CABLE HUSTON LLP

TOMMY A. BROOKS tbrooks@cablehuston.com
cablehuston.com

November 6, 2026

VIA EMAIL

Columbia County Board of County Commissioners
230 Strand Street
St. Helens, OR 97051
c/o Jacyn Normine by email at
jacyn.normine@columbiacountyor.gov

RE: Port of Columbia County – Port Westward Expansion
PA 13-02/ZC 13-01
Applicant's Open Record Submittal

Dear Ms. Dahl:

As you know, this firm represents the Port of Columbia County ("Port"). The Port is the Applicant in Columbia County Application No. PA 13-02/ZC 13-01 ("Application"). This letter and its attachments comprise the Applicant's Open Record Submittal for consideration by the County and should be included in the record for this matter.

1. Sensitive Receptors vs. Vulnerabilities

The Staff Report contains a brief discussion of the Applicant's use of the phrase "sensitive receptors" in its Remand Submittal. The Staff Report expresses confusion over the use of that phrase and how it relates to the assessment of the vulnerabilities of natural resources or farm and forest practices. Attached as **Exhibit 1** is a technical memorandum that explains in more detail how the identified "sensitive receptors" serve to determine and analyze "vulnerabilities" – a word that does not appear in the applicable statute or its implementing administrative rule.

2. Fire Protection Services

The Staff Report notes that the County's contract planner met with the Clatskanie Rural Fire Protection District ("CRFPD") Fire Chief Bruce Holsey almost exactly one year ago to discuss the CRFPD's capacity to provide fire protection services for the uses that potentially could be approved at the expanded Port Westward site. Contrary to the language in the Staff Report implying otherwise, the Applicant did meet with CRFPD prior to submitting its remand

materials, although that meeting was with Chief Holsey's predecessor. That meeting helped inform the Applicant's approach to addressing fire protection.

It does not appear that the County's contract planner actually provided the Application materials to Chief Holsey and, instead, had only a general conversation about fire protection services, divorced from any of the analysis or mitigation measures the Applicant has proposed. Earlier this year, the Applicant followed up with CRFPD again to ensure its new leadership was aware of the Applicant's specific proposal and to confirm the input CRFPD previously provided to the Applicant. Attached as **Exhibit 2** is the response the Applicant received from Chief Holsey once he was given the opportunity to review the Applicant's actual proposal. As indicated in that letter, the Applicant's approach for changing the zoning is appropriate from a fire and life safety standpoint, and that approach is consistent with CRFPD's emergency service plans for the Port Westward site.

3. Other Potential Mint Farm Impacts

LUBA's decision remanding this matter contains a brief discussion of prior testimony in the record relating to potential impacts to a nearby mint farm. In short, LUBA concluded that the County's findings in the prior decision needed to better address that testimony. Based on that part of LUBA's decision, the Staff Report contains numerous mentions of the mint farm and discusses whether the Applicant has sufficiently addressed certain practices, specifically with respect to gluten-free certifications. While LUBA's decision was focused on the sufficiency of the County's prior findings, as opposed to the sufficiency of the evidence, the Applicant has nevertheless continued to review and analyze the evidence in the record relating to mint farm practices and vulnerabilities. Attached as **Exhibit 3** is some additional information relating to gluten-free agriculture.

4. Other Permitting Information

A continuing issue in this proceeding relates to the extent to which regulatory permits bear on the compatibility determination required by ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d). The Applicant's Remand Submittal contains detailed information, supported by expert analysis, describing how some regulatory permits serve to protect against potential impacts to natural resources and farm and forest practices. Notwithstanding that information, the Staff Report insists that the Applicant's materials lack expert information regarding the vulnerabilities of surrounding uses to waterborne and airborne pollutants, or lacks expert information about groundwater.

Part of the Staff Report's misunderstanding appears to be grounded in the (inaccurate) assumption that the Applicant is relying solely on regulatory permits to determine compatibility. Further, although it is acknowledged in LUBA's most recent decision, the Staff Report does not appear to accept the fact that, at the comprehensive planning stage, the Applicant cannot analyze specific development proposals and, therefore, the consideration of some regulatory controls will need to be considered in a later proceeding, but that the County can nevertheless make a

compatibility determination at this phase. Attached as **Exhibit 4** is some additional information describing the relationship between environmental permitting and the County's compatibility determination. Attached as **Exhibit 5** is some additional information about potential groundwater impacts.

* *

The Applicant looks forward to reviewing the comments provided by other participants and will respond to those comments as part of the Rebuttal Period.

Sincerely,



Tommy A. Brooks

Memorandum

To: Tommy Brooks, Cable Huston LLP

Date: November 6, 2026

Subject: Compatibility Methodology and Response to Staff's Vulnerability Analysis

CSA Planning, an AKS Company
4497 Brownridge, Suite 101
Medford, OR 97504
Telephone 541.779.0569
Fax 541.779.0114
Jay.harland@aks-eng.com

Staff Report *Vulnerabilities* Response

The Staff report provided to the Columbia County Board of Commissioners suggests that the Compatibility Analysis prepared by CSA did not adequately evaluate the potential of future industrial development to have adverse impacts on vulnerabilities of surrounding farm/forest uses, natural resources, and resource management practices.

Staff's analysis suggests that the compatibility analysis should be performed by starting with an identified vulnerability and then analyzing it in pairwise fashion for each potential industrial use that may present a conflict. Staff states that LUBA recommended this approach in the most recent remand decision and implies that only this process can reach a supported conclusion that *each* use that would be allowed in the RIPD zone under the goal exception can be found to be compatible. LUBA stated that as an example of one way the analysis could be undertaken. The analysis recommended by staff is a common approach in a permit context, but not in the context of a comprehensive plan amendment. CSA has performed hundreds, if not thousands, of similar analyses for a wide variety of permits since the company was founded in 1980.

However, if the analysis is comprehensive then the compatibility determination must be made for every potential use. This is, essentially, a requirement for a pairwise analysis of *every* potential industrial use for *every* potential adverse impact to an identified vulnerability. As the record in this matter acknowledges, however, potential impacts may be different depending upon the specific proposed use, which will depend upon the design, size, and operational characteristics of a given facility. The limitations of this approach became clear as CSA worked through its analysis.

This memo explains the limitations of such an approach and why the analytic framework and structure used by CSA in the Compatibility Analysis was selected. The memo provides an example of how CSA's Compatibility Analysis captures potential impacts to specific vulnerabilities and reaches a supported conclusion regarding compatibility.

