria 5 above

9 Land use development activity in adjacent Urban Growth areas to the south, southwest and west have begun to create incompatible Urban Development as described in criteria 5 above

10 The decreasing need for agricultural land for crop production as described in this Application has kept the value of agricultural land stable at a low level for many years. Prior to the Great Recession, shovel ready industrial land was valued at between $4 00 and $5 00 dollars per square foot That value dropped to as low as $2 50 per square foot Industrial land values have now climbed to about $3 50-$4 00 per square foot and will continue to climb due to scarce supply and increased demand

11. Dairy farms in Clark County are no longer proximate to their markets Indeed the Lagler family is in the planning stages of moving their farming operations to the east side of the Cascade Mountains near the Columbia River As the Globalwise Report (Page 22) states, "Historically cow dairies were a major part of Clark County agriculture The county's dairy industry has steadily declined Dairy farmers in the county indicate that there are seven remaining cow dairies It is reported by the WSU dairy specialist that in 1984, there were 84 dairies in the county Dairy operators and former dairy operators state that many reasons exist for the decline First, the clear trend is for fewer and larger dairies, to achieve economies of scale The move to larger dairies also is part of the reason milk prices are low, which pressures the smaller dairies and leads them to expand or leave the industry The favored areas for dairy production in the Pacific Northwest are east of the Cascades in eastern Washington, eastern Oregon and in Idaho Among the reasons the industry has been re-locating to these areas relative to western Washington are less costly feed (principally alfalfa and hay), lower cost land which allows the diary operators to expand their land base and herd size, better access to labor and workers who are experienced with livestock care and management, and less effort/lower cost to meet manure management standards "

An additional if not typical reason for the Applicant to relocate its farm to the east side of Washington is that as a co-op member of Tillamook that is where their Diary products are processed Tillamook built a large processing plant there because dairy families find less expensive land, less cumbersome environmental regulations for the required Nutrient Lagoon, and the ability to create even larger dairy farms on less expensive land to maximize production as efficiently as possible at a lower cost

ZONING

The size of the Lagler property as well as its relatively flat nature and the absence of significant environmental constraints will allow it to meet the general and more specific development standards set forth in Clark County Unified Development Code including but not limited to

Chapter 40 200 (General Provisions)
Chapter 40 230 085 (Commercial, Business, Mixed Use and Industrial Districts - Employment Districts (IL, IH, IR, BP))
Chapter 40 250 070 (Overlay Districts Railroad Overlay District (RR)) – this overlay should be applied to all of the property on the west side of SR 503 (117th Avenue)
Chapter 40 310 (Signs)
Chapter 40 320 (Landscaping and Screening)
Chapter 40 340 (Parking and Loading)
Chapter 40 350 (Transportation and Circulation)

Chapter 40 360 (Solid Waste and Recycling)
Chapter 40 370 (Sewer and Water)
Chapter 40.385 (Stormwater and Erosion Control)
Chapter 40 4 (Critical Areas and Shorelines) – any applicable provisions to address critical areas, habitat and wetland protection
Chapter 40 570 (State Environmental Policy Act (SEPA))

The requested zoning for the Lagler and Ackerland properties is IL (Light Industrial)