BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by the Port Of Columbia County for a Comprehensive Plan Amendment, Zone Change and Goal 3 Exception to Reclassify and Rezone Property From Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPF) for an 837 acre Exemption of Port Westward on Remand from the Oregon Land Use Board of Appeals	)	AFFIDAVIT OF PUBLICATION

STATE OF OREGON)
) SS.
COLUMBIA COUNTY)

I, Jacyn Normine, being first duly sworn, hereby depose and say the following is true as I verily believe:

1. I am the duly appointed Board Office Administrator to the Board of County Commissioners for Columbia County, Oregon.

2. A copy of the attached Notice of Remand Proceedings was emailed to the Chronicle on October 28, 2020 for publication in their 11.04.2020 Chronicle addition and the 11.06.2020 Chief addition.

Dated this 28th day of October, 2020

Jacyn Normine

Subscribed and sworn before me on this 28 day of October, 2020

(Seal)

OFFICIAL STAMP
KATHY E CODDINGTON
NOTARY PUBLIC - OREGON
COMMISSION NO. 992649
MY COMMISSION EXPIRES OCTOBER 13, 2023

Kathy Coddington
Notary Public for Oregon
My commission expires: 10/13/2023

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by the Port of Columbia County for a Comprehensive Plan Amendment, Zone Change and Goal 3 Exception to Reclassify and Rezone Property from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD) for an 837 Acre Expansion of Port Westward on Remand from the Oregon Land Use Board of Appeals	))))))))	NOTICE OF REMAND PROCEEDINGS (PUBLICATION)

1. The Board of County Commissioners will conduct remand proceedings 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 ZC13-01). The subject property is located at the Port Westward Industrial Site in Clatskanie, Oregon. It is identified in the County Assessor's records as Tax Map Nos. 8N4W1600500; 8N4W2000 200, 300; 8N4W2100300, 301, 400, 500, 600; 8N4W2200400, 500, 600, 700; 8N4W2300900; and 8N4W23B0400, 500, 600, 700.

2. The applicant seeks to change the Comprehensive Plan Map designation of the expansion area from Agricultural Resource to Resource Industrial and to change the zoning from Primary Agriculture (PA-80) to Resource Industrial Planning Development (RIPD). An exception to Goal 3, which provides for the preservation of agricultural lands, is required to change the Comprehensive Plan designation from an agricultural use to an industrial use. The County approved the Port's original application in 2014. The County's decision on the Port's original application was appealed to LUBA, which affirmed parts of the decision and remanded others (see LUBA Final Order 2014-17/18). In response to the remand, the Port modified its application. The County approved the modified application in 2018 (see Ordinance No. 2018-1). The County's decision on the modified application was appealed to LUBA, which affirmed parts of the decision and remanded on a single issue (see LUBA Final Order 2018-020). LUBA remanded Ordinance No. 2018-1 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)."

3. 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).

4. Written evidence, arguments and testimony shall be limited to the single issue of 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). Any evidence, argument or testimony not related to this issue will be rejected and not entered into the record.

5. Interested parties may submit written evidence, arguments and testimony between November 17, 2020 and December 7, 2020.

6. Interested parties may submit written evidence, arguments and testimony in rebuttal of evidence submitted no later than December 28, 2020.

7. Unless waived by the applicant, the applicant shall have until January 11, 2020 to submit final written arguments in support of the application.

8. All evidence, argument and testimony must be submitted to the Board of County Commissioners' Office, Room 338, 230 Strand Street, St. Helens, Oregon 97051 or by email to Jacyn Normine by email at jacyn.normine@columbiacountyor.gov on or before the applicable deadline identified in paragraphs 5 through 7, above.

9. Failure to raise an issue accompanied by statements or evidence sufficient to afford the Board of Commissioners and the parties an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

10. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the Board of Commissioners to respond to the issue precludes an action for damages in circuit court.

11. The staff report will be available on November 10, 2020.

12. A copy of the staff report, applicable criteria, applicant's request for remand proceeding and compatibility study, and written materials will be available for inspection at no cost. Copies of these materials will be provided at a reasonable cost upon request. Additional information about this application may be obtained from Jacyn Normine at (503) 397-8400.

13. Following the period for the applicant to submit final arguments, the Board will schedule a meeting to deliberate towards a decision. The Board may announce a tentative decision

at the meeting or carry over the matter for consideration to a later date. The decision will not be considered final until it is put in writing and notice of the decision is sent out to all of the parties to the proceeding.

Dated this 4th of November, 2020.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: Alex Tardif
Alex Tardif, Chair

Chronicle: Please public in your November 4, 2020 issue.

Chief: Please public in your November 4, 2020 issue.

Affidavit of Mailing

I, Kathy Coddington, Board Office Specialist, being first duly sworn, depose and say:

That on the 4th day of November 4, 2020 I mailed a copy of the attached notice of Remand Proceedings (Property Owner Notice). In the Matter of the Application by the Port of Columbia County for a Comprehensive Plan Amendment, Zone Change and Goal 3 Exception to Reclassify and Rezone Property from Primary Agriculture (PA-80) to resource Industrial Planned Development (RIPD) for an 837 Acre Expansion of Port Westward on Remand from the Oregon Land Use Board of Appeals. To person(s) entitled.

Dated this 4th day of November, 2020

Kathy Coddington

STATE OF OREGON)
) ss.
County of Columbia)

Subscribed and sworn to before me this 4th day of October, 2019

OFFICIAL STAMP
JACYN LOUISE NORMINE
NOTARY PUBLIC-OREGON
COMMISSION NO. 961524
MY COMMISSION EXPIRES APRIL 30, 2021

Jacyn Louise Normine
Notary Public of Oregon
My Commission Expires: April 30, 2021

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by the Port of Columbia County for a Comprehensive Plan Amendment, Zone Change and Goal 3 Exception to Reclassify and Rezone Property from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD) for an 837 Acre Expansion of Port Westward on Remand from the Oregon Land Use Board of Appeals	))))))))	NOTICE OF REMAND PROCEEDINGS (PROPERTY OWNER NOTICE)

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at the meeting or carry over the matter for consideration to a later date. The decision will not be considered final until it is put in writing and notice of the decision is sent out to all of the parties to the proceeding.

Dated this 4th of November, 2020.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____Alex Tardif_____
Alex Tardif, Chair

mailed 11-04-2020

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Attn: Rich Larsen
PO Box 306
Clatskanie, OR. 97016

Clatskanie- Quincy CPAC
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St. Helens, OR. 97051

Oregon State University
Extension Service
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Clatskanie, OR. 97016

Clatskanie Fire District
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Clatskanie, OR. 97016

Development Review
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Astoria, OR. 97103

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Lower Columbia Wildlife District
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Portland, OR. 97231

Oregon State Dept. Of Agriculture
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Added 11.04.2020 for applicant

Spencer Q. Parsons, BEERY ELSNER & HAMMOND LLP, 1750 S. Harbor Way Suite 380, Portland, OR. 97201

Added 11.04.2020 for appellants:

Mayra Fahey, Crag Law Center, 3141 Burnside St., Portland, OR. 97214
&
1000 Friends of Oregon
133 SW 2nd Ave, Portland, OR. 972014

COLUMBIA COUNTY BOARD OF COMMISSIONERS`
PLANNING STAFF REPORT
November 9, 2020

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

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, Zone Change 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. 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 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 this remand, on April 18, 2017, the Port modified its application to align with the direction provided by LUBA. Specifically, the Port's modified application identified five specific rural industrial 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 agreed with petitioners that there is not substantial evidence in the record to support Ordinance No. 2018-1 and that "remand is necessary to adopt more adequate findings regarding compatibility, supported by substantial evidence." *Id.* at 549. 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. OAR660-004-

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.

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.

Figure 1 below shows the subject 837-acre proposed RIPD zoned area on an aerial photgraph.

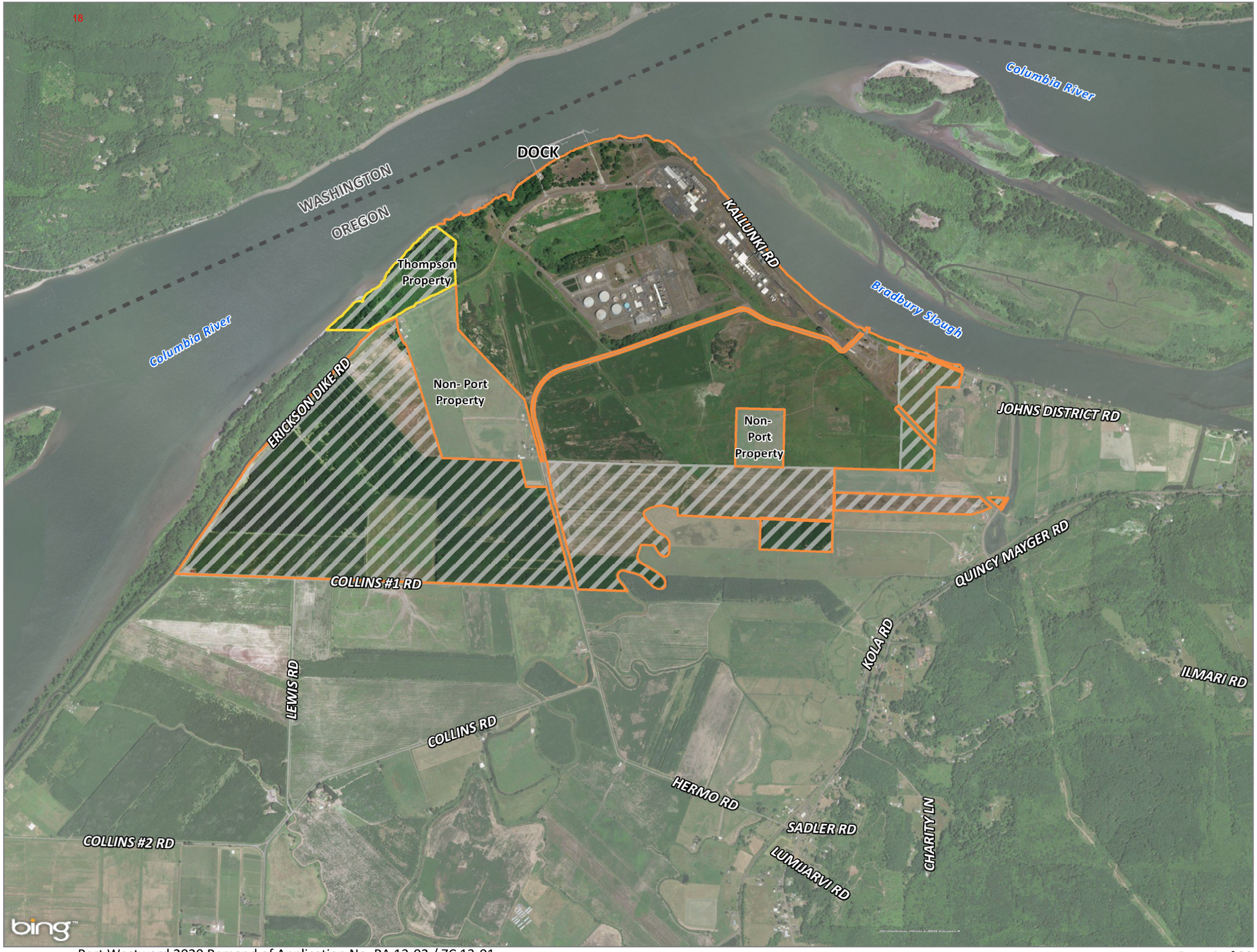

FIGURE 1
PORT WESTWARD
VICINITY MAP
Columbia County, Oregon

LEGEND

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

0 900 1,800 3,600 Feet

N

1 inch = 1,800 feet

SOURCE DATA:
Columbia County GIS Data, Oct 2016

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

Date: 7/17/2020
File: Port Westward_Aerial_2020

Map Created By: BJV
Project No: 2160462.01

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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 Staff Report will review and evaluate the Compatibility Report and make findings demonstrating how the five identified deep-water port dependent rural industrial uses (1) will be compatible with other existing adjacent land uses or (2) will be able to be rendered compatible by requiring site specific design criteria that will reduce potential adverse impacts to adjacent land uses.

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 statues, 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

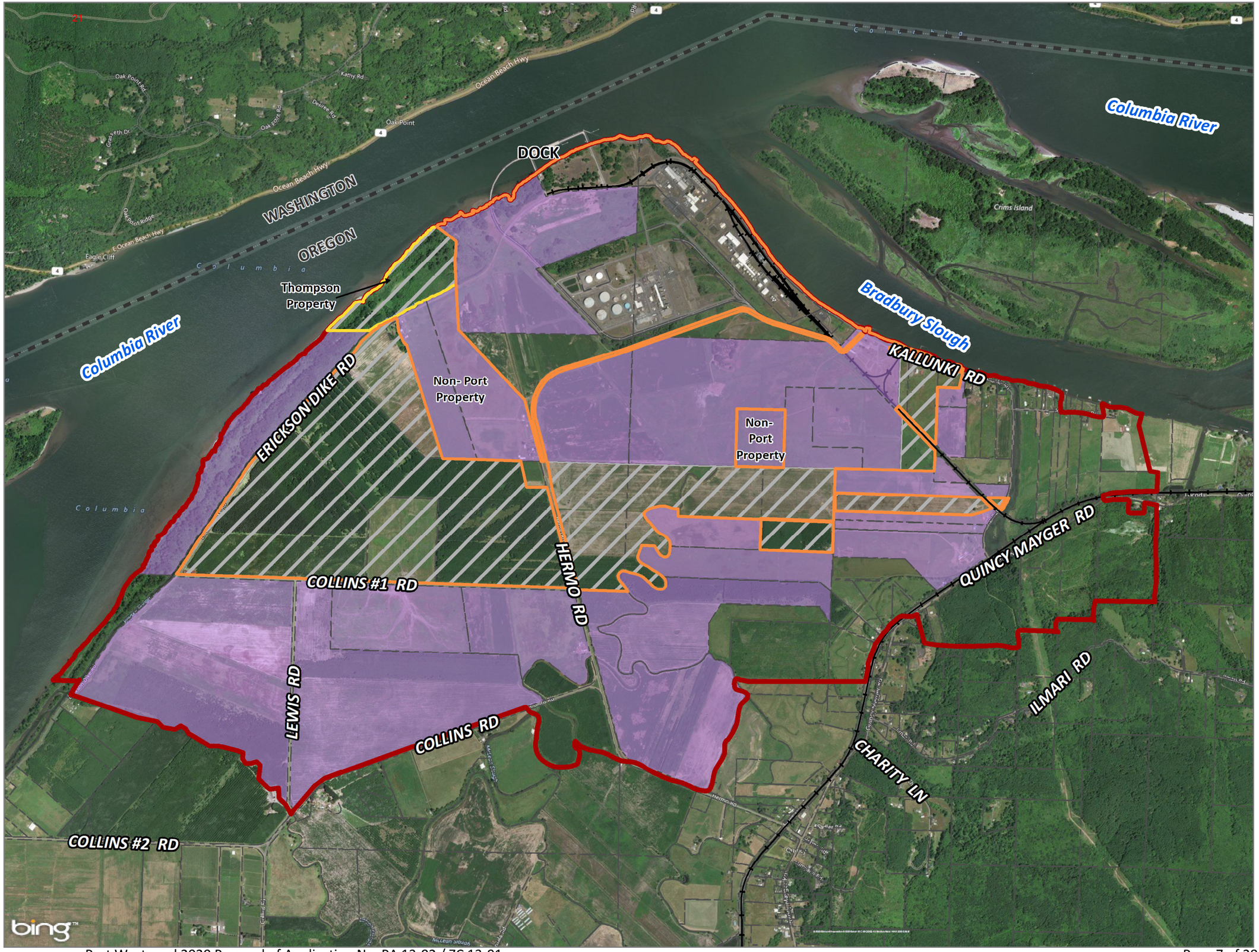
5. Identifying existing mitigation measures in Ordinance No. 2018-01 that will be used to minimize potentially incompatible impacts with adjacent land uses.

Each Part of this Staff Report will evaluate and make 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

Finding 1: 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 with a red border in Figure 3 below. Staff finds that this level of examination 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) as required in the LUBA Remand review.

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

0 900 1,800 3,600 Feet

1 inch = 1,800 feet

N

SOURCE DATA:
Columbia County GIS Data, Feb 2020

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

Date: 7/17/2020
File: Port Westward_AdjacentParcels_V2_07152020

Map Created By: GF
Project No: 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 below 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. Land outside the dike is primarily forested while land inside the dike 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.

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.

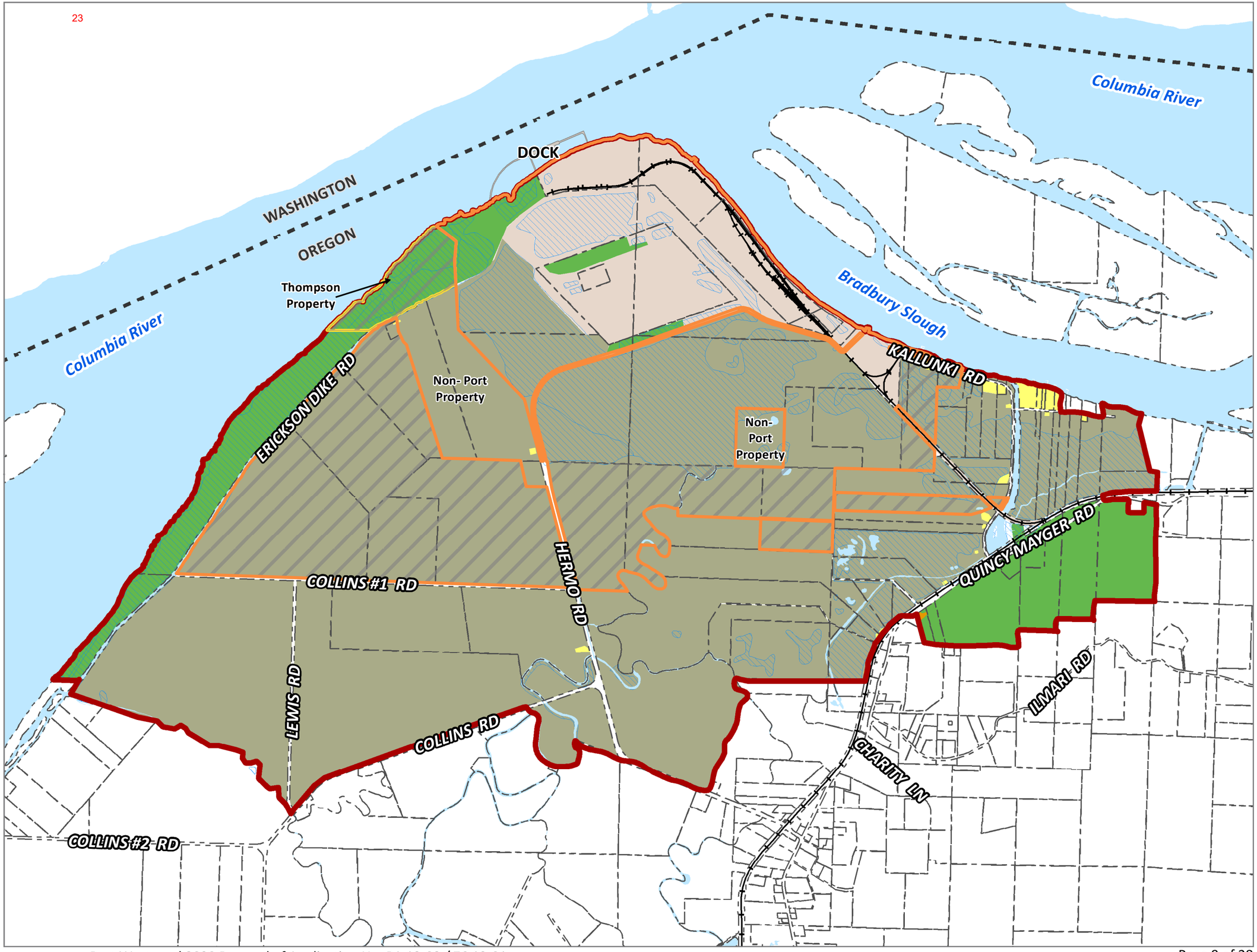

FIGURE 4
PORT WESTWARD AND NEARBY LAND USES
Columbia County, Oregon

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

0 900 1,800 3,600 Feet

N

1 inch = 1,800 feet

SOURCE DATA:
Columbia County GIS Data, Feb 2020

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

Date: 7/20/2020
File: Port Westward_NearbyUses

Map Created By: GF
Project No: 2160462.01

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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 above on page 9. This information confirms that both of these areas' existing land uses consist of the following:

- Tree farms and 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 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 these properties' agricultural uses. 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 Compatibility Study Area, only one 0.80-acre property addressed at 79680 Quincy Mayger Road is zoned for rural residential uses.

Finding 2: With these existing predominantly agriculture, forestry and rural industrial land 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". These resource-related uses are also identified as Permitted RIPD Uses in Section 682 of the County Zoning Ordinance.

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 authorize the siting of wood processing and related operations in close proximity to the surrounding rural area's existing forest operations and to Port Westward Industrial Park's existing unique transportation facility, its deep water port.

Finding 4: With this Staff Report's pictures showing the Compatibility Study and Zone Change Areas' predominant forested land uses, Staff finds the proposed 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 will complement the character and development of this surrounding rural area.

PART 2 – IDENTIFYING THE POTENTIAL ADVERSE IMPACTS OF THE FIVE SPECIFC 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	

Finding 5: Staff concurs with Section IV, Characterization of Port Westward Area Uses, of the Compatibility Report. Based on Table 1 and the detailed characterization of potential impacts of the five specific proposed rural industrial uses identified in Section IV of the Compatibility Report, Staff finds that the Port correctly identified the likely adverse impacts of the proposed uses on adjacent uses in the Compatibility Study Area.

PART 3 – ASSESSING THE EXTENT TO WHCH THE PROPOSED USES WILL ADVERSELY IMPACAT ADJAENT 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 *(not noted in Table 3 but Staff believes this to be a typographical error),* 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.

Finding 6: Staff concurs with Section IV, Characterization of Port Westward Area Uses, of the Compatibility Report, as supplemented by the discussion above. 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.

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, which are provided below, 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".

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

Table 5: Regulatory Programs Applicable to Proposed Industrial Use Examples

Regulatory Program	Forestry/Wood Products	Dry Bulk	Liquid Bulk	Natural Gas	Breakbulk
	Example: Wood pellets/chips	*Example: Sawdust*	*Example: Petroleum*	*Example: Natural Gas*	*Example: Drums or barrels*
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 *Example: Wood pellets/chips*	Dry Bulk *Example: Sawdust*	Liquid Bulk *Example: Petroleum*	Natural Gas *Example: Natural Gas*	Breakbulk *Example: Drums or barrels*
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 *Example: Wood pellets/chips*	Dry Bulk *Example: Sawdust*	Liquid Bulk *Example: Petroleum*	Natural Gas *Example: Natural Gas*	Breakbulk *Example: Drums or barrels*
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

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).

Finding 7: Staff concurs with Section V, Existing Regulatory Programs Relevant to the Port Westward, of the Compatibility Report.

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. 2018-01, 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.

Finding 8: Staff concurs with Section VI, Compatibility Assessment, of the Compatibility Report. Therefore, Staff finds that:

"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).

SUMMARY AND CONCLUSION:

For the sake of avoiding redundancy, Staff concurs with Section VII, Summary and Conclusion of the Compatibility Report, which states:

> This [Compatibility] 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, 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 660-04-0020.
>
> The report lists the five proposed use types and details the existing land uses within and adjacent to the zone change area, and finds that the

majority of existing land use is in agricultural tree farm uses and rural industrial uses. This 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.

STAFF RECOMMENDATION:

Based on this Staff Report's evaluation, analysis and findings, Staff recommends the Columbia County Board of Commissioners approve Application No. PA 13-02 and ZC 13-01 to amend the Comprehensive Plan and Zoning Maps and approve an exception to Statewide Planning Goal 3, subject to the eight Conditions of Approval in Ordinance No. 2018-1 and one additional Condition of Approval recommended in this Staff Report.

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, Resource Industrial–Planned Development (RIPD)

9 Columbia County Zoning Ordinance Section 1503, Conditional Uses

10 Columbia County Zoning Ordinance Section 1550, Site Design Review

BEFORE THE BOARD OF COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

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

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

SECTION 1. TITLE

This Ordinance shall be known as Ordinance 2018-1.

SECTION 2. AUTHORITY

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

SECTION 3. PURPOSE

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

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

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

SECTION 4. HISTORY

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

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

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

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

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

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

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

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

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

SECTION 5. FINDINGS AND CONCLUSIONS

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

A. The above recitals.

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

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

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

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

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

SECTION 6. DECISION, AMENDMENT AND AUTHORIZATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7. REPEALER

This Ordinance repeals Ordinance No. 2014-1.

SECTION 8. SEVERABILITY

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

SECTION 9. SCRIVENER'S ERRORS

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

DATED this 21st day of February, 2018.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____
Margaret Magruder, Chair

By: _____
Henry Heimuller, Commissioner

By: _____
Alex Tardif, Commissioner

Approved as to form

By: _____
Office of County Counsel

Recording Secretary

By: _____
Jan Greenhalgh

First Reading: 2-07-18
Second Reading: 2-21-18
Effective Date: 5-22-18

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

a. The County's Notice Complies with Legal Requirements

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

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

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

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

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

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

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

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

b. Proper Use of the Exception Process

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

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

c. Five Identified Uses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Dike

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

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

b. Rail

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2] See Footnote 1.

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

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

6. The Approval is Limited to Rural Uses

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

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

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

a. *Shaffer* Factors:

i. # 1: Employs a Small Number of Workers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Other Potential Sites Considered by the Port

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

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

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

i. Port of Astoria

1. North Tongue Point

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

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

2. South Tongue Point

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

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

ii. Port of Portland

1. West Hayden Island

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

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

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

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

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

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

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

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

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

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

2. Existing Port of Portland Facilities

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

iii. Port of Coos Bay

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

iv. Port of Newport

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

v. Port of Tillamook

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

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

c. Other Suggested Sites

i. Non-Deepwater Sites

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

ii. Out-of-State Sites

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COLUMBIA COUNTY BOARD OF COMMISSIONERS

PLANNING STAFF REPORT

July 26, 2017

Major Map Amendment

HEARING DATE: August 2, 2017

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

APPLICANT/ OWNERS:

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

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

Representatives:

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

Mackenzie
PO Box 14310
Portland, OR. 97293

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

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

ZONING: Primary Agriculture - 80 (PA-80)

SITE SIZE: Approximately 837 acres

Port owned = 786 acres
Thompson family owned = 50.9 acres

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

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

APPLICABLE REVIEW CRITERIA:

Columbia County Zoning Ordinance			Page
Section 680	Rural Industrial - Planned Development (RIPD)		4
Section 1502	Zone Changes (PA/ZC)		7
1502.1(A)(1)	Consistency with the Comprehensive Plan		8
1502.1(A)(2)	Consistency with Statewide Planning Goals		13-26
Criteria for a Goal 3 Reasons Exception			15
Oregon Revised Statute		ORS 197.732(2)	
Oregon Administrative Rule		OAR 660-004-0020(2)	16-22
		OAR 660-004-0022(3)	16-17
Section 1502.1(A)(3)	Adequacy of Public Facilities		27
Section 1600	Administration		28-29
1603	Quasi-Judicial Public Hearings		
1604	Appeals		
1608	Contents of Notice		
1610	Personal notice to Adjoining Property Owners		

BACKGROUND:

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

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

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

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

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

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

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

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

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

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

REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

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

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

.1 Are not generally labor intensive;

.2 Are land extensive;

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

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

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

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

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

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

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

RIPD 682 Permitted Uses:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Continuing with Columbia County Zoning Ordinance Section 1502 Zone Changes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OREGON'S STATEWIDE PLANNING GOALS

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

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

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

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

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

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

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

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

State Goal Exception Criteria

Exception Criteria - ORS 197.732

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

ORS 197.732(2).c

(2) c) The following standards are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

use". The exception must meet the following requirements:

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

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

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

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

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

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

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

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

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

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

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

Continuing with OAR 660-004-0020(2)©

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

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

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

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

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

Agricultural Crops Adjacent to Liquid Bulk Storage & Transport

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

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

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

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

Continuing with Oregon's Statewide Planning Goals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the intersections to bring them to acceptable performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Continuing with Columbia County Zoning Ordinance CCZO

CCZO 1502.1(A) (3):

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

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

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

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

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

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

Continuing with Columbia County Zoning Ordinance Section 1502 Zone Changes

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

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

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

Continuing with Columbia County Zoning Ordinance Section 1600 Administration

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

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

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

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

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

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

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

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

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

Continuing with CCZO Section 1600 Administration

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

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

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

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

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

.3 Nature of the proposed action;

.4 Interested parties may appear and be heard;

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

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

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

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

COMMENTS RECEIVED: as of July 26, 2017

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

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

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

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

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

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

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

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

CONCLUSION, & RECOMMENDED DECISION & CONDITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BOARD COMMUNICATION

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

TO: **BOARD OF COUNTY COMMISSIONERS**

FROM: Todd Dugdale, Director of Land Development Services

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

DATE: September 1, 2017

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

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

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

ATTACHMENT 1

COLUMBIA COUNTY BOARD OF COMMISSIONERS

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

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

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

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

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

Add to condition: (added to Condition #5)

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

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

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

Add condition:

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

Significantly

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

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

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

Add conditions:

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

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

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

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

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

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

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

COLUMBIA COUNTY
1854
OREGON

MEMORANDUM
From The Land Development Services Department

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Todd Dugdale, Director

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

DATE: August 22, 2017

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

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

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

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

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

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

August 8, 2017

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

Dear Commissioners Heimuller, Magruder, and Tardif:

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

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

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

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

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

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

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

Staff Response 4:

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

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

Staff Response 5:

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

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

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

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

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

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

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

Staff Response 6:

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

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

Staff Response 7:

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

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

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

Staff Response 8:

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

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

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

Staff Response 9:

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

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

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

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

Staff Response 10:

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

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

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

Sincerely,

Chip Bubl
32221 Church Road
Warren, OR 97053

The Plan

Table 1: Financially Constrained and Aspirational Project List

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

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Table 1: Financially Constrained and Aspirational Project List

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

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Table 1: Financially Constrained and Aspirational Project List

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

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Table 1: Financially Constrained and Aspirational Project List

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

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Table 1: Financially Constrained and Aspirational Project List

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

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Table 1: Financially Constrained and Aspirational Project List

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

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Table 1: Financially Constrained and Aspirational Project List

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

Chapter 33

The Federal Laws Applicable to Railroads

33-100 Introduction

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

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

33-200 The Interstate Commerce Commission Termination Act of 1995

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33-300 The Federal Railroad Safety Act of 1970

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

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

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

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

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

33-400 The Noise Control Act of 1972

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

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

135 ORMAN Michael
Aug 18 (3 days ago)

Attachment 1

to me, MCMORRINE, PURCELL, JACOBS

Todd,

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

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

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

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

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

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

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

136 (3200 unit trains per year or 9 unit trains in and 9 unit trains out per day)? Which permit, if either, actually limits the number of unit trains and what is the maximum number allowed under existing air quality permits issued by DEQ?

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

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

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

Sincerely,

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

RESOLUTION NO. 2013-81

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ayes: 4 **Nays:** 0

PORT OF ST. HELENS

By: _____
President

ATTESTED BY:

_____
Secretary

Page 3 - RESOLUTION NO. 2013-81

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

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

RECITALS

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

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

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

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

AGREEMENT

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

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

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

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

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

CASCADE KELLY HOLDINGS, LLC,
An Oregon limited Liability Company

By: _____

Name: EDWARD J FANEUK

Title: EVP

THE PORT OF ST. HELENS
an Oregon Municipal Corporation

By: _____

Name: PATRICK R. TRAPP

Title: EXECUTIVE DIRECTOR

EXHIBIT B

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

Maximum rail cars approved:

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

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

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

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

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

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

EGP 4-6-17

ATTACHMENT 2

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

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

CONCLUSION, & RECOMMENDED DECISION & CONDITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Significantly

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

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

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

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

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (2014)

I. Introduction

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

II. Findings of Fact and Conclusions of Law

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

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

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

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[1] See ORS 777.065, which provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

May 3, 2013).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Conclusion

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

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

EXHIBIT 5

COLUMBIA COUNTY BOARD OF COMMISSIONERS

PLANNING STAFF REPORT

September 11, 2013

Major Map Amendment

HEARING DATE: September 18 , 2013

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

APPLICANT/ OWNERS:

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

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

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

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

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

ZONING: Primary Agriculture - 80 (PA-80)

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

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

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

APPLICABLE REVIEW CRITERIA:

Columbia County Zoning Ordinance		Page
Section 680	Rural Industrial - Planned Development (RIPD)	3
Section 1502	Zone Changes (PA/ZC)	6
1502.1(A)(1)	Consistency with the Comprehensive Plan	7
1502.1(A)(2)	Consistency with Statewide Planning Goals	12
	Criteria for a Goal 3 Exception	14
1502.1(A)(3)	Adequacy of Public Facilities	24
Section 1600	Administration	25
	Senate Bill 766	26

BACKGROUND:

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

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

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

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

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

REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

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

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

.1 Are not generally labor intensive;

.2 Are land extensive;

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

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

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

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

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

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

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

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

RIPD 682 Permitted Uses:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 5

Continuing with Columbia County Zoning Ordinance Section 1502 Zone Changes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The County has received comments characterizing the location the hearing "unprecedented" because it will be held in Clatskanie rather than the Board's usual meeting location in St. Helens. Such statements are a mischaracterization. The Board frequently holds hearings in the community near the subject property, such as The Great Vow Zen Monastery conditional use, which was held near its location in Clatskanie; the Port Westward Urban Renewal public hearings, which were held near Clatskanie; re-zoning at the Vernonia Airport, which was held in Vernonia, just to name a few. Contrary to the criticisms, the Board holds hearings in the community near the subject property to encourage more public involvement, especially by those who are most affected by the proposal. Also, the Board is holding their meeting in the evening rather than at their normally scheduled 10 am, to make it easier for people to attend and testify.

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

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

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

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

Goal 3 (Agricultural Lands):
This proposed plan amendment would re-zone to Rural Industrial and remove 957 acres from farmland zoning. Goal 3 is to preserve and maintain agricultural lands. An exception to Goal 3 is necessary to approve this Major Map Amendment. This requires findings for a "reasons exception" pursuant to OAR 660-004-0020(2) and ORS 197.732(2), specifically related to siting rural industrial development on resource land outside of an urban growth boundary pursuant to OAR 660-004-0022(3).

Exception Criteria - ORS 197.732

197.732 Goal exceptions; criteria; rules; review. (1) A local government may adopt an exception to a goal if: a) the land is physically developed, or b) the land is irrevocably committed to another use, or

ORS 197.732(2).c

(2) c) The following standards are met:

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

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

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

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

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

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

The following Administrative Rule elaborates on how the provisions are to be met and adds specificity on the above ORS 197.732(2.c).

OAR 660-004-0022(3) Rural Industrial Development

(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;

Finding 5: The subject property is located outside of an urban growth boundary on designated agricultural lands. It is adjacent to Port Westward Industrial Area which is strategically located

along the Columbia River and a river port with existing industrial uses and facilities. The location of the site on the Columbia River is extremely important to the local and regional economy and to promote the proper location of river and port dependent industries. No other industrial site having such qualities is available in Columbia County, making Port Westward a unique resource.

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

Finding 6: The applicant wants to be able to promote large lot industrial users that can take advantage of the unique situation at Port Westward, close to both ship and rail transportation. The Exception Document examines other industrial facilities in the City of St. Helens urban area, the City of Astoria and others in the region; and, it concludes that the only Port of Portland may have some large lot industrial land available. However, Port Westward is less than half the distance to the Pacific Ocean than Port of Portland and other rural attributes give Port Westward in Columbia County a comparative advantage. This criteria is met based on the attached Exception Document and substantial evidence in the record.

c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.

Finding 7: An expanded industrial zone at Port Westward would take advantage of the existing facilities and infrastructure already installed by private investments and public incentives. It would take advantage of location on a deep river port and rail access. The Exception Document analyzes the details of significant comparative advantages of Port Westward, including a prime location factor, existing facilities factor, current economic conditions factor, industrial land shortages and the opportunity & value of expanded large lot industrial areas. The county acknowledges these factors as being substantial evidence that the location of industrial uses at Port Westward has a comparative advantage for industries needing large vacant industrial sites with maritime opportunities. The lost resource, farm land, is specifically detailed in the exception document. The economic benefit of industrial land verse farm land is overwhelming in favor of industrial when comparing employment wages per acre and revenue from local property taxes, etc.. In addition, the area proposed for re-zoning accounts for a small fraction of the overall amount of land zoned for agricultural use in this north county Clatskanie agricultural area. Of the 16,927 acres zoned primary agriculture in the north county Clatskanie area, the subject 957 acres, is only 5.6% of the total. The impact of converting some of this agricultural land to industrial use is minimized considering that 16,000 acres are left in agricultural use in this north county Clatskanie diked area.

660-004-0020
Goal 2, Part II C), Exception Requirements

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.

(2) The four standards in Goal 2 Part II C) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

Finding 8: The reasons set out in the exception document state why the applicable goal of protecting/preserving agricultural land should not apply to this land immediately adjacent to Port Westward. They include the fact that this land is uniquely situated by a river port that is already served by water, sewer and local roads, and the exception site has capability of being served by US Hwy 30 and a major freight rail corridor. Other factors supportive of good reasons include the ability for the county to take advantage of their most important transportation asset, the Columbia River for shipping transport. The centralization of industrial employment at this strategic location makes good planning sense and reduces future energy costs of having industry site haphazardly along the river. There is a documented shortage of large lot industrial sites in Oregon. By answering this shortage and providing vacant land for industrial development, the county would be capable of securing potential base employment jobs where the wage income is generated by out-of-county capital. Opening and taking advantage of trade opportunities in the Pacific Rim is advantageous to the county and region. The staff finds that there are sufficient reasons why this agricultural land should be used for industrial purposes and incorporates the attached exception document that more fully explains the reasons.

Continuing with OAR 660-004-0020

(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(I) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

C) The "alternative areas" standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

Finding 9: There are no non-resource lands available in Columbia County at the scale needed to to satisfy large industrial users or that have the competitive advantages as Port Westward. At the time of initial zoning, the County zoned all large lots in the the county as either Primary Forest or Primary Agriculture because they were not already committed to more intense development. For alternatives, the attached exception document examines the Port Westward Industrial Park itself, other Port of St. Helens properties, the Port of Astoria, Port of Coos Bay and the Port of Portland. This examination concludes that there is a shortage of readily zoned industrial sites. Testimony at the Planning Commission hearing took issue with the Port's alternative locations and proposed specific alternatives to taking an exception on the subject property adjacent to the Port Westward. The original exception document has been modified to address the issue raised in testimony. Areas in Urban Growth Boundaries in Columbia County do not have extensive industrial lands with water/rail transport availability that are not already in

use. With the inclusion of the Exception Document, the county finds that this criteria is met.

Continuing with OAR 660-004-0020

c) "The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site." The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

Finding 10: Any proposed use, of a prospective tenant, will need to meet or exceed the existing state and federal environmental laws. Reviews of siting an industry at the newly re-zoned property would be processed and decided in a public hearing format. In addition to existing laws, conditions imposed by the County on this exception area - such as traffic impacts, impacts to wetlands, impacts to the air & ground and impacts to surrounding uses will be reviewed; and, the use will either be not allowed or the impacts minimized through conditions imposed. The analysis of economic consequences including better paying wages and a larger tax base, supports the zone change. This concept is carried forward into the social consequences, in that citizens will have more money to spend locally, thereby creating a higher standard of living, which will in turn benefit other related industries and businesses. An energy related consequence would include better usage of existing facilities on site including large grid electrical power and abundant natural gas. This application supports consolidation of large scale industrial services at Port Westward. Based on the analysis in the exception document staff finds that the application is supported by consideration of the long term environmental, energy, social and energy consequences.

Continuing with OAR 660-004-0020

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Finding 11: The adjacent uses to the subject property are industrial to the north and agriculture/farming to the south. Any proposed uses in this new industrial zone will need to be compatible with both adjoining uses, industrial and farming. These criteria will be reviewed at site design review prior to releasing a building permit. There has been a substantial amount of testimony received from the farm community pertaining to whether this new industrial zone would allow uses that are incompatible with crops in nearby fields. Most testimony expressed a fear that the most despicable industrial uses may site next to them. The farm community does not have problems with the uses already in existence at Port Westward. As such, some lands that are zoned for industrial use at Port Westward are leased for agricultural purposes and can remain so. It is impossible for the applicant to show how every possible industrial use could or would be considered compatible with adjoining farm uses, even with an exhaustive list of mitigating measures. For this reason and to be in compliance with this criteria, staff believes that before a development permit is issued, each new use should be reviewed for compatibility with adjacent farm uses. The applicant has proposed that the following conditions be imposed to ensure measures are in place to reduce adverse impacts:

1) The habitat of threatened and endangered species shall be evaluated and protected as required by law.
2) Alterations of important natural features, including placement of structures shall maintain the overall values of the feature.
3) All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.
4) When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.
5) Controls, including suppression and requiring hard surfaces, shall be employed to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.
6) Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.
7) The industrial use impact on the water table shall be monitored to ensure that the water table can be maintained and managed as it historical is done.
8) Railroad crossings shall be managed consistently with federal law regulating crossing to

reduce crossing delays.

9) Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan.

Staff recommends the above measures be incorporated into conditions for the siting of any future industrial use. With the above referenced conditions this criteria can be met.

Continuing with Oregon's Statewide Planning Goals

Goal 4 (Forest Lands): The County finds this goal is not applicable. The subject property is not forest land. The applicant submitted an exception to forest lands. The Board may include it if wanted, but staff does not believe it is necessary.

Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources): This goal addresses the conservation and protection of both natural and cultural resources. There does not appear to be any inventoried cultural, historic or scenic resources on the subject property. Three natural resources apply to this site: 1) open space, 2) wildlife habitat and 3) wetlands. These are addressed under Part XVI of the Comprehensive Plan. As this Major Map Amendment complies with Part XVI of the Comprehensive Plan, it also complies with Statewide Goal 5. (See discussion Part XVI , page 9)

Goal 6 (Air, Water and Land Resources Quality): Goal 6 addresses the quality of air, water and land resources. In the context of Comprehensive Plan Amendments, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment will be able to satisfy applicable federal and state environmental standards, including air and water quality standards.

The proposed plan amendment and zone change would allow rural industrial uses in addition to resource uses, as allowed currently. As a matter of county ordinance, any future development would be required to comply with Federal, State and local laws, which are intended to minimize environmental impacts. The Clean Water Act and Clean Air Act are examples. Given the standards to which future development would be subject, including those applicable to Site Design Reviews, Uses Under Prescribed Conditions and Building Permits, staff finds that the requirements of goal 6 are met.

Goal 7 (Areas Subject to Natural Disasters and Hazards): Goal 7 deals with development

in places subject to natural hazards. It requires that jurisdictions apply "appropriate safeguards" when planning for development there.

In this case, there are no specific identified natural hazards. FEMA FIRM Map 41009C0050 D, dated November 26, 2010, identifies the property in zone X, which is not subject to floodplain regulations. In addition the property is within Seismic Zone D1 (formerly zone 3), which applies to building regulations. These would apply at time of development.

The County finds that the requirements of Goal 7 are met.

Goal 8 (Recreational Needs): This goal calls for a government to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. The subject property has not been planned for recreational opportunities. This Major Map Amendment will not compromise the recreational needs of the County citizenry and thus, meets the requirements of Goal 8.

Goal 9 (Economic Development): While Goal 9 applies only to urban and unincorporated lands inside urban growth boundaries, this Major Map Amendment, will nonetheless, help promote the County's economic strength. This is explained under Part X (Economy) and the Reasons Exception attached to this report. Though technically not applicable, the County finds that the overall intent of Goal 9 is met.

Goal 10 (Housing): The County finds that Goal 10 is not applicable. Goal 10 applies inside urban growth boundaries. In addition, this Major Map Amendment will not result in a loss or gain of dwelling units.

Goal 11 (Public Facilities and Services): Goal 11 requires local governments to plan and develop a timely, orderly and efficient arrangement of public facilities and services. It further provides that urban and rural development "be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served."

The applicant's response is: "Port Westward has developed public facilities and services for rural industrial development. The area also provides access to the Columbia River by existing docks, and access to rail transport. Rural industrial development in the Port Westward area is orderly and efficient in that it groups development around existing services and provides the benefits of a planned development area. Thus the application is consistent with Statewide Planning Goal 11."

Staff concurs with the applicant and finds that the proposal complies with Goal 11.

Goal 12 (Transportation): Goal 12 requires local governments to "provide and encourage a

safe, convenient and economic transportation system." Goal 12 is implemented through LCDC's Transportation Planning Rule (TPR), OAR 660, Division 12. The TPR requires that where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation that would significantly affect an existing or planned transportation facility's functional capacity, the local government shall put in place measures to assure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility.

Transportation issues were discussed earlier under the County Comprehensive Plan Part XIII Transportation. In current zoning PA-80, resource farm uses and some limited residential uses are allowed. Other potential uses include schools and churches. Aside from schools and churches, these land uses are not intense and would have a minimal traffic/transportation impact. If the proposal were approved and the subject property zoned RIPD, industrial uses could be sited and could potentially have a significant impacts on the surrounding transportation network. But, restrictions are in place by the RIPD zone that the new industrial uses must be rural and land extensive. They are generally not labor intensive as with high traffic volume generators from the working force (except for perhaps during construction). With this "rural" industrial zone a typical build-out traffic impact of the zoning district would be significantly less than in a typical urban industrial property.

