

Port Westward Rural Industrial Lands Goal 3 Exception – PA 13-02/ZC 13-01 Third LUBA Remand

Staff Report

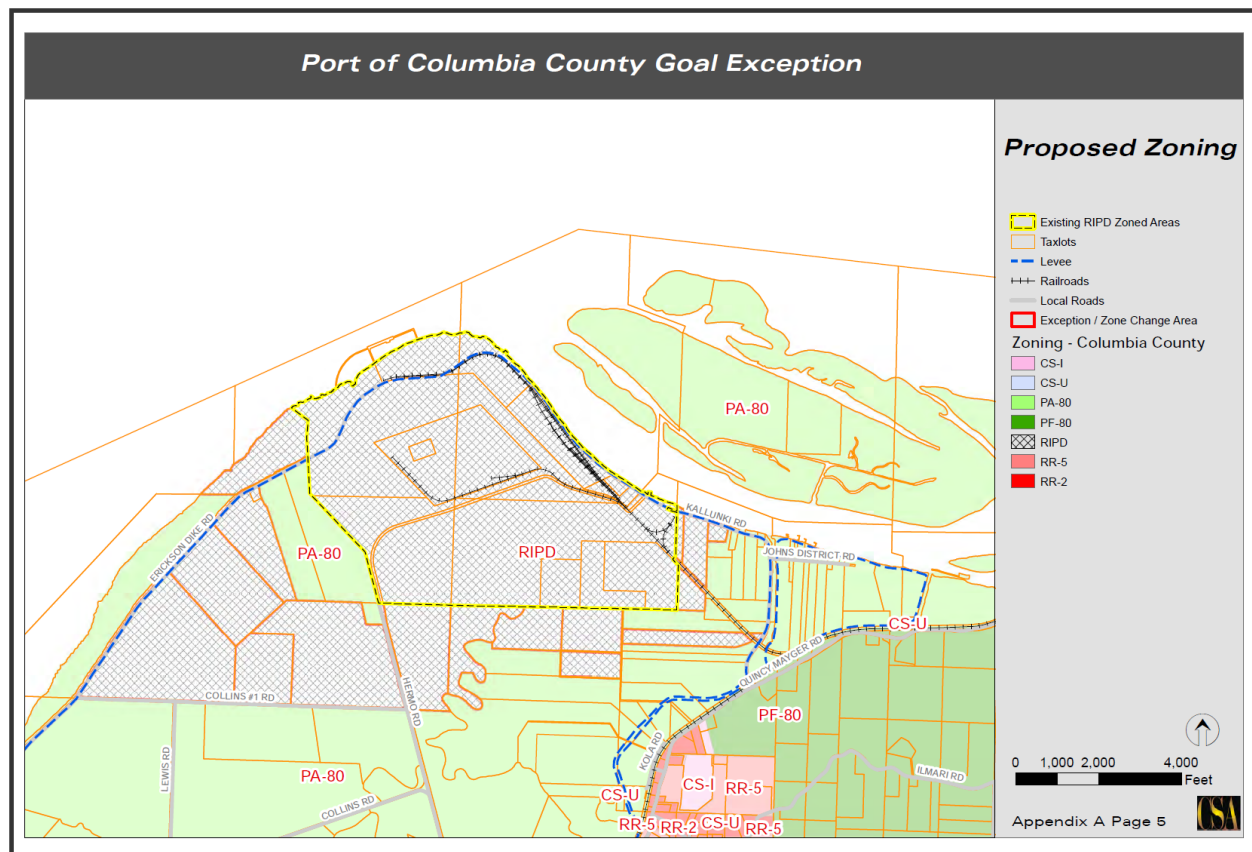


Figure 1: Existing and Proposed Rural Industrial Exception Areas and Zoning

File Number: PA 13-02/ZC 13-01
(*Riverkeeper III*: Third LUBA Remand)

Applicant: Port of Columbia County
100 E Street
Columbia City, OR 97018

Representative: Tommy Brooks, Cable Huston LLP
Supported by CSA Planning Ltd and Technical Consultants

Location: Port Westward Industrial Site – Expansion to the east, south and west

Tax Map Nos: 8416-00-00500
8420-00-00200/300
8421-00-00300/301/400/500/600
8422-00-00400/500/600/700
8423-00-00900
8423-B0-00400/500/600/700

Existing Zoning: Primary Agriculture (PA-80)
Proposed Zoning: Rural Industrial Planned Development (RIPD)

Existing Rural Exception Area: Approximately 957 acres

Proposed Rural Exception Area Expansion: Approximately 837 acres [Exact acreage to be confirmed.]

Submission Date: August 19, 2024

Staff Report Date: September 30, 2026

Request: Application for a Post Acknowledgement Comprehensive Plan Amendment, Zone Change from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD), which requires an Exception to Statewide Planning Goal 3.

On August 19, 2024, the Port of Columbia County submitted a remand analysis intended to demonstrate compatibility as called for by LUBA and the Court of Appeals in their decisions in *Columbia River Keeper et al. v. Columbia County*, LUBA No. 2021-097, *Columbia Riverkeeper et al. v. Columbia County*, LUBA No. 2018-20 and *Columbia Riverkeeper et al. v. Columbia County*, LUBA No. 2014-17/18.

Review Criteria:

Riverkeeper III LUBA remand decisions interpreting the compatibility standard found in Oregon Revised Statutes (ORS) 197.732(2)(c)(D) and Oregon Administrative Rules (OAR) 660-004-0020(2)(d), specifically: "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

Abbreviations and Definitions

ACDP	Air Contaminant Discharge Permit
Adverse Impact or Externality	LUBA and this staff report use the terms "adverse impact" and "externality" interchangeably to mean an adverse impact from an allowed industrial use on surrounding farm/forest and natural resource land uses
Applicant	Port of Columbia County, or the "Port"
BDIC	Beaver Drainage Improvement Company
BFE	Base Flood Elevation
BOC	Board of County Commissioners
BS	Breakbulk Storage, defined as a use category in the CSA Analysis.
CCZO	Columbia County Zoning Ordinance
CDF	"Customary Development Form," a term used in the CSA Analysis to mean a typical or "medium intensity" industrial use that requires deepwater port access
CRFPD	Clatskanie Rural Fire Protection District
Compatibility Standards	ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(D)
County	Columbia County
CSA Analysis	Port Westward Goal 3 Exception LUBA Remand Analysis (CSA Planning, Ltd., June 2024)
CSZ	Cascadia Subduction Zone
DEQ or ODEQ	Oregon Department of Environmental Quality
DBC	Dry Bulk Commodities, defined as a use category in the CSA Analysis.
DLCD	Oregon Department of Land Conservation and Development
DSL	Department of State Lands
EPA	U.S. Environmental Protection Agency

EHS	Extremely Hazardous Substances - defined by EPA, chemicals listed on <i>EPA List of Lists</i> (or its equivalent title as may be published in the future).
Farm/Forest Uses	Agricultural and forest uses within farm and forest zones and protected by Statewide Planning Goals 3 and 4
F&WP	Forestry and Wood Products, defined as a use category in the CSA Analysis.
FEMA	Federal Emergency Management Agency
Goal 3	Statewide Planning Goal 3: Agricultural Lands
Goal 4	Statewide Planning Goal 4: Forest Lands
LBC	Liquid Bulk Commodities, defined as a use category in the CSA Analysis.
LCDC	Oregon Land Conservation and Development Commission
LNG	Liquid Natural Gas
LUBA	Oregon Land Use Board of Appeals
LUCS	Land Use Compatibility Statement
NPDES	National Pollutant Discharge Elimination System
NG&DP	Natural Gas & Derivative Products, defined as a use category in the CSA Analysis.
Natural Resource Uses	Generally, wetlands and fish and wildlife habitat uses in the “surrounding area” identified in local, state and federal inventories
OAR	Oregon Administrative Rule
ODF	Oregon Department of Forestry
ORBIC	Oregon Biodiversity Information Center
ORS	Oregon Revised Statutes
OSSC	Oregon Structural Specialty Code
OWRD	Oregon Water Resources Department
PA-80	Primary Agriculture zone
PM	Particulate Matter
RIPD	Rural Industrial Planned Development Zone applied to existing and proposed Rural Industrial Exception Area

RQ	The minimum amount of a hazardous substance that, if released, triggers the requirement for an emergency report to a federal authority.
SEC Ordinance	Columbia County Stormwater and Erosion Control Ordinance
SQEHS	A significant quantity(ies) is the presence on the site of EHS's on the most current published <i>EPA List of Lists</i> (or its equivalent title as may be published in the future), where the site will have quantities of material that are five times the Threshold Planning Quantity (TPQ) reporting of Section 302 chemicals or five times the threshold CERCLA Reporting Quantity (RQ), whichever is greater. For chemicals on the <i>EPA List of Lists</i> without a stated TPQ or RQ, the SQEHS shall be determined by an expert opinion issued by a professional with a PhD in Chemistry or a registered Professional Chemical Engineer in the State of Oregon that compares the relative risk of that chemical to other chemicals posing similar risks for which a TPQ or RQ is provided.
SFHA	Special Flood Hazard Area
Surrounding Area	As defined in the CSA Analysis, the Surrounding Area includes natural resource and farm/forest uses that could be adversely impacted by industrial uses allowed in the RIPD zone. Generally, one mile radius of the proposed exception area and land protected from flooding by the BDIC levee.
TIA	Traffic Impact Analysis
TQ	The minimum amount of a designated toxic or flammable substance at a facility that triggers the need for a Risk Management Plan (RMP).
TPQ	The minimum amount of an Extremely Hazardous Substance present at a facility that triggers an emergency planning notification requirement under the Emergency Planning and Community Right-to-Know Act (EPCRA).
UGB	Urban Growth Boundary
USACE	US Army Corps of Engineers
Vulnerabilities	Specific characteristics of farm/forest and natural resource uses that make them vulnerable to potential adverse impacts from specific industrial uses allowed in the RIPD zone
WPCF	Water Pollution Control Facility Permit

Appendices

Appendix 1: *LUBA No. 2021-097 (Riverkeeper III)*

Appendix 2: **Applicant's Complete Remand Response** (summarized in Section 1 below)

A. Stormwater Hydrology Technical Review Memorandum (AKS, November 4, 2025).

Appendix 3: **Columbia County Public Hearing Notification**

Appendix 4: **Staff Assessment of Example Uses**

Appendix 5: **Complete List of CSA Proposed Conditions of Approval**

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Section 1: Background and Executive Summary

In 2013 the Port of Columbia County (formerly the Port of Saint Helens) applied to Columbia County (application no. PA 13-02 / ZC 13-01) requesting amendments to the county's Comprehensive Plan and Zoning Maps that would change approximately 957 acres of land adjacent to the Port Westward Industrial Park from agricultural to rural industrial uses. The Port applied for a Comprehensive Plan Amendment to change the subject property's Comprehensive Plan designation from Agriculture Resource to Rural Industrial, a Zoning Map amendment to rezone the subject property from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD), and an Exception to Statewide Goal 3 Agriculture Lands. On January 29, 2014, the Columbia County Board of Commissioners (BOC) denied a portion of the application for the 120 acres associated with Tax Lots 8420-00-00100 and 8429-00-00100 and approved the remaining approximately 837 acres.

The county's decision was then appealed to LUBA and remanded by LUBA three times¹ over the following years, with the third and latest remand on May 9, 2022. Since the original submission, the applicant has provided additional information on remand, including narrowing the range of remand issues that must be addressed to demonstrate compliance with the compatibility standard, and reducing the range of proposed allowed uses to five use categories.

The applicant (the Port of Columbia County) submitted its third remand response to the county on August 19, 2024. The applicant continues to seek a Goal 3 Exception to rezone 837 acres from PA-

¹ Summary of Previous LUBA Remands:

Riverkeeper I Application No. PA 13-02 / ZC 13-01 was partially approved (120 acres denied, 837 acres approved) by adopting Ordinance No. 2014-1 on January 29, 2014. Columbia Riverkeeper, 1000 Friends of Oregon and an area property owner filed an appeal of the decision with the Oregon Land Use Board of Appeals (LUBA), *Columbia Riverkeeper et al. v. Columbia County*, 70 Or LUBA 171 (2014) (Riverkeeper I). The remand found that the approval did not satisfy certain standards of the Goal 3 Exception criteria, namely regarding impacts, compatibility, alternatives, and the potential for urban uses. However, LUBA did uphold that the County can allow a range of uses through a PA/ZC and associated Goal Exception. In response to this remand, on April 18, 2017, the Port modified its application to align with the direction provided by LUBA. Specifically, the Port's modified application identified five specific rural industrial use categories, listed below, to be allowed under the exception. These categories were further limited by allowing only those uses that would be dependent on the existing deep-water port at Port Westward. The resubmission also provided further information on alternative siting and urban uses.

Riverkeeper II On February 21, 2018, the County BOC approved the modified application (second submission) by adopting Ordinance No. 2018-1. Columbia Riverkeeper and 1000 Friends of Oregon appealed the decision to the LUBA, *Columbia Riverkeeper et. al. v Columbia County*, 78 Or LUBA 547 (2018) (Riverkeeper II). LUBA agreed with petitioners that there is not substantial evidence in the record to support Ordinance No. 2018-1 and that "remand is necessary to adopt more adequate findings regarding compatibility, supported by substantial evidence." This decision resolved prior issues from Riverkeeper I and effectively limited the remaining issue to the compatibility criterion (OAR 660-004-0020(2)(d)). LUBA's decision was appealed by opponents and cross-petitioned by the Port to the Court of Appeals, which affirmed LUBA's decision, and subsequently appealed to the Oregon Supreme Court, which denied review.

80 to RIPD. The current remand deliberations are limited solely to the goal exception “compatibility standard” set forth in OAR 660-004-0020(2)(d)²:

“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.”

Riverkeeper III Assignments of Error

LUBA’s **Riverkeeper III** decision found three broad and inter-related “assignments of error.”

- **First Assignment of Error: A. Surrounding Natural Resources and B. Evaluation of Adjacent Uses** (*Riverkeeper III*, pp. 6-13)
- **Second Assignment of Error: A. Scale of Proposed Industrial Uses and Impacts, B. Comparison with Existing Port Westward Uses, and C. Impacts Not Addressed** (*Riverkeeper III*, pp. 13-21)
- **Third Assignment of Error: Appropriate Level of Detail and Impermissible Deferral of the Compatibility Determination** (*Riverkeeper III*, pp. 21-29)

Staff notes that the three **Riverkeeper III** remand assignments of error are interrelated and overlap:

- To determine compatibility of proposed industrial uses with surrounding natural resource and adjacent uses (including farm and forest uses), the impact characteristics of allowed industrial uses, the specific characteristics of the natural resources and adjacent uses, and the specific vulnerabilities of natural resource and adjacent uses to specific industrial use impacts must be evaluated.
- To avoid over-reliance on future conditions of approval to determine compatibility, compatibility with farm/forest uses and natural resources must be determined at the time an exception is granted – and not through future discretionary review processes – though the County can require conditions of approval that replicate the compatibility analysis at a finer scale at a later stage of development.
- Similarly, to avoid over-reliance on future state and federal permitting processes, the Goal 3 Exception application must explain these processes and demonstrate that they will mitigate adverse impacts from specific industrial land uses on the specific vulnerabilities of adjacent farm/forest uses and natural resources within the Surrounding Area.
- Future county conditions of approval must be feasible, clear, and objective, to ensure that specific industrial use impacts on vulnerable farm/forest and natural resource uses are mitigated sufficiently to ensure compatibility.

² OAR 660-002-0020(2)(d) was promulgated by LCDRC to implement ORS 197.732(2)(c)(D), which provides the following: “The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”

Staff Report Organization

The staff report is organized based on three assignments of error identified by LUBA in *Riverkeeper III*. The report breaks each broad assignment of error into two or more sub-issues to facilitate analysis. In text and footnotes to this staff report, Winterbrook (Columbia County’s contract planner) quotes extensively from the text of LUBA’s decision, describes how the applicant has responded to these issues, and then evaluates the information provided by the applicant on remand.

Applicant’s August 19, 2024, Remand Submission

The applicant’s remand submission includes the following:

1. **Port of Columbia County – Port Westward Remand Submittal** (Cable Huston, LLP, August 19, 2024) which explains the scope of remand and its legal background, the remand framework and context.
2. **Port Westward Goal 3 Exception Remand Analysis** (CSA Planning, Ltd., June 24, 2024) which analyzes the proposed uses that are port-dependent and fall into five broad categories (Forestry and Wood Products, Dry Bulk Commodities, Liquid Bulk Commodities, Natural Gas and Derivative Products, Breakbulk).
 - **Chapter 1 Introduction**
 - **Chapter 2 Compatibility Analysis Methodology**
 - Compatibility Fundamentals and Facts
 - Surrounding Area (Farm and Forestry Uses, Natural Resources)
 - Customary Development Framework Analysis: CSA developed a methodology for identifying a typical, “medium intensity” or “customary” development within each of the above categories for analysis purposes, which they refer to as “Customary Development Forms” or CDFs. CSA based its analysis on research of deepwater port examples and other factors. The goal of the CDF approach is to identify the likely scale of industrial development in each category, and to acknowledge that different use categories may have different intensities. This facilitates a comparative analysis and addresses concerns about the scale of impact raised by LUBA.
 - **Chapter 3 Compatibility Fundamentals and Facts**
 - Farm and Forestry Uses and Practices
 - Natural Resources
 - Beaver Drainage Improvement Company
 - Hazard Facts
 - Agricultural and Port Industrial Adjacency Land Use Patterns
 - Determination of the Surrounding Area
 - Existing Regulatory Processes
 - **Chapter 4 Customary Development Form (CDF) Analysis**
 - The CDF for each of the five broad categories of allowed industrial use, including less and more “intense” examples of proposed uses in each category, potential

externalities from each CDF and for more and less intensive industrial uses in the same category, and development guidance for each CDF and more or less intensive uses in the same category.

