

**COLUMBIA COUNTY BOARD OF COMMISSIONERS`
SUPPLEMENTAL PLANNING STAFF REPORT
June 16, 2021**

Land Use Board of Appeals Remand of Application No. PA 13-02 / ZC 13-01

FILE NUMBER: PA 13-03 / ZC 13-01

APPLICANTS/ OWNERS:	Port of Columbia County 100 E Street Columbia City, OR 97018	Thompson Family 4144 Boardman Ave. E Milwaukie, OR 97267
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LOCATION: Port Westward Industrial Site – Adjacent 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

ZONING: Primary Agriculture (PA-80)

SIZE: Approximately 837 acres: Port owned 786 acres
Thompson family owned 50.9 acres

REQUEST: Application for a Post Acknowledgement Comprehensive Plan Amendment that will amend the Comprehensive Plan from Agriculture to Rural Industrial and Rezone the properties from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD) and an Exception to Statewide Planning Goal 3.

On February 21, 2018, the County approved the Port of Columbia County's modified application for a Comprehensive Plan and Zone Change Amendment. However, LUBA remanded the decision "for the County to adopt more adequate findings, supported by substantial evidence, regarding the compliance with the requirement of OAR 660-004-0020(2)(d)" which requires a compatibility analysis.

On June 18, 2020, the Port of Columbia County submitted a request for the County to initiate remand proceedings. On July 22, 2020, the Port of Columbia County submitted a Compatibility Report that provides a compatibility analysis called for by LUBA and the Court of Appeals in their decisions in *Columbia Riverkeeper et al. v. Columbia County*, 78 Or LUBA 547 (2018) and *Columbia Riverkeeper et al. v. Columbia County*, 297 Or App. 628 (2019)

REVIEW CRITERIA:

Oregon Revised Statutes (ORS) 197.732(2)(c)(D) and
Oregon Administrative Rules (OAR) 660-004-0020(2)(d)

BACKGROUND

In 2013 the Port of Columbia County (formerly the Port of Saint Helens), hereinafter referred to as the “Port”, submitted an application to Columbia County, hereinafter referred to as the “County”, 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 denied Application No. PA 13-02 / ZC 13-01 for the 120 acres associated with tax lots 8420-00-00100 and 8429-00-00100 and approved with conditions the remaining approximate 837 acres by adopting Ordinance No. 2014-1. Columbia Riverkeeper and 1000 Friends of Oregon 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). LUBA remanded the decision in part and identified areas in which the record and findings provided insufficient justification for the approval. *Columbia Riverkeeper et al v. Columbia County*, 277 Or App. 637 (2014).

In response to that 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 uses (Forestry and Wood Products processing, production, storage, and transportation; Dry Bulk Commodities transfer, storage, production, and processing; Liquid Bulk Commodities processing, storage, and transportation; Natural Gas and derivative products, processing, storage, and transportation; and Breakbulk storage, transportation, and processing) to be allowed under the exception and further limited these uses by allowing only those uses that would be dependent on the existing deep-water port at Port Westward.

On February 21, 2018, the Board of County Commissioners approved the modified application through the adoption of Ordinance No. 2018-1, a copy of which is attached hereto, labeled as “Attachment 1” and incorporated herein by this reference. Columbia Riverkeeper and 1000 Friends of Oregon appealed the decision to the LUBA. On December 27, 2018, LUBA denied all but one of the petitioners' assignments of error. *Columbia Riverkeeper et al. v Columbia County*, 78 Or LUBA 547 (2018), a copy of which is attached hereto, labeled as “Attachment 2” and incorporated herein by this reference. LUBA remanded the County's decision “for the county to adopt more adequate findings, supported by substantial evidence, regarding the compliance with the requirement of OAR 660-004-0020(2) (d)”, hereinafter referred to as the “2020 LUBA

Remand” *Id.* at 568. OAR 660-004-0020(2) (d) requires that:

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

The [statewide planning goal] 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. (Emphasis added.)

Columbia Riverkeeper appealed LUBA's decision to the Oregon Court of Appeals, and the Port filed a cross-petition challenging LUBA's conclusion regarding compatibility. The Court of Appeals affirmed LUBA's decision. *Columbia Riverkeeper et al. v. Columbia County*, 297 Or App 628 (2019), a copy of which is attached hereto, labeled as “Attachment 3” and incorporated herein by this reference. Columbia Riverkeeper appealed the Court of Appeals decision to the Oregon Supreme Court. The Supreme Court denied review of the appeal. *Columbia Riverkeeper et al., v. Columbia County*, 365 Or 721 (2019), a copy of which is attached hereto, labeled as “Attachment 4” and incorporated herein by this reference.

On November 4, 2020 The Board of County Commissioners issued the Notice of Remand Proceedings in the Matter of the Application on the Port of Columbia County’s application for a Comprehensive Plan Map Amendment, Zone Change and an Exception to Statewide Planning Goal 3 for an 837-acre expansion of the Port Westward Rural Industrial Area (Port Westward) (see County File No. PA 13-02 and ZC 13-01).

The Board of County Commissioners limited the scope of this remand proceeding to written evidence, arguments and testimony on the single issue remanded by LUBA on whether the proposed uses are “compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts” pursuant OAR 660-004-0020(2)(d). On November 4, 2020, the Board of County Commissioners issued Notice of Remand Proceedings, which was mailed to the Port, parties of the previous proceeding and property owners within 500 feet of the subject property. The notice explained how to obtain a copy of the application and the November 9, 2020 Board of Commissioners Staff Report, and included the following periods for submission of written evidence, arguments and testimony:

- a. Interested parties may submit written evidence, arguments and testimony between November 17, 2020 and December 7, 2020.
- b. Interested parties may submit written evidence, arguments and testimony in rebuttal of evidence submitted no later than December 28, 2020.
- c. Unless waived by the applicant, the applicant shall have until January 11, 2020 to submit final written arguments in support of the application.

An inordinate number of the notices were returned to the County in the mail as undeliverable. As a result, the County verified current addresses. The County discovered that some of the parties to the previous proceeding no longer lived at the addresses in the record. Most of the addresses in the records are several years old due to that fact this matter was last before the Board of County Commissioners in 2018. In an effort to ensure that all parties to the previous proceeding receive notice of this remand proceeding, the County reviewed the Columbia County Assessor's Office records and conducted other research to identify the parties' new addresses. Additionally, the County expanded the mailing list of property owners from 500 feet of the subject property to 2,000 feet to be consistent with the compatibility study area. In order to ensure that interested parties received notice and had adequate time to comment on this matter, the County extended the comment periods. On December 18, 2020, the Board of County Commissioners issued Notice of a Revised Schedule for the Remand Proceedings, which was mailed to the Port, parties of the previous proceeding and property owners within 2,000 feet of the zone change area, with the following extended the period for submission of written evidence, arguments and testimony, as follows:

- a. The open comment period for interested parties to submit written evidence, arguments and testimony is extended to January 27, 2021.
- b. Interested parties may submit written evidence, arguments and testimony in rebuttal of evidence beginning January 28, 2021 and submitted no later than February 17, 2021.
- c. Unless waived by the applicant, the applicant shall have until March 3, 2021 to submit final written arguments in support of the application.

This Supplemental Staff Report, dated June 16, 2021, includes findings and analysis to comments received between November 17, 2020 and March 3, 2021.

SUMMARY OF CURRENT REQUEST

In response to the 2018 LUBA remand, on June 18, 2020, the Port submitted a LUBA Remand - Request for Review of Application No. PA 13-02 / ZC 13-01, a copy of which is attached hereto, labeled as "Attachment 5" and incorporated herein by this reference, and paid the corresponding required administrative fee. On July 22, 2020, the Port submitted a Letter "Re: Port of Columbia County's application on remand to address compatibility", a copy of which is attached hereto, labeled as "Attachment 6" and Compatibility Report titled "Port Westward Goal Exception, Comprehensive Plan Amendment and Zone Change Supplemental Analysis: Land Use Compatibility", prepared by Mackenzie, dated July 21, 2020, a copy of which is attached hereto, labeled as "Attachment 7" and incorporated herein by this reference.

The five specific uses authorized to operate within the proposed 837-acre expansion of the Port Westward RIPD zoned area are limited to the following:

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

SCOPE OF REMAND PROCEEDING

The purpose of this remand proceeding is for the County to determine whether the proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts pursuant to OAR 660-004-0020(2)(d).

OAR 660-004-0020 – Goal 2, Part II(c), Exception Requirements

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

[...]

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

Similar to OAR 660-004-0020(2)(d), ORS 197.732(2)(c)(D) requires that proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

ORS 197.732 Goal exceptions; criteria; rules; review.

(2) A local government may adopt an exception to a goal if:

[...]





(c) The following standards are met:

[...]

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

This Supplemental Staff Report will review and evaluate the written evidence, arguments and testimony submitted during the initial and extended Open Comment, Rebuttal and Final Comment periods. This Supplemental Staff Report makes additional findings that support staff's conclusion that the proposed uses are rendered compatible with other adjacent uses through mitigation measures designed to reduce adverse impacts pursuant to OAR 660-004-0020(2)(d).

FIGURE 1
PORT WESTWARD
VICINITY MAP
Columbia County, Oregon

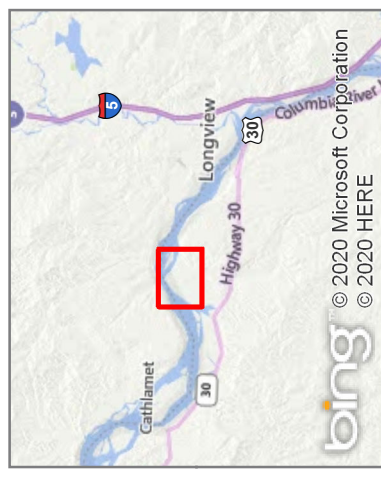
- LEGEND**
-  Port of Columbia County Properties
 -  Thompson Property
 -  Proposed Zone Change Area
 -  State Boundary



SOURCE DATA:
 Columbia County GIS Data,
 Oct 2016

GEOGRAPHIC PROJECTION:
 NAD 83 HARN, Oregon North
 Lambert Conformal Conic

Date: 7/17/2020 **Map Created By:** BVV
File: Port Westward_Aerial_2020 **Project No.:** 2160462.01



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COMPATIBILITY ANALYSIS REQUIRED BY LUBA

LUBA provided direction on the scope of compatibility analysis and findings required to show whether the proposed uses are compatible with other adjacent uses. Specifically, LUBA stated that:

[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. 78 Or LUBA 547, 569-570 (2018) (Emphasis added).

Based on the relevant Oregon statutes, administrative rules and legal precedent, the Compatibility Report provided the required compatibility analysis by gathering and evaluating the following data on the subject 837-acre zone change area and adjacent lands as follows:









1. Identifying existing "adjacent land uses" that are wholly or partially within 2,000 feet of the 837-acre zone change area;
2. Identifying the potential adverse impacts of the five specific proposed rural industrial uses;
3. Assessing the extent to which the proposed uses will adversely impact adjacent land uses;
4. Enumerating existing federal, state and local regulatory requirements that the five proposed rural industrial uses will need to comply with at time of future development; and
5. Identifying existing mitigation measures in Ordinance No. 2018-1 that will be used to minimize potentially incompatible impacts with adjacent land uses.

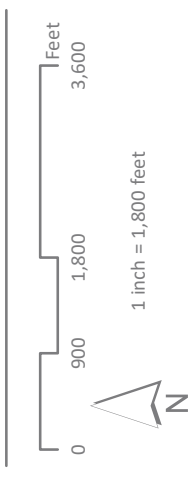
Each Part of this Supplemental Staff Report will evaluate and make supplemental findings specific to each of these issues.

PART 1 - IDENTIFYING EXISTING ADJACENT LAND USES WITHIN 2,000 FEET OF THE 837-ACRE ZONE CHANGE AREA

FIGURE 3
LAND USE
COMPATIBILITY
STUDY AREA
Columbia County, Oregon

LEGEND

-  Port of Columbia County Properties
-  Thompson Property
-  Proposed Zone Change Area
-  Tax Lots
-  Adjacent Tax Lots to Zone Change Area
-  Study Area
-  Rail
-  State Boundary



SOURCE DATA:
 Columbia County GIS Data,
 Feb 2020

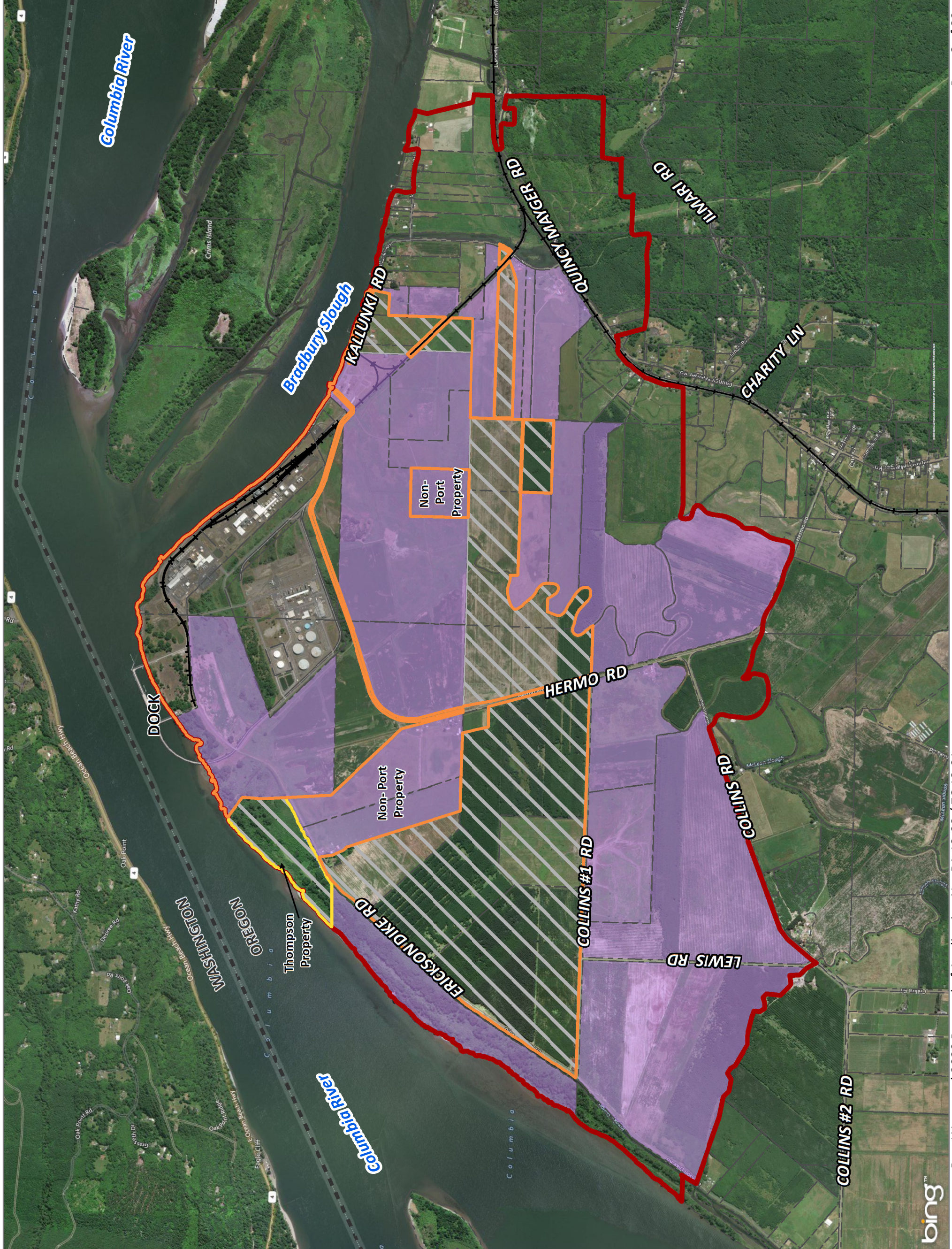
GEOGRAPHIC PROJECTION:
 NAD 83 HARN, Oregon North
 Lambert Conformal Conic

Date: 7/17/2020
Map Created By: GF
File:
Project No: 2160462.01



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Finding 1: Staff finds that the scope of the Compatibility Study Area identified in the Compatibility Report is adequate to determine compatibility with adjacent land uses as required by ORS 197.732 and OAR 660-004-0020(2)(d). ORS 197.732(2)(c)(D) provides:

(2) A local government may adopt an exception to a goal if:

* * *

(c)The following standards are met:

* * *

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

OAR 660-004-0020(2)(d) provides that:

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. (Emphasis added.)

The “interference or adverse impacts” from the development referenced in OAR 660-004-0020(2)(d) can potentially impact “adjacent” uses via “surrounding natural resources and resource management or production practices,” but the ORS 197.732 focuses the requirement on impacts to “adjacent” uses themselves. Accordingly, to the extent non-adjacent “surrounding natural resources and resource management or production practices” have impacts that in turn impact “adjacent” uses under ORS 197.732, those impacts fall under the scope of ORS 197.732.

While both ORS 197 and OAR Chapter 660, Division 4 utilize the term “adjacent,” neither the statute nor the administrative rule define it in the context of ORS 197.732 or OAR 660-004-0020(2)(d). The term is also not defined in the Columbia County Zoning Ordinance.

To identify an appropriate study area boundary, the Port examined dictionary definitions as well as other administrative rules that limit the term to only abutting land or that define “nearby land” as constituting a quarter-mile radius. The Merriam-Webster Dictionary’s primary definition for the word “adjacent” is threefold, including “not distant: nearby,” “having a common endpoint or border,” or “immediately preceding or following.”¹ Although not directly germane to Goal Exceptions, the Port considered used the definition of “adjacent land” in OAR 660-021-0010, which defines adjacent land as “abutting land” and “nearby land” as “land that lies wholly or partially within a quarter mile [1,320 feet] of an urban growth boundary.” Using the dictionary and OAR 660-021-0010 definitions as a starting point, the Port included all those parcels that

¹ Adjacent. *Merriam-Webster.com*. Accessed July 1, 2020, from <https://www.merriamwebster.com/dictionary/adjacent>.

touch the zone change area, plus all parcels that would touch the zone change area if not for an intervening road right-of-way, and defined those as “adjacent”. In addition, the Port included in the Compatibility Study Area all contiguous parcels which are wholly or partially within 2,000 feet of the zone change area.² The Compatibility Report defines the Compatibility Study Area as all parcels wholly or partially within 2,000 feet of the zone change area, which consists of approximately 2,200 acres totaling 260% of the 837-acre proposed zone change. This 2,000-foot distance covers properties located within one-third of a mile from the zone change area and identified in Figure 3 with a red border.

The County received comments that the Compatibility Report does not adequately address compatibility under OAR 660-004-0020(2)(d). In particular, regarding the scope of which uses are “adjacent”, the County received the following argument from Columbia Riverkeeper (“Riverkeeper”):

The compatibility standard requires the County to demonstrate not only how the proposed uses are compatible with adjacent land uses, but also “that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. This provision of the rule is clearly intended to extend the compatibility analysis beyond “adjacent land uses” to require consideration of areas and activities that may not be confined to particular parcels or defined by the designated zoning. Moreover, in using “surrounding” instead of “adjacent” the rule indicates that a less rigid approach is warranted when evaluating compatibility with natural resources.

Riverkeeper comments dated January 20, 2021, at 6-7 (Emphases Added).

Staff finds that Riverkeeper is attempting to stretch the Administrative Rule beyond the scope of authorization in the statute, which is not permitted. The above assertion, and any similar such assertions in the record regarding the scope of OAR 660-004-0020(2)(d), are contrary to law.

OAR 660-004-0020(2)(d) is an administrative rule promulgated by the Oregon Land Conservation and Development Department through the Department’s Land Conservation and Development Commission (“LCDC”). As a State agency, LCDC derives its authority from State law. This becomes clear upon examination of the text of OAR 660-004-0020.

At the bottom of the administrative rule, the following is provided:

Statutory/Other Authority: ORS 197.040
Statutes/Other Implemented: ORS 197.732
History: LCDD 3-2011, f. & cert. ef. 3-16-11
LCDD 1-2011, f. & cert. ef. 2-2-11
LCDD 3-2004, f. & cert. ef. 5-7-04
LCDC 8-1994, f. & cert. ef. 12-5-94
LCDC 9-1983, f. & ef. 12-30-83
LCDC 5-1982, f. & ef 7-21-82 (emphases added).

² A 2,000-foot measure is more than fifty percent greater than the quarter-mile measure used in the OAR 660-021-0010 definition of nearby land.

Accordingly, OAR 660-004-0020 itself recognizes and acknowledges that the scope of its authority is limited to the delegation in ORS 197.732, meaning the language cited by Riverkeeper (that OAR 660-004-0020 requires that an exception “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”) applies only in the context of the statute itself. In turn, the statute requires only that “The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts” (emphasis added). The intent of the statute (and the associated limit of its implementing regulation’s scope) is “compatib[ility] with other adjacent uses.” To the extent that compatibility requires consideration of “surrounding natural resources and resource management or production practices,” that consideration applies only in the context of “adjacent uses.” The administrative rule itself cannot self-authorize an expansion of the scope of the statute, but only implement the statute’s delegation of authority.

The interpretation of ORS 197.732 and OAR 660-004-0020 as applying to adjacent uses is consistent with ORS 197.040, which is cited in the rule as the authority for the promulgation of OAR 660-004-0020. ORS 197.040(1)(c)(A) authorizes LCDC to “[a]dopt by rule in accordance with ORS chapter 183 or by goal under ORS chapter 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196, and 197.” (Emphasis added.) As the rule implementing ORS 197.732, OAR 660-004-0020 “carr[ies] out” ORS 197.732, but cannot expand it, despite the unsubstantiated claims to the contrary presented to the Board. As the Oregon Court of Appeals has explained:

Administrative agencies may adopt rules only pursuant to statutory authority granted by the legislature. An administrative rule so adopted must be consistent with the legislative directive; it exceeds the agency's statutory authority if it “depart[s] from a legal standard expressed or implied in the particular law being administered, or [if it] contravene[s] some other applicable statute.”

Marolla v. Dep't of Pub. Safety Standards & Training, 245 Or. App. 226, 230, 263 P.3d 1034, 1035 (2011), quoting *Planned Parenthood Assn. v. Dept. of Human Res.*, 297 Or. 562, 565, 687 P.2d 785 (1984) (footnote and internal citations omitted).

In the context of OAR 660-004-0020(2)(d), the rule may require consideration of compatibility “with surrounding natural resources and resource management or production practices” if they concern compatibility with “adjacent uses” under ORS 197.732(2)(c)(D). However, any attempt would exceed the scope of authority delegated by the Legislature via ORS 197.732(2)(c)(D). Accordingly, Riverkeeper’s interpretation of OAR 660-004-0020(2)(d) is untenable. The language in OAR 660-004-0020(2)(d) cannot be used to expand the scope and application of ORS 197.732 beyond its intended target: adjacent uses.

Based on the foregoing reasons, staff finds that the Compatibility Study Area is a valid assessment tool that will provide a representative compatibility analysis consistent with the provisions in ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d).

Map of Port Westward and Nearby Land Uses

**FIGURE 4
PORT WESTWARD
AND NEARBY
LAND USES
Columbia County, Oregon**

- LEGEND**
- Port of Columbia County Properties
 - Thompson Property
 - Tax Lots
 - Proposed Zone Change Area
 - Study Area
 - Rail
 - State Boundary
 - Wetlands
- Land Use:**
- Industrial
 - Forested
 - Agricultural/Tree Farm
 - Residential (Accessory to Primary Agricultural Use)
 - Rural Residential

1 inch = 1,800 feet

GEOGRAPHIC PROJECTION:
NAD 83 HARN, Oregon North
Lambert Conformal Conic

SOURCE DATA:
Columbia County GIS Data,
Feb 2020

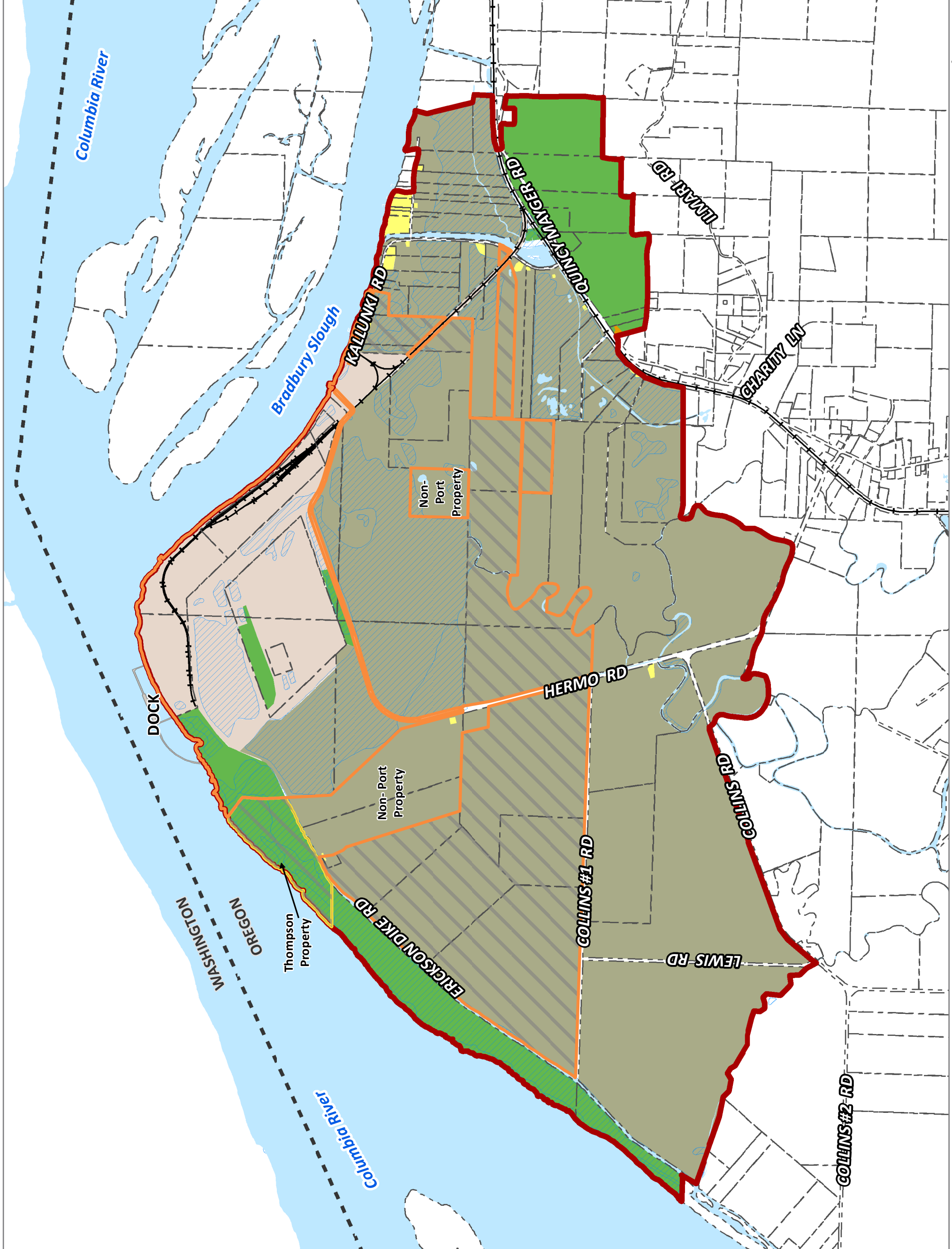
Date: 7/20/2020
Map Created By: GF

File:
Port Westward_NearbyUses
2160462.01



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Discussion – Description of Zone Change Area and Compatibility Study Area: The Port proposes to rezone the 837-acres from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD) in order to expand the existing 905-acre Port Westward Industrial Park by 837 acres. This 92 % expansion, in turn, will allow this industrial park's existing deep-water port to be able to accommodate five specific rural industrial uses that rely on this unique transportation facility along the Columbia River. Figure 4 on Page 9 shows the entire proposed zone change area (837-acres) is currently zoned PA-80 for agricultural uses. Existing site development, as shown on the pictures on Pages 9 – 13, consists of two vacant agricultural accessory residences addressed at 81022 Erickson Dike Road and 80869 Kallunki Road and other miscellaneous agricultural structures.

According to Federal Emergency Management Agency Flood Insurance Rate Map 41009CO050 D, the existing Beaver Dike/levee system is north, east and west of the zone change area and is located on portions of Erickson Dike Road, Kallunki Road and Quincy Mayger Road. All of the land inside the levee is listed as FEMA zone X, protected by levee. All land outside of the levee, along the river is listed as FEMA zone AE, special flood hazard area with base flood elevations determined. Land outside the levee is primarily forested while land inside the levee has historically been used for tree farm and other agricultural uses both of which are identified as Permitted Uses in the provisions in Section 682 of the RIPD Zone listed below.

CCZO Section 680

RESOURCE INDUSTRIAL - PLANNED DEVELOPMENT

RIPD

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

- .1 Are not generally labor intensive;
- .2 Are land extensive;
- .3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;
- .4 Complement the character and development of the surrounding rural area;
- .5 Are consistent with the rural facilities and services existing and/or planned for the area; and,
- .6 Will not require facility and/or service improvements at significant public expense.

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

682 Permitted Uses:

- .1 Farm use as defined by Subsection 2 of ORS 215.203 except marijuana growing and producing.
- .2 Management, production, and harvesting of forest products, including wood processing and related operations.

Agriculture uses and tree farms along Hermo Road, Collins Roads #1 and #2, and Erickson Dike Road within the Zone Change and Compatibility Study Areas









View of Port Westward from Hermo Road immediately north of zone change area



These eight pictures taken of properties within the Zone Change and Compatibility Study Areas coincide with the Zoning Map of these areas in Figure 4 on Page 9. This information confirms that existing land uses within the Compatibility Study and Zone Change Areas consist of the following:

- Tree farms, forested PA-80 zoned properties, and the RIPD zoned properties in the area bordered by the Columbia River, Bradbury Slough, Kallunki Road, Quincy Mayger Road, Erickson Dike Road and Collins Roads #1 and #2;
- Forested vacant approximately 180-acres of PF-80 zoned land located south of Quincy Mayger Road;
- Residences accessory to PA-80 uses on PA-80 zoned properties along Kallunki Road, Quincy Mayger Road and Hermo Road including the about 80-acre property associated with the Seely mint farm and its single family residence addressed at 18865 Hermo Road and
- One Rural Residential (RR-5) zoned property with one residence addressed at 79680 Quincy Mayger Road.

Residential and non-residential structures on these PA-80 zoned properties are likewise considered accessory to their primary use such as forest, agriculture, or residential. Similarly, the 180 acres of Primary Forest (PF-80) zoned properties east of Quincy Mayger Road are heavily forested with no accessory residential uses. Of the affected 2,200-acre Compatibility Study Area, only one 0.80-acre property addressed at 79680 Quincy Mayger Road is zoned for rural residential uses.

During the Extended Open Comment Period (November 17, 2020 – January 27, 2021), Columbia County received comments from the Department of Land Conservation and Development (DLCD) in a letter dated December 17, 2020 and the Oregon Department of Agriculture (DOA) in a letter dated December 9, 2020. Both agencies indicated that the Compatibility Report does not sufficiently describe or address the compatibility of the proposed land uses with the adjacent agricultural resource management or production practices. In addition, both the DLCD and the DOA letters suggest that the Compatibility Report did not include *"a description of adjacent agricultural resource management or production practices in the materials submitted beyond a general indication that agricultural uses including agricultural tree farms uses are occurring."*

Pages 1-2 of the DLCD letter specifically states that they *"believe that the requirements of OAR 660-004-00020(2)(d) are not adequately addressed without an examination of the characteristics of adjacent agricultural management and production practices and an assessment of the vulnerability of those particular management and production practices to potential externalities from industrial uses."*

In addition, Michael Seely the resident farmer of the 80-acre mint farm addressed at 18865 Hermo Road (located with the Compatibility Study Area) submitted a letter dated January 27, 2021 stating his opposition to the proposed map amendments. Mr. Seely raised the following potential adverse impacts from industrial uses to his 49 year old mint-farming operation that he believes the Compatibility Report did not sufficiently address:

- Flood control and irrigation needs,
- Wetland mitigation,
- Increased traffic on Hermo Road,
- Impacts to specific agriculture crops like mint, blueberries or other crops, and
- Increase in air emissions including dust.

Regardless of these expressed issues, Mr. Seely ends his letter stating *"I have offered to the Port to sit down and discuss how to address these issues. I am still willing to work with them on this."*

The Port's March 3, 2021 Final Response Page 2 addresses these compatibility issues expressed by the DLCDC, DOA and Michael Seely by reiterating that:

"The only remaining question is whether the five proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts in ORS 197.72(2)(c) (D) and OAR 660-004-0020(2)(d).

ORS 732(2) (c) (D) provides the following:

(2) A local government may adopt an exception to a goal if:

[...]

(c) The following standards are met:

[...]

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

OAR 660-004-0020 (2) (d) provides the following direction in evaluating compatibility:

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."

The July 21, 2020 Compatibility Report focuses on that single remaining issue, and establishes that each of the five proposed use categories will be compatible with existing adjacent uses, with the imposition of the proposed conditions."

The Port further describes the required extent of their Compatibility Report on Page 4 as:

"As the Compatibility Report details, ORS 197.732(1)(a) sets a limit on the reach of "compatible" under the statute: "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses. The same language is mirrored in the text of OAR 660-004-0020."

Finding 2: With the predominant existing forestry and rural industrial uses occurring on the PA-80 and RIPD zoned properties, Staff finds the overwhelming majority of these resource-related uses meet the Oregon Department of Forestry's definition of "Forestland" in the OAR 629-600-

00100 (26) as: "...land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied". The exception to this forestland in the PA-80 Zone is the about 80-acres owned by Michael Seely which his family has been operating for at least the past 49 years as he stated in his letter dated January 27, 2021. These resource-related agriculture uses are also identified, and will continue to be Permitted RIPD Uses as listed in Section 682 of the County Zoning Ordinance. The Seely Mint Farm has been operating for over four decades adjacent to the existing RIPD zoned properties and established industrial land uses without any impacts that have been reported to the county. Because the existing and proposed industrial uses and agricultural uses have similar impacts as described in the Compatibility Report, it is reasonable to conclude they will be able to continue to operate adjacent to each other. This provides convincing evidence that existing rural industrial uses have been operating for at least four decades in ways that are compatible with adjacent agricultural uses.

With regards to the DOA's, DLCD's and Michael Seely's suggestions that the Compatibility Report does not sufficiently describe/address the compatibility of the proposed land uses with the adjacent agricultural resource practices, Staff finds that any current examination of future RIPD uses' impacts on adjacent agricultural resource management or production practices, including assessing their vulnerability to potential externalities, can be rendered compatible with mitigation measures and that further analysis will be conducted on a project by project basis and evaluated during the required Site Design Review consistent with the requirements of OAR 660-004-0020(2) (d) and all applicable provisions of the Columbia County Zoning Ordinance. No project will be approved if it is not compatible. As will be covered in Finding 8 of this Supplemental Report, Board Order No. 2018-1 has imposed eight conditions of approval for this application and the Port offers a ninth Condition of Approval, all of which will render compatibly between future industrial and adjacent land uses.

To be sure, the applicant's compatibility analysis confirms that with the eight conditions of approval, plus the new ninth condition, future industrial uses can be compatible with existing adjacent uses. When a specific use is proposed in the future, it will be subject to additional land use reviews that will ensure the developed use is compatible with adjacent uses. This finding is also consistent with the Port's March 3, 2021 Final Response stating the ensured compatibility between future RIPD and adjacent agricultural resource practices will be rendered compatible through measures designed to reduce adverse impacts that have already been identified as the eight conditions of Approval in Ordinance No. 2018-1 and one additional Condition of Approval recommended by the Port in Finding 8. As will be covered in Findings 6, 7 and 8, these nine Conditions of Approval, do not preclude any additional conditions from being added to future industrial developers through the Conditional Use and Design Review Permitting processes. Future industrial uses will be subject to a land use process that includes site and industry specific analyses, to accurately identify the industrial use's potential adverse impacts to existing adjacent uses. Conditions of Approval will be added to the specific industrial use to render the use compatible.

Staff finds that the Port's March 3, 2021 Final Response on Page 2 has sufficiently addressed these compatibility concerns consistent with the statutory provisions in ORS 197.732(2)(c)(D) and the related regulatory provisions in OAR 660-004-0020(2)(d). For the foregoing reasons, including the site specific Conditions of Approval that will be added during future land use

processes, Staff concurs with the following conclusion on Page 2 of the Port's March 3, 2021 Final Response, consistent with the scope of this remand review:

"It must be emphasized that, in resolving the last remaining question, OAR 660-004-0020(2) (d) explicitly states that compatible is not an absolute term meaning no interference or adverse impacts of any type with adjacent uses. In other words, the last remaining issue before the Board is whether the five uses proposed by the Port are compatible with adjacent uses or will be so rendered through measures designed to reduce (but not necessarily eliminate) adverse impacts. The July 21, 2020 Compatibility Report focuses on that single remaining issue, and establishes that each of the proposed uses will be compatible with existing adjacent uses, with the imposition of the proposed conditions."

Finding 3: With the Compatibility Study and Zone Change Areas' existing uses being characterized as predominantly forested, Staff finds that rezoning of the 837-acres from PA-80 to RIPD will continue to authorize all existing Permitted Uses including the siting of wood processing and related operations, all farm uses defined in ORS 215.203, and the transfer, storage, production and processing of Dry Bulk Commodities. All of these allowed uses will be located in close proximity to the surrounding rural area's existing forestry and agriculture operations as well as to Port Westward Industrial Park's existing unique transportation facility, its deep water port.

Staff agrees with the Port's explanation that both the enabling legislation (ORS 197.732) and the related administrative rule (OAR 660-004-0020) clearly state that some degree of interference or adverse impacts on adjacent land uses may be permitted by proposed uses and yet still be deemed compatible as provided under the applicable statute and administrative rule.

On Pages 6-7 of the Port's January 20, 2021 comments, Columbia Riverkeeper suggests another measure of "compatibility" that the Port and Staff both consider to be outside the scope of this remand review. Specifically, Riverkeeper claims *"The compatibility standards requires the County to demonstrate not only how the proposed uses are compatible with adjacent land uses, but also that the proposed use is situated in such a manner to be compatible with surrounding natural resources and resource management practices. This provision of the rule is clearly intended to extend the compatibility analysis beyond adjacent land uses to require consideration of areas and activities that may not be confined to particular parcels or defined by the designated zoning. Moreover, in using "surrounding" instead of "adjacent", the rule indicates that a less rigid approach is warranted evaluating compatibility with natural resources."* Staff disagrees with Columbia Riverkeeper. Staff agrees with the Port's response on Page 3-4 of their March 3, 2021 Final Response that states *"Riverkeepers is attempting to stretch the Administrative Rule beyond the scope of the authorization in the statute, which is not permitted"* and explanation that Riverkeeper stretches the Administrative Rule in two ways:

First: *"Accordingly OAR 660-004-0020 itself recognizes and acknowledges that the scope of its authority is limited to the delegation in the Oregon Revised Statutes (ORS) 197.732. Consequently, Riverkeepers claim 'that OAR 660-004-0020 requires that an exception demonstrates that a proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices'*

applies only in the context of the statute itself."

Second: The administrative rule itself cannot self-authorize an expansion of the scope of the statute, but authorizes the implementation of the state's delegation of authority. Specifically, as the rule that implements ORS 197.732, OAR 660-0004-0020 carries out ORS 197.732, but cannot expand it[.] As the Oregon Court of Appeals has explained "An administrative rule so adopted must be consistent with the legislative directive: it exceeds the agency statutory authority if it "departs from a legal standard expressed or implied in the particular law being administered or if it contravenes some other applicable statute."

Staff agrees with the Port's analysis that the provisions of OAR 660-004-0020 should not be stretched beyond the requirements of ORS 197.732 and concurs with the Port's two conclusions (listed below and on Page 5 of March 3, 2021 Final Response).

1. "The interference or adverse impact from the development referenced in the rule can potentially impact adjacent uses via surrounding natural resources and resource management or production practices, but the statute focuses the requirements on impacts to adjacent uses themselves."

2. "To the extent non-adjacent surrounding natural resources and resource management or production practices have impacts that in turn impact adjacent uses under ORS 197.732, those impacts fall under the scope of ORS 197.732. However, the language in OAR 660-004-0020(2) (d) cannot be used to expand the scope and application of ORS 197.732 beyond its intended target: adjacent uses."

Finding 4: With this Staff Report's pictures showing the Compatibility Study and Zone Change Areas consist of predominantly forested land uses in the PA-80 Zone, Staff finds the proposed Comprehensive Plan Amendment and Zone Change will provide additional rural industrial development opportunities at Port Westward for the processing, production, storage and transportation of Forestry and Wood Products, all of which complement the character and development of the surrounding rural area. Additional industrial zoned land in this area will provide a location for processing of forest and farm products and the ability to bring these products to market via the existing deepwater port, thus being economically beneficial to forest and farm uses.

With the site specific review conducted at the time of actual site development, Staff finds that the specific rural industrial use will be reviewed according to the applicable provisions of the County Zoning Ordinance consistent with these requirements in OAR 660-04-0020 (2) (d). These regulatory requirements will, in turn, require all proposed uses to be situated on the site in such a manner as to be compatible with surrounding uses and be designed with site and industry specific measures to ensure compatibility with the development of the surrounding rural area and adjacent land uses with the imposition of the Eight Conditions of Approval in Ordinance No. 2018-1 and the one additional Condition of Approval recommended in Finding 8 of this Supplemental Report. For these reasons, Staff finds the Port has demonstrated they have complied with the requirements of this remand review and that the Comprehensive Plan Amendment and Zone Change's imposition of nine Conditions of Approval, as well as future

additional Conditions imposed at time of site development, will render the compatibility between industrial and adjacent land uses consistent with the scope of this remand and with these requirement in OAR 660-04-0020 (2) (d).

PART 2 – IDENTIFYING THE POTENTIAL ADVERSE IMPACTS OF THE FIVE SPECIFIC PROPOSED RURAL INDUSTRIAL USES

Discussion: The five specific rural industrial uses proposed for the zone change area include the following:

1. **Forestry and Wood Products:** The processing, production, storage and transportation of Oregon's historically leading rural industrial land use. Specific uses include saw mills as well as pulp and paper mills that produce wood pellets, utility poles, sawdust, log debarking, logs, lumber and other wood based products all of which may be imported or exported for international or domestic sale.
2. **Dry Bulk Commodities:** The transfer, storage, production of processing of grains, metals, lumber or other such merchandise that are produced or distributed for sale. Bulk refers to significant unpackaged quantities generally transported as a single commodity. Dry describes items transported in solid, and not liquid, form. These types of commodities require consolidation at a single location before further transportation or distribution. Processing is usually a value-added task performed before shipping and can be as simple as removing bark from logs before shipping overseas.
3. **Liquid Bulk Commodities:** The processing, storage and transportation of petroleum, ethanol, milk, cooking oil or other edible fluids. Liquid bulk is cargo transported or stored unpackaged in large volumes and a moved in large quantities by ship or barge, stored in tanks, and distributed by tanker trucks. Processing could include the mixing of additive to petroleum.
4. **Natural gas and derivative products:** The processing, storage and transportation of this natural resource that is used to produce a range of chemical products such as fertilizer or methanol suitable for transportation by river. There may be on-site storage of the raw material or its refined products before shipment. The existing Port Westward Industrial Park already has abundant existing infrastructure suitable for the processing, storage and transportation of natural gas.
5. **Breakbulk:** The storage, processing and transportation of Breakbulk refers to transporting cargo as separate pieces, not in containers or single commodity loads. Typically bags, boxes, crates, drums or barrel or single units (wind turbine blades, turbines, heat exchangers, automobiles etc.). This use would allow any items meeting local, state and federal requirements to be stored on site either before or after transfer across the dock. Processing would include limited work such as modifications or alterations to allow for safe transportation by river, rail, or roads.

Table 3 (below) of the Compatibility Report presents a visual representation and summary of

Table 1's Potential Adverse Impacts from Port Westward Five Proposed Rural Industrial Uses and Table 2's Potential Adverse Impacts from Adjacent and Non-Adjacent Land Uses.

Table 3: Comparison of Potential Adverse Impacts

Potential Adverse Impacts	Land Use							
	Proposed Uses					Existing PWW Industrial Uses	Agricultural/ Forest	Residential
	Forestry/ Wood Products	Dry Bulk	Liquid Bulk	Natural Gas	Breakbulk			
Airborne emissions (particulates, dust, water droplets, odor, steam, fumes, gas, smoke, heat, etc.)	X	X	X	X	X	X	X	X
Noise	X	X	X	X	X	X	X	
Rail/truck/ship traffic for raw materials, finished products, and wastes	X	X	X	X	X	X	X	
Vehicle and machinery exhaust emissions	X	X	X	X	X		X	X
Stormwater runoff which may contain chemicals, nutrients, colors, or sediment	X	X	X	X	X	X	X	X
Process/cooling water discharge	X	X	X	X	X	X		
Wastewater discharge	X	X	X	X	X	X		X
Fire/explosion	X	X	X	X	X	X		
Chemical spills (Including oils and hazardous materials)	X	X	X	X	X	X	X	
Light	X	X	X	X	X	X		
Water usage	X	X	X	X	X	X	X	X
Navigation Impacts	X	X	X	X	X			
Dike impacts for any levee modifications	X	X	X	X	X			
Wetland Impacts	X	X	X	X	X	X	X	
Wildlife impacts	X	X	X	X	X			
Accumulation of waste materials	X	X	X	X	X	X	X	
Nuisances from waste materials	X	X	X	X	X	X	X	
Combustibility	X	X						
Alteration of soil chemistry and structure							X	
Bacteria release (if manure is used for fertilizer)							X	

Discussion: In response to this remand review and between November 17, 2020 and January 27, 2021, the County received approximately 1,100 submissions claiming the Compatibility Report does not adequately address compatibility with adjacent land uses. In response, and beginning on Page 5 of their March 3, 2021 Final Response, the Port explains their methodology and subsequent analysis used to identify **each** of the five proposed rural industrial uses potential adverse impacts to adjacent uses all of which are summarized above on Table 3 .

The Port, on Page 6 of their March 3, 2021 Final Response, emphasizes the Compatibility Report relied on LUBA's analysis of the compatibility standard in its 2018 decision and focused specifically on this passage of that decision:

"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 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 compatible via identified measures."

With this direction from LUBA, Staff concurs with the methodology used in the Compatibility Report to assess the compatibility of the rural industrial Goal Exception with adjacent land uses and included the following measures listed on Page 7 of the March 3, 2021 Final Response:

- *Enumeration of potential adverse impacts of the proposed uses;*
- *Identification of significant differences in character among the proposed uses and adjacent land uses;*
- *Assessment of whether potential impacts produce adverse effects on adjacent land uses;*
- *Cataloging of those uses which require no mitigation to be compatible and those which require mitigation measures to be made compatible with adjacent land uses;*
- *Compilation of existing regulations applicable to the proposed uses which have the effect of maintaining compatibly and;*
- *Where required to promote compatibility, identification of appropriate mitigation to minimize incompatible impacts with adjacent land uses.*

Finding 5: Staff finds that LUBA provided a specific methodology to conduct a compatibility analysis which the Port used to develop their Compatibility Report and analyze its results.

Upon review of the Port's methodology and subsequent analysis used to identify each of the five proposed rural industrial use categories' potential adverse impacts to adjacent uses, Staff agrees with the Compatibility Report's data in Section IV - Characterization of Port Westward Area Uses- that are summarized in Table 1. For these reasons, Staff finds the Port's remand review correctly identified the likely adverse impacts of the proposed uses on adjacent uses in the Compatibility Study Area.

PART 3 – ASSESSING THE EXTENT TO WHICH THE PROPOSED USES WILL ADVERSELY IMPACT ADJACENT LAND USES

Discussion: Table 3 of the Compatibility Report not only identifies potential adverse impacts from the five proposed rural industrial categories, but also compares these potential impacts with (1) the adverse impacts of the adjacent 2,200-acre Compatibility Study Area's existing industrial uses within Port Westward Industrial Park and (2) the existing agricultural, forested and accessory residential uses occurring outside this industrial park.

Table 3 reveals that the majority of potential adverse rural industrial impacts align closely with the adverse impacts associated with existing rural industrial, agricultural, forested and residential uses of the Compatibility Study Area.

Staff's summary of Table 3's results reveals:

- Airborne Emissions, Stormwater Runoff, Vehicles and Machinery Exhaust Emissions, and Water Usage are present across all existing and proposed land uses;
- Noise and Rail/truck/ship traffic for raw materials finished products and wastes, Chemical Spills, Wetland Impacts, Accumulation Of and Nuisance From Waste Materials are present across all existing and proposed land uses except Residential,
- Process/cooling water discharge, Fire/Explosion and Light are present in all existing and proposed uses except Agricultural/Forest and Residential;
- Navigation Impacts, Dike impacts for any levee modifications and Wildlife Impacts will only be present in the five new rural industrial uses and are not associated with any existing land uses;
- The Alteration of Soil's Chemistry and Structure and the Release of Bacteria from using manure as fertilizer are only associated with existing agricultural and forestry uses; and
- Although Table 3 indicates the potential for Combustibility will increase only with the processing, production, storage and transportation of Forestry/Wood Products and Dry Bulk Commodities, Staff considers that "acts or instances of burning" or "Combustion" should be included in the Fire/Explosion category as an adverse impact of all existing and proposed land uses.

As summarized in Table 3, the subsequent analysis of the 20 potential compatibility impacts for operations within each of the five rural industrial use categories shows that not only are these potential impacts generally similar to each other, but there is also a large degree of overlap between the existing industrial uses on Port Westward's approximate 905 acres and the five industrial uses in the proposed expansion area. Of the approximate 1,100 comments received between November 17, 2020 and February 17, 2021, the differences among these uses are largely a matter of scale and probabilities that are associated with the different production processes.

Continuing on Page 8 of the Port's March 3, 2021 Final Response, the Port shows that the Compatibility Report demonstrates that the proposed rural industrial uses will be subject to much more stringent environmental regulations, including but not limited to stormwater containment and treatment, than the existing agricultural or residential uses which are already operating in close proximity to the 905-acre Port Westward campus and its deep water port.

In addition, Table 3's comparison and evaluation of potential adverse impacts of each of the proposed rural industrial uses to the area's existing industrial, agricultural, forested, and residential uses reveals the following:

"Given the range of potential adverse impacts from the rezone area's rural industrial uses, it might initially seem difficult to establish the compatibility of those uses with adjacent land uses and non-adjacent uses in the study area. However, upon closer analysis, such is not the case. First, not all potential impacts will be present for a given industrial operation. Where a particular impact is not present, there is no need to mitigate the non-impact. Moreover, even the potential impacts align closely with the potential impacts from the existing Port Westward (PWW) industrial uses. The County thus has a long record of compatibility in the form of the successful coexistence of existing industrial and non-industrial uses in the area, involving largely identical

impacts, which serves as strong evidence that the rezone area's five rural industrial uses can indeed be made compatible with the adjoining uses."

Staff agrees with the Port's conclusion on Page 9 of March 3, 2021 Final Response that any likely impacts on existing adjacent uses should not occur at levels greater than could potentially be experienced from existing industrial and agricultural uses at Port Westward. In addition, the Port concludes that mitigation measures exist and will be available to ensure the maintenance of future compatibility between existing adjacent land uses and each of the proposed five rural industrial uses. These specific Federal, State and Local mitigation measures will be discussed in the next section of this Supplemental Report.

Continuing on Page 9, the Port's response to comments submitted between November 17, 2020 – February 17, 2021 regarding concerns that the Compatibility Report does not consider various kinds of agricultural crops (berries, mint, livestock, tree farms etc.) grown on agricultural land. Specifically, the Port states and Staff concurs, that these considerations do not have any bearing on the compatibility analysis because seasonal crop rotations and typical changes in crop processing and/or management does not change the agricultural use of the land. When farmers alternate between growing poplar trees, cattle, mint, or berries, it does not alter the agriculture use of their land, but will alter the processing, management, and production operations of the various crops. The analysis in the Compatibility Report will continue to apply through such crop changes.

Finally, on Page 9 the Port reiterates a critical component pertaining to the compatibility of the new potential industrial impacts and the existing adjacent land uses identified on Page 19 of the Compatibility Report stating:

"Approval of the zone change and associated comprehensive plan amendment and Goal Exception by the County would move the boundary of future industrial development farther south, but would neither expose new types of adjacent land uses to industrial uses, nor expose those adjacent land uses to a new set of potential industrial impacts. This is a significant point as it pertains to compatibility because the potential impacts between similar adjacent land uses will likely be substantially the same... The study area is primarily composed of industrial, tree farm, and other agricultural uses and forested land with a smaller amount of residential uses accessory to primary agricultural uses. The proximity of these uses and their long-standing operations provide strong evidence rural industrial uses can safely exist side-by-side with non-industrial uses if appropriate mitigation is in place (such as buffering, setbacks, other separation) and the mitigation measures previously imposed by the County with the adoption of Ordinance 2018-1."

Finding 6: With the Port's submittal of additional evidence, Staff concurs with Section IV, Characterization of Port Westward Area Uses, of the Compatibility Report, as supplemented by the discussion above in response to the comments signed by over 1,100 people, submitted to the County from November 17, 2020 – February 17, 2021. Because these 1,100 comments also fall into Table 3's twenty categories of potential adverse impacts, Staff finds the Compatibility Report's methodology and analysis are comprehensive and comply with the direction given by LUBA in this remand review. Based on Table 3 and the detailed comparison of impacts provided in Section IV of the Compatibility Report, Staff finds that the Port correctly identified

the extent of likely adverse impacts of the proposed uses to adjacent uses in the compatibility study area.