Lancaster Engineering, on behalf of the applicant, submitted a preliminary Traffic Impact Analysis (TIA) for the proposed Plan Amendment on May 6, 2013. Comments from State ODOT, Columbia County and the City of Clatskanie were incorporated into the present August 27, 2013 Transportation Impact Analysis (TIA) for the proposed Port Westward expansion. A traffic analysis is difficult when a specific industrial uses are not identified for the subject property. Lancaster Engineering, together with State ODOT, Columbia County Road Department and the Public Works of Clatskanie, agree that a "Trip Cap" be established for a worst case scenario. Lancaster Engineering determined that the study intersections are currently operating satisfactorily, but would need operational or safety improvements when the subject new industrial area produced 332 PM peak-hour trips or more. When this trip cap level of traffic generation is reached there will be a need for an additional TIA and possible mitigating improvements to the intersections to bring them to acceptable performance. The Report analyzes intersections with state regulated highways. Specifically the TIA analyzes five intersections, including Highway 30 at Nehalem Street, Nehalem at 5th Street, Highway 30 at Van Street, Highway 30 at Beaver Falls Road, and Highway 30 at Old Rainier Road (Alston Mayger Road.

The State ODOT comment and concern about the "trip cap" proposed by the August 27, 2013 TIA, the County and ODOT needs to determine how the trip cap identified will be monitored and enforced. ODOT and Lancaster recommends a condition be imposed:

> "A traffic study be prepared for each future development within the subject property to determine the number of trips generated, likely travel routes, impacts

on both passenger car and heavy truck traffic. These TIA analysis would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap."

To ensure that all traffic impacts are minimized with each new development on our local roads, including in the City of Clatskanie; roads will need improvements commensurate with a new development impact. The County has historically imposed a Traffic Improvement Fee on new development in the Port Westward area.

With the above referenced conditions the Transportation Planning Rule requirements is satisfied.

Goal 13 (Energy Conservation): Goal 13 directs cities and counties to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based on sound economic principles.

The applicant's response is: "The application is consistent with Statewide Planning Goal 13 in that it will promote consolidation of industrial services in the Port Westward area and conserve energy that would otherwise be expended developing these services elsewhere."

In addition, as already explained in this report, the expansion of the Port Westward site will help enhance the County's economy, specifically the north part of the County. This will provide local jobs and help balance the jobs/dwellings ratio. Currently, many County citizens travel outside the County to work. Having more local jobs promotes energy conservation as it tends to result in less vehicle miles traveled.

For the above reasons, the County finds that the proposal complies with Goal 13.

Goal 14 (Urbanization): The County finds that Goal 14 is not applicable. The proposed amendments do not authorize urban uses on rural lands or otherwise convert rural land to urban uses.

Goal 15 (Willamette River Greenway): The County finds that Goal 14 is not applicable. The site is not near the Willamette River.

Goals 16 - 19 (Coastal State-Wide Planning Goals): These Goals do not apply to Columbia County as it is not a coastal jurisdiction.

<u>Continuing with Columbia County Zoning Ordinance CCZO</u>

CCZO 1502.1(A) (3):

3. The property and affected area are presently provided with adequate facilities, services, and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

Discussion: The Port Westward Industrial Park immediately to the north of the subject property has a full service of facilities available for potential industrial users. These facilities can easily be provided to the subject property in association with a particular development. The infrastructure framework for additional rural industrial development has been well planned by the Port and other industrial users in the vicinity. Existing facilities include water systems and fire protection services, county roads to provide access to Hwy 30, rail lines running within the site and through to connect the mainline Hwy 30 corridor, electrical service new substation, fiber optics, industrial sized natural gas lines, electric power plants, and a 1250 foot dock with deep water access.

There is no evidence that there will be any inadequacies of facilities, services and transportation networks for development subsequent to the Major Map Amendment. Any new development within the Port Westward Industrial site would not be allowed unless there were facilities that could adequately accommodate it. When a prospective industry submits plans for development, the facilities necessary are identified and extended or otherwise provided in conjunction with development.

Finding 12: Based on the discussions above on the Comprehensive Plan criteria and as presented in the application and submittal of noted items, this Major Map Amendment is consistent with the County's Comprehensive Plan.

Finding 13: Based on the discussions above on Statewide Goals and as presented in the application with the submittal of noted items, this Major Map Amendment is consistent with Oregon's Statewide Planning Goals.

Finding 14: Based on the discussions above in this Report and as presented in the application, the property and affected area is presently provided with adequate facilities, services, and transportation networks to support any use allowed by the RIPD zone, and that this Major Map Amendment will not compromise such facilities, services and transportation networks, with conditions imposed.

Continuing with Columbia County Zoning Ordinance Section 1502 Zone Changes

1502 .3 Alternate Zones: If the Commission determines that a zone other than the one being proposed will adequately allow the establishment of the proposed use, the Commission may substitute the alternate zone for the proposed zone in either the Major Map Amendment or the Minor Map Amendment procedures.

Discussion: This Major Map Amendment would bring the subject property to a designation of Rural Industrial and zoning to Rural Industrial - Planned Development (RIPD). This same designation and zoning borders the property on three sides, and there is no other adjacent designation and zoning other than Agricultural Resource and Primary Agriculture - 80 (PA-80).

Finding 15: Staff does not recommend the substitution of another designation or zone for this Major Map Amendment request.

Continuing with Columbia County Zoning Ordinance Section 1600 Administration

1605 Zone Change - Major Map Amendment: The hearing for a major map amendment shall follow the procedure established in Section 1505, 1502. 1, 1502 1A and 1502 1B. This hearing cannot result on the approval of a major map amendment. The Commission may make a recommendation to the Board of County Commissioners that such a zone change be granted. Approval by the majority of the Commission is necessary in order to make recommendation to the Board of Commissioners. The Board of Commissioners hearing on the proposed zone change-major map amendment will be on the record unless a majority of the Board votes to allow admission of new evidence.

Discussion: The Planning Commission made a recommendation for denial of this application for a Major Map Amendment. The Board of County Commissioners, who have the decision making authority, will hold a hearing on September 18, 2013 at the Clatskanie High School.

Continuing with Senate Bill 766

Public testimony at the Planning Commission raised concerns over the potential affect of Senate Bill 766 if the subject property is re-zoned to RIPD, specifically, the concern that SB 766 would remove the local review of future industrial uses at the site. SB 766, which was passed in 2011 to advance job creation on industrial lands, provides two separate programs: one for the designation of "industrial development projects of state significance" and another for the designation of "regionally significant industrial sites." An applicant must apply to the State Economic Recovery Council (ERRC) for either the state or regional significance designation.

The impact on local government is different for each designation. For the industrial development projects of state significance, review of compliance with land use regulations, including local regulation, is done at the state level by ERRC. Land use review of development of regionally significant industrial sites, on the other hand, remains with the local governments. Although review of a regionally significant site remains with the local government, the review process in general differs in that it is expedited, as provided in ORS 197.365 and 197.370, and appeal to the Oregon Court of Appeals rather than LUBA.

Here, the subject property has not been designated as either a state or regionally significant site. The applicant has stated that it will apply for the regionally significant designation for Port Westward. ERRC will be designating only five to fifteen regionally significant sites in the state. As explained, even if Port Westward receives such a designation, the County will be reviewing future industrial uses for compliance with land use regulations.

AGENCY COMMENTS RECEIVED:

City of Clatskanie: Several comments, have no objection to its approval as submitted.
Clatskanie-Quincy CPAC: (no response)
Clatskanie RFPD: No objection.
Soil & Water Conservation District: Comment # 87 on list, opposed the application negative affects on farming and riparian areas.
Lower Columbia Watershed Council: (no response)
Oregon ODOT: Several comments, agrees with a trip cap, but would like to discuss monitoring and enforcement of the trip cap.
Oregon ODOT Rail: Letter dated March 5, 2013, pertaining to rail extensions safety. See attached comments #8.
Oregon Department of Agriculture: Comment # 25 Excellent farm soils, good for high yields.
Oregon DLCD: Comment #91 generally supportive of Plan Amendment, must made adequate findings
Natural Resources Conservation Service: (no response)
County Roadmaster: No objection. Future developers will incur all costs for needed road improvements.
County Assessor: (no response)
County Sanitarian: (no response)
County Building Official: Has no objection to its approval as submitted.
City of Clatskanie: Strongly in favor of approval.

The Planning Division forwarded 198 comments to the Board. The cover index "Port of St. Helens Comments Submitted", 7 pages, lists by number the comments received in chronologic order.

CONCLUSION, & RECOMMENDED DECISION & CONDITIONS:

Based on the facts, findings and comments herein, the Planning Director recommends **approval** of this Major Map Amendment to re-designate the site from Agriculture Resource to Rural Industrial and to amend the Zoning Map of the Columbia County Zoning Ordinance to re-zone the subject property from Primary Agriculture - 80 (PA-80) to Rural Industrial - Planned Development (RIPD), with the following conditions:

1) Prior to an application for development of a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.

2) To ensure adequate transportation operation, future developments proposed for the subject property shall not produce more that 332 PM peak-hour trips without conducting a new Traffic Impact Analysis with recommendations for operational or safety mitigation.

3) A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.

4) To ensure compatibility with adjoining agricultural uses the applicant/developer of new industrial uses shall comply with the following:

A) The habitat of threatened and endangered species shall be evaluated and protected as required by law.

B) Alterations of important natural features, including placement of structures shall maintain the overall values of the feature.

C) All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.

D) When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.

E) Controls, including suppression and requiring hard surfaces, shall be employed to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.

F) Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.

G) The industrial use impact on the water table shall be monitored to ensure that the water table can be maintained and managed as it historical is done.

H) Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays.

I) Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.

5) The types of industrial uses for the subject Plan Amendment shall be limited to the uses, density, public facilities & services and activities to, only those that are justified in the exception.

ATTACHMENTS: Exception Document
Comments received under separate cover
Vicinity map, aerial map with boundaries
Application and maps in separate document

EXHIBIT 6

PORT WESTWARD EXPANSION AREA EXCEPTION STATEMENT

A. Introduction

In 2013 the Port of St. Helens (the Port), on behalf of itself and the Thompson family (Guy R. Thompson, Elizabeth Boswell, Robert Thompson, David Thompson and Rodger Thompson), submitted an application to Columbia County (the County) seeking a Major Comprehensive Plan Map Amendment to reclassify land adjacent to the existing Port Westward Industrial Park (Port Westward) from Agricultural Resource to Resource Industrial. The application also sought to rezone that land from Primary Agriculture-80 Acres (PA-80) to Resource Industrial-Planned Development (RIPD) for inclusion in the Port's industrial park at Port Westward. The subject 837-acre tract is directly adjacent to the existing Port Westward Industrial Park, which is already zoned RIPD. Because of its current agricultural zoning, the County was required to take an exception to Statewide Planning Goal 3 (Agricultural Lands) as part of the rezone and accompanying comprehensive plan amendment. The application was approved by Columbia County in 2014, granting an exception to Goal 3, rezoning the subject area to RIPD and authorizing those uses permitted in the RIPD zone under the County's regulations.

That decision was appealed to the Oregon Land Use Board of Appeals (LUBA). LUBA remanded the decision, in part, identifying areas in which the record and findings provided insufficient justification for taking a Goal 3 exception and rezoning the exception area to RIPD. In response to the remand, the Port modified its land use application consistent with the direction provided by LUBA. As approved, the exception granted on remand relies solely on OAR 660-004-0020(3)(a) as justification for taking an exception to Goal 3, which allows for the exception if "[t]he use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include . . . river or ocean ports." Specifically, the Port has identified the deepwater port, with its existing dock facilities at Port Westward, as the unique resource justifying an exception to Goal 3.

Similarly, as suggested by LUBA, on remand the number of approved uses in the exception area was reduced, from all uses authorized under Columbia County Zoning Ordinance ("CCZO") Section 680 to the following five:

- Forestry and Wood Products processing, production, storage, and transportation
- Dry Bulk Commodities transfer, storage, production, and processing
- Liquid Bulk Commodities processing, storage, and transportation
- Natural Gas and derivative products, processing, storage, and transportation
- Breakbulk storage, transportation, and processing

The record includes a technical report (the "Mackenzie Report") that: 1) provides a comprehensive analysis supporting a Goal 3 exception under OAR 660-004-0022(3)(a); 2) supports the conclusion

that the narrowed list of five approved uses listed above are in fact rural industrial uses; and 3) provides an in-depth alternative sites analysis in light of the single OAR 660-004-0022(3)(a) justification for the Goal 3 exception put forward on remand, namely the deepwater port at Port Westward.

B. Background

The Port of St. Helens owns the Port Westward Industrial Park (Port Westward), a 905-acre rural industrial exception area with 4,000 feet of deepwater frontage along the Columbia River. In the 1970s, Columbia County adopted an exception to Statewide Planning Goal 3 (Agricultural Lands) for Port Westward, and planned and zoned it for rural industrial uses. Port Westward is zoned Rural Industrial Planned Development (RIPD). Current uses at Port Westward include a 1,500 foot long dock, three electrical generating facilities owned and operated by Portland General Electric (PGE), a 1.3 million-barrel tank farm, a biomass refinery facility, and an electrical substation.

Port Westward includes necessary infrastructure facilities within its boundaries for the Port's rural industrial tenants. The site is served by private water systems that utilize wells and draw from the river. The rural property has a small private sewage system, and tenants also manage their own sanitary wastes via private onsite septic systems. The Port also operates and maintains a discharge system for tenants' process water. Taken together, these facilities provide sufficient service for rural industrial users, but preclude urban industrial uses that have a higher demand for public utilities. Electric power, natural gas, and high-speed telecommunications are readily available on site.

Port Westward is served by county road connections to nearby state and interstate highways, a rail line and, most importantly, it adjoins a self-scouring deepwater port with access to a 43-foot navigation channel in the Columbia River, part of the M-84 Marine Highway corridor. Development and improvement of the Port of St. Helens' deepwater port has been declared to be an economic goal of high priority by the State of Oregon (*See, e.g.*, ORS 777.065).

The Port has three existing tenants at Port Westward. Clatskanie Public Utility District leases 3 acres for an electrical substation, the Columbia Pacific Bio-Refinery ethanol facility holds 43 acres, and the remainder is leased by Portland General Electric (PGE) with agreements that run through 2066 and 2096[1]. PGE currently operates three power plants on 147 acres of its 862-acre leasehold. The remainder of its leasehold includes dedicated wetland mitigation areas, areas held for future PGE expansion (including future wetland mitigation needs), and necessary buffering of its operations.

[1] PGE holds 116 acres in fee title, but the Port has a reversionary interest in that acreage which is effective upon completion of PGE's lease.

PGE and the Port previously had a Joint Marketing Agreement to coordinate facilitating additional future development within the PGE leasehold. However, it did not lead to any additional development and the Joint Marketing Agreement was allowed to lapse. It was formally terminated by PGE in 2007. The Port and PGE have entertained potential suitors to sublease portions of its leasehold in the past, but such commitments have been precluded by potential conflicts with PGE's own use of its leasehold, restrictions imposed by PGE to protect its interests at Port Westward, and by existing encumbrances and physical site constraints including wetlands and the cost related to development of those wetlands. Because of the inability to site additional rural industrial users within the PGE leasehold, and because of a lack of additional available land at Port Westward, the Port determined that it was necessary to expand the industrial park at Port Westward and undertook this process with Columbia County.

C. Procedural History

1. Columbia County's Original Decision

In 2014, the Port received approval from the Columbia County Board of Commissioners (the Board) for a comprehensive plan amendment, zone change and Statewide Planning Goal 2 "Reasons" exception to Goal 3 for 837 acres of land zoned Primary Agriculture-80 (PA-80) directly adjacent to the Port Westward site to the south and west (the Expansion Area). The Board's approval excluded two riverfront lots originally proposed to be included in the Expansion Area, based on concerns of potential impacts on riparian habitat. The approval rezoned the exception area to RIPD as an expansion of the Port Westward site (also zoned RIPD). The RIPD zone only allows farm and forest use and temporary forest product processing uses as outright permitted uses, but it allows as conditional uses those industrial uses that fall within the areas of "[p]roduction, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities". *See* CCZO Section 682.

The stated purpose of the 837-acre expansion area was not to accommodate the use(s) of one or more identified future Port tenants, but rather to address the industrial land deficit at Port Westward in anticipation of as-yet unidentified potential future Port tenants and their need for industrially-zoned large lots near the deepwater port with its existing 1,500 foot dock, as well as the other facilities available at Port Westward.

The Board's approval included several conditions, including a requirement for site design review for any new use in the exception area, a trip cap of 332 p.m. peak hour trips, other requirements intended to ensure compatibility with adjoining agricultural uses (including the submission of a rail plan for any new use that includes rail transportation) and, finally, a prohibition on the storage, loading or unloading of coal. *See* Columbia County Ordinance No. 2014-1.

The findings supporting the original decision justified the Goal 3 exception based on all three of the reasons provided under OAR 660-004-0022(3). Specifically, the Board found that the industrial uses allowed in the RIPD zone would be maritime-related uses significantly dependent on the river port and docks to import or export materials or goods (consistent with OAR 660-004-0022(3)(a)); that the uses cannot be located within an urban growth boundary due to impacts that are hazardous or incompatible with dense populations (consistent with OAR 660-004-0022(3)(b)); and that the uses allowed in the RIPD zone would have a significant comparative advantage due to the location of the site and its proximity to the deepwater access, rail and highway connections, energy facilities and other amenities existing at the Port Westward site (consistent with OAR 660-004-0022(3)(c)). *See* Columbia County Ordinance No. 2014-1 and findings in support of same.

2. LUBA Appeal

The County's approval was appealed to LUBA and on August 27, 2014, LUBA issued a Final Opinion and Order remanding the County's decision, in part. LUBA's opinion addressed the petitioners' Assignments of Error as follows:

Proposed Uses

LUBA rejected the petitioners' argument that, as a matter of law, the County was required to restrict its Goal 3 Exception to particular uses under OAR 660-004-0022(1), 660-004-0022(3) and 660-004-0020(2). Similarly, LUBA rejected the claim that the County did not effectively limit the authorized uses to those justified by the approval under OAR 660-004-0018(4)(a). Regarding this argument, LUBA held:

> "[*W*]*e agree with the Port that the county has sufficient measures in place to ensure that* ***ANY*** *industrial uses approved in the exception area will be limited to those justified by one or more of the three reasons advanced.* . . . [W]e agree with the Port that Condition E.5, CCZO 683.1(A) and CCCP Part XII, Policy 12, together act to effectively require future conditional use applicants to demonstrate that a particular proposed industrial use was justified in the exception decision. Further, via CCZO 683.1(A), future conditional use applicants will be required to demonstrate that the proposed use conforms to either CCCP Resource Development Policies 3(A) through (F) or with Policy 3(G), the language of which echoes the themes of OAR 660-004-0022(3)(a), (b) and (c)." 70 Or LUBA 171, 185 (2014) (Emphasis added).

"Significantly Dependent on a Unique Resource" including "River or Ocean Ports"

LUBA also rejected the petitioners' assertion that a Goal 3 Exception was not justified for uses "significantly dependent" on access to the deepwater port at Port Westward under OAR 660-004-0020(3)(a), because some uses may not be port-dependent; the County did not limit uses to port-dependent ones; some record evidence indicated that the existing dock is underutilized; and petitioners' claim that the single riverfront lot approved as part of the County's decision would not be adequate to establish the non-riverfront lots are "significantly dependent" on river access.

LUBA explained: "[T]he county advanced three reasons to justify the exception area, and the fact that not all uses allowed in the exception area will be port-dependent uses for OAR 660-004-0022(3)(a) is not erroneous, as long as all uses fall within one or more of the three reasons." 70 Or LUBA at 187. However, on remand the exception granted is not based on either OAR 660-004-0022(3)(b) or (3)(c). As analyzed in depth in the Mackenzie Report, each of the five approved uses (narrowed from the scope of possible uses originally approved) are closely tied to the deepwater port at Port Westward for viability and, as approved, any use in the Expansion Area must be significantly dependent upon and have established access to the dock at the deepwater port.

"Impacts that are Hazardous or Incompatible in Densely Populated Areas"

LUBA sustained the petitioners' claim that the County's findings were inadequate to justify any uses under OAR 660-004-0022(3)(b), "use[s] that cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas." However, the exception granted on remand does not approve uses relying on OAR 660-004-0022(3)(b).

"Significant Comparative Advantage"

LUBA rejected the petitioners' assertion that a Goal 3 Exception could not be justified for any uses under the "significant comparative advantage" reason provided at OAR 660-004-0022(3)(c) until a specific use was identified by the Port, noting the presence of "deep-water access, existing dock facilities, access to railroad, highways and interstates, and the presence of utilities and power generating facilities" and concluding, "[W]e disagree with petitioners that the county must identify a specific industrial use in order to invoke OAR 660-004-0022(3)(c)." 70 Or LUBA 171, 190 (2014). Additionally, LUBA rejected arguments that the "significant comparative advantage" needed to come from the expansion site itself (and not from the existing Port Westward site), as well as petitioners' challenge to the County's findings that locating rural industrial uses in the expansion site would "benefit the county economy" and "cause only minimal loss of productive resources." *Id.*

Nevertheless, the exception granted on remand relies only on OAR 660-004-0022(3)(a), and so OAR 660-004-0022(3)(c) no longer applies to the approval.

Reasonable Accommodation Standard (Alternative Sites Analysis)

Vacant Port Westward Lands

LUBA sustained the petitioners' challenge to the sufficiency of the County's findings that "areas that do not require an exception cannot reasonably accommodate the use" under OAR 660-004-0020(2)(b), in particular as to the ability of acreage within the existing Port Westward site to accommodate the proposed uses. LUBA held that the County's finding that the unused acreage within the PGE leasehold is unavailable for rural industrial development was not supported by the record evidence. LUBA concluded that, to make such a finding, the record would need evidence either that PGE is categorically unwilling to sublease part of its leasehold, or that those unused acres "cannot otherwise be reasonably made available for development through acquisition or termination of the leasehold interest." 70 Or LUBA at 195.

Regarding wetlands within the PGE leasehold and elsewhere on Port Westward, LUBA held that the mere presence of wetlands does not make it unbuildable if development can occur with the appropriate permits and mitigation. 70 Or LUBA at 196. However, LUBA did note that OAR 660-004-0020(2)(b)(B) provides that "economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas" and, explaining further, noted that the cost of obtaining such permits and undertaking the work may be "so prohibitive that the cost alone or in combination with other factors could allow the county to conclude that the vacant lands within [the] Port Westward site cannot reasonably accommodate any industrial use." *Id.* Because the County had not made such findings, LUBA remanded on this point.

The Mackenzie Report has addressed this issue at length on remand and, to the extent any wetland areas within the PGE leasehold are in fact otherwise available (which the Mackenzie Report establishes is not the case), it provides substantial evidence that the cost of developing such an area would be economically infeasible. More significantly, the Mackenzie Report provides substantial evidence that the PGE leasehold is currently so encumbered that it is in fact unavailable for siting the Port's proposed uses and includes a letter from PGE stating that the remainder of its leasehold is unavailable for development.

Other Alternative Sites

LUBA sustained the petitioners' challenge to the sufficiency of the County's findings regarding other alternative sites not requiring an exception under OAR 660-004-0020(2)(b)(B). LUBA held that the Port was required to do a separate reasonable accommodation analysis for each non-overlapping reason used to justify the exception under OAR 660-004-0022(3). According to LUBA's decision, an alternative site rejected because it cannot reasonably accommodate one

particular use that falls under one "reason" may still be a viable alternative site if it is able to accommodate another use that falls under another reason. 70 Or LUBA at 197-98.

This concern has been addressed by narrowing the authorized uses to the five rural industrial uses listed above, in combination with the reliance on Port Westward's deepwater port as the single reason advanced for taking a Goal 3 exception under OAR 660-004-0022(3)(a).

LUBA also rejected the County's finding that alternative sites cannot reasonably accommodate the proposed uses because no individual site is large enough to accommodate in the same place all of the large-lot industrial uses that could be accommodated in the 837 acre exception area, and further held that the analysis rejecting the 450 acres at the Rainier site needed more analysis and/or record evidence. 70 Or LUBA 171, 198-99.

As discussed at length in the Mackenzie Report, consistent with OAR 660-004-0022(3)(a), the approval on remand is limited to five specific uses significantly dependent on the deepwater port at Port Westward. Therefore, the Rainier site, and any other sites without deepwater access, is not a viable alternative.

LUBA also held that alternative sites considered could not be excluded from consideration solely on the basis of the presence of wetlands or other environmental issues on those sites, short of making findings that due to regulatory, cost or other relevant factors it is unreasonable to expect such sites to be developed for the proposed uses. 70 Or LUBA at 198.

As noted, the application as modified is tied solely to the deepwater port at Port Westward under OAR 660-004-0022(3)(a), and therefore sites without deepwater access are not viable alternatives, including those previously excluded solely because of the presence of wetlands.

ESEE Analysis

LUBA rejected petitioners' claim that the County did not make adequate findings that the long term environmental, social, economic, and energy consequences would not be significantly more adverse than if an exception were taken for different otherwise-available resource lands (the County's "ESEE" analysis). LUBA accepted the County's incorporation of its compatibility analysis findings under OAR 660-004-0020(2)(c) into its ESEE analysis findings, and concluded that the petitioners had not demonstrated other or different findings were required. LUBA noted that the petitioners had not specifically identified and described alternative sites with fewer ESEE impacts. 70 Or LUBA at 202.

On remand, opponents have raised this issue, although this assignment of error was not sustained by LUBA. The only ESEE alternative sites identified in the record are the Port of the Dalles and

the Port of Klickitat, both upstream of the federally maintained 43-foot deepwater channel running 105 nautical miles from the mouth of the Columbia River to the Portland/Vancouver area. Opponents contend that those sites would have less adverse impacts because they are surrounded by less productive resource land, but do not provide evidence to support that assertion. Further, both of those alternative ports lack deepwater access and therefore cannot serve to replace Port Westward.

Because neither the Port of the Dalles nor the Port of Klickitat are deepwater ports, those locations are not appropriate alternatives for ESEE consideration. In addition, the Port of Klickitat is not an Oregon port and therefore not viable for consideration under the "reasonable accommodation standard" applicable only to land within Oregon and subject to Oregon's Statewide Planning Goals.

Compatibility Analysis (ORS 197.732(2)(c)(D); Goal 2; Part II(c); OAR 660-004-0020(2)(d)

LUBA sustained petitioners' claim that the County's findings regarding Goal 2's compatibility standard, under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d) were inadequate. LUBA held that such findings could not be deferred to a subsequent permit proceeding when the specific use is identified (thus requiring the Port to identify specific proposed uses). 70 Or LUBA at 205-206.

Transportation Analysis

LUBA previously rejected the claim that the County failed to adequately consider whether the proposed zone change would "significantly affect" transportation facilities under OAR 660-012-0060 of the Transportation Planning Rule, concluding that the rule did not require the County to evaluate whether the zone change significantly affects the rail system itself. 70 Or LUBA at 208-209.

Applicability of Goal 14

LUBA remanded the County's decision regarding its treatment of Goal 14. LUBA held that Goal 14 could apply to some of the broad array of potential uses authorized in the RIPD zone, and that a valid Goal 3 exception allows only for "rural" industrial uses. 70 Or LUBA at 211. LUBA found that a Goal 3 exception does not "exempt" industrial uses from Goal 14 and so Goal 14 would apply to any "urban" industrial uses. 70 Or LUBA at 208-212. LUBA also ruled that the County's findings regarding Goal 3 did not satisfy the requirement for specific findings necessary for a Goal 14 exception, and that as a matter of legal practicality the County erred by adopting a Goal 14 exception on a contingency basis. 70 Or LUBA at 213.

LUBA emphasized in its analysis of the applicability of Goal 14 that, in *Shaffer v. Jackson County,* 17 Or LUBA 922, 931 (1989), it had explicitly rejected an argument that industrial uses are inherently urban in nature, ruling instead that a case-by-case analysis of any proposed use was required to make such a determination. 70 Or LUBA at 211. However, because the approval did not identify particular uses to which the *Shaffer* factors could be applied, LUBA remanded the decision, stating:

> "Remand is necessary for the county to address whether any of the proposed uses allowed in the exception area under the *Shaffer* factors or other applicable considerations constitute the urban use of rural land. If so, the county must either limit allowed uses to rural uses or take an exception to Goal 14, addressing the criteria at OAR 660-012-0040." 70 Or LUBA at 211.

As discussed below, the Mackenzie Report provides a thorough *Shaffer* analysis for each of the five approved uses, and provides substantial evidence that the uses authorized have accordingly been limited to ones that are rural in nature, and therefore are appropriate for siting at Port Westward.

Applicability of Goal 11 (Public Facilities) and Need for a Goal 11 Exception

Finally, LUBA rejected petitioners' assertion that the County needed to but did not approve an exception to Goal 11, finding that the assertion was premature. LUBA explained that the argument would be ripe after addressing the Goal 14 issues identified above and, after that has happened review the County decision to make sure that the County has "either limit[ed] the exception to exclude such [urban] uses or adopt[ed] an exception to Goal 14." 70 Or LUBA at 211.

As discussed in the Mackenzie Report, no uses are proposed which require an urban level of facilities or services under the Port's modified application. Further, as no services provided at Port Westward rise to the level of urban services, and none are planned by the Port, the level of available services act to prevent urban industrial uses in the exception area. As the Mackenzie Report has made clear, the County's approval does not rely on existing facilities, except for the dock.

D. Matters Addressed in the Remand Decision

Based on LUBA's direction outlined above, on remand the Port has responding by addressing those issues raised as summarized below.

1. Reason Justifying a Goal 3 Exception

OAR 660-004-0020(2)(a) states:

> "(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:
>
> (a) 'Reasons justify why the state policy embodied in the applicable goals should not apply.' The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land."

Further, OAR 660-004-0022(3)(a) provides:

> "(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:
>
> (a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports."

In its decision, LUBA explained (in discussing application of the *Shaffer* factors):

> "[I]n the present case whether a particular use is an urban or rural use under the *Shaffer* factors may depend in part on the reason under which it was justified. Because the "significantly dependent" on a unique resource language of OAR 660-004-0022(3)(a) closely parallels one of the relevant factors the county can apply to determine whether proposed uses are urban or rural, it may be somewhat easier for the county to conclude that none of the proposed uses allowed in the exception area are urban uses, if the proposed uses are narrowed to those that are justified solely under OAR 660-004-0022(3)(a) rather than the broader universe of uses justified under OAR 660-004-0022(3)(b) and (c)." 70 Or LUBA at 214.

Taking up that suggestion from LUBA, on remand the narrowed scope of five approved uses is justified by a single reason under OAR 660-004-0022(3)(a). That provision authorizes an exception to Goal 3 for rural industrial uses that are "significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include . . . river or ocean ports." The unique resource the Port identified to justify a Goal 3 exception is the deepwater port at Port Westward.

The Mackenzie Report provides analysis as to the uniqueness of the deepwater port with its existing dock facilities at Port Westward. As the report establishes, the Port's proposed uses are highly dependent upon immediate proximity to a deepwater port. The Report states that the deepwater port access is "necessary for transferring materials from one mode to another, for both domestic and foreign transport (e.g., rail to marine), and for accommodating low-margin industrial operations which rely upon deepwater access to maintain an economically viable business in current market conditions."

Table 2 of the Mackenzie Report illustrates that each of the Port's five proposed uses are dependent upon deepwater access. As the Mackenzie Report explains:

> "Uses with foreign trade markets and marine-served domestic markets for products that are shipped by marine vessel are, by definition, reliant on deepwater port facilities. Table 2 demonstrates that each of the five proposed uses for PWW involve foreign import/export operations and are thus dependent upon a deepwater port. The proposed uses will achieve a significant operational advantage due to deepwater port access with nearby storage yards. As the proposed uses are low-margin businesses, port proximity is necessary to minimize operational costs for both import/export and domestic shipping operations. An external benefit of these firms' locations near port facilities is that locating their yards close to the port minimizes impacts on offsite transportation infrastructure."

Regarding the reliance on the deepwater port and dock facilities at Port Westward, the Mackenzie Report concludes:

> "[T]he uses identified in the Port's modified land use application are highly driven by foreign trade and the associated ocean marine transport, and Oregon's largest trading partners are along the Pacific Rim. Table 5 lists the state's top export partners in 2016. This list accounts for 90% of Oregon's export value. Among the top 20 export partners, 14 are Pacific Rim countries, including Canada and Mexico. These 14 markets account for 82% of all of Oregon's export value."

As evidenced by these passages, the identified reason for taking a Goal 3 exception for its five proposed uses is firmly established. The deepwater port at Port Westward constitutes a unique resource, and river ports are explicitly identified as a sufficiently unique resource to justify an exception to Goal 3 under OAR 660-004-0022(3)(a). However Port Westward's port has additional qualities that distinguish the site from otherwise qualified sites under the "unique resource" language of OAR 660-004-0022(3)(a). That is Port Westward is a self-scouring deepwater port (meaning it does not require dredging) with existing dock facilities, the development of which is

a declared priority for the State of Oregon under ORS 777.065. Therefore, the OAR 660-004-0022(3)(a) "unique resource" requirement is clearly satisfied.

2. Narrowed List of Proposed Uses

LUBA's decision required that the range of potential uses in the expansion area be narrowed beyond the scope of all uses authorized in the RIPD zone, to facilitate application of the *Shaffer* factors in determining whether the proposed uses are rural or urban industrial uses, and also to allow for an adequate compatibility analysis under OAR 660-004-0020(2)(d).

The narrowed list of the five approved uses listed above (Forestry and Wood Products processing, production, storage, and transportation; Dry Bulk Commodities transfer, storage, production, and processing; Liquid Bulk Commodities processing, storage, and transportation; Natural Gas and derivative products, processing, storage, and transportation; and Breakbulk storage, transportation, and processing to be authorized for siting in the exception area) are each described in detail in the Mackenzie Report. To avoid siting any uses in the proposed exception area that are urban in character, and thereby implicating Goals 14 and 11, each of the *Shaffer* factors has been applied to each of the proposed uses in the Mackenzie report.

Application of the Shaffer Factors to the Narrowed List of Proposed Uses

In its decision, LUBA summarized the applicable *Shaffer* factors as follows:

> "The relevant factors discussed in *Shaffer* that point toward a rural rather than an urban industrial use include whether the industrial use (1) employs a small number of workers, (2) is significantly dependent on a site-specific resource and there is a practical necessity to site the use near the resource, (3) is a type of use typically located in rural areas, and (4) does not require public facilities or services. None of the *Shaffer* factors are conclusive in isolation, but must be considered together. Under the analysis described in *Shaffer*, if each of these factors is answered in the affirmative, then it is relatively straightforward to conclude, without more, that the proposed industrial use is rural in nature. However, if at least one factor is answered in the negative, then further analysis or steps are necessary. In that circumstance, the county will either have to (1) limit allowed uses to effectively prevent urban use of rural land, (2) take an exception to Goal 14, or (3) adequately explain why the proposed use, notwithstanding the presence of one or more factors pointing toward an urban nature, should be viewed as a rural use." 70 Or LUBA at 211 (internal citations omitted).

A significant portion of the Mackenzie Report is dedicated to applying the applicable *Shaffer* factors to the Port's five proposed uses. *Shaffer* established several factors to apply when determining whether a particular industrial use is rural or urban in nature. For each of the five uses approved, the Mackenzie Report provides a thorough analysis establishing that those uses are categorically rural.

i. # 1: Employs a Small Number of Workers

Under the first Shaffer factor, employment of a small number of workers is an indicator of a rural use. The approved uses employ a small number of workers. Extensive analysis in the Mackenzie Report identified the typical number of employees per acre for the approved uses, with an average of 1.5 employees for acre as compared to an average of 18.1 employees per acre for urban industrial uses and 5.9 employees per acre for urban warehousing uses.

An alternative analysis suggested utilizing a section of the County's Comprehensive Plan forecasting the availability of vacant buildable industrial land based on assumptions of 1.5 employees per acre for "heavy" industrial uses and industrial uses outside city limits, and 4.0 employees per acre for "light" industrial uses and industrial uses inside city limits. However, the distinction between "heavy" and "light" industrial does not exist in the RIPD zone (*see, generally,* CCZO Section 680). Those specific designations in the Comprehensive Plan simply estimate potential employee capacity of then-existing vacant buildable lands (in terms of density) in order to forecast the adequacy of the County's buildable industrial land inventory. Columbia County Comprehensive Plan, Part XII, Industrial Siting – Industrial Economic Analysis: Summary of Economic Data, Section 5 ("Employment Capacity of Vacant Buildable Industrial Sites"). Further, the Board finds that the distinction between uses inside and outside of city limits is also inapplicable, as the County's zoning authority exists exclusively outside of city limits.

The densities discussed above were meant to be used solely to forecast the availability of vacant buildable industrial land, and are not intended to establish a bright-line maximum density for rural industrial uses either inside or outside of city limits, nor are they intended to establish different "heavy" or "light" industrial densities in the RIPD zone where the County's RIPD zone does not make such a distinction.

The Mackenzie Report provides quantitative data that profiles the employment densities associated with the Port's approved uses. Of the inquiries for development at Port Westward, the Report shows that the employment density for the approved uses averages approximately 1.5 jobs per acre (Mackenzie Report, Table 1, p. 15), and the examples of these uses provided in Section IV of the Mackenzie Report have densities ranging from 0.3-2.3 jobs per acre. The employee density numbers provided in the Mackenzie Report are based on real and current tangible information, regarding actual industrial employment densities, and provides substantial evidence that the densities for each approved use is likely to employ a small number of workers.

ii. # 2: Significantly Dependent on a Site-Specific Resource/Practical Necessity to Site Near the Resource

The second *Shaffer* factor used to identify a rural use is whether the use is significantly dependent on a site-specific resource, and there is a practical necessity to site near the resource. The approved uses are significantly dependent on a site/specific resource, the deepwater port, and there is a practical necessity to site near the deepwater port at Port Westward. The Mackenzie Report provides substantial evidence that the five uses are specifically dependent on the deepwater port at Port Westward and must be sited in the immediate vicinity. The Mackenzie Report applied this *Shaffer* factor to each of the five approved uses and found each use clearly linked to the deepwater port at Port Westward (as LUBA and the Port have noted, this *Shaffer* factor is very close to the "unique resource" reason OAR 660-004-0022(3)(a)). In addition, Condition 5 requires any use sited in the expansion area to be significantly dependent on the deepwater port at Port Westward, and therefore the exception granted only authorizes uses that will necessarily be significantly dependent on the deepwater port to site in the new expansion area.

iii. *# 3: Typically Located in Rural Areas*

The third *Shaffer* factor examines whether the use is typically located in rural areas. Opponents have claimed that the uses need to be "unique" to or "solely" located in rural areas to be found to be rural in character. However "typically" has a meaning akin to "commonly" and not "exclusively" in the application of this *Shaffer* factor. The third *Shaffer* factor does not attempt to limit rural industrial uses to ones occurring only in rural areas. As the Mackenzie Report notes, all of the approved uses are land-intensive and require larger sites and additional buffering. Table 3 of the Mackenzie Report provides substantial evidence to support its conclusion regarding this *Shaffer* factor by breaking each of proposed uses down by those requirements, and establishes that each of the five uses is rural in character.

The Mackenzie Report notes for the record the existence of similar examples located in urban areas, but explains that those still represent typically rural uses sited in areas that have urbanized over time, or uses that were sited in urban areas out of necessity due to lack of proximity to port access in rural areas, and concludes that the approved uses are typically located in rural areas.

iv. #4: Does not Require Public Facilities or Services

The fourth *Shaffer* factor examines whether the use requires public facilities or services. The Mackenzie Report's *Shaffer* analysis regarding this factor provides substantial evidence that the approved uses will have low potable water demands and generate low domestic wastewater flows, due to low employee counts, and thus will not require extension of a municipal sewer system. Moreover, the Mackenzie Report's analysis regarding traffic levels establishes rates lower than those associated with urban industrial uses, leading to a conclusion (supported by the conclusions

of the Port's traffic engineer as well as of ODOT) that traffic levels will not increase to urban levels. There is no evidence in the record to contradict that conclusion, or to support the claim that the proposed uses will necessarily require public facilities or services.

The Mackenzie Report also disposes of claims that the presence of fiber-optic, electrical and natural gas connections in the existing exception area – which are all commonly found elsewhere in rural areas – automatically disqualify the new expansion area.

3. Alternative Sites Analysis

OAR 660-004-0020(2)(a) states:

> "(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:
>
> (a) 'Reasons justify why the state policy embodied in the applicable goals should not apply.' The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;"

As discussed above, the Port has identified the deepwater port at Port Westward as the applicable reason for taking an exception to Goal 3, consistent with OAR 660-004-0022(3)(a).

OAR 660-004-0020(2)(b) provides:

> "(b) 'Areas that do not require a new exception cannot reasonably accommodate the use'. The exception must meet the following requirements:
>
> (A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;
>
> (B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?"

OAR 660-004-0020(2)(b) requires consideration of potential alternative sites that would not require a new exception. This requirement, together with the single reason selected by the Port under OAR 660-004-0022(3)(a), above, mean that the potential alternative sites to be considered must: 1) not require a new exception; and 2) provide deepwater port access. The alternatives analysis provided in the Mackenzie Report is therefore divided into two parts, the first being an analysis of industrial land availability at Port Westward, and the second being an analysis of industrial land availability at other locations not requiring an exception where the Port's five proposed uses could potentially be sited with deepwater port access.

Vacant Port Westward Acreage

The Mackenzie Report includes several maps of Port Westward, including the PGE leasehold area LUBA ruled the Port had not established could not accommodate rural industrial uses. As LUBA noted in its opinion, within PGE's 862 acre leasehold, 80 acres are dedicated mitigation areas, 60 acres are within the floodplain, 30 acres are developed with a security station and other infrastructure, and 100 acres are dedicated to utility easements and roads. 40 Or LUBA at 176. After deducting those 270 acres, and the 147 acres actively in use by PGE, from the 862 total acres, LUBA concluded that there are, approximately 445 acres remaining in PGE's leasehold available for potential rural industrial development. 40 Or LUBA at 176. Based on that conclusion, LUBA held that, under OAR 660-004-0020(2)(b), the County erred in finding that the remaining 445 acres could not reasonably accommodate rural industrial uses "absent evidence that PGE is categorically unwilling to sublease part or all of its leasehold to other industrial users, or that the leased acreage cannot otherwise be reasonably made available for development through acquisition or termination of the leasehold interest. . . ." 40 Or LUBA at 195.

Building on that information Mackenzie undertook a comprehensive investigation of the availability of acreage within the PGE leasehold.

> "The site is also encumbered by a number of easements for roadways, utilities, drainage facilities, levees, pipelines, and 46 acres of conservation areas, which serve to divide developable areas into smaller sections less conducive to large-scale rural industrial development. See Appendix 1. Together with the security fencing, gates, and other infrastructure, these encumbrances serve as barriers to development."

Mackenzie noted that PGE now operates three power generation facilities, not two, and that the remainder of Port Westward is heavily encumbered by wetlands, conservation easements, transmission lines, necessary buffering and other restrictions to developing sites for the uses proposed by the Port. The third power generation facility has become operational since the Port's original application was submitted to the County, demonstrating that growth is not hypothetical and that PGE in fact intends to utilize its leasehold area. This conclusion is evidenced by the June 16, 2016 letter from PGE to the Port, in which PGE states that it is in fact unwilling to sublease any more of its leasehold. As the letter states:

> "Maintaining and protecting PGE's assets at Port Westward is imperative to the company's current and future operations. Protecting the long-term interests of the electric generation capabilities at the site requires PGE to maintain adequate land buffers around the facilities for security and reliability purposes, *thus restricting third-party use on the 854-acre leasehold*. In addition, it is important to our future operations there is adequate space in our leasehold for building future generating plants. This limits the physical space, location and other related dynamics that might otherwise make the area available to third-parties. Given the company's investment at Port Westward and the critical nature of the site to support reliable electric service, third-party compatibility is a high bar which some proposed industrial facilities in the past could not meet. *Due to this high bar, PGE supports the Port's effort to bring additional industrial land outside the buffer into Port Westward.*" (Emphases added).

LUBA previously found that the existence of a Joint Marketing Agreement between the Port and PGE for additional development at Port Westward implies that areas within the PGE leasehold were available for development. 70 Or LUBA at 194. However, as Mackenzie notes in its report, that marketing agreement did not lead to the siting of any additional businesses at Port Westward. In 2007, PGE sent a letter to the Port formally terminating the joint marketing agreement, which by its terms had previously lapsed, and it has not entered into another one with the Port. That letter from PGE is included in Appendix 2 to the Mackenzie Report. Taken together, the two PGE letters

make it clear that, as far as PGE is concerned, future development within its leasehold area by any other user is not feasible.

Outside of the leasehold area, after accounting for all encumbrances and existing uses, Mackenzie identified one small area in the southeast corner of Port Westward. However, Mackenzie determined that that area was insufficient in size to accommodate the approved uses.

> "As evident in Figure 4, there are few developable portions of PWW that are not encumbered by wetlands, conservation easements, power generation facilities, transmissions lines, the ethanol plant, and long-term leases. The southeast corner of the Port's existing PWW property could perhaps provide one last small development site outside PGE's lease area, though, as described below, this would be insufficient to satisfy the overall demand for rural industrial sites and is too small to effectively site one of the five uses proposed by the Port."

Further, that last area has since been contractually committed to another party for development and is no longer available.

As the Port has explained, "Whether that failure [to locate other users within the PGE leasehold] is construed as categorical unwillingness by PGE to sublease acreage, or whether the existing site constraints simply make an otherwise-willing PGE incapable of subleasing acreage, the end result that no additional subtenants have been or can be sited [there] remains the same."

LUBA also held that the mere presence of wetlands was not a sufficient basis for determining that the PGE leasehold is unavailable for rural industrial development under OAR 660-004-0020(2)(b), without first making the requisite findings under OAR 660-004-0020(2)(b)(B) that economic factors made the leasehold unable to reasonably accommodate the rural industrial uses. That regulation provides as follows, in part:

> "Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas."

Mackenzie reviewed the impediment to future development at Port Westward, in light of the allowance for considering economic factors in determining whether existing acreage at the Port could accommodate the uses proposed by the Port. Even assuming that sufficient acreage would be available, Mackenzie concluded that such economic factors would not allow for development at Port Westward without taking an exception to Goal 3 for additional acreage unencumbered by wetlands concluding:

> "After deducting the approximately 40 acres of wetlands that lie within conservation easements, filling the remaining 439 acres of wetlands to create developable area would require at least 658 acres of land, which is not feasible within the boundaries of the existing PWW exception area. Significantly, wetland mitigation costs serve as a nearly-insurmountable hurdle to utilization of the remaining acreage at PWW, as wetland creation costs run on the order of $77,000-$82,000 per acre. Filling the wetland acreage noted above, and acquiring the requisite mitigation acreage, would cost on the order of $50 million above and beyond the acquisition costs—assuming that the Corps and DSL granted authorization to fill the wetlands." (Internal citation omitted).

