BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Wednesday, February 7, 2018
10:00 a.m. - Room 308

BOARD MEETING AGENDA

CALL TO ORDER/FLAG SALUTE

MINUTES:

Minutes, January 31, 2018 Board meeting.
Minutes, January 31, 2018 Work Session

VISITOR COMMENTS - 5 MINUTE LIMIT

MATTER(S)

1) First Reading of Ordinance No. 2018-1, "In the Matter of Application No. PA 13-02/ZC 13-01 by the Port of St. Helens for a Comprehensive Plan Amendment, Zone Change and Goal Exception to Reclassify 837 Acres of Agricultural Resource to Resource Industrial and Change the Zoning from Primary Agriculture – 80 (PA-80) to Rural Industrial – Planned Development (RIPD) for the Expansion of Port Westward".

CONSENT AGENDA:

(A) Ratify the Select to Pay for the week of 02.05.18.

(B) Appoint Doug Hayes, representing Port of St. Helens and Robert Johnston, representing South County Cities, as alternates to the Homeland Security Emergency Management Committee for a (1) year term.

(C) Reappoint Ian O'Connor, representing Fire/EMS (3 year term); Trish Hilsinger, representing Columbia 911 (1 year term); Jeff VanNatta, representing North County Cities (3 year term); Anne Parrott, representing Public Health (3 year term); and Lonny Welter, At Large position (3 year term) to the Homeland Security Emergency Management Committee.

(D) Appoint Herb Bailey, Industry Representative, to the Solid Waste Advisory Committee to replace Ernie Martin. Term to expire 12.31.20.

(E) Order No. 5-2018, "In the Matter of the Petition by C&P Investments to Name a New Private Road, located off of Shady Way near Scappoose, Oregon, "Sandy Point Way".

AGREEMENTS/CONTRACTS/AMENDMENTS:

(F) Homeland Security Grant Agreement No. 17-207 with the Oregon Office of Emergency Management and authorize the Chair to sign.

(G) Homeland Security Grant Agreement No. 17-208 with the Oregon Office of Emergency Management and authorize the Chair to sign.

(H) Intergovernmental Agreement No. 32421 with the Oregon Department of Transportation and the Oregon Business Development Department for Administering the Disadvantaged Business Enterprise (DBE) Unified Certification Function.

DISCUSSION ITEMS:

COMMISSIONER HEIMULLER COMMENTS:

COMMISSIONER MAGRUDER COMMENTS:

COMMISSIONER TARDIF COMMENTS:

EXECUTIVE SESSION:

Pursuant to ORS 192.640(1), the Board of County Commissioners reserves the right to consider and discuss, in either open session or Executive Session, additional subjects which may arise after the agenda is published.

BEFORE THE BOARD OF COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of Application No. PA 13-02/ZC 13-01 by the Port of St. Helens for a Comprehensive Plan Amendment, Zone Change and Goal Exception to Reclassify 837 Acres of Agricultural Resource to Resource Industrial and Change the Zoning from Primary Agriculture – 80 (PA-80) to Rural Industrial – Planned Development (RIPD) for the Expansion of Port Westward	ORDINANCE NO. 2018-1

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

SECTION 1. TITLE

This Ordinance shall be known as Ordinance 2018-1.

SECTION 2. AUTHORITY

This Ordinance is adopted pursuant to ORS 203.035, ORS 197.175, 197.610, 197.615 and 197.732.

SECTION 3. PURPOSE

The purpose of this Ordinance is to approve Application No. PA 13-02 / ZC 13-01 of the Port of St. Helens, as modified on remand from the Land Use Board of Appeals, for a Comprehensive Plan Amendment, Zone Change and Goal 2 Exception to Goal 3 to change the Comprehensive Plan designation of approximately 837 acres from Agricultural Resource to Resource Industrial. The approval also changes the zoning of the property from Primary Agriculture – 80 Acres (PA-80) to Rural Industrial – Planned Development (RIPD). The approved Goal Exception further limits the uses allowed in the expansion area to the following five uses, which must be significantly dependent on the deepwater port at Port Westward:

(1) Forestry and wood products processing, production, storage, and transportation;
(2) Dry bulk commodities transfer, storage, production, and processing;
(3) Liquid bulk commodities processing, storage, and transportation;
(4) Natural gas and derivative products, processing, storage, and transportation; and
(5) Breakbulk storage, transportation, and processing.

The subject property includes the following tax lots (identified by Tax Map ID): 8N4W 16 00 500; 8N4W 20 00 200, 300; 8N4W 21 00 300, 301, 400, 500, 600; 8N4W 22 00 400, 500, 600, 700; 8N4W 23 00 900; and 8N4W 23 BO 400, 500, 600, 700 (NOTE: 8N4W 20 00 100 and 8N4W 29 00 100 were included in original application, but not the modified application and are therefore not part of this approval.)

SECTION 4. HISTORY

Planning Staff first deemed Application No. PA 13-02 / ZC 13-01 complete on February 19, 2013. Following public notice, the Planning Commission held public hearings on May 6, 2013, and May 20, 2013. On June 17, 2013, the Planning Commission deliberated and voted 5-1 to recommend denial of the application to the Board of Commissioners.

Following public notice, the Board of Commissioners held three public hearings on the application in Clatskanie on September 18, 2013, October 3, 2013, and October 9, 2013. The Board then closed the hearing, left the record open for written testimony and continued deliberations to November 13, 2013.

After deliberating on November 13, 2013, the Board adopted Ordinance No. 2014-1 by unanimous vote, which denied PA 13-02 / ZC 13-01 as to the two southernmost river-front tax lots (8N4W 20 00 100 (96.59 acres) and 8N4W 29 00 100 (23.03 acres)) and approved the application as to the remaining tax lots, subject to conditions recommended by staff, as amended by the Board.

Shortly thereafter, Ordinance No. 2014-1 was appealed to the Land Use Board of Appeals (LUBA). On August 27, 2014, LUBA remanded the County's decision, in part, identifying areas in which the record and findings provided insufficient justification for taking a Goal 3 exception and rezoning the exception area to RIPD. (*Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014)).

In response to the remand, the Port of St. Helens (hereinafter, the "Port") submitted a modified Application No. PA 13-02 / ZC 13-01 on April 18, 2017. The Port's modified application excluded the two riverfront tax lots described, above, and relied solely on OAR 660-004-0022(3)(a) as justification for an exception to Goal 3. OAR 660-004-0022(3)(a) allows for an exception if "[t]he use is significantly dependent upon a unique resource located on agricultural or forest land." The Port identified the deepwater port, with its existing dock facilities at Port Westward, as the unique resource justifying an exception to Goal 3. Moreover, rather than seek an exception for all uses allowable in the RIPD zone, the Port's modified application limited the uses in the exception area to five rural industrial uses, as described above, that would be dependent on the deepwater port:

Following public notice, the Board of County Commissioners (hereinafter, the "Board") held a hearing on the modified application on August 2, 2017. The Board closed the hearing, left the record open for written testimony and continued the meeting to September 13, 2017, for deliberations. On September 13, 2017, the Board voted to reopen the record to allow new evidence from staff in response to concerns raised during the open record period. The Board then left the record open until September 27, 2017, to allow written testimony on the new evidence and until October 4, 2017 for final argument. The Board then continued its deliberations to October 25, 2017.

Prior to the scheduled deliberations, the Board, in its capacity as the Columbia County Development Agency, which is an entity separate from the County, met with the Port of St. Helens Board of Commissioners to discuss Port Westward matters unrelated to Application No.

PA 13-02 / ZC 13-01. However, during that meeting, the Board received information about the dock at Port Westward, which was relevant to Application No. PA 13-02 / ZC 13-01. On October 19, 2017, the Board notified interested parties by mail and publication of the *ex parte* contact, that the Board would hold a hearing on the *ex parte* contact on November 8, 2017, and that deliberations were rescheduled to that date. On November 8, 2017, the Board held a hearing to disclose the *ex parte* contact with the Port Commission as well as an *ex parte* Facebook message received about the dock. The Board left the record open until November 22, 2017, for the applicant's rebuttal and final argument, and continued deliberations to November 29, 2017.

On November 29, 2017, the Board deliberated and voted 2-1 to approve the modified application subject to conditions as recommended by staff. The Board then directed staff to prepare an ordinance to reflect the decision.

SECTION 5. FINDINGS AND CONCLUSIONS

The Board adopts the following findings and conclusions in support of its decision:

A. The above recitals.

B. The Supplemental Findings of Fact and Conclusions of Law on the modified application, attached hereto as Exhibit 1 and incorporated herein by this reference.

C. The findings and conclusions in the Staff Report on the modified application, attached hereto as Exhibit 2 and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.

D. The findings and conclusions in the Supplemental Staff Report on the modified application, attached hereto as Exhibit 3 and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.

E. The Supplemental Findings of Fact and Conclusions of Law on the original application, attached hereto as Exhibit 4 and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.

F. The findings and conclusions in the Staff Report on the original application, attached hereto as Exhibit 5 and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.

SECTION 6. DECISION, AMENDMENT AND AUTHORIZATION

A. Based on the evidence in the record, the Board hereby approves Application No. PA 13-02 / ZC 13-01, as modified to address issues on remand from LUBA, to amend the Comprehensive Plan and Zoning Map and to approve an exception to Goal 3 subject to the following conditions:

1) Prior to an application for a building or development for a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.

2) To ensure adequate transportation operation, proposed developments and expansions requiring site design review or Use Under Prescribed Conditions shall not produce more than 332 PM peak-hour trips for the entire subject property without conducting a new Traffic Impact Analysis ("TIA") with recommendations for operational or safety mitigation consistent with the Oregon Transportation Planning Rule 660-012-0060.

3) A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.

4) To ensure compatibility with adjoining agricultural uses, the applicant/developer of new industrial uses shall comply with the following:

    a. The habitat of threatened and endangered species shall be evaluated and protected as required by law.

    b. Alterations of important natural features, including placement of structures, shall maintain the overall values of the feature.

    c. All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses on PA-80 zoned land, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.

    d. When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.

    e. Controls, including suppression and requiring hard surfaces, shall be employed as needed to be determined by the County to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.

    f. Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.

    g. The industrial use impact on the water table and sloughs shall be monitored for water quality and surface water elevations to ensure that the area water can be maintained and managed for existing uses.

h. Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property and impacts to rail movements, safety, noise or other identified impacts along the rail corridor supporting the County's transportation system. The plan shall propose mitigation to identified impacts.

i. Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.

5) The types of industrial uses for the subject Plan Amendment shall be limited to only those uses that are substantially dependent on a deepwater port and have demonstrated access rights to the dock, and those uses with employment densities, public facilities and activities justified in the exception, specifically:

a. Forestry and wood processing, production, storage, and transportation;
b. Dry bulk commodities transfer, storage, production, and processing;
c. Liquid bulk commodities processing, storage, and transportation;
d. Natural gas and derivative products, processing, storage, and transportation; and
e. Breakbulk storage, transportation, and processing.

6) The storage, loading and unloading of coal is specifically not justified in this exception. Such uses shall not be allowed on the subject property without a separate approved exception to Goal 3.

7) The Port (applicant) shall institute a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for a range of contaminates at the re-zone site and down-gradient. The program should be designed and managed for assurance that future industrial wastewater discharges are treated to prevent pollution to the watershed environment. The program shall be designed to detect leaking tanks.

8) The Port (applicant) shall prepare a response plan and clean-up plan for a hazardous material spill event. The plan shall include appropriate government agencies and private companies engaged in such clean-up activities.

B. The Board hereby amends the Columbia County Comprehensive Plan to change the designation of the 837-acre subject property from Agricultural Resource to Resource Industrial, and to incorporate the Port Westward Expansion Area Exception Statement,

attached hereto as Exhibit 6 and incorporated herein by this reference, in Part XII. Industrial Siting.

C. The Board hereby amends the Columbia County Zoning Map to change the zoning of the subject property from Primary Agriculture – 80 (PA-80) to Rural Industrial – Planned Development (RIPD).

SECTION 7. REPEALER

This Ordinance repeals Ordinance No. 2014-1.

SECTION 8. SEVERABILITY

If any portion of this Ordinance is held invalid by a court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent portion, and such holdings shall not affect the validity of the remaining portions of this Ordinance.

SECTION 9. SCRIVENER'S ERRORS

Any scrivener's errors in this Ordinance may be corrected by order of the Board of County Commissioners.

DATED this _____ day of _____, 2018.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: _____
Office of County Counsel

By: _____
Margaret Magruder, Chair

By: _____
Henry Heimuller, Commissioner

Recording Secretary

By: _____
Jan Greenhalgh

By: _____
Alex Tardif, Commissioner

First Reading: _____
Second Reading: _____
Effective Date: _____

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of its decision the Columbia County Board of Commissioners adopts the following Supplemental Findings of Fact and Conclusions of Law:

1. The County has Complied with all Procedural Land Use Requirements During the Course of its Remand Proceedings

a. The County's Notice Complies with Legal Requirements

The Board finds that the County's notice was sufficiently detailed to apprise interested parties of the hearing on the Port's modified application on remand, the scope of the County's review, and the general applicable criteria. The notice provided, in part:

> "The purpose of the hearing is to consider the Port of St. Helens' modified application on remand from the Land Use Board of Appeals (LUBA) for a Comprehensive Plan Map Amendment, Zone Change, and an Exception to Statewide Planning Goal 3 pursuant to ORS 197.732(2)(c) for an 837-acre expansion of the Port Westward Rural Industrial Area (Port Westward). The applicant seeks to change the Comprehensive Plan Map designation of the expansion area from Agricultural Resource to Resource Industrial and to change the zoning from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD). An exception to Goal 3, which provides for the preservation of agricultural lands, is required to change the Comprehensive Plan designation from an agricultural use to an industrial use."

In accordance with ORS 197.763, the notice properly set forth the nature of the application and the general criteria– a Comprehensive Plan Amendment, Zone Change and Goal 3 Reasons Exception – to allow industrial uses on land currently zoned Primary Agriculture. The notice also stated that the staff report, which contained detailed criteria and findings, would be available in advance of the hearing.

In addition, the application at issue here is not a new application but a continuation of an existing application. The notice therefore properly explained that the County's review would be limited to whether the modified application addressed the issues remanded by LUBA, as follows:

> "Written and verbal testimony at the hearing will be limited to the issues on remand. Specifically, LUBA remanded the decision for the County to determine: (1) if applicable, whether the uses cannot be located within an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; (2) whether areas that do not require a goal exception cannot reasonably accommodate the use; (3) whether the proposed uses are compatible with adjacent uses or can be

rendered so through mitigation; and (4) applying the factors articulated in *Shaffer v. Jackson County*, whether a Goal 14 Exception is required."

As the notice indicates, LUBA remanded the County's previous approval on whether the uses originally proposed could not be located within an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas. However, the notice indicates the basis for remand needs to be addressed only "if applicable." In its modified application, the Port addressed this issue by choosing not to pursue an exception to Goal 3 under OAR 660-004-0022(3)(b) (hazardous or incompatible uses in densely populated areas). Accordingly, the Board finds that OAR 660-004-0022(3)(b) is no longer applicable and does not serve as a basis for the Goal 3 exception granted by the Board.

In sum, the County's notice informed interested parties of the application, the issues on remand and the opportunity to testify in a manner that was understandable and meaningful. It also provided an opportunity for any interested party to obtain additional information prior to the hearing. The Board finds that the notice of public hearing met the requirements of ORS 197.763.

b. Proper Use of the Exception Process

The Board finds that the Port's request for an exception to Goal 3 is a proper use of the exception process and that the Port is not limited to the Periodic Review process under to ORS 197.628 to 197.636. The Board also finds proposed expansion area is approximately 7 miles away from the City of Clatskanie's urban growth boundary, and so is not subject to mandatory Periodic Review.

The Board finds that the Port has proposed a Comprehensive Plan Map amendment and Zone Change for a specific area adjacent to Port Westward to conditionally allow five specific rural industrial uses in the new expansion area, in addition to the two uses permitted outright in the RIPD zone. As detailed below, the Port's application does not propose "a planning or zoning policy of general applicability" under ORS 197.732(1)(b)(A) and OAR 660-004-0005(1)(a). Rather, the Port has requested authorization for five specific uses conditionally allowed in the RIPD zone, each limited to the exception area and, as approved, significantly dependent on the use of the existing deepwater port at Port Westward.

c. Five Identified Uses

The Board Finds that the Port is proposing a Comprehensive Plan Map amendment and Zone Change, limited to the specific 837 acre area adjacent to Port Westward, to allow five specific rural uses in that specific area. Because the land is currently zoned PA-80, the Comprehensive Map Amendment and Zone Change require an exception to Goal 3.

Opponents have argued that the Port's application constitutes "a planning or zoning policy of general applicability" which is prohibited under ORS 197.732(1)(b)(A) and OAR 660-004-0005(1)(a). The Board finds that its approval of the Port's request does not constitute the implementation of a planning or zoning policy of general applicability, but rather is a limited approval authorizing five specific uses conditionally permitted in the RIPD zone, and further limiting the approval of those uses to the subject expansion area. To be clear, the Board is not authorizing any conditional uses in the 837 acre area beyond the five uses proposed by the Port. Further, the authorization is geographically limited to the 837 acre expansion area.

To the extent opponents have expressed concern that future rural industrial Port tenant uses could potentially lack a nexus with the deepwater port at Port Westward, and thereby undermine the basis for granting the exception, the Board finds that the terms of the Port's application on remand is self-limiting in that the sole basis the Port has put forward is significant dependence on the deepwater port at Port Westward. Given that limitation, any potential tenant seeking to locate in the new expansion area would be limited not only to the five authorized uses, but to the five authorized uses in a form that would be significantly dependent on the deepwater port at Port Westward.

Nevertheless, the Board acknowledges that the opponents' concern is a reasonable one and notes that Condition 5 has accordingly been imposed for additional clarity. The condition requires that the five uses authorized be significantly dependent on and have demonstrated access to the deepwater port at Port Westward. With that condition in place, the Board finds that the only rural industrial uses the approval authorizes in the new expansion area are those that will be significantly dependent on actual deepwater port usage at Port Westward.

In its remand decision, LUBA held that the applicable law does not prohibit approval of an exception for more than one rural industrial use. 70 Or LUBA 171,181. The Board finds that each of the approved uses, while somewhat similar in nature, is a discrete and specific use which, in specific contexts, can have a significant dependence on maritime commerce, which the condition described above requires. The Board does not agree with opponents that operational sub-components of use each comprise separate uses, nor that the approved uses amount solely to "goods." The Board notes that each of the five uses are specific to different kinds of goods, but the approved uses also include the processing, handling and/or storage of those goods. The Board therefore finds that the approved uses each involve the act (or acts) of getting the subject goods processed, transferred, imported and/or exported via deepwater port and accordingly serve as a valid basis for taking an exception to Goal 3.

2. Each of the Port's Approved Uses is Significantly Dependent on a Unique Resource Located on Agricultural or Forest Land

a. Port Westward is a Deepwater Port as Recognized under State Law

The Board finds that Port Westward is recognized as a deepwater port under State law. ORS 777.065 recognizes that the State of Oregon has five deepwater port facilities (Astoria, Coos Bay, Newport, Portland and St. Helens). ORS 777.065 states the following:

> "The Legislative Assembly recognizes that assistance and encouragement of enhanced world trade opportunities are an important function of the state, and that development of new and expanded overseas markets for commodities exported from the ports of this state has great potential for diversifying and improving the economic base of the state. Therefore, development and improvement of port facilities suitable for use in world maritime trade at the Ports of Umatilla, Morrow, Arlington, The Dalles, Hood River and Cascade Locks and *the development of deepwater port facilities at Astoria, Coos Bay, Newport, Portland and St. Helens is declared to be a state economic goal of high priority.* All agencies of the State of Oregon are directed to assist in promptly achieving the creation of such facilities by processing applications for necessary permits in an expeditious manner and by assisting the ports involved with available financial assistance or services when necessary." (Emphases added.)

The Board accordingly finds that Port Westward qualifies as a deepwater port. The Port has noted that Page 95 in the original record provides an explanation that Oregon's deepwater ports can accommodate vessel drafts of 40 feet or deeper, and that the 2008 Oregon Legislative Committee Services Background Brief in the record of the remand proceedings identifies Port Westward as a deepwater port, stating, "The three ports on the lower Columbia, Astoria, St. Helens, and Portland, are deep water ports."

As the Port has explained in its submissions to the County, the deepwater ports on the Columbia River are those ports with access to the federally maintained 43 foot navigation channel running 105 nautical miles from the mouth of the Columbia River to the Portland/Vancouver area. This is supported by Pacific Northwest Waterways Association Columbia Snake River System Fact Sheet submitted into the record.

Opponents have suggested that the Board adopt a definition of "deepwater port" consistent with the use of that term as applied to off-shore oil and gas transfer and transportation facilities under 33 U.S.C. 1502(9). The Board declines to adopt such a definition, in the face of the substantial evidence in the record as to the meaning and use of the term as outlined above.

To the extent that opponents have argued that Port Westward is not a deepwater port, the Board rejects that argument. Based on substantial evidence submitted into the record to the contrary, the Board finds that Port Westward is a deepwater port with access to the federally maintained 43 foot navigation channel.

The Board also finds that the 2008 Background Brief on Oregon Ports, prepared by the Oregon Legislative Committee Services and submitted into the record, provides substantial

evidence that the approved uses are typical uses at port facilities. As the Port noted, three of the uses authorized by this decision are explicitly identified in that Background Brief as common port activities: Dry Bulk, Liquid Bulk and Break Bulk. In addition, the "Cowlitz Partnership Shoreline Master Program Updates" document submitted into the record discusses Dry Bulk, Liquid Bulk and Breakbulk each as potential uses under the chapter titled "Demand for Water Dependent Uses" and under the subheading of "Marine Cargo" *See*, Riverkeeper Letter dated August 2, 2017, Ex. 22, pp. 5-8. The Board finds that the approved uses are commonly associated with port facilities, as established by the record evidence before the Board.

The Board also rejects the argument that the Port is required to demonstrate all "parcels" of the subject property will have independent specific access to the deepwater port at Port Westward. OAR 660-004-0022(3)(a) requires a demonstration that the "use is significantly dependent upon a unique resource" (underlining added) including "river and ocean ports," not that the proposed "parcels of the subject property" are significantly dependent on the unique resource. Further, the process of rezoning property is not required to be conducted separately for individual lots or parcels, and it is not uncommon for the County to process single rezoning applications involving more than one such lot or parcel. Consequently, the Board rejects arguments to the contrary.

b. The Deepwater Port at Port Westward is a Unique Resource that Provides a Valid Basis for an Exception under OAR 660-004-0022(3)(a)

The Board finds that OAR 660-004-0022(3)(a) specifically authorizes taking an exception to Goal 3 for "river and ocean ports" as proposed by the Port. The Board rejects the argument that the existence of human-made dock facilities serving the deepwater port at Port Westward disqualify the deepwater port at Port Westward as a basis for a reasons exception to Goal 3. Under OAR 660-004-0022(3)(a), an approved use must be "significantly dependent upon a unique resource" and the administrative rule provides as examples "geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports." As the Port has pointed out, in addition to "river and ocean ports," the rule also authorizes explicitly human-made "water reservoirs" as a valid basis for granting a "unique resource" reasons exception. The language of the rule indicates that the necessary human-made dam (or similar detention facility) for creating a water reservoir would not disqualify a reservoir, and accordingly the Board concludes that the presence of a dock at the deepwater port at Port Westward does not disqualify it as a valid basis for taking an exception under OAR 660-004-0022(3)(a).

The Board also rejects the assertion that the *pre-existence* of human-made dock improvements at Port Westward disqualify the deepwater port from providing a basis for a unique resource exception. The Board finds such an argument contradicted by the inclusion of reservoirs in the list of *per se* valid examples of unique resources that can provide a basis for a reasons exception under OAR 660-004-0022(3)(a), which by definition are water supply capacity improvements and would by necessity predate granting any proposal for a Goal 3 exception

relying on the reservoir as the "unique resource" justifying a reasons exception. Based upon the inclusion of reservoirs in the list of acceptable "unique resources" under OAR 660-004-0022(3)(a), the Board finds that a potential rural feature put forward as the basis for a "unique resource" reasons exception cannot be disqualified on the basis that it is human-made or that its construction predates the exception request.

c. The Land Surrounding the Deepwater Port at Port Westward Qualifies for an Exception under OAR 660-004-0022(3)(a)

Opponents argue that the deepwater port cannot qualify as a unique resource because it is not on agricultural or forest land. The Board disagrees. As an initial matter, the Comprehensive Plan designates the RIPD zone as a resource zone, as embedded in its name, "Resource Industrial Planned Development." The zone is intended to be on resource lands and to coexist with farm and forest uses. For that reason, CCZO Section 682 establishes as the only outright permitted uses in the RIPD zone "[f]arm use[s] as defined Subsection 2 of ORS 215.203 except marijuana growing and producing" and the "[m]anagement, production and harvesting of forest products, including wood processing and related operations." The Board concludes that such "farm uses" and "management, production and harvesting of forest products" are agricultural and forest uses and that the original exception area qualifies as agricultural or forest land.

Both the original exception area and new expansion area at Port Westward are outside of an urban growth boundary. Section XII of the Comprehensive Plan, Industrial Siting, discusses Port Westward under the heading, "Industrial Lands Exceptions." In that discussion of the original exception area, the Comprehensive Plan states:

> "The site is located 7 miles northeast of the city of Clatskanie. The site totals 905 acres, of which 120 acres contains a 535 MW electric generating plant, a 1,250 foot dock and a 1.3 million barrel tank farm, among other related facilities. *Approximately 300 acres contains dredge-fill and is no longer considered resource land. The remainder of the 905 acres (485 acres) is land needed for future industrial expansion*. The site has deep-water port facilities, and access to Burlington Northern Railroad." (Emphasis added.)

Given that description of the original exception area in the Comprehensive Plan, the Board finds that the original exception area qualifies as resource land under the County's acknowledged Comprehensive Plan.

To the extent opponents have raised an argument that the original exception area is disqualified under OAR 660-033-0020(1)(c), the opponents have not explained how that administrative rule prohibits forest lands from providing a valid basis for an exception. As explained above, the RIPD zone authorizes as outright permitted uses both "[f]arm use[s] as defined Subsection 2 of ORS 215.203 except marijuana growing and producing" as well as the

"[m]anagement, production and harvesting of forest products, including wood processing and related operations." Opponents have not provided, and the Board is unaware of, an administrative rule excluding land within acknowledged Goal 3 exception area from qualifying as "forest land." Accordingly, as the RIPD zone allows both forest and agricultural uses as its only outright permitted uses, the Board finds that OAR 660-033-0020(2)(c) does not disqualify RIPD lands as a valid basis for a Goal 3 Exception under OAR 660-004-0022(3)(a).

Opponents also challenge whether OAR 660-004-0022(3)(a) can provide a basis for taking an exception to Goal 3 based on a claim that the port itself is not "located on agricultural or forest land" as required by the administrative rule, but over jurisdictional waters. As an initial matter, the Board notes that the unique resource here is the *deepwater port* – not just the dock – and the port consists both of submerged land under the jurisdictional waters of the state, as well as the adjoining upland area unquestionably zoned RIPD and anchoring the existing dock. OAR 660-004-0022(3)(a) specifically authorizes granting a reasons exception for rural industrial uses that are significantly dependent on "river and ocean ports", all of which by definition are necessarily located at the nexus between navigable "jurisdictional" waters of the state and adjoining upland areas.

Opponents also argue that the recently decided *1000 Friends of Oregon v. Jackson County* (LUBA No. 2017-066, October 27, 2017), categorically prohibits the deepwater port from qualifying as a unique resource under OAR 660-004-0022(3)(a) because it is not on agricultural or forest land. Based on the above, the Board disagrees.

The issue in *Jackson County* was whether an electrical substation located within an urban growth boundary could constitute a "unique resource" under OAR 660-004-0022(3)(a) to justify a solar farm on land zoned for primary agriculture. However, in *Jackson County*, the County did not approve the exception on that basis and did not make any findings on OAR 660-004-0022(3)(a). Rather, the applicant in that case urged LUBA to employ ORS 197.835(11)(b) to affirm the exception on that basis despite nonexistent findings on OAR 660-004-0022(3)(a). LUBA declined, stating:

> "Further, *ORS 197.835(11)(b) is a limited vehicle that allows LUBA to overlook inadequate findings in cases where the relevant evidence is such that it is 'obvious' or 'inevitable' that the decision complies with the applicable approval standards*. [Internal citation omitted.] ORS 197.835(11)(b) is not a vehicle that would allow LUBA to affirm a reasons exception based on a reasons standard that the local government apparently did not consider. Further, it is certainly not 'obvious' or 'inevitable' that a reasons exception could be justified under OAR 660-004-0022(3)(a)." Slip Op. at (emphasis added.)

Accordingly, LUBA's statement that "because the Sage Substation is located within the city's UGB, it cannot possibly constitute a 'resource' for purposes of OAR 660-004-0022(3)(a)," (Slip Op. at p. 27) was focused on *whether the evidence was so "obvious" or "inevitable" as to allow LUBA to justify a reasons exception that Jackson County had not considered*. It was not a determination on what constitutes resource land, but that it was not *obvious* that the particular substation at issue was on resource land because it was within a city's UGB. Reliance on LUBA's statement for purposes of determining what constitutes resource land is therefore misplaced.

In any event, this approval is not like the substation in *Jackson County*. The deepwater port at Port Westward is not within a UGB and is approximately 7 miles from the City of Clatskanie's UGB, the nearest UGB. And as explained above, the upland area portion of the port, at a minimum, is in the RIPD zone, which is a resource zone where the only uses allowed outright are agricultural and forest uses. Moreover, the port itself (including that part submerged beneath jurisdictional waters of the state) is expressly allowed as a basis for an exception. Given those distinctions, the Board concludes that the approved expansion area adjacent to the deepwater port "unique resource" qualifies for an exception under OAR 660-004-0022(3)(a).

d. The Existing Dock is Underutilized as Contemplated by the Original Port Westward Exception Which Does Not Impose Limitations on Dock Usage

The Board rejects the argument that the level of dock usage is limited under the terms of the previous exception. Section IV.B. of the original Port Westward Exception Statement in the Columbia County Comprehensive Plan states the following:

> "B. Dock
>
> There is a 1,250-foot dock immediately adjacent to the Columbia River 40-foot channel. The dock is of creosoted timber pile construction, protected with a sprinkler system with 100 pounds of pressure, and has been well maintained. Rail tracks traverse the dock and connect it to the mainland from the downstream end by a trestle. *There are two berths capable of storing large cargo vessels,* plus dolphins for log rafting and barge moorage on the Bradbury Slough." (Emphasis added.)

Thus, the original exception contemplated use of the dock by "large cargo vessels."

The Board also notes that Section V of the exception statement for the existing Port Westward exception area gave the following as examples of possible anticipated users: "a 200-acre oil refinery, a 150-200-acre coal plant, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant," all uses that would require significantly more dock usage than the evidence

shows is currently occurring at the Port Westward dock.[1] Accordingly, the Board finds that the original exception authorized large cargo vessels and that the record indicates current actual dock traffic is substantially lower than the level contemplated at the time the original exception was granted.

In addition, the Port has submitted evidence into the record regarding its "Terminal Manager" position, with an explanation that an essential function of the Port's Terminal Manager is to coordinate dock traffic. The existence of the position, and the job description of the position contained in the record, is evidence that the Port has anticipated and planned for substantially heavier dock usage, by multiple users served by large marine vessels, than currently exists.

To the extent opponents suggest that the Port Westward dock does not have the capacity to accommodate other Port tenants' use of the dock, the Board disagrees based on evidence in the record. While the Board does note that the Dock Use Agreement grants Columbia Pacific Bio-Refinery (CPBR) "first priority" for Berth 1, Sections 2(a) and 2(c) shed light on what that means. Section 2(a) of the Third Amendment to the Dock Use Agreement states the following:

> "CPBR will regularly provide to the Port CPBR's anticipated schedule of vessel calls at Berth 1. CPBR will update the schedule with the Port on a regular basis. The Port, after good faith consultation with CPBR, shall establish a commercially reasonable schedule and deadline for nomination procedures at Berth 1, in accordance with industry standards. In the event CPBR or any other party, in accordance with Port nomination procedures, nominates the same days, CPBR's nomination shall have priority."

The Board finds that this language clearly anticipates usage of Berth 1 by other entities. In so finding, the Board also relies on Section 2(c), which provides the following, in part:

> "The Port will establish a Berth Window for other entities using Berth 1 to set the duration of the permitted use of Berth 1 on the vessel's call and will communicate the Berth Window to the dock user and vessel interests as well as to CPBR. . . ."

The Board notes that this language from the Dock Use Agreement applies exclusively to Berth 1, but that the original exception statement notes that there are two berths at Port Westward "capable of storing large cargo vessels." The terms of the Dock Use Agreement quoted above apply only to Berth 1. Regarding Berth 2, there is evidence in the record to establish that, between the two berths, there is existing capacity to accommodate additional port-dependent uses in the new expansion area. The Board accordingly finds that such capacity exists, and that utilization of that additional capacity has been anticipated since the original exception was granted.

[1] The Board notes that these uses come from the decades-old Exception Statement for the original exception area and were merely provided as examples of potential uses in that original exception area, and specifically notes that coal is not authorized under the exception granted for the new expansion area.

e. LUBA's Decision Found All Uses Allowed in the RIPD Zone Supported an Exception and the Narrowed List of Five Approved Uses Fall Within that Scope

The Board finds that the approved uses fall within those uses authorized in the RIPD zone, and that LUBA has ruled that any such authorized uses are valid. As LUBA stated:

> "[W]e agree with the Port that Condition E.5, CCZO 683.1(A) and CCCP Part XII, Policy 12, together act to effectively require future conditional use applicants to demonstrate that a particular proposed industrial use was justified in the exception decision. Further, via CCZO 683.1(A), future conditional use applicants will be required to demonstrate that the proposed use conforms to either CCCP Resource Development Policies 3(A) through (F) or with Policy 3(G), the language of which echoes the themes of OAR 660-004-0022(3)(a), (b) and (c)." (emphasis/all caps added)." 70 Or LUBA 171, 185 (2014).

Condition E.5 in Ordinance No. 2014-1, the condition referenced above, provided the following:

> "The types of industrial uses for the subject property shall be limited to the uses, density, public facilities & services and activities to, only those that are justified in the exception."

Condition 5 of this approval, which is similar, provides the following:

> "The types of industrial uses for the subject Plan Amendment shall be limited to only those uses that are dependent on a deepwater port and have demonstrated access rights to the dock, and those uses with employment densities, public facilities and activities justified in the exception, specifically:
>
> 1. Forestry and Wood processing, production, storage, and transportation
> 2. Dry Bulk Commodities transfer, storage, production, and processing
> 3. Liquid Bulk Commodities processing, storage, and transportation
> 4. Natural gas and derivative products processing, storage, and transportation
> 5. Breakbulk storage, transportation and processing."

Condition 5 is even more specific than the prior condition imposed, because it is directly tied to the five approved uses (uses significantly dependent upon deepwater access and use). Because of that, the Board finds that LUBA's holding above regarding former Condition E.5 applies with equal force to the more specific current Condition 5.

f. Appropriateness of Forestry and Wood Products Processing, Production, Storage and Transportation to Allow the County to Meet its Obligations Under OAR 660-004-0018(4)(a) as an Allowed Use

The Board finds that the Processing, Production, Storage and Transportation of Forestry and Wood Products is an appropriate use under the exception granted. Columbia County Zoning Ordinance ("CCZO") Section 304.2 allows only the "[p]ropogation or harvesting of forest products") and Section 305.19 allows only the "primary" processing of forest products and imposes a requirement that facilities related to such uses "be portable or temporary in nature" and approved for periods of not greater than one year at a time.

The Board finds that such a use is distinct from the Port's approved use, which is a long-term use, focused on utilization of the deepwater port at Port Westward and involving the processing, production, storage and transportation of forestry and wood products. Second, the Board agrees with the Port that, under OAR 660-004-0018(4)(a), inclusion of this use as an explicitly authorized use in the new expansion area is required as part of this approval, as any use must be specifically justified by the exception.

3. The Approved Expansion Area Has Access to the Deepwater Port and Dock Facilities at Port Westward

The Board finds that there is existing access to the deepwater port at Port Westward for future uses in the expansion area. As evidence of such access, Paragraph 4 of the First Amendment of the Master Lease between PGE and the Port states PGE retains only a "non-exclusive" easement for access and use of the dock and dock access area. While the same provision requires the written consent of PGE for use of the dock, it also explicitly states that such consent "shall not be unreasonably withheld" but can only be "reasonably conditioned."

In reviewing the evidence, the Board concludes that PGE is required under the terms of its lease with the Port to provide reasonable dock access. This conclusion is supported by the "Dock Use Agreement" between PGE, the Port and CPBR in the record and recognized in the First Amendment to the Master Lease. PGE's written communications to the Port included in the record provide further evidence of PGE's commitment to continue providing reasonable access and comply with the access requirement spelled out of its lease with the Port. All of the communications between PGE and the Port in the record provide evidence that access to the dock currently exists and will continue to exist into the future, and there is no evidence in the record of past or potential future denial of dock access. Other than general concerns expressed by opponents and the public that access may possibly be denied by PGE, the Board finds that the contrary evidence and history outweigh those concerns. Given the protections provided in the PGE lease, as well as PGE's past practices, existing agreements and representations in the record, the Board finds substantial evidence in the record demonstrates that dock access will be available to uses in the expansion area.

Similarly, the Board rejects the argument of opponents that the Port's Wharf Certification from DSL for the dock imposes limitations on the level of dock use. The scope of the Port's

authorization from DSL is not an approval criterion for granting a reasons exception to Goal 3, its implementing rules or any other applicable law. The DSL certification in the record states that it is issued for "wharfing purposes" under ORS 780.040(1), which provides the following:

> "The owner of any land lying upon any navigable stream or other like water, and within the corporate limits of any incorporated town *or within the boundaries of any port*, may construct a wharf upon the same, and extend the wharf into the stream or other like water beyond low-water mark so far as may be necessary *for the use and accommodation of any ships, boats or vessels engaged exclusively in the receipt and discharge of goods or merchandise* or in the performance of governmental functions upon the stream or other like water." (Emphasis added.)

Thus, the Board finds no restriction to be imposed under either the DSL Wharf Certificate or the applicable statute.

4. The Port has Established that its Approved Uses are Compatible With Adjacent Uses or Will Be So Rendered through the Conditions Imposed to Mitigate Impacts

The Board finds that the approved uses are compatible with adjacent uses or will be so rendered through conditions imposed to mitigate impacts. Condition 1 requires Site Design Review and RIPD Use Under Prescribed Conditions applications to be submitted, as required by the CCZO, prior to an application for a building or development for a new use in the new expansion area. Condition 2 imposes a trip cap on the entire exception area of 332 PM peak-hour trips to limit traffic impacts. Condition 3 requires a traffic study for each new use in the expansion area to determine the anticipated number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that roadways are improved as needed to adequately serve future development. The traffic analysis required will identify impacts on passenger and truck traffic, ensure compliance with the trip cap imposed, and require improvements to roadways as needed.

In addition to the above, the Board finds that Condition 4 specifically provides requirements tailored to address potential compatibility issues. It explicitly addresses compatibility concerns with adjoining agricultural uses by requiring: evaluations of threatened and endangered species as required by law, maintenance of natural resource features, buffers and screening for any development adjacent to land zoned PA-80, and the maintenance of undeveloped areas in their natural state if not developed. The Board notes that Condition 4 explicitly requires dust suppression and water run-off controls to be implemented. Condition 4 imposes a requirement that any conditional applications include agricultural impact assessment reports for adjacent agricultural uses, by which applicants must demonstrate ongoing compatibility, identify potential impacts and, if necessary, implement a mitigation plan to maintain compatibility. The proposed condition also requires submission of a rail plan to ensure consistency with applicable law and identification of potential mitigation measures.

The approval conditions require future Port tenants to adopt a plan, and institute a program consistent with the plan, establishing baseline measurements for contaminates at the expansion area and down-gradient and assuring that any future industrial wastewater discharges are treated to prevent pollution. The approval conditions also require future Port tenants to prepare response and clean-up plans in the event of a hazardous material spill, involving appropriate government agencies and private companies specializing in such clean-up activities. As before, the conditions prohibit any uses related to the storage, loading or unloading of coal. The Board finds these measures are sufficient to maintain compatibility with adjacent uses.

Opponents have argued that the approved uses are so broad as to prohibit maintaining such compatibility, but have not explained how compatibility is not adequately maintained between one or more of those approved uses. The Board notes that under ORS 197.732(1)(a) and OAR 660-004-0020(2)(d) "compatible" as a term "is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." The Board finds no evidence in the record of any meaningful distinction between the anticipated impacts of the approved uses and those of existing industrial uses at Port Westward on neighboring uses, and therefore finds that the approved uses will be similarly compatible with existing adjacent uses.

Opponents have argued, in using liquid bulk processing, storage and transportation as an example, that it is not possible to make a compatibility determination because the subject liquid substance is not known. However, as the Port has noted, opponents have failed to explain why the conditions imposed so as to maintain compatibility might not be effective in doing so for some liquids. The Board finds that the compatibility requirements apply equally to different liquids and, to the extent that the potential damage arising from spills is different, that consideration is not relevant so long as compatibility with adjacent uses is maintained. Conditions 7 and 8 may be necessary for some liquids and not necessary for others to maintain compatibility, but the conditions are tailored to ensure compatibility regardless of the liquid. Instituting the plans as required by Conditions 7 and 8 may be more onerous for some liquids than for others. However, those conditions are intentionally designed to maintain compatibility regardless of the applicable liquid, and to focus on the outcome of the development so as to ensure that compatibility with adjoining uses is not negatively impacted, irrespective on how onerous it is to comply with the requirement.

The Board finds that there is substantial evidence of existing and ongoing compatibility between neighboring industrial and agricultural uses in the record. Specifically, the evidence of previous reported spills at the PGE site, the mitigation measures taken, and the record evidence of subsequent efforts by area farmers to obtain irrigation rights for water originating on Port Westward industrial property and draining into the Beaver Slough and the McClean Slough (notwithstanding past and potential future spills) demonstrates adjacent user coexistence with current industrial uses and the potential hazards related to those uses. The Board notes that the irrigation water use permit application paperwork for Michael Seely from 2010 in the record was voluntarily submitted and approved for agricultural use long after other the original siting of both

the neighboring tank farm and ethanol facility (that previously handled petroleum products). This body of record evidence leads the Board to conclude that current and future uses are and will be able to successfully maintain compatibility.

The Board also finds that the Timber Reservation Agreement between the Port and Lower Columbia Tree Farm, LLC in the record, addressing timber on land owned by the Port in the approved expansion area adjacent to RIPD land, provides further support for a finding of compatibility. Lower Columbia Tree Farm, LLC sold and leased back the property from the Port fully aware of the potential incremental future development of the property, as acknowledged in the agreement. This agreement also constitutes substantial evidence of existing compatibility and the ability of the County to maintain compatibility.

a. Dike

Opponents have raised concerns regarding the sufficiency of the dike system surrounding the proposed expansion area. The Board understands this issue to have been raised in the context of compatibility.

The Port has submitted into the record information from the National Levee Database showing that the subject dike currently has a rating of "minimally acceptable" from the Army Corps of Engineers, and that such a maintenance rating is consistent with the majority of federally built and privately maintained levees in Columbia and Multnomah Counties. The Board finds that substantial evidence in the record establishes that the proposed expansion area is sufficiently protected from flooding from the Columbia River.

b. Rail

Opponents have contended that the County must assess how potential rail use might impact transportation facilities. However, no function classification, performance standards or other benchmarks in the County's Comprehensive Plan, TSP or anywhere else are applicable to this application addressing rail impacts. This contention has been previously considered and rejected by LUBA:

> "A railroad is a "transportation facility" as defined at OAR 660-012-0005(3) and pursuant to OAR 660-012-0020 a local government transportation system plan (TSP) must include a planning element for railroads. However, nothing in OAR 660-012-0020 or elsewhere cited to our attention requires local governments to adopt either functional classifications or performance standards for railroads. OAR 660-012-0060(1)(a)-(c) defines "significantly affect" in six different ways. Each of the six ways to "significantly affect" a transportation facility under OAR

660-012-0060(a)-(c) relates to either a change or inconsistency with a functional classification, or a degradation of a performance standard.

In the present case, Riverkeeper does not identify any functional classification or performance standard in the county's TSP or elsewhere that applies to railroads within the county. Therefore, Riverkeeper's arguments under OAR 660-012-0060 do not provide a basis for reversal or remand. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006) (arguments that an amendment "significantly affects" the Columbia River as a 'transportation facility' fail under OAR 660-012-0060(1) where the petitioner identifies no functional classification or performance standard in the TSP that is applicable to the river); *Gunderson LLC v. City of Portland*, 62 Or LUBA 403, 414, aff'd in part, rev'd in part on other grounds, 243 Or App 612, 259 P3d 1007 (2011), aff'd 352 Or 648, 290 P3d 803 (2012) (city's Freight Master Plan does not provide performance measures for the Willamette River for purposes of OAR 660-012-0060(1))." 70 Or LUBA at 208-209.

Opponents reference the 2009 Lower Columbia River Rail Corridor/ Rail Safety Study to support their argument. That study, however, does not impose such functional classifications or performance standards that would apply to this application. Because no such applicable functional classifications or performance standards have been identified, the Board finds that this argument is unsupported.

Nevertheless, the County is addressing potential rail impacts through condition 4(h), which provides:

"Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property, impact on the County's transportation system, and proposed mitigation."

This condition imposes a requirement that development proposals include a rail plan that will address impacts and propose measures to mitigate any identified impact, that concerns raised involving rail impacts will be specifically identified and addressed, and that the County will be able to confirm that it does.

c. No Rail Spur is Proposed as Part of this Application.

Opponents also raise arguments regarding the possible construction of a rail spur in the expansion area, contending that the area cannot accommodate such improvements. However, the Port is not proposing the construction of a rail spur as part of this application. Any future developer

wishing to construct such a rail spur would undertake the necessary studies and permitting as part of development. Similar to road improvements needed to accommodate users' needs, rail transportation needs (including any potential improvements within the expansion area) will be properly identified and addressed at the time of development.

d. The Questions Raised by the Oregon Department of Agriculture Have Been Adequately Addressed

The Board received a letter from the Oregon Department of Agriculture raising questions about four potential compatibility issues: potential dust creation; water quality impacts; the ability of area farmers to move their equipment on area roads; and the potential impact on underground agricultural infrastructure. . As explained in the Staff Reports and elsewhere in these Findings, under state law the approved uses must be compatible with other adjacent uses or "so rendered through measures designed to reduce adverse impacts." As the applicable statutes and administrative rules explain, however: "'Compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." ORS 197.732(1)(a), OAR 660-004-0020(2)(d).

The approval conditions explicitly address each of these concerns. Condition 4(e) imposes a requirement that adequate measures be taken to control dust, including the use of hard surfaces and dust suppression. Condition 4(f) requires control and containment of site-run off and containment or other adequate treatment of any harmful sediment prior to release off of the new expansion area to prevent or adequately mitigate potential impacts to irrigation equipment and area ground and surface water quality. Condition 4(g) requires monitoring water tables and sloughs for water quality and elevations to ensure that area water is maintained for existing uses. Condition 2 imposes a trip cap of 332 PM peak-hour trips for the entire new expansion area, and a new traffic impact analysis required prior to any development after that number of trips is reached that includes recommendations consistent with state law requirements. Condition 3 requires individual traffic studies for each proposed use in the new expansion area to determine trips generated, travel routes, identify impacts and require improvements in relation to the identified impacts. In addition, the information collected under Condition 3 would monitor traffic levels to ensure compliance with the trip cap imposed via Condition 2. The Board also notes that both the Port's traffic engineer and the regional ODOT representative have submitted letters into the record discussing projected traffic levels, and both concur that the proposal would not cause a significant effect on the surrounding transportation system.