In addition, Staff agrees with the Port and finds that moving the boundary of the future industrial development farther south will not expose additional types of adjacent land uses to industrial uses, nor expose those adjacent land uses to a new set of potential industrial impacts. Currently the boundary between the zone districts has RIPD zoning adjacent to PA-80 zoning. With this proposal, the expanded boundary will continue RIPD zoning adjacent to PA-80 zoning.

The Compatibility Report comprehensively evaluated potential impacts in accordance with the direction from LUBA. Future industrial uses will be subject to further land use process that will apply conditions of approval and ensure compatibility. In other words, the compatibility report shows that the proposed uses can be compatible. When uses are actually proposed and developed, the land use process and additional conditions of approval will ensure that what is built is compatible.

For the foregoing reasons, Staff finds the Port has demonstrated how the five future industrial use categories will be rendered compatible with adjacent land uses consistent OAR 660-0040-0020(2)(d).

PART 4 - ENUMERATING EXISTING FEDERAL, STATE AND LOCAL REGULATORY REQUIREMENTS THAT THE FIVE PROPOSED RURAL INDUSTRIAL USES WILL NEED TO COMPLY WITH AT TIME OF FUTURE DEVELOPMENT

Discussion: The Compatibility Report continues and elaborates existing federal, state and local regulatory programs that are designed to mitigate and regulate potential adverse impacts from the five proposed uses. The Compatibility Report's Tables 4 and 5, on Pages 45 – 48, provide effective visualization of the elaborate regulatory requirements that are titled "Regulatory Bodies Addressing Potential Adverse Impacts from Proposed Industrial Uses" and "Regulatory Programs Applicable to Proposed Industrial Use Examples".

Although the Port states this list of regulations is not meant to be exhaustive, it does identify a broad range of existing regulations that are designed to avoid or minimize potentially adverse impacts of the built environment on the natural environment (land, air, water, plants and animals) and the quality of life of all inhabitants.

Staff will categorically summarize these regulations which may apply to any or all of the five proposed industrial uses that will have the effect of maintaining compatibility between the proposed industrial uses and adjacent land uses as required under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d). These programs require site-specific mitigation measures consisting of performing specific actions, evaluating multiple development alternatives, or complying with numerical standards all of which allow rural industrial facility operators some flexibility on meeting the applicable standards.

Applicable Federal Regulations – Pages 20 -29 of the Mackenzie Report presents detailed

descriptions of these regulatory requirements designed to protect the Natural and Built Environments and their inhabitants.

1. The National Environmental Policy Act (NEPA)
2. National Historic Preservation Act
3. U.S. Army Corps of Engineers - The Rivers and Harbors Act, Clean Water Act, Oil Pollution Act, Toxic Substances Control Act and Lutenberg Chemical Safety Act, Emergency Planning and Community Right-To-Know Act, Pollution Prevention Act, Safe Drinking Water Acts and Resource Conservation and Recovery Act, and the Clean Air Act
4. U.S. Coast Guard – Homeland Security Act of 2002 and the Oil Pollution Act
5. Pipeline and Hazardous Materials Safety Administration – Hazardous Liquid Pipeline Act and Natural Gas Pipeline Safety Act, Oil Pollution Act, Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES) Act, Federal Safety Act
6. Federal Railroad Administration – Federal Rail Safety Act
7. U.S. Maritime Administration - Marine Highway Program and Deepwater Port Act
8. Federal Energy Regulatory Commission – Natural Gas Act and Natural Gas Policy Act, Interstate Commerce Act
9. Federal Emergency Management Agency (FEMA) – National Flood Insurance Program
10. U.S. Fish and Wildlife Service and National Marine Fisheries Service– Migratory Bird Treaty Act, Marine Mammal Protection Act
11. Federal Agencies (Bureau of Land Management and the U.S. Forest Service) Providing Supplemental Review - Endangered Species Act, Fish and Wildlife Coordination Act. Magnuson-Stevens Fishery Conservation and Management Act

Applicable State of Oregon Regulations – Pages 30 -38

1. Department of State Lands – Wetland and Waterway Removal and Fill Permits
2. Department of Environmental Quality –Water Quality Permits including Permits for National Pollutant Discharge Elimination System, Water Pollution Control Facilities, Underground Injection Control Program, Onsite Wastewater Management Program, Nonpoint Source Program, Section 401 (of the Clean Waters Act) Removal and Fill Certification, Biosolids Program, Industrial Pretreatment Program, Ballast Water Program, Air Quality, Cleaner Air Oregon Program, Air contamination Discharge Permits, Title V Operation Permits, Aboveground and Underground Storage Tanks, Hazardous Waste, Noise Control, Emergency Response.
3. Department of Energy – Liquefied Natural Gas, Energy Facilities
4. Office of the State Fire Marshall – Community Right-to Know, Emergency Response, Fire Code and Inspections, Incident Response, Storage Tanks
5. Office of Emergency Management
6. Water Resource Department
7. Oregon Department of Transportation – ODOT Rail and ODOT Highway
8. State Agencies Providing Supplemental Review – Oregon Department of Fish and Wildlife, Oregon Heritage

Applicable Columbia County Zoning Ordinance Sections – Pages 39 - 44

1. Columbia County Zoning Ordinance Section 680, Resource Industrial – Planned Development (RIPD), a copy of which is attached hereto, labeled as “Attachment 8” and incorporated herein by this reference, apply to all RIPD development are designed to help ensure these operations will accommodate rural and natural resource related industries in ways that complement the character and development of the surrounding rural area. Specifically, the provisions in Section 683.1(B) will require all adverse impacts from the proposed uses to be mitigated.
2. Columbia County Zoning Ordinance Section 1503, Conditional Uses, a copy of which is attached hereto, labeled as “Attachment 9” and incorporated herein by this reference, requires the mitigation of any adverse impacts upon the adjoining properties. Specifically, Section 1503.2 states that:

The [Planning] Commission may attach conditions and restrictions to any conditional use approved. The setbacks and limitations of the underlying district shall be applied to the conditional use. Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds, and other reasonable conditions, restrictions, or safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use being allowed. (Emphasis added.)

3. Columbia County Zoning Ordinance Section 1550, Site Design Review, a copy of which is attached hereto, labeled as “Attachment 10” and incorporated herein by this reference, states:

The Planning Commission or Director shall make a finding with respect to each of the following criteria when approving, approving with conditions, or denying an application:

- A. Flood Hazard Areas: See CCZO §1100, Flood Hazard Overlay Zone. All development in Flood Hazard Areas must comply with State and Federal Guidelines.
- B. Wetlands and Riparian Areas: Alteration of wetlands and riparian areas shall be in compliance with State and Federal laws.
- C. Natural Areas and Features: To the greatest practical extent possible, natural areas and features of the site shall be preserved.
- D. Historic and Cultural sites and structures: All historic and culturally significant sites and structures identified in the Comprehensive Plan, or identified for inclusion in the County Periodic Review, shall be protected if they still exist.

- E. Lighting: All outdoor lights shall be shielded so as to not shine directly on adjacent properties and roads.
- F. Energy Conservation: Buildings should be oriented to take advantage of natural energy saving elements such as the sun, landscaping and land forms.
- G. Transportation Facilities: Off-site auto and pedestrian facilities may be required by the Planning Commission, Planning Director or Public Works Director consistent with the Columbia County Road Standards and the Columbia County Transportation Systems Plan. (Emphasis added).

Beginning on Page 9 of the Port's March 3, 2021 Final Response, the Compatibility Report focuses on two areas of mitigation that will be relied on to ensure compatibility is maintained: the County's authority to regulate land uses and impose appropriate and site-specific conditions and the higher levels of industrial regulation at the Federal and State levels that will apply to development at Port Westward. The County Zoning Ordinance implements the goals and policies of its Comprehensive Plan to ensure all land uses comply with and are consistent with the adopted statewide and local goals, policies and objectives. The underlying premise of the County Zoning Ordinance is to protect human health and safety by limiting the incompatibility of surrounding uses.

As part of the current zone change adopted by the Board in Ordinance No. 2018-1, the County will assign conditions of approval that will require any future rural industrial use be compatible with both County and Statewide regulatory requirements and will subject these uses to public land use review procedures/processes that comply with the terms and limitations of an exception granted to Goal 3 (e.g. be dock-dependent) as well as all other applicable land use regulation at the state and local level.

Similarly, on Page 10 of the March 3, 2021 Final Response, the Port reiterates the County's Conditional Use review process described in Page 39 of the Compatibility Report as follows:

"The Planning Commission may attach conditions and restrictions to any conditional use approved. The setbacks and limitations of the underlying district shall be applied to the conditional use. Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards and bonds and other reasonable conditions, restrictions and safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon the adjoining properties which may result by reasons of the conditional use being allowed."

The Port continues and emphasizes that the Compatibility Report has already explained on Page

39 that a significant reason the expansion area's five proposed uses can be rendered compatible with existing adjacent uses is because the uses are the subject of stringent regulation at the Federal and State level to minimize adverse impacts to adjacent land uses, waterways and air.

The Port demonstrates the assurance of compatibility will be maintained by the additional condition (to the eight Conditions of Approval in Ordinance 2018-1) that will require applicants for future development proposals in the rezone area to provide evidence of approval of all applicable Federal, State and local permits prior to issuance of occupancy permits. While this additional condition is not necessary to require compliance with all regulatory programs (because compliance is required, whether or not the condition is imposed), such a condition nevertheless provides additional assurance that compatibility is maintained.

On Page 12 of the March 3, 2021 Final Response, the Port states beginning on Page 20 of the Compatibility Report, they provide detail on existing regulatory programs which have jurisdiction designed to mitigate and regulate potential adverse impacts from the five proposed industrial uses. The existing programs demonstrate they are protective of the most intense scenario (e.g. oil rather than milk for liquid bulk commodities), and that the details of any specific development proposal will be analyzed when they are timely, at the time of a land use application and the related Site Design Review and/or Conditional Use Permit Review and at the time of permit application. These local land use permit applications will also be submitted to and approved by the Federal, State and County agencies prior to the commencement of any operations.

Finding 7: Staff concurs with the Compatibility Report's Section V that identifies the existing regulatory programs that would be relevant to establishing any new industrial use at Port Westward. Staff finds that the local land use process will require coordination with the state and federal programs. The local land use process will also attach conditions of approval designed to render new industrial uses compatible with adjacent uses.

Compatibility does not mean no impact of any kind. OAR 660-004-0020(2)(d) explicitly states that compatible is not an absolute term meaning no interference or adverse impacts of any type with adjacent use, but also allows future rural industrial uses to be rendered compatible with adjacent uses through measures designed to reduce (but not necessarily eliminate) adverse impacts.

Staff concurs with the Port when it refutes comments submitted to the County inferring that the Board's approval of the Port's proposal will unlawfully defer compliance with compatibility requirements under ORS 197.732(2)(c)(D). On the contrary, the Port has performed the compatibility analysis as set forth by LUBA, which demonstrates that the proposed uses can be compatible with existing adjacent uses. Future industrial uses will be subject to a land use review process that will apply additional conditions of approval to ensure that actual development continues to be compatible. Accordingly, the County finds that with the application of regulatory programs and with the imposition of the County's approval conditions in this PAPA application and with approval conditions in future land use applications, potential adverse impacts of rural industrial uses in the expansion area can be made compatible with adjacent land uses for the lifetime of their operation.

PART 5 - IDENTIFYING EXISTING MITIGATION MEASURES THAT CAN BE USED TO MINIMIZE POTENTIALLY INCOMPATIBLE IMPACTS WITH ADJACENT LAND USES.

Discussion: Staff concurs with Section VI, Compatibility Assessment, of the Compatibility Report that explains how the proposed uses can be rendered compatible with adjacent uses in the Compatibility Study Area by imposing conditions of approval of Application No. PA 13-02 / ZC 13-01. Particularly, Section VI explains:

"Section V [of the Compatibility Report] provides information on the numerous existing regulatory programs that are anticipated to be applicable to the zone change area at the Federal, State, and local level. While the programs do not guarantee zero impacts (e.g., an Air Contaminant Discharge Permit authorizes release of some amount of air pollutant), the programs require mitigation to ensure that emissions are limited to levels that have been scientifically determined to be acceptable for public health and environmental quality, or by performing actions such as developing and implementing spill response plans. These provisions are in keeping with the statute (ORS 197.732-197.736) and administrative rule (OAR 660-004-0020) which indicate that "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses."

The net effect of these regulations is to establish a framework that has the result of maintaining compatibility with adjacent land uses and adjacent aquatic resources, due to the numerous water quality and air quality standards detailed above.

To ensure that compatibility is maintained, the County has the ability to impose a condition as part of an approval of the Port's proposal that any future uses in the rezone area comply with all applicable regulatory programs, including all required federal, state and local permitting. This requirement would be carried forward and additionally imposed on development proposals, and if it does so the County can find that this mitigates potential impacts on adjacent land uses and accordingly maintains compatibility under ORS 197.732 and OAR 660-004-0020. The range of potential adverse impacts identified in Table 1 of the Compatibility Report is addressed by the multiple agencies outlined in Table 4 of the Compatibility Report. Furthermore, Table 5 of the Compatibility Report examines how a representative example from each of the five proposed uses would fall under the regulatory authority of the programs outlined in Section V of the Compatibility Report.

The programs noted above (and other regulations that may be applicable to users even if not identified above) are wholly consistent with meeting the compatibility rule. To the extent that any development is conditioned so as to require compliance with all standards and requirements of all applicable regulatory programs, the County will be assuring compliance with the compatibility requirement under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d).

Even though compliance with the aforementioned federal regulatory programs is mandatory, the Port has also offered that the County Board of Commissioners add one additional Condition of Approval to those in Ordinance No. 2018-1 that would fully ensure these compatibility requirements for the five rural industrial use types. This Condition can be added as Condition 9 and would read as follows:

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.

Furthermore, with the adoption of Ordinance No. 2018-1, the Columbia County Board of Commissioners went beyond these aforementioned federal, state and local regulations. Specifically, the County imposed eight Conditions of Approval designed to ensure that the five proposed rural industrial uses will be compatible with adjacent land uses.

On Pages 13 – 15 of the Port's March 3, 2021 Final Response, the Port states that the County is within its rights to rely on Federal, State and local regulatory programs to maintain compatibility under ORS 197.732(2) (c) (D) and OAR 660-004-0020(2) (d).

Beginning on Page 13 of this Final Response and continuing to Page 20, the Port specifically addresses the following concerns submitted to the County between November 17, 2020 and February 17, 2021 pertaining to:

- The Beaver Dike,
- Changes to the appearance of the landscape views, sounds and odors at Port Westward,
- Seismic consideration of new industrial uses,
- Stormwater related impacts in a draft report prepared by Richard Horner, and
- Comments related to coal, dust and traffic/transportation.

Beaver Dike

The Beaver Drainage Improvement Company (BDIC) submittal on January 13, 2021 stating that *"...the BDIC pump station will not be used as form of spill control caused by residents. The Board will continue to evaluate any new spill control plans proposed by new industry to ensure that no BDIC infrastructure is harmed and that there are no impacts to the function of the BDIC system."*

Because the BDIC provides flood control, drainage and irrigation water for the lands within their district, they have been and will continue to be an actively involved stakeholder with critical oversight of the vast majority of water discharged from the Drainage District to the Columbia River resulting from any new industrial development located in their district and within the zone change area

The Port states on Page 13 of the March 3, 2021 Final Response, *"that the dikes are sufficiently certified to allow for development in the expansion area without requiring that structures be elevated above the floodplain for un-diked areas"* With regards to questions submitted about the dike certification process, the Port explains that this issue was resolved in the previous proceedings related to the adoption of Ordinance No. 2018-1 and is not currently before the Board because it is not directly related to the single compatibility criterion that is within the scope of this remand review.

Changes to the appearance of landscape views as well as the sounds and odors related to new development at Port Westward

In response to the aesthetic, auditory and olfactory impacts resulting from new industrial development, the Port reiterates that two parts of Condition 4 of Ordinance No. 2018-1 will be enforced at time of all Site Design and Conditional Use Permit Reviews and in order to appropriately and adequately mitigate any impacts related to the new future development:

- c. All development adjacent to land zoned for 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 and
- 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.

Seismic consideration of new industrial uses

On Page 16 of the March 3, 2021 Final Response, the Port states seismic consideration will be sufficiently addressed through the application of the Oregon Structural Specialty Code ORS 455.020 at time of actual development reviewed through the Site Design and Conditional Use Permit processes. The appropriate application of the necessary seismic considerations will ensure the maintenance of compatibility with surrounding land uses under ORS 197.732 (2)(c)(D) and OAR 660-004-0020(2)(d). The Oregon Structural Specialty Code is adopted by the State and applied by the County through the issuance of construction and building permits all of which will assure compliance with the applicable seismic construction requirements at time of site specific development.

Stormwater related impacts discussed in a Draft Report prepared by Richard Horner and submitted by Columbia Riverkeepers

The Port addresses the comments included in the November 20, 2020 submittal by Columbia Riverkeeper of a report drafted by Richard Horner that describes his *"assessment of the adequacy of the Port's submission and its conclusions with respect to stormwater management and anticipated stormwater-related impacts"*.

Staff concurs with the Port's assessment of Mr. Horner's analysis in that he appears to misunderstand that the Compatibility Report was prepared as a Comprehensive Plan amendment, zone change, and Goal Exception authorized under Oregon State law, and was not prepared in response to a specific industrial development proposal.

Nevertheless, the Port agrees with Mr. Horner statement that all future development *"Should collect all underlying data pertinent to the required environmental assessments, conduct those*

assessments with the best available methods, and provide all the information regulators or citizens need to make a full and confident evaluation of the proposal and its potential environmental effects." The Port also agrees with Mr. Horner's discussion related to the implementation of best Management Practices for future industrial uses' site-specific stormwater management provisions that emphasize preventive source and retention controls in order to avoid contact of pollutants with rainfall or runoff and retaining runoff on-site are 100 percent effective in keeping contaminants out of receiving waters.

The Port's statement that requiring compliance with all such required environmental assessments at that point (of actual site development) is the best means by which to provide all the information regulators and citizens need to make full and confident evaluation of the proposal and its required environmental assessments. The County attests to these statements and analysis, finds they are consistent with the substantial evidence standards, and that the Port has complied with the requirements of this remand review.

Comments related to coal, dust and traffic/transportation

Even though Condition No 6 of Ordinance 2018-1 specifically prohibited the storage, loading, and unloading of coal in the zone change area unless a separate Goal 3 Exception for this use is approved by the State, the County received comments between November 17, 2020 – February 17, 2021 stating opposition to potential impacts from coal related operations siting at Port Westward. The Port continues to support the County imposing this condition for future site development in the rezone area.

Similarly but pertaining to potential adverse impacts from dust generation, Condition No. 4 (e) of Ordinance 2018-1 already includes measures for ensuring future compatibility as follows:

- 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 users that may emanate from the site and traffic to the site.

Continuing on Page 19 of the March 3, 2021 Final Response, the Port states that "*development in the zone change area would likely result in paving of existing gravel roadways, thereby reducing dust from those roads. Industrial development would be subject to air quality standards and may require Air Contaminant Discharge Permits from the Oregon Department of Environmental Quality to ensure that dust (and other contaminants) is limited to specific levels.*"

With these County enforced dust suppression measures and the additional applicable regulatory programs of the State and Federal governments, the Port concludes that future impacts from dust generation will be adequately addressed to ensure compatibility with adjacent uses.

Regarding impacts related to transportation and traffic brought to the County between November 17, 2020 – February 17, 2021, on Pages 19-20 of the March 3, 2021 Final Response, the Port shows that Conditions No. 2 and No. 3 of Board Order 2018-1 will ensure future industrial developments' compatibility with adjacent uses as follows:

Condition No. 2: To ensure adequate transportation operation, proposed developments and expansions requiring site design review or Use Under

Prescribed Conditions shall not produce more than 332 PM peak-hour trips for the entire subject property without conducting a new Traffic Impact Analysis(TIA) with recommendations of operational or safety mitigation consistent with the Oregon Transportation Planning Rule 660-012-0060 and

Condition No. 3 A traffic study (will) 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 [articulated in Condition No. 2].

Finding 8: Staff finds that the numerous mitigation measures that all future industrial uses will be required to implement to ensure compatibility with adjacent uses. Based on all the evidence in the record, Staff concurs with the Port’s Section VI, Compatibility Assessment, of the Compatibility Report that finds:

“Based on the totality of the evidence, the five rural industrial uses are appropriately situated to allow for any appropriate and necessary mitigation to achieve compatibility with adjacent land uses and natural resources including wetlands and area waterways:

1. The extensive federal, state, and local regulatory programs applicable to industrial development address the potential impacts from new development and require measures to safeguard that offsite effects are limited to acceptable levels as determined by the regulating agencies and programs.
2. The five uses’ dependence on the deepwater port and requirement to be consistent with the characteristics identified in the Goal Exception request help to further maintain compatibility by precluding objectionable uses and urban uses.
3. The dike between the zone change area and the Columbia River separates the bulk of the zone change area (excluding the Thompson property) from the waterway, allowing for effective stormwater management approaches, and additionally improving emergency response options in the event of a spill.
4. The required buffers between development in the zone change area and land zoned PA-80 separates industrial development from designated agricultural areas to ensure that the industrial development doesn’t diminish the viability of farm use.”
Compatibility Report, Page 49.

With imposition of the eight Conditions of Approval in Ordinance No. 2018-1 and recommended Condition of Approval 9 identified above, Staff finds that the proposed uses can be rendered compatible with adjacent uses in the Compatibility Study Areas consistent with the compatibility requirements in ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d).

Finding 9: Staff has reviewed over 1600 pages of written testimony submitted into the record, signed by over 1100 people. Attachment 14 contains a table of contents of the comments

submitted and identifies general areas of concern that were raised. Many of the comments were not specific to the review criteria or were outside of the limited scope of this compatibility review. Findings have been made in this supplemental staff report to all applicable review criteria.

SUMMARY AND CONCLUSION:

Staff agrees with the Port’s March 3, 2021, Final Argument, that responds to issues raised during the open comment and rebuttal period, clarifies the scope of this remand review, identifies the compatibility standards in the statute and the administrative rule, shows how the standards are satisfied with the imposition of approval conditions. After review of all documents received during this process, Staff finds the Port's analysis to be accurate, thorough, convincing and consistent with this remand review. The evidence and facts in the record show impacts can be rendered compatible with mitigation measures proposed as conditions of approval to this supplemental staff report.

STAFF RECOMMENDATION:

Based on the November 9, 2020 Staff Report and the May 19, 2021 Supplemental Staff Report evaluation, analysis and findings, Staff recommends the Columbia County Board of Commissioners **APPROVE** this application (File No. PA 13-02 and ZC 13-01) for an exception to Statewide Planning Goal 3, and to amend the Comprehensive Plan Map from Agriculture to Rural Industrial and to amend the Zoning Map from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD, subject to the eight Conditions of Approval in Ordinance No. 2018-1 and one additional Condition of Approval recommended in this Staff Report.

NEW CONDITION OF APPROVAL:

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.

Attachments:

- # 1 Board of Columbia County Commissioners Ordinance No. 2018 -1, February 21, 2018
- # 2 *Columbia Riverkeeper et al. v. Columbia County*, 78 Or LUBA 547 (2018)
- # 3 *Columbia Riverkeeper et al. v. Columbia County*, 297 Or App 628 (2019)
- # 4 *Columbia Riverkeeper et al. v. Columbia County*, 365 Or 721 (2019) (review denied)
- # 5 LUBA Remand - Request for Review of Application No. PA 13-02 / ZC 13-01 from Spencer Parsons with Beery Elsner & Hammond LLP on behalf of the Port, June 18, 2020
- # 6 Letter “Re: Port of Columbia County's application on remand to address compatibility” from Spencer Parsons with Beery Elsner & Hammond LLP on behalf of the Port, July 22, 2020
- # 7 Compatibility Report: *Port Westward Goal Exception, Comprehensive Plan Amendment and Zone Change Analysis; Land Use Compatibility*, prepared by Mackenzie, July 21, 2020
- # 8 Columbia County Zoning Ordinance Section 680, Rural Industrial–Planned Development (RIPD)
- # 9 Columbia County Zoning Ordinance Section 1503, Conditional Uses
- # 10 Columbia County Zoning Ordinance Section 1550, Site Design Review
- #11 Letter in response to public testimony, submitted on behalf of the Port by Brian Varriccione of Mackenzie, dated February 17, 2021.
- #12 Letter in response to public testimony, submitted on behalf of the Port by Beery Elsner & Hammond LLP, dated February 17, 2021.
- #13 Final Argument of the Port in support of the PAPA application, submitted by Beery Elsner & Hammond LLP, dated March 3, 2021.
- #14 Public Comment – Table Of Contents

BEFORE THE BOARD OF COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

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

ORDINANCE NO. 2018-1

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

SECTION 1. TITLE

This Ordinance shall be known as Ordinance 2018-1.

SECTION 2. AUTHORITY

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

SECTION 3. PURPOSE

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

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

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

SECTION 4. HISTORY

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

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

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

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

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

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

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

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

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

SECTION 5. FINDINGS AND CONCLUSIONS

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

- A. The above recitals.
- B. The Supplemental Findings of Fact and Conclusions of Law on the modified application, attached hereto as Exhibit 1 and incorporated herein by this reference.
- C. The findings and conclusions in the Staff Report on the modified application, attached hereto as Exhibit 2 and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.
- D. The findings and conclusions in the Supplemental Staff Report on the modified application, attached hereto as Exhibit 3 and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.
- E. The Supplemental Findings of Fact and Conclusions of Law on the original application, attached hereto as Exhibit 4 and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.
- F. The findings and conclusions in the Staff Report on the original application, attached hereto as Exhibit 5 and incorporated herein by this reference, to the extent those findings and conclusions are consistent with the Board's decision.

SECTION 6. DECISION, AMENDMENT AND AUTHORIZATION

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

- 1) Prior to an application for a building or development for a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.
- 2) To ensure adequate transportation operation, proposed developments and expansions requiring site design review or Use Under Prescribed Conditions shall not produce more than 332 PM peak-hour trips for the entire subject property without conducting a new Traffic Impact Analysis ("TIA") with recommendations for operational or safety mitigation consistent with the Oregon Transportation Planning Rule 660-012-0060.
- 3) A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.
- 4) To ensure compatibility with adjoining agricultural uses, the applicant/developer of new industrial uses shall comply with the following:
 - a. The habitat of threatened and endangered species shall be evaluated and protected as required by law.
 - b. Alterations of important natural features, including placement of structures, shall maintain the overall values of the feature.
 - c. All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses on PA-80 zoned land, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.
 - d. When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.
 - e. Controls, including suppression and requiring hard surfaces, shall be employed as needed to be determined by the County to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.
 - f. Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.
 - g. The industrial use impact on the water table and sloughs shall be monitored for water quality and surface water elevations to ensure that the area water can be maintained and managed for existing uses.

- h. Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property and impacts to rail movements, safety, noise or other identified impacts along the rail corridor supporting the County's transportation system. The plan shall propose mitigation to identified impacts.
- i. Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.

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

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

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

7) The Port (applicant) shall institute a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for a range of 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.

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

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

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

SECTION 7. REPEALER

This Ordinance repeals Ordinance No. 2014-1.

SECTION 8. SEVERABILITY

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

SECTION 9. SCRIVENER'S ERRORS

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

DATED this 21st day of February, 2018.

Approved as to form

By: [Signature]
Office of County Counsel

Recording Secretary

By: [Signature]
Jan Greenhalgh

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: [Signature]
Margaret Magruder, Chair

By: [Signature]
Henry Heimuller, Commissioner

By: [Signature]
Alex Tardif, Commissioner

First Reading: 2-07-18

Second Reading: 2-21-18

Effective Date: 5-22-18

78 Or LUBA 547 (Or Luba), 2018 WL 10454697

Land Use Board of Appeals

State of Oregon

COLUMBIA RIVERKEEPER, Petitioner,
and
1000 FRIENDS OF OREGON, Intervenor-Petitioner,
vs.
COLUMBIA COUNTY, Respondent,
and
PORT OF ST. HELENS, Intervenor-Respondent.

LUBA No. 2018-020

REMANDED December 27, 2018

Appeal from Columbia County.

****1** Scott N. Hilgenberg and Maura Fahey, Portland, filed a petition for review, and Maura Fahey argued on behalf of petitioner. With them on the brief was Crag Law Center.

Meriel L. Darzen, Bend, filed a petition for review and argued on behalf of intervenor-petitioner. With her on the brief was 1000 Friends of Oregon.

No appearance by Columbia County.

Spencer Q. Parsons, Portland, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief were Christopher D. Crean and Beery, Elsner & Hammond, LLP.

BASSHAM, Board Member; RYAN, Board Chair, participated in the decision.

ZAMUDIO, Board Member, concurred in the decision.

***548 1. 6.3.4 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Reasons.**

7.6 Goal 3 - Agricultural Lands/ Goal 3 Rule - Exceptions to.

Where the challenged decision is limited to a single site in a remote rural area, is based on a single unique resource, and limits its authorization to five categories of rural industrial uses that are significantly dependent on that resource, nothing in OAR 660-004-0020 or -0022 precludes a county from justifying an amount of land for a range of deepwater port-dependent rural industrial uses based on the best available evidence regarding the types and land needs of likely industrial uses, without knowing exactly which industrial uses will locate in the exception area or exactly how much acreage each use will require. Although the typical reasons exception involves only a single proposed use, the size of which is generally known, and in such cases it is relatively easy to determine “the amount of land for the use being planned” for purposes of OAR 660-004-0020(2)(a), a county may take a reasons exception to allow more than one use, or even a range of uses, the exact nature and size of which may not be known.

2. 6.3.4 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Reasons.

7.6 Goal 3 - Agricultural Lands/ Goal 3 Rule - Exceptions to.

Goal 3 does not generally allow industrial uses on agricultural land. Goal 2 defines an “exception” in part as a comprehensive plan amendment to allow a use that “[d]oes not comply with some or all goal requirements applicable to the subject property or situations[.]” Goal 2 does not allow establishment of a zoning policy of general applicability. Where a local government authorizes five broad categories of industrial and commercial uses distinguished by a general type of good or commodity (dry bulk, liquid bulk, breakbulk, etc.), and each use is limited by the requirement that the use be significantly dependent on a deepwater port, that does not mean that as a consequence the county has approved an exception that establishes a “zoning policy of general applicability,” contrary to the Goal 2, ORS 197.732(1)(b)(A) and OAR 660-004-0005(1)(a) definition of “exception.”

****2 3. 6.3.2 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Developed.**

6.3.3 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Committed.

6.3.4 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Reasons.

7.6 Goal 3 - Agricultural Lands/ Goal 3 Rule - Exceptions to.

8.7 Goal 4 - Forest Lands/ Goal 4 Rule - Exceptions to.

The county did not err in concluding that the “unique resource” at issue, a deepwater river port whose upland portions are located within the existing exception area, is still “located on agricultural or forest land” for purposes of OAR 660-004-0022(3)(a). Although “Agricultural Land” for purposes of Goal 3 and its implementing administrative rule does not include land areas subject to exceptions to Goal 3, it does not necessarily follow that agricultural land, as that term is used in OAR 660-004-0022 or other parts of the Goal 2 exception rule is subject to the same restriction. At least for the limited purpose of evaluating the need for and compliance with exception standards to allow new or changed uses contrary to the resource goals, land within an exception area potentially remains “agricultural land” subject to Goal 3, and where the original exception did not take an exception to Goal 4 the site potentially remains “forest land.”

***549 4. 1.6.2 Administrative Law - Substantial Evidence - Definition Of.**

6.3.1 Goal 2 - Land Use Planning - Exceptions/ Exception Rule - Generally.

7.6 Goal 3 - Agricultural Lands/ Goal 3 Rule - Exceptions to.

NATURE OF THE DECISION

Petitioner appeals a decision approving comprehensive plan amendments, zone changes, and an exception to Statewide Planning Goal 3 (Agricultural Land) to expand an existing rural industrial site onto adjacent farmland.

REPLY BRIEF

Petitioner Columbia Riverkeeper (Riverkeeper) and intervenor-petitioner 1000 Friends of Oregon (1000 Friends) move to file a joint reply ***550** brief to respond to new matters raised in intervenor-respondent Port of St. Helens' (the Port's) response brief. There is no opposition to the motion and it is allowed.

FACTS

The county's decision is on remand from LUBA. *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171, *aff'd*, 267 Or App 637, 342 P3d 181 (2014) (*Riverkeeper I*). The proposed exception area is an 837-acre area (consisting of 17 parcels) that is planned and zoned for exclusive farm use (EFU) (PA-80), and which consists predominantly of Class III high-value farm soils. The proposed exception area is adjacent to the existing Port Westward site, which is a 905-acre rural industrial exception area with 4,000 feet of frontage along the Columbia River, served by a 1,250-foot dock and rail connections. The Port Westward site is one of five deepwater ports in the state of Oregon, *i.e.*, capable of handling ocean-going vessels, and one of three deepwater ports located along the Columbia River. The Port Westward river frontage is self-scouring, a condition that eliminates the need for dredging to accommodate docking of deep-draft vessels.

Port Westward is a former military site, and in the 1970s the county adopted built and irrevocably committed exceptions to Goal 3 in order to plan and zone the site for rural industrial uses. Port Westward is zoned Rural Industrial Planned Development (RIPD), which allows a broad and open-ended range of uses, not limited to industrial uses that depend on access to a port.

The Port leases 862 acres of Port Westward to Pacific Gas and Electric (PGE) under two 99-year leases. PGE has constructed and operates three electrical generating plants on a portion of its leasehold. The leasehold site also includes a 1.3-million barrel tank farm, a biomass refinery facility, and an electrical substation. A significant portion of the leasehold site is occupied by roads, rail lines, transmission lines and other infrastructure. Approximately half of the Port Westward site, and almost all of the remaining undeveloped area, consists of wetlands.

In 2013, the Port applied for a reasons exception and comprehensive plan and zoning amendments to rezone the proposed 837-acre exception area to RIPD, as an expansion of the Port Westward site. The Port did not propose any specific industrial uses for the exception area, but sought amendments that would allow any of the broad array of uses authorized in the RIPD zone. In 2014, the county approved the reasons exceptions under three separate "reasons" set out in ***551** OAR 660-004-0022(3)(a), (b) and (c).¹ On appeal, LUBA remanded the 2014 reasons exception on a number of grounds, including failure to adequately justify the broad range of uses allowed under the RIPD under one or more of the three reasons set forth at OAR 660-004-0022(3) (a), (b) and (c).

****4** On remand, the Port modified the application to seek a reasons exception only under OAR 660-004-0022(3)(a), for uses that are "significantly dependent upon a unique resource located on agricultural or forest land," which includes as a listed example "river or ocean ports." *See* n 1. The modified application also narrowed the range of industrial uses allowed in the exception area to five categories of uses allowed in the RIPD zone that are intended to be significantly dependent on the deepwater port: (1) Forestry and Wood Products processing, production, storage and transportation; (2) Dry Bulk Commodities transfer, storage, production and processing; (3) Liquid Bulk Commodities processing, storage, and transportation; (4) Natural Gas and derivative products, processing, storage, and transportation; and (5) Breakbulk storage, transportation, and processing.²

The county board of commissioners conducted hearings on the modified application and, on February 18, 2018, issued a decision approving the application. This appeal followed.

***552 FIRST AND NINTH ASSIGNMENTS OF ERROR (RIVERKEEPER)**

FIFTH ASSIGNMENT OF ERROR (1000 FRIENDS)

In these assignments of error, petitioner Riverkeeper and intervenor-petitioner 1000 Friends (together, petitioners) argue that the county failed to justify why Goal 3 should not apply to the exception area, specifically by failing to justify “the amount of land for the use being planned” as required by OAR 660-004-0020(2)(a).³ According to Riverkeeper, the Port failed to identify how many acres it needs to accommodate the proposed five categories of uses, and to justify why 837 acres are necessary to accommodate those uses.

Relatedly, 1000 Friends argues that because no particular use or uses are proposed, the county does not know how much land will be needed. 1000 Friends argues that there is no evidence that a single industrial use would require 837 acres of land, and that the county is instead justifying the amount of land based on the assumption that a number of different industrial uses, likely occupying anywhere from 50 to 100 acres, will be sited in the exception area. However, petitioners argue, that approach is inconsistent with Statewide Planning Goal 2 (Land Use Planning), ORS 197.732(1)(b)(A) and OAR 660-004-0005(1)(a), which all define an “exception” in part as a comprehensive plan amendment that is “applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability.”

The Port responds that the county justified the size of the exception area based on the Mackenzie Report, at Record 3079-133. The Mackenzie Report discussed acreage requirements in several different ways. First, it concluded that three of the five use categories (Forestry/Wood products, Dry Bulk, and Breakbulk) require large yard or deck storage areas, and the two others (Liquid Bulk and Natural Gas) ***553** require large buffer areas. Record 3100. Section IV of the Mackenzie Report surveys a representative sample of uses within the five use categories that are located at other ports and terminals along the river, noting the amount of acreage each use occupies. Record 3104-07. The acreage associated with the sample uses range from 25 acres for an ethanol plant to 262 acres for a multi-function marine transport terminal, with an average acreage of around 77 acres. The Mackenzie Report concludes that all five use categories require relatively large, flat, contiguous development sites.⁴ Further, the Mackenzie Report concludes that all five use categories require access to a deepwater port. Record 3099. However, petitioners are correct that the Mackenzie Report does not attempt to estimate the minimum or typical acreage requirements of any use category or uses within each category. The Mackenzie Report does not, for example, estimate the minimum or typical acreage requirements for a sawmill or a natural gas terminal.

****5** Instead, the Mackenzie Report estimates acreage needs, for individual uses and in the aggregate, in a more general way. The main evidence on this point is an inventory of recent site inquiries to locate industrial uses at Port Westward, an inventory maintained by the Port and Business Oregon. The Mackenzie Report notes:

“As illustrated in Figure 12 and Figure 13, since 2007 there have been over 40 active prospects seeking land at Port Westward totaling over 2,800 acres of rural industrial land. These prospects have been heavily concentrated in energy production (solar, biomass, other); chemical/liquid bulk (ethanol, fertilizer, methanol, crude oil, other) processing and transport; and dry bulk products (iron, coal, grain) transport. While sitings have been prohibited by regulatory (e.g., PA-80 zoning) and physical constraints (e.g., wetlands and existing leaseholds), this velocity is reflective of the site's economic potential.

***554** “* * * * *

“Within these sectors, the site need profile is consistent with what we observed across existing firms in peer locations, previously reviewed in Section IV. Site needs ranged from 10 to over 300 acres in size. The most common request was for sites between 50 and 100 acres, as illustrated in Figure 13. Over just a 10-year period, an interval that included the worst economic downturn in a generation, there were 11 potential deals at Port Westward of 100 acres or larger.

“* * * * *

“Collectively, this prospect list represents over 2,800 acres of potential demand over a 10-year period. This amounts to more than three times the size of the zone change area. Because the data to calculate this rate was observed over a period that included a severe recession and tepid recovery, we can assume that this rate of business activity represents a conservative assessment of future velocity, all else being equal. At this rate of demand velocity, capturing 15% of similar inquiries would fully absorb the [proposed exception area of 857 acres] over a 20-year period. Given observed market interest and recent activity in similarly configured areas, we would consider this to be a completely feasible scenario. * * *” Record 3115-17.

Appendix 3 of the Mackenzie Report includes a list of the 40 prospects and the requested acreage, along with proposed investment amounts and number of jobs, where known.⁵

In sum, the Mackenzie Report provides evidence that (1) the five use categories all require large areas for storage or buffering, (2) both similar uses on other sites, and acreage requests of recent prospects, show that the proposed uses commonly require 50 to 100 acres, and (3) the aggregate total acreage of recent prospects to site industrial uses at Port *555 Westward significantly exceeds the size of the proposed 857-acre exception area. Based on this evidence, the county found that the “the amount of land for the use being planned” is justified for purposes of OAR 660-004-0020(2)(a). Record 45.

****6** 1 1000 Friends is correct that the typical reasons exception involves only a single proposed use, the size of which is generally known, and in such cases it is relatively easy to determine “the amount of land for the use being planned” for purposes of OAR 660-004-0020(2)(a). However, as we held in *Columbia Riverkeeper I*, a county may take a reasons exception to allow more than one use, or even a range of uses, the exact nature and size of which may not be known. 70 Or LUBA at 181. In our view, that is even more likely when the reasons exception is intended to exploit a “unique resource” under OAR 660-004-0022(3)(a). In such circumstances, the amendment is not necessarily driven by a particular land use proposal, but rather by the existence of a unique resource that can be exploited to support what can be an array of rural industrial economic activity, which may have varying land size needs. Some of the unique resources listed in OAR 660-004-0022(3)(a), by their nature, can be exploited only by a limited set of industrial uses (*e.g.*, mining operations for mineral or aggregate resources), and the amount of land needed for such uses is intrinsically limited by the size of the resource. Other listed unique resources can, by their nature, support a variety of rural industrial uses. For example, one of the unique resources listed in OAR 660-004-0022(3)(a) is ““geothermal wells,”” which provide a source of energy that could potentially power a range of rural industrial uses, with varying land needs. We see no reason why the county cannot justify an amount of land for a range of industrial uses dependent on that energy resource, based on evidence regarding the dependence of those industrial uses on that energy resource, likely or typical land needs of the identified range of uses and the economic demand for such uses, without knowing the precise industrial uses to be located or the exact amount of land each industrial use would need.

Similarly, with respect to the unique resource of deep water “river or ocean ports,” such resources can support a potentially wide range of rural industrial uses that are dependent on shipping goods by water to intrastate, national and international markets. We see nothing in OAR 660-004-0020 or -0022 that would preclude a county from justifying an amount of land for a range of deepwater port-dependent rural industrial uses based on the best available evidence regarding the types and land needs of likely industrial uses, without knowing exactly which industrial uses will locate in the exception area or exactly how much acreage each use will require. We disagree with petitioners that such an approach establishes a “planning or zoning policy of general applicability,” and thus does not qualify as an *556 “exception” as defined at ORS 197.732(1)(b)(A) and OAR 660-004-0005(1)(a). The challenged decision is limited to a single site in a remote rural area, is based on a single unique resource, and limits its authorization to five categories of rural industrial uses that are significantly dependent on that resource. Such an exception decision does not represent a “planning or zoning policy of general applicability.”

****7** Further, petitioners have not established that the county's justification for the size of the 837-acre exception area is not supported by substantial evidence or adequate findings. A reasonable person could rely on the Mackenzie Report to conclude

that there is significant economic demand to site a range of rural industrial uses at Port Westward that are dependent on deepwater shipping, that aggregate land demand is well in excess of 837 acres, and that individual industrial uses will require large, flat contiguous sites of varying acreage, with the most common need for sites from 50 to 100 acres in size. Petitioners have not established that in the context of a justifying an exception based upon the unique resource of a deepwater port that OAR 660-004-0020(2)(a) requires the county to limit the analysis to a single proposed use, or to determine exactly which industrial uses will locate at the site or exactly how many acres each industrial use will require.

Riverkeeper's first and ninth assignments of error and 1000 Friends' fifth assignment of error are denied.

SECOND ASSIGNMENT OF ERROR (RIVERKEEPER)

SECOND ASSIGNMENT OF ERROR (1000 FRIENDS)

Goal 2 defines an "exception" in part as a comprehensive plan amendment to allow a use that "[d]oes not comply with some or all goal requirements applicable to the subject property or situations[.]" Goal 3 does not generally allow industrial uses on agricultural land. However, Riverkeeper argues that the county erred in authorizing some rural industrial uses that are in fact allowed on agricultural lands under Goal 3 and ORS chapter 215, which govern lands zoned for EFU. Relatedly, 1000 Friends argues that the county erred in approving an overly broad range of industrial uses.⁶

***557** As noted, the county's decision authorizes five categories of rural industrial uses, based on five distinct types of commodities: (1) Forestry and Wood Products processing, production, storage and transportation; (2) Dry Bulk Commodities transfer, storage, production and processing; (3) Liquid Bulk Commodities processing, storage, and transportation; (4) Natural Gas and derivative products, processing, storage, and transportation; and (5) Breakbulk storage, transportation, and processing. Petitioners argue that these five use categories in fact represent 18 categories of industrial uses. This calculation is achieved by breaking each of the five use categories into components. For example, in petitioners' view, Category 1 actually consists of four separate industrial use categories: (a) forestry and wood products *processing*, (b) forestry and wood products *production*, (c) forestry and wood products *storage*, and (d) forestry and wood products *transportation*. From that premise, Riverkeeper argues that the county erred in authorizing the use category of forestry and wood processing, because Goal 3 and ORS 215 already allow, in limited circumstances, certain uses such as forest product processing on agricultural land. *See, e.g.*, ORS 215.283(2)(j) (allowing temporary or portable facilities for the primary processing of forest products grown on the subject property or contiguous land). Similarly, Riverkeeper argues that the county erred in authorizing the use category of forest products transportation, because ORS 215 and OAR 660-0012-0065, an administrative rule that implements Goal 12 (Transportation), allow construction of certain transportation facilities on resource land without taking an exception to the resource goals.

****8** Relatedly, 1000 Friends argues that the 18 use categories that petitioners have identified are expanded further by the broad nature of the five types of commodities at issue. For example, 1000 Friends argues that "forestry and wood products processing" could include anything from primary log milling to secondary or tertiary furniture making, and that "liquid bulk transportation" could encompass transshipments of any liquid in bulk, including milk, petroleum products, or liquid fertilizer. We understand 1000 Friends to contend that each type of wood product or bulk liquid involves a distinct type of industrial use, and that the broad array of industrial uses potentially allowed demonstrates that the county has strayed too far from the permissible scope of an exception, and has impermissibly adopted a "zoning policy of general applicability," contrary to the ***558** definition of "exception" in Goal 2, ORS 197.732(1)(b)(A) and OAR 660-004-0005(1)(a).

2 The Port responds, and we agree, that petitioners have not demonstrated reversible error in the manner that the county categorized the authorized uses. Any conceivable industrial use that is dependent on a deepwater port will involve the storage and transportation of goods, and those functions are not properly viewed as separate use categories. Processing and production of goods could constitute distinct operations in separate facilities, or they could be vertically integrated operations within a single facility. But regardless of how finely the land use categories are sliced, petitioners have not established that the county approved any category of land use within the exception area that is allowed without an exception on agricultural land. The

ORS 215.283 uses that Riverkeeper cites to, such as temporary or portable forest products processing facilities allowed in limited circumstances on EFU-zoned lands, are clearly not the same as the permanent forest products processing and production facilities authorized in the county's decision. Further, while ORS chapter 215 and OAR 660-012-0065 allow a limited set of transportation facilities on resource or rural lands without taking an exception, the "transportation" function at issue here is transshipping goods and commodities on and off ships, via a deepwater port and dock facility. Nothing cited to us in ORS chapter 215 or OAR 660-012-0065 authorizes on resource lands such transportation uses or facilities without taking an exception to the resource goals.

1000 Friends is correct that by authorizing five categories of uses distinguished by a general type of good or commodity (dry bulk, liquid bulk, breakbulk, etc.), the county has lumped together within each general category a diverse range of specific goods and commodities. However, we disagree with 1000 Friends that as a consequence the county has approved an exception that establishes a "zoning policy of general applicability," contrary to the Goal 2, ORS 197.732(1)(b)(A) and OAR 660-004-0005(1) (a) definition of "exception." 1000 Friends argues that in *Hood River Valley Residents v. Hood River County*, 75 Or LUBA 452 (2017), LUBA commented that allowing all uses in an industrial zone within an exception area "comes close" to establishing a zoning policy of general applicability. *Id.* at 461. According to 1000 Friends, in the present case the county's five broad categories allow so many different and distinct sub-categories of uses that, in effect, the county has authorized in the exception area almost all uses allowed in the RIPD zone.

****9** However, *Hood River Valley Residents* does not support 1000 Friends' argument. In *Hood River Valley Residents*, the county interpreted ***559** language in its comprehensive plan adopting an irrevocably committed exception for land formerly occupied by a sawmill. 75 OR LUBA at 458. The county had zoned the property for industrial use, under an industrial zone that also, by reference, allowed all uses authorized under the county's commercial zone. *Id.* at 455. The specific issue was whether it is consistent with the exception language to approve a commercial use--a hotel--on the site, without taking a new exception. *Id.* at 455-56. LUBA rejected the county's interpretation and held that the committed exception did not extend to authorize all uses allowed in the industrial and commercial zones, such as the proposed hotel, in part because such a broad interpretation would "come close" to establishing a zoning policy of general applicability. *Id.* at 461.

In the present case, the five categories of uses authorized by the county's decision are only a subset of the universe of industrial uses allowed in the county's RIPD zone. Not only are the uses allowed limited by the five specified commodity types but, as discussed below, each use is also limited by the requirement that the use be significantly dependent upon the deepwater port. In any case, even if the county had authorized *all* of the industrial uses allowed in the RIPD zone, which would put the present circumstances closer to those at issue in *Hood River Valley Residents*, we did not state that interpreting a comprehensive plan exception area designation to allow all uses in an industrial zone (plus all uses allowed in a commercial zone) *establishes* a zoning policy of general applicability, only that it "comes close" to establishing such a general zoning policy. The present much more limited range of uses allowed by the challenged decision is even further from establishing a zoning policy of general applicability.

The second assignment of error (Riverkeepers) and the second assignment of error (1000 Friends) are denied.

THIRD ASSIGNMENT OF ERROR (RIVERKEEPER)

FIRST AND THIRD ASSIGNMENTS OF ERROR (1000 FRIENDS)

As noted, OAR 660-004-0022(3)(a) provides that an appropriate reason for taking an exception to site industrial development on resource land includes circumstances where "[t]he use is significantly dependent upon a unique resource located on agricultural or forest land," with the listed example of "river or ocean ports." *See* n 1. Under these assignments of error, petitioners argue that the county misconstrued OAR 660-004-0022(3)(a) and approved a decision that is prohibited by law because, among other reasons, (1) the proposed uses are not all significantly ***560** dependent upon the unique resource, a deepwater port, (2) the

unique resource at issue is not “located on agricultural or forest land,” and (3) the exception area does not in fact have guaranteed access to the deepwater port.

A. Significantly Dependent on a Unique Resource

****10** Petitioners contend that the county failed to adopt findings that each of the authorized industrial uses are significantly dependent upon the deepwater port. As noted, petitioners argue that the county actually authorized at least 18 distinct uses, rather than the five use categories discussed in the findings. Petitioners' count of 18 uses is derived by breaking up the listed components of the five identified uses into separate uses, *e.g.*, forestry and wood products *processing*, forestry and wood products *production*, forestry and wood products *storage*, etc. Petitioners do not appear to dispute that storage and loading/offloading of goods and commodities onto ships are uses that are significantly dependent upon the deepwater port. However, petitioners contend that other components, processing and production, could be accomplished elsewhere and need not be located in proximity to the deepwater port. According to petitioners, with respect to these components the county cites only considerations such as “operational advantages” and minimization of costs to explain why these separate components are significantly dependent on the port. Record 3098. Petitioners argue that such considerations are insufficient.

The county rejected petitioners' argument that “operational subcomponents” of the five identified uses “each comprise separate uses[.]” Record 19. The county and the Mackenzie Report on which the county relied focus on whether each of the five identified uses, and not their individual components, are dependent on deepwater access. The county concluded, based on the Mackenzie Report, that the five identified uses are “highly dependent upon immediate proximity to a deepwater port[.]” quoting a statement in the Mackenzie Report that the five uses are “low-margin industrial operations which rely upon deepwater access to maintain an economically viable business in current market conditions.” Record 163. The findings continue:

“Table 2 of the Mackenzie Report [at Record 3099] illustrates that each of the Port's five proposed uses are dependent upon deepwater access. As the Mackenzie Report explains:

“Uses with foreign trade markets and marine-served domestic markets for products that are shipped by marine vessel are, by definition, reliant on deepwater port facilities. Table 2 demonstrates that each of the five proposed uses for [the Port *561 Westward expansion] involve foreign import/export operations and are thus dependent upon a deepwater port. The proposed uses will achieve a significant operational advantage due to deepwater port access with nearby storage yards. As the proposed uses are low-margin businesses, port proximity is necessary to minimize operational costs for both import/export and domestic shipping operations. An external benefit of these firms' locations near port facilities is that locating their yards close to the port minimizes impacts on offsite transportation infrastructure.”*D' Id.*

****11** The Port argues, and we agree, that petitioners have not demonstrated that the county erred in concluding that the five identified uses are ““significantly dependent” on the deepwater port, notwithstanding that some components of the uses could theoretically be separated from the others and located elsewhere. As the Mackenzie Report notes, import/export uses of this kind are low-margin operations, and proximity to a deepwater port represents a significant operational and cost advantage. That advantage clearly extends to the import/export operation as a whole. Stated differently, an otherwise integrated import/export operation that is allowed to locate only storage yards and loading/unloading facilities at the port, but is forced to locate processing and other components of the operation elsewhere, could be at a significant economic disadvantage, a disadvantage that may preclude siting any facilities entirely at Port Westward. We conclude that the county did not err in evaluating the five identified uses as a whole, including components such as processing or production of goods and commodities transshipped via the port, to determine whether the use as a whole is significantly dependent on the deepwater port.