Therefore, presuming that those areas encumbered by wetlands could somehow be made available (contrary to PGE's representations and Mackenzie's conclusion that those areas are in fact not available), Mackenzie nevertheless determined that the economic barriers to developing those wetlands would be insurmountable.

The "undeveloped" land in the western and southern portions of the existing Port Westward property are in fact encumbered both by wetlands and by the PGE lease, as illustrated in Figure 4 of the Mackenzie Report. The Port has provided substantial evidence that it is economically infeasible to fill this large volume of wetlands, in addition to the fact that PGE's has provided a letter stating that the Port should consider the undeveloped portion of PGE's leasehold unavailable for siting additional tenants. Accordingly, there is no available acreage at the existing Port Westward exception area, either inside or outside of the PGE leasehold.

Other Alternative Sites

LUBA remanded the County's decision regarding its analysis of alternative sites other than the PGE leasehold under OAR 660-004-0020(2)(b). As explained above, the rule requires findings that the "areas that do not require a new exception cannot reasonably accommodate the [approved] use[s]." LUBA concluded that doing such an analysis authorizing all potential uses allowed in the RIPD zone, combined with justification of three separate reasons for taking the exception to Goal 3 for all of those uses, made undertaking an alternative sites analysis for those sites impossibly complicated. 40 Or LUBA at 197-98. As LUBA explained, "[I]f the county had limited the proposed uses to port-dependent uses that require deep-water access, then the county could easily reject alternative sites that do not provide deep-water access." *Id.* at 198 (2014).

In response, the approved uses have been narrowed down to five specific uses that are each port-dependent, and that also is limited one reason under OAR 660-004-0022(3)(a) justifying the exception, the deepwater port at Port Westward.

LUBA also found that the County's decision did not adequately establish that other alternative sites cannot accommodate the entire scope of rural industrial uses (as conditionally allowed in the RIPD zone and as justified by all three OAR 660-004-0022(3) "reasons" originally put forward), on the basis that no alternative site is large enough to accommodate in one place the multiple large-lot industrial uses that proposed exception area could accommodate. LUBA reasoned that "if one or more alternative sites can reasonably accommodate one or more of the proposed large lot industrial uses, then the county cannot reject such sites solely on the basis that they cannot provide 837 acres for multiple large lot uses at a single location." 40 Or LUBA at 198.

However, the approval on remand is now limited to five uses that are, as explained above and detailed in the Mackenzie Report, highly dependent on the deepwater port at Port Westward under the justification provided under OAR 660-004-0020(3)(a). Therefore, the exception, as approved, obviates the need to look at scattered large lot sites that are not located in close proximity deepwater ports with existing dock facilities.

The Mackenzie Report undertook an assessment of alternative sites that potentially meet those criteria. It first assesses other Port of St. Helens properties ostensibly available for the kinds of uses proposed by the Port. However, because none of the other sites currently have deepwater access or related dock facilities, Mackenzie concludes that none of the Port's other sites provide viable alternatives.

Next, in the report Mackenzie examines the state's other public deepwater ports, with a particular focus on those deepwater ports along the M-84 Marine Highway/Columbia River corridor with deepwater access (the Port of Astoria and the Port of Portland).

Port of Astoria

As detailed in the Mackenzie Report, the Port of Astoria has deepwater facilities, but lacks sufficient available land for the kinds of uses proposed by the Port. The Port of Astoria is divided into two areas, the Central Waterfront and Tongue Point. The Central Waterfront is fully occupied and has no vacant land. Tongue Point itself is divided into two distinct areas, North Tongue Point and South Tongue Point.

North Tongue Point is 34 acres in its entirety. The northern 19 acre portion is partially occupied by tenants, and has some developed smaller warehouse space available for lease. However, none of the Port's proposed uses could be sited at those available spaces because of their small sizes. The southern portion is a vacant parcel, but is only 15 acres in size and thus is insufficient to site the kinds of uses proposed by the Port. In addition, a landfill was discovered on the site containing heavy metals and PCBs exceeding acceptable levels. Together with the insufficient acreage, the

environmental contamination presents an economic obstacle that makes development infeasible, as detailed in the Mackenzie Report.

South Tongue Point consists of four parcels totaling approximately 137 acres, three owned by the Oregon Department of State Lands (DSL), and one owned by the U.S. Army Corps of Engineers. However, according to the Mackenzie Report, Clatsop Community College has a purchase-and-sale agreement in place and is in the process of acquiring the three DSL parcels for its own use, and the U.S. Army's Joint Base Lewis-McChord is actively pursuing repurposing the Army Corps of Engineers' property for an Army training facility.

In light of the insufficient acreage, and in context of the other factors, the record establishes that there is no acreage at the Port of Astoria considered available for siting the Port's proposed uses.

Port of Portland

The Mackenzie Report next examines the availability at the Port of Portland for the Port's proposed uses. The report notes that the Port of Portland recently (2013) pursued the development of additional port facilities at West Hayden Island, but that that pursuit was halted after the Port of Portland determined that the obstacles to development were insurmountable and withdrew its annexation proposal from the City of Portland. A letter from the Port of Portland to the City of Portland explaining that decision is appended to the Mackenzie Report. *See* Appendix 5 to the Mackenzie Report. In detailing the letter, the Mackenzie Report provides the following:

> "In the letter, the Executive Director states that '[T]he [Portland] Planning and Sustainability Commission (PSC) has recommended annexation, but on terms that render the development of the 300 acre marine terminal parcel impossible.' The letter also states, 'From our conversation, I understand that you believe the Council is unwilling to take action on a modified proposal. Based upon your assessment that the Council's policy choice is to not bring forward a package that is viable in the market, the Port will not continue with the annexation process at this time and withdraws its consent to annexation' and '[t]he city, unfortunately, will now have to deal with the consequences of a severe shortfall in industrial land.'"

The letter elsewhere explains that, given the regulatory burdens West Hayden Island faces, development will be economically infeasible. As the Executive Director explains, "The Port is enterprise funded: only 4 percent of our revenues come from taxes. Any development at WHI must meet basic, sustainable market requirements. The PSC recommendations put the development cost of the property at about double its value in the market."

Further, as the Executive Director makes clear, it is not only the local regulations that make development of West Hayden Island infeasible:

> "Furthermore, the PSC recommendations exceed what is required by Goal 5 by obligating us to go back at the time of development for further review for any docks or other in water development that would be integral to the development of a water dependent use (on top of the lengthy and contentious, federal and state permitting processes). This type of approach does not give us any assurance that we'll have the opportunity to actually develop the property once annexation occurs."

Mackenzie noted that West Hayden Island is completely undeveloped and lacks any infrastructure at all, including deepwater access or related dock facilities. As highlighted in the Port of Portland's letter, dredging for deepwater access and the installation of dock facilities would require "lengthy and contentious, federal and state permitting processes." The 2014 Regional Industrial Site Readiness Inventory Update (the Inventory Update), prepared by Mackenzie on behalf of Business Oregon, Metro, NAIOP – Commercial Real Estate Development Association Oregon Chapter, the Oregon Department of Land Conservation and Development, and the Port of Portland, estimates that West Hayden Island is at least seven years away from site readiness for the kinds of uses proposed from the Port, and states that that clock would not start running until after the Port of Portland and the City of Portland re-engaged and successfully navigated the legislative process for developing the area. As stated in the Inventory Update:

> ". . . West Hayden Island . . . is inside the UGB but subject to a lengthy planning and annexation process that is likely to include significant mitigation requirements. If approved for development, the West Hayden Island site is at least seven years away from readiness due to permits, mitigation, and infrastructure requirements."

Thus West Hayden Island does not present a viable alternative to Port Westward, because it lacks the deepwater access, the very reason the Port advances under OAR 660-004-0022(3)(a) for taking an exception to Goal 3, as well as any infrastructure whatsoever. Accordingly, the Mackenzie Report concludes that West Hayden Island is not economically or practically feasible as an alternative for siting the uses proposed by the Port. Because the remainder of the Port of Portland's facilities are built out and occupied, the Mackenzie Report concludes that the Port of Portland is not a viable alternative.

In addition to finding Hayden Island unavailable for multiple reasons, including but not limited to the lack of deepwater access, infrastructure or political will, the Mackenzie Report found the remainder of the Port of Portland's facilities that could accommodate the Port's proposed uses to

be built out and occupied, and lacking needed acreage for siting any of the approved uses. Accordingly, the Port of Portland is not a viable alternative.

Non-Columbia River Ports

Port of Coos Bay

Regarding the non-Columbia River/M-84 corridor ports, the Mackenzie Report first addresses the Oregon International Port of Coos Bay. It notes that it is 200 nautical miles from the mouth of the Columbia River, does not serve M-84/Columbia River corridor commerce and is 230 road miles from the Portland metropolitan area. The Mackenzie Report also specifically discusses the fact that that over 60% of Oregon's manufacturing, warehousing, and transportation-based economy is located along the Columbia River Corridor. For commerce beyond Oregon, the confluence of national or regional waterways (Columbia River/M-84), freeways (I-5, I-84), and rail networks (Union Pacific and BNSF Class I rail lines) occurs at the metro area only 50 miles from Port Westward but, as noted, is 230 road miles from Coos Bay. Based on that, the properties in Coos Bay are not economically comparable to Port Westward to serve the Columbia River Corridor economy and so the Oregon International Port of Coos Bay is not a viable alternative for the approved uses.

Port of Newport

The Mackenzie Report finds that the Port of Newport does not provide a viable alternative, noting among other things that it does not serve Columbia River/M-84 corridor commerce. Based on the same reasoning provided for Coos Bay, the Port of Newport is not a viable alternative.

Port of Tillamook

The Mackenzie Report similarly finds Port of Tillamook is not a viable alternative, noting that, in addition to not serving Columbia River/M-84 corridor commerce, the Port of Tillamook entirely lacks maritime access. Based on that fact, and on the same reasoning eliminating Coos Bay and Newport from consideration, the Port of Tillamook is not a viable alternative.

Other Sites Considered

Finally, the Mackenzie Report addresses other potential alternative sites that were previously raised, both public and non-public, noting that the viability of each site is impacted by the Port's modification of its application to limit the reason put forward to justify the exception to the deepwater port and existing dock facilities at Port Westward as a "unique resource" under OAR 660-004-0022(3)(a). The Mackenzie Report addresses those raised alternatives, noting that none

provide deepwater access or existing dock facilities, and the report therefore concludes that none are viable alternatives.

Non-Deepwater Sites

The North Coast Business Park, East Skipanon Peninsula, Wasser-Williams Site, Port of the Dalles and Port of Klickitat have all been raised by opponents as potential alternative sites. However, they are not viable alternatives because they all lack deepwater access. In addition, as explained below the Port of Klickitat is not an Oregon port and is not subject to Oregon's Statewide Planning Goals.

Out-of-State Sites

Opponents have raised the Millennium Site in Cowlitz County, Washington as another non-Oregon potential alternative. That site is in a protracted process involving evaluation for the siting of a coal export facility. The materials submitted to the County by the opponents show an intent to site only certain uses because of the limits of the site's aquatic lands lease with the State of Washington that do not encompass the approved uses. The materials submitted also discuss no-action alternatives for industrial development unrelated to deepwater access, and would also not allow the approved uses.

Equally important, as discussed by the Port and as highlighted by the Washington aquatic lands permit application, the OAR 660-004-0020 "reasonable accommodation standard" cannot reasonably be interpreted to apply to out-of-state sites, specifically because no out-of-state sites are subject to Oregon's Statewide Planning Goals at all. As such, none would require an exception under Oregon law. The intent of alternative sites analysis for sites not requiring an exception applies only to sites subject to the Oregon Statewide Planning Goals, meaning only sites located within Oregon. A different interpretation would undermine the intent of the exception process and have disparate application in areas bordering Washington, Idaho and California. Given that conclusion, the Millennium site, as well as all other out-of-state sites raised (including but not limited to the Port of Klickitat and the Waser-Williams Site), are not viable alternatives.

ESEE Analysis

LUBA previously rejected the claim that Columbia County did not make adequate findings that the long term environmental, social, economic, and energy ("ESEE") consequences would not be significantly more adverse than if an exception were taken for different otherwise-available resource lands. LUBA held that the petitioners had not demonstrated other or different findings were required. LUBA noted that the petitioners had not specifically identified and described alternative resource sites with fewer ESEE impacts. 70 Or LUBA at 202. On remand, opponents have raised this issue, although this assignment of error was not sustained by LUBA.

The only additional alternative ESEE sites identified in the record on remand are the Port of the Dalles and the Port of Klickitat, both upstream of the federally maintained deepwater channel in the Columbia River. In addition, opponents contend that those sites would have less adverse impacts because they are surrounded by less productive resource land but do not provide evidence to support that assertion. Further, as discussed above, both ports lack deepwater access and therefore cannot serve to replace Port Westward.

To the extent ESEE Analysis applies to the modified approval, because neither the Port of the Dalles nor the Port of Klickitat are deepwater ports, neither are not appropriate alternatives for ESEE consideration. In addition, the fact that the Port of Klickitat is not an Oregon port and is therefore not viable for consideration under the "reasonable accommodation standard" applicable only to lands Oregon subject to Oregon's Statewide Planning Goals.

4. Compatibility Analysis for the Narrowed Field of Proposed Uses

Under ORS 197.732(2)(c)(D), Goal 2, Part II(c) and OAR 660-004-0020(2)(d), the County is required to make a determination that the proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

OAR 660-004-0020(2)(d) states, in part:

> "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

The rule further explains that "'compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses."

LUBA concluded that, absent the proposal of specific rural industrial uses, it is impossible to make adequate compatibility findings, which is a prerequisite for taking an Exception to Goal 3, stating, "The time to discover whether the proposed use is compatible or can be made compatible with adjacent uses, and therefore qualifies for a goal exception under OAR 660-004-0020(2)(d), is before the local government adopts the comprehensive plan text, map and zoning changes that authorize the proposed use." 40 Or LUBA at 206.

Five specific rural industrial uses have been approved, and therefore the County is accordingly capable of determining, ensuring and maintaining continued compatibility with other adjacent uses, or that the approved uses can be so rendered through measures designed to reduce adverse impacts, thereby ensuring compliance with OAR 660-004-0020(2)(d). As part of the approval of this exception, such measures designed to reduce any adverse impacts have been taken.

Condition 1 of the approval requires Site Design Review and RIPD Use Under Prescribed Conditions applications to be submitted, as required by the CCZO, prior to an application for a building or development for a new use in the new expansion area. Condition 2 imposes a trip cap on the entire exception area of 332 PM peak-hour trips to limit traffic impacts. Condition 3 requires a traffic study for each new use in the expansion area to determine the anticipated number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. The traffic analysis required will identify impacts on passenger and truck traffic, ensure compliance with the trip cap imposed, and require improvements to county roadways as needed.

In addition, Condition 4 specifically provides requirements tailored to address potential compatibility issues. The condition explicitly addresses compatibility concerns with adjoining agricultural uses by requiring: evaluations of threatened and endangered species as required by law, maintenance of natural resource features, buffers and screening for any development adjacent to land zoned PA-80, and the maintenance of undeveloped areas in their natural state if not developed. Condition 4 also requires dust suppression and water run-off controls to be implemented, and that any conditional applications include agricultural impact assessment reports for adjacent agricultural uses, by which applicants must demonstrate ongoing compatibility, identify potential impacts and, if necessary, implement a mitigation plan to maintain compatibility. The condition also requires submission of a rail plan to ensure consistency with applicable law and identification of potential mitigation measures.

The approval conditions further require future Port tenants to adopt a plan, and institute a program consistent with the plan, establishing baseline measurements for contaminates at the expansion area and down-gradient and assuring that any future industrial wastewater discharges are treated to prevent pollution. They also require future Port tenants to prepare response and clean-up plans in the event of a hazardous material spill, involving appropriate government agencies and private companies specializing in such clean-up activities. The conditions prohibit any uses related to the storage, loading or unloading of coal. These measures are sufficient to maintain compatibility with adjacent uses.

Opponents have argued generally that the approved uses are so broad as to prohibit maintaining such compatibility, but have not explained how compatibility is not adequately maintained between one or more of those approved uses. Under ORS 197.732(1)(a) and OAR 660-004-0020(2)(d) "compatible" as a term "is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." The County has received no substantive evidence in the record of any meaningful distinction between the anticipated impacts of the approved uses and those of existing industrial uses at Port Westward on neighboring uses, and therefore finds that the approved uses will be similarly compatible with existing adjacent uses.

The substantial evidence in the record establishes that there is existing and ongoing compatibility between neighboring industrial and agricultural uses at Port Westward. This body of record

evidence supports a conclusion that current and future uses are and will be able to successfully maintain compatibility.

The record also contains information from the National Levee Database showing that the dike surrounding the Port Westward area currently has a rating of "minimally acceptable" from the Army Corps of Engineers, and that such a maintenance rating is consistent with the majority of federally built and privately maintained levees in Columbia and Multnomah Counties.

The Oregon Department of Agriculture submitted a letter into the raising questions about four potential compatibility issues: potential dust creation; water quality impacts; the ability of area farmers to move their equipment on area roads; and the potential impact on underground agricultural infrastructure. Under state law the approved uses must be compatible with other adjacent uses or "so rendered through measures designed to reduce adverse impacts." As the applicable statutes and administrative rules explain, however: "'Compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses." ORS 197.732(1)(a), OAR 660-004-0020(2)(d).

The approval conditions explicitly address each of these concerns. Condition 4(e) imposes a requirement that adequate measures be taken to control dust, including the use of hard surfaces and dust suppression. Condition 4(f) requires control and containment of site-run off and containment or other adequate treatment of any harmful sediment prior to release off of the new expansion area to prevent or adequately mitigate potential impacts to irrigation equipment and area ground and surface water quality. Condition 4(g) requires monitoring water tables and sloughs for water quality and elevations to ensure that area water is maintained for existing uses. Condition 2 imposes a trip cap of 332 PM peak-hour trips for the entire new expansion area, and a new traffic impact analysis required prior to any development after that number of trips is reached that includes recommendations consistent with state law requirements. Condition 3 requires individual traffic studies for each proposed use in the new expansion area to determine trips generated, travel routes, identify impacts and require improvements in relation to the identified impacts. In addition, the information collected under Condition 3 would monitor traffic levels to ensure compliance with the trip cap imposed via Condition 2. The Board also notes that both the Port's traffic engineer and the regional ODOT representative have submitted letters into the record discussing projected traffic levels, and both concur that the proposal would not cause a significant effect on the surrounding transportation system.

Significantly, from feedback received through the hearing process, Staff recommended and the Board included two additional conditions aimed directly at addressing potential compatibility concerns. Condition 7 requires the development and implementation of a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for contaminates at the new expansion area, and down-gradient. The stated intent of the condition is to protect against pollution of the watershed environment and as an early detection system for any

leaking tanks in the new expansion area. Further, Condition 8 preemptively requires a response and clean-up plan to be in the event of any hazardous material spill. The condition requires identification of appropriate governmental agencies and private companies to be involved in such a clean-up activity.

Regarding underground irrigation and/or drainage infrastructure, the conditions outlined above, and specifically Conditions 4(f), 4(g), 7 and 8 are specifically targeted toward and will effectively ensure compatibility with adjacent uses, including agricultural uses utilizing irrigation and drainage infrastructure, including underground infrastructure. The record establishes that there are several existing active industrial uses currently operating within the original exception area, and adjacent to agricultural uses. With the conditions imposed, the approved uses sited in the Expansion Area will be compatible with the adjacent agricultural uses.

In response to LUBA's conclusion, the Port has narrowed the scope of its proposed rural industrial uses to the five discussed above, so as to allow for an adequate compatibility analysis for the proposed uses consistent with the requirements of OAR 660-004-0020(2)(d) and LUBA's holding.

Transportation Analysis

Notwithstanding LUBA's prior holding, opponents have claimed that potential rail use impacts to other transportation facilities must be assessed. However, no function classification, performance standards or other benchmarks in the County's Comprehensive Plan, TSP or anywhere else are applicable to this application addressing rail impacts. The contention has been previously considered and rejected by LUBA:

> "A railroad is a 'transportation facility' as defined at OAR 660-012-0005(3) and pursuant to OAR 660-012-0020 a local government transportation system plan (TSP) must include a planning element for railroads. However, nothing in OAR 660-012-0020 or elsewhere cited to our attention requires local governments to adopt either functional classifications or performance standards for railroads. OAR 660-012-0060(1)(a)-(c) defines 'significantly affect' in six different ways. Each of the six ways to 'significantly affect' a transportation facility under OAR 660-012-0060(a)-(c) relates to either a change or inconsistency with a functional classification, or a degradation of a performance standard.
>
> In the present case, [opponents do] not identify any functional classification or performance standard in the county's TSP or elsewhere that applies to railroads within the county. Therefore, [opponents'] arguments under OAR 660-012-0060 do not provide a basis for reversal or remand. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006) (arguments that an amendment 'significantly affects' the Columbia River as a 'transportation facility' fail under OAR 660-012-0060(1) where the petitioner identifies no functional classification

> or performance standard in the TSP that is applicable to the river); *Gunderson LLC v. City of Portland*, 62 Or LUBA 403, 414, *aff'd in part*, *rev'd in part on other grounds*, 243 Or App 612, 259 P3d 1007 (2011), *aff'd* 352 Or 648, 290 P3d 803 (2012) (city's Freight Master Plan does not provide performance measures for the Willamette River for purposes of OAR 660-012-0060(1))." 70 Or LUBA at 208-209.

Opponents reference the 2009 Lower Columbia River Rail Corridor/ Rail Safety Study to support their argument. That study, however, does not impose such functional classifications or performance standards that would apply to this application. Because no such applicable functional classifications or performance standards have been identified, that argument is unsupported. Nevertheless, potential rail impacts are addressed through Condition 4(h) of the approval, which provides:

> "Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property, impact on the County's transportation system, and proposed mitigation."

Development proposals are thereby required to include a rail plan that will address impacts and propose measures to mitigate any identified impact, that concerns raised involving rail impacts will be specifically identified and addressed, and that the County will be able to confirm that these requirements are satisfied.

Regarding the possible construction of a rail spur in the expansion area, and concerns that the area cannot accommodate such improvements, the exception granted does not propose the construction of a specific rail spur. Any future developer wishing to construct such a rail spur would undertake the necessary studies and permitting as part of development. Similar to road improvements needed to accommodate users' needs, rail transportation needs (including any potential improvements within the expansion area) will be properly identified and addressed at the time of development.

E. Conclusion

Based on the evidence contained in the record and in particular the analysis provided in the technical report produced by Mackenzie, the Port of St. Helens has demonstrated compliance with all applicable laws and regulations for taking an exception to Goal 3 and rezoning the Port Westward Expansion area from PA-80 to RIPD. The uses proposed are rural in nature, are significantly dependent on close proximity to a deepwater port, and are (or can be rendered compatible) with adjacent uses. As evidenced by the analysis contained in the record, including that provided by the Mackenzie Report, there are no viable alternative sites available for the Port's

proposed uses, and therefore an exception to Goal 3 is justified for the expansion of Port Westward, with the following requirements imposed as conditions of approval:

1) Prior to an application for a building or development for a new use, the applicant/developer shall submit a Site Design Review and an RIPD Use Under Prescribed Conditions as required by the Columbia County Zoning Ordinance.

2) To ensure adequate transportation operation, proposed developments and expansions requiring site design review or Use Under Prescribed Conditions shall not produce more than 332 PM peak-hour trips for the entire subject property without conducting a new Traffic Impact Analysis ("TIA") with recommendations for operational or safety mitigation consistent with the Oregon Transportation Planning Rule 660-012-0060.

3) A traffic study be prepared for each proposed future development within the subject property to determine the number of trips generated, likely travel routes, impacts on both passenger car and heavy truck traffic and to ensure that County roadways are improved as needed to adequately serve future development. These TIA reports would also be used to ensure that the number of trips generated and accumulative trips do not exceed the trip cap.

4) To ensure compatibility with adjoining agricultural uses, the applicant/developer of new industrial uses shall comply with the following:

    a. The habitat of threatened and endangered species shall be evaluated and protected as required by law.

    b. Alterations of important natural features, including placement of structures, shall maintain the overall values of the feature.

    c. All development adjacent to land zoned PA-80 shall include buffers that are established and maintained between the industrial uses and adjacent land uses on PA-80 zoned land, including natural vegetation and where appropriate, fences, landscaped areas and other similar types of buffers.

    d. When possible the area of the site that is not developed for industrial uses or support shall be left in a natural condition or in resource (farm) production.

    e. Controls, including suppression and requiring hard surfaces, shall be employed as needed to be determined by the County to mitigate dust caused by industrial uses that may emanate from the site and traffic to the site.

f. Site run-off shall be controlled and any harmful sediment shall be contained or otherwise treated before being released to ensure potential impacts to irrigation equipment and area water quality (both ground and surface) are controlled.

g. The industrial use impact on the water table and sloughs shall be monitored for water quality and surface water elevations to ensure that the area water can be maintained and managed for existing uses.

h. Railroad crossings shall be managed consistently with federal law regulating crossing to reduce crossing delays. Any proposed use that includes transportation to or from the subject property by rail shall submit a rail plan identifying the number and frequency of trains to the subject property and impacts to rail movements, safety, noise or other identified impacts along the rail corridor supporting the County's transportation system. The plan shall propose mitigation to identified impacts.

i. Development applications shall include an agricultural impact assessment report that shall analyze adjacent agricultural uses and practices and demonstrate that impacts from the proposed use are mitigated. The report shall include a description of the type and nature of the agricultural uses and farming practices, if any, which presently occur on adjacent lands zoned for farm use, type of agricultural equipment customarily used on the property, and wind pattern information. The report shall include a mitigation plan for any negative impacts identified.

5) The types of industrial uses for the subject Plan Amendment shall be limited to only those uses that are substantially dependent on a deepwater port and have demonstrated access rights to the dock, and those uses with employment densities, public facilities and activities justified in the exception, specifically:

a. Forestry and wood processing, production, storage, and transportation;
b. Dry bulk commodities transfer, storage, production, and processing;
c. Liquid bulk commodities processing, storage, and transportation;
d. Natural gas and derivative products, processing, storage, and transportation; and
e. Breakbulk storage, transportation, and processing.

6) The storage, loading and unloading of coal is specifically not justified in this exception. Such uses shall not be allowed on the subject property without a separate approved exception to Goal 3.

7) The Port (applicant) shall institute a plan and ongoing program for sampling ground and surface water quality to establish baseline measurements for a range of contaminates at the re-zone site and down-gradient. The program should be designed and managed for assurance that future industrial wastewater discharges are treated to prevent pollution to the watershed environment. The program shall be designed to detect leaking tanks.

8) The Port (applicant) shall prepare a response plan and clean-up plan for a hazardous material spill event. The plan shall include appropriate government agencies and private companies engaged in such clean-up activities.

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.

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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.

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8.7 Goal 4 - Forest Lands/ Goal 4 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

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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

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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

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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 country 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 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.

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 net-works (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 fives 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 it 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."

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November 14, 2019

365 Or. 721
(This disposition is referenced in the Pacific Reporter.)
Supreme Court of Oregon.

COLUMBIA RIVERKEEPER

v.

COLUMBIA COUNTY

(A169901)(S066897)

(297 Or. App. 628)

Opinion
Review Denied

Nakamoto, J., would allow.

All Citations

365 Or. 721, 453 P.3d 551 (Table)

End of Document

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File No. Attachment 5a

COLUMBIA COUNTY
Land Development Services

ST. HELENS, OR 97051
230 Strand St.
Direct (503) 397 1501
www.co.columbia.or.us

LUBA REMAND—REQUEST FOR REVIEW

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: x 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.

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).

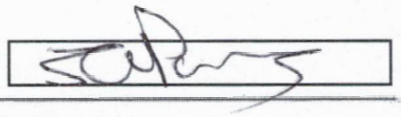
Attachment 5a

***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.

Print Name	Signature	Date
Spencer Q. Parsons		6/18/2020

++

Planning Department Use Only

Date Rec'd. _____ Accela Record No.: _____

Fee: _____ Receipt No. _____

Staff: _____ File No. _____

TICOR TITLE™
Company of Oregon

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 Ticor 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

Ticor Title Company of Oregon
Order No. 473817000137

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:

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
Recoded: 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

Ticor Title Company of Oregon
Order No. 473817000137

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

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

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 64º01’20” 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 43º47’31” West for a distance of 2703.11 feet to a 5/8 inch rebar monument; thence North 46º12’29” East for a distance of 794.99 feet to a 5/8 inch rebar monument; thence South 40º28’00” East for a distance of 404.17 feet to a 5/8 inch rebar monument; thence South 35º48’19” East for a distance of 1226.73 feet to a 5/8 inch rebar monument; thence South 44º57’31” East for a distance of 621.68 feet to a 5/8 inch rebar monument; thence South 50º17’46” East for a distance of 696.83 feet to a 5/8 inch rebar monument; thence South 64º30’35” 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 31º25'41" 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 60º01'20" 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 64º30'35" East, 518.93 feet to the point of beginning; thence continuing along said Southeasterly line North 64º30'35" 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 57º38'37", East, 514.97 feet; thence South 46º12'14" West, 323.25 feet; thence North 43º47'46" 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 64º01'20" 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 43º47'31" West for a distance of 2703.11 feet to a 5/8 inch rebar monument; thence North 46º12'29" East for a distance of 794.99 feet to a 5/8 inch rebar monument; thence South 40º28'00" East for a distance of 404.17 feet to a 5/8 inch rebar monument; thence South 35º48'19" East for a distance of 1226.73 feet to a 5/8 inch rebar monument; thence South 44º57'31" East for a distance of 621.68 feet to a 5/8 inch rebar monument; thence South 50º17'46" East for a distance of 696.83 feet to a 5/8 inch rebar monument; thence South 64º30'35" 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 31º25'41" 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 60º01'20" 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 64º30'35" East, 518.93 feet to the point of beginning; thence continuing along said Southeasterly line North 64º30'35" 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 57º38'37", East, 514.97 feet; thence South 46º12'14" West, 323.25 feet; thence North 43º47'46" West, 566.17 feet to the point of beginning.

Ticor Title Company of Oregon
Order No. 473817000137

LIMITATIONS OF LIABILITY

"CUSTOMER" REFERS TO THE RECIPIENT OF THIS REPORT.

CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF LOSS WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN, OR THE COMPANY'S NEGLIGENCE IN PRODUCING, THE REQUESTED REPORT, HEREIN "THE REPORT." CUSTOMER RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITY WHICH COULD ARISE FROM SUCH ERRORS OR OMISSIONS OR NEGLIGENCE. THEREFORE, CUSTOMER UNDERSTANDS THAT THE COMPANY IS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REPORT UNLESS THE COMPANY'S LIABILITY IS STRICTLY LIMITED. CUSTOMER AGREES WITH THE PROPRIETY OF SUCH LIMITATION AND AGREES TO BE BOUND BY ITS TERMS.

THE LIMITATIONS ARE AS FOLLOWS AND THE LIMITATIONS WILL SURVIVE THE CONTRACT:

ONLY MATTERS IDENTIFIED IN THIS REPORT AS THE SUBJECT OF THE REPORT ARE WITHIN ITS SCOPE. ALL OTHER MATTERS ARE OUTSIDE THE SCOPE OF THE REPORT.

CUSTOMER AGREES, AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE REPORT AND TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS AND ALL OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS FOR ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, LOSSES, COSTS, DAMAGES AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY'S FEES, HOWEVER ALLEGED OR ARISING, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF WARRANTY, EQUITY, THE COMMON LAW, STATUTE OR ANY OTHER THEORY OF RECOVERY, OR FROM ANY PERSON'S USE, MISUSE, OR INABILITY TO USE THE REPORT OR ANY OF THE MATERIALS CONTAINED THEREIN OR PRODUCED**, SO THAT THE TOTAL AGGREGATE LIABILITY OF THE COMPANY AND ITS AGENTS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS SHALL NOT IN ANY EVENT EXCEED THE COMPANY'S TOTAL FEE FOR THE REPORT.**

CUSTOMER AGREES THAT THE FOREGOING LIMITATION ON LIABILITY IS A TERM MATERIAL TO THE PRICE THE CUSTOMER IS PAYING, WHICH PRICE IS LOWER THAN WOULD OTHERWISE BE OFFERED TO THE CUSTOMER WITHOUT SAID TERM. CUSTOMER RECOGNIZES THAT THE COMPANY WOULD NOT ISSUE THE REPORT BUT FOR THIS CUSTOMER AGREEMENT, AS PART OF THE CONSIDERATION GIVEN FOR THE REPORT, TO THE FOREGOING LIMITATION OF LIABILITY AND THAT ANY SUCH LIABILITY IS CONDITIONED AND PREDICATED UPON THE FULL AND TIMELY PAYMENT OF THE COMPANY'S INVOICE FOR THE REPORT.

THE REPORT IS LIMITED IN SCOPE AND IS NOT AN ABSTRACT OF TITLE, TITLE OPINION, PRELIMINARY TITLE REPORT, TITLE REPORT, COMMITMENT TO ISSUE TITLE INSURANCE, OR A TITLE POLICY, AND SHOULD NOT BE RELIED UPON AS SUCH. THE REPORT DOES NOT PROVIDE OR OFFER ANY TITLE INSURANCE, LIABILITY COVERAGE OR ERRORS AND OMISSIONS COVERAGE. THE REPORT IS NOT TO BE RELIED UPON AS A REPRESENTATION OF THE STATUS OF TITLE TO THE PROPERTY. THE COMPANY MAKES NO REPRESENTATIONS AS TO THE REPORT'S ACCURACY, DISCLAIMS ANY WARRANTY AS TO THE REPORT, ASSUMES NO DUTIES TO CUSTOMER, DOES NOT INTEND FOR CUSTOMER TO RELY ON THE REPORT, AND ASSUMES NO LIABILITY FOR ANY LOSS OCCURRING BY REASON OF RELIANCE ON THE REPORT OR OTHERWISE.

IF CUSTOMER (A) HAS OR WILL HAVE AN INSURABLE INTEREST IN THE SUBJECT REAL PROPERTY, (B) DOES NOT WISH TO LIMIT LIABILITY AS STATED HEREIN AND (C) DESIRES THAT ADDITIONAL LIABILITY BE ASSUMED BY THE COMPANY, THEN CUSTOMER MAY REQUEST AND PURCHASE A POLICY OF TITLE INSURANCE, A BINDER, OR A COMMITMENT TO ISSUE A POLICY OF TITLE INSURANCE. NO ASSURANCE IS GIVEN AS TO THE INSURABILITY OF THE TITLE OR STATUS OF TITLE. CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES IT HAS AN INDEPENDENT DUTY TO ENSURE AND/OR RESEARCH THE ACCURACY OF ANY INFORMATION OBTAINED FROM THE COMPANY OR ANY PRODUCT OR SERVICE PURCHASED.

NO THIRD PARTY IS PERMITTED TO USE OR RELY UPON THE INFORMATION SET FORTH IN THE REPORT, AND NO LIABILITY TO ANY THIRD PARTY IS UNDERTAKEN BY THE COMPANY.

CUSTOMER AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS, AND ALL OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES AND SUBCONTRACTORS BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, INCOME, SAVINGS, DATA, BUSINESS, OPPORTUNITY, OR GOODWILL, PAIN AND SUFFERING, EMOTIONAL DISTRESS, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, BUSINESS INTERRUPTION OR DELAY, COST OF CAPITAL, OR COST OF REPLACEMENT PRODUCTS OR SERVICES, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE, OR OTHERWISE AND WHETHER CAUSED BY NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE OR ANY OTHER CAUSE WHATSOEVER, AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY FOR SUCH DAMAGES.

END OF THE LIMITATIONS OF LIABILITY

Beery Elsner & Hammond LLP
ATTORNEYS AT LAW

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).

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Portland, OR 97201-5106
www.gov-law.com

- 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

Beery Elsner & Hammond LLP

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]

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[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.

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DESIGN DRIVEN | CLIENT FOCUSED

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

MACKENZIE
Since 1960

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LIST OF ABBREVIATIONS

ACDP	Air Contaminant Discharge Permit
AST	Aboveground Storage Tank
BLM	Bureau of Land Management
BTU	British Thermal Unit
CAA	Clean Air Act
CAO	Cleaner Air Oregon
CFR	Code of Federal Regulations
Corps	United States Army Corps of Engineers
CWA	Clean Water Act
DEQ	Department of Environmental Quality
EFH	Essential Fish Habitat
EFSC	Energy Facility Siting Council
EPA	United States Environmental Protection Agency
FEMA	Federal Emergency Management Agency
FERC	Federal Energy Regulatory Commission
FIRM	Flood Insurance Rate Map
FR	Federal Register
LNG	Liquified Natural Gas
LPG	Liquified Petroleum Gas
LUBA	Land Use Board of Appeals
LUCS	Land Use Compatibility Statement
MARAD	U.S. Maritime Administration
MMBTU	million British Thermal Units
MSA	Magnuson Stevens Act
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
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
DOE	Oregon Department of Energy
ODOT	Oregon Department of Transportation
OEM	Oregon Office of Emergency Management
ORS	Oregon Revised Statutes
OSFM	Office of the State Fire Marshal
OWRD	Oregon Water Resources Department
PA-80	Primary Agriculture-80 Acres zone
PGE	Portland General Electric
PHMSA	Pipeline and Hazardous Materials Safety Administration
POTW	Publicly Owned Treatment Works
PPA	Pollution Prevention Act
PWW	Port Westward Industrial Park
RCRA	Resource Conservation and Recovery Act
RIPD	Resource Industrial-Planned Development zone
SHPO	State Historic Preservation Office
SLOPES	Standard Local Operating Procedures for Endangered Species
TPR	Transportation Planning Rule
TSCA	Toxic Substances Control Act
UIC	Underground Injection Control
USACE	United States Army Corps of Engineers
USC	United States Code
USDOT	United States Department of Transportation
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
UST	Underground Storage Tank
WPCF	Water Pollution Control Facility

I. INTRODUCTION AND PURPOSE

In 2013, the Port of Columbia County[1] (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]

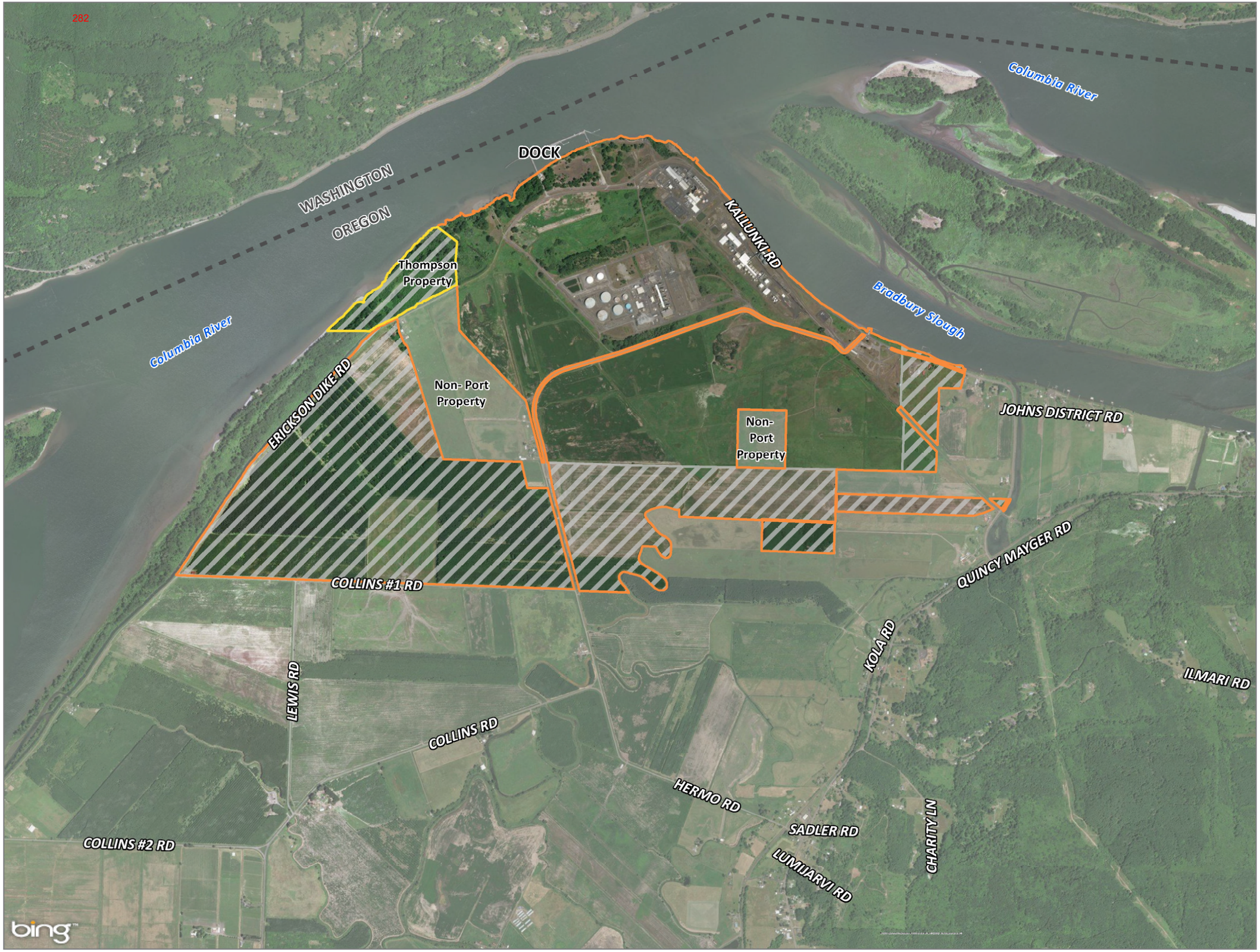
In response to the remand, the Port modified its land use application to align with the direction provided by LUBA in its decision, identifying five specific rural industrial uses to be allowed under the exception, and further limiting them by only allowing uses that would be dependent on the existing 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

0 900 1,800 3,600 Feet

N

1 inch = 1,800 feet

SOURCE DATA:
Columbia County GIS Data, Oct 2016

GEOGRAPHIC PROJECTION:
NAD 83 HARN, Oregon North Lambert Conformal Conic

Date: 7/17/2020
File: Port Westward_Aerial_2020

Map Created By: BJV
Project No: 2160462.01

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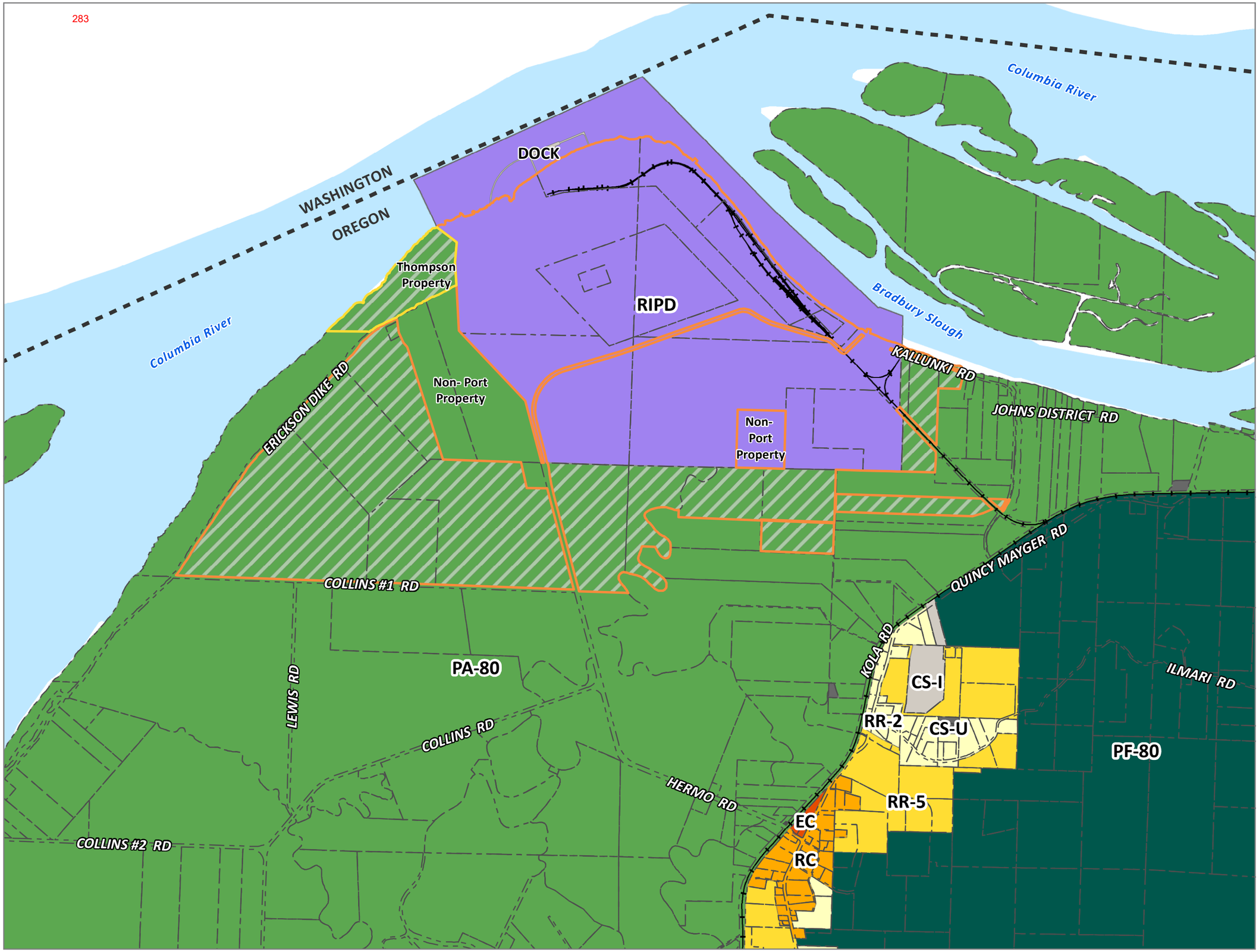
FIGURE 2
PORT WESTWARD ZONING MAP
Columbia County, Oregon



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-I 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

0 900 1,800 3,600 Feet

N

1 inch = 1,800 feet

SOURCE DATA:
Columbia County GIS Data, Oct 2016

GEOGRAPHIC PROJECTION:
NAD 83 HARN, Oregon North Lambert Conformal Conic

Date: 7/17/2020
File: Port Westward_Zoning_2020

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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]

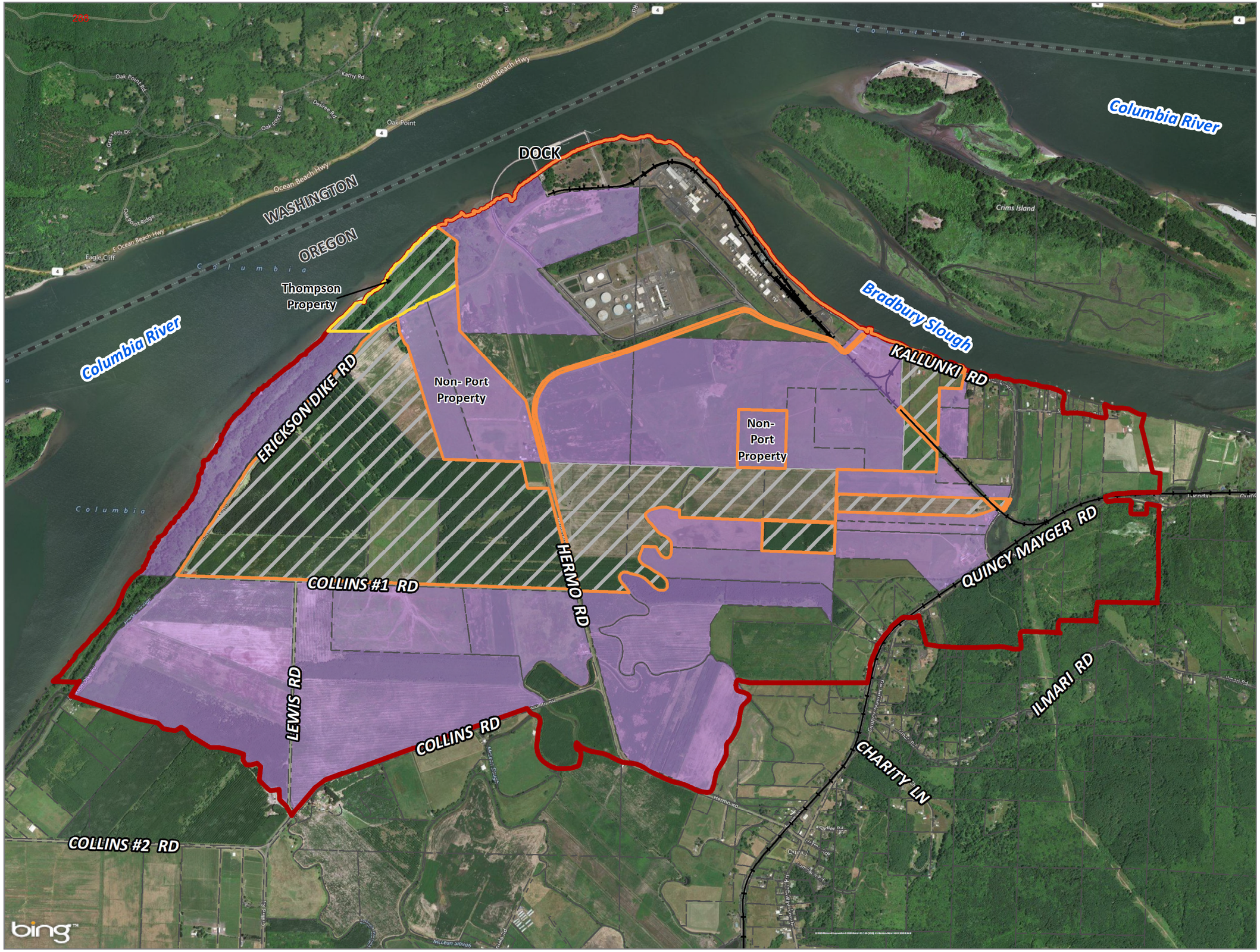
The Port would be justified in identifying a compatibility study area that includes only those parcels which immediately abut the zone change area. However, the Port's analysis goes beyond this narrow approach, looking to other administrative rules for guidance. Although not directly germane to Goal 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.