Significantly, from feedback received through the hearing process, Staff recommended and the Board added two conditions aimed directly at addressing potential compatibility concerns. Condition 7 requires the development and implementation of a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for contaminates at the new expansion area, and down-gradient. The stated intent of the condition is to protect against pollution of the watershed environment and as a detection system for leaks in the new expansion

area. Further, Condition 8 preemptively requires a response and clean-up plan to be in place in the event of any hazardous material spill. The condition requires identification of appropriate governmental agencies and private companies to be involved in such a clean-up activity.

Regarding underground irrigation and/or drainage infrastructure, the Board finds that the conditions outlined above, and specifically Conditions 4(f), 4(g), 7 and 8 are specifically targeted toward and will effectively ensure compatibility with adjacent uses, including agricultural uses utilizing irrigation and drainage infrastructure, including underground infrastructure. The Board notes that the record establishes that there are several existing active industrial uses currently operating within the original exception area, and adjacent to agricultural uses. The Board finds that the rural industrial uses approved here, which will be required comply with the conditions imposed to ensure compatibility, will be compatible with the adjacent agricultural uses.

5. The Uses Approved for the New Expansion Area are Already Permitted in the Original Exception Area; Therefore, No Additional Exception is Required for the Original Exception Area

The Board rejects the claim that the uses approved for the new expansion area require a new Goal 3 exception for the original exception area. As the Port notes in its submissions, the scope of the uses approved for the expansion area is narrower than and wholly encompassed by the authorized uses for the existing exception area. The original exception does not place any restrictions on authorized uses, meaning that all uses allowed in the RIPD zone are authorized. Because the range of uses authorized in the new expansion area is more restrictive than (and wholly encompassed by) the uses authorized in the original exception area, the Board finds that no additional exception is necessary for the original exception area. To the extent that the movement of goods and materials between the new expansion area and the waterfront dock at Port Westward constitutes use of the original exception area, the Board finds that such movement to and from the dock is covered by the exception previously granted for the original exception area.

Further, to the extent opponents have suggested that uses in the new expansion area accessing the dock would constitute an increase in intensity or uses within the existing exception area in violation of OAR 660-004-0018(4)(b), the Board concludes that that suggestion is inconsistent with the text of the exception statement for the existing Port Westward exception area in the County's Comprehensive Plan. Particularly, Section V of the exception statement for the original exception area states the following:

> "V. Proposed Use of the Property
>
> Probable uses would likely be related to the existing services, including the railroad, the dock and the tank farm.

> Because of the distance to Portland and the constraints on the access roads, the site is not likely to attract any heavy highway users. Uses likely to be located here are best illustrated by four proposals submitted to the current leaseholder since 1980.
>
> Proposals have included a 200-acre oil refinery, a 150-200-acre coal plant, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant. These types of uses NEVER absorb a small amount of acreage each year, but rather occupy large sites and occur at intervals over a number of years. These four uses, plus the generating plants, would have occupied virtually the entire site." (Emphasis in original.)[2]

Thus, under the exception to Goal 3 granted for the original exception area at Port Westward, uses were contemplated that would have heavy reliance on the dock, specifically for transporting liquid and dry bulk commodities. These potential uses contemplated by the original exception statement granted are broader in nature but similar to the uses approved for the new expansion area. In addition, the exception statement explicitly identifies the "probable uses" as uses related to the dock. Accordingly, the Board finds that an additional Goal 3 exception is unnecessary and would be redundant for movement of goods and materials across the original exception area for use of the dock consistent with the kind and intensity of use contemplated (but as yet unfulfilled) for the original exception area at Port Westward.

Similarly, because no exception to Goals 11 or 14 is needed for the new expansion area, the Board rejects the argument that a new exception to Goals 11 and/or 14 is necessary for the *original* exception area. The Board finds that the Mackenzie Report, which applied LUBA's *Shaffer* template to each of the five approved uses, provides substantial evidence that the approved industrial uses are appropriately characterized as rural uses. The report establishes that all five approved uses will all have low potable water demands and generate low domestic wastewater flows, obviating the need to extend municipal water or sewer service to the expansion area.

Assertions that the presence of fiber-optic, electrical and natural gas connections in the existing exception area (all of which are commonly available elsewhere in rural areas) are not developed, and the Board finds that those assertions do not constitute substantial evidence that any of the Port's five proposed uses would require urban levels of *public* facilities.

The Mackenzie Report establishes that the approved uses will generate traffic levels at rates lower than those associated with urban industrial uses, and opponents have not, nor is the Board aware of, any evidence in the record challenging the Mackenzie Report's findings in that regard. The Board notes that Mackenzie's conclusion is consistent with the conclusion of both the Port's own traffic engineer and the Oregon Department of Transportation. LUBA has previously rejected

[2] See Footnote 1.

the argument that "industrial uses are inherently urban in nature" as explained in the previous remand decision. 70 Or LUBA at 211.

The Board understands LUBA to acknowledge that rural industrial uses exist under Oregon law. In *Shaffer*, LUBA provided an analytical template to aid local governments in determining whether a particular industrial use is rural or urban in character. As discussed in Section 7 of these findings, the Board concludes that the five approved uses are all rural in character, and therefore do not require exceptions to Goals 11 and 14.

6. The Approval is Limited to Rural Uses

In providing direction on how to determine whether a particular use is urban or rural in character, LUBA indicated that the appropriate analysis is provided in *Shaffer* and summarized the applicable *Shaffer* factors in making such a determination as follows:

> "The relevant factors discussed in *Shaffer* that point toward a rural rather than an urban industrial use include whether the industrial use (1) employs a small number of workers, (2) is significantly dependent on a site-specific resource and there is a practical necessity to site the use near the resource, (3) is a type of use typically located in rural areas, and (4) does not require public facilities or services. None of the *Shaffer* factors are conclusive in isolation, but must be considered together. Under the analysis described in *Shaffer*, if each of these factors is answered in the affirmative, then it is relatively straightforward to conclude, without more, that the proposed industrial use is rural in nature. However, if at least one factor is answered in the negative, then further analysis or steps are necessary. In that circumstance, the county will either have to (1) limit allowed uses to effectively prevent urban use of rural land, (2) take an exception to Goal 14, or (3) adequately explain why the proposed use, notwithstanding the presence of one or more factors pointing toward an urban nature, should be viewed as a rural use." 70 Or LUBA 171, 211 (2014) (Internal citations omitted).

As discussed below, the Mackenzie Report applies the *Shaffer* factors outlined above to each of the five approved uses, and clearly establishes that all are rural in character and that, although the record contains assertions otherwise, the Board finds that evidence in the record clearly supports such a finding.

a. *Shaffer* Factors:

i. # 1: Employs a Small Number of Workers

Under the first Shaffer factor, employment of a small number of workers is an indicator of a rural use. The Board finds that each of the approved uses employ a small number of workers. Extensive analysis in the Mackenzie Report identified the typical number of employees per acre for the approved uses, with an average of 1.5 employees for acre as compared to an average of

18.1 employees per acre for urban industrial uses and 5.9 employees per acre for urban warehousing uses.

Although the Board heard objections to the data Mackenzie collected and used as a basis for analyzing employee density under *Shaffer*, the only alternative analysis offered was from a section of Part XII of the County's Comprehensive Plan forecasting the availability of vacant buildable industrial land based on assumptions of 1.5 employees per acre for "heavy" industrial uses and industrial uses outside city limits, and 4.0 employees per acre for "light" industrial uses and uses inside city limits. As an initial matter, the distinction between "heavy" and "light" industrial does not exist in the RIPD zone (*see, generally*, CCZO Section 680). Those specific designations in the Comprehensive Plan simply estimate potential employee capacity of then-existing vacant buildable lands (in terms of density) in order to forecast the adequacy of the County's buildable industrial land inventory. Columbia County Comprehensive Plan, Part XII, Industrial Siting – Industrial Economic Analysis: Summary of Economic Data, Section 5 ("Employment Capacity of Vacant Buildable Industrial Sites"). Further, the Board finds that the distinction between uses inside and outside of city limits is also inapplicable here, as the County's zoning authority exists exclusively outside of city limits.

The Board finds that those benchmarks are meant to be used forecast the availability of vacant buildable industrial land, and are not intended to establish a bright-line maximum density for rural industrial uses, or to establish different "heavy" or "light" industrial densities in the RIPD zone where the County's RIPD zone does not make such a distinction. Accordingly, the Board declines to use those numbers for analyzing this *Shaffer* factor.

Regarding opponents' claim that the employee density of a given industrial use (when considering whether that industrial use is rural or urban in character) is a county-specific inquiry and that the Board is limited to looking at data only from within the County's own boundaries, the Board also disagrees. The Mackenzie Report provides quantitative data that profiles the employment densities associated with the Port's approved uses. Of the inquiries for development at Port Westward, the Report shows that the employment density for the approved uses averages approximately 1.5 jobs per acre (Mackenzie Report, Table 1, p. 15), and the examples of these uses provided in Section IV of the Mackenzie Report have densities ranging from 0.3-2.3 jobs per acre. Because the employee density numbers provided in the Mackenzie Report are based on real and current tangible information, regarding actual industrial employment densities, and because the conclusions drawn from the Mackenzie Report are based on that data, the Board finds the Mackenzie Report persuasive. Accordingly, the Board finds that substantial evidence in the record supports a conclusion that the employment densities for each approved use equates to a small number of workers.

ii. # 2: Significantly Dependent on a Site-Specific Resource/Practical Necessity to Site Near the Resource

The second *Shaffer* factor used to identify a rural use is whether the use is significantly dependent on a site-specific resource, and there is a practical necessity to site near the resource. The Board finds that the approved uses are significantly dependent on a site/specific resource, and there is a practical necessity to site near the deepwater port at Port Westward. The Mackenzie Report provides substantial evidence that the five uses are specifically dependent on the deepwater port at Port Westward and must be sited in the immediate vicinity. The Mackenzie Report applied this *Shaffer* factor to each of the five approved uses and found each use clearly linked to the deepwater port at Port Westward (as LUBA and the Port have noted, this *Shaffer* factor is very close to the "unique resource" reason OAR 660-004-0022(3)(a)). Finally, Condition 5 additionally requires any use sited in the expansion area to be significantly dependent on the deepwater port at Port Westward. Given that condition, the approval only authorizes uses that will necessarily be significantly dependent on the deepwater port to site in the new expansion area.

iii. *# 3: Typically Located in Rural Areas*

The third *Shaffer* factor examines whether the use is typically located in rural areas. The Board finds that that each of the approved uses is typically sited in rural areas. The record contains opposition testimony asserting that the uses need to be "unique" to or "solely" located in rural areas to be found to be rural in character, but the Board does not find that argument persuasive. The Board finds "typically" to have a meaning akin to "commonly" and not "exclusively" in the application of this *Shaffer* factor. The third *Shaffer* factor does not attempt to limit rural industrial uses to ones occurring only in rural areas, and that argument is rejected by the Board. As the Mackenzie Report notes, all of the approved uses are land-intensive and require larger sites and additional buffering. The Board finds that Table 3 of the Mackenzie Report provides substantial evidence to support its conclusion regarding this *Shaffer* factor by breaking each of proposed uses down by those requirements, and establishes that each of the five uses is rural in character.

The Mackenzie Report does note similar examples located in urban areas that still represent typical rural uses sited in areas that have urbanized over time, or that were sited in urban areas out of necessity due to lack of proximity to port access in rural areas. Accordingly, the Mackenzie Report concludes that the approved uses are typically located in rural areas, and the Board finds the same.

iv. #4: Does not Require Public Facilities or Services

The fourth *Shaffer* factor examines whether the use requires public facilities or services. The Board finds that none of the proposed uses requires public facilities or services. The Mackenzie Report's *Shaffer* analysis regarding this factor provides substantial evidence that the approved uses will have low potable water demands and generate low domestic wastewater flows, due to low employee counts, and thus will not require extension of municipal sewer systems. Moreover, as discussed in Section 5 of these Findings, the Report's analysis regarding traffic

estimates levels at rates lower than those associated with urban industrial uses, which leads to a conclusion (supported by the conclusions of the Port's traffic engineer and concurred by ODOT) that traffic levels will not increase above rural levels. There is no specific evidence in the record that the proposed uses will require public facilities or services.

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Also as examined in Section 5, claims that the presence of fiber-optic, electrical and natural gas connections in the existing exception area – all commonly found elsewhere in rural areas – automatically disqualify the new expansion are undeveloped. The Board finds the argument alone does not support a finding that one or more of the approved uses would require urban levels of *public* facilities.

Based on the above, the Board concludes that the approved uses are all rural in character under *Shaffer*.

7. Areas that Do Not Require a New Exception Cannot Reasonably Accommodate the Use

a. The Original Port Westward Exception Area Cannot Reasonably Accommodate the Port's Approved Uses

The Board finds that the original exception area lacks the necessary acreage to reasonably accommodate the Port's approved uses. As noted by the Port, the final portion of the original exception area outside of the PGE leasehold has been secured by Northwest Innovation Works LLC. With the commitment of that area, there remains no acreage outside of the PGE leasehold available for development at Port Westward without taking an additional exception.

The Board also finds that sufficient acreage within the PGE leasehold is unavailable. The context provided by: 1) PGE's formal termination of the (previously-lapsed) Joint Marketing Agreement with the Port, together with 2) PGE's letters in the record stating that siting additional users within is leasehold is not feasible given the existing encumbrances and inability to site businesses in the past, and together with 3) the Mackenzie Report analysis of existing encumbrances establishing that further development is not possible, demonstrates that no future industrial users will locate within the PGE leasehold. As the Port has explained, "Whether that failure [to locate other users within the PGE leasehold] is construed as categorical unwillingness by PGE to sublease acreage, or whether the existing site constraints simply make an otherwise-willing PGE incapable of subleasing acreage, the end result that no additional subtenants have been or can be sited [there] remains the same." As the Mackenzie Report also states:

> "The site is . . . encumbered by a number of easements for roadways, utilities, drainage facilities, levees, pipelines, and 46 acres of conservation areas, which serve to divide developable areas into smaller sections less conducive to large-scale

> rural industrial development. See Appendix 1. Together with the security fencing, gates, and other infrastructure, these encumbrances serve as barriers to development." Mackenzie Report, p. 7.

The Board also finds that the above-referenced Appendix 1 and Figure 4 of the Mackenzie Report, provide substantial evidence that the remainder of the leasehold is undevelopable.

In addition, the Board finds that the economic analysis in the Mackenzie Report addressing the cost of wetland mitigation provides substantial evidence that, even if the wetlands were available (which the Mackenzie Report establishes is not), mitigation costs would run in the area of $77,000-82,000 per acre "above and beyond the acquisition costs" for off-site mitigation areas, making such mitigation infeasible. The Board disagrees with the argument that the Mackenzie Report did not consider off-site mitigation. Although the extra cost for the acquisition of land for off-site mitigation areas was not included in the mitigation costs by Mackenzie, those additional expenses would not decrease the cost of any mitigation, even if included in the analysis.

The Board does not find arguments challenging the Port's wetland mitigation feasibility analysis persuasive, as those arguments are not supported by evidence. The argument that fill and mitigation activities being considered by the Port at McNulty Creek Industrial Park provides evidence of the feasibility of undertaking similar measures at Port Westward ignores the Port's explanation that the only reason it is undertaking those activities is because the cost has made it economically unfeasible for potential tenants to site there. Of equal or greater importance to potential future tenants is the uncertain yet significant amount of time such permitting and mitigation activities add to a development timetable. The Port is investing the time and subsidizing the siting costs of future tenants at the McNulty Creek Industrial Park, to address a factors developers have been unwilling to address there. In addition, the Board finds that the argument ignores the large discrepancy in the cost of undertaking such activities at McNulty Creek Industrial Park as compared to the estimated cost of doing so at Port Westward. Given that discrepancy, and the evidence demonstrating that the subject area at Port Westward is not available for siting any of the approved uses, the Board finds that similar mitigation activities in the existing exception area at Port Westward are unfeasible.

The Board finds that the supposed alleged "large swaths" of "undeveloped" land in the western and southern portions of the existing Port Westward property are in fact encumbered both by wetlands and by the PGE lease, as illustrated in Figure 4 of the Mackenzie Report. The Board concludes that it is economically unfeasible to fill this large volume of wetlands, in addition to the fact that PGE's has provided a letter stating that the Port should consider the undeveloped portion of PGE's leasehold unavailable for siting additional tenants.

Thus, based on the above and the other documents before the Board, the Port has provided substantial evidence of and established that there is no available acreage at the existing Port Westward exception area, either inside or outside of the PGE leasehold.

b. Other Potential Sites Considered by the Port

The Board also finds that the record contains substantial evidence that there are no alternative sites to accommodate the approved uses. The Mackenzie Report provides evidence that the approved uses would be significantly dependent on the deepwater port at Port Westward, and have substantial minimum acreage requirements. The Board understands and finds that any approved uses will be located close to one another because of a shared significant dependence on access to the deepwater port at Port Westward. The approved uses all require more acreage than the potential alternatives examined by the Port can provide while still providing deepwater port access. The Board finds that none of the potential alternatives in the record can provide both adequate acreage and the deepwater port access necessary for the approved uses.

The Board finds that the Mackenzie Report provides substantial evidence of the need of this scale of land in aggregate, based on the evidence in the record, including the written testimony submitted by the State Economic Development Agency, Business Oregon. The Board notes that the record evidence reflects inquiries for deepwater port-dependent uses in recent years have totaled over 2,800 acres, and that number only reflects inquiries specific to Port Westward. The Board also notes that distribution of site needs among these potential sitings were typically larger sites.

Opponents have questioned both the scope and breadth of the alternative sites examined as part of the application process. However, as to specific potential alternative sites, the Board finds that each was addressed by the Port, including the sites raised by the opponents, and the record contains substantial evidence supporting the Port's conclusion as to each site that none are viable alternatives. The Board also finds that none of the proposed alternative sites are feasible, given the uses approved and the deepwater port dependency of each of the approved uses.

i. Port of Astoria

1. North Tongue Point

The Mackenzie Report notes that North Tongue Point is 34 acres in its entirety, and that 19 acres of the 34 acre area is already developed and occupied in part by tenants. The report notes that the area has some smaller warehouse space available for lease, but that none of the Port's proposed uses could be sited in any of that available space. The Mackenzie Report also notes that the southern portion is a vacant parcel of only 15 acres and therefore is insufficient to site the kinds of uses proposed by the Port. The Report describes a landfill that was discovered on the site containing heavy metals and PCBs exceeding acceptable levels. Although the insufficient acreage is alone enough to reject North Tongue Point, the report notes that the environmental contamination also presents an economic obstacle that makes development infeasible.

Opponents claim that the Mackenzie Report relies on the opinion of DSL staff to conclude that the North Tongue Point site is unavailable. The Board finds that assertion incorrect. In reviewing the Mackenzie Report, the Board finds that it highlights both insufficient acreage available for development as well as the requirement for time-consuming and expensive environmental remediation. The Mackenzie Report does note that DSL staff concurred that these factors would serve as barriers to development. The only other evidence in the record is Tongue Point marketing materials submitted into the record by opponents, which the Board finds do not provide evidence of sufficient developable acreage for the approved uses.

2. South Tongue Point

The Mackenzie Report explains that South Tongue Point consists of four parcels with a grand total of 137 acres. The report identifies three parcels owned by DSL, and a final one owned by the U.S. Army Corps of Engineers. The report notes that Clatsop Community College has a contracted to purchase the three DSL parcels for its own use, and that the U.S. Army's Joint Base Lewis-McChord is in the act of repurposing the Army Corps of Engineers' property for an Army training facility, leaving no available acreage at South Tongue Point. Given those commitments, the Mackenzie Report concludes that there is no available acreage at the Port of Astoria for siting any of the Port's approved uses.

Opponents argue that these South Point areas are not unavailable, suggesting that negotiations can break down. However, the Board finds that the record evidence supports a finding that the property is contractually obligated and unavailable for the approved uses, that there is no record evidence that the subject areas may become available at some future point, and is therefore not available as a viable alternative.

ii. Port of Portland

1. West Hayden Island

The Mackenzie Report examines availability at the Port of Portland for the Port's proposed uses, starting with the undeveloped West Hayden Island in Multnomah County. The Mackenzie Report explains that the Port of Portland had pursued the development of additional port facilities at West Hayden Island in 2013, but that the pursuit was halted after the Port of Portland determined that the obstacles to development were insurmountable and withdrew its annexation proposal from the City of Portland. Appended to the Mackenzie Report is a letter from the Port of Portland to the City of Portland outlining the basis for that decision. The Mackenzie Report provides the following in discussing that letter:

> "In the letter, the Executive Director states that '[T]he [Portland] Planning and Sustainability Commission (PSC) has recommended annexation, but on terms that render the development of the 300 acre marine terminal parcel impossible.' The

> letter also states, 'From our conversation, I understand that you believe the Council is unwilling to take action on a modified proposal. Based upon your assessment that the Council's policy choice is to not bring forward a package that is viable in the market, the Port will not continue with the annexation process at this time and withdraws its consent to annexation' and '[t]he city, unfortunately, will now have to deal with the consequences of a severe shortfall in industrial land.'"

The letter elsewhere explains that, given the regulatory burdens West Hayden Island faces, development will be economically infeasible. Discussing that point, the Port of Portland Executive Director explains, "The Port is enterprise funded: only 4 percent of our revenues come from taxes. Any development at WHI must meet basic, sustainable market requirements. The PSC recommendations put the development cost of the property at about double its value in the market."

The Board notes that the letter also specifies that, it is not only the local regulations that make development of West Hayden Island infeasible:

> "Furthermore, the PSC recommendations exceed what is required by Goal 5 by obligating us to go back at the time of development for further review for any docks or other in water development that would be integral to the development of a water dependent use (on top of the lengthy and contentious, federal and state permitting processes). This type of approach does not give us any assurance that we'll have the opportunity to actually develop the property once annexation occurs."

The Mackenzie Report explains that West Hayden Island is completely undeveloped and lacks any infrastructure at all, including deepwater access (or any marine access at all). The appended letter states that dredging for deepwater access and the installation of dock facilities would require "lengthy and contentious, federal and state permitting processes."

As the Port notes in its application materials, the 2014 Regional Industrial Site Readiness Inventory Update – prepared by Mackenzie on behalf of Business Oregon, Metro, NAIOP – Commercial Real Estate Development Association Oregon Chapter, the Oregon Department of Land Conservation and Development, and the Port of Portland – estimates that West Hayden Island is at least seven years away from site readiness for any uses similar to the approved uses. It also makes clear that such a timeframe only begins running after the Port of Portland and the City of Portland have re-engaged and successfully navigated the legislative process for annexing and developing the area. The Inventory Update states:

> ". . . West Hayden Island . . . is inside the UGB but subject to a lengthy planning and annexation process that is likely to include significant mitigation requirements. If approved for development, the West Hayden Island site is at least seven years away from readiness due to permits, mitigation, and infrastructure requirements."

Thus, the Board concludes that West Hayden Island does not present a viable alternative to Port Westward for the approved uses, because it lacks not only deepwater access but any facilities at all, and because it has proven to be impossible for the local government agencies involved to work through differences to facilitate annexation for its development.

2. Existing Port of Portland Facilities

In addition to finding Hayden Island unavailable for multiple reasons, including but not limited to the lack of deepwater access, infrastructure or political will, the Mackenzie Report found the remainder of the Port of Portland's facilities that could accommodate the Port's proposed uses to be built out and occupied, and lacking needed acreage for siting any of the approved uses. Accordingly, the Board concludes that the Port of Portland is not a viable alternative.

iii. Port of Coos Bay

The Board finds that the Oregon International Port of Coos Bay is not a viable alternative. The Mackenzie Report explains that Coos Bay serves a completely different economic area because it is 200 nautical miles from the mouth of the Columbia River and does not serve Columbia River/M-84 corridor commerce, and because it is 230 road miles from the Portland metropolitan area. The Mackenzie Report also notes that over 60% of Oregon's manufacturing, warehousing, and transportation-based economy is located along the Columbia River Corridor. For commerce beyond Oregon, the confluence of national or regional waterways (Columbia River/M-84), freeways (I-5, I-84), and rail networks (Union Pacific and BNSF Class I rail lines) occurs at the metro area only 50 miles from Port Westward, but 230 road miles from Coos Bay. Based on that, the Mackenzie Report concludes that properties in Coos Bay are not economically comparable to Port Westward to serve the Columbia River Corridor economy. Accordingly, Board concludes that the Oregon International Port of Coos Bay is not a viable alternative for the approved uses.

iv. Port of Newport

The Mackenzie Report finds that the Port of Newport does not provide a viable alternative, noting among other things that it does not serve Columbia River/M-84 corridor commerce and is located 115 nautical miles from the mouth of the Columbia River and over 200 nautical miles from the Portland metropolitan area. Based on the same reasoning provided for Coos Bay, the Board concludes that the Port of Newport is not a viable alternative.

v. Port of Tillamook

The Mackenzie Report similarly finds Port of Tillamook is not a viable alternative, noting that, in addition to not serving Columbia River/M-84 corridor commerce, the Port of Tillamook

entirely lacks maritime access. Based on that, and on the same reasoning eliminating Coos Bay and Newport from consideration, the Board finds that the Port of Tillamook is not a viable alternative.

c. Other Suggested Sites

i. Non-Deepwater Sites

The North Coast Business Park, East Skipanon Peninsula, Wasser-Williams Site, Port of the Dalles and Port of Klickitat have all been raised by opponents as potential alternative sites. However, they were not considered because they all lack deepwater access. Based on that shortcoming, the Board finds that none are viable alternatives. In addition, as explained below the Port of Klickitat is not an Oregon port and is not subject to Oregon's Statewide Planning Goals. Accordingly, the Board finds that none of the non-deepwater sites suggested are viable alternatives.

ii. Out-of-State Sites

Opponents have raised the Millennium Site in Cowlitz County, Washington as a potential alternative. That site is in a protracted process involving evaluation for the siting of a coal export facility. The materials submitted to the County by opponents Riverkeeper show an intent to site only certain uses because of the limits of the site's aquatic lands lease with the State of Washington that do not encompass the approved uses. Riverkeeper Exhibit 48, p. 2-30 – 2-31. The materials submitted also discuss no-action alternatives for industrial development unrelated to deepwater access, and would also not allow the Port's five approved uses.

Equally important, as discussed by the Port and as highlighted by the Washington aquatic lands permit application, the Board finds that the OAR 660-004-0020 "reasonable accommodation standard" cannot reasonably be interpreted to apply to out-of-state sites, specifically because no out-of-state sites are subject to Oregon's Statewide Planning Goals at all. As such, none would require an exception under Oregon law. If the requirement were interpreted to require consideration of out-of-state lands, a Goal 3 exception could never be granted, and in fact no Goal exception to any statewide land use goal to allow a traded sector development could ever feasibly be granted.

Accordingly, the Board finds that the intent of alternative sites analysis for sites not requiring an exception applies only to sites subject to the Oregon Statewide Planning Goals, meaning only sites located within Oregon. A different interpretation would undermine the intent of the exception process and have disparate application in areas bordering Washington, Idaho and California. Given that conclusion, the Board finds that Millennium site, as well as all other out-of-

state sites raised (including but not limited to the Port of Klickitat and the Waser-Williams Site), are not eligible alternatives.

8. The Port Has Provided Substantial Evidence of the Need for the Entire Expansion Area Acreage (837 Acres)

The Mackenzie Report describes the need of rural industrial uses for large, flat, contiguous sites. The Board finds that this analysis, together with the established need for deepwater access at Port Westward, supports a conclusion that the approved uses require the acreage approved in the new expansion area. As the Mackenzie Report explains:

> "[T]he Port's proposed uses have low density, correlating to their need for large sites and consistent with the Shaffer factor specifying that rural uses employ a small number of workers. Furthermore, rural industrial uses have a need for flat, contiguous sites to accommodate their facilities while allowing for efficient operations.
>
> For uses defined in this report, a large share of physical space is required for the storage and movement of commodities in a rural industrial setting. Bulk commodities including aggregates, steel, logs, wood chips liquid bulks and automobiles, for example, all require extensive space for circulation, storage and laydown yards. In the case of uses involving the presence of hazardous materials or other externalities, required buffering increases users' overall site needs. Another contributing factor to large site needs is land banking. Because the proposed uses' storage needs for products and cargo is quite high, uncertainty about future space needs leads firms to locate on sites with the flexibility and scale to accommodate future growth. The PGE leasehold at Port Westward is a classic example of this kind of land banking, and is clearly explained by PGE in its 2016 letter in Appendix 2."

The Board adopts that analysis from the Mackenzie Report as its own and, based on that analysis, finds that the five approved uses justify the size of the new expansion area for the approved uses.

9. The County's Previous Finding Regarding ESEE Consequences Applies to this Approval on Remand

LUBA previously rejected petitioners' claim that the County did not make adequate findings that the long term environmental, social, economic, and energy ("ESEE") consequences would not be significantly more adverse than if an exception were taken for different otherwise-available resource lands. LUBA held that the petitioners had not demonstrated other or different findings were required. LUBA noted that the petitioners had not specifically identified and

described alternative sites with fewer ESEE impacts. 70 Or LUBA 171, 202 (2014). On remand, opponents have raised this issue, although this assignment of error was not sustained by LUBA.

The only alternative sites identified in the record are the Port of the Dalles and the Port of Klickitat, both upstream of the federally maintained deepwater channel in the Columbia River. In addition, opponents contend that those sites would have less adverse impacts because they are surrounded by less productive resource land but do not provide evidence to support that assertion. Further, as discussed above, both ports lack deepwater access and therefore cannot serve to replace Port Westward.

To the extent that opponents are re-asserting a previous argument, the Board finds that it cannot be raised again on remand under *Beck v. Tillamook*, 313 Or 148, 150-151, 831 P2d 678 (1992). "Issue preclusion" bars re-litigation of an issue in subsequent proceedings when the issue has been determined by a valid and final determination in a prior proceeding under *Nelson v. Emerald People's Utility Dist.*, 318 Or 99, 103, 862 P2d 1293 (1993). *See also*, *Widgi Creek Homeowners Association v. Deschutes County*, 71 Or LUBA 321 (2015).

However, to the extent ESEE Analysis applies to the Port's modified application, the Board finds that because neither the Port of the Dalles nor the Port of Klickitat are deepwater ports, those locations are not appropriate alternatives for ESEE consideration. The Board also finds that the Port of Klickitat is not an Oregon port and therefore not viable for consideration under the "reasonable accommodation standard" applicable only to land within Oregon and therefore subject to Oregon's Statewide Planning Goals.

10. The Approved Expansion Area is Presently Provided with Adequate Facilities, Services and Transportation Networks to Support the Approved Uses or Will Be Provided Concurrently with Development as Required by Condition 5.

a. CCZO 1502(1)(A) and (B)

Opponents have argued that the *ex parte* PGE email supports its contention that CCZO 1502 is not satisfied. However, the Board finds that much of the discussion in the PGE email has nothing to do with facilities, services or transportation networks to support the Port's approved uses in the new expansion area, but rather existing facilities in the original exception area. As the Mackenzie Report has made clear, the Port's proposal does not rely on those existing facilities, except for the dock, and the Board finds that future Port tenants will be expected to provide their own needed facilities.

Because the Mackenzie Report concludes that the proposed uses can site without requiring an urban level of services, and although contrary arguments have been made they are not developed or supported with record evidence, the Board accordingly finds that the new expansion area is presently provided with adequate facilities, services and transportation networks to support the

use, *or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property*.

The Board finds that if the needs of a future Port tenant requires additional facilities, this approval ensures that the County will have the opportunity to require the provision of that needed capacity "concurrently with the development of the property."

i. The Existing Rail Transportation Network is Adequate and Any Necessary Expansion Will Occur Concurrently with Development

The Board finds that the analysis outlined above applies equally to rail transportation facilities. Opponents have argued that the County must assess how potential rail use might impact transportation facilities. However, as LUBA has previously explained, no functional classification, performance standards or other benchmarks in the County's Comprehensive Plan or TSP are applicable to this application as pertains to rail impacts. As LUBA previously held:

> "[Opponents have] not identified any functional classification or performance standard in the county's TSP or elsewhere that applies to railroads within the County. Therefore, [opponents'] arguments under OAR 660-012-0060 do not provide a basis for reversal or remand. *See People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006) (arguments that an amendment "significantly affects" the Columbia River as a 'transportation facility' fail under OAR 660-012-0060(1) where the petitioner identifies no functional classification or performance standard in the TSP that is applicable to the river); *Gunderson LLC v. City of Portland*, 62 Or LUBA 403, 414, *aff'd in part, rev'd in part on other grounds*, 243 Or App 612, 259 P3d 1007 (2011), aff'd 352 Or 648, 290 P3d 803 (2012) (city's Freight Master Plan does not provide performance measures for the Willamette River for purposes of OAR 660-012-0060(1))." 70 Or LUBA 171, 208-209.

Because no such applicable functional classifications or performance standards have been identified, and because the same arguments were previously raised and rejected by LUBA, the Board finds that the arguments raised by the opponents regarding rail impacts do not provide a basis for denial.

In addition, the Board notes that Condition 4(h) provides the following:

> "Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property, impact on the County's transportation system, and proposed mitigation."

This condition will impose a requirement that development proposals include a rail plan addressing impacts and propose measures to mitigate any identified impacts, and will allow rail impacts to be specifically identified and addressed at the time of development.

ii. The Record Contains Substantial Evidence of Access to the Deepwater Port and Dock at Port Westward and No Evidence to the Contrary

As described in Section 3, above, the Board has found that PGE is obligated under the terms of its lease with the Port to provide access to the dock at Port Westward. As noted, although PGE has reserved a role for itself to reasonably condition dock access so as to protect its assets, PGE must nevertheless provide such dock access to any other Port tenants.

The Board additionally relies on the Dock Use Agreement submitted into the record by the Port in so concluding, in that it provides evidence of PGE's need to provide reasonable access. As previously explained, any claims that PGE might not provide access to the deepwater port and dock facilities at Port Westward appears to be speculative and the Board is not aware of any evidence in the record to suggest otherwise. The Board finds that such speculation is directly contradicted by record evidence of PGE's past behavior, by the fact that PGE has in fact executed and abided by the terms of the Dock Access Agreement, and by its recent representations to the Port in the record.

In addition, Paragraph 4 of the First Amendment of the Master Lease between PGE and the Port reserves for PGE a "*non-exclusive*" easement for access to and use of the dock. Paragraph 4 provides that PGE's consent for dock access is required in writing, but also states that PGE's consent cannot be unreasonably withheld:

> "The Dock shall not be used by or on behalf of any party other than [the Ethanol Facility] without such party first obtaining the prior written consent of PGE *which shall not be unreasonably withheld, but may be reasonably conditioned to the extent necessary or appropriate to protect PGE's interests in the Dock.*" (Emphasis added.)

To the extent that opponents argue that the PGE Email provides any evidence of an unwillingness to provide access to the dock, the Board disagrees, specifically relying on the following language from that email: "PGE is willing to assign and transfer both access legs as well as the connector to the Port[.]"

Notwithstanding suggestions to the contrary by opponents, the PGE Email does nothing to contradict that conclusion based on the substantial (and only) evidence in the record to that effect. Accordingly, the Board finds that the substantial evidence in the record establishes that PGE has previously and intends to continue providing at least the same level dock access to future Port tenants, and likely additional access.

The Board also relies on the following language from the Dock Use Agreement:

"Cascade is hereby granted the right to use the Dock Area for (i) the purpose of loading or unloading liquid bulk cargo produced by its proposed production facility on the Cascade Property (collectively, the "Approved Products"), (ii) access to and repair of pipelines and necessary piping and material transfer equipment, and (iii) ingress and egress for all purposes of this Agreement ("Permitted Uses"). Prior to delivering any other cargo to or transporting any other cargo from the Dock Area, Cascade shall obtain the prior written consent of the Port and PGE to the proposed product and the proposed location, storage, and duration and handling procedures. Except for the facilities existing in the Dock Area on the date hereof, Cascade shall furnish and maintain all equipment, supplies, and dunnage necessary to its use of the Dock Area. No foreign flag vessels are to be allowed dockage with out [sic] prior approval of PGE. Subject to the foregoing, all other terms and conditions of this Agreement, and the requirement of the Maritime Facilities Security Plan to be developed among Cascade, PGE, the Port, and the U.S. Coast Guard, *the Port hereby reserves the right to allow non-Cascade vessels to use the Dock Area subject to the prior written consent of PGE which shall not be unreasonably withheld but may be reasonably conditioned to the extent necessary or appropriate to protect PGE's interests in the Dock Area*." (Emphasis added.) August 16, 2017 Port Submission to Columbia County, Ex. E, p. 2.

In summary, the Board finds that the record evidence establishes that PGE has agreed in writing to dock use by CPBR, and that it is willing to provide access to the Port and its other future tenants. The Dock Use Agreement constitutes substantial evidence of PGE's ongoing willingness to comply with its lease obligation to provide dock access to other Port tenants. The PGE Letter dated August 1, 2017 provides evidence of PGE's willingness to continue to comply with its lease obligations and provide reasonable dock access, and provides additional substantial evidence that future Port tenants siting in the expansion area will be able to utilize the deepwater port and dock facilities at Port Westward. The PGE Email is consistent with all of that evidence regarding PGE's willingness to comply with its well-established obligation to provide dock access. The Board is unaware of any record evidence indicating an unwillingness by PGE to provide such access in breach its contractual obligations to the Port, but notes that the record contains evidence that PGE is willing to grant access control to the Port in its entirety, in exchange for preserving PGE's access and maintaining the access road. Given the above, the Board concludes that access to the deepwater port at Port Westward exists and control of the access legs is likely to be transferred back to the Port in the near future.

iii. The Existing Roads Provide Adequate Access to the Port for the Proposed Uses and Any Necessary Expansion of the Road Will Occur Concurrently with Development

The Board finds that the same analysis outlined above applies to the level of access the roads provide to the port at Port Westward. CCZO 1502 allows the Board to find that facilities, services and transportation networks exist, and to require that any additional facilities, services and transportation networks will be provided as development occurs. Further, the Board finds that the traffic trip cap imposed provides an adequate basis for finding that the standard is 1) presently satisfied and 2) that if development is proposed that exceeds those limits the County will have the opportunity to require the provision of that needed additional capacity concurrently with development. Again, the Board is not aware of any record evidence to the contrary.

b. OAR 660-012-0060(5) Does Not Disqualify the Port's Application

In discussing the PGE Email, opponents re-raise the argument that OAR 660-012-0060(5) prohibits the Port from relying on the deepwater port and dock facilities at Port Westward as a basis for seeking a reasons exception under OAR 660-004-0022(3)(a). The Port has essentially responded by stating that, while that may or may not have been true if the approval relied solely on the dock at Port Westward as the basis for the exception, it is in fact the *deepwater port* at Port Westward, which simply happens to include the existing dock facilities.

OAR 660-004-0022(3)(a) explicitly authorizes an exception to Goal 3 for "river or ocean ports," with or without existing dock facilities, and whether or not the port has deepwater access. The Board finds that these additional attributes present at Port Westward do not disqualify Port Westward as a "river or ocean port" under OAR 660-004-0022(3)(a), and OAR 660-012-0060(5) does not disqualify it under OAR 660-004-0022(3)(a). The Board finds that it is unnecessary to determine whether river or ocean ports are or are not "transportation facilities" under OAR 660-012-0060(5) because, whether they are (and OAR 660-004-0022(3)(a) provides and exception) or they are not (and OAR 660-012-0060(5) does not apply), OAR 660-004-0022(3)(a) explicitly authorizes ports such as Port Westward as a valid basis for a Goal 3 exception.

COLUMBIA COUNTY BOARD OF COMMISSIONERS

PLANNING STAFF REPORT

July 26, 2017

Major Map Amendment

HEARING DATE: August 2, 2017

FILE NUMBER: PA 13-02 & ZC 13-01 (Modification)

APPLICANT/ OWNERS:

Port of St. Helens;
100 E Street
Columbia City, OR. 97018

Thompson Family
4144 Boardman Ave. E
Milwaukie, OR. 97267

Representatives:

Spencer Parsons
Beery Elsner & Hammond, LLP
1750 SW Harbor Way, Suite 380
Portland, OR. 97201-5106

Mackenzie
PO Box 14310
Portland, OR. 97293

SITE LOCATION: **Port Westward Industrial Site** - Adjacent to the east, south and west

TAX MAP NOS:
8N4W 16 00 500
8N4W 20 00 200, 300
8N4W 21 00 300, 301, 400, 500, 600
8N4W 22 00 400, 500, 600, 700
8N4W 23 00 900
8N4W 23 B0 400, 500, 600, 700

ZONING: Primary Agriculture - 80 (PA-80)

SITE SIZE: Approximately 837 acres

Port owned = 786 acres
Thompson family owned = 50.9 acres

REQUEST: Expand Port Westward Industrial Park. This request is a modified application in response- to a remand from a LUBA appeal. Consisting of a **Comprehensive Plan Amendment** to change property designated Agriculture Resource to Rural Industrial and a **Zone Change** from Primary Agriculture-80 (PA-80) to Rural Industrial Planned Development (RIPD). A Statewide Goal 3 exception is required to allow Industrial Uses on Agricultural Land. The County approved the original application by Ordinance No. 2014-1; but, the decision was appealed to LUBA who remanded it back to the County for the parts of the County decision that did not meet exception standards.

APPLICATION COMPLETE: May 30, 2017 **150-DAY DEADLINE**: N/A ORS 215.427(6)

APPLICABLE REVIEW CRITERIA:

BACKGROUND:

In January of 2014 Columbia County approved an application by the Port of St. Helens (Port), for an 837 acre tract, to amend the Plan and Zoning Ordinance to change Agricultural land to Rural Industrial land for an expansion of the Port Westward Industrial Site. The decision was appealed to the Oregon Land Use Board of Appeals (LUBA). In its Final Opinion and Order LUBA identified areas in which the record and findings provided insufficient justification for taking a Goal 3 Agricultural exception and re-zoning the exception area to industrial uses. The application was remanded back to the County to address those deficiencies.

The Port has revised the original application to address the deficiencies identified by LUBA and submitted this modified application. The original application has been modified to address only one of several justifications given in State law for granting an exception to agricultural lands - that the proposed new use is significantly dependent on a unique resource, that of a river or ocean port. Port Westward is located on the Columbia River with a 1500 foot long dock which accommodates ocean going marine traffic. By relying on an exception justification of deep water

port, potential allowed uses have been narrowed significantly from their earlier application. The Port has narrowed down its list of proposed uses from all those allowed in the proposed RIPD zone to just the following five uses:

- Forestry and Wood processing, production, storage, and transportation
- Dry Bulk Commodities transfer, storage, production, and processing
- Liquid Bulk Commodities processing, storage, and transportation
- Natural gas and derivative products, processing, storage, and transportation
- Breakbulk storage, transportation, and processing.

The applicant's purpose of this Comprehensive Plan Map Amendment is to expand the Port Westward Industrial Area to accommodate in the long term, future maritime-related uses specifically dependent on the river port and docks to import or export material or goods. The Port Westward Industrial Site includes a 1,500 foot long dock, three electrical generating facilities owned and operated by Portland General Electric (PGE), a 1.3 million barrel tank farm, a biomass refinery facility producing ethanol also exporting other fluid products, and a three acre electrical substation. The subject expansion property borders the existing industrial zoned property to the south and wraps around to the west and east. To the north is the Columbia River and Bradbury Slough, open to deep water navigation. The subject expansion property is comprised of 17 tax lots, is generally flat, and undeveloped, consists of individual farmland plots generally used for cottonwood pulp, vacant pasture and mixed crop hayfield.

The applicant requests an expansion of the Port Westward Industrial Park(PWIP) to accommodate the siting and development of maritime large lot industrial users. The need for more industrial land at PWIP is because of two restrictions of the present site. First, almost all of the vacant undeveloped land zoned Rural Industrial is under long term lease to Portland General Electric (PGE). PGE's intent is to protect 95% of the existing Port Westward area for future energy production uses and required buffers. Second, much of the vacant land is encumbered by wetlands, existing easements and required electrical power generation buffers. From a long range planning perspective, the County acknowledges preservation of PGE's leased area for energy production and buffers, while opening up this surrounding subject property to other "port" related industrial users.

For the subject expansion property, the National Wetlands Inventory (NWI) maps identifies only small plots of wetlands. The site is also identified as within major water fowl habitat according to the County's Beak maps. The site is located in zone X which designates lands not subject to flood hazard, per FIRM Map No. 41009C0050 D, dated November 26, 2010. It is protected by the Beaver Drainage District levee system.

Even though the proposed expansion of the Port Westward Industrial Area seems very large, approximately 837 acres, various State agencies including the Land Conservation and Development (DLCD) acknowledge the site's uniqueness and comparative advantages for water related industrial use. The rural industrial area has 4,000 feet of deep water Columbia River

frontage at the confluence of the Bradbury Slough. This direct access to the Columbia River gives an approach to the US Department of Transportation's M-84 Marine Highway Corridor and connects to the M-5 Marine Highway Corridor along the Pacific Coast. The River has a 43-foot navigation channel, and at Port Westward a self-scouring deepwater port to accommodate vessels needing deepwater port access. The Port Westward Industrial Park would be well suited to attract large lot, maritime, rural industrial users to serve the import-export trade in Oregon to the Pacific Rim countries and other national ports.

This application is not for a specific use or development, but rather for a zone change to RIPD to allow the aforementioned five categories of future uses other than agriculture on the subject property. Moreover, as explained in this Staff Report, the only uses allowed outright in the RIPD zone are farm uses and management, production and harvesting of forest products. All other uses can only be allowed if approved by the Planning Commission, at public hearing, through a "Use Permitted Under Prescribed Conditions" and Site Design review, which would impose any and all conditions set and approved by the County for this exception to agricultural lands goal (Goal 3).

REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Columbia County Zoning Ordinance Section 680 Resource Industrial - Planned Development (RIPD)

681 Purpose: The purpose of this district is to implement the policies of the Comprehensive Plan for Rural Industrial Areas. These provisions are intended to accommodate rural and natural resource related industries which:

.1 Are not generally labor intensive;

.2 Are land extensive;

.3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;

.4 Complement the character and development of the surrounding rural area;

.5 Are consistent with the rural facilities and services existing and/or planned for the area; and,

.6 Will not require facility and/or service improvements at significant public expense.

The uses contemplated for this district are not appropriate for location within Urban Growth Boundaries due to their relationship with the site specific resources noted in the Plan and/or due to their hazardous nature.

Discussion Columbia County's RIPD zone is unique to the state. There are very few similar zones in Oregon. In their application, The Port of St. Helens states that they have been approached by several different companies requiring large vacant industrial sites of 50 to 300 acres. Possible uses would include maritime and associated industrial processing, storage and transport uses that will benefit from the existing services, the moorage and deep water access, existing and future docks and the railroad and energy facilities.