The county's findings acknowledge concerns that it is possible that a conditional use permit application for a specific use could be submitted that, in fact, does not involve the import or export of goods and commodities via the deepwater port and thus would not be “significantly dependent” on the port. OAR 660-004-0022(3)(a). The county rejected that concern, finding that because the challenged exception authorizes only uses that are significantly dependent on the port, and all proposed uses must

be consistent with the exception, that “any potential tenant seeking to locate in the new expansion area would be limited not only to the five authorized uses, but to the five authorized uses in a form that would be significantly dependent on the deepwater port at Port Westward.” Record 19. However, to address the opponents' concerns, the county imposed Condition 5, quoted below, explaining:

***562** “[T]he Board acknowledges that the opponents' concern is a reasonable one and notes that Condition 5 has accordingly been imposed for additional clarity. The condition requires that the five uses authorized be significantly dependent on and have demonstrated access to the deepwater port at Port Westward. With that condition in place, the Board finds that the only rural industrial uses the approval authorizes in the new expansion area are those that will be significantly dependent on actual deepwater port usage at Port Westward.” *Id.*

Condition 5 states:

“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:[Listing the five authorized types of land uses].” Record 15.

****12** 1000 Friends argues, however, that Condition 5 is insufficient to ensure that only uses that are significantly dependent on the port facilities will be approved. 1000 Friends argue that Condition 5 simply requires an applicant to show that the proposed use is one of the five authorized uses, not that the proposed use is also dependent on the port. The Port responds that the county found that, even without Condition 5, all potential industrial tenants will have to demonstrate that the proposed use is consistent with the reasons exception, which explicitly authorizes only uses that are significantly dependent on the deepwater port. According to the Port, Condition 5 was imposed only to provide additional assurance to opponents that only uses that are significantly dependent on the port will be approved. The Port argues that Condition 5, read in context with the county's findings and the exception that it is attached to, is clearly intended to require that applicants demonstrate that the proposed use is not only one of the five authorized uses, but also a use that is significantly dependent on the port facilities.

We agree with the Port. All industrial uses in the RIPD zone are essentially conditional uses, and are allowed only if the county reviews an application for the proposed use and determines that the use conforms to the “exceptions to the rural resource land goals[.]” Columbia County Zoning Ordinance (CCZO) 683.1.A. Even if the county had not imposed Condition 5, it appears that any applicant for a proposed industrial use within the exception area would be required to show that the use is consistent with the adopted exception statement, which is part of the county comprehensive plan, and which explicitly allows only uses that are significantly dependent on the port facility. In this context, it is reasonably ***563** clear that Condition 5 is a “belt and suspenders” condition intended as additional assurance that applicants will have to demonstrate that proposed uses will be significantly dependent on the port.

Nonetheless, 1000 Friends argues that requiring an applicant to demonstrate that the proposed use is “significantly dependent” on the port facility as required by Condition 5 represents an impermissible deferral of findings of compliance with OAR 660-004-0022(3)(a). *See Riverkeeper I*, 70 Or LUBA at 205 (where the county does not find that authorized uses will be compatible with adjacent land uses, as required by OAR 660-004-0020(2)(d), but instead relies on a demonstration of compatibility as part of permit approval, the county impermissibly defers findings of compliance with OAR 660-004-0020(2)(d)). However, we disagree that Condition 5 represents a deferral of findings of compliance with OAR 660-004-0022(3)(a). The county adopted several pages of findings intended to establish that uses authorized under the exception are limited to those that are significantly dependent on the port facility. Record 18-21. The county imposed Condition 5 only because opponents, including petitioners, expressed concerns that there were inadequate safeguards to prevent approval of industrial uses that are not in fact significantly dependent on the port facility. That the county agreed to impose additional safeguards does not mean that the county deferred findings of compliance with OAR 660-004-0022(3)(a) to the permit stage.

B. Located on Agricultural or Forest Land

****13** As noted, OAR 660-004-0022(3)(a) provides that an appropriate reason to take an exception to the resource goals includes uses that are significantly dependent upon a unique resource “located on agricultural or forest land.” The unique resource identified by the county is the deepwater port, which includes the submerged land under the jurisdictional waters of the state, plus the dock facilities and related upland facilities. However, petitioners argue that the upland components of the port facilities are located in the existing exception area at Port Westward that is zoned RIPD, and therefore are not “located on agricultural or forest land.” Therefore, petitioners argue the port facilities do not qualify as a “unique resource.”

The county rejected that argument:

“As an initial matter, the [Columbia County] Comprehensive Plan designates the RIPD zone as a resource zone, as embedded in its name, ‘Resource Industrial Planned Development.’ The zone is intended to be on resource lands and to coexist with farm and forest uses. For that reason, CCZO Section 682 establishes as the only outright permitted uses in the RIPD zone ‘[f]arm use[s] as defined [by] Subsection 2 of ***564** ORS 215.213 except marijuana growing and producing’ and the ‘[m]anagement, production and harvesting of forest products, including wood processing and related operations.’ The Board concludes that such ‘farm uses’ and ‘management, production and harvesting of forest products’ are agricultural and forest uses and that the original exception area qualifies as agricultural or forest land.” Record 22.

In addition, the county noted that the exception document for the Port Westward exception site found that 300 acres of the site had been filled with dredged materials and “is no longer considered resource land.” *Id.* The county inferred from this statement that the original exception document continued to view the unfilled remainder of the site as “resource land.” *Id.*

On appeal, petitioners argue that, as a matter of state law, land that is subject to an exception to Goal 3 is no longer “agricultural [] land” for any purpose, including OAR 660-004-0022(3)(a). Petitioners cite to OAR 660-033-0020(1)(c), part of the administrative rule implementing Goal 3, which for purposes of that division defines the term “Agricultural [Land]” to exclude ““land within acknowledged exception areas for Goal 3 or 4.” Because the Port Westward site has been acknowledged to be committed to industrial uses, petitioners argue that the dock and related upland facilities are not located on “agricultural land” for purposes of OAR 660-004-0022(3)(a), even if the RIPD zone is labeled as a “resource” zone and continues to allow farm uses as a permitted use. The county’s findings acknowledge that argument, but respond that even if petitioners are correct on that point the Port Westward exception was applicable only to Goal 3, not to Statewide Planning Goal 4 (Forest Lands), and there is no equivalent rule applicable to forest lands stating that forest lands excludes lands subject to an exception. Record 22-23.

****14 3** It is clear that “Agricultural Land” for purposes of Goal 3 and its implementing administrative rule does not include land areas subject to exceptions to Goal 3. *See* Goal 3 (definition of “Agricultural Land”).⁷ ***565** However, it does not necessarily follow that “agricultural [] land” as that term is used in OAR 660-004-0022 or other parts of the Goal 2 exception rule is subject to the same restriction. A goal exception under OAR chapter 660, division 004 can be, indeed in many cases will be, only a partial exception to a goal, to allow a specific use or type of use that is contrary to the goal. OAR 660-004-0018(1) provides: “* * * Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.”

OAR 660-004-0018(2)(a) provides that for physically developed and irrevocably committed exception areas all plan and zoning designations must limit uses to those that are same as the existing uses on the site. OAR 660-004-0018(3) provides that uses that do not qualify under OAR 660-004-0018(2), *e.g.*, different types of uses than those that justified the exception, can be approved only under the provisions for a reasons exception. *See Ooten v. Clackamas County*, 70 Or LUBA 338, 346 (2014), *aff’d*, 270 Or App 214, 346 P3d 1305 (2015) (discussing the requirements of OAR 660-004-0018).

The Port Westward exception area is a physically developed and irrevocably committed exception area, based on the existence of industrial development that predated the Statewide Planning Goals. Under OAR 660-004-0018(1), the Port Westward exception is intended to allow continuation of those preexisting types of industrial development, but plan and zoning amendments that would allow changes in existing types of uses potentially require that the changes be justified as a new “reasons” *566 exception to the applicable goals. For example, if the Port wanted to change the use of Port Westward from industrial to commercial or residential use, that change in use would almost certainly require that the county adopt a new reasons exception to Goal 3 (and perhaps also Goal 4), because the original built and committed exception did not take an exception to any goal for commercial or residential uses.

In other words, the fact that Port Westward is an area subject to an exception to Goal 3 does not mean that Goal 3 no longer applies at all to the site, at least for purposes of OAR chapter 660, division 004. At least for the limited purpose of evaluating the need for and compliance with exception standards to allow new or changed uses contrary to the resource goals, land within an exception area potentially remains “agricultural land” subject to Goal 3.⁸ In addition, the original Port Westward exception did not take an exception to Goal 4 and the Port Westward site potentially remains “forest land” for that reason alone. For these reasons, the county did not err in concluding that the “unique resource” at issue, the deepwater river port whose upland portions are located within the existing Port Westward exception area, is still “located on agricultural or forest land” for purposes of OAR 660-004-0022(3)(a).

C. Access to the Unique Resource

****15** The county found that the proposed expansion of the Port Westward exception area has access to the deepwater port and dock facilities at Port Westward. Record 27. Petitioners argue that this finding is not supported by substantial evidence.

According to petitioners, the Port's lease with PGE grants PGE a non-exclusive easement to use the Port's dock facilities, and further provides that access to the docks by other users across PGE's leasehold is subject to PGE's consent. The lease provides that PGE's consent “shall not be unreasonably withheld,” and can only be “reasonably conditioned.” Record 27. Petitioners argue that there is no evidence in the record that PGE is likely to consent to allow new tenants within the expanded exception area to fully access the dock facilities.

***567** The Port responds, and we agree, that the county's finding that tenants within the proposed exception area will have access to the docks is supported by substantial evidence. In addition to the lease itself, which requires PGE to consent to reasonable access, the findings note that the record includes communications with PGE evincing PGE's commitment to continue providing reasonable access to other users. A reasonable person could conclude based on the lease terms and representations in the record that tenants in the expanded exception area will have reasonable access to the dock facilities. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993) (substantial evidence is evidence a reasonable person would rely on in making a decision).

Riverkeeper's third assignment of error, and 1000 Friends' first and third assignments of error, are denied.

FOURTH ASSIGNMENT OF ERROR (RIVERKEEPER)

FOURTH ASSIGNMENT OF ERROR (1000 FRIENDS)

ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d) require a finding that the proposed uses are “compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”⁹ In *Riverkeeper I*, we held that the county failed to establish compliance with OAR 660-004-0020(2)(d), in part because the proposed exception at issue in that appeal authorized an open-ended universe of industrial uses in the exception area, and the county made no attempt to describe the proposed uses or identify their adverse impacts, and thus could not meaningfully address whether the proposed uses are compatible with adjacent uses or will be rendered compatible through identified measures. Instead, as noted, above, the county essentially punted that evaluation to the permit approval stage.

On remand, as noted, the county narrowed the range of authorized uses to five categories of uses, discussed above, and adopted findings that *568 attempt to identify likely adverse impacts of the five categories of uses, and explain how the proposed uses will be rendered compatible with adjacent uses through identified measures. On appeal, petitioners argue that the county again failed to meaningfully address the compatibility standard, and again impermissibly deferred a determination of compliance with the compatibility standard to the development approval stage.

**16 The county's findings, at Record 28-30 and 177-80, take the position that potential adverse impacts of the five proposed categories of industrial uses will be similar to the impacts of the existing industrial uses located at Port Westward, and that substantial evidence in the record establishes that the existing industrial uses are and have been compatible with adjacent agricultural uses. The findings address specific arguments made regarding specific potential adverse impacts, particularly regarding impacts on water quality from industrial pollution or hazardous waste. The findings discuss a number of conditions imposed to prevent or address the identified impacts, including Condition 1 (requiring site design and conditional use approval), Conditions 2 and 3 (requiring traffic studies and compliance with a traffic cap), and Condition 4 (requiring a range of measures, including buffers, dust-control, stormwater facilities, water quality monitoring, and an "agricultural impact assessment" with a mitigation plan for any negative impacts identified). In addition, the county imposed Conditions 7 and 8, which require the Port to develop a plan and ongoing program to establish baseline measurements for a range of industrial contaminants and manage future industrial wastewater discharges to prevent pollution, and further to require the Port to prepare a plan to deal with a hazardous material spill.

Riverkeeper argues that the record does not support the county's fundamental premise that potential adverse impacts of the five proposed categories of industrial uses would be similar to the impacts of the existing industrial uses located at Port Westward. On this point, the findings state only that there is "'no evidence in the record of any meaningful distinction between the anticipated impacts of the approved uses and those existing industrial uses at Port Westward[.]'" Record 29. However, Riverkeeper argues that this finding effectively shifts the burden to opponents, and that if the Port wants to rely upon the supposed similarity between the impacts of the proposed uses and the existing industrial uses, it is incumbent on the Port to present evidence on that point. Riverkeeper argues that the few existing industrial uses at Port Westward (three electrical generating plants, tank farm, a biomass refinery facility, and an electrical substation) differ significantly from the proposed five categories of uses, and there is simply no evidence in the record indicating that the impacts of the existing uses would be similar to likely impacts of the proposed uses.

*569 In addition, Riverkeeper argues that the county's findings fail to address detailed testimony by an expert hydrologist regarding probable adverse impacts on water quality from industrially polluted water, given the area's high water table and mixing of ground and surface water during winter months. Finally, Riverkeeper argues that the county failed to address whether the proposed uses are compatible with existing PGE operations, noting PGE testimony that it retains the right under its lease to withhold consent to any improvements within its leasehold that would have a material adverse impact on PGE's operations.

**17 1000 Friends similarly argues that the county failed to provide any analysis of the likely potential adverse impacts of the five authorized use categories, and further that those use categories are still too broad and open-ended to allow meaningful analysis of impacts even if the county had separately evaluated the impacts of the five use categories, instead of lumping them together. With respect to impacts on adjacent agricultural practices, 1000 Friends argues that the decision provides no analysis or findings, but relies almost entirely on Condition 4, which requires development applicants to provide an agricultural impacts analysis. Finally, 1000 Friends contends that the findings fail to identify non-agricultural resource uses on adjacent lands, specifically fishing and aquatic-related natural resource uses that may be impacted by spills of contaminants and other industrial pollution.

4 In response, the Port does not cite to any evidence supporting the county's finding that the likely adverse impacts of the proposed uses are similar to the impacts of the existing industrial uses at Port Westward. The findings simply state that there is no evidence that the impacts would be different. However, the *absence* of evidence that the impacts would be different is not a basis to conclude that the impacts would be similar. The unsupported presumption that the impacts would be similar is the foundation

for much of the county's subsequent analysis. Because that presumption is not supported by substantial evidence, we agree with petitioners that remand is necessary to adopt more adequate findings regarding compatibility, supported by substantial evidence.

5 We also agree with petitioners 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 versus a fertilizer export operation, could be different enough to require a separate analysis. The findings should also address the characteristics of uses on *570 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).

**18 Riverkeeper's and 1000 Friends' fourth assignments of error are sustained.

FIFTH ASSIGNMENT OF ERROR (RIVERKEEPER)

OAR 660-004-0020(2)(b) requires a showing that “areas that do not require a new exception cannot reasonably accommodate the use,” considering relevant factors including economic costs.¹⁰ In *Riverkeeper I*, *571 LUBA rejected the county's alternative sites analysis for multiple reasons, noting that it was “highly problematic” to attempt to reject all alternative sites to justify an exception for a broad and open-ended set of industrial uses, based on three separate but overlapping justifications. 70 Or LUBA at 199. On remand, the Port limited the range of industrial uses to five categories, and focused on a single justification: uses that are significantly dependent upon a unique resource, the deepwater port. To demonstrate that no alternative sites can reasonably accommodate the proposed uses, the Port submitted an alternative sites analysis that focused on industrial lands near deepwater port facilities along the river, concluding that no alternative sites could reasonably accommodate the proposed uses. The county considered and rejected alternative sites suggested by opponents on various grounds, including lack of access to a deepwater port, lack of sufficient available acreage, and location elsewhere than on the Columbia River corridor. The county ultimately relied upon the Port's analysis to find compliance with OAR 660-004-0020(2)(b).

On appeal, Riverkeeper argues that the Port's alternative sites analysis suffers from many of the same flaws identified in *Riverkeeper I*. Riverkeeper first argues that the county erred in rejecting alternative sites with no access to a deepwater port. The Port responds, and we agree, that because the exception is justified based solely on the “unique resource” of a deepwater port--in this case, a self-scouring deepwater port that requires no dredging in order to accommodate ocean-going cargo vessels--the county properly limited its analysis to alternative sites with access to a deepwater port. We agree with the Port that the county is not required to *572 evaluate non-deepwater ports, or the possibility of dredging non-deepwater ports to accommodate ocean-going vessels.

As we understand it, there are three existing deepwater ports along the Columbia River: Port of Astoria, Port of Portland and the existing Port Westward exception area. The county rejected all three sites as alternatives, for reasons we discuss below. The county also considered and rejected the two deepwater ports located along the Oregon coast (Coos Bay and Newport), and a coastal port that currently lacks any maritime access (Tillamook). All three coastal ports were rejected in part because they cannot serve commerce needs along the Columbia River corridor, which the analysis notes is a region that represents 60 percent of Oregon's manufacturing, warehousing and transportation-based economy, with a concentration of river, rail and highway transportation networks. Riverkeeper argues, however, that the county erred in rejecting the coastal alternative sites for that reason. According to Riverkeeper, while “comparative advantage due to its location” is a basis for a reasons exception under OAR 660-004-0022(3)(c) (*see n 1*), such locational considerations are not a factor under OAR 660-004-0022(3)(a), which is only concerned with proximity to and the characteristics of a unique resource, not comparative advantages due to location.

Thus, Riverkeeper argues, it is error under OAR 660-004-0022(3)(a) to reject an alternative site simply because it does not serve the same economic region as the preferred site.

****19** The Port responds that OAR 660-004-0020(2)(b) allows consideration of “economic factors” along with other relevant factors, and argues that it is not error to reject alternative sites that cannot serve the Columbia River corridor and its economic region. We agree with the Port. Part of what makes the Port Westward site a unique resource is its status as one of three deepwater ports along a primary maritime artery, connecting national and international markets with the Portland Metropolitan area, the state's largest economic area. The three coastal ports are located hundreds of miles away from that economic area and serve very different and more isolated regional markets. We conclude that in conducting an alternative sites analysis for industrial uses justified based on proximity to the “unique resource” of a river or ocean port under OAR 660-004-0022(3)(a), the county is not required to evaluate other port sites in the state (or elsewhere) that serve entirely different economic markets.

With those preliminaries, we turn to Riverkeeper's challenges to the findings rejecting the three alternative sites located on the Columbia River: Port of Astoria, Port of Portland and the existing Port Westward exception area.

***573 D. Port of Astoria**

The county found that the only vacant industrial land at the Port of Astoria is at Tongue Point, which has north and south sub-areas. The county found that North Tongue Point has no vacant parcels larger than 15 acres, insufficient to accommodate even one of the large-scale industrial uses authorized at the preferred site. South Tongue Point has four vacant parcels totaling 137 acres, but the county found that three parcels are subject to a recent purchase and sale agreement with a community college, and the other, owned by the U.S. Army Corps of Engineers, is in the process of being repurposed for an army training facility. The county found that these parcels are not available, and thus cannot reasonably accommodate any of the proposed uses.

Riverkeepers argue that the county erred in finding that the four South Tongue Point parcels are not available, citing to *Riverkeeper I*, where we held that the county erred in rejecting any alternative site simply because it was not owned or controlled by the Port. 70 Or LUBA at 195. We held that the mere fact that an alternative site is owned or currently leased by a third party is an insufficient basis to conclude, without more, that the site is unavailable. However, we agree with the Port that evidence that three of the parcels are subject to a recent purchase and sale agreement, and the other is a federally owned property that is subject to other development plans, is a sufficient basis to conclude that these parcels are not available for purchase or lease.

Riverkeeper also argues, with respect to the Port of Astoria and the Port Westward alternative sites, that the county erred in rejecting alternatives as too small, based on inability to provide at least 837 acres for industrial development. Riverkeeper contends that the county is required to evaluate individual industrial uses, not the aggregate sum that can be accommodated on the proposed 857-acre exception area. Further, Riverkeeper repeats its arguments that the county must identify the minimum acreage necessary for each individual industrial use, and can reject only those alternative sites that fall below the identified minimum acreage.

****20** However, as far as we can tell the county did not reject alternative sites because they were less than 857 acres in size and thus too small to accommodate all of the proposed uses in the aggregate. The county rejected the 15-acre North Tongue Point site as being too small, because it cannot accommodate even one of the authorized large-scale uses, which the county found all require large storage areas or large buffer areas, and which the county found commonly require 50 to 100 acres. The county did ***574** not reject any or all of the four South Tongue Point parcels, totaling 157 acres, for being too small; indeed, the county presumed that those parcels, if available, could accommodate at least some of the proposed uses. Record 41 (“there is no available acreage at the Port of Astoria for siting any of the Port's approved uses”). In sum, Riverkeeper has not demonstrated that the county erred in rejecting the Port of Astoria as an alternative site under OAR 660-004-0020(2)(b).

E. Port of Portland

The alternative sites analysis found that the main Port of Portland facilities are built out and have no remaining available land for the proposed uses. The analysis also rejected West Hayden Island, a large undeveloped site (which in 2013 the Port of Portland attempted, but failed, to have annexed into the city and zoned for a proposed new marine terminal) with no port facilities or deepwater access. The county concluded that no Port of Portland facilities can reasonably accommodate the proposed uses. Riverkeeper directs only scattershot challenges to the county's findings. For example, Riverkeeper argues that the county erred in citing the lack of "political will" to annex and develop West Hayden Island as one reason why that site cannot accommodate the proposed use. However, the county rejected that site for a number of other reasons, among them the current lack of deepwater access, which are largely unchallenged. As explained above, because the proposed exception is based on the unique resource of an existing deepwater port, the county is not required to evaluate alternative sites that are not deepwater ports or that require dredging to become a deepwater port. Riverkeeper has not demonstrated that the county erred in rejecting the Port of Portland site as an alternative site.

F. Port Westward

In *Riverkeeper I*, we remanded the county's decision regarding the existing Port Westward exception area as an alternative site, noting evidence that approximately 445 acres of the 862-acre PGE leasehold appeared to be vacant and potentially developable for at least some of the proposed uses, and that the record failed to establish that the Port is unable to acquire a sublease from PGE or otherwise obtain the right to develop those vacant areas.

Since our 2014 decision PGE has constructed a third power plant on its leasehold, and the last vacant area of Port Westward not within the PGE leasehold is no longer available. On remand, the Port submitted a letter from PGE stating that the Port should consider the undeveloped *575 portion of its leasehold unavailable for siting additional tenants.¹¹ In addition, the Port submitted additional evidence regarding the availability of vacant lands within the PGE leasehold, concluding that the undeveloped portion of PGE's leasehold is encumbered with a number of roadways, utilities, drainage facilities, levees, pipelines, conservation areas, wetland areas, and areas reserved for buffers or expansion of PGE facilities, in a manner that effectively precludes siting any large-scale industrial use. Nearly all of the remaining vacant land in the PGE leasehold, representing 439 acres and approximately half of PGE's leasehold, consists of wetlands. Record 3088-89. The evidence included estimates of the cost of wetland mitigation (creating new wetlands) in the area of \$77,000 to \$82,000 per acre, above and beyond the cost of acquiring off-site mitigation areas, and testimony that filling and mitigating the hundreds of acres of wetlands on the site would require acquiring 658 acres of mitigation and cost in the order of \$50 million. Record 3089. Based on this evidence, the county found that development of any significant portion of the existing wetland areas is economically unfeasible, and that given the other constraints and encumbrances on the remainder of PGE's leasehold that there is no contiguous site available to develop even one of the authorized large-scale industrial uses, even if PGE were willing to sublease any portion of its leasehold.

**21 Riverkeeper argues that the county places too much reliance on the PGE letter and PGE's current unwillingness to consider subleasing any part of its leasehold. Riverkeeper notes that we stated in *Riverkeeper I* that "absent evidence that PGE is categorically unwilling to sublease part or all of its leasehold to other industrial users" the fact that land otherwise available within the leasehold is not currently controlled by the Port is not a sufficient basis to conclude that the vacant PGE lands are not available. *576 70 Or LUBA at 195. According to Riverkeeper, the PGE letter falls short of demonstrating a "categorical unwillingness" to sublease land during the remainder of its 99-year lease, stating only that a "high bar" exists to PGE granting its consent to site third-party industrial uses within its leasehold. Petition for Review 38-39; Record 3136.

The Port argues, and we agree, that the PGE letter is a sufficient basis to conclude that the vacant PGE lands are not available because PGE is unwilling to sublease any portion of its leasehold. We disagree with Riverkeeper that that unwillingness must be stated in stronger or more categorical terms to support that conclusion. We also disagree with Riverkeeper's suggestion that the Port must consider terminating PGE's long-term leases (which would presumably entail paying PGE a significant amount of compensation) or otherwise offer extraordinary financial inducements to overcome PGE's expressed unwillingness to sublease the remaining vacant lands within its leasehold.

In addition, the county also found that, regardless of PGE's willingness to sublease portions of its leasehold, the vacant lands are so encumbered that no large-scale industrial use of the types proposed could be feasibly or economically developed. Riverkeeper disputes the findings regarding wetland areas, arguing that the evidence the Port submitted is insufficient to establish that it is economically unfeasible to convert wetlands to developable land, including mitigation costs. Riverkeeper argues that much of the existing development at Port Westward historically involved filling some wetlands, and any future expansion of PGE facilities will probably also involve filling some wetlands, which demonstrates that the existence of wetlands is not an insuperable bar to development.

Riverkeeper argues that it must be possible to cobble enough land together, avoiding wetlands and existing encumbrances, to site at least one of the proposed large-scale industrial uses. Riverkeeper is correct that the presence of wetlands at an alternative site, in itself, would not generally be sufficient to render land unavailable, for purposes of OAR 660-004-0020(2)(b). Generally, it is possible to obtain needed state and federal agency approvals to fill jurisdictional wetlands, usually subject to requirements to provide mitigation at a one to one and a half (1:1.5) acre ratio. But filling and mitigating wetlands is expensive, and economic costs are one of the factors the county can consider in determining whether an alternative site can reasonably accommodate a proposed use. OAR 660-004-0020(2)(b)(B). In the present case, the undisputed evidence is that the vacant land within the PGE leasehold consists largely of jurisdictional wetlands. Even if PGE's unwillingness to sublease property could be overcome, and a contiguous *577 site for a single large-scale industrial use such as that authorized could be found given other encumbrances on the property, the undisputed evidence is that development of any large-scale site would likely require providing off-site mitigation, at a cost of \$77,000 to \$82,000 per acre. In other words, development of even a single large-scale industrial use on the order of 50 acres could require several million dollars for wetland mitigation alone, not counting land acquisition costs.

****22** We agree with the Port that the record supports the county's conclusion that the Port Westward site cannot reasonably accommodate any of the proposed uses, given PGE's expressed unwillingness to sublease any part of its leasehold, the pervasive extent of various encumbrances, the pervasive extent of wetlands, and the consequent difficulty and high cost of developing any large-scale industrial site. Record 171. Riverkeeper has not demonstrated that the county erred in rejecting the Port Westward site under OAR 660-004-0020(2)(b).

Riverkeeper's fifth assignment of error is denied.

SIXTH ASSIGNMENT OF ERROR (RIVERKEEPER)

OAR 660-012-0060 is part of the Transportation Planning Rule (TPR), which implements Statewide Planning Goal 12 (Transportation). OAR 660-012-0060(5) provides that:

“The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.”

Riverkeeper contends that the Port Westward dock facility constitutes a “transportation facility” for purposes of OAR 660-012-0060(5), and therefore as a matter of law the presence of the dock facility cannot constitute a basis for a reasons exception for industrial development on rural land under OAR 660-004-0022.

The county rejected that argument, stating:

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

***578** “OAR 660-004-0022(3)(a) explicitly authorizes an exception to Goal 3 for ‘river or ocean ports,’ with or without existing dock facilities, and whether or not the port has deepwater access. The Board finds that these additional attributes

present at Port Westward do not disqualify Port Westward as a ‘river or ocean port’ under OAR 660-004-0022(3)(a), and OAR 660-012-0060(5) does not disqualify it under OAR 660-004-0022(3)(a). The Board finds that it is unnecessary to determine whether river or ocean ports are or are not ‘transportation facilities’ under OAR 660-0012-0060(5) because, whether they are (and OAR 660-004-0022(3)(a) provides an exception) or they are not (and OAR 660-0012-0060(5) does not apply), OAR 660-004-0022(3)(a) explicitly authorizes ports such as Port Westward as a valid basis for a Goal 3 exception.” Record 50 (emphasis in original).

Thus, the county reads OAR 660-012-0060(5) in context with OAR 660-004-0022(3)(a) to apply only when the exception is based solely on an existing transportation facility. The county concluded that, even if the existing dock facility is a “transportation facility” for purposes of OAR 660-012-0060(5), the exception is based not (or not solely) on the existing dock facility but rather on the natural upland and aquatic features of the port, with the combination of flat developable upland in proximity to deep water and self-scouring features, aspects of a deepwater river port that is the “unique resource” justifying an exception under OAR 660-004-0022(3)(a). We understand the county to conclude that an exception could be justified under OAR 660-004-0022(3)(a) based on that unique resource, even if there were no existing dock facilities, but only a proposal to construct dock facilities to take advantage of deepwater access.

****23** On appeal, Riverkeeper argues that a “river or ocean port[]” as that term is used in OAR 660-004-0022(3)(a) is also a “[t]ransportation facility” for purposes of OAR 660-012-0060(5), and that there is no meaningful distinction between the dock facility and the other features of the river port for purposes of OAR 660-012-0060(5). Riverkeeper notes that OAR 660-012-0005(30) defines “[t]ransportation facility” in relevant part as a “physical facility” that moves goods, including facilities identified in OAR 660-012-0020.¹² OAR 660-012-0020(2)(e) requires that a local government transportation system plan include “[a]n air, rail, water and pipeline transportation plan which identifies where public use airports, ***579** mainline and branchline railroads and railroad facilities, [and] *port facilities*” are located or planned. (Emphasis added.) We understand Riverkeeper to that argue even if the exception is based on the river * * * port[]” as a whole (OAR 660-004-0022(3)(a)), and not on the existing dock facility, the river port is itself a type of “[t]ransportation facility” and hence subject to OAR 660-012-0060(5).

Riverkeeper is correct that a “port facility” that must be identified in a local government transportation system plan pursuant to OAR 660-012-0020(2)(e) is included by cross-reference within the definition of “[t]ransportation facility” at OAR 660-012-0005(30). The Port responds in part that the county’s air, rail, water and pipeline transportation plan included in its transportation system plan does not, in fact, identify Port Westward among the port facilities discussed in the plan. However, we disagree with the Port that the fact the county did not actually identify Port Westward as a port facility in its transportation plans means that, as a consequence, that the Port Westward port facilities is not a “port facility” for purposes of OAR 660-012-0020(2)(e) or, by cross-reference, at least potentially a “[t]ransportation facility” for purposes of OAR 660-012-0005(30).

Riverkeeper acknowledges that its argument casts OAR 660-004-0022(3)(a), which expressly allows a reasons exception for industrial uses based on the existence of a “river or ocean port,” into apparent conflict with OAR 660-012-0060(5), which under Riverkeeper’s interpretation prohibits taking an exception based on the presence of a river or ocean port. However, Riverkeeper argues that any conflict must be resolved in favor of OAR 660-012-0060(5), which was adopted more recently. According to Riverkeeper, the Land Conservation and Development Commission (LCDC) clearly intended, by the express cross-reference to OAR 660-004-0022, that OAR 660-012-0060(5) would limit or prohibit some exceptions that could otherwise be approved under OAR 660-004-0022. Riverkeeper argues that LCDC is presumably aware of its own administrative rules, was presumably aware that “river or ocean ports” are types of “[t]ransportation facilities,” and thus presumably intended to prohibit any exception on rural land that is based upon the existence of a river or ocean port.

****24** However, it does not necessarily follow that OAR 660-012-0060(5), read in context, is properly interpreted to prohibit the establishment or expansion of an industrial area based on an existing river or ocean port authorized under OAR 660-004-0022(3)(a), as Riverkeeper argues. It is important to note that the list of appropriate reasons to approve industrial uses at OAR 660-004-0022(3) is non-exclusive, and that a ***580** county can, theoretically, come up with a new but still sufficient reason to

authorize industrial use of resource land that is not one of the three listed reasons. *See* n 1 (appropriate reasons and facts may include, but are not limited to, the three listed reasons). Thus it is entirely possible to read OAR 660-004-0022(3)(a) and OAR 660-012-0060(5) in context together in a manner that offers no conflict. Read in this context, OAR 660-012-0060(5) is intended to prohibit only an exception based on the existence of a transportation facility for reasons that are not otherwise specifically listed as an appropriate reason for an exception set out in OAR 660-004-0022.

This view is supported by two other rules viewed in context. The first is OAR 660-004-0022(3)(c), which provides that an appropriate reason to site industrial uses on resource land includes comparative advantage due to location. OAR 660-004-0022(3)(c) expressly authorizes consideration of the “specific transportation” advantages that support the exception, which presumably would allow the county to consider advantages provided by proximity to an existing transportation facility. *See* n 1. Second, as already noted, a specific provision of the TPR, at OAR 660-012-0065(3)(m), authorizes replacement of existing docks without taking a goal exception, where the replacement does not significantly increase the dock capacity. The clear implication is that dock replacement that significantly increases dock capacity requires a goal exception. However, no such goal exception would be possible under Riverkeeper's broad interpretation of OAR 660-012-0060(5).

Moreover, it is difficult to understand why LCDC would intend OAR 660-012-0060(5) to effectively prohibit the expansion or improvement of an existing dock facility or port facility (or any similar transportation facility). OAR 660-012-0060(5) is part of an administrative rule that, broadly speaking, is intended to ensure that when local governments adopt comprehensive plan amendments that significantly impact transportation facilities, measures are put in place to protect the function and performance of transportation facilities. OAR 660-012-0060(1). One of the common measures to protect the function and performance of affected transportation facilities is to require improvements to those transportation facilities.¹³ OAR 660-012-0060(2). Read in this *581 immediate context, OAR 660-012-0060(5) is probably intended to protect transportation facilities from an otherwise inappropriate exception based on nothing but the presence of a transportation facility. An easy-to-imagine example is an exception to allow commercial or industrial uses on rural or resource land that are rendered economically feasible due only to the presence of an adjoining public highway. Conversely, it makes no policy sense to interpret OAR 660-012-0060(5) to effectively prevent local governments from adopting an exception necessary to improve or expand existing docks, ports or similar transportation facilities, where that exception is otherwise authorized by a reason that LCDC has specifically deemed to be appropriate. We highly doubt that LCDC intended, in promulgating OAR 660-012-0060(5), to effectively preclude the expansion of port facilities or the industrial uses and areas that support port facilities. Accordingly, we conclude that OAR 660-012-0060(5), read in context, does not prohibit a reasons exception for an industrial use based on a river port that is a unique resource for purposes of OAR 660-004-0022(3)(a).

****25** Riverkeeper's sixth assignment of error is denied.

***582 SEVENTH ASSIGNMENT OF ERROR (RIVERKEEPER)**

OAR 660-012-0070 sets out standards for reasons exceptions needed to approve “transportation facilities and improvements” on rural land that cannot be approved without an exception under OAR 660-012-0065. OAR 660-012-0070(2) provides: “When an exception to Goals 3, 4, 11, or 14 is required to locate a transportation improvement on rural lands, the exception shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this division. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 14 shall not apply. Exceptions adopted pursuant to this division shall be deemed to fulfill the requirements for goal exceptions required under ORS 197.732(1)(c) and Goal 2.”

Under the seventh assignment of error, Riverkeeper argues that the county erred in approving “transportation improvement[s]” on rural land without applying the standards for a reasons exception at OAR 660-012-0070. According to Riverkeeper, because each of the five authorized industrial uses involves the “transportation” of goods and commodities, *i.e.*, loading and offloading goods and commodities, the exception standards at OAR 660-012-0070 apply rather than the exception standards at OAR 660-004-0022.

The Port responds initially that no issue was raised below regarding OAR 660-012-0070 and thus the issue raised under the seventh assignment of error is waived, under ORS 197.763(1). On the merits, the Port argues that the decision does not approve any transportation facility or improvement, but rather simply approves five types of industrial uses which, like all industrial uses, necessarily involve some transportation of goods and commodities.

Riverkeeper responds that it is entitled to raise new issues on appeal because the county's notices did not describe the five authorized uses, and thus did not “reasonably describe” the proposed action. ORS 197.835(4)(b).¹⁴ However, even if ORS 197.835(4)(b) would allow Riverkeeper to raise new issues on appeal regarding OAR 660-012-0070, we agree with the Port that the challenged decision does not approve any *583 “transportation facilities or improvements” within the meaning of OAR 660-012-0070. As noted, OAR 660-012-0005(30) defines “transportation facility” as a “physical facility that moves or assist[s] in the movement of people or goods[.]” The decision approves a reasons exception to authorize five categories of industrial uses, and those uses necessarily involve shipping of goods and commodities off and on the site, but the decision does not approve any physical facility to move or assist in the movement of those goods and commodities, such as a dock facility. Riverkeeper argues, nonetheless, that moving the goods or commodities between the industrial sites and the existing dock facilities will require some kind of internal road, pipeline, etc. However, we disagree that internal improvements needed to move goods or commodities from one location to another location within the Port Westward industrial site constitutes a “transportation facility or improvement” for purposes of OAR 660-012-0070.

****26** Riverkeeper' seventh assignment of error is denied.

EIGHTH ASSIGNMENT OF ERROR (RIVERKEEPER)

As noted, the existing Port Westward exception area is an irrevocably committed and physically developed exception site, zoned RIPD. OAR 660-004-0018(2) provides that “all plan and zone designations” must meet several requirements, including that the “rural uses, density, and public facilities” allowed under the plan and zoning designation “will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028.” OAR 660-004-0028 sets out the standards for determining whether land is irrevocably committed to uses not allowed by the applicable goals, by uses or development on adjoining or surrounding uses. OAR 660-004-0018(1) provides that “[a]doption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.”

Riverkeeper argues that the challenged decision approves industrial uses within the proposed exception area that will intensify use of the existing docks within the existing Port Westward exception area. Because the decision authorizes increased use of the dock facility within an existing exception area, Riverkeeper contends that OAR 660-004-0018 requires the county to adopt a new reasons exception for the Port Westward exception area, to authorize the more intensive dock usage.

The county rejected that argument in its findings, noting that the uses allowed in the new exception area are much more restrictive than the *584 uses allowed in the RIPD zone that applies to the Port Westward exception area, and thus the decision does not authorize any “changes in existing types of uses, densities, or services” within the Port Westward exception area. OAR 660-004-0018(1); Record 33. The findings also note that the exception statement for the Port Westward site contemplated heavy reliance on the dock to transport liquid and bulk commodities, similar to those approved in the new exception area, and concludes that the fact that uses within the new exception area will rely upon the dock facility does not result a change in or intensification of the dock usage that would require a new reasons exception. Record 33-34 (citing language in the Port Westward exception statement discussing proposals for a 200-acre oil refinery, 150-200 acre coal plant, and a 230-acre coal gasification plant).

The Port argues, and we agree, that Riverkeeper has not demonstrated that the county is required to adopt a reasons exception for the existing Port Westward exception area. The uses and facilities allowed in the RIPD zone on the existing Port Westward exception area do not “commit” adjacent resource land (*i.e.*, the proposed exception area) to uses not allowed by the resource goals, contrary to OAR 660-004-0018(2)(b). There is no dispute that the existing dock facilities at Port Westward are

underutilized, apparently because actual development at Port Westward (e.g., the PGE power plants) does not use the docks, for the most part. The county found that the proposed increased use of the docks is within the level of intensity contemplated by the original exception and the RIPD zone. Riverkeeper might be correct that a new reasons exception would be required if intensified dock usage (from either exception area) required an expansion of the dock facilities.¹⁵ However, the present decision does not authorize or require dock expansion, and no party argues that the existing docks have insufficient capacity to handle cargo associated with the proposed uses. Accordingly, Riverkeeper's arguments under OAR 660-004-0018 do not provide a basis for reversal or remand.

****27** Riverkeeper's eighth assignment of error is denied.

***585 CONCLUSION**

As explained under Riverkeeper's and 1000 Friends' fourth assignments of error, the decision must be remanded for the county to adopt more adequate findings, supported by substantial evidence, regarding compliance with the compatibility requirement of OAR 660-004-0020(2)(d). All other assignments of error are denied.

The county's decision is remanded.

Zamudio

Board Member, concurring

In my view, this case presents a close call and I concur based on the facts that the exception is based on a single unique resource, the river port, the exception authorizes only those uses that are significantly dependent on the river port, and the exception area is uniquely situated by the river port. I write separately to emphasize that exceptions are and should remain ““exceptional.”” *1000 Friends of Oregon v. LCDC*, 69 Or App 717, 731, 688 P2d 103 (1984). Goal 3 preservation of agricultural lands for existing and future needs is essential to statewide land use planning. ORS 215.243. A reasons exception is, by design, a narrow yet flexible passageway for avoiding compliance with Goal 3.¹⁶ See *Riverkeeper I*, 70 Or LUBA at 181-82 (explaining that a reasons exception is a more limited vehicle than physically developed and irrevocably committed exceptions). In this case, LUBA recognizes flexibility in justifying a reasons exception but does not create a broader passage around Goal 3 protections.

I agree with petitioners that the evidence in the record and the county's reasoning supporting the reasons exception are slim. With respect to the amount of land included in the 837-acre exception area, the county relied heavily on inquiries to the Port to conclude that port-dependent industrial uses require large acreage lots and that the total acreage to meet the demand for industrial uses at Port Westward significantly exceeds the proposed 837-acre exception area. The evidence is that the exception area will feasibly be fully utilized over a 20-year period based on market “demand velocity.” Record 3117. It is not clear to me that a reasons exception was intended to be used as a mid-range planning tool to meet ***586** market demand. However, I ultimately agree with the majority that market demand may justify the amount of land included in the exception area.

LCDC has determined that general housing market demand is not a sufficient reason to justify a goal exception for rural residential development on resource lands. OAR 660-004-0022(2) (“For rural residential development the reasons cannot be based on market demand for housing except * * * [where] the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.”); see also *Still v. Marion County*, 42 Or App 115, 122, 600 P2d 433 (1979), *rev den*, 288 Or 493 (1980) (in the context of a needs exception, the court observed that “Goal # 3 was enacted to preserve agricultural land from encroachment by urban and suburban sprawl by subordinating the free play of the marketplace to broader public policy objectives”). LCDC has not imposed a similar limitation on reasons exceptions for rural industrial development on resource lands. OAR 660-004-0022(3). Thus, a local government is not prohibited from relying on market demand, as the county did here, to establish the amount of land planned for resource-dependent rural industrial development. In my opinion, the evidence and reasoning supporting the

justification for the amount of land needed for the exception area is thin, but nonetheless qualifies as “substantial evidence in the record.”¹⁷ See ORS 197.732(6)(a) (“Upon review of a decision approving or denying an exception: The Land Use Board of Appeals * * * shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception[.]”).

****28** In this case, the county was required to determine that the approved uses are “significantly dependent upon a unique resource” and could not defer that analysis to the permitting process. OAR 660-004-0022(3)(a); *Riverkeeper I*, 70 Or LUBA at 206 (“[I]t is clearly impermissible to defer to a subsequent permit proceeding a determination that a *Goal 2 exception standard* is met[.]” (Emphasis in original.)). As I understand it, the county did not find that the five categories of approved ***587** uses are in-and-of-themselves significantly port-dependent. Instead, the county found that a subset of those uses *can be* port-dependent. Record 19. The county plans to assure significant port dependence through (1) adopting the exception as part of the county's comprehensive plan, (2) imposing Condition 5 of the challenged decision, and (3) the conditional use permitting process. While it is a very close call, I agree with the majority that the county's findings and reasoning justify the reasons exception and the county did not impermissibly defer that determination to a later permit proceeding.

Finally, I write separately to note the potential mischief that could arise from LUBA accepting the county's conclusion that the area of existing exception land within PGE's leasehold “cannot reasonably accommodate the proposed use[[s].” OAR 660-004-0020(2)(b). My concern is that an applicant or local government could avoid meaningful consideration of alternative sites if allowed to exclude areas that are either contractually obligated or in different ownership, and thereby obtain approval for a preferred location for an exception. For example, a company could create different entities to hold interests in property and then submit evidence that a less desirable potential alternative site is otherwise committed and cannot reasonably accommodate the proposed use. While I do not think that type of mischief is necessarily present in this case, it is a potential problem that merits scrutiny in reviewing such an alternative site analysis.

Footnotes

- 1 OAR 660-004-0022(3) provides:
 “Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:
 “(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;
 “(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or
 “(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.”
- 2 We understand “breakbulk” to refer to cargo that is loaded off and on ships as individual items (e.g., barrels or automobiles) rather than in large intermodal containers, or as bulk commodities such as oil or grain. Record 3092.
- 3 OAR 660-004-0020(2) provides, in relevant part:
 “The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:
 “(a) ‘Reasons justify why the state policy embodied in the applicable goals should not apply.’ The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land[.]”
- 4 The Mackenzie Report states:
 “For uses defined in this report, a large share of physical space is required for the storage and movement of commodities in a rural industrial setting. Bulk commodities including aggregates, steel, logs, wood chips, liquid bulks, and automobiles, for example, all require extensive space for circulation, storage and laydown yards. In the case of uses involving the presence of hazardous materials or other externalities, required buffering increases users' overall site needs. Another contributing factor to large site needs is land

banking. Because the proposed uses' storage needs for products and cargo is quite high, uncertainty about future space needs leads firms to locate on sites with the flexibility and scale to accommodate future growth. The PGE leasehold at Port Westward is a classic example of this kind of land banking, and is clearly explained by PGE in its 2016 letter in Appendix 2." Record 3110.

5 We note that some of the prospects listed in Appendix 3 are for uses that, under the county's decision, cannot be sited in the proposed exception area. Examples include two proposals for 150-acre and 200-acre coal terminals. The challenged decision prohibits siting a coal terminal in the exception area. Record 183. Others include uses that, by their nature, do not appear to fall within any of the five use categories (e.g., a proposal to site a solar farm) and/or do not appear to require access to the unique resource. The total number of acres listed in Appendix 3 (2,789 acres) thus appears to significantly overstate the total number of acres associated with recent prospects that could have been sited in the exception area. If coal terminals and other uses that cannot be lawfully sited in the exception area are excluded from the acreage total, the total falls to less than 2,000 acres, which is roughly two times the size of the 857-acre exception area, not three times the size, as the Mackenzie Report states. However, petitioners do not make any arguments on this point, or dispute the accuracy of the total acreage estimates in the Mackenzie Report, so we consider it no further.

6 The Port argues, initially, that these issues were not raised with sufficient specificity during the proceedings below, and are thus waived under ORS 197.763(1) (an issue that is the basis for an appeal to LUBA must be raised during local proceedings, with sufficient specificity sufficient to afford the decision maker and the parties an adequate opportunity to respond); ORS 197.835(3). However, we agree with petitioners that the issues raised under the petitioners' second assignments of error were raised with sufficient specificity below.

7 "Agricultural Land-in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

"More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

"Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4.

"Farm Use-is as set forth in ORS 215.203.

"High-Value Farmlands-are areas of agricultural land defined by statute and Commission rule."

8 Petitioners cite to *1000 Friends of Oregon v. Jackson County (Jackson County)*, 76 Or App 270 (2017), *rev'd and rem'd*, 292 Or App 173, 423 P3d 793, *rev allowed*, 363 Or 727 (2018), to support their argument that land within an exception area is not "agricultural land" for purposes of OAR 660-004-0022(3)(a). However, as the Port notes, *Jackson County* did not involve OAR 660-004-0022(3) (a), and did not concern land within an exception area. Further, the particular holding that petitioners rely upon was reversed by the Court of Appeals. 292 Or App at 184.

9 OAR 660-004-0020(2)(d) provides:

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

10 OAR 660-004-0020(2)(b) provides:

"Areas that do not require a new exception cannot reasonably accommodate the use." The exception must meet the following requirements:

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

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

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

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

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

“(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?
 “(C) The ‘alternative areas’ standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.”

11 The PGE letter states, in relevant part:

“Maintaining and protecting PGE’s assets at Port Westward is imperative to the company’s current and future operations. Protecting the long-term interests of the electric generation capabilities at the site requires PGE to maintain adequate land buffers around the facilities for security and reliability purposes, thus restricting third-party use on the 854-acre leasehold. In addition, it is important to our future operations there is adequate space in our leasehold for building future generating plants. This limits the physical space, location and other related dynamics that might otherwise make the area available to third-parties. Given the company’s investment in Port Westward and the critical nature of the site to support reliable electric service, third-party compatibility is a high bar which some proposed industrial facilities in the past could not meet. Due to this high bar, PGE supports the Port’s efforts to bring additional industrial land outside the buffer into Port Westward.” Record 3135.

12 OAR 660-012-0005(30) provides the following definition for purposes of OAR 660-012:

“‘Transportation Facilities’ means any physical facility that moves or assist[s] in the movement of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage and water systems.”

13 OAR 660-012-0060 provides in relevant part:

“(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. * * *”

“* * * * *

“(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below[.] * * *

“(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

“(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

“(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

“(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. * * *”

14 ORS 197.835(4)(b) provides that a petitioner may raise new issues to LUBA where:

“The local government made a land use decision or limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government’s final action.”

15 The existing dock facilities at Port Westward can handle two ocean-going vessels. We note that OAR 660-012-0065(3)(m) authorizes the replacement of docks without taking a new exception to the resource goals where the replacement does not significantly increase the capacity of the facility. That suggests, by negative implication, that expanding the existing docks to increase capacity would require a new exception to the resource goals. The present application does not include any proposal to expand the existing dock facility, although one portion of the proposed exception area (tax lot 500) fronts on the river next to the existing dock facility and the Port has deemed tax lot 500 as “critical for future dock expansion.” Record 114.

16 The parties in this appeal did not provide any legislative history regarding the legislature’s intent in allowing a reasons exception, or LCDC’s intent in adopting rules governing reasons exceptions. Perhaps such legislative history would illuminate the scope and function of reasons exceptions.

17 I am troubled by the county’s reasoning that the approved categories of industrial uses require large lots to allow “land banking” for future expansion. However, land banking for rural industrial uses may be analogous to acreage needs supporting 160-acre minimums for livestock rangeland or 2- to 5-acre lots for rural residential development in that the nature of the use supports a certain size lot regardless of whether the entire lot is physically occupied by the use at any given time.

78 Or LUBA 547 (Or Luba), 2018 WL 10454697

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297 Or.App. 628
Court of Appeals of Oregon.

COLUMBIA RIVERKEEPER,
Petitioner Cross-Respondent,
and
1000 Friends of Oregon,
Intervenor-Petitioner-below,
v.
COLUMBIA COUNTY,
Respondent Cross-Respondent,
and
Port of Columbia County,
Respondent Cross-Petitioner.

A169901
|
Argued and submitted March 15, 2019.
|
May 22, 2019

Synopsis

Background: County riverkeeper sought review of decision of the Land Use Board of Appeals (LUBA), remanding to the county board of commissioners its decision approving deepwater port's petition seeking reasons exception to statewide planning goal, and related zoning changes, for area of agricultural land adjacent to deepwater port located on river. Deepwater port cross-petitioned for review.

Holdings: The Court of Appeals, Lagesen, P. J., held that:

Court of Appeals would review for determination of whether LUBA's decision was substantially or procedurally unlawful;

board's decision sufficiently limited allowed uses to those justified in reasons exception, as required by administrative rule;

board's alternative sites analysis was sufficient to meet requirements of applicable administrative rule; and

LUBA did not misunderstand its role in applying substantial evidence standard of review.

Attachment 3

Affirmed.

****1185** Land Use Board of Appeals, 2018020

Attorneys and Law Firms

Maura C. Fahey, Portland, argued the cause for petitioner-cross-respondent. Also on the briefs was Crag Law Center.

Spencer Q. Parsons argued the cause for respondent-cross-petitioner. Also on the brief was Beery, Elsner & Hammond, LLP.

No appearance for respondent-cross-respondent.

Before Lagesen, Presiding Judge, and DeVore, Judge, and Sercombe, Senior Judge.

Opinion

LAGESEN, P. J.

***630** This judicial review proceeding arises from a final order of the Land Use Board of Appeals (LUBA). In that order, LUBA remanded a decision of the Board of Commissioners for Columbia County (the county). The county's decision approved a reasons exception to Statewide Planning Goal 3 (Agricultural Land)—and related comprehensive plan and zoning changes—for an area of agricultural land adjacent to Port Westward, a deepwater port on the Columbia River. The county granted the exception to allow for the expansion of the port. LUBA concluded that the county's findings in support of the exception were inadequate in one respect, but that the decision was otherwise sound. Columbia Riverkeeper (Riverkeeper) petitions for judicial review, contending that LUBA erred by concluding that the county properly determined that two other applicable requirements for the reasons exception were satisfied; the Port of Columbia County (the port) cross-petitions for review, contending that LUBA erred when it determined that some of the county's findings were inadequate. We conclude that neither party has demonstrated that LUBA erred. We therefore affirm on the petition and cross-petition.

I. LEGAL AND FACTUAL BACKGROUND

A. Legal Standards at Issue

We start with the legal standards applicable to the county decision at the heart of this ****1186** proceeding. Here, the port seeks authorization for industrial uses on land designated agricultural in the county's comprehensive plan. To obtain that authorization, the port must demonstrate justification for an exception to Statewide Planning Goal 3, which requires counties to preserve and maintain agricultural lands for farm use. One type of allowable exception—the type at issue in this case—is a “reasons exception” under ORS 197.732(2)(c) and OAR 660-004-0020(2). Four standards must be met to permit a reasons exception to a state-wide land use goal:

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

***631** “(B) Areas that do not require a new exception cannot reasonably accommodate the use;

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

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

ORS 197.732(2)(c); Statewide Planning Goal 2: Part II (Exceptions); OAR 660-004-0020(2) (restating and amplifying statutory standard).¹

OAR 660-004-0022 elaborates on the various types of reasons that can justify the conclusion that “the state policy embodied in the applicable goals” should not apply to preclude a particular use. *See generally* OAR 660-004-0022. Under that rule, one identified reason to allow “siting of industrial development” on resource land outside an urban growth boundary is proximity to a “unique resource,” such as—as is the case here—a port: “The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include ******* river or ocean ports[.]” OAR 660-004-0022(3)(a).