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

0 900 1,800 3,600 Feet

1 inch = 1,800 feet

N

SOURCE DATA:
Columbia County GIS Data, Feb 2020

GEOGRAPHIC PROJECTION:
NAD 83 HARN, Oregon North Lambert Conformal Conic

Date: 7/17/2020
File: Port Westward_AdjacentParcels_V2_07152020

Map Created By: GF
Project No: 2160462.01

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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 Uses[15]

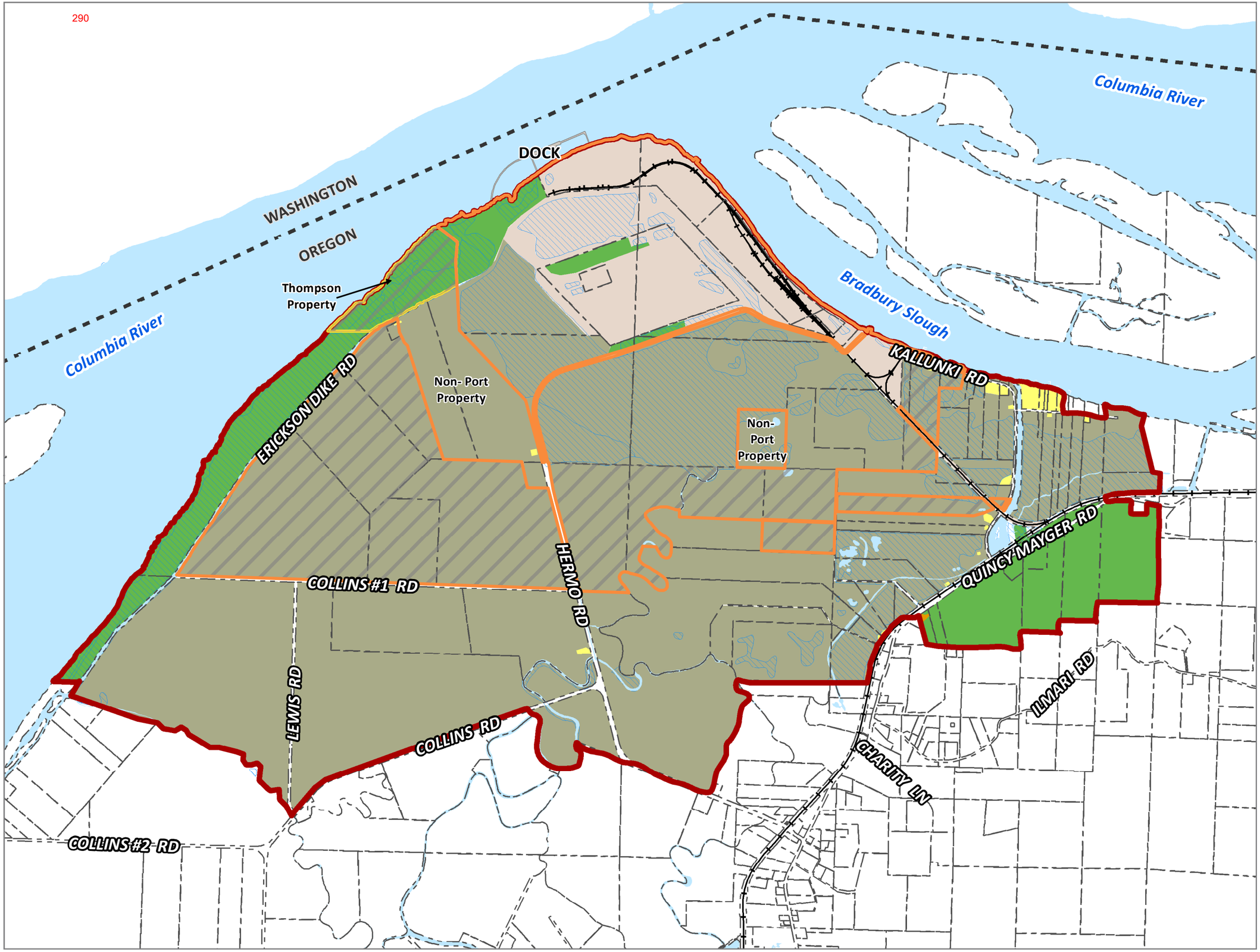
Land adjacent to the zone change area is in a variety of uses, as depicted in Figure 4.

- 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 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

0 900 1,800 3,600 Feet

1 inch = 1,800 feet

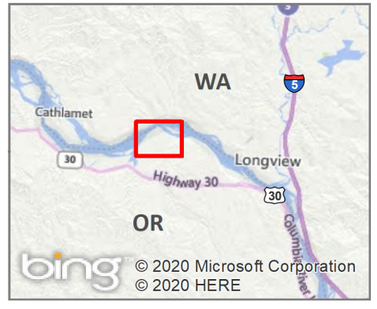
N

SOURCE DATA:
Columbia County GIS Data, Feb 2020

GEOGRAPHIC PROJECTION:
NAD 83 HARN, Oregon North Lambert Conformal Conic

Date: 7/20/2020
File: Port Westward_NearbyUses

Map Created By: GF
Project No: 2160462.01



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- 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	▪ *See below*	▪ 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	▪ Sawmills ▪ Pulp and paper mills ▪ Wood pellets ▪ Wood chips ▪ Utility poles ▪ Sawdust ▪ Flat-pack furniture ▪ Flooring ▪ Logs ▪ Lumber	▪ Impacts common to all five proposed uses, as noted above ▪ Combustibility
Dry Bulk	▪ Grain ▪ Metals ▪ Lumber ▪ Potash ▪ Aggregates ▪ Sawdust	▪ Impacts common to all five proposed uses, as noted above ▪ Dust combustibility
Liquid Bulk	▪ Petroleum ▪ Ethanol ▪ Methanol ▪ Ammonia ▪ Milk ▪ Liquid fertilizers ▪ Liquid chemicals	▪ Impacts common to all five proposed uses, as noted above
Natural Gas	▪ Natural gas ▪ Fertilizer ▪ Methanol	▪ Impacts common to all five proposed uses, as noted above
Breakbulk	▪ Bagged, boxed, or crated materials ▪ Drums or barrels ▪ Single units (wind turbine blades, turbines, heat exchangers, etc.) ▪ Automobiles ▪ Containerized agriculture products ▪ Steel slabs	▪ 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	▪ 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	▪ 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	▪ 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	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	

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 substances[27] 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)

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)

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.

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[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 hresponders 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 applications[51] 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 Code[62]

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
	Example: Wood pellets/chips	*Example: Sawdust*	*Example: Petroleum*	*Example: Natural Gas*	*Example: Drums or barrels*
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 *Example: Wood pellets/chips*	Dry Bulk *Example: Sawdust*	Liquid Bulk *Example: Petroleum*	Natural Gas *Example: Natural Gas*	Breakbulk *Example: Drums or barrels*
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 *Example: Wood pellets/chips*	Dry Bulk *Example: Sawdust*	Liquid Bulk *Example: Petroleum*	Natural Gas *Example: Natural Gas*	Breakbulk *Example: Drums or barrels*
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 contaminates at the re-zone site and down-gradient. The program should be designed and managed for assurance that future industrial wastewater discharges are treated to prevent pollution to the watershed environment. The program shall be designed to detect leaking tanks.

8) The Port (applicant) shall prepare a response plan and clean-up plan for a hazardous material spill event. The plan shall include appropriate government agencies and private companies engaged in such clean-up activities.

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 requirement 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 b elgibile 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.

PW - Rezone/ Support 347

Karen, Matt, Tiffany, CC

COLUMBIA COUNTY BOARD OF COMMISSIONERS
NOV 17 REC'D
TOC #1

COLUMBIA COUNTY ECONOMIC TEAM

November 17, 2020

Columbia County Board of Commissioners
Columbia County Courthouse Annex Room 338
230 Strand Street
St. Helens, OR 97051
Jacyn.normine@columbiacountyor.gov

Submitted electronically and by Post

RE: Port of Columbia County Comprehensive Plan Map Amendment, Zone Change and Exception to Statewide Planning Goal 3; County File No. PA 13-02

Dear Chair Tardif, and Commissioners Magruder, and Heimuller:

The Columbia County Economic Team (CCET) urges your approval of the final Land Use Compatibility issue in Remand Proceeding for the Port of Columbia County's application for re-zoning 837 acres at Port Westward from the current "Primary Agricultural" to "Resource Industrial Planned Development (RIPD)." At its November 10 meeting, the CCET Board of Directors voted unanimously in support, representing CCET's entire membership.

We know you are well aware of the lengthy and thorough process for this application, which is now down to one issue: Land Use Compatibility. We are confident that your deliberations will be considering that singular issue, regardless of any other distracting arguments that may be offered by outside parties that have repeatedly challenged, unsuccessfully, the merit, purpose, need and appropriateness of this application for years.

The singular issue remanded is for compatibility with adjacent or surrounding agricultural uses. To that end, the Port has overwhelmingly demonstrated that it is compatible, and this has been addressed in multiple ways:

- The Port has worked together with interested parties and signed agricultural leases on the very land in question.
- The Port has implemented plans for large agricultural buffers around future industries.
- The original agricultural opponent, an adjacent farmer, not only has dropped his opposition (as have others) but is now one of the Port's agricultural lessees.
- The Port has worked out agreeable and approved limitations on the type of industries to be located on the property – which further addresses "no adverse impact".

Underscored by the fact that agriculture has existed compatibly alongside military and industrial usage at Port Westward for eighty years, this is all clear evidence of meeting both the letter and intent of our Comprehensive Land Use Planning and land use laws, as well as cooperative, community-driven action.

CCET also can offer uniquely relevant perspective. In just the past four months, we have been unable to make proposals or have been rendered non-competitive for three (3) Business Oregon business investment projects because our county had inadequate land configuration. We can provide the RFP's for you to verify.

These all were agricultural/food processing investments of several hundreds of millions of dollars, representing more than 200 direct jobs, and would have benefitted from adjacent marine terminals as well as adjacent agricultural lands with existing production. These lost investments were not only compatible, but completely *complementary*, land uses addressed by the Port's modified application.

The Port of Columbia County has demonstrated vision in this long-term land use planning, and the purpose, need and all other land use tests have been upheld repeatedly. Now, the port has also substantially demonstrated that not only will compatibility exist, it already has taken measures to make it so. The Port Westward re-zoning will help meet Oregon's critical shortage of Lower Columbia marine industrial sites and help make our county, region and state more productive in essential, appropriate use of our land in compatible uses that generate investment, revenue, and family-wage jobs.

Once again, based on the Port's compatibility modifications as its final component, we strongly urge your approval of the final Compatibility Remand element to complete the Port Westward Re-zoning application.

Thank you for your service, and your consideration of the compelling evidence in support.

Sincerely,

Robert Blumberg, President
Columbia County Economic Team

City of Rainier

Spirited City on the Mighty Columbia

Columbia County Board of Commissioners
Columbia County Courthouse Annex Room 338
230 Strand St
St. Helens, OR 97051

Friday, November 20, 2020

Chair Tardif and Commissioners Magruder and Heimuller,

As you know, the Rainier City Council has historically supported the expansion of economic activity at Port Westward. The purpose of this letter is to reiterate the city's support and request the county's approval of the final Land Use Compatibility issue in Remand Proceeding for the Port of Columbia County's application for re-zoning 837 acres from Primary Agricultural to Resource Industrial Planned Development.

The city is in favor of compatible land uses that draw private investment to create family wage jobs and generate additional revenue to help fund public services. There is a currently lack of Lower Columbia marine industrial sites, and this proposal would go a long way towards creating those kinds of necessary opportunities for residents throughout the county.

Many public entities stand to benefit from the added revenue that would result from this rezoning, including the Rainier Cemetery District, Columbia County Sheriff's Office, Clatskanie School District and others. In short, the City urges your support of this proposal.

Sincerely,

W. Scott Jorgensen, Executive MPA
City Administrator

106 West "B" Street P.O. Box 100 Rainier, Oregon 97048 (503) 556-7301 Fax (503) 556-3200
City of Rainier is an equal opportunity organization and provides all services and activities without regard to race, creed, color, sex, age, or disability.

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I OPPOSE Port Westward Re-Zoning

Brady Preheim <brady@preheim.com>

Fri 11/20/2020 9:47 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>; Paul Vogel <paulvogel@columbiacountyoregon.com>

Columbia County Board of Commissioners
c/o jacyn.normine@columbiacountyor.gov
230 Strand Street Room 338
St. Helens, OR 97051

Dear Commissioners:

I urge you to DENY the Compatibility Remand component of the Port Westward re-zoning application.

The issue of compatibility with surrounding farmland has NOT BEEN fully addressed by the Port of Columbia County.
The Port has overwhelmingly demonstrated in multiple ways their inability to objectively evaluate compatible industries:

1. The Port stupidly signed a long term lease with a con artist, Lou Soumas and Next Energy. Even the most ardent supporter of Next Energy has said that the project has at best a 50% chance. This was a reckless decision, and helped a con artist con more people.
2. The Port approved Balkan Crude oil to be shipped through their terminal, despite evidence of the damage this product does.
3. The Port ignored the significant risks of the transportation of this oil.
4. The Port allowed a increase in the API of the oil coming into Port property, making it much hard to clean up an oil spill when it happens.
5. The Port has failed in their fiduciary responsibility to determine if adequate insurance coverage is available from the railroad industry should a spill occur.
6. The Port has failed to provide a transpiration study to determine the negative impacts of increased rail traffic.
7. The Port has failed to identify and fund rail improvements such as an overpass to allow emergency responders to get across the railroad tracks when 1.5 mile long trains pass through out community.
8. The Port has failed to obtain fire suppression foam in case of a fire, despite admitting this critical component is needed.
9. The Port has failed in their responsibility to adequately implement agricultural buffers
10. The Port signed a lease with a methanol plant to export our natural resources to China, making the US a 3rd world county
11. The Port worked hard to get an ethanol plant built at Port Westward, with over $90 Million of public investment, and creating an Enterprise Zone to build a defunct well at taxpayer expense that STILL has to be paid back.
12. The Port can rezone a few acres at a time, AFTER they have released the name and type of industries to use the land and provided public hearings so that the public can determine if the proposed re-zone is in the best interest of the Port and the people it represents. There is no need to rezone the ENTIRE area, and trust a political process to ensure compatible use.

This list, while not comprehensive, is just a sample of the poor decisions that Port has made.
It is clear the Port can NOT be trusted to allow compatible industries and do what is best for this county.

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I ask again that the Port Westward re-zoning be DENIED.

We need your careful decision on this final component, to benefit our county and its citizens. On behalf of our families, neighbors and communities, please vote to DENY the Compatibility Remand to STOP the Port Westward re-zoning.

Sincerely,

Brady Preheim
195 Clark Street
St. Helens, OR 97051
503-543-4884
brady@preheim.com

Brady Preheim
brady@preheim.com
https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.preheim.com%2F&data=04%7C01%7Cjacyn.normine%40columbiacountyor.gov%7Cffe5d76b3f434945374f08d88de0e863%7Ccafdaa97351d48ec971d9f125b7c0dbc%7C0%7C0%7C637415344406292457%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=gjK0DHUsWKriREYZCUrjnD9XxEY4%2FUjAH98p844kc9Q%3D&reserved=0

Preheim Computers
PO Box 761
St. Helens, OR 97051
503-543-4884
fax:503-543-4885

We Have Your Solution

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Columbia County port westward re-zoning

heather clark <heather@alterationsbyheather.com>

Sat 11/21/2020 9:22 AM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

I am writing to you to let you know I support your approval of Port of Columbia County's Compatibility conditions for Port Westward Re-Zoning.

It is time for our community to move forward with this long awaited improvement to a beautiful space in our town. Please help move forward:)

~Heather Clark
Owner
Alterations by Heather
2149 Columbia Blvd
St. Helens, OR 97051
503-839-9112
Tuesday-Saturday 10:00-6:00
alterationsbyheather.com

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Port Westward re-zone.... letter for the county commissioners..

Tammy Maygra <megs@opusnet.com>

Sat 11/21/2020 11:37 AM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

November 21. 2020

Board of County Commissioners,

I urge you to rethink the re-zoning of Port Westward when it comes before you. At least take into consideration the amount of acreage which is being sought. Over the last half a century or so just how many companies have sited at Port Westward and succeeded. You can count these companies easily on one hand with fingers to spare. I would suggest if you intend to pass the request for re-zoning which you most certainly will do. At least restrict the number of acres.

We have little farm land left in Columbia County, and while many believe that you can't make a living off a small farm these days, Mike Seeley has proven that yes you can. We don't know what the future will hold because of climate change and food production, but we just might need that land to produce food for local areas. I believe we need to think outside the box and look ahead.

If there is a rush of companies intending to site at Port Westward then I would say re-zone it. But frankly there has never been that issue to address. So why not take it a bit slower and see how things come to fruition.

MONEY PIT:

Port Westward has been a continuous money pit property in Columbia County for decades. The taxpayers of Columbia County has paid dearly for the development and possible siting's of several different energy companies throughout the years at Port Westward. The county was on the hook for about $70 million, for twenty plus years the taxpayers of the county continued to pay off this debt for failed projects.

The taxpayers of Oregon has put in approximately $190 million in the development for an ethanol plant. While projections, economists, and a long track history of ethanol facilities failures for the past 50 years. failure was certain.

SPECULATION:

This energy speculation has been the same principle. A new technology government money, more tax breaks a boom for the economy. Sounds great right? Well anyone who had done their due diligence and read the simple repeating history of this product could see its future as an ill-fated and doomed investment. Yet---- Columbia County commissioners forged ahead with the manifestation of grandeur. Selling the investment as a golden savior for the county. The company ending up bankrupt, the county in debt, the State of Oregon losing $190 million of taxpayer's dollars.

ENERY HUB:

Port Westward has drawn many such companies to the area, promising jobs, jobs, jobs, I agree we need industry in our county for the high paying jobs, and for a solid tax base. I understand that the remoteness of the area is prime for an energy hub. I understand why the State of Oregon wants Port Westward to be that hub, keeping unsightly industry out of urban areas and also for safety issues in case of an unforeseen event. PGE, Global are energy companies. PGE has been sited at Port Westward for decades while Global is a new comer. These companies are all that has succeeded, not a very good track record, and clearly proves that there is NO NEED for a huge expansion of re-zone acreage.

PROBLEMATIC

The problem with Port Westward is clear. While being remote is positive for safety and cosmetics, it also hinders the prospect of prosperous companies to the area. It is a simple fact, it has a narrow two lane road for ingress and regress. And then again transport to a two lane Hwy 30. Slowing the transport of goods by semi trucks, adding the cost for the transport of products, making it just too costly. It is too far from connecting to a major highway such

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as I-5. The rail into Port Westward is not large enough to handle a major operation. That leaves barges to carry most of a manufactured product. And barges is not the answer for many facilities.

UNWISE ACTIONS BY THE PORT OF COLUMBIA, And Failures:

The Port unwisely signed a long term lease with Lou Soumas and Next Energy. Even the most devoted supporter of Next Energy has said that the project has at best a 50% chance. This was a reckless decision. Another pie in the sky, fly by night, questionable investor. An investor with questionable business practices, deliberate environmental rape of the land, the environment and community. Again, did the Port research the product being offered by Mr. Soumas? His product is in short supply all across Europe where it is closer to countries selling the used oils. Europe is building their own facilities. In fact, many countries which are selling the oil are making their own production facilities, tightening up the market. Making this project even more questionable. Not speculation but simply the facts.

While most civilized nations acknowledge climate change and the need to move away from fossil fuels as fast as we can, The Port remained to be the ostrich dinosaur in the room by burying their heads in the sand so to speak by approving Balkan Crude oil to be shipped through their terminal, despite scientific evidence of the damage this product does.

Then the Port disregarded the significant risks of the transportation of this oil. By allowing an increase in the API of the oil coming into Port property, making it much harder to clean up an oil spill when it happens. They failed to obtain fire suppression foam in case of a fire, despite admitting this critical component is needed, even with public outcry.

The Port has failed in their fiduciary responsibility to determine if adequate insurance coverage is available from the railroad industry should a spill occur. Again something the public, the taxpayers vehemently asked for time and time again, and being sold a bill of goods with a smile from the port commissioners. After all it's their money which funds Port Westward and the taxpayers common sense demands should be listened too and accounted for and implemented. Being an ostrich by birth is uncontrollable and a natural event and not a bad thing, but to imitate an ostrich by burying ones head in the sand because of the want of political gain, or thoughts of grandeur with the same repeated failures again and again is an insult to this magnificent beast.

Conclusion:

It is a straight forth, and simple decision on all your parts. You can either look at the data, history and the future by limiting the number of acres in the non-questionable re-zone, as there is no need for expansion, but you will go ahead and will ultimately happen on your watch. Satisfy all citizens in the county by giving everybody what they want. Or you can be that ostrich.

Tammy Maygra

34319 Canaan rd.

Deer Island, Oregon 97054

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Position on Port Westward Rezone

unclebob@gorge.net <unclebob@gorge.net>
Sun 11/22/2020 7:34 PM
To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Jacyn Normine
jacyn.normine@columbiacountyor.gov
Board of Columbia County Commissioners' Office
Room 338
230 Strand Street
St Helens, Oregon 97051

Dear Jacyn and the Commission,

Of course the conversion of 800 acres of blueberry farms, mint farms, cattle operations, and salmon habitat into petro/carbon infrastructure while claiming this will not affect those legacy uses will be strongly opposed by land and business owners and Oregonians statewide. I strongly demand that the commission urge the Port, in the strongest terms, to deny the conversion of lower Columbia farmlands and habitat into petro/carbon infrastructure on such weak grounds for the following reasons:

Our economic enemies (customers for these carbon products) such as China need our environmental destruction to continue so that eventually we will be weakened by the loss of private land ownership, and the lack of food, clean air, and clean water.

The compatibility report arbitrarily limits the study area to just 2000 feet from the proposed rezone—the distance of six average city blocks. By limiting the study area, the port is refusing to acknowledge the risk to dozens of residential homes located just beyond the 2000-foot study area.

The report refuses to acknowledge that agriculture is not monolithic. The only agricultural commodity recognized in the report is the hybrid poplar tree farm. Berries, mint, livestock, and all other commodities are not considered, despite the fact that these activities are currently occurring within the proposed rezoned area and nearby. The report also fails to consider the sale of the tree farm and the future agricultural uses that will depend on their ability to utilize the prime soils in this area.

The report denies reality with its claim that adding 837 acres of industrial development would simply maintain the same level of risk and impact to homes and agriculture as the existing Port Westward site. In reality, nearly doubling an industrial site increases traffic, pollution, water use, and the risks of an accidental spill or explosion.

The report bizarrely states that our homes and farms carry a similar level of environmental and habitat impact as an industrial facility. True, farms sometimes use chemicals and homes often have septic systems, but these impacts are less than a day's rounding error of what exists in an 800-acre industrial park with an oil train terminal, a methanol refinery, or both.

The report dramatically understates the potential risks of industrial water pollution. The report does not adequately address how storm water, process water, and spills of oil and other pollutants will impact irrigation, the water table, and other water resources.

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The report claims that if a spill from the industrial facility occurred, the Beaver Drainage District pumps that currently keep the land at Port Westward above water could simply be turned off. While this might keep the pollution from entering the Columbia River, it could also flood nearby farms and homes with the spilled pollution material.

The report gives almost no attention to potential impacts to water quality or habitat issues outside the Beaver Drainage District dike. The report fails to show how industrializing this area will meet local land use standards for protecting salmon, migratory birds, or Columbia white-tailed deer, instead arguing that other agencies will resolve these issues later. The Port of Columbia County's report is a flawed attempt to convince homeowners and farmers that living and working next to a massive industrial hub will be OK. The port gets a failing grade on their report but unfortunately, we are not the decision-makers. Columbia County Commissioners need to hold the port accountable for their terrible report and deny the Port Westward rezone.

Thank you for your attention to my concerns,

John Wood
Hood River

357

Jobs Jobs Jobs

Doug Walker <shirleyjdoug@netscape.net>

Sun 11/22/2020 2:54 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>
Cc: advocacy@columbiacountyoregon.com <advocacy@columbiacountyoregon.com>

Columbia County Board of Commissioners
c/o jacyn.normine@columbiacountyor.gov
230 Strand Street Room 338
St. Helens, OR 97051

Dear Commissioners:
I urge you to approve the Compatibility Remand component of the Port Westward re-zoning application.
The issue of compatibility with surrounding farmland has been fully addressed by the Port of Columbia County. The singular issue for remand was compatibility with adjacent or surrounding agricultural uses. The Port has overwhelmingly demonstrated this in multiple ways:

- The Port has worked together with interested parties and signed agricultural leases on the very land in question.
- The Port has implemented plans for large agricultural buffers around future industries.
- The original agricultural opponent, an adjacent farmer, not only has dropped his opposition (as have others) but is now one of the Port's agricultural lessees.
- The Port has worked out agreeable and approved limitations on the type of industries to be located on the property.

This is all clear evidence of meeting both the letter and intent of our land use laws, as well as cooperative, community-driven action.

Further ensuring compatibility, future industrial uses of the land are limited to the processing, production, storage, and transportation of forestry and wood products, natural gas, dry bulk, liquid bulk, and break bulk commodities, all of which are compatible with agriculture. This even further strengthens the removal of adverse impacts, further enhancing compatibility.

The Port of Columbia County has demonstrated vision in this long-term land use planning, and the purpose, need, and all other land use tests have been upheld repeatedly. Now, the Port has demonstrated that not only will compatibility exist, measures have been taken to make it so. In doing so, when approved, the Port Westward rezone will help meet Oregon's critical shortage of Lower Columbia marine industrial sites and will help make our county, region and state more productive in essential, appropriate, compatible uses of our land that generate investment, revenue and family-wage jobs.

Once again, based on the Port's compatibility modifications as its final component, we strongly urge your approval of the Port Westward Compatibility Remand to complete the Port Westward Re-zoning application.

We need your careful and favorable decision on this final component, to benefit our county and its citizens. This rezoning can make a HUGE difference in the availability of family-wage jobs in the county. Not barista/hamburger-flipping jobd but jobs you can support a family on. Real productive jobs that help increase the tax base within the county. this seems to be a NO-BRAINER to me. I hope you can see that too.

On behalf of our families, neighbors and communities, please vote to approve the Compatibility Remand to complete the Port Westward re-zoning.
Sincerely,

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Doug Walker
60003 Ridgeway Loop
St Helens, OR 97051
503.201.5045

January 22, 2020

Columbia County Commissioners
Columbia County Courthouse
230 Strand Street
St. Helens, OR 97051

RE: Port Westward Rezoning

Dear Commissioners Heimuller, Magruder and Tardiff:

As longtime resident of Columbia County, I've witnessed a dramatic change in loss of family wage jobs and thriving industry. These large businesses pay taxes that support public services including law enforcement, roads and parks, 911 and schools.

I would encourage you to approve the Compatability Remand component currently before the county in regards to Port Westward Re-zoning application. Our County has abundant and productive agricultural lands available and it's time now to make sure we keep a good balance – lands for industrial use and those for farming! Making this land more developable will attract an and enable investment that creates jobs and contributes even more to our communities!

Please count me in as a supporter!

Sincerely,

Diane M. Dillard
124 N. 2nd Street
St. Helens, OR. 97051

cc: Advocacy@columbiacountyoregon.com
Jacyn.normine@columbiacountyor.gov
Port of St. Helens
CCET

Brian Little
P.O. Box 182
St. Helens, OR 97051

November 22, 2020

Columbia County Board of Commissioner
Columbia County Courthouse
230 Strand St
St. Helens, OR 97051

Re: Support for approval of Port of Columbia County's Compatibility conditions for Port Westward Re-Zoning

Dear Commissioners:

This letter is in support of the County Board of Commissioners approving the final issue of Compatibility for the Port of Columbia County (formerly the Port of St. Helens) request to rezone land adjacent to the Port Westward Industrial Park.

The rezoning of the land under question has been under consideration for rezoning for several years. It makes sense that this adjacent land be included in the Industrial zoned lands currently at Port Westward. Creating much-needed family wage jobs and addressing a critical shortage of marine industrial sites on the Columbia River, were goals of the Port of Columbia County when it purchased approximately 837 acres of land next to the Port Westward Industrial Site from a willing seller in 2010.

The Port has run out of additional lands to market to potential clients. The Port was able to bring Northwest Innovation Works in in 2014 for the last remaining industrial zoned property at Port Westward. This is a project valued at over $2 billion. When Next Energy came to the County looking for a site with an investment of over $1 billion, an agreement was worked out whereby NWIW released its option so that the Port could lease it to Next who was farther along in its development plans. NWIW then took out an option on the land under consideration for rezoning. These two project would increase the valuation of the County by over $3 billion, an increase of 60% of the County's current valuation.

Industries at Port Westward already pay over 20 percent of all the property taxes received by Columbia County. Those taxes support public services including our Sheriff's Office, County Roads & Parks, 9-1-1, 4-H/Extension, Vector Control, Soil & Water Conservation, plus the Clatskanie School District, RFPD, Park & Rec, Library, and Rainier Cemetery District. Making this land more developable will attract and enable investment that creates jobs and contributes even more to our communities and services.

I strongly encourage you to approve this final issue so that the Port of Columbia County can continue to bring economic development and family wage jobs to Columbia County in an environmentally and economical way.

Thank you.

Brian Little

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Rezone compatibility

April Helton <aprilheltonyoga@yahoo.com>

Tue 11/24/2020 12:01 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Nov 24, 2020

Dear current Columbia County Commissioners Tardiff, Margruder, and Heimueller and Commissioner to be Garrett.

I lost sleep last night thinking about writing this letter. My main thought was, “what’s the point? They’ve already decided where they stand, this “decision” is just a formality and your letter is going to fall on deaf ears."

Yet I write it anyway, hoping to have the ear of your better angels. I know many people are going to write to you and give you all the logical reasons not to go through with the rezone. Reasons like the Ports idea that if there is a liquid spill, (and no one can guarantee that there won't be) that turning off the dikes pumps to protect the river will somehow mean that the liquid will then not seep into the soil. It's got to go somewhere, if not the river then that leaves the soil.

I come from a farming family. I have watched my sister’s soybean farm struggle through Trumps trade war with China. Farms are businesses too. Farm family's struggle enough already. I don’t understand when we started caring more about big industry than farmers. The rezone area is valuable farm land with top tier soil and farms need to be around other farms in order to be successful. Placing more industrial sites with the possibility/probability of fossil fuels next to farms is not compatible, I don’t care how you try to reframe it just doesn't make sense from a compatibility stand point. From a farmers perspective it's crazy.

The Port says that other agencies hold the responsibility to see that pollution won’t happen. That was disproved yesterday when a federal court ruled that the Army Corp of Engineers did not do their due diligence issuing permits for the proposed Kalama refinery. The ball was dropped there and the ball could be dropped here too. This is our land; no other agency is going to care for it like the citizens who live here. We are the stewards. We can't leave it up to other agencies. The buck stops with us, with you.

The narrative that outside interests are fueling the push back is not true. We are all Oregonians. Some of us live in Columbia County, some live up river, some live down river, we all share the river. Global Partners is a fortune 500 company based in Massachusetts. If anyone is an outside interest it’s them. They don’t give a toot at the end of the day about us, or our land. They are a business and their interest is money. Once this endeavor stops being profitable they won’t stick around, but we will still be here left with the fallout. Will Mike Seeley still be here or is he to be collateral damage?

I think you already have your minds made up, but I hope you look into your hearts and pause and think. Consider the potential impacts for generations to come. Once that soil is tainted it's done. You can't get it back. You cannot guarantee there will not be spill, you just can’t. Therefore let’s be honest, putting industry next to farmland is

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not compatible, you can hope that all will go well and that there will be no problems....but just look at the year we have had. If 2020 has taught us anything, it's to not assume that everything will go off without a hitch, these things rarely do.

Thank you for your time

April Helton

31311 Beaver Homes Rd
Rainier OR 97048

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Request to Rezone at Port Westward

Barbara Harris <bbharris1936@gmail.com>

Wed 11/25/2020 9:42 AM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

The port has made a request that contains change to functions that might be useful to the long range common good for the area, but, it contains an invitation to facilities that expand the highly destructive consumption of fossil fuels. This expansion of fossil fuel infrastructure furnishes short term wages, but, on the downside promotes lethal global warming and establishes hazard from risk of explosion of petroleum product in transport and at the port. Please promote use of valuable land area to uses which involve creation of sustainable green jobs.

Please reject the port request.

Bill Harris
503 228 3448

COLUMBIA COUNTY
BOARD OF COMMISSIONERS
NOV 3 0 REC'D
2020
Karen, Matt, Dege

January 22, 2020

Columbia County Commissioners
Columbia County Courthouse
230 Strand Street
St. Helens, OR 97051

RE: Port Westward Rezoning

Dear Commissioners Heimuller, Magruder and Tardiff:

As longtime resident of Columbia County, I've witnessed a dramatic change in loss of family wage jobs and thriving industry. These large businesses pay taxes that support public services including law enforcement, roads and parks, 911 and schools.

I would encourage you to approve the Compatability Remand component currently before the county in regards to Port Westward Re-zoning application. Our County has abundant and productive agricultural lands available and it's time now to make sure we keep a good balance – lands for industrial use and those for farming! Making this land more developable will attract an and enable investment that creates jobs and contributes even more to our communities!

Please count me in as a supporter!

Sincerely,

Diane M. Dillard
124 N. 2nd Street
St. Helens, OR. 97051

cc: Advocacy@columbiacountyoregon.com
Jacyn.normine@columbiacountyor.gov
Port of St. Helens
CCET

COLUMBIA COUNTY
BOARD OF COMMISSIONERS
NOV 3 0 REC'D
2020
Karen, matt, cc · DEB

Board of County Commissioners' Office
Room 338
230 Strand Street
St. Helens, OR 97051

To Whom It May Concern:

I am writing today with respect to the proposal to rezone the Columbia River Valley region near Great Vow monastery from 'agricultural' to 'industrial' zoning.

Over my years on this earth (I am retired now), I have been to many retreats and I have lived at more than one monastery, and I can state with assurance that there are few that can offer a container of practice like Great Vow does. I chose to retreat to Great Vow during a very difficult period in my life specifically because of its setting: as you know, it is located on the upper reaches of the Columbia River Valley, overlooking a panorama of pastoral and agricultural lands, with plentiful forest cover, centering on the river below, with the far bank of the Columbia Valley rising in the distance. Medical and psychological research outlines the value of natural settings in contributing toward the enhancement and restoration of health, and such was the case for me. I was fortunate enough to enjoy many healing experiences that related directly to the environment.

One afternoon, I was listening to the voices of birds and became aware of a curious 'buzzing' audible in the drowsy, silent afternoon of early autumn – and realized there were at least a dozen hummingbirds feeding on the flowering bushes nearby! I doubt I would have heard them had Great Vow not been where it is, surrounded by the landscape that it is. I also doubt it would have been be possible if there were an industrial park in the valley below: how could such a tiny sound be heard? Assuming that the birds would be there at all – how could these and other birds' patterns of life not be utterly disrupted by vast paved-over acres denuded of plants and trees, saturated day and night by disorienting lights and the sounds of machine-based industry and movement? In any case, I did hear them that afternoon and after that, almost every day I saw literally dozens of them.

On many afternoons and evenings, I and others would watch the sun set over the hills on the far side of the river. The valley falls away to the River and rises on the opposite shore, creating layer upon layer of interplay between near and far woodland and pasture and the play of colors that accompanied sunsets was breathtaking. Within the lowering dusk came sounds from distant farms, barking dogs, lowing cattle, and nearby, the flitting of bats and owls warming up their night calls in the woods. Such a sense of peace, support, and renewal for me!

And on one very special occasion, I woke very early, it was the dim pre-dawn, and I walked out into the lawns to find does and fawns crossing from the valley toward the woods. Two stopped to look me over with curiosity, but no fear: a young doe came to within an arm's length of me. She sniffed at my outstretched hand. I could have petted her ears. I had never before been within touching distance of a wild deer, and never have again. That experience remains unique, and it retains its power for me still. After many years, it not dimmed.

It could be that such experiences may not sound like 'really big things' to people who live close to the natural world and have many opportunities and spaces to enjoy, but for someone with an overly-busy city-based life such as mine, the opportunity to experience truly dark nights with stars, to enjoy silence against a backdrop of natural sounds, to observe the shifting shadows and lights across vast open spaces with clean skies and smog-free landscapes, and most especially, to have contact with other species, are deeply important, enriching and healing events. These experiences were possible for me partly because of <u>what</u> Great Vow is (as a Buddhist center) but principally because it is <u>where</u> it is. It is that area of Columbia River Valley as it currently exists that enabled them. Wild lands and agricultural lands grow fewer and fewer every year, and these particular lands are precious in their current state. Please preserve them.

Caddie T'Kenye

Caddie T'Kenye, BFA MA (AdEd) (retired)
202 – 6465 Rue Sherbrooke Est
Montreal, Quebec, Canada H1N 3N6

COLUMBIA COUNTY
BOARD OF COMMISSIONERS
NOV 3 0 REC'D
2020
Karen, Matt, cc. Deb

FROM THE DESK OF
CHARLOTTE SCHUSTER

November 24, 2020

Board of County Commissioners' Office
Room 338
230 Strand St
St. Helens, Or. 97051

Rezoning land for industrial use.

The land adjacent to the Sanctuary of Great Vow Zen Monastery is under consideration yet again to change the zoning from agricultural to industrial.

Should this parcel of land be rezoned it will effect the temperate rainforest on which the Monastery rests.This rainforest is home to Eagles and other protected species.

What scientific studies has the Commissioners' office completed to evaluate the disruption of this delicate ecosystem? I would be interested in seeing the work used to satisfy local, state and federal regulations under the protective species act. Please forward to address below.

The sphere of influence of this Zen community extends world wide. Due to the pandemic they have been able to stay connected, offering comfort via the internet.People who worship at the Monastery usually drive for hours to practice Zen with the monks. It is my honor and privilege to know them. The peaceful beauty of the Sanctuary is a comfort for the entire Zen community of Oregon. It is a treasure, like the temperate rainforest on which rests.

Once we loose these precious places, they are not easily restored.

Sincerely yours,

Charlotte Schuster

Charlotte Schuster

2345 SE TANAGER CIRCLE, HILLSBORO OREGON 97123

Contact Commissioner Henry Heimuller - New Form Submission for Columbia County Oregon

no-reply@www.columbiacountyor.gov <no-reply@www.columbiacountyor.gov>
Sun 11/29/2020 3:51 PM
To: Henry Heimuller <Henry.Heimuller@columbiacountyor.gov>

A new submission has been received for Contact Commissioner Henry Heimuller at 11/29/2020 3:51 PM

First Name:	Haley
Last Name:	Voekel
Email Address:	muddle42@gmail.com
Company Name:	
Phone:	5037280654
Address:	
City:	
State/Province:	
Country:	
Zip Code:	
Questions:	please reject the rezone! You are endangering the lives of generations of fishermen who count on the Columbia river for their livelihood. Please consider your grandchildren and their future. Don't give up on them! They want clean air and water. Fresh fish to eat and a natural world to admire, not to hide from. No one wants to live next to heavy industry. Please take care of your community

368

Contact Commissioner Henry Heimuller - New Form Submission for Columbia County Oregon

no-reply@www.columbiacountyor.gov <no-reply@www.columbiacountyor.gov>
Sun 11/29/2020 11:46 AM
To: Henry Heimuller <Henry.Heimuller@columbiacountyor.gov>

A new submission has been received for Contact Commissioner Henry Heimuller at 11/29/2020 11:46 AM

First Name:	Brad
Last Name:	Vanek
Email Address:	bradvanek@msn.com
Company Name:	
Phone:	5035568439
Address:	32240 Highland Road
City:	Rainier
State/Province:	OR
Country:	US
Zip Code:	97048
Questions:	I want to know why we are allowing our rural areas to get multiple housing projects in our farm and forest lands? In particular close to me is this apparent multiple perk holes on Petersons old hay field....this has got to stop! This is not suburbs! I have already been subject to this infringement when my property was bureaucratically changed to rural residential. 12 acres of pasture and forest land with 1 home. This is about money PERIOD and is not "progress" it's declination of rural lifestyle. WE NEED TO TAKE BACK OUR COUNTY. Get rid of LCDC and start representing rural interests. We don't want to be another Washington County that taxes us out of existence....I've lived in Columbia County for 39 years and have watched it go into decline as soon as LCDC took over our land use.....There is plenty of land out there for this Urban sprawl...not farm and forest land .....keep Columbia county rural and don't give in to the "ruling Class"/metropolitan society, who don't give a damn about preserving our rural lifestyle. this county was an island of red in a sea of blue counties. It's not a "republican" county...It's a rural county. If you let this continue it will get engulfed with government that has no regards for the liberties that rural people cherish. Sincerely, Brad Vanek 32240 Highland road

000368

369

Port Westward Rezone Application

Annie Christensen <anniedc53@gmail.com>

Wed 12/2/2020 3:35 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Matt, Karen DEB CC

Columbia County
DEC 2 2020
Board of Commissioners

Dear Columbia County Commissioners,

LUBA rejected the Port's rezone application because it failed to adequately address the issue of compatibility with the surrounding areas. The Port's response is two-fold.

First, they claim "Agriculture pollutes, too!" This does not address the issue at all. Is this a "The other kids are doing it, too!" defense? Huge numbers of unit trains carrying dangerous commodities, fossil fuel terminals, and/or refineries don't begin to compare with pollutants associated with blueberries, organic mint, or livestock. More importantly, it doesn't answer the question of compatibility.

Second, the Port claims there are other agencies responsible. They provide a long list. Surely LUBA is aware of these state agencies. LUBA didn't ask for a list of agencies; they asked for an explanation of compatibility. Again, the Port did not address the issue.

The Port did not address the required deficiency of their previous two applications. Instead, they point the finger elsewhere. This irresponsibility should be enough, in itself, to deny the application. The Port did not address the one required issue. Instead of showing compatibility, the Port denies responsibility.

We can only each one conclusion. In three different applications the Port remains unable to provide any evidence that rezoning high value agricultural land at Port Westward is compatible with the surrounding farms, homes, and Columbia River. Those of us who live, farm, boat, fish, wander, and delight in living in the Pacific Northwest know that massive industrialization at Port Westward is incompatible with sustaining our quality of life.