- This information is summarized in a matrix for each of the five categories of allowed industrial uses. Each of the five matrices covers eight types of potential negative impacts, organized into three broad categories: Environmental, Hazard Event, and General Development. The CDF serves as a benchmark for comparing the intensity of other uses across five industrial use categories and includes examples of both less and more intense uses. Each of the five industrial categories has an analysis matrix that uses the CDF as a baseline to evaluate potential adverse impacts on uses in the Surrounding Area, which CSA calls “compatibility externalities.” Each of the five matrices includes conclusions on the relative severity of potential impacts on farm/forest and natural resources in the Surrounding Area.
- CSA also summarizes minimum standards needed to meet federal and state permitting requirements for each impact category.
- **Chapter 5 Guidance for Application to Specific Development Scenarios**
Provides permitting guidance for future development application decision-making. This chapter addresses:
 - State, Federal Permitting Requirements for all Uses
 - County RIPD Conditional Use Requirements for all Uses
 - Site Design Review for all Uses
 - Additional Universal Conditions
 - Guidance for Use Intensity Determination and related specific conditions
 - Use Specific Conditions based on Use Intensity for each use category
- **Chapter 6 Overall Compatibility Determinations**
Compatibility determinations based on CSA’s professional opinions and supporting technical appendices.
- **Chapter 7 Technical Appendices**
This section includes technical appendices that support specific elements of the alternatives and compatibility analyses.
Technical Appendices A-J:
 - A.** Atlas of Maps (CSA Planning)
 - B.** Wetland Determination and Feasibility Study (Schott & Associates)
 - C.** Surrounding Natural Resources – Water (CwM-H20)
 - D.** Flood Risk Mitigation (West Consultants)
 - E.** Scale of Proposed Industrial Uses and Impacts – Air Quality (SCS Engineers)
 - F.** Land Use Separation (CSA Planning)
 - G.** Agricultural and Port Industrial Adjacency Land Use Patterns (CSA Planning)
 - H.** GIS Methods and Data Sources (CSA Planning)
 - I.** Publicly Available Tax Records of Beaver Drainage Improvement Company
 - J.** EPA Consolidated List of Chemicals

3. **Proposed Review Process Cover Letter and Flowcharts** summarizing CSA’s proposed land use review process and CDF determination process.

Executive Summary

This staff report focuses solely on compliance with the compatibility standard as interpreted by LUBA in **Riverkeeper III**. OAR 660-004-0020(2)(d) reads as follows:

“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.”

Key Staff Findings

1. Staff analysis is limited to deficiencies identified in **Riverkeeper III** or raised by the petitioners and the applicant in their briefs, and to the scope of LUBA’s remand, namely the OAR 660-004-0020(2)(d) compatibility standard.
2. While the general characteristics of surrounding farm/forest and natural resource uses are described well, the characteristics that make them vulnerable to potential adverse impacts from specific industrial uses are not evaluated in sufficient detail – making it difficult to determine compatibility between surrounding uses and all proposed industrial uses without relying on conclusory statements in the applicant’s remand submission.
3. While potential industrial use categories and their operating characteristics are described well, their specific adverse impacts on specific farm/forest and natural resource uses, necessary for making a compatibility determination for each use category, often cannot be adequately identified due to limited descriptions of the specific vulnerabilities of farm/forest and natural resource uses.
4. While expert testimony is provided regarding the effectiveness of state and federal standards to reduce potential adverse water and air quality impacts from potential industrial uses, it is unclear whether these standards are sufficient in themselves to meet the compatibility standard. The issue is the lack of sufficient expert information regarding the vulnerabilities of surrounding uses to waterborne and airborne pollutants that could be generated from some proposed industrial uses, which is necessary to make a compatibility determination.
5. The applicant has provided more clarity regarding the applicability of additional local conditions that can help to reduce adverse impacts (for example, requiring compliance with state and federal standards, levee certification, flood-proofing facilities, and meeting seismic building code requirements). However, some of the proposed conditions are ineffective, subjective, or insufficiently detailed to demonstrate compatibility at this time – which run the substantial risk of being found to impermissibly defer demonstration of compatibility for most proposed uses.

6. Staff have concluded that there is sufficient basis to approve the Goal 3 exception area and some of the less “intense” uses proposed by the applicant, subject to more specific and objective conditions of approval.

Staff Recommendation

Staff recommends approval of the 837-acre Goal 3 exception expansion area, but for a limited range of allowable uses, subject to more specific conditions of approval. Please see Section 4 of this staff report.

Section 2: Staff Findings and Analysis

Quotes from the OAR and LUBA *Riverkeeper III* are in italics; the applicant's findings are shown in standard text in quotes. Text omitted from both review standards and applicant's findings, for brevity's sake, is indicated by a bracketed ellipse: [...].

As discussed, the previous appeal and remand proceedings have narrowed the scope of this review to the compatibility criterion, OAR 660-004-0020(2)(d).

“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.”

As noted in LUBA's *Riverkeeper III* decision (pp. 28-29), LUBA made the following observation and suggestion under the third assignment of error, that applies generally to determination of compliance with OAR 660-004-0020(2)(d):

“The key question presented is the appropriate level of detail in the findings addressing goal exception criteria in the context of a decision that approves a goal exception and associated comprehensive plan and zoning changes but does not approve any particular development. In the present case, the challenged exception would permit a wide range of industrial uses, with many different characteristics and potential impacts. Because the county does not know exactly which industrial uses will be applied for within the exception area, or where they will be located relative to adjacent uses and natural resources, the county's findings will necessarily evaluate compatibility at a more abstract or general level than if a specific industrial use were proposed.

*Nonetheless, even in the absence of a specific proposal, the **county's compatibility analysis must evaluate in sufficient detail the likely characteristics of the uses allowed under the goal exception, the characteristics or vulnerabilities of uses in the adjoining area and natural resources in the surrounding area, and the likely adverse impacts of proposed uses on those adjoining uses and natural resources, along with any specific identified mitigation or other conditions necessary to ensure compatibility.*** [Emphasis added.]

LUBA Assignment of Error 1.A: Surrounding Natural Resources

Quoting from *Riverkeeper III*:

“The county's findings do not identify any natural resources or resource management or production practices, within or outside of the 2,000-foot study area, that could be impacted by the location of the proposed industrial uses. [...] In sum, remand is necessary for the county to adopt findings addressing the OAR 660-004-0020(2)(d) requirement to evaluate compatibility with “surrounding natural resources and resource management or production

practices," including identification of the "surrounding" area and any natural resources or resource management or production practices that occur in that area." (pp. 10-11)

*"[...] the county's compatibility analysis must evaluate in sufficient detail the likely characteristics of the uses allowed under the goal exception, **the characteristics or vulnerabilities of uses in the adjoining area and natural resources in the surrounding area**, and the likely adverse impacts of proposed uses on those adjoining uses and natural resources, along with any specific identified mitigation or other conditions necessary to ensure compatibility."* (p. 28) [Emphasis added.]

Thus, to demonstrate compatibility with natural resources in the surrounding area, the applicant must:

- **Issue 1.A.1: Determine the surrounding area where impacts on natural resources may occur;**
- **Issue 1.A.2: Describe natural resources and resource management and production practices; and**
- **Issue 1.A.3: Describe vulnerabilities of natural resources in the surrounding area to potential impacts from specific allowed industrial uses.³**

Applicant's Response to Remand Issue 1

This section summarizes the applicant's responses to each of the three natural resource issues identified by LUBA in *Riverkeeper III*, followed by staff review of the adequacy of the applicant's responses.

Issue 1.A.1: Determination of Surrounding Natural Resource Impact Area

Applicant's Remand Response

Chapter 3.7 of the CSA Analysis recognizes that natural areas must be analyzed for compatibility with the industrial use categories allowed in the Goal Exception. The proposed Surrounding Area includes the area within a one-mile radius of the proposed Exception Area, as well as land protected from flooding by Beaver Drainage Improvement Company (BDIC) levees:

"Given the types of potential 'compatibility externalities' [adverse impacts] that may be expected to occur from development in the Exception Area, such as air quality impacts or stormwater runoff, the intensity of compatibility externalities is expected to be strongest

³ There is some ambiguity in LUBA's decision regarding the extent to which the applicant must identify the vulnerabilities of natural resources. In staff's view, it would be difficult to determine the compatibility of any particular industrial use with a natural resource, without first understanding the vulnerability of specific natural resources (e.g., an endangered species) to impacts from the specific industrial use. This interpretation is supported by the text of LUBA's decision quoted above. *Riverkeeper III* Footnote 8 also references "vulnerabilities" in the context of both adjoining farm/forest uses and surrounding natural resources by stating: "Describe in detail the most vulnerable use or natural resource in the Surrounding Area, and assuming that the industrial use is located in proximity to that use or resource. Then evaluate the likely impacts of the industrial use on the adjoining use or resource." To describe in detail the most vulnerable natural resource, one would need to know the vulnerabilities of all natural resources in the Surrounding Area.

immediately adjacent to the proposed industrial areas. Externalities will diffuse over time and distance, becoming less concentrated as they travel farther from their point of origin. For example, if the air emissions externalities within one mile from the proposed use are determined to be compatible, it is logical that those farther away will be also found to be compatible to the extent the more distant uses are similar to the more proximal ones.

In addition to lands within one mile of the Exception Area, the record includes assertions that the lands within the BDIC function as an interconnected agricultural unit due to the hydrology of the area. Because many potential externalities concern hydrologic factors, CSA finds that analysis of lands within the BDIC levees for purposes of the compatibility analysis is appropriate even though the potential for externalities would still be expected to diminish as distance from the Exception Area increases.

Therefore, the surrounding area is defined as those lands immediately adjacent to the Exception Area, those within one mile of the Exception Area, and the land within the levees of the BDIC. The map included on Page 11 of Appendix A of the CSA Analysis displays this surrounding area and serves as the basis for the remainder of the analysis.” (p. 3-17).

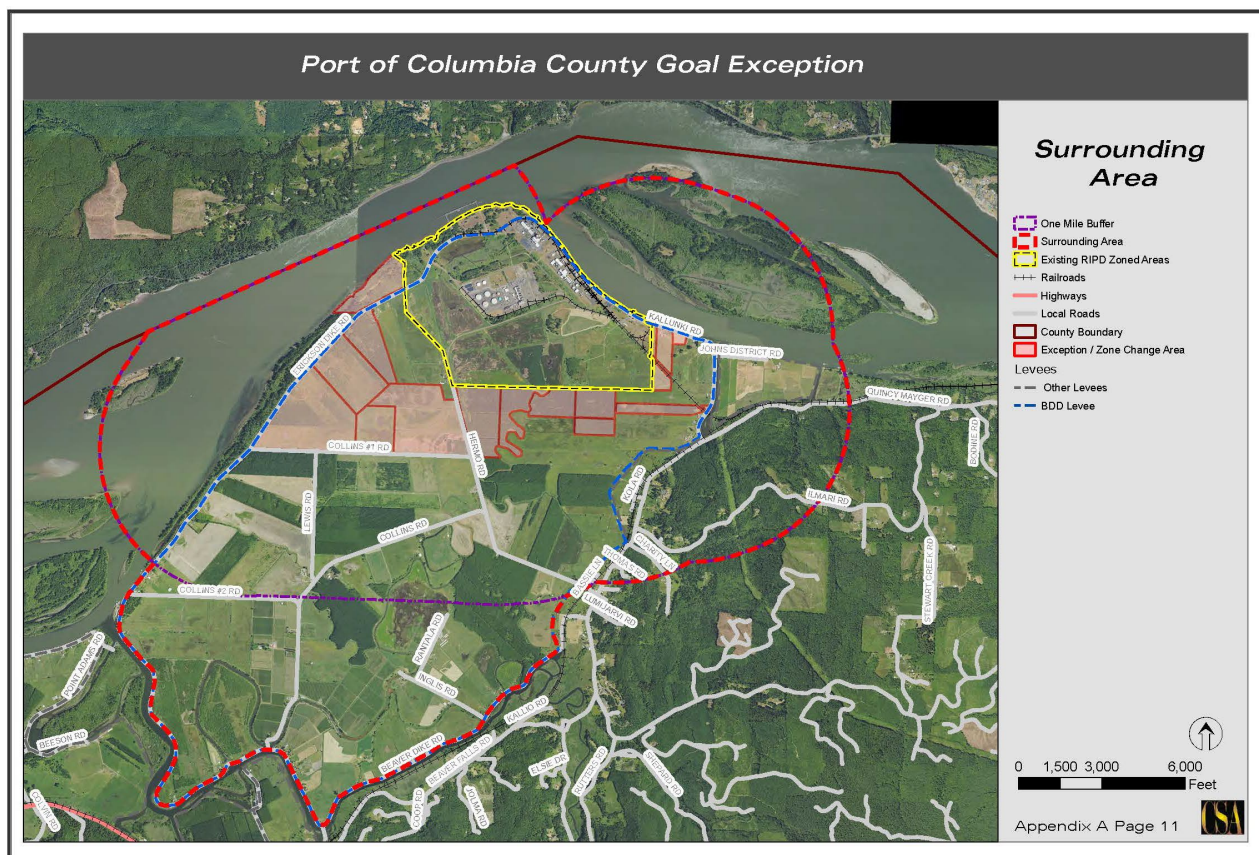


Figure 2: CSA Map of Surrounding Area

Adequacy of Applicant's Response

Staff generally agree with CSA's rationale for establishing the natural resources surrounding (impact) area. Staff note that the one-mile radius from the Exception expansion area, combined with the entire area served by the Beaver Drainage District's levee system, includes the wildlife habitat areas identified in Appendix B Wetland Feasibility Study, many mapped wetlands, county-identified Goal 5 resources sites, and wildlife habitat based on ORBIC Threatened, Endangered, and Sensitive Wildlife Species Data.

However, the CSA Map of the Surrounding Area does not extend for a full mile northwest of the proposed Exception Area as indicated in the CSA text quoted above. Rather, the Surrounding Area stops at the state line (the center of the Columbia River), which is also outside the ORBIC mapping area. In *Riverkeeper III* (p. 11), LUBA expressed skepticism of the idea of determining the boundaries of the natural resource Surrounding Area based solely on jurisdictional boundaries.⁴ However, in this instance, the state line is in the middle of the Columbia River, which staff believe is representative of natural resources associated with the Columbia River. Because CSA's mapped Surrounding Area represents the wide variety of natural resources that could be impacted by industrial uses permitted in the RIPD zone, staff support reliance on the CSA map shown in Figure 2.

Issue 1.A.2: Description of Surrounding Natural Resources and Resource Location, Management and Production Practices

Applicant's Remand Response

Chapter 3.2 of the CSA Analysis, and Appendix B to the CSA Analysis, identify the location and describe the characteristics and management practices of wetlands, water areas, and fish and wildlife habitat in the mapped Surrounding Area:

- Major Waterfowl Habitat
- Wildlife Game Habitat
- Wildlife Endangered Species (Columbia white tailed deer and salmonids)
- Salmon – Coho, Chinook, Steelhead, Chum, Sockeye
- Julia Buter Hansen Wildlife Refuge located on Crims Island
- Essential Salmonid Habitat in John Slough, Cries Creek, Columbia River, and Bradbury Slough
- Columbia River
- Open Space
- Wetlands and Riparian areas
- Further information on water resources in Appendix C: Surrounding Natural Resources (Water) (CwM-H2O)

⁴ "However, it is not clear what bearing the geographic extent of the county's zoning authority has on application of the compatibility test in OAR 660-004-0020(2)(d). The rule is concerned with impacts on adjoining uses and natural resources in the Surrounding Area, and is not limited to uses and resources that are located within the county's zoning jurisdiction." (*Riverkeeper III*, p. 11)

- Further information on air resources in Appendix E: Scale of Proposed Industrial Uses and Impacts (Air Quality) (SCS Engineers)

Adequacy of Applicant's Response

Staff find that the applicant has provided sufficient information related to natural resource characteristics and management practices in the Surrounding Area to satisfy this remand requirement.

Issue 1.A.3: Description of Natural Resource Vulnerabilities to Potential Adverse Impacts from Specific Allowed Industrial Uses

Applicant's Remand Response

While the CSA Analysis Chapter 3 and Appendix B describe the general characteristics of natural resources in the Surrounding Area, expert analysis addressing *vulnerabilities* of specific types of natural resources to potential adverse impacts from the wide range of allowed industrial uses, required to make a compatibility determination, is not provided. The applicant's natural resources expert (Schott & Associates) does not describe specific vulnerabilities of natural resources surveyed in Appendix B. The applicant has not provided evidence that they consulted with the Oregon Department of Fish & Wildlife or any other agency with expertise in natural resources or the potential vulnerabilities of wildlife habitat. The applicant's response cites no scientific studies on the impacts of any proposed industrial uses on specific habitat types.