Finding 1: The Port of St. Helen's stated goal is to attract companies looking to export, import, process or manufacture goods with the intent of using the maritime capabilities at this site already improved with existing facilities. The Port has limited the range of uses that would be allowed in the exception area to five: (1) forestry and wood processing, production, storage, and transportation; (2) dry bulk commodities transfer, storage, production, and processing; (3) liquid bulk commodities processing, storage, and transportation; (4) natural gas and derivative products, processing, storage, and transportation; (5) breakbulk storage, transportation, and processing. The Port has prepared a detailed analysis to demonstrate that these five use categories are rural industrial in nature and rely on access and proximity to a deepwater port. These types of future uses meets the purpose of the zone. This criteria is satisfied.

RIPD 682 Permitted Uses:

.1 Farm use as defined by Subsection 2 of ORS 215.203.

.2 Management, production, and harvesting of forest products, including wood processing and related operations.

Finding 2: Only agricultural and forest production & harvesting, wood processing and related operations are allowed outright in the RIPD zone. One of the five use categories proposed - forest and wood processing, production and storage is allowed outright in the RIPD zone. Any and all other industrial uses, while allowable, must be approved through and meet all of the conditions imposed under Section 683.1 below.

RIPD 683 Uses Permitted Under Prescribed Conditions: The following uses may be permitted subject to the conditions imposed for each use:

.1 Production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities subject to the following findings:

A. The requested use conforms with the goals and policies of the Comprehensive Plan - specifically those policies regarding rural

industrial development and exceptions to the rural resource land goals and policies.

B. The potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated considering the following factors:

.1 Physiological characteristics of the site (i.e., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements;

.2 Existing land uses and both private and public facilities and services in the area;

.3 The demonstrated need for the proposed use is best met at the requested site considering all factors of the rural industrial element of the Comprehensive Plan.

C. The requested use can be shown to comply with the following standards for available services:

.1 Water shall be provided by an on-site source of sufficient capacity to serve the proposed use, or a public or community water system capable of serving the proposed use.

.2 Sewage will be treated by a subsurface sewage system, or a community or public sewer system, approved by the County Sanitarian and/or the State DEQ.

.3 Access will be provided to a public right-of-way constructed to standards capable of supporting the proposed use considering the existing level of service and the impacts caused by the planned development.

.4 The property is within, and is capable of being served by, a rural fire district; or, the proponents will provide on-site fire suppression facilities capable of serving the proposed use. On-site facilities shall be approved by either the State or local Fire Marshall.

Discussion: New uses allowed in an expansion area of Port Westward would need to be consistent with CCZO Section 683. Industrial development is not allowed on the subject property under present PA-80 zoning, and therefore a zone change is required. Although many industrial uses are possible under the RIPD zone, further review and approval by the Planning Commission, in a public hearing format, is required for any proposed industrial use. That review

is in the form of a Use Under Prescribed Conditions, which requires the mitigation of adverse impacts among other things and a Site Design Review application. This Planning Commission review and approval would take place before the issuance of any building permit. These subsequent land use permits are beyond the scope of this Major Map Amendment, and the applicable design standards and impacts of any proposed facility would be addressed at the time those permits are reviewed.

Finding 3: Resource Industrial-Planned Development (RIPD) is the proper zone in Columbia County to achieve the applicant's the objective of siting large lot maritime and associated industrial uses. The application is seeking to expand, by 837 acres, the existing RIPD zone at Port Westward. The Port's stated proposed uses are:

- Forestry and Wood processing, production, storage, and transportation
- Dry Bulk Commodities transfer, storage, production, and processing
- Liquid Bulk Commodities processing, storage, and transportation
- Natural gas and derivative products, processing, storage, and transportation
- Breakbulk storage, transportation, and processing.

As mentioned, forestry and wood processing, production, storage and transportation is allowed outright in the RIPD zone. All other proposed uses fit as a subset of those uses allowable in the RIPD zoning district and would be subject to approval and conditions imposed through a Section 683 Use Under Prescribed Conditions review.

Continuing with Columbia County Zoning Ordinance Section 1502 Zone Changes

.1 Major map Amendments are defined as Zone Changes which require the Comprehensive Plan Map to be amended in order to allow the proposed Zone Change to conform with the Comprehensive Plan. The approval of this type of Zone Change is a 2 step process:

A. The Commission shall hold a hearing on the proposed Zone Change, either concurrently or following a hearing on the proposed amendment to the Comprehensive Plan which is necessary to allow the proposed zoning to conform with the Comprehensive Plan. The Commission may recommend approval of a Major Map Amendment to the Board of Commissioners provided they find adequate evidence has been presented at the hearing substantiating the following:

1. The proposed Zone Change is consistent with the policies of the Comprehensive Plan;
2. The proposed Zone Change is consistent with the Statewide Planning Goals (ORS 197); and

3. The property and affected area are presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

B. Final approval of a Major Map Amendment may be given by the Board of Commissioners. The Commissioners shall hold a hearing on the proposed Zone Change either concurrently or following a hearing on the proposed Comprehensive Plan Amendment which is necessary to allow the proposed zoning to conform with the Comprehensive Plan. The Board may approve a Major Map Amendment provided they find adequate evidence has been presented substantiating the following:

1. The proposed Zone Change is consistent with the policies of the Comprehensive Plan;
2. The proposed Zone Change is consistent with the Statewide Planning Goals (ORS 197); and
3. The property and affected area are presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services, and transportation networks are planned to be provided concurrently with the development of the property.

Discussion: This zone change request is a Major Map Amendment. For the original decision by the Board of Commissioners in January 2014, findings were made with supporting evidence in the record that the Planning Commission held a public hearings on May 6, 2013 and May 20, 2013, and deliberated on June 17, 2013. The Board of Commissioners held three public hearings on the application in Clatskanie on September 18, October 3 and October 9, 2013. In addition to hearing oral testimony, the Board admitted written evidence and testimony into the record by leaving the record open until October 16, then until October 30 for the applicant's final written arguments. This application was properly vetted in accordance with this criteria before the Board maid its decision in January 2014.

This new Modified application, addressing the issues returned to the County by the LUBA remand, is related to the Board's original decision in Ordinance No. 2014-1, and is being considered by the Board. A hearing before the Board of Commissioners was scheduled for August 2, 2017, to consider the modified application. Notice of the hearing was mailed to entitled parties on June 28, 2017 and published in the Chronicle and Clatskanie Chief on July 12, 2017.

(**Continued discussion** for Section 1502.1(B)(1) (Consistent with the Comprehensive Plan)

THE FOLLOWING POLICIES OF THE COUNTY'S COMPREHENSIVE PLAN APPLY TO THIS PROPOSAL (THOSE NOT LISTED ARE NOT APPLICABLE):

Part II (Citizen Involvement): requires opportunity for citizens to be involved in all phases of the planning process. Generally, Part II is satisfied when a local government follows the public involvement procedures set out in State statutes and in its acknowledged Comprehensive Plan and land use regulations. This has been done for this application as explained further under Part III below.

Part III (Planning Coordination): requires coordination with affected governments and agencies. For the original application the County provided notice of the hearing with the opportunity for comments to the state DLCD, ODOT, ODOT Rail, ODFW, Oregon Department of Agriculture and applicable agencies (e.g. Soil & Water Conservation District, Roadmaster, and the Clatskanie RFPD), the Clatskanie - Quincy CPAC, and neighboring property owners within the notification area. (This list is not intended to be exclusive) Any and all comments as of the date of this report are presented under COMMENTS RECEIVED below near the end of this Report. These notifications were sent to invite participation prior to the Planning Commission and the Board of Commissioners public hearings.

For quasi-judicial Comprehensive Map Amendments and Zone Changes, the County's land use regulations, ORS 215.060 and ORS 197.610 require notice to the public and to the Department of Land Conservation and Development (DLCD) and two public hearings, one before the County Planning Commission and another before the Board of Commissioners.

For this modified application in response to a remand, notice of public hearing with opportunity to comment was sent to the same agencies and neighboring property owners as the original application hearing as presented above.

Part V (Agriculture): The property contains a large area of Wauna Locola silt loam that is Class III w, considered high-valued farm soil. Because this soil type, plus others, represents a significant portion of the subject property, staff concludes that the vast majority of the soils on the site are high-value farmlands. See related discussion under Statewide Planning Goals, Goal 3 (Agricultural Lands).

Two sensitive crops have been identified as being produced in the immediate area: blueberries and mint. Each has a long history of production and need specific conditions to grow well. Many of the sandy soils found within the subject area have a history of producing high-yields of high-value crops. The ability to maintain these high-valued agricultural production units is of prime importance for the county to not only sustain, but increase their potential production. Their compatibility with potential industry nearby is discussed in Finding 8 of this report

The goal of Part V of the Comprehensive Plan is to preserve agricultural land for agricultural uses. This application would remove agricultural lands from the County's inventory (zoned PA-80). The County has approximately 55,000 acres of agricultural lands with soil classifications of Class I, II, or III and all this land is zoned for Primary Agriculture. Most of the good farm soils and Primary Agriculture (PA-80) zone is located in the diked areas along the Columbia River. The largest block of PA-80 zoned property is in the diked area of Scappoose and Sauvie Island. Other significant areas include the Deer Island area north to Goble, the area just downstream of Rainier and the north county Clatskanie area. In this north county Clatskanie area, the County has zoned 16,927 acres as Primary Agriculture (PA-80). The north county primary agricultural properties extend from Mayger down stream along the river to Woodson and the Clatsop County line. Several drainage districts serve these agricultural properties, including Beaver Drainage, Midland Drainage, Marshland, Webb, Magruder, Woodson etc.. If this Plan Amendment is approved, 837 acres would be removed from PA-80 zoning, representing 4.9% of the total north county Clatskanie agricultural area. For the County as a whole this loss of farm zoned property is just 1.5 % of the county's total 55,000 acres of primary agricultural inventory.

Farming is an allowed use in the RIPD zone and there are fields currently under farm lease that are zoned RIPD, and can remain so. But, if zoned RIPD, certain non-agricultural industrial uses would likely be sited, given the site's proximity to the Port Westward Industrial Park. As such, this proposal will require an exception to Oregon Statewide Planning Goal 3, as detailed below under Statewide Goal 3. The applicant's proposed exception document is attached to this staff report.

Part X (Economy): This goal generally promotes economic strength and diversity in the County. Though agricultural related practices contribute to the County's economy, industrial operations do too. In addition, industrial operations typically provide a tax base in greater proportion to public services provided and result in more permanent jobs. Many residing in the County commute outside its borders. Industrial land and the jobs it creates helps balance the jobs to residence ratio (currently in favor of residences). Moreover, future development resulting from this Major Map Amendment will support maritime exporting, which is itself an ingredient to economic growth of the state and region.

Good industrial sites are often determined by location factors. This is the case with Port Westward. As explained by the applicant, proximity to the Columbia River and existing maritime infrastructure including docks, rail spurs, and private and public utility infrastructure, as well as the Port's facilities and services, makes the site valuable for industrial use and economic development.

For these reasons, this proposal is in compliance with the goals and policies of Part X Economy.

Part XII (Industrial Siting): This goal addresses the need for industrial land such as that located at Port Westward. This part of the Comprehensive Plan also contains the County's basis for the original Port Westward area for industrial use rather than farm use. The original exception in the Plan to Statewide Planning Goal 3 for agriculture lands, per Goal 2, was justified for Port Westward given as a need (e.g. economics, employment and the site's unique characteristics) and irrevocable commitment (pre-existing use of the land before the Comprehensive Plan was adopted in 1984). This Major Map Amendment will allow expansion of the site. As explained by the applicant, development of additional industrial uses in this area will create new and continuous employment opportunities, promote economic growth, and maximize existing public and private investments. In other words, this is an expansion of a justified and important industrial site in the County; and thus, this proposal, with a "reasons exception" from State Goal 3 agricultural lands, is in compliance with Part XIII Industrial Siting of the Comprehensive Plan.

Part XIII (Transportation): The goal of Part XIII is the creation of an efficient, safe, and diverse transportation system to serve the needs of Columbia County residents. The two most applicable objectives of Part XIII as it relates to this proposal are: 1) to utilize the various modes of transportation that are available in the County to provide services for the residents, and 2) to encourage and promote an efficient and economical transportation system to serve the commercial and industrial establishments of the County.

Three modes of transportation apply to this proposal: waterborne, rail and auto/truck. The Comprehensive Plan discusses how the Columbia River and its deep water access is one of the County's most valuable transportation resources. It also mentions that the Columbia River is underutilized for this purpose. Expansion of Port Westward for maritime deep water import-export uses helps the county take advantage of the Columbia River. In addition, only certain parts of the County have access to functional railroads. The subject property and Port Westward Industrial Park has access to the Hwy 30 rail line operated by Portland & Western Railroad Inc. This Major Map Amendment will provide the ability for rural industrial expansion of the Port Westward site, which utilizes both the river access and rail route. The County original decision in January 2014 approving a zone change for this 837 acres was appealed to LUBA on the grounds that the county failed to adequately consider whether the proposed zone change would significantly affect rail transportation facilities. LUBA denied that assignment of error and the Court of Appeals affirmed the LUBA decision. The adequacies of the rail transportation system serving Port Westward is therefore not a subject of the remand.

The applicant acquired the services of Lancaster Engineering to provide a Transportation Impact Analysis (TIA). By knowing that a limited range of uses would be allowed in the exception area of just five uses of similar characteristics (rural, large lot, low employment) the subsequent traffic characteristics are not detailed until a specific tenant applies. Lancaster Engineering states that it is appropriate to establish a "trip cap" on the subject property in

order to limit the magnitude of traffic impacts from future development. Since the trip cap will limit the development potential it also serves as a reasonable "worst case" traffic scenario. If 332 or fewer PM peak-hour site trips are generated by future development within the subject property, the impact intersections will continue to operate acceptably without the need for operational or safety improvements. Lancaster Engineering recommends that a traffic study be prepared for each new development and impacts of both passenger car and heavy truck traffic be commensurate with mitigation measures, established to improve local roads when needed. Part XIII Transportation can be met with conditions.

Historically, the local roads that provide access to Hwy 30 have been improved sequentially as new industrial uses are sited at the Port Westward Area. Through a Transportation Improvement Agreement a new industrial site users contribute a proportional fee to the County for local road improvements. These agreements were the catalyst for past substantial improvements to Beaver Falls Road, Mayger Road and Kallunki Road with engineering work on Hermo Road. Hermo Road has been designated as the main local access road to this expansion property and Port Westward. Hermo Road alignment is finalized and construction is underway. Although the current local roads serving Port Westward are insufficient to support new industrial development at the scale proposed by this application, any new industrial user in the Port Westward Area will be required to address its uses and impacts on local transportation when the proposal is reviewed under Site Design Review.

Part XIV (Public Facilities & Services): The goal of Part XIV is to plan and develop a timely, orderly, and efficient arrangement of public services as a framework for urban and rural development. The subject property is located adjacent to the Port Westward area, a rural industrial park. There are no urban facilities within 6 miles of the proposal. Significant investments have already been made in the Port Westward area's services and facilities, including water, sewer, new electrical substation, natural gas mainlines, and fire protection services. The area also has existing rail systems and a full-service 1,500 foot dock. There are also public and private energy transmission facilities in the Port Westward area. There is an existing framework of facilities for allowing additional rural industrial development in the area. Staff concurs that with this existing substantial investment in services and facilities already in the area, an expansion of industrial land as proposed would be efficient from a facilities and services standpoint. This proposal is consistent with Part XIV.

Part XVI (Goal 5: Open Space, Scenic & Historic Areas, and Natural Resources): The purpose of this Part is to protect cultural and natural resources. Three resources apply to this site: 1) open space, 2) wildlife habitat and 3) wetlands.

The County is not aware of any cultural resources on the subject property. An older cultural site was discovered near the river, was fenced and protective signage was placed to protect the area for future excavation. This site is on the existing Port Westward Industrial Park. If a

cultural site is discovered the owner is required to contact the County and the State Historic Preservation Office.

Open space is not specifically inventoried in the County; though, most of the County is zoned for resource use in the PF-80, FA-80 or PA-80 zoning districts. The primary intent of this zoning is to conserve resource lands for resource uses, but the resource zones also protect open space as a secondary function. The subject property is zoned PA-80 and will be re-zoned to RIPD given successful completion of this Major Map Amendment. Given the zoning designation alone, open space could conceivably be compromised. However, in this case, the subject property is already bordering RIPD Industrial zoning. Hence, any impact to open space should be minimal. Open space is already compromised by this adjoining industrial area

With regards to wildlife, the site is identified as being within major waterfowl habitat. Potential conflicting uses to waterfowl habitat generally apply to removal of water bodies (e.g. streams and sloughs) and wetlands. The subject property does contain wetlands, however there is no evidence this Major Map Amendment itself will compromise water fowl habitat, though subsequent development if authorized could. Albeit, any development would be subject to regulation of the County and other applicable agencies such as the Division of State Lands and Oregon Department of Fish and Wildlife to address and mitigate any issues when an application for a particular use is submitted.

Finally, and as already noted, the site does not contain any significant wetlands. However there are some wetlands associated with crossing sloughs and drainage ways. The intensity of development possible on RIPD zoned land is greater than PA-80; however, development would be subject to regulation of the applicable agencies (e.g. County, Division of State Lands, and the Army Corps of Engineers) to address and mitigate any wetland impacts. It is likely that any development, if initially authorized, would require a wetland delineation to determine wetland boundaries and potential impacts.

As there is no evidence to suggest this Major Map Amendment will compromise the identified Goal 5 resources on the subject property, it complies with Part XVI.

(Continued discussion) - Zoning Ordinance Section 1502.1(A)(2)

OREGON'S STATEWIDE PLANNING GOALS

Goal 1 (Citizen Involvement): Goal 1 requires opportunity for citizens to be involved in all phases of the planning process. Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in the statutes and in its acknowledged Comprehensive Plan and land use regulations.

For quasi-judicial Comprehensive Plan Amendments and Zone Changes, the County's land use regulations, ORS 215.060 and ORS 197.610 require notice to the public and to the Department of Land Conservation and Development (DLCD) and public hearings before the County Planning Commission and Board of Commissioners. By complying with these regulations and statutes, the County complies with Goal 1.

The County provided notice to DLCD on February 20, 2013 for the initial application in 2014; and, for this modified application, DLCD was re-notified on June 18, 2017. Agency referrals were sent to the Clatskanie-Quincy CPAC, City of Clatskanie, Clatskanie RFPD, Soil & Water Conservation District, OSU Agricultural Office, Clatskanie PUD, Oregon Department of Agriculture, Oregon ODOT and Natural Resources Conservation Service. Any agency comments which have been received up to the date of this staff report are under "COMMENTS RECEIVED" below. In addition, property owners within the required notice area were notified of the Board of Commissioners hearing, scheduled for August 2, 2017 .

Goal 2 (Land Use Planning), Part I: Goal 2, Part 1 requires that actions related to land use be consistent with acknowledged Comprehensive plans of cities and counties. Consistency with the applicable provisions of the acknowledged Columbia County Comprehensive Plan is demonstrated within.

Goal 2, Part I also requires coordination with affected governments and agencies and an adequate factual base. Affected agencies have been notified as explained under Goal 1, above. The factual basis of this application is included herein. Both County and State laws and how this Major Map Amendment relates to and complies with them is analyzed. For these reasons, the County finds that the requirements of Goal 2, Part I are met.

Goal 2 (Land Use Planning), Part II: Goal 2, Part II authorizes three different types of exceptions: (1) physically developed (previously called "built"); (2) irrevocably committed; and (3) reasons exceptions. Standards for taking these kinds of exceptions are set out in LCDC's rule interpreting the Goal 2 exceptions process, OAR 660, Division 4. Besides addressing how a local government takes these kinds of exceptions in the first instance, the rule sets out standards that apply when a local government proposes to change existing types of uses, densities or public facilities and services authorized under prior exceptions.

In this case, the subject property will be changed from Agriculture Resource to Rural Industrial and will require a Goal 3 exception. The physically developed and irrevocably committed bases for exceptions are intended to recognize and allow continuation of existing development. The subject property is not developed; therefore, the reasons exception applies to this application. The applicant's Goal 3 exception analysis is set forth as attached to this report and analyzed below.

Goal 3 (Agricultural Lands):
This proposed plan amendment would re-zone to Rural Industrial and remove 837 acres from farmland zoning. Goal 3 is to preserve and maintain agricultural lands. An exception to Goal 3 is necessary to approve this Major Map Amendment. This requires findings for a "reasons exception" pursuant to OAR 660-004-0020(2) and ORS 197.732(2), specifically related to siting rural industrial development on resource land outside of an urban growth boundary pursuant to OAR 660-004-0022(3). (discussed after OAR 660-004-0020 below)

State Goal Exception Criteria

Exception Criteria - ORS 197.732

197.732 Goal exceptions; criteria; rules; review. (2) A local government may adopt an exception to a goal if: a) the land is physically developed, or b) the land is irrevocably committed to another use, or c)...

ORS 197.732(2).c

(2) c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas which do not require a new exception cannot reasonably accommodate the use;

C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(3) "Compatible," as used in subsection (2)c) of this section, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Finding 4: LCDC adopted more specific rules, to augment the above Statute. They are incorporated in OAR 660-004-0020 & 0022 examined below. Those findings are incorporated herein as applicable to (A) - (D) above.

The following Administrative Rule OAR 660-004-0020 presents how the statute provisions are to be met and adds specificity to the above noted ORS 197.732(2.c).

660-004-0020
Goal 2, Part II C), Exception Requirements

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.

(2) The four standards in Goal 2 Part II C) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

Discussion: For taking a "reasons exception", the types of reasons that may justify certain types of uses not allowed on farmland are set forth in OAR 660-004-0022 (referred to in (1) above). The rule specifically addresses reasons applicable to Rural Industrial Development that are applicable in this application.

OAR 660-004-0022(3) Rural Industrial Development
(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;

Finding 5: In this Modified Application, the Port's sole Reason for taking an exception to Goal 3 is OAR 660-004-0022(3)(a) - that the use is significantly dependent upon a unique

resource located on agricultural land, specifically that of a 'river port'. In the original decision in 2014, the County approved the Goal 3 exception based on additional reasons set out in OAR 660-004-0022(3), in particular: that 'the use can not be located inside an Urban Growth Boundary due to its impacts that are hazardous or incompatible in densely populated areas', and 'the use would have a significant comparative advantage due to its location...' LUBA upheld two of the County's reasons exceptions - that the use is significantly dependent on a unique resource and that the use would have a significant comparative advantage - but found that the County's justifications for the third reasons exception insufficient. In any event, the Port in this new modified application narrows the proposed uses allowed to only uses related to the unique resource - dependent on deepwater port and dock facilities. Consequently, the remand on the basis of the "hazardous and incompatible in densely populated areas" reason exception is no longer relevant.

The subject property is located outside of an urban growth boundary on designated agricultural lands. It is adjacent to Port Westward Industrial Area which is strategically located along the Columbia River and a river port with existing industrial uses and facilities. The location of the site on the Columbia River is extremely important to the local and regional economy and is consistent with the proper location of river and port dependent industries. No other industrial site having such qualities is available in Columbia County, making Port Westward a unique resource.

The reasons set out in the exception document state why the applicable goal of protecting/preserving agricultural land should not apply to this land immediately adjacent to Port Westward. They include the fact that this land is uniquely situated by a river port that is already served by water, sewer and local roads, and the exception site has capability of being served by US Hwy 30 and a major freight rail corridor. Another factor supportive of a reasons exception includes the ability for the county to take advantage of their most important transportation asset, the Columbia River for shipping transport, as stated in the Comprehensive Plan. The centralization of industrial employment at this strategic location makes good planning sense and reduces future energy costs associated with industrial sites being haphazardly located along the river. There is a documented shortage of large lot industrial sites in Oregon. (See Application - Mackenzie Regional Industrial Site Readiness, 2014 Inventory Update) By addressing this shortage and providing vacant land for deepwater river port industrial development, the County would be capable of securing potential base employment jobs where the wage income is generated by out-of-county capital. Opening and taking advantage of trade opportunities in the Pacific Rim is advantageous to the County and region. Staff finds that the above stated reasons as further detailed in the applicant's attached exception document as to why this agricultural land should be re-designated for industrial purposes are sufficient to address this exception criterion.

Continuing - going back to OAR 660-004-0020(2)(b)

(b) "Areas that do not require a new exception cannot reasonably accommodate the

use". The exception must meet the following requirements:

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(I) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

C) The "alternative areas" standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

Finding 6: Alternative site analysis was one on LUBA's remand issues with the County prior decision in January 2014. LUBA found that the evidence in the record was insufficient to establish that 445-acres in the PGE leasehold was unavailable or that it would be infeasible to mitigate the wetlands in the leasehold area to accommodate future uses. LUBA also found the County's rejection of alternative sites flawed because the County could only reject alternative

sites from its analysis if it found that the site could not reasonably accommodate any use under any of the reasons justifying the exception. The applicant has modified its application to address these issues.

The applicant has narrowed the potential industrial uses to only "port related" uses. In the Modified Application the Mackenzie technical reports examine "potential alternative sites" that are deep water ports with existing dock facilities which would not require an exception to a State goal. The first and foremost alternative examined is the existing vacant land at Port Westward within Portland General Electric (PGE) leasehold. PGE wrote a letter to the Port, dated June 16, 2016, which discusses the 854 acre leasehold at port Westward. The letter states they have long term interest in protecting the electric power generation capabilities at the site by restricting third-party use within their leasehold. The Mackenzie Report analyzes this leasehold area and finds that because of encumbrances, there only a few acres of usable area in the southwest corner of the leasehold for addition of port dependent development. The Mackenzie Report also analyzes potential deep water ports along the Columbia River, M-84 Marine Highway including the Port of Astoria and the Port of Portland. They find there is insufficient large lot industrial marine port property in the state including Columbia County.

There are no non-resource lands available in Columbia County of sufficient size and with a deepwater port location needed to satisfy large industrial users than Port Westward. At the time of initial zoning, the County zoned all large lots in the the county as either Primary Forest or Primary Agriculture; those lots not zoned for resource use were already committed to more intense development. The attached exception document examines the alternative sites including Port Westward Industrial Park itself, other Port of St. Helens properties, the Port of Astoria, Port of Coos Bay and the Port of Portland. This examination concludes that there is a shortage of readily zoned large lot industrial sites. Areas in Urban Growth Boundaries in Columbia County do not have adequate industrial lands with water/rail transport availability that are not already in use. With the inclusion of the Exception Document, staff finds that this alternative sites criteria is met.

Continuing with OAR 660-004-0020(2)©

> c) "The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site." The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The

exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

Finding 7: Any proposed use, of a prospective tenant, will need to meet or exceed the requirements in existing state and federal environmental laws. County review of siting of a specific industrial development at the newly re-zoned property would be processed and decided in a public hearing format. In addition to existing laws, conditions imposed by the County on this exception area - such as traffic impacts, impacts to wetlands, impacts to the air & ground and impacts to surrounding uses will be reviewed; and, the use will be allowed if the impacts of the use is minimized through conditions imposed. The applicant's analysis of economic consequences including better paying wages and a larger tax base, supports the zone change. This concept is carried forward into the social consequences. Citizens will have more money to spend locally, thereby creating a higher standard of living. This in turn will benefit other related industries and businesses. An energy related consequence would include better usage of existing on site facilities including large grid electrical power and abundant natural gas. This application supports consolidation of large scale industrial services that require a port dock for Columbia River shipping transport at Port Westward. Based on the analysis in the exception document, staff finds that the application is adequately supported by consideration of the long term environmental, energy, social and energy consequences. LUBA did not rule against the County in the ESEE analysis findings contained in the prior approval. In this Modified application, by narrowing acceptable uses to only 'port dependent' the ESEE exception argument becomes stronger in favor of a zone change to rural industrial. With the inclusion of the attached exception document the County finds that the ESEE criteria is satisfied in support of an approval.

Continuing with OAR 660-004-0020(2)(d)

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Agricultural Crops Adjacent to Liquid Bulk Storage & Transport

Finding 8: The adjacent uses to the subject property are industrial to the north and agriculture/farming to the south. Any proposed uses in this new industrial zone will need to be compatible with both adjoining uses, industrial and farming. The storage, shipping, production/processing of dry bulk, liquid bulk, wood products and natural gas are uses that are naturally compatible with agricultural uses if separated with adequate buffers. Agricultural uses are presently close to bulk liquid storage tanks as can be seen in the photo above, taken from Hermo Road at Port Westward. There has not been any compatibility uses raised between the uses. The five uses proposed for the exception which could potentially be sited at the Port Westward expansion area are similar in nature; most needing large storage areas for movement, sorting and loading. These large lot sizes are similar in nature to large lots needed for commercial agricultural crop fields. The applicant presented, in the Mackenzie Report Table 1, the narrowed types of uses proposed in the Modified Application by acreage and by number of employees. This study based on existing industrial sites analysis shows that all of the proposed uses are rural requiring at least 20-200 acres. Staff finds that the five proposed uses that need to be close to a shipping dock for loading and unloading are all compatible with agricultural uses to the south. In addition, any proposed use would necessarily be restricted by conditions imposed by this plan amendment. These criteria will be reviewed at site design review prior to releasing a building permit. During the last hearing process there was a substantial amount of testimony

received from the farm community pertaining to whether this new industrial zone would allow uses that are incompatible with crops in nearby fields. The farm community does not have problems with the uses already in existence at Port Westward. This new proposal is to continue more of the same type of uses. As such, some lands that are zoned for industrial use at Port Westward are leased for agricultural purposes and will continue to be farmed. In addition to the general finding that these proposed uses are naturally compatible with crop cultivation and animal husbandry, before a development permit is issued, each new use will be reviewed in a public hearing format. The applicant has proposed that the following conditions be imposed to ensure measures are in place to reduce adverse impacts:

1) The habitat of threatened and endangered species shall be evaluated and protected as required by law.
2) Alterations of important natural features, including placement of structures shall maintain the overall values of the feature.
3) All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.
4) When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.
5) Controls, including suppression and requiring hard surfaces, shall be employed to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.
6) Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.
7) The industrial use impact on the water table shall be monitored to ensure that the water table can be maintained and managed as it historical is done.
8) Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays.
9) Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan.

Staff recommends the above measures be incorporated into conditions for the siting of any future industrial use. With the above referenced conditions this criteria can be met.

Continuing with Oregon's Statewide Planning Goals

Goal 4 (Forest Lands): The County finds this goal is not applicable. The subject property is

not forest land. The applicant submitted an exception to forest lands. The Board may include it if wanted, but staff does not believe it is necessary.

Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources): This goal addresses the conservation and protection of both natural and cultural resources. There are no inventoried cultural, historic or scenic resources on the subject property. Three natural resources apply to this site: 1) open space, 2) wildlife habitat and 3) wetlands. These are addressed under Part XVI of the Comprehensive Plan. As this Major Map Amendment complies with Part XVI of the Comprehensive Plan, it also complies with Statewide Goal 5. (See discussion Part XVI , page 9)

Goal 6 (Air, Water and Land Resources Quality): Goal 6 addresses the quality of air, water and land resources. In the context of Comprehensive Plan Amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment will be able to satisfy applicable federal and state environmental standards, including air and water quality standards.

The proposed plan amendment and zone change would allow rural industrial uses reliant on the river port in addition to resource uses, as allowed currently. As a matter of county ordinance, any future development would be required to comply with Federal, State and local laws, which are intended to minimize environmental impacts. The Clean Water Act and Clean Air Act are examples. Given the standards to which future development would be subject, including those applicable to Site Design Reviews, Uses Under Prescribed Conditions and Building Permits, staff finds that the requirements of Goal 6 are met.

Goal 7 (Areas Subject to Natural Disasters and Hazards): Goal 7 deals with development in places subject to natural hazards. It requires that jurisdictions apply "appropriate safeguards" when planning for development there.

In this case, there are no specific identified natural hazards. FEMA FIRM Map 41009C0050 D, dated November 26, 2010, identifies the property in zone X, which is not subject to floodplain regulations. In addition the property is within Seismic Zone D1 (formerly zone 3), which applies to building regulations. These would apply at time of development.

The County finds that the requirements of Goal 7 are met.

Goal 8 (Recreational Needs): This goal calls for a government to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. The subject property has not been planned for recreational opportunities. This Major Map Amendment will not compromise the recreational needs of the County citizenry and thus, meets the requirements of Goal 8.

Goal 9 (Economic Development): While Goal 9 applies only to urban and unincorporated

lands inside urban growth boundaries, this Major Map Amendment, will nonetheless, help promote the County's economic strength. This is explained under Part X (Economy) and the Reasons Exception attached to this report. Though technically not applicable, the County finds that the overall intent of Goal 9 is met.

Goal 10 (Housing): The County finds that Goal 10 is not applicable. Goal 10 applies inside urban growth boundaries. In addition, this Major Map Amendment will not result in a loss or gain of dwelling units.

Goal 11 (Public Facilities and Services): Goal 11 requires local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services. It further provides that urban and rural development "be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served."

The applicant's response is: "Port Westward has developed public facilities and services for rural industrial development. The area also provides access to the Columbia River by existing docks, and access to rail transport. Rural industrial development in the Port Westward area is orderly and efficient in that it groups development around existing services and provides the benefits of a planned development area. Thus the application is consistent with Statewide Planning Goal 11."

Staff concurs with the applicant and finds that the proposal complies with Goal 11.

Goal 12 (Transportation): Goal 12 requires local governments to "provide and encourage a safe, convenient and economic transportation system." Goal 12 is implemented through LCDC's Transportation Planning Rule (TPR), OAR 660, Division 12. The TPR requires that where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation that would significantly affect an existing or planned transportation facility's functional capacity, the local government shall put in place measures to assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility. Transportation issues were discussed earlier under the County Comprehensive Plan Part XIII Transportation.

Lancaster Engineering, on behalf of the applicant, submitted a preliminary Traffic Impact Analysis (TIA) for the proposed Plan Amendment on May 6, 2013. Lacaster Engineering, together with State ODOT, Columbia County Road Department and the Public Works of Clatskanie, agree that a "Trip Cap" be established for a worst case scenario. Lancaster Engineering determined that the study intersections are currently operating satisfactorily, but would need operational or safety improvements when the subject new industrial area produced 332 PM peak-hour trips or more. When this trip cap level of traffic generation is reached there will be a need for an additional TIA and possible mitigating improvements to

the intersections to bring them to acceptable performance.

The State ODOT comment expressed concern about the "trip cap" proposed by the August 27, 2013 TIA, the County and ODOT need to determine how the trip cap identified will be monitored and enforced. ODOT and Lancaster recommend a condition be imposed:

> "A traffic study be prepared for each future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic. These TIA analysis would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap."

To ensure that all traffic impacts are minimized with each new development on our local roads, including in the City of Clatskanie; roads will need improvements commensurate with a new development impact. The County has historically imposed a Traffic Improvement Fee on new development in the Port Westward area.

With respect to train traffic, the State Land Use Board of Appeals and the Court of Appeals has ruled that the County does not need to evaluate whether the zone change would significantly affect rail transportation facilities. A Rail Transport Impact Analysis is not required before the zone change. However, with the imposition of conditions the County will require that any new use that proposes rail traffic shall submit a rail plan identifying the number and frequency of trains to the subject property, its impact and proposed mitigation measures.

Impacts on marine transportation are not addressed in the state rules for analyzing adverse impacts or mitigating the Columbia River shipping transport channels.

With the above referenced conditions staff finds that the Transportation Planning Rule requirements are satisfied.

Goal 13 (Energy Conservation): Goal 13 directs cities and counties to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based on sound economic principles.

Staff finds that the application is consistent with Statewide Planning Goal 13 in that it will promote consolidation of industrial uses reliant on river dock and shipping commodities services in the Port Westward area and conserve energy that would otherwise be expended developing these services elsewhere."

In addition, as already explained in this report, the expansion of the Port Westward site will help enhance the County's economy, specifically the north part of the County. This will

provide local jobs and help balance the jobs/dwellings ratio. Currently, many County citizens travel outside the County to work. Having more local jobs promotes energy conservation as it tends to result in less vehicle miles traveled.

For the above reasons, the Staff finds that the proposal complies with Goal 13.

Goal 14 (Urbanization): Failure to take an exception to Goal 14 (Urbanization) was one the errors that LUBA remanded. LUBA held that the County when it found that Goal 14 is not applicable based on the determination that no urban uses were being permitted, was insufficient. The proposed amendments did not authorize urban uses on rural lands or otherwise convert rural land to urban uses. LUBA ruled that the County must apply the Shaffer factors to determine whether the use is urban or rural. In Shaffer v. Jackson County, 17 Or LUBA 922, 931 (1989) LUBA rejected the argument that industrial uses are inherently urban in nature, and absent any rule making by LCDC considered the some relevant factors that point toward rural rather than urban. The Shaffer factors that point toward rural industrial rather than urban are:

1) *employs a small number of workers* - The applicant's Mackenzie Report provides an analysis and presents data of the Port's 5 proposed uses by the typical number of employees per acre is 1.5 jobs per acre. A typical urban industrial density is 18.1 jobs per acre, and typical urban warehousing density is 5.9 jobs per acre. The Port's proposed uses have job densities well below those of urban industries, concluding that the uses employ a small number of workers.

2) *is significantly dependent on a site-specific resource and there is a practical necessity to site the use near the resource* - The Mackenzie Report analyzes product examples of each of the 5 proposed uses for its necessity to be in close proximity to a deep water dock facility at Port Westward. In exporting Oregon's products to reduce transportation costs, typically placing storage yards and trans-loading facilities for shipping at a port are almost always done.

3) *is a type of use typically located in rural areas* - The Mackenzie Report examines product examples of each of the 5 proposed uses reliance on a rural location using three factors: needing proximity/access to natural resource, needing a large yard or deck area and whether significant buffering is required. The proposed uses substantially correlates with these rural factors.

4) *does not require public facilities or services* - The Mackenzie Report determines that the Port's 5 proposed uses do not need public water due to their low employee density. Also public sewer system is not necessary due to low waste water levels generated by the low number of potential employees. Port Westward is provided with process water from the Port's water right, and the Port operates a discharge system for industrial wastewater.

The application concludes that the Port's 5 proposed uses have job densities well below those of urban industries, and are specifically dependent on the resource port dock, and have lot size characteristics typical with rural industries, and do not need public facilities and services. The proposed 5 uses at the exception site are rural uses.

The Staff conclude that the uses proposed are rural in nature, meet the Shaffer factors and do not require an exception to Goal 14.

Goal 15 (Willamette River Greenway): The County finds that Goal 15 is not applicable. The site is not near the Willamette River.

Goals 16 - 19 (Coastal State-Wide Planning Goals): These Goals do not apply to Columbia County as it is not a coastal jurisdiction.

Continuing with Columbia County Zoning Ordinance CCZO

CCZO 1502.1(A) (3):

3. The property and affected area are presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

Discussion: The Port Westward Industrial Park immediately to the north of the subject property has service facilities available for potential industrial users. These services can easily be provided to the subject property in association with a particular development. The infrastructure framework for additional rural industrial development has been well planned by the Port and other industrial users in the vicinity. Existing facilities include water systems and fire protection services, county roads to provide access to Hwy 30, rail lines running within the site and through to connect the mainline Hwy 30 corridor, electrical service new substation, fiber optics, industrial sized natural gas lines, electric power plants, and a 1500 foot dock with deep water access.

There is no evidence that there will be any inadequacies of facilities, services and transportation networks for development subsequent to the Major Map Amendment. Any new development within the Port Westward Industrial site would not be allowed unless there were facilities that could adequately accommodate it. When a prospective industry submits plans for development, the facilities necessary are identified and extended or otherwise provided in conjunction with development.

Finding 11: Based on the discussions above on the Comprehensive Plan criteria and as presented in the application and submittal of noted items, Staff finds that this Major Map Amendment is consistent with the County's Comprehensive Plan.

Finding 12: Based on the discussions above on Statewide Goals and as presented in the application with the submittal of noted items, Staff fins that this Major Map Amendment is consistent with Oregon's Statewide Planning Goals.

Finding 13: Based on the discussions above in this Report and as presented in the application, Staff finds that the property and affected area is presently provided with adequate facilities, services, and transportation networks to support the proposed uses that would be allowed under prescribed conditions in the RIPD zone, and that this Major Map Amendment will not compromise such facilities, services and transportation networks, with conditions imposed.

Continuing with Columbia County Zoning Ordinance Section 1502 Zone Changes

1502 .3 Alternate Zones: If the Commission determines that a zone other than the one being proposed will adequately allow the establishment of the proposed use, the Commission may substitute the alternate zone for the proposed zone in either the Major Map Amendment or the Minor Map Amendment procedures.

Discussion: This Major Map Amendment would bring the subject property to a designation of Rural Industrial and zoning to Rural Industrial Planned Development (RIPD). This same designation and zoning borders the property, and there is no other adjacent designation and zoning other than Agricultural Resource and Primary Agriculture - 80 (PA-80).

Finding 14: Staff finds that there are no other Plan designations nor zoning districts other than those being proposed which will adequately accommodate the proposed port dependent uses and does not recommend the substitution of another designation or zone for this Major Map Amendment request.

Continuing with Columbia County Zoning Ordinance Section 1600 Administration

1603 Quasijudicial Public Hearings: As provided elsewhere in this ordinance, the Hearings Officer, Planning Commission, or Board of Commissioners may approve certain actions which are in conformance with the provisions of this ordinance. Zone Changes, Conditional Use Permits, Major Variances, and Temporary Use Permits shall be reviewed by the appropriate body and may be approved using the following procedures:

.1 The applicant shall submit an application and any necessary supplemental information as required by this ordinance to the Planning Department. The application shall be reviewed for completeness and the applicant notified in writing of any deficiencies. The application shall be deemed complete upon receipt of all pertinent information. If an application for a permit or zone change is incomplete, the Planning Department shall notify the applicant of exactly what information is missing within 5 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of this section upon receipt by the Planning Department of the missing information. [*effective 7-15-97*]

.2 Once an application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission or Hearings Officer. The Director will publish a notice of the request in a paper of general circulation not less than 10 calendar days prior to the scheduled public hearing. Notices will also be mailed to adjacent individual property owners in accordance with ORS 197.763. [*effective 7-15-97*]

[**Note:** ORS 197.763 requires 20 days notice (or 10 days before the first hearing if there will be 2 or more hearings), and that notice be provided to property owners within 100' (inside UGBs), 250' (outside UGBs), or 500' (in farm or forest zones).]

.3 At the public hearing, the staff, applicant, and interested parties may present information relevant to the criteria and standards pertinent to the proposal, giving reasons why the application should or should not be approved, or what modifications are necessary for approval. [*effective 7-15-97*]

.4 Approval of any action by the Planning Commission at the public hearing shall be by procedure outlined in Ordinance 91-2. [*effective 7-15-97*]

Finding 15: The hearing before the Board of Commissioners is scheduled for August 2, 2017, and the Board may approve or deny the application in accordance with the provisions of the Zoning Ordinance and state law. The Port of St. Helens submitted this Modified Application on April 18, 2017 in response to LUBA's remand. The County determined the Application complete on May 30, 2017 after the Board set the hearing date of August 2, 2017.

Notice of the hearing was published in the Chronicle and Clatskanie Chief on July 12, 2017. Notice was mailed to surrounding property owners with the notification area on June 28, 2017.

The hearing will be conducted in accordance with ORS 197.763 and Section 1603 of the Zoning Ordinance.

Continuing with CCZO Section 1600 Administration

1604 Appeal: The decision to approve or deny an application in a quasijudicial hearing may be appealed as provided in Section 1700.

Finding 16: The Board of Commissioners decision may be appealed to the Land Use Board of Appeals (LUBA) as provided in Section 1700.

1608 Contents of Notice: Notice of a quasijudicial hearing shall contain the following information:

.1 The date, time, and place of the hearing;

.2 A description of the subject property, reasonably calculated to give notice as to the actual location, including but not limited to the tax account number assigned to the lot or parcel by the Columbia County Tax Assessor;

.3 Nature of the proposed action;

.4 Interested parties may appear and be heard;

.5 Hearing to be held according to the procedures established in the Zoning Ordinance.

Finding 17: All of the above information was included in the notice.

1610 Personal Notice to Adjoining Property Owners: For the purpose of personal notification, the records of the Columbia County Assessor shall be used and persons whose names and addresses are not on file at the time of the filing of the application need not be notified of the action. The failure of the property owner to receive notice shall not invalidate the action if a good faith attempt was made to comply with Section 1600.

Finding 18: Notice was sent to surrounding property owners, within 500 feet, on June 28, 2017.

COMMENTS RECEIVED: as of July 26, 2017

Clatskanie PUD: Letter dated May 22,2017 Supports the modified application.

Columbia Pacific Economic Development District: Letter dated July 14, 2017 Supports the Modified application.

State of Oregon Department of Land Conservation and Development: Letter dated July 7, 2017 Supports the modified application with a narrowed list of proposed uses.

Private Post Card: Dated July 11, 2017 signed by 7 persons in opposition to the application.

Anne Morten: Letter dated July 18, 2017 in opposition to the application, loss of farmland.

Columbia Soil & Water Conservation Dist: Letter dated July 20, 2017 in opposition to the application, loss of farmland to industrial potentially incompatible with existing farms.

Business Oregon: Letter dated July 19 in support of the application, excellent location for trade sector industries.

Lona Pierce: Letter dated July 26, 2017 in opposition to the application, not good for county residents, loss of farmland.

CONCLUSION, & RECOMMENDED DECISION & CONDITIONS:

Based on the facts, findings and comments herein, the Planning Director recommends **approval** of Major Map Amendment, PA 13-02 & ZC 13-01, as modified to address LUBA remand issues, to re-designate the site from Agriculture Resource to Rural Industrial and to amend the Zoning Map of the Columbia County Zoning Ordinance to re-zone the subject property from Primary Agriculture - 80 (PA-80) to Rural Industrial - Planned Development (RIPD), and taking an Exception to Goal 3 Agricultural Lands; with the following conditions:

1) Prior to an application for a building or development for a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.

2) To ensure adequate transportation operation, proposed developments and expansions requiring site design review or Use Under Prescribed Conditions shall not produce more that 332 PM peak-hour trips for the entire subject property without conducting a new Traffic Impact Analysis with recommendations for operational or safety mitigation consistent with the Oregon Transportation Planning Rule 660-012-0060.

3) A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.

4) To ensure compatibility with adjoining agricultural uses the applicant/developer of new industrial uses shall comply with the following:

a) The habitat of threatened and endangered species shall be evaluated and protected as required by law.

b) Alterations of important natural features, including placement of structures shall maintain the overall values of the feature.

c) All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses on PA-80 zoned land, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.

d) When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.

e) Controls, including suppression and requiring hard surfaces, shall be employed as needed to be determined by the County to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.

f) Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.

g) The industrial use impact on the water table shall be monitored to ensure that the water table can be maintained and managed as it historical is done.

h) Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property, impact on the County's transportation system, and proposed mitigation.

I) Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.

5) The types of industrial uses for the subject Plan Amendment shall be limited to only those uses that are justified in the exception, specifically:

- Forestry and Wood processing, production, storage, and transportation
- Dry Bulk Commodities transfer, storage, production, and processing
- Liquid Bulk Commodities processing, storage, and transportation
- Natural gas and derivative products, processing, storage, and transportation
- Breakbulk storage, transportation, and processing.

6) The storage, loading and unloading of coal is specifically not justified in this exception. Such uses shall not be allowed on the subject property without a separate approved exception to Goal 3.