The Port failed to show compatibility.

Please deny this application.

Sincerely,

Annie Christensen
35234 Hazel Street
St. Helens, OR 97051

000369

COLUMBIA COUNTY
BOARD OF COMMISSIONERS
NOV 25 REC'D
2020
Karen, Matt, DeB
cc

Comments on Port of Columbia's Rezone Request at Port Westward

James Hoffmann <hopvillefarms@gmail.com>

Wed 11/25/2020 1:08 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>
Cc: Sandy@columbiariverkeeper.org <Sandy@ColumbiaRiverkeeper.org>; Brett Columbia Riverkeeper <bv@columbiariverkeeper.org>; Richter Carrie <crichter@batemanseidel.com>; Zimmer-Stucky Jasmine <jasmine@friends.org>

2 attachments (450 KB)
annot-Hopville_LiDAR2.pdf; NrFinal.PtWestward-jjr-8-1-17.doc;

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you are expecting this email and/or know the content is safe.

Dear Commissioners,

I am writing to express my strong opposition to the proposed rezone of farmland located within the Beaver Drainage District as contemplated by the Port of Columbia. A rezone of EFU lands in this area would irreparably harm my farm, for reasons that have been articulated many times over in prior comments and testimony; and, despite years of political machinations and taxpayer dollars, the Port has never bothered to adequately address the significant issues caused by a rezone and further industrialization to farming and the area watershed. The constant threat of a rezone, and the uncertainty it has created, has slowed agricultural investment in the area, and is hurting the local economy, my farming operations, and area land values (as demonstrated by the dismal prices and lack of interest in the Greenwood Resources auction of its timber farm parcels.

The compatibility report issued by the Port in response to LUBA is frankly an insult to all who have endured this long rezone process, and it should be rejected in its entirety. Claiming the risk of pollution is minimal, premised and enabled by the enclosed diked area of the District, in which the Columbia River is protected because the ramifications of a spill or industrial accident would only get as far as the area farms, only serves as prime evidence of the incompatibility of the proposed industrial uses and existing farms. This is no surprise as the spill plan filed by Global Partners with the Army Corp of Engineers says the same thing. The [in]compatibility report ignores the impact of the rezone on existing high value agriculture, such as my farm's blueberry fields, by arbitrarily drawing lines of impact to within 2000 feet of the rezone. In fact, industrial uses will have impact on every square foot of the Beaver Drainage District, even if 3 miles away. The hydrology of the Beaver Drainage District is such that the diked area is completely interconnected; water contamination that occurs at the North area of the District flows South through drainage canals/sloughs/ditches to the pumps located at the Southwest corner of the District, and these water flows do not recognize the Port's arbitrary lines of impact and study. The District deals with significant water inundation nine months a year due to heavy precipitation, a high water table, and dike seepage. Industrialization, even of uses that are deemed "clean" by the Port (non chemical, non petrochemical, non coal, non methane) are problematic given these users/tenants, by necessity, will be required to build-up their facilities & roads to prevent water inundation, reducing water permeability, and these industrial islands increase the overall water level to everyone else in the rest of the District, flooding homes, flooding roads, flooding fields. Our objection to the rezone is not NIMBY, it is that the

industrial uses and farming are incompatible when their water drainage, their casual surface spills, their inevitable pollutants, wash from their facilities into our irrigation sources and existing established water resources. This specific region does not have viable groundwater wells, there is no alternative for farmers than accessing available surface water for irrigation.

The attached expert opinion from Mr. Rhodes, that details these facts, and which was previously submitted as testimony but ignored by the Port's report, is again attached. Please note the high water table that area farms already deal with. Note the directional flow of water and how sloughs and ditches flow from North to South. Please note how existing industrial facilities are hardened and elevated and imagine what that will do to remaining EFU lands if such a geography were to be extended, via a rezone. Please consider the arbitrary boundaries the Port used in justifying compatibility - which only serves to underscore how incompatible further industrialization is with farming within the Beaver Drainage District.

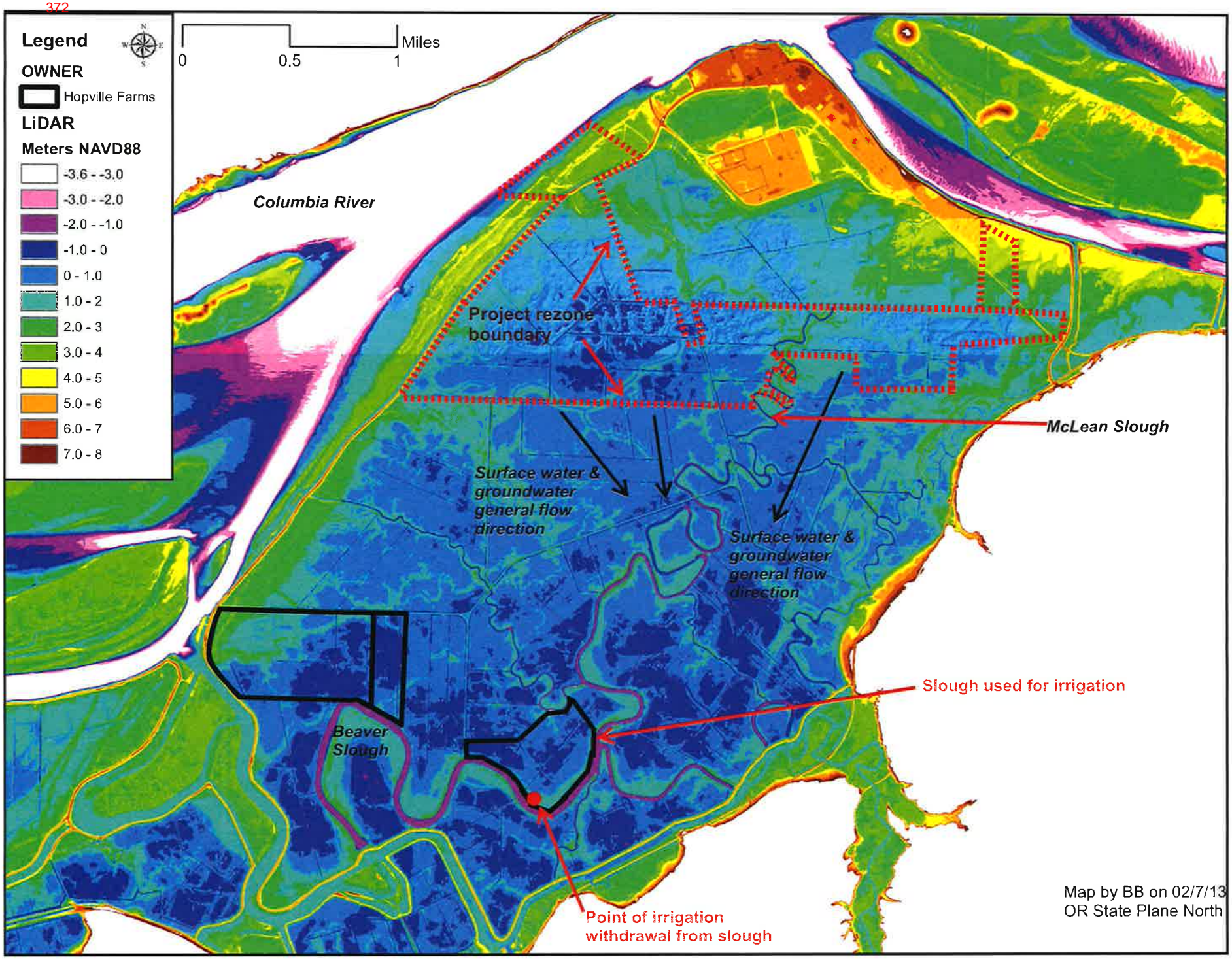
I also recommend Commissioners consider how inappropriate Port Westward is to further industrialization given the Army Corp of Engineers has identified the dikes as being in poor repair; the area is particularly ill suited to surviving even a modest seismic event, with the oil storage tanks unlikely to survive even a modest quake intact. This is the wrong location for an energy industrial complex as envisioned by the Port.

The proposed rezone represents an existential threat to the area's high value farms as well as to all area homes. It is extremely unfortunate the Port, a quasi state agency, continues to threaten area farmers using state resources and taxpayer money on policies that run counter to the environmental policies embraced by the state, that run counter to state protections of farm land, that run counter to existing farmers and businesses for the sole purpose of assisting an energy industry in decline, and for tenants that do not have the financial resources to deal with the environmental liabilities they are sure to create.

The proposed rezone should be rejected.

Sincerely,

James Hoffmann
Hopville Farms, LLC



Map 1. All annotations are illustrative and are not geographically exact.

My name is Jonathan J. Rhodes. My education includes Ph.D. study in forest hydrology from the University of Washington (1989), an M.S. in hydrology and hydrogeology from the University of Nevada-Reno, and a B.S. in hydrology and water resources from the University of Arizona.

I have more than 35 years of professional experience. I have been an independent consulting hydrologist since 2002, working for an array of clients, including county governments, on a variety of issues. Most of my work has focused on the impacts of various land and water management on water quality, streams, and fisheries. I have published numerous reports and peer-reviewed scientific journal papers on these topics.

The assessment that follows is based on my experience, education, and an onsite review of the area, conducted on July 28, 2017, along with conversations with local blueberry farmers.

Summary

I provide these comments to explain how industrial development within the five general categories proposed to occur within 837 acres at Point Westward (hereafter: "Project") is incompatible with nearby local agriculture and fish populations due to water quality impacts. Due to the sensitivity of the surrounding uses and their physical setting, it is unlikely that the Project could be made compatible with existing agricultural uses and fisheries.

If implemented, this Project would vastly increase stormwater runoff. Due to the area's hydrology and the amount of rainfall it receives, it would be impossible to entirely contain the stormwater onsite. Stormwater runoff from industrial areas contains high levels of sediment and a variety of chemical contaminants, which would pollute adjacent water bodies, including those used for irrigation of agriculture and by imperiled fish. Due to the Project's nature, the pollution from stormwater runoff will be ongoing, resulting in permanent, and, in some cases, progressive,

impairment of beneficial uses by agriculture and fish populations. The Project's pollution impacts on these beneficial uses would be unavoidable, due to the affected area's climate, hydrology, and physical setting.

Discussion

Existing conditions

The land generally slopes southwesterly from the existing Port Westward site towards sloughs and surrounding areas (Map 1). The flow of water follows the land surface slope, primarily in a southwesterly direction (Map 1). The McLean Slough drains southwesterly from the proposed Project to the Beaver Slough, which generally flows westerly in a meandering fashion (Map 1). Much of the area southwesterly from the existing Port Westward site is below sea level and lower in elevation than surrounding lands (Map 1). These lowlands are surrounded by dikes that separate surface water flow from the Columbia and Clatskanie Rivers to sloughs and farms in the lowlands. These dikes also serve to contain much of the surface waters within the agricultural lowlands. The farms in the diked lowlands produce mint, blueberries, and other agricultural products.

The Hopville farm, located in the agricultural lowlands, uses water from the Beaver Slough to irrigate blueberries during the summer. Clean water is critical to producing marketable blueberries, particularly for international markets, which require relatively stringent testing of food products. Currently, Hopville farm filters algae from withdrawn water for irrigation, as well as testing it for various potential components.

Due to the low elevation, high levels of precipitation, and adjacent rivers, the water table in these agricultural lowlands is shallow. Currently, the irrigation district pumps water out of sloughs used for irrigation to lower the water table seasonally for agriculture during parts of the

year, depending on water table conditions. It is likely that shallow groundwater flow follows the slope of the land in the area as well, with some draining into the sloughs that drain to the south and west that provide irrigation water. During winter, the water table often is at or above the land surface with standing water for considerable periods of the time. For these foregoing reasons, shallow groundwater and surface water in these lowlands is mixed and interconnected.

Due to the high water table, wetlands occur in parts of the lowlands, as confirmed in the rezoning proposal. It is worth noting that some of the areas occupied by dense poplar plantations located within the rezoning area would likely have wetlands, if the trees are harvested. This is because poplars consume large amounts of water and dense plantations can lower water table elevations locally. Once the plantations are harvested, it is extremely likely that the local water table elevation will rise in these harvested areas.

The nearby Columbia River provides passage and rearing habitat for numerous populations of steelhead and several species of salmon, including Chinook and coho, many of which are listed under the Endangered Species Act (ESA). Several of the nearby sloughs and streams also provide important habitats for coho and fall Chinook, which are listed under the ESA. The Clatskanie River also provides passage habitat for steelhead, which are listed under the ESA, and cutthroat trout, which are considered "potentially at risk" (ODFW, 2005).

Project Impacts

Although the rezoning proposal provides no detail on the physical alterations of the landscape that would have to occur to accommodate the operations under the five categories of uses, it is safe to assume that these operations would require:

- copious amounts of fill material over a large area to raise elevation of the operating surfaces by a minimum of several feet over existing land surface

elevation, so that the operation surface area is well above the high water table and standing water during the winter;

- creation of highly compacted and paved areas and other impervious surfaces, such as roofed structures, over a large area.

The fill will significantly increase the land surface slopes towards the farmlands to the south and west of the proposed Project area in a permanent manner, so that surface water and groundwater will continue to flow from the Project area to the agricultural lowlands, albeit in a more pronounced manner.

The Project's impervious surfaces and/or compacted soils will vastly increase stormwater runoff to adjacent waters and lands. The major increases in stormwater runoff from impervious surfaces and compacted soils have been documented by large body of scientific information (National Research Council, 2008). Increased stormwater runoff volumes generated by impervious surfaces for the proposed uses will be both large and frequent due to the high levels of frequent precipitation in the area, particularly during the wet winter season. Importantly, impervious surfaces permanently increase stormwater runoff.

Stormwater runoff from impervious surfaces in industrial areas is significantly polluted, typically carrying significantly elevated levels of nutrients, metals, hydrocarbons, including petroleum-related compounds, and sediment (National Research Council, 2008; NOAA Fisheries, 2016),. These have several adverse impacts on beneficial uses by agriculture and fisheries, as described in greater detail later in these comments.

The frequency and volume of stormwater discharge will make it extremely difficult or impossible to control appreciably onsite. Due to high precipitation, the sheer volume of stormwater discharge generated by compacted and impervious areas will be too large to tractably

retain onsite. High water tables preclude infiltrating stormwater, especially during the winter, when soils are usually saturated or occupied by standing water. Precipitation amounts are greater than evaporation and infiltration rates, so any retention ponds would capture more water from precipitation than would be lost by infiltration and evaporation, particularly during winter months, making complete onsite retention impossible. For these reasons, the proposed Project would deliver large amounts of stormwater runoff to adjacent lands and water bodies with considerable frequency.

These same factors make it impossible to prevent stormwater discharge from the Project area to adjacent land and waters. Stormwater runoff delivered to the south of the Project area during periods when the lowlands are inundated will be mixed with the standing surface water that is ultimately used for irrigation. The high water tables preclude any appreciable infiltration of stormwater offsite, especially during the winter, when soils are commonly saturated or covered by standing water. However, even during drier periods, the any infiltrating stormwater will pollute shallow groundwater, which in the area, is mixed with surface waters that are used for irrigation, as previously discussed.

Stormwater discharged to the north of the proposed Project area would also affect shallow groundwater. Some of this groundwater likely drains southwesterly where it would mix with surface water that is ultimately used for irrigation in the agricultural lowlands south and west of the Project site.

Attempts to discharge the Project's stormwater runoff to the Columbia River is likely to be extremely problematic due to the numerous ESA-listed populations of salmon and steelhead that that use the lower Columbia for passage and rearing. The pollutants in stormwater discharge are known to harm salmon and steelhead. Thus, there is no simple tractable solution for avoiding

pollution of adjacent waterways from the large volume stormwater runoff that will be generated permanently if the proposed Project is implemented.

The pollutants typically found in stormwater runoff harm beneficial water uses in several ways. Elevated nutrients contribute to increases in algae in affected waters. Increases in algae typically increase filtration and treatment costs for irrigation. Increases in algae can also contribute to increases in harmful bacteria, which can increase irrigation water treatment costs, as well as posing a threat to human health.

The elevated levels of metals that typically occur in stormwater runoff pose major problems for agriculture and fish. The metals (typically copper, nickel, lead, and zinc) can accumulate in soils exposed to polluted stormwater discharge. These metals can be taken up by plants, reducing their desirability or marketability, due to human health concerns. Metals in stormwater discharge, particularly copper, are known to have a number of adverse impacts on salmonids (NOAA Fisheries, 2016).

Hydrocarbons, including those from petroleum products, in stormwater runoff also impair beneficial uses by agriculture. Even trace amounts of hydrocarbon pollutants in fruit can reduce its marketability and value. These pollutants also have a number of negative impacts on salmon and steelhead (NOAA Fisheries, 2016).

Elevated levels of sediment can increase dredging costs in affected waterways used for irrigation water storage. It can also increase filtration costs for irrigation withdrawals. Elevated levels of sediment have numerous adverse impacts on salmon, steelhead, and trout. Construction of infrastructure creates particularly large increases in sediment in stormwater runoff, during the construction period (National Research Council, 2008)

For these combined reasons, the Project, if implemented, will permanently impair and conflict with existing beneficial uses of water by agriculture and fish. Due to the setting, it will not be possible to eliminate or reverse these adverse impacts if the Project is implemented.

JONATHAN J. RHODES

Literature cited:

National Research Council, 2008. Urban Stormwater Management in the United States, National Academies Press, Washington, D.C.

NOAA Fisheries, 2016. Water quality: How toxic runoff affects pacific salmon & steelhead. http://www.westcoast.fisheries.noaa.gov/publications/habitat/fact_sheets/stormwater_fact_sheet_3.22.2016.pdf

ODFW, 2005. Oregon Native Fish Status Report Volume II Assessment Methods & Population Results. http://www.dfw.state.or.us/fish/ONFSR/docs/final/09-cutthroat-trout/ct-methods-lower-col.pdf

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CLATSKANIE
PEOPLE'S UTILITY DISTRICT
Owned by the People We Serve

Columbia County
DEC 2 2020
Board of Commissioners

Kaven, Matt, DB
CC

Board of Directors:
Bob Wiggins
Merle Gillespie
Jeannie Mustola
Steve Petersen
Don Hooper

General Manager:
Marc Farmer

12/1/2020

Columbia County Board of Commissioners
c/o jacyn.normine@columbiacountyor.gov
230 Strand Street Room 338
St. Helens, OR 97051

Dear Commissioners:

As a publicly owned, locally controlled public power utility, Clatskanie PUD has a responsibility to its customers to weigh in on decisions that have a material impact on the communities we serve.

As such, we urge you to approve the Compatibility Remand component of the Port Westward re-zoning application.

The issue of compatibility with surrounding farmland has been fully addressed by the Port of Columbia County. The singular issue for remand was compatibility with adjacent or surrounding agricultural uses. The Port has overwhelmingly demonstrated this in multiple ways:

- The Port has worked together with interested parties and signed agricultural leases on the very land in question.
- The Port has implemented plans for large agricultural buffers around future industries.
- The original agricultural opponent, an adjacent farmer, not only has dropped his opposition (as have others) but is now one of the Port's agricultural lessees.
- The Port has worked out agreeable and approved limitations on the type of industries to be located on the property.

This is all clear evidence of meeting both the letter and intent of our land use laws, as well as cooperative, community-driven action.

Further ensuring compatibility, future industrial uses of the land are limited to the processing, production, storage, and transportation of forestry and wood products, natural gas, dry bulk, liquid bulk, and break bulk commodities, all of which are compatible with agriculture. This even further strengthens the removal of adverse impacts, further enhancing compatibility.

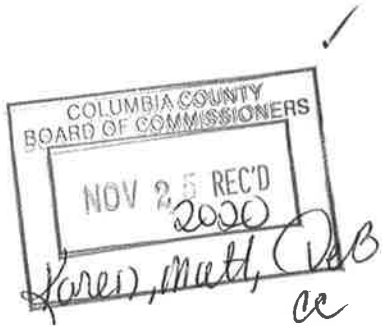
The Port of Columbia County has demonstrated vision in this long-term land use planning, and the purpose, need, and all other land use tests have been upheld repeatedly. Now, the Port has demonstrated that not only will compatibility exist, measures have been taken to make it so. In doing so, when approved, the Port Westward rezone will help meet Oregon's critical shortage of Lower Columbia marine industrial sites and will help make our county, region and state more productive in essential, appropriate, compatible uses of our land that generate investment, revenue and family-wage jobs.

Once again, based on the Port's compatibility modifications as its final component, we strongly urge your approval of the Port Westward Compatibility Remand to complete the Port Westward Re-zoning application.

We need your careful and favorable decision on this final component, to benefit our county and its citizens. On behalf of our families, neighbors and communities, please vote to approve the Compatibility Remand to complete the Port Westward re-zoning.

Sincerely,

Marc Farmer, General Manager
Clatskanie PUD
PO Box 216
Clatskanie, OR 97016
mfarmer@clatskaniepud.com



Columbia County Board of Commissioners
c/o jacyn.normine@columbiacountyor.gov
230 Strand Street Room 338
St. Helens, OR 97051

Dear Commissioners:

The Rainier Chamber of Commerce represents over 50 businesses in the Rainier area, ranging from small main street style shops and restaurants to large industrial employers. On behalf of our membership, our board of directors recently passed a resolution supporting approval of the Compatibility Remand component of the Port Westward re-zoning application.

The issue of compatibility with surrounding farmland has been fully addressed by the Port of Columbia County. The singular issue for remand was compatibility with adjacent or surrounding agricultural uses. The Port has overwhelmingly demonstrated this in multiple ways:

- The Port has worked together with interested parties and signed agricultural leases on the very land in question.
- The Port has implemented plans for large agricultural buffers around future industries.
- The original agricultural opponent, an adjacent farmer, not only has dropped his opposition (as have others) but is now one of the Port's agricultural lessees.
- The Port has worked out agreeable and approved limitations on the type of industries to be located on the property.

This is all clear evidence of meeting both the letter and intent of our land use laws, as well as cooperative, community-driven action.

Further ensuring compatibility, future industrial uses of the land are limited to the processing, production, storage, and transportation of forestry and wood products, natural gas, dry bulk, liquid bulk, and break bulk commodities, all of which are compatible with agriculture. This even further strengthens the removal of adverse impacts, further enhancing compatibility.

The Port of Columbia County has demonstrated vision in this long-term land use planning, and the purpose, need, and all other land use tests have been upheld repeatedly. Now, the Port has demonstrated that not only will compatibility exist, measures have been taken to make it so. In doing so, when approved, the Port Westward rezone will help meet Oregon's critical shortage of Lower Columbia marine industrial sites and will help make our county, region and state more productive in essential, appropriate, compatible uses of our land that generate investment, revenue and family-wage jobs.

Once again, based on the Port's compatibility modifications as its final component, we strongly urge your approval of the Port Westward Compatibility Remand to complete the Port Westward Re-zoning application.

We need your careful and favorable decision on this final component, to benefit our county and its citizens. On behalf of our families, neighbors and communities, please vote to approve the Compatibility Remand to complete the Port Westward re-zoning.

Sincerely,

Meagan Fawcett, President
Rainier Chamber of Commerce
PO Box 1085
Rainier, OR 97048
rainierchamberofcommerce@gmail.com

COLUMBIA COUNTY
BOARD OF COMMISSIONERS
NOV 25 REC'D

Matt, Karen, Deb, cc

November 23, 2020

Henry Heimuller
Margaret Magruder
Alex Tardiff
230 Strand St.
County Courthouse Room 338
St. Helens, OR 97051

Dear Commissioners Tardiff, Heimuller, and Magruder:

I urge you to reject the port's proposal to rezone 837 acres of high-value farmland at Port Westward. The proposal fails to show that fossil fuel development and heavy industry will be compatible with the health, safety, and natural resources of Columbia County residents, neighboring farms, and habitat at Port Westward.

- The port hasn't shown that it's plan is compatible with farms, clean water, and salmon habitat.
- The report arbitrarily limits the study area to just 2000 feet from the proposed rezone. By limiting the study area, the port is refusing to acknowledge the risk to residential homes located just beyond the study area.
- The report refuses to acknowledge that agriculture is diverse at Port Westward. Berries, mint, livestock, are currently raised within the proposed rezoned area and nearby. The report also fails to consider the sale of the tree farm and the future agricultural uses that will utilize the prime soils in the future.
- The report understates how doubling an industrial site will increase traffic, pollution, water use, and the risks of an accidental spill or explosion.
- The report dramatically understates the potential risks of industrial water pollution. The report does not adequately address how stormwater, process water, or potential spills of oil and other pollutants could impact irrigation, salmon habitat and water resources.

The Port of Columbia County's application is a disappointing attempt to convince homeowners and farmers that living and working next to a massive industrial hub will have no impact. I urge you to reject the port's application.

Sincerely,

Catherine Ingram

Catherine Ingram
Oregon native
catnina@comcast.net

Nov 21, 2020

COLUMBIA COUNTY
BOARD OF COMMISSIONERS
NOV 25 REC'D 2020

matt
Karen
DB
cc

I am writing to voice my opposition to a proposal to rezone the land across from Great Vow Monastery. I understand the Port of Columbia owns the land and wants to change the zoning from agricultural to industrial. I am a big supporter of Great Vow and think this is a terrible idea. The Monastery is a spiritual refuge that offers sanctuary in an otherwise noisy world. Walking the monastery grounds, you can hear birdsong, bamboo rustling in the wind, cows lowing in the distance. You can also hear singing, the offering of prayers, and rarest of all, silence. It is dark at night outside the monastery, and when the clouds part, you can see stars. Allowing an industrial enterprise across the street would utterly destroy this sanctuary. How? Industry would create light pollution, noise pollution and industrial pollution. It would also threaten water quality. It would hurt salmon and the jobs they bring. It would hurt birds, and all the critters that depend on unobstructed access to a clean river.

I have visited Great Vow many times over the years and was last there in February for a weeklong retreat. If not for the Covid-19 pandemic and the current closure, I would have been back. I live in Portland and am a supporting member of the Zen Community of Oregon which helps fund Great Vow. Even now, the monastic residents stay in close contact with our community, offering online retreats and other religious services on an ongoing basis. I rely on the folks at Great Vow to help me find sanity in a world that seems ever more chaotic. I am not alone. Hundreds, maybe even thousands of people rely on this sanctuary. Please don't take this priceless resource away from us.

Sincerely yours,

Carol McClain

Carol McClain
Portland, Oregon

Columbia County
DEC 2 2020
Board of Commissioners

Dear Columbia County Commissioners:

Please approve the compatibility remand component of the Port Westward re-zoning application. At a time when many companies are severely challenged to survive the covid shut downs, we need new living wage jobs. The port has done several things to ensure compatibility with the lands in question and has worked out approved limitations on the lands in question and now it would be important to move forward bringing new businesses and jobs to Columbia County.

Sincerely,

Cathy Martens

386

Pott Westward Rezone

Denis Markian Wichar <deedub@webtv.net>

Tue 12/1/2020 6:23 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Please do not rezone in order to allow for fossil fuels. Doing so would put my city in jeopardy, as well as your own. Oil to wherever passes thru Vancouver. Are we in this together or are we all isolated entities!

Den Mark Wichar
711 W 25 St
Vancouver WA 98660

"A person is a person because he recognizes others as persons."
--- Anglican Archbishop Desmond Mpilo Tutu

Народжені вільними! Нам потрібен(на) кожен(на)!

"Not everything that counts can be counted,
and not everything that can be counted counts."
--- W.B. Cameron

11/25/20

Dear Board of County Commissioners. Tardiff, Heimuller, Magruder

Today I am writing to you regarding whether the proposal to rezone land that sits at Port Westward to industrial use is compatible with other adjacent properties. Thank you for requesting and reading my testimony.

One adjacent property is Great Vow Zen Monastery. The noise, air, and light pollution introduced by industrial zoning is not compatible with a spiritual retreat center, where people live and visit to reconnect with quiet, calm, and the natural world. The habitat in that area also supports the lives of numerous birds, rabbits, amphibians, deer, coyote, and plants that would be disrupted by rezoning. Though I live in Portland, the monastery is my spiritual home, a refuge from the noises of busses, trains, and construction equipment. During the pandemic, I have not been able to visit the monastery, and have been attending meditation retreats virtually. Hearing croaks, chirps, and howls while sitting in the zendo connects me and grounds me in the world beyond the city and has given me a great emotional support during this time of global pandemic and suffering. Knowing the monastery, a spiritual and natural refuge, is continuing on amidst this year of change has helped me carry on. Please choose to protect this special place by leaving Port Westward's zoning as an agricultural zone, protecting the surrounding habitats and preserving the serenity that envelops the surrounding area. Many thanks for your service and consideration - Kayla Reopelle

K. Reopelle
5705 N. Albina
PORTLAND OR 972
Portland, OR 97217
30 NOV 2020 PM 5 L

Board of County Commissioners' Office

387

388

We Support your approval of Port of Columbia County's Compatibility conditions for Port Westward Re-Zoning

cc, HAM Matt Karen, QB

Columbia County
DEC 3 2020
Board of Commissioners

Ruth Nelson <mrsmarknelson@gmail.com>

Thu 12/3/2020 10:04 AM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Columbia County Board of Commissioners

c/o jacyn.normine@columbiacountyor.gov

230 Strand Street Room 338

St. Helens, OR 97051

Dear Commissioners:

We **urge you to approve** the **Compatibility Remand** component of the **Port Westward re-zoning application**. The issue of compatibility with surrounding farmland has been **fully** addressed by the Port of Columbia County. The singular issue for remand was compatibility with adjacent or surrounding agricultural uses. The Port has overwhelmingly demonstrated this in multiple ways:

• **The Port has worked together with interested parties and signed agricultural leases on the very land in question.**

• The Port has implemented plans for large agricultural buffers around future industries.

• **The original agricultural opponent, an adjacent farmer, not only has dropped his opposition** (as have others) **but is now one of the Port's agricultural lessees.**

• The Port has worked out agreeable and approved limitations on the type of industries to be located on the property.

This is all clear evidence of meeting both the letter and intent of our land use laws, as well as cooperative, community-driven action.

Further ensuring compatibility, future industrial uses of the land are limited to the processing, production, storage, and transportation of forestry and wood products, natural gas, dry bulk, liquid bulk, and break bulk commodities, all of which are compatible with agriculture. This even further strengthens the removal of adverse impacts, further enhancing compatibility.

The Port of Columbia County has demonstrated vision in this long-term land use planning, and the purpose, need, and all other land use tests have been upheld repeatedly. Now, the Port has demonstrated that not only will compatibility exist, measures have been taken to make it so. In doing so, when approved, the Port Westward rezone will help meet Oregon's critical shortage of Lower Columbia marine industrial sites and will help make our county, region and state more productive in essential, appropriate, compatible uses of our land that generate investment, revenue and family-wage jobs.

Once again, based on the Port's compatibility modifications as its final component, we strongly urge your approval of the Port Westward Compatibility Remand to complete the Port Westward Re-zoning

000388 388

389

application.

We need your careful and favorable decision on this final component, to benefit our county and its citizens.

On behalf of our family, neighbors and our communities, please **vote to approve** the Compatibility Remand to complete the Port Westward re-zoning.

Thank you,

Mark and Ruth Nelson

50607 Elder Ave

Scappoose OR 97056

000389

390

Fwd: Rezone application

Carroll Sweet <mcsweet46@gmail.com>

Thu 12/3/2020 6:44 AM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Cc, tham
Matt, Karen, Deb

Columbia County
DEC 3 2020
Board of Commissioners

Sent from my iPhone

Begin forwarded message:

From: Carroll Sweet <mcsweet46@gmail.com>
Date: December 3, 2020 at 5:56:20 AM PST
To: Columbia county commissioners
Subject: Rezone application

County commissioners,
I am writing to comment on the latest attempt to rezone land at Port Westward. We the citizens have been following this issue for quite a few years. Initially we were told by LUBA and other state agencies that the port should identify the actual industries that necessitate the rezone. We have had many responses, light industrial, compatible with surrounding industries, wonderful job creating opportunities etc. but no actual answers. We recently were treated to a PR piece promising all wonderful things but no actual named industries. We implore you to honor the initial plan and require the port to NAME THE INDUSTRY! How can we trust any action by the port when they repeatedly ignore best practice and proceed without following the rules? Are they hiding something? The Columbia River is a critical resource and we the citizens are determined to protect it. Please join us in this effort.

Carroll Sweet
52077 Rabinsky Rd
Scappoose, OR 97056

Sent from my iPad

000390

Dear Commissioners Tardiff, Heimuller, and Magruder.

My name is Eli Kramer. I'm a sophomore at the Massachusetts Institute of Technology. I've spent the last few months at The Great Vow Zen Monastery and have immensely enjoyed my stay. I strongly urge you to reject the port's proposal to rezone 837 acres of high value farmland at Port Westward. For most of my life, I've resided in cities. The Monastery has provided me a peaceful and therapeutic getaway from all the hustle and bustle of cities. I really appreciate the fresh air and rolling green that accompany my stay.

Many people (including myself) rely on places like Great Vow to help give their lives a balance. I think it's vital that we strive to protect the last remnants of lands that don't yet bear the mark of post industrial society. We all need places of refuge in this day and age. This rezoning would dramatically change the coveted, serene environment for the worse, placing the monastery in the midst of what it seeks to escape from.

Sincerely,
Eli

Columbia County

Columbia County
DEC 3 2020
Board of Commissioners

Karen, Matt, Deb, CC
HAM

Dear Commissioners Tardiff, Heimuller, and Magruder:

I strongly urge you to **reject** the port's proposal to rezone 837 acres of high-value farmland at Port Westward.

The Columbia river watershed is a place for **wonderful hunting and fishing opportunities**. Waterfowl, deer and salmon are all still bountiful in this region! This is not only high value farmland but please also don't forget the fishing industry is a massive part of the economy of the pacific northwest. Both commercial and recreational.

If we destroy fishing on the Columbia, it's as good as a dead river.

Please consider the long ranging economic impact on this area if we allow more heavy industry. Clatskanie will lose its ability to entice Tourists to the area. Farmers will lose the ability to farm high value crops on this high value farmland.

The ethanol plant has **not** proved effective in bringing a worthwhile increase of desirable employment to Columbia County. It has brought an increase in pollution. Air pollution, light pollution, sound pollution.

Thank you for your time,

Sincerely,

Haley Voekel

December 1, 2020

393
Rachel Kelley
79640 Quincy Mayger Rd
Clatskanie OR 97016

Karen, Matt, Des, CC

Columbia County
DEC 3 2020
Board of Commissioners

HAM

Dear Commissioner Magruder,

I urge you to reject the ports proposal to rezone 837 acres of farmland at Port Westward to industrial. I live less than two miles and can attest that the benefits of keeping it as it is outweigh the imagined benefits of another industrial complex.

The impact would cause our community to dwindle not grow.

Please join your commissioners in rejecting the rezone proposal.

Sincerely,
Rachel Kelley

December 1, 2020

394

Karen, Matt, Deb, Ce
Hann

Columbia County
DEC 3 2020
Board of Commissioners

Rachel Kelley
71640 Quincy Mayger Rd
Clatskanie OR 97016

Dear Commissioner Jarcliff,

I strongly urge you to Reject the ports proposal to rezone 837 acres of farmland to industrial. I live less than two miles from the proposed rezone area.

This rezone would greatly threaten my health and those of my neighbors. Any positive impact would go solely to the owners of the rezone and not to the citizens of the area.

Please do not approve this rezoning.

Sincerely,
Rachel Kelley

December 1, 2020

395

Rachel Kelly
29640 Quinn Mason Rd
Clatskanie OR 97016

Karen, Matt, DB
ce

Dear Commissioner Heemuller,

I beg you to Reject the ports proposal to rezone 837 acres of farmland at Port Westward. I live less than two miles from the proposed industry and would be harmed by the light, air and sound pollution created. With paper mills and ethanol plant already so close by, you can see the economic benefit would not be as great as proposed.

You will serve the residents of our county by rejecting the rezone proposal.

Thank you for your service,

Rachel Kelly

Deb, Matt, Karen cc

Columbia County
DEC 3 2020
Board of Commissioners

Dear Commissioners Tardiff, Heimuller, and Magruder:

I strongly urge you to reject the port's proposal to rezone 837 acres of high-value farmland at Port Westward. I am a member of the Zen Community of Oregon and live at a large residential retreat center just two miles from the port and even closer to the proposed rezone area. Heavy industry and fossil fuel development would have an enormous detrimental effect on our business model and livelihood.

We offer long retreats and residencies, accommodating roughly a thousand people a year. We host guest teachers from all over the country and world to lead retreats in this ideal setting. A quiet space with clean air is essential to the services we offer. Residents and visitors constantly report the importance of a peaceful natural environment to feel safe and grounded and work on quieting the mind and opening the heart. Those who come on retreat here spend significant time working outdoors. We already live between two large paper mills, which affects the quality of our air. Further industry, especially so close to our front door, would have a much higher cost of sound, light, air, and water pollution.

Further, as members of a collective ecosystem, we protest the endangerment of our home not just for ourselves but for the diverse plant, animal, and insect life of the Columbia River Valley. The proposal fails to offer safeguards for our community or address the impacts of process water and other pollutants into our vital clean water and air, increased traffic, as well as the risk of an oil spill or explosion.

We have been active and engaged members of the Clatskanie community for twenty years, involved in community service and supporting many local businesses including those that fill all of our building and maintenance needs. We host nearly a hundred guests every month from around the west coast and out-of-state who also support Clatskanie businesses. We plan to be a dedicated part of the community for many years to come, and this rezone would greatly threaten our home and business and impair our ability to do so.

Thank you for your time.

Sincerely,

Timothy Landry

Timothy Landry

Karen, Matt, Bob, cc

Columbia County
DEC 3 2020
Board of Commissioners

Dear Commissioners Tardiff, Heimuller, and Magruder:

I strongly urge you to reject the port's proposal to rezone 837 acres of high-value farmland at Port Westward. I am a member of the Zen Community of Oregon and live at a large residential retreat center just two miles from the port and even closer to the proposed rezone area. Heavy industry and fossil fuel development would have an enormous detrimental effect on our business model and livelihood.

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Further, as members of a collective ecosystem, we protest the endangerment of our home not just for ourselves but for the diverse plant, animal, and insect life of the Columbia River Valley. The proposal fails to offer safeguards for our community or address the impacts of process water and other pollutants into our vital clean water and air, increased traffic, as well as the risk of an oil spill or explosion.

We have been active and engaged members of the Clatskanie community for almost twenty years, involved in community service and supporting many local businesses including those that fill all of our building and maintenance needs. We host nearly a hundred guests every month from around the west coast and out-of-state who also support Clatskanie businesses. We plan to be a dedicated part of the community for many years to come, and this rezone would greatly threaten our home and business and impair our ability to do so.

Sincerely,

Janet Ault

Janet Ault
Zen Community of Oregon

Karen Matt, Deb cc Ham

Columbia County
DEC 3 2020
Board of Commissioners

79640 Quincy Mayger Rd
Clatskanie, OR 97016

Quincy Mayger RD.

December 1, 2020

RE: Comprehensive Plan Map Amendment

Dear Commissioners,

I have been a resident of Clatskanie for 20 years. My property overlooks the proposed 837-acre expansion.

I have four specific pollution concerns and recommendations as you move forward with this project. I strongly suggest that any agreements about the use of this property include the following points:

1. Air pollution control. During the forest fires last summer and during winter atmospheric inversions the normally wonderful quality of the air degenerates. Any proposed use of the property should come with a caveat that air pollution must be minimized.

2. Odor pollution avoidance: Noxious odors affect the quality of life. Any proposed use of the property should come with a statement that there will be no noxious odor emitted. We all remember Camus Washington's famous smell.

3. Sound pollution mitigation. We live in a quiet rural area. There is currently an acceptable level of subdued sound from the activity at the former ethanol plant. However, when the ethanol plant was built there was a 'hammer crusher' (I do not remember the exact name they used) to process grain. This led to a steady pounding vibration and noise. This kind of impact should be avoided.

4. Light pollution restriction: industrial areas are often continuously lighted. Fixtures should be shaded and light kept within the parameters of any facility.

Thank you for your consideration,

Hogen Bays

Hogen Bays

399

November 29, 2020

Commissioner Alex Tardif
Columbia County Board of Commissioners
230 Strand St., Room 338
St Helens OR 97051

Dear Commissioner Tardif,

On the Columbia County web site you are quoted "I will work to preserve our unique rural culture while developing and enhancing opportunities for all to prosper." My hope is you will remember to preserve the rural culture and vote no to rezone the 837 acres of prime farm and timber growth lands near Port Westward. My further hope is you will enhance responsible business opportunities which already exist in Columbia County. I oppose this rezoning and recommend you do the same.

An ethanol plant already have compromised the quietude while presenting us with light pollution in the lower Columbia River. Let's not further this. Let's also not impinge on the delicate ecosystem which supports a myriad fauna. Using the lands adjacent to Port Westward for processing, storing and shipping of natural gas and its derivatives puts the area in jeopardy of an ecological or explosive disaster.

You and I both know there is a huge potential for tax windfalls from using this port area for fossil fuel processing and shipping. But at what cost?

Please think deeply about this matter. The loss of rural lands, for the sake of capital gain, may negatively impact the lives of our grandchildren. It is particularly crucial to make a wise decision since this acreage is extremely rich. Its conceivable we may need community farming to feed us if we experience a global economic disaster. This possibility is so much greater today.

Most sincerely,

Stuart Gray
Clatskanie

400

Matt, Karen, DeB
HAM
cc

Columbia County
DEC 3 2020
Board of Commissioners

November 29, 2020

Commissioner Margaret Magruder
Columbia County Board of Commissioners
230 Strand St., Room 338
St Helens OR 97051

Dear Commissioner Magruder,

I am opposed to reconsidering the rezoning of 837 acres of agricultural land adjacent to Port Westward, near my home in Clatskanie. Keeping Columbia County rural and protecting our natural resources, especially along the scenic Columbia River, should be a priority in your work with the county.

My home overlooks the river north of Port Westward. Except for the irritating constant hum from an ethanol plant, I have enjoyed this rural area.

Thousands of Canadian Geese inhabit the area this time of the year for as long as I remember. When business interests seize the valuable farm and riparian areas, the lives of countless fauna are lost, perhaps for generations, perhaps forever. Ecological balance is disturbed. Please keep large business interests away from the river. There is plenty of opportunity for responsible business within Columbia County.

I am also very worried about pollution if this area is rezoned for industry. I enjoy seeing the stars at night. More light pollution, such as that produced by the ethanol plant, will further spoil the night skies. Noise pollution, possible water and air pollution are equally abhorrent.

Further, my piece of mind is a large consideration for my opposition to this rezoning. The possibility of an ecological or explosive disaster occurring with fossil fuel processing, storage and shipping would put me in constant anxiety. This industry does not have a clean record or a record of responsibility for the health and safety of the public. I want to live in ease in Clatskanie, without the worry of a major disaster.

In short, the quality of my life in Clatskanie risks being upended if you vote to rezone this area. Please protect the livability of this county for our grandchildren.

Most sincerely,

Stuart Gray
Clatskanie

401

Hamm, Karen, Matt
cc Hamm

Columbia County
DEC 3 2020
Board of Commissioners

November 29, 2020

Commissioner Henry Heimuller
Columbia County Board of Commissioners
230 Strand St., Room 338
St Helens OR 97051

Dear Commissioner Heimuller,

From what I have heard, you will again vote on rezoning the property adjacent to Port Westward. A wise choice is to oppose this time.

In the board of commissioners mission statement, regarding livability, is this statement:

"We also act with the utmost care for our natural, historic and aesthetic resources, and work to preserve and enhance them within our rural character for future generations."

The 837 acres under consideration is rich agricultural land. Let's not throw away this for the sake of capital gain. The ethanol plant near Mayger has not provided much in the way of promised local employment. It did, however, give us noise and light pollution.

Using Port Westward for fossil fuel processing, storage and shipping puts us all in danger of a ecological or explosive disaster, and perhaps even light, air, water and soil pollution. I want my mind to be at ease, without such a possibility.

It is not inconceivable that global economic conditions will worsen. The ability to ship food regionally, nationally or globally may be compromised. The Port Westward land may be required for community farming to feed our grandchildren. Rezoning agricultural land is a serious matter, especially in this time of uncertainty.

I want to commend you commissioner for your years of service, particularly for the years you spent as a paramedic. You know in your heart what it means to give.

Sometimes the way to give is not to take away.

Most sincerely,

Stuart Gray
Clatskanie

402

Karen, Sam, Matt
DB
cc

Columbia County
DEC 3 2020
Board of Commissioners

Board of Columbia County Commissioners
230 Strand Street - Room 338
St. Helens, Oregon 97051

RE: Rezone Application, Port Westward

Dear Commissioners,

The Port of Columbia County is proposing a rezone of over 800 acres near the Port Westward to be used for heavy industrial. This land is currently forestland and productive farmland. It also contains Columbia River shoreline.

I fear that the Port will want to put in industrial development like an oil terminal or a methanol refinery. The impact on air quality alone would be excessive. For example, increased crude oil shipping, storage, and transloading would result in increased levels of volatile organic compounds, carbon monoxide, sulfur dioxide, particulate matter, and other air hazardous air pollutants.

The Columbia River Estuary would also experience an unacceptable level of risk. Here, the mixture of salt and fresh waters produce one of the world's highest quality ecosystems. For example, any kind of an oil spill or leak into the Estuary would have an impact on prime salmon nurseries.

I do not think that Oregon wants or needs increased fossil fuel infrastructure at this time. It is entirely the wrong direction for our state. Fossils fuels are NOT the way for the future.

Please do not allow this rezoning request to go forward.

Sincerely,

Stephanie L Walker-Masson

Stephanie Walker-Masson
4075 North Castle
Portland, OR 97227
November 27, 2020

12/6/2020

PORTLAND OR 970
4 DEC 2020
PM 5

Happy Holi

Columbia County Board of Commissioners
230 Strand St.
Room 338
St. Helens, OR 97051

Hello, I'm an Oregonian cuisently residing in Portland Really hope you don't rezone the river front (837 acres) to industrial. The value of that riparian habitat is far higher than using it in an industrial way. This habitat IS doing bio-engineering work that cleans water & nurtures wildlife. We need to protect what we have - not convert & lose it.