The CSA Analysis Chapter 4 does identify "potential externalities" of five "customary development forms" which represent the "typical" or "medium" impact uses allowed in each of the five industrial use categories, as well as the operating characteristics of "more intense" and "less intense" industrial uses in each of the five industrial categories. Chapter 4 discusses in general terms "compatibility externalities" that could potentially have an adverse impact of "sensitive natural resource receptors", including "airborne emissions, water quality degradation, stormwater/hydrology, levee externalities and floodplain, fire hazard, and seismic hazard, noise and light." However, Chapter 4 does not identify and rank the vulnerabilities of sensitive natural resource receptors or explain what makes a specific natural resource more or less "sensitive" to specific adverse impacts from allowed industrial uses.

Thus, none of the listed "compatibility externalities" describes specific vulnerabilities of different natural resource types in the manner suggested by LUBA in ***Riverkeeper III*** in order to make a sufficient compatibility determination. Here are two examples of the level of detail and analysis provided in CSA matrices intended to demonstrate compatibility:

Forest and Wood Products CDF – Wood Pellet Plant:

"Airborne Emissions: ODEQ air quality permits set limits and conditions on the emissions and require monitoring, reporting, and pollution control practices of the facility. Permits are issued to comply with federal and state air quality laws. [...]

Natural Resources: The CDF may generate airborne emissions equal to or somewhat more intense than existing agricultural uses. Minimal compatibility considerations are expected

on natural resources. [...]

A use less intense than the CDF is not expected to generate airborne emission more intense than the existing surrounding uses. No natural resources are expected to be affected. [...]

A use more intense than the CDF may generate significantly more emissions than a typical agricultural use. No identified externalities on natural resources, provided there are no changes to Ph in localized precipitation.”⁵

Liquid Bulk Commodities CDF – Ethanol Processing Facility:

“Airborne Emissions: ODEQ air quality permits set limits and conditions on the emissions and require monitoring, reporting, and pollution control practices of the facility. Permits are issued to comply with federal and state air quality laws. [...]

Natural Resource: The CDF may generate airborne emissions equal to or somewhat more intense than existing agricultural uses. Minimal compatibility considerations are expected on natural resources. [...]

A use less intense than the CDF is not expected to generate airborne emission more intense than the existing surrounding uses. No natural resources are expected to be affected. [...]

A use more intense than the CDF may generate significantly more emissions than a typical agricultural use. No identified externalities on natural resources, provided there are no changes to Ph in localized precipitation.”

Adequacy of Applicant’s Response

Instead of taking the worst-case-scenario approach recommended by LUBA,⁶ applied to each specific vulnerability, the CSA Analysis took the approach of identifying CDFs. These are typical example uses based on research of similar uses of regional ports under each proposed use category. Under the CDF approach, the analysis of potential adverse impacts on natural resources and conclusions regarding such impacts are identical for two very different categories of industrial uses, are not specific to any natural resource use or vulnerability, and are not supported by an expert for the relevant natural resource vulnerabilities. In other words, if the application were approved and again appealed, there is a substantial risk LUBA would find the CDF compatibility

⁵ Staff found no specific list of uses with emissions that generate changes to Ph in localized precipitation, no measurements of localized precipitation, and no expert testimony regarding the veracity of this conclusion.

⁶ “One way of doing this, without evaluating every conceivable industrial use, is to evaluate in detail the most impact-intensive use within each of the five categories, subject to reasonable “worst-case” assumptions about size, design, location, and other characteristics. Describe in detail the most vulnerable adjoining use or natural resource in the surrounding area and assume that the industrial use is located in proximity to that use or resource. Then evaluate the likely impacts of the industrial use on the adjoining use or resource. If that detailed evaluation indicates that the industrial use is not compatible with the adjoining use or resource, then evaluate what measures (minimum distance, buffers, size or design restrictions, etc.) may be necessary to render the industrial use compatible. If such measures are deemed sufficient, then impose conditions requiring them. Otherwise, impose conditions excluding that particular industrial use. Repeat the analysis for the next most impact-intensive use in that category until one is found that is compatible or can be made so. Complete that same analysis for all use categories.” (*Riverkeeper III*, p. 28).

analysis to be both general and conclusory, as before, and therefore impermissibly defers the determination of compatibility to a future county development review process.

CSA Analysis Chapters 3 and 4 also describe the local, state, and federal permitting requirements related to various proposed uses. Appendices B, C, and D explain how state and federal permitting processes generally are “protective” of wetlands, water quality, and air quality. However, without the requisite analysis of the specific vulnerabilities of various types of natural resources in the Surrounding Area to specific adverse impacts from the wide variety of allowed industrial uses necessary to make a compatibility determination for each use category, it is impossible to demonstrate compatibility of many uses with natural resources in the Surrounding Area.

Based on staff’s discussions with DEQ air quality representatives on October 1, 2025, the DEQ air permitting program is “protective” of air quality but depends on detailed modeling of specific industrial uses to determine whether state and federal air quality standards are met. DEQ air quality representatives noted that compliance with such standards does not guarantee that the wide range of industrial uses allowed in the Exception Area will be rendered “compatible” with the natural resources or farm/forest uses found in the Surrounding Area.

As noted by DEQ air quality representatives, once an industrial use has been certified by local government through a Land Use Compatibility Statement (LUCS) to be allowed under local zoning, all that DEQ can determine is whether the permitted use meets federal air quality standards – not whether those standards are sufficiently protective of fish and wildlife habitat to ensure that the industrial use is compatible. Further details on this discussion can be found in Section 3.A of this staff report.

Thus, the CSA Analysis does not explain in sufficient detail why these future permitting processes will ensure that the wide range of industrial uses allowed in the Exception Area will not have significant adverse impacts on the wide variety of natural resources found in abundance in the Surrounding Area.

LUBA Assignment of Error 1.B: Evaluation of Adjacent Uses

Quoting LUBA’s decision in *Riverkeeper III* (First Assignment of Error, Part B)⁷ two key issues must be addressed by the applicant:

“As we stated in Riverkeeper II, the findings must address issues raised regarding the specific characteristics of adjacent uses and the vulnerabilities of adjacent uses to the

⁷ *“The findings identify and evaluate impacts on several agricultural and residential uses located within the [2,000 foot] study area, including tree farms, a mint farm, unmanaged forested lands, and several residences. Petitioners argue that those findings fail to adequately describe the adjacent uses and adequately evaluate potential impacts on those uses. **Petitioners contend that the findings fail to describe the particular characteristics and vulnerabilities of adjoining agricultural uses and practices, and ignore testimony regarding the same.**” (Riverkeeper III, p. 12) [Emphasis added]*

particular impacts of specific industrial uses. The findings on remand are inadequate in that regard, despite testimony in the record that would allow a more finely grained description and evaluation.” (p. 13) [Emphasis added.]

Thus, to demonstrate compatibility with adjacent farm/forest uses, the applicant must:

- **Issue 1.B.1: Describe adjacent farm and forest use characteristics and practices.**
- **Issue 1.B.2: Describe the specific vulnerabilities of adjacent farm and forest uses to specific adverse impacts from allowed industrial uses.**

Issue 1.B.1: Description of Adjacent Land Farm and Forest Uses

Applicant’s Remand Response

The CSA Analysis, Chapter 3.1 Farm and Forest Practices, describes the location and operating characteristics of 12 farm/forest uses within “adjacent area” and the larger Surrounding Area. These farm/forest uses include Pasture, Hybrid Poplar Tree Farms, Forestry and Woodlot, Berries, Open Space / Fallow, Grass Hay and Alfalfa, Mint, Barn and Outdoor Storage, Paddock or Pen, Flower farm, Cannabis, Orchard and Horse Arena.

Adequacy of Applicant’s Response

Staff finds that the applicant has provided sufficient information on farm and forest practices in the Surrounding Area to serve as a foundation for the next steps in the required compatibility analysis.

Issue 1.B.2: Applicant’s Description of Vulnerabilities of Specific Farm and Forest Uses and Practices to Specific Allowed Industrial Uses

*The findings identify and evaluate impacts on several agricultural and residential uses located within the [2,000 foot] study area, including tree farms, a mint farm, unmanaged forested lands, and several residences. **Petitioners argue that those findings fail to adequately describe the adjacent uses and adequately evaluate potential impacts on those uses. Petitioners contend that the findings fail to describe the particular characteristics and vulnerabilities of adjoining agricultural uses and practices, and ignore testimony regarding the same.”*** (Riverkeeper III, p. 12) [Emphasis added.]

Applicant’s Remand Response

CSA Analysis Chapter 4 identifies “potential externalities” of five CDFs which represent the “typical” or “medium” impact uses allowed in each of the five industrial use categories, as well as the operating characteristics of “more intensive” and “less intensive” industrial uses in each of the five industrial categories. Chapter 4 discusses in general terms broad categories of “compatibility externalities” that could potentially have an adverse impact on “sensitive receptors” in the Surrounding Area, including “airborne emissions, water quality degradation, stormwater/hydrology, levee externalities and floodplain, fire hazard, and seismic hazard, noise and light.”

The preface to each of the five matrices includes the following statement regarding “potential compatibility considerations,” which is repeated for all five industrial use categories:

“The ledger size matrix on the next page relates potential compatibility considerations between the identified uses in the surrounding area with the identified potential externalities. The matrix analyzes the compatibility according to the sensitive receptors (columns) for relevant externality (rows). For example, the analysis of potential farm use impacts from airborne emissions is examined from perspective of relative externality impacts on farm uses that would be expected to be sensitive to airborne emissions. For example, row crops are expected to be a more sensitive receptor to dust emissions when compared to a cattle pasture, at emissions levels that could obtain emission permitting authorization. The analysis examines the potential for externality impacts for the receptor land uses that would reasonably be expected to be sensitive to the relevant potential externality.” (CSA Analysis, pp. 4-4, 4-10, 4-18, 4-25, and 4-32)

However, the basis for determining farm/forest “sensitive receptor uses” (as opposed to non-sensitive receptor uses) is not explained further. Similar analysis and conclusions apply to two different industrial use categories. Both note that “dust sensitive uses could experience externalities due to particulate matter emissions,” but do not explain which farm/forest uses are sensitive to such emissions, and to what extent. Here are two examples of the level of detail and analysis provided in CSA matrices intended to demonstrate compatibility:

Dry Bulk CDF – Gypsum Wallboard Plant:

“Airborne Emissions: ODEQ air quality permits set limits and conditions on the emissions and require monitoring, reporting, and pollution control practices of the facility. Permits are issued to comply with federal and state air quality laws. [...]

Surrounding Land Uses: The CDF may generate airborne emissions equal to or somewhat more intense than that of existing agricultural uses. Dust sensitive uses could experience externalities from PM [particulate matter] emissions. [...]

A use less intense than the CDF is not expected to generate airborne emission when compared to existing agricultural uses. No sensitive receptors externalities are expected. [...]

A use more intense than the CDF may generate significantly more emissions than a typical agricultural use. Dust sensitive uses could experience externalities from PM emissions.”

Liquid Bulk Commodities CDF – Ethanol Processing Facility:

“Airborne Emissions: ODEQ air quality permits set limits and conditions on the emissions and require monitoring, reporting, and pollution control practices of the facility. Permits are issued to comply with federal and state air quality laws. [...]

Surrounding Land Uses: The CDF may generate airborne emissions equal to or somewhat more intense than existing agricultural uses. Dust sensitive uses could experience externalities from PM emissions. [...]

A use less intense than the CDF is not expected to generate airborne emission more intense the existing surround uses. No sensitive receptors externalities are expected. [...]

A use more intense than the CDF may generate significantly more emissions than a typical

agricultural use. Abutting sensitive uses could experience externalities from PM emissions.”⁸

Unlike the prior stages of this proceeding, the CSA Analysis Chapters 3 and 4 describe the relationship between the local, state, and federal permitting requirements and the various proposed uses. Appendices B, C and D explain how state and federal permitting processes generally are “protective” of wetlands, water quality and air quality.

Adequacy of Applicant’s Response

The broad categories of “compatibility externalities” are generally consistent with the testimony the County received in prior stages of this proceeding. However, as with the evaluation of natural resource vulnerabilities and impacts, the CDF analysis is both general and conclusory, and therefore impermissibly defers the determination of compatibility to the development review stage.

CSA Analysis Chapters 3 and 4 describe the local, state, and federal permitting requirements related to the various proposed uses. Appendices B, C, and D explain how state and federal permitting processes generally are protective of wetlands, water quality and air quality. As explained in Section 3.A of this staff report, the DEQ air quality permitting process, while “protective”, is not designed to ensure compatibility with specific farm/forest uses and practices in the Surrounding Area. Without an expert analysis of the specific vulnerabilities of various types of farm/forest uses in the Surrounding Area to specific adverse impacts from allowed industrial uses, the applicant has not demonstrated compatibility to the level of specificity required in ***Riverkeeper III***.

It would have been extremely helpful to include such an expert evaluation in the applicant’s remand submission, as required and outlined by LUBA’s ***Riverkeeper III*** decision, which provided analysis and conclusions regarding compatibility. We recommend a more specific and detailed expert evaluation of potential impacts from each of the proposed use categories on surrounding farm/forest uses’ specific vulnerabilities and recommend mitigation measures that the county can objectively require to ensure such compatibility.

Again, staff discussions with DEQ air program representatives on October 1, 2025, indicated that the DEQ air quality program is protective of air quality and relies on modeling of specific uses to determine compliance with state and federal standards. However, meeting these standards does not ensure that industrial activities will avoid significant impacts on endangered species, wildlife habitat, or nearby farm/forest uses. As DEQ confirmed, its permitting authority only evaluates whether a use meets air quality standards, not applicable land-use regulations intended to ensure

⁸ Under “LBC CDF Compatibility Analysis Results and Conclusions” (CSA Analysis, p. 4-20) CSA adds the following conclusion regarding the CDF: “The types of emissions from an ethanol plant that would result once required air permitting is obtained would not be of a type that would typically negatively affect crop production, cattle grazing, blueberry production, or other farm uses identified in the area nor would they be likely to negatively affect the riparian or riverine resources in the area.” This conclusion does not apply to more intensive CDF uses, is qualified by the word “likely,” and is not supported by expert facts or analysis regarding the vulnerabilities of farm/forest uses in the Surrounding Area – other than CSA’s “professional opinion.”

compatibility with surrounding farms, forests, and natural resources. DEQ relies on the LUCS to ensure compliance with applicable land use standards, including OAR 660-002-0020(2)(d). Thus, the CSA Analysis does not appropriately correlate regulated emission levels with possible adverse impacts on specific vulnerabilities.

Staff Recommendation

In the absence of sufficient evidence and analysis demonstrating the compatibility of all proposed industrial uses, staff has identified specific lower-intensity industrial uses that, with staff's recommended conditions, are or will be made compatible with farm/forest and natural resource uses in the Surrounding Area. Staff has also identified more intensive uses that do not meet the compatibility standard in the applicant's current analysis. See staff report Section 4 and Appendix 4.

LUBA Assignment of Error 2: Lack of appropriate intensity, scale and impact characteristics of the proposed industrial uses

Quoting from LUBA's decision in **Riverkeeper III** decision (Second Assignment of Error):⁹

*"Petitioners argue that the county failed to adopt adequate findings **describing the scale and impact characteristics of the different types of proposed industrial uses**. In Riverkeeper II, we noted that "adequate findings regarding compatibility would start by identifying the likely adverse impacts of typical uses authorized under the five approved use categories, evaluating each use category separately, and if necessary specific types of uses within each use category. As petitioners argue, the potential adverse impacts of different types of liquid bulk terminals, e.g., an oil terminal*

⁹ "In *Columbia Riverkeeper v. Columbia County*, 78 Or LUBA 547 (2018) (*Riverkeeper II*), *aff'd*, 297 Or App 628, 443 P3d 1184, rev den, 365 Or 721 (2019), we remanded for more adequate findings, supported by substantial evidence, to address the "compatibility" standard at ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d), which both require a finding that "[t]he proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

We explained:

"[A]dequate findings regarding compatibility would start by identifying the likely adverse impacts of typical uses authorized under the five approved use categories, evaluating each use category separately, and if necessary specific types of uses within each use category.

As petitioners argue, the potential adverse impacts of different types of liquid bulk terminals, e.g., an oil terminal versus a fertilizer export operation, could be different enough to require a separate analysis. The findings should also address the characteristics of uses on adjoining areas, and assess vulnerability to potential externalities from industrial uses in the exception area, such as impacts on water quality.

*Informed by those analyses, the county can then reach sustainable conclusions regarding whether the proposed uses are compatible with adjoining uses, or can be rendered compatible via identified measures. We generally agree with petitioners that because the county failed to conduct the required analyses, its determinations regarding compatibility with adjoining agricultural practices are conclusory, and the resulting over-reliance on conditions such as Condition 4, which require applicants to submit an agricultural impacts analysis, thus represents an impermissible deferral of demonstrating compliance with OAR 660"004-0020(2)(d)." *Riverkeeper II*, 78 Or LUBA at 569-70." (**Riverkeeper III**, p. 4)*

versus a fertilizer export operation, could be different enough to require a separate analysis." 78 Or LUBA at 569." (p. 13) [Emphasis added]

LUBA's second assignment of error in *Riverkeeper III*, contains three sub-issues:

- **2.A Scale of Proposed Industrial Uses and Impacts**
- **2.B Comparison with Existing Port Westward Industrial Uses**
- **2.C Specific Impacts Not Addressed**

LUBA Assignment of Error 2.A: Scale of Proposed Industrial Uses and Impacts

"Petitioners argue that, while the county recognized testimony that there may be significant differences in "scale and probabilities" between the impacts of the proposed industrial uses and those of the existing industrial and other uses, the findings never address any differences in scale. [...]"