Limitations of Industrial Use-by-Use Pairwise Analysis Vulnerabilities

At the comprehensive plan stage, when CSA is analyzing five general use categories with no specific use proposed, it is impractical to evaluate every possible use against every possible vulnerability because uses, facility design, farm practices, and available mitigations all have the potential to vary. Thus, there are mathematical limitations to employing a pairwise analysis to evaluate compatibility with each potential vulnerability from both a farm/forest standpoint and a natural resources/resource management plan standpoint:

- While there are "only" five categories of industrial uses justified in the prior remand proceedings, the number of potential specific industrial uses in those categories is voluminous. The intensity of potential industrial uses can vary significantly across categories and likewise within each category. Moreover, in a long-range planning land use compatibility context, it is possible there are potential types of specific port-dependent land uses that have not been invented yet.
- The actual design and operations of a specific industrial use are case specific. For example, consider a "flour mill." In a land use planning context, a "flour mill" would typically be treated as a relatively specific land use type. However, according to EPA's AP-42, Section 9.9.1, there are distinct processes between different types of mills. Wheat, durum, rye, oat, rice and corn all have separate milling processes (although wheat, rye and durum are similar). Any new mill will have unique size, process flows, and control systems designed for the specific mill project. Even though the uses are similar, staff's approach would result in unique pairwise analyses for each variation.
- Comprehensive Plan designations, especially rural county designations in the Oregon land use system, tend to be long-lived. Farm uses can be very dynamic; so much so that the U.S. Department of Agriculture produces a comprehensive census of agricultural uses across the entire country every few years. It is simply impossible to know at the Comprehensive Planning stage all future potential farm uses and all the specific potential vulnerabilities the future farm uses that may exist at the time of a future industrial permitting review might have.
- Similarly, the number of potential mitigation measures that could be applied at the permitting stage to address a potential vulnerability and eliminate or substantially reduce the potential for adverse impacts is effectively unlimited. Each industrial use facility would have a very specific design for the materials and processes being undertaken; that is what industrial uses are. Potential mitigations include – facility design requirements, overall scale, site location and buffer distance (150 vs 300 vs 600 or more) relative to other land uses, etc.

Figure 1 below illustrates how these individual variables can compound, leading to a huge number of required analyses for any use category.

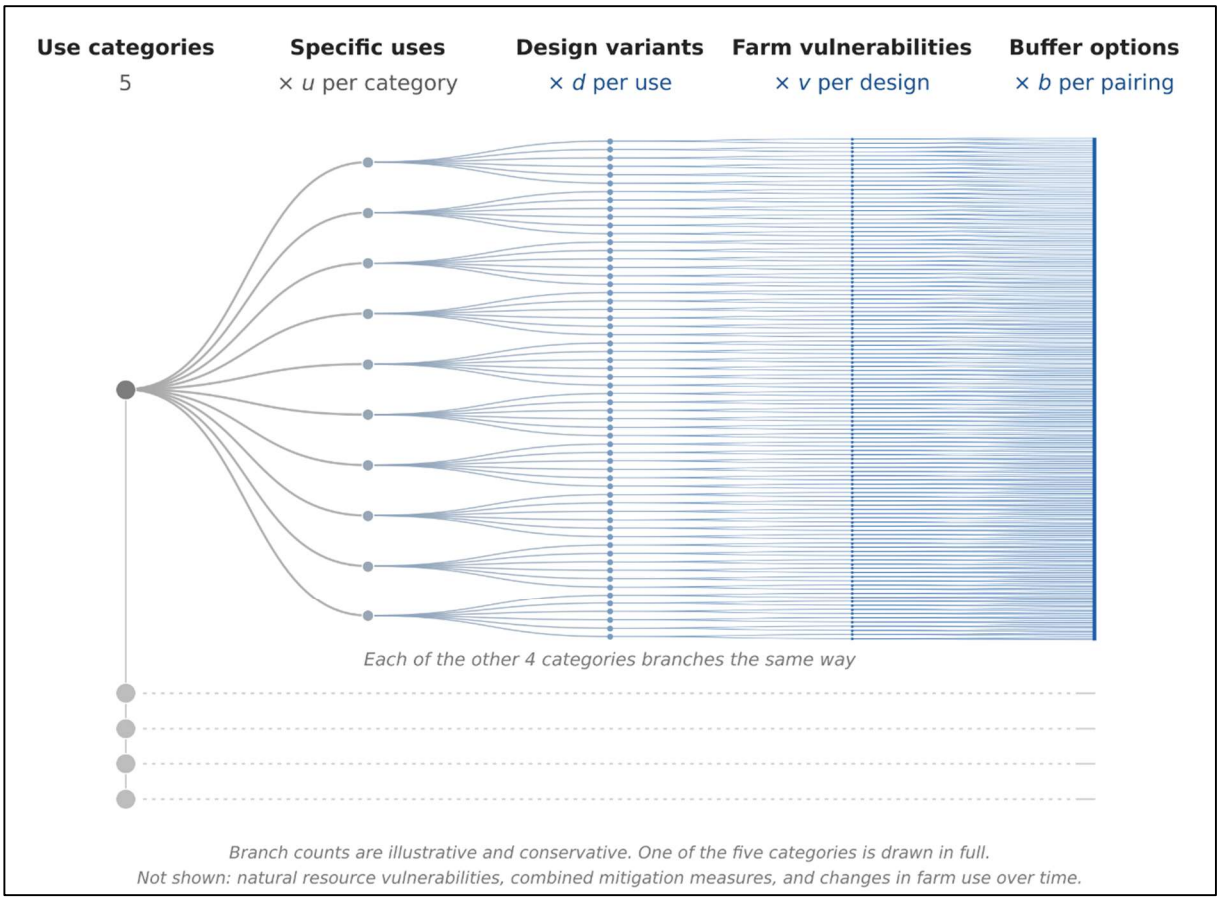


Figure 1. A use-by-use pairwise analysis multiplies with open-ended variables.

The subject application is not a permit. It is a comprehensive plan amendment that will result in a plan designation and zoning district that allows categories of uses that could take many forms. As CSA advanced the analysis, the limitations of a pairwise analysis approach became apparent for the above reasons. In the context of the subject Comprehensive Plan amendment that would allow an array of land use types that could individually vary with an array of potential mitigation measures that could be applied in the permit review process for a specific project, requiring a use-by-use pairwise analysis as the only acceptable methodological approach means the number of compatibility determinations that would be required is potentially infinite.

Advantages of CSA's Analytic Approach

Some terminology clarification is beneficial. The CSA compatibility analysis uses the term "sensitive receptor" to describe types of land uses or types of natural resources that may be sensitive to, and therefore vulnerable to, a potential externality. Sensitive and vulnerable are synonyms. After identifying sensitive receptors (i.e. vulnerabilities), the analysis evaluates the extent to which a use may be sensitive (or vulnerable) to a potential type of externality. In CSA's experience, "sensitive receptor" is a more common term in professional land use planning than vulnerable receptor, but either terminology would be appropriate and changing out synonymous words does not alter the structure or results of the analysis.

Potential Externalities are Discrete

In the CSA analysis, the sources of potential impacts (termed externalities in the analysis) include the following:

- Airborne Emissions
- Groundwater (water sources)
- Stormwater (linked to groundwater quantity and quality)
- Flood Hazard
- Fire Hazard
- Seismic Hazard
- Noise
- Light

Examining Externality Potential for Impacts Becomes Manageable

The number of potential industrial uses, facility designs, and future farm vulnerabilities is open-ended. The number and type of externalities created by a potential industrial use is not. Because of this, the CSA compatibility analysis is based on the potential externalities to sensitive or vulnerable uses of the allowable uses, instead of the pairwise analysis approach recommended by staff. Both provide analysis of potential impacts on surrounding farm/forest uses and natural resources.