-Kevin Freeny

You can only industrialize so much before you live in a dump

Columbia County
DEC 7 2020
Board of Commissioners

Hans CC
Matt Karen DEB

cc, Matt
Karen, DEB, HANK

Columbia County
DEC 4 2020
Board of Commissioners

Dear Columbia County Commissioners:

We urge you to approve the Port Westward rezone.

We are convinced that the issue of compatibility with the surrounding farmland has been addressed. This is evidenced by the absence of continued opposition by adjacent farmers, the signing of agricultural leases on the land in question, and the limiting of the type of future industries on the property.

Large and small agricultural operations, family farms and homes have existed compatibly alongside military and industrial usage at Port Westward for almost 80 years.

North Columbia County has thousands of acres of under-utilized farm land. Ninety percent of Columbia County is zoned for natural resources. The rezoning of these 740 acres will not have a significant negative impact on agriculture in our county.

The State of Oregon has a critical shortage of large marine industrial sites. Columbia County has a 70 percent commuter rate, and the traffic problems, loss of social capital and tax revenues that go with it.

Too many of our residents cannot find jobs near their homes, and too many of our young people cannot stay in their hometowns because of the lack of jobs.

Industries at Port Westward already pay 24 percent of the property taxes in our county. Those revenues to Columbia County, 9-1-1, and other local taxing districts will increase if high value industries locate on this acreage.

The Port Westward rezone is crucial to creating jobs, and sustaining and improving public services throughout Columbia County. It is compatible with nearby agricultural operations. It is a critical component for the future prosperity of our communities.

Please vote YES on the Port Westward rezone.

Philip and Deborah Hazen ✓

PO Box 157

346 NE 5th Street

Clatskanie, OR 97016

dshazen13@gmail.com

503-338-8268

Karen, cc, Matt, Tim Der

Columbia County
DEC 4 2020
Board of Commissioners

December 4, 2020

Dear Commissioners Heimuller, Magruder and Tardiff,

I have been a resident of Clatskanie for over 20 years, on a property very close to the 837 acres that the Commission is proposing be changed from high-value farmland to industrial zoning. During that time I have watched activity in the existing industrial zone. Several industries have made big promises of revenue for our city and county, moved in, and gone bankrupt. Far from providing revenue, they have resulted in a net cost to us, the taxpayers, of $36 million in green loans and tax credits which will never be paid back. See: http://www.oregonlive.com/environment/index.ssf/2013/05/former_ethanol_plant_in_clatsk.html.

More industrial development in the proposed are for rezoning would have a negative impact on our home and our business. Our home is a residential community of 18-30 people. In the past we have hosted about 1,500 people a year at the monastery for classes, workshops and monthly silent meditation retreats. We are one of three such monasteries in the US, and one of two such facilities that is able to host conferences of teachers from around the US and the world.

We have endeavored to be good neighbors, supporting local businesses including building suppliers, hardware, pharmacy, and grocery stores and the Farmer's Market. We have supported the schools, civic clubs and local charities. Some of our overflow guests and our residents' families stay at the motel and several local B&B's.

The quiet serenity of the rural valley below us is vital to our business. Our guests constantly tell us that it is the peace and quiet, the fresh air, and the natural surroundings that are what draws them here again and again. In the summer they enjoy meditating outdoors and working in our big organic gardens. They come here for rest, relaxation, perspective on their busy lives, and spiritual renewal.

Our guests love to sit on benches in front of the monastery and soak in the serenity of the valley, the beautiful sunsets and the green hills of Washington across the Columbia River.

I am a physician, and there is a fast-growing body of medical and psychological research that immersion in nature can help people be healthier and heal faster. For example, here is an article with many references to that research at the end. https://www.takingcharge.csh.umn.edu/enhance-your-wellbeing/environment/nature-and-us/how-does-nature-impact-our-wellbeing

As more and more people are buying local, organic food, these precious acres could be put to much better use. To invite further industry is to endanger the complex interdependent ecosystem of the river, the streams, the marshlands, and the plant, animal and human life they support.

If you contemplate going forward with this project I ask that any agreements that are made about the use of this property require strict requirements and strict enforcement regarding:

1. **Air pollution:** During the forest fires last summer and during winter atmospheric inversions the normally wonderful quality of the air degenerates. Any proposed use of the property should come with a caveat that the air must remain clean of pollutants.

2. **Odor pollution:** Noxious odors affect the quality of life. Any proposed use of the property should come with a statement that there will be no noxious odor emitted. Our guests rave about the fresh air here. Occasionally, when the wind is right, we can smell emissions from the paper plants. Our business and home life would be seriously damaged by any unpleasant odors from the rezoned area.

3. **Sound pollution:** We live in a quiet rural area. Sound carries right up the valley from the port. There is currently an acceptable level of subdued sound from the PGE Power plant and at the former ethanol plant. However, when the ethanol plant was built there was a steady pounding noise and perceptible vibration from their corn crushing machine. Any extra audible sound would seriously affect our life and business here.

4. **Light pollution:** Our guest are delighted with how dark and quiet it is here at night. The current level of light pollution at the existing plants is acceptable. Any more would be damaging to our life and business here. We ask for strict rules regarding lighting, light shading and light pollution.

We hope to be able to offer the benefit of this rural environment and the services of the monastery for many years in the future. Thank you for being thoughtful and protective, not only with the quality of life and livelihood of current citizens and the ecological balance, that supports us all, but also with the quality of life in our neighborhood and community in the future.

Sincerely,

Judith A. Bays, MD

Jan (Judith A.) Bays, MD
Great Vow Zen Monastery
79640 Quincy Mayger Road
Clatskanie, OR 997016

Vow Monastery

HAM, CC, DeB Matt
Karen

Columbia County
DEC 4 2020
Board of Commissioners

Dear Commissioners Tardiff, Heimuller, and Magruder:

I ask for your careful consideration about the port's proposal to rezone 837 acres farmland at Port Westward. I am a postulant for ordination at Great Vow Zen Monastery which overlooks the site in question.

Our monastery is used as a retreat center as well as a home for a wide range of people seeking to practice and live in a peaceful natural setting. In my time in residence here I have seen how important this healthy quietude is for those living stressful, noisy, overstimulated lives. Many people from all over the world count on this center to help them stay grounded in a slightly crazy world.

Please consider that too much noise, light and air pollution may destroy this delicate harmony. I hope that there is a way to maintain the natural environment at Port Westward so that Great Vow Monastery can continue to function as a refuge for those in need.

Sincerely,

Doug Hull

Zen Community

CITY OF CLATSKANIE

December 1, 2020

Columbia County Board of Commissioners
230 Strand Street; Room 338
St. Helens, OR 97051

Ham, cc
Karen
Matt
Deb

Columbia County
DEC 4 2020
Board of Commissioners

Dear Commissioners:

The City of Clatskanie strongly urges you to approve the Compatibility Remand component of the Port Westward re-zoning application. As you know, development of the properties out at Port Westward is absolutely critical for the future of the economic vitality of Clatskanie and the whole north-county area, let alone the whole county.

The City believes the issue of compatibility with adjacent and surrounding agricultural uses of the farmland has been fully addressed by the Port of Columbia County. The Port has, without question, addressed these issues and addressed them to the full satisfaction of the remand request. The Port has already issued agricultural leases and has instituted large agricultural buffers. The key point the Commission should take into consideration is the original agricultural land user opposed to the re-zone has dropped his opposition and is now a lessee of the Port's property. This is significant.

The Port of Columbia County has also implemented limitations to the type of industry that can be located at the site. Though we do not necessarily agree with putting limits on potential businesses and job growth by excluding potential industry partners, we completely understand the reasons why.

Again, the City urges you to approve the Port Westward Compatibility Remand to complete the Port of Columbia County's Port Westward Re-zoning application. Thank you for this opportunity to take our input on this extremely important matter. This re-zone will continue our quest for further economic growth and diversity that Port Westward has the potential to deliver.

Yours,

Bob Brajcich

Bob Brajcich
Mayor, Clatskanie

P.O. Box 9 • 75 S. Nehalem • Clatskanie, OR 97016 • (503) 728-2622

409

HAM
cc
Karen,
Deb, Matt

Columbia County
DEC 4 2020
Board of Commissioners

1 December 2020

Dear Commissioners,

I am writing as a priest and senior resident of Great Vow Zen Monastery, just across Quincy Mayger Road from the proposed development site at Port Westward. As the decision on the Port Westward rezone approaches, I encourage you to bring compassion, care, and wisdom to your position on the Board. We are the caretakers of this land, this great river. We are responsible for the harmony and wellbeing of this place we call home. If we do not care for it, what will we be passing on to our children and our children's children and our children's children's children? Please do your part to ensure that our precious local ecology is treated with care and respect.

As resident of an adjacent property, I ask that you consider the impact industrial activity will have on the local community. Over the last twenty years, the monastery has hosted thousands of guests who benefit from the healing and harmonizing power of this unique natural environment. Industrial facilities - with their noise, pollution, and heavy traffic - are so common in our world. A natural site where human beings tend the land and live in balance with diverse plant and animal inhabitants is a rare treasure. Please protect and appreciate this treasure! It will bring good into the world far surpassing the limited and unreliable gains promised by big industry.

Please, I urge you to take the large view. The future of our planet depends on small acts of conservation, stewardship, and simple living. Most of all, it depends on our love for the natural world, of which we are just a small part. Thank you for your attention, and for your engagement with these local processes.

Sincerely,

Kennyo Patrick Dunn

Great Vow Zen Monastery

Zen Monastery

410

Fw: Port of Columbia County's Port Westward rezoning

Henry Heimuller <Henry.Heimuller@columbiacountyor.gov>
Fri 12/4/2020 12:27 PM
To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Commissioner Henry Heimuller
Columbia County of Oregon
230 Strand Street
St. Helens, Oregon 97051
Office: 503-397-4322
Mobile: 503-369-1503
Henry.Heimuller@columbiacountyor.gov

From: Keith Forsythe <kforsythe@pisi.ws>
Sent: Friday, December 4, 2020 9:34 AM
To: Alex Tardif <Alex.Tardif@columbiacountyor.gov>; Henry Heimuller <Henry.Heimuller@columbiacountyor.gov>; Margaret Magruder <Margaret.Magruder@columbiacountyor.gov>
Subject: Port of Columbia County's Port Westward rezoning

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you are expecting this email and/or know the content is safe.

HAM, CC, Karen, Matt DeB

Columbia County
DEC 4 2020
Board of Commissioners

I would like to voice my support for the rezoning at Port Westward

Thank you

Keith Forsythe, President / CEO
Pacific Industrial Service, Inc.
1800 Rail Road Ave.
St.Helens, OR 97051
Phone: 503-366-1381
Fax: 503-366-1387
Website: www.pacificindustrialservice.com

411
12/7/2020

Karen Deb Matl, CC, Hwy

Columbia County
DEC 7 2020
Board of Commissioners

To Columbia County Oregon Commissioners:

How do I persuade you to end the out of state pressure to industrialize Port Westward by adopting a zone change for the agricultural property there?

The evidence from the landowners and informed people who live in the county is clear.

+Industrial zoning of agricultural land conflicts with state goals for the preservation of agricultural land. The people and businesses established on the dike land are farmers with long time relationship with this land and flourishing business concerns.

+The soil of this land is high quality farm land and should be retained as such.

+Industrial zoning puts salmon raising waterways at risk.

+Industrial zoning endangers and will inevitably destroy one of the last remaining natural forest habitats along the river.

+Industrial zoning will lead to further degradation of the river environment leading to irretrievable loss of water quality, pollution of the local agriculture land, and loss of value of the local property as the area deteriorates. The evidence of this kind of inevitable degradation is legion across the planet and within our own county....Look to the super sites in Portland and at the remains of our local paper industry.

+Industrialization of more land at this port site will create only a few jobs which require specialized workers, not local unemployed.

12/7/2020

+Local residents have been opposing this zone change for at least 6 years for the stated reasons; the Land Use Planning Board has supported our objections multiple times. Your job is to serve and protect your constituents and find the best and highest use of our publicly managed properties. The best and highest use of this land is compatible agriculture that does not harm the ecology of place.

+People across the planet are dying of covid, of pollution, we just experienced another of our routine inversions which make breathing the air in our area a danger; climate change is wreaking havoc by fire in our forests, drought in our food producing states, weather changes the accelerate storm intensity, plastic gyres cover miles in the Pacific ocean....every decision we make, whether as an individual choosing to recycle, or not use chemicals on their lawns, to wear or not, a mask, or as a county, whether to allow more fossil fuel based corporations to run roughshod over our land, our values, our future...every decision now matters.

Please, do not approve this out of state corporate overreach; protect our county, honor our ecology, both our natural ecology and our social ecology...do not allow this zone change.
Thank you.
Mary Duvall, MA, MSW
73151 Lost Creek Road
Clatskanie, Oregon 97016

413

Karen, Matt, Deb, CC, Tammy

Columbia County
DEC 7 2020
Board of Commissioners

RE: PORT OF COLUMBIA COUNTY- proposal to rezone 837 acres

Dear Columbia County Commissioners, December 7, 2020

My husband and I are farmers. We reside on 25 acres off Hermo Road in the township of Quincey, just north of Clatskanie, OR. Our property currently grows hay, blueberries, cherries and apples. We rely on the natural waterways to irrigate our land. The ebb and flow of the Columbia River is directly related to our annual crop yield. The river brings rich nutrients through a network of interconnected sloughs to our farm and many farms in the region. The water table is just perfect for an annual high yield harvest. The Columbia River Basin has one of the largest watersheds in the country, extending from Alberta Canada to Nevada and Wyoming.

Any threat to this water source would be detrimental to the environment, multiple species of fish and wildlife and completely destroy the balance needed for Agriculture. There are multiple family farms growing organic produce, eggs, pork and beef, to name a few. We have worked hard to keep our land chemical free for the health of our families and community. The goods we sell at the market and export to other communities rely on the quality and health of our products.

Rezoning 837 acres of fertile (useable) agricultural land to heavy industrial would be a crime. Placing volatile chemicals near our waterways is risky. You are opening yourself up to the possibility of a major disaster. We are located in an earthquake zone and not shy to major tumultuous storms. In the event of a record breaking spill, you are looking at decades to restore the balance. During this time, many

farms will go under with their land unusable and animals sick from tainted water and poor air quality. It would be detrimental to the fishing industry, making salmon, chinook and sturgeon with their already dwindling populations even more scarce. Multiple species of birds would die and the remaining threatened for lack of clean food and water. A disaster of any kind would threaten the livelihood of our agricultural community.

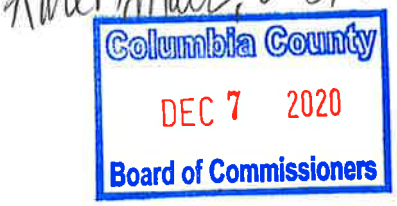
With this letter, I am asking the Columbia County Commission to consider that rezoning 837 acres for heavy industrial would be of great danger to our community.

Sincerely,

Wendy Schmidt

415

Karen, Matt, Deb, HAM cc



Port Westward rezone request

Ann Turner <annturnerpdx106@gmail.com>

Mon 12/7/2020 7:56 AM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Dear Commissioners Tardiff, Heimuller, and Magruder:

As a physician, I am especially concerned about the health impacts of permitting heavy industry, i.e. the fossil fuel industry, to be located near high value farmland and precious natural resources. Port Westward is the home of mint and blueberry farms, cattle ranching, precious salmon habitat and wetlands that are the home to migratory birds. I strongly urge you to reject the port's proposal to rezone 837 acres of farmland at Port Westward.

The fossil fuel industry pollutes the surrounding air, water and soil and creates serious safety risks to the community. Air pollutants include, but are not limited to, small particulate matter, carbon monoxide, nitrous oxide, and volatile organic compounds, causing or worsening respiratory, cardiovascular, and neurologic disorders as well as causing cancer. For many of these toxins, there are no safe levels. Water pollution from toxic chemicals has the potential of affecting drinking water, water for farm irrigation and salmon habitat. The fossil fuel industry also poses a significant safety risk to the community—explosion, fire, spills. The question is not "if" but "when." Locating heavy industry adjacent to farmland is not compatible land use.

We must protect the health of both our rich farmland, our natural resources and our residents from the harmful effects of the fossil fuel and other heavy industry. Please reject this proposal.

Thank you.

Ann Turner, MD

2007 NE Mason St. ✓

Portland, OR 97211

503-318-6238

Karen Dees, Matl, Hpr

Columbia County
DEC 7 2020
Board of Commissioners

December 6, 2020

To:
The Columbia County Commissioners

My name is Scott MacGregor. I live with my wife on Erickson Dike Rd. where weavor to raise as much of our own food as possible from our garden and livestock. We live about 1 mile downriver from the proposed rezone of 837 acres at Port Westward.

I am opposed to the rezone and urge the Commissioners to reject the Port's proposal.

My primary objection is the narrowness of the Port's proposal. They have restricted the risk and impact assessment to 2000 feet, which is unrealistic. In the event of an industrial accident (which is a matter of when not if) the pollution could quite easily threaten our lives and welfare, as well as the agricultural existence of our neighbors.

But that is not the greatest problem with the Port's proposal. The narrowness of their vision allows them only to see their project in terms of a distorted economic model that values exploitation over sustainability.

I am an enrolled member of the Jamestown S'KlallamTribe. My ancestors have lived in the Pacific Northwest for thousands of years in a symbiotic relationship with the trees, water and animals of this region. Guided by the experiences and wisdom of our elders we are taught to respect and honor the other life forms with which we share this planet. In place of greed we are taught to take only what we need. We are taught to consider the consequences of our actions for seven generations.

My wife and I are only one family attempting to live a life that will leave an inhabitable world for future generations.

The Port's proposal is a short-sighted effort that may briefly benefit a few but will act to the long-term detriment of many.

Please reject the rezone.

.

Scott MacGregor smacgregor@gmail.com

417

Port Westward Rezone Request

Linda Horst <lindahorst45@gmail.com>

Sun 12/6/2020 4:23 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>
Cc: Dan Serres <dan@columbiariverkeeper.org>; lindahorst45@gmail.com <lindahorst45@gmail.com>

Hon, CC, Deb, Matt Karen

Columbia County
DEC 7 2020
Board of Commissioners

December 6, 2020

The Board of County Commissioners
For Columbia County, Oregon
230 Strand St
Room 338
St Helens, OR 97051

Dear Commissioners,

The Port of Columbia County is requesting a rezone at Port Westward of 837 acres of farmland (PA-80) to industrial use (RIPD). To justify this reclassification, they are seeking an exception to LUBA's Goal 3 "which requires agricultural lands be preserved and maintained for farm use". To understand the importance of Goal 3, it must be noted that Oregon voters have consistently supported this protection to prevent the demise of valuable farmland from industry takeover.

To circumvent the will of Oregon citizens to protect their irreplaceable farmland through Goal 3, the Port has created a Compatibility Report which unsuccessfully attempts to create "compatibility" of agriculture and heavy industry where logically none can possibly exist!

This flawed report also downplays or ignores the significant impacts of rezoned potential industrial development by skewing their analysis to portray "compatibility" with surrounding farms and homes as having a net 'zero' change to the environmental status quo.

Consider the following questionable rationalizations presented in the port's Compatibility Report:

• The report's claim that doubling the size of the port's industrial development by 837 acres will simply maintain the SAME level of risk and impacts to homes and farms as the existing Port Westward site is implausible! When you double the size of an industrial site and facilities, you will dramatically increase pollution, water/energy use, traffic and the risks of an explosion or accidental spill which will consequently double the negative impacts on surrounding property owners. This indefensible claim does not meet the "compatibility with other uses" requirement!

• The report makes the outlandish claim of equating the impacts of homes and farms with the impacts from industrial facilities. What an absurd comparison! Yes, homes and farms both have septic systems and occasionally use chemicals. However, homes and farms do not have: brightly lit 24/7 operations; steam stacks producing toxic vapor plumes reaching 2.5 miles long; 245' tall flare stack "purging" polluting methanol; millions of gallons of highly volatile fossil fuels; and incessant industrial odors, noise and rail traffic. Commissioners, which one sounds like the "compatible" neighbor you would like to live

000417

by?[418]

• To downplay the impacts of this rezone on neighboring homes and farms, the report has arbitrarily limited the "compatibility study area" to a mere 2,000 feet from the proposed rezone. This is the distance of six average city blocks....a rather short distance when the world's largest methanol refinery could be your neighbor! By limiting the perimeter of this "study area", the port is refusing to acknowledge the risks and welfare of dozens of residential homes located just beyond the 2,000 foot "study area". This arbitrary distance selection shines a disingenuous light on their "compatibility study area" for this report.

• What are the "compatibility" ramifications to adjacent homes and farms if a toxic spill occurs from an industrial facility? The port's report claims that the Beaver Drainage District pumps, that currently keep the land at Port Westward above water, could simply be turned off....a rather simplistic solution to a complicated, devastating scenario! While turning off the pumps might keep the pollution and contaminants from entering the Columbia River, without pumps it could also flood the industrial park and surrounding homes and farms with life-altering consequences!

When contemplating the myriad impactful aspects of something as horrendous as flooding happening to innocent neighbors of Port Westward, the term "compatibility" would never be applicable!

• Because the port's report has refused to acknowledge the diversity of agriculture at Port Westward, the accuracy of this report is called into question. The only agriculture commodity recognized in the report is the hybrid poplar tree farm. The internationally known blueberry and mint farms along with livestock and all other commodities are not considered, despite the fact that these farms are currently active within the proposed rezoned area and near by.

Commissioners, how do you know if the "proposed uses" (rezoned industries) are "compatible with other uses" (blueberries and mint farms, livestock etc) if the Port has intentionally eliminated those other uses in their Compatibility Report to you? You and the public deserve an honest, accurate and complete accounting in the port's Compatibility Report.

As highlighted by my preceding remarks, the port's indefensible claims, glaring omissions and misconceptions contained in their Compatibility Report clearly demonstrate that the Port has failed to make their case for "compatibility with other adjacent uses". Therefore, I urge you to deny the Port Westward Rezone request.

Cordially,
Linda Horst

For further questions or discussion:
1020 Kool Road
Kelso, WA 98626
Cell 360-442-3059
lindahorst45@gmail.com

419

Hann cc, DeB, Matt Brad

Vote "NO" on the Port of Columbia County's attempt to rezone Port Westward!

Columbia County
DEC 7 2020
Board of Commissioners

Tracy Prescott MacGregor <tracypmacg@gmail.com>

Sun 12/6/2020 1:49 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Dear Columbia County Commissioners,

I am very much against the Port of Columbia County's latest attempt to rezone 837 acres from prime agricultural to rural industrial at Port Westward. The nature of these dike lands makes this area a poor choice for such high risk activity.

I have lived about a mile from the proposed rezone for the last 20 years and I am very familiar with this land. Until the 1920s when the dikes were built the area was a flood plain created by the periodic flooding the Columbia river. This flooding deposited the rich top soils we farmers now enjoy. The water no longer floods the area due to the dikes but the water table still continues to rise during the heavy rains of fall, winter and spring. The low lying areas fill up with water as the water table rises much like a bathtub. The dikes serve as sort of tub sides holding the water in. In order to deal with these low lying wet spots drainage ditches are dug and maintained throughout the many acres of berries, mint and poplar farms. Many of these drainage ditches, sloughs and waterways are interconnected throughout. The water that flows through these ditches provides a rapid delivery system for any accidental toxic spillage by industrial activities at the Port Westward site far beyond the stated 2000 feet mentioned in the Port's application.

An accidental spill of toxic material would spread widely carried by this web of waterways and no doubt damage crops and livestock far beyond its point of origin. Native plants and animals will suffer along side our farms.

During these challenging times we need to be focusing on creating strong local food systems. It is well known we live in an area where large earthquakes are predicted in the coming years. You may not live see it but your children and grandchildren may well witness such a catastrophe in their lives.

Consider them too in your decision,

"A society grows great when old men plant trees whose shade they know they shall never sit in."—Greek Proverb

Regards,

Tracy Prescott-MacGregor

79490 Erickson Dike Rd. Clatskanie, OR

000419 419

420

ham cc Deb, Karen Matt

Port Westward Rezone Remand Testimony - File No. PA 13-02 and ZC 13-01

Maura Fahey <maura@crag.org>

Mon 12/7/2020 11:14 AM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>
Cc: Lauren Goldberg <lauren@columbiariverkeeper.org>

Columbia County
DEC 7 2020
Board of Commissioners

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you are expecting this email and/or know the content is safe.

Good Morning,

This email is submitted on behalf of Columbia Riverkeeper for the purpose of noting for the record that Columbia Riverkeeper intends to submit evidence, argument and testimony for the consideration of the Board of Commissioners in the above referenced proceeding. According to the Board's discussion at its December 2, 2020 meeting, and as confirmed by county counsel via email, the County intends to re-notice these proceedings and extend the open public comment period at least 21 days. In reliance on these representations, Riverkeeper intends to submit its complete remand testimony on or before the close of the extended open comment period.

Thank you,

Maura Fahey
Staff Attorney
Crag Law Center
3141 E Burnside St.
Portland, OR 97214
Office: 503.525.2722
Fax: 503.296.5454

Protecting and Sustaining the Pacific Northwest's Natural Legacy.

River Keeper

000420

265 Strand Street, St. Helens, OR 97051
Phone: (503) 397-6272 Fax: (503) 397-4016
www.sthelensoregon.gov

Columbia County Board of Commissioners
c/o jacyn.normine@columbiacountyor.gov
230 Strand Street Room 338
St. Helens, OR 97051

Submitted electronically

Subject: **City of St. Helens Support for the Port Westward Re-Zoning Application**

Dear Commissioners:

We urge you to approve the Compatibility Remand component of the Port Westward re-zoning application. The issue of compatibility with surrounding farmland has been fully addressed by the Port of Columbia County. The singular issue for remand was compatibility with adjacent or surrounding agricultural uses. The Port has overwhelmingly demonstrated this in multiple ways:

- The Port has worked together with interested parties and signed agricultural leases on the very land in question.
- The Port has implemented plans for large agricultural buffers around future industries.
- The original agricultural opponent, an adjacent farmer, not only has dropped his opposition (as have others) but is now one of the Port's agricultural lessees.
- The Port has worked out agreeable and approved limitations on the type of industries to be located on the property.

This is all clear evidence of meeting both the letter and intent of our land use laws, as well as cooperative, community-driven action.

Further ensuring compatibility, future industrial uses of the land are limited to the processing, production, storage, and transportation of forestry and wood products, natural gas, dry bulk, liquid bulk, and break bulk commodities, which are compatible with agriculture. This strengthens the removal of adverse impacts, enhancing compatibility.

The Port of Columbia County has demonstrated vision in this long-term land use planning, and the purpose, need, and all other land use tests have been upheld repeatedly. Now, the Port has demonstrated that not only will compatibility exist, measures have been taken to make it so. In doing so, when approved, the Port Westward rezone will help meet Oregon's critical shortage of Lower Columbia marine industrial sites and will help make our county, region and state more productive in essential, appropriate, compatible uses of our land that generate investment, revenue and family-wage jobs.

Once again, based on the Port's compatibility modifications as its final component, we strongly urge your approval of the Port Westward Compatibility Remand to complete the Port Westward Re-zoning application.

We need your careful and favorable decision on this final component, to benefit our county and its citizens. On behalf of our families, neighbors, and communities, please vote to approve the Compatibility Remand to complete the Port Westward re-zoning.

Sincerely,

John Walsh, City Administrator
City of St. Helens
jwalsh@ci.st-helens.or.us
www.sthelensoregon.gov

422

Vote No to the Port Westward Rezone!

Kisei Costenbader <kisei@zendust.org>

Fri 12/4/2020 4:27 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Dear Columbia County Commissioners Tardiff, Heimuller, and Magruder,

I am writing to express my concern about the proposed rezone of 837-acre expansion of the Port Westward rural Industrial Area. **PLEASE VOTE NO ON THE PORT WESTWARD REZONE PROPOSAL.** I am a teacher and leader at Great Vow Zen Monastery, a retreat center and spiritual community that overlooks the 837 acres of pristine farmland, which the Port of Saint Helens is applying to rezone.

An industrial complex on the proposed land would greatly impact our community and our business. As a spiritual center we are concerned with creating sanctuary where people can rediscover their center, find spiritual grounding and enjoy the peace and serenity of the natural world. The view overlooking the river valley is spectacular. When we witness the mists rising off of the river, a deep sense of peace, calm and awe fills the mind —truly we are part of something much larger.

We serve thousands of people a year, who make the drive to Great Vow in Clatskanie, OR— from Portland, Seattle and cities all over the country and world. They make the journey because they know that the peace and serenity of the monastery grounds is healing, is nourishing and is grounding for them.

I have watched so many people arrive at Great Vow Zen Monastery, a bit stressed, faces scrunched and shoulders tight. They step out of their cars, and pause. Looking out into that vast sky and lush earth of the Columbia River Valley. They take a breath of fresh air, and relax. People rediscover how to breath while they are here, breathing that fresh, clean country air. This air is rare in our world. And once its polluted, its almost impossible to get back. We know this being situated between two mills, some days the air smells of pollutants—but most days it is delicious.

We are concerned about the air pollution that may come with industrial development. This will directly impact the health of the 20 people who live here full time and the thousands of people who come here for retreat. We are concerned about the light and sound pollution. This will impact the sense of serenity and peace that is also rare in our world.

Our work centers around health, well-being, interconnection and the natural world. We have constant examples of how industrial development impacts the health of local communities and communities both upstream and downstream on the river. Please take a broad view, think of the people in three generations, will industry still be going strong in 100 years? Or will we have another run down industrial site, a polluted river, dead land and a community struggling to clean it all up. We can imagine what kind of place this would be in 100 years if the land remains agricultural —fresh air, migratory birds, blueberry and mint farms—a place where life continues to flourish, as it has for thousands of years.

Please make the best decision— one that is compassionate and truly caring for the whole of our community. Please consider the repercussions of your decision. May you lead and represent our county from a place of dignity, wisdom and honesty—you are entrusted by the citizens of this county to truly represent their best interests. I pray that you are able to fulfill this duty in way that you feel good about and that your great-grandchildren will also feel good about.

Sincerely,

Amy Kisei Costenbader
Great Vow Zen Monastery/Guiding Teacher

--

Kisei Amy Costenbader
(she/they)
Great Vow Zen Monastery/Zen Teacher

Great Vow Zen Monastery
PO Box 188
Clatskanie, OR 97016
503-728-0654
https://www.zendust.org/blog
https://www.facebook.com/greatvow/

Email & POST

Ham, cc, Deb, Matt Karen

Columbia County
DEC 7 2020
Board of Commissioners

00042422

Dear Columbia County Commissioners Tardiff, Heimuller, and Magruder,

I am writing to express my concern about the proposed rezone of 837-acre expansion of the Port Westward rural Industrial Area. **PLEASE VOTE NO ON THE PORT WESTWARD REZONE PROPOSAL.** I am a teacher and leader at Great Vow Zen Monastery, a retreat center and spiritual community that overlooks the 837 acres of pristine farmland, which the Port of Saint Helens is applying to rezone.

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Please make the best decision— one that is compassionate and truly caring for the whole of our community. Please consider the repercussions of your decision. May you lead and represent our county from a place of dignity, wisdom and honesty—you are entrusted by the citizens of this county to truly represent their best interests. I pray that you are able to fulfill this duty in way that you feel good about and that your great-grandchildren will also feel good about.

Sincerely,

Amy Kisei Costenbader
Great Vow Zen Monastery/Guiding Teacher

424

Ham, cc. Deb.
Matt
Karen

Columbia County
DEC 7 2020
Board of Commissioners

Document1

Kirk Leonard <kandlleo@kalama.com>

Sat 12/5/2020 1:29 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

1 attachments (12 KB)

Document1.docx;

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I am submitting my testimony on the single issue of the five allowed uses which will be "significantly depend" on the dock.

1. Forestry and Wood products, processing, production, storage and transportation.
2. Dry Bulk Commodities transfer, storage, production and processing.
3. Liquid Bulk Commodities transfer, storage, production and processing.
4. Gas and derivatives, products, processing, storage and transportation.
5. Breakbulk storage, transportation and processing.

Will any of the above be reasonably compatible with neighboring farms?

Forest and Wood Products. The concerning question, will the soils be compatible to site certification?

Dry Bulk. Coal is a dry bulk commodity, the toxic impacts are enormous. The coal in transit from mine source to destination loses an average 500 pounds of coal per trip. This data has been substantiated by both BNSF Railroad and the Surface Transportation Board. The dry coal blows off the top of the open gondolas and filters out the bottom. It is then spread all along the railroad right of way in the air, the soil and the waterways all along the transport route. The coal then leaches contaminants of lead, mercury, arsenic, cadmium, barium, chromium and selenium into the soil and water. A photo chronology of coal dust pollution in the Columbia River Gorge National Scenic Area is available on the Friends of the Columbia River Gorge website.

Liquid Bulk Commodities. The glaring example that stands out with shipping crude oil is the Mosier Oregon oil car derailment on June 3, 2016. Sixteen tank cars exploded, evacuating the town leaving oil sheen on the Columbia River. I also question the current condition of the rails. Derailment would impact the River and towns downstream, Clatskanie and beyond. Crude by rail exposes farms and residents to the potential dangers from a toxic spill with oil leaching into the ground.

Gas and derivatives. A methanol refinery is the best example of NOT being compatible with the agricultural farms or residents in close proximity. The heath impacts of the chemicals released from a refinery are ammonia, benzene, formaldehyde, nepthalene, toluene, xylene and n-Hexane. The local risks to this area will be fire and explosions, methanol is highly flammable. Ground level air pollution along with diesel particulate matter into the air leads to subsequent respiratory and cardio-vascular illness. The impacts on the Columbia River would harm habitat for endangered salmon and wildlife. The increased warming of the water from light pollution and flaring, which will operate 24/7, decreases the chance for salmon numbers to return. Gas is mostly methane which is a super potent greenhouse gas that traps 86 times as much heat as carbon dioxide over 20 years.

Breakbulk storage. Again, I would question the soil compatibility from the weight factor.

000424

425

Not one of the five uses is compatible with nearby farms and homes. Port Westward is home to farmers growing blueberries, mint, tree growers, cattle ranchers and the protection of salmon habitat. Under the state law, the 837 acres of farmland is considered high value with agriculture a chief contributor to Oregon's economy and continues to be a way of life for many of the state's residents.

The numbers help tell the story: $4.3 billion dollars—the value of Oregon's agricultural production. https://oregonfresh.net/education/ag-facts-figures/

The proposed industrial re zone will have significant impacts on all the citizens with the vicinity of this proposal. The paradox of the compatibility of industrial projects and neighboring farms and salmon habitat have no impacts is questionable at best. The adverse impacts will be significant.

It is patently absurd to once again attempt to overturn Oregon's Land Use Laws which is Governor Tom McCall's legacy.

It appears the Port of Columbia County's rezone is motivated by opening Port Westward to the export of fossil fuels. The argument, other agencies will do the right thing with vetting, in the case with Norwest Innovations' methanol refinery in Kalama, the Federal District Court vacated the Federal permits required for the project to proceed, send the project back to the U.S. Army Corps of Engineers for a full, transparent environmental review.

Coal trains, oil trains or a methanol refinery are not a good fit for the rural farms, as well as the Columbia River. The constant noise of industry, along with the high possibility of carbon pollution is not compatible with the neighboring agricultural farms. The working farms need clean air and clean water.

When an industrial site is increased by 837 acres, doubling the size, the chance of increased explosions, spills, water pollution and traffic will increase exponentially.

Sincerely,

Linda Leonard
217 Pebble Lane
Kalama, Washington
98625

000425
425

426

Re-zone Proposal at Pt. Westward

Karen, Tam, cc Matt BB

Columbia County
DEC 7 2020
Board of Commissioners

Thomas Gordon <tndgardens@comcast.net>

Mon 12/7/2020 3:55 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

FROM:
Anita J. Thomas
701 Columbia Street, #713
Vancouver, WA 98660
December 7, 2020

TO: Port Westward Commissioners

Distinguished Commissioners:

As your neighbor in Vancouver, Washington, I note your interest in changing the zoning for 837 acres at your port. The Columbia River is a national treasure with local farms, fisheries, and recreation and tourist businesses thriving in your area.

Please make sure that any facilities you consider allowing to locate at your port do not endanger your established economic basis there. Please also be mindful of Native American treaty rights that apply in your area.

Sincerely,

Anita J. Thomas

Karen, Matt CB, tkm cc

Columbia County
DEC 7 2020
Board of Commissioners

427

rezone comment

Tom/Diana Gordon <tndgardens@comcast.net>
Mon 12/7/2020 3:51 PM
To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Dear Commissioners:

The Port of Columbia County wants to rezone more than 800 acres to industrial classification. One possibility that has been mentioned is a methanol refinery for Port Westward. This is very bad idea as I explain below.

It takes only one gallon of methanol spilled into the Columbia River to deoxygenate 198,000 gallons of water.

One tank of methanol would hold 9.4 million gallons of methanol, according to Northwest Innovation Works, in their documents for a proposed methanol refinery in Kalama, Washington.

Depending on the size of release of methanol, which depends on the number of tanks in Port Westward and the amount released from each tank, the whole mouth of the Columbia River and the estuary there could be contaminated. This means the salmon runs could be wiped out as well as all the other aquatic life there and on out into the ocean.

IF the Port decides to allow this project, a provision needs to be in the contract that liability needs to rest with whomever builds there. Usually, the liability stops at the dock but there is the potential for much greater damage. The Port would most likely be held liable if the is no such provision.

For example, on July 3, 2019, a lightening strike at a Jim Beam warehouse in Versailles, Kentucky, caused a fire and burned 40,000 barrels of whiskey of which an unknown amount went into Glenn's Creek which eventually went into the Kentucky River and the Ohio River. About 1,000 fish were killed. While this is an act of God, Jim Beam had to pay $600,000 in fines and $112,000 in clean-up costs to the Kentucky Energy and Environment Cabinet, according to The Louisville Courier Journal. This was ethanol and the potential chemical here is another alcohol, methanol.

A fire or earthquake could result in a very large amount of methanol going into the Columbia River with huge fish kills and potentially affecting water supplies for people downstream. The Columbia River could be closed to shipping if there was also a fire with the highly flammable methanol. The Center for Disease Control says the lower explosive (flammable) limit in air (LEL) is 6.0% and the upper explosive (flammable) limit in air (UEL) is 36%. This shows there is a wide range of concentration of methanol in air which could ignite. Plus, methanol burns with a nearly invisible flame which makes it even more dangerous.

The best approach is to not have a methanol refinery in Port Westward to begin with.

Thomas Gordon
642 I Street
Washougal, WA 98671
(360) 835-7748

Hannah, Ben, Matt, Karen,

Columbia County
DEC 7 2020
Board of Commissioners

December 5, 2020

Dear Commissioners,

I am writing to ask that you reject the proposal to rezone the land at Port Westward to heavy industrial. I deeply value the Great Vow Monastery as a spiritual sanctuary, and this proposal would be devastating to the sanctuary were it passed. It would also be devastating to the wildlife that lives there, as well as the whole ecosystem. Please reject this proposal so that this land is not permitted to become an industrial area, which would destroy our beloved spiritual home. It is a unique sanctuary which serves people from all across the Pacific Northwest, and it would be a great loss for so many of us who travel there seek sanctuary.

Thank you for your time and consideration.

Sincerely,

Kit Ham

Karen Matt Deb cc Tam

Columbia County
DEC 7 2020
Board of Commissioners

To the Board of County Commissioners, Port of Columbia County

I am writing to ask that the 837 acres of land at Port Westward NOT be rezoned to "industrial".

I am a part of the Zen Community of Oregon and come to Great Vow Monastery and the land it sits on for renewal of my spiritual being. This has been a peaceful, healthy environment suited for healing and personal and collective growth. An industrial complex would NOT be compatible here. It would bring noise and light pollution, air pollution as well as disruption to existing habitats.

I travel North from Corvallis to spend time in this beautiful place, along the Columbia River.

Please protect this land for Oregon and the Zen Community.

Thank you,
Katherine Hayden

Katherine Hayden

33221 SE Peoria Road
Corvallis, Oregon 97333

HHM, Deb cc Karen, Matt

Columbia County
DEC 7 2020
Board of Commissioners

Board of Columbia County Commissioners
Room 338
230 Strand Street
St. Helens, OR 97051

December 3, 2020

Dear Commissioners Magruder, Heimuller and Tardiff,

I am heart broken at the prospect of the port's proposal to rezone 837 acres of farmland at Port Westward being approved. I urge you all to reject this proposed rezoning and protect the farms, homes, migrating birds, the Zen Community of Oregon's Great Vow Monastery and the precious Columbia River Valley ecosystem from the hugely detrimental effects of the proposed heavy industry pollution that would result.

I've visited Clatskanie many times in the last 20+ years. For many years my sister and brother-in-law had a home in Clatskanie near the river and we often celebrated the fourth of July with the community. My brother-in-law is now a retired Columbia River pilot who knows the river well and understands the importance of maintaining a healthy river ecosystem. He too is deeply disturbed by the prospect of more industrial activity on the river and so close to Clatskanie.

For 6 years I've been a member of the Zen Community of Oregon and have spent time in retreat, workshops and other events at the monastery. The monastery offers a unique opportunity for peaceful retreat in a healthy, natural environment for people who come from all over Oregon, the USA and the world. The addition of noisy, polluting industry so close and in view of Great Vow would destroy that peaceful environment and the health and wellbeing of the residents and visitors. No doubt people would stop coming to Great Vow because of this and a thriving, financially contributing religious member of your community would not survive.

I appreciate your consideration of my and my Zen community's appeal to reject the rezoning and protect the future of our Columbia River ecosystem and our spiritual home.

Sincerely,
Linda Chorin Vick

Linda C. Vick

Columbia County
DEC 7 2020
Board of Commissioners

Karen, Deb, Matt
cc, Hans

Peggy Jordan Lavelle
11460 Lower River Road
Grants Pass, OR 97526

December 4, 2020

Board of County Commissioners Office
230 Strand Street
Room 338
St. Helens, OR 97051

Re: Re-Zoning of Property near Great Vow Monastery

Dearest Board:

As a person who has traveled often to this location for their quiet retreats and the peace that being there brought me, I ask that you sincerely take this into account with your thoughts on re-zoning the area near Great Vow Monastery.

I have visited this location over several years, as have many, to train and learn compassionately how to look into ways of better serving our fellow humans and this all too hectic world at times. This place allows that healing for so many.

I also know that Great Vow Monastery brings much to the local community. Noise and light pollution would be most disruptive to the teaching there.

Money is often the pull for this type of re-zoning but I hope you will see the value of a place that offers a different value, a more lasting value and one that highly supports the community that surrounds them as well as many who travel great distances to get these teachings.

Sincerely,

Peggy Lavelle

HAM, Karen, Mull, CC Deb.

Columbia County
DEC 7 2020
Board of Commissioners

To: Columbia County Commission
Re: Port Westward Rezone/Dec. 7, 2020

Dear Commissioners Tardiff, Heimuller, and Magruder:

I urge you to reject the Port's proposal to rezone 837 acres of high-value farmland at Port Westward. And I ask that you hold a Public Hearing on this.

My understanding is that this misguided proposal would convert the 837 acres of farmland to industrial uses, which will quite conceivably open the door to oil train terminals, refineries, LNG facilities, power plants, etc. It is beyond belief that such uses would in any way be considered compatible with neighboring farms, as well as nearby salmon habitat. Such uses would inevitably lead to degradation of the health, safety and natural resources of Columbia County.

I live in Vancouver, WA but have long held great concern over the risks and negative impacts of fossil fuel exploitation that has been proposed over and over again throughout the Pacific Northwest. These proposals involve a quest for short-term profits, promise much but disguise the underlying risks and negative impacts that have been shown to occur in other parts of the country where such proposals get permitted, built and operate.

Vancouver, WA is a rail community, and oil-by-rail and LNG-by-rail would increase the health and safety risks for all of us who live along and love the Columbia River. Rezoning this property and allowing in industrial fossil fuel uses would ultimately bring harm not just to the citizens of Columbia County but also to my community, and to the river I love.

We concerned citizens in Vancouver spent 5 long years resisting (and defeating) the empty promises of an out-of-state oil-by-rail proposal, and our community has thrived without an oil terminal at the Port of Vancouver. We have been safer without the risks that oil terminal would have brought with increased oil train travel through Vancouver. We do not want to see this happen in another location (Columbia County) that would have the same risks brought to us once again, along our rail lines.

You are the decision makers, and you hold the public trust on this. There are high stakes (public health and safety, the viability of existing neighboring farms and wetlands, salmon habitat to name a few) and as elected representatives you must hold the Port accountable for it's flawed report that seeks to justify the unjustifiable.

Please do not betray the public trust - especially for the future well being of citizens, especially young people, who will have to live with the consequences of your ultimate decision on this. We are counting on you to do the right thing with this crucial decision.

Please deny the Port Westward Rezone.

Thank you,
Cathryn Chudy
Vancouver, WA 98663

Karen, Matt, DCB CC Hans

Columbia County
DEC 7 2020
Board of Commissioners

Pat Richards
433
2657 Fir St.
Longview, WA 98632

Board of County Commissioners
230 Strand Street
St. Helens, OR 97051

December 4, 2020

Dear Columbia County Commissioners,

I am writing to implore you not to rezone the land across from Great Vow Monastery, from agricultural to industrial. I have been a member of the Zen Community of Oregon for several years and have attended many services and retreats at the monastery. While there, I have gazed across the valley and felt peace and tranquility that was very healing. I have walked the trails and seen and heard the variety of animals that make their home in this ecosystem. The monastery is a serene and reverent place, providing education and spiritual practice for the residents and community. An industrial complex would not be compatible with the adjacent properties. The noise, air, and light pollution, as well as the disruption of

the beautiful landscape, would be detrimental to the habitat, the residents, and the community visitors.

I currently live in Longview, Washington, but I was an elementary teacher in in the Rainier School District for 38 years. I know how important the land, the animals, and the river are to the people of Columbia County. The community is proud of their history and heritage on the river. It would be disrespectful to take the agricultural land in question and rezone it to be used for an industrial plant. Please consider the effect of the inevitable pollution that would come from such a plant. Consider the destruction of the habitat of countless mammals, birds, amphibians, reptiles, and insects that rezoning would cause. The residents and visitors to the monastery have manged to cohabitate with all those beings in a healthy ecosystem. An industrial complex would have a lifelong damaging effect on that ecosystem and the spiritual sanctuary of Great Vow Monastery. Again, I implore you not to rezone the land from agricultural to industrial.