B. County Proceedings

This proceeding began in 2013. Port Westward is a deepwater port on the Columbia River. It is a self-scouring site, which means that the property can accommodate deep-draft vessels without being dredged. To lay the groundwork for expanding

Port Westward, the port applied to the county for exceptions to Goal 3, along with corresponding amendments to the comprehensive plan and zoning changes, for an 837-acre area of land adjacent to Port Westward. In its application, the port requested that a broad array of ***632** industrial uses be allowed on the site, contending that several different exceptions to Goal 3 applied to the property in question. The county approved three exceptions, including a reasons exception, as well as the corresponding plan and zone amendments. However, the matter was appealed to LUBA and LUBA remanded to the county on a number of grounds, including that the county had failed to justify the reasons exception for the wide range of uses proposed.

On remand, the port modified its application. The modified application sought only a reasons exception to permit a limited set of industrial uses on the land. Specifically, the port sought a reasons exception under OAR 660-004-0020(2) and OAR 660-004-0022(3)(a) for five particular uses:

“(1) Forestry and Wood Products processing, production, storage and transportation; (2) Dry Bulk Commodities transfer, storage, production and processing; (3) Liquid Bulk Commodities processing, storage, and transportation; (4) Natural Gas and derivative products, processing, storage, and transportation; and (5) Breakbulk storage, transportation, and processing.”

Relying primarily on analysis contained in a report denominated the “Mackenzie Report,” the port sought to demonstrate that the reason the policies underlying Goal 3 should not apply to preclude the requested uses is because ****1187** those uses are “significantly dependent on [the] unique resource” of a deepwater port. OAR 660-004-0022(3)(a).² The Mackenzie Report explained:

“Uses with foreign trade markets and marine-served domestic markets for products that are shipped by marine vessel are, by definition, reliant on deepwater port facilities. Table 2 demonstrates that each of the five proposed uses for [the Port Westward expansion] involve foreign import/export operations and are thus dependent upon a ***633** deepwater port. The proposed uses will achieve a significant operational advantage due to deepwater port access with nearby storage yards. As the proposed uses are low-margin businesses, port proximity is necessary to minimize operational costs for both import/export and domestic shipping operations. An external benefit of these firms’ locations near port facilities is that locating their yards close to the port minimizes impacts on offsite transportation infrastructure.”

Further, the port contended, the other criteria for a reasons exception were met, including the requirement that “[a]reas that do not require a new exception cannot reasonably accommodate the use[s],” OAR 660-004-0020(2)(b), as well as the requirement that the “proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts,” OAR 660-004-0020(2)(d).

The county agreed that a reasons exception should be granted for the five proposed uses. The county looked to OAR 660-004-0022(3), as noted, a rule establishing particular exception requirements for the siting of industrial development on rural resource land. The county determined that the deepwater port at Port Westward was the type of “unique resource” that would permit an exception to Goal 3 for uses that are “significantly dependent” on a deepwater port: “[T]he approved uses each involve the act (or acts) of getting the subject goods processed, transferred, imported and/or exported via deepwater port and accordingly serve as a valid basis for taking an exception to Goal 3.” However, the county noted that opponents of the exception had legitimate concerns as to whether some of the approved uses when implemented might, in fact, lack the requisite dependence on a deepwater port. To account for those concerns, the county explained that, even though it did not construe the port’s application to seek approval for any nondependent uses—it characterized the port’s application as “self-limiting”—it would impose measures to safeguard against uses that did not actually depend on a deepwater port:

“To the extent opponents have expressed concern that future rural industrial Port tenant uses could potentially lack a nexus with the deepwater port at Port Westward, *634 and thereby undermine the basis for granting the exception, the Board finds that the terms of the Port’s application on remand is self-limiting in that the sole basis the Port has put forward is significant dependence on the deepwater port at Port Westward. Given that limitation, any potential tenant seeking to locate in the new expansion area would be limited not only to the five authorized uses, but to the five authorized uses in a form that would be significantly dependent on the deepwater port at Port Westward.

“Nevertheless, the Board acknowledges that the opponents’ concern is a reasonable one and notes that Condition 5 has accordingly been imposed for additional clarity. The condition requires that the five uses authorized be significantly dependent on and have demonstrated

access to the deepwater port at Port Westward. With that condition in place, the Board finds that the only rural industrial uses the approval authorizes in the new expansion area are those that will be significantly dependent **1188 on actual deepwater port usage at Port Westward.”

Addressing the requirements of OAR 660-004-0020(2)(b), the county determined that the proposed uses could not be “reasonably accommodated” instead by “areas that do not require a new exception.” It concluded that the relevant areas to consider for purpose of its analysis were the five other deepwater ports in Oregon, rejecting arguments that it must look to out-of-state sites, or to ports that were not deepwater ports. The county then found that the Port of Portland and the Port of Astoria were not viable alternative sites to accommodate the proposed uses because of space limitations and other constraints. It determined that the other three deepwater ports in Oregon—the Port of Coos Bay, the Port of Newport, and the Port of Tillamook—were not viable alternative sites that could reasonably accommodate the same uses because those sites were located too far from the Columbia River/M-84 marine highway corridor commerce. Addressing the Port of Coos Bay, the county explained:

“The Board finds that the Oregon International Port of Coos Bay is not a viable alternative. The Mackenzie Report explains that Coos Bay serves a completely different economic area because it is 200 nautical miles from the mouth of the Columbia River and does not serve Columbia *635 River/M-84 corridor commerce, and because it is 230 road miles from the Portland metropolitan area. The Mackenzie Report also notes that over 60% of Oregon’s manufacturing, warehousing, and transportation-based economy is located along the Columbia River Corridor. For commerce beyond Oregon, the confluence of national or regional waterways (Columbia River/M-84), freeways (I-5, I-84), and rail networks (Union Pacific and BNSF Class I rail lines) occurs at the metro area only 50 miles from Port Westward, but 230 road miles from Coos Bay. Based on that, the Mackenzie Report concludes that properties in Coos Bay are not economically comparable to Port Westward to serve the Columbia River Corridor economy. Accordingly, [the] Board concludes that the Oregon International Port of Coos Bay is not a viable alternative for the approved uses.”

The county explained that, because of similar reasoning based on location, the Port of Newport and the Port of Tillamook also were not sites that could reasonably accommodate the proposed uses. The Port of Tillamook, the county added,

was not suitable for an additional reason: it “entirely lacks maritime access.”

Addressing the requirements of OAR 660-004-0020(2)(d), the county determined that the “proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.” It found that the approval contained numerous conditions that could mitigate any adverse impacts from the proposed uses. Addressing the opponents’ argument that the proposed uses were too poorly defined to conduct a meaningful compatibility analysis, the county found that there was no evidence that the proposed uses would impact adjacent uses differently from the industrial uses currently permitted at Port Westward:

“Opponents have argued that the approved uses are so broad as to prohibit maintaining such compatibility, but have not explained how compatibility is not adequately maintained between one or more of those approved uses. The Board notes that under ORS 197.732(1)(a) and OAR 660-004-0020(2)(d) ‘compatible’ as a term ‘is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.’ The Board finds no evidence in the record of any meaningful distinction *636 between the anticipated impacts of the approved uses and those of existing industrial uses at Port Westward on neighboring uses and therefore finds that the approved uses will be similarly compatible with existing adjacent uses.”

Thereafter, the county adopted Ordinance No. 2018-1 granting the port’s application with conditions.

C. LUBA Proceedings

Riverkeeper appealed to LUBA, as did **1189 1000 Friends of Oregon.³ Pertinent to this proceeding, Riverkeeper contended that, for numerous reasons, the county erred in concluding that (1) the five proposed uses were “significantly dependent” on the “unique resource” of a deepwater port; (2) other sites that did not require an exception could not reasonably accommodate the five proposed uses; and (3) the proposed uses were compatible with adjacent uses, or could be made compatible with measures designed to address the impacts of the uses. Riverkeeper contended that, in reaching those conclusions, the county erroneously interpreted the applicable rules, and also that its determinations were not supported by substantial evidence.

LUBA rejected Riverkeeper’s first two assertions but agreed with the third. Regarding Riverkeeper’s challenges to the board’s “significantly dependent” determination, LUBA rejected the argument that, because certain components of the five uses might not, on their own, be significantly dependent on a deepwater port, that meant that the five uses as a whole were not significantly dependent. In particular, LUBA pointed to the analysis in the Mackenzie Report explaining how the five uses, including their components, were “highly dependent” on proximity to a deepwater port because of the low-margin operations involved:

“The port argues, and we agree, that petitioners have not demonstrated that the county erred in concluding that the five identified uses are ‘significantly dependent’ on the deepwater port, notwithstanding that some components of the uses could theoretically be separated from the others *637 and located elsewhere. As the Mackenzie Report notes, import/export uses of this kind are low-margin operations, and proximity to a deepwater port represents a significant operational and cost advantage. That advantage clearly extends to the import/export operation as a whole. Stated differently, an otherwise integrated import/export operation that is allowed to locate only storage yards and loading/unloading facilities at the port, but is forced to locate processing and other components of the operation elsewhere, could be at a significant economic disadvantage *** that may preclude siting any facilities entirely at Port Westward. We conclude that the county did not err in evaluating the five identified uses as a whole, including components such as processing or production of goods and commodities transshipped via the port, to determine whether the use as a whole is significantly dependent on the deepwater port.”

LUBA also rejected the contention that the board’s inclusion of Condition 5 (requiring a demonstration that any use allowed in the exception area is, in fact, significantly dependent on the deepwater port) meant that the county was, in effect, impermissibly deferring its finding regarding significant dependence until a later date. LUBA elaborated:

“However, we disagree that Condition 5 represents a deferral of findings of compliance with OAR 660-004-0022(3)(a). The county adopted several pages of findings intended to establish that uses authorized under the exception are limited to those that are significantly dependent on the port facility. Record 18-21. The county imposed Condition 5 only because opponents, including petitioners, expressed concerns that there were inadequate

safeguards to prevent approval of industrial uses that are not in fact significantly dependent on the port facility. That the county agreed to impose additional safeguards does not mean that the county deferred findings of compliance with OAR 660-004-0022(3)(a) to the permit stage.”

Addressing whether there were other sites not requiring an exception that could reasonably accommodate the five proposed uses, LUBA first rejected Riverkeeper’s argument that the county erred by limiting its consideration to the other deepwater port sites in Oregon. LUBA explained that, “because the exception is justified based *638 solely on the ‘unique resource’ of a deepwater port—in **1190 this case, a self-scouring deepwater port that requires no dredging in order to accommodate ocean-going cargo vessels—the county properly limited its analysis to alternative sites with access to a deepwater port.”

LUBA next addressed Riverkeeper’s contention that the county erred when it concluded that the three coastal ports could not reasonably accommodate the uses proposed for the expansion area because of their location outside the Columbia River corridor; Riverkeeper argued that it “is error under OAR 660-004-0022(3)(a) to reject an alternative site simply because it does not serve the same economic region as the preferred site.” Rejecting that argument, LUBA explained that, under OAR 660-004-0020(2)(b), the county was permitted to consider economic factors in determining whether other sites could reasonably accommodate the proposed uses and, further, that

“[p]art of what makes the Port Westward site a unique resource is its status as one of three deepwater ports along a primary maritime artery, connecting national and international markets within the Portland Metropolitan area, the state’s largest economic area. The three coastal ports are located hundreds of miles away from that economic area and serve very different and more isolated regional markets. We conclude that in conducting an alternative site analysis for industrial uses justified based on proximity to the ‘unique resource’ of a river or ocean port under OAR 660-004-0022(3)(a), the county is not required to evaluate other port sites in the state (or elsewhere) that serve entirely different economic markets.”

LUBA did not, however, accept the county’s decision in every respect. It determined that the county’s analysis regarding the compatibility between the proposed uses and adjacent uses was not supported by adequate findings or substantial evidence. Observing that the county inferred that the impacts

of the proposed uses would not adversely affect adjacent uses based on the types of impacts from past industrial uses, LUBA explained that the inference was not reasonable absent evidence that the impacts of the proposed uses would be comparable to the impacts of existing uses:

*639 “[T]he Port does not cite to any evidence supporting the county’s finding that the likely adverse impacts of the proposed uses are similar to the impacts of the existing industrial uses at Port Westward. The findings simply state that there is no evidence that the impacts would be different. However, the *absence* of evidence that the impacts would be different is not a basis to conclude that the impacts would be similar. The unsupported presumption that the impacts would be similar is the foundation for much of the county’s subsequent analysis. Because that presumption is not supported by substantial evidence, we agree with petitioners that remand is necessary to adopt more adequate findings regarding compatibility, supported by substantial evidence.”

(Emphasis in original.)

Board member Zamudio concurred in the decision “based on the facts that the exception is based on a single unique resource, the river port, the exception authorizes only those uses that are significantly dependent on the river port, and the exception area is uniquely situated by the river port.” She wrote separately to address several of her concerns with the county’s decision.

D. Issues and Arguments on Judicial Review

As noted, Riverkeeper has petitioned for judicial review of LUBA’s final order, and the port has cross-petitioned. Riverkeeper assigns error to LUBA’s determinations that (1) the county correctly determined that the five proposed uses are significantly dependent on the unique resources of a deepwater port and (2) the county correctly concluded that there were no other sites that could, without an exception, reasonably accommodate the proposed uses. The port assigns error to LUBA’s conclusion that the county’s determination regarding the compatibility of the proposed uses with adjacent uses was not supported by adequate findings or substantial evidence.

**1191 II. STANDARD OF REVIEW

In the order on review, LUBA did not engage in any factfinding under ORS 197.835(2), and, before us, neither

party contends that LUBA's order is unconstitutional. We therefore review LUBA's order to determine whether it is ***640** "unlawful in substance or procedure." ORS 197.850(9)(a); *Central Oregon Landwatch v. Deschutes County*, 285 Or. App. 267, 269, 396 P.3d 968 (2017). To the extent that the parties' assignments of error challenge LUBA's determinations as to whether substantial evidence supports the county's order, we review to assess whether LUBA correctly understood its role in conducting its review for substantial evidence. *Root v. Klamath County*, 260 Or. App. 665, 670, 320 P.3d 631 (2014).

III. ANALYSIS

A. Riverkeeper's Petition

1. Significant dependence

In its first assignment of error, Riverkeeper argues that LUBA erred in upholding the county's determination that the five proposed uses identified in the port's application are significantly dependent on the unique resource of a deepwater port. Specifically, Riverkeeper contends that LUBA erred in three different ways: (1) by misconstruing its arguments; (2) by misconstruing the "significant dependence" standard articulated in OAR 660-004-0022(3)(a); and (3) by rejecting the argument that the county impermissibly deferred a finding of significant dependence until a later time. The central thesis of Riverkeeper's arguments is that the approved uses are broad and contain subcategories of uses that, in and of themselves, could not be found (on this record, anyway) to be significantly dependent on a deepwater port. In Riverkeeper's view, OAR 660-004-0022(3)(a) required the county to separately analyze those subcategories of uses to determine whether they were significantly dependent on a deepwater port; further, the fact that the record would not support the conclusion that those subcategories are significantly dependent on a deepwater port means that the county erred in approving the application. Riverkeeper also contends that the county's imposition of Condition 5, requiring that the five uses allowed, in fact, be significantly dependent on a deepwater port, demonstrates that the county impermissibly deferred making a "significant dependence" determination.

Riverkeeper's arguments do not demonstrate that LUBA's order is "unlawful in substance." As to Riverkeeper's first point, having reviewed the record, we are not convinced ***641** that LUBA misunderstood the arguments that

Riverkeeper presented to it. As for Riverkeeper's remaining arguments, they appear to rest on a characterization of the county's decision that LUBA was not required to accept, given the plain terms of the decision. Riverkeeper's arguments appear to rest on the proposition that the county's exception allows for the five proposed uses in the broadest of terms. If that were the case, then Riverkeeper might be right that the county's "significant dependence" determination could not be sustained on this record. But, the county's decision, as LUBA recognized, is not so broad.

Specifically, the county construed the port's application to be "self-limiting," that is, to seek approval only for those uses that were in fact dependent on a deepwater port. With the application so construed, the county then found that the evidence demonstrated that those uses were dependent on a deepwater port based on the analysis in the Mackenzie Report explaining how the five proposed uses involved "low-margin" import and export operations that were "highly dependent" on access to a deepwater port. The county evaluated each of the five approved uses "as a whole" in determining significant dependence on a deepwater port, that is, the county interpreted the allowed use categories to require each use to be dependent upon port transportation services.

Finally, the county adopted an exception statement in its comprehensive plan that limited the allowed uses in the exception area to the five categories of uses that are significantly dependent on the deepwater port at Port Westward. The exception statement determined that "each of the five proposed uses for [Port Westward] involve foreign import/export operations and are thus dependent ****1192** upon a deepwater port." In addition, to ensure that any uses eventually allowed would comport with the county's narrow construction of the port's application (and the evidence that supported the approval of the application, as narrowly construed), the county imposed Condition 5.

When the county's decision is understood in that manner, Riverkeeper's arguments do not demonstrate any error in LUBA's rejection of Riverkeeper's arguments ***642** regarding the county's interpretation and application of OAR 660-004-0022(3)(b). Under OAR 660-004-0018(4)(a), when a local government takes a reasons exception, "plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception." ORS 197.732(1)(b) and the equivalent part of Statewide Planning Goal 2: Part II define an "exception" as "a comprehensive plan provision" that applies to specific

properties and avoids a goal requirement by meeting the standards for taking an exception. See *Waste Not of Yamhill County v. Yamhill County*, 240 Or. App. 285, 288, 246 P.3d 493 (2010) (“When a city or county wishes to adopt a property-specific plan provision that is inconsistent with a goal requirement, it approves an exception to that goal requirement as part of the comprehensive plan.”).

That is precisely what the county did in adopting an exceptions statement that approved the five categories of rural industrial uses—each of which has a storage and transportation component—while limiting those uses to ones that are “substantially dependent on a deepwater port and have demonstrated access rights to the dock.” The exceptions statement requires that any allowed use be integrated with the port operations through demonstrated access rights for the required storage and transportation components of the use and that the use be “substantially dependent” on Port Westward. That is sufficient to comply with the demands of OAR 660-004-0018(4)(a) and to rebut Riverkeeper’s contention that the use allowances were too broad or insufficient in form.

2. *Alternative sites analysis*

Riverkeeper next challenges LUBA’s determination that the county correctly determined that there was no alternative site that could accommodate the proposed uses without a goal exception, OAR 660-004-0020(2)(b). As we understand Riverkeeper’s argument, it contends that the county excluded from consideration other coastal ports that did not serve the Columbia River corridor, and yet the county never adequately explained why proximity to the Columbia River corridor was relevant to the inquiry of whether other sites could reasonably accommodate the *643 proposed uses. Riverkeeper further contends that LUBA’s decision upholding the county’s determination that it need not take into account the ocean ports is inconsistent with OAR 660-004-0020(2)(b) because, in its view, “[n]othing in the text of [the rule] limits the ‘reasonable accommodation’ analysis to sites located within the same geographic area or economic market.” Riverkeeper asserts that LUBA impermissibly relied on findings and conclusions not contained in the county’s decision when it addressed the fact that it is permissible under the rule to rely on economic factors when evaluating the viability of a proposed alternative site.

Riverkeeper’s contentions do not convince us that LUBA’s decision is “unlawful in substance” in upholding the county’s determination regarding coastal ports. First, contrary to Riverkeeper’s arguments, the terms of OAR 660-004-0020(2)

(a) and (b) indicate that a local government may limit its consideration of alternative sites to ones that are near the proposed exception area. That provision states, in full:

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

“(a) ‘Reasons justify why the state policy embodied in the applicable goals should not apply.’ The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the **1193 amount of land for the use being planned and why the use requires a location on resource land;

“(b) ‘Areas that do not require a new exception cannot reasonably accommodate the use.’ The exception must meet the following requirements:

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

“(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed *644 use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

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

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

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

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

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

OAR 660-004-0020(2)(a), (b) (emphasis added).⁴

***645** The italicized wording in OAR 660-004-0020 (2) (a) and (b) explains that a local government need initially examine generally whether “similar types of areas in the vicinity” could reasonably accommodate the proposed use or uses, and need not examine specific locations. The use of the word “vicinity” suggests that a local government may, consistent with the rule, limit its consideration of alternative sites to those that are near the proposed exceptions area. The common meaning of “vicinity” in this context is “[t]he quality or state of being near: nearness, propinquity, proximity” or, along the same lines, “[a] surrounding area or district: locality, neighborhood.” *Webster’s Third New Int’l Dictionary* 2550 (unabridged ed. 2002). Although the rule specifies that a local government must conduct a “site specific comparison” if a party to the proceeding suggests a specific site for consideration, the terms of the rule do not compel the conclusion that that obligation extends to consideration of specific sites outside of the “vicinity” of the proposed exceptions.

****1194** In any event, even if a party’s proposal of a specific site can operate to require consideration of sites outside the “vicinity” of a proposed exception area, a local government’s obligation to conduct a site-specific comparison between the proposed exceptions area and another site proposed by a party to the proceeding arises only when another party to the proceeding “describes specific sites that can *more reasonably* accommodate the proposed use.” OAR 660-004-0020 (2)(b)(C) (emphasis added). The rule specifies

further that the local government may take into account “economic factors” in evaluating whether alternative sites are ones that could reasonably accommodate a particular use. OAR 660-004-0020(2)(b). Here, the county found, based on the analysis in the Mackenzie Report, that the coastal ports were not “economically comparable” to Port Westward, given their distance from the Columbia River Corridor market that Port Westward serves and, based on that finding, did not conduct further analysis regarding the coastal ports’ ability to accommodate the uses proposed for the requested exception area.⁵

***646** Riverkeeper has not persuaded us that that analysis contravenes the requirements of OAR 660-004-0020(2)(b). Essentially, assuming that the county was obliged to consider the ocean ports although they are outside the “vicinity” of Port Westward, the county’s finding that the coastal ports were not “economically comparable” to Port Westward effectively foreclosed on this record a conclusion that those proposed alternative sites are ones that “can more reasonably accommodate” the proposed uses. For that reason, the county’s decision not to engage in further analysis of those sites’ capacity to accommodate the proposed uses was not inconsistent with the requirements of the rule. Therefore, we reject Riverkeeper’s contention that LUBA’s decision to uphold the county’s alternative sites analysis is “unlawful in substance.”

B. *The Port’s Cross-Petition*

In its cross-petition, the port assigns error to LUBA’s conclusion that the county’s determination that the proposed uses are “compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts” was not supported by adequate findings. The port contends that LUBA misinterpreted the county’s findings on the point and, based on that misinterpretation, erroneously concluded that the county’s findings were not adequate to support its conclusion regarding the compatibility of the proposed uses with adjacent uses.

We are not convinced. We understand LUBA’s rejection of the county’s compatibility determination to turn on an application of the substantial evidence standard of review. LUBA, in essence, determined that the county’s compatibility determination was not supported by substantial evidence because it turned, by its terms, on a finding that there is “no evidence” that the impacts of the proposed uses would be different from the impacts of the existing uses: “The Board

finds no evidence in the record of any meaningful distinction between the anticipated impacts of the approved uses and *647 those existing industrial uses at Port Westward on neighboring uses, and therefore finds that the approved uses will be similarly compatible with existing adjacent uses.” But, as LUBA correctly recognized, an absence of evidence about the differences between impacts from current and proposed uses is not, by itself, a basis on which to logically infer that the impacts are the same.

As noted above, our task in evaluating LUBA’s application of the substantial evidence standard of review is to determine whether LUBA correctly understood its role in applying that standard. *Root*, 260 Or. App. at 670, 320 P.3d 631. We may not displace its decision unless “there is no evidence to support the finding or if the evidence in the case **1195 is ‘so at odds with LUBA’s evaluation that a reviewing court could infer that LUBA had misunderstood or misapplied its scope of review.’ ” *Citizens for Responsibility v. Lane County*, 218 Or. App. 339, 345, 180 P.3d 35 (2008) (quoting *Younger v. City of Portland*, 305 Or. 346, 359, 752 P.2d 262 (1988)). Although

the port correctly points out that the county’s compatibility determination was based on more expansive findings than that on which LUBA focused, the county nonetheless expressly tethered its compatibility determination to its factual finding that there was “no evidence” that impacts of the proposed uses would be different from those of the existing uses. Under those circumstances, LUBA’s decision to remand does not reflect a misunderstanding of its role on substantial evidence review, or otherwise demonstrate legal error.

IV. CONCLUSION

For the foregoing reasons, the parties have not convinced us that LUBA erred in any respect.

Affirmed on petition and cross-petition.

All Citations

297 Or.App. 628, 443 P.3d 1184

Footnotes

- 1 For each of the four criteria listed in OAR 197.732(2)(c), OAR 660-004-0020(2) describes in greater detail the analysis a local government must undertake in determining whether the criteria are met.
- 2 OAR 660-004-0022(3) provides, in relevant part:
 “Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:
 “(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports.”
- 3 1000 Friends of Oregon is not a party to this judicial review proceeding. Before LUBA, the arguments of Riverkeeper and 1000 Friends had significant overlap. References to arguments made by Riverkeeper below at times encompass overlapping arguments by 1000 Friends.
- 4 We note that the exception statement is part of a “comprehensive plan,” defined by ORS 197.015(5) to be “a generalized, coordinated land use map and policy statement *** that interrelates all functional and natural systems and activities relating to the use of lands ***. *** ‘Comprehensive’ means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan.” We need not decide whether the alternative lands evaluated in a plan’s exception statement are necessarily confined to the same geographic area as the plan so as to qualify the plan as “comprehensive” and its provisions as interrelated.
- 5 Under OAR 660-004-0020(2)(a) and (b), alternative lands are those that can “reasonably accommodate the proposed use.” The “proposed use” is the use specified in the reasons exception, and the suitability of land as an alternative depends upon whether it can satisfy that specified land use need. Where the need is for port-related land on the Columbia River, as may be the case here, the evaluated alternative lands would seem to be confined to those proximate to a port on the river that could “reasonably accommodate the proposed use.”

November 14, 2019

365 Or. 721

(This disposition is referenced in the Pacific Reporter.)
Supreme Court of Oregon.

(297 Or. App. 628)

Opinion
Review Denied

Attachment 4

COLUMBIA RIVERKEEPER

v.

COLUMBIA COUNTY

(A169901)(So66897)

|

Nakamoto, J., would allow.

All Citations

365 Or. 721, 453 P.3d 551 (Table)

End of Document

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K12-PA 13-02 PLNG01

COLUMBIA COUNTY
Land Development Services



File No. _____

ST. HELENS, OR 97051
230 Strand St.
Direct (503) 397-1501
www.co.columbia.or.us

LUBA REMAND—REQUEST FOR REVIEW

Attachment 5

APPLICANT / AGENT:

Name: Port of Columbia County
Mailing Address: 100 E Street, Columbia City, OR 97018
Phone Number(1): (503) 928-3193 Phone Number (2): (503) 397-2888
Email (1): jensen@portofcolumbiacounty.org or hayes@portofcolumbiacounty.org Email (2): _____

PROPERTY OWNER: Same As Above, or

Name: _____
Mailing Address: _____
Phone Number(1): _____ Phone Number (2): _____
Email (1): _____ Email (2): _____

PROPERTY SITE ADDRESS: Not assigned

SUBJECT PROPERTY: See attached

<u>8420-00-00200</u>	_____	_____	_____
Map / Tax Lot	Tax Account No.	Zone	Acres
_____	_____	_____	_____
Map / Tax Lot	Tax Account No.	Zone	Acres
_____	_____	_____	_____
Map / Tax Lot	Tax Account No.	Zone	Acres

TOTAL ACRES: _____

PREVIOUS LOCAL FILE NO.: PA 13-02/ZC 13-01 **LUBA CASE NO.:** 2018-020

PROJECT DESCRIPTION: Comprehensive Plan Map Amendment (Agricultural Resource to Resource Industrial), rezone (PA-80 to RIPD) and exception to Goal 3.

ASSIGNMENTS OF ERROR TO BE REVIEWED: Compatibility Analysis under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d).

NOTE: Please attach all supplemental information , written narrative, maps and site plans that you would like to include into the record.

ADDITIONAL COMMENTS: Supplement to the Mackenzie Report "Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change Alternatives Analysis" (April 10, 2017) addressing ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d)

to be submitted under separate cover in one to two weeks

CERTIFICATION:

I hereby certify that I am the property owner, or authorized representative, and that all of the above statements, and all other documents submitted, are accurate and true to the best of my knowledge and belief.

Spencer Q Parsons



8/18/2020

Print Name

Signature

Date

Print Name

Signature

Date

+++++
Planning Department Use Only

Date Rec'd. _____

Accela Record No.: _____

Fee: _____

Receipt No. _____

Staff: _____

File No. _____



2534 Sykes Road, Ste C
St Helens, OR 97051
Phone: (503)397-3537 / Fax: (503)397-4851

TITLE PLANT RECORDS REPORT Report of Requested Information from Title Plant Records

Port Of St. Helens
P.O. Box 598
St. Helens, OR 97051

Customer Ref.: _____
Order No.: 473817000137
Effective Date: February 13, 2017 at 08:00 AM
Fee(s):

The information contained in this report is furnished by Tigor Title Company of Oregon (the "Company") as an information service based on the records and indices maintained by the Company for the county identified below. THIS IS NOT TITLE INSURANCE NOR IS IT A PRELIMINARY TITLE REPORT OR A COMMITMENT FOR TITLE INSURANCE. No examination has been made of the Company's records, other than as specifically set forth herein. Liability for any loss arising from errors and/or omissions is limited to the lesser of the fee paid or the actual loss to the customer, and the Company will have no greater liability by reason of this report. THIS REPORT ("THE REPORT") IS SUBJECT TO THE LIMITATIONS OF LIABILITY STATED BELOW, WHICH LIMITATIONS OF LIABILITY ARE A PART OF THIS REPORT

County and Time Period

This report is based on a search of the Company's title plant records for County of Columbia, State of Oregon, for the time period **from February 13, 1997 through February 13, 2017** (with the through date being "the Effective Date").

Ownership and Property Description

The Company reports the following, as of the Effective date and with respect to the following described property ("the Property"):

Owner. The apparent vested owner of the Property is:

Port of Saint Helens, a Municipal Corporation

Premises. The Property is:

(a) Street Address:

80997, 81200 and 81566 Kallunki Road, Saint Helens, OR 97051

(b) Legal Description:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Encumbrances

THE FOLLOWING LIST OF ENCUMBRANCES (CHECK THE APPLICABLE BOX):

- INCLUDES NON-MONETARY AND MONETARY ENCUMBRANCES.**
 INCLUDES ONLY MONETARY ENCUMBRANCES.

Encumbrances. For the above stated time period, the Company reports that, as of the Effective Date, the Property appears to be subject to the following encumbrances, not necessarily shown in order of priority:

EXCEPTIONS

1. Regulations, including levies, liens, assessments, rights of way and easements of Beaver Drainage Improvement.
2. Any adverse claim based upon the assertion that:
 - a) Said Land or any part thereof is now or at any time has been below the highest of the high watermarks of Columbia River and Bradbury Slough, in the event the boundary of said Columbia River and Bradbury Slough has been artificially raised or is now or at any time has been below the high watermark, if said Columbia River and Bradbury Slough is in its natural state.
 - b) Some portion of said Land has been created by artificial means or has accreted to such portion so created.
 - c) Some portion of said Land has been brought within the boundaries thereof by an avulsive movement of Columbia River and Bradbury Slough, or has been formed by accretion to any such portion.
3. The rights of the public and governmental bodies for fishing, navigation and commerce in and to any portion of the Land herein described, lying below the high water line of the Bradbury Slough and Columbia River.

The right, title and interest of the State of Oregon in and to any portion lying below the high water line of Bradbury Slough and Columbia River.
4. The rights of the public and governmental bodies for fishing, navigation and commerce in and to any portion of the Land herein described, lying below the high water line of the Columbia River and Bradbury Slough.

The right, title and interest of the State of Oregon in and to any portion lying below the high water line of Columbia River and Bradbury Slough.
5. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Granted to: John Drainage District
Purpose: 20 foot right of way for dike and levee
Recording Date: April 5, 1915
Recording No: Book 21, page 520
Affects: Exact location not disclosed
6. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Granted to: Columbia Agricultural Co.
Purpose: levee and wagon road

Recording Date: March 22, 1916
Recording No: Book 23, page 82
Affects: Exact location not disclosed

7. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document, including the terms and provisions thereof;

Reserved by: Columbia Agricultural Co.
Purpose: right of way
Recording Date: August 16, 1920
Recording No: Book 29, page 609
Affects: Exact location not disclosed

8. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document, including the terms and provisions thereof;

Reserved by: William Johnson and Jennie Johnson
Purpose: right of way
Recording Date: January 21, 1922
Recording No: Book 32, page 384
Affects: Exact location not disclosed

9. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Granted to: Beaver Drainage District
Purpose: right of way to build, construct, reconstruct and repair levees, embankments, revetments, canals, ditches and other incidental works appurtenant to the said Beaver Drainage District
Recording Date: November 9, 1937
Recording No: Book 61, page 394
Affects: Exact location not disclosed

10. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Granted to: United States of America
Purpose: right of way and levees
Recording Date: December 16, 1937
Recording No: Book 61, page 571
Affects: Exact location not disclosed

11. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Granted to: Beaver Drainage District
Purpose: right of way to build, construct, reconstruct and repair levees, embankments, revetments, canals, ditches and other incidental works appurtenant to the said Beaver Drainage District
Recording Date: January 5, 1938
Recording No: Book 61, page 623
Affects: Exact location not disclosed

12. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Ticor Title Company of Oregon
Order No. 473817000137

Granted to: United States of America
Purpose: right of way and levees
Recording Date: August 13, 1939
Recording No: Book 64, page 471
Affects: Exact location not disclosed

13. A lease with certain terms, covenants, conditions and provisions set forth therein.

Dated: August 10, 1967
Lessor: The Port of St. Helens, a municipal corporation
Lessee: Westward Properties, Inc., a California corporation
Recording Date: August 17, 1967
Recording No: Book 166, page 154

Memorandum of Lease recorded May 9, 1974 in Book 196, page 117, Deed Records of Columbia County, Oregon.

Amendment to Lease, including the terms and provisions thereof

Recording Date: June 8, 2006
Recording No.: 2006-007492

Amendment of Master Lease, including the terms and provisions thereof

Recording Date: September 4, 2008
Recording No.: 2008-008607

Amendment to Master Lease, including the terms and provisions thereof

Recording Date: July 7, 2010
Recording No.: 2010-005597

14. Right of First Refusal, including the terms and provisions thereof, as contained in Memorandum Lease,

In favor of: Portland General Electric Company
Recorded: May 9, 1974
Recording No.: Book 196, page 117

15. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document, including the terms and provisions thereof;

Reserved by: Port of St. Helens
Purpose: right of re-entry
Recording Date: May 9, 1974
Recording No: Book 196, page 122
Affects: Parcel 2 only - Exact location not disclosed

Amendment, including the terms and provisions thereof

Recording Date: June 8, 2006
Recording No.: 2006-007553

16. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Granted to: The Port of St. Helens, Portland General Electric Company and KB Pipeline Company
Purpose: right of way
Recording Date: June 27, 2000
Recording No: 00-06319
Affects: see drawing attached to this easement for location

17. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Granted to: Beaver Drainage Improvement Company, an Oregon District Improvement Non Profit Corporation
Purpose: right of way
Recording Date: February 16, 2005
Recording No: 2005-002243

18. Easement(s) for the purpose(s) shown below and rights incidental thereto, including the terms and provisions thereof, as granted in a document:

Granted to: Oregon Department of Energy
Purpose: conservation easement
Recording Date: February 22, 2005
Recording No: 2005-002419

19. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Between: Port of St. Helens, a municipal corporation of the State of Oregon and Columbia County, a political subdivision of the State of Oregon
Recording Date: October 17, 2005
Recording No: 2005-013779

20. Subject to an Easement over, on and across the ammunition spur tract between Stations 10+30 and 13+83, also between Stations 8+10 and 8+25.

21. Roadway permit granted to Columbia County, including the terms and provisions thereof, as disclosed and described Deed from United States of America to Port of St. Helens, recorded March 31, 1966 in Book 161, page 122, Deed Records of Columbia County, Oregon.

22. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Sublease
Lessor: Portland General Electric Company, an Oregon corporation
Lessee: Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No: 2006-007491

Ticor Title Company of Oregon
Order No. 473817000137

Said Lessor's interest was subsequently assigned to the Port of St. Helens, a municipal corporation of the State of Oregon by the following:

Amended of Lease, including the terms and provisions thereof,
Recording Dated: June 8, 2006
Recorded No.: 2006-007492
Records of Columbia County, Oregon

Assignment of the Lessee's interest under said lease,

Assigned to: Cascade Kelly Holdings LLC
Recording Date: December 23, 2009
Recording No: 2009-011493

23. Memorandum of Rail Easement, including the terms and provisions thereof,

Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No.: 2006-007493
Records of Columbia County, Oregon.

Re-Recording Date: July 6, 2006
Re-Recording No: 2006-008865

First Amendment, including the terms and provisions thereof,
Recorded: February 10, 2009
Recording No.: 2009-001518

24.

24. Memorandum of Natural Gas Easement, including the terms and provisions thereof,
Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No.: 2006-007494
Records of Columbia County, Oregon
25. Memorandum of Electrical Easement, including the terms and provisions thereof,
Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No.: 2006-007495
Records of Columbia County, Oregon
26. Memorandum of Road Easement, including the terms and provisions thereof,
Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No.: 2006-007496
Records of Columbia County, Oregon
27. Memorandum of Telecommunications Easement, including the terms and provisions thereof,
Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No.: 2006-007497
Records of Columbia County, Oregon
28. Memorandum of Pipe Line Easement, including the terms and provisions thereof,
Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No.: 2006-007498
Records of Columbia County, Oregon
29. Amendment of Deed, including the terms and provisions thereof
Between: Portland General Electric and Port of St. Helens
Recording Date: June 8, 2006
Recording No.: 2006-007553
30. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: Clatskanie People's Utility District
Purpose: right of way
Recording Date: June 26, 2006
Recording No: 2006-008436
Affects: see drawing attached to document

31. Memorandum of Grain Transfer Easement, including the terms and provisions thereof,

Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No.: 2006-008863
Records of Columbia County, Oregon

32. Memorandum of Storm Water Easement, including the terms and provisions thereof,

Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: June 8, 2006
Recording No.: 2006-008864
Records of Columbia County, Oregon

33. Memorandum of Prime Landlord's Consent and Agreement, including the terms and provisions thereof,

Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
Recording Date: March 28, 2007
Recording No.: 2007-004298
Records of Columbia County, Oregon.

34. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not
limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status,
disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or
federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set
forth in the document

Executed by: Port of St. Helens, a municipal corporation of the State of Oregon
Recording Date: August 2, 2007
Recording No: 2007-010161

35. Memorandum of Fire Suppression Easement, including the terms and provisions thereof,

Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
For: fire suppression
Recording Date: September 21, 2007
Recording No.: 2007-012217
Records of Columbia County, Oregon

36. Memorandum of Stormwater Pipe Easement, including the terms and provisions thereof,

Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
For: stormwater pipe
Recording Date: September 21, 2007
Recording No.: 2007-012218
Records of Columbia County, Oregon

37. Memorandum of Pipeline easement, including the terms and provisions thereof,
Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
For: pipeline
Recording Date: September 21, 2007
Recording No.: 2007-012219
Records of Columbia County, Oregon
38. Memorandum of Vapor Recovery Easement, including the terms and provisions thereof,
Between: Port of St. Helens, an Oregon municipal corporation and Portland General Electric Company,
an Oregon corporation and Cascade Grain Products, LLC, an Oregon limited liability company
For: vapor recovery
Recording Date: October 12, 2007
Recording No.: 2007-013014
Records of Columbia County, Oregon
39. A lease with certain terms, covenants, conditions and provisions set forth therein.
Dated: July 11, 2007
Lessor: The Port of St. Helens
Lessee: Clatskanie Peoples' Utility District
Recording Date: May 16, 2008
Recording No: 2008-004915
Affects: Parcel 3
40. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
Granted to: Clatskanie People's Utility District
Purpose: right of way
Recording Date: March 26, 2008
Recording No: 2008-002965
Affects: Parcel 1
41. Development and Maintenance Agreement, including the terms and provisions thereof,
Between: Columbia County, a political subdivision of the State of Oregon and Port of St. Helens, a
municipal corporation of the State of Oregon and Portland General Electric Company, an Oregon
corporation
Recording Date: August 27, 2008
Recording No.: 2008-008403
Records of Columbia County, Oregon.
42. Construction Permit, including the terms and provisions thereof
Recording Date: August 27, 2008
Recording No.: 2008-008405
43. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not
limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status,
disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender
expression, medical condition or genetic information, as set forth in applicable state or federal laws,

except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: August 27, 2008
Recording No: 2008-008406

44. A financing statement as follows:

Debtor: Port of St. Helens
Secured Party: State of Oregon, acting by and through its Department of Transportation
Recording Date: February 10, 2009
Recording No: 2009-001520

45. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$1,865,000,000.00
Dated: February 15, 2013
Trustor/Grantor: Cascade Kelly Holdings, LLC, an Oregon limited liability company
Trustee: Ticor Title Company
Beneficiary: Bank of America, N.A.
Recording Date: February 19, 2013
Recording No.: 2013-001229
Affects Parcel 2 and Includes Additional Property

The Deed of Trust set forth above is purported to be a "Credit Line" Deed of Trust. It is a requirement that the Trustor/Grantor of said Deed of Trust provide written authorization to close said credit line account to the Lender when the Deed of Trust is being paid off through the Company or other Settlement/Escrow Agent or provide a satisfactory subordination of this Deed of Trust to the proposed Deed of Trust to be recorded at closing.

First Amendment to Line of Credit, the terms and provisions of said deed of trust as therein provided

Executed by: Cascade Kelly Holdings LLC, an Oregon limited liability company and Bank of America, N.A.
Recording Date: March 14, 2014
Recording No: 2014-001320

46. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: March 28, 2013
Recording No: 2013-002514

47. Easement Agreement, including the terms and provisions thereof

Granted to: Port of St. Helens
Purpose: pipeline
Recording Date: January 12, 2015
Recording No: 2015-000188

Ticor Title Company of Oregon
Order No. 473817000137

48. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Clatskanie Peoples' Utility District
Purpose: right of way for utilities
Recording Date: October 13, 2015
Recording No: 2015-008722
Affects: Exact location not disclosed

49. Unrecorded easements for railroad tracks as disclosed by Survey issued by David Evans & Associates, Inc., dated February 7, 2013 as Project #GLPA0000-0001.

General Index Liens against Named Party

For the above stated county and time period, and as of the Effective Date, with respect to the following named party or parties:

Port of St. Helens, Portland General Electric Company, Cascade Grain Products, LLC, Cascade Kelly Holdings, LLC and Clatskanie Peoples' Utility District

the Company reports that the following matters in its general index (index of matters that are not property specific but may give rise to a lien on any real property of the debtor in the county) may be unsatisfied, including such matters as judgments, federal tax liens, state warrants or orders and county tax warrants:

None

Recorded Documents

[If no information appears in this section, the section is intentionally omitted.]

End of Reported Information

There will be additional charges for additional information or copies. For questions or additional requests, contact:

Denise Blanchard

FAX

Denise.Blanchard@ticortitle.com

Ticor Title Company of Oregon
2534 Sykes Road, Ste C
St Helens, OR 97051

EXHIBIT "A"
Legal Description

PARCEL 1:

A parcel of land in Sections 15, 16, 21, 22 and 23, Township 8 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, described as follows:

Beginning at the East quarter corner of said Section 21; thence South 89°37' West, 1780.20 feet to the centerline of a county road; thence North 16°36' West, 1188.39 feet along the said centerline; thence North 45°39' West, 1928.31 feet; thence North 5°23' West, 1472.77 feet; thence North 6°09' East, 385.00 feet; thence North 55°05' West, 128.00 feet; thence Northwesterly to the low water line of the Columbia River; thence Northeasterly and Southeasterly in the low water line, 11,300 feet, more or less, to the East line of said Section 22, which is 2,400 feet North of the East quarter corner of said Section 22; thence South along the said East line, 1109.60 feet to the Northeasterly right of way line of a railroad spur to the ammunition storage area; thence South 45°39' East, 2141.95 feet along said right of way; thence along a 5679.65 foot radius curve to the left, through a central angle of 5°00' for a distance of 495.64 feet; thence South 50°39' East 300.00 feet; thence along a 769.02 foot radius curve to the left, through a central angle of 66°42'10" for a distance of 895.28 feet; thence North 62°38'50" East 95.00 feet to the Northwesterly right of way of the Spokane Portland and Seattle Railway; thence Southwesterly 367.60 feet along said Northwesterly right of way; thence from a tangent of South 81°13'10" West along a 869.02 foot radius curve to the right, through a central angle of 48°07'50" for a distance of 730.00 feet; thence North 50°39' West 300.00 feet; thence along a 5779.65 foot radius curve to the right, through a central angle 5°00' for a distance of 504.37 feet; thence North 45°39' West 865.95 feet; thence West 86.95 feet to a point 300.00 feet North and 760.00 feet East of the West quarter corner of said Section 23; thence North 85.16 feet; thence North 45°39' West 1707.40 feet; thence South 89°37' West, 1795.60 feet; thence South 0°04' East 454.00 feet; thence South 89°37' West 960.00 feet; thence South 0°04' East, 1148.00 feet; thence South 89°37' West, 2113.80 feet to the point of beginning.

EXCEPTING THEREFROM the following described property, conveyed to Portland General Electric by instrument recorded November 9, 1974 in Book 196, page 122, Deed Records of Columbia County, Oregon, now known as Parcels 1 and 2 of Partition 2007-28, recorded September 25, 2007 as Fee Number 2007-012334, Records of Columbia County, Oregon.

ALSO EXCEPTING THEREFROM the following described property:

A parcel of land in the Southwest quarter of Section 15, Township 8 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, being more particularly described as follows:

Commencing at a ½ inch, inside diameter iron pipe, 2 feet above ground level, which marks the most Easterly corner of an 120.47 acre, more or less, parcel of land recorded in Book 196, page 122, Deed Records of Columbia County, Oregon; thence South 64°01'20" East for a distance of 1139.29 feet to a 5/8 inch rebar monument and the point of beginning of the parcel to be described; thence North 43°47'31" West for a distance of 2703.11 feet to a 5/8 inch rebar monument; thence North 46°12'29" East for a distance of 794.99 feet to a 5/8 inch rebar monument; thence South 40°28'00" East for a distance of 404.17 feet to a 5/8 inch rebar monument; thence South 35°48'19" East for a distance of 1226.73 feet to a 5/8 inch rebar monument; thence South 44°57'31" East for a distance of 621.68 feet to a 5/8 inch rebar monument; thence South 50°17'46" East for a distance of 696.83 feet to a 5/8 inch rebar monument; thence South 64°30'35" West for a distance of 729.59 feet to a 5/8 inch rebar monument and the point of beginning.

EXHIBIT "A"
Legal Description

ALSO EXCEPTING THEREFROM the following described parcel:

A parcel of land located in the Southeast and Southwest quarters of Section 15 and the Northeast and Northwest quarters of Section 22, Township 8 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, described as follows:

Beginning at the West quarter corner of said Section 22; thence North 31°25'41" East, 3915.81 feet to ½" iron pipe marking the most Easterly corner of that parcel of land described in Deed Book 196, page 122; thence South 60°01'20" East, 1139.29 feet to a 5/8" iron rod with yellow plastic cap inscribed "PLS 2180" marking the most Southerly corner of the "Cascade Grain Lease Boundary"; thence along the Southeasterly line of said "Cascade Grain Lease Boundary" North 64°30'35" East, 518.93 feet to the point of beginning; thence continuing along said Southeasterly line North 64°30'35" East, 210.66 feet to a 5/8" iron rod with yellow plastic cap inscribed "PLS 2180" marking the most Easterly corner of said "Cascade Grain Lease Boundary; thence leaving said Southeasterly line South 57°38'37", East, 514.97 feet; thence South 46°12'14" West, 323.25 feet; thence North 43°47'46" West, 566.17 feet to the point of beginning.

PARCEL 2:

A parcel of land in the Southwest quarter of Section 15, Township 8 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, being more particularly described as follows:

Commencing at a ½ inch, inside diameter iron pipe, 2 feet above ground level, which marks the most Easterly corner of an 120.47 acre, more or less, parcel of land recorded in Book 196, page 122, Deed Records of Columbia County, Oregon; thence South 64°01'20" East for a distance of 1139.29 feet to a 5/8 inch rebar monument and the point of beginning of the parcel to be described; thence North 43°47'31" West for a distance of 2703.11 feet to a 5/8 inch rebar monument; thence North 46°12'29" East for a distance of 794.99 feet to a 5/8 inch rebar monument; thence South 40°28'00" East for a distance of 404.17 feet to a 5/8 inch rebar monument; thence South 35°48'19" East for a distance of 1226.73 feet to a 5/8 inch rebar monument; thence South 44°57'31" East for a distance of 621.68 feet to a 5/8 inch rebar monument; thence South 50°17'46" East for a distance of 696.83 feet to a 5/8 inch rebar monument; thence South 64°30'35" West for a distance of 729.59 feet to a 5/8 inch rebar monument and the point of beginning.

PARCEL 3:

A parcel of land located in the Southeast and Southwest quarters of Section 15 and the Northeast and Northwest quarters of Section 22, Township 8 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, described as follows:

Beginning at the West quarter corner of said Section 22; thence North 31°25'41" East, 3915.81 feet to ½" iron pipe marking the most Easterly corner of that parcel of land described in Deed Book 196, page 122; thence South 60°01'20" East, 1139.29 feet to a 5/8" iron rod with yellow plastic cap inscribed "PLS 2180" marking the most Southerly corner of the "Cascade Grain Lease Boundary"; thence along the Southeasterly line of said "Cascade Grain Lease Boundary" North 64°30'35" East, 518.93 feet to the point of beginning; thence continuing along said Southeasterly line North 64°30'35" East, 210.66 feet to a 5/8" iron rod with yellow plastic cap inscribed "PLS 2180" marking the most Easterly corner of said "Cascade Grain Lease Boundary; thence leaving said Southeasterly line South 57°38'37", East, 514.97 feet; thence South 46°12'14" West, 323.25 feet; thence North 43°47'46" West, 566.17 feet to the point of beginning.

LIMITATIONS OF LIABILITY

"CUSTOMER" REFERS TO THE RECIPIENT OF THIS REPORT.

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July 22, 2020

SENT VIA EMAIL

Karen Schminke, Columbia County Land Development Services Director
Matt Laird, Columbia County Land Development Services Planning Manager

Re: Port of Columbia County's application on remand to address compatibility

Dear Ms. Schminke and Mr. Laird:

The Port of Columbia County ("Port") has filed with Land Development Services a request that Columbia County initiate remand proceedings for File No. PA 13-02/ZC13-01.

As you are aware, the Oregon Land Use Board of Appeals ("LUBA") remanded the Board of Commissioners' approval (Ordinance No. 2018-1) for additional compatibility findings under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d).

On remand, the Port submits for the County's evaluation the enclosed "Port Westward Goal Exception, Comprehensive Plan Amendment and Zone Change Supplemental Analysis: Land Use Compatibility" ("Compatibility Report"), which provides the compatibility analysis called for by LUBA and the Court of Appeals in their decisions *Columbia Riverkeeper v. Columbia County*, 78 Or LUBA 547 (2018) and *Columbia Riverkeeper v. Columbia County*, 297 Or App 628 (2019).¹

The single remaining issue to be addressed is whether the five port and dock dependent uses identified by the Port are compatible with existing adjacent uses or can be made compatible by the imposition of mitigation measures by the County. As the Compatibility Report explains, all of the proposed uses can be rendered compatible with the existing adjacent uses in the Port Westward Area.

As a reminder, the following five uses are those that the Port has identified for the Port Westward expansion area:

- Forestry and Wood Products processing, production, storage, and transportation
- Dry Bulk Commodities transfer, storage, production, and processing
- Liquid Bulk Commodities processing, storage, and transportation

¹ Columbia Riverkeeper's Petition for Review of the Court of Appeals decision was denied by the Oregon Supreme Court. 365 Or 721 (2019).

July 22, 2020

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- Natural Gas and derivative products, processing, storage, and transportation
- Breakbulk storage, transportation, and processing

Any use looking to site in the expansion area would additionally need to be dependent of Port Westward's deepwater port and existing dock facilities in order to qualify for siting in the expansion area.

The Port of St. Helens has again retained Beery, Elsner & Hammond, LLP ("BEH") for representation through the remand process. BEH is submitting the accompanying materials in support of the Port's application on remand to address compatibility.

With these materials, compatibility has been addressed in a manner consistent with the direction provided by LUBA and the Court of Appeals.

Thank you, and please do not hesitate to contact us if questions arise while you are reviewing the materials or if you need any additional information throughout the process.