ATTACHMENTS: Exception Document
Comments received to date
Application and maps in separate document

BOARD COMMUNICATION

FROM THE LAND DEVELOPMENT SERVICES DEPARTMENT
MEETING DATE: September 6, 2017 Board Staff Meeting

TO: **BOARD OF COUNTY COMMISSIONERS**

FROM: Todd Dugdale, Director of Land Development Services

SUBJECT: **PA 13-02 & ZC 13-01 (Modification) Remand Hearing and Proceedings - Port of St. Helens, Applicant - Port Westward Industrial Area Expansion. Staff Briefing on Substantial Issues Addressed in Testimony Received as of August 16, 2017 - Supplemental Staff Report & Recommended Changes to Conditions of Approval.**

DATE: September 1, 2017

SUMMARY: The Board has received 105 written comments about the comprehensive plan amendment which proposes the expansion of Port Westward industrial area. Some comments are just a single page while others are hundreds of pages in three ring binders or in digital form. In the attached supplemental staff report, Staff has provided a discussion of several substantial issues brought up in this process in an effort to help the Board with possible additional findings and conditions which may be attached to the recommended approval of the request. The decision made by the Board must be supported by findings of fact and conclusions of law.

Most of the testimony in opposition centered around the importance of keeping good agricultural land protected by an exclusive farm use designation as Primary Agriculture. This objective has been one of the County's primary goals for lands with Class I through IV soils. But whenever an alternative use is proposed for such lands, as in this case, State law requires that an exception be taken to the agricultural lands preservation goal(Goal 3). The decision whether or not these agricultural lands should be converted to rural industrial use depends on the adequacy of findings required by the State for a Goal 3 exception. In providing responses to testimony, Staff has attempted to consider the value of prime agricultural land in the area to be rezoned, potential impacts of an expanded rural industrial area and the need to take economic advantage of the significant regional and state resource represented by the Port Westward deep water port, a gateway to the world maritime corridor which has the potential to enhance trade opportunities, expand our markets and improve our local, state and regional economic base.

ATTACHMENTS:
1. Supplemental Staff Report
2. Staff Recommended Changes to Conditions

ATTACHMENT 1

COLUMBIA COUNTY BOARD OF COMMISSIONERS

Supplemental Staff Report and Recommended Conditions
September 1, 2017
Major Map Amendment

FILE NUMBER: PA 13-02 & ZC 13-01 (Modification)

APPLICANT/ OWNERS:	**Port of St. Helens;** 100 E Street Columbia City, OR. 97018	**Thompson Family** 4144 Boardman Ave. E Milwaukie, OR. 97267

Below is a summary review of substantive issues raised in testimony before the Board of Commissioner's at the their public hearing on August 2, 2017 and in additional written testimony received by August 16, 2017. In addition, Staff has recommended additional or modified conditions from those in the Staff Report dated July 26, 2017 where deemed necessary to address the concern expressed.

Issue 1: **Right of User Dock Access.** Need for future port dependent users to have clear rights of access to deepwater port.
Current PGE lease has provision for Port user access. "Shall not unreasonably withhold/restrict access". Need documentation of right of access for any user prior to land use approval.

Add to condition: (added to Condition #5)

5) The types of industrial uses for the subject Plan Amendment shall be limited to only those uses **that are dependent on a deepwater port and have demonstrated access rights to the dock, and those uses with employment densities, public facilities and activities** justified in the exception, specifically:

1. Forestry and Wood processing, production, storage, and transportation
2. Dry Bulk Commodities transfer, storage, production, and processing
3. Liquid Bulk Commodities processing, storage, and transportation
4. Natural gas and derivative products, processing, storage, and transportation
5. Breakbulk storage, transportation, and processing.

Issue 2: Verification of User Deep Water Port Dependency. Need to have assurance that all users of rezoned property are deepwater port dependent.

Add condition:

5) The types of industrial uses for the subject Plan Amendment shall be limited to only those uses **that are dependent on a deepwater port and have demonstrated access rights to the dock, and those uses with employment densities, public facilities and activities** justified in the exception, specifically:

Significantly

1. Forestry and Wood processing, production, storage, and transportation
2. Dry Bulk Commodities transfer, storage, production, and processing
3. Liquid Bulk Commodities processing, storage, and transportation
4. Natural gas and derivative products, processing, storage, and transportation
5. Breakbulk storage, transportation, and processing.

Issue 3: Water Quality and Spillage Incident Impacts On Adjacent Agricultural Land. Numerous members of the local farm community expressed concern about adjoining industrial uses and their potential devastating impacts on high value crops. The State Dept. Of Agriculture commented that perennial crops require a long term commitment in agricultural infrastructure and a long term financial assurance. Farming this area requires regulated drainage and irrigation management. Drainage is interconnected; that is, runoff and seepage of waters from industrial lands is interconnected with the adjacent farmland water uses.

The types of future industrial maritime uses in the Port Westward expansion area are likely to include those emerging export market categories of fruits & veg. specialty foods, basic chemicals and chemical/liquid bulk, as described in the applicant's MacKenzie Report, Table 8 Maritime Vessel Export Volumes, State of Oregon (2005-2015). It is important for long term farm investments to be secure from negative impacts of potential spillage or seepage of these concentrated chemicals in large storage/transport units.

Add conditions:

7) The Port (applicant) shall institute a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for a range of contaminates at the re-zone site and down-gradient. The program should be designed and managed for assurance that future industrial wastewater discharges are treated to prevent pollution to the watershed environment. The program shall be designed to detect leaking tanks.

8) The Port (applicant) shall prepare a response plan and clean-up plan for a hazardous material spill event. The plan shall include appropriate government agencies and private companies engaged in such clean-up activities.

Issue 4: Levee Protection of Proposed Lands To Be Rezoned. Comments were made by Warren Nakkela that fill would need to be brought in for future industrial sites/buildings to bring the site to an ground elevation equal to the elevation of the top of the dike. While PGE may have chosen to fill their sites, it is not mandatory by FEMA floodplain development Federal Code or local Floodplain Development Ordinance. The Beaver levee is provisionally accredited and mapped by FIRM as being in Zone X out of the 100 year flood elevation, protected by a levee. This issue is not a regulatory mandate but is simply an issue that prospective tenants must evaluate in their site selection process. The Beaver Drainage District has been proactive for a new dike accreditation. Staff does not recommend added conditions for this issue.

The second issue made by Nakkela was that the levee system was built and rated as an agricultural levee and is not designed or recommended for commercial or industrial uses. Staff has not been able to identify any levee system construction standards based on the type of land use. Staff does not recommend added conditions for this issue.

Issue 5: Impacts of rail transport of bulk commodities. Written testimony submitted by Chip Bubl raised several concerns about possible negative impacts of increased bulk commodity rail transport including:

1. Consistency with the Columbia County Transportation Plan
2. Increases in the volume of rail traffic resulting from a proposed rail loop in the proposed rezoning area.
3. Lack of studies of the impact of rail traffic on communities along the Columbia River Rail Corridor.
4. High contaminant discharge limits in Global Partners air quality permits translate into equally high potential for increases in rail traffic volumes, especially increases in unit trains.
5. Increases in rail traffic, especially unit trains, threaten to tangle commuter traffic.
6. Comprehensive rail impact study of actual rail traffic impacts of range of volumes being proposed needed before rezoning decision.

Staff responses to these concerns are contained in the attached memorandum dated August 22, 2017.

COLUMBIA COUNTY
1854
OREGON

MEMORANDUM
From The Land Development Services Department

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Todd Dugdale, Director

RE: **Staff Response to Port of St. Helens Plan/Zoning Amendment Testimony August 8, 2017 Written Testimony From Chip Bubl**

DATE: August 22, 2017

Commissioner Heimulller requested that Staff provide a response to testimony from Chip Bubl regarding bulk cargo rail transport.

In responding to these comments, I contacted the following to collect and verify information related to the contents of the testimony:
Bob Melbo, ODOT Rail Planner
Jim Irwin, Vice President, Portland Western Railroad
Don Cain, Global Partners
Paula Miranda, Port of St. Helens
Michael Orman, DEQ Air Quality Section Manager, Northwest Region

I reviewed the following related documents:
2017 Columbia County Transportation System Plan
2014 State Rail Plan
2009 Lower Columbia River Rail Corridor Safety Study

I have provided specific Staff responses in **bold type** within the text of the testimony by Mr. Bubl for easier reference. If the Board has further questions related to these responses or would like to have copies of the above referenced documents, please let me know.

Attachments:
Bubl Testimony with Staff Responses
- Attachment 1: Columbia County TSP Rail Related Improvement Projects
- Attachment 2: Summary of Federal Laws Applicable to Railroads
- Attachment 3: Questions/Responses DEQ NW Region Air Quality Program
- Attachment 4: Port of St Helens Resolution Establishing A Global Partners Unit Train Cap

******Please Note: Staff Responses Are Noted in Bold Type Below.******

August 8, 2017

To: Columbia County Board of Commissioners
Subject: Comments on the merits of rezoning agricultural land in the Beaver District – transportation impacts

Dear Commissioners Heimuller, Magruder, and Tardif:

Thank you for actively seeking input on the proposed rezone of agricultural lands at Port Westward. In Glen Higgins' comments in Clatskanie last week, he noted that any development on that land, were it to be rezoned, would have to address the County transportation plan. So here are some concerns I have, and have had right from the beginning in my testimony to the Planning Commission in 2013, about bulk cargo rail transport to Port Westward.

Staff Response 1:
The recently updated 2017 Columbia County Transportation Systems Plan (TSP) does not include planning to accommodate increases in future rail traffic and only indirectly addresses rail impacts including impacts from bulk cargo rail transport, that being in the form of recommended improvements to railroad crossings. A list of TSP recommended road transportation improvement projects with those related to railroad crossings are highlighted in Attachment 1.

The industrial development of Port Westward involving the train transport of bulk commodities, hazardous or not, through the upriver cities along Highway 30 will be profoundly disruptive to the social and economic life of those communities. One of the major impacts of the rezone will be to facilitate a rail loop at Port Westward to greatly increase capacity to bring trains in and send them back out.

Staff Response 2:
Bob Melbo, ODOT State Rail Planner, commented that, whereas a rail loop at Port Westward would allow greater efficiency of train movement and allow for the potential of more trains in and out, the capacity of the Portland Western rail line would dictate the amount of rail traffic that would be possible. Significant improvements to the rail line would be necessary to accommodate any major increases in train traffic above current capacity. Therefore, it does not follow that the addition of a rail loop at Port Westward itself would have a "major impact" on rail corridor communities.

The transportation impacts on Rainier and the South County communities of Columbia City, St. Helens, and Scappoose of the proposed bulk commodity terminals supplied by rail have never been studied with the rail traffic volumes now being considered.

Staff Response 3:
It is correct that comprehensive public studies of existing or projected bulk freight rail impacts have not been done for the Columbia River Corridor or anywhere else in Oregon. However, Bob Melbo, ODOT Rail Planner, points out that Portland Western Railroad typically identifies any improvements to their line necessary to serve a given bulk commodity project and includes provisions in their contracts with users to cover the cost of needed transportation system upgrades and/or includes the costs of the upgrades in the freight rates charged. Further, as addressed in Staff Response 4 below, there have been several studies dealing the with impact of rail traffic on the road, bike and pedestrian transportation systems. It should be noted that any policy arising from a study which proposes to manage or regulate bulk freight rail traffic directly could not be implemented due to the federal laws applicable to railroads that preempt local and state laws which would seek to govern railroad operations. See Attachment 2 for a summary of Federal laws applicable to railroads and an overview of state and local law preemptions.

In addition, the only transportation impact planning has been for a small set of roads immediately adjacent to Port Westward. The 2009 Lower Columbia River Rail Corridor/ Rail Safety Study, on which all the transportation impacts have been modeled, used a baseline of a maximum of 5.2 local trains per day and 3.2 unit trains per week.

Staff Response 4:

There have been several recent studies that have considered rail impacts to the transportation system. The 2009 Columbia River Rail Corridor Safety Study evaluated the impacts of existing and projected rail volumes on safety along the rail corridor and recommended safety improvement projects to address those impacts for years between 2009 and 2018. The study assumed a growth in train traffic of 8% per year for that period resulting in the projection of 5.2 local and 3.2 unit trains per week. It focused specifically on the rail safety implications of longer, more frequent unit trains such as those addressed in this testimony. It should be noted that these projections of train traffic have not been realized. The 2017 County TSP notes (Vol. 2, page 31) that there are currently an average of 2 train movements (combined local and unit trains) per day along the Portland Western line. The 2014 Oregon State Rail Plan (page 81) projects less than 5 trains (combined local and unit trains) per day along the Columbia River Rail Corridor to the year 2035. However, this may have been based, in part, on the current availability of industrial land along the corridor. Bob Melbo, ODOT Rail Planner explains that without more specific information on projects which would occupy the land currently proposed for rezoning, it would be difficult to evaluate rail impacts in any meaningful way. In addition to the impacts on safety created by longer unit trains, a companion traffic analysis for the 2009 Columbia River Rail Corridor Study was completed for 20 selected intersections of roads which cross the Portland Western Railroad. Both the City of Scappoose and the City of St Helens included proposed improvements to rail crossings in their Transportation System Plans(TSPs). As noted in Response #1, the County included rail crossing improvements in its 2017 TSP update. Finally, Staff has proposed Condition #4h which would require project developers to conduct a rail impact study and propose mitigation of any negative impacts identified.

The current baseline on the Global Partners ethanol/crude oil transport is 2 unit trains in and 2 unit trains out per day. But their throughput permit is for over 3200 unit trains per year, **almost 9 unit trains in and 9 unit trains out per day**. This is on top of the Teevin Brothers log trains (combined other local rail traffic) and any other proposed unit trains that may be in discussion. That said, existing track capacity, especially the lack of sidings and no rail loop yet at Port Westward (though likely to be installed with a rezone) would serve to limit their shipments until those issues could be addressed. In addition, the current DEQ fugitive emissions air quality permit appears to limit Global to two trains in and two trains out per day. But given the breadth of the throughput permit DEQ has approved and changes in technology to contain the incidental air contaminants that are a part of the off-loading of the oil cargo, it could easily be moved up to their throughput limit, if rail corridor improvements were also made.

Staff Response 5:

The TSP notes (Vol. 2, page 31) that, on the Corridor rail line as a whole, there are, on average 2 trains per day traveling at speeds between 25 and 30 miles per hour from all rail users.

Staff asked DEQ Northwest Region Air Quality Section staff to respond to the statements relating contaminants limits in Global Partners air quality permits to potential bulk freight train traffic. The specific questions to DEQ and DEQ responses are contained in Attachment 3. DEQ points out that their air quality permits relate only to stationary emission sources. They explain that their air quality permits do not specify "current baseline on the Global Partners ethanol/crude oil transport" 2 unit trains in and 2 unit trains out per day" , nor do they impose a limit of 3200 unit trains per year". Based on DEQ responses to these comments, it would seem to be inappropriate to relate air quality permits to future bulk commodity rail traffic.

Don Cain of Global Partners clarified that currently their train traffic averages about 2 unit trains per week not 2 unit trains in and 2 out per day and they are limited by customer demand, site storage capacity and most importantly by an agreement with the Port of St Helens limiting train traffic to a maximum of between 288 and 456 unit trains per year depending on when rail improvements have been made to the rail line and when the consent of PGE the leaseholder of land on which the rail spur is located. The Port of St. Helens resolution establishing unit train trip caps is contained in Attachment 4. The Port of St. Helens trip cap effectively limits Global Partners to a maximum of just over 1 unit train per day.

Jim Irwin, Vice President of Portland Western Railroad, noted that the current capacity of the Columbia River Corridor line is 1 unit train in and 1 out per day without significant improvements to the line including the addition of sidings.

Bob Melbo, ODOT State Rail Planner, did agree that the current Columbia Corridor rail line lacks adequate sidings and added sidings together with the recent upgrade of the rail quality to a Class 2 facility (25 mph) will could somewhat increase the capacity of the current facility. However, neither the State nor the Federal Government establishes functional design or capacity standards for rail lines.

The recent sale of the PGE tank farm at Port Westward to Global that was approved by the PUC several months ago drives home the point that they intend to ship fuel from the defunct ethanol plant at Port Westward they own and establish a major west coast export facility for what is most likely to be crude oil when oil prices improve. All this is happening without any real public discussion of its potential transportation (and other) impacts.

Rainier has been forced to do contingency planning since the train tracks run right down the main street of the town. But the solutions have left their residents confused, unsure of their safety, and fearful of losing their downtown.

Staff Response 6:

According to the City of Rainier, planning and project implementation for improving safety along the Columbia River Rail Corridor has been ongoing since completion of the 2009 Lower Columbia River Rail Corridor Study. The City of Rainier expects rail safety projects coming out of that study to be implemented by next year (2018). Improvements are to include rail and vehicular traffic separations and road crossing signalization to improve safety. The City has focused on the safety of rail operations and not specifically on volumes of trains.

All the other river communities (except Clatskanie) are bisected along Highway 30 by the rail line as well. Only Columbia City has an existing (modest) rail overpass. Scappoose recently did a major traffic flow modeling study but didn't model the impact of much higher train traffic at all from what I could read in the consultant's report. St. Helens hasn't projected what the traffic issues would be with much higher train volumes.

Staff Response 7:

Recently updated St Helens and Scappoose Transportation System Plans (TSPs) do focus on non-rail modes of transportation since the State standards for these plans contained in the Transportation Planning Rule(TPR) do not address rail. That said however, these local plans do include rail crossing projects aimed at improved traffic movement and safety.

The hesitation of the cities to publically engage with the Port and the Columbia County BOC directly on these issues is curious given the potential impacts to their citizens and businesses. The BOC needs to encourage first responders, city council persons, city managers, and others to say in public what they say in private. You and the public need their honest perspectives before you make this rezone decision.

There are no proposals for overpasses anywhere along the route prior to the proposed arrival of greatly expanded train traffic. However, the general public appears to believe that overpasses will be part of the rail/vehicle management plan (from private conversations with many individuals in the St. Helens/Scappoose area).

Staff Response 8:

According to Bob Melbo, ODOT Rail Planner, and Jim Irwin, Vice President of Portland Western Railroad, there are currently no overpass projects in planning or implementation along the Columbia River corridor.

I once asked the recently retired Port Manager if you took the continuum of no trains and constant trains, where was the point along that line where the public disruption was too great. He looked at me blankly and walked away. I asked the same of a Port Commissioner during an election town hall type meeting and he responded "I don't know. Do you know? There is no valid modeling out there. To make this rezone decision without good rail impact modeling is appalling.

Bulk rail transport also has serious economic consequences for our residents. The last census (2010) and related data showed that Columbia County had Oregon's 8th highest per capita income, the 5th highest median family income, and the 3rd highest household income. The reason is obvious to anyone who lives in South County (where the bulk of our population lives). We are within easy commuting distance to the best job market in the state. Our banks and credit unions are full of money from Intel, Nike, Boeing, Portland law firms, hospitals, and other high-skill public and private employers. They choose to live in Columbia County for quality of life, schools, and other amenities. But they depend on good access to the metro area for high value employment options. Private residences pay the bulk of the property taxes in Columbia County. Tangling commuter access with ill-conceived development that ties up the transportation corridor will reduce incomes, add to our residents' costs, affect their quality of life, and potentially reduce their safety.

Staff Response 9:

Although increased train traffic can increase vehicular traffic rail crossing delay times, State ODOT Rail Planner, Bob Melbo, points out that for every rail car added to the line, 3 to 4 freight trucks can be removed from Highway 30. Rather than tangle commuter traffic, unit trains can actually have a positive result for commuters by reducing truck freight traffic. He also noted that the reported intersection delays of up to 20 minutes for unit trains is not correct. Unit trains traveling at 25 miles per hour take only between 3 to 5 minutes to pass an intersection. Local trains using rail sidings tend to create longer delays as they can stop while blocking intersections while adding or dropping rail cars.

In addition, reliance of rail transport rather than truck transport has environmental advantages. As the 2014 Oregon State Rail Plan (page 75) states:

"In general, rail is the most efficient form of ground transportation from the standpoint of fuel consumption and energy use. On a per-ton basis, rail is the most efficient way to move large heavy loads- in fact rail fuel efficiency ranges from 156 to 512 ton-miles per gallon, while truck fuel efficiency ranges from68 to 133 ton-miles per gallon. Since the primary driver of emissions is fuel consumption, the reduced use of fuel associated with freight and passenger rail can lead to reduced emissions of carbon dioxide (CO), particulates(PM) and other pollutants, including NOx.

A thorough and independent transportation study that looks at the actual impacts of the range of volumes of freight train traffic being proposed is needed before decisions like this can be thoughtfully made. The Columbia County Board of Commissioners should not facilitate further development of a rail-driven bulk-loading infrastructure at Port Westward at this time.

Staff Response 10:

Bob Melbo, ODOT Rail Planner, said that there have not been any comprehensive studies of bulk freight rail impacts without reference to a specific project. Prior to rezoning, he said that it would be difficult to model such a study without more specific information based on projects which would use the rail line. As an example, there have been several studies specific to rail impacts of oil terminal projects on the Washington side of the Columbia River where details of projects were known. As noted in Staff Response 4 above, Staff has proposed Condition #4h which would require project developers to conduct a rail impact study and propose mitigation of any negative impacts identified.

The current proposal for rezoning should not be approved. The County is not obligated to make this rezoning upon request of the landowner but can and should look to the larger issues that flow from this decision. A poorly thought-out decision could ultimately threaten the jobs, quality of life, and safety of most of the residents of Columbia County.

Thank you again for allowing these comments. I hope they make sense to you. If they don't, please contact me directly. I appreciate all the time and thought you are giving to this very important decision.

Sincerely,

Chip Bubl
32221 Church Road
Warren, OR 97053

The Plan

Table 1: Financially Constrained and Aspirational Project List

Project ID	Project Description	Project Elements*	Estimated Cost (2015 Dollars)	Primary Funding Source**	Package ***	Average Daily Traffic (2014)
1	US 30 / Woodson Road railroad crossing	Improve the US 30 / Woodson Road intersection and railroad crossing, which would include widening of US 30 to provide capacity improvements (e.g., eastbound and westbound left-turn lanes) and a wider shoulder on the north side of the highway (65 feet in length) to allow southbound traffic to clear the railroad crossing when a train approaches, installing flashing railroad crossing lights and gates, and improving railroad crossing signage and markings.	$2,400,000	State	2	US 30: 7,359/ Woodson Road: 270
2	Woodson transit stop	Improve the Woodson transit stop, to include shoulder widening, improved lighting, a sheltered stop with seating, and route information. Improvements should not impact the highway clear zone.	$50,000	CC Rider	2	N/A
3	Marshland transit stop	Improve the Marshland transit stop, to include shoulder widening, improved lighting, a sheltered stop with seating, and route information. Improvements should not impact the highway clear zone.	$50,000	CC Rider	2	N/A
4	US 30 / Marshland Road (east) railroad crossing	Improve the US 30 / Marshland Road (east) railroad crossing, to include new railroad crossing signs on Marshland Road, and vegetation removal to enhance sight distance at the railroad crossing.	$5,000	County	2	N/A
5	US 30 / Point Adams Road railroad crossing	Improve the US 30 / Point Adams Road railroad crossing, to include replacement of the existing flashing railroad crossing lights, and new shelter grounding equipment and circuitry.	$350,000	State	2	271
6	Swedetown Road from the Clatskanie UGB to Cedar Grove Road.	Improve Swedetown Road to Major Collector standard from the Clatskanie UGB to Cedar Grove Road, to include wider shoulders.	$4,475,000	County	2	1,830

The Plan

Table 1: Financially Constrained and Aspirational Project List

Project ID	Project Description	Project Elements*	Estimated Cost (2015 Dollars)	Primary Funding Source**	Package ***	Average Daily Traffic (2014)
7	US 30 from the east Clatskanie UGB to the west Rainier UGB	Improve US 30 from the east Clatskanie UGB to the west Rainier UGB, to include centerline rumble strips with delineation to address head-on crashes.	$125,000	State	1	11,476
8	Beaver Falls Road from the Clatskanie UGB to Delena Road	Improve Beaver Falls Road to Major Collector standard from the Clatskanie UGB to Delena Road, to include wider shoulders, upgraded bridges, and additional guardrail.	$24,450,000	County	2	West end: 2,821 / East end: 880
9	Hermo Road from Quincy Mayger Road to Port Westward.	Improve and extend the existing segment of Hermo Road from Quincy Mayger Road to Port Westward. This roadway should be reconstructed / constructed as a Local roadway resource route.	$12,500,000	County	2	N/A
10	Hermo Road railroad crossing	Improve the Hermo Road railroad crossing, to include installation of flashing railroad crossing lights and gates.	$350,000	State	2	N/A
11	Kallunki Road / Quincy Mayger Road railroad crossing	Improve the railroad crossing at the Kallunki Road / Quincy Mayger Road intersection, to include installation of flashing railroad crossing lights and gates.	$350,000	State	2	N/A
12	Alston Mayger Road / Quincy Mayger Road from US 30 to Kallunki Road.	Improve Alston Mayger Road / Quincy Mayger Road to Major Collector standard, as a resource route, from US 30 to Kallunki Road, to include wider shoulders, and upgraded bridges.	$6,000,000	County	2	1,660
13	Delena Mayger Road from Alston Mayger Road to Cox Road	Improve Delena Mayger Road to Local roadway standard from Alston Mayger Road to Cox Road, to include roadway surface enhancements, and wider shoulders.	$3,200,000	County	2	380
14	Beaver Falls Road Bridge (County Bridge 076)	Replace the Beaver Falls Road Bridge (County Bridge 076).	$1,630,000	County	2	880
15	Beaver Falls Road Bridge (County Bridge 075)	Replace the Beaver Falls Road Bridge (County Bridge 075).	$1,440,000	County	2	880

The Plan

Table 1: Financially Constrained and Aspirational Project List

Project ID	Project Description	Project Elements*	Estimated Cost (2015 Dollars)	Primary Funding Source**	Package ***	Average Daily Traffic (2014)
16	Alston Store transit stop	Improve the Alston Store transit stop, to include a sheltered stop with seating, and route information.	$10,000	CC Rider	2	N/A
17	Wonderly Road transit stop	Construct a new park-and-ride along Wonderly Road, to include a sheltered stop with seating, and route information.	$200,000	CC Rider	2	N/A
18	Old Rainier Road from US 30 to the Rainier UGB	Improve Old Rainier Road to Major Collector roadway standard from US 30 to Apiary Road, Old Rainier Road to Minor Arterial roadway standard from Apiary Road to Larson Road, and Old Rainier Road to Local roadway standard from Larson Road to the Rainier UGB, to include wider shoulders.	$4,000,000	County	2	535
19	Larson Road from US 30 to Parkdale Road	Improve Larson Road to Minor Arterial roadway standard between US 30 and Old Rainier Road, and to Local roadway standard between Old Rainier Road and Parkdale Road, to include wider shoulders.	$1,700,000	County	2	N/A
20	Apiary Road / Old Rainier Road intersection	Realign Old Rainier Road to the west of the existing Apiary Road intersection, to form a new "T" intersection. This roadway should be constructed as a Major Collector resource route.	$1,725,000	County	2	1,250
21	Apiary Road from OR 47 to Old Rainier Road.	Improve Apiary Road to Minor Arterial standard (as a resource route) from OR 47 to Old Rainier Road, to include spot roadway surface and shoulder widening, and improved curve delineation.	$6,500,000	County	2	1,250
22	Apiary Road / Fern Hill Road intersection	Improve the Apiary Road / Fern Hill Road intersection, to include vegetation removal to enhance sight distance.	$25,000	County	2	1,250
23	Longview to Rainier Bridge	Replace the existing Longview to Rainier Bridge, or support an additional Columbia River crossing.	$300,000,000 ****	ODOT/ WSDOT	2	18,000

The Plan

Table 1: Financially Constrained and Aspirational Project List

Project ID	Project Description	Project Elements*	Estimated Cost (2015 Dollars)	Primary Funding Source**	Package ***	Average Daily Traffic (2014)
24	US 30 between the east Rainier UGB and the west Columbia City UGB	Improve US 30 between the east Rainier UGB and the west Columbia City UGB, to include centerline rumble strips with delineation to address head-on crashes.	$150,000	State	1	8,930
25	Graham Road from US 30 to Blakely Street.	Improve Graham Road to Local roadway standard from US 30 to Blakely Street, to include wider shoulders.	$1,000,000	County	2	313
26	Graham Road railroad crossing	Improve the Graham Road railroad crossing, to include installation of flashing railroad crossing lights and gates.	$350,000	State	2	313
27	Trojan Park to Prescott Beach County Park	Create an off-street shared-use path connection between Trojan Park and Prescott Beach County Park.	$400,000	County	2	N/A
28	US 30 / Neer City Road intersection	Provide capacity improvements at the US 30 / Neer City Road intersection (e.g., northbound left-turn lane).	$1,800,000	State	1	US 30: 8,901/ Neer City Road: 306
29	US 30 / Nicolai Road intersection	Provide capacity improvements at the US 30 / Nicolai Road intersection (e.g., northbound and southbound left-turn lanes), a shoulder on the east side of the highway (75 feet in length) for westbound traffic to clear the railroad crossing when a train approaches, and improved alignment of the east and west approaches.	$3,500,000	State	1	US 30: 8,901/ Nicolai Road: 1,021
30	US 30 / Nicolai Road railroad crossing	Improve the US 30 / Nicolai Road railroad crossing, to include improved signage and pavement markings at the grade crossing, replacing old tracks, repairing/replacing crossing surface, and installing flashing railroad crossing lights and gates.	$400,000	State	2	1,021
31	Beaver Homes Road Bridge (County Bridge 044)	Replace the Beaver Homes Road Bridge (County Bridge 044).	$600,000	County	2	N/A

The Plan

Table 1: Financially Constrained and Aspirational Project List

Project ID	Project Description	Project Elements*	Estimated Cost (2015 Dollars)	Primary Funding Source**	Package ***	Average Daily Traffic (2014)
32	Beaver Homes Road Bridge (County Bridge 046)	Replace the Beaver Homes Road Bridge (County Bridge 046).	$600,000	County	2	N/A
33	US 30 / Nicolai Cutoff Road intersection	Provide capacity improvements at the US 30 / Nicolai Cutoff Road intersection (e.g., northbound left-turn lane).	$1,800,000	State	1	US 30: 8,930
34	US 30 / Tide Creek Road intersection	Provide capacity improvements at the US 30 / Tide Creek Road intersection (e.g., northbound left-turn lane), and a new bridge with improved horizontal curve radaii and width. The Tide Creek Bridge is an existing freight pinch point, and with improvements could accommodate wider loads.	$6,500,000	State	2	US 30: 8,930/ Tide Creek Road: 489
35	Anliker Road from Meissner Road to Nicolai Road.	Improve Anliker Road to Minor Collector standard from Meissner Road to Nicolai Road, to include roadway surface enhancements, and wider shoulders.	$4,600,000	County	2	N/A
36	Canaan Road transit stop	Improve the Canaan Road transit stop, to include a new park-and-ride, sheltered stop with seating, and route information.	$50,000	CC Rider	2	N/A
37	US 30 at spur railroad crossing north of Columbia City	Upgrade the US 30 spur track crossing north of Columbia City by replacing the control circuitry, to include new activation equipment, shunt-enhancing equipment, track leads, batteries, and battery charging equipment.	$100,000	State	2	10,598
38	Pittsburg Road from the St. Helens UGB to West Kappler Road.	Improve Pittsburg Road to Major Collector standard from the St. Helens UGB to West Kappler Road, to include wider shoulders.	$3,650,000	County	2	1,850
39	Pittsburg Road / West Kappler Road intersection	Realign the northbound West Kappler Road approach or southbound Pittsburg Road approach to form a single intersection at Brinn Road. This roadway should be constructed as a Major Collector.	$600,000	County	2	1,850

The Plan

Table 1: Financially Constrained and Aspirational Project List

Project ID	Project Description	Project Elements*	Estimated Cost (2015 Dollars)	Primary Funding Source**	Package ***	Average Daily Traffic (2014)
40	Anderson Road Bridge (County Bridge 039)	Replace Anderson Road Bridge (County Bridge 039).	$500,000	County	2	N/A
41	Sykes Road from the St. Helens UGB to West Kappler Road	Improve Sykes Road to Major Collector standard from the St. Helens UGB (near Benjamin Lane) to West Kappler Road, to include wider shoulders.	$2,600,000	County	2	N/A
42	Bachelor Flat Road, Bennett Road, Hazen Road, and Berg Road from the St. Helens UGB to US 30	Improve Bachelor Flat Road, Bennett Road, Hazen Road, and Berg Road to Major Collector roadway standard from the St. Helens UGB to US 30, to include wider shoulders.	$4,300,000	County	2	900
43	US 30 from Old Portland Road to Millard Road	Improve US 30 between Old Portland Road and Millard Road. This project includes increasing the turning radius of the right-turn lane onto Bennett Road by widening and restriping the roadway near the intersection, restricting access to Bennett Road to right-in, right-out, left-in only, and adding a traffic signal at the Millard Road intersection with US 30.	Funded ($5,550,000) *****	State	1	27,058
44	Old Portland Road from the St. Helens UGB to US 30	Improve Old Portland Road to Major Collector roadway standard from the St. Helens UGB to US 30, to include wider shoulders.	$2,500,000	County	2	N/A
45	US 30 / Berg Road intersection	Provide capacity improvements at the US 30 / Berg Road intersection (e.g., left-turn and right-turn lane on the Berg Road approach).	$425,000	State	2	US 30: 27,058/ Berg Road: 874
46	US 30 Local Connectivity Study	Study for the feasibility of improved multi-modal connectivity between Scappoose and St. Helens. This could include a shared-use path in the US 30 corridor.	$175,000	County	2	N/A

The Plan

Table 1: Financially Constrained and Aspirational Project List

Project ID	Project Description	Project Elements*	Estimated Cost (2015 Dollars)	Primary Funding Source**	Package ***	Average Daily Traffic (2014)
47	Reeder Road from Multnomah County to the northern terminus	Improve Reeder Road to Local roadway standard from Multnomah County to the northern terminus, to include wider shoulders.	$400,000	County	2	N/A
48	US 30 / West Lane Road railroad crossing	Widen US 30 at the West Lane Road intersection, to include a shoulder on the east side of the highway (75 feet in length) for westbound traffic to clear the railroad crossing when a train approaches.	$275,000	State	2	1,180
49	Wikstrom Road from Scappoose Vernonia Highway to US 30	Improve Wikstrom Road to Major Collector standard from Scappoose Vernonia Highway to US 30, to include wider shoulders.	$3,950,000	County	2	980
50	US 30 / Johnson's Landing Road railroad crossing	Upgrade the railroad crossing equipment at the US 30 / Johnson's Landing Road crossing, to include new constant warning time activation equipment, standby battery, and rectifier.	$100,000	State	2	N/A
51	US 30 Ride Share Parking	Ride Share parking- provide parking for 25 spaces next to truck scale near the County line. Project to be coordinated with ODOT, Multnomah and Columbia County.	$375,000	CC Rider	2	N/A
52	Dutch Canyon Road Bridge (County Bridge 002)	Replace the Dutch Canyon Road Bridge (County Bridge 002).	$600,000	County	2	N/A
53	Scappoose Vernonia Highway / Wikstrom Road intersection	Realign Wikstrom Road to the south of the existing Scappoose Vernonia Highway intersection, to form a new "T" intersection. This roadway should be constructed as a Major Collector.	$600,000	County	2	2,419
54	Reid Road Bridge (County Bridge 128)	Replace the Reid Road Bridge (County Bridge 128).	$480,000	County	2	N/A

Chapter 33

The Federal Laws Applicable to Railroads

33-100 Introduction

Congress and the courts long have recognized a need to regulate railroad operations at the federal level. *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998). A number of federal laws are controlling, but three commonly found to preempt state and local attempts to regulate railroad activities are the Interstate Commerce Commission Termination Act of 1995, the Federal Railroad Safety Act of 1970, and the Noise Control Act of 1972.

The state and local issues examined in this section are limited to those that are primarily related to land use. The general principal arising from the statutory and case law is that, if a railroad is engaged in transportation-related activities, federal law will preempt state and local attempts to regulate.

33-200 The Interstate Commerce Commission Termination Act of 1995

The Interstate Commerce Commission Termination Act of 1995 ("ICCTA") *(49 U.S.C.A. §10101 et seq.)* abolished the Interstate Commerce Commission and gave the Surface Transportation Board exclusive jurisdiction over: (1) transportation by rail carriers and the remedies provided with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state. *49 U.S.C. § 10501(b).*

The ICCTA preempts state and local *regulation, i.e.*, "those state laws that may reasonably be said to have the effect of 'managing' or 'governing' rail transportation." *Norfolk Southern Railway Company v. City of Alexandria*, 608 F.3d 150, 157-158 (4th Cir. 2010) (city ordinance regulating the transportation of bulk materials, including ethanol, and city permit unilaterally issued to the railroad under the ordinance regulating the transport of ethanol to the railroad's transload facility, was preempted by the ICCTA). Thus, the ICCTA preempts the state and local regulation of matters directly regulated by the Surface Transportation Board, such as the construction, operation, and abandonment of rail lines. *Emerson v. Kansas City S. Ry. Co.*, 503 F.3d 1126 (10th Cir. 2007); *Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439 (5th Cir. 2001). Whether a state or local regulation is preempted requires a factual assessment of whether the action would have the effect of preventing or unreasonably interfering with railroad transportation. *Emerson, supra.*

Following is a summary of state and local permitting or preclearance requirements preempted by the ICCTA because, by their nature, they could be used to deny a railroad the ability to perform part of its operations or to proceed with activities authorized by the Surface Transportation Board *(collected in Emerson, supra)*:

- Preconstruction permitting of a transload facility. *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005).
- Environmental and land use permitting. *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998).
- The demolition permitting process. *Soo Line R.R. Co. v. City of Minneapolis*, 38 F. Supp. 2d 1096 (D.Minn. 1998).
- Requirement that railroad companies obtain state approval before discontinuing station agents, abandoning rail lines, or removing side tracks or spurs. *Burlington Northern Santa Fe Corp. v. Anderson*, 959 F. Supp. 1288 (D.Mont. 1997).

Following is a summary of areas of state and local regulations directly regulated by the Surface Transportation Board and, therefore, are preempted by the ICCTA *(collected in Emerson, supra)*:

- State statutes regulating railroad operations. *Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439 (5th Cir. 2001) (state and local regulations such as those attempting to limit the duration that crossings are blocked are operational requirements and are preempted); *R.R. Ventures, Inc. v. Surface Transportation Board*, 299 F.3d 523 (6th Cir. 2002) (state statute regulating railroad operations preempted); *CSX Transportation, Inc. v. City of Plymouth*, 283 F.3d 812 (6th Cir. 2002) (holding that state law imposing limitation on duration at which crossing may be blocked by train, which is related to train speed, was preempted).

- State statutes regulating contracts between rail carriers. *San Luis Cent. R.R. Co. v. Springfield Terminal Ry. Co.*, 369 F. Supp. 2d 172 (D.Mass. 2005) (contract between rail carriers concerning use of railroad cars and payment rates preempted in light of other ICCTA provisions regulating those issues).

- Attempts to condemn railroad tracks or nearby land. *City of Lincoln v. Surface Transportation Board*, 414 F.3d 858 (8th Cir. 2005) (attempt to use eminent domain to acquire portion of property abutting a rail line for municipal bicycle trail preempted); *Wis. Cent. Ltd. V. City of Marshfield*, 160 F. Supp. 2d 1009 (W.D.Wis. 2000) (attempt to use state's condemnation statute to condemn an actively used railroad track preempted).

- State negligence and nuisance claims. *Friberg, supra* (state claims of negligence and negligence per se concerning a railroad's alleged blockages of road leading to plaintiff's business were preempted); *Rushing v. Kansas City S. Ry. Co.*, 194 F. Supp. 2d 493 (S.D.Miss. 2001) (state law nuisance and negligence claims that would interfere with operation of railroad switchyard preempted).

Following is a summary of state and local activities not preempted by the ICCTA:

- Voluntary agreements entered into by the railroad. *PCS Phosphate Co. v. Norfolk Southern Corp.*, 559 F.3d 212, 221 (4th Cir. 2009) (quoting the Surface Transportation Board that "voluntary agreements may be seen as reflecting the carrier's own determination and admission that the agreements would not unreasonably interfere with interstate commerce," though this rule is not absolute).

- Traditional police powers over the development of railroad property such as electrical, plumbing and fire codes, at least to the extent that the regulations protect the public health and safety, are settled and defined, and can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved or rejected without the exercise of discretion on subjective questions. *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005). The regulations may not discriminate against rail carriers or unreasonably burden rail carriage. *Southern Norfolk, supra.*

- Zoning regulations applied to railroad-owned land used for non-railroad purposes by a third party. *Florida East Coast Railway Company v. City of West Palm Beach*, 266 F.3d 1324 (11th Cir. 2001).

- Miscellaneous laws and acts determined to not have anything to do with transportation. *Emerson, supra* (summary judgment for railroad was reversed because the railroad's acts of depositing old railroad ties and other debris into a drainage ditch abutting plaintiff's property, which allegedly caused the flooding of plaintiffs' property, were not preempted because they had nothing to do with transportation); *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295 (3rd Cir. 2004) (state regulation of solid waste disposal facility serving railroad was not preempted).

- State statute requiring railroads to pay for pedestrian crossings across railroad tracks. *Adrian & Blissfield R.R. v. Village of Blissfield*, 550 F.3d 533 (6th Cir. 2008) (determined not to be preempted by the ICCTA).

33-300 The Federal Railroad Safety Act of 1970

Issues regarding state and local regulation of train speed and the duration that railroad crossings are blocked are also considered under the Federal Railroad Safety Act of 1970 ("FRSA"). The FRSA contemplates a comprehensive and uniform set of safety regulations in all areas of railroad operations. *Chicago Transit Authority v. Flohr*, 570 F.2d 1305 (7th Cir. 1977). The purpose of the FRSA is to "promote safety in every area of railroad operations and reduce

railroad-related accidents and incidents." *49 U.S.C. § 20101.*

The FRSA includes a preemption provision that, among other things, allows state and local governments to regulate only those matters on which the Secretary of Transportation has not yet regulated. The Secretary regulates train speeds, which depend on the classification of the tracks. *CSX Transportation, Inc. v. City of Plymouth*, 283 F.3d 812 (6th Cir. 2002) (holding that state law imposing a limitation on the duration at which a crossing may be blocked by a train, which is related to train speed, was preempted); *see also CSX Transportation, Inc. v. City of Mitchell*, 105 F. Supp. 2d 949 (S.D.Ind. 1999) (granting summary judgment to railroad and enjoining city from enforcing law prohibiting railroad from blocking crossing for more than 10 minutes); *Drieson v. Iowa, Chicago & Eastern Railroad Corporation*, 777 F. Supp. 2d 1143 (N.D. Iowa 2011) (partial summary judgment for railroad; federal regulations governing the movement of trains, including blocked crossings as they pertained to air brake testing requirements, preempted state and local laws).

In *Plymouth*, the attorney general argued that the crux of the state statute was not train speed, but "the time that trains may block highway traffic." The court of appeals was unpersuaded by this contention, explaining that "the amount of time a moving train spends at a grade crossing is mathematically a function of the length of the train and the speed at which the train is traveling." The court concluded that the statute would require the railroad to modify either the speed at which its trains travel or their length, and would also restrict the railroad's performance of federally mandated air brake tests. The court also concluded that numerous federal regulations covered the speed at which trains may travel and, thus, the federal regulations "substantially subsume the subject matter of the relevant state law." *Plymouth*, 283 F. 3d at 817.

Congress intended that the ICCTA and the FRSA coexist. While the Surface Transportation Board must adhere to federal policies encouraging "safe and suitable working conditions in the railroad industry," the ICCTA and its legislative history contain no evidence that Congress intended for the Surface Transportation Board to supplant the Federal Railroad Administration's authority over rail safety under the FRSA. *Tyrrell v. Norfolk Southern Railway Co.*, 248 F.3d 517 (6th Cir. 2001). Rather, the agencies' complementary exercise of their statutory authority accurately reflects Congress's intent for the ICCTA and the FRSA to be construed *in pari materia. Tyrell, supra.*

33-400 The Noise Control Act of 1972

Issues regarding state and local regulation of train noise are evaluated under the Noise Control Act of 1972 ("NCA"), which establishes the maximum noise levels for rail cars engaged in interstate commerce. The preemption provision under the NCA has been described as being "decidedly narrow." *Rushing v. Kansas City Southern Ry. Co.*, 185 F.3d 496 (5th Cir. 1999).

Many cases in this area are based on state nuisance claims brought by abutting landowners. Generally, if the noise generated by the train has a transportation purpose and is within the NCA's noise limits, state and local regulation is preempted. *Rushing, supra* (holding that a triable issue of fact existed based on the plaintiffs' lay opinion that the railroad's expert's opinion regarding compliance was based on sound measurements which did not reflect the true sound level plaintiffs typically heard); *Jones v. Union Pacific RR*, 79 Cal.App.4th 793 (2000) (holding that plaintiff's nuisance claim could proceed against the railroad for excessive idling and horn blowing near plaintiff's home because plaintiff had adequately alleged that these activities did not have a transportation purpose but were, instead, done solely to harass the plaintiff).

ORMAN Michael
Aug 18 (3 days ago)

to me, MCMORRINE, PURCELL, JACOBS

Todd,

Thank you to you and the County Commissioners for providing DEQ the opportunity to respond to comments made in recent public testimony regarding the rezone proposal at Port Westward in Clatskanie. Please see responses to each of your questions included below.

If there is additional information that DEQ can provide relating to Air Quality, please feel free to contact me directly. If Columbia County has follow up questions regarding DEQ's regulatory authorities in other programs or the region, please contact Jennifer Purcell, DEQ's North Coast Regional Coordinator, at 971-212-5745 or via email at Purcell.Jennifer@deq.state.or.us.

1. What is the "DEQ throughput permit" and is the reference to 3200 unit trains per year correct in the context of the point he is making is that the DEQ permit allows up to 3200 unit trains per year out of Global Partners.

Global Partners has received a Standard Air Contaminant Discharge Permit (ACDP) No. 05-0023-ST-01 for the trans loading (barge and trains) of ethanol and crude oil products. This is in addition to the Standard ACDP No. 05-0006-ST-01 that they also have for ethanol production. DEQ regulates and limits emissions from stationary sources. The trans loading permit contains emission limits for criteria pollutants (permit condition 4.1), and limits the annual throughput of crude oil or ethanol (permit condition 2.3). DEQ does not regulate mobile sources or limit train traffic; therefore, DEQ permits do not specify "current baseline on the Global Partners ethanol/crude oil transport" of "2 unit trains in and 2 unit trains out per day", nor is there a limit of "3200 unit trains per year".

2. I need verification that the "DEQ fugitive emissions air quality permit" limits Global Partners to two trains in and two trains out per day. Or is that just an assumed number for purposes of the permit and not a regulatory limit which, if exceeded, would be grounds for revocation?

As mentioned in our response to Question 1, DEQ does not regulate mobile sources or limit train traffic. In addition: There is no "DEQ fugitive emissions air quality permit" permit category. DEQ issues Basic, General, Simple, and Standard ACDPs, and Title V permits. The type of air permit needed is based upon the quantity of emissions, the type of equipment and required pollution controls, and any federal requirements for a specific industry or equipment. For more information, visit: http://www.oregon.gov/deq/aq/aqPermits/Pages/default.aspx. If a regulatory limit is exceeded, it would not necessarily be grounds for permit revocation. DEQ can revoke a permit or issue a Cease and Desist order, but these are extreme measures for particularly egregious violations or immediate public health concerns. In the case of a permit violation, DEQ would enter into formal enforcement actions, which could include notice to correct requirements and/or penalties.