Sincerely,
Pat Richards

Oregon
Kate Brown, Governor

Department of Land Conservation and Development
Community Services Division
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: 503-373-0050
Fax: 503-378-5518
www.oregon.gov/LCD

Hem, cc

Columbia County
DEC 7 2020
Board of Commissioners

Karen, Matt, Deb

December 7, 2020

Board of Columbia County Commissioners
203 Strand Street
St. Helens, OR 97051

Delivered via email: jacyn.normine@columbiacountyor.gov

Re: Port Westward Comprehensive Plan Map/Zoning Map Amendment and Goal 3 Exception Modified Application on Remand from the Oregon Land Use Board of Appeals (LUBA); County File No.: LUBA Remand of Application No. PA 13-02/ZC 13-01; DLCD File No.: 002-13

Dear Chair Tardif and Commissioners,

Thank you for the opportunity to comment on File NO.: PA 13-03 / ZC 13-01, an Application for a Post Acknowledgement Comprehensive Plan Amendment, Zone Change from Primary Agriculture (PA-80) to Resource Industrial Planned Development (RIPD) and an Exception to Statewide Planning Goal 3. We appreciate all the work that has gone into this proposal.

We understand that 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) found that there was not substantial evidence in the record to support findings of compliance with the requirement of OAR 660- 004-0020(2)(d).

OAR 660-004-0020(2)(d) clarifies the standards required to be addressed when taking an exception to a statewide planning goal including a demonstration that "the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices." DLCD staff did not find a description of adjacent agricultural resource management or production practices in the materials submitted beyond a general indication that 'agricultural uses' including 'agricultural tree farm use' are occurring.

In Columbia Riverkeeper et al. v Columbia County, 78 Or LUBA 547 (2018), referred to as the "2020 LUBA Remand" in the Staff Report, LUBA opined that "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." A description of the characteristics of adjacent agricultural uses, including particular management practices, and an assessment of the vulnerability of those agricultural management and production practices to potential externalities from industrial uses does not appear to have been included in the submitted materials.

DLCD believes that the requirements of OAR 660-004-0020(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.

Please feel free to contact us if you have further questions or concerns.

Best Regards,

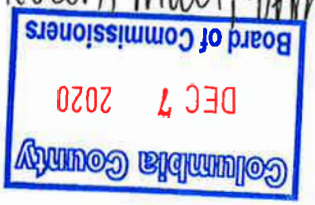
Lisa M Phipps

Lisa M Phipps | North Coast Regional Representative

Hilary Foote | Farm Forest Specialist

CC: Karen Schminke, Columbia County Land Development Services Director
Matt Laird, Columbia County Planning Manager
Gordon Howard, DLCD Community Services Division Manager
Patty Snow, DLCD Oregon Coastal Program Manager
Jennifer Purcell, North Coast Regional Solutions Coordinator
Kirstin Greene, DLCD Deputy Director
Jim Rue, DLCD Director

Deb
Karen, Matt, Henry cc



C. Bradford Biddle
4705 NE 13th Ave.
Portland, OR 97211
brad.biddle@gmail.com
503.502.1259

Commissioners Tardiff, Heimuller, and Magruder
Board of County Commissioners' Office
Room 338
230 Strand Street
St. Helens, OR 97051

Via email, c/o Ms. Jacyn Normine <jacyn.normine@columbiacountyor.gov>

RE: Port Westward Rezoning

Dear Commissioners Tardiff, Heimuller, and Magruder:

I write to urge you to reject the port's proposal to rezone 837 acres of farmland at Port Westward. I am a member of the Zen Community of Oregon and frequently attend retreats at a large residential retreat center just two miles from the port and even closer to the proposed rezone area. Heavy industry and fossil fuel development in this area would have an enormous detrimental effect on the retreat center, creating both economic loss for the center and the surrounding community, and immeasurably diminishing a personal and community experience that drives real positive change in the world.

Thank you for your thoughtful consideration of this matter.

Warm regards,

Brad Biddle

438

Rezone Proposal

Tom/Diana Gordon <tndgardens@comcast.net>

Mon 12/7/2020 4:58 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Columbia County
DEC 7 2020
Board of Commissioners

Gentlemen:

The Washington Department of Fish and Wildlife says wild salmon runs in the Columbia Basin have dropped to less than 5 percent of levels in the past. They used to be 10 to 16 million fish yearly.

With an accident at the proposed Port Westward facility, if a methanol plant is allowed to be built with the aid of rezoning now under consideration, the escaped methanol would kill the remaining salmon runs and destroy the Columbia River estuary nursery for salmon and all other denizens of the Columbia River there.

The methanol would effectively take the oxygen from the water and all life would suffocate. This effect would proceed out to the ocean and include all creatures from crab, to bottom fish, to the various species of whales until the methanol diluted to values below the toxic level. This would be a man-made dead zone that would take years to re-populate. Some would never come back, such as some species of salmon.

This area is prone to earthquakes, including "the Big One" which has at least a 30% chance of occurring in the next 50 years. Man-caused events would only increase the chances of a disastrous fire, explosion, and dispersal of methanol near the refinery to an area downstream known as one of the most dangerous bars in the world.

As the world fast approaches and utilizes renewable energy, this refinery would have a limited lifetime before it became obsolete, leaving , at the very least, a contaminated shell to be cleaned up by our children and grand children.

If the rezoning occurs, the plant or plants should be benign and not include dangers that cost huge amounts of money to clean-up, if they can be cleaned up at all.

Thomas Gordon
642 I Street
Washougal, WA 98671
(360) 835-7748
tndgardens@comcast.net

440

Karen, Matt, Dan, CC Hann

Port Westward Rezone

Michael Mintz <zyzzyvamintz@gmail.com>

Mon 12/7/2020 4:55 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

To the Columbia County Commissioners:

The Port of Columbia County's report is a flawed attempt to convince homeowners and farmers that living and working next to a massive industrial hub would be okay. The port gets a failing grade on their report. Columbia County Commissioners need to hold the Port accountable for their terrible report and deny the Port Westward rezone.

The report dramatically understates the potential risks of industrial water pollution. It does not adequately address how stormwater, process water, or potential spills of oil and other pollutants could impact irrigation and other water resources.

The report denies reality with its claim that adding 837 acres of industrial development would simply maintain the same level of risk and impact to homes and agriculture as the existing Port Westward site. In reality, nearly doubling an industrial site increases traffic, pollution, water use, and the risks of an accidental spill or explosion.

US citizens, particularly those with low income, have suffered the risks taken by the fossil fuel industry in the interest of profits for a century. We are tired and we are sick from leaks and spills and explosions and polluted resources that the industry continually leaves behind in the northwest and across the globe.

We need to take a stand on our own turf and just say "No" to the industries that put profits over the health and rights of Native Americans, US citizens, people of color, and families with limited resources and low income.

I am asking each of you to consider the facts, be brave, and stand up Global Partners, a corporation that is heavily invested in Canadian tar sands and Bakken shale oil developments.

Thank you for your careful consideration. Thank you for moving Columbia County and the region toward a more sustainable infrastructure. We really don't have any time left to allow developments like the proposed rezone.

Sincerely,

Michael Mintz
3607 SE 8th Ave., Portland, OR 97202

441

Columbia County
DEC 7 2020
Board of Commissioners

December 6, 2020

To the Commissioners of the Board of Columbia County:

I am writing in opposition to the Port of Columbia County's proposal to re-zone 800 acres of farm land for industrial use. First of all it is a breach of democracy not to sponsor a public hearing for the proposal. These issues need to be aired in community, not limited to individual responses.

If this proposal were accepted, one of the potential tenants of the newly zoned area would be a massive methane to methanol refinery and it is naive to assume that this particular proposal is not a driving force behind the rezone request. Northwest Innovation Works, the company behind the proposal, has already purchased a lease option in Port Westward and recently switched that option to 100 acres that is subject to the rezone proposal. The company has struggled to gain the permits it needs to build another refinery across the river in Kalama due to local resistance to its significant environmental impacts and adverse effects on global warming. During the several years NWIW has tried to peddle its project to the community of Kalama, it has misrepresented its intentions and deployed junk science to promote its interests. NWIW has shown itself to be disinterested in local concerns and there is no reason to assume it would be a better partner with Columbia County.

The Port presents a highly misleading argument about how any fossil fuel project of this magnitude is compatible with the surrounding area. Its study area is limited to a 2000 foot zone outside the industrial footprint, as if pollutants and industrial traffic and potential spills and explosions would be confined to that narrow strip of land. Furthermore, this is an area subject to flooding, earthquakes and tsunamis. Given the highly toxic and explosive nature of both methane and methanol, this presents a significant risk to both the surrounding riparian habitat, farmland, and local residents.

The methanol refinery would consume 500 million gallons of water per day, which is roughly ten times the amount used by the residents of nearby Clatskanie. At a time when water supplies are already diminishing due to climate change, this level of consumption could compromise the local supply for residential and agricultural needs. The refinery would import an estimated volume of fracked gas equal to half of the gas the entire state of Oregon currently uses.

The global warming effects of this consumption fly in the face of Governor Brown's directive to cut greenhouse gas emissions by 45% by 2035.

Oregon needs to protect and preserve its natural resources. This includes salmon habitat, prime agricultural land such as that surrounding Port Westward, and our water supply. The Land Use Board of Appeals has already twice rejected the Port's claims that large fossil fuel projects are compatible with the surrounding agricultural land. Nothing has changed. The County of Columbia should reject this dangerous proposal.

Sincerely yours,

Patricia Kullberg, MD MPH

Portland, Oregon

Karen, Matt, CC DCB HAM.

OREGON DEPARTMENT OF AGRICULTURE

Protect. Promote. Prosper.

Natural Resources Program
635 Capitol St, NE, Salem, OR 97209-2832
503.986.4706 Oregon.gov/ODA

Columbia County
DEC 9 2020
Board of Commissioners

Open Comment

December 9, 2020

Columbia County Board of Commissioners
County Courthouse Room 338
St. Helens, OR 97051

Commissioners:

The Oregon Department of Agriculture (ODA) has reviewed the materials associated with an application by the Port of St. Helens for a comprehensive plan amendment and zone change for approximately 837 acres from Primary Agriculture (EFU) to Resource Planned Development (File PA 13-02). This request is in response to a remand from the Oregon Land Use Board of Appeals. ODA provided comments on the original application. We offer the following comments for your consideration.

Our review of the subject area indicates that the vast majority of the soils found within the area proposed for the plan amendment are rated by the USDA Natural Resources Conservation Service as agricultural capability Class II and III, non-irrigated (see http://websoilsurvey.sc.egov.usda). These Class II and III soils are considered high-value farmland soils under state law. It is important to note that the only Class VI soils located within the subject area are located west and outside of the dike paralleling the Columbia River. There is a large area of Class VI soils located to the north, outside of the area proposed for the amendment.

Many of the sandy soils found within the subject area have a record of producing high-yields of high-value crops. For example, we are aware of mint production in the area yielding 1000 pounds per acre of peppermint and spearmint. The unique soils in the area are also supported by a warmer and dryer microclimate that allows for the production of heirloom mint varieties that cannot be grown in other mint regions of the state due to a susceptibility to a virus. Blueberry production is also growing in the area. Drainage is a key to such production. The soils in this area drain well (especially with the management done by area farmers) and the soils contain adequate organic matter. In fact, the organic matter is unique, allowing for less utilization of chemical fertilization which helps to produce higher-value, organic crops.

One last note related to the suitability of the area for agricultural production. Both mint and blueberries are perennial crops. Farmers do not lightly decide to develop any perennial crop as it represents a long-term commitment to the subject land and required agricultural infrastructure. With greater cost than producing annual crops. Some examples of

infrastructure development on agricultural lands in the area include irrigation and drainage facilities, trellis networks, site preparation for raised beds, weed cloth and processing facilities as needed.

State law requires that a proposed Exception be found to be compatible with adjacent land uses. We understand that this is the single issue to be considered in the subject remand. The information provided by the applicant fails to adequately address the compatibility of the proposed land uses with the ongoing and future area agricultural production (and associated practices) in the area. The applicant provides no real evaluation of the agricultural operations in the area including crops grown or crops that realistically may be grown in the future. There is no discussion or analysis of the implications to agricultural producers or agricultural practices associated with the types of crops that are grown or may be grown in the area. And there has been no discussion or consideration given t the implications of industrial operations to the infrastructure, such as drainage facilities and water supply that supports area agriculture.

The analysis provided by the applicant and the staff report focuses on broad types of farm use such as growing trees, blueberries and mint. There is no comprehensive analysis of the many different and unique agricultural practices that are utilized by area farming operations to produce such crops. Practices associated with planting, cultivation, irrigation, pest and weed management and harvest should evaluated for each individual practice as it relates to each individual crop. Agricultural practices can also vary from farm to farm for the same crop. For example, one of the area blueberry farms mechanically harvests its fruit while another harvests by hand. This reflects the different markets that each operation is suppling. There is no evidence in the materials provided of any consideration of such distinction in general practice and the different implications that adjacent industrial development may pose for these operations.

Dust creation and suppression is also an important concern. Dust can be created by both the industrial uses developed on-site and associated traffic. Both blueberry and mint production can be adversely impacted by dust. Besides potential impacts to production yields, dust on these products would require washing. Washing would involve greater infrastructure needs and costs to the farmer. Washing would also create issues with wastewater disposal and could also, in the case of mint leaves, promote mold growth impairing the quality of the end product. Dust and other contaminants could also impact certification of area farms related to food safety and quality standards required to meet market requirements. We are aware of at least one farmer in the immediate area who is a short time away from being certified as an organic operation, increasing the value of his product. Contaminants could adversely impact such certification.

The general conclusion statement provided, with no supporting analysis, appears to primarily defer any consideration of any impacts to the time when a development application is submitted and it has a major dependence on the permitting and review of other agencies. It is important to note that none of the required permits by other agencies identified in the

application documents requires any consideration of the implications to agricultural producers, farm use or agricultural practices. Dependence on EPA, FERC, USDOT, the Coast Guard, USFWS, NMFS and ODSL to name several listed by the applicant, for determining compatibility of nonfarm land uses with surrounding farming operations defers to other agencies who have no responsibility nor experience addressing the viability of agriculture nor the compatibility of nonfarm land uses with diversified agricultural practices.

Thank you for the opportunity to provide these comments. Please enter this letter into the record of this case.

Respectfully,

James W. Johnson
Land Use and Water Planning Coordinator

Cc: Alexis Taylor
Gordon Howard, DLCD
Lisa Phipps, DLCD
Hilary Foote, DLCD

12-8-20

Columbia County
DEC 14 2020
Board of Commissioners

Dear Commissioners Tardiff, Heimuller, and Magruder:

I strongly and whole-heartedly urge you to reject the port's proposal to rezone 837 acres of high-value farmland at Port Westward. The proposal fails to show that fossil fuel development and heavy industry will be compatible with the health, safety and natural resources of Columbia County residents, neighboring farms, and habitat at Port Westward. The port has not shown that its plan is compatible with farms, clean water, and salmon habitat. Of the things in this world I depend on most, more industry builds and I then assume, the careless misuse of our precious PNW land from such special interests, this project sounds like a selfish act. If we take a moment or a day to think, "industrial complex or whole earth land?" which of the two would best benefit our community? What does community mean to you? Earth? Industry? I've lived in Eugene, Oregon since 1994. As I've grown and lived here, it has become more and more clear to me what we all need to thrive together on this Earth. Oxygen and soil. AND water.

In what ways may we continue to take good care of these resources simply handed to us upon arriving into this world? I also understand that at this time, we do rely on oil, machinery and man-made systems to best help everyone. It's pretty unfathomable. One of many great things nature of this Earth continually teaches us is balance. She even shows us imbalance. So, we already know what balance is and can be.

If we consider once more what we have to choose for balance and the well-being of beings, will industry help the natural balance? Or will farmers, peaceful spiritual communities and nature help us balance with the Earth's nature and our great activity?

I deeply thank each of you for doing what you do. I can imagine the difficulties you face at every turn. I am simply writing to you to share my love and support for you and hope that you will listen to your heart for what is best for us beings.

Sincerely,

Kyle Jendrisak

Columbia County
DEC 14 2020
Board of Commissioners

Dear Commissioners.

Please do not rezone 837 acres at Port Westward. This place is a sanctuary to me and many others in my community. The Great Vow Zen Monastery sits right next to the site. It becoming Industrial will seriously affect our ability to host many people from all over the world.

The impact of traffic and pollution will be severe and I hope you reject the port's proposal.

The land around the Monastery is special and should be preserved at all costs.

Thank you for your consideration!

Brent Comer

Stephen Metzler
110 Morton Road
Oregon City, OR 97045

December 11th, 2020

Columbia County
DEC 16 2020
Board of Commissioners

Columbia County Commissioners
Room 338
230 Strand Street
St. Helens, OR 97051

To the Columbia County Commission,

I am concerned that rezoning an industrial zone at Port Westward would have a deleterious effect on the larger surrounding community. I worry about its impact on the ecosystem and the habitats of many beings -- deer, coyote, raven, salamander, red-wing black bird, geese, bald eagle, turkey vulture, osprey, crane, bushtit, rabbit, opossum, tree frog, dragon fly, nutria and all else who make the Columbia River Valley their home.

Additionally, I am disturbed by how the proposed rezoning would impact the adjacent properties, particularly the Great Vow Zen Monastery. This space has been an invaluable place of healing and refuge from the chaos of our contemporary world, for myself and for many others. My visits to the monastery have provided me with spiritual nourishment and meaningful re-connection with the larger web of life due, in part, to the monastery's location overlooking the area of the proposed rezoning. I am concerned that the proposed change in zoning would result in further pollution of air, light, and noise, which would detract from the monastery's presence as a serene respite from the larger world.

I urge you to reject the proposal to rezone this land.

Sincerely,

Stephen Metzler

December 4th, 2020

Board of County Commissioners' Office
Room 338
230 Strand Street
St. Helens, OR 97051

Columbia County
DEC 16 2020
Board of Commissioners

Dear Commissioners,

I am writing in regards to rezoning the land currently owned by the Port of St. Helens in the Quincy-Mayger region of the Columbia River Valley. This land is currently zoned as agricultural, however there is discussion about rezoning the land to industrial. I would like to express my clear opposition to this zoning change.

For nine years, I lived at Great Vow Zen Monastery, a Buddhist sanctuary on 20 acres of land adjacent to the property owned by the Port of St. Helens. During those nine years, I had the great fortune to experience the land as it is currently zoned.

The monastery is a refuge for hundreds of people each year. During my residency, there were, on average, ten to fifteen residents. The monastery is not cloistered, and in fact welcomes visitors for weekly events, weekend retreats, and week-long silent meditation intensives. Participants regularly come from across Oregon, Washington, and even British Columbia. Additionally, the monastery offers tours to anyone who visits, and I gave tours to the frequent unannounced guests making detours on their travels from Portland to Astoria. In this way, the monastery encourages people around our region to know about the town of Clatskanie, and to think of it warmly as the home of a sanctuary.

The monastery sees itself as a good neighbor to the people of Clatskanie. During my residency, efforts were regularly made to support neighbors and the community. I volunteered weekly with two other residents at an afterschool program supervising games for kids. Other monastery residents taught marimba at the elementary school when the community cut their music program due to budget limitations. One abbot has been a member of Kiwanis Club for eighteen years, attending their meetings, and volunteering to sell Christmas trees and run raffles. The monastery residents help with the annual "Clatskanie Clean Up Day". And, each year the monastery joins the 4th of July festivities with their contribution of a marimba float. Suffice to say, the monastery has actively benefitted the community of Clatskanie since its arrival in 2002.

If the proposal to rezone the land from agricultural to industrial passes, it would be devastating to the monastery, the community of Clatskanie, and the many other species who live in the region. It's hard to emphasize how the increased light pollution, noise pollution, and air pollution would fundamentally change the experience of Great Vow Zen Monastery as a refuge. People come to Great Vow to experience peace, and a core component of that is the beauty of the landscape. If

you decide to rezone the proposed property to industrial, I have no doubt that people will stop coming to the monastery. Should enough people make that choice, the monastery will not be able to financially survive, and will need to decide whether to relocate. I lived at the monastery when it was located in Corbett, Oregon, and we had to make the difficult choice to relocate specifically because of zoning issues. Should the monastery relocate, the community will lose all the benefits the residents and monastery guests currently offer. And, setting aside the impact to humans, the property being discussed is home to numerous native species such as coyote, tree frogs, salamander, crane, and more. They are part of a delicate ecosystem which is disrupted if their home is turned into an industrial complex.

I thank you for taking the time to read my reflections. I also strongly encourage you to visit Great Vow Zen Monastery for yourself. Take a walk around the 20 acres of land. Step into the meditation hall, and feel the stillness of that space. Enjoy a few moments on a bench in front of the monastery looking out over the bucolic landscape. It's impossible to describe the experience with words.

Many thanks,

Rev. Ryushin Hart, MSW, CADC I
Program Manager/Counselor
Benton County Drug Treatment Court

Columbia County
DEC 22 2020
Board of Commissioners

Breach Collective

PORTLAND HARBOR COMMUNITY COALITION
Our river. Our future.

STOP ZENITH
COLLABORATIVE

STOP FRACKED GAS PDX

Oregon Conservancy Foundation

OREGON PSR
PHYSICIANS FOR SOCIAL RESPONSIBILITY

December 21, 2020
Board of Columbia County Commissioners' Office
Room 338
230 Strand Street
St Helens, Oregon 97051
jacyn.normine@columbiacountyor.gov

Re: Port Westward Rezone Proposal

Dear Commissioners Tardiff, Heimuller, and Magruder,

As environmental and community-based organizations from across the region, we are writing to urge you to reject the Port of Columbia County's proposal to rezone 837 acres of high-value farmland at Port Westward.

We are deeply concerned by this proposal's inadequate accounting for the full range of impacts resulting from zoning changes for heavy industrial development and fossil fuel infrastructure expansion. This report underestimates how doubling the industrial site at Port Westward will lead to increased traffic, air and water pollution, and risk of an accidental spill or explosion from fossil fuel activities. By underestimating impacts, this report obscures the real and enduring harm these zoning changes would bring to neighboring farms, critical habitat for endangered salmon, Columbia County residents, and upstream communities. As a result, this proposal fails to adequately demonstrate compatibility with adjacent land uses at Port Westward—a requirement of Oregon's land use laws—and for this reason it should be rejected.

The proposed zoning changes would create a pathway for fossil fuel infrastructure expansion at Port Westward, including increased traffic of crude oil by rail. Since 2013, more than a dozen oil train derailments, fires, and spills have occurred across North America, including the June 3, 2016 derailment in Mosier, Oregon, which nearly caused catastrophic harm. These zoning changes would put neighboring farms and communities all along the rail line at acute risk.

The impacts to ecosystems and public health are no less severe from on-site developments, such as from an oil transloading terminal or methanol refinery (both of which are likely proposals at the site). These facilities can release enormous amounts of toxic emissions, including diesel particulate matter, nitrogen oxides, carbon monoxide,

volatile organic compounds, polycyclic aromatic hydrocarbons, formaldehyde, ozone, and heavy metals. Neighbors and workers exposed to these toxins face increased risk of cardiovascular, pulmonary, and developmental disorders, along with a host of other potential health issues from excessive noise pollution and onsite exposure to hazardous chemicals. [1]

Water pollution poses perhaps the largest risk to neighboring farms and habitats, and its insufficient treatment in this proposal points to the deep incompatibility of these zoning changes with the neighboring landscape. Port Westward is located in a wetland area adjacent to the Columbia River and in close proximity to extensive irrigation networks. Yet, this report dramatically understates the potential risks of industrial water pollution. The report does not adequately address how stormwater, process water, or potential spills of oil and other pollutants would impact irrigation and other water resources. Further, the report claims that if a spill from the industrial facility did occur, the Beaver Drainage District pumps that currently keep the land at Port Westward above water could simply be turned off. While this might keep the pollution from entering the Columbia River, it could also flood nearby farms and homes with the spilled material. Regardless, the likeliness of an accident of this kind understates how this proposal is incompatible with adjacent agricultural uses as well as local land use standards for protecting endangered salmon, migratory birds, and Columbia white-tailed deer.

Underlying and magnifying each of these risks is the very high likelihood that a massive earthquake will strike our region any day in the future. A study from 2010 estimates a 37% chance that the Cascadia earthquake will occur before 2060, and a 10-15% likelihood this earthquake will be magnitude 9.0 or greater.[2] Structures built on river-sediment soils, like those found at Port Westward, are particularly at risk of destruction from soil liquefaction. An earthquake-induced tsunami would also cause enormous floods and endanger these facilities along the Columbia River. Expanding heavy industry and fossil fuel infrastructure at Port Westward effectively creates a ticking time-bomb for spills, explosions, and contaminations that threaten the future of endangered species and neighboring farms in the area.

Overall, the Port's proposal fails to address these impacts directly. Instead, it argues other agencies can resolve these issues later on. This is a deeply concerning argument, and one that sets a dangerous precedent for land use decisions in Oregon. Regulating agencies, such as Oregon's Department of Environmental Quality, are limited in the scope of their enforcement to *onsite* environmental and health standards. Oregon's landmark state land use laws were created to protect our high value natural resources, communities, and businesses from development projects that would threaten their continued existence. Heavy industrial developments and fossil fuel expansions would cause enormous harm to Port Westwards thriving habitats and high-value mint, berry, livestock and other agricultural commodities. Oregon's rich ecosystems and economies depend on the continued preservation of farmland like Port Westward.

We urge you to consider these impacts and reject the Port of Columbia County's proposal to rezone these 837 acres.

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[1] https://www.oregonpsr.org/fracked_gas_a_threat_to_healthy_communities
[2] https://www.sciencedaily.com/releases/2010/05/100524121250.htm

Sincerely,

Elijah Cetas
Regional Organizer
Breach Collective

Cathryn Chudy
Oregon Conservancy Foundation

Cassie Cohen
Executive Director
Portland Harbor Community Coalition

Jolene Jonas & Carroll Sweet
Envision Columbia County

Damon Motz-Storey
Healthy Climate Program Director
Oregon Physicians for Social Responsibility

Emilia Ponti
Mothers for a Safe Columbia County

Don Steinke
Organizer
Climate Action of Southwest Washington

Stop Fracked Gas-PDX

Stop Zenith Collaborative

Columbia County
DEC 22 2020
Board of Commissioners

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PORTLAND HARBOR COMMUNITY COALITION
Our river. Our future.

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STOP FRACKED GAS PDX

Oregon Conservancy Foundation

OREGON PSR PHYSICIANS FOR SOCIAL RESPONSIBILITY

First Unitarian Portland

December 21, 2020
Board of Columbia County Commissioners' Office
Room 338
230 Strand Street
St Helens, Oregon 97051
jacyn.normine@columbiacountyor.gov

Re: Port Westward Rezone Proposal

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The impacts to ecosystems and public health are no less severe from on-site developments, such as from an oil transloading terminal or methanol refinery (both of which are likely proposals at the site). These facilities can release enormous amounts of toxic emissions, including diesel particulate matter, nitrogen oxides, carbon monoxide, volatile organic compounds, polycyclic aromatic hydrocarbons, formaldehyde, ozone, and heavy metals. Neighbors and workers exposed to these toxins face increased risk of cardiovascular, pulmonary, and developmental disorders, along with a host of other potential health issues from excessive noise pollution and onsite exposure to hazardous chemicals. [1]

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Overall, the Port's proposal fails to address these impacts directly. Instead, it argues other agencies can resolve these issues later on. This is a deeply concerning argument, and one that sets a dangerous precedent for land use decisions in Oregon. Regulating agencies, such as Oregon's Department of Environmental Quality, are limited in the scope of their enforcement to *onsite* environmental and health standards. Oregon's landmark state land use laws were created to protect our high value natural resources, communities, and businesses from development projects that would threaten their continued existence. Heavy industrial developments and fossil fuel expansions would cause enormous harm to Port Westwards thriving habitats and high-value mint, berry, livestock and other agricultural commodities. Oregon's rich ecosystems and economies depend on the continued preservation of farmland like Port Westward.

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[2] https://www.sciencedaily.com/releases/2010/05/100524121250.htm

We urge you to consider these impacts and reject the Port of Columbia County's proposal to rezone these 837 acres.

Sincerely,

Elijah Cetas
Regional Organizer
Breach Collective

Cathryn Chudy
Oregon Conservancy Foundation

Cassie Cohen
Executive Director
Portland Harbor Community Coalition

Jolene Jonas & Carroll Sweet
Envision Columbia County

Damon Motz-Storey
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Oregon Physicians for Social Responsibility

Emilia Ponti
Mothers for a Safe Columbia County

Laura Rogers
Community For Earth, *First Unitarian Portland*

Don Steinke
Organizer
Climate Action of Southwest Washington

Stop Fracked Gas-PDX

Stop Zenith Collaborative

Compatibility with adjacent uses re: Expansion of Port Westward

Hm, cc, Karen Mail Deb

Roger Rocka <rogerrocka@icloud.com>

Wed 12/30/2020 7:18 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Dear Commissioners,

There is a reason we protect farmland in Oregon. The supply of prime soils is limited and once turned to other uses it is lost forever. That is the situation and the threat on and around the 800+ acres the port wants to rezone for industrial use at Port Westward. There are appropriate sites for industry but irreplaceable prime farmland is the wrong place.

The effects of industrial use usually extend well beyond the industrial site. In the wrong place, clean water, clean air, salmon habitat, soils and quality of life are all threatened by industrial pollution and runoff. Heavy industry and fossil fuel development are not compatible with the site and its surroundings and the port cannot and does not show otherwise. I ask that you deny the rezoning proposal.

Roger Rocka
362 Duane Street
Astoria, OR 97103

000458

HCM, CC, Karen
Matt
Deb

To:
Columbia County Commissioners
%Jacyn.Normine@columbiacountyor.gov

Re: Rezone of property ay Port Westward

The land in question is zoned for agriculture. It was zoned for agriculture when the Port purchased it. The soil and proximity to water justify this classification.

The Port bought the land, not for agriculture, but with the intent of changing the zoning. How does that matter? Would someone who bought a storefront next to a high school be granted a re-zone to open a porn shop because that was their intent?

Changing the zoning is incompatible with local agriculture.

My wife and I own and farm 10 acres about 1 mile from the site in question where we attempt to grow as much of our own food as possible.

The consequences of an industrial accident, should this property be re-zoned, could well be devastating for us. But we are a small operation, and we are old, and perhaps the Commissioners don't care about such as us.

I would like to argue, however, that changing this zoning is wrong on a much larger scale. It furthers the catastrophic impact that humans are wrecking upon this earth.

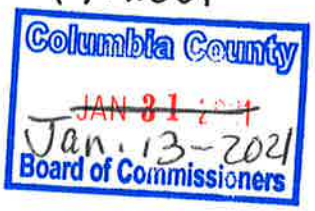
Agriculture, practiced correctly, is sustaining both to human life and animal life. In contrast, exploitation (which this re-zone seeks to promote) is a short-sighted degenerative process that would defile not only the land in question but also pollutes the world we live in and degrades what is passed on to our descendants.

There is a better way forward. Please reject the proposal to re-zone.

Sincerely,

Scott MacGregor
79490 Erickson Dike Rd.
Clatskanie, Oregon

Karen
HM, CC, Matt DB



Re-zone at Port Westward

Thomas Gordon <tndgardens@comcast.net>

Wed 1/13/2021 11:00 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Comment on Rezoning

January 13, 2021

Clatskanie, Oregon

The proposed area to be rezoned is not completely protected by dikes. Lying partially in the 100 year flood plain, once developed, the constructed industrial sites could be flooded and cause damage with the release of contaminants into the Columbia River. With increasing sea level rise, combined with increases in rain such as the winter of 2016 and the spring of 2017, the Columbia River could be pushed to increased heights. 100 year flood events may well occur more often than every 100 years. And flooding may well occur this year if we have more storms such as the one that just went through. Would flooded companies turn and sue Port Westward for damages?

Keep this land in farmland. This land is excellent for blueberries as well as mint, such as are there now.

In the past, the Oregon Land Use Board of Appeals decided that farm land was the best use for this land.

Thank You.

Thomas Gordon
642 I Street
Washougal, WA 98671
835-7748
tndgardens@comcast.net

BEAVER DRAINAGE IMPROVEMENT COMPANY, INC.
P.O. Box 201
Clatskanie, OR 97016
Email: ajvelke@yahoo.com Telephone (360)751-8778

Hem, CC, DCB
Karen Mott

Columbia County
JAN 13 2021
Board of Commissioners

The Beaver Drainage Improvement Co (BDIC) Board of Directors (Board) would like to clarify that the BDIC pump station will not be used as a 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.

Sincerely,

Warren Seely
President
Beaver Drainage Improvement Co., Inc.

Truett C. Stolzenburg

Truett Stolzenburg
Director
Beaver Drainage Improvement Co., Inc.

Sean P. Clark
Director
Beaver Drainage Improvement Co., Inc.

HCM, Karen, Matt
DEB
CC

Columbia County
JAN 14 2021
Board of Commissioners

Board of Columbia County Commissioners
203 Strand Street
St. Helens, OR 97051
Delivered via email: jacyn.normine@columbiacountyor.gov
Re: Port Westward Land Use Application. PA 13-02/ZC 13-01
Dear Chair Tardif and Commissioners,

I am Doug Krahmer, President of Berries Northwest LLC. I have been operating 175 acres of Blueberries at 78681 Collins Rd Clatskanie since 1999. At that time there were only 60 acres of Blueberries and 10 or 15 acres had been damaged by flood water sometime earlier when the Beaver Drainage District had pump problems during a wet winter.

So having experienced that problem, I am opposed to the rezoning of farmland by Port Westward that has in their mitigation plan that if there is a hazardous waste spill that gets into the drainage ditches that they will have the Beaver Drainage District shut down the pumps. Having seen the effects of what that does the economic effect on my operation would be great. The new acres we have planted, we have spent $30,000/ac to get to maturity. Turning off the pumps will damage potions of most fields we have planted.

If the pump shutoff happens in the summertime we would be irrigating out of the drainage ditches and would have to shut our pumps off and not water. Because we have no other source of irrigation water, our shallow rooted plants, loaded with fruit would be damaged in a few short days. We water with drip irrigation and water each plant every day and fertilize all the

plants every week during the growing season. This would also have a economic impact on our operation, potentially leaving the fruit dried up with poor quality and not fit for harvest.

Dust is also a potential issue. About 1/3 of our fruit gets harvested for the fresh market which means that washing that fruit is not possible and if the dust is contaminated with any kind of waste we would also then be in violation of our food safety plan. That is the reason we changed from watering our plants with overhead sprinklers to drip irrigation to keep the fruit dry. We plant our roadways to grass sod to keep down dust and use a water trailer to wet down any areas that become dusty during harvest each day.

I strongly believe this proposal is not compatible with my blueberry operation and need to be turned down. I would like to see the rezone for the property take place as the Port finds uses for the land so that we can then comment on the particular use that is being proposed.

As for the hazardous spills, anytime the spills leave the property of the company that is responsible, we are going to have economic problems with our crops.

Doug Krahmer
Berries Northwest LLC

Cowlitz Indian Tribe

HEM, CC, DeB, Karen MATT

Columbia County
JAN 25 2021
Board of Commissioners

Hard copy & digital email version

January 20, 2021

Jacyn Normine
Board of County Commissioners Office
Room 338
230 Strand Street
St. Helens, OR 97051
Jacyn.normine@columbiacountyor.gov

RE: Port of Columbia County Comprehensive Plan Map Amendment Zone Change and Zone 3 Exception at Port Westward

To the Columbia County Commissioners;

The Cowlitz Indian Tribe is a federally acknowledged tribe located in southwest Washington State. Our historic area includes a large portion of the lower Columbia River basin, in both Oregon and Washington State. We are writing this letter to enumerate our concerns about the proposed Columbia County Comprehensive Plan Map Amendment Zone Change and Zone 3 Exception at Port Westward. We believe the proposed change would directly and indirectly affect resources critical to our Tribe and our ongoing cultural and traditional practices.

The Port of Columbia County wishes to amend agricultural zonation to rural industrial development, dependent upon a 'unique resource.' The Port has been repeatedly exhorted to provide a rationale compliant with ORS 197.732 goal exceptions. The Port appears define a unique resource as an existing deep-water port. We disagree that this is a unique resource, or that the Port's application is compliant with ORS 197.732, or that it will be compliant with 197.732 under the strategy employed by the Port. It appears to us that this the Port proposal is driven by the Port's interest in developing additional industrial port facilities rather than a necessary land use rezone related to a unique resource.

The Cowlitz Indian Tribe has management authorities and priorities for at-risk aquatic and floodplain species and their habitats. Our prioritized species restoration include: Lower Columbia River Summer Chinook, Fall Chinook, Steelhead, Coho, and Chum, as well as Pacific Eulachon and Columbian white-tailed deer. We have completed major restoration projects throughout the lower Columbia River. The Tribe has also partnered with USFWS, WDFW, ODFW, and CFW to initiate the Eulachon Technical Recovery Implementation Team and based on the research that the Tribe has conducted for several years. We have partnered extensively in Columbian white-tailed deer recovery. These species, and their

PO Box 2547 • Longview, WA 98632-8594 • (360) 577-8140 • Fax (360) 577-7432 • EMAIL cowlitztribe@cowlitz.org

individual habitat needs, are being affected by climate change and development changes from the 1880's until today, including heavy impacts associated with floodplain development and industrial development.

We highlight these specific species and partnerships to illustrate our keen interest and engagement in fish and wildlife persistence and recovery in the lower Columbia River. We establish that, as a federally recognized Tribal nation, we have fish and wildlife management rights and responsibilities. We assert these rights and further make the following observations:

- First, the Port initially proposed uses which were not water dependent on a deep-water port.

- Second, the Port has not made arguments which demonstrate why this proposed rezone is associated with a unique resource, necessary for any purpose other than financial, nor have they made a strong effort to demonstrate compatibility with adjacent land uses.

- Third, and most important relative to our interests and rights, we believe that industrial development of the site will be detrimental to fish and wildlife, as well as ground and surface water resources.
    - Columbian white-tailed deer will be significantly affected by the industrial development on and around the site.
    - Site fill will displace species and water resources, which may lead to flooding of areas that are not currently flooded (permanently or temporarily), as well as reducing the spatial habitat availability.
        - Site fill could also lead to increased reliance on diking district pumps.
        - Adjacent agricultural and habitat contamination would occur if the pumps were to fail, stormwater leak, or contaminants spill.
    - Climate change will affect diking district levee system reliability, or result in higher rainfall events and again, increased reliance on diking district pumps to keep the diking district within historic standards.
    - Air, soil, and water pollution associated with the proposed industrial development could be minimized by local, state, and federal regulations but would certainly be an increase over existing pollutant levels.
        - Such pollutants would affect agricultural and aquatic environments.

The above list is just a short compilation of our concerns. It has been established a primer to educate the Columbia County Board of County Commissioners about the Tribe's interests and work related to these concerns. We are hopeful that, in the continued absence of a unique resource AND the Port's inability to contextualize its plans, the rezone will be dismissed entirely.

Please contact our Natural Resources Department Director, Taylor Aalvik or our Natural Resources Program Coordinator, Tiffini Johnson for follow up communications and scheduling. Taylor can be reached at: 360-577-8140, or taylor.a@cowlitz.org, and Tiffini can be reached at: 360-353-9509, or tjohnson@cowlitz.org,

Sincerely Yours,

Philip Harju
Chairman of the Cowlitz Indian Tribe

Cc:
Vicki Walker, Oregon Department of State Lands Agency Director

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HCM, CC, DB, Matt, Karen

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Board of Commissioners

January 20, 2021

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230 Strand Street
St. Helens, Oregon 97051
Jacyn.normine@columbiacountyor.gov

digital copy also provided

VIA HAND DELIVERY

Re: Testimony for Remand Proceedings for Port of Columbia County's application for Comprehensive Plan Map Amendment, Zone Change and Goal 3 Exception at Port Westward (File No. PA 13-02 and ZC 13-01)

To the Board of Commissioners of Columbia County:

The following comments are submitted on behalf of Columbia Riverkeeper and 1000 Friends of Oregon (collectively "Riverkeeper"). Columbia Riverkeeper is a regional environmental organization that seeks to protect and restore the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Representing over 8,000 members and supporters, Columbia Riverkeeper works to restore a Columbia River where people can safely eat the fish they catch, and where children can swim without fear of toxic exposure. 1000 Friends of Oregon is a nonprofit, membership organization that works with Oregonians to support livable urban and rural communities; protect family farms, forests and natural areas; and provide transportation and housing choice. 1000 Friends has members in all parts of Oregon including Columbia County. Columbia Riverkeeper was a named petitioner in both of the Land Use Board of Appeal ("LUBA") proceedings that resulted in remand back to the County to further evaluate the Port of Columbia County's ("Port") application. 1000 Friends was a named petitioner in the most recent LUBA proceeding. Both Columbia Riverkeeper and 1000 Friends of Oregon strongly oppose the proposed rezone.

I. Introduction

The Port of Columbia County (formerly Port of St. Helens) seeks to expand the Port Westward Industrial Park ("PWIP") by requesting a comprehensive plan map amendment, zone change, and exception to Statewide Planning Goal 3 to convert 837 acres of high-value agricultural land for rural industrial uses. The proposed rezone area, and surrounding lands, consists primarily of agricultural lands that produce high-value crops such as mint, blueberries, and other agricultural products. The rezone area is situated within the Beaver Drainage District, which is managed with a series of dikes and pumps to drain surface water from low-elevation agricultural areas to prevent flooding. Due to much of the area lying at elevations below the

Columbia River, the rezone area and surrounding lands have a very high water table, with wetlands located within portions of the rezone area.

The Thompson Property, included in the proposed rezone area, consists of freshwater emergent wetland and freshwater forested/shrub wetland. This area, as well as the Columbia River and surrounding riparian areas, provide important habitat for salmonid species listed under the federal Endangered Species Act. The surrounding area also provides habitat for the listed Columbia White Tailed Deer.

The Port's proposal, to nearly double the size of the existing Port Westward Industrial Park to make room for multiple large-scale and high-impact industrial uses, poses serious risks to the existing agricultural uses and natural resource values of the rezone area and surrounding lands. This remand proceeding marks the Port's third attempt at satisfying statewide standards to justify a Goal 3 exception that are intended to protect agricultural uses and natural resources. The Port has had over 7 years to prepare the necessary analysis and information to demonstrate that the proposed industrial uses will be compatible with existing uses and natural resource values in the Port Westward area. Yet, the Port's analysis continues to be woefully inadequate.

II. Legal Framework

Goal exceptions are governed by ORS 197.732 and administrative rules set forth in Chapter 660, Division 4. There are limited bases for taking an exception to a Statewide Planning Goal, briefly known as the "physically developed," "irrevocably committed," and "reasons" exceptions. ORS 197.732(2). An "exception" to a planning goal cannot be a comprehensive plan amendment that "establish[es] a planning or zoning policy of general applicability[.]" ORS 197.732(1)(b)(A); OAR 660-004-0005(1)(a); *Hood River Valley Residents Committee v. Hood River County*, 75 Or LUBA 452 (2017), slip op. 15.

Here, the Port is requesting a "reasons" exception to Statewide Planning Goal 3,[1] based on the provision for siting rural industrial development that is "significantly dependent upon a unique resource located on agricultural or forest land." OAR 660-004-0022(3)(a). The identified unique resource, on which all authorized uses of the rezoned area must be significantly dependent, is the existing deepwater port and dock facilities at Port Westward. *See* Staff Report, Attachment 1, Exhibit 3 (Supplemental Findings) at 3–5. When approving a reasons exception, the County's decision "must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception." OAR 660-004-0018(4)(a). For each authorized use under a reasons exception, four standards must be met in order for a local government to adopt an exception to a goal:

> (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
> (B) Areas that do not require a new exception cannot reasonably accommodate the use;

[1] Statewide Planning Goal 3 is "[t]o preserve and maintain agricultural lands."

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

ORS 197.732(2)(c). These standards are further developed in OAR 660-004-0020 and -0022.

As relevant to this proceeding and the issue before the County, OAR 660-004-0020(2)(d) elaborates on the compatibility requirement set out in the statute. The rule 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 and production practices. 'Compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses."

OAR 660-004-0020(2)(d).

III. Decision History and Scope of Remand

The Board of Commissioners of Columbia County ("County") first approved the Port's proposal in January 2014. The County's decision approved a multi-layered reasons exception under all three reasons provided under OAR 660-004-0022(3) and authorized all uses within the Resource Industrial – Planned Development (RIPD) zone. Columbia Riverkeeper and local mint farmer, Mike Seely, challenged the County's decision before LUBA. LUBA remanded the County's first decision on multiple grounds after finding the County's approach of authorizing an open-ended range of unspecified industrial uses to be "highly problematic for the Port to demonstrate compliance with all exception standards and applicable goal requirements." *Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171, 180, 206 (2014), *aff'd without opinion*, 267 Or App 637 (2014) ("*Riverkeeper I*"). In total, LUBA concluded that the County had not provided adequate justification for taking an exception to Goal 3.

With respect to the compatibility standard under ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d), LUBA determined that the criteria could not be "meaningfully addressed unless the 'proposed use' is described sufficiently to identify and evaluate its likely adverse impacts. *Id.* at 203. LUBA found the County's approach of relying on conditions of approval to ensure compatibility at the time of future development was "not consistent with the language of OAR 660-004-0020(2)(d)[.]" *Id.* at 204. LUBA explained what the compatibility standard requires:

> "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 rendered the proposed use compatible. Identifying a process that in the future will identify the proposed use, identify the adverse impacts of that use, and then identify and impose any specific measures needed to reduce impacts and render the proposed use compatible, is something quite different."

Id. LUBA clarified that the appropriate time for determining whether proposed uses are compatible or can be made compatible with adjacent uses is prior to adopting a goal exception. *Id.* at 206. LUBA concluded, "findings of compliance with the Goal 2 compatibility standard cannot be deferred to a subsequent permit proceeding." *Id.*

On the first remand, the Port revised its application and proposal to five industrial use categories and proceeded under a single reason to justify the exception—that the proposed uses are significantly dependent on a unique resource located on agricultural land, under OAR 660-004-0022(3)(a). However, the Port and County again failed to identify the likely adverse impacts of the proposed uses and instead concluded that the potential adverse impacts of the five proposed use categories would be similar to the existing Port Westward industrial uses, which the County found were already compatible with surrounding agricultural uses. The County conditioned the rezone on non-specific requirements to "ensure compatibility" during future conditional use review. Columbia Riverkeeper, along with 1000 Friends of Oregon, again appealed the County's decision to LUBA.