- Surrounding land uses or natural resources can still be evaluated with respect to the potential sources of impact to which the land use or natural resource may be sensitive (or vulnerable).
- Starting the analysis with potential externalities allows it to differentiate between industrial uses with different potential types or intensities of externalities that therefore could cause different types or intensities of potential impacts.
- Starting the analysis with potential externalities also allows for an important distinction between potential externalities that would be considered routine and regular versus those that could result from high consequence but low-frequency, low-likelihood events (commonly referred to as natural disasters).
- Using the externalities as a base, also sets up a better framework to develop appropriate comprehensive plan level conditions of approval to address compatibility across the allowed use categories and intensities because the condition is founded on the externality potential to create an identified adverse impact.

The Customary Development Form (CDF) Approach

The final structural component of the analysis is the introduction of the customary development form or CDF analytic concept. This concept was used to make the analysis comprehensive but also manageable. LUBA correctly pointed out that the land use intensities can vary significantly across the industrial land use categories justified in the prior proceedings and within each category as well.

LUBA suggested a pairwise analysis as a potential method to determine compatibility whereby the most intensive use would be evaluated for compatibility and if it were not made compatible by mitigation, then a less intensive use would be evaluated until a compatible intensity was determined.

In addition to the combinatorial challenges of this approach, it has the potential to create a series of circular feedback loops once potential conditions of approval are considered.

If one identifies "the most intensive use," the initial analysis may find it to be incompatible, but may also identify conditions of approval that could render it compatible. For any use found compatible, a larger version or slightly different format can be imagined. This effectively means that the "most intensive use" or reasonable worst case scenario has no fixed ceiling. The analysis must restart to find an even more intensive use to analyze all potential conditions of approval and conclude none are adequate in order to establish the upper threshold of incompatibility. Determining the "reasonable worst case" will vary by receptor, as well.

This analytic challenge becomes even more complex in the context of low-likelihood but high consequence event-based externalities with the potential to cause adverse impacts on sensitive (or vulnerable) receptor. There is no such thing as a maximum margin of safety. No credible qualified engineer will tell anyone that. Essentially, there is no upper bound on the potential for conditions of approval to impose an ever-higher margin of safety that would prevent an impact while chasing an ever more remote chance of any negative impact actually occurring.

The CDF approach used in the CSA analysis truncates the potential for an analysis that must be repeated ad infinitum. It does so by starting with something typical that might actually occur and analyzes that. The CDF then sets a sort of baseline of conditions of approval for typical use intensities within each category for a midpoint compatibility determination. Conditions of approval then ratchet up for uses that are more intense than the CDF and some ratchet down or are eliminated for uses that are less intense than the CDF.

Flour Mill Example

Compatibility Analysis Walkthrough

The staff report discusses a flour mill and suggests that the CSA analysis does not evaluate vulnerability to gluten free certification on mint farming in the area. This is incorrect. Unlike staff's conceptualized pairwise analysis method, the compatibility analysis starts by looking at the externalities by the proposed use category.

Staff's example of a flour mill is used here to walk through an example of how the compatibility analysis examines potential impacts to a sensitive (or vulnerable) receptor, being the nearby mint farming operation that has concerns about gluten contamination. A matrix at page 4-11 looks at potential externalities for uses in the Dry Bulk Commodities category.

The first row is "Airborne Emissions". As noted in the matrix, there are minimum permitting standards for air emissions that must be met. ODEQ is the regulating agency. A separate memo provided by SCS Engineers discusses how this permitting works and the protective nature of said permitting. The second column notes that new uses would be expected to have additional air emissions in comparison to vacant land.

The third column compares the Dry Bulk CDF versus agricultural uses. This is an interesting comparison for the test case. Oregon is a right-to-farm state and farm uses are not directly subject to regulation or limitation of air emissions. The discing of fields, driving of equipment through dirt and dust, and the operation of farm equipment would all be expected to result in air emissions. Mint is grown commercially alongside other farm uses, which is evidence that it is tolerant of ordinary agriculture dust. However, there is nothing in state law that would preclude another farmer from growing gluten containing crops immediately next to the existing mint farms. Wheat fields could be planted in the next growing season immediately on the borders of a mint farm. The 2017 Census of Agriculture noted that there were approximately 235 acres of wheat being grown in Columbia County at the time. The growing and harvesting of such crops would not require an air permit from ODEQ.

The next few columns look at the air emissions in the context of the three different use intensities. The use in this particular case is one equivalent to the CDF (see discussion below). A use equivalent to the CDF may generate airborne emissions more intense than existing agricultural uses. The CDF is identified as a gypsum wallboard plant, which has relatively complicated processing methods for creating an industrial product. Dust sensitive uses may experience some negative externalities without proper permitting and conditions of approval to mitigate impacts.

The analysis recognizes that some externalities may exist and therefore recommends additional conditions of approval to address these. These conditions are found in Section 5 of the compatibility analysis. Depending upon the intensity of the Dry Bulk use, two different sets of conditions may apply. For uses classified as less intense than the CDF, a land use separation of 150 feet would be required between all developed areas and adjacent lands not zoned RIPD. In addition, as explicitly recognized in the conditions of approval, a 300-foot buffer is required when the proposed dry bulk use is likely to create fugitive dust, such as sand, gypsum or flour. For uses comparable in intensity to the CDF, this increases to 300- and 600-foot buffers, respectively. The precise buffer is a result of the use classification and intensity.

The staff report suggests the compatibility determination must be reached for each potential use in relation to each potential vulnerability. The CSA analysis is a more generalized approach that is more appropriate for comprehensive planning decisions whereby conditions will be imposed on broad types of land uses with similar intensities to ensure compatibility measures are appropriate across a range of potential land uses.