3. Is it correct to say that given the "throughput permit" allows up to 3200 unit trains per year and given that unit train number that Global could "easily"(with available technology to contain air contaminants) move from the "fugitive AQ permit number of unit trains (two in and two out daily) to the "throughput permit" number of unit trains

(3200 unit trains per year or 9 unit trains in and 9 unit trains out per day)? Which permit, if either, actually limits the number of unit trains and what is the maximum number allowed under existing air quality permits issued by DEQ?

As mentioned earlier in this email, DEQ does not regulate mobile sources or limit train traffic. DEQ permits do not limit the number of unit trains. Air quality permits limit emissions from stationary sources, and require facilities to operate, maintain and test required vapor recovery and treatment equipment to limit emissions. Emissions limits are specific to stationary facilities and do not apply to mobile sources. In the case of Global Partners, the air quality permit for trans loading addresses operations relating to crude oil and/or ethanol being on-loaded/offloaded from trains and barges to/from tanks.

4. Any other comments you have on the assertions about the relationship between the DEQ AQ permits and limits on unit trains at Global Partners and whether other bulk handling uses subject to DEQ AQ permits in the future, should this land be rezoned for that purpose, could be limited in the number of unit trains by the air quality permit.

All proposed are subject to a rigorous air permit evaluation on a case-by-case basis. DEQ's review is based upon emissions of criteria pollutants (NOx, SO2, CO, VOCs, and PM) and Hazardous Air Pollutants for stationary equipment. Any limits on a bulk handling project (or any other type of project with air emissions) would be for throughput storage or trans loading, and not on number of unit trains transporting the bulk handling material.

Sincerely,

Michael R. Orman, PE*
Air Quality Section Manager, Northwest Region
Oregon Department of Environmental Quality
700 NE Multnomah St., Suite 600
Portland, OR 97232
Tel: (503) 229-5160
Cel: (503) 793-9635
*Licensed in Arizona

RESOLUTION NO. 2013-81

A RESOLUTION TO ADJUST THE RAIL CAR CAP ASSOCIATED WITH THE PORT LEAD/ WEST PORT LEAD CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT.

WHEREAS, the Port of St. Helens (the Port) owns the rail lead into Port Westward and during the construction and improvement of that lead, an agreement was entered into by the Port of St Helens and Cascade Grain on 29 August 2007; and

WHEREAS, the Port lead was constructed on Portland General Electric (PGE) leasehold, which established rail "Safe Harbor" limits associated with this lead, which are currently approximately eight (8) unit trains per week and two (2) non-unit trains per day. And, this Resolution does not affect nor alter the non-unit train movements; and

WHEREAS, the business lines and commodities associated with Port Westward and the use of the Port Lead have diversified to include both ethanol and petroleum products; and

WHEREAS, the State Regional Solutions Team has worked to identify Funding to assist with safety improvements within the District, and in particular for the City of Rainier in which an ODOT Project Manager has been identified to assist in coordination; and

WHEREAS, the Portland & Western Railroad (P&W) has strategic capital rail plans and improvements within the County, for the entire "A" line which upon completion will result in roughly 20 additional jobs, and will accommodate increases in rail volume; and

WHEREAS, the P&W, to facilitate increases in rail volume, has agreed to focus on improvements that safely reduce crossing delays and achieve a rail speed of 25 MPH, where safe and appropriate, throughout the District; and

WHEREAS, Both State Representative Brad Witt and State Senator Betsy Johnson have given assurances to the Port that public and private funding has been identified and secured to complete significant capital improvements to rail in Rainier, and that that funding is contingent on the P&W's increased volume from increased business from Global Partners, and

WHEREAS, the P&W has committed to providing regular and frequent updates to the Port Commission regarding the status of and any changes to the Capital Improvement Plan; and

WHEREAS, Columbia Pacific Bio-Refinery (CPBR) - Global Partners seeks to invest $50 to $70 millions of dollars on capital improvements at Port Westward resulting in approximately 30 additional jobs and the return of ethanol production. This investment would include improvements to Hermo Road, the dock, construction of additional storage facilities, and rail transfer operations; and

WHEREAS, CPBR-Global's capital improvements will result in more efficient rail loading and unloading operations , which would provide the P&W railroad the business needed to focus on improvements that would increase rail speeds, reduce congestion at crossings, and increase capacity; and

WHEREAS, the P&W has informed the Port Commission that the A-Line cannot accommodate more than 24 unit trains per month to CPBR-Global until rail improvements, specifically increased rail speed capability (reducing crossing delays) and additional sidings are completed, and

WHEREAS, to accommodate both ethanol and petroleum, as well as future products; and given the above assurances from key stakeholders, now, therefore,

BE IT RESOLVED that the Commission approves and authorizes the Executive Director to execute a change to Exhibit B of the Port Lead Agreement providing a new cap of 50,000 unit train rail cars per year, which equates to approximately 38 unit trains per month; and

BE IT FURTHER RESOLVED that the Executive Director is required to restrict the rail cap to 32,000 unit train rail cars per year, which equates to approximately 24 unit trains per month until January 1, 2015 while the improvements described above are being pursued, and the Port is satisfied that assurances of completion are in place, and

BE IT FURTHER RESOLVED that for the next five years (until December 31, 2018), CPBR—Global will provide quarterly updates on site improvements and P&W will provide quarterly updates on Rail Improvements to the Port Executive Director, and each will provide quarterly updates to the Port Commission, including updates on:

- CPBR-Global's on-site improvements to rail unloading, storage tanks, and dock expansion;
- P&W's ability to safely achieve 25 MPH capability to help reduce rail crossing delays on public roads throughout the county where it is safe to do so.
- P&W's plans to provide additional capacity through sidings, where it is safe to do so
- P&W's strategic plan to reduce rail crossing delays on public roads
- Capital improvement plans to increase safe passage of trains in Rainier

BE IT FURTHER RESOLVED that the Executive Director is authorized and directed to make changes, with PGE's concurrence, to the Safe Harbor consistent with this Resolution and again prior to any increase above 34 unit trains per month.

PASSED AND ADOPTED this 13th day of November, 2013 by the following vote:

Ayes: 4 **Nays:** 0

PORT OF ST. HELENS

By: _____
President

ATTESTED BY:

_____
Secretary

Page 3 - RESOLUTION NO. 2013-81

THIRD AMENDMENT
TO PORT LEAD/WEST PORT LEAD
CONSTRUCTION, OPERATION AND MAINTENANCE
AGREEMENT

This Third Amendment to Port Lead/West Port Lead Construction, Operation and Maintenance Agreement (this "Third Amendment") is entered into as of April 6, 2017, by and between PORT OF ST. HELENS, an Oregon municipal corporation (the "Port"), and CASCADE KELLY HOLDINGS, LLC, an Oregon limited liability company ("CPBR").

RECITALS

A. The Port and Cascade Grain Products LLC have entered into that certain Port Lead/West Port Lead Construction, Operation and Maintenance Agreement dated August 29, 2007, as amended by a First Amendment to Port Lead/West Port Lead Construction, Operation and Maintenance Agreement, dated November 28, 2007, as was also amended by a Second Amendment to Port Lead/West Port Lead Construction, Operation and Maintenance Agreement, dated December 8, 2008 (the "Agreement").

B. CPBR assumed and was assigned the rights and obligations of Cascade under the Agreement pursuant to the Asset Purchase Agreement (and all addenda thereto) dated December 29, 2009 between CPBR and Peter C. McKittrick in his capacity as the Trustee for Cascade under the United States bankruptcy Code Chapter 7. On February 15, 2013, Global Partners LP acquired CPBR.

C. CPBR requested the Port to increase the number of trains allowed under Exhibit B of the Agreement.

D. The Port and CPBR now desire to amend the Agreement to provide for a new Exhibit B to reflect the agreed changes approved on November 13, 2013 by the Port Board of Commissioners under Resolution 2013-81.

AGREEMENT

NOW, THEREFORE, the parties, in consideration of the mutual covenants set forth below, agree as follows:

1. Exhibit B. The original Exhibit B attached to the Agreement shall be removed and replaced in its entirety with the Exhibit B here attached.

2. No Required Consents. No person has become a Party to the Agreement other than the Port and CPBR.

3. Agreement Effective. Except as expressly amended by this Third Amendment, the Agreement remains in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Third Amendment to Port Lead/West Port Lead Construction, Operation and Maintenance Agreement as of the date set forth above.

CASCADE KELLY HOLDINGS, LLC,
An Oregon limited Liability Company

By: _____
Name: EDWARD J FANEUIL
Title: EVP

THE PORT OF ST. HELENS
an Oregon Municipal Corporation

By: Patrick R. Trapp
Name: PATRICK R. TRAPP
Title: EXECUTIVE DIRECTOR

EXHIBIT B

The Port Commission approved and authorized the Executive Director to execute a change to this Exhibit (Exhibit B of the Port Lead Agreement) on November 13, 2013 providing a new cap of 50,000 unit train rail cars per year, which equates to approximately 38 unit trains per month, as stated per Port Resolution 2013-81.

Maximum rail cars approved:

USER	Rail Car Cap (Max Rail Cars/Year)	Unit Train Cap (Max Unit Trains/Year)
Cascade Kelly Holdings	50,000	456 (Average of 108 – 110 rail cars/train)

Current Caps will limit the maximum rail cars in accordance with Port Resolution 2013-81:

USER	Rail Car Caps (Max Rail Cars/Year)	Unit Train Cap (Max Unit Trains/Month)	Unit Train Cap (Approximate Unit Trains/Year)
Cascade Kelly Holdings	32,000 (Note 1)	24	288 (Average of 108 – 110 rail cars/train)
	45,000 (Note 2)	34	409 (Average of 108 – 110 rail cars/train)
	50,000 (Note 3)	38	456 (Average of 108 – 110 rail cars/train)

Note (1): The Port Executive Director is required to restrict the rail cap to 32,000 unit train rail cars per year, which equates to approximately 24 unit trains per month, until January 1, 2015 while rail improvements are being pursued, and the Port is satisfied that assurances of completion are in place.

Note (2): Once improvements are assured to be completed, and after January 1, 2015 the Port Executive Director is authorized to approve an increase to a maximum rail cars of 45,000, which equates to approximately 34 unit trains per month.

Note (3): The Port Executive Director is further authorized to make changes up to the full cap of 50,000 rail cars, which equates to approximately 38 unit trains per month, but only with PGE's consent to increases above the Safe Harbor limits, and consistent with Port Resolution 2013-81.

EGP 4-6-17

ATTACHMENT 2

Staff Recommended Changes to Conditions of Approval
Based on Evidence and Testimony Received As Of August 16, 2017
September 1, 2017

Additions in **Bold**; Deletions in ~~Strikeout~~

CONCLUSION, & RECOMMENDED DECISION & CONDITIONS:

Based on the facts, findings and comments herein, the Planning Director recommends approval of Major Map Amendment, PA 13-02 & ZC 13-01, as modified to address LUBA remand issues, to re-designate the site from Agriculture Resource to Rural Industrial and to amend the Zoning Map of the Columbia County Zoning Ordinance to re-zone the subject property from Primary Agriculture - 80 (PA-80) to Rural Industrial - Planned Development (RIPD), and taking an Exception to Goal 3 Agricultural Lands; with the following conditions:

1) Prior to an application for a building or development for a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.

2) To ensure adequate transportation operation, proposed developments and expansions requiring site design review or Use Under Prescribed Conditions shall not produce more that 332 PM peak-hour trips for the entire subject property without conducting a new Traffic Impact Analysis with recommendations for operational or safety mitigation consistent with the Oregon Transportation Planning Rule 660-012-0060.

3) A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.

4) To ensure compatibility with adjoining agricultural uses the applicant/developer of new industrial uses shall comply with the following:

a) The habitat of threatened and endangered species shall be evaluated and protected as required by law.

b) Alterations of important natural features, including placement of structures shall maintain the overall values of the feature.

c) All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses on

PA-80 zoned land, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.

d) When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.

e) Controls, including suppression and requiring hard surfaces, shall be employed as needed to be determined by the County to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.

f) Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.

g) The industrial use impact on the water table **and sloughs** shall be monitored **for water quality and surface water elevations** to ensure that the **area** water ~~table~~ can be maintained and managed **for** ~~as it historical~~ **existing uses.** ~~is done.~~

h) Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property and impacts **to rail movements, safety, noise or other identified impacts along the rail corridor supporting** ~~on~~ the County's transportation system. **The plan shall** proposed mitigation **to identified impacts**.

I) Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.

5) The types of industrial uses for the subject Plan Amendment shall be limited to only those uses **that are dependent on a deepwater port and have demonstrated access rights to the dock, and those uses with employment densities, public facilities and activities** justified in the exception, specifically:

Significantly

1. Forestry and Wood processing, production, storage, and transportation
2. Dry Bulk Commodities transfer, storage, production, and processing
3. Liquid Bulk Commodities processing, storage, and transportation
4. Natural gas and derivative products, processing, storage, and transportation
5. Breakbulk storage, transportation, and processing.

6) The storage, loading and unloading of coal is specifically not justified in this exception. Such uses shall not be allowed on the subject property without a separate approved exception to Goal 3.

7) The Port (applicant) shall institute a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for a range of contaminates at the re-zone site and down-gradient. The program should be designed and managed for assurance that future industrial wastewater discharges are treated to prevent pollution to the watershed environment. The program shall be designed to detect leaking tanks.

8) The Port (applicant) shall prepare a response plan and clean-up plan for a hazardous material spill event. The plan shall include appropriate government agencies and private companies engaged in such clean-up activities.

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (2014)

I. Introduction

In support of its decision on PA 13-02 and ZC 13-01, In the Matter of the Application by the Port of St. Helens (hereinafter the "Applicant" or the "Port") for a Comprehensive Plan Amendment, Zone Change and Goal 2 Exceptions to Change the Zoning of 957 Acres from Primary Agriculture - 80 (PA-80) to Resource Industrial - Planned Development (RIPD) for the Expansion of Port Westward, the Board of County Commissioners adopts the findings of fact and conclusions of law in the Staff Report dated September 11, 2013, to the extent those findings are consistent with the Board's decision. As further support for its decision, the Board adopts the following findings of fact and conclusions of law:

II. Findings of Fact and Conclusions of Law

A. An Exception is not Justified for the Two Southern River-Front Parcels

The subject property includes three parcels with river frontage: Tax IDs 8N4W1600-500, 8N4W2000-100 and 8N4W2900-100, also known as the Thompson property and "Thompson Island." For the reasons that follow, the Board finds that a reasons exception to Goal 3 is not justified for the two southern river-front parcels (8N4W2000-100 and 8N4W2900-100), which combined are approximately 120 acres.

As an initial matter, the Port has identified tax lot 500, the northernmost of the three parcels, as critical for future dock expansion. Port Westward is one of a few deepwater ports in Oregon, and its viability is of state economic importance.[1] Tax lot 500 is adjacent to the Port's

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[1] See ORS 777.065, which provides:

> "Development of port facilities at certain ports as state economic goal; state agencies to assist ports. The Legislative Assembly recognizes that assistance and encouragement of enhanced world trade opportunities are an important function of the state, and that development of new and expanded overseas markets for commodities exported from the ports of this state has great potential for diversifying and improving the economic base of the state. Therefore, development and improvement of port facilities suitable for use in world maritime trade at the Ports of Umatilla, Morrow, Arlington, The Dalles, Hood River and Cascade Locks and the development of deepwater port facilities at Astoria, Coos Bay, Newport, Portland and St. Helens is declared to be a state economic goal of high priority. All agencies of the State of

existing dock facility and alongside a deeper channel of the river. The vitality of Port Westward's deepwater port is of high economic importance for Columbia County because of its potential to attract traded-sector, global industries. Moreover, the County's Comprehensive Plan recognizes the Columbia River as one of its most valued, yet largely underutilized, transportation resource. The County's Transportation System Plan, which is incorporated into the Comprehensive plan, provides: "Industrial uses shall be encouraged to locate in such a manner that they may take advantage of the water and rail transportation systems which are available to the County." The Columbia River is also recognized as a Marine Highway Corridor – M-84, underscoring the river's importance in serving local, regional and national transportation needs. (See Exhibit 8 of Application). The expansion of the dock facility is consistent with the Comprehensive Plan because it will further promote the use of the County key transportation asset, the Columbia River.

While the Board finds that allowing expansion of dock facilities onto tax lot 500 will promote the viability of the Port Westward's deepwater port consistent with the Comprehensive Plan, the Board finds that not to be the case for the two southern river-front parcels. In contrast to tax lot 500, the two southern parcels are not critical for dock expansion. A slough separates the two southern parcels from most of the subject property, creating a long and narrow peninsula of riparian habitat and containing identified wetlands. The parcels are also in a flood plain. Development on the two southern parcels could have significant impacts on the riparian habitat, even if such development spans over the parcels as the Port has envisioned. In addition to its value as riparian habitat, evidence in record also indicates that the southern parcels contain seining grounds used by early settlers.

The Board recognizes the importance of dock facilities for a viable deepwater port, but finds that the record lacks evidence of the need to expand into the southern parcels. The Board is simply not convinced that expanded dock facilities cannot be confined to tax lot 500. Weighing the Goal 5 (Open Space, Scenic and Historic Areas, and Natural Resources) values – environmental sensitivity, habitat value and historic value – of the southern parcels against an undefined need to expand dock facilities into that area, the Board concludes that an exception to Goal 3 for the two parcels along the river is not justified at this time. Accordingly, the Board denies the application as to the two southern river-front parcels, identified as 8N4W2000-100 and 8N4W2900-100 and totaling approximately 120 acres.

B. The County will Evaluate the Impact of Increased Unit Trains when Development is Proposed.

Much testimony in opposition focused on the negative impact of increased unit trains on

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> Oregon are directed to assist in promptly achieving the creation of such facilities by processing applications for necessary permits in an expeditious manner and by assisting the ports involved with available financial assistance or services when necessary."

the County's transportation system. With the Portland and Western rail line running through the middle of many of the County's cities, there is no question that unit trains impact communities by temporarily cutting off access from one side of a community to the other. The result is increased travel time for movement of people and goods alike. However, rail transport is firmly part of the County's transportation system and plays an integral role in the County's economic growth. The County's Transportation System Plan ("TSP") provides that the system of rail and water transportation in the County represents a resource for future economic development. The TSP recognizes the rail line paralleling the Columbia River as traditionally being the primary mode of transporting goods through the County, stating that "rail lines within Columbia County represent a benefit for potential industrial sites in Port Westward[.]" (TSP 4.4). The TSP further provides: "Industrial uses shall be encouraged to locate in such a manner that they may take advantage of the water and rail transportation systems which are available to the County." (TSP 1.3). The movement of goods is essential for business, especially traded-sector industries, and the County must leverage all of its transportation infrastructure, including rail, to attract such industries. Consistent with the TSP, the application attempts to promote and take advantage of the rail system.

But to be sure, this is an application to change zoning, to make industrial land available and to put Columbia County in a more competitive position to attract industrial businesses that bring income and jobs into the county. It is not an application for a specific development, and thus, includes no specific rail transport plans. Preventing industrial land expansion at Port Westward because of future possible, yet currently undeterminable, rail use is an overly restrictive way to address rail impacts. Such a prohibition would preclude all potential industrial uses whether or not they include a rail component and whether or not mitigation can address adverse impacts. The County is better served by having industrial land available and addressing impacts when specific uses are proposed and planned rail use is known.

To address the potential impact of increased rail, the Board has added a condition to require proposed uses to submit a rail plan identifying the number and frequency of trains, the impacts of those trains on the County's transportation system, and how those impacts will be mitigated. Conditions of approval run with the land and will apply to future uses on the subject property.

Moreover, because the only uses allowed outright in the RIPD zone are farm uses and forest-related uses (see CCZO Sec. 682), most uses will only be allowed on the subject property following a Uses Permitted under Prescribed Conditions review (hereinafter "UPPC"). The UPPC process involves a public hearing before the Planning Commission and requires compliance with criteria that includes, among others: conformance with the Comprehensive Plan; identification and mitigation of adverse impacts on the surrounding area; and availability of needed infrastructure.[2]

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[2] A recurring concern expressed in testimony was that proposed uses would not be reviewed by the County and would not involve a public hearing if the Port obtains a Regionally

In sum, the County will review the impacts and mitigation of increased rail usage at the time a use is proposed and its rail needs are known. Unless the use is allowed outright – and most industrial uses will not be – the County will conduct a UPPC review, which provides for public participation.

C. An Exception to Goal 3 is not Justified for the Storage, Loading or Unloading of Coal.

The Board also heard numerous objections to the possibility of coal being transported by rail to Port Westward. As discussed, this application is not for any specific use, such as a coal terminal but for a zone change from agriculture to resource industrial. However, as demonstrated by testimony and evidence in the record, Kinder Morgan had a lease option on part of the subject property and planned to develop a coal export terminal. Although Kinder Morgan no longer intends to locate at Port Westward, the concern remains that industrial zoning at Port Westward would open the door to another outdoor coal storage facility, especially because coal-handling is one of the proposed uses the Port has identified for the subject property.

The Board finds that evidence in the record supports the objections that coal transport, storage, loading or unloading on the subject property may negatively impact neighboring agricultural and industrial uses. Studies done by BNSF Railway indicate that, without mitigation,[3] 500 pounds to a ton of coal can escape from a single loaded coal car. (Exhibit 32 of Columbia Riverkeepers letter dated May 3, 2013). Coal dust emissions from coal transported to Port Westward by rail is therefore a real concern. In the case of a neighboring mint farm, for example, coal dust that coats mint leaves cannot be washed off without seriously affecting quality and yield of the mint oil derived from the leaves. (Mike Seely letter dated April 1, 2013.) Similar issues would face neighboring berry farms. With respect to the impact on industry, the record shows that coal dust could negatively impact existing industrial plants at Port Westward. News articles submitted by Columbia Riverkeeper identify PGE's concern that coal dust would interfere with equipment at its natural gas combustion plant at Port Westward, and that PGE rejected Kinder Morgan's proposal. (See Exhibits 12 and 14, Columbia Riverkeeper letter dated

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Significant Industrial Area designation by the State pursuant to Senate Bill 766, adopted in 2011, codified at ORS 197.722 to 197.728. Port Westward is not currently a Regionally Significant Industrial Area, but if it should obtain such a designation – which requires a public rulemaking process – development applications would still be reviewed by the County. ORS 197.724. The County, however, would review the application under the expedited process prescribed in ORS 197.365 and 197.370, which allows for public comment but does not provide for a public hearing before County officials. *Id.*

[3] BNSF has studied coal dust emissions because escaped coal dust can seriously damage track structure as well as the ballast along rail lines. BNSF studies also indicate that coal dust emissions can be greatly reduced through the use of certain measures, such as surfectant and modified chutes. (Exhibit 32 of Columbia Riverkeeper letter dated May 3, 2013).

May 3, 2013).

The Port's application and subsequent testimony and submittals does not adequately address the negative impacts of coal dust. Any failure to address coal dust impacts, however, is likely because a coal terminal is not part of this application. Nevertheless, the Board finds that coal dust emissions could seriously impact neighboring farms and industry. Such impacts must be addressed before coal-related uses will be allowed on the subject property. In light of the potential impact of coal dust on the neighboring agricultural land as well as existing industry at Port Westward, the Board concludes that an exception to Goal 3 is not justified for uses involving the storage, loading or unloading of coal on the subject property.

D. Exceptions to Goals 4, 11, and 14 are Unwarranted.

Columbia Riverkeeper, Leslie Ann Hauer and others (collectively referred to as "objectors") assert that the proposal requires Goal 2 exceptions to Goals 4 (Forest Lands), 11 (Public Facilities), and 14 (Urbanization). For the reasons that follow, the Board finds that exceptions to Goals 4, 11, and 14 are unwarranted.

1. An Exception to Goal 4, Forest Lands, is Unwarranted Because the Subject Property Contains No Designated Goal 4 Forest Lands.

Columbia Riverkeeper argues that the Port's application failed to include a Goal 2 Exception to Goal 4, Forest Lands. Riverkeeper relies on the definition of "forest lands" in the County's Comprehensive Plan, which includes "forest lands in urban and agricultural areas that provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors and recreational use." Riverkeeper thus posits that "[f]orest lands on the property include the Thompson parcel, land currently used for the production and processing of trees, and forested areas within agricultural areas that provide wildlife and fisheries habitat." (Columbia Riverkeeper letter dated May 3, 2013 at 5 (internal citations omitted)).

But Riverkeeper's argument misses a critical point. The land in question has not been *designated* as a Goal 4 resource by the County's Comprehensive Plan, and therefore does not require a Goal 4 exception to remove the designation. For land to be a Goal 4 resource, the County must designate it as Forest-Conservation in the Comprehensive Plan.[4] In other words, land is not Goal 4 Forest Land in Columbia County unless it has been designated as Forest-Conservation. Once property has been designated as Forest-Conservation, a Comprehensive Plan

[4] Land that is designated Forest-Conservation is zoned Primary Forest (PF-80) or Forest-Agriculture (FA-80). (Columbia County Comprehensive Plan, Part IV., Policy 2). None of the subject property contains PF-80 or FA-80 zoning.

Amendment would be necessary to change that designation.[5] Moreover, a Goal 2 exception would also be required if the proposed amendment does not comply with Goal 4. Since none of the subject property has been designated Forest-Conservation, an exception to Goal 4 is unwarranted.

Even if an exception to Goal 4 were required, the Port properly amended its application to request such an exception, and the County provided public notice of the requested Goal 4 exception. The Board finds that if an exception to Goal 4 is required, the application meets the criteria for such an exception and adopts the same findings and conclusions the Board relied on in support of its exception to Goal 3.

2. An Exception to Goal 11, Public Facilities and Services, is Unwarranted Because the Application Does Not Propose Sewer Facilities.

The Goal 2 Exceptions process requires an exception to Goal 11 for establishment or extension of a new sewer line on rural land. OAR 660-004-0010(1)(c) states that the exceptions process is applicable to "Goal 11 'Public Facilities and Services' as provided in OAR 660-011-0060(9). OAR 660-011-0060(9) further states, in part:

> "A local government may allow the establishment of *new sewer systems or the extension of sewer lines* not otherwise provided for in section (4) of this rule, or allow a use to connect to an existing sewer line not otherwise provided for in section (8) of this rule, provided the standards for an exception to Goal 11 have been met, and provided the local government adopts land use regulations that prohibit the sewer system from serving any uses or areas other than those justified in the exception." (Emphasis added).

Thus, an exception to Goal 11 is only be required for *a new or extended sewer system* on rural land. The Port's application is for a Comprehensive Plan Amendment and Zone Change and does not propose any development, including establishment or extension of sewer systems. An exception to Goal 11 is therefore not required as part of this application. However, when sewer systems are proposed in the future for the subject property, an exception to Goal 11 may be required at that time. The RIPD zone is a rural zone, and any proposed sewer facilities will be subject to the requirements of Goal 11.

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[5] Statewide Planning Goal 4 requires counties to inventory, designate, and zone forest lands. Goal 4 defines forest lands as those lands acknowledged as forest lands as of the date of adoption of the goal amendment. In accordance with Goal 4, Columbia County adopted Part IV of its Comprehensive Plan. In that effort, it identified forest lands throughout the county, and then classified and zoned them as such. The subject property does not include any land acknowledged as forest lands as of the date of adoption of Goal 4.

3. An Exception to Goal 14, Urbanization, is Unwarranted because the Application is Subject to the Exceptions Provisions for Rural Industrial Development.

Objectors challenge the application's compliance with Part IX of the Comprehensive Plan and Statewide Planning Goal 14, both of which address Urbanization. Because Part IX and Goal 14 prohibit urban development outside of acknowledged urban growth boundaries (UGBs), objectors argue that industrial development is therefore prohibited on the subject property, which is outside of a UGB, without an exception to Goal 14. The Port, on the other hand, argues that such an exception is not required because rural industrial development receives a special exemption from Goal 14 pursuant to OAR 660-004-0022(3), which provides specific criteria for a Goal 2 Exception for Rural Industrial Development.

The Board agrees with the Port and adopts and incorporates herein by this reference the reasoning expressed in the Port's written testimony. (Gary Shepherd letter, dated May 27, 2013, at 8-9). In the alternative, the Board also finds that even if a separate exception to Goal 14 were required, sufficient facts and analysis in the record support such an exception. Specifically, OAR 660-014-0040(2) provides that a county can justify an exception to Goal 14 to allow urban development of rural land if urban development is "necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource." The County's Comprehensive Plan recognizes the need for large, isolated sites for heavy industry that are supported by services, including multi-modal transportation. The application here is for the expansion of an industrial park adjacent to a deep water port on the Columbia River to promote the shipment of goods and thus meets the criterion.

OAR 660-014-0040(3) provides that to approve such an exception, a county must also find:

> "(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;
>
> (b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:
>
> (A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development."

To the extent that the objectors argue that the Port did not address the above criteria, the Board finds that the application addressed all of the above criteria in its exception statement and supporting testimony. In conclusion, the Board finds that an Exception to Goal 14 was not required, but if it were, the application meets the criteria under OAR 660-014-0040(3) for the same reasons that it meets the criteria under OAR 660-004-0020 and 660-004-0022(3) for a reasons exception to allow industrial use of resource land.

E. The Application Complies with the Statewide Planning Goals 5, 6, 7 and 12.

Testimony in the record from multiple sources asserts that the application fails to comply with Goals 5, 6, 7 and 12. For the reasons that follow, the Board finds that its approval of the application subject to conditions complies with all criteria, including Goals 5, 6, 7 and 12.

Goal 5 (Open Space, Scenic and Historic Areas, and Natural Resources). As discussed in the Staff Report, the subject property includes inventoried Goal 5 resources. Specifically, the County's Comprehensive Plan identifies portions of the property as waterfowl habitat, wetlands, and fish habitat. The river-front parcels contain the most significant habitat,

and thus, the Board has denied the application as to the two southern river-front parcels to ensure protection of those Goal 5 resources. To the extent Goal 5 resources exist on the remainder of the subject property, the existing Riparian Zone and wetland regulations will continue to apply to ensure that any development will meet criteria designed to protect those resources. The application does not propose the removal of the riparian zone or wetland mapping or the removal of any inventoried Goal 5 resource. The Board thus finds that this objection lacks factual support and that the application as approved complies with Goal 5.

Goal 7 (Areas Subject to Natural Hazards). Goal 7 provides: "Local governments will be deemed to comply with Goal 7 for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet the minimum National Flood Insurance Program (NFIP) requirements." In 2010, the County adopted Ordinance 2010-6, "In the Matter of Amending the Columbia County Zoning Ordinance, Section 1100, Flood Hazard Overlay Zone, to comply with the National Flood Insurance Program Regulations." The County's Zoning Ordinance thus currently complies with the Goal 7 requirements relating to floodplains. The subject property has been zoned to comply with floodplain regulations in accordance with Goal 7, and any development will be required to meet those regulations. The Board finds that the application as approved is consistent with Goal 7.

Goal 6 (Air, Water and Land Resources) and Goal 12 (Transportation) . The Board finds that the application complies with Goals 6 and 12 for the reasons explained in the Staff Report and the Port's submittal by Gary Shepherd, dated October 29, 2013 (and supporting documents referenced therein).

F. The Existing RIPD-Zoned Land at Port Westward is Insufficient to Meet the County's Industrial Land Needs

The Board heard testimony that the application should be denied because sufficient vacant RIPD-zoned land already exists at Port Westward. The Port has argued that the land referenced is largely under the control of PGE through a 99-year lease and is not readily available for industrial development.[6] Those leased lands accommodate power generating facilities and accompanying uses, including buffers, designated wetlands and wetland mitigation. Objectors argue that PGE's control of the land does not preclude development of the land. Although PGE

[6] As described in the Comprehensive Plan, in 1966, the Federal Government deeded the old Beaver Army Terminal Ammunition Depots to the Port of St. Helens for economic development. In 1967, the Port leased the property for 99 years to Westward Properties, a subsidiary of Kaiser Aetna. In 1973, Portland General Electric (PGE) bought Kaiser Aetna's leasehold and built Beaver Generating Plant. Other energy production uses have located at Port Westward including Columbia Pacific Bio-Refinery and two natural gas turbine electrical generators. PGE as leaseholder controls which uses it will allow on the leased property pursuant to the terms of the 99 year lease.

does indeed control much of the existing Port Westward property through its lease – and its control of the property does not necessarily render the land unavailable for development – the land under lease is still insufficient. As the Port has explained in its testimony, much of the existing RIPD-zoned land at Port Westward is committed to development or is used as buffers, wetland mitigation, easements, etc. The Board thus finds that although Port Westward currently includes land available for industrial development, that land is not sufficient to meet the County's shortage of large-lot industrial land.

G. Although an Alternative Sites Analysis was not Required, the Applicant Analyzed Alternative Sites in Accordance with the Exception Criteria.

The Board heard testimony that the application failed to meet the criteria for a Goal 2 Reasons Exception because the proposed industrial uses could be located elsewhere in the County, Portland, and the region. They further argued that the Port failed to provide an alternative sites analysis required by OAR 660-004-0020(2)(b)(C). Under that provision, the applicant is required to perform a broad review of similar sites unless another party describes specific sites that can more reasonably accommodate the proposed use. The rule further explains, a "detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable[.]" In this case, objectors broadly identified alternative sites, but did not describe facts to demonstrate that the sites would be more reasonable. Accordingly, the Board finds that the Port was not required to perform an alternative sites analysis.

But even if objectors had sufficiently described alternative sites, the Port nevertheless provided an alternative sites analysis that meets the standard of OAR 660-004-0020(2)(b)(C). The record includes extensive documentation on the shortage of large lot industrial sites in the entire region. Reports from both private and public entities, from state and regional interests, confirm the shortage. The record lacks evidence to support the objectors' claims that other large lot industrial lands capable of supporting heavy industrial, multi-modal dependent development projects in an economic and efficient manner exist. The Port's alternative sites analysis demonstrates that objectors' alternative sites are not comparable or suitable alternatives economically, physically, geographically or otherwise. Port Westward and the proposed expansion land benefits from existing infrastructure and services that need only be extended to a new development site (rather than developing all new infrastructure) and an existing deep-water port and multi-modal transportation support. No other property in the County can better and more efficiently meet the industrial land need. The alternative sites therefore cannot more reasonably accommodate the proposed use. The Board thus finds that the Port has met the requirements OAR 660-004-0020(2)(b)(C).

H. Large-Scale Industrial Development Can Be Compatible with Farming.

The Board heard testimony that large scale industrial development is inherently incompatible with farming – that the two cannot coexist. The Board heard testimony from the

owner of Seely's Mint Farm that his farm could coexist with certain uses but not others. The Board also heard testimony that large-scale industrial development and farming can be compatible, and in fact, farms and industrial uses have coexisted at Port Westward for decades.

ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d) require an applicant to show that proposed uses are compatible with adjacent uses or can be so rendered through measures designed to reduce adverse impacts. The Board finds that in this case, compatibility can be ensured in two ways. First, CCZO § 683.1 requires that future development applications on RIPD-zoned land demonstrate that the proposed use is compatible with farming and adjacent uses. Second, the Board has developed conditions of approval to address concerns raised by farmers. For instance, one condition of approval requires development applications to provide an agricultural impact assessment to demonstrate impacts on adjacent agricultural uses and propose mitigation. The conditions of approval will run with the land, binding the property and future users in a manner that exceeds the requirements of the Zoning Code.

III. Conclusion

Generally, Comprehensive Plan amendments involve the balancing of competing goals and policies. For example, County and Statewide planning goals seek to preserve agricultural land, but also recognize the importance of allowing for rural industrial development on those lands when appropriate and justified. Such a situation requires the decision maker to balance those competing goals and policies. The Board has done that here in reviewing the application, evidence and testimony.

The Board concludes that the findings in the Staff Report dated September 11, 2013 that are consistent with the Board's decision and the above supplemental findings are supported by substantial evidence in the record. Those findings support the Board's conclusion that the application as approved with conditions complies with the Comprehensive Plan and the Statewide Planning Goals.

COLUMBIA COUNTY BOARD OF COMMISSIONERS

PLANNING STAFF REPORT

September 11, 2013

Major Map Amendment

HEARING DATE: September 18 , 2013

FILE NUMBER: PA 13-02 & ZC 13-01

APPLICANT/ OWNERS:	**Port of St. Helens**; 100 E Street Columbia City, OR. 97018	**Thompson Family** 4144 Boardman Ave. E Milwaukie, OR. 97267

Representative: Gary Shepherd, Port Attorney
Oregon Land Law
PO Box 86159
Portland, OR. 97286

SITE LOCATION: **Port Westward Industrial Site** - Adjacent to the east, south and west

TAX MAP NOS: 8N4W 16 00 500
8N4W 20 00 100, 200, 300
8N4W 21 00 300, 301, 400, 500, 600
8N4W 22 00 400, 500, 600, 700
8N4W 23 00 900
8N4W 23 B0 400, 500, 600, 700
8N4W 29 00 100

ZONING: Primary Agriculture - 80 (PA-80)

SITE SIZE: Approximately 957 acres — Port owned = 786 acres; Thompson family owned = 171 acres

REQUEST: Add the above site to a Rural Industrial designation adjacent to the existing Port Westward Industrial Park. This is a **Major Map Amendment** consisting of a **Comprehensive Plan Amendment** to change property designated Agriculture Resource to Rural Industrial and a **Zone Change** from Primary Agriculture - 80 (PA-80) to Rural Industrial - Planned Development (RIPD).

APPLICATION COMPLETE: February 19, 2013 **150-DAY DEADLINE**: N/A ORS 215.427(6)

APPLICABLE REVIEW CRITERIA:

BACKGROUND:

The applicant's purpose of this Major Map Amendment is to expand the Port Westward Industrial Area to accommodate in the long term, future maritime and large lot industrial users that will benefit from the moorage and deepwater access, existing services, energy generation facilities and rail/highway/water transportation facilities. The subject property borders the existing industrial zoned property to the south and wraps around to the west and east. To the north is the Columbia River and Bradbury Slough, open to deep water navigation. The subject property is comprised of 19 tax lots, generally flat, and undeveloped, consisting of individual farmland plots generally used as cottonwood pulp, vacant pasture and mixed crop hayfield.

An expansion of the Port Westward Industrial Park(PWIP) is needed to accommodate the siting and development of maritime and large scale industrial users, other than energy production related uses. The need is for two basic reasons; first, almost all of the vacant and undeveloped land already zoned industrial, is identified as wetlands; and, second Portland General Electric (PGE) leases 95% of the existing industrial zoned land for future energy production uses. For long range planning purposes, the County should acknowledge and preserve PGE's large acreage for energy production and buffer, while opening up this surrounding subject property to other "port" related industrial users.

The National Wetlands Inventory (NWI) and County Beak maps only identify small plots of wetlands on the subject property. The site is also identified as being within major water fowl habitat according to the County's Beak maps, and zone X, not in flood hazard, per FEMA FIRM 41009C0050 D, dated November 26, 2010.

Even though the proposed expansion of the Port Westward Industrial Area seems very large, 957 acres, the State Land Conservation and Development (DLCD) acknowledges the site's uniqueness and comparative advantages. The Port Westward Industrial Park would be well suited to attract large lot, maritime, rural industrial users.

This application is not for a specific use or development, but rather for a zone change to RIPD to allow future uses other than agriculture. Moreover, as explained in this Staff Report, the only uses allowed outright in the RIPD zone are farm uses and management, production and harvesting of forest products. All other uses can only be allowed if approved by the Planning Commission through a "Use Permitted Under Prescribed Conditions" review. If approved the use will also be subject to Site Design Review.

REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Columbia County Zoning Ordinance Section 680 Resource Industrial - Planned Development (RIPD)

681 Purpose: The purpose of this district is to implement the policies of the Comprehensive Plan for Rural Industrial Areas. These provisions are intended to accommodate rural and natural resource related industries which:

.1 Are not generally labor intensive;

.2 Are land extensive;

.3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;

.4 Complement the character and development of the surrounding rural area;

.5 Are consistent with the rural facilities and services existing and/or planned for the area; and,

.6 Will not require facility and/or service improvements at significant public expense.

The uses contemplated for this district are not appropriate for location within Urban Growth Boundaries due to their relationship with the site specific resources noted in the Plan and/or due to their hazardous nature.

Discussion Columbia County's RIPD zone is unique to the state; there are very few similar zones in Oregon. The Port of St. Helens in their application state they have been approached by several different companies requiring large vacant industrial sites of 50 to 300 acres. Possible

uses would be a combination of maritime and industrial users that will benefit from the existing services, the moorage and deep water access, existing and future docks, the railroad and energy facilities.

Finding 1: The Port of St. Helens stated goal is to attract companies looking to export, import, process or manufacture goods with the intent of using the combination rail and maritime capabilities at this site already improved with existing facilities. These types of future uses meets the purpose of the zone, this criteria is satisfied.

RIPD 682 Permitted Uses:

.1 Farm use as defined by Subsection 2 of ORS 215.203.

.2 Management, production, and harvesting of forest products, including wood processing and related operations.

Finding 2: Only agricultural and forest production & harvesting are allowed outright in the RIPD zone. Any and all other industrial uses, while allowable, must be approved through Section 683.1 and meet all of the conditions imposed under Section 683.1 below.

RIPD 683 Uses Permitted Under Prescribed Conditions: The following uses may be permitted subject to the conditions imposed for each use:

.1 Production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities subject to the following findings:

A. The requested use conforms with the goals and policies of the Comprehensive Plan - specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies.

B. The potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated considering the following factors:

.1 Physiological characteristics of the site (i.e., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements;

.2 Existing land uses and both private and public facilities and services in the area;

.3 The demonstrated need for the proposed use is best met at the requested site considering all factors of the rural industrial element of the Comprehensive Plan.

C. The requested use can be shown to comply with the following standards for available services:

.1 Water shall be provided by an on-site source of sufficient capacity to serve the proposed use, or a public or community water system capable of serving the proposed use.

.2 Sewage will be treated by a subsurface sewage system, or a community or public sewer system, approved by the County Sanitarian and/or the State DEQ.

.3 Access will be provided to a public right-of-way constructed to standards capable of supporting the proposed use considering the existing level of service and the impacts caused by the planned development.

.4 The property is within, and is capable of being served by, a rural fire district; or, the proponents will provide on-site fire suppression facilities capable of serving the proposed use. On-site facilities shall be approved by either the State or local Fire Marshall.

Discussion: Generally, expansion of the Port Westward industrial development would need to be facilitated by and consistent with CCZO Section 683. Industrial development is not allowed in the present PA-80 zoning. Although industrial uses are possible under the RIPD zone, further review and approval by the Planning Commission, in a public hearing format, is required for any proposed use other than agriculture or management & production of forest products. That review is in the form of a Use Under Prescribed Conditions, which requires the mitigation of adverse impacts among other things, and Site Design Review. The Planning Commission review would take place before the issuance of any building permit in this zone. These subsequent land use permits are beyond the scope of this Major Map Amendment, and the applicable design standards and impacts of any proposed facility would be addressed at the time those permits are applied for.

Finding 3: Resource Industrial-Planned Development (RIPD) is the proper zone in Columbia County for which the applicant can achieve the objective of siting maritime and large lot industrial uses. The application would expand, by 957 acres, an existing RIPD zone at Port Westward.

Continuing with Columbia County Zoning Ordinance Section 1502 Zone Changes

.1 Major map Amendments are defined as Zone Changes which require the Comprehensive Plan Map to be amended in order to allow the proposed Zone Change to conform with the Comprehensive Plan. The approval of this type of Zone Change is a 2 step process:

A. The Commission shall hold a hearing on the proposed Zone Change, either concurrently or following a hearing on the proposed amendment to the Comprehensive Plan which is necessary to allow the proposed zoning to conform with the Comprehensive Plan. The Commission may recommend approval of a Major Map Amendment to the Board of Commissioners provided they find adequate evidence has been presented at the hearing substantiating the following:

1. The proposed Zone Change is consistent with the policies of the Comprehensive Plan;
2. The proposed Zone Change is consistent with the Statewide Planning Goals (ORS 197); and
3. The property and affected area are presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

B. Final approval of a Major Map Amendment may be given by the Board of Commissioners. The Commissioners shall hold a hearing on the proposed Zone Change either concurrently or following a hearing on the proposed Comprehensive Plan Amendment which is necessary to allow the proposed zoning to conform with the Comprehensive Plan. The Board may approve a Major Map Amendment provided they find adequate evidence has been presented substantiating the following:

1. The proposed Zone Change is consistent with the policies of the Comprehensive Plan;
2. The proposed Zone Change is consistent with the Statewide Planning Goals (ORS 197); and
3. The property and affected area are presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services, and transportation networks are planned to be provided concurrently with the development of the property.

Discussion: This Zone Change is a Major Map Amendment. The Planning Commission held a public hearings on May 6, 2013 and May 20, 2013, and deliberated on June 17, 2013. The Planning Commission voted 5-1 to recommend denial of the application. Chairman Guy Letourneau signed the Planning Commission's final order, which was then forwarded to the Board. The Board of Commissioners hearing is scheduled for September 18, 2013 at the Clatskanie High School. The Comprehensive Plan designation for the approximate 957 acre subject property is AGRICULTURE RESOURCE, which will need to be changed to RURAL INDUSTRIAL in order for the PA-80 to RIPD Zone Change to be possible in conformance with the Comprehensive Plan.

(Continued discussion)
THE FOLLOWING POLICIES OF THE COUNTY'S COMPREHENSIVE PLAN APPLY TO THIS PROPOSAL (THOSE NOT LISTED ARE NOT APPLICABLE):

Part II (Citizen Involvement): requires opportunity for citizens to be involved in all phases of the planning process. Generally, Part II is satisfied when a local government follows the public involvement procedures set out in State statutes and in its acknowledged Comprehensive Plan and land use regulations. This has been done for this application and explained further under Part III below.

Part III (Planning Coordination): requires coordination with affected governments and agencies. The County provided notice of the hearing with the opportunity for comments to the state DLCD, ODOT, ODOT Rail, ODFW, Oregon Department of Agriculture and applicable agencies (e.g. Soil & Water Conservation District, Roadmaster, and the Clatskanie RFPD), the Clatskanie - Quincy CPAC, and neighboring property owners within the notification area. (This list is not intended to be exclusive) Any and all comments as of the date of this report are presented under COMMENTS RECEIVED below near the end of this Report. These notifications were sent to invite participation prior to the Planning Commission and the Board of Commissioners public hearings.

The County is responsible for coordinating the plans of cities in its jurisdiction. However, in this case, the subject property is not within any city's Urban Growth Boundary.

For quasi-judicial Comprehensive Map Amendments and Zone Changes, the County's land use regulations, ORS 215.060 and ORS 197.610 require notice to the public and to the Department of Land Conservation and Development (DLCD) and two public hearings, one before the County Planning Commission and another before the Board of Commissioners.

Part V (Agriculture): The property contains a large area of Wauna Locola silt loam is Class III w, considered high-valued farm soil. Because this soil type, plus others, representing a significant portion of the subject property, staff concludes that the vast majority of the soils on the site are high-value farmlands. See related discussion under Statewide Planning Goals, Goal 3 (Agricultural Lands).