The Port responds that the county is not required to evaluate the scale or intensity of the potential adverse impacts of the proposed industrial uses on the existing adjacent uses because most of the proposed industrial uses will be regulated by state and federal entities, including regulations designed to prevent or mitigate environmental impacts caused by chemical spills. However, the Port does not explain why potential future application of state and federal regulations to some or all of the proposed industrial uses obviates the need to evaluate the scale or intensity of the industrial uses, and their potential adverse impacts, to satisfy the required compatibility analysis." (Riverkeeper III , pp.15 -16) [Emphasis added.]

In a footnote, LUBA explains:

"⁴ To the extent that state and federal regulations will be applied to specific industrial uses and could reduce the likelihood or severity of adverse impacts on adjoining land uses, the county may consider such presumed reductions in impact in its compatibility analysis." (Riverkeeper III , p.17)

Applicant's Remand Response

Chapter 4 of the CSA Analysis provides detailed descriptions of the operating characteristics of typical or medium-intensity uses in each of the five industrial use categories, as well as examples of less- and more-intensive uses within the same category. As previously noted, the CSA Analysis refers to the typical scale of development as the "Customary Development Form" or CDF. These descriptions provide sufficient detail to describe the intensity and scale of proposed industrial uses that could be allowed in the RIPD zoning district.

CDFs and descriptive examples of less and more intensive uses in the same category include:

- a. Forestry and Wood Products CDF: Wood Pellet Plant**
 - a. Less Intensive Use: Log Yard for Export
 - b. More Intensive Use: Pulp Mill
- b. Dry Bulk Commodities (non-containerized) CDF: Gypsum Wallboard Plant**

- a. Less Intensive Use: Food Stuff Import or Export
- b. More Intensive Use: Import, Export or Processing of Extremely Hazardous Materials
- c. Liquid Bulk Commodities CDF: Ethanol Processing Facility**
 - a. Less Intensive Use: Non-hazardous (food) Liquid Bulk Import and Export
 - b. More Intensive Use: Petroleum Storage and Refining
- d. Natural Gas and Derivative Products CDF: Liquid Natural Gas**
 - a. Less Intensive Use: Power Generation Facility
 - b. More Intensive Use: Ammonium Nitrate Fertilizer Plant
- e. Breakbulk Storage (Not Containerized) CDF: Non-Containerized Imports with Additional Processing**
 - a. Less Intensive Use: Non-Hazardous Import Facility
 - b. More Intensive Use: Extremely Hazardous or Explosive Materials Handling

CSA has not defined specific acceptable locations for any of the proposed uses, which is not explicitly required for the suggested redesignation with this Goal Exception, but does inhibit Staff's ability to determine compatibility with adjacent farm and forest uses and natural resources. However, CSA indirectly addresses the location question by a range of setbacks, depending on the intensity of use proposed in the expanded Exception Area. Generally (with a few exceptions), a 150-foot setback is required for less-intensive industrial uses, a 300-foot setback for medium-intensity CDF, and a 600-foot setback for more-intensive industrial uses. These setbacks help clarify the potentially acceptable locations for certain uses based on intensity, but again lack specificity regarding the vulnerabilities in question.

The CSA Analysis, Chapter 4, identifies eight potential externalities for each CDF that could adversely affect "sensitive" farm/forest and natural resource uses: airborne emissions, water quality degradation, stormwater/hydrology, levee externalities & floodplain, fire hazard, noise, and light.

CSA Analysis Chapter 4 summarizes federal, state and local permitting processes that apply to each of the CDFs (Appropriate Air Quality Permit issued by DEQ, Appropriate NPDES Stormwater Permit for construction and industrial uses, State Removal-Fill Permit issued by DSL, Federal Section 404 Permit issued by USACE, Federal Section 401 Water Quality Certification issued by DEQ, Spill Prevention Control and Countermeasure Plan as appropriate, Hazardous Waste Management Permit issued by DEQ, Site Design Review Permit issued by Columbia County, RIPD Use Permitted Under Prescribed Conditions Permit issued by Columbia County.

Based on the assumption that the cumulative effect of these permitting processes will reduce adverse impacts, CSA prepared ledger-size matrices analyzing compatibility with sensitive receptors for relevant externalities. These estimates are based on CSA's professional judgment and expert materials contained within the appendices, and include similar conclusions for surrounding (farm/forest) and natural resource land uses. The boxes in the sections below contain abbreviated quotes from the CSA Analysis matrices.

Liquid Bulk Commodities CDF: Ethanol Processing

- a. Less Intensive Use: Non-hazardous Liquid Bulk Import and Export
- b. More Intensive Use: Petroleum Storage and Refining

For example, the Liquid Bulk Container CDF (Ethanol Processing) would have the following potential adverse impacts from airborne emissions on undefined “sensitive” farm/forest and natural resource uses in the Surrounding Area.

Surrounding Land Uses	Natural Resource Uses
The CDF may generate airborne emissions equal to or somewhat more intense than that of existing agricultural uses. Dust sensitive uses could experience externalities from PM emissions.	The CDF may generate airborne emissions equal to or somewhat more intense than that of existing agricultural uses. Minimal compatibility considerations are expected on natural resources.

A Liquid Bulk Container use that is less intensive than the CDF (Non-hazardous Liquid Bulk Import and Export) would have the following potential adverse impacts on undefined “sensitive” farm/forest and natural resource uses in the Surrounding Area.

Surrounding Land Uses	Natural Resource Uses
No sensitive receptors are expected.	No natural resources are expected to be affected.

A Liquid Bulk Container use that is more intensive than the CDF (Petroleum Storage and Refining) would have the following potential adverse impacts on undefined “sensitive” farm/forest and natural resource uses in the Surrounding Area.

Surrounding Land Uses	Natural Resource Uses
A use more intense than the CDF may generate significantly more emissions than a typical agricultural use. Abutting sensitive uses could experience externalities from PM emissions.	A use more intense than the CDF may generate significantly more emissions than a typical agricultural use. No identified externalities on natural resources, provided there are no changes to Ph in localized precipitation.

Dry Bulk Commodities (non-containerized) CDF: Gypsum Wallboard Plant

- c. Less Intensive Use: Food Stuff Import or Export
- d. More Intensive Use: Import, Export or Processing of Extremely Hazardous Materials

Another example, the Dry Bulk Commodities CDF (Gypsum Wallboard Plant) would have the following potential adverse impacts on undefined “sensitive” farm/forest and natural resource uses in the Surrounding Area.

Surrounding Land Uses	Natural Resource Uses
The CDF may generate airborne emissions equal to or somewhat more intense than that of existing agricultural uses. Dust sensitive uses could experience externalities from PM emissions.	The CDF may generate airborne emissions equal to or somewhat more intense than that of existing agricultural uses. Minimal compatibility considerations are expected on natural resources.

A Dry Bulk Commodities use that is less intensive than the CDF (Food Stuff Import or Export) would have the following potential adverse impacts on undefined “sensitive” farm/forest and natural resource uses in the Surrounding Area.

Surrounding Land Uses	Natural Resource Uses
No sensitive receptors are expected.	No natural resources are expected to be affected.

A Dry Bulk Commodities use that is more intensive than the CDF (Import, Export or Processing of Extremely Hazardous Materials) would have the following potential adverse impacts on undefined “sensitive” farm/forest and natural resource uses in the Surrounding Area.

Surrounding Land Uses	Natural Resource Uses
A use more intense than the CDF may generate significantly more emissions than a typical agricultural use. Abutting sensitive uses could experience externalities from PM emissions.	A use more intense than the CDF may generate significantly more emissions than a typical agricultural use. No identified externalities on natural resources, provided there are no changes to Ph in localized precipitation.

Adequacy of Applicant’s Response

Staff finds that the applicant’s CDF analysis provides sufficient detail to differentiate the types and scale of the proposed industrial uses to provide a solid foundation for the required compatibility analysis.

While staff agrees with CSA that increased setbacks generally reduce potential adverse impacts, staff finds that setbacks by themselves are insufficient to ensure compatibility in the absence of a more detailed analysis of the farm/forest vulnerabilities. This is especially true of water pollution (which can travel via the system of channels and sloughs to vulnerable uses) and air pollution (which is affected by wind and topography).

As noted under Issues 1.A.2 and 1.B.2, across all industrial use categories, the applicant has not identified the specific vulnerabilities of farm/forest uses and natural resources to potential adverse impacts from the CDF or more or less intensive uses and linked these vulnerabilities to specific

adverse impacts from the proposed uses. Until these vulnerabilities are identified in relation to potential adverse impacts from specific farm/forest and natural resource uses, staff cannot recommend approval of either the CDF or more intensive proposed uses in the expanded Exception Area.

LUBA Assignment of Error 2.B: Comparison with Existing Port Westward Uses

“Despite the dissimilar types of industrial uses, and the greater distance, the county relied on the lack of reported conflicts between existing industrial uses and the mint farm and other uses in the area as critical support for its conclusion that the proposed industrial uses are compatible with adjoining uses.

In Riverkeeper II, we rejected a similar attempt to infer from the lack of evidence regarding conflicts between existing industrial uses and adjacent uses that the proposed industrial uses will be compatible. [...] A power-generating station may share some of same types of potential adverse impacts as an oil terminal, but, if the potential adverse impacts of an oil terminal are greater in scale or intensity compared to those of a power station, then the comparison between the proposed and existing industrial uses does not support the inference the county draws. Until the county conducts the fuller analysis required by OAR 660-004-0020(2)(d), it is not in a position to infer anything from the lack of reported conflicts between the existing Port Westward industrial uses and nearby uses with respect to compatibility between the different, and more proximate, proposed industrial uses.” (Riverkeeper III, p. 15) [Emphasis added]

Applicant’s Remand Response:

CSA Analysis Chapter 4 Customary Development Form Analysis no longer relies on the presumption that the lack of reported conflicts with Port Westward industrial uses is sufficient to demonstrate compatibility. Rather, the CSA Analysis Chapter 4 relies on the “Customary Development Form” (CDF) analysis framework to differentiate among the wide range of industrial uses allowed in each of the five industrial categories.

Adequacy of Response

Since the CSA Analysis does not rely on comparisons with existing Port Westward uses to demonstrate compatibility, staff finds that this remand issue has been adequately addressed. For example, CSA Analysis Chapter 4 describes power-generating facilities and why they are less intensive than the CDF for the Liquid Bulk Commodities uses and proposes a 150-foot setback to address locational requirements for such low-intensity uses. For these reasons, staff finds that lower-intensity power-generating facilities are compatible with uses in the Surrounding Area.

LUBA Assignment of Error 2.C: Impacts Not Addressed

“Petitioners also argue that the county failed to address issues raised regarding specific industrial use characteristics or impacts. First, petitioners cite evidence that the exception area, and the entire Port Westward area, is at high risk of soil liquefaction in the event of a large earthquake. Record 1348, 1901. Petitioners argue that, among the

proposed industrial uses, bulk fossil fuel storage and processing facilities are most vulnerable to seismic events and pose a particular risk of adverse impacts to adjoining uses.

The Port does not respond to this argument. We note that the findings recite the Port's position that seismic issues will be addressed at the time of development via application of state construction codes. Record 60. However, that finding does not purport to address the specific issues raised below regarding the seismic vulnerability of bulk fossil fuel facilities or explain why such issues need not be addressed in the compatibility analysis.

Petitioners next argue that the county failed to address issues raised regarding impacts on the hydrology in the area, citing expert testimony that the area has a high water table and that filling and grading associated with construction of the proposed industrial uses could elevate the water table higher and impact agricultural uses that are vulnerable to flooding or that require well-drained soils. *Petitioners argue that the findings the county adopted to ostensibly address impacts on hydrology in fact address only impacts on water quality. Port does not cite any findings addressing this issue or explain why the issue need not be addressed. We agree with petitioners that remand is necessary for the county to adopt responsive findings. Norvell, 43 Or App at 853. The third assignment of error is sustained.” (Riverkeeper III, pp.19-20) [Emphasis added.]*

LUBA identified two specific impacts that the applicant did not address:

- **Issue 2.C.1: Impact of a major earthquake on bulk fuel facilities and related adverse impacts on vulnerable adjoining uses.**
- **Issue 2.C.2: Impact from grading and filling on water table elevation and related adverse impacts on vulnerable mint and berry crops.**

Issue 2.C.1: Impact of a major earthquake on bulk fuel facilities

Applicant's Remand Response

The cover letter for the applicant's remand submission (Cable Huston, August 19, 2024) makes a useful distinction between “ordinary and event-based risks.”

“To assess the characteristics and/or vulnerabilities of uses in the surrounding area to potential externalities from industrial uses, the County must have some sense of whether an adverse condition is reasonably likely to occur. With respect to guarding against natural hazards in general, Statewide Planning Goal 7 (“Goal 7”) is a useful reference, and Goal 7 guides local planning agencies to take into account the frequency and severity of the hazard.

Much of the testimony already in the record identified certain risks that could arise from new industrial development in the Port Westward area. That testimony, however, typically did not describe whether such a risk is “ordinary” – in the sense that it is reasonably likely to occur during the lifespan of a specific development – or whether the risk was extraordinary and tied to a single “event” that, while possible, is unlikely to occur even over a long period

of time. An example of the former is a seasonal high water event. An example of the latter is a 500-year flood event.

The appropriate compatibility analysis must acknowledge that distinction by identifying the type of risk each development faces and then properly evaluating low-likelihood but high-consequence events. The CSA Remand Analysis uses that approach.”

The CSA Analysis appears to place a Category 9 earthquake as a “low-likelihood but high consequences event.” The CSA Analysis addresses the seismic vulnerability in relation to bulk fuel facilities in the following ways:

- Chapter 3.5 (pp. 3-14 to 3-15) identifies the Port Westward site’s vulnerability to seismic hazard due to the proximity of the Cascadia Subduction Zone (CSZ), potential for the CSZ-related magnitude nine earthquake, and Oregon Department of Geology and Mineral Industries (DOGAMI) geohazard maps’ indication of high liquefaction and severe shaking on site.
- Chapter 3.8 (p. 3-19)¹⁰ summarizes regulatory requirements established by Senate Bill 1567 (misabeled as 1537) in 2022, including mandated seismic vulnerability assessments and risk mitigation plans for bulk oil and liquid fuel terminals, with implementing rules in OAR 340-300.
- Chapter 4 discusses seismic hazard as a “potential externality” across all use categories, noting that structures must meet Oregon Structural Specialty Code (OSSC) seismic design standards. Elevated risk is generally associated with more intensive uses, dependent on Extremely Hazardous Substances (EHS) presence. Liquid Bulk Commodities (LBC) and Natural Gas and Derivative Products (NG&DP) likely involve large tanks of liquid, fuel or otherwise. Both categories have seismic risk identified at the CDF and, in the case of NG&DP, for the less intensive use as well.
- Chapter 5 recommends a seismic improvement condition based on use category and intensity, requiring facilities containing EHS or “necessary to protect public health” to be constructed to withstand the CSZ magnitude nine earthquake. For LBC, this condition depends on the intensity of use and scale of liquid bulk storage.

Adequacy of Applicant’s Response

Staff finds that the applicant’s response adequately addresses this remand issue by analyzing seismic impacts. The CSA Analysis notes that structures must be designed to OSSC seismic

¹⁰ “After the passage of Senate Bill 1537 in 2022, the State of Oregon now requires systematic comprehensive seismic vulnerability assessments for bulk oils or liquid fuels terminals located in Columbia, Multnomah, or Lane County. Rules regarding fuel tank seismic stability have been adopted at OAR Chapter 340, Division 300. ODEQ is seeking to have the assessments complete by June of 2024.

The legislation also requires that owners or operators of such terminals implement a seismic risk mitigation plan approved by ODEQ. The seismic risk mitigation plan must consider a magnitude 9.0 Cascadia Subduction Zone earthquake and, at a minimum, identify actions with timelines to protect public health, life safety and environmental safety within the facility, in areas adjacent, and other areas that may be affected.” (CSA Analysis, p. 3-19)

standards and that state regulations (OAR 340, Division 300) will apply to bulk fuel terminals in the proposed expansion area. Accordingly, staff finds that the applicant has adequately addressed the issue of the vulnerability of bulk fossil fuel storage and processing facilities during a seismic event while recognizing the extraordinary scale of the CSZ event.

However, staff recommends revisions to the proposed CSA Analysis seismic improvement condition for clarity and objectivity. Staff recommends defining “facility” as used within the condition as the Columbia County Zoning Ordinance (CCZO) definition of “structure” (CCZO Section 100.114) and prohibiting the outdoor storage of EHS unless within a structure improved to OSSC standards. See Section 4.B, Condition 8 of this staff report.

Issue 2.C.2: Impact of industrial filling and grading on the water table and related adverse impacts on vulnerable crops

Applicant’s Remand Response

The staff report, Section 3.B, includes a detailed discussion of the applicant’s response to this issue.

Adequacy of Applicant’s Response

The staff report, Section 3.B, explains in detail why the applicant has not demonstrated that state and federal regulations sufficiently mitigate water-table impacts to ensure compatibility with vulnerable mint and blueberry crops.

However, without analysis and design by a registered engineer that addresses specific potential impacts on mint and berry crops, staff’s best assessment is that BDIC’s ongoing water table management, combined with stormwater systems designed for the 100-year storm event, can adequately address hydrologic changes from new development. Staff recommends requiring that all on-site stormwater management systems be designed for the 100-year design storm event, as set forth in the Columbia County Stormwater & Erosion Control (SEC) Ordinance. (See staff report, Section 4.B, Condition 3.b.)