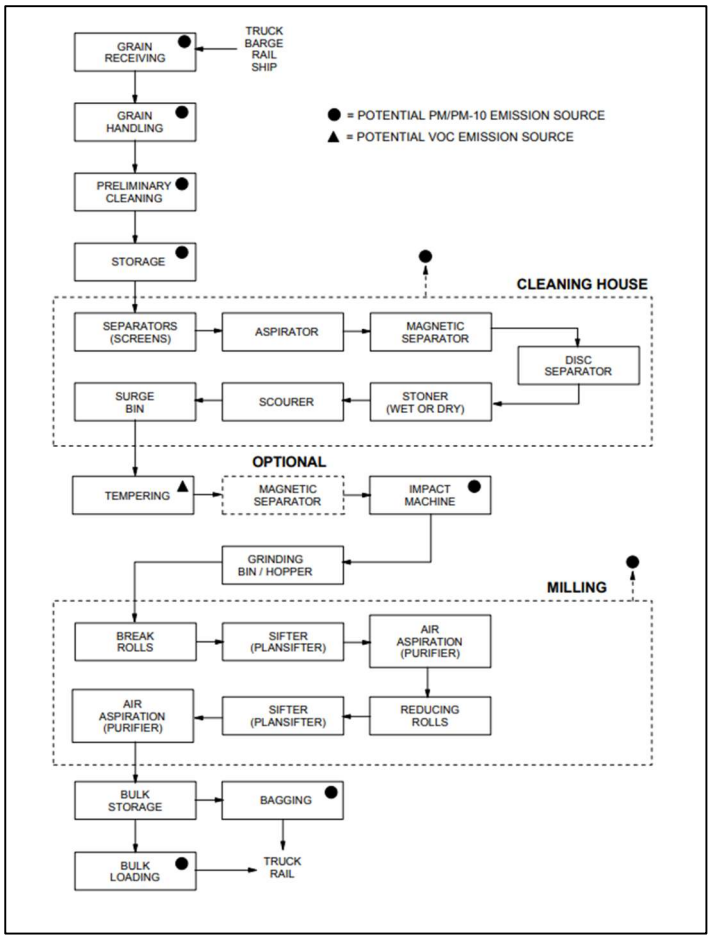
Development Permit Analysis Walkthrough

The above explains how possible negative impacts from industrial uses were evaluated on uses in the Study Area. Below is a walkthrough of how a development permit for a grain mill would function after approval of the Goal Exception and conditions to ensure compatibility would apply.

As analyzed in the compatibility analysis, the first step is to classify the use and intensity of the proposed development. A flour mill would fall under the Dry Bulk Commodities Use classification. It would then be compared to the CDF (a gypsum wallboard plant) to determine the relative intensity of the use. Such an analysis would compare the relative size of the use and characteristics of the proposed use.

The CDF in this case occupies 10 or more acres and has relatively complicated processing methods that do not rely upon substantial quantities of extremely hazardous materials. Uses less intense than the CDF would be expected to have no chemical processing and stick to simpler or limited mechanical processing methods. In this case, the proposed use is a flour mill which may process gluten containing grains. A chart from the EPA[1] shows a simplified process flow diagram of a typical flour mill:

[1] U.S. Environmental Protection Agency, Compilation of Air Pollutant Emissions Factors from Stationary Sources (AP-42), Fifth Edition, Volume I, Chapter 9, Section 9.9.1, "Grain Elevators and Processes" (Apr. 2003), available at https://www.epa.gov/sites/default/files/2020-10/document s/c9s0909-1.pdf



As the diagram shows, a flour mill involves a number of relatively complicated processing methods for creating a final industrial product. Receiving and handling alone could be deemed less intense than the CDF, but the actual separation, tempering, and milling is complicated enough to be comparable to the CDF. Because the mill does not require the use of substantial quantities of extremely hazardous substances, it would not warrant being classified as a use that is higher intensity than the CDF. Assuming a mill of roughly comparable scale to the CDF, a commercial flour mill should be considered a Dry Bulk use comparable to the CDF.

Because the use involves flour it would therefore warrant the 600 foot land use separation required by the conditions of approval recommended for a Dry Bulk CDF equivalent use.

Did CSA's Analytic Approach Ensure Compatibility for a Flour Mill?

Based upon available research, it appears so, and for several reasons:

Setbacks make future industrial uses compatible with adjacent agriculture: Setbacks are a common land use tool for reducing impacts and conflicts between uses. As discussed above, CSA's framework would require a 600 foot buffer between uses similar to the CDF that generates fugitive dust, which includes a flour mill. The Environmental Protection Agency provides the relevant data. The agency publishes a number of emission factors by source in AP-42: Compilation of Air Emissions Factors from Stationary Sources. Chapter 13.2 of AP-42 relates to fugitive dust from mechanical disturbance of granular materials exposed to air. Based on EPA's data,

assuming a typical wind speed of 16 km/hr, particles between 30-100 microns typically settle within a few hundred feet of the source of emissions. This is evidence supporting the protective nature of the Applicant's proposed 300- or 600-foot buffers against negative impacts from industrial dust. The settling distance is reported on page 13.2-2 of AP-42.

According to another EPA document, AP-42 Chapter 9.9.1 – Grain Elevators and Processes, dust from grain operations is predominantly coarse, with approximately 75% of dust from grain handling operations larger than 10 μm (AP-42 9.9.1, page 9.9.1-13). Page 13.2-2 of AP-42 notes that "particles larger than about 100 μm are likely to settle out within 6 to 9 meters (20 to 30 feet [ft]) from the edge of the road or other point of emission. Particles that are 30 to 100 μm in diameter are likely to undergo impeded settling. These particles, depending upon the extent of atmospheric turbulence, are likely to settle within a few hundred feet from the road." The 600 foot setback is approximately twice the distance of EPA's dust settling range for these particles.

Smaller particles (10 microns or below) make up about a quarter of grain dust, and EPA notes that these particles settle more slowly and can travel further. This is why they are typically captured at the source via fabric filters, also known as baghouses. According to EPA, "[f]abric filters are used extensively in flour mills" and "are highly efficient" (AP-42 9.9.1, page 9.9.1-17). According to an EPA factsheet, fabric filters have design efficiencies of 99 to 99.9% (EPA factsheet EPA-452/F-03-025). As DEQ advised staff, for a 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" (Staff Report, pp. 46–47).

The Gluten concern applies to only some mill types: AP-42 9.9.1 recognizes there are several different types of grain mills, which is illustrative of the combinatorial nature of the compatibility analyses. Staff's gluten contamination concerns would only apply to mills that process grains that contain gluten. Not all grains contain gluten. Oats, for example, do not contain gluten. A mill that processes oats and follows proper supply chain protocols would not pose a risk to the gluten free certification of an adjacent crop.

Dust resulting from a non-gluten containing product cannot raise the gluten content of an adjacent farm product above the gluten content of the dust itself. Even in the extreme case of a mint product covered entirely of oat dust, it would not affect the ability of the mint to meet gluten free certification standards.

Staff's single "flour mill" example is a good example of a use that will vary based upon operational details and the difficulty of a use-by-use pairwise analysis at the comprehensive planning level.

Risk of Gluten Free de-certification: CSA did substantial research into gluten free certification. That research is compiled in the attached memo titled "Adjacent Contamination as a Cause of Certification Revocation in Organic/Gluten-Free Agriculture." CSA's research was unable to find any examples of gluten-free certification being revoked or lost due to industrial contamination. Based upon our research, products are certified, not farms. The primary hazard appears to be a risk of recall of certain lots or product shipments. For example, a review of safety alerts from the Gluten Free Certification Organization showed no cases related to industrial (or otherwise) contamination in fields. Instead, the alerts were concerned about individual lots of products being contaminated by gluten or the misuse of the GFCO label by manufacturers.

While there is industry acknowledgment that adjacent contamination is a risk, CSA did not find a published case where a farm or product lost gluten free certification due to contamination from adjacent fields, airborne dust, or a neighboring industrial facility.

The product is certified, not the crop: As found in CSA's research, gluten-free designations are associated with finished *products*, so the correct compatibility question is whether a final product would fail a gluten threshold test, not whether the farm loses a designation. The example used by staff, being mint, is an example of a product that is not a gluten containing grain and one that a producer may label as "gluten-free" under the auspices of federal law (21 C.F.R. § 101.91) without a third-party certification program so long as a 20 ppm threshold is met.