Sincerely,



Spencer Q. Parsons

Enclosures



Applicable Criteria on Remand

ORS 197.732(2)(c)(D)
OAR 660-004-0020(2)(d)

Introduction and Background

In 2013, the Port of Columbia County (the “Port”) applied for approval from Columbia County (the “County”) to rezone land adjacent to the Port Westward Industrial Park from Primary Agriculture-80 Acres (“PA-80”) to Resource Industrial-Planned Development (“RIPD”), for incorporation into the Industrial Park. The application requested a Comprehensive Plan Amendment and Goal Exception to allow rural industrial development on resource land, and was approved by Columbia County in early 2014. That decision was appealed to the Oregon Land Use Board of Appeals (“LUBA”). LUBA remanded the case in part and identified specific areas for the County to revisit in its record and findings.¹

In response, the Port modified its land use application to align with the direction provided by LUBA in its 2014 decision by limiting the number of uses permitted in the exception area to five identified rural industrial uses, each of which would be required to be dependent on the deepwater port and dock at Port Westward. The Port’s legal team retained Mackenzie to address the specific concerns raised by LUBA, and Mackenzie prepared the *Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change Alternatives Analysis* report, dated April 10, 2017 (the “2017 Mackenzie Report”). The amended land use application was approved by the County in February of 2018 (Ordinance No. 2018-1). Columbia Riverkeeper (“Riverkeeper”) and 1000 Friends of Oregon (“1000 Friends”) appealed the County’s 2018 decision to LUBA. In December of 2018, LUBA denied the majority of the appellants’ arguments but sustained one, remanding the case for the County to address whether the five identified uses will be “compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts” per ORS 197.732(2)(c)(D)² and OAR 660-004-0020(2)(d).³

¹ *Columbia Riverkeeper v. Columbia County*, 78 Or LUBA 547 (2018).

² ORS 197.732(2)(c)(D) provides the following:

“(2) A local government may adopt an exception to a goal if:

* * *

(c) The following standards are met:

* * *

Riverkeeper appealed LUBA's decision to the Oregon Court of Appeals on several grounds, and the Port filed a cross-petition challenging LUBA's conclusion regarding compatibility. The Court of Appeals affirmed LUBA's decision.⁴ Riverkeeper petitioned the Oregon Supreme Court to review the decision, but the Supreme Court denied review.⁵

In response to the 2018 LUBA remand, the Port has requested that Columbia County take up the Port's application again, to address compatibility with adjoining uses consistent with the direction of LUBA and the Court of Appeals. Mackenzie was again retained for the specific and limited purpose of providing a comprehensive compatibility analysis between the five rural industrial uses (Forestry and Wood Products processing, production, storage, and transportation; Dry Bulk Commodities transfer, storage, production, and processing; Liquid Bulk Commodities processing, storage, and transportation; Natural Gas and derivative products, processing, storage, and transportation; and Breakbulk storage, transportation, and processing)⁶ and the existing adjacent land uses.

Compatibility Standard

Mackenzie's *Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change Supplemental Compatibility Analysis* (the "Compatibility Report") provides an analysis of compatibility based on the framework identified by LUBA and the Court of Appeals. The Compatibility Report establishes the compliance of each of the five identified uses with ORS 197.732(2)(c)(D), and OAR 660-004-0020(2)(d), examining the statute and administrative rule, their application by the LUBA and Oregon Court of Appeals decisions, and makes determinations regarding compatibility as applied to the five identified rural industrial uses.

The Compatibility Report cites ORS 197.732(1)(a) as a limit on the reach of "compatible:" "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." As the Compatibility Report explains, "[B]oth the enabling legislation and the administrative rule are clear that some degree of 'interference or adverse

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

³ OAR 660-004-0020(2)(d) provides the following:

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

⁴ *Columbia Riverkeeper v. Columbia County*, 297 Or App 628, 443 P.3d 1184 (2019).

⁵ *Columbia Riverkeeper v. Columbia County*, 365 Or App 721, 453 P.3d 551 (2019).

⁶ Under the Port's proposal, all uses are required to be dependent on the deepwater port and existing dock at Port Westward.

impacts' on adjacent land uses may be permitted by a proposed use and yet still be deemed compatible as provided under the applicable statute and administrative rule.”

The Compatibility Report also examines OAR 660-004-0020(2)(d) which includes language that is identical to the language in ORS 197.732(1)(a). The Compatibility Report highlights that both the statute and the administrative rules are clear: the intent is not to create an absolute prohibition of uses that may impact adjacent uses, but to ensure that impacts are adequately mitigated to allow the continuation of existing uses along with the new use.

The Compatibility Report next turns to LUBA's discussion of the requirement in its 2014 decision:

That language contemplates that the county has identified the proposed use, has determined that the use has adverse impacts incompatible with adjacent uses, but has identified and imposed specific measures in the exception decision to reduce impacts and thus render the proposed use compatible. 70 Or LUBA 171, 204 (2014).

The Compatibility Report then addresses LUBA's elaborated analysis of the requirement in its 2018 decision, focusing on the following passage from LUBA's decision:

[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.⁷

The Compatibility Report next evaluates the Oregon Court of Appeals decision upholding LUBA's opinion, which provides the following conclusion: "...LUBA's decision to remand does not reflect a misunderstanding of its role on substantial evidence review, or otherwise demonstrate legal error."⁸ As the Compatibility Report explains, the Court of Appeals frames LUBA's decision regarding compatibility in the following manner: "We understand LUBA's rejection of the county's compatibility determination to turn on an application of the substantial

⁷ 78 Or LUBA 547, 569-570 (2018).

⁸ 297 Or App 628, 647.

evidence standard of review.”⁹ The Compatibility Report also explains that the Supreme Court denied Riverkeeper’s petition for review.¹⁰

The Compatibility Report accordingly relies on the methodology identified by LUBA and the Court of Appeals to provide a compatibility analysis of each of the five uses proposed for the expansion area that satisfies the requirements of substantial evidence review.

Application of Compatibility Standard

Characteristics of Five Uses and Existing Adjoining Uses and Assessment of Potential Impacts from Industrial Uses Sited in the Expansion Area

As described in 2017 Mackenzie Report, the five rural industrial uses proposed for the expansion area include the following, all of which must be dependent on the deepwater port and dock at Port Westward:

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

The Compatibility Report discusses LUBA’s rejection of a challenge to the validity of the five identified uses. In its decision, LUBA stated the following:

In the present case, the five categories of uses authorized by the county's decision are only a subset of the universe of industrial uses allowed in the county's RIPD zone. Not only are the uses allowed limited by the five specified commodity types but, as discussed below, each use is also limited by the requirement that the use be significantly dependent upon the deepwater port. . . . The present much more limited range of uses allowed by the challenged decision is even further from establishing a zoning policy of general applicability.¹¹

In the context of compatibility, the narrowed scope of uses also provides the County the opportunity to evaluate and weigh potential impacts on adjacent uses. The Compatibility Report provides such an analysis, examining identified potential impacts, noting potential impacts that are unique to individual uses, impact overlaps between the five uses, and impacts that would be common with existing uses in the Port Westward area.

⁹ *Id.* Under ORS 197.835(9)(a)(C), the County’s decision will not be reversed or remanded if it is supported by “substantial evidence in the whole record.”

¹⁰ 365 Or 721 (2019).

¹¹ 78 Or LUBA 547, 559 (2018).

Characteristics of the Expansion Area and Existing Uses

The expansion area, as summarized in the Original Report, consists of 837 acres adjacent to the existing Port Westward Industrial Park (“PWW”) facility, reaches east to the Bradbury Slough and deepwater Columbia River access on the north. Of the 837 acres, approximately 51 acres are owned by the Thompson family, while the remaining 786 acres are owned by the Port.

If approved, the expansion area would be rezoned from Primary Agriculture-80 Acres (PA-80) to Resource Industrial-Planned Development (RIPD) to accommodate both agricultural uses as well as rural industrial development within the scope of the five uses identified by the Port and dependent on the port and existing dock at Port Westward. As detailed in the 2017 Mackenzie Report, and outlined in the Compatibility Report, the zone change requires a Comprehensive Plan Map Amendment and an Exception to Statewide Planning Goal 3 (Agricultural Lands).

As the Compatibility Report explains, the expansion area is largely undeveloped beyond agricultural uses, except for a residence at 81022 Erickson Dike Road, and a residence at 80869 Kallunki Road, both of which are owned by the Port and are unoccupied, and miscellaneous agricultural buildings. The Thompson property is largely forested and outside the dike, while the Port’s property is largely planted as tree farms and some smaller portions in agricultural use inside the dike.

Characteristics of Adjacent Area and Existing Uses

The Compatibility Report details the characteristics of areas adjacent to the expansion area as well, outlining the zoning designations and land use classifications of the adjacent lands.

Land north of the zone change area is primarily within the existing Port Westward 905-acre industrial park and is zoned RIPD. This site is developed with a Clatskanie Public Utility District electrical substation, the Columbia Pacific Bio-Refinery ethanol facility, and Portland General Electric’s (PGE) three power generation facilities. As detailed in the 2017 Mackenzie Report and acknowledged through the appeals process, the PGE leasehold includes most of the RIPD zoned land and is unavailable for additional development. Port Westward contains considerable wetlands (479 acres, or 53% of the existing industrial park), some of which are naturally occurring and some of which have been created as part of wetland mitigation activities. The site also contains a 1,500-foot dock on the Columbia River, roadways, rail lines, utilities, drainage facilities, levees, and pipelines. Much of the undeveloped portions of the property are in agricultural use with farming activities, plus small sections that are forested or wetland areas not being farmed.

As for other adjacent areas, land between the expansion area and the Columbia River to the west is undeveloped, forested and largely outside the dike. Land south of the zone change area is agricultural and primarily used for tree farms, plus some agricultural properties growing other crops. Land east of the zone change area is primarily in agricultural use, with a handful of large properties that include accessory residences. Two areas denoted as “Non-Port Property” on the maps included in the Compatibility Report are in agricultural production. There are also two residences, one on Hermo Road and one on Erickson Dike Road.

As noted above, the Compatibility Report identifies potential adverse impacts applicable to the existing uses adjacent to the expansion area. It divides the existing adjacent uses generally into industrial and non-industrial uses, and then evaluates which of those (and their potential impacts) closely align with those noted for the five proposed uses. It notes that the adjacent agricultural and forest/tree farm uses have a shorter list of potential impacts, with some overlap though most likely on a smaller scale; that residential uses have minimal impacts; and that adjacent wetlands and waterways do not themselves create impacts. The Compatibility Report notes that the developable portion of the expansion area, like the existing Port Westward industrial park, is behind the Beaver Dike, and the dike itself can perform emergency backstop containment function in that the dike pumps can be turned off.

Compatibility Assessment

In identifying and analyzing the range of potential compatibility impacts for operations falling within each of the five rural industrial uses, the Compatibility Report notes that the potential impacts of each of the five are generally similar. It also concludes that there is a large amount of overlap of potential impacts between the existing industrial uses at Port Westward and the five rural industrial uses proposed for the expansion area, and that the differences among uses is largely a matter of scale associated with the different production processes.

The Compatibility Report then surveys offsite impacts from the proposed uses, concluding that they are largely the same as those from existing industrial uses. The Compatibility Report notes that there is even some overlap in potential impacts between the five rural industrial uses and tree farm and other adjacent agricultural uses, and that the industrial uses would be subject to more stringent regulations such as those pertaining to stormwater containment and treatment.

The Compatibility Report provides an analysis of existing regulatory programs designed to mitigate potential adverse impacts from development in general and industrial operations in particular, and relates them back to “compatibility” in the context of the County’s duty to regulate land uses under Statewide Planning Goal 2. The Compatibility Report explains that a significant reason the County can know the five proposed uses for the expansion area can be rendered compatible with existing adjacent uses is specifically because of the high level of regulation that the uses will be subject to in order to be sited in the expansion area at Port Westward. It also explains that, in requiring that all of the applicable programs are applied to a particular use, the County will be fulfilling its obligation to ensure that compatibility is maintained. As the Compatibility Report explains, demonstrating compliance with all applicable regulatory programs will additionally serve the function of demonstrating compliance with the compatibility standard under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d).

The Compatibility Report explains how the approved land uses in the Port Westward expansion area will require substantial review from local, State and Federal agencies to ensure compliance with regulatory emission and impact standards. Regulatory permits from these agencies are generally required prior to commencement of any of the industrial operations proposed by the Port for the expansion area. Further, such permits typically regulate impacts for a defined period of time, and then require the operator to gain all applicable renewals, which requires the operator

to monitor and report on the effectiveness of its current mitigation measures for permit renewal. Any new and/or updated standards promulgated by an administrative agency with regulatory authority over a particular use or regulatory field may become applicable to the use at the time of permit renewal.

Regulatory oversight is typically a standard and essential part of industrial siting to mitigate potential environmental, economic, and social impacts on the area and includes opportunities for public input. For each of the listed uses, several permits and/or licenses will be required prior to development to ensure the development meets the applicable regulatory standards. Because siting any of the Port's proposed land uses in the expansion area will require substantial review from Federal, State, and local jurisdictions to ensure compliance with regulatory emissions and impact standards, and to uphold the existing integrity of the environment, compliance will also ensure compatibility with adjacent uses.

Permit requirements will need to be met prior to the construction of proposed projects, and complied with (and monitored) going forward. This process provides for ongoing review and refinement by experts in the applicable regulatory fields, and thereby ensures ongoing compatibility with adjacent uses.

Conclusion

As the Compatibility Report establishes, the regulatory agencies with permitting authority independently impose stringent requirements. In other words, those programs already apply. However, by explicitly requiring that the applicable agencies' authority is applied to any of the uses siting in the Port Westward expansion area, the County will be ensuring compatibility with surrounding uses will be maintained, as it is required to do. Accordingly, the Compatibility Report (in addition to the approval conditions previously imposed by the County) recommends one additional approval condition reinforcing the requirement for future development proposals in the rezone area to provide evidence of approval of all applicable Federal, State, and local permits prior to issuance of occupancy permits. The Compatibility Report concludes that in imposing such a condition, the County will be reinforcing for itself an oversight role in the application of the regulatory programs, thereby ensuring that impacts are mitigated and land use compatibility is maintained.

MACKENZIE.

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Land Development Services

Attachment 7

**PORT WESTWARD
GOAL EXCEPTION,
COMPREHENSIVE
PLAN AMENDMENT,
AND ZONE CHANGE
SUPPLEMENTAL
ANALYSIS: LAND USE
COMPATIBILITY**

To

Beery, Elsner & Hammond,
LLP

For

Port Westward Zone Change

Dated

July 21, 2020

Project Number

2160462.01



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LIST OF ABBREVIATIONS

ACDP	Air Contaminant Discharge Permit	DOE	Oregon Department of Energy
AST	Aboveground Storage Tank	ODOT	Oregon Department of Transportation
BLM	Bureau of Land Management	OEM	Oregon Office of Emergency Management
BTU	British Thermal Unit	ORS	Oregon Revised Statutes
CAA	Clean Air Act	OSFM	Office of the State Fire Marshal
CAO	Cleaner Air Oregon	OWRD	Oregon Water Resources Department
CFR	Code of Federal Regulations	PA-80	Primary Agriculture-80 Acres zone
Corps	United States Army Corps of Engineers	PGE	Portland General Electric
CWA	Clean Water Act	PHMSA	Pipeline and Hazardous Materials Safety Administration
DEQ	Department of Environmental Quality	POTW	Publicly Owned Treatment Works
EFH	Essential Fish Habitat	PPA	Pollution Prevention Act
EFSC	Energy Facility Siting Council	PWW	Port Westward Industrial Park
EPA	United States Environmental Protection Agency	RCRA	Resource Conservation and Recovery Act
FEMA	Federal Emergency Management Agency	RIPD	Resource Industrial-Planned Development zone
FERC	Federal Energy Regulatory Commission	SHPO	State Historic Preservation Office
FIRM	Flood Insurance Rate Map	SLOPES	Standard Local Operating Procedures for Endangered Species
FR	Federal Register	TPR	Transportation Planning Rule
LNG	Liquefied Natural Gas	TSCA	Toxic Substances Control Act
LPG	Liquefied Petroleum Gas	UIC	Underground Injection Control
LUBA	Land Use Board of Appeals	USACE	United States Army Corps of Engineers
LUCS	Land Use Compatibility Statement	USC	United States Code
MARAD	U.S. Maritime Administration	USDOT	United States Department of Transportation
MMBTU	million British Thermal Units	USFS	United States Forest Service
MSA	Magnuson Stevens Act	USFWS	United States Fish and Wildlife Service
NEPA	National Environmental Policy Act	UST	Underground Storage Tank
NFIP	National Flood Insurance Program	WPCF	Water Pollution Control Facility
NGA	Natural Gas Act		
NMFS	National Marine Fisheries Service		
NPDES	National Pollution Discharge Elimination System		
OAR	Oregon Administrative Rule		
ODFW	Oregon Department of Fish and Wildlife		

I. INTRODUCTION AND PURPOSE

In 2013, the Port of Columbia County¹ (the Port) applied for approval from Columbia County (the County) to rezone land adjacent to the Port Westward Industrial Park (PWW) from Primary Agriculture-80 Acres (PA-80) to Resource Industrial-Planned Development (RIPD), for incorporation into the existing industrial park. Figure 1 is an aerial photo of PWW and the zone change area, while Figure 2 is a map of the area's existing zoning designations.

The application, which relied upon concurrent requests for a Comprehensive Plan Amendment and a Goal Exception for rural industrial development on resource land, was approved by Columbia County in early 2014. However, the decision was appealed to the Oregon Land Use Board of Appeals (LUBA). LUBA remanded the case in part and identified areas in which the record and findings provided insufficient justification for the approval.²

In response to the remand, the Port modified its land use application to align with the direction provided by LUBA in its decision, identifying five specific rural industrial uses to be allowed under the exception, and further limiting them by only allowing uses that would be dependent on the existing deepwater port and dock at Port Westward. The Port's legal team engaged Mackenzie to address the concerns raised by LUBA and Mackenzie prepared the *Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change Alternatives Analysis* report, dated April 10, 2017. The amended land use application was approved by the County in February 2018 (Ordinance No 2018-1). Columbia Riverkeeper (Riverkeeper) and 1000 Friends of Oregon subsequently appealed the County's 2018 decision to LUBA. In December 2018, LUBA denied the majority of the appellants' arguments but sustained one argument, remanding the case to address whether the identified rural industrial uses are "compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts" per ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d).³

Riverkeeper appealed LUBA's decision to the Oregon Court of Appeals, and the Port filed a cross-petition challenging LUBA's conclusion regarding compatibility. The Court of Appeals affirmed LUBA's decision.⁴ Riverkeeper again appealed the Court of Appeals decision to the Oregon Supreme Court, but the Supreme Court denied review.⁵ In response to the 2018 LUBA remand, the Port has requested that the County take up the remand and is providing additional information regarding compatibility with adjoining uses. In support of this effort, Mackenzie was retained to analyze compatibility among the five proposed dock-dependent rural industrial uses approved by Columbia County and recognized by LUBA (Forestry and Wood Products processing, production, storage, and transportation; Dry Bulk Commodities transfer, storage, production, and processing; Liquid Bulk Commodities processing, storage, and transportation; Natural Gas and derivative products, processing, storage, and transportation; and Breakbulk storage, transportation, and processing) and existing adjacent land uses.

As part of prior proceedings in 2017-2018, the Port limited its request to the five rural industrial uses identified above, and further restricted uses to those that would be dependent on the deepwater port at

¹ Prior to 2019, the Port of Columbia County was known as the Port of St. Helens.

² *Columbia Riverkeeper, et al. v. Columbia County*, 70 Or. LUBA 171 (2014), *aff'd without opinion*, 267 Or App. 637 (2014).





³ *Columbia Riverkeeper, et al. v. Columbia County*, 78 Or. LUBA 547 (2018).

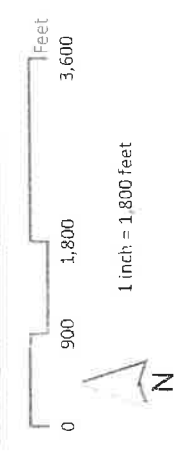
⁴ *Columbia Riverkeeper, et al. v. Columbia County*, 297 Or. App. 628 (2019).

⁵ *Columbia Riverkeeper, et al. v. Columbia County*, 365 Or. 721 (2019).

FIGURE 1
PORT WESTWARD
VICINITY MAP
Columbia County, Oregon

LEGEND

-  Port of Columbia County Properties
-  Thompson Property
-  Proposed Zone Change Area
-  State Boundary



GEOSPATIAL PROJECTION:
 NAD 83 HARN, Oregon North
 Lambert Conformal Conic
 SOURCE DATA:
 Columbia County GIS Data,
 Oct 2015

Date: 7/17/2020 Map Created By: BIV
 Project No: 2180662_01
 File: Port Westward_Aerial_2020

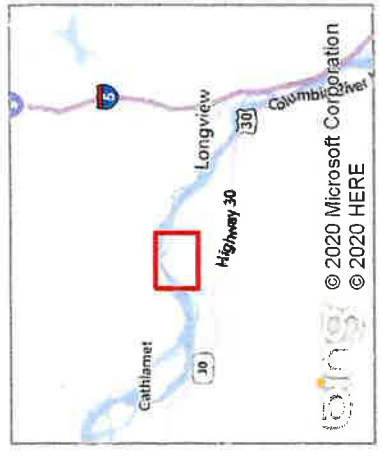

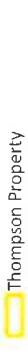

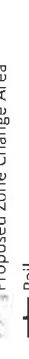
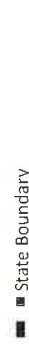


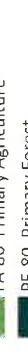


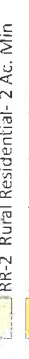
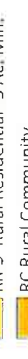
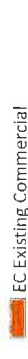


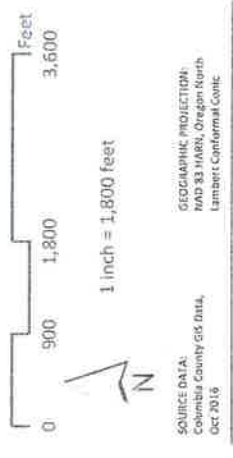


FIGURE 2
PORT WESTWARD
ZONING MAP
Columbia County, Oregon

LEGEND

-  Port of Columbia County Properties
 -  Thompson Property
 -  Tax Lots
 -  Proposed Zone Change Area
 -  Rail
 -  State Boundary
- ZONING**
-  RIPD Resource Industrial- Planned Development
 -  PA-80 Primary Agriculture
 -  PF-80 Primary Forest
 -  CS-1 Community Service- Institutional
 -  CS-U Community Service- Utility
 -  RR-2 Rural Residential- 2 Ac. Min
 -  RR-5 Rural Residential- 5 Ac. Min.
 -  RC Rural Community
 -  EC Existing Commercial



SOURCE DATA:
 Columbia County GIS Data,
 Oct 2019

GEOGRAPHIC PROJECTION:
 NAD 83 NAD83, Oregon North
 Lambert Conformal Conic

Date: 2/17/2020
Map Created By: BV
Project No: 2160462.01

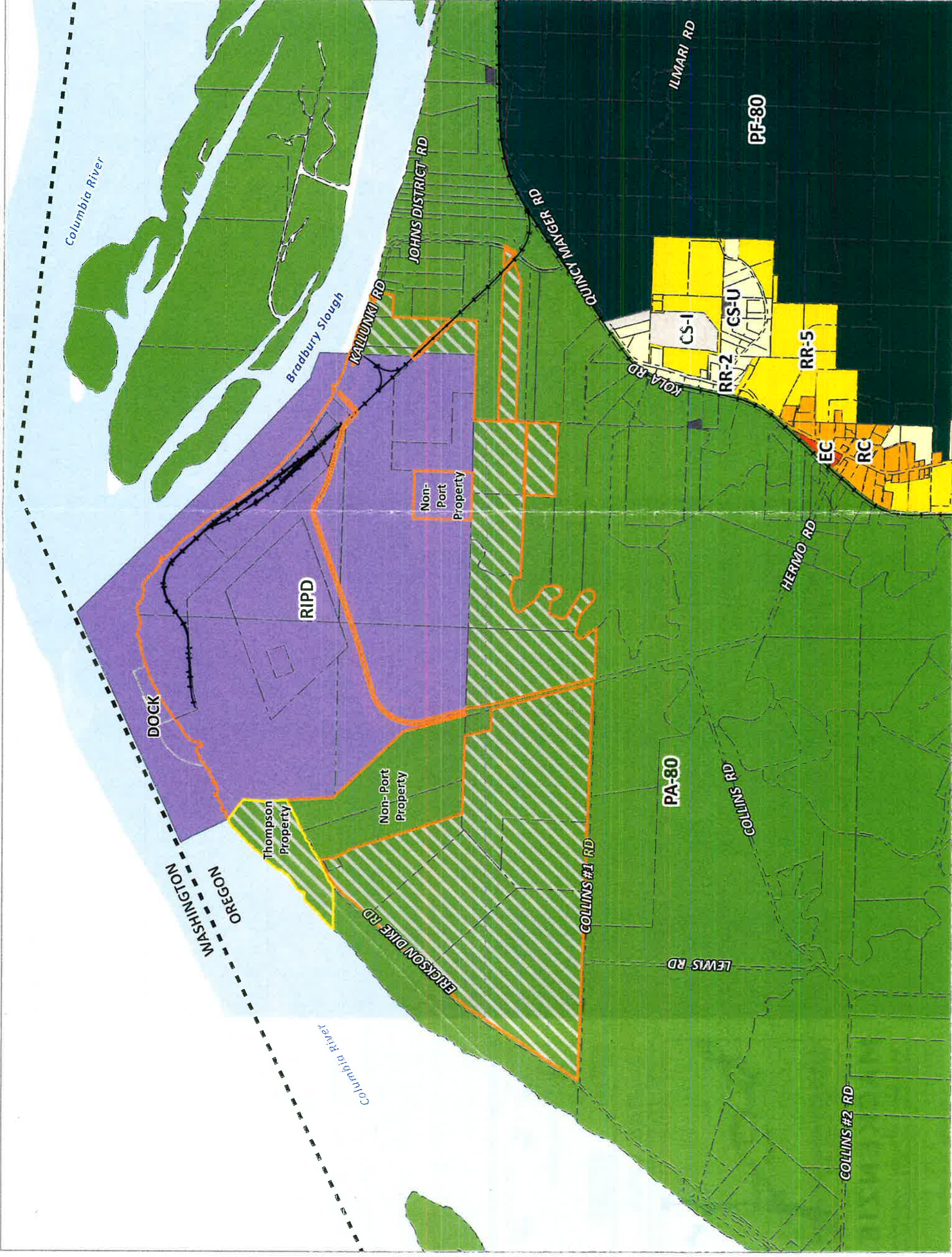


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Port Westward. LUBA and the appellate courts concluded that the record contained sufficient evidence to support the validity of those uses, remanding solely for the County to address the issue of compatibility. This report is thus limited to an analysis of compatibility among the zone change area's five identified uses and existing adjacent land uses.

The report is structured as follows:

- Section II provides regulatory context for compatibility and lays out the analytical approach.
- Section III describes the zone change area and adjacent land uses.
- Section IV characterizes the range of potential impacts associated with the five proposed uses as well as the potential impacts from adjacent land uses.
- Section V details existing regulatory programs that serve to maintain compatibility among the proposed industrial uses and adjacent land uses.
- Section VI assesses compatibility in light of existing regulatory programs and the conditions of approval already imposed by the Columbia County Board of Commissioners.
- Section VII provides a summary and conclusion.

II. COMPATIBILITY ANALYSIS APPROACH

This section defines the term “compatible” as used in the context of a Goal Exception and outlines the compatibility analysis approach required to demonstrate compliance with applicable land use regulations.

Definition of Compatibility

Below is information on the framework through which the Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), LUBA, and the courts provide direction on how compatibility should be analyzed for a Goal Exception.

Statutes and Administrative Rules

ORS 197.732-197.736, which addresses Goal Exceptions, stipulates that a local government may grant an exception if several conditions are met, including that “The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.” ORS 197.732(1)(a) notes that “‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.”

Similarly, OAR 660-004-0020 outlines the evidentiary requirements for obtaining a Statewide Planning Goal Exception and refers to Part II of Statewide Planning Goal 2 (Land Use Planning) which states that “A local government may adopt an exception to a Goal when ... the proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.” Based on this Goal language, OAR 660-004-0020(2)(d) specifies that:

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. [emphasis added]

The underlined language is identical to ORS 197.732(1)(a); thus, both the enabling legislation and the administrative rule are clear that some degree of “interference or adverse impacts” on adjacent land uses may be permitted by a proposed use and yet still be deemed compatible as provided under the applicable statute and administrative rule.

LUBA

The 2014 LUBA opinion, in reference to the provision in OAR 660-004-0020(2)(d) allowing for “measures designed to reduce adverse impacts,” states that:

That language contemplates that the county has identified the proposed use, has determined that the use has adverse impacts incompatible with adjacent uses, but has identified and imposed specific measures in the exception decision to reduce impacts and thus render the proposed use compatible.⁶

⁶ *Columbia Riverkeeper, et al. v. Columbia County*, 70 Or LUBA 171, 204 (2014).

The 2018 LUBA opinion’s discussion of compatibility notes that:

[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.⁷

To summarize, LUBA has interpreted the administrative rule to stipulate that a determination of compatibility must be based on substantial evidence at the time of approval of a Goal Exception. More specifically, LUBA has provided clear guidance on an appropriate process to evaluate compatibility, identify and evaluate such evidence in the record, and make appropriate findings addressing compatibility.

Oregon Court of Appeals

After reviewing the 2018 LUBA case, the Oregon Court of Appeals affirmed LUBA’s analysis, indicating that “...LUBA’s decision to remand does not reflect a misunderstanding of its role on substantial evidence review, or otherwise demonstrate legal error.” The Court of Appeals framed LUBA’s decision regarding compatibility as follows: “We understand LUBA’s rejection of the county’s compatibility determination to turn on an application of the substantial evidence standard of review.”⁸ As discussed above, LUBA provided a framework for analyzing compatibility in a manner that would satisfy the substantial evidence standard. That framework is the approach taken in this supplemental analysis.

Oregon Supreme Court

As the Oregon Supreme Court denied review,⁹ the compatibility approach proposed by LUBA and endorsed by the Court of Appeals continues to apply.

Compatibility Summary and Analysis Approach

Based on the effective statutes, administrative rules, court opinions, and plain-language definitions such as the Merriam-Webster Dictionary’s primary definition for the word “compatible” (“capable of existing together in harmony”),¹⁰ determination of compatibility for a rural industrial Goal Exception should thus address the following:

- Enumeration of potential adverse impacts of the proposed uses;

⁷ *Columbia Riverkeeper, et al. v. Columbia County*, 78 Or. LUBA 547 (2018).

⁸ *Columbia Riverkeeper, et al. v. Columbia County*, 297 Or. App. 628, 647 (2019).

⁹ *Columbia Riverkeeper, et al. v. Columbia County*, 365 Or. 721 (2019).

¹⁰ Compatible. *Merriam-Webster.com*. Accessed July 1, 2020, from <https://www.merriam-webster.com/dictionary/compatible>

- Identification of significant differences in character among the proposed uses and adjacent land uses;
- Assessment of whether potential impacts produce adverse effects on adjacent land uses;
- Cataloging of those uses which require no mitigation to be compatible and those which require mitigation measures to be made compatible with adjacent land uses;
- Compilation of existing regulations applicable to the proposed uses which have the effect of maintaining compatibility; and
- Where required to promote compatibility, identification of appropriate mitigation to minimize incompatible impacts with adjacent land uses.

Compatibility Study Area and Definition of Adjacent

While both ORS 197 and OAR Chapter 660, Division 4 utilize the term “adjacent,” neither the statute nor the administrative rule define it in the context of ORS 197.732 or OAR 660-004-0020(2)(d). The term is also not defined in the Columbia County Zoning Ordinance.

In some contexts, the word is construed to mean abutting or touching, while in other contexts the word may refer to proximity or closeness. The Merriam-Webster Dictionary’s primary definition for the word “adjacent” is threefold, including “not distant: nearby,” “having a common endpoint or border,” or “immediately preceding or following.”¹¹

The Port would be justified in identifying a compatibility study area that includes only those parcels which immediately abut the zone change area. However, the Port’s analysis goes beyond this narrow approach, looking to other administrative rules for guidance. Although not directly germane to Goal Exceptions, in the context of Urban Reserves OAR 660-021-0010 defines “adjacent land” as “abutting land” and “nearby land” as “land that lies wholly or partially within a quarter mile [1,320 feet] of an urban growth boundary.”

Using these definitions as a starting point, for the purposes of compatibility analysis the Port has included all those parcels that touch the zone change area, plus all parcels that would touch the zone change area if not for an intervening road right-of-way, and defined those as “adjacent”. In addition, the Port has included in its study area all contiguous parcels which are wholly or partially within 2,000 feet of the zone change area.¹² See Figure 3. Ultimately, the Board of Commissioners may determine that the scope of “adjacent” land uses is significantly less than that addressed in this analysis, but the study area addressed in this analysis has been enlarged to provide adequate information for the County to make an informed determination regarding compatibility.

¹¹ Adjacent. *Merriam-Webster.com*. Accessed July 1, 2020, from <https://www.merriam-webster.com/dictionary/adjacent>

¹² A 2,000-foot measure is more than fifty percent greater than the quarter-mile measure used in the OAR 660-021-0010 definition of nearby land.

III. PORT WESTWARD ZONE CHANGE AREA AND SURROUNDINGS

This section describes the Port Westward zone change area and nearby land uses.¹³ The compatibility study area has been classified into multiple categories including industrial uses, agricultural and tree farm uses, forested uses, residential accessory to primary agricultural uses, and rural residential use.¹⁴

Proposed Zone Change Area

The zone change area, which consists of 837 acres adjacent to the existing PWW facility, has Bradbury Slough waterfront access on the east and deepwater Columbia River access on the north. Approximately 6% of the zone change area is owned by the Thompson family, an area largely outside the dike, while the remaining 94% is owned by the Port and largely inside the dike. See Figure 1. The zone change area is currently zoned Primary Agriculture-80 Acres (PA-80) and is proposed to be rezoned to Resource Industrial-Planned Development (RIPD) to accommodate future rural industrial development. See Figure 2. As detailed in the Port's request, this zone change necessitates a comprehensive plan map amendment and an Exception to Statewide Planning Goal 3 (Agricultural Lands). Nearby zoning includes RIPD to the north and east (existing PWW) and PA-80 to the west, south, and east.

The zone change area is presently undeveloped, except for a vacant agricultural accessory residence at 81022 Erickson Dike Road, a vacant agricultural accessory residence at 80869 Kallunki Road, and miscellaneous agricultural buildings. The area outside the dike is largely forested, while the area inside the dike has historically been utilized for tree farm and other agricultural uses.

Adjacent Land Uses¹⁵

Land adjacent to the zone change area is in a variety of uses, as depicted in Figure 4.

- Adjacent land north of the zone change area is primarily within the existing PWW 905-acre rural industrial park, and already zoned Resource Industrial-Planned Development by Columbia County. A minor fraction of this area is developed as industrial use already. The remainder of the adjacent land north of the zone change area is largely undeveloped and is in agricultural use with the exception of a forested section adjacent to the Thompson property. This area contains considerable wetlands, some of which are naturally occurring and some of which have been created as part of wetland mitigation activities by the existing industrial developments at PWW, e.g., conservation areas for Portland General Electric's (PGE) three Natural Gas power generation facilities.
- Adjacent land east and south of the zone change area is primarily in agricultural tree farm use, except for a handful of accessory residences on large lot properties primarily in agricultural use.¹⁶

¹³ The extent of the County's zoning authority is limited to land uses rather than waterways such as the Columbia River (which are subject to separate Federal and State water quality and maritime commerce regulations), so waters of the United States and waters of the State have not been cataloged here.









¹⁴ Wetland areas have been classified based on their existing land use (e.g., farm or forest use).

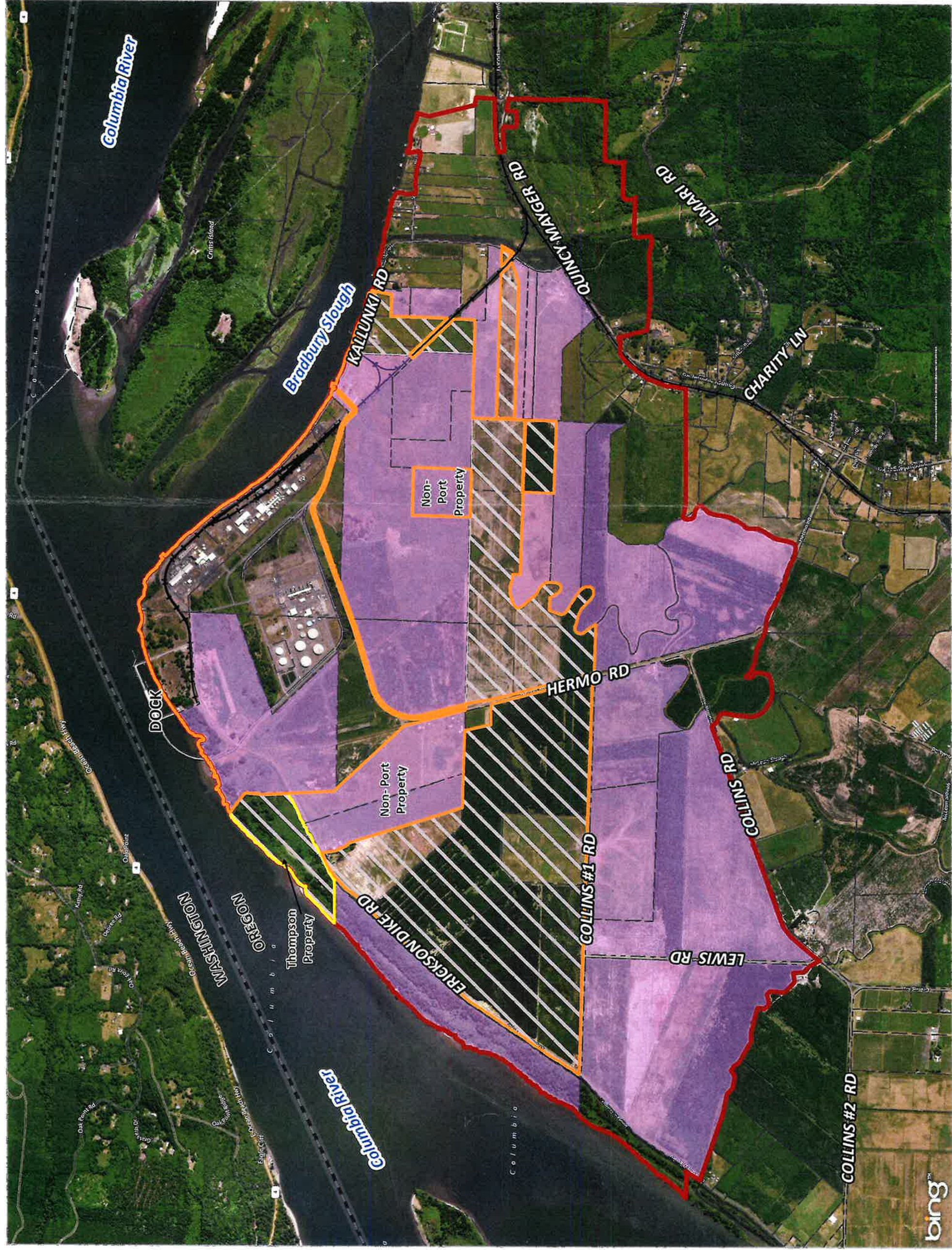
¹⁵ See Section II for discussion of the definition of "adjacent."

¹⁶ Residences on property zoned PA-80 are not outright permitted uses but instead require administrative review and satisfaction of approval criteria, e.g., residences accessory to agricultural use or located on lots-of-record.

FIGURE 3
LAND USE
COMPATIBILITY
STUDY AREA
Columbia County, Oregon

LEGEND

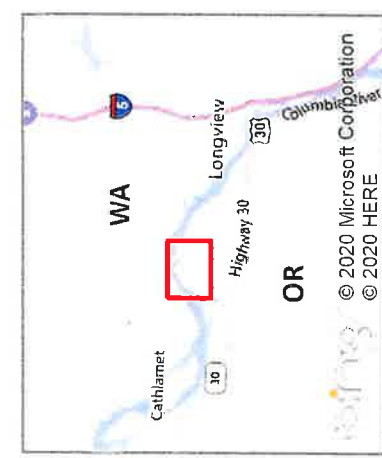
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-  Thompson Property
-  Proposed Zone Change Area
-  Tax Lots
-  Adjacent Tax Lots to Zone Change Area
-  Study Area
-  Rail
-  State Boundary



SOURCE DATA:
 Columbia County GIS Data,
 Feb 2020

GEOGRAPHIC PROJECTION:
 NAD 83 HARN, Oregon North
 Lambert Conformal Conic

Date: 7/17/2022
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














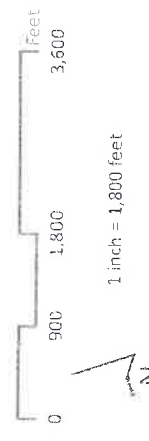
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FIGURE 4
PORT WESTWARD
AND NEARBY
LAND USES
Columbia County, Oregon

LEGEND

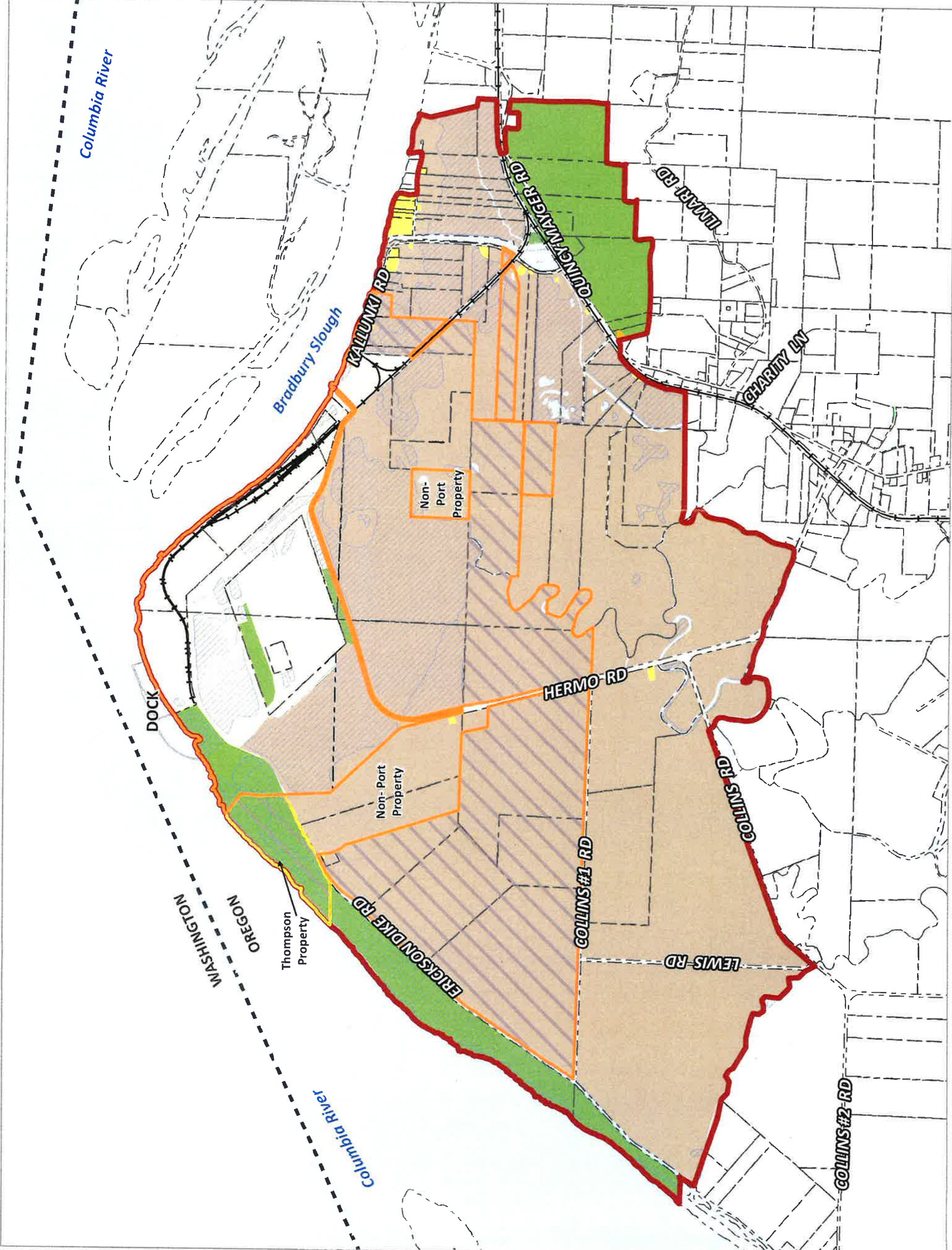
-  Port of Columbia County Properties
-  Thompson Property
-  Tax Lots
-  Proposed Zone Change Area
-  Study Area
-  Rail
-  State Boundary
-  Wetlands
- Land Use:**
-  Industrial
-  Forested
-  Agricultural/Tree Farm
-  Residential (Accessory to Primary Agricultural Use)
-  Rural Residential



SOURCE DATA:
 Columbia County GIS Data,
 Feb. 2020

GEOGRAPHIC PROJECTION:
 NAD 83 - NAD 83 Oregon North
 Lambert Conformal Conic

Date: 7/20/2020
 Map Created By: GF
 Project No.: 2100052.01
 Port Westward - Zoning Study



- Land west of the zone change area, between the zone change area and the Columbia River, is undeveloped and is largely forested.
- Two areas denoted as “Non-Port Property” in Figure 4 (between the existing PWW and the zone change area) are in agricultural use growing crops. There are also two associated accessory residences, one on Hermo Road and one on Erickson Dike Road, the owners of which have not objected to the Port’s proposal.

In summary, land adjacent to the zone change area falls into several general categories:

- The majority is in agricultural use, including tree farms;
- Sizeable areas are forested;
- Considerable areas are in rural industrial use; and
- An insignificant fraction (approximately 0.15% of the adjacent area) is in residential use accessory to primary agricultural use.

Non-Adjacent Land Uses within the Study Area

As the Port has included more than the adjacent parcels in its compatibility study area, Figure 4 also illustrates the land uses for those non-adjacent parcels within the study area.

- Non-adjacent land to the north consists of the balance of PWW, which is the developed portion of the industrial park. This area is developed with the Clatskanie Public Utility District electrical substation, the Columbia Pacific Bio-Refinery ethanol facility, and PGE’s Natural Gas power generation facilities, all industrial uses. PWW has a 1,500-foot dock on the Columbia River that serves industrial uses at Port Westward, plus roadways, rail lines, utilities, drainage facilities, levees, and pipelines.
- Non-adjacent land to the east is primarily in agricultural and forested use, except for a small number of accessory residences on large lot agricultural properties. There is also one (1) residence on Quincy Mayger Road on property zoned Rural Residential-2 Acre Minimum (RR-2).
- Non-adjacent land to south is primarily used for tree farms and other agricultural cropland, plus a few accessory residences on large lot agricultural properties.
- Non-adjacent land to the southwest, abutting the Columbia River, is undeveloped and forested.

In summary, non-adjacent land in the study area falls into several general categories:

- The majority is in agricultural use (including tree farms);
- Sizeable areas are forested;
- A small fraction (approximately 1.35% of the non-adjacent land in the study area) is in residential use accessory to primary agricultural use; and
- A single rural residential use is present.

IV. CHARACTERIZATION OF PORT WESTWARD AREA USES

This section describes the five proposed rural industrial uses and assesses potential impacts on adjacent and non-adjacent parcels within the study area.

Potential Adverse Impacts from Proposed Rural Industrial Uses

As described in Mackenzie's 2017 *Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change Alternatives Analysis* report, the five rural industrial uses proposed by the Port for the zone change area are identified below. Significantly, each of these uses is subject to conditional use approval by the County, and as conditioned by Columbia County in Ordinance 2018-1, the industrial uses "...shall be limited to only those uses that are substantially dependent on a deepwater port...."

The use descriptions below (and the product examples in Table 1) are copied from the 2017 report.

- Forestry and Wood Products processing, production, storage, and transportation
 - This has historically been one of Oregon's leading rural industrial land uses. Several uses within this category include sawmills, pulp and paper mills, wood pellet production, utility pole production, sawdust, or log debarking. Semi-finished wood products range from assembly-required flat-pack furniture to base and crown molding for wholesale uses or wood flooring production. Other possibilities include bulk import, export, or domestic transfer of logs, lumber, or other wood-based products.
- Dry Bulk Commodities transfer, storage, production, and processing
 - Examples include grain, metals, or lumber. Commodities refers to merchandise, product, or substance produced or distributed for sale to or for use by others. Bulk refers to significant unpackaged quantities generally transported as a single commodity. Dry describes items transported in solid, not liquid form. These commodities require consolidation at a single location before further transportation or distribution. For example, sawdust or grain would be carried in a semi-truck, consolidated and stored, and then loaded on a ship for further transport. Processing is usually a value-added task performed before shipping and can be as simple as removing bark from logs before shipping overseas.
- Liquid Bulk Commodities processing, storage, and transportation
 - Examples include petroleum, ethanol, milk, cooking oil, or other edible fluids. Commodities refers to merchandise, product, or substance produced or distributed for sale to or for use by others. Liquid bulk is cargo transported or stored unpackaged in large volumes in a fluid state. These commodities are moved in large quantities by ship or barge, stored in tanks, and distributed by tanker trucks. Processing could, as an example, include the mixing of additives to petroleum.
- Natural Gas and derivative products, processing, storage, and transportation
 - Natural gas is a resource with abundant existing infrastructure at Port Westward. Natural gas is a raw material used to produce a range of chemical products such as fertilizer or

methanol suitable for transportation by river. There may be on-site storage of the raw material or its refined products before shipment.

- Breakbulk storage, transportation, and processing
 - Breakbulk refers to a system of transporting cargo as separate pieces, not in containers or single commodity loads, but typically by the use of bags, boxes, crates, drums, barrels, or single units (e.g., wind turbine blades, turbines, heat exchangers, automobiles, etc.). This use would allow for any items meeting local, state, and federal requirements to be stored on site either before or after transfer across the dock. Processing would include limited work such as modifications or alterations to allow for safe transportation by river, rail, or roads.

For each of the five Port Westward proposed rural industrial land uses, the range of potential adverse impacts for operations has been identified. As demonstrated in Table 1, the potential adverse impacts from the five Port Westward uses largely fall into the same general categories. The differences among uses is largely a matter of scale and probabilities associated with the different production processes. For instance, potential fuel spills for Dry Bulk would generally be limited to those volumes contained in vehicles or machinery, whereas Liquid Bulk carries the risk of fuel spills from storage tanks and loading and unloading to and from the zone change area. By contrast, Dry Bulk may generate higher volumes of particulates (dust) than Liquid Bulk.

Table 1: Potential Adverse Impacts from Port Westward Rural Industrial Uses

Use	Product Examples	Potential Adverse Impacts from Industrial Operations
All five rural industrial uses proposed and evaluated by the Port	<ul style="list-style-type: none"> ▪ <i>See below</i> 	<ul style="list-style-type: none"> ▪ Airborne emissions (particulates, dust, water droplets, odor, steam, fumes, gas, smoke, heat, etc.) ▪ Noise ▪ Rail/truck/ship traffic for raw materials, finished products, and wastes ▪ Vehicle and machinery exhaust emissions ▪ Stormwater runoff which may contain chemicals, nutrients, colors, or sediment ▪ Process/cooling water discharge ▪ Wastewater discharge ▪ Fire/explosion ▪ Chemical spills (including oils and hazardous materials) ▪ Light ▪ Water usage ▪ Navigation impacts ▪ Dike impacts for any levee modifications ▪ Wetland impacts ▪ Wildlife impacts ▪ Accumulation of waste materials ▪ Nuisances from waste materials

Use	Product Examples	Potential Adverse Impacts from Industrial Operations
Forestry/Wood Products	<ul style="list-style-type: none"> ▪ Sawmills ▪ Pulp and paper mills ▪ Wood pellets ▪ Wood chips ▪ Utility poles ▪ Sawdust ▪ Flat-pack furniture ▪ Flooring ▪ Logs ▪ Lumber 	<ul style="list-style-type: none"> ▪ Impacts common to all five proposed uses, as noted above ▪ Combustibility
Dry Bulk	<ul style="list-style-type: none"> ▪ Grain ▪ Metals ▪ Lumber ▪ Potash ▪ Aggregates ▪ Sawdust 	<ul style="list-style-type: none"> ▪ Impacts common to all five proposed uses, as noted above ▪ Dust combustibility
Liquid Bulk	<ul style="list-style-type: none"> ▪ Petroleum ▪ Ethanol ▪ Methanol ▪ Ammonia ▪ Milk ▪ Liquid fertilizers ▪ Liquid chemicals 	<ul style="list-style-type: none"> ▪ Impacts common to all five proposed uses, as noted above
Natural Gas	<ul style="list-style-type: none"> ▪ Natural gas ▪ Fertilizer ▪ Methanol 	<ul style="list-style-type: none"> ▪ Impacts common to all five proposed uses, as noted above
Breakbulk	<ul style="list-style-type: none"> ▪ Bagged, boxed, or crated materials ▪ Drums or barrels ▪ Single units (wind turbine blades, turbines, heat exchangers, etc.) ▪ Automobiles ▪ Containerized agriculture products ▪ Steel slabs 	<ul style="list-style-type: none"> ▪ Impacts common to all five proposed uses, as noted above

Potential Adverse Impacts from Adjacent and Non-Adjacent Land Uses

To evaluate compatibility among the five identified uses and currently existing land uses within the study area, it is necessary to describe the potential adverse impacts from other existing adjacent and non-adjacent land uses. Table 2 demonstrates that existing industrial uses within the study area have potential adverse impacts which entirely align with those noted for the proposed uses. The adjacent tree farm and other agricultural uses and the forest uses have a shorter list of potential adverse impacts, some of which overlap with industrial impacts, though likely at a smaller scale. However, in many cases impacts from agricultural uses are exempt from many regulatory programs applicable to the industrial uses that could be sited in the rezone area (e.g., stormwater standards and spill response plans) or otherwise are regulated at a lower standard than industrial uses. The adjacent accessory residential uses have minimal adverse impacts.