LUBA Assignment of Error 3: Appropriate Level of Detail and Impermissible Deferral of the Compatibility Determination

This issue is closely related to Remand Issue 3 because the appropriate scale and impact characteristics of the wide range of permitted industrial uses had not previously been fully evaluated. As a result, LUBA found that the proposed conditions of approval cannot be relied upon to address potential adverse impacts in the future. Quoting from LUBA’s decision in ***Riverkeeper III***:

“While the decision at Record 53 to 56 lists a number of local, state, and federal regulations and permits that could potentially apply to or be required for future development, petitioners argue that there is no evidence or analysis of which regulations and permits in fact will be applied to or required for which of the proposed industrial uses, or how regulations and permits designed for many different policy objectives (e.g., homeland

security, endangered species, reducing smog) could function to prevent or mitigate impacts on adjacent agricultural uses. [...]

*In adopting a goal exception, the county's only permissible option is to fully address the goal exception criteria and determine whether the criteria are met based on adequate findings and substantial evidence. That determination can, of course, be based in part on conditions of approval that limit or regulate future development in specified ways in order to ensure continued compliance with the goal exception criteria. Such conditions of approval can replicate, at a finer scale and to a greater degree, the analysis required under goal exception criteria such as OAR 660-004-0020-(2)(d). **Such a "belt and suspenders" approach is not error, so long as the local government does not rely on conditions of approval or subsequent permit reviews to substitute for findings fully addressing the goal exception criteria at an appropriate level of detail.**" (Riverkeeper III, pp. 24-27) [Emphasis added.]*

Issue 3.A: Application of State and Federal Programs to Ensure Compatibility

Though within LUBA's second assignment of error, the following quote directly addresses the insufficiency of the applicant's previous submission's reliance on state and federal permitting:

*"The state and federal regulations to which the Port refers are intended to reduce the likelihood or severity of certain adverse impacts on the environment. **The Port presumes that such reductions in environmental impacts might also reduce impacts on adjacent agricultural, forestry, or residential uses. However, nothing cited to us in the findings and evidence establishes that connection. For example, petitioners point out that the findings do not attempt to explain how state air quality standards are protective of sensitive crops.**" (Riverkeeper III, p. 16) [Emphasis added.]*

Applicant's Remand Response

The CSA Analysis Chapter 3.8.1 summarizes state and federal wetland, air quality, stormwater and groundwater, seismic assessment and risk management, spill prevention control, solid waste disposal, and hazardous waste management programs and permitting requirements. Chapter 3.8.2 describes the BDIC flood improvement and accreditation program, which is designed to prevent flooding within its BDIC levee system. The applicability of each of these programs is further described in CSA Analysis Chapter 4, which explains which permits apply to specific industrial land uses.

Technical appendices, authored by qualified professionals in their respective fields, describe how environmental programs are implemented and applied to specific categories of development projects.

- Appendix B: Wetlands
- Appendix C: Hydrology and Water Quality
- Appendix D: Flood Management, BDIC Accreditation
- Appendix E: Air Quality

Conclusions from each report are quoted below:

Appendix B: Wetland Determination and Feasibility Study (p. 6):

“The Port zone change site is estimated to have significant wetland area, covering roughly 50% of the zone change area. Future development of the zone change site will have to contend with these environmental constraints. Permitting wetland removal/fill can be costly and time-consuming and avoidance and minimization should be considered. Based upon the initial reconnaissance for this scope of work, there may be areas of contiguous upland onsite that could potentially be developed with minimal impacts to wetlands. The upland areas are almost entirely in poplar tree cultivation use currently and the absence of wetland criteria would be determined through the formal delineation process.

Based on a history of wetland disturbance through levee installation, agricultural practices and conversion of historical wetland to upland, minor-to-moderate impacts to wetlands could be readily mitigated. The mitigation measures would require the onsite permittee to provide compensatory mitigation site development using a combination of acceptable forms including creation, restoration, enhancement, and preservation. **Given the degraded nature of the existing lands that would be expected to meet wetland criteria through the formal delineation process, these compensatory environmental actions may accrue natural resource benefits versus current agricultural land uses.**” [Emphasis added.]

Appendix C: Surrounding Natural Resources (Water) (p. 12):

“The purpose of this memorandum is to address comments from the Land Use Board of Appeals (LUBA) remand No. 2021-097, specifically comments about the potential impacts to groundwater, water resources, and water quality from the proposed rezoning and expansion at the PWIP development. A summary matrix of the land uses proposed, potential list of likely permits needed, and the public involvement required for each potential port facility are presented in Attachment 3 – Land Use Matrix. The matrix does not include all permits potentially required.

- Based on the water use analysis and comparison between agricultural use and rural industrial use, both uses appear compatible in the area of the PWIP. **The demands for water by both agricultural and rural industrial can be met in the area of the proposed port expansion.** Expanded rural industrial water use will not impair the operation of the nearby agricultural water users.
- Based on the presented requirements of three state agencies; OWRD, DEQ, ODF, and the federal EPA, the natural surface water and groundwater resources of Oregon are well protected for development of new rural industrial facilities and **do not threaten the continued use of groundwater in the area for agricultural purposes.**
- This professional opinion assumes that the Port’s proposed requirements for seismic standards and 100-year flood hazard protection will be imposed as conditions of approval.” [Emphasis added.]

Appendix D: Flood Risk Mitigation Strategies - BDIC Accreditation (pp. 5-6):

“It is recommended that the conditions of approval for various land use categories be based on the consequences that would result from flooding. For example, less intense land uses that do not involve hazardous materials or are unlikely to result in significant environmental impacts should be required to follow the standard land use process for approval, based on the FEMA flood hazard mapping in effect at the time of approval. Whereas, **the most intensive land uses that involve hazardous chemicals and/or could cause significant environmental harm without adequate safety measures in place should require the BDIC levee system to be upgraded as necessary and obtain certification and accreditation by FEMA.** Also, appropriate floodproofing of facilities should be conducted to prevent significant harm in the event that the accredited levee system is not able to prevent flooding of the proposed facility. **For moderately intense land uses that do not involve hazardous chemicals but could cause some amount environmental harm, it is recommended that, at a minimum, floodproofing of the facility be required.** A matrix of example land uses and associated flood risk mitigation recommendations is provided in Table 1.” [Emphasis added.]

Table 1 recommends BDIC Accreditation Agreement for all “more intense” industrial uses and for the Natural Gas CDF (LNG Facility).¹¹

Appendix E: Scale of Proposed Industrial Uses and Impacts – Air Quality (p. 6):

“Compliance with applicable state and federal air quality regulations is considered to be protective of the environment and human health. Air quality regulations must be and are supported by the best available science, including a wealth of existing literature and ongoing empirical data collection. Air emissions by their nature are very specific to the industrial process proposed, thus, each project must be individually assessed based on its site-specific characteristics; expansion of the Port Westward Industrial Park would be no exception.” [Emphasis added.]

Summarized DEQ Contact

The CSA Analysis relies heavily on DEQ air and water quality permitting processes to ensure compatibility, as described in CSA Analysis Appendix C and E.

To assess the effectiveness of DEQ regulations in protecting nearby farm and forest uses and natural resources, staff met with DEQ air quality representatives on October 1, 2025, and with DEQ water quality representatives on October 24, 2025. The discussions focused on the effectiveness of DEQ air and water permitting regulations to address specific impacts identified by LUBA in **Riverkeeper III**. Further details on this discussion are in Section 3.A and 3.B of this staff report. Key points include:

¹¹ Note: CSA recommends conditions of approval mirror and refine these recommendations, as discussed under Issue 3.2 of this staff report.

- DEQ’s air and water quality permitting and certification programs are designed to address state and federal air and water quality standards and are not designed or intended to ensure land use compatibility.
- Air and water quality permits do not address specific land use compatibility issues related to flour dust impacts to gluten-free certification for crops or the elevation of the water table impacts on crops that require well-drained soils.

Adequacy of Applicant’s Response

Issue 3.1 has two parts:

- a) Does the applicant’s remand response explain which regulations or permits will be required for specific industrial uses, to the extent such regulations and permits can be identified at the comprehensive planning stage?
- b) Has the applicant explained how regulations and permits designed for many different policy objectives function to prevent or mitigate impacts on adjacent agricultural uses and natural resources?

The answer to the first question is yes. The CSA Analysis, combined with relevant technical appendices, clearly describes each regulatory program and explains how each program would apply to the industrial uses identified in each of the five industrial use categories.

The answer to the second question is more complicated. The CSA Analysis and Appendices B, C, D and E address the broad categories of “compatibility externalities” identified in the CSA Analysis Chapter 4: wetland impacts, water quality impacts, flooding impacts, and air quality impacts. However, the identified environmental protection programs do not ensure that all adverse impacts identified by petitioners are mitigated to the extent necessary to ensure compatibility.

As noted above, in meetings with DEQ representatives, they confirmed their permitting and certification programs are designed to meet state and federal regulations. They do not ensure land use compatibility. The Applicant has not shown that what is allowable under state and federal permitting is compatible with surrounding farm/forest use and natural resources.

Additional expert evidence regarding potential adverse impacts from proposed uses – and probable vulnerabilities to such adverse impacts on farm and forest and natural resource uses, in Surrounding Lands – is needed to support all the potential industrial uses allowed in the expanded exception area to satisfy the evidentiary requirements set forth in ***Riverkeeper III***. Again, since LUBA considers “vulnerabilities” to be a subset of “characteristics”, we suggest that the expert vulnerability discussion should be included in Chapter 3 and evidence regarding mitigation should be detailed in Chapters 4 and 5, based on expert information in the relevant technical appendix.

For example, Schott & Associates (who qualify as experts in fish and wildlife habitat issues) has not provided expert information regarding vulnerabilities of fish and wildlife habitat from the many industrial land uses proposed in this exception expansion area; nor has expert evidence been provided by a state or federal agency (e.g., Oregon Fish and Wildlife or National Marine Fisheries) regarding vulnerabilities or proposed mitigation measures that would be sufficient to ensure

compatibility between proposed industrial uses and fish and wildlife habitat resources within the impact area.

There is no doubt that Appendices C, D, and E have been prepared by qualified engineers who explain how state and federal permitting processes are “protective” of surrounding lands by reducing potential water quality, flooding, and air quality impacts from the wide range of allowed industrial uses. However, staff have identified at least two instances where these expert studies have fallen short of meeting the compatibility test. These examples are explained in detail in Section 4: Illustrative Examples.

Staff recommend that each technical expert supplement their technical memoranda to specifically identify the vulnerabilities of surrounding land uses and recommend specific measures sufficient to ensure compatibility. If a specific use cannot be rendered compatible by state and federal regulations, supplemented by local conditions of approval, then that use should be identified and excluded from the uses authorized in the expanded exception area.

Issue 3.B: Reliance On Proposed Local Conditions of Approval

*“Petitioners argue that the specific agricultural impact analysis required by Condition 4(i) is the type of detailed analysis necessary to support the compatibility determination required by OAR 660-004-0020(2)(d). Because **the county made, at best, a very generalized assessment of impacts, and relied heavily on Condition 4(i) to establish compatibility with adjoining agricultural uses, petitioners argue that the county has again impermissibly deferred a finding of compliance with OAR 660-004-0020(2)(d).***

*Similarly, petitioners argue that, while the findings generally discuss the use of buffers to mitigate impacts, there is **no detailed analysis of which type or size of buffers are needed to adequately mitigate against the impacts of proposed industrial uses. Petitioners contend that Condition 4(c), which requires that buffers be approved “as needed to be determined by the County” in subsequent permit approvals, cannot substitute for that analysis.** Similarly, with respect to Condition 4(e), which requires unspecified dust suppression measures, petitioners argue that there are **no findings and there is no evidence establishing that any dust suppression measures will be sufficient to mitigate impacts, particularly on sensitive crops...***

We reiterate our holding in Riverkeeper I that deferral of compliance with Goal 2 exception criteria to subsequent permit proceedings is not a permissible option.” (Riverkeeper III, pp. 24-27) [Emphasis added]

Applicant’s Remand Response

The CSA Analysis Chapter 4 describes the local conditional use and design review permitting processes and recommends several pages of conditions. Some of these conditions apply to all industrial uses allowed in the RIPD zone, and others apply to the typical use (CDF), less intensive and more intensive uses in the five industrial use categories.

Appendix 3 of this staff report includes the applicant's proposed conditions. The applicant has also provided two flow charts intended to assist staff in (a) determining the intensity of any proposed industrial use, and (b) processing and conditioning any future industrial use proposal. Appendix 3 to this staff report includes the complete list of CSA's proposed conditions.

CSA Analysis Chapter 5 lists general conditions that apply to all development applications, and several sets of use-specific conditions.

General 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 Permitted 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 Permitted 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 shall 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, see also specific land use separation conditions for individual use categories and intensities.
 - 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 contaminants 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.
- 9. Prior to the Occupancy of any future industrial facility, the applicant shall submit written confirmation to the county that they have obtained all necessary Permits from the applicable Federal, State and Local Regulatory Agencies.
- 10. At the time of the proposed industrial development the Applicant will be required to provide a noise study that projects the built out industrial development can feasibly comply with

DEQ noise standards and shall project L50 noise levels will be no greater than 50 dBA at external property lines for neighboring properties not owned by the Port of Columbia County or developed with industrial uses.

11. At the time of the proposed industrial development, the Applicant shall provide a Fire Protection Plan from a registered professional Fire Protection Engineer in the State of Oregon.

CSA Analysis Chapter 5 also includes recommended conditions for each of the five broad categories of industrial uses (Forest and Wood Products, Dry Bulk Commodities, Liquid Bulk Commodities, Natural Gas and Derivative Products, and Breakbulk Storage). These conditions vary depending on the intensity of uses in each category: the typical (CDF) use, less intensive uses, and more intensive uses. The following summarizes the CSA's proposed conditions; however, conditions may vary based on specific uses. Please see Appendix 3 for a complete list of CSA's proposed use-specific conditions.

- **Setbacks:** Generally, with a few exceptions, 150-foot setbacks are required for less intensive uses, 300-foot setbacks are required for the typical CDF use, and a 600-foot setback for more intensive uses. Roads and railroad tracks are allowed in the setback area. A 600-foot setback is required for some typical CDF uses (for example, dry bulk commodity uses with dust emissions or an LNG facility).
- **Floodproofing and Levee Accreditation:** Floodproofing is required for the CDF use, which typically involves some hazardous materials; BDIC levee accreditation is required for more intensive uses prior to delivery of large quantities of hazardous materials to the site.
- **Seismic Improvement Standards:** Must be met for all facilities with hazardous materials or with a "public health" function.
- **Fire/Life Safety Standards:** More intensive uses must forego any tax breaks that reduce Fire District income, provide "bridge financing" for District improvements, provide an onsite "fire brigade," and in some cases rebuild the Quincy Fire Station.
- **Air Quality:** If an air quality permit is required, the benefits of paving access streets must be modeled and roads shall be improved if recommended by DEQ. The county may also require that onside access roads be improved.

Fire Protection

On November 13, 2025, county staff met with the Clatskanie Rural Fire Protection District Fire Chief Bruce Holsey, and District 1 Deputy State Fire Marshall Chris Dugan to discuss the CRFPD's capacity to provide adequate fire protection services for the wide range of uses that potentially could be approved at the expanded Port Westward site.

Both agreed that the CRFPD lacks capacity and funding to respond adequately to all the proposed uses, especially those higher hazard uses. The specific answer to the adequate capacity question depends on the International Building Code occupancy classification(s) for proposed uses. Potentially applicable classifications include Business (B), Factory and Industrial (F-1 and F-2), High Hazard (H-1 to H-5), and Storage (S-1 and S-2). In short, Mr. Holsey and Mr. Dugan agreed that

“we need to know what we’re up against” to answer this question. When questioned by staff, both said they had not been contacted by the applicant regarding the remand submission.

Staff learned that fire protection capacity depends on several factors, including site access, water supply, the number of adequately trained staff, and modern firefighting equipment – all of which require adequate funding. The best way to answer the capacity question is for a licensed fire protection engineer to prepare a detailed study based on the occupancy classification of the specific proposed use. This study should be conducted well in advance of construction, so that the study's recommendations can be funded and implemented prior to occupancy of the proposed industrial or business use. Even with adequate funding, it can take a year or more to acquire the equipment needed (including potential station improvements) and to recruit and train firefighters (especially in rural areas). It is also important that any fire-related conditions of land use approval apply for the life of the use and ensure long-term maintenance.

Based on this information, staff concludes that the wide range of proposed allowable uses makes it impossible to determine potential adverse fire impacts on natural resource and farm/forest uses – without more detail regarding the specific industrial uses, their related occupancy classifications, and the funding needed to increase fire protection capacity. The applicant could have retained the services of a fire protection engineer to (a) determine the occupancy classifications of each of the potential industrial uses described in the CSA Analysis, (b) evaluate the capacity of the CRFPD to provide adequate fire protection services to each classification, and (c) make more specific recommendations regarding the funding necessary for staff, facility, and equipment upgrades necessary to serve each occupancy classification.

In the absence of such an analysis, staff is unable to conclude that adequate fire protection capacity is available – or feasibly can be made available in a timely manner – to meet the compatibility standard for all proposed industrial uses. This conclusion is especially applicable to High Hazard occupancy classifications. (See Staff Recommended Condition 9).

Adequacy of Applicant’s Response

Based on staff review, CSA’s recommended conditions add to the prior conditions the County imposed and fall into three categories:

- a. Conditions that replicate at a “finer scale or to a greater degree” than the analysis required under the compatibility standard, as allowed by LUBA, and should be retained as is;
- b. Conditions that impermissibly defer compliance with the compatibility standard; and
- c. Conditions that should be modified for greater objectivity, clarity and/or effectiveness.