Two sensitive crops have been identified as being produced in the immediate area: blueberries and mint. Each has a long history of production and need specific conditions to do well. Many of the sandy soils found within the subject area have a history of producing high-yields of high-value crops. The ability to maintain these high-valued agricultural production units is of prime importance for the county to not only sustain, but increase their potential production. Their compatibility with potential industry nearby is discussed in Finding 9 of this report

The goal of Part V of the Comprehensive Plan is to preserve agricultural land for agricultural uses. This application would remove agricultural lands from the County's inventory (zoned PA-80). The County has approximately 55,000 acres of agricultural soil classifications of Class I, II, or III; all is zoned for Primary Agriculture. Most of the good farm soils and Primary Agriculture (PA-80) zone is located in the diked areas along the Columbia River. The largest block of PA-80 zoned property is in the diked area of Scappoose and Sauvie Island. Other significant areas include the Deer Island area north to Goble, the area just downstream of Rainier and the north county Clatskanie area. In this north county Clatskanie area, the county has zoned 16,927 acres as Primary Agriculture (PA-80). The north county primary agricultural properties extends from Mayger down stream along the river to Woodson and the Clatsop County line. Several drainage districts serve these agricultural properties, including Beaver Drainage, Midland Drainage, Marshland, Webb, Magruder, Woodson etc.. If this Plan Amendment is approved 957 acres would be removed from PA-80 zoning, representing 5.6% of the total north county Clatskanie agricultural area. For the county as a whole this loss of farm zoned property is just 1.7 % of the county's total 55,000 acres of primary agricultural inventory.

Farming is an allowed use in the RIPD zone and there are fields currently under farm lease that are zoned RIPD, and can remain so. But, if zoned RIPD, certain non-agricultural industrial uses would likely be sited, given the site's proximity to valuable Port Westward Industrial Park. As such, this proposal will require an exception to Oregon Statewide Planning Goal 3, as detailed below under Statewide Goal 3. The applicant's proposed exception document is attached to this staff report.

Part X (Economy): This goal generally regards economic strength and diversity in the County. Though agricultural related practices contribute to the County's economy, industrial operations do too. In addition, industrial operations typically provide a tax base in greater proportion to public services provided and result in more permanent jobs. Many residing in the County commute outside its borders. Industrial land and the jobs it creates helps balance the jobs to residence ratio (currently in favor of residences). Moreover, it is likely that the future development resulting from this Major Map Amendment will be for maritime exporting, which is itself an ingredient to economic growth of the state and region.

Good industrial sites are often determined by location factors. This is the case with Port

Westward. As explained by the applicant, proximity to the Columbia River and existing maritime infrastructure including docks, rail spurs, and private and public utility infrastructure, as well as the Port's facilities and services, makes the site valuable for industrial use and economic development.

For these reasons, this proposal is in compliance with the goals and policies of Part X Economy.

Part XII (Industrial Siting): This goal addresses the need for industrial land such as that located at Port Westward. This part of the Comprehensive Plan also contains the basis for the original Port Westward zoning for industrial use rather than farm use. Generally, the original exception in the Plan to Statewide Planning Goal 3 for agriculture lands, per Goal 2, was justified for Port Westward given need (e.g. economics, employment and the site's unique characteristics) and irrevocable commitment (pre-existing use of the land before the Comprehensive Plan was adopted in 1984). This Major Map Amendment will allow expansion of the site and as explained by the applicant, development of additional industrial uses in this area will create new and continuous employment opportunities, promote economic growth, and maximize existing public and private investments. In other words, this is an expansion of a justified and important industrial site in the County and thus, this proposal is in compliance with Part XIII Industrial Siting of the Comprehensive Plan.

Part XIII (Transportation): The goal of Part XIII is the creation of an efficient, safe, and diverse transportation system to serve the needs of Columbia County residents. The two most applicable objectives of Part XIII as it relates to this proposal are: 1) to utilize the various modes of transportation that are available in the County to provide services for the residents, and 2) to encourage and promote an efficient and economical transportation system to serve the commercial and industrial establishments of the County.

Three modes of transportation apply to this proposal: waterborne, rail and auto/truck. The Comprehensive Plan discusses how the Columbia River and its deep water access is one of the County's most valuable transportation resources. It also mentions that the Columbia River is underutilized for this purpose. In addition, only certain parts of the County have access to functional railroads. The subject property and Port Westward Industrial Park has access to the Hwy 30 rail line operated by Portland & Western Railroad Inc. This Major Map Amendment will provide the ability for rural industrial expansion of the Port Westward site, which utilizes both the river access and rail route. Given the County's overall dependance on automobiles and trucks for transportation, the ability to use other modes of transportation lessens the burden on the roads. Though roads will continue to be a means of accessing the site as well, there are other existing options for addressing the impacts on local roads.

Early in the application process, Oregon Department of Transportation (ODOT) expressed concern that a Transportation Impact Analysis (TIA) was not presented in the application. The applicant immediately acquired the services of Lancaster Engineering to provide a TIA.

At the time of the Planning Commission hearing, Lancaster's TIA was in draft form. Comments and concerns from the City of Clatskanie, Columbia County and the State ODOT have now been incorporated into the TIA. The August 27, 2013 Transportation Impact Analysis includes operational analysis on five intersections: Highway 30 at Nehalem Street, Nehalem Street at 5th street, Highway 30 at Van Street, Highway 30 at Beaver Falls Road and Highway 30 at Old Rainier Road (Alston/Mayger Road). These study intersections are operating at acceptable levels and will continue to do so through the year 2033 planning horizon or under a trip cap of 332 PM peak-hour trips for the subject property is reached. Without knowing what industry will site on the subject property and its subsequent traffic characteristics, Lancaster Engineering states that it is appropriate to establish a "trip cap" on the subject property in order to limit the magnitude of traffic impacts from future development. Since the trip cap will limit the development potential it also serves as a reasonable "worst case" traffic scenario. If 332 or fewer PM peak-hour site trips are generated by future development within the subject property, the impact intersections will continue to operate acceptably without the need for operational or safety improvements. Lancaster Engineering recommends that a traffic study be prepared for each new development and impacts of both passenger car and heavy truck traffic be commensurate with mitigation measures, established to improve local roads when needed. The City of Clatskanie also has impacts on local roads.

Historically, the local roads that provide access to Hwy 30 have been improved sequentially as new industrial uses are sited at the Port Westward Area. Through a Transportation Improvement Agreement all new industrial site users contribute a proportional fee to the County for local road improvements. These agreements were the catalyst for past substantial improvements to Beaver Falls Road, Mayger Road and Kallunki Road with engineering work on Hermo Road. Although the current local roads serving Port Westward are insufficient to support new industrial development at the scale proposed by this application, any new industrial user in the Port Westward Area will be required to pay a Transportation Improvement Fee to address its uses and impacts on local transportation.

Part XIV (Public Facilities & Services): The goal of Part XIV is to plan and develop a timely, orderly, and efficient arrangement of public services as a framework for urban and rural development. The subject property is located adjacent to the Port Westward area, a rural industrial park. There are no urban facilities within 6 miles of the proposal. Significant investments have already been made in the Port Westward area's services and facilities, including water, sewer, new electrical substation, natural gas mainlines, and fire protection services. The area also has existing rail systems and a full-service 1,250 foot dock. There are also public and private energy transmission facilities in the Port Westward area. There is an existing framework of facilities for allowing additional rural industrial development in the area. Staff concurs that with this existing substantial investment in services and facilities already in the area, an expansion of industrial land as proposed would be efficient from a facilities and services standpoint. This proposal is consistent with Part XIV.

Part XVI (Goal 5: Open Space, Scenic & Historic Areas, and Natural Resources): The purpose of this Part is to protect cultural and natural resources. Three resources apply to this site: 1) open space, 2) wildlife habitat and 3) wetlands.

The County is not aware of any cultural resources on the subject property. An older cultural site was discovered near the river, fenced and protective signage placed to protect the area for future excavation. This site is on the existing Port Westward Industrial Park. No cultural sites are anticipated to be discovered on the subject property; however, if a site is discovered the owner is required to contact the County and the State Historic Preservation Office.

Open space is not specifically inventoried in the County; though, most of the County is zoned for resource PF-80, FA-80 or PA-80; and, the primary intent of this zoning is to conserve resource lands for resource uses, but the resource zones also protect open space as a secondary function. The subject property is zoned PA-80 and will be re-zoned to RIPD given successful completion of this Major Map Amendment. Given the zoning designation alone, open space could conceivably be compromised. However, in this case, the subject property is already bordering RIPD Industrial zoning. Hence, any impact to open space should be minimal. Open space is already compromised by this adjoining industrial area

With regards to wildlife, the site is identified as being within major waterfowl habitat. Potential conflicting uses to waterfowl habitat generally apply to removal of water bodies (e.g. streams and sloughs) and wetlands. The subject property does contain wetlands, however there is no evidence this Major Map Amendment itself will compromise water fowl habitat, though subsequent development if authorized could. Albeit, any development would be subject to regulation of the County and other applicable agencies such as the Division of State Lands and Oregon Department of Fish and Wildlife to address and mitigate any issues when an application for a particular use is submitted.

Finally, and as already noted, the site does not contain any significant wetlands, however there are some wetlands associated with crossing sloughs and drainage ways. The intensity of development possible on RIPD zoned land is greater than PA-80; however, development would be subject to regulation of the applicable agencies (e.g. County, Division of State Lands, and the Army Corps of Engineers) to address and mitigate any wetland impacts. It is likely that any development, if initially authorized, would require a wetland delineation to determine wetland boundaries and potential impacts.

As there is no evidence to suggest this Major Map Amendment will compromise the identified Goal 5 resources on the subject property, it complies with Part XVI.

(Continued discussion) - Zoning Ordinance 1502.1(A)(2)

OREGON'S STATEWIDE PLANNING GOALS (similar to Comprehensive Plan Goals)

Goal 1 (Citizen Involvement): Goal 1 requires opportunity for citizens to be involved in all phases of the planning process. Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in the statutes and in its acknowledged Comprehensive Plan and land use regulations.

For quasi-judicial Comprehensive Plan Amendments and Zone Changes, the County's land use regulations, ORS 215.060 and ORS 197.610 require notice to the public and to the Department of Land Conservation and Development (DLCD) and public hearings before the County Planning Commission and Board of Commissioners. By complying with these regulations and statutes, the County complies with Goal 1.

The County provided notice to DLCD on February 20, 2013 . Agency referrals were sent to the Clatskanie-Quincy CPAC, Clatskanie RFPD, Soil & Water Conservation District, OSU Agricultural Office, Clatskanie PUD, Oregon Department of Agriculture, Oregon ODOT, Natural Resources Conservation Service, and the County Roadmaster and Assessor. Any and all agency comments are under "COMMENTS RECEIVED" below. In addition, property owners within the required notice area were notified of the Planning Commission hearing. The first hearing was scheduled for April 1, 2013; however due to a lack of quorum, that meeting was rescheduled. For this matter, before the Planning Commission, a second, rescheduled and corrected notice was sent to property owners and affected parties on April 10, 2013. The first hearing before the Planning Commission was scheduled for May 6, 2013 and continued through May 20, 2013. The hearing before the Board of County Commissioners is set for Wednesday, September 18, 2013 at 6:30 PM. The staff finds that Goal 1 has been satisfied.

The County has received comments characterizing the location the hearing "unprecedented" because it will be held in Clatskanie rather than the Board's usual meeting location in St. Helens. Such statements are a mischaracterization. The Board frequently holds hearings in the community near the subject property, such as The Great Vow Zen Monastery conditional use, which was held near its location in Clatskanie; the Port Westward Urban Renewal public hearings, which were held near Clatskanie; re-zoning at the Vernonia Airport, which was held in Vernonia, just to name a few. Contrary to the criticisms, the Board holds hearings in the community near the subject property to encourage more public involvement, especially by those who are most affected by the proposal. Also, the Board is holding their meeting in the evening rather than at their normally scheduled 10 am, to make it easier for people to attend and testify.

Goal 2 (Land Use Planning), Part I: Goal 2, Part 1 requires that actions related to land use be consistent with acknowledged Comprehensive plans of cities and counties. Consistency with the applicable provisions of the acknowledged Columbia County Comprehensive Plan is demonstrated within.

Goal 2, Part I also requires coordination with affected governments and agencies and an adequate factual base. Affected agencies have been notified as explained under Goal 1, above. The factual base supporting this application is described herein. Both County and State laws and how this Major Map Amendment relates to and complies with them is analyzed. For these reasons, the County finds that the requirements of Goal 2, Part I are met.

Goal 2 (Land Use Planning), Part II: Goal 2, Part II authorizes three different types of exceptions: (1) physically developed (previously called "built"); (2) irrevocably committed; and (3) reasons exceptions. Standards for taking these kinds of exceptions are set out in LCDC's rule interpreting the Goal 2 exceptions process, OAR 660, Division 4. Besides addressing how a local government takes these kinds of exceptions in the first instance, the rule sets out standards that apply when a local government proposes to change existing types of uses, densities or public facilities and services authorized under prior exceptions.

In this case, the subject property will be changed from Agriculture Resource to Rural Industrial and will require a Goal 3 exception. The physically developed and irrevocably committed bases for exceptions are intended to recognize and allow continuation of existing development. The subject property is not developed; therefore, the reasons exception apply to this application. The applicants Goal 3 exception analysis is set forth as attached to this report and analyzed below.

Goal 3 (Agricultural Lands):
This proposed plan amendment would re-zone to Rural Industrial and remove 957 acres from farmland zoning. Goal 3 is to preserve and maintain agricultural lands. An exception to Goal 3 is necessary to approve this Major Map Amendment. This requires findings for a "reasons exception" pursuant to OAR 660-004-0020(2) and ORS 197.732(2), specifically related to siting rural industrial development on resource land outside of an urban growth boundary pursuant to OAR 660-004-0022(3).

Exception Criteria - ORS 197.732

197.732 Goal exceptions; criteria; rules; review. (1) A local government may adopt an exception to a goal if: a) the land is physically developed, or b) the land is irrevocably committed to another use, or

ORS 197.732(2).c

(2) c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas which do not require a new exception cannot reasonably accommodate the use;

C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(3) "Compatible," as used in subsection (2)c) of this section, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Finding 4: LCDC adopted rules more specific, to augment the above Statute. They are incorporated in OAR 660-004-0020 & 0022 examined below. Those findings are incorporated herein as applicable to (A) - (D) above.

The following Administrative Rule elaborates on how the provisions are to be met and adds specificity on the above ORS 197.732(2.c).

OAR 660-004-0022(3) Rural Industrial Development

(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;

Finding 5: The subject property is located outside of an urban growth boundary on designated agricultural lands. It is adjacent to Port Westward Industrial Area which is strategically located

along the Columbia River and a river port with existing industrial uses and facilities. The location of the site on the Columbia River is extremely important to the local and regional economy and to promote the proper location of river and port dependent industries. No other industrial site having such qualities is available in Columbia County, making Port Westward a unique resource.

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

Finding 6: The applicant wants to be able to promote large lot industrial users that can take advantage of the unique situation at Port Westward, close to both ship and rail transportation. The Exception Document examines other industrial facilities in the City of St. Helens urban area, the City of Astoria and others in the region; and, it concludes that the only Port of Portland may have some large lot industrial land available. However, Port Westward is less than half the distance to the Pacific Ocean than Port of Portland and other rural attributes give Port Westward in Columbia County a comparative advantage. This criteria is met based on the attached Exception Document and substantial evidence in the record.

c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.

Finding 7: An expanded industrial zone at Port Westward would take advantage of the existing facilities and infrastructure already installed by private investments and public incentives. It would take advantage of location on a deep river port and rail access. The Exception Document analyzes the details of significant comparative advantages of Port Westward, including a prime location factor, existing facilities factor, current economic conditions factor, industrial land shortages and the opportunity & value of expanded large lot industrial areas. The county acknowledges these factors as being substantial evidence that the location of industrial uses at Port Westward has a comparative advantage for industries needing large vacant industrial sites with maritime opportunities. The lost resource, farm land, is specifically detailed in the exception document. The economic benefit of industrial land verse farm land is overwhelming in favor of industrial when comparing employment wages per acre and revenue from local property taxes, etc.. In addition, the area proposed for re-zoning accounts for a small fraction of the overall amount of land zoned for agricultural use in this north county Clatskanie agricultural area. Of the 16,927 acres zoned primary agriculture in the north county Clatskanie area, the subject 957 acres, is only 5.6% of the total. The impact of converting some of this agricultural land to industrial use is minimized considering that 16,000 acres are left in agricultural use in this north county Clatskanie diked area.

660-004-0020
Goal 2, Part II C), Exception Requirements

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.

(2) The four standards in Goal 2 Part II C) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

Finding 8: The reasons set out in the exception document state why the applicable goal of protecting/preserving agricultural land should not apply to this land immediately adjacent to Port Westward. They include the fact that this land is uniquely situated by a river port that is already served by water, sewer and local roads, and the exception site has capability of being served by US Hwy 30 and a major freight rail corridor. Other factors supportive of good reasons include the ability for the county to take advantage of their most important transportation asset, the Columbia River for shipping transport. The centralization of industrial employment at this strategic location makes good planning sense and reduces future energy costs of having industry site haphazardly along the river. There is a documented shortage of large lot industrial sites in Oregon. By answering this shortage and providing vacant land for industrial development, the county would be capable of securing potential base employment jobs where the wage income is generated by out-of-county capital. Opening and taking advantage of trade opportunities in the Pacific Rim is advantageous to the county and region. The staff finds that there are sufficient reasons why this agricultural land should be used for industrial purposes and incorporates the attached exception document that more fully explains the reasons.

Continuing with OAR 660-004-0020

(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(I) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

C) The "alternative areas" standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

Finding 9: There are no non-resource lands available in Columbia County at the scale needed to to satisfy large industrial users or that have the competitive advantages as Port Westward. At the time of initial zoning, the County zoned all large lots in the the county as either Primary Forest or Primary Agriculture because they were not already committed to more intense development. For alternatives, the attached exception document examines the Port Westward Industrial Park itself, other Port of St. Helens properties, the Port of Astoria, Port of Coos Bay and the Port of Portland. This examination concludes that there is a shortage of readily zoned industrial sites. Testimony at the Planning Commission hearing took issue with the Port's alternative locations and proposed specific alternatives to taking an exception on the subject property adjacent to the Port Westward. The original exception document has been modified to address the issue raised in testimony. Areas in Urban Growth Boundaries in Columbia County do not have extensive industrial lands with water/rail transport availability that are not already in

use. With the inclusion of the Exception Document, the county finds that this criteria is met.

Continuing with OAR 660-004-0020

c) "The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site." The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

Finding 10: Any proposed use, of a prospective tenant, will need to meet or exceed the existing state and federal environmental laws. Reviews of siting an industry at the newly re-zoned property would be processed and decided in a public hearing format. In addition to existing laws, conditions imposed by the County on this exception area - such as traffic impacts, impacts to wetlands, impacts to the air & ground and impacts to surrounding uses will be reviewed; and, the use will either be not allowed or the impacts minimized through conditions imposed. The analysis of economic consequences including better paying wages and a larger tax base, supports the zone change. This concept is carried forward into the social consequences, in that citizens will have more money to spend locally, thereby creating a higher standard of living, which will in turn benefit other related industries and businesses. An energy related consequence would include better usage of existing facilities on site including large grid electrical power and abundant natural gas. This application supports consolidation of large scale industrial services at Port Westward. Based on the analysis in the exception document staff finds that the application is supported by consideration of the long term environmental, energy, social and energy consequences.

Continuing with OAR 660-004-0020

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Finding 11: The adjacent uses to the subject property are industrial to the north and agriculture/farming to the south. Any proposed uses in this new industrial zone will need to be compatible with both adjoining uses, industrial and farming. These criteria will be reviewed at site design review prior to releasing a building permit. There has been a substantial amount of testimony received from the farm community pertaining to whether this new industrial zone would allow uses that are incompatible with crops in nearby fields. Most testimony expressed a fear that the most despicable industrial uses may site next to them. The farm community does not have problems with the uses already in existence at Port Westward. As such, some lands that are zoned for industrial use at Port Westward are leased for agricultural purposes and can remain so. It is impossible for the applicant to show how every possible industrial use could or would be considered compatible with adjoining farm uses, even with an exhaustive list of mitigating measures. For this reason and to be in compliance with this criteria, staff believes that before a development permit is issued, each new use should be reviewed for compatibility with adjacent farm uses. The applicant has proposed that the following conditions be imposed to ensure measures are in place to reduce adverse impacts:

1) The habitat of threatened and endangered species shall be evaluated and protected as required by law.
2) Alterations of important natural features, including placement of structures shall maintain the overall values of the feature.
3) All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.
4) When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.
5) Controls, including suppression and requiring hard surfaces, shall be employed to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.
6) Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.
7) The industrial use impact on the water table shall be monitored to ensure that the water table can be maintained and managed as it historical is done.
8) Railroad crossings shall be managed consistently with federal law regulating crossing to

reduce crossing delays.
9) Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan.

Staff recommends the above measures be incorporated into conditions for the siting of any future industrial use. With the above referenced conditions this criteria can be met.

Continuing with Oregon's Statewide Planning Goals

Goal 4 (Forest Lands): The County finds this goal is not applicable. The subject property is not forest land. The applicant submitted an exception to forest lands. The Board may include it if wanted, but staff does not believe it is necessary.

Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources): This goal addresses the conservation and protection of both natural and cultural resources. There does not appear to be any inventoried cultural, historic or scenic resources on the subject property. Three natural resources apply to this site: 1) open space, 2) wildlife habitat and 3) wetlands. These are addressed under Part XVI of the Comprehensive Plan. As this Major Map Amendment complies with Part XVI of the Comprehensive Plan, it also complies with Statewide Goal 5. (See discussion Part XVI , page 9)

Goal 6 (Air, Water and Land Resources Quality): Goal 6 addresses the quality of air, water and land resources. In the context of Comprehensive Plan Amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment will be able to satisfy applicable federal and state environmental standards, including air and water quality standards.

The proposed plan amendment and zone change would allow rural industrial uses in addition to resource uses, as allowed currently. As a matter of county ordinance, any future development would be required to comply with Federal, State and local laws, which are intended to minimize environmental impacts. The Clean Water Act and Clean Air Act are examples. Given the standards to which future development would be subject, including those applicable to Site Design Reviews, Uses Under Prescribed Conditions and Building Permits, staff finds that the requirements of goal 6 are met.

Goal 7 (Areas Subject to Natural Disasters and Hazards): Goal 7 deals with development

in places subject to natural hazards. It requires that jurisdictions apply "appropriate safeguards" when planning for development there.

In this case, there are no specific identified natural hazards. FEMA FIRM Map 41009C0050 D, dated November 26, 2010, identifies the property in zone X, which is not subject to floodplain regulations. In addition the property is within Seismic Zone D1 (formerly zone 3), which applies to building regulations. These would apply at time of development.

The County finds that the requirements of Goal 7 are met.

Goal 8 (Recreational Needs): This goal calls for a government to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. The subject property has not been planned for recreational opportunities. This Major Map Amendment will not compromise the recreational needs of the County citizenry and thus, meets the requirements of Goal 8.

Goal 9 (Economic Development): While Goal 9 applies only to urban and unincorporated lands inside urban growth boundaries, this Major Map Amendment, will nonetheless, help promote the County's economic strength. This is explained under Part X (Economy) and the Reasons Exception attached to this report. Though technically not applicable, the County finds that the overall intent of Goal 9 is met.

Goal 10 (Housing): The County finds that Goal 10 is not applicable. Goal 10 applies inside urban growth boundaries. In addition, this Major Map Amendment will not result in a loss or gain of dwelling units.

Goal 11 (Public Facilities and Services): Goal 11 requires local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services. It further provides that urban and rural development "be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served."

The applicant's response is: "Port Westward has developed public facilities and services for rural industrial development. The area also provides access to the Columbia River by existing docks, and access to rail transport. Rural industrial development in the Port Westward area is orderly and efficient in that it groups development around existing services and provides the benefits of a planned development area. Thus the application is consistent with Statewide Planning Goal 11."

Staff concurs with the applicant and finds that the proposal complies with Goal 11.

Goal 12 (Transportation): Goal 12 requires local governments to "provide and encourage a

safe, convenient and economic transportation system." Goal 12 is implemented through LCDC's Transportation Planning Rule (TPR), OAR 660, Division 12. The TPR requires that where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation that would significantly affect an existing or planned transportation facility's functional capacity, the local government shall put in place measures to assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility.

Transportation issues were discussed earlier under the County Comprehensive Plan Part XIII Transportation. In current zoning PA-80, resource farm uses and some limited residential uses are allowed. Other potential uses include schools and churches. Aside from schools and churches, these land uses are not intense and would have a minimal traffic/transportation impact. If the proposal were approved and the subject property zoned RIPD, industrial uses could be sited and could potentially have a significant impacts on the surrounding transportation network. But, restrictions are in place by the RIPD zone that the new industrial uses must be rural and land extensive. They are generally not labor intensive as with high traffic volume generators from the working force (except for perhaps during construction). With this "rural" industrial zone a typical build-out traffic impact of the zoning district would be significantly less than in a typical urban industrial property.

Lancaster Engineering, on behalf of the applicant, submitted a preliminary Traffic Impact Analysis (TIA) for the proposed Plan Amendment on May 6, 2013. Comments from State ODOT, Columbia County and the City of Clatskanie were incorporated into the present August 27, 2013 Transportation Impact Analysis (TIA) for the proposed Port Westward expansion. A traffic analysis is difficult when a specific industrial uses are not identified for the subject property. Lancaster Engineering, together with State ODOT, Columbia County Road Department and the Public Works of Clatskanie, agree that a "Trip Cap" be established for a worst case scenario. Lancaster Engineering determined that the study intersections are currently operating satisfactorily, but would need operational or safety improvements when the subject new industrial area produced 332 PM peak-hour trips or more. When this trip cap level of traffic generation is reached there will be a need for an additional TIA and possible mitigating improvements to the intersections to bring them to acceptable performance. The Report analyzes intersections with state regulated highways. Specifically the TIA analyzes five intersections, including Highway 30 at Nehalem Street, Nehalem at 5th Street, Highway 30 at Van Street, Highway 30 at Beaver Falls Road, and Highway 30 at Old Rainier Road (Alston Mayger Road.

The State ODOT comment and concern about the "trip cap" proposed by the August 27, 2013 TIA, the County and ODOT needs to determine how the trip cap identified will be monitored and enforced. ODOT and Lancaster recommends a condition be imposed:

> "A traffic study be prepared for each future development within the subject property to determine the number of trips generated, likely travel routes, impacts

on both passenger car and heavy truck traffic. These TIA analysis would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap."

To ensure that all traffic impacts are minimized with each new development on our local roads, including in the City of Clatskanie; roads will need improvements commensurate with a new development impact. The County has historically imposed a Traffic Improvement Fee on new development in the Port Westward area.

With the above referenced conditions the Transportation Planning Rule requirements is satisfied.

Goal 13 (Energy Conservation): Goal 13 directs cities and counties to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based on sound economic principles.

The applicant's response is: "The application is consistent with Statewide Planning Goal 13 in that it will promote consolidation of industrial services in the Port Westward area and conserve energy that would otherwise be expended developing these services elsewhere."

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In addition, as already explained in this report, the expansion of the Port Westward site will help enhance the County's economy, specifically the north part of the County. This will provide local jobs and help balance the jobs/dwellings ratio. Currently, many County citizens travel outside the County to work. Having more local jobs promotes energy conservation as it tends to result in less vehicle miles traveled.

For the above reasons, the County finds that the proposal complies with Goal 13.

Goal 14 (Urbanization): The County finds that Goal 14 is not applicable. The proposed amendments do not authorize urban uses on rural lands or otherwise convert rural land to urban uses.

Goal 15 (Willamette River Greenway): The County finds that Goal 14 is not applicable. The site is not near the Willamette River.

Goals 16 - 19 (Coastal State-Wide Planning Goals): These Goals do not apply to Columbia County as it is not a coastal jurisdiction.

<u>Continuing with Columbia County Zoning Ordinance CCZO</u>

CCZO 1502.1(A) (3):

3. The property and affected area are presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

Discussion: The Port Westward Industrial Park immediately to the north of the subject property has a full service of facilities available for potential industrial users. These facilities can easily be provided to the subject property in association with a particular development. The infrastructure framework for additional rural industrial development has been well planned by the Port and other industrial users in the vicinity. Existing facilities include water systems and fire protection services, county roads to provide access to Hwy 30, rail lines running within the site and through to connect the mainline Hwy 30 corridor, electrical service new substation, fiber optics, industrial sized natural gas lines, electric power plants, and a 1250 foot dock with deep water access.

There is no evidence that there will be any inadequacies of facilities, services and transportation networks for development subsequent to the Major Map Amendment. Any new development within the Port Westward Industrial site would not be allowed unless there were facilities that could adequately accommodate it. When a prospective industry submits plans for development, the facilities necessary are identified and extended or otherwise provided in conjunction with development.

Finding 12: Based on the discussions above on the Comprehensive Plan criteria and as presented in the application and submittal of noted items, this Major Map Amendment is consistent with the County's Comprehensive Plan.

Finding 13: Based on the discussions above on Statewide Goals and as presented in the application with the submittal of noted items, this Major Map Amendment is consistent with Oregon's Statewide Planning Goals.

Finding 14: Based on the discussions above in this Report and as presented in the application, the property and affected area is presently provided with adequate facilities, services, and transportation networks to support any use allowed by the RIPD zone, and that this Major Map Amendment will not compromise such facilities, services and transportation networks, with conditions imposed.

Continuing with Columbia County Zoning Ordinance Section 1502 Zone Changes

1502 .3 Alternate Zones: If the Commission determines that a zone other than the one being proposed will adequately allow the establishment of the proposed use, the Commission may substitute the alternate zone for the proposed zone in either the Major Map Amendment or the Minor Map Amendment procedures.

Discussion: This Major Map Amendment would bring the subject property to a designation of Rural Industrial and zoning to Rural Industrial - Planned Development (RIPD). This same designation and zoning borders the property on three sides, and there is no other adjacent designation and zoning other than Agricultural Resource and Primary Agriculture - 80 (PA-80).

Finding 15: Staff does not recommend the substitution of another designation or zone for this Major Map Amendment request.

Continuing with Columbia County Zoning Ordinance Section 1600 Administration

1605 Zone Change - Major Map Amendment: The hearing for a major map amendment shall follow the procedure established in Section 1505, 1502. 1, 1502 1A and 1502 1B. This hearing cannot result on the approval of a major map amendment. The Commission may make a recommendation to the Board of County Commissioners that such a zone change be granted. Approval by the majority of the Commission is necessary in order to make recommendation to the Board of Commissioners. The Board of Commissioners hearing on the proposed zone change-major map amendment will be on the record unless a majority of the Board votes to allow admission of new evidence.

Discussion: The Planning Commission made a recommendation for denial of this application for a Major Map Amendment. The Board of County Commissioners, who have the decision making authority, will hold a hearing on September 18, 2013 at the Clatskanie High School.

Continuing with Senate Bill 766

Public testimony at the Planning Commission raised concerns over the potential affect of Senate Bill 766 if the subject property is re-zoned to RIPD, specifically, the concern that SB 766 would remove the local review of future industrial uses at the site. SB 766, which was passed in 2011 to advance job creation on industrial lands, provides two separate programs: one for the designation of "industrial development projects of state significance" and another for the designation of "regionally significant industrial sites." An applicant must apply to the State Economic Recovery Council (ERRC) for either the state or regional significance designation.

The impact on local government is different for each designation. For the industrial development projects of state significance, review of compliance with land use regulations, including local regulation, is done at the state level by ERRC. Land use review of development of regionally significant industrial sites, on the other hand, remains with the local governments. Although review of a regionally significant site remains with the local government, the review process in general differs in that it is expedited, as provided in ORS 197.365 and 197.370, and appeal to the Oregon Court of Appeals rather than LUBA.

Here, the subject property has not been designated as either a state or regionally significant site. The applicant has stated that it will apply for the regionally significant designation for Port Westward. ERRC will be designating only five to fifteen regionally significant sites in the state. As explained, even if Port Westward receives such a designation, the County will be reviewing future industrial uses for compliance with land use regulations.

AGENCY COMMENTS RECEIVED:

City of Clatskanie: Several comments, have no objection to its approval as submitted.
Clatskanie-Quincy CPAC: (no response)
Clatskanie RFPD: No objection.
Soil & Water Conservation District: Comment # 87 on list, opposed the application negative affects on farming and riparian areas.
Lower Columbia Watershed Council: (no response)
Oregon ODOT: Several comments, agrees with a trip cap, but would like to discuss monitoring and enforcement of the trip cap.
Oregon ODOT Rail: Letter dated March 5, 2013, pertaining to rail extensions safety. See attached comments #8.
Oregon Department of Agriculture: Comment # 25 Excellent farm soils, good for high yields.
Oregon DLCD: Comment #91 generally supportive of Plan Amendment, must made adequate findings
Natural Resources Conservation Service: (no response)
County Roadmaster: No objection. Future developers will incur all costs for needed road improvements.
County Assessor: (no response)
County Sanitarian: (no response)
County Building Official: Has no objection to its approval as submitted.
City of Clatskanie: Strongly in favor of approval.

The Planning Division forwarded 198 comments to the Board. The cover index "Port of St. Helens Comments Submitted", 7 pages, lists by number the comments received in chronologic order.

CONCLUSION, & RECOMMENDED DECISION & CONDITIONS:

Based on the facts, findings and comments herein, the Planning Director recommends **approval** of this Major Map Amendment to re-designate the site from Agriculture Resource to Rural Industrial and to amend the Zoning Map of the Columbia County Zoning Ordinance to re-zone the subject property from Primary Agriculture - 80 (PA-80) to Rural Industrial - Planned Development (RIPD), with the following conditions:

1) Prior to an application for development of a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.

2) To ensure adequate transportation operation, future developments proposed for the subject property shall not produce more that 332 PM peak-hour trips without conducting a new Traffic Impact Analysis with recommendations for operational or safety mitigation.

3) A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.

4) To ensure compatibility with adjoining agricultural uses the applicant/developer of new industrial uses shall comply with the following:

A) The habitat of threatened and endangered species shall be evaluated and protected as required by law.

B) Alterations of important natural features, including placement of structures shall maintain the overall values of the feature.

C) All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.

D) When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.

E) Controls, including suppression and requiring hard surfaces, shall be employed to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.

F) Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.

G) The industrial use impact on the water table shall be monitored to ensure that the water table can be maintained and managed as it historical is done.

H) Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays.

I) Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.

5) The types of industrial uses for the subject Plan Amendment shall be limited to the uses, density, public facilities & services and activities to, only those that are justified in the exception.

ATTACHMENTS: Exception Document
Comments received under separate cover
Vicinity map, aerial map with boundaries
Application and maps in separate document

PORT WESTWARD EXPANSION AREA EXCEPTION STATEMENT

A. Introduction

In 2013 the Port of St. Helens (the Port), on behalf of itself and the Thompson family (Guy R. Thompson, Elizabeth Boswell, Robert Thompson, David Thompson and Rodger Thompson), submitted an application to Columbia County (the County) seeking a Major Comprehensive Plan Map Amendment to reclassify land adjacent to the existing Port Westward Industrial Park (Port Westward) from Agricultural Resource to Resource Industrial. The application also sought to rezone that land from Primary Agriculture-80 Acres (PA-80) to Resource Industrial-Planned Development (RIPD) for inclusion in the Port's industrial park at Port Westward. The subject 837-acre tract is directly adjacent to the existing Port Westward Industrial Park, which is already zoned RIPD. Because of its current agricultural zoning, the County was required to take an exception to Statewide Planning Goal 3 (Agricultural Lands) as part of the rezone and accompanying comprehensive plan amendment. The application was approved by Columbia County in 2014, granting an exception to Goal 3, rezoning the subject area to RIPD and authorizing those uses permitted in the RIPD zone under the County's regulations.

That decision was appealed to the Oregon Land Use Board of Appeals (LUBA). LUBA remanded the decision, in part, identifying areas in which the record and findings provided insufficient justification for taking a Goal 3 exception and rezoning the exception area to RIPD. In response to the remand, the Port modified its land use application consistent with the direction provided by LUBA. As approved, the exception granted on remand relies solely on OAR 660-004-0020(3)(a) as justification for taking an exception to Goal 3, which allows for the exception if "[t]he use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include . . . river or ocean ports." Specifically, the Port has identified the deepwater port, with its existing dock facilities at Port Westward, as the unique resource justifying an exception to Goal 3.

Similarly, as suggested by LUBA, on remand the number of approved uses in the exception area was reduced, from all uses authorized under Columbia County Zoning Ordinance ("CCZO") Section 680 to the following five:

- Forestry and Wood Products processing, production, storage, and transportation
- Dry Bulk Commodities transfer, storage, production, and processing
- Liquid Bulk Commodities processing, storage, and transportation
- Natural Gas and derivative products, processing, storage, and transportation
- Breakbulk storage, transportation, and processing

The record includes a technical report (the "Mackenzie Report") that: 1) provides a comprehensive analysis supporting a Goal 3 exception under OAR 660-004-0022(3)(a); 2) supports the conclusion

that the narrowed list of five approved uses listed above are in fact rural industrial uses; and 3) provides an in-depth alternative sites analysis in light of the single OAR 660-004-0022(3)(a) justification for the Goal 3 exception put forward on remand, namely the deepwater port at Port Westward.

B. Background

The Port of St. Helens owns the Port Westward Industrial Park (Port Westward), a 905-acre rural industrial exception area with 4,000 feet of deepwater frontage along the Columbia River. In the 1970s, Columbia County adopted an exception to Statewide Planning Goal 3 (Agricultural Lands) for Port Westward, and planned and zoned it for rural industrial uses. Port Westward is zoned Rural Industrial Planned Development (RIPD). Current uses at Port Westward include a 1,500 foot long dock, three electrical generating facilities owned and operated by Portland General Electric (PGE), a 1.3 million-barrel tank farm, a biomass refinery facility, and an electrical substation.

Port Westward includes necessary infrastructure facilities within its boundaries for the Port's rural industrial tenants. The site is served by private water systems that utilize wells and draw from the river. The rural property has a small private sewage system, and tenants also manage their own sanitary wastes via private onsite septic systems. The Port also operates and maintains a discharge system for tenants' process water. Taken together, these facilities provide sufficient service for rural industrial users, but preclude urban industrial uses that have a higher demand for public utilities. Electric power, natural gas, and high-speed telecommunications are readily available on site.

Port Westward is served by county road connections to nearby state and interstate highways, a rail line and, most importantly, it adjoins a self-scouring deepwater port with access to a 43-foot navigation channel in the Columbia River, part of the M-84 Marine Highway corridor. Development and improvement of the Port of St. Helens' deepwater port has been declared to be an economic goal of high priority by the State of Oregon (*See, e.g.*, ORS 777.065).

The Port has three existing tenants at Port Westward. Clatskanie Public Utility District leases 3 acres for an electrical substation, the Columbia Pacific Bio-Refinery ethanol facility holds 43 acres, and the remainder is leased by Portland General Electric (PGE) with agreements that run through 2066 and 2096[1]. PGE currently operates three power plants on 147 acres of its 862-acre leasehold. The remainder of its leasehold includes dedicated wetland mitigation areas, areas held for future PGE expansion (including future wetland mitigation needs), and necessary buffering of its operations.

[1] PGE holds 116 acres in fee title, but the Port has a reversionary interest in that acreage which is effective upon completion of PGE's lease.

PGE and the Port previously had a Joint Marketing Agreement to coordinate facilitating additional future development within the PGE leasehold. However, it did not lead to any additional development and the Joint Marketing Agreement was allowed to lapse. It was formally terminated by PGE in 2007. The Port and PGE have entertained potential suitors to sublease portions of its leasehold in the past, but such commitments have been precluded by potential conflicts with PGE's own use of its leasehold, restrictions imposed by PGE to protect its interests at Port Westward, and by existing encumbrances and physical site constraints including wetlands and the cost related to development of those wetlands. Because of the inability to site additional rural industrial users within the PGE leasehold, and because of a lack of additional available land at Port Westward, the Port determined that it was necessary to expand the industrial park at Port Westward and undertook this process with Columbia County.

C. Procedural History

1. Columbia County's Original Decision

In 2014, the Port received approval from the Columbia County Board of Commissioners (the Board) for a comprehensive plan amendment, zone change and Statewide Planning Goal 2 "Reasons" exception to Goal 3 for 837 acres of land zoned Primary Agriculture-80 (PA-80) directly adjacent to the Port Westward site to the south and west (the Expansion Area). The Board's approval excluded two riverfront lots originally proposed to be included in the Expansion Area, based on concerns of potential impacts on riparian habitat. The approval rezoned the exception area to RIPD as an expansion of the Port Westward site (also zoned RIPD). The RIPD zone only allows farm and forest use and temporary forest product processing uses as outright permitted uses, but it allows as conditional uses those industrial uses that fall within the areas of "[p]roduction, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities". *See* CCZO Section 682.

The stated purpose of the 837-acre expansion area was not to accommodate the use(s) of one or more identified future Port tenants, but rather to address the industrial land deficit at Port Westward in anticipation of as-yet unidentified potential future Port tenants and their need for industrially-zoned large lots near the deepwater port with its existing 1,500 foot dock, as well as the other facilities available at Port Westward.

The Board's approval included several conditions, including a requirement for site design review for any new use in the exception area, a trip cap of 332 p.m. peak hour trips, other requirements intended to ensure compatibility with adjoining agricultural uses (including the submission of a rail plan for any new use that includes rail transportation) and, finally, a prohibition on the storage, loading or unloading of coal. *See* Columbia County Ordinance No. 2014-1.

The findings supporting the original decision justified the Goal 3 exception based on all three of the reasons provided under OAR 660-004-0022(3). Specifically, the Board found that the industrial uses allowed in the RIPD zone would be maritime-related uses significantly dependent on the river port and docks to import or export materials or goods (consistent with OAR 660-004-0022(3)(a)); that the uses cannot be located within an urban growth boundary due to impacts that are hazardous or incompatible with dense populations (consistent with OAR 660-004-0022(3)(b)); and that the uses allowed in the RIPD zone would have a significant comparative advantage due to the location of the site and its proximity to the deepwater access, rail and highway connections, energy facilities and other amenities existing at the Port Westward site (consistent with OAR 660-004-0022(3)(c)). *See* Columbia County Ordinance No. 2014-1 and findings in support of same.

2. LUBA Appeal

The County's approval was appealed to LUBA and on August 27, 2014, LUBA issued a Final Opinion and Order remanding the County's decision, in part. LUBA's opinion addressed the petitioners' Assignments of Error as follows:

Proposed Uses

LUBA rejected the petitioners' argument that, as a matter of law, the County was required to restrict its Goal 3 Exception to particular uses under OAR 660-004-0022(1), 660-004-0022(3) and 660-004-0020(2). Similarly, LUBA rejected the claim that the County did not effectively limit the authorized uses to those justified by the approval under OAR 660-004-0018(4)(a). Regarding this argument, LUBA held:

> "[*W*]*e agree with the Port that the county has sufficient measures in place to ensure that* ***ANY*** *industrial uses approved in the exception area will be limited to those justified by one or more of the three reasons advanced*. . . . [W]e agree with the Port that Condition E.5, CCZO 683.1(A) and CCCP Part XII, Policy 12, together act to effectively require future conditional use applicants to demonstrate that a particular proposed industrial use was justified in the exception decision. Further, via CCZO 683.1(A), future conditional use applicants will be required to demonstrate that the proposed use conforms to either CCCP Resource Development Policies 3(A) through (F) or with Policy 3(G), the language of which echoes the themes of OAR 660-004-0022(3)(a), (b) and (c)." 70 Or LUBA 171, 185 (2014) (Emphasis added).

"Significantly Dependent on a Unique Resource" including "River or Ocean Ports"

LUBA also rejected the petitioners' assertion that a Goal 3 Exception was not justified for uses "significantly dependent" on access to the deepwater port at Port Westward under OAR 660-004-0020(3)(a), because some uses may not be port-dependent; the County did not limit uses to port-dependent ones; some record evidence indicated that the existing dock is underutilized; and petitioners' claim that the single riverfront lot approved as part of the County's decision would not be adequate to establish the non-riverfront lots are "significantly dependent" on river access.

LUBA explained: "[T]he county advanced three reasons to justify the exception area, and the fact that not all uses allowed in the exception area will be port-dependent uses for OAR 660-004-0022(3)(a) is not erroneous, as long as all uses fall within one or more of the three reasons." 70 Or LUBA at 187. However, on remand the exception granted is not based on either OAR 660-004-0022(3)(b) or (3)(c). As analyzed in depth in the Mackenzie Report, each of the five approved uses (narrowed from the scope of possible uses originally approved) are closely tied to the deepwater port at Port Westward for viability and, as approved, any use in the Expansion Area must be significantly dependent upon and have established access to the dock at the deepwater port.

"Impacts that are Hazardous or Incompatible in Densely Populated Areas"

LUBA sustained the petitioners' claim that the County's findings were inadequate to justify any uses under OAR 660-004-0022(3)(b), "use[s] that cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas." However, the exception granted on remand does not approve uses relying on OAR 660-004-0022(3)(b).

"Significant Comparative Advantage"

LUBA rejected the petitioners' assertion that a Goal 3 Exception could not be justified for any uses under the "significant comparative advantage" reason provided at OAR 660-004-0022(3)(c) until a specific use was identified by the Port, noting the presence of "deep-water access, existing dock facilities, access to railroad, highways and interstates, and the presence of utilities and power generating facilities" and concluding, "[W]e disagree with petitioners that the county must identify a specific industrial use in order to invoke OAR 660-004-0022(3)(c)." 70 Or LUBA 171, 190 (2014). Additionally, LUBA rejected arguments that the "significant comparative advantage" needed to come from the expansion site itself (and not from the existing Port Westward site), as well as petitioners' challenge to the County's findings that locating rural industrial uses in the expansion site would "benefit the county economy" and "cause only minimal loss of productive resources." *Id.*

Nevertheless, the exception granted on remand relies only on OAR 660-004-0022(3)(a), and so OAR 660-004-0022(3)(c) no longer applies to the approval.

Reasonable Accommodation Standard (Alternative Sites Analysis)

Vacant Port Westward Lands

LUBA sustained the petitioners' challenge to the sufficiency of the County's findings that "areas that do not require an exception cannot reasonably accommodate the use" under OAR 660-004-0020(2)(b), in particular as to the ability of acreage within the existing Port Westward site to accommodate the proposed uses. LUBA held that the County's finding that the unused acreage within the PGE leasehold is unavailable for rural industrial development was not supported by the record evidence. LUBA concluded that, to make such a finding, the record would need evidence either that PGE is categorically unwilling to sublease part of its leasehold, or that those unused acres "cannot otherwise be reasonably made available for development through acquisition or termination of the leasehold interest." 70 Or LUBA at 195.

Regarding wetlands within the PGE leasehold and elsewhere on Port Westward, LUBA held that the mere presence of wetlands does not make it unbuildable if development can occur with the appropriate permits and mitigation. 70 Or LUBA at 196. However, LUBA did note that OAR 660-004-0020(2)(b)(B) provides that "economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas" and, explaining further, noted that the cost of obtaining such permits and undertaking the work may be "so prohibitive that the cost alone or in combination with other factors could allow the county to conclude that the vacant lands within [the] Port Westward site cannot reasonably accommodate any industrial use." *Id*. Because the County had not made such findings, LUBA remanded on this point.