Table 2: Potential Adverse Impacts from Adjacent and Non-Adjacent Land Uses

Land Use	Potential Adverse Impacts
Existing industrial uses within the Port Westward Industrial Park	<ul style="list-style-type: none"> ▪ Airborne emissions (particulates, dust, water droplets, odor, steam, fumes, gas, smoke, etc.) ▪ Noise ▪ Rail/truck/ship traffic for raw materials, finished products, and wastes ▪ Stormwater runoff which may contain chemicals, nutrients, colors, or sediment ▪ Process/cooling water discharge ▪ Wastewater discharge ▪ Fire/explosion ▪ Chemical spills (including oils and hazardous materials) ▪ Light ▪ Water usage ▪ Wetland impacts ▪ Accumulation of waste materials ▪ Nuisances from waste materials

Land Use	Potential Adverse Impacts
Agricultural uses (including tree farms) and forest uses	<ul style="list-style-type: none"> ▪ Airborne emissions (particulates, dust, water droplets, odor, smoke, etc.) ▪ Noise ▪ Truck traffic for raw materials, finished products, and wastes ▪ Vehicle and machinery exhaust emissions ▪ Stormwater runoff which may contain chemicals, nutrients, or sediment ▪ Chemical spills (e.g., fuels, hydraulic fluid, pesticides, herbicides, fungicides) ▪ Water usage ▪ Wetland impacts ▪ Accumulation of waste materials ▪ Nuisances from waste materials ▪ Alteration of soil chemistry and structure ▪ Bacteria release (if manure is used for fertilizer)
Residential accessory to primary agricultural uses and rural residential uses	<ul style="list-style-type: none"> ▪ Airborne emissions (dust, smoke, etc.) ▪ Vehicle exhaust emissions ▪ Stormwater runoff which may contain chemicals (e.g., herbicides), nutrients, or sediment ▪ Wastewater discharge ▪ Water usage

Similarities and Differences Among Impacts of Proposed, Adjacent, and Non-Adjacent Land Uses

Comparing the lists in Table 1 and Table 2 reveals significant overlap among the potential adverse impacts from the five rezone area rural industrial uses and the existing industrial uses within PWW. The potential offsite impacts from the five proposed industrial uses are largely the same as those that are already present from the existing industrial uses.

There is also overlap in the lists of potential adverse impacts from the five proposed uses and adjacent and non-adjacent tree farm and other agricultural uses and forested uses. Notably, the industrial uses are subject to more stringent environmental regulation than non-industrial uses. For instance, industrial uses need to comply with Federal, State, and County regulations requiring on-site containment and treatment of stormwater runoff, whereas agricultural operations may generate unregulated nonpoint runoff.¹⁷

The list of potential adverse impacts from residential uses is shorter than the list for the rezone area's rural industrial uses. However, as above, the industrial uses are subject to more stringent environmental regulations than non-industrial uses. For instance, even less stringent than agricultural uses discussed

¹⁷ U.S. Environmental Protection Agency, Polluted Runoff: Nonpoint Source (NPS) Pollution. Accessed July 1, 2020 from <https://www.epa.gov/nps/nonpoint-source-agriculture>

above, residential uses are generally only required to demonstrate compliance upon installation of an on-site wastewater treatment system and do not have ongoing monitoring requirements.¹⁸

Table 3 provides a comparison of the potential adverse impacts from each of the five proposed rural industrial uses; the existing industrial uses within PWW; agricultural uses and forested uses; and residential uses.

¹⁸ OAR Chapter 340 Division 71, Onsite Wastewater Treatment Systems. Accessed July 1, 2020 from <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1479>



Table 3: Comparison of Potential Adverse Impacts

Potential Adverse Impacts	Proposed Uses				Land Use			
	Forestry/ Wood Products	Dry Bulk	Liquid Bulk	Natural Gas	Breakbulk	Existing PWW Industrial Uses	Agricultural/ Forest	Residential
Airborne emissions (particulates, dust, water droplets, odor, steam, fumes, gas, smoke, heat, etc.)	X	X	X	X	X	X	X	X
Noise	X	X	X	X	X	X	X	
Rail/truck/ship traffic for raw materials, finished products, and wastes	X	X	X	X	X	X	X	
Vehicle and machinery exhaust emissions	X	X	X	X	X		X	X
Stormwater runoff which may contain chemicals, nutrients, colors, or sediment	X	X	X	X	X	X	X	X
Process/cooling water discharge	X	X	X	X	X	X		
Wastewater discharge	X	X	X	X	X	X		X
Fire/explosion	X	X	X	X	X	X		
Chemical spills (including oils and hazardous materials)	X	X	X	X	X	X	X	
Light	X	X	X	X	X	X		
Water usage	X	X	X	X	X	X	X	X
Navigation impacts	X	X	X	X	X			
Dike impacts for any levee modifications	X	X	X	X	X			
Wetland impacts	X	X	X	X	X		X	
Wildlife impacts	X	X	X	X	X			
Accumulation of waste materials	X	X	X	X	X	X	X	
Nuisances from waste materials	X	X	X	X	X	X	X	
Combustibility	X	X						
Alteration of soil chemistry and structure							X	
Bacteria release (if manure is used for fertilizer)							X	

Compatibility Evaluation

Given the range of potential adverse impacts from the five rezone area rural industrial uses, it might initially seem difficult to establish the compatibility of those uses with adjacent land uses and non-adjacent uses in the study area. However, upon closer analysis, such is not the case. First, not all potential impacts will be present for a given industrial operation. Where a particular impact will not be present, there is no need to mitigate the non-impact. Moreover, even the potential impacts align closely with the potential impacts from the existing PWW industrial uses. The County thus has a long record of compatibility in the form of the successful coexistence of existing industrial and non-industrial uses in the area, involving largely identical impacts, which serves as strong evidence that the rezone area's five rural industrial uses can indeed be made compatible with adjoining uses.

Approval of the zone change and associated comprehensive plan amendment and Goal Exception by the County would move the boundary of future industrial development farther south, but would neither expose new types of adjacent land uses to industrial uses, nor expose those adjacent land uses to a new set of new potential industrial impacts. This is a significant point as pertains to compatibility, as the potential impacts between similar adjacent land uses will likely be substantially the same. As described in Section III, the study area is primarily composed of industrial, tree farm and other agricultural uses, and forested land (with a smaller amount of residential uses accessory to primary agricultural uses). The proximity of these uses and their long-standing operations provide strong evidence that rural industrial uses can safely exist side-by-side with non-industrial uses if appropriate mitigation is in place (such as buffering, setbacks, other separation, and the mitigation measures previously imposed by the County with the adoption of Ordinance 2018-1).

Based on the potential adverse impacts from the five proposed uses cataloged in Table 1, the potential exists for adjacent non-industrial uses to experience some degree of susceptibility to those impacts, though not at a level greater than could potentially be experienced from existing industrial and agricultural uses at PWW. Accordingly, the five identified rural industrial uses will likely require some mitigation of their impacts in order to maintain compatibility. However, as discussed below, adequate mitigation measures exist and are available to ensure that compatibility is maintained between the existing adjacent land uses and each of the rural industrial uses proposed for the rezone area.

The fundamental reason the existing PWW uses and the five rural industrial uses identified for the zone change area are compatible with adjoining uses is that industrial operations are highly regulated at the Federal and State levels to minimize adverse impacts to adjacent land uses and area waterways.¹⁹ These regulations are adequate to ensure the adverse impacts from the five rural industrial uses can be adequately mitigated so as to be rendered compatible with adjacent land uses, as required for the requested Goal Exception. To provide even more protection, the Zoning Ordinance requires uses in the RIPD zone to identify and address "any adverse impact"²⁰ and the County's prior approval of the zone change requires the five industrial uses to go through conditional use review. Maintaining compatibility is therefore largely a function of cost for users to meet the regulatory standards at the time of development, and whether the total cost of initial and ongoing regulatory compliance is economically feasible to allow a particular use to site at Port Westward. Accordingly, Section V outlines applicable regulatory programs.

¹⁹ Furthermore, in large part specifically to help maintain compatibility with neighboring properties, the Port selected a narrow list of uses after evaluating and rejecting other uses with objectionable impacts.

²⁰ Columbia County Zoning Ordinance Section 683.1

V. EXISTING REGULATORY PROGRAMS RELEVANT TO PORT WESTWARD

This section provides detail on existing regulatory programs designed to mitigate and regulate potential adverse impacts from development in general and industrial operations in particular. This listing is not intended to be exhaustive; some users may be subject to additional regulations requiring compliance with programs and permits not described below. The programs below apply to the stationary sources associated with the land use. This list does not examine the regulations that apply to mobile sources, as those are already highly regulated by other rules (e.g. Federal and Oregon vehicle air quality standards) which are not specific to the five rural industrial uses.

As these regulatory programs may be applicable to the five proposed industrial uses, their application will have the effect of maintaining compatibility among the proposed rural industrial uses and adjacent land uses as required under ORS 197.732 and OAR 660-004-0020.

The proposed land uses in the Port Westward zone change area will require substantial review from Federal, State, and local agencies to ensure compliance with regulatory emission and impact standards to satisfy regulatory objectives. Permits from these agencies are generally required prior to commencement of industrial operations and usually expire after several years. Through the course of each permit, operators must typically monitor and report on the effectiveness of current mitigation measures. At the time of permit renewal, the operations would become subject to any new permit standards and regulations in effect since the last permit cycle, which may then lead to implementation of new best practices.

The programs described below require mitigation consisting of either performing specific actions (e.g., preparing and promulgating an emergency response plan or evaluating multiple development alternatives) or of complying with numerical standards, which allow the facility operator some flexibility on how to meet the standards (e.g., selecting from among several technologies to comply with emissions limits).

Applicable Federal Regulations

Federal environmental and other regulatory rules are enforced by multiple agencies as they carry out numerous programs. The discussion below provides information on programs that may affect industrial operations in the zone change area.

All Federal Agencies

National Environmental Policy Act

The National Environmental Policy Act (NEPA, 42 USC § 4321) requires Federal agencies to factor in environmental considerations and to provide opportunity for public comment prior to making decisions, such as when establishing new policies or procedures. NEPA is also triggered prior to issuance of Federal agency permits, which in the zone change area would be necessary for a variety of actions (e.g., Federal wetland permits) as further described below.²¹

²¹ A project would only avoid being subject to NEPA if no Federal permits are required.

NEPA is under the umbrella of the White House Council on Environmental Quality, but individual agencies with the most relevant expertise and overarching regulatory authority generally take the lead, with other agencies in supporting roles. NEPA requires the anticipated environmental effects from proposed actions to be identified. There are generally three tiers of analysis:

- If the proposed actions are on a list of activities that Federal agencies have identified as not having significant impacts on the environment, then a Categorical Exclusion determination is issued.²²
- For more complex situations, an Environmental Assessment is required to determine if the proposed action will or will not result in significant environmental impact. The result of this analysis is either a Finding of No Significant Impact or a requirement for an environmental impact statement.
- For major Federal actions, an Environmental Impact Statement is required. This requires estimation of environmental consequences, evaluation of alternatives to minimize adverse impacts, and identification of mitigation measures to eliminate significant impacts.

The lead Federal agency will issue a decision only after concluding the analysis described above.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (54 USC § 306108) requires Federal agencies to account for impacts on historic properties and archaeological sites prior to making decisions. Agencies must consult with interested parties such as state or tribal historic offices, tribes, and local governments. Similar to NEPA, this act is triggered prior to issuance of Federal agency permits (e.g., Federal wetland permits). If historic or cultural elements are present, applicants may need to modify their development proposals to avoid or minimize impacts.

U.S. Army Corps of Engineers

Rivers and Harbors Act

Section 10 of the Rivers and Harbors Act (33 USC §§ 403 and 404) requires that a permit be obtained from the U.S. Army Corps of Engineers (Corps) prior to constructing structures that affect the course, location, condition, or capacity of navigable waters of the United States. This program was instituted to mitigate for navigational impacts. At Port Westward, such a permit would be necessary along the Thompson property's Columbia River shore (within the zone change area), for instance, to construct a dock, reinforce the bank, install a jetty, fill or dredge the shoreline. A Section 10 permit would also be required outside the zone change area if the Port were to undertake these activities on its waterfront property within PWW. Consistent with NEPA, permitting through Section 10 includes coordination with interested parties regarding historic resources, water quality, tribal claims and concerns, and wildlife and habitat impacts (among other factors). Mitigation measures may be imposed to achieve the lowest level of impact necessary to achieve the intended purpose.

Section 14 of the Rivers and Harbors Act (33 USC § 408) requires authorization from the Corps prior to alterations to federally authorized "Civil Works" projects. At Port Westward, any proposed modifications

²² Council on Environmental Quality, Categorical Exclusions. Accessed July 16, 2020, from <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>

to the levee system (e.g., running utilities across a dike) would require Corps approval, which would be granted only upon demonstration that the actions taken are not “injurious to the public interest.” As part of the permit review process, the Corps examines multiple considerations, as outlined in its procedural guidance:

Factors that may be relevant to the public interest depend upon the type of USACE project being altered and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation.²³

The Corps may require mitigation prior to issuing a permit; this mitigation could consist of modifying the project to reduce adverse impacts or performing compensatory actions to address impacts on habitat, cultural resources, air quality, or other elements.²⁴

Clean Water Act

Under Section 404 of the Federal Water Pollution Control Act of 1972 (Clean Water Act, or CWA, 33 USC § 1344), the Corps regulates dredging and fill of waters of the United States, which includes the Columbia River, some of its tributaries, and many wetlands.²⁵ For wetlands, a jurisdictional determination (necessitating field visits by a wetland scientist and review of a wetland determination report by Corps staff) would be required to identify whether any individual wetland is subject to Corps regulations. In general, to obtain a Section 404 permit, applicants must demonstrate that the discharge of dredged or fill material would not significantly degrade the nation’s waters and there are no practicable alternatives less damaging to the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

While wetland alterations affecting less than a half-acre may be approvable via a Nationwide Permit, activities exceeding that threshold (or of any size at Corps staff’s discretion) would be subject to the more rigorous Individual Permit review process, which requires a robust alternatives analysis. Most impacts trigger a requirement to perform mitigation, with some minor exceptions (e.g., projects impacting less than 0.1 acres of wetlands that also meet other conditions). Mitigation for wetland impacts can be satisfied in three different ways:

- On-site wetland restoration, creation, enhancement, and preservation/conservation;
- Off-site wetland restoration, creation, enhancement, and preservation/conservation; or
- Payment to a wetland mitigation bank (though this would not presently be an option at Port Westward since Columbia County does not currently have a mitigation bank).

²³ Engineer Circular (EC) 1165-2-220, U.S. Army Corps of Engineers, 10 September 2018. Accessed July 1, 2020, from https://www.publications.usace.army.mil/Portals/76/Publications/EngineerCirculars/EC_1165-2-220.pdf

²⁴ Ibid.

²⁵ Effective June 22, 2020, the definition of “waters of the United States” was clarified through Corps and EPA administrative rulemaking. 85 FR 22250, accessed July 1, 2020, from <https://www.federalregister.gov/documents/2020/04/21/2020-02500/the-navigable-waters-protection-rule-definition-of-waters-of-the-united-states>

Environmental Protection Agency

Clean Water Act

The Environmental Protection Agency (EPA) has jurisdiction over programs established to carry out the Clean Water Act (except for Section 404, noted above, in which both the Corps and EPA have a regulatory role). Taken together, the EPA's programs established under the CWA will result in mitigation consisting of pollution control practices, spill prevention and response plans, and facility design features that minimize impacts on water resources.

- Section 301 (33 USC § 1311). This section prohibits discharge of pollutants to waters of the United States unless a person has obtained a permit (for instance, via Sections 402 or 404, described below).
- Section 303 Water Quality Standards and Implementation Plans (33 USC § 1313). This section requires the EPA and states to prepare and periodically review water quality standards.
- Section 306 National Standards of Performance (33 USC § 1316). Based on this section, the EPA creates water quality standards for various industry sectors (e.g., timber products processing), requiring effluent reductions based on best available technology at the time of permit issuance.
- Section 307 National and Local Pretreatment Standards (33 USC § 1317). This section establishes standards for wastewater flows to publicly owned treatment works (POTW, or municipal wastewater facility), which require pretreatment at a facility prior to discharging into a municipal wastewater collection system that then conveys flows to a POTW. In Oregon, the EPA has delegated authority of this program to the state Department of Environmental Quality (DEQ). These rules would only apply if a POTW system were implemented at Port Westward.
- Section 311 Oil and Hazardous Substance Liability (33 USC § 1321). This section regulates discharges of oil and other hazardous substances into waters of the United States to ensure the effects are not harmful to the public health or welfare or the environment. The EPA is the lead agency for responding to oil spills in inland waters (whereas the Coast Guard is the lead agency for spills at deepwater ports and tidal waters such as Port Westward). Mitigation for impacts addressed in this program often includes requiring facilities that store or use certain quantities of oil (those that may cause "substantial harm") to identify ways to prevent spills and to prepare a Facility Response Plan to identify how to respond in the event of a spill (per 40 CFR 112).
- Section 316 Thermal Discharges (33 USC § 1326). This section authorizes granting of variances from Section 301 or 306 thermal standards if the variance is still protective of fish and wildlife. Additionally, cooling water intake structures that withdraw more than two (2) million gallons per day are subject to design requirements to minimize environmental impacts, particularly on waterborne organisms.
- Section 319 Nonpoint Source Management Programs (33 USC § 1329). This section established funding for the EPA to issue grants for states to improve programs designed to reduce pollution

from nonpoint sources such as agricultural runoff, sediment, nutrients, pesticides, vehicle oil, etc. In Oregon, this grant funding is provided to DEQ.²⁶

- Section 401 State Certification of Water Quality (33 USC § 1341). Before Federal agencies issue permits resulting in discharge to waters of the United States, states must certify that water quality requirements of the CWA are met. Within the zone change area, these provisions would be triggered prior to wetland alterations if the Corps has taken jurisdiction of the affected wetlands or for EPA or other Federal permits. The EPA has established regulations for this process as outlined 40 CFR 121, and in Oregon the 401 Certification review is performed by the DEQ. The EPA allows DEQ to impose conditions of approval as needed to mitigate for incompatible impacts such as effluent quality standards and monitoring requirements to ensure the system's ongoing performance meets standards even beyond permit issuance.
- Section 402 National Pollutant Discharge Elimination System (NPDES, 33 USC § 1342). The EPA requires that point sources obtain a permit from the EPA or the state (in this case, Oregon DEQ) before discharging pollutants into waters of the United States. Point sources include pipes, ditches, and similar channels but exclude agricultural runoff. Within the zone change area, for example, these provisions may apply to wastewater treatment facilities or industrial facilities that discharge process water or stormwater to the Columbia River. Permits place specific limits on the quantity and concentration of an array of pollutants (e.g., heavy metals, nutrients, toxic compounds, bacteria, etc.) as specified in Section 301, which typically necessitates operators to install a treatment system prior to discharge. NPDES permits have regular monitoring and reporting requirements. As these permits have a discrete timespan, operators need to periodically reapply and meet updated permit standards, such as by implementing new available technology.
- Section 404 Permits for Dredged or Fill Material (33 USC § 1344). The EPA disseminates guidelines and criteria utilized by the Corps (and some states, but not including Oregon) in the administration of dredging and fill of waters of the United States.
- Section 405 Sewage Sludge and Disposal Program (33 USC § 1345). The EPA has established programs and standards for the management of biosolids (sewage sludge) from POTWs. As Port Westward does not have a POTW and the Port is not proposing land application of biosolids within the zone change area, this section does not directly affect the zone change area.

Oil Pollution Act

The aim of the Oil Pollution Act (33 USC § 2701), which amended the Clean Water Act, is to minimize damage from oil spills by requiring measures to prevent, prepare for, and respond to spills to avoid discharge to waters. The EPA has issued rules that require onshore oil facilities to prepare emergency response plans pursuant to the Spill Prevention, Control and Countermeasure (SPCC) Rule (40 CFR 112). The EPA has oil spill response authority in the Inland Zone, while the Coast Guard has authority in the Coastal Zone including waters subject to tide such as the portion of the Columbia River at Port Westward. The EPA may either perform cleanup itself or direct the spiller's response.

²⁶ As noted in Section IV, industrial development at Port Westward would not be permitted to allow nonpoint runoff, in contrast to agricultural operations which may generate nonpoint runoff.

Toxic Substances Control Act and Lautenberg Chemical Safety Act

Under the Toxic Substances Control Act (TSCA, 15 USC § 2601), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the EPA requires testing of chemicals proposed for production or storage to assess exposure to humans and the environment, and can place limits on chemicals determined to pose an unreasonable risk of injury. More germane to the zone change area, EPA requires import and export operations to certify that chemicals comply with TSCA and requires chemical operations to maintain records and submit reports to EPA regarding the chemicals, which can be disclosed to local governments, emergency responders, and health professionals (even if the information includes confidential operational data).

Emergency Planning and Community Right-to-Know Act

This EPA's Office of Emergency Management implements and provides guidance on this program pursuant to 42 USC § 11001, which requires that states create emergency planning committees. It also requires industries to report information on use and storage of hazardous chemicals to local governments and to report any accidental releases of hazardous or toxic chemicals, with information available to the public through the EPA's Toxics Release Inventory. In Oregon, this program is largely overseen by the Office of the State Fire Marshal.

Pollution Prevention Act

As part of the Pollution Prevention Act (PPA, 42 USC § 13101) the EPA implements programs including source reduction to minimize the amount of chemicals in use, thereby reducing the volume of any accidental release. Following source reduction, industries are required to recycle pollutants. For those businesses required to file toxic chemical release forms under the Emergency Planning and Community Right-to-Know Act, the PPA requires reporting of toxic reduction and recycling.

Safe Drinking Water Act and Resource Conservation and Recovery Act

The EPA has established the Underground Injection Control (UIC) program in 40 CFR 144 pursuant to provisions of the Safe Drinking Water Act (SDWA, 42 USC § 300) and the Resource Conservation and Recovery Act (RCRA, 42 U.S. Code § 6901). This program specifies the rules through which UICs (e.g., drywells for stormwater disposal) may be constructed and utilized. Mitigation (e.g., water quality treatment) may be required in order to protect groundwater quality, particularly for underground drinking water supplies. The EPA has delegated authority to DEQ to administer this program within Oregon.

The Resource Conservation and Recovery Act also authorizes the EPA to set standards to regulate solid waste, including hazardous waste, and specifies rules for underground storage tank safety. In Oregon, RCRA provisions are implemented through DEQ.

Clean Air Act

Under the Clean Air Act (CAA, 42 USC § 7401 et seq.), the EPA establishes air quality standards, including those for six common pollutants: ground-level ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen dioxide. The EPA also regulates emissions of hazardous air pollutants that cause health effects such as cancer. Taken together, the CAA regulations require pollution controls and compliance with emissions standards. For each of these regulatory areas, new sources (such as those that would be constructed in the zone change area) are subject to more stringent regulations than existing sources. Similar to NPDES permits, Clean Air Act operating permits have regular monitoring and reporting

requirements and require periodic renewal. The EPA has delegated authority to DEQ to administer this program within Oregon.

CAA Section 112(r) requires facilities using certain quantities of an extensive list of regulated substances²⁷ to submit a Risk Management Plan to the EPA (not DEQ) every five years to outline steps to reduce the likelihood of chemical accidents and share information with first responders on how to respond to an accident.

U.S. Coast Guard

Homeland Security Act of 2002

In addition to its high-profile search and rescue mission, the U.S. Coast Guard has ten other missions identified in the Homeland Security Act of 2002 (6 USC § 468). Those most relevant to the Port Westward zone change area include marine safety; marine environmental protection; and ports, waterways and coastal security. The Coast Guard is the lead agency for responding to incidents (including spills of oils or hazardous materials) in waterways, and consequently coordinates and prepares for emergency response efforts. The Coast Guard reviews and approves security plans for ships and marine facilities (including ports), including anti-terrorism measures.

Oil Pollution Act

The Oil Pollution Act (33 USC § 2701), which amended the Clean Water Act, grants authority to the Coast Guard to require oil transport vessels (and large ships carrying fuel for their own use) to prevent, prepare for, and respond to spills. The Coast Guard requires vessel operators to obtain certificates to demonstrate adequate financial resources to respond to a spill, if one should occur. The Coast Guard has oil spill response authority in the U.S. Coastal Zone which includes areas subject to tide such as the Columbia River near Port Westward. The Coast Guard may either perform cleanup itself or direct the spiller's response.

Pipeline and Hazardous Materials Safety Administration

Hazardous Liquid Pipeline Act and Natural Gas Pipeline Safety Act

The Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation is responsible for overseeing pipeline safety pursuant to the Hazardous Liquid Pipeline Act and the Natural Gas Pipeline Safety Act (both at 49 USC § 60101). PHMSA issues regulations on pipeline design and construction, testing, maintenance, and accident reporting.

Oil Pollution Act

The Oil Pollution Act (33 USC § 2701) grants authority to PHMSA to regulate pipelines that transport oil and other hazardous materials. PHMSA requires operators to design and construct pipelines to meet specific safety standards and to develop emergency response plans.

²⁷ U.S. Environmental Protection Agency, List of Regulated Substances under the Risk Management Plan (RMP) Program. Accessed July 1, 2020, from <https://www.epa.gov/rmp/list-regulated-substances-under-risk-management-plan-rmp-program>

Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES) Act

The PIPES Act reauthorized PMHSA's pipeline safety program and required PMHSA to develop standards for underground natural gas storage operations. This Act also required PMHSA inspectors to provide reports to pipeline operators following inspections, so that operators can expediently make any necessary changes to improve safety.

Federal Rail Safety Act

Under the Federal Rail Safety Act (49 USC § 20106), as amended, PHMSA and the Federal Railroad Administration require railroad operators to prepare oil spill response plans, to share information with local emergency responders, and to utilize rail cars meeting the latest safety standards.

Federal Railroad Administration

Federal Rail Safety Act

Under the Federal Rail Safety Act (49 USC § 20106), as amended, PHMSA and the Federal Railroad Administration (FRA) require railroad operators to prepare oil spill response plans, to share information with local emergency responders, and to utilize rail cars meeting the latest safety standards. The FRA also issues rail safety regulations and enforces them via inspections. Violators are subject to fines.

U.S. Maritime Administration

Marine Highway Program

The U.S. Maritime Administration (MARAD), part of the U.S. Department of Transportation, manages the Marine Highway Program to encourage increased use of navigable waters. The M 84 Marine Highway Corridor (of which the Columbia River is a part) is included in this program. As part of this program, MARAD regulates the Columbia River M-84 Corridor and awards grant funding for qualifying projects at ports.

Deepwater Port Act

Pursuant to the Deepwater Port Act (33 USC § 1501), MARAD licenses offshore port structures not applicable in this context. This act defines deepwater ports more narrowly than the state of Oregon; for the purposes of this act, deepwater ports are those which are beyond state seaward boundaries. As a result, this act is not applicable to Port Westward, but may have a nexus to vessels in maritime commerce that call at Port Westward.

Federal Energy Regulatory Commission

Natural Gas Act and Natural Gas Policy Act

Under the Natural Gas Act (15 USC § 717) and Natural Gas Policy Act (15 USC § 3341), the Federal Energy Regulatory Commission (FERC) is charged with reviewing applications for the construction and operation of natural gas terminals, storage facilities, and pipelines. As part of this process, FERC coordinates with multiple agencies including the U.S. Coast Guard, U.S. Department of Transportation, and state and local governments to ensure that the facility meets standards and that the operator has an appropriate emergency response plan in place. If FERC approves a natural gas facility, it then operates under FERC regulatory oversight throughout the course of the facility's operation. As part of this oversight, FERC can

require operators to perform safety improvements. The NEPA review associated with these facilities would also address alternatives analysis, pollution prevention measures, and the like.

Interstate Commerce Act

As part of the Interstate Commerce Act (49 USC § 1), FERC regulates rates (tariffs) for both oil and natural gas pipelines. Safety regulations for these pipelines are issued by the U.S. Department of Transportation (USDOT) Pipeline and Hazardous Materials Safety Administration, not by FERC.

Federal Emergency Management Agency

National Flood Insurance Program

The Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP, 42 USC § 50), which among other provisions requires preparation of Flood Insurance Rate Maps (FIRMs). FEMA also promulgates regulations that communities wishing to participate in the NFIP are obligated to meet or exceed.²⁸ FEMA does not have direct regulatory authority over the application of the NFIP in permitting and development, as that is under the purview of the local government (Columbia County, in the case of the zone change area). However, if an applicant wishes to amend a FIRM, it must submit technical documentation to FEMA to demonstrate compliance with the NFIP and other laws including the Endangered Species Act and may need to modify the project design to comply.

U.S. Fish and Wildlife Service

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (16 USC § 703) prohibits “taking” of certain migratory bird species without a permit from the U.S. Fish and Wildlife Service (USFWS). Taking is broadly defined as including:

*...pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof...*²⁹

Therefore, construction activities and facility operations need to avoid takings (e.g., by limiting certain actions to non-migration periods) or first obtain USFWS approval. If unpermitted takings occur, violators are subject to fines.

²⁸ Federal flood insurance is only available within communities that participate in the NFIP.

²⁹ 16 USC § 703(a). Accessed July 1, 2020 from [https://uscode.house.gov/view.xhtml?req=\(title:16 section:703 edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:16 section:703 edition:prelim))

U.S. Fish and Wildlife Service and National Marine Fisheries Service

Marine Mammal Protection Act

The Marine Mammal Protection Act (16 USC § 1361) prohibits “taking” of marine mammals without a permit from USFWS or the National Marine Fisheries Service (NMFS), with the applicable agency dependent on species. The term take is defined as “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.”³⁰ Therefore, construction activities and facility operations need to avoid takings (e.g., by altering practices) or first obtain USFWS and/or NMFS approval. If unpermitted takings occur, violators are subject to fines.

Federal Agencies Providing Supplemental Review

Multiple agencies including USFWS, NMFS, Bureau of Land Management (BLM), and the U.S. Forest Service (USFS) provide additional review of Federal permits to ensure the proposed Federal actions do not impact sensitive natural resources. The administering Federal agency (e.g., the Corps) then incorporates the comments from the reviewing agencies into its decision on the requested permit. For instances where specific coordination requirements are not specified in other statutes, the National Environmental Policy Act (described above) would still require coordination with these agencies when reviewing Federal actions. While the reviewing agencies’ comments are generally not binding, they help the lead agencies comply with Federal environmental laws by providing recommendations on courses of action.

Endangered Species Act

Under the Endangered Species Act (16 USC § 1531), USFWS has created a list of endangered species. Federal agencies are required to coordinate with USFWS and NMFS to ensure that Federal actions (including permit decision) will not further threaten listed species, either through direct effects or through habitat impacts. An example of how this could affect the zone change area is that if a project requires a Federal permit, the stormwater management system must be designed to meet both the NMFS Standard Local Operating Procedures for Endangered Species (SLOPES) standards and the County stormwater standards.

Fish and Wildlife Coordination Act

For projects that impound, divert, control, or modify water bodies and wetlands (including navigation and drainage projects), the Fish and Wildlife Coordination Act (16 USC § 661) requires other Federal agencies to consult with USFWS and NMFS prior to issuing permits to minimize damage to wildlife. An applicant may need to modify the project design to address concerns raised by the reviewing agencies.

Magnuson-Stevens Fishery Conservation and Management Act

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 USC § 1801), Federal agencies are required to coordinate with NMFS prior to taking actions (including issuing permits) that may impact essential fish habitat. An applicant may need to modify the project design to address concerns raised by the reviewing agencies.

³⁰ 16 USC § 1362(13). Accessed July 1, 2020 from [https://uscode.house.gov/view.xhtml?req=\(title:16 section:1362 edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:16 section:1362 edition:prelim))

Applicable Oregon Regulations

Similar to the Federal level, state regulatory programs are administered by multiple agencies.

Department of State Lands

Wetland and Waterway Removal and Fill permits

Pursuant to Oregon's Removal-Fill Law (ORS 196.795-990), the Department of State Lands (DSL) regulates alterations of waters of the state, which include streams, ponds, wetlands, and ditches. Regulated activities include removal or intentional movement of rock, gravel, sand, silt, other inorganic substances, and large woody debris from the bed or banks of a waterway, or deposition of material. These regulations are similar to Corps regulations of waters of the United States, but state rules are in some ways more stringent than Federal rules.

DSL permits are required for projects that involve 50 cubic yards of fill and/or removal (cumulative) within the jurisdictional boundary.³¹ Furthermore, there are two areas within and near the zone change area that would require DSL permits for projects of any size (even smaller than 50 cubic yards), namely (1) in the wetland mitigation sites northwest of Portland General Electric's generating facilities, and (2) abutting the east end of the zone change area in Dobbins Slough/Johns Slough due to its designation as Essential Salmonid Habitat.

Similar to Corps permits, to obtain many DSL fill-removal permits, applicants must generally perform an alternatives analysis to justify wetland/waterway alterations and demonstrate alteration of construction to minimize impacts on aquatic habitat. DSL requires mitigation for the adverse impacts to the extent practical, with a minimum of 1.5 acres of new wetland creation for every acre filled.³²

Department of Environmental Quality

Oregon Department of Environmental Quality (DEQ) oversees permit programs addressing air quality, water quality, and solid waste disposal.³³ Prior to review of any DEQ permit, the state requires submittal of a Land Use Compatibility Permit (LUCS) signed by the local government (in this case, Columbia County) to indicate whether the proposed use is compatible with applicable comprehensive plan provisions and zoning standards.³⁴

As part of its rulemaking process, DEQ regularly evaluates and refines its programs and standards to safeguard public health and the environment. For instance, the NPDES 1200-Z permit (noted below) is currently under review, with the proposed draft rule anticipated to be issued for public comment in fall 2020 and the final rule anticipated in spring 2021.

³¹ Oregon Department of State Lands, A Guide to the Removal-Fill Permit Process, 2019. Accessed July 1, 2020 from http://www.oregon.gov/dsl///_Fill_Guide.pdf

³² Ibid.

³³ DEQ also manages an Environmental Cleanup Program but since the zone change area is not a brownfield, the cleanup program is not applicable at this location.

³⁴ Oregon Department of Environmental Quality, Land Use Compatibility Statement. Accessed July 1, 2020 from <https://www.oregon.gov/deq/Permits/Pages/LUCS.aspx>

Water Quality

DEQ issues water quality permits based both on Federal authority delegated by the EPA (e.g., the Underground Injection Control Program) and on authority granted by Oregon statute. Water quality permits must be obtained prior to discharge of pollutants to water or to the ground. These permits generally limit allowable quantities and types of pollutant discharges (e.g., sediment, chemicals, etc.) and may require certain equipment or practices to limit pollution. Several permit types also require regular monitoring and reporting; the agency then makes these data available to the public.

NPDES Permits

Pursuant to Section 402 of the Clean Water Act, DEQ is authorized by the EPA to issue permits as part of the National Pollutant Discharge Elimination System. These permits are required for point source (pipes, ditches, and similar channels but excluding agricultural runoff) discharges to waters of the United States and State of Oregon. Within the zone change area, for example, these provisions may apply to wastewater treatment facilities or industrial facilities that discharge process water or stormwater to the Columbia River. Permits place specific limits on the quantity and concentration of an array of pollutants (e.g., heavy metals, nutrients, toxic compounds, bacteria, etc.) as specified in CWA Section 301, which typically necessitates operators to install a treatment system prior to discharge. NPDES permits have regular monitoring and reporting requirements. As these permits have a discrete timespan, operators need to periodically reapply and meet changing permit standards such as by implementing best available technology.

Types of NPDES permits that would be needed for future activities within the zone change area include:

- 1200-C Construction Stormwater General Permit, for construction activities that disturb more than one acre; and
- 1200-Z Stormwater Discharge General Permit, for ongoing industrial operations.

WPCF Permits

Water Pollution Control Facility (WPCF) permits are similar to NPDES permits but are instead required for discharge to the ground rather than to surface water. DEQ issues WPCF permits for wastewater lagoons, onsite sewage disposal systems (described below), underground injection control systems (described below), and land irrigation of wastewater. In each case, operators must install any requisite technology to meet allowable release standards.

Underground Injection Control Program

Pursuant to the Federal Safe Drinking Water Act and Oregon's Groundwater Act (OAR Chapter 340, Division 40), DEQ's UIC Program regulates injection wells that may be used for disposal or storage of liquids (e.g., stormwater management drywells), to ensure that such facilities are built and operated in a manner that is protective of groundwater supplies. Prior to construction, applicants need to obtain a UIC permit from DEQ to demonstrate that adequate separation from groundwater is provided and that appropriate pre-treatment facilities are in place to improve water quality prior to injection, with required pre-treatment levels varying depending on the source of the injected fluid. DEQ may also require periodic sampling and reporting, and may require closure of non-compliant UICs.

Onsite Wastewater Management Program

DEQ publishes rules (OAR Chapter 340, Divisions 71 and 73) regarding the design, construction, and maintenance of onsite sewage systems (e.g., septic systems) to maintain public health and protect water quality. These rules require an applicant to obtain a permit prior to construction and to build the system to specific standards to minimize impacts. Owners of certain types of systems (e.g., sand filters) are required to file an annual operation and maintenance form by a certified onsite maintenance provider. In Columbia County, individual onsite systems are permitted through the County rather than through DEQ.

Nonpoint Source Program

DEQ's Nonpoint Source Program encourages reduction of pollution from nonpoint sources. Pursuant to CWA Section 319, DEQ provides grant funding for qualified partners to implement programs to decrease nonpoint source pollution.³⁵

Section 401 Removal and Fill Certification

For projects that require Federal permits that may result in discharge to waters of the United States, Section 401 of the Clean Water Act requires states to certify that water quality requirements of the CWA are met. As noted above, these provisions would be triggered within the zone change area if a Corps wetland fill permit or other Federal permit is needed to accommodate a project. DEQ may impose conditions of approval to mitigate for incompatible impacts such as effluent quality standards and monitoring requirements. Without DEQ's 401 certification, the Federal permit cannot be issued.

Biosolids Program

Pursuant to Clean Water Act Section 405 and state rules, DEQ manages the state's program for management of biosolids (sewage sludge) from municipal wastewater facilities. Port Westward does not have a municipal wastewater facility and the Port is not proposing land application of biosolids within the zone change area, so this section does not directly affect the zone change area unless those circumstances change in the future.

Industrial Pretreatment Program

The EPA has delegated management of the CWA National and Local Pretreatment Standards to DEQ. The state also has its own supplemental regulations. As noted above, these standards are applicable to wastewater flows to publicly owned treatment works (POTW), so they would only apply if a POTW system were implemented at Port Westward.

Ballast Water Program

DEQ's rules for ballast water stipulate that regulated vessels must provide reports to the state before entering state waters and comply with management practices outlined in ORS 783.620 through 783.640 to minimize introduction of nuisance species. DEQ can issue fines for noncompliance. At Port Westward,

³⁵ As noted in the EPA discussion, industrial development at Port Westward would not be permitted to allow nonpoint runoff but would instead need to collect and treat stormwater prior to discharge; by contrast, agricultural operations may generate unregulated nonpoint runoff.

this program would only apply to the zone change area if a dock were constructed in the future along the Thompson property's Columbia River shore.

Air Quality

DEQ issues air quality permits based both on Federal authority delegated by the EPA (for new sources and hazardous air pollutants) and on authority granted by Oregon statute. Air quality permits generally limit allowable quantities and types of air pollution emissions (e.g., particulates, toxics, Clean Air Act pollutants, etc.) and may require certain equipment or practices to limit pollution. DEQ also requires regular air quality monitoring and reporting; the agency then makes these data available to the public.

Cleaner Air Oregon Program

The Cleaner Air Oregon (CAO) Program, established in 2018, strengthened air quality standards for industrial operations. Based on the purposes outlined in OAR 340-245-0005, this program is intended to protect health, analyze health risk based on science, use a science-based approach to address risks, and reduce air toxic exposure while supporting businesses. With the exceptions of minor sources of pollutants, new businesses are required to first undergo CAO risk assessment, which may require operators to institute additional emission controls to comply with the state's Risk Action Levels. Following the CAO risk assessment, operators then apply for applicable permits (further described below), which incorporate the results of the assessment.

Air Contaminant Discharge Permits

Air Contaminant Discharge Permits (ACDPs) are required for new sources of air pollution or major modifications to existing sources.³⁶ DEQ has established four tiers of ACDPs, which increase in complexity as one moves through the following list (the type of emission source determines the applicable permit tier).³⁷ The following list provides examples of activities that would require each type of ACDP but does not replicate the entire inventory of applicable activities promulgated by DEQ. With each of these ACDP's, an operator may need to install pollution control technology as mitigation to ensure compliance with numerical emissions standards.

1. Basic ACDP. Facilities that fall under this permit threshold include:
 - Natural gas and propane fired boilers of 10 or more million British Thermal Units (MMBTU)/hour but less than 30 MMBTU/hour heat input that may use less than 10,000 gallons per year of #2 diesel oil as a backup fuel.
 - Rock, concrete or asphalt crushing, both stationary and portable, more than 5,000 tons/year but less than 25,000 tons/year crushed.
2. General ACDP. Facilities that fall under this permit threshold include:
 - Boilers (>10 million BTU/hour heat input for oil fuels and >30 million BTU/hour heat input for natural gas and propane fuels).

³⁶ Oregon Department of Environmental Quality, Instructions for Using Air Contaminant Discharge Permit Application Forms, January 21, 2020. <https://www.oregon.gov/deq/FilterPermitsDocs/acdp-applguidelines.pdf>

³⁷ Ibid.

- Rock crushers (>25,000 tons of rock crushed per year); sawmills, planing mills, millwork, plywood manufacturing and veneer drying (>25,000 board feet per 8-hour shift).
3. Simple ACDP. Facilities that fall under this permit threshold include:
- Building paper and buildingboard mills.
 - Natural gas and oil production and processing and associated fuel burning equipment.
4. Standard ACDP. Facilities that fall under this permit threshold include:
- All sources that DEQ determines have emissions that constitute a nuisance.
 - All sources having the potential to emit 25 tons or more of all hazardous air pollutants combined in a year.

Title V Operating Permits

Industrial operations deemed major sources of air pollutants (as defined in OAR 340-200-0020) are required by the Federal Clean Air Act to obtain Title V operating permits. For new facilities (such as any future facilities in the zone change area), operators need to first obtain the applicable ADCP authorizing construction, then apply for Title V operating permits.³⁸ Title V permits require additional air quality monitoring and reporting (compared to ACDPs) to demonstrate compliance with air quality standards.

Tanks

DEQ has standards for both aboveground storage tanks (AST) and underground storage tanks (UST).

Aboveground Storage Tanks

While AST's are largely regulated by EPA, DEQ does require that spills of oil or hazardous materials be reported to the DEQ emergency response program.³⁹ DEQ also has authority over ASTs with 10,000 gallon or greater capacity if petroleum is received from pipelines or vessels.⁴⁰ Operators would need to utilize appropriate tank designs and containment measures to reduce the potential for harmful spills.

Underground Storage Tanks

The EPA has certified that DEQ's underground storage tank program meets or exceeds Federal standards.⁴¹ Therefore, DEQ is the lead agency for UST's in Oregon, and requires tank owners and operators to meet both state and Federal standards. DEQ rules specify tank installation and operating standards, require DEQ registration of tanks and annual operating certificates, specify measures for

³⁸ OAR Chapter 340, Division 218, Oregon Title V Operating Permits. Accessed July 1, 2020 from <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1540>

³⁹ Oregon Department of Environmental Quality, Above Ground Storage Tanks. Accessed July 1, 2020 from <https://www.oregon.gov/deq/tanks/Pages/Above-Ground-Storage-Tanks.aspx>

⁴⁰ Ibid.

⁴¹ Oregon Department of Environmental Quality, Underground Storage Tank Program. Accessed July 1, 2020 from <https://www.oregon.gov/deq/tanks/Pages/UST.aspx>

addressing leaks, mandate operator training, require licensed UST contractors, and establish liability for future leaks.

Hazardous Waste

The five proposed uses for the zone change area have the potential to generate hazardous waste. DEQ regulates hazardous waste generators; hazardous waste treatment, storage or disposal facilities; and hazardous waste recycling facilities to maintain public health and environmental quality. Waste generators need to characterize their waste to determine if it is hazardous under Federal law (RCRA) or state law (OAR Chapter 340), and then provide annual reporting to DEQ. Additionally, DEQ rules specify hazardous waste accumulation limits; personnel training standards for waste handling; emergency management planning; shipping methods; allowable storage and treatment requirements; and spill containment procedures. DEQ also provides hazardous waste training to educate operators about how to properly manage hazardous waste.

Noise Control

Pursuant to ORS Chapter 467, DEQ has issued noise control regulations adopted as OAR 340 Division 35, and these model rules can be adopted by local jurisdictions (including Columbia County) to address noise events. These rules stipulate that new industrial uses cannot generate sounds that exceed specified levels or that increase ambient noise levels by more than 10 decibels in an hour, as measured at a “noise sensitive property.” Additional standards address impulsive sounds and sound frequency. Operators may need to implement noise reduction measures to comply with these standards.

Emergency Response

Pursuant to OAR 340 Divisions 141 and 142, DEQ coordinates with Federal, state, and local partners to help prevent accidental discharges of oil or other hazardous wastes and to respond to spill events. DEQ requires ship and pipeline operators to prepare oil spill prevention and response plans, which DEQ then circulates during a public comment period. DEQ also requires reporting of spills of oils and other hazardous materials.

Department of Energy

Among other programs, the Oregon Department of Energy (ODOE) participates in decisions regarding the siting of liquified natural gas facilities and energy facilities.

Liquified Natural Gas

ODOE is the state agency charged with evaluating requests for liquified natural gas (LNG) import/export facilities on behalf of the state. ODOE provides input to FERC, which has the ultimate decision-making authority regarding siting new facilities pursuant to Federal law. ODOE also coordinates with FERC and the U.S. Coast Guard to ensure that the operator has an appropriate emergency response plan in place and that the operator has signed a Memorandum of Understanding with ODOE regarding safety planning and cost recovery for any needed emergency preparation.

Energy Facilities

ODOE staff support the Energy Facility Siting Council (EFSC) which regulates the siting of energy facilities as defined in ORS 469.300(11)(a), which includes certain pipelines transporting petroleum or LNG; certain

fuel processing facilities; and LNG storage facilities over 70,000 gallons (excluding import/export facilities). The EFSC only issues site certificates once adequate evidence has been provided by an applicant to confirm that appropriate mitigation measures are in place to meet standards for safety, noise control, wildlife protection, offsite impacts, etc. EFSC's review process involves coordination with state, local, and tribal agencies and notice to nearby property owners.

Office of the State Fire Marshal

The Office of the State Fire Marshal (OSFM) manages multiple programs applicable to industrial safety.

Community Right to Know

OSFM implements Oregon's Community Right to Know program. This program requires industries to provide annual reporting on use and storage of hazardous chemicals (and associated Safety Data Sheets) and to report any accidental releases of hazardous or toxic chemicals.⁴² OSFM also collects hazardous material incident reports from emergency providers. The information reported to OSFM is available for review by the public. Confidential information (e.g., exact quantities of hazardous materials) is made available to emergency responders but not to the general public.

Emergency Response

OSFM oversees the State Emergency Response Commission, which establishes emergency planning districts and reviews local emergency response plans. The agency has also established the Oregon Fire Service Mobilization Plan to identify the state response role during large emergency response events.

Fire Code and Inspections

Deputy State Fire Marshals perform plan review on new structures to confirm compliance with the Oregon Fire Code, including standards for emergency access, fire hydrants and water supply, building information signs (denoting construction type and fire-resistance rating, fire protection systems, occupancy type, and hazards), fire suppression systems, and emergency responder radio coverage.⁴³ Deputy State Fire Marshals also perform inspections of industrial structures following construction.⁴⁴

Incident Response

OSFM trains emergency response personnel in how to respond to hazardous materials incidents. OSFM also has Incident Management Teams that can be deployed for large or complex events.

Storage Tanks

The Oregon Fire Code specifies standards for the installation of tanks storing flammable/or combustible liquids. Aboveground tanks over 1,000 gallons also need permits from OSFM prior to installation. Per OAR 837-030-0100 through 837-030-0280, bulk storage sites for liquid petroleum gas (LPG) are subject to annual permits and inspections, and operators are required to submit plans for OSFM review prior to

⁴² OAR Chapter 837, Division 85, Community Right-to-Know Survey and Compliance Programs. Accessed July 1, 2020 from <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3816>

⁴³ 2019 Oregon Fire Code. Accessed July 1, 2020 from <https://codes.iccsafe.org/content/OFC2019P1>

⁴⁴ Office of the State Fire Marshal, Deputy State Fire Marshals. Accessed July 1, 2020 from <https://www.oregon.gov/osp/programs/sfm/Pages/Deputy-State-Fire-Marshals.aspx>

changes to the storage site and notify OSFM within two weeks of any new tank installations, whether above ground or underground. Any deficiencies noted by OSFM inspectors must be remedied within 60 days or fewer.

Office of Emergency Management

The Oregon Office of Emergency Management (OEM) has a role both in preparing for and in responding to significant emergencies.⁴⁵ OEM provides grants to local agencies to assist in disaster and emergency preparation and publishes the Comprehensive Emergency Management Plan which addresses natural hazards, preparedness, emergency operations, and recovery, including emergency operations procedures relating to such topics as firefighting and hazardous materials.⁴⁶ While local responders (e.g., Clatskanie Rural Fire Protection District) would have responsibility for addressing emergencies at PWW and in the zone change area, if an emergency were large then OEM may also participate in the response.

Water Resources Department

The Oregon Water Resources Department (OWRD) manages water rights within the state. If industrial uses in the zone change area wish to install new systems to utilize surface water or groundwater, they would first need to obtain water rights from OWRD, a process which requires demonstration that measures are in place to ensure that water is not wasted.

If industrial uses in the zone change area wish to utilize groundwater, they would need to utilize a certified well constructor to ensure that the well was installed per state standards and properly reported to the state. If the user later wishes to abandon the well, again the work would need to be performed by a certified well constructor, with reporting provided to OWRD.

Oregon Department of Transportation

ODOT Rail

The Oregon Department of Transportation (ODOT) Rail and Public Transit Division (ODOT Rail) inspects track and performs inspections of railroad equipment and track in conjunction with the FRA to maintain safety of infrastructure and rail cars. ODOT Rail requires carriers to prepare emergency response plans per ORS 824.082, which specifies that rail carriers need to provide notice to the state in advance of transporting hazardous materials by rail.

State Agencies Providing Supplemental Review

Additional state agencies provide supplemental review and comment on permit applications under review by other agencies. The reviewing agencies' comments help the lead agencies comply with Federal and state environmental laws by providing recommendations on courses of action.

⁴⁵ Oregon Office of Emergency Management. Accessed July 12, 2020 from <https://www.oregon.gov/oem>

⁴⁶ Oregon Office of Emergency Management, State of Oregon Emergency Management Plan, Volume III: Emergency Operations Plan, April 2017. Accessed July 12, 2020 from https://www.oregon.gov/oem/Documents/2017_OR_EOP_complete.pdf

Oregon Department of Fish and Wildlife

- Oregon Department of Fish and Wildlife (ODFW) comments on water rights applications to OWRD.⁴⁷
- ODFW comments on impacts to endangered species (and sensitive or threatened species) and may require mitigation (e.g., design changes) for impacts.⁴⁸
- ODFW provides comments to Columbia County on whether mitigation would be appropriate or necessary to mitigate for habitat impacts for development in wetlands and riparian corridors.⁴⁹
- ODFW comments on DEQ Section 401 Removal and Fill Certifications.⁵⁰
- ODFW comments on DEQ NPDES water quality permit applications.
- ODFW comments on DSL wetland fill permit applications⁵¹ and EFSC energy facility applications.⁵²

Oregon Heritage

Oregon Heritage is the State Historic Preservation Office (SHPO) within Oregon Parks and Recreation Department.

- SHPO comments on Federal permit applications under Section 106 of the National Historic Preservation Act, which requires Federal agencies to account for impacts on historic properties and archaeological sites prior to making decisions.⁵³
- Similarly, SHPO also comments on Federal permit applications falling under NEPA provisions.
- If historic or cultural elements are present, applicants may need to modify their development proposals to avoid or minimize impacts.⁵⁴

⁴⁷ Oregon Department of Fish and Wildlife, The Water Quality and Quantity Program. Accessed July 1, 2020 from <https://www.dfw.state.or.us/fish/water/>

⁴⁸ OAR Chapter 635, Division 415, Fish and Wildlife Habitat Mitigation Policy. Accessed July 1, 2020 from <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2989>

⁴⁹ Columbia County Zoning Ordinance section 1170

⁵⁰ Oregon Department of State Lands, An Introduction to Water-Related Permits and Reviews Issued by Oregon State Agencies, August 2012. Accessed July 1, 2020 from https://www.oregon.gov/DSL/WW/Documents/water_related_permits_user_guide_2012.pdf

⁵¹ Ibid.

⁵² Oregon Department of Energy, Oregonians' Guide to Siting and Oversight of Energy Facilities, September 2017. Accessed July 1, 2020 from <https://www.oregon.gov/energy/facilities-safety/facilities/Documents/Fact-Sheets/EFSC-Public-Guide.pdf>

⁵³ Oregon Heritage, Begin Project Review Process. Accessed July 1, 2020 from <https://www.oregon.gov/oprd/OH/Pages/ProjectReview.aspx>.