Conditions that impermissibly defer compliance with the compatibility standard

There are two key conditions the applicant relies upon that impermissibly defer the demonstration of compatibility: the CSA Analysis proposed Conditions 4 and 9.

The CSA Analysis proposed Condition 4 is an umbrella condition “To ensure compatibility with adjoining uses” with nine subparts (Condition 4.a through 4.i) containing specific requirements related to different areas of adverse impacts. Condition 4 on its face appears to defer a finding of

compatibility to the county review process. It also refers only to adjacent uses, not to the analysis area chosen by CSA (i.e., the Surrounding Area), on which the county must rely to determine compatibility. The subparts 4.a, 4.b, 4.e, 4.g, and 4.i of Condition 4 impermissibly defer compatibility for reasons discussed below.

- Condition 4.a limits the future review of natural resources to “threatened and endangered species habitat” (which is required anyway). The CSA Analysis and Appendix B identify a broader set of natural resources (see Section 2, LUBA Assignment of Error 1.A). However, they do not assess the vulnerabilities of these resources to specific development impacts. Beyond the narrowed set of uses identified as supportable by staff, evaluating natural resource vulnerabilities is necessary to demonstrate compatibility before approval of the expanded Exception Area and cannot be deferred to the conditional use review stage.
- Condition 4.b requires that future development “maintain the overall values of important natural features, even if altered.” Without the vulnerabilities analysis, this condition cannot be relied upon to ensure compatibility.
- Condition 4.e defers the determination of whether and how dust suppression is provided to the conditional use review stage; however, this compatibility issue was specifically raised by petitioners and must be resolved prior to approval of the Exception Area. (See staff report, Section 3.A Wheat Dust Example.)
- Condition 4.g requires monitoring of the water table and sloughs for both water quality and surface elevations, to ensure that the area water can be maintained and managed for existing uses. Aside from being vague, this standard appears intended to address a specific LUBA finding that increased impervious surface areas could raise the water table to the point that sensitive mint and berry crops would die. This compatibility issue must be addressed prior to Exception Area approval. (See staff report Section 3.B.)
- Condition 4.i requires an agricultural impact assessment to determine adverse impacts on agricultural land. This evaluation and required mitigation measures should be determined before approval of the expanded Exception Area.

The CSA Analysis proposed Condition 9 is a broad condition requiring that the applicant submit confirmation to the County that they have obtained all required federal, state, and local permits prior to occupancy. While similar conditions are typical for land use approvals and are generally a good idea to have conditioned, staff find that they cannot be relied upon to determine compatibility, particularly without greater specificity. Staff has modified this condition (recommended Condition 10) to require the applicant to submit, prior to occupancy, written documentation from each relevant agency confirming the necessary permits have been obtained. The modified condition still cannot be relied upon to demonstrate compatibility alone. However, staff is satisfied that with the further recommended conditions, the narrower recommended set of uses can be made compatible with neighboring farm/forest uses and natural resources.

Conditions recommended for change to improve objectivity, clarity and/or effectiveness

Staff has recommended that a significant number of proposed CSA Analysis conditions be modified to achieve the required objectivity, clarity, and/or effectiveness to demonstrate compatibility.

One key condition to modify is CSA Analysis Condition 5, as staff does not find all currently proposed use categories supportable. CSA Analysis Condition 5 proposes that the types of industrial uses allowed under the goal exception be limited to those dependent on the deepwater port with demonstrated access rights to the dock and that fall into the five categories of industrial uses without modification. Staff believes that under the current application, supportable uses are primarily import/export operations with minimal processing, which do not involve state or federal permitting, EHS, or explosive substances. This generally correlates to the lower-intensity industrial uses identified in the CSA Analysis. As such, the staff recommended Condition 1 modifies the proposed list of use categories to allow only those lower-intensity example uses, or similar, identified within the CSA Analysis.

- Staff report Section 4.A and Appendix 2 provide more detailed analysis regarding approvable industrial uses.
- Staff report Section 4.B Recommended Conditions of Approval includes staff's reorganized and refined list of recommended conditions.

Section 3: Illustrative Examples

In the discussion below, staff cites two specific examples that illustrate the staff findings summarized in several sections above, but particularly under Issues 1.A.3 and 1.B.2 and LUBA Assignments of Error 2.B and 3:

- A. Potential Wheat Dust Impacts on Adjacent Mint and Berry Gluten-Free Certification; and
- B. Potential Water Table and Water Quality Impacts on Farming Operations from Development

A. Wheat Dust Example Cited by LUBA

In *Riverkeeper III*, LUBA provides an example of proposed “dry bulk commodities” industrial use that has “externalities” or adverse impacts on vulnerable mint farming operations that were not adequately addressed in the applicant’s findings in response to *Riverkeeper II* or the more recent response to *Riverkeeper III*.

As LUBA explained in *Riverkeeper III* (p. 12):

“Petitioners contend that the findings fail to describe the particular characteristics and vulnerabilities of adjoining agricultural uses and practices, and ignore testimony regarding the same.

For example, petitioners argue that the record includes testimony that the adjoining 80-acre mint farm could lose gluten-free certification if the mint crop is contaminated by windborne wheat dust from dry bulk operations within the exception area. The findings briefly address the mint farm, but they do not describe any characteristics or practices thereon, or address issues raised regarding particular impacts such as wheat dust from proposed dry bulk operations. Record 45. Petitioners point to evidence that dust and other particulate emissions were raised as a concern for sensitive crops that cannot be washed or rinsed. Record 1094-95 (testimony that moisture damages mint and berries).” [Emphasis added].

Winterbrook carefully reviewed the applicant’s remand submittal to determine whether this issue had been clearly and adequately addressed in the CSA Analysis or supporting appendices. Despite the clear admonition from LUBA, staff finds that the CSA Analysis in response to *Riverkeeper III* still does not demonstrate compatibility between the proposed “dry bulk commodity” use (flour mill) and a nearby mint farming operation with gluten-free certification.

Fugitive Wheat Dust Impacts on Vulnerable Mint and Berry Production

Adverse Impact: Fugitive wheat dust from grain processing can result in loss of gluten-free certification for mint and berry crops grown in the impact area.

Vulnerable Use: Mint and berry production – gluten-free certification. LUBA required a description of farm practices and vulnerabilities. The CSA Analysis (Chapter 3.1) describes farm practices for mint and blueberry production, but does not describe specific vulnerabilities to specific industrial uses allowed in the proposed exception area. To adequately respond to the wheat dust impact on a

certified mint farming operation, the gluten-free certification vulnerability should have been specifically described in Chapter 3.3. More generally, Chapter 3.3 should identify, for all farm and forest uses and natural resources within the impact area, specific vulnerabilities identified by experts as part of Chapter 3 of the Analysis.

Industrial Use Category: The CSA Analysis (Chapter 4.2.2) states that fugitive emissions can result from the processing and loading of gypsum wallboard. The applicant's matrix recognizes that "dust sensitive uses could experience externalities from PM emissions," and "will require a Standard ACDP and may require a Title V permit." However, there is no discussion of gluten-free certification or of the effectiveness of these DEQ air quality permits in ensuring that gluten-free certification is not jeopardized.

State-Federal Program to Ensure Compatibility

The CSA Analysis references Appendix E (Technical Memorandum: Scale of Proposed Industrial Uses and Impacts (Air Quality) SCS Engineers). An expert in air quality regulation prepared Appendix E that provides a useful description of the DEQ air quality review process. As noted in the introduction to the technical memo: "This memorandum will show how compliance with applicable state and federal air quality regulations are protective of the environment and human health, both generally and in the context of the development of the proposed Port Westward Industrial Park expansion."

There is no doubt that the air quality permitting process helps to alleviate air pollution from proposed industrial development. However, staff finds that there is no specific evaluation of how the DEQ air quality permitting process ensures that wheat dust will not adversely affect the gluten-free certifications of mint or blueberry crops, thereby resulting in compatibility.

DEQ Air Program Contact

Again, the CSA Analysis appears to rely on the DEQ air quality permitting process to ensure compatibility, as explained in CSA Appendix E. ODEQ's role is to implement Oregon's environmental laws. DEQ is not the state agency that manages land use in Oregon, nor does DEQ have jurisdiction or consideration regarding land use decisions.

On October 1, 2025, Winterbrook met with Patty Jacobs and Kristen Martin of the DEQ air program to discuss the effectiveness of DEQ's air quality permitting program to ensure that fugitive wheat dust from a hypothetical flour mill would not jeopardize gluten-free certification of an adjacent mint farm. At this meeting, DEQ confirmed that:

- The DEQ air permitting program, which would include modeling of particulate matter within 50 kilometers of the hypothetical flour mill, regulates emission limits and is protective of air quality. DEQ does not require specific pollution control devices but does provide guidance to applicants on methods for meeting emission limits. DEQ indicated that for flour mills, or similar uses with particulate matter, they'd often recommend "bag houses" (analogous to a large vacuum cleaner) - as opposed to "scrubbers" recommended by CSA - to contain fugitive dust emissions. For the hypothetical flour

mill, “bag houses” or other PM pollution control devices would need to be used for any activity that results in wheat dust emissions, including manufacturing and loading facilities, to meet emission limits.

- However, DEQ made it clear that they do not have the authority to evaluate the impact of fugitive wheat dust on the gluten-free certification for a mint or berry farm, or to determine “compatibility” with adjacent farm uses. Rather, DEQ relies on local governments, through the LUCS (Land Use Compatibility Statement) process, to make such determinations.
- DEQ’s mandate focuses on ensuring that toxic air emissions (including particulate matter) meet state and federal air quality standards. These standards do not consider gluten-free certification. Regulating the specific impact of non-toxic wheat dust on adjacent mint crop gluten-free certification is not within their purview.
- DEQ also noted that modeling of potential air quality impacts is complicated and depends on detailed and specific information regarding the characteristics and location of specific industrial uses. Thus, the model is not intended or suitable for evaluating generalized “hypothetical” situations and should not be relied upon to determine land use compatibility.¹²
- Finally, DEQ confirmed that setbacks (buffers) can reduce the concentrations of fugitive emissions, but their effectiveness depends on local wind conditions and topography, among other factors. DEQ offered no opinion as to whether setbacks from a hypothetical flour mill would be adequate to maintain a mint farm’s gluten-free certification.

Applicant’s Proposed Local Protection Program to Ensure Compatibility

The CSA Analysis appears to concur that DEQ air quality permitting alone may be insufficient to protect crops grown in the impact area from air pollution resulting from industrial processing. The CSA Analysis (Chapter 4.2.5) recommends that: “Any outdoor storage uses with air emissions potential should require medium or large land use separation and/or control design measures such as scrubbers to ensure that emissions allowed under the applicable air permit will nevertheless be minimal for any nearby agricultural uses sensitive to the relevant emissions – for example – additional separation for dust emissions from crops sensitive to dust.”

However, it is unclear how “scrubbers” can be required in outdoor storage areas (as opposed to indoor processing areas). Again, there is no mention of which specific crops are sensitive to dust emissions from wheat processing.

The CSA Analysis (Chapter 5.6) explains that the planning director will determine the intensity of the DBC use and then apply conditions of approval related to land use separation based on the

¹² Although air quality modeling could, in theory, be used for hypothetical situations, the number of possible inputs and variables for the five categories of uses would be almost impossible to assess, as it would rely on a nearly limitless number of hypothetical models.

“intensity” of the DBC use. This chapter states that for DBC uses that “create fugitive dust, such as sand, gypsum, or flour,” a 300’ buffer will be required from “all developed areas and adjoining lands that are not zoned RIPD and are not owned by the Port.” The term “developed area” is not defined. Does it include “outdoor storage areas”? Does it include “loading areas”? (These issues are clarified in staff’s recommended conditions of approval.)

Moreover, the CSA Analysis states road and rail facilities may be constructed within the buffer. There is no provision for the types of “scrubbers” that may be required, or their effectiveness in containing wheat dust. There is no provision that clearly limits loading and unloading of gypsum or flour products from railroads or roads in the buffer area.

More importantly, there is no specific evaluation of the effectiveness of the 300’ buffer in preventing flour dust contamination of mint and berry crops other than professional assessment that buffers are commonly used in Oregon and can reduce land use conflicts. Appendix F includes CSA land use planning qualifications, and a statement that “In CSA’s experience, spatial separation of land uses is a measure that can reduce the potential for land use conflicts.” Appendix F also explains how the required buffer width (150-1000 ft) varies with land use intensity.

What is not explained is how or why a 300’ buffer will ensure that dust from a flour mill will not adversely impact mint and berry crop certifications in the surrounding area. An expert in gluten-free certification or air quality mitigation would need to demonstrate on the record its expertise/certification(s) held, propose a solution to the compatibility issue presented, and explain in detail why the presented solution (whether the 300’ buffer or something else) would sufficiently satisfy the compatibility standard.

Since the issue was specifically cited *as an example* in the ***Riverkeeper III*** LUBA decision, staff would need to see a clear, qualified expert-supported demonstration of compatibility before we could support the application. Staff has the following additional concerns with the unsupported conclusion that a 300’ buffer is adequate to ensure that fugitive dust emissions will not compromise gluten-free certification for mint and berry products:

- The Columbia River corridor is well known for its strong winds, which tend to blow inland (to the east) from the Pacific Ocean during the growing and harvesting season. There was no evaluation of the effect of prevailing winds on fugitive dust emissions from the typical DBC use (wallboard production) or from a use of similar “intensity,” a flour mill – even though the mint farms are located downwind from the proposed industrial expansion area.
- There was no expert evidence regarding the type of facilities (baghouses or scrubbers) necessary to ensure that fugitive emissions do not leave the production site.
- There are no specific limitations on loading and unloading materials in the buffer area from the CDF or a flour mill.

B. Water Table and Water Quality Example Cited by LUBA

In ***Riverkeeper III***, LUBA discusses the potential impacts of industrial use on the water table, which are expected across all proposed use categories. As LUBA explained:

*“Petitioners next argue that the county failed to address issues raised regarding impacts on the hydrology in the area, citing expert testimony that the **area has a high water table and that filling and grading associated with construction of the proposed industrial uses could elevate the water table higher and impact agricultural uses that are vulnerable to flooding or that require well-drained soils.** Petitioners argue that the findings the county adopted to ostensibly address impacts on hydrology in fact address only impacts on water quality.*

*Petitioners are correct that the findings at Record 23 to 25 focus mostly on impacts on water quality rather than hydrology. **Neither those findings nor any others cited to us address the issues raised regarding impacts of development on the water table.** We agree with petitioners that remand is necessary for the county to adopt findings addressing those Issues. See *Norvell v. Portland Area LGBC*, 8 43 Or App 849, 853, 604 P2d 896 (1979) (findings must address and respond to specific issues relevant to compliance with applicable approval standards that were raised in the proceedings below).” (**Riverkeeper III**, pp. 19-20) [Emphasis added]*

Industrial Development: Water Table and Water Quality Impacts to Surrounding Agricultural Productivity

Adverse Impact: Industrial development that involves filling and grading, including increased on-site impervious surface area, could raise the already high water table in nearby farmland, as noted in the CSA Analysis. This may lead to standing water or an increased risk of flooding inside the levee, which could result in crop loss.

Vulnerable Use: Mint and blueberry production are especially sensitive to water table conditions. Blueberries require well-drained soils, and native spearmint can die if flooded for even a single day.¹³ LUBA requires a description of farm practices and vulnerabilities; the CSA Analysis (Chapter 3.1) addresses the practices used for mint and blueberry production. All proposed industrial use categories will involve changes in impervious surface, grading, and filling. As such, all industrial uses could elevate the water table. The CSA Analysis partially acknowledges correlated vulnerabilities for neighboring uses:

- On p. 3-6, the CSA Analysis notes that “standing water or waterlogged soil will harm blueberry plants and encourage disease.”
- On p. 3-9, the CSA Analysis states more generally that “mint is a perennial herb typically grown in locations with well-drained soil and plentiful irrigation.”

Beyond these brief statements, there is no further discussion of the vulnerability of mint and blueberries to an elevated water table. Additional discussion of mint and blueberry production within the CSA Analysis in Chapter 3.6 reviews other existing mint and blueberry farms in proximity to industrial or other high-intensity uses. Staff does not consider the comparisons useful with respect to potential impact on the water table without further engineering details (such as existing

¹³ Page 29 of the Columbia Riverkeeper and 1000 Friends Petition for Review for the **Riverkeeper III**.

conditions and stormwater design) for the other existing farm sites and an analysis of how compatibility is achieved.

Industrial Use Category: Chapter 4 of the CSA Analysis broadly acknowledges stormwater and hydrology impacts across all industrial use categories. For each use category, it notes that “as with any use, the addition of impervious surfaces would add to the amount of stormwater runoff that would need to be managed... Retention ponds constructed to accommodate stormwater could create new areas of standing water, and the filling of wetlands may alter historical patterns of runoff.” Additionally, within each use category, the CSA Analysis discusses the typical CDF acreage as a general scale for new impervious surface.

On November 4, 2025, the applicant submitted the “Stormwater Hydrology Technical Review Memorandum” by AKS Engineering & Forestry (Stormwater Memo). This memo also acknowledges that, “The expansion and development of RIPD-related industrial uses within the BDD drainage basin could result in an increase of stormwater runoff due to an increase of impervious area” (p. 2). In the Stormwater Memo, it is noted that groundwater level is generally shallow because it is a levee-protected area.