The Mackenzie Report has addressed this issue at length on remand and, to the extent any wetland areas within the PGE leasehold are in fact otherwise available (which the Mackenzie Report establishes is not the case), it provides substantial evidence that the cost of developing such an area would be economically infeasible. More significantly, the Mackenzie Report provides substantial evidence that the PGE leasehold is currently so encumbered that it is in fact unavailable for siting the Port's proposed uses and includes a letter from PGE stating that the remainder of its leasehold is unavailable for development.

Other Alternative Sites

LUBA sustained the petitioners' challenge to the sufficiency of the County's findings regarding other alternative sites not requiring an exception under OAR 660-004-0020(2)(b)(B). LUBA held that the Port was required to do a separate reasonable accommodation analysis for each non-overlapping reason used to justify the exception under OAR 660-004-0022(3). According to LUBA's decision, an alternative site rejected because it cannot reasonably accommodate one

particular use that falls under one "reason" may still be a viable alternative site if it is able to accommodate another use that falls under another reason. 70 Or LUBA at 197-98.

This concern has been addressed by narrowing the authorized uses to the five rural industrial uses listed above, in combination with the reliance on Port Westward's deepwater port as the single reason advanced for taking a Goal 3 exception under OAR 660-004-0022(3)(a).

LUBA also rejected the County's finding that alternative sites cannot reasonably accommodate the proposed uses because no individual site is large enough to accommodate in the same place all of the large-lot industrial uses that could be accommodated in the 837 acre exception area, and further held that the analysis rejecting the 450 acres at the Rainier site needed more analysis and/or record evidence. 70 Or LUBA 171, 198-99.

As discussed at length in the Mackenzie Report, consistent with OAR 660-004-0022(3)(a), the approval on remand is limited to five specific uses significantly dependent on the deepwater port at Port Westward. Therefore, the Rainier site, and any other sites without deepwater access, is not a viable alternative.

LUBA also held that alternative sites considered could not be excluded from consideration solely on the basis of the presence of wetlands or other environmental issues on those sites, short of making findings that due to regulatory, cost or other relevant factors it is unreasonable to expect such sites to be developed for the proposed uses. 70 Or LUBA at 198.

As noted, the application as modified is tied solely to the deepwater port at Port Westward under OAR 660-004-0022(3)(a), and therefore sites without deepwater access are not viable alternatives, including those previously excluded solely because of the presence of wetlands.

ESEE Analysis

LUBA rejected petitioners' claim that the County did not make adequate findings that the long term environmental, social, economic, and energy consequences would not be significantly more adverse than if an exception were taken for different otherwise-available resource lands (the County's "ESEE" analysis). LUBA accepted the County's incorporation of its compatibility analysis findings under OAR 660-004-0020(2)(c) into its ESEE analysis findings, and concluded that the petitioners had not demonstrated other or different findings were required. LUBA noted that the petitioners had not specifically identified and described alternative sites with fewer ESEE impacts. 70 Or LUBA at 202.

On remand, opponents have raised this issue, although this assignment of error was not sustained by LUBA. The only ESEE alternative sites identified in the record are the Port of the Dalles and

the Port of Klickitat, both upstream of the federally maintained 43-foot deepwater channel running 105 nautical miles from the mouth of the Columbia River to the Portland/Vancouver area. Opponents contend that those sites would have less adverse impacts because they are surrounded by less productive resource land, but do not provide evidence to support that assertion. Further, both of those alternative ports lack deepwater access and therefore cannot serve to replace Port Westward.

Because neither the Port of the Dalles nor the Port of Klickitat are deepwater ports, those locations are not appropriate alternatives for ESEE consideration. In addition, the Port of Klickitat is not an Oregon port and therefore not viable for consideration under the "reasonable accommodation standard" applicable only to land within Oregon and subject to Oregon's Statewide Planning Goals.

Compatibility Analysis (ORS 197.732(2)(c)(D); Goal 2; Part II(c); OAR 660-004-0020(2)(d)

LUBA sustained petitioners' claim that the County's findings regarding Goal 2's compatibility standard, under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d) were inadequate. LUBA held that such findings could not be deferred to a subsequent permit proceeding when the specific use is identified (thus requiring the Port to identify specific proposed uses). 70 Or LUBA at 205-206.

Transportation Analysis

LUBA previously rejected the claim that the County failed to adequately consider whether the proposed zone change would "significantly affect" transportation facilities under OAR 660-012-0060 of the Transportation Planning Rule, concluding that the rule did not require the County to evaluate whether the zone change significantly affects the rail system itself. 70 Or LUBA at 208-209.

Applicability of Goal 14

LUBA remanded the County's decision regarding its treatment of Goal 14. LUBA held that Goal 14 could apply to some of the broad array of potential uses authorized in the RIPD zone, and that a valid Goal 3 exception allows only for "rural" industrial uses. 70 Or LUBA at 211. LUBA found that a Goal 3 exception does not "exempt" industrial uses from Goal 14 and so Goal 14 would apply to any "urban" industrial uses. 70 Or LUBA at 208-212. LUBA also ruled that the County's findings regarding Goal 3 did not satisfy the requirement for specific findings necessary for a Goal 14 exception, and that as a matter of legal practicality the County erred by adopting a Goal 14 exception on a contingency basis. 70 Or LUBA at 213.

LUBA emphasized in its analysis of the applicability of Goal 14 that, in *Shaffer v. Jackson County*, 17 Or LUBA 922, 931 (1989), it had explicitly rejected an argument that industrial uses are inherently urban in nature, ruling instead that a case-by-case analysis of any proposed use was required to make such a determination. 70 Or LUBA at 211. However, because the approval did not identify particular uses to which the *Shaffer* factors could be applied, LUBA remanded the decision, stating:

> "Remand is necessary for the county to address whether any of the proposed uses allowed in the exception area under the *Shaffer* factors or other applicable considerations constitute the urban use of rural land. If so, the county must either limit allowed uses to rural uses or take an exception to Goal 14, addressing the criteria at OAR 660-012-0040." 70 Or LUBA at 211.

As discussed below, the Mackenzie Report provides a thorough *Shaffer* analysis for each of the five approved uses, and provides substantial evidence that the uses authorized have accordingly been limited to ones that are rural in nature, and therefore are appropriate for siting at Port Westward.

Applicability of Goal 11 (Public Facilities) and Need for a Goal 11 Exception

Finally, LUBA rejected petitioners' assertion that the County needed to but did not approve an exception to Goal 11, finding that the assertion was premature. LUBA explained that the argument would be ripe after addressing the Goal 14 issues identified above and, after that has happened review the County decision to make sure that the County has "either limit[ed] the exception to exclude such [urban] uses or adopt[ed] an exception to Goal 14." 70 Or LUBA at 211.

As discussed in the Mackenzie Report, no uses are proposed which require an urban level of facilities or services under the Port's modified application. Further, as no services provided at Port Westward rise to the level of urban services, and none are planned by the Port, the level of available services act to prevent urban industrial uses in the exception area. As the Mackenzie Report has made clear, the County's approval does not rely on existing facilities, except for the dock.

D. Matters Addressed in the Remand Decision

Based on LUBA's direction outlined above, on remand the Port has responding by addressing those issues raised as summarized below.

1. Reason Justifying a Goal 3 Exception

OAR 660-004-0020(2)(a) states:

> "(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:
>
> (a) 'Reasons justify why the state policy embodied in the applicable goals should not apply.' The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land."

Further, OAR 660-004-0022(3)(a) provides:

> "(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:
>
> (a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports."

In its decision, LUBA explained (in discussing application of the *Shaffer* factors):

> "[I]n the present case whether a particular use is an urban or rural use under the *Shaffer* factors may depend in part on the reason under which it was justified. Because the "significantly dependent" on a unique resource language of OAR 660-004-0022(3)(a) closely parallels one of the relevant factors the county can apply to determine whether proposed uses are urban or rural, it may be somewhat easier for the county to conclude that none of the proposed uses allowed in the exception area are urban uses, if the proposed uses are narrowed to those that are justified solely under OAR 660-004-0022(3)(a) rather than the broader universe of uses justified under OAR 660-004-0022(3)(b) and (c)." 70 Or LUBA at 214.

Taking up that suggestion from LUBA, on remand the narrowed scope of five approved uses is justified by a single reason under OAR 660-004-0022(3)(a). That provision authorizes an exception to Goal 3 for rural industrial uses that are "significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include . . . river or ocean ports." The unique resource the Port identified to justify a Goal 3 exception is the deepwater port at Port Westward.

The Mackenzie Report provides analysis as to the uniqueness of the deepwater port with its existing dock facilities at Port Westward. As the report establishes, the Port's proposed uses are highly dependent upon immediate proximity to a deepwater port. The Report states that the deepwater port access is "necessary for transferring materials from one mode to another, for both domestic and foreign transport (e.g., rail to marine), and for accommodating low-margin industrial operations which rely upon deepwater access to maintain an economically viable business in current market conditions."

Table 2 of the Mackenzie Report illustrates that each of the Port's five proposed uses are dependent upon deepwater access. As the Mackenzie Report explains:

> "Uses with foreign trade markets and marine-served domestic markets for products that are shipped by marine vessel are, by definition, reliant on deepwater port facilities. Table 2 demonstrates that each of the five proposed uses for PWW involve foreign import/export operations and are thus dependent upon a deepwater port. The proposed uses will achieve a significant operational advantage due to deepwater port access with nearby storage yards. As the proposed uses are low-margin businesses, port proximity is necessary to minimize operational costs for both import/export and domestic shipping operations. An external benefit of these firms' locations near port facilities is that locating their yards close to the port minimizes impacts on offsite transportation infrastructure."

Regarding the reliance on the deepwater port and dock facilities at Port Westward, the Mackenzie Report concludes:

> "[T]he uses identified in the Port's modified land use application are highly driven by foreign trade and the associated ocean marine transport, and Oregon's largest trading partners are along the Pacific Rim. Table 5 lists the state's top export partners in 2016. This list accounts for 90% of Oregon's export value. Among the top 20 export partners, 14 are Pacific Rim countries, including Canada and Mexico. These 14 markets account for 82% of all of Oregon's export value."

As evidenced by these passages, the identified reason for taking a Goal 3 exception for its five proposed uses is firmly established. The deepwater port at Port Westward constitutes a unique resource, and river ports are explicitly identified as a sufficiently unique resource to justify an exception to Goal 3 under OAR 660-004-0022(3)(a). However Port Westward's port has additional qualities that distinguish the site from otherwise qualified sites under the "unique resource" language of OAR 660-004-0022(3)(a). That is Port Westward is a self-scouring deepwater port (meaning it does not require dredging) with existing dock facilities, the development of which is

a declared priority for the State of Oregon under ORS 777.065. Therefore, the OAR 660-004-0022(3)(a) "unique resource" requirement is clearly satisfied.

2. Narrowed List of Proposed Uses

LUBA's decision required that the range of potential uses in the expansion area be narrowed beyond the scope of all uses authorized in the RIPD zone, to facilitate application of the *Shaffer* factors in determining whether the proposed uses are rural or urban industrial uses, and also to allow for an adequate compatibility analysis under OAR 660-004-0020(2)(d).

The narrowed list of the five approved uses listed above (Forestry and Wood Products processing, production, storage, and transportation; Dry Bulk Commodities transfer, storage, production, and processing; Liquid Bulk Commodities processing, storage, and transportation; Natural Gas and derivative products, processing, storage, and transportation; and Breakbulk storage, transportation, and processing to be authorized for siting in the exception area) are each described in detail in the Mackenzie Report. To avoid siting any uses in the proposed exception area that are urban in character, and thereby implicating Goals 14 and 11, each of the *Shaffer* factors has been applied to each of the proposed uses in the Mackenzie report.

Application of the Shaffer Factors to the Narrowed List of Proposed Uses

In its decision, LUBA summarized the applicable *Shaffer* factors as follows:

> "The relevant factors discussed in *Shaffer* that point toward a rural rather than an urban industrial use include whether the industrial use (1) employs a small number of workers, (2) is significantly dependent on a site-specific resource and there is a practical necessity to site the use near the resource, (3) is a type of use typically located in rural areas, and (4) does not require public facilities or services. None of the *Shaffer* factors are conclusive in isolation, but must be considered together. Under the analysis described in *Shaffer*, if each of these factors is answered in the affirmative, then it is relatively straightforward to conclude, without more, that the proposed industrial use is rural in nature. However, if at least one factor is answered in the negative, then further analysis or steps are necessary. In that circumstance, the county will either have to (1) limit allowed uses to effectively prevent urban use of rural land, (2) take an exception to Goal 14, or (3) adequately explain why the proposed use, notwithstanding the presence of one or more factors pointing toward an urban nature, should be viewed as a rural use." 70 Or LUBA at 211 (internal citations omitted).

A significant portion of the Mackenzie Report is dedicated to applying the applicable *Shaffer* factors to the Port's five proposed uses. *Shaffer* established several factors to apply when determining whether a particular industrial use is rural or urban in nature. For each of the five uses approved, the Mackenzie Report provides a thorough analysis establishing that those uses are categorically rural.

i. # 1: Employs a Small Number of Workers

Under the first Shaffer factor, employment of a small number of workers is an indicator of a rural use. The approved uses employ a small number of workers. Extensive analysis in the Mackenzie Report identified the typical number of employees per acre for the approved uses, with an average of 1.5 employees for acre as compared to an average of 18.1 employees per acre for urban industrial uses and 5.9 employees per acre for urban warehousing uses.

An alternative analysis suggested utilizing a section of the County's Comprehensive Plan forecasting the availability of vacant buildable industrial land based on assumptions of 1.5 employees per acre for "heavy" industrial uses and industrial uses outside city limits, and 4.0 employees per acre for "light" industrial uses and industrial uses inside city limits. However, the distinction between "heavy" and "light" industrial does not exist in the RIPD zone (*see, generally,* CCZO Section 680). Those specific designations in the Comprehensive Plan simply estimate potential employee capacity of then-existing vacant buildable lands (in terms of density) in order to forecast the adequacy of the County's buildable industrial land inventory. Columbia County Comprehensive Plan, Part XII, Industrial Siting – Industrial Economic Analysis: Summary of Economic Data, Section 5 ("Employment Capacity of Vacant Buildable Industrial Sites"). Further, the Board finds that the distinction between uses inside and outside of city limits is also inapplicable, as the County's zoning authority exists exclusively outside of city limits.

The densities discussed above were meant to be used solely to forecast the availability of vacant buildable industrial land, and are not intended to establish a bright-line maximum density for rural industrial uses either inside or outside of city limits, nor are they intended to establish different "heavy" or "light" industrial densities in the RIPD zone where the County's RIPD zone does not make such a distinction.

The Mackenzie Report provides quantitative data that profiles the employment densities associated with the Port's approved uses. Of the inquiries for development at Port Westward, the Report shows that the employment density for the approved uses averages approximately 1.5 jobs per acre (Mackenzie Report, Table 1, p. 15), and the examples of these uses provided in Section IV of the Mackenzie Report have densities ranging from 0.3-2.3 jobs per acre. The employee density numbers provided in the Mackenzie Report are based on real and current tangible information, regarding actual industrial employment densities, and provides substantial evidence that the densities for each approved use is likely to employ a small number of workers.

ii. # 2: Significantly Dependent on a Site-Specific Resource/Practical Necessity to Site Near the Resource

The second *Shaffer* factor used to identify a rural use is whether the use is significantly dependent on a site-specific resource, and there is a practical necessity to site near the resource. The approved uses are significantly dependent on a site/specific resource, the deepwater port, and there is a practical necessity to site near the deepwater port at Port Westward. The Mackenzie Report provides substantial evidence that the five uses are specifically dependent on the deepwater port at Port Westward and must be sited in the immediate vicinity. The Mackenzie Report applied this *Shaffer* factor to each of the five approved uses and found each use clearly linked to the deepwater port at Port Westward (as LUBA and the Port have noted, this *Shaffer* factor is very close to the "unique resource" reason OAR 660-004-0022(3)(a)). In addition, Condition 5 requires any use sited in the expansion area to be significantly dependent on the deepwater port at Port Westward, and therefore the exception granted only authorizes uses that will necessarily be significantly dependent on the deepwater port to site in the new expansion area.

iii. *# 3: Typically Located in Rural Areas*

The third *Shaffer* factor examines whether the use is typically located in rural areas. Opponents have claimed that the uses need to be "unique" to or "solely" located in rural areas to be found to be rural in character. However "typically" has a meaning akin to "commonly" and not "exclusively" in the application of this *Shaffer* factor. The third *Shaffer* factor does not attempt to limit rural industrial uses to ones occurring only in rural areas. As the Mackenzie Report notes, all of the approved uses are land-intensive and require larger sites and additional buffering. Table 3 of the Mackenzie Report provides substantial evidence to support its conclusion regarding this *Shaffer* factor by breaking each of proposed uses down by those requirements, and establishes that each of the five uses is rural in character.

The Mackenzie Report notes for the record the existence of similar examples located in urban areas, but explains that those still represent typically rural uses sited in areas that have urbanized over time, or uses that were sited in urban areas out of necessity due to lack of proximity to port access in rural areas, and concludes that the approved uses are typically located in rural areas.

iv. #4: Does not Require Public Facilities or Services

The fourth *Shaffer* factor examines whether the use requires public facilities or services. The Mackenzie Report's *Shaffer* analysis regarding this factor provides substantial evidence that the approved uses will have low potable water demands and generate low domestic wastewater flows, due to low employee counts, and thus will not require extension of a municipal sewer system. Moreover, the Mackenzie Report's analysis regarding traffic levels establishes rates lower than those associated with urban industrial uses, leading to a conclusion (supported by the conclusions

of the Port's traffic engineer as well as of ODOT) that traffic levels will not increase to urban levels. There is no evidence in the record to contradict that conclusion, or to support the claim that the proposed uses will necessarily require public facilities or services.

The Mackenzie Report also disposes of claims that the presence of fiber-optic, electrical and natural gas connections in the existing exception area – which are all commonly found elsewhere in rural areas – automatically disqualify the new expansion area.

3. Alternative Sites Analysis

OAR 660-004-0020(2)(a) states:

> "(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:
>
> (a) 'Reasons justify why the state policy embodied in the applicable goals should not apply.' The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;"

As discussed above, the Port has identified the deepwater port at Port Westward as the applicable reason for taking an exception to Goal 3, consistent with OAR 660-004-0022(3)(a).

OAR 660-004-0020(2)(b) provides:

> "(b) 'Areas that do not require a new exception cannot reasonably accommodate the use'. The exception must meet the following requirements:
>
> (A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;
>
> (B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

> (i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?
>
> (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?
>
> (iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?
>
> (iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?"

OAR 660-004-0020(2)(b) requires consideration of potential alternative sites that would not require a new exception. This requirement, together with the single reason selected by the Port under OAR 660-004-0022(3)(a), above, mean that the potential alternative sites to be considered must: 1) not require a new exception; and 2) provide deepwater port access. The alternatives analysis provided in the Mackenzie Report is therefore divided into two parts, the first being an analysis of industrial land availability at Port Westward, and the second being an analysis of industrial land availability at other locations not requiring an exception where the Port's five proposed uses could potentially be sited with deepwater port access.

Vacant Port Westward Acreage

The Mackenzie Report includes several maps of Port Westward, including the PGE leasehold area LUBA ruled the Port had not established could not accommodate rural industrial uses. As LUBA noted in its opinion, within PGE's 862 acre leasehold, 80 acres are dedicated mitigation areas, 60 acres are within the floodplain, 30 acres are developed with a security station and other infrastructure, and 100 acres are dedicated to utility easements and roads. 40 Or LUBA at 176. After deducting those 270 acres, and the 147 acres actively in use by PGE, from the 862 total acres, LUBA concluded that there are, approximately 445 acres remaining in PGE's leasehold available for potential rural industrial development. 40 Or LUBA at 176. Based on that conclusion, LUBA held that, under OAR 660-004-0020(2)(b), the County erred in finding that the remaining 445 acres could not reasonably accommodate rural industrial uses "absent evidence that PGE is categorically unwilling to sublease part or all of its leasehold to other industrial users, or that the leased acreage cannot otherwise be reasonably made available for development through acquisition or termination of the leasehold interest. . . ." 40 Or LUBA at 195.

Building on that information Mackenzie undertook a comprehensive investigation of the availability of acreage within the PGE leasehold.

> "The site is also encumbered by a number of easements for roadways, utilities, drainage facilities, levees, pipelines, and 46 acres of conservation areas, which serve to divide developable areas into smaller sections less conducive to large-scale rural industrial development. See Appendix 1. Together with the security fencing, gates, and other infrastructure, these encumbrances serve as barriers to development."

Mackenzie noted that PGE now operates three power generation facilities, not two, and that the remainder of Port Westward is heavily encumbered by wetlands, conservation easements, transmission lines, necessary buffering and other restrictions to developing sites for the uses proposed by the Port. The third power generation facility has become operational since the Port's original application was submitted to the County, demonstrating that growth is not hypothetical and that PGE in fact intends to utilize its leasehold area. This conclusion is evidenced by the June 16, 2016 letter from PGE to the Port, in which PGE states that it is in fact unwilling to sublease any more of its leasehold. As the letter states:

> "Maintaining and protecting PGE's assets at Port Westward is imperative to the company's current and future operations. Protecting the long-term interests of the electric generation capabilities at the site requires PGE to maintain adequate land buffers around the facilities for security and reliability purposes, *thus restricting third-party use on the 854-acre leasehold*. In addition, it is important to our future operations there is adequate space in our leasehold for building future generating plants. This limits the physical space, location and other related dynamics that might otherwise make the area available to third-parties. Given the company's investment at Port Westward and the critical nature of the site to support reliable electric service, third-party compatibility is a high bar which some proposed industrial facilities in the past could not meet. *Due to this high bar, PGE supports the Port's effort to bring additional industrial land outside the buffer into Port Westward*." (Emphases added).

LUBA previously found that the existence of a Joint Marketing Agreement between the Port and PGE for additional development at Port Westward implies that areas within the PGE leasehold were available for development. 70 Or LUBA at 194. However, as Mackenzie notes in its report, that marketing agreement did not lead to the siting of any additional businesses at Port Westward. In 2007, PGE sent a letter to the Port formally terminating the joint marketing agreement, which by its terms had previously lapsed, and it has not entered into another one with the Port. That letter from PGE is included in Appendix 2 to the Mackenzie Report. Taken together, the two PGE letters

make it clear that, as far as PGE is concerned, future development within its leasehold area by any other user is not feasible.

Outside of the leasehold area, after accounting for all encumbrances and existing uses, Mackenzie identified one small area in the southeast corner of Port Westward. However, Mackenzie determined that that area was insufficient in size to accommodate the approved uses.

> "As evident in Figure 4, there are few developable portions of PWW that are not encumbered by wetlands, conservation easements, power generation facilities, transmissions lines, the ethanol plant, and long-term leases. The southeast corner of the Port's existing PWW property could perhaps provide one last small development site outside PGE's lease area, though, as described below, this would be insufficient to satisfy the overall demand for rural industrial sites and is too small to effectively site one of the five uses proposed by the Port."

Further, that last area has since been contractually committed to another party for development and is no longer available.

As the Port has explained, "Whether that failure [to locate other users within the PGE leasehold] is construed as categorical unwillingness by PGE to sublease acreage, or whether the existing site constraints simply make an otherwise-willing PGE incapable of subleasing acreage, the end result that no additional subtenants have been or can be sited [there] remains the same."

LUBA also held that the mere presence of wetlands was not a sufficient basis for determining that the PGE leasehold is unavailable for rural industrial development under OAR 660-004-0020(2)(b), without first making the requisite findings under OAR 660-004-0020(2)(b)(B) that economic factors made the leasehold unable to reasonably accommodate the rural industrial uses. That regulation provides as follows, in part:

> "Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas."

Mackenzie reviewed the impediment to future development at Port Westward, in light of the allowance for considering economic factors in determining whether existing acreage at the Port could accommodate the uses proposed by the Port. Even assuming that sufficient acreage would be available, Mackenzie concluded that such economic factors would not allow for development at Port Westward without taking an exception to Goal 3 for additional acreage unencumbered by wetlands concluding:

> "After deducting the approximately 40 acres of wetlands that lie within conservation easements, filling the remaining 439 acres of wetlands to create developable area would require at least 658 acres of land, which is not feasible within the boundaries of the existing PWW exception area. Significantly, wetland mitigation costs serve as a nearly-insurmountable hurdle to utilization of the remaining acreage at PWW, as wetland creation costs run on the order of $77,000-$82,000 per acre. Filling the wetland acreage noted above, and acquiring the requisite mitigation acreage, would cost on the order of $50 million above and beyond the acquisition costs—assuming that the Corps and DSL granted authorization to fill the wetlands." (Internal citation omitted).

Therefore, presuming that those areas encumbered by wetlands could somehow be made available (contrary to PGE's representations and Mackenzie's conclusion that those areas are in fact not available), Mackenzie nevertheless determined that the economic barriers to developing those wetlands would be insurmountable.

The "undeveloped" land in the western and southern portions of the existing Port Westward property are in fact encumbered both by wetlands and by the PGE lease, as illustrated in Figure 4 of the Mackenzie Report. The Port has provided substantial evidence that it is economically infeasible to fill this large volume of wetlands, in addition to the fact that PGE's has provided a letter stating that the Port should consider the undeveloped portion of PGE's leasehold unavailable for siting additional tenants. Accordingly, there is no available acreage at the existing Port Westward exception area, either inside or outside of the PGE leasehold.

Other Alternative Sites

LUBA remanded the County's decision regarding its analysis of alternative sites other than the PGE leasehold under OAR 660-004-0020(2)(b). As explained above, the rule requires findings that the "areas that do not require a new exception cannot reasonably accommodate the [approved] use[s]." LUBA concluded that doing such an analysis authorizing all potential uses allowed in the RIPD zone, combined with justification of three separate reasons for taking the exception to Goal 3 for all of those uses, made undertaking an alternative sites analysis for those sites impossibly complicated. 40 Or LUBA at 197-98. As LUBA explained, "[I]f the county had limited the proposed uses to port-dependent uses that require deep-water access, then the county could easily reject alternative sites that do not provide deep-water access." *Id*. at 198 (2014).

In response, the approved uses have been narrowed down to five specific uses that are each port-dependent, and that also is limited one reason under OAR 660-004-0022(3)(a) justifying the exception, the deepwater port at Port Westward.

LUBA also found that the County's decision did not adequately establish that other alternative sites cannot accommodate the entire scope of rural industrial uses (as conditionally allowed in the RIPD zone and as justified by all three OAR 660-004-0022(3) "reasons" originally put forward), on the basis that no alternative site is large enough to accommodate in one place the multiple large-lot industrial uses that proposed exception area could accommodate. LUBA reasoned that "if one or more alternative sites can reasonably accommodate one or more of the proposed large lot industrial uses, then the county cannot reject such sites solely on the basis that they cannot provide 837 acres for multiple large lot uses at a single location." 40 Or LUBA at 198.

However, the approval on remand is now limited to five uses that are, as explained above and detailed in the Mackenzie Report, highly dependent on the deepwater port at Port Westward under the justification provided under OAR 660-004-0020(3)(a). Therefore, the exception, as approved, obviates the need to look at scattered large lot sites that are not located in close proximity deepwater ports with existing dock facilities.

The Mackenzie Report undertook an assessment of alternative sites that potentially meet those criteria. It first assesses other Port of St. Helens properties ostensibly available for the kinds of uses proposed by the Port. However, because none of the other sites currently have deepwater access or related dock facilities, Mackenzie concludes that none of the Port's other sites provide viable alternatives.

Next, in the report Mackenzie examines the state's other public deepwater ports, with a particular focus on those deepwater ports along the M-84 Marine Highway/Columbia River corridor with deepwater access (the Port of Astoria and the Port of Portland).

Port of Astoria

As detailed in the Mackenzie Report, the Port of Astoria has deepwater facilities, but lacks sufficient available land for the kinds of uses proposed by the Port. The Port of Astoria is divided into two areas, the Central Waterfront and Tongue Point. The Central Waterfront is fully occupied and has no vacant land. Tongue Point itself is divided into two distinct areas, North Tongue Point and South Tongue Point.

North Tongue Point is 34 acres in its entirety. The northern 19 acre portion is partially occupied by tenants, and has some developed smaller warehouse space available for lease. However, none of the Port's proposed uses could be sited at those available spaces because of their small sizes. The southern portion is a vacant parcel, but is only 15 acres in size and thus is insufficient to site the kinds of uses proposed by the Port. In addition, a landfill was discovered on the site containing heavy metals and PCBs exceeding acceptable levels. Together with the insufficient acreage, the

environmental contamination presents an economic obstacle that makes development infeasible, as detailed in the Mackenzie Report.

South Tongue Point consists of four parcels totaling approximately 137 acres, three owned by the Oregon Department of State Lands (DSL), and one owned by the U.S. Army Corps of Engineers. However, according to the Mackenzie Report, Clatsop Community College has a purchase-and-sale agreement in place and is in the process of acquiring the three DSL parcels for its own use, and the U.S. Army's Joint Base Lewis-McChord is actively pursuing repurposing the Army Corps of Engineers' property for an Army training facility.

In light of the insufficient acreage, and in context of the other factors, the record establishes that there is no acreage at the Port of Astoria considered available for siting the Port's proposed uses.

Port of Portland

The Mackenzie Report next examines the availability at the Port of Portland for the Port's proposed uses. The report notes that the Port of Portland recently (2013) pursued the development of additional port facilities at West Hayden Island, but that that pursuit was halted after the Port of Portland determined that the obstacles to development were insurmountable and withdrew its annexation proposal from the City of Portland. A letter from the Port of Portland to the City of Portland explaining that decision is appended to the Mackenzie Report. *See* Appendix 5 to the Mackenzie Report. In detailing the letter, the Mackenzie Report provides the following:

> "In the letter, the Executive Director states that '[T]he [Portland] Planning and Sustainability Commission (PSC) has recommended annexation, but on terms that render the development of the 300 acre marine terminal parcel impossible.' The letter also states, 'From our conversation, I understand that you believe the Council is unwilling to take action on a modified proposal. Based upon your assessment that the Council's policy choice is to not bring forward a package that is viable in the market, the Port will not continue with the annexation process at this time and withdraws its consent to annexation' and '[t]he city, unfortunately, will now have to deal with the consequences of a severe shortfall in industrial land.'"

The letter elsewhere explains that, given the regulatory burdens West Hayden Island faces, development will be economically infeasible. As the Executive Director explains, "The Port is enterprise funded: only 4 percent of our revenues come from taxes. Any development at WHI must meet basic, sustainable market requirements. The PSC recommendations put the development cost of the property at about double its value in the market."

Further, as the Executive Director makes clear, it is not only the local regulations that make development of West Hayden Island infeasible:

> "Furthermore, the PSC recommendations exceed what is required by Goal 5 by obligating us to go back at the time of development for further review for any docks or other in water development that would be integral to the development of a water dependent use (on top of the lengthy and contentious, federal and state permitting processes). This type of approach does not give us any assurance that we'll have the opportunity to actually develop the property once annexation occurs."

Mackenzie noted that West Hayden Island is completely undeveloped and lacks any infrastructure at all, including deepwater access or related dock facilities. As highlighted in the Port of Portland's letter, dredging for deepwater access and the installation of dock facilities would require "lengthy and contentious, federal and state permitting processes." The 2014 Regional Industrial Site Readiness Inventory Update (the Inventory Update), prepared by Mackenzie on behalf of Business Oregon, Metro, NAIOP – Commercial Real Estate Development Association Oregon Chapter, the Oregon Department of Land Conservation and Development, and the Port of Portland, estimates that West Hayden Island is at least seven years away from site readiness for the kinds of uses proposed from the Port, and states that that clock would not start running until after the Port of Portland and the City of Portland re-engaged and successfully navigated the legislative process for developing the area. As stated in the Inventory Update:

> ". . . West Hayden Island . . . is inside the UGB but subject to a lengthy planning and annexation process that is likely to include significant mitigation requirements. If approved for development, the West Hayden Island site is at least seven years away from readiness due to permits, mitigation, and infrastructure requirements."

Thus West Hayden Island does not present a viable alternative to Port Westward, because it lacks the deepwater access, the very reason the Port advances under OAR 660-004-0022(3)(a) for taking an exception to Goal 3, as well as any infrastructure whatsoever. Accordingly, the Mackenzie Report concludes that West Hayden Island is not economically or practically feasible as an alternative for siting the uses proposed by the Port. Because the remainder of the Port of Portland's facilities are built out and occupied, the Mackenzie Report concludes that the Port of Portland is not a viable alternative.

In addition to finding Hayden Island unavailable for multiple reasons, including but not limited to the lack of deepwater access, infrastructure or political will, the Mackenzie Report found the remainder of the Port of Portland's facilities that could accommodate the Port's proposed uses to

be built out and occupied, and lacking needed acreage for siting any of the approved uses. Accordingly, the Port of Portland is not a viable alternative.

Non-Columbia River Ports

Port of Coos Bay

Regarding the non-Columbia River/M-84 corridor ports, the Mackenzie Report first addresses the Oregon International Port of Coos Bay. It notes that it is 200 nautical miles from the mouth of the Columbia River, does not serve M-84/Columbia River corridor commerce and is 230 road miles from the Portland metropolitan area. The Mackenzie Report also specifically discusses the fact that that over 60% of Oregon's manufacturing, warehousing, and transportation-based economy is located along the Columbia River Corridor. For commerce beyond Oregon, the confluence of national or regional waterways (Columbia River/M-84), freeways (I-5, I-84), and rail networks (Union Pacific and BNSF Class I rail lines) occurs at the metro area only 50 miles from Port Westward but, as noted, is 230 road miles from Coos Bay. Based on that, the properties in Coos Bay are not economically comparable to Port Westward to serve the Columbia River Corridor economy and so the Oregon International Port of Coos Bay is not a viable alternative for the approved uses.

Port of Newport

The Mackenzie Report finds that the Port of Newport does not provide a viable alternative, noting among other things that it does not serve Columbia River/M-84 corridor commerce. Based on the same reasoning provided for Coos Bay, the Port of Newport is not a viable alternative.

Port of Tillamook

The Mackenzie Report similarly finds Port of Tillamook is not a viable alternative, noting that, in addition to not serving Columbia River/M-84 corridor commerce, the Port of Tillamook entirely lacks maritime access. Based on that fact, and on the same reasoning eliminating Coos Bay and Newport from consideration, the Port of Tillamook is not a viable alternative.

Other Sites Considered

Finally, the Mackenzie Report addresses other potential alternative sites that were previously raised, both public and non-public, noting that the viability of each site is impacted by the Port's modification of its application to limit the reason put forward to justify the exception to the deepwater port and existing dock facilities at Port Westward as a "unique resource" under OAR 660-004-0022(3)(a). The Mackenzie Report addresses those raised alternatives, noting that none

provide deepwater access or existing dock facilities, and the report therefore concludes that none are viable alternatives.

Non-Deepwater Sites

The North Coast Business Park, East Skipanon Peninsula, Wasser-Williams Site, Port of the Dalles and Port of Klickitat have all been raised by opponents as potential alternative sites. However, they are not viable alternatives because they all lack deepwater access. In addition, as explained below the Port of Klickitat is not an Oregon port and is not subject to Oregon's Statewide Planning Goals.

Out-of-State Sites

Opponents have raised the Millennium Site in Cowlitz County, Washington as another non-Oregon potential alternative. That site is in a protracted process involving evaluation for the siting of a coal export facility. The materials submitted to the County by the opponents show an intent to site only certain uses because of the limits of the site's aquatic lands lease with the State of Washington that do not encompass the approved uses. The materials submitted also discuss no-action alternatives for industrial development unrelated to deepwater access, and would also not allow the approved uses.

Equally important, as discussed by the Port and as highlighted by the Washington aquatic lands permit application, the OAR 660-004-0020 "reasonable accommodation standard" cannot reasonably be interpreted to apply to out-of-state sites, specifically because no out-of-state sites are subject to Oregon's Statewide Planning Goals at all. As such, none would require an exception under Oregon law. The intent of alternative sites analysis for sites not requiring an exception applies only to sites subject to the Oregon Statewide Planning Goals, meaning only sites located within Oregon. A different interpretation would undermine the intent of the exception process and have disparate application in areas bordering Washington, Idaho and California. Given that conclusion, the Millennium site, as well as all other out-of-state sites raised (including but not limited to the Port of Klickitat and the Waser-Williams Site), are not viable alternatives.

ESEE Analysis

LUBA previously rejected the claim that Columbia County did not make adequate findings that the long term environmental, social, economic, and energy ("ESEE") consequences would not be significantly more adverse than if an exception were taken for different otherwise-available resource lands. LUBA held that the petitioners had not demonstrated other or different findings were required. LUBA noted that the petitioners had not specifically identified and described alternative resource sites with fewer ESEE impacts. 70 Or LUBA at 202. On remand, opponents have raised this issue, although this assignment of error was not sustained by LUBA.

The only additional alternative ESEE sites identified in the record on remand are the Port of the Dalles and the Port of Klickitat, both upstream of the federally maintained deepwater channel in the Columbia River. In addition, opponents contend that those sites would have less adverse impacts because they are surrounded by less productive resource land but do not provide evidence to support that assertion. Further, as discussed above, both ports lack deepwater access and therefore cannot serve to replace Port Westward.

To the extent ESEE Analysis applies to the modified approval, because neither the Port of the Dalles nor the Port of Klickitat are deepwater ports, neither are not appropriate alternatives for ESEE consideration. In addition, the fact that the Port of Klickitat is not an Oregon port and is therefore not viable for consideration under the "reasonable accommodation standard" applicable only to lands Oregon subject to Oregon's Statewide Planning Goals.

4. Compatibility Analysis for the Narrowed Field of Proposed Uses

Under ORS 197.732(2)(c)(D), Goal 2, Part II(c) and OAR 660-004-0020(2)(d), the County is required to make a determination that the proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

OAR 660-004-0020(2)(d) states, in part:

> "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

The rule further explains that "'compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses."

LUBA concluded that, absent the proposal of specific rural industrial uses, it is impossible to make adequate compatibility findings, which is a prerequisite for taking an Exception to Goal 3, stating, "The time to discover whether the proposed use is compatible or can be made compatible with adjacent uses, and therefore qualifies for a goal exception under OAR 660-004-0020(2)(d), is before the local government adopts the comprehensive plan text, map and zoning changes that authorize the proposed use." 40 Or LUBA at 206.

Five specific rural industrial uses have been approved, and therefore the County is accordingly capable of determining, ensuring and maintaining continued compatibility with other adjacent uses, or that the approved uses can be so rendered through measures designed to reduce adverse impacts, thereby ensuring compliance with OAR 660-004-0020(2)(d). As part of the approval of this exception, such measures designed to reduce any adverse impacts have been taken.

Condition 1 of the approval requires Site Design Review and RIPD Use Under Prescribed Conditions applications to be submitted, as required by the CCZO, prior to an application for a building or development for a new use in the new expansion area. Condition 2 imposes a trip cap on the entire exception area of 332 PM peak-hour trips to limit traffic impacts. Condition 3 requires a traffic study for each new use in the expansion area to determine the anticipated number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. The traffic analysis required will identify impacts on passenger and truck traffic, ensure compliance with the trip cap imposed, and require improvements to county roadways as needed.

In addition, Condition 4 specifically provides requirements tailored to address potential compatibility issues. The condition explicitly addresses compatibility concerns with adjoining agricultural uses by requiring: evaluations of threatened and endangered species as required by law, maintenance of natural resource features, buffers and screening for any development adjacent to land zoned PA-80, and the maintenance of undeveloped areas in their natural state if not developed. Condition 4 also requires dust suppression and water run-off controls to be implemented, and that any conditional applications include agricultural impact assessment reports for adjacent agricultural uses, by which applicants must demonstrate ongoing compatibility, identify potential impacts and, if necessary, implement a mitigation plan to maintain compatibility. The condition also requires submission of a rail plan to ensure consistency with applicable law and identification of potential mitigation measures.

The approval conditions further require future Port tenants to adopt a plan, and institute a program consistent with the plan, establishing baseline measurements for contaminates at the expansion area and down-gradient and assuring that any future industrial wastewater discharges are treated to prevent pollution. They also require future Port tenants to prepare response and clean-up plans in the event of a hazardous material spill, involving appropriate government agencies and private companies specializing in such clean-up activities. The conditions prohibit any uses related to the storage, loading or unloading of coal. These measures are sufficient to maintain compatibility with adjacent uses.

Opponents have argued generally that the approved uses are so broad as to prohibit maintaining such compatibility, but have not explained how compatibility is not adequately maintained between one or more of those approved uses. Under ORS 197.732(1)(a) and OAR 660-004-0020(2)(d) "compatible" as a term "is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." The County has received no substantive evidence in the record of any meaningful distinction between the anticipated impacts of the approved uses and those of existing industrial uses at Port Westward on neighboring uses, and therefore finds that the approved uses will be similarly compatible with existing adjacent uses.

The substantial evidence in the record establishes that there is existing and ongoing compatibility between neighboring industrial and agricultural uses at Port Westward. This body of record

evidence supports a conclusion that current and future uses are and will be able to successfully maintain compatibility.

The record also contains information from the National Levee Database showing that the dike surrounding the Port Westward area currently has a rating of "minimally acceptable" from the Army Corps of Engineers, and that such a maintenance rating is consistent with the majority of federally built and privately maintained levees in Columbia and Multnomah Counties.

The Oregon Department of Agriculture submitted a letter into the raising questions about four potential compatibility issues: potential dust creation; water quality impacts; the ability of area farmers to move their equipment on area roads; and the potential impact on underground agricultural infrastructure. Under state law the approved uses must be compatible with other adjacent uses or "so rendered through measures designed to reduce adverse impacts." As the applicable statutes and administrative rules explain, however: "'Compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." ORS 197.732(1)(a), OAR 660-004-0020(2)(d).

The approval conditions explicitly address each of these concerns. Condition 4(e) imposes a requirement that adequate measures be taken to control dust, including the use of hard surfaces and dust suppression. Condition 4(f) requires control and containment of site-run off and containment or other adequate treatment of any harmful sediment prior to release off of the new expansion area to prevent or adequately mitigate potential impacts to irrigation equipment and area ground and surface water quality. Condition 4(g) requires monitoring water tables and sloughs for water quality and elevations to ensure that area water is maintained for existing uses. Condition 2 imposes a trip cap of 332 PM peak-hour trips for the entire new expansion area, and a new traffic impact analysis required prior to any development after that number of trips is reached that includes recommendations consistent with state law requirements. Condition 3 requires individual traffic studies for each proposed use in the new expansion area to determine trips generated, travel routes, identify impacts and require improvements in relation to the identified impacts. In addition, the information collected under Condition 3 would monitor traffic levels to ensure compliance with the trip cap imposed via Condition 2. The Board also notes that both the Port's traffic engineer and the regional ODOT representative have submitted letters into the record discussing projected traffic levels, and both concur that the proposal would not cause a significant effect on the surrounding transportation system.

Significantly, from feedback received through the hearing process, Staff recommended and the Board included two additional conditions aimed directly at addressing potential compatibility concerns. Condition 7 requires the development and implementation of a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for contaminates at the new expansion area, and down-gradient. The stated intent of the condition is to protect against pollution of the watershed environment and as an early detection system for any

leaking tanks in the new expansion area. Further, Condition 8 preemptively requires a response and clean-up plan to be in the event of any hazardous material spill. The condition requires identification of appropriate governmental agencies and private companies to be involved in such a clean-up activity.

Regarding underground irrigation and/or drainage infrastructure, the conditions outlined above, and specifically Conditions 4(f), 4(g), 7 and 8 are specifically targeted toward and will effectively ensure compatibility with adjacent uses, including agricultural uses utilizing irrigation and drainage infrastructure, including underground infrastructure. The record establishes that there are several existing active industrial uses currently operating within the original exception area, and adjacent to agricultural uses. With the conditions imposed, the approved uses sited in the Expansion Area will be compatible with the adjacent agricultural uses.

In response to LUBA's conclusion, the Port has narrowed the scope of its proposed rural industrial uses to the five discussed above, so as to allow for an adequate compatibility analysis for the proposed uses consistent with the requirements of OAR 660-004-0020(2)(d) and LUBA's holding.

Transportation Analysis

Notwithstanding LUBA's prior holding, opponents have claimed that potential rail use impacts to other transportation facilities must be assessed. However, no function classification, performance standards or other benchmarks in the County's Comprehensive Plan, TSP or anywhere else are applicable to this application addressing rail impacts. The contention has been previously considered and rejected by LUBA:

> "A railroad is a 'transportation facility' as defined at OAR 660-012-0005(3) and pursuant to OAR 660-012-0020 a local government transportation system plan (TSP) must include a planning element for railroads. However, nothing in OAR 660-012-0020 or elsewhere cited to our attention requires local governments to adopt either functional classifications or performance standards for railroads. OAR 660-012-0060(1)(a)-(c) defines 'significantly affect' in six different ways. Each of the six ways to 'significantly affect' a transportation facility under OAR 660-012-0060(a)-(c) relates to either a change or inconsistency with a functional classification, or a degradation of a performance standard.
>
> In the present case, [opponents do] not identify any functional classification or performance standard in the county's TSP or elsewhere that applies to railroads within the county. Therefore, [opponents'] arguments under OAR 660-012-0060 do not provide a basis for reversal or remand. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006) (arguments that an amendment 'significantly affects' the Columbia River as a 'transportation facility' fail under OAR 660-012-0060(1) where the petitioner identifies no functional classification

> or performance standard in the TSP that is applicable to the river); *Gunderson LLC v. City of Portland*, 62 Or LUBA 403, 414, *aff'd in part, rev'd in part on other grounds*, 243 Or App 612, 259 P3d 1007 (2011), *aff'd* 352 Or 648, 290 P3d 803 (2012) (city's Freight Master Plan does not provide performance measures for the Willamette River for purposes of OAR 660-012-0060(1))." 70 Or LUBA at 208-209.

Opponents reference the 2009 Lower Columbia River Rail Corridor/ Rail Safety Study to support their argument. That study, however, does not impose such functional classifications or performance standards that would apply to this application. Because no such applicable functional classifications or performance standards have been identified, that argument is unsupported. Nevertheless, potential rail impacts are addressed through Condition 4(h) of the approval, which provides:

> "Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property, impact on the County's transportation system, and proposed mitigation."

Development proposals are thereby required to include a rail plan that will address impacts and propose measures to mitigate any identified impact, that concerns raised involving rail impacts will be specifically identified and addressed, and that the County will be able to confirm that these requirements are satisfied.

Regarding the possible construction of a rail spur in the expansion area, and concerns that the area cannot accommodate such improvements, the exception granted does not propose the construction of a specific rail spur. Any future developer wishing to construct such a rail spur would undertake the necessary studies and permitting as part of development. Similar to road improvements needed to accommodate users' needs, rail transportation needs (including any potential improvements within the expansion area) will be properly identified and addressed at the time of development.

E. Conclusion

Based on the evidence contained in the record and in particular the analysis provided in the technical report produced by Mackenzie, the Port of St. Helens has demonstrated compliance with all applicable laws and regulations for taking an exception to Goal 3 and rezoning the Port Westward Expansion area from PA-80 to RIPD. The uses proposed are rural in nature, are significantly dependent on close proximity to a deepwater port, and are (or can be rendered compatible) with adjacent uses. As evidenced by the analysis contained in the record, including that provided by the Mackenzie Report, there are no viable alternative sites available for the Port's

proposed uses, and therefore an exception to Goal 3 is justified for the expansion of Port Westward, with the following requirements imposed as conditions of approval:

1) Prior to an application for a building or development for a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.