Commercial mint is typically "swathed, chopped and distilled to extract the oils" based on information from the OSU Extension Service (CSA Compatibility Analysis, page 3-9). When a mint crop is being used to produce distilled oils,[2] such as peppermint oil, the gluten free designation is not at risk. As the FDA says with regards to labeling gluten free products,[3] if "distilled properly, distillation is capable of removing all proteins, including gluten, it would be considered a process to remove gluten. Thus, an ingredient that is derived from a gluten containing grain that has been properly distilled would be allowed to be used in a food bearing the "gluten-free" claim because the ingredient would meet the requirements of 21 CFR 101.91." This, again, points to the combinatorial nature of staff's recommended analysis and its difficulties.

Specific Conditions of Approval Can Be Added

There is nothing in CSA's analysis that precludes the Board of Commissioners from still imposing specific conditions of approval to address specific compatibility concerns raised in the record. The CSA analysis has never suggested otherwise. The entire analysis would not fail.

This can be handled in a simple manner, whereby the Board of Commissioners simply concludes that while the overall analysis is correct, the Board has decided to impose condition X on use Y to address specific compatibility concern Z.

In fact, staff has proposed one condition that the Applicant encourages the Board to adopt. Specifically, staff's condition 4.b (found on page 64 of the staff report) prohibiting loading or unloading of cargo within buffer areas is reasonable. It would prevent dust emissions from being generated within the proposed buffers, which would align with the Port's intent.

CONCLUSIONS

Staff's suggested approach to the compatibility analysis is common in a permit context when a specific use with design and operational parameters has been proposed. CSA's framework can be used to answer the same question as staff's approach, namely if the uses in the surrounding area can be compatible with the identifiable impacts from the five categories of port dependent industrial uses, or be so rendered through measures designed to mitigate impacts but in a manner that is appropriate at the comprehensive planning level.

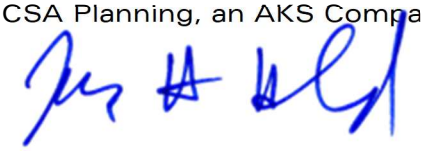
The flour mill cited in the staff report is a representative example. After classifying the use within the CSA framework, a 600-foot buffer would be required. This distance would exceed the settling range for coarse grain dust, as established by EPA data, and the air quality permitting process can be expected to require a baghouse or equivalent PM control device to capture finer particulate emissions in the first place.

[2] The Seely Mint farm's website describes the operation as growing "peppermint and spearmint essential oil" which is steam distilled. See, "Our Story" at https://www.seelymint.com/our-story, last accessed on November 4, 2026

[3] https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/questions-and-answers-gluten-free-food-labeling-final-rule

CSA's analytic framework and its resulting recommended conditions of approval provide an adequate factual basis to reach a supported compatibility determination for proposed use categories. Moreover, the Board of Commissioners can impose additional specific conditions of approval to address specific potential land use conflicts that are raised in the record if the Board finds such conditions necessary to conclude the land use designations will be compatible.

CSA Planning, an AKS Company



Jay Harland
Principal and Member

Clatskanie Rural Fire Protection District

PO Box 807 / 280 SE Third St. Clatskanie, OR 97016
Phone (503) 728-2025 Fax (503) 728-4388
Email- bholsey@clatskaniefire.org

Elliott Levin
Port of Columbia County
North County Operations & Terminal Manager

April 3, 2026

Dear Elliott;

On behalf of Clatskanie Rural Fire Protection District (CRFPD) I have reviewed the memo from Jay Harland of CSA Planning seeking input into the effects we may see from the proposed comprehensive plan amendment. We appreciate the opportunity to provide input at this important stage of the process.

Clatskanie RFPD finds that, for most uses, with the proposed conditions of approval and compliance of future development with the applicable building and fire codes, the exception to change the zoning from PA-80 to RIPD is appropriate from a fire and life safety standpoint and is consistent with CRFPD emergency service plans for the Port Westward Industrial site.

CRFPD would request and expect to be a part of the planning process when a specific business proposal is put forward. We would welcome the opportunity to evaluate each potential business to ensure that we have or can plan for the necessary resources and training to respond to and address fire and life safety emergencies specific to each operation.

Please let me know if you have any questions or concerns;

Respectfully submitted;

B P Holsey

Bruce P Holsey
Fire Chief

Technical Memorandum

CSA Planning, an AKS Company
4497 Brownridge, Suite 101
Medford, OR 97504
Telephone 541.779.0569
Fax 541.779.0114

To: Jay Harland, CSA Planning, an AKS Company

Tommy Brooks, Cable Huston LLP

Date: November 6, 2026

Subject: Adjacent Contamination as a Cause of Certification Revocation in Organic/Gluten-Free Agriculture

---

RESEARCH TASK

The purpose of this research is to identify cases in North America where certified organic or gluten-free producers lost certification due to industrial air emission discharges from adjacent or nearby industrial sources. The focus is on external air quality discharges originating from industrial facilities. In some instances, the research also considered emissions from neighboring farms or other nonindustrial activities. The research was not focused on certification implications from internal management failures or supply-chain issues.

Research was limited geographically to North America and included both recent and historical cases. Only certified operations, such as USDA Organic, or accredited third-party Gluten-Free Certification Organization (GFCO) programs were considered. The focus was on cases in which an operation lost or was suspended from certification because of contamination from an industrial source or ambient air pollution or dust. Agricultural pesticide drift cases were also noted.

Keyword Research Strategy Summary

The research strategy utilized iterative systematic keyword combinations in Google Scholar, LexisNexis, Justia, Casetext, and general search engines. Examples include:

- "Organic farm decertified dust contamination"
- "Organic certification revoked airborne drift site:.gov"
- "Gluten free certification contamination adjacent wheat/oats"
- "NOP certification suspended dust industrial activity"
- Boolean operators ("AND/OR") and proximity commands (NEAR/ADJ) were applied where available.
- AI-Assisted Search: OpenAI's research tools were used to broaden queries, identify relevant case law, and cross-check grey literature, supplementing traditional database and keyword searches.

Sources Reviewed

A number of sources were reviewed as part of this research task:

- Government and regulator reports (e.g., USDA National Organic Program enforcement data, California Air Resources Board, California Department of Food and Agriculture State Organic Enforcement Records, and EPA reports).
- Legal case databases (Justia, FindLaw, Casetext, LexisNexis).
- Industry and NGO publications (e.g., Gluten-Free Watchdog, Beyond Pesticides, Cornucopia Institute, Gluten Free Certification Organization).
- California Department of Food and Agriculture State Organic Enforcement Records.
- News outlets covering certification disputes and contamination incidents.

Limitations

Not all records are public. Many incidents are handled informally (e.g., certified crops sold as conventional instead of organic), which may limit records available for research. Confidentiality agreements between certifiers and producers can also restrict disclosure.

Because of their nature, airborne pollutants and dust are diffused, making it difficult to attribute contamination to a single adjacent source.