However, the CSA Analysis and Stormwater Memo do not specifically discuss the potential impact of future industrial development on water table elevation, whether from site development or flooding. As all industrial development is expected to involve filling, grading, and the creation of new impervious surfaces, these impacts apply to all identified categories.

State-Federal Program to Ensure Compatibility

In Chapter 3 of the CSA Analysis, the applicant provides an overview of existing state and federal permitting related to stormwater and groundwater. It notes that these regulations primarily concern water quality. DEQ manages industrial stormwater under the 1200-Z Industrial Stormwater Discharge Elimination System permit (NPDES), and groundwater protection is regulated by the DEQ Water Pollution Control Facility Permit (WPCF).

The additional Stormwater Memo also notes that development of the expansion area will likely have wetland and water impacts that trigger permits from the Oregon Department of State Lands (DSL), the US Army Corps of Engineers (USACE), and DEQ. Identified certifications and regulations include the DEQ 401 WQ certification, which has water quality treatment criteria, and the USACE SLOPES V, which has both water quality and quantity criteria. The SLOPES V water quantity criteria require limiting post-development discharge rates to pre-development rates at 50 percent of the 2-year and 10-year storm events.

Further discussion is provided in Appendix C (Technical Memorandum: Surrounding Natural Resources (Water) – CwM-H20) of the CSA Analysis, which contains expert opinion on potential impacts to groundwater, water resources, and water quality from the proposed rezoning and expansion at the PWIP development. The introduction explains, “The memorandum then discusses how compliance with state and federal water use and water quality regulations are protective of natural resources and human health in the area surrounding the PWIP in the context of the proposed development and rezoning of agricultural lands.” However, Appendix C is silent on directly assessing the compatibility of the proposed industrial use categories with surrounding farm

and forest uses and agricultural resources, particularly regarding the potential for an elevated water table. Appendix C reviews ‘State and Federal Regulations Protective of Water Quality’, including the following regulations:

Oregon Water Resource Regulations ORS Chapter 690

As described in Appendix C, water rights regulate the use of water, including the type of use, source, duration of use, and allowable rate or volume. The Oregon Water Resources Department (OWRD) system has measures in place to restrict or stop water use if the resource is at risk, primarily to prevent overdraft of water. OWRD can include conditions on water rights for metering to monitor water use. Groundwater rights can also define limits on the extent of impact allowed on neighboring wells or source water levels before the OWRD can intervene, with common conditioned limits including no more than 15 feet of interference with a neighboring well or a 3-foot-or-greater annual decline in the source well. All proposed industrial activities for the PWIP expansion that require water must operate under the existing Port groundwater right, or the Port must acquire a new right through application or transfer.

Staff Analysis

The OWRD regulations primarily concern the impact of water drawdown on neighboring uses from proposed new industrial uses. While this is a related concern, and perhaps the OWRD could also condition maximum water table limits, Appendix C does not discuss the potential impact of an elevated water table resulting from hydrological changes due to new industrial development, including increased impervious surfaces, filling, and grading. Therefore, staff find this discussion does not conclusively address the concern raised by petitioners, nor does it demonstrate compatibility.

Oregon DEQ OAR Chapter 340

As described in Appendix C, the Oregon Department of Environmental Quality (DEQ) oversees the primary rules regulating groundwater and surface water quality through various preventive measures, required plans, and permits. Applicable DEQ rules include, but are not limited to:

- *Groundwater Quality Protection (OAR 340, Division 40)*
- *Underground Injection Control Permits (OAR 340, Division 44)*
- *Water Pollution Control Facility Permits (OAR 340, Division 45)*
- *Section 401 Water Quality Certification (OAR 340, Division 45)*
- *National Pollution Discharge Elimination System (NPDES) Stormwater Permits (OAR 340, Division 45)*
 - The Industrial Stormwater Discharge Permitting (1200-Z) program protects surface waters from contamination caused by stormwater discharges from any pollution point source.

Staff Analysis

Appendix C acknowledges that these DEQ regulations primarily concern water quality. While also crucial to ensuring compatibility, these permits do not directly address petitioners’ concerns of an

elevated water table. The primary concern discussed by the expert and within the OARs is the protection of groundwater and surface water from contamination. Even the NPDES, which will be required to manage stormwater runoff associated with industrial development, is primarily concerned with managing the quantity and quality of water runoff, with no discussion of impacts on the water table. Discussion of the OAR 340 regulations does not conclusively address the petitioners' concern, nor does it demonstrate compatibility.

FEMA Levee Accreditation Requirements

According to expert testimony in Appendix D (Technical Memorandum: Flood Risk Mitigation – WEST Consultants), the levee system was provisionally accredited by FEMA in 2010. The probability of overtopping each year is 0.02, corresponding to a 50-year recurrence interval, with shallow inundation depths expected. A Phase 2 Levee System Evaluation conducted by the USACE in 2014 identified several deficiencies that the BDIC must address before the accreditation process can continue. Full accreditation requires an Operations Plan, an Interior Drainage Plan, and a Maintenance Plan in accordance with the National Flood Insurance Program (Title 44). Appendix D recognizes that it is likely, given the current condition of the levee, that at some point FEMA will remove the provisional accreditation status for the levee. This would result in the levee-protected area being incorporated into the Special Flood Hazard Area (SFHA) for the Columbia River. Full accreditation has not been undertaken and is not in progress at this time but would result in protection from the 100-year recurrence flood event, including 3 feet of freeboard above the Base Flood Elevation (BFE).¹⁴

Staff Analysis

Appendix D discusses the current status of the levee, including its accreditation, flooding probability, and requirements for future accreditation. The discussion of the levee system is not directly concerned with changes in the water table caused by industrial development. However, it does concern the water table in the event of overtopping, which is currently a regularly expected occurrence with a 50-year recurrence interval. Staff finds that the 50-year flood event is an “ordinary event” that could have severe consequences and therefore must be evaluated to determine compatibility.

Flooding from levee overtopping will occur regardless of industrial development. However, industrial development involving EHS would introduce an additional risk of contamination within the levee area, likely resulting in adverse impacts on agricultural uses and contamination of the water table. As such, staff requires that the levee be fully accredited for any proposed industrial use involving EHS, or that any future development provide an equally effective means of ensuring the area within the levee is protected from flooding in the event of a 50-year overtopping event.

¹⁴ The requirement for 3 feet of freeboard above the BFE is a FEMA requirement for levee accreditation. This is different than the requirements of the Flood Hazard Ordinance (CCZO Section 1100), which has requirements for the height various structures must be above the BFE. This only applies to areas of special flood hazards.

DEQ Water Program Contact

The CSA Analysis and Appendix C clearly describe the state and federal permitting framework that may apply to development within the industrial exception area, depending on the specific use and design proposed.

On October 24, 2025, Winterbrook met with Christine Svetkovich, Tiffany Yelton-Bram, and Melyssa Graeper from DEQ to discuss whether DEQ's water quality permitting ensures that industrial development that involves filling, grading, and increased impervious surface would not raise the already high water table in nearby farmland. At this Teams meeting, DEQ confirmed that:

- The DEQ water quality program issues certifications or permits required under state and federal environmental regulations. Their role is to determine and enforce applicable certifications and permits to protect water quality, not to moderate the water table or manage stormwater runoff volumes.
- Some developments may include stormwater requirements, such as detention ponds, under DEQ certifications and permits, depending on the applicable regulations. These measures manage the quality of stormwater runoff, not the volume of water.
- DEQ made it clear that, while some certifications and permits may interact with the water table, they do not regulate the water table. The DEQ water program regulates the related pollution to water bodies, including groundwater. Thus, they cannot determine “compatibility” with adjacent farm uses regarding the potential for an elevated water table from industrial development.
- DEQ relies on local governments, through the LUCS (Land Use Compatibility Statement) process, to make compatibility determinations. DEQ cannot process applications without a LUCS in the application package.

Again, ODEQ is not the state agency that manages land use in Oregon, nor does DEQ have jurisdiction or consideration regarding land use decisions.

Federal-State Program Summary as Applied to an Elevated Water Table

Staff finds that the expert analysis of Federal-State requirements provided in Appendices C and D of the CSA Analysis primarily concerns water quality and water availability, rather than an elevated water table. The water rights regulations associated with ORS Chapter 690 primarily address the groundwater table in the context of water drawdown, and the DEQ Regulations in OAR Chapter 340 primarily address water quality. Neither Appendix demonstrates that any regulations within this chapter may be relied upon to demonstrate compatibility with neighboring farmland in terms of the water table. DEQ has made it explicit that their permitting program does not manage the water table and cannot be used to show compatibility with adjacent agricultural uses.

While the additional Stormwater Memo does review stormwater management water quantity criteria, there is no direct correlation between these criteria and an elevated water table. It has not

been conclusively established that the applicable criteria ensure compatibility between future industrial uses and neighboring sensitive crops.

Meeting FEMA Levee Accreditation requirements would ensure the levee-protected area is protected against 100-year flood overtopping; however, this does not address rainfall-related flooding or typical stormwater design, nor does it directly address the day-to-day management of the water table within the levee. The applicable federal and state permits protect water resources affected by industrial activities; however, they do not guarantee that increased impervious surface area, filling, and grading will not raise the water table to the detriment of mint and berry farms in the surrounding area.

Local Protection Program to Ensure Compatibility

Federal and state standards do not conclusively demonstrate that required permitting will ensure that the water table will not be elevated to the point of causing crop loss. Thus, they cannot demonstrate compatibility, and the local protection program must be reviewed. The CSA Analysis primarily relies on proposed conditions of approval to ensure future compatibility of industrial development. The relevant proposed conditions from the CSA Analysis are as follows:

- Condition 4.f: “Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impact to irrigation equipment and area water quality (both ground and surface) are controlled.”
- Condition 4.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.”

Beyond this, the CSA Analysis does not provide a specific assessment of the water table or propose any stormwater management requirements, aside from commentary on state-federal regulations.

Staff does not consider these conditions to be sufficiently protective of the water table, as there are no specific design standards, baseline elevations to which the water table is required to be monitored, designated review or monitoring bodies, or any apparent correlation with the vulnerabilities of blueberries and mint to flooding. As such, these conditions do not clearly demonstrate how they will ensure compatibility between industrial development and neighboring farm and forest uses or natural resources.

The supplementary Stormwater Memo acknowledges the high groundwater table, provides commentary on BDIC’s management of the drainage system within the levee, and identifies the applicable standards of the Columbia County Stormwater and Erosion Control (SEC) Ordinance 2001-10. It does not suggest any additional conditions or draw any direct conclusions between stormwater management standards and impacts to neighboring uses that would be useful in making a compatibility determination regarding the proposed uses. The additional memo did not alter staff’s recommendation related to industrial development’s impact on the water table and the potential impact to surrounding sensitive mint and blueberry crops.

Staff's recommended Condition 3.b is intended to address this issue by requiring that stormwater detention systems be designed for a 100-year storm event in accordance with the Columbia County SEC Ordinance. (See staff report Section 4.B, Condition 3.b.)

Beaver Drainage Improvement Company (BDIC)

The existing levee and the BDIC manage water levels throughout the levee. As explained in Appendix C, a network of drainage channels and pumps controls the groundwater table within the levee area. In the winter, rain is pumped out to prevent flooding, and in the summer, pumps are turned off to raise the water table closer to the surface for irrigation.

Columbia County Stormwater Requirements

The CSA Analysis recommends reliance on CCZO Section 1550, Site Design Review to address stormwater management requirements. This section of the CCZO requires that the proposed site plan address Stormwater and Erosion Control, including possible adverse effects on adjacent lands. While not directly required under the CCZO, the Columbia County SEC Ordinance (No. 2001-10) includes stormwater management requirements. Staff recommended Condition 3.b requires that any future development application comply with specific sections of the county SEC Ordinance to address potential increases in the elevation of the water table.

The County SEC Ordinance has the following standards which would be applicable to all future development and industrial development:

II. General Requirements [...]

E. Conveyance

- 1. Conveyance systems shall be designed to carry runoff from the 25-year storm where contributing drainage area is less than 40 acres and the 100-year storm where the contributing drainage area exceeds 40 acres.**
- 2. Runoff from the 100-year storm may leave pipes and channels, but shall not rise to elevation for than one (1) foot below that of the lowest finished floor of buildings.**

And:

III. Standards Specific to Activities [...]

B. Building Permits for Commercial, Industrial, Multi-Family, and Associated Accessory Uses [...]

2. Long Term Water Quality Protection

a. Required Treatment Measures

- i. Runoff from parking lots, driveways, and other exposed traffic areas shall be treated using one of the following treatment methods: biofiltration swales, vegetative filter strips, or alternative treatment methods**

- ii. Treatment methods shall be sized to treat the water quality storm.
- iii. Biofiltration swales and vegetative filter strips shall be sized for a 9-minute hydraulic residence time.
- iv. Oil/water separators shall be required for activities exhibiting a significant risk of high oil loading in runoff, oil spills, or illegal dumping of oil or grease.

b. Required Runoff Control Measures

- i. Runoff from the development site shall be controlled such that the following criteria are met:

- A) The peak flows for the 10 and 100-year design storms after development does not exceed the respective pre-development peak flows.

- B) The peak flow for the 2-year design storm after development does not exceed one-half the pre-development peak flow for the 2-year storm.

- ii. Discharges directly into tidal waterbodies are exempt from the above runoff control measures, but not treatment requirements.

c. Stormwater Plan

- i. A Final Stormwater Plan is required.

- ii. The plan shall be prepared by an Engineer.

- iii. The plan shall specify use of the treatment and runoff control measures outlined above.

- iv. The plan shall be completed in the format specified in Section IV.

- v. The plan shall be submitted to the county with the building permit application.

- vi. A building permit will not be issued until the plan is approved by the county.

As defined in Section I(C) of the SEC Ordinance, design storms are based solely on rainfall and do not account for levee overtopping. Staff has proposed Condition 3.b, which requires that any future development within the proposed exception area be designed to the standards of the Columbia County SEC Ordinance (No. 2001-10). Two key modifications to the SEC standards are proposed:

- 1) All conveyance systems must be designed to the 100-year storm.
- 2) SEC Ordinance standard in Section II(E)(2), stating that runoff may leave pipes and channels so long as it does not result in the rise of flood elevation more than one foot below that of the lowest finished floor of buildings, shall not be allowed, given the vulnerabilities of surrounding crops.

Columbia County Public Works Department Meeting

On November 13, 2025, staff met with Michael Russell, Director of Public Works, and Grant DeJongh, Assistant Director - Public Works, regarding the elevated water table issue.

Staff learned that the county is updating its stormwater and erosion control standards, which will apply to future development in the exception expansion area. As things now stand, the area within the levee system “becomes a bathtub any time we have flooding.” This situation would be alleviated by levee certification.

However, to address the effects of an elevated water table on crops grown within the levee system, a special engineering study would be required.¹⁵ This study could determine the impact of development grading and impervious surfaces (including any hard surfacing or expansion of Hermo Road) on the water table level and suggest methods to minimize any related adverse impacts on mint and berry crop production.

Public Works staff noted that the suggested condition of designing stormwater systems to detain a 100-year flood would use a lot of space and may not be practical (Section 4.B, Condition 3.b). A focused hydrological engineering study would be more useful in determining the potential impacts of grading and paving on crops grown in the surrounding area.

Local Protection Program Summary

BDIC will continue to manage the day-to-day water levels within the levee, accommodating the change in hydrology associated with industrial development. Appropriate stormwater design is required to prevent flooding of future industrial development within the levee area during a predictable storm event. The county stormwater standards require industrial development to design runoff control measures for both the 10-year and 100-year design storms, and to design conveyance systems for the 25-year or 100-year storm, depending on scale. As such, staff proposes Condition 3.b, requiring stormwater management systems for all industrial development to be designed to the standards of the SEC Ordinance (No. 2001-10), with additional requirements that all conveyance systems be designed for the 100-year design storm regardless of scale and that the standard in Section II(E)(2) shall not be allowed. Again, it is noted that the 100-year design storm may not be necessary if a hydrological study is provided.

Analysis of the Water Table Example

The CSA Analysis, Chapter 4 acknowledges that industrial development would increase impervious surfaces and the volume of stormwater runoff. These sections also note that filling wetlands could alter historical runoff patterns. The CSA Analysis, Condition 4.g proposes monitoring industrial impacts on the water table and sloughs, including water quality and surface water elevations, to ensure that water can be maintained and managed for existing uses. This implicitly recognizes potential adverse impacts from development on the water table. The CSA Analysis acknowledges that levee overtopping during a 50-year recurrence is predictable. It also addresses the vulnerability of blueberry production to flooding, alluding to mint’s sensitivity. Despite this, the

¹⁵ To ensure even lower-intensity industrial uses meet the compatibility standard, it would be extremely helpful if the applicant were to provide such a hydrological engineering study for staff review.

applicant has not demonstrated that any state-federal regulatory program sufficiently mitigates the impact on the water table to be compatible with the identified vulnerabilities of mint and blueberry crops. As discussed, the expert testimony in Appendices C and D primarily focuses on water quality and water drawdown rather than on an elevated water table.

However, without analysis and design by a registered engineer that addresses specific potential impacts on mint and berry crops, staff's best assessment is that BDIC's ongoing water table management, combined with stormwater systems designed for the 100-year storm event, can adequately address hydrologic changes from new development. Staff recommends requiring all on-site stormwater management systems be designed for the 100-year design storm event, as set forth in the SEC Ordinance. (See staff report, Section 4.B, Condition 3.b.)