2) To ensure adequate transportation operation, proposed developments and expansions requiring site design review or Use Under Prescribed Conditions shall not produce more than 332 PM peak-hour trips for the entire subject property without conducting a new Traffic Impact Analysis ("TIA") with recommendations for operational or safety mitigation consistent with the Oregon Transportation Planning Rule 660-012-0060.

3) A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.

4) To ensure compatibility with adjoining agricultural uses, the applicant/developer of new industrial uses shall comply with the following:

    a. The habitat of threatened and endangered species shall be evaluated and protected as required by law.

    b. Alterations of important natural features, including placement of structures, shall maintain the overall values of the feature.

    c. All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses on PA-80 zoned land, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.

    d. When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.

    e. Controls, including suppression and requiring hard surfaces, shall be employed as needed to be determined by the County to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.

f. Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.

g. The industrial use impact on the water table and sloughs shall be monitored for water quality and surface water elevations to ensure that the area water can be maintained and managed for existing uses.

h. Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property and impacts to rail movements, safety, noise or other identified impacts along the rail corridor supporting the County's transportation system. The plan shall propose mitigation to identified impacts.

i. Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.

5) The types of industrial uses for the subject Plan Amendment shall be limited to only those uses that are substantially dependent on a deepwater port and have demonstrated access rights to the dock, and those uses with employment densities, public facilities and activities justified in the exception, specifically:

a. Forestry and wood processing, production, storage, and transportation;
b. Dry bulk commodities transfer, storage, production, and processing;
c. Liquid bulk commodities processing, storage, and transportation;
d. Natural gas and derivative products, processing, storage, and transportation; and
e. Breakbulk storage, transportation, and processing.

6) The storage, loading and unloading of coal is specifically not justified in this exception. Such uses shall not be allowed on the subject property without a separate approved exception to Goal 3.

7) The Port (applicant) shall institute a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for a range of contaminates at the re-zone site and down-gradient. The program should be designed and managed for assurance that future industrial wastewater discharges are treated to prevent pollution to the watershed environment. The program shall be designed to detect leaking tanks.

8) The Port (applicant) shall prepare a response plan and clean-up plan for a hazardous material spill event. The plan shall include appropriate government agencies and private companies engaged in such clean-up activities.

Date: 19 January 2018 To: Columbia County Board of Commissioners

From: Della Fawcett, Coordinator

Subj: Recommendation for Membership Appointment, Homeland Security Emergency Management Commission

Commissioners –

Please find attached the Homeland Security Emergency Management Commission (HSEMC) recommendations for membership appointment for 2018. These recommendations were made during the 9 January 2018 regular HSEMC meeting. We are recommending four new appointments to the HSEMC, and seven re-appointments. We currently have three vacant positions we are actively working to fill for 2018.

Please contact me if you have any questions regarding these appointments.

Thank you,

Della Fawcett

Resilience and Community Preparedness Coordinator

Columbia County Office of Emergency Management
230 Strand St
Saint Helens OR 97051

Recommendation for Membership Appointment – January 9, 2018
Homeland Security Emergency Management Commission

Member No.	Discipline/Geographic Group	Member	Alternate	Date Nominated	Term Length	Last Term Expired	New Term Expires
1	Port of St. Helens	Sean Clark	(1) Doug Hayes	1.10.17	1 year	12.31.16	12.31.19
2	Law Enforcement	Mike McGlothlin	Norm Miller	1.10.16	2 years	12.31.16	12.31.18
3	Fire/EMS	(3) Ian O'Connor ✓	(3) Mike Greisen	1.13.15	3 years	12.31.17	12.31.17
4	Columbia 9-1-1	(1) Trish Hilsinger ✓	VACANT	1.10.17	1 year	12.31.16	12.31.19
5	Utilities	Pat LaPointe	Bob Perry	1.10.17	2 years	12.31.16	12.31.18
6	North County Cities (Rainier, Clatskanie, Prescott)	(3) Jeff VanNatta (Vice Chair) ✓	(3) Greg Hinkleman	1.13.15	3 years	12.31.17	12.31.17
7	South County Cities (Columbia City, St. Helens, Scappoose)	Leahnette Rivers	(1) Robert Johnston	1.10.17	1 year	12.31.16	12.31.19
8	Mid County Cities (Vernonia, Mist)	Dave Crawford	Dan Brown	1.10.17	2 years	12.31.16	12.31.18
9	Public Health/Mental Health	(3) Anne Parrott ✓	VACANT	1.13.15	3 years	12.31.17	12.31.17
10	Industry	John Bob	VACANT	1.10.17	1 year	12.31.16	12.31.19
11	At Large, Position 1	Kelly Niles (Chair)	Diane Dillard	1.10.17	2 years	12.31.16	12.31.18
12	At Large, Position 2	(3) Lonny Welter ✓	Casey Wheeler	1.13.15	3 years	12.31.17	12.31.17
13	Schools	Scot Stockwell	Michael Carter	1.10.17	1 year	12.31.16	12.31.19
Ex-officio Members	County Commissioners	Margaret Magruder, Alex Tardif, Henry Heimuller					
	County Emergency Management	Steve Pegram, Shaun Brown, Della Fawcett					

The names written in RED above are being recommended to the Board of Commissioners for appointment to the Homeland Security Emergency Management Commission. Names in Blue are being recommended for re-appointment.

BOARD COMMUNICATION

FROM THE LAND DEVELOPMENT SERVICES DEPARTMENT
MEETING DATE: **February 7, 2018 Regular Meeting * CONSENT***

TO: **BOARD OF COUNTY COMMISSIONERS**

FROM: Todd Dugdale, Director of Land Development Services

SUBJECT: **SOLID WASTE ADVISORY COMMITTEE**

- appoint Herb Bailey as Industry Rep.

DATE: February 1, 2018

SUMMARY:

Waste Connections SWAC member Ernie Martin has left his position with Waste Connections, Herb Bailey as of January 2, 2018 is the site manager for the Columbia County Transfer Station. The SWAC recommends that Herb Bailey be appointed to the SWAC as Waste Connections Industry Representative with his term running an additional three (3) years, through December 31, 2020.

SUGGESTED MOTION:
I move to appoint the following members to the Solid Waste Advisory Committee with terms to expire on December 31, 2020:
Herb Bailey as an Industry Representative

CC: Kathy Boutin-Pasterz, Solid Waste Program Coordinator, Columbia County Counsel

Attachment: current Columbia County Solid Waste Advisory Roster

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Petition by C&P Investments to Name a New Private Road, located off of Shady Way near Scappoose, Oregon, "Sandy Point Way"	ORDER NO. 5-2018

WHEREAS, the Columbia County Board of Commissioners can name a private road if citizens so request, and if the Director of the County Land Development Services Department determines that under the circumstances, naming the private road would serve the interest of the public and be beneficial to the County; and

WHEREAS, on December 15, 2017, Mark Comfort of C&P Investments submitted a petition to name a new private road off of Shady Way near Scappoose, Oregon, "Sandy Point Way"; and

WHEREAS, the new private road serves three properties known as Tax Map ID Numbers 4314-D0-00700, and 4314-D0-00901; and

WHEREAS, the Director of Land Development Services has determined that the petition meets the criteria set forth in Ordinance No. 81-6 (Rural Addressing Ordinance), Section 7.04, as amended, regarding the naming of private roads and recommends petitioner's second choice, "Sandy Point Way." The Director's recommendation is attached hereto as Exhibit A and is incorporated herein by this reference.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS HEREBY ORDERS that the new private road serving the property known as Tax Map ID Nos. 4314-D0-00700, and 4314-D0-00901 shall be named "Sandy Point Way."

Dated this ___ day of _____, 2018

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Margaret Magruder, Chair

Approved as to Form

By: _____
Henry Heimuller, Commissioner

By: _____
Office of County Counsel

By: _____
Alex Tardif, Commissioner

BOARD COMMUNICATION

FROM THE LAND DEVELOPMENT SERVICES DEPARTMENT
MEETING DATE: **January 31, 2018 Board/Staff Meeting**

TO: **BOARD OF COUNTY COMMISSIONERS**

FROM: Todd Dugdale, Director of Land Development Services

SUBJECT: Road Naming: Private Road Off Of Shady Way in Scappoose Area

DATE: January 18, 2017

SUMMARY:

C + P Investments originally submitted an application to name a private road located off of Shady Way in the Scappoose area. Presently there are two owners that will be served by this newly created road ; however, the owner has been approved for a partition (MP 17-01), for a total of at least three (3) parcels to be served by this road. The proposed names in this application were "Sandy Point", "Sandy Drive" and "Sandy Road". On June 22, 2017 the Columbia County Cartographer submitted comments stating, "*FYI... there is already a Sandy Ln in Rainier if you are interested in eliminating duplicates within the County.*" Also, the GIS Specialist for Columbia 911 commented, "*There is a Sandy Ln in Rainier. Having another Sandy in Scappoose could be problematic. Often 911 callers will incorrectly identify street, lane, avenue, etc. it is possible emergency response could go to Rainier instead of the Scappoose Sandy Road.*" Staff recommended that the applicant modify their request to name this private road.

On December 15, 2017 Mark Comfort, of C + P Investments, submitted a modified application(Attachment 1) with a 1st choice, **Sandy Point Lane**; a 2nd choice, **Sandy Point Way**, and a 3d choice, **Sandy Point Road**, for the subject new road off Shady Way in the Scappoose area.

FINDINGS:

The proposed application for a road name meets criteria set forth in Section VII, Road Names, of Ordinance 81-6 as amended; specifically Subsection 7.04 regarding the naming of private roads.

The Road Master, LDS staff, the Scappoose Rural Fire District have reviewed the applicant's modified 1st through 3rd choices. The Road Master submitted comments dated December 22, 2017 and stated that, the applicant's 3d choice, *"Sandy Point Road is NOT OK. We reserve "Road" for County maintained roads"*. The Road Department found no conflicting names with the applicant's 1st choice, Sandy Point Lane, nor his 2nd choice, Sandy Point Way. However, as noted above, the Cartographer and GIS Specialist commented on possible confusion for 911 and emergency responders between the applicant's 1st choice, Sandy Point Lane, with Sandy Lane in Rainier.

ATTACHMENTS:

1. **Application**
2. **Referral And Acknowledgments**
3. **Board Order**

RECOMMENDATION:

Staff Recommendation:
Based on the above findings, Staff recommends that the subject private road be named the applicant's 2nd choice, **"Sandy Point Way"**.

Road 16

EXHIBIT A

COLUMBIA COUNTY

LAND DEVELOPMENT SERVICES

Columbia County Courthouse ✦ St. Helens, Oregon 97051 ✦ (503) 397-1501 ✦ Fax: (503) 366-3902

APPLICATION TO NAME / RENAME A ROAD

Applicant Name: C&P INVESTMENTS	Date of Application: DEC 15, 2017
Mailing Address: POB 321	Applicant Signature: [signature]
City, Zip: VERNONIA, OR 97064	Phone Number: 503-396-0271

Township, Range, Section(s): T4N R3W SEC 14

General Location: INTERSECTION WITH SNAOY WAY

Current Road Name: *(If any)*

Proposed Names: *(Please list three)*
1st Choice: SANDY POINT LANE
2nd Choice: SANDY POINT WAY
3rd Choice: SANDY POINT ROAD

Reason for Name Change: PROPOSED PARTITION MP 17-01

Affected Properties: *(Attached additional page if necessary)*

Owner Name (Print): ALLISON CECIL C.	Address: 57201 SNAOY WAY, SCAPPOOSE
Signature: [signature]	Tax Account #: 28629
Owner Name (Print): C&P INVESTMENTS,	Address: POB 321 VERNONIA, OR 97064
Signature: [signature] C&P INC	Tax Account #
Owner Name (Print)	Address
Signature	Tax Account #
Owner Name (Print)	Address
Signature	Tax Account #

Applicant: Please return completed application to Land Development Services.

For Office Use Only

Date Rec'd_____ Receipt #_____ Check #_____ Staff Member_____

4314-0-2602

EXHIBIT A

THIS SIDE FOR OFFICIAL USE ONLY

REFERRAL AND ACKNOWLEDGMENT

To:

- ☐ City of _____ (*if inside UGB*)
- ☒ Columbia 911
- ☒ County Roadmaster
- ☒ Fire District (Name: Scappoose)
- ☒ Post Office (City: _____)
- ☒ Cartography
- ☐ Electric Utility _____

Planner: Hayden Richardson

Date Mailed: 12-18-17 **Reply by:** 1-2-18

This Application to Name/Rename a Road is being referred to you for your information and comment. Your recommendation and suggestions will be used by the County Planning Department and/or the Columbia County Board of Commissioners in arriving at a decision. Your prompt reply will help us to process this application and will ensure the inclusion of your recommendations in the decision making process. Please comment below.

1. _____We have reviewed the enclosed application and have no objection to its approval as submitted
   We recommend Choice #_____.

2. _____Please see our comments below.

3. _____We are considering the proposal further, and will have comments to you by _____.

4. _____Our board must meet to consider this; we will return their comments to you by _____.

5. _____Please contact our office so we may discuss this.

6. _____We recommend denial of the application, for the reasons below:

COMMENTS:_____

_____

_____

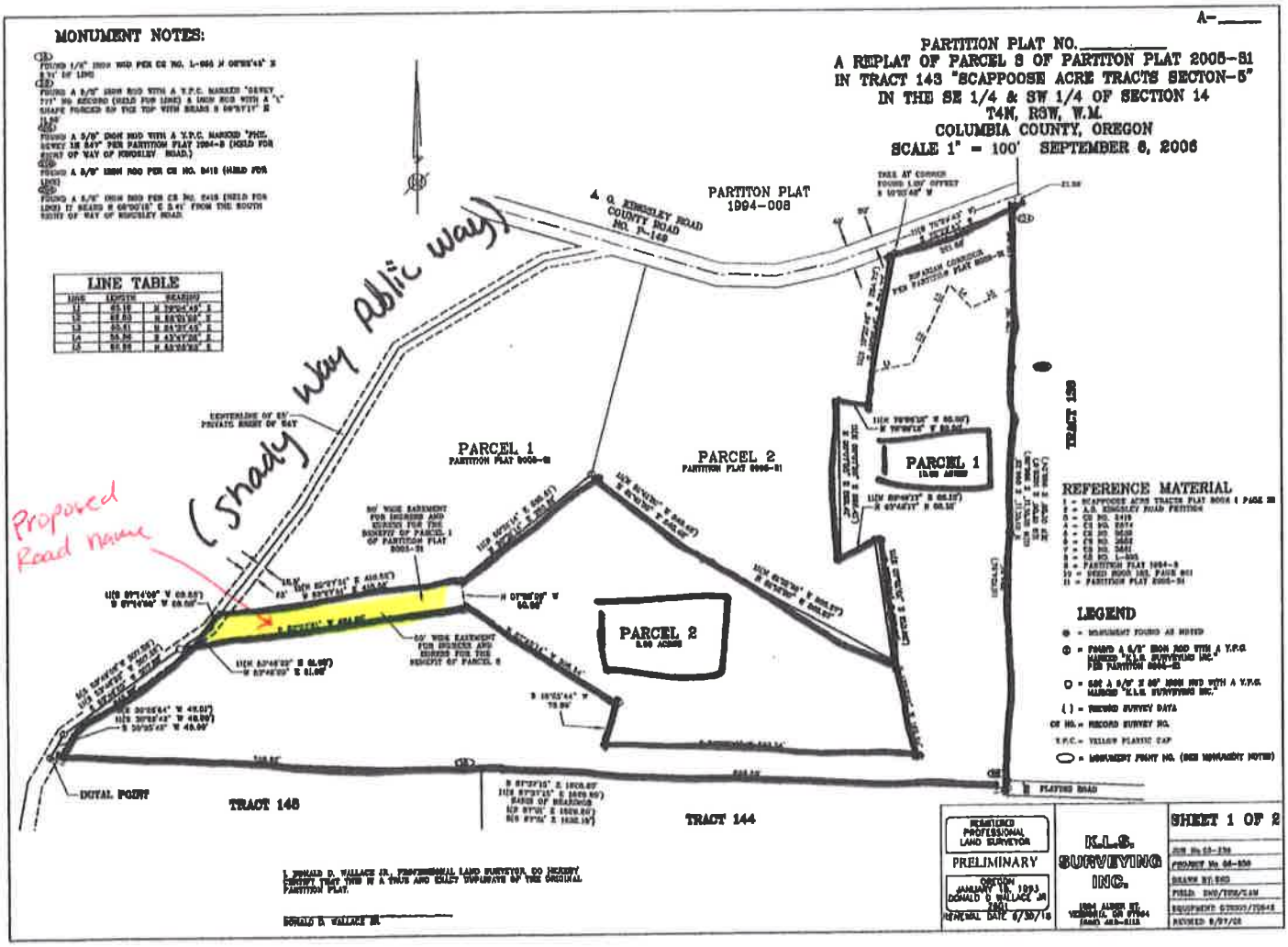
Signed:_____

Title:_____ Date:_____

Agency: Please return completed Referral and Acknowledgment to Land Development Services.

Revised 2 parcel Partition M.P.
M.P. 1701

EXHIBIT A



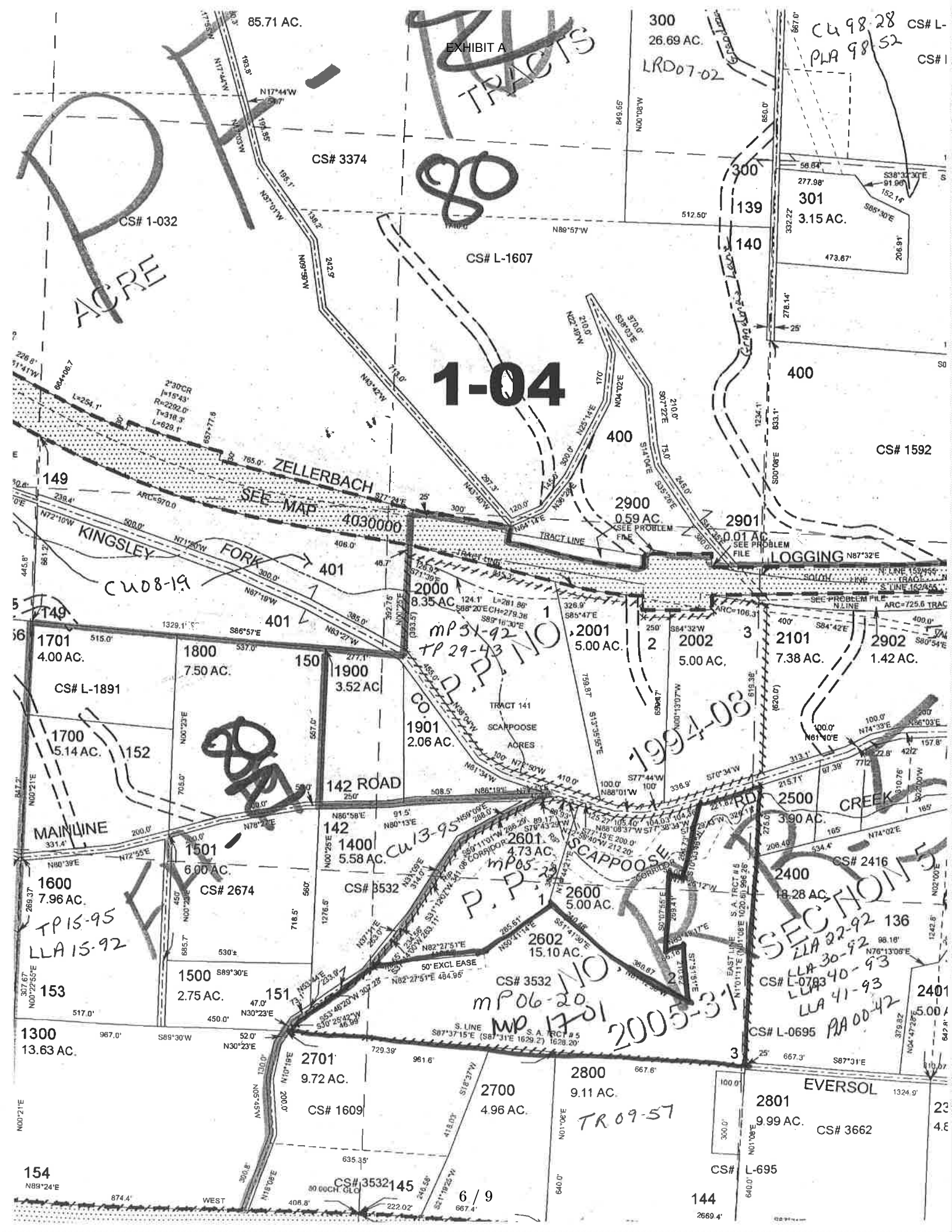


EXHIBIT A
1-04
CU 98-28
PLA 98-52
LRD07-02
CU08-19
MP 31-92
TP 29-93
CU13-95
MP05-25
MP06-20
MP 17-01
2005-31
1994-03
TP15-95
LLA 15-92
LLA 22-92
LLA 30-92
LLA 40-93
LLA 41-93
PLA 00-42
TR 09-57
CS# 3374
CS# 1-032
CS# L-1607
CS# 1592
CS# L-1891
CS# 2674
CS# 3532
CS# 1609
CS# L-0783
CS# L-0695
CS# 2416
CS# 3662
ZELLERBACH
KINGSLEY FORK
SEE MAP 4030000
LOGGING
MAINLINE
142 ROAD
SCAPPOOSE CREEK RD
SCAPPOOSE CORRIDOR
TRACT 141 SCAPPOOSE ACRES
EVERSOL
85.71 AC.
26.69 AC.
3.15 AC.
0.59 AC.
0.01 AC.
8.35 AC.
5.00 AC.
7.38 AC.
1.42 AC.
4.00 AC.
7.50 AC.
3.52 AC
5.14 AC.
2.06 AC.
4.73 AC.
3.90 AC.
6.00 AC.
7.96 AC.
5.58 AC.
18.28 AC.
5.00 AC.
15.10 AC.
2.75 AC.
13.63 AC.
9.72 AC.
4.96 AC.
9.11 AC.
9.99 AC.
6 / 9

ROAD 16 Map

Columbia County

1854

Oregon

GeoMoose

Columbia County Web Maps

Disclaimer: *This map was produced using Columbia County GIS data. The GIS data is maintained by the County to support its governmental activities and is subject to change without notice. This map should not be used for survey or engineering purposes. Columbia County assumes no responsibility with regard to the selection, performance or use of information on this map.*

Printed 06/19/2017

EXHIBIT A

EXHIBIT A

Richardson, Hayden <hayden.richardson@co.columbia.or.us>

Road Name

1 message

Welter, Lonny <lonny.welter@co.columbia.or.us> Fri, Dec 22, 2017 at 10:57 AM
To: Hayden Richardson <hayden.richardson@co.columbia.or.us>

Application for Road Name: Applicant C&P Investments.

Choice 1, Sandy Point Lane is OK
Choice 2, Sandy Point Way is OK
Choice 3, Sandy Point Road is NOT OK, we reserve "Road" for County maintained roads.

Sincerely,

Lonny Welter
Transportation Planner
Columbia County Road Department

RECEIVED
DEC 22 2017
Land Development Services

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of the Petition by C+P Investments to Name a New Private Road, located off of Shady Way. near Scappoose, "Sandy Point Way"	))))	ORDER NO. __-_____

WHEREAS, the Columbia County Board of Commissioners can name a private road if citizens so request, and if the Director of the County Land Development Services Department determines that under the circumstances, naming the private road would serve the interest of the public and be beneficial to the County; and

WHEREAS, on December 15, 2017, Mark Comfort, of C+P Investments, submitted a petition to name a new private road off of Shady Way near Scappoose; and

WHEREAS, the new private road services three properties known as Tax Map ID Numbers 4314-D0-00700, 4314-D0-00900, and 4314-D0-00901; and

WHEREAS, the Director of Land Development Services has determined that the petition meets the criteria set forth in Ordinance No. 81-6 (Rural Addressing Ordinance), Section 7.04, as amended, regarding the naming of private roads and recommends petitioner's 2nd choice, "Sandy Point Way." The Director's recommendation is attached hereto as Exhibit A and is incorporated herein by this reference.

NOW THEREFORE, IT IS HEREBY ORDERED that the new private road serving properties known as Tax Map ID Numbers 4314-D0-00700, 4314-D0-00900, and 4314-D0-00901 shall be named "Sandy Point Way."

Dated this ___ day of _____, 20__.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Henry Heimuller, Chair

Approved as to Form

By: _____
Office of County Counsel

By: _____
Margaret Magruder, Commissioner

By: _____
Alex Tardif, Commissioner

OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
HOMELAND SECURITY GRANT PROGRAM
STATE HOMELAND SECURITY PROGRAM
CFDA # 97.067
COLUMBIA COUNTY
$14,870
Grant No: 17-207

This Agreement is made and entered into by and between the **State of Oregon,** acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and **Columbia County,** hereinafter referred to as "Subrecipient," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2017** and ending, unless otherwise terminated or extended, on **June 30, 2018** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

   Exhibit A: **Project Description and Budget**
   Exhibit B: **Federal Requirements and Certifications**
   Exhibit C: **Subcontractor Insurance**
   Exhibit D: **Information required by 2 CFR 200.331(a)**

   In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **$14,870** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2017 State Homeland Security Program (SHSP) grant.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. **Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

a. Performance Reports.

i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2017 State Homeland Security Program.

ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).

iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

i. To receive reimbursement, Subrecipient must submit a signed Request for Reimbursement (RFR), using a form provided by OEM that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.

ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.

iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.

iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant may be used for expenses incurred before or after the Grant Award Period.

6. Disbursement and Recovery of Grant Funds.

a. Disbursement Generally. OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the State Homeland Security Program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at http://www.oregon.gov/oem/emresources/Grants/Pages/HSGP.aspx.

b. Conditions Precedent to Disbursement. OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.

ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.

iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

c. **Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

7. **Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:

a. **Organization and Authority.** Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

b. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. **NIMS Compliance.** By accepting FY 2016 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **Records Maintenance and Access; Audit.**

a. **Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement

and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, sub-recipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

b. Retention of Records. Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

c. Audits.

i. If Subrecipient expends $750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than $ 750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.

ii. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend $750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

a. Subagreements. Subrecipient may enter into agreements (hereafter "subagreements") for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than $150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for

contracts for more than $10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

i. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for $100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than $100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.

ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of $100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of $100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.

iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

b. **Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:

i. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.

ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.

iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.

v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.

vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.

vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.

viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.

ix. Subrecipient shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.

c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

10. Termination

a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:

i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or

ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or

iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or

iv. The Project would not produce results commensurate with the further expenditure of funds; or

v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.

vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.

b. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:

i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or

ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.

d. **Settlement upon Termination.** Immediately upon termination under Sections 10.a.i, v. or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

11. GENERAL PROVISIONS

a. **Contribution.** To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors. This Section shall survive expiration or termination of this Agreement.

b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.

c. **Responsibility for Grant Funds.** Any Subrecipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Subrecipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

   Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.

j. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than $500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

k. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

n. **Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

COLUMBIA COUNTY

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

By _____
Subrecipient's Legal Counsel

Date _____

Subrecipient Program Contact:
Steve Pegram
Emergency Management Director
Columbia County Emergency Management
230 Strand St
St. Helens, OR 97051
503-366-3934
steve.pegram@co.columbia.or.us

Subrecipient Fiscal Contact:
Jennifer Cuellar
Finance Director
Columbia County Dept. of Finance
230 Strand St
St. Helens, OR 97051
503-397-7252
jennifer.cuellar@co.columbia.or.us

OEM

By _____

Sonya Pedersen
Operations and Preparedness Section Manager, OEM

Date _____

APPROVED AS TO FORM

By Marvin D. Fjordbeck
Senior Assistant Attorney General

Date October 20, 2017

OEM Program Contact:
Sidra Metzger-Hines
Grants Coordinator
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3661
sidra.metzgerhines@state.or.us

OEM Fiscal Contact:
Angela Creasey
Senior Grants Accountant
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3316
angela.creasey@state.or.us

Exhibit A
Grant No: 17-207
Subrecipient: Columbia County

I. Project Description

Project Title: EOC Satellite Communication Project

This project will fully develop a permanent satellite communications capability at the Columbia County Emergency Operations Center (EOC).

II. Budget

Interoperable Communications	$ 14,870
Total	**$ 14,870**

EXHIBIT B

Federal Requirements and Certifications

I. General. Subrecipient agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) program regulations and requirements.

II. Specific Requirements and Certifications

A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).

B. Standard Assurances and Certifications Regarding Lobbying. Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990.

C. Compliance with Applicable Federal Law. Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:

1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
   a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
   b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement

may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

1. **Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:

   a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.

   b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.

   c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.

   d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.

   e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.

   f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

   g. If, during the past three years, Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subrecipient must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subrecipient, or Subrecipient settles a case or matter alleging such discrimination, Subrecipient must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.

2. **Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see http://www.lep.gov.

F. **Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.

G. **SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

H. **Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

I. **Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.

J. **Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

K. **Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

L. **Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

M. **Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.

N. **Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.

O. **Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

P. **Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.

Q. **Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

R. **Energy Policy and Conservation Act**. Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act.

S. **Lobbying Prohibitions**. Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.

T. **Terrorist Financing**. Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subrecipient is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers' liability insurance with coverage limits of not less than $500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

$500,000 per occurrence, (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and Subrecipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

Exhibit D

Information required by 2 CFR 200.331(a)

1. Federal Award Identification:

(i) Sub-recipient name (which must match registered name in DUNS): Columbia County

(ii) Sub-recipient's DUNS number: 094299625

(iii) Federal Award Identification Number (FAIN): EMW-2017-SS-00031-S01

(iv) Federal Award Date: September 01, 2017

(v) Sub-award Period of Performance Start and End Date: From October 1, 2017 to June 30, 2018

(vi) Amount of Federal Funds Obligated by this Agreement: $14,870

(vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement *: $42,523

(viii) Total Amount of Federal Award committed to the Subrecipent by the pass-through entity: $42,523

(ix) Federal award project description: State Homeland Security Program Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation.

(x) (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
(b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
(c) Contact information for awarding official: Andrew Phelps, Director – Oregon Office of Emergency Management, PO Box 14370, Salem, OR 97309-5062

(xi) CFDA Number and Name: 97.067 Homeland Security Grant Program
Amount: $6,659,100

(xii) Is Award R&D? No

(xiii) Indirect cost rate for the Federal award: 0%

2. Subrecipient's indirect cost rate: 0%

*The Total amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current fiscal year.

OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
HOMELAND SECURITY GRANT PROGRAM
STATE HOMELAND SECURITY PROGRAM
CFDA # 97.067
COLUMBIA COUNTY
$27,653
Grant No: 17-208

This Agreement is made and entered into by and between the **State of Oregon,** acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and **Columbia County,** hereinafter referred to as "Subrecipient," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2017** and ending, unless otherwise terminated or extended, on **June 30, 2018** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

   Exhibit A: **Project Description and Budget**
   Exhibit B: **Federal Requirements and Certifications**
   Exhibit C: **Subcontractor Insurance**
   Exhibit D: **Information required by 2 CFR 200.331(a)**

   In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **$27,653** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2017 State Homeland Security Program (SHSP) grant.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. **Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

a. Performance Reports.

i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2017 State Homeland Security Program.

ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).

iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

i. To receive reimbursement, Subrecipient must submit a signed Request for Reimbursement (RFR), using a form provided by OEM that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.

ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.

iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.

iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant may be used for expenses incurred before or after the Grant Award Period.

6. Disbursement and Recovery of Grant Funds.

a. Disbursement Generally. OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the State Homeland Security Program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at http://www.oregon.gov/oem/emresources/Grants/Pages/HSGP.aspx.

b. Conditions Precedent to Disbursement. OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.

ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.

iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

c. **Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

7. **Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:

a. **Organization and Authority.** Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

b. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. **NIMS Compliance.** By accepting FY 2016 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through OEM at http://www.oregon.gov/oem/emresources/Plans_Assessments/Pages/NIMS.aspx.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **Records Maintenance and Access; Audit.**

a. **Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement

and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, sub-recipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

b. **Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

c. **Audits.**

i. If Subrecipient expends $750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than $ 750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.

ii. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend $750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

9. **Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance**

a. **Subagreements.** Subrecipient may enter into agreements (hereafter "subagreements") for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than $150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for

contracts for more than $10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

i. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for $100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than $100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.

ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of $100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of $100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.

iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

b. Purchases and Management of Property and Equipment; Records. Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:

i. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.

ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.

iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.

v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.

vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.

vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.

viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.

ix. Subrecipient shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.

c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

10. Termination

a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:

i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or

ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or

iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or

iv. The Project would not produce results commensurate with the further expenditure of funds; or

v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.

vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.

b. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:

i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or

ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.

d. **Settlement upon Termination.** Immediately upon termination under Sections 10.a.i, v. or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

11. GENERAL PROVISIONS

a. **Contribution.** To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors. This Section shall survive expiration or termination of this Agreement.

b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.

c. **Responsibility for Grant Funds.** Any Subrecipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Subrecipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

   Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.

j. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than $500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

k. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

n. **Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

COLUMBIA COUNTY

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required for Subrecipient)

By _____
Subrecipient's Legal Counsel

Date _____

Subrecipient Program Contact:
Steve Pegram
Emergency Management Director
Columbia County Emergency Management
230 Strand St
St. Helens, OR 97051
503-366-3934
steve.pegram@co.columbia.or.us

Subrecipient Fiscal Contact:
Jennifer Cuellar
Finance Director
Columbia County Dept. of Finance
230 Strand St
St. Helens, OR 97051
503-397-7252
jennifer.cuellar@co.columbia.or.us

OEM

By _____

Sonya Pedersen
Operations and Preparedness Section Manager, OEM

Date _____

APPROVED AS TO FORM

By Marvin D. Fjordbeck
Senior Assistant Attorney General

Date October 20, 2017

OEM Program Contact:
Sidra Metzger-Hines
Grants Coordinator
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3661
sidra.metzgerhines@state.or.us

OEM Fiscal Contact:
Angela Creasey
Senior Grants Accountant
Oregon Military Department
Office of Emergency Management
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Salem, OR 97309-5062
503-378-3316
angela.creasey@state.or.us

Exhibit A
Grant No: 17-208
Subrecipient: Columbia County

I. Project Description

Project Title: ARES Communications Project

This project will purchase and outfit two fixed amateur radio stations as well as purchasing one portable amateur radio repeater system.

II. Budget

Interoperable Communications	$ 27,653
Total	**$ 27,653**

EXHIBIT B

Federal Requirements and Certifications

I. General. Subrecipient agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) program regulations and requirements.

II. Specific Requirements and Certifications

A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).

B. Standard Assurances and Certifications Regarding Lobbying. Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990.

C. Compliance with Applicable Federal Law. Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:

1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
   a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
   b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement

may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

1. **Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:

   a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.

   b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.

   c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.

   d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.

   e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.

   f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

   g. If, during the past three years, Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subrecipient must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subrecipient, or Subrecipient settles a case or matter alleging such discrimination, Subrecipient must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.

2. **Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see http://www.lep.gov.

F. **Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.

G. **SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

H. **Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

I. **Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.

J. **Fly America Act of 1974**. Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

K. **Activities Conducted Abroad**. Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

L. **Acknowledgement of Federal Funding from DHS**. Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

M. **Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.

N. **Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.

O. **Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

P. **Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.

Q. **Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

R. **Energy Policy and Conservation Act**. Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act.

S. **Lobbying Prohibitions**. Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.

T. **Terrorist Financing**. Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subrecipient is a Party.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers' liability insurance with coverage limits of not less than $500,000 must be included.

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

$500,000 per occurrence, (for all claimants for claims arising out of a single accident or occurrence).

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and Subrecipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

Exhibit D

Information required by 2 CFR 200.331(a)

1. Federal Award Identification:

(i) Sub-recipient name (which must match registered name in DUNS): Columbia County

(ii) Sub-recipient's DUNS number: 094299625

(iii) Federal Award Identification Number (FAIN): EMW-2017-SS-00031-S01

(iv) Federal Award Date: September 01, 2017

(v) Sub-award Period of Performance Start and End Date: From October 1, 2017 to June 30, 2018

(vi) Amount of Federal Funds Obligated by this Agreement: $27,653

(vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement *: $42,523

(viii) Total Amount of Federal Award committed to the Subrecipent by the pass-through entity: $42,523

(ix) Federal award project description: State Homeland Security Program Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation.

(x) (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
(b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
(c) Contact information for awarding official: Andrew Phelps, Director – Oregon Office of Emergency Management, PO Box 14370, Salem, OR 97309-5062

(xi) CFDA Number and Name: 97.067 Homeland Security Grant Program
Amount: $6,659,100

(xii) Is Award R&D? No

(xiii) Indirect cost rate for the Federal award: 0%

2. Subrecipient's indirect cost rate: 0%

*The Total amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current fiscal year.

INTERGOVERNMENTAL AGREEMENT
Administering the Disadvantaged Business Enterprise
Unified Certification Function

This Agreement is made and entered into by and between the State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" the State of Oregon, acting by and through its Oregon Business Development Department, hereinafter referred to as "OBDD;" and cities, counties or local partners signing on to this Agreement, hereinafter referred to as "Agencies." Parties signing this Agreement shall be referred to individually as "Party," or collectively referred to as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

2. The Disadvantaged Business Enterprise (DBE) program requirements set out in Title 49 United States Code of Federal Regulations (CFR) part 26, section 81 require that state recipients of federal transportation funds establish a "one-stop" process to certify businesses owned by socially- and economically-disadvantaged individuals as DBEs: the Unified Certification Program (UCP). 49 CFR § 26.81 requires that all recipients of federal transportation funds in a state sign an agreement establishing the UCP and submit same to the U.S. Secretary of Transportation.

3. As provided in 49 CFR part 26, only firms owned and controlled by socially- and economically-disadvantaged person(s) are to benefit from the DBE Program. ODOT Office of Civil Rights is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification and will act in the capacity of Lead Agency for coordinating the program participation of the Agencies hereunder. ODOT is responsible to USDOT for assuring certification of DBEs is performed consistent with 49 CFR part 26.

4. As provided under ORS 200.055(5), OBDD is the sole agency authorized to certify enterprises as Disadvantage Business Enterprises eligible to perform on public contracts in this state. Pursuant to ORS 200.055, ODBDD herein delegates authority for administration of the Oregon UCP DBE Certification Component to its Certification Office for Business Inclusion and Diversity, hereinafter, "COBID."

5. Pursuant to Oregon Revised Statute 183.341, OBDD has adopted rules for the certification of Disadvantaged Business Enterprise firms, (see OAR chapter 123, division 200).

6. This Agreement defines the roles and responsibilities of ODOT, OBDD, COBID, and Agencies to continue participation in the UCP. The collective effort of the Parties is hereinafter referred to as the "UCP Partnership" or "Partnership."

NOW THEREFORE, premise being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, ODOT, OBDD and Agencies agree to cooperate and coordinate the administration of DBE certification services as required under the Code of Federal Regulations 49 Part 26.

2. The term of this Agreement shall begin upon the signatures of ODOT, OBDD and the first Party to execute this Agreement and shall terminate five (5) years from that date.

MUTUAL PARTIES OBLIGATIONS

1. The Parties mutually agree that all DBE certification decisions by COBID shall be binding on all recipients of federal transportation funds within Oregon.

2. The Parties shall ensure that COBID has sufficient resources and expertise to carry out the requirements of 49 CFR § 26.81.

3. The Parties mutually agree to have open and regular communications on matters concerning DBE certification. Matters of concern to all agencies include process time, staffing, budget, certification issues, directory maintenance and changes in the overall DBE certification process.

4. The Parties shall cooperate in the administration of the USDOT required DBE Certification process, striving for the most efficient use of their individual agency resources in carrying out the process of certifying Socially and Economically Disadvantaged individuals.

5. The Parties agree that all certifications shall be pre-certifications, i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

6. The Parties mutually agree to notify or copy all Parties of the Partnership on any communication to the USDOT or respective agencies regarding DBE Certification.

7. The Parties agree to work in partnership during Federal audits and performance reviews.

8. The Parties will not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex and national origin.

9. The Parties will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishments of the objective of this program with respect to individuals of a particular race, color, sex and national origin.

AGENCIES OBLIGATIONS

1. Each Agency shall designate a representative to attend semi-annual UCP Partnership meetings and any special sessions held to resolve issues that arise requiring more immediate attention. Attendance by teleconference will be acceptable. Semi-annual meetings will occur in the summer (July or August) and the fall (October or November). COBID will provide all other Agencies reasonable notice of the meeting.

2. Agencies agree that ODOT is the Lead Agency for the Partnership.

3. Agencies shall notify COBID of any DBE certification issues affecting DBE eligibility for participation on federally assisted projects.

4. Agencies shall promptly notify OMWESB of complaints received relating to DBE certification or program administration.

ODOT OBLIGATIONS

1. As Lead Agency, ODOT shall do the following:

   a. Notify and advise COBID and Agencies of any change in federal law, USDOT regulation, and or changes to ODOT's DBE Program Plan document.

   b. Notify COBID and Agencies of training programs relevant to DBE Certification function and procedures.

   c. Review a COBID determination in a third party complaint that challenges a DBE firm's certification status and or eligibility.

   d. Provide ongoing DBE Certification expertise, oversight, as well as conduct process reviews when required, including an annual audit of DBE Certification files.

   e. Assist COBID in conducting appeals of firms challenging DBE certification decisions.

2. ODOT shall notify COBID of any DBE certification issues affecting DBE eligibility for participation on federally-assisted projects.

3. ODOT shall promptly notify COBID of complaints received relating to DBE certification or program administration.

4. ODOT's Project Manager for this Project is Daniel Jackson, Small Business Programs Manager, ODOT – Office of Civil Rights, MS-23, 3930 Fairview Industrial Dr SE, Salem, OR 97302, 503-986-3016, daniel.jackson@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

OBDD OBLIGATIONS

1. OBDD will consult with Agencies regarding changes in State rules, regulations, statutory proposals or amendments conflicting with federal guidelines in DBE certification.

2. OBDD will not be required to process an application for certification from a firm having its principle place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business.

3. OBDD will share its information and documents concerning the firm with other interested agencies that are considering the firm's application.

4. OBDD shall maintain a DBE Certification database and directory.

5. OBDD shall provide Agencies with all necessary DBE Certification information required to complete federal reports and data collection.

6. OBDD shall follow all certification procedures and standards set out in 49 CFR part 26.

7. OBDD shall cooperate fully in the oversight, review, and monitoring activities of the USDOT and its operating administrations and implement USDOT's directives and guidance concerning certification matters.

8. OBDD agrees to act in accordance with 49 CFR §26.83(k). OBDD agrees that COBID shall make decisions on applications for certification within ninety (90) days of receiving all information required from the applicant firm. This period may be extended once, for no more than sixty (60) days, upon written notification to the applicant firm, explaining fully and specifically the reasons for the extension.

9. Subject to the Oregon Public Records Law, ORS 192.410 to 192.505, COBID shall not release any information that may be reasonably construed as confidential business information to any third party without the written consent of the applicant firm.

10. OBDD shall submit to ODOT the following documentation on each DBE certification within seven (7) days upon request of ODOT:

    a. Copy of letter of determination
    b. Copy of site visit

11. OBDD shall notify ODOT and Agencies in writing within seven (7) days upon request of any of the following:

    a. **Decertification or Denial of DBE Certification**
    b. Third party challenge
    c. Closures or cancellations of any DBE certifications due to a firm's failure to file an annual no-change affidavit;
    d. Any withdrawals of DBE Certification applications

12. OBDD will participate in DBE staff training.

13. OBDD shall coordinate participation in DBE Certification workshops with Agencies.

14. OBDD shall provide technical assistance to firms seeking DBE Certification.

15. DISPUTE RESOLUTION BETWEEN ODOT and OBDD

    a. ODOT and OBDD agree that any tort liability claim, suit, or loss resulting from or arising out of ODOT's or OBDD's performance of and activities under this Agreement shall be allocated, as between the state agencies, in accordance with law by the Oregon Department of Administrative Services' (DAS) Risk Management, for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. ODOT and OBDD agree to notify the DAS Risk Management Division and the other state agency in the event it receives notice or knowledge of any claims arising out of the performance of, or the state agencies' activities under this Agreement.

    b. ODOT and OBDD understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). ODOT and OBDD agree to accept that coverage as adequate insurance of the other state agency with respect to personal injury and property damage.

16. OBDD's Project Manager for this Project is Carrie L. Hulse, Program Manager, COBID, 775 Summer Street SE, Suite 200, Salem, OR. 97301, 971-301-1271, carrie.l.hulse@oregon.gov, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. Any Party may terminate its participation by providing at least thirty (30) days written notice to the other Parties.

2. This Agreement may be terminated by mutual consent of all current Parties upon thirty (30) days' notice, in writing and delivered by certified mail or in person.

3. ODOT or OBDD may terminate this Agreement effective upon delivery of written notice to Agencies, or at such later date as may be established by ODOT or OBDD, under any of the following conditions:

    a. If Agencies fail to perform any of the other provisions of this Agreement, in accordance with its terms, and after receipt of written notice from ODOT or OBDD fails to correct such failures within ten (10) days or such longer period as ODOT or OBDD may authorize.

    b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT

or OBDD are prohibited from paying for such work from the planned funding source.

4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT, OBDD or any other Party or Parties with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice, copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

6. With respect to a Third Party Claim for which ODOT or OBDD is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), ODOT or OBDD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Party or Parties in such proportion as is appropriate to reflect the relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's or OBDD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT or OBDD had sole liability in the proceeding.

7. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with ODOT or OBDD (or would be if joined in the Third Party Claim), the Party or Parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT or OBDD in such proportion as is appropriate to reflect the relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Party or Parties contribution amount in any instance is capped to the same extent it would have been capped under

Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

9. The Parties acknowledge and agree that the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.

10. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

11. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than $500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.

12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

13. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT or OBDD to enforce any provision of this Agreement shall not constitute a waiver by ODOT or OBDD of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

STATE OF OREGON, by and through its Oregon Business Development Department

By _____
Chris Cummings, Assistant Director

Date October 29, 2017

OBDD/OMWESB Contact:
Carrie L. Hulse, Program Manager
OBDD – COBID Section
775 Summer Street SE, Suite 200,
Salem, OR. 97301
971-301-1271
carrie.l.hulse@oregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Angela Crain, Office of Civil Rights Manager

Date 10/30/17

ODOT Contact:
Daniel Jackson, Small Business Programs Manager
ODOT Office of Civil Rights, MS-23
3930 Fairview Industrial Dr SE
Salem, OR 97302
503-986-3016
daniel.jackson@odot.state.or.us

Unified Certification Function Agreement Signature Page

The Unified Certification Program process developed and implemented by the Oregon Department of Transportation and the Oregon Business Development Department and has been reviewed by this agency. We recognize this program as the authorizing process for certification, certification review, and de-certification of firms in the Disadvantaged Business Enterprise Program for the State or Oregon as required by 49 CFR Part 26.81.

IN THE WITNESS WHEREOF, the Public Entity_____ (Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

_____ Agency Signature	_____ Date	_____ Title
_____ Agency Signature	_____ Date	_____ Title
_____ Agency Counsel	_____ Date	_____ Counsel's title

Name and title of Agency Contact Representative: _____

Address: _____

_____

Phone: _____ Fax: _____

E-mail: _____

Send the **Unified Certification Function Agreement Signature Page** (this page) to: Nameun House, Procurement and Contracts Specialist via e-mail at: **Nameun.House@odot.state.or.us** and cc' Daniel Jackson, Small Business Programs Manager at: daniel.jackson@odot.state.or.us.