⁵⁴ Ibid.

Applicable Columbia County Programs

County regulations and programs that directly or indirectly serve to maintain compatibility with adjoining uses are identified below.

Zoning Ordinance

Columbia County is the land use authority at Port Westward and throughout unincorporated portions of the County. Accordingly, the County has adopted its Zoning Ordinance to implement the County's Comprehensive Plan to ensure that land uses are consistent with adopted statewide and local goals, policies, and objectives. The underlying premise of a zoning ordinance is that it will protect human health and safety by limiting incompatibility of surrounding uses. For instance, as part of the current zone change application, the County will impose conditions as part of any approval to ensure compliance with both County and statewide policies, and future development proposals will be subject to public land use review processes that comply with the terms and limitations of an exception granted to Goal 3 (e.g., uses must be dock-dependent), and any other then-applicable land use regulations (and related regulations) at the state and local level.

Specific provisions applicable to the RIPD zone (to be applied in the zone change area) require that new developments provide setbacks "necessary to adequately protect adjacent properties." As part of the County's future Conditional Use review process for individual industrial developments, the Planning Commission has authority to impose additional conditions of approval to ensure consistency with land use regulations (e.g., requiring documentation on all required Federal, State, and County permits):

The Commission may attach conditions and restrictions to any conditional use approved. The setbacks and limitations of the underlying district shall be applied to the conditional use. Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds, and other reasonable conditions, restrictions, or safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use being allowed.⁵⁵

In order to grant the Conditional Use, the applicant must provide evidence of compliance with applicable zoning provisions and the following approval criteria:

- A. *The use is listed as a Conditional Use in the zone which is currently applied to the site;*
- B. *The use meets the specific criteria established in the underlying zone;*
- C. *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;*
- D. *The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;*
- E. *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;*

⁵⁵ Columbia County Zoning Ordinance section 1503.2

- F. *The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;*
- G. *The proposal will not create any hazardous conditions.⁵⁶*

The Zoning Ordinance also requires Site Design Review for new industrial developments; this application requires submittal of information on proposed conditions including such aspects as building and paved areas, natural features, stormwater facilities, lighting, erosion control, waste management areas, noise sources, measures to protect water bodies and habitat, landscaping, and grading. As part of the process, the Planning Commission has the authority to impose conditions of approval as needed to comply with the following approval criteria:

- A. *Flood Hazard Areas: See CCZO §1100, Flood Hazard Overlay Zone. All development in Flood Hazard Areas must comply with State and Federal Guidelines.*
- B. *Wetlands and Riparian Areas: Alteration of wetlands and riparian areas shall be in compliance with State and Federal laws.*
- C. *Natural Areas and Features: To the greatest practical extent possible, natural areas and features of the site shall be preserved.*
- D. *Historic and Cultural sites and structures: All historic and culturally significant sites and structures identified in the Comprehensive Plan, or identified for inclusion in the County Periodic Review, shall be protected if they still exist.*
- E. *Lighting: All outdoor lights shall be shielded so as to not shine directly on adjacent properties and roads.*
- F. *Energy Conservation: Buildings should be oriented to take advantage of natural energy saving elements such as the sun, landscaping and land forms.*
- G. *Transportation Facilities: Off-site auto and pedestrian facilities may be required by the Planning Commission, Planning Director or Public Works Director consistent with the Columbia County Road Standards and the Columbia County Transportation Systems Plan.⁵⁷*

As required by the Zoning Ordinance and referenced in Ordinance 2018-1, new uses in the zone change must meet the following standards for RIPD Use Under Prescribed Conditions:

- A. *The requested use conforms with the goals and policies of the Comprehensive Plan - specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies.*
- B. *The potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated considering the following factors:*
 - .1 *Physiological characteristics of the site (ie., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements;*

⁵⁶ Columbia County Zoning Ordinance section 1503.5

⁵⁷ Columbia County Zoning Ordinance section 1563

- .2 Existing land uses and both private and public facilities and services in the area;
 - .3 The demonstrated need for the proposed use is best met at the requested site considering all factors of the rural industrial element of the Comprehensive Plan.
- C. The requested use can be shown to comply with the following standards for available services:
- .1 Water shall be provided by an on-site source of sufficient capacity to serve the proposed use, or a public or community water system capable of serving the proposed use.
 - .2 Sewage will be treated by a subsurface sewage system, or a community or public sewer system, approved by the County Sanitarian and/or the State DEQ.
 - .3 Access will be provided to a public right-of-way constructed to standards capable of supporting the proposed use considering the existing level of service and the impacts caused by the planned development.
 - .4 The property is within, and is capable of being served by, a rural fire district; or, the proponents will provide on-site fire suppression facilities capable of serving the proposed use. On-site facilities shall be approved by either the State or local Fire Marshall.⁵⁸

The Zoning Ordinance contains floodplain management standards that are developed to mitigate impacts to floodplains and to promote compatibility within the frequently flooded areas, applicable to areas subject to a one percent or greater chance of flooding in any given year. Based on the floodplain boundaries identified on Flood Insurance Rate Map 41009C0050D, these standards would apply to the Thompson Property but not to the remainder of the zone change area.

The Zoning Ordinance also contains provisions regulating impacts to wetlands and riparian corridors, including obtaining applicable permits from state and Federal agencies (e.g., wetland fill permits from DSL and the Corps) prior to issuance of County permits. The County's 1995 Wildlife and Sensitive Lands (adopted in the Comprehensive Plan) maps do not indicate the presence of Natural Areas, Non-Game Areas, or Sensitive Plants Areas within or adjacent to the zone change area. However, they do classify as Major Waterfowl Habitat the entire zone change area and portions of the adjacent area. Additionally, they indicate that portions of the adjacent area south of the zone change area (but not the zone change area itself) are classified as Columbia White-tailed Deer – Marginal Habitat. As part of its review, the County consults with ODFW to determine if mitigation would be appropriate or necessary to mitigate for habitat impacts.

Onsite Wastewater Program

The County's Public Health Department requires onsite sewage systems (e.g., septic systems) to meet state rules issued by DEQ, specifically OAR 340 Divisions 71 and 73. These regulations require applicants to design and construct systems in a manner demonstrated to protect water quality and properly manage human waste. Onsite systems cannot be constructed until an applicant obtains permits from the County.⁵⁹

⁵⁸ Columbia County Zoning Ordinance section 683.1

⁵⁹ While the existing Port Westward Industrial Park has a small private sewer system, future tenants have the option to either connect to the existing system or to manage their own sanitary wastes via private on-site systems.

Stormwater and Erosion Control Ordinance

The Columbia County Stormwater and Erosion Control Ordinance was enacted to achieve the following objectives:

- Prevent water quality degradation of the county's water resources;
- Prevent damage to property from increased runoff rates and volumes;
- Protect the quality of waters for drinking water supply, contact recreation, fisheries, irrigation, and other beneficial uses;
- Establish sound developmental policies which protect and preserve the county's water and land resources;
- Protect county roads and rights-of-way from damage due to inadequately controlled runoff and erosion;
- Protect the health, safety, and welfare of the inhabitants of the county;
- Maintain existing instream flows; and
- Preserve and enhance the aesthetic quality of the county's water resources.⁶⁰

This ordinance is applicable to all building permits and grading permits disturbing more than 2,000 square feet or for drainage modifications in streams, stormwater facilities, or wetlands.⁶¹ For industrial developments, this ordinance requires conveyance structures sized for design-year storms; flow control at stormwater outfalls; cut-fill balance in the regulated floodplain; erosion control measures; stormwater detention; and water quality treatment (e.g., swales, oil-water separators, etc.).

These provisions are implemented by requiring engineered stormwater plans to be approved by the County prior to issuance of building permits.

Building Code

To maintain safety of buildings and structures, the Columbia County Building Division enforces current versions of building codes issued by the Oregon Building Codes Division. Applicable codes for development in the zone change area include:

- Oregon Structural Specialty Code
- Oregon Zero Energy Ready Commercial Code
- Oregon Mechanical Specialty Code
- Oregon Electrical Specialty Code

⁶⁰ Columbia County Stormwater and Erosion Control Ordinance No. 2001-10, Effective February 26, 2002.

⁶¹ By contrast, Farm Use activities (per ORS 215.203) are specifically excluded from the Stormwater and Erosion Control Ordinance.

- Oregon Plumbing Specialty Code⁶²

Prior to issuance of permits, applicants must demonstrate that structures comply with applicable codes. Once permits have been issued, applicants may commence construction and must obtain interim and final inspections by County staff to ensure construction is undertaken consistent with code standards.

Solid Waste Management Ordinance

The Columbia County Solid Waste Management Ordinance was enacted to achieve several County objectives, including the following which are applicable to the zone change area:

- Provide for safe and sanitary accumulation, storage, collection, transportation, disposal, and utilization of wastes and solid wastes.
- Prohibit accumulation of wastes or solid wastes on private property in such a manner as to create a public nuisance, a hazard to health or a condition of unsightliness to provide for the abatement of such conditions where found.
- Provide for a coordinated countywide solid waste management plan in cooperation with federal, state and local agencies responsible for the prevention, control or abatement of air, water and ground pollution and prevention of litter.
- Promote energy and resource conservation through reduction, reuse, recycling and resource recovery.⁶³

This ordinance establishes solid waste franchises to collect, transport, and properly dispose of waste. Other provisions prohibit unauthorized dumping; require rigid, leak-proof solid waste containers that also prevent wind-blown material from escaping; and prohibit storage or collection of waste on private property that "...is offensive or hazardous to the health and safety of the public or which creates offensive odors or a condition of unsightliness."

Enforcement Ordinance

The Columbia County Enforcement Ordinance establishes the County's authority to enforce adopted statutes, administrative rules, ordinances, orders and resolutions, both those adopted at the County level and at the state level. Based on this ordinance, the County can declare violations of the above as nuisances, issue citations, impose daily fines, and compel compliance with the adopted regulations.⁶⁴

Emergency Planning

The County's Department of Emergency Management coordinates with multiple parties including the state, nearby local governments, the Port, fire districts, and facility operators to develop emergency plans for a variety of risks, whether those emergencies are natural disasters or caused by human activities. The Department is also a member of the Regional Disaster Preparedness Organization which includes four counties in Oregon plus Clark County, Washington and improves preparedness for large-scale disasters

⁶² Oregon Building Codes Division, Codes and Standards. Accessed July 1, 2020 from <https://www.oregon.gov/bcd/codes-stand/Pages/adopted-codes.aspx>

⁶³ Columbia County Solid Waste Management Ordinance, updated through October 2010.

⁶⁴ Columbia County Enforcement Ordinance, integrated through March 4, 2020.

and emergency incidents. Finally, the Department helps coordinate responses to emergencies and performs training activities to help people prepare for how to respond in a safe and effective manner.

Other Local Programs

Clatskanie Rural Fire Protection District

In addition to compliance with building codes, industrial development must also satisfy provisions of the Oregon Fire Code,⁶⁵ including standards for emergency access, fire hydrants and water supply, building information signs (denoting construction type and fire-resistance rating, fire protection systems, occupancy type, and hazards), fire suppression systems, and emergency responder radio coverage. In the Port Westward area, the Fire Code is administered by the Clatskanie Rural Fire Protection District. To maintain adequate building safety, Fire Code provisions apply on a continuing basis even following a building's final construction inspection by the County Building Division. The Fire District can compel operating or design changes to comply with the Fire Code and minimize fire risk.

Beaver Drainage Improvement Company

The Beaver Drainage Improvement Company manages nearly 12.5 miles of dikes and associated stormwater conveyance and pumps within the Beaver Drainage District, which includes the zone change area. Accordingly, the District has an interest in ensuring that stormwater is properly managed and that any alterations to the dikes themselves are approved by the District and the Corps.

The District's dikes have the added benefit of isolating the zone change area (with the exception of the Thompson property) from the Columbia River, which can provide additional mitigation against pollutant transport to the river in the event of a spill.

Summary of Applicable Regulations

Based on the assessment of Federal, State, and local regulatory programs described above, Table 4 identifies which agencies address the potential adverse impacts for the five proposed industrial uses identified in Table 1.

⁶⁵ 2019 Oregon Fire Code. Accessed July 1, 2020 from <https://codes.iccsafe.org/content/OFC2019P1>

Table 4: Regulatory Bodies Addressing Potential Adverse Impacts from Proposed Industrial Uses

Potential Adverse Impact (from Table 1)	Regulatory Bodies		
	Federal	State	Local
Airborne emissions (particulates, dust, water droplets, odor, steam, fumes, gas, smoke, etc.)	EPA FERC	DEQ	
Noise		DEQ	Columbia County ⁶⁶
Rail/truck/ship traffic for raw materials, finished products, and wastes	FRA USDOT EPA Coast Guard	ODOT Rail ODOT DEQ	
Vehicle and machinery exhaust emissions	EPA ⁶⁷	DEQ	
Stormwater runoff which may contain chemicals, nutrients, colors, or sediment	EPA NMFS	DEQ	Columbia County
Process/cooling water discharge	EPA	DEQ	
Wastewater discharge	EPA	DEQ	Columbia County
Fire/explosion	EPA PHMSA FRA FERC	OSFM OEM ODOT Rail	Columbia County Clatskanie Rural Fire Protection District
Chemical spills (including oils and hazardous materials)	EPA PHMSA FRA FERC Coast Guard	DEQ ODOE OSFM OEM ODOT Rail	Columbia County Clatskanie Rural Fire Protection District
Light			Columbia County
Water usage	EPA	OWRD ODFW	
Wetland impacts	Corps EPA USFWS NMFS	DSL DEQ	Columbia County
Wildlife impacts	USFWS Corps EPA NMFS	ODFW	Columbia County

⁶⁶ The County may choose to incorporate DEQ's model noise control rules and enforce them in the event that noise becomes an issue at a noise sensitive property.

⁶⁷ EPA regulates emissions from passenger vehicles, trucks, locomotives, and U.S. vessels. The International Convention for the Prevention of Pollution from Ships (MARPOL) regulates emissions from international vessels.

Potential Adverse Impact (from Table 1)	Regulatory Bodies		
	Federal	State	Local
Navigation impacts	Corps MARAD		
Dike impacts for any levee modifications	Corps FEMA		Beaver Drainage District
Accumulation of waste materials	EPA	DEQ OSFM	Columbia County
Nuisances from waste materials			Columbia County
Combustibility	EPA PHMSA	DEQ OSFM	Clatskanie Fire

Applicable Regulations as Applied to Proposed Industrial Uses

Table 5 demonstrates how the regulations described above would likely apply to representative examples for each of the five proposed rural industrial uses for the zone change area. This table further illustrates how the proposed uses are adequately regulated by programs that require mitigation measures leading to compatibility.

Table 5: Regulatory Programs Applicable to Proposed Industrial Use Examples

Regulatory Program	Forestry/Wood Products	Dry Bulk	Liquid Bulk	Natural Gas	Breakbulk
	<i>Example: Wood pellets/chips</i>	<i>Example: Sawdust</i>	<i>Example: Petroleum</i>	<i>Example: Natural Gas</i>	<i>Example: Drums or barrels</i>
Federal Programs					
National Environmental Policy Act	X	X	X	X	X
National Historic Preservation Act	X	X	X	X	X
Rivers and Harbors Act	X	X	X	X	X
Clean Water Act	X	X	X	X	X
Oil Pollution Act	X	X	X	X	X
Toxic Substances Control Act and Lautenberg Chemical Safety Act			X	X	X
Emergency Planning and Community Right-to-Know Act	X	X	X	X	X
Pollution Prevention Act	X	X	X	X	X
Safe Drinking Water Act and Resource Conservation and Recovery Act	X	X	X	X	X
Clean Air Act	X	X	X	X	X

Regulatory Program	Forestry/Wood Products	Dry Bulk	Liquid Bulk	Natural Gas	Breakbulk
	<i>Example: Wood pellets/chips</i>	<i>Example: Sawdust</i>	<i>Example: Petroleum</i>	<i>Example: Natural Gas</i>	<i>Example: Drums or barrels</i>
Homeland Security Act of 2002	X	X	X	X	X
Hazardous Liquid Pipeline Act and Natural Gas Pipeline Safety Act			X	X	
Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES) Act			X	X	
Federal Rail Safety Act	X	X	X	X	X
Natural Gas Act and Natural Gas Policy Act				X	
Interstate Commerce Act			X	X	
National Flood Insurance Program	X	X	X	X	X
Migratory Bird Treaty Act	X	X	X	X	X
Marine Mammal Protection Act	X	X	X	X	X
Endangered Species Act	X	X	X	X	X
Fish and Wildlife Coordination Act	X	X	X	X	X
Magnuson-Stevens Fishery Conservation and Management Act	X	X	X	X	X
Oregon Programs					
Wetland and Waterway Removal and Fill permits	X	X	X	X	X
NPDES Permits	X	X	X	X	X
WPCF Permits	X	X	X	X	X
Underground Injection Control Program	X	X	X	X	X
Onsite Wastewater Management Program	X	X	X	X	X
Section 401 Removal and Fill Certification	X	X	X	X	X
Ballast Water Program	X	X	X	X	X
Cleaner Air Oregon Program	X	X	X	X	X
Air Contaminant Discharge Permits	X	X	X	X	X
Title V Operating Permits			X	X	

Regulatory Program	Forestry/Wood Products	Dry Bulk	Liquid Bulk	Natural Gas	Breakbulk
	<i>Example: Wood pellets/chips</i>	<i>Example: Sawdust</i>	<i>Example: Petroleum</i>	<i>Example: Natural Gas</i>	<i>Example: Drums or barrels</i>
Aboveground Storage Tanks	X	X	X	X	X
Underground Storage Tanks	X	X	X	X	X
Hazardous Waste	X	X	X	X	X
Noise Control	X	X	X	X	X
DEQ Emergency Response	X	X	X	X	X
Liquified Natural Gas				X	
Energy Facilities			X	X	
Community Right to Know	X	X	X	X	X
OSFM Emergency Response	X	X	X	X	X
Fire Code and Inspections	X	X	X	X	X
Incident Response	X	X	X	X	X
Storage Tanks	X	X	X	X	X
Office of Emergency Management	X	X	X	X	X
Water Resources Department	X	X	X	X	X
ODOT Rail	X	X	X	X	X
Oregon Department of Fish and Wildlife	X	X	X	X	X
Oregon Heritage	X	X	X	X	X
Columbia County Programs					
Zoning Ordinance	X	X	X	X	X
Onsite Wastewater Program	X	X	X	X	X
Stormwater and Erosion Control Ordinance	X	X	X	X	X
Building Code	X	X	X	X	X
Solid Waste Management Ordinance	X	X	X	X	X
Enforcement Ordinance	X	X	X	X	X
Emergency Planning	X	X	X	X	X
Other Local Programs					
Clatskanie Rural Fire Protection District	X	X	X	X	X
Beaver Drainage Improvement Company	X	X	X	X	X

VI. COMPATIBILITY ASSESSMENT

This section synthesizes the above information to demonstrate how the five proposed uses can and will be made compatible with adjacent land uses and natural resources under the applicable land use standards.

Regulatory Programs

Section V provides information on the numerous existing regulatory programs that are anticipated to be applicable to the zone change area at the Federal, State, and local level. While the programs do not guarantee zero impacts (e.g., an Air Contaminant Discharge Permit authorizes release of some amount of air pollutant), the programs require mitigation to ensure that emissions are limited to levels that have been scientifically determined to be acceptable for public health and environmental quality, or by performing actions such as developing and implementing spill response plans. These provisions are in keeping with the statute (ORS 197.732-197.736) and administrative rule (OAR 660-004-0020) which indicate that “Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.”

The net effect of these regulations is to establish a framework that has the result of maintaining compatibility with adjacent land uses and adjacent aquatic resources, due to the numerous water quality and air quality standards detailed above.

To ensure that compatibility is maintained, the County has the ability to impose a condition as part of an approval of the Port’s proposal that any future uses in the rezone area comply with all applicable regulatory programs, including all required Federal, state and local permitting. This requirement would be carried forward and additionally imposed on development proposals, and if it does so the County can find that this mitigates potential impacts on adjacent land uses and accordingly maintains compatibility under ORS 197.732 and OAR 660-004-0020.⁶⁸ The range of potential adverse impacts identified in Table 1 is addressed by the multiple agencies outlined in Table 4. Furthermore, Table 5 examines how a representative example from each of the five proposed uses would fall under the regulatory authority of the programs outlined in Section V.

The programs noted above (and other regulations that may be applicable to users even if not identified above) are wholly consistent with meeting the compatibility rule. To the extent that any development is conditioned so as to require compliance with all standards and requirements of all applicable regulatory programs, the County will be assuring compliance with the compatibility requirement under ORS 197.732 (2)(c)(D) and OAR 660-004-0020(2)(d).

Existing Conditions of Approval

Going beyond the regulations stated above, the Columbia County Board of Commissioners itself imposed several conditions of approval when enacting Ordinance 2018-1 to approve the Port’s zone change

⁶⁸ Even without such a condition, compliance with the applicable regulatory programs is still mandatory. The approval condition would simply exercise the County’s land use authority to require documentation of compliance with all applicable regulatory programs to a given use to ensure that compatibility with adjacent land uses is maintained.

request. Below is a list of those conditions, which further help maintain compatibility for all future land use applications and development in the zone change area:

- 1) *Prior to an application for a building or development for a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.*
- 2) *To ensure adequate transportation operation, proposed developments and expansions requiring site design review or Use Under Prescribed Conditions shall not produce more than 332 PM peak-hour trips for the entire subject property without conducting a new Traffic Impact Analysis ("TIA") with recommendations for operational or safety mitigation consistent with the Oregon Transportation Planning Rule 660-012-0060.*
- 3) *A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.*
- 4) *To ensure compatibility with adjoining agricultural uses, the applicant/developer of new industrial uses shall comply with the following:*
 - a. *The habitat of threatened and endangered species shall be evaluated and protected as required by law.*
 - b. *Alterations of important natural features, including placement of structures, shall maintain the overall values of the feature.*
 - c. *All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses on PA-80 zoned land, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.*
 - d. *When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.*
 - e. *Controls, including suppression and requiring hard surfaces, shall be employed as needed to be determined by the County to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.*
 - f. *Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.*
 - g. *The industrial use impact on the water table and sloughs shall be monitored for water quality and surface water elevations to ensure that the area water can be maintained and managed for existing uses.*
 - h. *Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property and impacts to rail movements, safety, noise or other identified impacts along the rail corridor*



supporting the County's transportation system. The plan shall propose mitigation to identified impacts.

- i. *Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.*
- 5) *The types of industrial uses for the subject Plan Amendment shall be limited to only those uses that are substantially dependent on a deepwater port and have demonstrated access rights to the dock, and those uses with employment densities, public facilities and activities justified in the exception, specifically:*
 - a. *Forestry and wood processing, production, storage, and transportation;*
 - b. *Dry bulk commodities transfer, storage, production, and processing;*
 - c. *Liquid bulk commodities processing, storage, and transportation;*
 - d. *Natural gas and derivative products, processing, storage, and transportation; and*
 - e. *Breakbulk storage, transportation, and processing.*
- 6) *The storage, loading and unloading of coal is specifically not justified in this exception. Such uses shall not be allowed on the subject property without a separate approved exception to Goal 3.*
- 7) *The Port (applicant) shall institute a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for a range of 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.*

These conditions of approval require an applicant to perform many steps that lead to compatibility:

- Apply for and obtain land use approval for the proposed project after demonstrating compliance with applicable criteria in the Zoning Ordinance;
- Comply with applicable standards of the Transportation Planning Rule (TPR) and demonstrate that appropriate transportation infrastructure is in place;
- Provide evidence demonstrating compatibility with adjacent land;
- Limit activities to the specific uses outlined above and rely on the deepwater port;

- Monitor water quality; and
- Plan for hazardous material spills.

These requirements for full analysis of impacts and implementation of appropriate mitigation measures assure that future development in the zone change will be compatible with adjacent uses.

Additional Recommended Condition of Approval

To fully ensure compatibility and have adequate measures identified in the record, it would be appropriate for the Board of Commissioners to consider an additional Condition of Approval requiring applicants for future development proposals in the rezone area to provide evidence of approval of all applicable Federal, State, and local permits prior to issuance of occupancy permits.⁶⁹

Compatibility Analysis Findings and Determination

Based on the totality of the evidence, the five rural industrial uses are appropriately situated to allow for any appropriate and necessary mitigation to achieve compatibility with adjacent land uses and natural resources including wetlands and area waterways:

- The extensive Federal, state, and local regulatory programs applicable to industrial development address the potential impacts from new development and require measures to safeguard that offsite effects are limited to acceptable levels as determined by the regulating agencies and programs.
- The five uses' dependence on the deepwater port and requirement to be consistent with the characteristics identified in the Goal Exception request help to further maintain compatibility by precluding objectionable uses and urban uses.
- The dike between the zone change area and the Columbia River separates the bulk of the zone change area (excluding the Thompson property) from the waterway, allowing for effective stormwater management approaches, and additionally improving emergency response options in the event of a spill.
- The required buffers between development in the zone change area and land zoned PA-80 separates industrial development from designated agricultural areas to ensure that the industrial development doesn't diminish the viability of farm use.

Ultimately, compatibility will be accomplished via overlapping programs and measures that protect area residents, land uses, and aquatic resources.

⁶⁹ As noted above, compliance with all applicable regulatory programs is required with or without such a land use condition. However, including such a condition ensures that the County will have an oversight role in the application regulatory programs, and in so doing have the ability to ensure that impacts are mitigated and land use compatibility maintained.

VII. SUMMARY AND CONCLUSION

This report supplements the record for the Port of Columbia County's application for a Comprehensive Plan Amendment, zone change, and Goal Exception for approximately 837 acres adjacent to the existing Port Westward Industrial Park. In accordance with the direction provided by LUBA and the Oregon Court of Appeals, and to provide substantial evidence for the County's record, land use compatibility has been assessed and appropriate mitigation measures identified to demonstrate compliance with the compatibility standards of ORS 197.732-197.736 and OAR 660-004-0020.

The report lists the five proposed uses and details the existing land uses within and adjacent to the zone change area, and finds that the majority of existing land is in agricultural tree farm uses and rural industrial uses. The report next describes the existing regulatory programs which would most likely be applicable to future industrial development, all of which have the effect of limiting adverse impacts and thereby maintain compatibility as provided under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d). Finally, the existing Conditions of Approval and the recommended Condition of Approval provide redundancy to ensure that the future development is fully protective of and compatible with its surroundings.

Section 680 RESOURCE INDUSTRIAL - PLANNED DEVELOPMENT RIPD

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

- .1 Are not generally labor intensive;
- .2 Are land extensive;
- .3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;
- .4 Complement the character and development of the surrounding rural area;
- .5 Are consistent with the rural facilities and services existing and/or planned for the area; and,
- .6 Will not require facility and/or service improvements at significant public expense.

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

682 Permitted Uses:

- .1 Farm use as defined by Subsection 2 of ORS 215.203 except marijuana growing and producing.
- .2 Management, production, and harvesting of forest products, including wood processing and related operations.

[Amd. Ordinance 2015-4, eff. 11-25-15]

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

- .1 Production; processing; assembling; packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities subject to the following findings:
 - A. The requested use conforms with the goals and policies of the Comprehensive Plan - specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies.
 - B. The potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated considering the following factors:

- .1 Physiological characteristics of the site (ie., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements;
 - .2 Existing land uses and both private and public facilities and services in the area;
 - .3 The demonstrated need for the proposed use is best met at the requested site considering all factors of the rural industrial element of the Comprehensive Plan.
- C. The requested use can be shown to comply with the following standards for available services:
- .1 Water shall be provided by an on-site source of sufficient capacity to serve the proposed use, or a public or community water system capable of serving the proposed use.
 - .2 Sewage will be treated by a subsurface sewage system, or a community or public sewer system, approved by the County Sanitarian and/or the State DEQ.
 - .3 Access will be provided to a public right-of-way constructed to standards capable of supporting the proposed use considering the existing level of service and the impacts caused by the planned development.
 - .4 The property is within, and is capable of being served by, a rural fire district; or, the proponents will provide on-site fire suppression facilities capable of serving the proposed use. On-site facilities shall be approved by either the State or local Fire Marshall.
- .2 Accessory buildings may be allowed if they fulfill the following requirements:
- A. If attached to the main building or separated by a breezeway, they shall meet the front and side yard requirements of the main building.
 - B. If detached from the main building, they must be located behind the main building or a minimum of 50 feet from the front lot or parcel line, whichever is greater.
 - C. Detached accessory buildings shall have a minimum setback of 50 feet from the rear and/or side lot or parcel line.
- .3 Signs as provided in Chapter 1300.
 - .4 Off street parking and loading as provided in Chapter 1400.
 - .5 Home occupations consistent with ORS 215.448. Home occupations do not include commercial activities carried on in conjunction with a marijuana crop.

- .6 A temporary caretaker/watchman residence that is necessary to and in conjunction with a permitted use. The temporary caretaker/watchman residence shall be:
- A. Temporary in nature and restricted to a manufactured dwelling or mobile home. The temporary residence shall be initially allowed for one (1) year and shall be eligible for annual renewal pursuant to Section 1505.7 until such time as the associated permitted use ceases.
 - B. Approved for potable water and on-site sewage disposal.
 - C. Removed or made to conform with applicable zoning and building regulations when the associated permitted use ceases.
 - D. Accompanied by a signed and recorded Waiver of Remonstrance regarding past, current and future lawful permitted uses on adjacent and nearby properties.

[Added by Ordinance No. 2009-8 eff. 12/22/09; Amd. Ordinance 2015-4, eff. 11-25-15]

684 Prohibited Uses:

- .1 Marijuana growing and producing.

[Amd. Ordinance 2015-4, eff. 11-25-15]

685 Standards:

- .1 The minimum lot or parcel size for uses allowed under Section 682 shall be 38 acres.
- .2 The minimum lot or parcel size, average lot or parcel width and depth, and setbacks for uses allowed under Section 683, shall be established by the Planning Commission, and will be sufficient to support the requested rural industrial use considering, at a minimum, the following factors:
 - A. Overall scope of the project. Should the project be proposed to be developed in phases, all phases shall be considered when establishing the minimum lot size.
 - B. Space required for off street parking and loading and open space, as required.
 - C. Setbacks necessary to adequately protect adjacent properties.
- .3 Access shall be provided to a public right-of-way of sufficient construction to support the intended use, as determined by the County Roadmaster.

[Amd. Ordinance 2015-4, eff. 11-25-15]

686 Review Procedures: The Planning Commission shall review, in accordance with Section 1600, all requests made pursuant to Section 683 to assure that:

- .1 The use conforms to the criteria outlined in Section 681.

- .2 The conditions outlined in Section 683 can be met.
- .3 The Design Review Board or Planning Commission reviewed the request and found it to comply with the standards set out in Section 1550 and the minimum lot or parcel size provisions set out in Section 684.

1503 CONDITIONAL USES:

- .1 Status: Approval of a conditional use shall not constitute a change of zoning classification and shall be granted only for the specific use requested; subject to such reasonable modifications, conditions, and restrictions as may be deemed appropriate by the Commission, or as specifically provided herein.
- .2 Conditions: The Commission may attach conditions and restrictions to any conditional use approved. The setbacks and limitations of the underlying district shall be applied to the conditional use. Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds, and other reasonable conditions, restrictions, or safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use being allowed.
- .3 Conditional Use Permit: A Conditional Use Permit shall be obtained for each conditional use before development of the use. The permit shall stipulate any modifications, conditions, and restrictions imposed by the Commission, in addition to those specifically set forth in this ordinance. On its own motion, or pursuant to a formal written complaint filed with the Planning Department, upon proper notice and hearing as provided by Sections 1603 and 1608 of this ordinance, the Commission, (or Board on appeal) may, but is not required to, amend, add to or delete some or all of the conditions applied to Conditional Use Permits issued by the Planning Commission or Board of Commissioners. The power granted by this subsection may only be exercised upon a finding such amendment, addition or deletion is reasonably necessary to satisfy the criteria established by Section 1503.5 below.
- .4 Suspension or Revocation of a Permit: A Conditional Use Permit may be suspended or revoked by the Commission when any conditions or restrictions imposed are not satisfied.
 - A. A Conditional Use Permit shall be suspended only after a hearing before the Commission. Written notice of the hearing shall be given to the property owner at least 10 days prior to the hearing.
 - B. A suspended permit may be reinstated, if in the judgment of the Commission, the conditions or restrictions imposed in the approval have been satisfied.
 - C. A revoked permit may not be reinstated. A new application must be made to the Commission.
- .5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:
 - A. The use is listed as a Conditional Use in the zone which is currently applied to the site;
 - B. The use meets the specific criteria established in the underlying zone;
 - C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;

- D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;
 - E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;
 - F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;
 - G. The proposal will not create any hazardous conditions.
- .6 Design Review: The Commission may require the Conditional Use be subject to a site design review by the Design Review Board or Planning Commission.

Section 1550 SITE DESIGN REVIEW

[Amended by Ordinance 98-9, eff. 11/25/98; amended by Ordinance No. 2003 - 5, effective December 15, 2003].

The Site Design Review process shall apply to all new development, redevelopment, expansion, or improvement of all community, governmental, institutional, commercial, industrial and multi-family residential (4 or more units) uses in the County.

1551. Types of Site Design Review:

- A. Type 1: Projects, developments and building expansions which meet any of the following criteria:
 1. are less than 5,000 sq.ft., and are less than 10% of the square footage of an existing structure.
 2. Increase the number of dwelling units in a multi-family project.
 3. Increase the height of an existing building.
- B. Type 2: Projects, developments and building expansions which meet any of the following criteria:
 1. have an area of 5,000 sq.ft. or more, or are 10% or more of the square footage of an existing structure.
 2. Change the category of use (e.g., commercial to industrial, etc.).
 3. New off-site advertising signs or billboards.
 4. Any project meeting any of the Type 2 criteria shall be deemed a Type 2 Design Review application.

1552 Design Review Process: The Planning Director shall review and decide all Type 1 Site Design Review applications. The Planning Commission shall review all Type 2 Design Review applications. Applications shall be processed in accordance with Sections 1600 and 1700 of this ordinance.

1553 Pre-application Conference: A pre-application conference is required for all projects applying for a Site Design Review, unless the Director or his/her designate determines it is unnecessary. The submittal requirements for each application are as defined in this section and the standards of the applicable zone, and will be determined and explained to the applicant at the pre-application conference.

1554 Pre-application Conference Committee: The committee shall be appointed by the Planning Director and shall consist of at least the following officials, or their designated staff members. Only affected officials need to be present at each pre-application conference.

- A. The County Planning Director.
- B. The County Director of Public Works.
- C. The Fire Marshal of the appropriate Rural Fire District.
- D. The County Building Official.
- E. The County Sanitarian.
- F. A city representative, for projects inside Urban Growth Boundaries.
- G. Other appointees by the Planning Director, such as an Architect, Landscape Architect, real estate agent, appropriate officials, etc.

- 1555 Submittal documents: The following documents, when applicable, are required for a Site Design Review. The scope of the drawings and documents to be included will be determined at the pre-application conference by the Pre-application Conference Committee, and a Site Design Review Submittal Checklist will be given to the applicant, documenting which items are deemed not applicable or not necessary to determine compliance with County and State standards, with a short explanation given for each item so determined.
- A. History.
 - B. Project narrative.
 - C. Existing site plan.
 - D. Proposed site plan.
 - E. Grading plan.
 - F. Drainage plan.
 - G. Wetland mitigation plan. Goal 5 Resource Protection Plans (streams, wetlands, riparian areas, natural areas, fish and wildlife habitat).
 - H. Landscaping plan.
 - I. Architectural plans.
 - J. Sign drawings.
 - K. Access, parking and circulation plan.
 - L. Impact assessment.
 - M. Site Design Review Submittal Checklist.
- 1556 Site Plan Submittal and Analysis: The applicant shall submit an application and any necessary supplemental information as required by this ordinance to the Land Development Services Department. The Planning Director or designate shall review the application and check its completeness and conformance with this ordinance. Once a Type 2 application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission. A staff report shall be prepared and sent to the applicant, the Planning Commission, and any interested party requesting a copy.
- 1557 Planning Director Review: All Type 1 design review applications will be processed by the Planning Director or designate according to Sections 1601, 1602 and 1609 of this ordinance. If the Director determines that the proposed development meets the provisions of this ordinance, the director may approve the project and may attach any reasonable conditions.
- 1558 Planning Commission Review: The Planning Commission shall hold a public hearing for all Type 2 Design Review applications according to Sections 1603, 1604 and 1608 of this ordinance. If the Planning Commission determines that the proposed development meets the provisions of this ordinance, it may approve the project. The Planning Commission may attach any reasonable conditions to its approval of a site plan.
- 1559 Compliance: Conditions placed upon the development of a site are also placed upon any building permits issued for the same site. These conditions shall be met by the developer prior to an occupancy permit being issued by the Building Official, or as an alternative, a bond shall be posted equal to 125% of the estimated cost of the unfinished work, to ensure completion within 1 year of occupancy. If all improvements are not completed within the 1-year bond period, the County may use the bond to complete the work.
- 1560 Existing Site Plan: The degree of detail in the existing site plan shall be appropriate to the scale of the proposal, or to special site features requiring careful design. An existing site plan shall include the following, unless it is determined by the Planning Director that the information is not applicable or is not necessary to determine compliance with County and State standards, and a short explanation will be given for each item so determined:

- A. A vicinity map showing location of the property in relation to adjacent properties, roads, pedestrianways and bikeways, and utility access. Site features, manmade or natural, which cross property boundaries are to be shown.
- B. A site description map at a suitable scale (i.e. 1"=100'; 1"=50'; or 1"=20') showing parcel boundaries and gross area, including the following elements, when applicable:
 - 1. Contour lines at the following minimum intervals:
 - a. 2 foot intervals for slopes 0-20%;
 - b. 5 or 10 foot intervals for slopes exceeding 20%;
 - c. Identification of areas exceeding 35% slope.
 - 2. In special areas, a detailed slope analysis may be required. Sources for slope analysis include maps located at the U.S. Natural Resources Conservation Service office.
 - 3. Potential natural hazard areas, including potential flood or high ground water, landslide, erosion, and drainage ways. An engineering geologic study may be required.
 - 4. Wetland areas, springs, wildlife habitat areas, wooded areas, and surface features such as mounds and large rock outcroppings.
 - 5. Streams and stream corridors.
 - 6. Location, species and size of existing trees proposed to be removed.
 - 7. Significant noise sources.
 - 8. Existing structures, improvements, utilities, easements and other development.
 - 9. Adjacent property structures and/or uses.

1561 Proposed Site Plan: A complete application for design review shall be submitted, including the following plans, which may be combined, as appropriate, onto one or more drawings, unless it is determined by the Planning Director that the information is not applicable or is not necessary to determine compliance with County and State standards, and a short explanation will be given for each item so determined:

- A. Site Plan: The site plan shall be drawn at a suitable scale (i.e. 1"=100', 1"=50', or 1"=20') and shall include the following:
 - 1. The applicant's entire property and the surrounding area to a distance sufficient to determine the relationships between the applicant's property and proposed development and adjacent properties and developments.
 - 2. Boundary lines and dimensions of the property and all proposed property lines. Future buildings in phased development shall be indicated.
 - 3. Identification information, including names and addresses of project designers.
 - 4. Natural features which will be utilized in the site plan.

5. Location, dimensions and names of all existing or platted roads or other public ways, easements, and railroad rights-of-way on or adjacent to the property, city limits, section lines and corners, and monuments.
 6. Location and dimensions of all existing structures, improvements, or utilities to remain, and structures to be removed, all drawn to scale.
 7. Historic structures, as designated in the Comprehensive Plan.
 8. Approximate location and size of storm water retention or detention facilities and storm drains.
 9. Location and exterior dimensions of all proposed structures and impervious surfaces.
 10. Location and dimension of parking and loading areas, pedestrian and bicycle circulation, and related access ways. Individual parking spaces shall be shown.
 11. Orientation of structures, showing entrances and exits.
 12. All exterior lighting, showing type, height, wattage, and hours of use.
 13. Drainage, Stormwater and Erosion Control, including possible adverse effects on adjacent lands.
 14. Service areas for waste disposal and recycling.
 15. Noise sources, with estimated hours of operation and decibel levels at the property boundaries.
 16. Goal 5 Resource Protection Plans. Indicate how project will protect streams, wetlands, riparian areas, natural areas, and fish and wildlife habitat from negative impacts.
 17. A landscaping plan which includes, if applicable:
 - a. Location and height of fences, buffers, and screening;
 - b. Location of terraces, decks, shelters, play areas, and common open spaces;
 - c. Location, type, size, and species of existing and proposed shrubs and trees; and
 - d. A narrative which addresses soil conditions and erosion control measures.
- B. Grading Plans: A preliminary grading plan indicating where and to what extent grading will take place, including general contour lines, slope ratios, slope stabilization proposals, and natural resource protection proposals.
- C. Architectural Drawings:
1. Building elevations and sections;
 2. Building materials (color and type);
 3. Floor plan.

D. Signs: (see also Zoning Ordinance Section 1300)

1. Freestanding sign:
 - a. Location of sign on site plan;
 - b. Elevation of sign (indicate size, total height, height between bottom of sign and ground, color, materials, and means of illumination).
2. On-Building Sign:
 - a. Building elevation with location of sign (indicate size, color, materials and means of illumination);
 - b. Plot plan showing location of signs on building in relation to adjoining property.

1562 Landscaping: Buffering, Screening and Fencing:

A. General Provisions:

1. Existing plant materials on a site shall be protected to prevent erosion. Existing trees and shrubs may be used to meet landscaping requirements if no cutting or filling takes place within the dripline of the trees or shrubs.
2. All wooded areas, significant clumps or groves of trees, and specimen conifers, oaks or other large deciduous trees, shall be preserved or replaced by new plantings of similar size or character.

B. Buffering Requirements:

1. Buffering and/or screening are required to reduce the impacts on adjacent uses which are of a different type. When different uses are separated by a right of way, buffering, but not screening, may be required.
2. A buffer consists of an area within a required setback adjacent to a property line, having a width of up to 10 feet, except where the Planning Commission requires a greater width, and a length equal to the length of the property line adjacent to the abutting use or uses.
3. Buffer areas shall be limited to utilities, screening, pedestrian and bicycle paths, and landscaping. No buildings, roads, or parking areas shall be allowed in a buffer area.
4. The minimum improvements within a buffer area shall include:
 - a. One row of trees, or groupings of trees equivalent to one row of trees. At the time of planting, these trees shall not be less than 10 feet high for deciduous trees and 5 feet high for evergreen trees, measured from the ground to the top of the tree after planting. Spacing of trees at maturity shall be sufficient to provide a year-round buffer.
 - b. In addition, at least one 5-gallon shrub shall be planted for each 100 square feet of required buffer area.
 - c. The remaining area shall be planted in grass or ground cover, or spread with bark mulch or other appropriate ground cover (e.g. round rock). Pedestrian and bicycle paths are permitted in buffer areas.

C. Screening Requirements:

1. Where screening is required, the following standards shall apply in addition to those required for buffering:
 - a. A hedge of evergreen shrubs shall be planted which will form a four-foot high continuous screen within two years of planting; or,
 - b. An earthen berm planted with evergreen plant materials shall be provided which will form a continuous screen six feet in height within two years. The unplanted portion of the berm shall be planted in lawn, ground cover or bark mulch; or,
 - c. A five foot or taller fence or wall shall be constructed to provide a continuous sight obscuring screen. Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, brick, or other materials approved by the Director. Corrugated metal is not an acceptable fencing material. Chain link fences with slats may be used if combined with a continuous evergreen hedge.
2. When the new use is downhill from the adjoining zone or use being protected, the prescribed heights of required fences, walls, or landscape screening along the common property line shall be measured from the actual grade of the adjoining property at the common property line. This requirement may be waived by the adjacent property owner.
3. If four or more off-street parking spaces are required, off-street parking adjacent to a public road shall provide a minimum of four square feet of landscaping for each lineal foot of street frontage. Such landscaping shall consist of landscaped berms or shrubbery at least 4 feet in total height at maturity. Additionally, one tree shall be provided for each 50 lineal feet of street frontage or fraction thereof.
4. Landscaped parking areas may include special design features such as landscaped berms, decorative walls, and raised planters.
5. Loading areas, outside storage, and service facilities must be screened from adjoining properties.

D. Fences and Walls:

1. Fences, walls or combinations of earthen berms and fences or walls up to four feet in height may be constructed within a required front yard. Rear and side yard fences, or berm/fence combinations behind the required front yard setback may be up to six feet in height.
2. The prescribed heights of required fences, walls, or landscaping shall be measured from the lowest of the adjoining levels of finished grade.
3. Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, brick, or other materials approved by the Director. Corrugated metal is not an acceptable fencing material. Chain link fences with slats may be used if combined with a continuous evergreen hedge.
4. Re-vegetation: Where natural vegetation or topsoil has been removed in areas not occupied by structures or landscaping, such areas shall be replanted to prevent erosion.

1563 Standards for Approval:

The Planning Commission or Director shall make a finding with respect to each of the following criteria when approving, approving with conditions, or denying an application:

- A. Flood Hazard Areas: See CCZO §1100, Flood Hazard Overlay Zone. All development in Flood Hazard Areas must comply with State and Federal Guidelines.
- B. Wetlands and Riparian Areas: Alteration of wetlands and riparian areas shall be in compliance with State and Federal laws.
- C. Natural Areas and Features: To the greatest practical extent possible, natural areas and features of the site shall be preserved.
- D. Historic and Cultural sites and structures: All historic and culturally significant sites and structures identified in the 1984 Comprehensive Plan, or identified for inclusion in the County Periodic Review, shall be protected if they still exist.
- E. Lighting: All outdoor lights shall be shielded so as to not shine directly on adjacent properties and roads.
- F. Energy Conservation: Buildings should be oriented to take advantage of natural energy saving elements such as the sun, landscaping and land forms.
- G. Transportation Facilities: Off-site auto and pedestrian facilities may be required by the Planning Commission, Planning Director or Public Works Director consistent with the Columbia County Road Standards and the Columbia County Transportation Systems Plan.

1564 Final Site Plan Approval:

If the Planning Director or Planning Commission approves a preliminary site plan, the applicant shall finalize all the site drawings and submit them to the Director for review. If the Director finds the final site plan conforms with the preliminary site plan, as approved by the Director or Planning Commission, the Director shall give approval to the final site plan. Minor differences between the preliminary site plan and the final site plan may be approved by the Director. These plans shall be attached to the building permit application and shall become a part of that permit.

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LDS HCM ce

MACKENZIE



February 17, 2021

Columbia County Board of Commissioners
 County Courthouse, Room 338
 230 Strand Street
 St. Helens, OR 97051

Re: **Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change (PA 13-02 and ZC 13-01)**
Response to Public Testimony regarding Compatibility Analysis
 Project Number 2160462.01

Dear Chair Magruder, Commissioner Heimuller, and Commissioner Garrett:

On behalf of the Port of Columbia County, we would like to offer information in response to public testimony regarding the Port Westward compatibility analysis raised during the public comment period for the remand on application PA 13-02 and ZC 13-01, which closed on January 27, 2021.¹ Discussion categories are identified below in italicized text, while responses are provided in standard text.

1. *Questions on whether study area boundary was sufficiently large*

Response: As noted in the *Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change Supplemental Analysis: Land Use Compatibility Report*, dated July 21, 2020 (the Compatibility Report), neither ORS 197.732 nor OAR 660-004-0020(2)(d) defines the term "adjacent" for the purposes of defining a study area for compatibility analysis (Compatibility Report p. 7). To identify an appropriate study area boundary, Mackenzie examined dictionary definitions as well as other administrative rules that limit the term to only abutting land or that define "nearby land" as constituting a quarter-mile radius. However, the Port opted to go beyond these other measures by identifying a study area inclusive of contiguous parcels within 2,000 feet of the zone change area.² As noted in the Compatibility Report, the extent of the County's zoning authority is limited to land uses rather than waterways such as the Columbia River, as those are subject to separate Federal and State water quality and maritime commerce regulations (Compatibility Report p. 9). The Board of Commissioners can determine that the Port made a reasonable effort to analyze an appropriate study area in alignment with applicable statutes and rules.

2. *Statements that the report provides little information on impacts outside the Beaver Drainage Improvement Company dike*

Response: While the Compatibility Report did identify a study area largely within the diked area, compatibility is primarily demonstrated via the existing Federal, State, and local regulatory programs that address the range of potential adverse impacts identified for the five proposed uses within the zone change area (Compatibility Report beginning on p. 20). The Federal and State regulatory programs are not geographically limited to addressing potential impacts in the diked area, whereas the County is limited in its jurisdiction.

¹ Available at [https://www.columbiacountyor.gov/media/Board/Port%20WestWard%202020/Record%20of%20Application%20PA%2013-02%20ZC%2013-01%20\(02.01.2021\).pdf](https://www.columbiacountyor.gov/media/Board/Port%20WestWard%202020/Record%20of%20Application%20PA%2013-02%20ZC%2013-01%20(02.01.2021).pdf)

² By comparison, the Columbia County Zoning Ordinance requires notice to property owners only within 500 feet for quasi-judicial zone change hearings including the present application.



3. *Assertions that the Port Westward deepwater port is not a unique resource*
Response: OAR 660-004-0022(3) specifically identifies ports as unique resources that may be used to satisfy a Goal 3 exception, and ORS 777.065 recognizes that the State of Oregon has five deepwater port facilities (Astoria, Coos Bay, Newport, Portland, and St. Helens [Port Westward]).
4. *Statements that the report does not enumerate all nearby crops and agricultural practices*
Response: The report does not attempt to identify all the crops within the study area, nor such items as soil preparation, planting, fertilizing, managing weeds, harvesting, or processing. Contrary to statements by Oregon Department of Agriculture and Oregon Department of Land Conservation and Development staff, the applicable language in OAR 660-004-0020(2)(d) does not mandate an exhaustive description of adjacent agricultural resource management or production practices (Compatibility Report p. 5).³ Rather, the Port demonstrated in the Compatibility Report (beginning on p. 49) that there is a host of existing regulatory programs and conditions of approval that have the effect of ensuring compatibility with nearby uses and the larger environment, including agriculture.
5. *Concerns that industrial development will impair the setting enjoyed by visitors and residents (including the Great Vow Zen Monastery) because of visual changes, lighting, odors, sounds, etc.*
Response: New industrial development in the zone change area will indeed change the visual character of the landscape compared to existing agricultural conditions. However, this is not a new or incompatible impact from the zone change, as there are already large areas zoned for industrial use at Port Westward that have been or could be developed in a manner that similarly alters the character. Since the U.S. Army developed Port Westward for shipping in 1942 there has been significant industrial development at Port Westward in proximity to the proposed zone change area.
6. *Statement that the proposed zone change would affect resources critical to the Cowlitz Indian Tribe*
Response: The zone change itself would not directly affect resources. Future development proposals that require Federal permits would need to account for impacts on historic properties and archaeological sites pursuant to Section 106 of the National Historic Preservation Act (Compatibility Report p. 21). Similarly, future developments may need to comply with the National Environmental Policy Act, which requires Federal agencies to factor in environmental considerations and to provide opportunity for public comment (including comments from the Tribe) prior to making decisions (Compatibility Report p. 20). Both Acts would be triggered if a project requires any Federal permits (e.g., Federal wetland permits). Furthermore, OAR 736-051-0080(2) stipulates that applicants considering ground-disturbing projects on public land (including Port-owned land) should contact the appropriate Tribe to inquire about the presence of archaeological sites and objects. The governing Federal, State, and local regulations cataloged in the Compatibility Report require further actions that limit emissions and discharges to prescribed levels in order to protect human health and natural resources.
7. *Assertions that reliance on other permitting processes to demonstrate compatibility constitutes an impermissible deferral of compatibility*
Response: The compatibility analysis required by OAR 660-004-0020(2)(d) is analogous to the Transportation Planning Rule, which calls for analysis of generalized transportation impacts for a reasonable worst-case scenario for a range of potential uses, and is later followed by detailed analysis of a specific development as part of a transportation impact study during the land use review process. The Port's Compatibility Report provides detail

³ ODA and DLCD staff may be conflating the compatibility analysis regulations with those of ORS 215.296(1) regarding standards for approval of certain uses in exclusive farm use zones.

on existing regulatory programs (beginning on p. 20) which have jurisdiction designed to mitigate and regulate potential adverse impacts from the five proposed industrial uses in the zone change area, demonstrating that existing programs are protective of the most intense scenario (e.g., oil rather than milk for liquid bulk commodities). The details of a specific development proposal are analyzed when they are timely and available, namely at the time of a land use application (e.g., site design review or conditional use review), and at the time of a permit application. These applications will be submitted to and approved by Federal, State, and County agencies prior to commencing operations.