The identified 50-year recurrence levee overtopping will result in flooding within the levee that is not addressed by the county's stormwater design standards. Overtopping will occur regardless of industrial development; however, if proposed industrial uses involve EHS, such development introduces additional risk of contamination within the levee during an overtopping event. Accordingly, staff recommends Condition 6, which requires levee accreditation for any proposed industrial development involving EHS to protect the levee area from contamination during predictable flooding events. This maintains compatibility with surrounding farmland and natural resources. Alternatively, for any future development involving EHS, the applicant may provide an equally effective means of protecting the area within the levee from flooding during a 50-year overtopping event.

Section 4: Staff Recommendation and Conditions of Approval

Staff recommends that the Board of Commissioners approve the PA/ZC and Goal Exception expansion area, but only for a limited set of use categories secured by Condition 1. Additional conditions of approval are also recommended to ensure that compatibility can be demonstrated for the supportable uses. **Note that this recommendation in no way precludes future county approval of more intensive industrial uses within the five broad industrial categories – provided that sufficient information and analysis are submitted to demonstrate that the compatibility standard is met.**

The applicant's resubmittal for the third LUBA remand clearly represents a large amount of work undertaken by the applicant, and adequately addresses several of LUBA's prior concerns, including identifying and describing surrounding farm and forest uses and natural resources, providing an analysis of the potential scale and intensity of uses, and not relying solely on comparison with existing Port Westward uses. However, key gaps remain. The application lacks expert vulnerability analysis, clear correlation of vulnerabilities to adverse impacts from proposed industrial uses, and sufficient detail on proposed mitigation measures or measurable performance conditions to conclude compliance with the compatibility standard for all proposed uses. The CSA Analysis continues to rely on general, conclusory statements and impermissibly defers compatibility determinations.

Staff's primary remaining concerns relate to a lack of analysis of vulnerabilities for farm and forest uses and natural resources in the Surrounding Area. Without a proper assessment of vulnerabilities, staff finds no apparent connection among vulnerabilities, the adverse impacts of proposed industrial uses, and the conditions or mitigation measures required to demonstrate compatibility. Accordingly, staff recommends approval only for a limited set of uses that, based on the application materials and the legal record, provide adequate evidence of compatibility with surrounding farm and forest uses and natural resources.

A. Staff Use Assessment and Recommendations for Allowed Uses

Staff reviewed the approvability of the uses identified in the CSA Analysis, including the CDFs and the example uses of varying intensity, based on the current application package. Other example uses not explicitly discussed were also reviewed as relevant, such as a flour mill and uses similar to those currently on site. A full assessment of these uses is provided in Appendix 2 of this staff report.

Staff evaluated the compatibility of the proposed uses with surrounding uses through a two-tier approach:

1. Are applicable state and federal permits sufficient to demonstrate compatibility?
2. If not, are the proposed local conditions sufficient?

If staff could not affirm either, staff then evaluated whether additional conditions could be imposed to ensure compatibility with surrounding farm and forest uses and natural resources. The use

tables in Appendix 2 reflect staff’s review of the application materials and the *Riverkeeper III* decision and legal briefs.

The CSA Analysis does not adequately address the vulnerabilities of surrounding farm and forest uses and natural resources. It also does not connect specific adverse impacts of the proposed industrial uses on those vulnerabilities. Because of this, the CDF approach, with its associated more- and less-intensive uses, is not particularly useful for assessing the intensity of impact. The actual scale of adverse impact from an industrial use depends on the proposed use and the identified vulnerability of surrounding farm/forest uses or natural resources. For example, the flour mill example would seem to be a DBC use “less intense than the CDF,” as “food stuff import or export with minimal processing.” However, when considering the vulnerability of adjacent mint farms’ gluten-free certification, the flour mill would, in fact, be one of the highest-intensity sources of adverse impact.

Staff finds that most identified example CDF uses are not approvable. This is primarily because the applicant has not yet conclusively demonstrated that the impact to air and water quality, particularly from processing, EHS, and explosive materials, can be avoided or mitigated to demonstrate compatibility. The applicant continues to impermissibly defer impact analysis to a future permitting process.

No analysis has been provided to determine whether pollutant levels allowed under state and federal air and water quality regulations are compatible with surrounding farm and forest uses or natural resources. During the October 1, 2025, meeting with DEQ, staff confirmed that DEQ’s modeling does not assess land use compatibility; instead, DEQ relies on the LUCS process to make that determination. Once a LUCS is issued, DEQ can regulate only to state and federal standards. Impermissible deferral is further discussed in Section 2 (LUBA Assignment of Error 3) and Section 3.A.

Uses considered supportable require numerous conditions to ensure compatibility with surrounding farm and forest uses and natural resources. For example, clear and objective stormwater design requirements have been recommended as Condition 3.b to ensure new industrial development appropriately manages runoff for a 100-year design storm. These measures will prevent adverse impacts to the water table during predictable storm events and protect nearby sensitive agricultural uses within the levee, such as mint and blueberries.

A full assessment of all uses is included in Appendix 2. In summary, based on the application package, staff find that supportable uses are primarily limited to import/export operations with minimal processing. These uses generally do not involve EHS materials, explosive substances, or toxic air emissions that require state or federal permits, as the applicant has not demonstrated that such permits ensure compatibility.

Accordingly, staff finds that supportable uses generally correspond to those identified in the CSA Analysis as “less intense than the CDF,” including:

- Log Yard for Export

- Wood Chip Facility
- Food Stuff Import or Export with Minimal Processing (excluding facilities that generate wheat dust)
- Non-hazardous Liquid Bulk Import and Export (e.g. cooking oils, milk, or juice)
- Utility Peaker Plant
- Non-hazardous Breakbulk Import Facility (e.g. lumber, unitized cargo, automobiles, and machinery)

Other than the above list, staff finds that there is insufficient information, primarily the lack of vulnerability analysis, to assess the remaining identified example uses as compatible without impermissibly deferring to state and federal permitting. These remaining uses primarily involve EHS, explosive materials, or toxic air emissions. However, with additional analysis as recommended within this staff report, staff believe that many of the example CDF uses identified by the applicant may be supportable.

Based on the current application and record, of the example uses discussed within the CSA Analysis and other relevant example uses, staff consider the following currently unsupportable:

- Wood Pellet Plant
- Sawmill
- Wood Flooring Manufacture
- Kraft Pulp Mill
- Utility Pole Manufacture
- Gypsum Wallboard Plant
- Hydrated Lime Processing Plant
- Garnet Processing Plant
- Flour Import and Processing Mill (Foodstuff import or export that is not allowed due to wheat dust)
- Import, Export, or Processing of Extremely Hazardous Materials (e.g., lead concentrates, sulfur, nickel ore)
- Ethanol Processing Facility
- Petroleum Storage and Refining
- Liquefied Natural Gas
- Ammonium Nitrate Fertilizer Plant
- Breakbulk Imports with Additional Processing (e.g., SteelScape)
- Extremely Hazardous or Explosive Materials Handling (e.g., batteries, bleach, or other explosives)

The applicant has not yet adequately addressed LUBA's concerns as they pertain to the second set of uses listed above. As such, staff cannot currently support all proposed use categories, or example uses in the application. Staff's review is based solely on the application package, the LUBA remands, and the record submitted by petitioners and the applicant. Staff has not attempted to anticipate additional objections.

B. Recommended Conditions of Approval

Staff have reviewed the Conditions of Approval (CoA) recommended in Chapter 5 of the CSA Analysis. The applicant proposed a set of general conditions, along with additional conditions based on their CDF methodology for each use category. Most of these conditions have been incorporated in some form in staff's proposed conditions. A complete list of the Applicant's recommended conditions is in Appendix 5.

As discussed in Section 2 under LUBA Assignment of Error 3, a key problem with the applicant's approach has been the improper deferral of analysis to a later stage through conditions of approval. Staff continues to find this issue in the current application, as the applicant's reliance on future permitting and analysis prevents clear determination of compatibility between industrial and neighboring uses at this time. In addition, many proposed conditions lack specificity, defined standards, or an identified reviewing authority. Staff notes that it is common for land use applicants and other participants to offer additional conditions of approval to respond to specific concerns raised in the record. The parties may suggest additional conditions of approval to address specific vulnerabilities, and this may well occur during the proceedings.

Accordingly, staff recommends the following conditions, including the applicant's proposed conditions, as modified where necessary. Modifications were particularly necessary where the CSA Analysis' conditions were dependent on their CDF approach. Additional conditions are also recommended to ensure that future industrial development demonstrates compatibility with surrounding farm and forest uses and natural resources.

Staff Recommended Conditions of Approval:

1. Exception Expansion Area Allowed Uses

Allowable uses must be substantially dependent on a deepwater port and have demonstrated access rights to the dock, and have employment densities, public facilities, and activities justified in the exception. 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.

The following low-intensity uses have been found to meet the goal exception compatibility standard and shall be allowed:

- a. Forestry and wood processing, production, storage, and transportation;
 - Log Yard for Export
 - Wood Chip Manufacturing
- b. Dry bulk commodities transfer, storage, production, and processing;
 - Food Stuff Import or Export with Minimal Processing (must not generate wheat dust)
- c. Liquid bulk commodities processing, storage, and transportation;
 - Non-hazardous (per 49 CFR Part 172 Subpart B) Liquid Bulk Import and Export (e.g. cooking oils, milk, or juice)
- d. Natural gas and derivative products, processing, storage, and transportation;
 - Utility Peaker Plant
- e. Breakbulk storage, transportation, and processing; and

- Non-hazardous (per 49 CFR Part 172 Subpart B) Import Facility (e.g. lumber, unitized cargo, automobiles, and machinery)
- f. Farm and natural resource uses.
- 2. Outdoor storage of hazardous materials is prohibited. See also conditions 7 and 8 related to floodproofing and seismic standards.
- 3. **Land Use Application.** Prior to an application for a building permit for any new or expanded industrial use, the applicant/developer shall submit a Site Design Review and an RIPD Use Permitted Under Prescribed (UPUP) Conditions as required by the Columbia County Zoning Ordinance (CCZO). The application shall include:
 - a. **Transportation Impact Analysis:** A traffic study shall 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.
 - i. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.
 - ii. The traffic study shall be submitted to and reviewed by the Columbia County Public Works department, with any future Site Design Review or RIPD UPUP application for new development within the subject property.
 - iii. To ensure adequate transportation operation, proposed developments and expansions requiring Site Design Review or Use Permitted 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.
 - b. **Stormwater and Erosion Control Plan.** Stormwater facilities and erosion control shall be designed in accordance with the standards of the Columbia County Stormwater & Erosion Control Ordinance (No. 2001-10), or its subsequent replacement, with an additional requirement that all conveyance systems be designed for the 100-year design storm regardless of development scale. [Note: the 100-year may not be necessary if the applicant provides a hydrological study as called for by Public Works]. The standard in SEC Ordinance Section II(E)(2) shall not be allowed. Hydraulic design will ensure that historic drainage patterns are not altered. The preliminary stormwater and erosion control design shall be reviewed and approved by a professional engineer on behalf of Columbia County as part of any future development application. Final stormwater and erosion control design shall be reviewed and approved by the County's professional engineer with required building permits.
 - c. **Rail Plan.** Railroad crossings shall be managed in accordance with federal law governing crossings to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan that has been reviewed and approved by ODOT, 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 for identified impacts.

- d. **Noise Study.** The applicant shall provide a noise study prepared by a professional acoustical engineer as part of any future industrial development application, including hours of operation and decibel levels at property boundaries in accordance with CCZO 1550 Site Design Review. The noise study will demonstrate compliance with OAR 340-035-0035. The study shall recommend mitigation measures to ensure that industrial development will comply with DEQ noise standards and shall project L_{50} ¹⁶ noise levels will be no greater than 50 dBA at external property lines.
 - e. **EHS Management Plan.** For any proposed development involving EHS, the applicant shall provide a response plan and clean-up plan for a hazardous material spill event and shall include the following specific plans if applicable:
 - (i) For any use involving petroleum products, an Oil Spill Contingency Plan shall be submitted to and reviewed by DEQ in accordance with OAR 340, Division 141 as discussed in Appendix C of the application package.
 - (ii) For any use involving petroleum products, a Spill Prevention Control and Countermeasure (SPCC) Plan as required by the EPA shall be prepared and kept on site as discussed in Appendix C of the application package.
 - (iii) Any proposed use with EHS on site will be required to obtain a Hazardous Waste Management Permit (OAR 240, Divisions 100-108 and 120) in accordance with the EPA's Resource Conservation and Recovery Act (RCRA). This will be reviewed and implemented by DEQ.
 - f. **Peer Review.** At its sole discretion, the county may require peer review of any required study by an outside qualified expert consultant acceptable to the county. If required, the applicant shall bear any cost of any required peer review.
4. **Land Use Separation:** A 150-foot buffer (setback) shall be provided between all developed areas and adjoining lands that are not zoned RIPD.
- a. Road transportation facilities, utilities, rail facilities, and similar linear features are allowed in the land use separation areas in addition to any uses allowed in the PA-80 zone.
 - b. No loading or unloading of cargo from any transportation facilities or similar linear features is permitted within buffer areas.
 - c. The applicant shall prepare a buffer landscape plan for the entire 150-foot buffer area as required by CCZO 1550 Site Design Review. The landscape plan shall be prepared by an Oregon-licensed landscape architect and comply with landscaping standards in CCZO 1562.
5. **Air Quality:** In addition to meeting applicable air quality permitting requirements, the county may require paving of frontage roads and internal access ways, and periodic sweeping, to minimize ambient dust. If requested by the county in writing (via email or letter), the applicant shall provide a copy of applicable air quality permits within two weeks of receipt of the written request. The county may suspend site operations if the applicant fails to provide the air quality permit in a timely manner.

¹⁶ L_{50} noise levels as defined by DEQ are the assumed background noise level that is exceeded 50 percent of the time.

6. **BDIC Levee System Accreditation:** For any uses involving EHS, FEMA levee accreditation shall be required prior to construction. This will ensure no contamination within the levee area due to overtopping during a 50-year flood event and thereby endangering crops and natural resources. Alternatively, the applicant's certified engineer shall design a system that equally or better protects sensitive crops from water table rise during a 50-year flood event.
7. **Floodproofing:** Floodproofing measures intended to limit the potential hazard of the development shall be required in accordance with Federal Emergency Management Agency (FEMA), Floodproofing Non-Residential Buildings, FEMA P-936, July 2013 (or the most current published standard from FEMA). At minimum, all facilities proposed in the exception area that will contain EHS will be floodproofed. Facilities shall be taken as the Columbia County Zoning Ordinance's definition of structure, "a building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles or irrigation system components, that are not customarily regulated through zoning ordinance" (CCZO Section 100.114).
8. **Seismic Improvement Standards:** All facilities that will contain EHS¹⁷ at the threshold quantity (TQ), reporting quantity (RQ), or threshold planning quantity (TPQ) (whichever is least) listed on the *EPA List of Lists*; any development capable of storing 10 million gallons of liquid, and any structures determined by the county to be necessary to protect public health through the site review process, will be constructed to withstand a magnitude 9 earthquake expected from a Cascadian subduction zone earthquake in accordance with the Oregon Structural Specialty Code (2025, or its subsequent replacement). Substances without a TQ, TPQ, or RQ on the *EPA List of Lists* shall be determined by an expert opinion issued by a professional with a PhD in Chemistry or a registered Professional Chemical Engineer in the State of Oregon. EHS must be secured within a structure that has been seismically improved to OSSC standards. Again, facilities shall be taken as the definition of structure in CCZO Section 100.114.
9. **Fire Safety.** A fire protection plan prepared by an Oregon licensed fire protection engineer acceptable to the Clatskanie Rural Fire Protection District (CRFPD) shall be submitted as part of the land use application for any proposed industrial use allowed in the expanded exception area by the RIPD zone.
 - a. The selected engineer shall work collaboratively with the CRFPD to (a) determine the occupancy classification(s) of proposed industrial use, (b) evaluate the capacity of the CRFPD to provide adequate fire protection services for the proposed use(s),

¹⁷ The applicant defined EHS as "Chemicals listed on EPA List of Lists (or its equivalent title as may be published in the future)". However, EHS are clearly a subset of the materials included in the List of Lists, so the reference provided is unclear. The applicant also defined a "significant quantity" of EHS (SQEHS) as what seems to be an arbitrary threshold of 5x the level of EHS required to file an emergency management plan or 5x the Reporting Quantity (RQ), whichever is greater. Until these definitions are clarified through additional expert testimony, staff have defaulted to a threshold that may be too low: the lesser of the RQ, TQ, or TPQ.

- and (c) make specific recommendations regarding to the funding necessary for staff, facility and equipment upgrades necessary to serve the proposed use.
 - b. The fire protection plan should include provisions for on-site fire protection to supplement CRFPD fire prevention and protection services funded and maintained by the proposed industrial use.
 - c. The fire protection plan shall ensure that its recommendations apply over the life of the proposed use, and that adequate fire protection staff, equipment and facilities are in place and operational prior to building occupancy.
 - d. This condition shall be implemented by intergovernmental agreement between Columbia County and the CRFPD and shall be recorded as a deed restriction.
10. **State and Federal Permits.** Prior to the Occupancy of any future industrial facility, the applicant shall submit written documentation from each relevant agency confirming to the planning director that all necessary permits from the applicable Federal, State, and Local Regulatory Agencies have been approved or are otherwise not required.
11. **Department of State Lands (DSL) Wetland Delineation Concurrence.** The applicant shall delineate all on-site wetlands to the satisfaction of the DSL as part of the land use application. A copy of the DSL wetland concurrence letter shall be required.