ORGANIC CERTIFICATION

Organic Farms in California

California boasts 3,061 USDA-certified organic farms, encompassing over 800,000 acres as of the 2021 Organic Survey.[1]

Many are within California's Central Valley, an area notably subject to elevated $PM_{2.5}$, NO_x, SO_x, and VOC levels. These are all pollutants that are monitored and subject to air quality emissions permitting.

Ambient Air Pollution Impacts

California Air Resources Board (CARB) data confirms substantial regional emissions of ozone precursors and particulate matter in the Central Valley[2] yet no evidence of organic decertification associated with these emissions was found.

Regulatory Framework

Air quality regulators (CARB, EPA) and organic certifiers such as the National Organic Program (USDA NOP) operate independently from each other.

Organic certification focuses on *direct* contamination by prohibited substances applied or used by the operator (e.g., pesticides, GMOs), not diffuse airborne pollutants. In adopting organic regulations, the USDA explained that "organic certification is a production claim, not a content claim," and that when "we are considering drift issues, it is particularly important to remember that organic standards are process based." Addressing genetically modified material, USDA added that "[t]he presence of a detectable residue of a product of excluded methods alone does not necessarily constitute a violation of this regulation. As long as an organic operation has not used

[1] USDA National Agricultural Statistics Service, 2021 Organic Survey: California State Summary, 2021

[2] California Air Resources Board, "Pollution Map," last modified July 2025

excluded methods and takes reasonable steps to avoid contact with the products of excluded methods as detailed in their approved organic system plan, the unintentional presence of the products of excluded methods should not affect the status of an organic product or operation."[3]

Absence of Decertification Cases

CSA's research indicates the NOP's regulatory approach will not result in certification loss if there is no evidence found of a banned substance in the product or soil.[4]

A review of enforcement actions available through the California Department of Food and Agriculture State Organic Enforcement Records revealed that each of the cases involved mislabeling, poor record keeping, use of prohibited inputs, or selling products as organic without certification. None of them involved contamination from an adjacent or ambient source.

Federal enforcement reports from the USDA National Organic Program covering 2021 through 2025 are consistent with the California enforcement records.[5] Across those five years, many operations lost certification each year, including 626 in 2021 and nearly 1,000 in 2022. The reports group enforcement cases into categories of uncertified operations (which consist of 63% of open cases in the most recent report), fraud, labeling, livestock, prohibited substances, pesticide residue, and other. The prohibited substance cases are not broken down by source. NOP defines a prohibited substance as being one "the use of which in any aspect of organic production or handling is prohibited or not provided for in the Act or the regulations of this part" (7 C.F.R. § 205.2).

Where the reports trace residue violations to a cause, the cause was the operation's own practices, such as "prohibited post-harvest materials" on shared packing lines and storage foggers, or a grower's failure to clean equipment previously used with a prohibited material. None of the reports identifies contamination from neighboring land or airborne sources as a basis for enforcement.

Related Cases

While CSA's research did not find any cases of decertification due to industrial emissions, there are records of organic producers who lost the ability to market specific crops as organic due to contamination from nearby farms using pesticides in ways that allow for drift. These cases are noted here because they do show how the potential contamination cases CSA could find were related to other adjacent agricultural uses and further show how they are handled under the NOP.

The first case is from the State of Minnesota, Johnson v. Paynesville Farmers Union Cooperative Oil Company,[6] where pesticides applied to a conventionally farmed field drifted onto an organic farming operation. The second involves Grinnell Heritage Farm, where an aerial fungicide application drifted onto an organic hay field.[7] The third is a case from California, Jacobs Farm Del Cabo Inc v. Western Farm Service Inc.[8] In that

[3] National Organic Program, Final Rule, 65 Fed. Reg. 80548, 80556, 80633 (Dec. 21, 2000).

[4] Id. at 80633

[5] USDA Agricultural Marketing Service, National Organic Program, USDA Organic Oversight and Enforcement Update: Summary of Activities (June 2022) (covering calendar year 2021); id. (2023) (covering 2022); id. (covering 2023); USDA Organic Oversight and Enforcement Update (2024 and 2025 activities; status as of Feb. 2, 2026).

[6] Johnson v. Paynesville Farmers Union Coop. Oil Co., 817 N.W.2d 693 (Minn. 2012).

[7] https://modernfarmer.com/2017/08/perils-pesticide-drift/

[8] Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc., 190 Cal. App. 4th 1502 (2010).

case, agricultural pesticide applications on nearby farmland drifted onto organic rosemary and dill crops. Because of the type of pesticide, the result was a crop that could not be sold as either an organic or conventional crop. In every case, the loss of organic status or the harm caused was due to a pesticide application by a farm, not industrial facility emissions.

Data Limitations:

Organic certifiers do not typically publish suspension or decertification reasons, and ambient contamination complaints, if filed, do not appear to be highly publicized.[9] The federal government does publish the Organic Integrity Database, which shows which producers have had certifications suspended or revoked, but does not give specific reasoning.

GLUTEN FREE CERTIFICATION

Gluten-Free Certification

FDA allows "gluten-free" labeling for products <20 ppm gluten.[10] Independent certification by GFCO and others is voluntary. The independent certifiers typically have a more stringent threshold for certification, with <10 ppm being the standard of GFCO.

The available records reviewed by CSA indicate that certification revocation is due to supply chain mismanagement or due to processing contamination. CSA identified only one publicly documented case of an independent certification being withdrawn. In that case GFCO revoked certification from Best Express Foods/Universal Bakery in May of 2024 after testing found gluten in excess of the FDA's 20 ppm threshold. The press release from GFCO states that the revocation was because "BEF/Universal Baking failed to complete GFCO's requirements to remedy." This is a result of the company failing to meet industry standards.[11]

A review of safety alerts from GFCO showed no cases related to contamination in fields. Instead, the alerts were concerned about individual lots of products being contaminated by gluten or the misuse of the GFCO label by manufacturers.

While there is industry acknowledgment that adjacent contamination is a risk, there were no published cases found where a farm or product lost certification due to contamination from adjacent fields, airborne dust, or neighboring industrial facility.