8. *Concerns about vehicle traffic*
Response: Pursuant to the Transportation Planning rule, the Port volunteered a trip cap as a means of ensuring that the reasonable worst-case scenario did not cause roadway operations in the area to drop below applicable mobility standards. When adopting Ordinance 2018-1 approving the Port's application on remand, the County Board of Commissioners imposed conditions of approval requiring traffic analysis for future development proposals to estimate traffic impacts and identify any necessary mitigation measures.
9. *Concerns about shutting off the Beaver Drainage Improvement Company pumps as a means of spill containment*
Response: As noted in the Compatibility Report (p. 52), the Beaver Drainage Improvement Company (BDIC) dikes separate the majority of the zone change area from the Columbia River. We see that the BDIC submitted a letter indicating that its pumps would not be used as a form of spill control (public record p. 461). Regardless, the dikes provide additional opportunity for hydraulic isolation to prevent waterborne materials from reaching the river, as may be implemented via isolation gates and localized pumps or other measures identified as part of a spill response plan required by the Clean Water Act, Oil Pollution Act, Federal Rail Safety Act, Natural Gas Act, Natural Gas Policy Act, and standards of the Oregon Department of Environmental Quality, Oregon Department of Energy, Oregon Office of the State Fire Marshal, Oregon Department of Transportation, among others. The BDIC would be involved in the development of any spill response plans involving BDIC facilities.
10. *Characterization that the Compatibility Report understates the potential risks of industrial water pollution*
Response: The Compatibility Report does not catalog the potential water-borne compounds that could be generated by future users of the zone change area, as each potential user would have its own unique processes and materials, so attempting to quantify these materials would at best be imprecise. Rather, the Compatibility Report (beginning on p. 20) identifies the applicable Federal, State, and local regulatory programs that require water quality preservation measures (e.g., spill containment plans, process water treatment, stormwater, and erosion control, etc.). The net result of these programs ensures compatibility with the surroundings, including groundwater, and water bodies and their associated habitat. The Port currently holds an individual discharge permit for Port Westward, and future development is unlikely to be approved under a general permit.
11. *Assertions that industrial development is by its very nature incompatible with agriculture, residential development, or habitat*
Response: Industrial development in the zone change area will indeed result in some level of impact on its surroundings. However, the fact that pollutants may be produced (e.g., generation of air or water pollutants) does not mean that the development is therefore incompatible; existing Federal, State, and local regulations require those pollutants to be captured and limited to defined emissions levels, thereby assuring compatibility (Compatibility Report beginning on p. 20). Furthermore, ORS 197.732(1)(a) and OAR 660-004-0020(2)(d) state that "'compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses".

12. *Concerns about dust impacts on agriculture*
Response: Dust may be generated by construction, vehicle traffic, or industrial operations such as grain storage and distribution. Development in the zone change area would likely result in paving of existing gravel roadways, thereby reducing dust from those roads. Industrial development would be subject to air quality standards and may require Air Contaminant Discharge Permits from the Oregon Department of Environmental Quality to ensure that dust (and other contaminants) is limited to specified levels.
13. *Statements regarding the status of the existing dike system*
Response: The dike system has been provisionally accredited, the same as nearly every dike system in the Lower Columbia River, providing protection from the 1% annual chance flood. This issue is not directly related to compatibility, and has been addressed in the record associated with Ordinance 2018-1. It is our understanding that the Beaver Drainage Improvement Company is embarking on the dike recertification process, and while it is certainly a large task, it is entirely achievable (as evidenced by the Scappoose Drainage Improvement Company's significant progress in that direction).
14. *Concerns about earthquakes*
Response: The Oregon Structural Specialty Code requires that new construction comply with applicable seismic and geotechnical design standards. These would be addressed at the time of a specific development by a State of Oregon registered professional engineer, not at the time of compatibility analysis for the zone change.
15. *Statements about Columbian white-tailed deer habitat*
Response: The Port acknowledges that multiple agencies encourage restoration of habitat for Columbian white-tailed deer in the general vicinity of the proposed zone change area. This encouragement does not constitute regulation, nor does it require specific action by the Port to demonstrate compatibility. The Clatskanie-Quincy CPAC [Citizen Planning Advisory Committee] Wildlife Game Habitat map (Beak Consultants Inc., June 1995, attached), which serves as the basis for identifying areas subject to Columbia County's Big Game Habitat Overlay, does not identify the zone change area as either 'core' or 'marginal' Columbian white-tailed deer habitat. We assume that the Federal agencies involved in this restoration effort will be consulted as part of any Federal permit proceeding, and will comment as applicable.
16. *Concerns about impacts from coal*
Response: The County Board of Commissioners specifically prohibited coal at the Port Westward zone change area per condition of approval number 6 in Ordinance 2018-1. This condition of approval was not challenged and is settled.

Thank you for the opportunity to submit this information for the Board's consideration.

Sincerely,



Brian Varricchione
Land Use Planning

Enclosure: Clatskanie-Quincy CPAC Wildlife Game Habitat map, Beak Consultants Inc., June 1995 (annotated)

c: Scott Jensen – Port of Columbia County
Spencer Parsons – Beery Elsner & Hammond, LLP



CLATSKANIE - QUINCY C.P.A.C. WILDLIFE GAME HABITAT

Columbia County

Prepared by: 
 CLATSkanie








DATE: 6/25/95 PROJ. NO. 73824

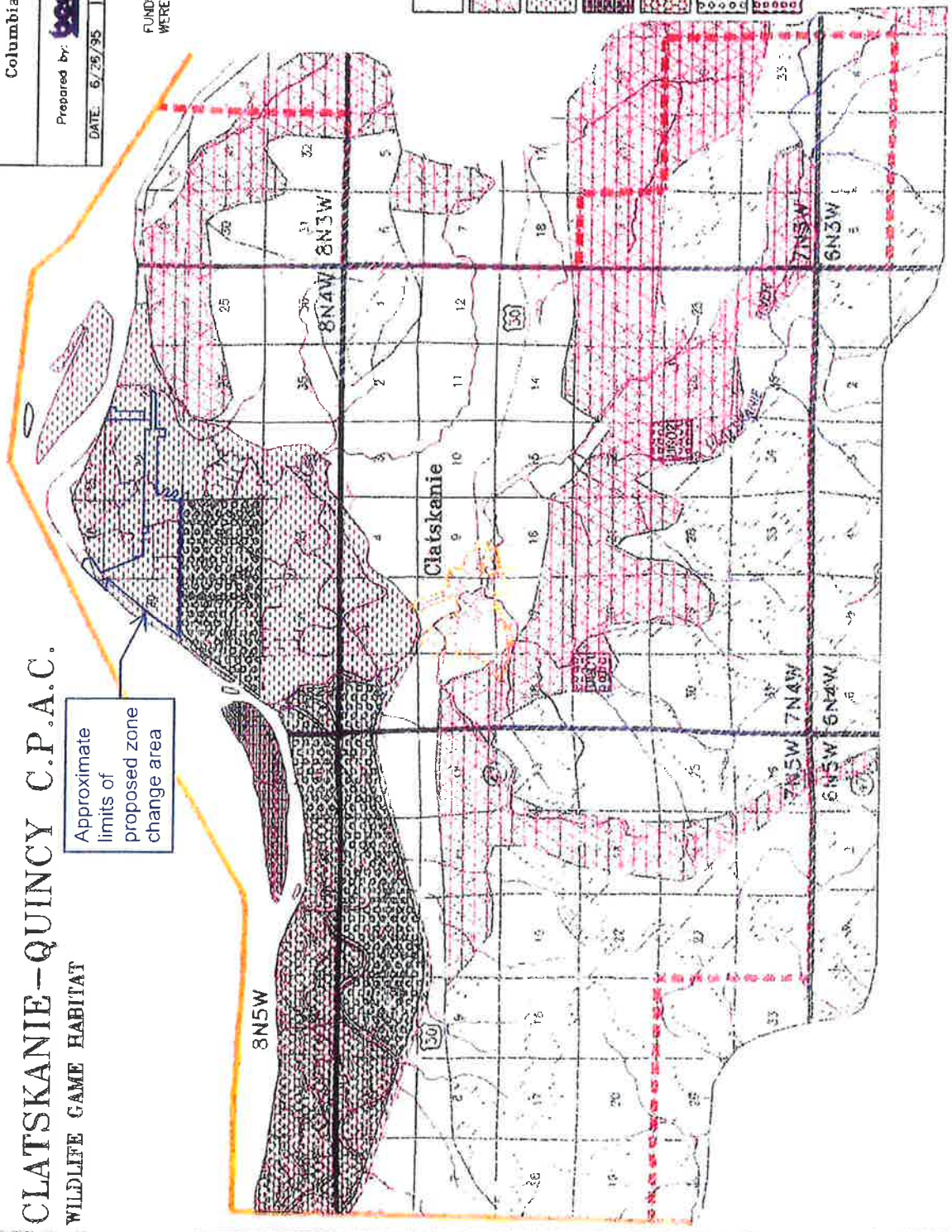
FUNDS FOR THIS MAP WERE PROVIDED BY LOOC.

Approximate limits of proposed zone change area



LEGEND

-  BIG GAME HABITAT
-  OREGONIAN BK. GAME HABITAT
-  MALLOW WHITEFLOW. HABITAT
-  COLUMBIAN BK. TAILED DEER - MOUNTAIN AND BLACK REDWOOD HABITAT
-  COLUMBIAN WHITE-TAILED DEER - MOUNTAIN HABITAT
-  COLUMBIAN WHITE-TAILED DEER - MOUNTAIN HABITAT
-  UPLAND GAME AREAS





February 17, 2021

Introduction

These comments are respectfully submitted by the Port of Columbia County (the “Port”) to the Columbia County Board of Commissioners (the “Board”) regarding the Port’s application before the Board (File No. PA 13-02/ZC 13-01). This office represents the Port of Columbia County regarding its proposed rezone of land adjacent to the existing Port Westward Industrial Park (“PWW”) from Primary Agriculture-80 Acres (“PA-80”) to Resource Industrial-Planned Development (“RIPD”), as well as a related Comprehensive Plan Amendment and Goal Exception, to allow for the five dock-dependent rural industrial uses previously approved by Columbia County (the “County”).

The Port will reserve its final written argument until after all other written evidence, arguments and testimony have been submitted to the County, including its response to the comments of Columbia Riverkeeper and 1000 Friends of Oregon (collectively, “Riverkeeper”) already submitted. However, before then, the Port submits the following comments regarding other written testimony submitted to the County to date.

DLCD Letter dated December 7, 2020 and Oregon Department of Agriculture Letter dated December 9, 2020

In a letter dated December 7, 2020, the Department of Land Conservation and Development (“DLCD”) suggests that the Compatibility Report does not sufficiently describe “adjacent agricultural resource management or production practices” and goes on to quote language from LUBA’s decision remanding the application to the County for additional findings regarding compatibility. However, neither DLCD’s statement nor its analysis is consistent with the language it quotes from the LUBA decision. As DLCD itself points out, LUBA states that the “findings should . . . address the characteristics of uses on adjoining areas, such as impacts on water quality.” (emphasis added)

The Oregon Department of Agriculture makes a similar suggestion in its letter dated December 9, 2020. Neither LUBA’s opinion nor OAR 660-004-0020(2)(d) require the kind of extensive analysis of adjacent agricultural production or resource management practices suggested in those letters for the Port to satisfy the requirements of the applicable rule. What is required is a demonstration of compatibility which the Compatibility Report achieves through, in LUBA’s words, an “assess[ment of] vulnerability to potential externalities from industrial uses in the exception area, such as impacts on water quality,” and by establishing how the broad scope of applicable regulatory programs will have the effect of ensuring compatibility with those existing adjacent uses. Accordingly, the Compatibility Report relies on the methodology suggested by LUBA and applying it to the context of each of the five uses proposed for the expansion area.

The Compatibility Report details the characteristics of both the expansion area and areas adjacent to the expansion area¹, outlining the zoning designations and uses of the adjacent lands and identifying potential adverse impacts applicable to the existing uses adjacent to the expansion area. Specifically, the Compatibility Report then divides the existing adjacent uses generally into industrial and non-industrial uses, and then evaluates which of those (and their potential impacts) closely align with those noted for the five proposed uses.

In assessing potential impacts and compatibility, the Compatibility Report provides an exhaustive analysis of existing regulatory programs designed to mitigate potential adverse impacts from the rural industrial development proposed by the Port. The Compatibility Report explains that a significant reason the County can know that the five proposed uses for the expansion area can be rendered compatible with existing adjacent uses is specifically because of the high level of regulation that the uses will be subject to in order to be sited in the expansion area at Port Westward. The uses will be under scrutiny by specialized administrative agencies equipped to monitor and enforce compliance with their own unique regulations applicable to the subject use. The County can be further assured that, in addition to the regulation and enforcement brought to bear by regulatory agencies, an engaged public can and does play a key role in maintaining compatibility with the adjacent uses.²

Finally, the Compatibility Report recommends that the County impose one additional approval condition which, though perhaps redundant, will ensure compatibility by making explicit a requirement that all applicable Federal, State, and local permits be approved prior to issuance of occupancy permits. In imposing such a condition, compatibility will be maintained through compliance with the applicable regulatory programs.

Letter of the Beaver Drainage Improvement Company submitted on January 13, 2021

Several comments submitted have raised the issue of Beaver Drainage Improvement Company ("BDIC") using pump stations as a form of spill control, and concern that doing so would be at the expense of neighboring uses. However, as the BDIC letter states, "The [BDIC] Board will continue to evaluate any new spill control plans proposed by new industry to ensure that no BDIC infrastructure is harmed and that there are no impacts to the function of the BDIC system."

As the above statement indicates, the BDIC will perform an oversight function for any uses cited in the expansion area. Its submission indicates that it will not surrender control of its pumps to industrial uses for their sole benefit, or turn off its pumps for this purpose. However, the fact remains that the majority of water from the district discharges to the Columbia River via the BDIC pumps, and that affords the BDIC a level of control over discharges to enhance compliance with applicable regulatory programs.

¹ The Compatibility Report takes into consideration a study area that includes properties within 2000 feet of the proposed expansion area.

² See, e.g., Riverkeeper Jan. 25, 2021 Comment, Exhibits 38 and 40, Rec. 1354-1365; Rec. 1375-1382. Ensuring such public engagement satisfies the intent of Statewide Planning Goal 1, Citizen Involvement.

Conclusion

The Compatibility Report provides an analysis of compatibility based on the framework identified by LUBA and the Court of Appeals. The Compatibility Report establishes the compliance of each of the five identified uses with ORS 197.732(2)(c)(D), and OAR 660-004-0020(2)(d). Mackenzie will be submitting additional comments to address issues raised regarding the Compatibility Report. As indicated above, the Port reserves its final written argument until the record is closed to all other parties.



March 3, 2021

The Port of Columbia County (the “Port”) respectfully submits this written Final Argument in support of its application currently before the Columbia County Board of Commissioners (the “Board”), File No. PA 13-02/ZC 13-01, in response to comments submitted to the County during both the initial open comment period which ended on January 27, 2021, and the rebuttal period which ended on February 17, 2021.

I. What Remains at Issue for Approval of the Port’s Application

The County has received a voluminous amount of submissions into its record, and that avalanche of documents can seem daunting. However, the task before the Board is much simpler than those documents make it appear. The single remaining question before the Board is whether the Port’s five proposed uses¹ are “compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”² Much of the comments received by the County relate to issues that have been previously raised and resolved on appeal and are no longer at issue. The comments discussing issues not applicable to the single standard still remaining, the compatibility standard, only confuse the question and are not issues currently before the Board.

For example, comments challenging the acreage proposed for the expansion area are no longer at issue. Similarly, the questions of whether the proposed uses are adequately supported by the Port’s application, or qualify as “rural industrial uses,” have already been resolved. The argument of whether the Port’s proposal constitutes a “planning or zoning policy of general applicability” has also already been raised, and was similarly rejected by the Board and on appeal. The questions of whether the uses would be sufficiently dependent on Port Westward’s deepwater port, whether that deepwater port is a unique resource, and whether it is located on agricultural or forest land have all been addressed through the previous appeals process and are likewise no longer before the Board. Challenges on the basis that the proposal has not sufficiently considered potential alternative sites, or does not comply with the Transportation

¹ The five rural industrial uses proposed for the Port Westward expansion area are detailed in Mackenzie’s *Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change Alternative Analysis Report*, dated April 10, 2017 (the “Mackenzie Report”):

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

² ORS 197.732(2)(c)(D); OAR 660-004-0020(2)(d).

Planning Rule³ were likewise previously raised and resolved through the previous round of appeals. None of those issues, or any others unrelated to compatibility, remain before the Board.

The only remaining question is whether the five proposed uses are “compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.” ORS 197.732(2)(c)(D); OAR 660-004-0020(2)(d).

ORS 197.732(2)(c)(D) provides the following:

(2) A local government may adopt an exception to a goal if:

* * *

(c) The following standards are met:

* * *

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

OAR 660-004-0020(2)(d) provides the following directing in evaluating compatibility:

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.

It must be emphasized that, in resolving that last remaining question, OAR 660-004-0020(2)(d) explicitly states that compatible “is not an absolute term meaning no interference or adverse impacts of any type with adjacent uses.” In other words, the last remaining issue before the Board is whether the five uses proposed by the Port are compatible with adjacent uses or “will be so rendered through measures designed to reduce [but not necessarily eliminate] adverse impacts.” Mackenzie’s *Port Westward Goal Exception, Comprehensive Plan Amendment, and Zone Change Supplemental Compatibility Analysis* dated July 21, 2020 (the “Compatibility Report”) focuses on that single remaining issue, and establishes that each of the proposed uses will be compatible with existing adjacent uses, with the imposition of the proposed conditions.

II. What the Compatibility Standard Requires

The Board has received comments that the Compatibility Report does not adequately address compatibility under OAR 660-004-0020(2)(d). For example, regarding the scope of which uses are “adjacent” the County received this argument from Columbia Riverkeeper (“Riverkeeper”):

³ OAR Chapter 660, Division 12.

The compatibility standard requires the County to demonstrate not only how the proposed uses are compatible with adjacent land uses, but also “that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. This provision of the rule is clearly intended to extend the compatibility analysis beyond “adjacent land uses” to require consideration of areas and activities that may not be confined to particular parcels or defined by the designated zoning. Moreover, in using “surrounding” instead of “adjacent” the rule indicates that a less rigid approach is warranted when evaluating compatibility with natural resources.

Riverkeeper comments dated January 20, 2021, at 6-7 (emphases added).

Riverkeeper is attempting to stretch the Administrative Rule beyond the scope of authorization in the statute, which is not permitted. The above assertion, and any similar such assertions in the record regarding the scope of OAR 660-004-0020(2)(d), are patently false.

OAR 660-004-0020(2)(d) is an administrative rule promulgated by the Oregon Land Conservation and Development Department through the Department’s Land Conservation and Development Commission (“LCDC”). As a State agency, LCDC derives its authority from State law. This becomes clear upon examination of the text of OAR 660-004-0020.

At the bottom of the administrative rule, the following is provided:

Statutory/Other Authority: ORS 197.040

Statutes/Other Implemented: ORS 197.732

History:

LCDD 3-2011, f. & cert. ef. 3-16-11

LCDD 1-2011, f. & cert. ef. 2-2-11

LCDD 3-2004, f. & cert. ef. 5-7-04

LCDC 8-1994, f. & cert. ef. 12-5-94

LCDC 9-1983, f. & ef. 12-30-83

LCDC 5-1982, f. & ef 7-21-82 (emphases added).⁴

Accordingly OAR 660-004-0020 itself recognizes and acknowledges that the scope of its authority is limited to the delegation in ORS 197.732, meaning the language cited by Riverkeeper (that OAR 660-004-0020 requires that an exception “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”) applies only in the context of the statute itself.

In turn, the statute requires only that “The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts” (emphasis added). The intent of the statute (and the associated limit of its implementing regulation’s scope) is “compatib[ility] with other adjacent uses.” To the extent that compatibility requires consideration of “surrounding natural resources and resource management or production practices,” that consideration applies only in the context of “adjacent uses.” The administrative

⁴ Available at <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=174999>.

rule itself cannot self-authorize an expansion of the scope of the statute, but only implement the statute's delegation of authority.

That interpretation of ORS 197.732 and OAR 660-004-0020 is consistent with ORS 197.040, which is cited in the rule as the authority for the promulgation of OAR 660-004-0020. ORS 197.040(1)(c)(A) authorizes LCDC to “[a]dopt by rule in accordance with ORS chapter 183 or by goal under ORS chapter 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196, and 197.” (emphasis added) As the rule implementing ORS 197.732, OAR 660-004-0020 “car[ri]es out” ORS 197.732, but cannot expand it, despite the unsubstantiated claims to the contrary presented to the Board. As the Oregon Court of Appeals has explained:

Administrative agencies may adopt rules only pursuant to statutory authority granted by the legislature. An administrative rule so adopted must be consistent with the legislative directive; it exceeds the agency's statutory authority if it “depart[s] from a legal standard expressed or implied in the particular law being administered, or [if it] contravene[s] some other applicable statute.”

Marolla v. Dep't of Pub. Safety Standards & Training, 245 Or. App. 226, 230, 263 P.3d 1034, 1035 (2011), quoting *Planned Parenthood Assn. v. Dept. of Human Res.*, 297 Or. 562, 565, 687 P.2d 785 (1984) (footnote and internal citations omitted).

In the context of OAR 660-004-0020(2)(d), the rule may require consideration of compatibility “with surrounding natural resources and resource management or production practices” if they concern compatibility with “adjacent uses” under ORS 197.732(2)(c)(D). However, if an attempt is made, in Riverkeeper's words to “extend” the rule “beyond” “adjoining uses,” that attempt would exceed the scope of authority delegated by the Legislature via ORS 197.732(2)(c)(D). Accordingly, Riverkeeper's interpretation of OAR 660-004-0020(2)(d) is untenable.

As the Compatibility Report details, ORS 197.732(1)(a) sets a limit on the reach of “compatible” under the statute: “‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.” In fact, that same language is mirrored in the text of OAR 660-004-0020.⁵ As the Compatibility Report explains, “[B]oth the enabling legislation and the administrative rule are clear that some degree of ‘interference or adverse impacts’ on adjacent land uses may be permitted by a proposed use and yet still be deemed compatible as provided under the applicable statute and administrative rule.” *Compatibility Report*, at 5.

As Mackenzie explained in its letter to the Board dated February 17, 2021:

As noted in the [Compatibility Report], neither ORS 197.732 nor OAR 660-004-0020(2)(d) defines the term “adjacent” for the purposes of defining a study area for compatibility analysis (Compatibility Report p. 7). To identify an appropriate study area boundary, Mackenzie examined dictionary definitions as well as other administrative rules that limit the term to only abutting land or that define “nearby land” as constituting

⁵ See text of OAR 660-004-0020(2)(d) on p. 2, above.

a quarter-mile radius. However, the Port opted to go beyond these other measures by identifying a study area inclusive of contiguous parcels within 2,000 feet of the zone change area. As noted in the Compatibility Report, the extent of the County's zoning authority is limited to land uses rather than waterways such as the Columbia River, as those are subject to separate Federal and State water quality and maritime commerce regulations (Compatibility Report p. 9). The Board of Commissioners can determine that the Port made a reasonable effort to analyze an appropriate study area in alignment with applicable statutes and rules (footnote omitted).⁶

The "interference or adverse impacts" from the development referenced in the rule can potentially impact "adjacent" uses via "surrounding natural resources and resource management or production practices," but the statute focuses the requirement on impacts to "adjacent" uses themselves.

Accordingly, to the extent non-adjacent "surrounding natural resources and resource management or production practices" have impacts that in turn impact "adjacent" uses under ORS 197.732, those impacts fall under the scope of ORS 197.732. However, the language in OAR 660-004-0020(2)(d) cannot be used to expand the scope and application of ORS 197.732 beyond its intended target: adjacent uses.

III. The Compatibility Report demonstrates that the requirements of ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d) are Satisfied with the Imposition of the Approval Conditions Together With the Additional Approval Condition Proposed in the Compatibility Report

a. The Compatibility Report adequately identifies potential adverse impacts to adjacent uses by each of the five proposed uses

The County has received record submissions stating that the Compatibility Report does not adequately address adjacent uses. As explained above, compatibility applies to "surrounding natural resources and resource management or production practices" only as it relates to adjacent uses. Mackenzie details this in its February 17, 2021 letter:

The [Compatibility R]eport does not attempt to identify all the crops within the study area, nor such items as soil preparation, planting, fertilizing, managing weeds, harvesting, or processing. Contrary to statements by Oregon Department of Agriculture and Oregon Department of Land Conservation and Development staff, the applicable language in

⁶ This line of analysis is similar to one that was previously enunciated by LUBA. In discussing the scope of alternative sites to be considered under OAR 660-004-0020(2)(b), and in rejecting an argument that the Port had not sufficiently addressed alternative sites elsewhere in the State or across state lines under that rule, LUBA stated the following: "We conclude that in conducting an alternative sites analysis for industrial uses justified based on proximity to the 'unique resource' of a river or ocean port under OAR 660-004-0022(3)(a), the County is not required to evaluate other port sites in the state (or elsewhere) that serve entirely different economic markets." 78 Or LUBA 547, Slip Op. at 41.

OAR 660-004-0020(2)(d) does not mandate an exhaustive description of adjacent agricultural resource management or production practices (Compatibility Report p. 5). Rather, the Port demonstrated in the Compatibility Report (beginning on p. 49) that there is a host of existing regulatory programs and conditions of approval that have the effect of ensuring compatibility with nearby uses and the larger environment, including agriculture.

In a footnote, Mackenzie's letter surmises, "ODA and DLCD staff may be conflating the compatibility analysis regulations with those of ORS 215.296(1) regarding standards for approval of certain uses in exclusive farm use zones."

What the Compatibility Report does is rely on direction, obtained through the previous rounds of appeals, to address the question of compatibility, analyzing LUBA's discussion of the requirement in its 2014 decision:

[OAR 660-004-0020(2)(d)] contemplates that the county has identified the proposed use, has determined that the use has adverse impacts incompatible with adjacent uses, but has identified and imposed specific measures in the exception decision to reduce impacts and thus render the proposed use compatible.⁷

It also considers LUBA's elaborated analysis of the compatibility standard in its 2018 decision, focusing specifically on the following passage of the decision:

[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.⁸

Based on the direction provided, the Compatibility Report enunciates a methodology for assessing compatibility:

Based on the effective statutes, administrative rules, court opinions, and plain-language definitions such as the Merriam-Webster Dictionary's primary definition for the word "compatible" ("capable of existing together in harmony"), determination of compatibility for a rural industrial Goal Exception should thus address the following:

⁷ 70 Or LUBA 171, 204 (2014).

⁸ 78 Or LUBA 547, 569-570 (2018).

- Enumeration of potential adverse impacts of the proposed uses;
- Identification of significant differences in character among the proposed uses and adjacent land uses;
- Assessment of whether potential impacts produce adverse effects on adjacent land uses;
- Cataloging of those uses which require no mitigation to be compatible and those which require mitigation measures to be made compatible with adjacent land uses;
- Compilation of existing regulations applicable to the proposed uses which have the effect of maintaining compatibility; and
- Where required to promote compatibility, identification of appropriate mitigation to minimize incompatible impacts with adjacent land uses.

Compatibility Report, at 6-7.

After formulating that methodology, the Compatibility Report applies it to each of the five proposed uses. It relies on the methodology identified by LUBA and the Court of Appeals to provide a compatibility analysis of each of the five uses proposed for the expansion area that satisfies the requirements of substantial evidence review.

As part of that methodology, the Compatibility Report considers the significance of the following statement from the decision of the Oregon Court of Appeals upholding LUBA's opinion: "We understand LUBA's rejection of the county's compatibility determination to turn on an application of the substantial evidence standard of review."⁹ Accordingly, the Compatibility Report addresses the applicable evidentiary standard as follows in evaluating compatibility: ". . . LUBA provided a framework for analyzing compatibility in a manner that would satisfy the substantial evidence standard. That framework is the approach taken in this supplemental analysis." *Compatibility Report, at 6.*

In identifying and analyzing the range of potential compatibility impacts for operations falling within each of the five rural industrial uses, the Compatibility Report notes that the potential impacts of each of the five are generally similar. It also concludes that there is a large amount of overlap of potential impacts between the existing industrial uses at Port Westward and the five rural industrial uses proposed for the expansion area, and that the differences among uses is largely a matter of scale associated with the different production processes. As the Compatibility Report states:

⁹ *Id.* Under ORS 197.835(9)(a)(C), the County's decision will not be reversed or remanded if it is supported by "substantial evidence in the whole record."

For each of the five Port Westward proposed rural industrial land uses, the range of potential adverse impacts for operations has been identified. As demonstrated in Table 1, the potential adverse impacts from the five Port Westward uses largely fall into the same general categories. The differences among uses are largely a matter of scale and probabilities associated with the different production processes.

Compatibility Report, at 13.

Table 1 in the *Compatibility Report* delineates potential adverse impacts from the Port's five proposed uses, and Table 2 delineates potential adverse impacts from the existing industrial uses at Port Westward. *Compatibility Report*, at 14-15.

In comparing the two tables to one another, the *Compatibility Report* notes that there is "significant overlap among the potential adverse impacts from the five rezone area rural industrial uses and the existing industrial uses within PWW. The potential offsite impacts from the five industrial uses are largely the same as those that are already present from the existing industrial uses." *Compatibility Report*, at 16. Further, the *Compatibility Report* notes that "[t]here is overlap in the lists of potential adverse impacts from the five proposed uses and adjacent and non-adjacent tree farm and other agricultural uses and forested uses." *Id.* The *Compatibility Report* notes that the proposed uses will be subject to much more stringent environmental regulations than either agricultural or residential uses. *Id.*

The *Compatibility Report* then surveys offsite impacts from the proposed uses, concluding that they are largely the same as those from existing industrial uses. The *Compatibility Report* notes that there is even some overlap in potential impacts between the five rural industrial uses and tree farm and other adjacent agricultural uses, and that the industrial uses would be subject to more stringent regulations pertaining to stormwater containment and treatment.

The *Compatibility Report* also includes a third table, Table 3, that compares potential adverse impacts of each of the proposed uses to existing industrial uses; existing agricultural and forested uses; and existing residential uses. *Id.* at 17. In evaluating the comparison, the *Compatibility Report* states the following:

Given the range of potential adverse impacts from the rezone area rural industrial uses, it might initially seem difficult to establish the compatibility of those uses with adjacent land uses and non-adjacent uses in the study area. However, upon closer analysis, such is not the case. First, not all potential impacts will be present for a given industrial operation. Where a particular impact is not present, there is no need to mitigate the non-impact. Moreover, even the potential impacts align closely with the potential impacts from the existing PWW industrial uses. The County thus has a long record of compatibility in the form of the successful coexistence of existing industrial and non-industrial uses in the area, involving largely identical impacts, which serves as strong evidence that the rezone area's five rural industrial uses can indeed be made compatible with the adjoining uses.

Approval of the zone change and associated comprehensive plan amendment and Goal Exception by the County would move the boundary of future industrial development farther south, but would neither expose new types of adjacent land uses to industrial uses, nor expose those adjacent land uses to a new set of new potential industrial impacts. This is a significant point as pertains to compatibility, as the potential impacts between similar adjacent land uses will likely be substantially the same. As described in Section III, the study area is primarily composed of industrial, tree farm and other agricultural uses, and forested land (with a smaller amount of residential uses accessory to primary agricultural uses). The proximity of these uses and their long-standing operations provide strong evidence rural industrial uses can safely exist side-by-side with non-industrial uses if appropriate mitigation is in place (such as buffering, setbacks, other separation, and the mitigation measures previously imposed by the County with the adoption of Ordinance 2018-1.

Compatibility Report, at 19.

The Report concludes that there are likely to be impacts on existing adjacent uses, “though not at a level greater than could potentially be experienced from existing industrial and agricultural uses at PWW” and that “mitigation measures exist and are available to ensure that compatibility is maintained between the existing adjacent land uses and each of the rural industrial uses proposed for the rezone area.” *Id.*

To the extent that arguments are raised asserting that Mackenzie’s analysis does not consider different kinds of crops grown on agricultural land, that consideration does not have bearing on compatibility analysis. Whether due to seasonal crop rotations or other changes in crops, the use remains agricultural in nature. In fact, as Riverkeeper points out, some of the former poplar farm acreage within the Port Westward expansion area is now being used for cattle and mint. Additional changes will undoubtedly occur prior to development. However, the use remains agricultural in nature, and the analysis in the Compatibility Report will continue to apply through such crop changes.

b. The Compatibility Report identifies mitigation measures to maintain compatibility with adjacent uses

In concluding that “mitigation measures exist and are available to ensure that compatibility is maintained,” the Compatibility Report zeroes in on two areas of mitigation: the County’s own authority to regulate land uses and impose approval conditions to ensure that compatibility is maintained; and 2) the high level of industrial regulation at the Federal and State levels that will apply to development at Port Westward. As to the former, the Compatibility Report states the following:

Columbia County is the land use authority at Port Westward and throughout unincorporated portions of the County. Accordingly, the County has adopted its Zoning Ordinance to implement the County’s Comprehensive Plan to ensure that land uses are consistent with adopted statewide and local goals, policies and objectives. The underlying premise of a zoning ordinance is that it will protect human health and safety by limiting

incompatibility of surrounding uses. For instance, as part of the current zone change application, the County will impose conditions as part of any approval to ensure compliance both County and Statewide policies, and future development proposals will be subject to public land use review processes that comply with the terms and limitations of an exception granted to Goal 3 (e.g., uses must be dock-dependent), and any other then-applicable land use regulation (and related regulations) at the state and local level.

Compatibility Report, at 39.

The Compatibility Report continues:

As part of the County's future Conditional Use review process for individual industrial developments, the Planning Commission has authority to impose additional conditions of approval to ensure consistency with land use regulations (e.g., requiring documentation on all required Federal, State, and County permits:

The Commission may attach conditions and restrictions to any conditional use approved. The setbacks and limitations of the underlying district shall be applied to the conditional use. Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds, and other reasonable conditions, restrictions, and safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use being allowed.¹⁰

Compatibility Report, at 39.

Regarding existing regulatory programs that have the effect of mitigating potential adverse impacts from development in general, and industrial operations in particular, the Compatibility Report explains that a significant reason the five proposed uses for the expansion area can be rendered compatible with existing adjacent uses is specifically because the uses are the subject of stringent regulation at the Federal and State level.

The fundamental reason the existing PWW uses and the five rural industrial uses identified for the zone change area are compatible with adjoining uses is that industrial operations are highly regulated at the Federal and State levels to minimize adverse impacts to adjacent land uses and waterways. These regulations are adequate to ensure the adverse impacts from the five rural industrial uses can be adequately mitigated so as to be rendered compatible with adjacent land uses, as required for the requested Goal Exception.

Id., at 19. In addition, the Compatibility Report notes that Columbia County Zoning Ordinance ("CCZO") Section 683.1 requires uses in the RIPD zone to identify and address "any adverse impact" and that a previous condition of approval imposed by the Board would require

¹⁰ CCZO Section 1503.2.

any use siting in the expansion area to go through a conditional use approval process.¹¹ *Id.*

As the Compatibility Report explains: “Maintaining compatibility is therefore largely a function of cost for users to meet the regulatory standards at the time of development, and whether the total cost of initial and ongoing regulatory compliance is economically feasible to allow a particular use to site at Port Westward. *Id.*”

It also bears mentioning that, in addition to the eight approval conditions previously imposed by the Board in Ordinance No. 2018-1, Mackenzie has recommended an additional approval condition to maintain compatibility with adjacent uses “requiring applicants for future development proposals in the rezone area to provide evidence of approval of all applicable Federal, State, and local permits prior to issuance of occupancy permits.” *Id.* at 52. In a footnote, the Compatibility Report explains that, while a condition is not necessary to require compliance with all regulatory programs (because compliance is required whether or not the condition is imposed), such a condition nevertheless provides additional assurance that compatibility is maintained:

As noted above, compliance with all applicable regulatory programs is required with or without such a land use condition. However, including such a condition ensures that the County will have an oversight role in the application [of] regulatory programs, and in so doing have the ability to ensure that impacts are mitigated and land use compatibility maintained.

Compatibility Report, at 52, n.69.

LUBA previously approved of a similar approach by the County in imposing Condition No. 5 (limiting the proposed uses to those substantially dependent on a deepwater port):

According to the Port, Condition 5 was imposed only to provide additional assurance to opponents that only uses that are significantly dependent on the port will be approved. The Port argues that Condition 5, read in context with the county’s findings and the exception that it is attached to, is clearly intended to require that applicants demonstrate that the proposed use is not only one of the five authorized uses, but also a use that is significantly dependent on the port facilities. We agree with the Port.

78 Or LUBA 547, Slip Op. at 41. In this context, although unnecessary, the approval condition “provide[s] additional assurance” that compatibility will be maintained.

¹¹ Approval Condition No. 1 of Ordinance No. 2018-1 provided the following:

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

- c. The new approval condition proposed in the Compatibility Report prevents deferral of compliance with compatibility under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d)*

Some of the comments submitted to the County infer or explicitly state that approval of the Port's proposal by the Board will unlawfully defer compliance with compatibility requirements under ORS 197.732(2)(c)(D). That is incorrect. The County can make a finding that, with the proper application of regulatory programs, and with the imposition of the County's approval conditions, compatibility will be maintained.

In particular, the Port notes that the new condition recommended in the Compatibility Report "requiring applicants for future development proposals in the rezone area to provide evidence of approval of all applicable Federal, State, and local permits prior to issuance of occupancy permits," while perhaps redundant (in that it requires something that is already required under applicable laws and regulations), assures (now) that compatibility will be maintained into the future (at the time of development and beyond). If a future developer secures all such permits, the development will be constructed in a manner so as to be compatible with adjacent uses; if the developer cannot satisfy that requirement, the development will simply not go forward (which will have the effect of disallowing an incompatible use by preventing the project from proceeding).

As Mackenzie explains in its February 17, 2021 letter to the Board:

The compatibility analysis required by OAR 660-004-0020(2)(d) is analogous to the Transportation Planning Rule, which calls for analysis of generalized transportation impacts for a reasonable worst-case scenario for a range of potential uses, and is later followed by detailed analysis of a specific development as part of a transportation impact study during the land use review process. The Port's Compatibility Report provides detail on existing regulatory programs (beginning on p. 20) which have jurisdiction designed to mitigate and regulate potential adverse impacts from the five proposed industrial uses in the zone change area, demonstrating that existing programs are protective of the most intense scenario (e.g., oil rather than milk for liquid bulk commodities). The details of a specific development proposal are analyzed when they are timely and available, namely at the time of a land use application (e.g., site design review or conditional use review), and at the time of a permit application. These applications will be submitted to and approved by Federal, State, and County agencies prior to commencing operations.

Accordingly, as proposed, the Board is able to find the compatibility standard satisfied, without deferring compliance to future proceedings.

IV. Response to Other Comments Submitted to the County

- a. The County is well within its rights to rely on Federal, State and local regulatory programs to maintain compatibility under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d)*

The Beaver Drainage Improvement Company (the "BDIC") exists to provide flood control, drainage, and irrigation water for the lands within the district. The BDIC is obviously concerned about anything that could get into the waters it manages within the district. They have been and will continue to be a partner with any development in the district, agricultural or industrial.

To the extent the County has received comments that it is inappropriate for the County to rely on State and Federal regulatory programs to maintain compatibility with adjacent uses, that argument is belied by the fact that the authority of the regulating agencies and the County do not completely overlap. Accordingly, Columbia County (and all counties in Oregon) has always and will continue to rely on those agencies to carry out their own delegated authority. In the context of this proceeding, the County's obligation and scope of authority is in making a determination that the proposed uses are compatible, or can be made compatible via measures that will reduce adverse impacts. The proposed conditions, including requiring that all applicable regulatory permits be secured prior to occupancy permit issuance, allows the County to "piggyback" on the jurisdictional authority of the regulatory bodies, and utilize their authority (which authority the County does not have on its own) so as to eliminate or reduce impacts and thereby maintain compatibility under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d).

- b. The dikes are sufficiently certified to allow for development in the expansion area without requiring that structures be elevated above the floodplain for undiked areas*

Regarding questions raised pertaining to dike certification, the issue was resolved as part of the previous proceedings and is not currently before the Board. To the extent the Board considers it, the Port relies on its prior submissions to the Board, and the explanation provided by Mackenzie in its February 17, 2021 letter to the Board.

From the Mackenzie letter:

The dike system has been provisionally accredited, the same as nearly every dike system in the Lower Columbia River, providing protection from the 1% annual chance flood. This issue is not directly related to compatibility, and has been addressed in the record associated with Ordinance 2018-1. It is our understanding that the Beaver Drainage Improvement Company is embarking on the dike recertification process, and while it is certainly a large task, it is entirely achievable (as evidenced by the Scappoose Drainage Improvement Company's significant progress in that direction).

From the Port's September 27, 2017 submission to the County:

The Port has previously submitted materials regarding the level of levee protection provided by the Beaver Diking District. In particular, the Port directs the Board's attention to the information from the National Levee Database, attached to the Port's August 30, 2017 submission as Exhibit D.

As previously explained, those documents show that the levee has received a certification as sufficient for protection in the event of a flood, provides context showing that the dike rating is similar to the vast majority of rated levees in the surrounding area, and establishes that the proposed expansion area is sufficiently protected from flooding from the Columbia River.

The Port additionally concurs with the findings of staff found in in-line responses to the testimony of Warren Nakkela and others regarding the construction of the levee and the need for fill in the expansion area.

From the Port's August 30, 2017 submission to the County:

Opponents also raise concerns regarding the sufficiency of the dike system surrounding the proposed expansion area (except for the Thompson Property). In response the Port is submitting applicable information from the National Levee Database for the Board's consideration, attached hereto as Exhibit D.

Those documents show that the dike has recently received a rating of "minimally acceptable" from the Army Corps of Engineers. That maintenance rating is consistent with the vast majority of federally built and privately maintained levees in Columbia and Multnomah Counties. The Army Corps of Engineers has three ratings classifications: Acceptable, Minimally Acceptable and Unacceptable. Regarding "Overall Segment/System Ratings," the designation of "Minimally Acceptable" means that

[o]ne or more items are rated as Minimally Acceptable or one or more items are rated as Unacceptable and an engineering determination concludes that the Unacceptable items would not prevent the segment/system from performing as intended during the next flood event. Ex. C, p. 10.

Given that definition, combined with the fact that that the dike has received a certification as sufficient for protection in the event of a flood (and in the context that the dike rating is similar to the vast majority of rated levees in the surrounding area), the substantial evidence establishes that the proposed expansion area is sufficiently protected from flooding from the Columbia River.

- c. *Neither the County's proposed findings, nor the Compatibility Report, impose any requirements on the Beaver Drainage Improvement Company, but rather recognize it as an interested stakeholder with critical oversight of the vast majority of water discharged from the Drainage District to the Columbia River*

To address questions raised regarding the BDIC, the Port relies on the explanation provided by Mackenzie in its February 17, 2021 letter to the County.

From the Mackenzie letter:

As noted in the Compatibility Report (p. 52), the Beaver Drainage Improvement Company (BDIC) dikes separate the majority of the zone change area from the Columbia River. We see that the BDIC submitted a letter indicating that its pumps would not be used as a form of spill control (public record p. 461). Regardless, the dikes provide additional opportunity for hydraulic isolation to prevent waterborne materials from reaching the river, as may be implemented via isolation gates and localized pumps or other measures identified as part of a spill response plan required by the Clean Water Act, Oil Pollution Act, Federal Rail Safety Act, Natural Gas Act, Natural Gas Policy Act, and standards of the Oregon Department of Environmental Quality, Oregon Department of Energy, Oregon Office of the State Fire Marshal, Oregon Department of Transportation, among others. The BDIC would be involved in the development of any spill response plans involving BDIC facilities.

- d. *Changes to the appearance of the landscape views at Port Westward and because of rural industrial development do not render the Port's five proposed uses incompatible with adjacent uses under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d)*

The County received several comments regarding potential impacts related to any changes to the appearance of Port Westward, as well as additional sounds and odors related to new development. To that concern, the Port points out that, prior to any development, a future Port tenant will be required to go through Site Design and Conditional Use reviews. Condition No. 4 requires the following, in part:

- 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.

Condition 4 also requires the following:

- 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.

In combination, the two provisions of Condition No. 4 will adequately mitigate any impacts related to future development at Port Westward.

Further, this concern was addressed by Mackenzie to the Board in its letter dated February 17, 2021:

New industrial development in the zone change area will indeed change the visual character of the landscape compared to existing agricultural conditions. However, this is not a new or incompatible impact from the zone change, as there are already large areas zoned for industrial use at Port Westward that have been or could be developed in a manner that similarly alters the character. Since the U.S. Army developed Port Westward for shipping in 1942 there has been significant industrial development at Port Westward in proximity to the proposed zone change area.

Accordingly, development can occur at Port Westward in compliance with ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d) with the appropriate mitigation measures discussed in the Port's application materials and the County's proposed approval conditions.

- e. Seismic consideration will be sufficiently addressed through the application of the Oregon Structural Specialty Code at the time of development, and its proper application will maintain compatibility under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d)*

The Oregon Structural Specialty Code, adopted by the State and applied by the County through the issuance of construction and building permits, assures compliance with all applicable seismic construction requirements and ensures those requirements are addressed at the time of development. By imposing a requirement of compliance (now) with regulatory programs (at the time of development), compatibility with adjacent uses will be maintained and the Board can make such a finding as part of this proceeding. That any development must meet the applicable building codes is a bedrock principle of the building permit process. See, e.g., ORS 455.020.

- f. Response to the report of Richard Horner dated November 2, 2020 submitted by Riverkeeper*

Riverkeeper submitted a report drafted by Richard Horner "providing my assessment of the adequacy of the Port's submission and its conclusions with respect to stormwater management and anticipated stormwater-related impacts" (the "Horner Report"). The fatal flaw with Dr. Horner's analysis is that, instead of viewing the Port's proposal as one requesting a Comprehensive Plan amendment, zone change and Goal exception, as allowed under Oregon State law, he appears to misunderstand it as a specific development proposal. Because of that fundamental misunderstanding of the nature of this proceeding at the outset, the Horner Report's analysis of the Compatibility Report is of negligible evidentiary value to the Board.

For example, the Horner Report states that

“[a] project put forward for approval to proceed should collect all underlying data pertinent to the required environmental assessments, conduct those assessments with the best available methods, and provide all the information regulators or citizens need to make a full and confident evaluation of the proposal and its potential environmental effects. The Port Westward project documents do not meet this standard.”

Riverkeeper Submission dated January 20, 2021, Ex. 1. While the Port does not object to that concept in general, and in fact agrees that it is the appropriate means by which the County can and should maintain compatibility with adjoining uses, the problem is that there is no “project” being put forward by the Port as part of its proposal; the “Port Westward project” as referenced in the Horner Report, simply does not exist.¹²

The Port does agree that, if its application is approved, a future development proposal “should collect all underlying data pertinent to the required environmental assessments, conduct those assessments with the best available methods, and provide all the information regulators or citizens need to make a full and confident evaluation of the proposal and its potential environmental effects.” Accordingly, the Port maintains that requiring compliance with all such “required environmental assessments” at that point is the best means by which to “provide all the information regulators or citizens need to make a full and confident evaluation of the proposal and its potential environmental effects” at the time of actual development. Further, to guarantee that is exactly what happens, thereby maintaining compatibility, the Compatibility Report recommends one additional approval condition, “requiring applicants for future development proposals in the rezone area to provide evidence of approval of all applicable Federal State, and local permits prior to issuance of occupancy permits.” *Compatibility Report*, at 52.

Because the Horner Report fundamentally misconceives what the Port’s application proposes, it fails to acknowledge that future development would be subject to additional regulation by all applicable administrative programs (not to mention its blindness to the fact that such development would be subject to future Conditional Use and Site Design review by the County), and so its conclusions are based on misconceptions that completely undermine its evidentiary value to the Board.

¹² This fundamental defect in the Horner Report’s analysis repeats itself throughout. *See, e.g.:*

1. The heading at the top of p. 4 of the Horner Report: “The Concept of Compatibility as Applied to the Proposed Development”. The Port’s application does not propose any development at this time.
2. Statement on p. 15 of the Horner Report: “There is no mention in the Compatibility Report how the proponent intends to manage wetlands on the site, specifically no reference to any plains to fill or drain.” The Port does not intend to undertake any development in the expansion area itself; development will be undertaken by future Port tenants.
3. Statement at the top of p. 16 of the Horner Report: “Development without awareness of these intricate relationships and measures to counter their effects is likely to increase storm runoff drainage to the wetlands on the Port Westward site.” Such “awareness” is assured by requiring developers to secure and obtain all necessary permits prior to issuance of occupancy permits which is already mandatory but would be additionally required by the imposition of the recommended approval condition put forward in the Compatibility Report.
4. Statement on p. 17 of the Horner Report: “However, because of the size and nature of the proposed operation . . .” The Port has not included a specific “operation” as part of its proposal.

Further, the Horner Report is silent on the proposed approval conditions, and their potential impact on compatibility. In particular, the following provisions of Condition No. 4 are germane:

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 users.

These are the kind of measures the Horner Report claims to be missing from the Port's proposal. However, they are in fact part-and-parcel to the Port's application, and are conditions that the Port continues to support.

However, it is not entirely without value. The one area where the Horner Report is not misguided, and where its inherent misassumptions do not completely undermine its value, is in its general discussion of "Best Management Practices" (BMPs) for stormwater management. The report provides the following narrative at p. 16:

The general view in the stormwater management field is that emphasizing preventive source and retention controls is preferable to relying on remedial controls. Avoiding the contact of pollutants with rainfall or runoff and retaining runoff on-site, if complete, are 100 percent effective, in terms of keeping contaminants out of receiving waters. Preventive methods are also frequently lower in cost than treatment. The most common, and effective, preventive BMPs in the structural subcategory utilize straightforward methods like coverings (permanent or temporary), to keep rain from falling on and percolating through contaminant sources, and measures such as site grading and berms to direct runoff away from these sources.

The Port agrees with this assessment. In particular, Dr. Horner's statement that "[a]voiding the contact of pollutants with rainfall or runoff and retaining runoff on-site, if complete, are 100 percent effective, in terms of keeping contaminants out of receiving waters." In processing regulatory permits, BMPs are applied (and updated over time), which has the effect of maintaining compatibility. However, as further assurance, the Port would not be opposed to another condition that, while redundant (like the others discussed above), would require development proposals to apply BMPs when securing all necessary Federal, State and local regulatory permits and authorizations.

g. Comments pertaining to Coal, Dust, and Traffic/Transportation

Coal

To the extent that opponents continue to express concern about the potential impacts from coal-related operations siting at Port Westward, the Port simply responds by pointing out that the County previously imposed the following Condition No. 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.

The Port supported imposition of Condition No. 6 previously, and continues to support approval of the inclusion of Condition No. 6.

Dust

Regarding impacts related to dust, compatibility will be maintained via the continued application of Condition No. 4, which provides the following, in part:

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 users that may emanate from the site and traffic to the site.

This language addresses dust generation and, as applied, will maintain compatibility. To the extent the Board wishes to reinforce that the condition adequately addresses compatibility, the Port would not object to the removal of the portion reading “as needed to be determined by the County” from the condition.

Mackenzie addresses such concerns in its February 17, 2021 letter to the Board as well, stating that “[d]evelopment in the zone change area would likely result in paving of existing gravel roadways, thereby reducing dust from those roads. Industrial development would be subject to air quality standards and may require Air Contaminant Discharge Permits from the Oregon Department of Environmental Quality to ensure that dust (and other contaminants) is limited to specified levels.”

Accordingly, with the dust suppression measures imposed by the County, and the applicable regulatory programs, the Board can find that impacts related to dust generation are adequately addressed to maintain compatibility with adjacent uses.

Traffic/Transportation

Regarding impacts related to transportation and traffic, the Port notes that Conditions No. 2 and Condition No. 3 directly apply. Condition No. 2 provides as follows:

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

Condition No. 3 states:

A traffic study [will] 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 [articulated in Condition No. 2].

These conditions will have the effect of maintaining the compatibility with adjacent uses and their related traffic/transportation.

V. Conclusion

Based on the foregoing, and based on the Port's previous submissions, the Port respectfully requests that the Board approve its application with the conditions recommended by staff, including the new condition as described in the Compatibility Report.

Columbia County Land Development Services

REVISED March 4, 2021

Applicant: Port of Columbia County
 File No. PA 13-02 ZC 13-01
 Port Westward - PAPA (Remand)

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01/25/2021	Diana Gordon	1	1383	1		1	1	1	1		1								
01/25/2021	Julia Glas	1	1384	1		1	1	1	1	1				1					
01/25/2021	Chip Buhl	1	1385	1		1	1	1	1	1	1	1	1	1	1				
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1/27/2021	Kate Murphy, Columbia Riverkeeper	1	1391	930		1	1	1	1	1	1	1	1	1	1	1		1	1
1/27/2021	Alta Lynch	1	1492		1														
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1/27/2021	M Keely	1	1619	1			1	1	1			1	1	1	1				
1/27/2021	S. Keely	1	1620	1			1	1	1										
1/27/2021	Mike Sealy	1	1621	1			1	1	1	1	1	1	1	1	1	1		1	1
1/27/2021	Darrel Whipple	1	1623	1			1	1	1		1	1	1	1	1			1	1
01/27/2021	Jasmine Zimmer-Stucky	1	1626	89		1	1	1	1	1	1	1	1	1	1	1		1	1

DATE	Description	Tally Page	CON	PRO	Ag Practice	Water Quality & Wetland	Air Quality	Noise, Light, Odor	Rail Vehicle Traffic	Levee & Flooding	Storm Water	Beaver Drainage District	Wildlife & Waterfow	Earth quake Exp osion Spills	Crop Specific Studies	Quality of Life	Historical Cultural Tribal	Public Services & Economy	
01/27/2021	Thomas Gordon	1	1662	1										1					
1/27/2021	Keith Forsythe	1	1663		1														
Rebuttal 01/28/2021-02/17/2020																			
02/17/2021	Betsy Johnson, State Senator	1	1665		1													1	
02/17/2021	Beery Eisner & Hammond LLP (BEH)	1	1667		1							1				1			
02/17/2021	Mackenzie	1	1670		1					1									
Final Argument 02/18/2021 - 03/03/2021																			
03/03/21	BEH - Beery, Eisner & Hammond LLP	1	1675																
TOTALS		109		1101	21	43	58	59	37	21	14	12	18	46	37	10	23	12	17

Note: Pursuant to OAR 661-10-0025 (2), any audio tapes and/or oversided exhibits that exist will be retained by County until oral argument.