Gluten-Free "Purity Protocol"

GFCO, which is an industry leader in gluten free certification, has a number of research papers they publish on their website. This includes the *Purity Protocol*, developed and written in 2017 by oat industry stakeholders and posted in June 2020 by the Gluten-Free Certification Organization (GFCO). The paper outlines a voluntary set of agricultural and processing standards designed to ensure that oats remain uncontaminated. The protocol focuses on minimizing cross-contact risk from adjacent gluten-containing

[9] U.S. Department of Agriculture, Agricultural Marketing Service. "7 CFR § 205.501 – General Requirements for Accreditation." *Electronic Code of Federal Regulations (eCFR)*.
[10] 21 C.F.R. § 101.91
[11] Gluten-Free Certification Organization, "Gluten-free Certification Organization Withdraws Certification from Best Express Foods" (press release, May 28, 2024, updated May 31, 2024), https://gfco.org/best-express-foods-inc/.

crops through measures such as isolation strips (a minimum of 6 feet in width), dedicated equipment, crop rotation, and field inspections.[12]

Analysis Results

Comparative Gluten-Free Regime

Gluten-free certifiers maintain strict in-facility control requirements; however, research did not yield any instances of decertification due to field-to-field gluten drift. Moreover, the research did not yield any instances where off-site facilities handling gluten containing commodities resulted in decertification of an existing gluten-free commodity production operation. As discussed above, "gluten free" labeling is attached to products or foods, not farms. Ultimately, the current process is a comprehensive planning level determination of compatibility and the purpose of the analysis was to determine if gluten-free de-certifications due to industrial facility proximity is something that seems likely to occur based upon similar issues arising in other locations. Similarly, the analysis examined the degree to which emissions have resulted in organic product designations being impacted on a frequent basis in another location where air quality is known to be poor (California Central Valley). The analysis is not intended to categorically determine an impact could not occur, but rather, to determine at the comprehensive planning level whether such land use conflicts are likely or not.

Conclusion

CSA's research and analysis found no documented example of organic certification loss from ambient air pollution or dust, nor gluten-free certification revocation due to adjacent contamination. The only adjacent-contamination cases identified involved agricultural pesticide drift.

CSA Planning, an AKS Company



Samuel J. Bender

Planner

[12] Allred, Kupper, Iverson, Perry, Smith & Stephen, "Definition of the 'Purity Protocol' for Producing Gluten-Free Oats," Cereal Chemistry 94(3):377–379 (2017).

November 6, 2026
File No. 04223025.26

TECHNICAL MEMORANDUM

TO: Jay Harland, CSA Planning

FROM: Shane Latimer, PhD
Jeff Leadford, PE

SUBJECT: Response to Staff Report (September 30, 2026) - Air Quality
Port Westward Industrial Site – Expansion to the east, south and west
PA 13-02/ZC 13-01
(Riverkeeper III: Third LUBA Remand)

The purpose of this technical memorandum is to respond to statements generally concerning air quality on pages 13, 21, 24, 25, and 36-38, of the Staff Report.

Summary

We agree that DEQ's environmental permitting programs determine whether a proposed facility complies with applicable air quality requirements and do not make the County's land-use compatibility determination; nor is that their purpose.

Compliance with environmental standards, however, is not merely a technical or administrative consideration. Applicable standards and permit requirements are based on scientific, technical, and regulatory evaluations intended to control emissions and discharges and protect identified human-health or environmental receptors. Evidence that a proposed use can satisfy environmental requirements applicable to its emissions or discharges is, therefore, relevant technical evidence for the County's compatibility analysis.

Where a specific farm, forest, ecological, or other receptor is alleged to have a vulnerability not adequately addressed by an applicable environmental standard, that issue should be evaluated through a defined analytical relationship among the proposed source, the pollutant or stressor, the exposure pathway, the receptor, and the adverse effect. The evaluation should be supported by facility-specific information and relevant scientific evidence rather than by generalized assumptions about potential industrial uses.

Because no particular facility, process, equipment configuration, or emission profile has been identified for each possible future use, a quantitative source-specific assessment cannot reliably be completed for every allowed use category at this stage. However, the County can require objective information, environmental compliance demonstrations, source-specific analysis, and appropriate mitigation when a particular facility is proposed.

Accordingly, DEQ permitting should not be characterized as a substitute for the County's compatibility determination. It should instead be recognized as an important component of the technical evidence upon which the County may rely, together with receptor-specific information and any necessary land-use conditions, in determining whether a particular proposed use can operate compatibly with surrounding farm, forest, and natural-resource uses.

Staff's Position

Staff states that Chapters 3 and 4 of the CSA Analysis describe the local, state, and federal permitting requirements applicable to the proposed use categories and that Appendices B, C, and D explain how state and federal permitting processes generally protect wetlands, water quality, and air quality.

Staff concludes that although the Oregon Department of Environmental Quality's (DEQ) air-quality permitting program is protective of air quality, it is not designed to independently determine whether a proposed industrial use is compatible with particular farm and forest uses in the surrounding area. Staff therefore requests a more specific evaluation of the vulnerabilities of surrounding farm and forest uses to potential impacts from the proposed industrial use categories, together with mitigation measures that the County could objectively require to ensure compatibility.

Staff also states that DEQ evaluates compliance with applicable air-quality standards but relies on the land-use process to determine compliance with applicable land-use criteria. Staff concludes that the CSA Analysis does not sufficiently correlate regulated emission levels with potential adverse effects on specific surrounding receptors.

Response

1. Environmental permitting and land-use compatibility are related but distinct determinations

Air quality permitting processes do not independently determine whether a proposed use satisfies the County's applicable land-use compatibility criteria. That determination remains with the County under the applicable land-use standards.

Environmental permitting nevertheless provides relevant technical evidence for the County's compatibility analysis. Air programs establish and enforce environmental requirements through emission or discharge limitations, operating requirements, modeling, monitoring, pollution-control requirements, and other permit conditions. These regulatory processes evaluate whether a proposed facility can comply with the environmental standards applicable to its emissions, discharges, and operations.

Accordingly, the fact that an environmental permit does not independently establish land-use compatibility does not make the permitting analysis irrelevant to compatibility. Information developed through the permitting process can help the County evaluate the nature, magnitude, location, and potential effects of emissions or discharges associated with a proposed use.

2. Environmental standards reflect scientific evaluations of pollutant exposure and effects

Applicable air quality standards are developed using toxicological, epidemiological, ecological, exposure, monitoring, and other relevant scientific information, depending upon the pollutant and regulatory program. Many health- and environmentally based criteria incorporate conservative assumptions, uncertainty factors, margins of safety, or other protective features intended to account for scientific uncertainty and potentially sensitive receptors.

Permit requirements may also include technology-based controls, source-specific modeling, monitoring, operational restrictions, recordkeeping, and other measures intended to limit emissions or discharges and demonstrate continuing compliance.

Not every environmental standard is derived through the same scientific or regulatory methodology. Some requirements are based principally on human-health or ecological effects, while others are based on ambient standards, available control technologies, water-quality criteria, or other statutory and regulatory considerations. Nevertheless, compliance with the standards applicable to a proposed source provides scientifically and technically relevant evidence concerning the potential environmental effects of that source.

3. Receptor-specific vulnerabilities require a defined source, pollutant, exposure pathway, and effect

Staff's comments identify a potentially separate question: whether a particular surrounding farm use, forest use, crop, livestock operation, habitat, species, or other environmental receptor could be adversely affected at an exposure level below, or through a pathway not adequately addressed by, an otherwise applicable regulatory standard.

Scientifically evaluating such an assertion requires, at a minimum, identification of the following:

- The particular farm, forest, ecological, or other receptor alleged to be vulnerable;
- The pollutant or stressor associated with the asserted vulnerability;
- The relevant exposure pathway, such as inhalation, deposition, soil uptake, surface-water exposure, or ingestion;
- The concentration, dose, deposition rate, duration, or frequency associated with the asserted adverse effect;
- The scientific basis for the asserted response or vulnerability;
- The industrial source or process capable of producing the pollutant or stressor;
- The reasonably anticipated emission or discharge rate from that source;
- The transport and fate mechanisms connecting the source to the receptor; and
- Whether applicable controls, permit conditions, setbacks, monitoring, or other mitigation measures would prevent or reduce potential exposure.

Without this information, it is not possible to establish a scientifically supportable relationship between an allowed industrial use category and an adverse effect on a particular surrounding receptor. The generalized possibility that some unidentified future industrial use might emit an unspecified pollutant capable of affecting an unidentified sensitive receptor does not, by itself, demonstrate incompatibility.

4. Quantitative source-specific risk analysis is constrained when no particular facility has been proposed

Allowed use categories potentially encompass facilities with materially different processes, equipment, raw materials, products, pollutants, emission rates, operating schedules, and control technologies. Therefore, a quantitative, source-specific, risk assessment cannot reliably be performed without evaluating characteristics of a particular facility.

For example, an assessment of potential air-quality effects would ordinarily require information concerning the types of emission units, pollutants emitted, maximum emission rates, stack parameters, operating schedules, pollution-control equipment, building configurations, and source locations. Evaluation of effects at a specific receptor could additionally require meteorological data, terrain information, receptor locations, background concentrations, deposition characteristics, and pollutant-specific toxicity or ecological-effects information.

Attempting to conduct a quantitative toxicological or ecological risk assessment without this information would require speculative assumptions that might not reasonably characterize a future facility. Such an assessment could overstate impacts by assuming processes or pollutants that are not ultimately proposed, or understate impacts by assuming equipment and controls different from those that might ultimately be proposed as part of a specific industrial use project, and moreover, both the land use permitting process and the environmental permitting process may, and often do, result in conditions on the project that further reduce the potential for adverse impacts.

5. Compatibility can still be examined

The absence of sufficient information to perform a quantitative assessment for every possible future facility does not preclude the County from examining the extent to which broad land use categories are likely to result in specific future land uses that would reasonably be expected to cause adverse impacts on receptors.

For a determination of land use compatibility at the comprehensive planning level, there are still available methods of analysis. For example, compatibility determination could consider analyses like the following:

1. Compile and summarize meta-data on similar situations elsewhere in the region to assess the degree to which similar land use situations co-exist. Follow on research can seek instances regulatory permitting conflicts that have arisen elsewhere with similar land use configurations.
2. Review, summarize, and cite published research from credible sources to evaluate the degree to which potential land uses are reasonably likely to result in potential impacts that could not adequately be addressed at the time of future permitting where specific uses, facility design, and receptor vulnerabilities would be known with much greater certainty. In our experience, published research that is either directly analogous, or at least meaningfully relevant, is often available. Nevertheless, this approach can still be limited where relevant research is not available.

Conclusion

It is common for municipalities to make compatibility determinations based on proposed uses for which final facility designs and equipment have not been determined. Oregon's air permitting program, one of the strictest in the country, provides a solid foundation on which compatibility may be reasonably evaluated, regardless of the scale or juxtaposition of the proposed and adjacent uses.

AKS
WWW.AKS-ENG.COM

AKS ENGINEERING & FORESTRY, LLC
12965 SW HERMAN ROAD, SUITE 100
TUALATIN, OR 97062
(503) 563-6151

November 6, 2026

Tommy Brooks
Cable Huston LLP
1455 SW Broadway, Ste 1500
Portland, OR 97201

RE: Staff Report (dated September 30, 2026) - Stormwater Hydrology Responses
Port of Columbia County – Port Westward Expansion
Columbia County, Oregon

Mr. Brooks:

The following letter report is intended to respond to and provide additional context regarding the potential stormwater hydrology impacts from the existing and proposed expansion of the Port Westward Industrial Park (PWIP). The proposed PWIP expansion consists of rezoning ±837 acres of land adjacent to the PWIP for Resource Industrial Planned Development (RIPD) zoning to allow various industrial uses for use of the Port.

The proposed expansion of the PWIP is situated within the Beaver Drainage District (BDD), which consists of a series of levees, canals, ditches, and a pump station managed by the Beaver Drainage Improvement Company (BDIC).

Groundwater Hydrology Impacts
Staff identified potential concerns for the 'potential impact of an elevated water table resulting from hydrological changes due to new industrial development, including increased impervious surfaces, filling, and grading.'

In our professional opinion, the risk for elevated groundwater levels due to industrial development is low. Review of geotechnical bore logs within the general area indicates that the underlying soils typically consist of sands, silty sands, and silts. The presence of underlying zones of clean and permeable sandy soil generally allows groundwater levels to 'equalize' over relatively short distances within the levee protected Port area. Any fills or grading accomplished for new industrial development will only impact the permeability of the soils immediate area beneath where the development occurs and will likely be impacted similarly to the soils beneath the fill levees which were constructed to isolate the area from the floodplain of the Columbia River.

In addition, increased impervious surface area from development within the PWIP expansion area does not increase the amount of water and should not assume a direct correlation to a potential increase in groundwater levels. The Port is situated within a levee protected area that essentially functions as a 'bath tub' with the Beaver Drainage District managing the collection, control, and discharge of stormwater and groundwater levels (which hydraulically connect to drainage canals) across and out of

the district. Flooding within the BDD is ultimately controlled by the network of drainage channels and pumps that manage water levels (both surface and groundwater) within the district.

It should also be understood that the volume of water that comes from a storm event (rain or snow) which falls onto a farm field within the area is identical to the volume which falls onto an impervious parking lot (1-inch of rain falling over 1-acre equals 3,630 cubic feet regardless of the pervious or impervious nature of the ground surface). The addition of impervious surfaces does not increase the volume of water within the drainage district, the impervious surface only concentrates and increases the peak flows of stormwater runoff. However, the existing stormwater management standards for water quantity control within Columbia County require developers to mitigate these peak flow impacts to match pre-developed levels. Therefore, in our opinion, there is no correlation between increased impervious surface and elevated groundwater levels on adjacent properties. Groundwater levels should remain similar to existing conditions and the management of the BDD and the water levels of the nearby Columbia River will 'control' the groundwater levels much more than any impacts from fills or grading from development within the PWIP expansion area.

As noted in the previous technical memorandum, the groundwater table in the project area is hydraulically connected to the water elevation of the Columbia River stage rather than being driven by local infiltration, development of impervious surfaces, surficial grading/filling, and/or the addition of stormwater management facilities within the district. The Beaver Drainage District manages the water levels within the levee protected areas and the quantity of water that the BDIC pumps out of the system is not expected to change and therefore groundwater levels are expected to be substantially similar to current conditions.

Sincerely,

AKS ENGINEERING & FORESTRY, LLC





Paul Sellke, PE, GE
12965 SW Herman Road, Suite 100
Tualatin, OR 97062
503-561-6151 | PaulS@aks-eng.com

Cc: Jay Harland (AKS Engineering) - jay.harland@aks-eng.com
Nathan Emerson (AKS Engineering) – nathan.emerson@aks-eng.com