LUBA again remanded the County's decision on the compatibility standard, finding that the County had not identified any support for its presumption that the impacts of the five proposed industrial use categories would be similar to the existing Port Westward industrial uses. *Columbia Riverkeeper v. Columbia County*, 78 Or LUBA 547, slip op. 34–35 (2018) ("*Riverkeeper II*"). After finding that this unsupported presumption formed the basis for much of the County's analysis, LUBA remanded for the County to "adopt more adequate findings regarding compatibility, supported by substantial evidence." *Id.* LUBA provided guidance to the County on remand:

> "[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."

Id. at 36. LUBA also found that the County's over-reliance on conditions of approval to demonstrate compatibility with surrounding agricultural uses represented an "impermissible deferral of demonstrating compliance with OAR 660-004-0020(2)(d)." *Id.*

On appeal from the Port, the Court of Appeals upheld LUBA's decision regarding the compatibility standard. *Columbia Riverkeeper v. Columbia County*, 297 Or App 628, 646–57 (2019). Thus, for this second remand, the Port was again tasked with attempting to adequately identify the likely adverse impacts of the numerous uses authorized within the five proposed industrial use categories and demonstrating how those uses are compatible with other surrounding uses and natural resources, or could be rendered compatible through specific measures to reduce adverse impacts.

IV. The Port's Remand Compatibility Analysis

In response to LUBA's second remand, the Port retained Mackenzie to prepare a Land Use Compatibility Report ("Report") for the proposed rezone and Goal exception. The Report begins by establishing the compatibility "study area," which is defined by land parcels adjacent to the rezone area and contiguous parcels within 2,000 feet. Report at 7. The study area does not include surrounding natural resources or some of the most sensitive nearby agricultural operations. The Report then identifies adjacent land uses by simply listing, in the most general terms, the various uses that exist on the adjacent lands—agricultural, residential, industrial. *Id.* at 9–11. The Report does not include any detail on the nature of the adjacent uses. *Id.*

Next, the Report purports to assess the potential adverse impacts of the various uses within the five proposed industrial use categories. *Id.* at 12–14. This "assessment" consists of a basic list of different types of impacts associated with each use category. *Id.*, Table 1. The Report does not describe the scale or nature of the adverse impacts for any specific use within the proposed use categories. The Report then compares the general list of impacts for the proposed uses to a similar list of impacts for the existing uses within the rezone study area, again, with no discussion of the scale or nature of the impacts. *Id.* at 15–18. Based on this basic comparison, the Report concludes that adjacent uses would not experience any greater level of adverse impacts from the proposed industrial uses than is already experienced at Port Westward. *Id.* at 19. The Report concludes with listing numerous federal, state, and local agencies and regulatory programs that may be applicable to the various proposed industrial uses and relies on these programs to demonstrate compatibility. *Id.* at 20–49.

V. The Port's Compatibility Report Does Not Demonstrate Compliance with OAR 660-004-0020(2)(d).

While the Port's Compatibility Report is over 50 pages in length, it adds little substance to the County's prior findings and evidence regarding compatibility and thus, similarly fails to satisfy the goal exception standard.

A. The Report's identified study area is inadequate.

In defining the compatibility study area, the Report begins by incorrectly asserting that "the Port would be justified in identifying a compatibility study area that includes only those parcels which immediately abut the zone change area." Report at 7. While the Report ultimately extends the study area beyond merely adjacent parcels to include "all contiguous parcels which are wholly or partially within 2,000 feet of the zone change area," the identified study area is

nonetheless unjustifiably limited and inconsistent with the requirements of OAR 660-004-0020(2)(d).

First, the Report artificially limits the study area by confining it solely to contiguous land parcels. In doing so, the Report arbitrarily cuts off the compatibility study area at water bodies, which in some instances results in the study area ending at the boundary of the rezone area. *See* Report, Figure 3 (map of study area). Per the Report's own definition of "adjacent," and using the minimum threshold of land parcels for defining the study area, the boundary should extend at least to all parcels within 2,000 feet of the zone change area, regardless of whether they are contiguous or separated by a body of water. *See* Report at 7 (defining "adjacent" as including "not distant: nearby"). For example, along the northeastern boundary of the proposed rezone area it appears that the 2,000-foot study area should include parcels of land on Crims Island, across Bradbury Slough. The Report provides no indication that the adverse impacts of the proposed uses experienced on the Crims Island parcels would be any less or different than the impacts experienced on contiguous land parcels within 2,000 feet of the rezone area. Thus, there is no justification for limiting the study area to contiguous parcels, when there are likely to be the same or similar impacts on non-contiguous parcels within the same 2,000-foot distance from the rezone area.

Second, the Report does not provide adequate justification for limiting the consideration of adverse impacts to contiguous parcels that are within the 2,000-foot study area. The Report casts the 2,000-foot study area as a gratuitous expansion of what is required by the compatibility standard, offered by the Port out of the goodness of its heart. However, the language of the rule is not so confined, as the Port would have it. While the Report focuses on adjacent or contiguous parcels, the actual text of the compatibility standard is concerned more broadly with "adjacent *uses*." ORS 197.732(2)(c); OAR 660-004-0020(2)(d) (emphasis added). A particular land use often extends well beyond an individual parcel, particularly in rural areas such as Port Westward.

The proposed rezone area is surrounded primarily by agricultural uses. Report, Figure 4. While the Report's map showing adjacent uses stops at the 2,000-foot boundary, *see id.*, the uses themselves continue beyond the 2,000-foot mark. Indeed, the adjacent agricultural lands extend well beyond the Report's artificial 2,000-foot boundary. *See* Report, Figure 2 (showing zoning of broader Port Westward vicinity area). As discussed in detail below, the proposed uses are likely to cause adverse impacts to adjacent agricultural uses well beyond 2,000 feet from the rezone area. *See supra* Part V.D. For example, water quality and hydrologic impacts from the proposed uses will likely impact adjacent agricultural uses within the entire Beaver Drainage District. The rule provides no support for limiting the compatibility analysis based on adjacent or contiguous parcels, especially where, as here, the adjacent land uses cover broad areas of land and may be adversely impacted regardless of where the parcel lines are drawn.

Finally, by defining the study area based on land parcels, the Report entirely ignores a major component of the required compatibility analysis. 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." OAR 660-004-0022(2)(d). 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. As discussed further below, the surrounding area supports several important natural resource uses. The Report entirely excludes these areas and uses from the compatibility analysis and thus fails to demonstrate compliance with the rule.

B. The Report's discussion of the surrounding uses and natural resources is inadequate.

In addition to the inadequacy of the compatibility study area, the Report also fails to adequately describe the adjacent and surrounding uses and natural resources that will be impacted by the proposed industrial uses. The Report glosses over the nature of adjacent agricultural uses and entirely omits any reference to surrounding natural resources and resource management and production. These inadequacies result in an incomplete picture of the area and uses surrounding the proposed rezone and renders the compatibility analysis effectively meaningless.

Completely missing from the Report's description of the adjacent uses is any reference to the sensitive and high-value agricultural uses that occur adjacent to the proposed rezone area. The Report references agricultural uses generally in describing the adjacent and "non-adjacent" land uses, but then inexplicably makes multiple specific references to tree farms while at the same time lumping all other agricultural uses together as "other agricultural cropland." Report at 9–11. These "other agricultural croplands" include a U-pick blueberry operation and the Seely Mint farm. *See* Exhibits 2, 3. Further south of the rezone area there are more sensitive agricultural operations, including an all-natural cannabis farm and the Hopville Farms commercial blueberry operation. Exhibit 4; Rec. 370–71 (James Hoffman comments).[2] The Report does not acknowledge the distinct nature of any of these adjacent agricultural uses. These are sensitive crops, which are sold for human consumption and must meet certain standards that do not apply to tree farms.

Moreover, the Port fails to disclose that the Lower Columbia Tree Farm, LLC/Greenwood Resources, which managed the tree farm on lands surrounding the rezone area has discontinued its operations and all of those lands have been or are in the process of being sold off for other uses. Exhibit 5. Thus, the Report's reference to only this one type of agricultural use is even more problematic as it does not accurately represent the current or future state of the surrounding uses.

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[2] Citations to "Rec." are to the record of the current remand proceedings before the County, as compiled on the County's website (https://www.columbiacountyor.gov/departments/BoardofCommissionersOffice/PortWestwardRezoneRecord). Citations to "2014-Rec." refer to the record for LUBA Case Nos. 2014-017/2014-018, which is incorporated into the record in this proceeding. Citations to "2018-Rec." refer to the record for LUBA Case No. 2018-020, which is incorporated into the record in this proceeding.

LUBA directed the County, on remand, to adopt findings that "address the characteristics of uses on adjoining areas[.]" *Riverkeeper II*, 78 Or LUBA 547, slip op. at 36. By lumping all agricultural uses together, the Report makes it effectively impossible for the County to make adequate findings regarding compatibility. The Report's broad generalization of other adjacent agricultural uses is a clear attempt by the Port to avoid addressing the important distinctions between the characteristics of commercial tree farms and blueberry, heirloom mint, and other crop production and how those uses may be differently impacted by the proposed uses.

Additionally, the Report neglects to disclose that over 450 acres of the proposed rezone area that has historically been used as a tree farm are being converted to other agricultural uses pursuant to recently issued leases from the Port. *See* Report at 9. In 2010, the Port entered into a purchase agreement for 740 acres that were previously owned and managed as a poplar plantation by the Lower Columbia Tree Farm. Exhibit 6. Per that agreement, tree farming on the property could continue until 2025 or until the Port identified an alternate use of the property. *Id.* In May 2020, the Port entered into two new lease agreements for the subject property to allow cattle grazing and an expansion of the Seely Mint farming operation into the rezone area. *Id.* The Report does not acknowledge these agricultural uses.

Perhaps the most glaring omission from the Report's description of the compatibility study area is any reference to the important natural resources and resource management and production operations surrounding the rezone area, as is required by OAR 660-004-0020(2)(d). For example, the Report does not include any discussion or consideration of adverse impacts on the Columbia River, Bradbury Slough, or other surrounding waterways. The Report states that the reason for this omission is that "[t]he extent of the County's zoning authority is limited to land uses rather than waterways such as the Columbia River . . . so waters of the United States and waters of the State have not been cataloged here." Report at 9, n 13. However, the compatibility standard is not limited to those areas or uses for which the County has zoning authority and there is no justification for the Port's failure to evaluate compatibility with respect to these important natural resources.

It is the Port's burden, as the applicant, to demonstrate with substantial evidence that the goal exception criteria are satisfied. However, in an effort to highlight the gross inadequacy of the Port's analysis, Riverkeeper submits the following examples of surrounding natural resources and resource production and management uses that are missing from the Report. If the Port were to conduct a complete analysis, it is likely that additional natural resources and uses would be identified.[3]

The Columbia River, as well as riparian areas surrounding the rezone site that are below the ordinary high water line, are designated critical habitat for thirteen separate evolutionarily significant populations of salmon and steelhead listed under the federal Endangered Species Act. 2014-Rec. 3040, 4253; *See* Exhibit 1 at 9–10 The Columbia River also supports important

[3] If the Port supplements the Compatibility Report to attempt to correct these inadequacies and address surrounding natural resources, Riverkeeper intends to request that the County reset the schedule for public testimony to allow the public to submit opening argument and evidence in response to the Port's supplemented application materials.

commercial and tribal fisheries. The Port Westward area is within the Columbia River Estuary, which serves as key transition habitat for listed anadromous fish species. 2014-Rec. 4585. The Thompson property and adjacent riparian areas are not merely "forested," as the Report characterizes them. These areas contain protected wetland features, including Freshwater Forested/Shrub Wetlands and Freshwater Emergent Wetlands, that are part of the U.S. Fish & Wildlife Service's National Wetlands Inventory. 2014-Rec. 4250.

Across Bradbury Slough, Crims Island is also almost entirely protected wetland areas. *Id.* The majority of Crims Island is also designated and managed as part of the Julia Butler Hansen National Wildlife Refuge which provides important habitat to threatened Columbia white-tailed deer, as well as migratory waterfowl and other wildlife. Exhibit 7 at 15, 19. Between 2004 and 2006, several federal agencies partnered to complete a major restoration project to restore tidal marsh and riparian forest on Crims Island to provide rearing and foraging habitat to fall Chinook, chum, and coho salmon. *Id.* at 37; *see* 2014-Rec. 4797, 5658. There are several other restoration sites in the vicinity of the rezone area that would be impacted by the proposed uses. *See* 2018-Rec. 1587–94, 2141–42, 2307–08, 2311. The Report lacks any acknowledgment or analysis of impacts to these sites.

The Columbia River and the area surrounding the proposed rezone area supports many vital natural resources, including fish and wildlife and their habitats. *See e.g.* 2014-Rec. 2334–2541. Numerous state, federal, and private entities have devoted significant time and money to manage and restore these important natural resources. The Port completely disregards these resources in its compatibility analysis. The compatibility standard requires a demonstration that the proposed uses will be compatible with surrounding natural resources. OAR 660-004-0020(2)(d). Having entirely failed to conduct this analysis, the Report does not provide any evidence to support a finding that this prong of the compatibility standard has been satisfied.

The Report also fails to adequately discuss the nature of surrounding residential uses and incorrectly minimizes the extent of adjacent residential uses. Similarly, the Report does not include any mention of community water systems in the area that might be impacted by the proposed industrial uses.

C. The Report fails to provide any context for the scale of anticipated impacts of the proposed industrial uses and existing uses at Port Westward.

Section IV of the Report is presented as the Port's assessment of the potential adverse impacts of the proposed industrial uses on the parcels included in the study area. Report at 12. However, the Report's discussion of adverse impacts is a far cry from the type of analysis or assessment that is required by the compatibility standard and that was called for by LUBA. Instead, the Report merely identifies a list of potential adverse impacts for the proposed industrial uses, the existing PWIP uses, and the uses on parcels within the study area, and offers an overly simplistic assessment of those impacts based on comparing the list of impacts in each use category. Report at 12–18.

The Report begins by identifying the range of potential adverse impacts for the five proposed use categories. Report at 13–14. This exercise consists of merely listing out types of

adverse impacts that apply to all categories and then noting, for each individual use category, whether any additional impacts apply. *Id.* The Report treats all of the individual uses within each use category as having the exact same list of potential adverse impacts. *Id.* The Report notes, "[t]he 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." Report at 13. However, the Report does not go any further in actually describing or analyzing the important differences in scale of the potential impacts of the various proposed uses. This is in direct disregard of LUBA's direction on remand:

> "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 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."

Riverkeeper II, slip op 36 (emphasis added). Simply acknowledging the potential differences in the impacts of the proposed uses, without any actual discussion or analysis of those differences, does not satisfy the compatibility standard. A starker example of the problematic nature of the Port's overly simplistic approach is in the Report's representation that two vastly different uses in the liquid bulk use category—petroleum and milk—will pose the exact same adverse impacts. Report at 14. It is absurd to assert that the fire and explosion risk at a milk processing or storage facility would be equivalent to that of a bulk petroleum processing and storage facility.

These inadequacies are carried forward to the Report's discussion of the adverse impacts of the existing industrial uses at the Port Westward Industrial Park, as well as the adjacent agricultural and residential uses within the study area. Report at 15–17. For the existing PWIP industrial uses, the Report lumps them together into a single category and lists the same generalized range of potential impacts that were identified for the proposed use categories. Report at 15. Based on this simplistic comparison, the Report concludes, the "existing industrial uses within the study area have potential adverse impacts which entirely align with those noted for the proposed uses." *Id.* (emphasis added); *see also* Report at 16 ("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.").

This approach is problematic for at least two reasons. First, even if this sort of generalized and high-level assessment of potential adverse impacts was warranted for the proposed and yet-undeveloped industrial uses in the rezone area (which it is not), it is certainly not adequate for assessing the actual adverse impacts of the long-existing industrial uses at Port Westward. The Port's approach is simply lazy and fails to meet the requirements of the standard.

Second, the limited scope of the existing uses at the PWIP cannot serve as proxies for the open-ended and broad categories of industrial uses proposed for the rezone area. For example,

the adverse impacts of an electrical generating facility cannot reasonably be equated with those of an industrial sawmill or pulp and paper operation. Nonetheless, the Report relies on the "successful coexistence of existing industrial and non-industrial uses in the area" as "strong evidence that the rezone area's five rural industrial uses can indeed be made compatible with adjoining uses." Report at 19. As in the prior remand proceeding, evidence (or lack thereof) regarding the adverse impacts of the few existing industrial uses at Port Westward is not substantial evidence to support a finding of compatibility for the broad range of industrial uses proposed by the Port. *Riverkeeper II,* slip op 35–36. The Report offers almost nothing new to the inadequate analysis that formed the basis of the County's unlawful and unsupported decision in 2018.

The Report applies this same flawed approach to assessing the adjacent agricultural and residential uses. While the Report again acknowledges that any adverse impacts from agricultural and residential uses are "likely at a small scale," the Report provides no discussion of the varying scale of impacts associated with the different uses. Report at 15. This failure results in the absurd and incorrect implication—highlighted in Table 3 of the Report—that certain impacts from agricultural and residential uses are equal to those of large-scale industrial operations. Report at 18. The Report then suggests that the proposed industrial uses may actually be less impactful than agricultural or residential uses, because "the industrial uses are subject to more stringent environmental regulation than non-industrial uses." Report at 16. The Report's own examples demonstrate the absurdity of this comparison. For instance, it is a matter of common sense that a single-family residential on-site wastewater system would be regulated differently than wastewater treatment at large-scale industrial facility. *See* Report at 16–17. The Report entirely ignores the differences in scale between these various uses and cannot be taken seriously.

Moreover, even if comparison of the impacts of the existing industrial, agricultural, and residential uses to the proposed industrial uses was adequate for demonstrating compatibility, there are several identified adverse impacts that are not associated with the existing uses. Specifically, the Report identifies "navigation impacts," "dike impacts for any levee modifications," "wildlife impacts" and "combustibility" as adverse impacts which apply only to the proposed uses and are not associated with any of the existing industrial, agricultural or residential uses. Report at 18, Table 3. However, the Report does not provide any discussion or analysis of these impacts—beyond simply listing them—or otherwise explain how they will be compatible with the existing surrounding uses and natural resources.

Finally, it is unclear why the Report analyzes the "adverse impacts" of the adjacent agricultural and residential uses at all. The Port is required to demonstrate that the proposed industrial uses are compatible with the existing surrounding uses, not the other way around. The rezone area and the surrounding lands have already been planned and zoned for agricultural and residential uses. It is the Port's proposed industrial uses that do not belong and that must meet the criteria required to justify taking an exception to Goal 3, which is intended to protect agricultural land. LUBA directed the County to "address the characteristics of uses on adjoining areas, and assess vulnerability to potential externalities from industrial uses in the exception area[.]" *Riverkeeper II*, slip op 36 (emphasis added). By falsely equating the scope and scale of impacts

from agricultural uses with those of the proposed heavy industrial uses, the Report entirely fails to satisfy LUBA's directive.

Without disclosing and analyzing the scale of potential adverse impacts of the proposed industrial uses, it is impossible for the County to determine whether those uses are compatible or what specific measures are needed to reduce adverse impacts to a compatible level. The Report asserts that "rural industrial uses can safely exist side-by-side with non-industrial uses if appropriate mitigation is in place[.]" Report at 19. But how is the County to determine what "appropriate mitigation" is without knowing the scale of the impacts to be mitigated? As discussed further below, buffers, setbacks, and other mitigation measures are meaningless unless they are specifically designed to address particular impacts. This necessarily requires an analysis of the scale and extent of the potential adverse impacts. The County cannot make a finding of compatibility based on the Port's bare-bones Report.

D. The Report fails to adequately address adverse impacts to surrounding agricultural uses and natural resources.

Because the Report completely fails to provide any level of detail of the potential adverse impacts of the proposed uses, it is virtually impossible to analyze whether those uses will in fact be compatible with the surrounding agricultural uses and natural resources. The proposed uses include multiple heavy industrial uses, which have the potential to cause harmful pollution to surrounding water sources, pose serious health and safety risks to the area, and impact wildlife and habitat.[4] Riverkeeper again notes that it is the Port's burden to demonstrate that the proposed uses will be compatible, which necessarily requires a complete disclosure of the potential adverse impacts of those uses. However, in an effort to further illustrate the inadequacies of the Port's analysis, Riverkeeper discusses several of the most likely adverse impacts of the proposed uses and how those impacts are incompatible with surrounding uses.

1. Water Quality/Hydrology

The Report does not discuss the specifics of the wastewater and on-site stormwater that will be produced with each of the various proposed uses. The Report also does not discuss the

[4] The Report asserts, "in large part specifically to maintain compatibility with neighboring properties, the Port selected a narrow list of uses after evaluating and rejecting other uses with objectionable impacts." Report at 19, n 19. This is false. The Port's April 13, 2017 remand application states, "as suggested by LUBA, on remand the Port has also narrowed down its list of proposed uses in the exception area from all those authorized under [CCZO] Section 680 to the [five proposed use categories]." April 13, 2017 Remand Application at 2. The Port narrowed the list of uses because LUBA indicated that it would be difficult for the County to justify a goal exception for every single use allowed in the RIPD zone, particularly where many of those uses have no dependence on the deepwater port and dock. *Id.* at 5, 7. The Port eliminated uses because they are not justified under its chosen reason; that decision had nothing to do with avoiding objectionable impacts to neighboring uses. This is clear from the fact that the five proposed uses include some of the most intensive and polluting activities allowed in the RIPD zone.

level of fill and surface hardening that will be required to make the rezone area developable for industrial uses and how that will impact the hydrology and surface water flow of the surrounding area. Water quality and surface water flows are important factors that impact agricultural operations. Industrial development also presents significant impacts to surrounding natural resources from stormwater and other pollution. The Report does not address these impacts in any level of detail.

Dr. Johnathan Rhodes prepared a report in 2017 to address the likely impacts of the five proposed use categories on hydrology and water quality of the surrounding area. Despite having been provided a copy of the Rhodes report in the prior remand proceeding, and being specifically directed by LUBA to address water quality impacts on this remand, the Port has again failed to address these issues. *Riverkeeper II*, slip op 26; Rec. 372–79. Dr. Rhodes prepared a report based on over 35 years of professional experience in hydrology and hydrogeology, as well as an onsite review of the area. Rec. 373.

Dr. Rhodes' report discusses the probable adverse impacts to water quality from industrially polluted water, and the area's high water table, resulting in frequent mixing of ground and surface water during rainy winter months. Rec. 373–79. The report notes the risk of water contamination caused by increased surface flow of polluted runoff onto agricultural lands due to fill material that will be necessary to raise site elevations to achieve the flat land surface needed for large industrial uses. Rec. 375–76.[5] The Rhodes report concludes that it is "impossible to prevent stormwater discharge from the Project areas to adjacent land and waters." Rec. 377. Industrial pollutant runoff can increase algae and result in elevated levels of metals and hydrocarbons in agricultural water supply, all which increase cost and negatively affect marketability of farm crops. Rec. 378. Dr. Rhodes also noted that if the then-existing poplar tree plantations were harvested (which is certain to happen in light of the recent/pending sale of those parcels), those areas would likely develop wetlands due to a rise in the water table. Rec. 375.

Riverkeeper also submits the report of Dr. Richard Horner with these comments, which elaborates on the issues identified in the Rhodes report and further discusses the likely impacts of industrial stormwater pollution on the Columbia River aquatic ecosystem and its resources and beneficial uses. Exhibit 1. Dr. Horner notes that the Compatibility Report "is virtually silent on potential effects on Columbia River and wetlands water quality and aquatic life and how deleterious impacts will be countered." *Id.* at 6. Dr. Horner points out the differences in stormwater pollutants associated with the existing PWIP uses and the uses within the five proposed use categories. *Id.* at 7–8. With respect to the wetland hydrology of the Port Westward area, Dr. Horner elaborates on the important functions of wetlands and advises, "[d]evelopment 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. This outcome would

[5] The Beaver Drainage District ("BDD"), which encompasses most of the rezone area and surrounding lands, is not certified by the U.S. Army Corps of Engineers as meeting the requirements for accreditation under National Flood Insurance Program ("NFIP") Levee System Evaluation. Exhibit 11. NFIP accreditation means that the levee system is equipped to handle a 100-year flood event. Because the BDD is not certified, any construction within the BDD, including the rezone area, will need to be raised above the floodplain.

alter hydrology and, probably, also the floral and faunal diversity." *Id.* at 16–17; *see also* Exhibit 13 at 8–9. As discussed further below, Dr. Horner also points out the flaws in the Port's reliance on federal and state regulatory programs to adequately mitigate adverse impacts from stormwater runoff.

These potential impacts are particularly problematic for agricultural uses in the area in light of the Report's reliance on the Beaver Drainage District's dike system to isolate any potential industrial pollution from the Columbia River. Report at 44. The BDD serves to drain water from inland low-lying agricultural and residential areas that surround the rezone area to the south, east and west. If the pumps are turned off to isolate industrial pollution or spills, the lands within the BDD could be inundated rapidly, which would cause agricultural fields to become flooded with contaminated water. *See* Exhibit 14 (photos of natural flooding/inundation of fields at Port Westward). This would cause serious impacts to sensitive crops such as mint and blueberry, and may permanently damage soils with industrial contaminants. 2018-Rec at 1024–25. Even without flooding, agricultural users rely on the BDD ditches to convey irrigation water for crops. If water within the drainage ditches becomes contaminated with industrial pollutants, there would be serious impacts to surrounding agricultural operations.

Impacts to groundwater and surface water sources in the Port Westward area would also have serious potential impacts on community water systems that supply domestic and drinking water to nearby residential and commercial users. *See e.g.* Exhibit 12. The Report does not address these potential impacts.

2. Dust and Other Airborne Contaminants

The Report also fails to adequately address the potentially damaging impacts of dust and other airborne contaminants from the proposed industrial uses on surrounding agricultural uses. As discussed above, the lands surrounding the rezone area are farmed with sensitive crops that are grown and sold for human consumption, such as blueberries, mint, and marijuana. These crops must meet specific food safety and other certification standards in order to be marketable. Dust, particulates, and other airborne pollutants from the proposed industrial uses may interfere with the marketability of these sensitive crops.

The proposed use category "Dry Bulk" includes grain storage, processing and transport related uses, such as a grain elevator that handles corn, soybean, or wheat products. Dust particles from a bulk grain facility will likely travel to nearby farms and contaminate crops. Grain products cannot be loaded onto barges or other bulk carriers while it is raining because moisture can spoil the product. Exhibit 18. Thus, bulk transfers of grain will happen during dry periods when dust is likely to travel further to surrounding agricultural fields. Dust particulates associated with various grain products could have serious impacts on nearby agricultural operations and profitability.

For example, wheat dust would likely cause nearby mint grown for tea to lose its certification as a gluten-free product. This sensitive crop cannot be washed to remove dust or other contaminants because washing mint causes the oils to seep out of the leaves and can lead to mold due to excessive moisture content. Additionally, if bulk grain operations include corn or

soybean products that are genetically modified, dust that lands on nearby blueberry crops could result in farmers losing their non-GMO certification. These contaminants would also interfere with organic crop certifications.

Other uses within the five proposed use categories have additional potential adverse impacts on agricultural operations through airborne contaminants associated with petroleum, chemical, or other hazardous material processing and handling. The proposed uses will also result in significantly increased traffic to the Port Westward area, including along gravel roads. Dust generated from increased traffic on gravel roads would similarly impact sensitive mint and blueberry crops. Moreover, surrounding agricultural operations frequently use these roads to transport machinery from field to field. Delays in these operations caused by increased traffic would likely increase costs for farmers due to lowered efficiency in labor and production.

The Report does not acknowledge the scope or extent of these potential impacts on surrounding uses. The Port cannot adequately mitigate for impacts that it does not study or disclose. The Report does not demonstrate that the proposed uses will be compatible with surrounding agricultural uses.

3. Health and Safety

The Report minimizes the potential health and safety impacts associated with liquid bulk and natural gas uses that involve the bulk transport, storage and processing of fossil fuels and other volatile chemicals and substances. The Report simply notes "fire/explosion" as a potential adverse impact of each of the proposed use categories, without providing any context for the varying scale of that risk across specific use types. The risks and resulting impacts of a fire or explosion at a liquified natural gas facility or petroleum processing facility are much greater than those at a breakbulk facility that handles wind turbine components. Certain liquid bulk and natural gas uses also pose significant safety and environmental risks, including the danger of oil spills and health hazards from toxic diesel pollution from trains and sulfide gas from crude oil. 2014-Rec. 765–856. The Report does not identify any of the unique risks or potential impacts posed by these types of uses, which are proposed for the rezone area.

The Report also fails to acknowledge the potential risk of an earthquake at Port Westward and how the proposed uses would dramatically increase the adverse impacts of an earthquake event on surrounding uses and natural resources. Port Westward is at risk of a catastrophic earthquake from the Cascadia Subduction Zone, which has a 15–20 percent chance of rupture in the next 50 years and could be similar in impact to the Magnitude 9 earthquake that hit Japan in 2011. The entire Port Westward area, include the rezone area and surrounding agricultural areas are at a high risk of liquefaction in the event of a large earthquake. Exhibit 16. Bulk fossil fuel storage and processing facilities pose serious health and safety risks from explosions and fire as a result of seismic vulnerabilities.

A recent example of the potential risks posed by proposed bulk petroleum and natural gas storage uses is the October 2019 explosion at the NuStar Energy facility in Crockett, CA after a 4.5 magnitude earthquake struck near the facility. Exhibits 19–21. The tanks erupted in flames for several hours and an explosion blew the roof off one of the storage tanks. Thousands of local

residents were forced to stay in their homes to avoid dangerous air pollution, the nearby interstate I-80 was closed for several hours, and it is estimated that thousands of barrels of industrial chemicals were released from the tanks. *Id.* The impacted tanks were only at 1% of their storage capacity, indicating that the impacts could have been much worse had the tanks been filled. Exhibit 20.

In addition to risks with storage tanks, bulk petroleum and natural gas facilities also involve high-risk transport of volatile liquids. Oil trains associated with bulk fossil fuel storage and processing have a high rate of hazardous spill incidents. Exhibit 22 at 41; Exhibit 23. In 2016, an oil train derailed in the Columbia River Gorge in Mosier, Oregon spilling 1,000 barrels of oil and affecting local drinking water facilities. Exhibit 24. In August 2018, a train carrying tar sands crude oil derailed in Doon, Iowa and released 230,000 gallons of tar sands crude into a local river. Exhibit 25. In September 2019, a Union Pacific train carrying liquified petroleum gas (LPG) derailed in Portland and struck a support beam for an overpass bridge, closing off the main access point to the Swan Island industrial area. Exhibit 26. Thankfully, none of the tank cars leaked, which likely would have caused significantly more damage to the bridge and surrounding area and prolonged disruption of access to Swan Island. And just last month, a train carrying crude oil to a refinery in Whatcom County, Washington derailed in a small community and burst into flames, causing road closures and evacuation of the surrounding community. Exhibit 27.

Any one of these extremely high-risk events at Port Westward could cause serious impacts to nearby agricultural uses and natural resources. A major spill or explosion involving hazardous materials could contaminate nearby water sources and land, destroying crops and rendering agricultural operations impossible for the long term. The Report fails to explain how these potential adverse impacts are compatible with the surrounding high-value agricultural uses or how the unspecified mitigation measures will ensure compatibility.

4. Impacts to Fish & Wildlife

As discussed in detail above, the compatibility standard requires the Port to demonstrate that the proposed uses are compatible with surrounding natural resources and resource management and production practices, but the Report almost entirely ignores the important natural resource values surrounding the proposed rezone area. *See infra* Part V.B. In identifying the potential adverse impacts of the proposed uses, the Report lists "wildlife impacts" for each of the five proposed use categories. Report at 13. Notably, this is one of the identified impacts which the Report attributes only to the new proposed industrial uses and thus, offers no point of comparison for impacts associated with existing uses in the PWIP or surrounding area. However, the Report provides no discussion or explanation of the scope, extent, or type of adverse impacts that the proposed uses will have on wildlife.

The segment of the Columbia River that passes along Port Westward is designated for multiple beneficial uses, including fish and aquatic life, wildlife and hunting, and fishing, as well as a migration corridor for salmon and steelhead. OAR 340-41-0101, Tables 101A & 101B. The River supports multiple species of salmonids, which are vital to tribal, recreational and commercial fishing practices up and down the River. Exhibit 1 at 9, Exhibit 28. Sturgeon also

use habitat in the vicinity of Port Westward. Exhibit 1 at 10. Wetlands surrounding the rezone area and on nearby Crims Island support a diversity of wildlife and fish species and provide important ecological functions. *Id.* at 10–11.

The proposed industrial uses have the potential to negatively impact the fish and wildlife populations and habitats at and around Port Westward, particularly through water pollutants. *Id.* at 11–17. In his report, Dr. Horner explains how certain pollutants associated with uses in the proposed industrial use categories are likely to impact water quality and aquatic resources. *Id.* Dr. Horner also discusses the likely impacts on wetland hydrology and functioning as a result of fill and intrusion from development in the rezone area. *Id.* at 16–17. The Compatibility Report does not address any of these potential impacts.

The proposed rezone area and surrounding lands also provide important habitat for the endangered Columbian White-tailed ("CWT") deer. Several agencies have undertaken significant efforts to protect the CWT deer's habitat within the region, including establishing the Julia Butler Hansen National Wildlife Refuge for Columbian White-tailed deer on nearby Crim's Island in 1971. Exhibit 7 at 16. In 1983, the U.S. Fish & Wildlife Service adopted a recovery plan for the CWT deer. Exhibit 9 at 60. One of the key measures of that plan is to "ensure that at least 4,600 hectares (11,500 acres) of low-lying pastureland in private ownership will remain in agricultural production with farm management practices...." *Id.* The entire Port Westward area is designated as a priority area for CWT deer. *Id.* at 65. The Report does not address the potential impacts to CWT deer from the proposed uses or how the rezone will interfere with ongoing recovery and habitat restoration efforts on surrounding lands.

E. The Port cannot rely on other federal, state, and local regulatory programs to demonstrate compatibility.

The Report's ultimate conclusion regarding compatibility relies almost entirely on federal and state regulatory programs, which involve issues that are outside the County's authority and that may or may not apply to the proposed uses until long after the County has made the decision to convert this high-value agricultural land for heavy industrial uses. Specifically, the Report states, "[t]he fundamental reason the existing PWW uses and the five rural industrial uses identified for the zone change 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." Report at 19. The Port's reliance on these other permitting programs is problematic for several reasons.

First, given the Report's lack of detail and specificity regarding the type and scale of anticipated impacts for each of the proposed use categories (and specific uses within those categories), it is impossible for the County to accurately assess the level of mitigation needed to ensure compatibility. Without adequately identifying the scale and extent of adverse impacts, the Port and County cannot determine which of the federal, state, and local regulatory programs will apply to the proposed uses and therefore, whether mitigation of impacts through those programs will actually occur.

The Report takes a spaghetti-at-the-wall approach by presenting a 24-page list of what appears to be every federal, state, and local regulatory program, administered by various agencies to address multiple categories of impacts, that *could* potentially apply to the proposed uses. Report at 20–44.[6] The Report concludes, "[t]he 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. However, the Report does not explain which regulatory programs (and within them which permits, standards, or mitigation requirements) will actually apply to the various uses being proposed for the rezone area. Instead, the Report provides an overly simplistic table, listing the various regulatory programs and checking the box for which programs "would likely apply to representative examples for each of the five proposed rural industrial uses[.]" *Id.* at 46, Table 5. The problem with this approach is illustrated in the Report itself, which provides: "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." Report at 20 (emphases added). The Port cannot rely on regulatory programs that may or may not apply to the proposed uses to demonstrate compatibility.

Second, even assuming that the identified regulatory programs will apply to the various proposed uses, many of them do not adequately address adverse impacts to surrounding agricultural uses and natural resources. Indeed, none of the identified federal, state, or county regulatory programs are designed to address adverse impacts to, or ensure compatibility with, agricultural uses. For instance, federal regulatory programs under the Clean Water Act and Clean Air Act impose limits based on generalized standards intended to reduce or minimize pollutant levels across a broad area, such as an entire waterbody or airshed. The Report does not explain how these programs will adequately mitigate the likely adverse impacts of the proposed uses such that they will be compatible with surrounding agricultural and natural resource uses. The Port cannot pass the buck on its obligation satisfy the compatibility standard and demonstrate that a goal exception is justified.

Dr. Horner's report discusses this issue with respect to the likely industrial stormwater impacts from the proposed uses. As discussed in detail above, the proposed uses will have potentially significant impacts on surrounding agricultural uses and natural resources from industrial stormwater. *See infra* Part V.D.1. Dr. Horner notes that the primary regulatory mechanism that would address industrial stormwater at Port Westward is Oregon's Stormwater Discharge General Permit No. 1200-Z. Exhibit 1 at 19; *see* Report at 31 (indicating 1200-Z permit would apply to proposed uses). The 1200-Z permit applies certain terms to all industrial stormwater dischargers and additional terms for particular industrial sectors. Ex. 1 at 19. Thus, as Dr. Horner notes, "the permit cannot take into account site-specific circumstances." *Id.*; *See* Exhibit 13 at 4 (stormwater permits are "usually statewide, one-size-fits-all permits in which general provisions are stipulated."). This is particularly important here, where the Port is proposing industrial uses which do not currently exist in Oregon, such as petroleum processing

[6] The Report reveals the form-over-substance nature of this exercise in admitting that some of the listed regulatory programs do not apply to any existing or proposed use at Port Westward. *See* Report at 32 (acknowledging that DEQ Biosolids Program does not apply to rezone).

and methanol production, and are thus beyond the existing experience of the 1200-Z permit. Exhibit 1 at 19. Additionally, the 1200-Z permit relies on self-reporting by permittees based on only four water quality samples per year. *Id.* Thus, Dr. Horner notes, "this regulatory mechanism is limited in its ability to ensure aquatic resource protection." *Id.* A 2009 study commissioned by the National Academy of Sciences discusses the limitations of stormwater regulatory programs at the federal and state level and notes that "stormwater discharges would ideally be controlled through direct controls on land use[.]" Exhibit 13 at 6. In other words, state and federal permitting programs cannot substitute for mitigation measures and conditions that are specifically designed to address impacts at the local level.

Finally, these regulatory programs are routinely violated by regulated entities and are often poorly enforced and implemented. Several specific local examples are indicative of the inadequacy of the various regulatory programs to ensure adverse impacts are adequately addressed. For example, a review of Oregon DEQ's enforcement database shows that the agency levied penalties in 180 separate enforcement actions related to air, water, and land-based permitting violations over a 12-month period between November 2019 and November 2020. Exhibit 29. This high level of noncompliance demonstrates the inadequacies of these regulatory programs in protecting the environment and preventing adverse impacts from pollution sources.

In many instances, the responsible regulatory agency does not step in to enforce these programs in response to industry violations. In October 2020, Columbia Riverkeeper sued the Port of Longview under the federal Clean Water Act over the Port's failure to comply with the conditions of its Industrial Stormwater General Permit. Exhibit 30. The alleged violations include the Port of Longview's failures to collect adequate samples, prevent illicit discharges, timely submit required monitoring reports, implement an adequate pollution control plan or best management practices, and to take appropriate corrective actions as required by the permit. *Id.* Similarly, in November 2020, Riverkeeper notified the Port of Vancouver of its intent to sue for similar violations of the Port's Industrial Stormwater General Permit. Exhibit 31. These types of citizen enforcement actions are necessitated by the failure of state or federal regulatory agencies to enforce their regulatory programs, whether as a result of inadequate agency resources and staffing or a lack of political will.

These factors also likely contribute to ongoing inadequacies with the agencies' implementation and application of these regulatory programs. A 2019 study by the National Academy of Sciences identified recommendations to EPA for updating and strengthening the Multi-Sector General Permit for industrial stormwater and noted that EPA has been slow to adapt the program to the best available science and new information. Exhibit 32 at 7–14.[7] In 2018, Riverkeeper sued Oregon DEQ over inadequacies in its stormwater permitting program. Exhibit 33. The lawsuit resulted in a settlement that requires DEQ to add protections for heavily polluted water bodies and increase reporting obligations on permitted entities. *Id.*

In 2017, in response to a draft industrial stormwater permit for the Tesoro-Savage oil-by-rail terminal proposed in Vancouver, WA, numerous parties, including state and federal agencies, conservation organizations, scientific experts and the general public, weighed in to

[7] Oregon's 1200-Z permit is modeled after EPA's Multi-Sector General Permit.

document how the proposed project would harm designated uses, violate water quality standards and conflict with state policy to improve water quality. *See* Exhibit 34. Ultimately, the project was rejected by state officials. A similar type of facility would be authorized under the Port's proposed rezone and goal exception. Recently, a federal court in Washington vacated federal permits for the proposed Kalama Methanol Refinery after finding that the Army Corps of Engineers failed to comply with the National Environmental Policy Act and Clean Water Act when issuing the permits. Exhibit 35. Specifically, the court found that the agency failed to consider the cumulative impact of greenhouse gas emissions caused by the project and regional pipeline and failed to consider the project's costs to the public. *Id.* Northwest Innovation Works, the company behind the Kalama refinery, already holds a lease option to develop the same type of facility within the proposed rezone area. Exhibits 36 & 37.[8]

The various regulatory programs referenced in the Report are clearly inadequate to ensure that adverse impacts are addressed and mitigated to an extent to achieve compatibility with surrounding agricultural, residential and natural resource uses. The Port cannot rely on these programs as a substitute for a legally adequate compatibility analysis.

VI. The Proposed Conditions of Approval are Inadequate to Demonstrate Compatibility.

The Port's Compatibility Report and the County Planning Staff Report rely on conditions of approval to "ensure that the future development is fully protective of and compatible with its surrounding." Report at 49–53; Staff Report at 27–28, Attachment 1 at 3–5 (Ordinance No. 2018-1). With one exception, these conditions are the exact same set of conditions that were imposed in the County's prior remand decision. The Port proposes that the County adopt one new condition of approval to require future industrial applicants to confirm "prior to occupancy" that they have obtained all applicable Federal, State, and local permits. The proposed conditions are not adequate to demonstrate compatibility and constitute an impermissible deferral of compliance with the compatibility standard.

Indeed, LUBA already rejected this approach as inadequate to satisfy the compatibility standard in *Riverkeeper I*. 70 Or LUBA at 203–04. In that decision, the County had relied on site design and conditional use standards, which would be applied to future development proposals, to ensure that compatibility would be addressed. LUBA held that approach was "not consistent with the language of OAR 660-004-0020(2)(d)" that allows compatibility to be demonstrated through "measures designed to reduce adverse impacts." *Id.* LUBA explained that the county could not simply identify some other process in the future that would identify and impose specific mitigation measures as the basis for finding compatibility. *Id.*

On remand, the County adopted a longer set of approval conditions, including Condition 4, which required future applicants to conduct an agricultural impact assessment at the time they submit a development application. Ordinance 2018-1 at 4. On appeal, LUBA again rejected the

[8] On January 19, 2021, Washington Department of Ecology denied a key shorelines permit for the proposed Kalama methanol facility after deciding it would have significant negative impacts on the climate, Washington's shorelines, and the public interest.

County's overreliance on conditions of approval. *Riverkeeper II*, slip op at 36–37. LUBA held that because the County had failed adequately address the characteristics of the surrounding uses and the vulnerability of those uses to the potential adverse impacts of the proposed uses, the decision over-relied on conditions of approval and thus, represented an impermissible deferral of demonstrating compliance with the compatibility standard. *Id.*

The same issue is being repeated in this remand. As discussed throughout these comments, the Port's analysis fails to adequately describe the surrounding agricultural uses and natural resources, fails to adequately disclose the types and scale of impacts presented by the proposed industrial uses, and fails identify mitigation measures that will ensure compatibility. The conditions of approval adopted in Ordinance 2018-1 continue to be inadequate to demonstrate compatibility. For example, the Report relies on these conditions as providing "appropriate mitigation" to ensure compatibility through the use of buffers, setbacks and other separation. Report at 19. However, the conditions do not specify what types of buffers or setbacks will be provided. Instead, Condition 4(c)—which is part of the condition "to ensure compatibility with adjoining agricultural uses"—merely provides,

> "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."

Ordinance 2018-1 at 4. The Port has not provided any evidence demonstrating what types of buffers will be required to adequately mitigate the various adverse impacts from the proposed industrial uses. The County's other conditions of approval that are intended to ensure compatibility fail for this same reason. Thus, the County cannot rely on these vague conditions as "measures designed to reduce adverse impacts." OAR 660-004-0020(2)(d).

The proposed addition of a new condition of approval requiring applicants to obtain all Federal, State, and local permits does not resolve the issues with the County's prior decision. Importantly, the proposed condition only requires applicants to demonstrate compliance with these other regulatory programs "prior to occupancy." Staff Report at 26. Many of the adverse impacts discussed above and ignored in the Report will occur during site preparation and construction, well before the proposed industrial facilities are ready for occupancy. At that point, it will be far too late for the County to ensure compatibility with surrounding uses and natural resources. Additionally, the County has no control over whether future applicants actually comply with permitting requirements prior to occupancy.

A recent example illustrates that industrial operators, such as those being proposed for the rezone area, cannot be relied upon to obtain all necessary federal and state permits prior to engaging in activities that will harm surrounding uses and natural resources. Columbia Riverkeeper recently filed a Clean Water Act suit against Perennial Wind Chaser, LLC for failing to obtain a required DEQ stormwater permit prior to beginning construction on its gas-fired power plant in Hermiston, Oregon. Exhibit 38; *see also* Exhibit 40 (Notice of Intent to Sue Zenith Energy for similar violations). The facility had gone ahead with constructing an access

road on the site, despite a condition imposed by state regulatory authorities requiring the facility to obtain all necessary permits prior to construction. Exhibit 39.

Reliance on these other permitting processes to demonstrate compatibility constitutes an impermissible deferral of the determination that is required by OAR 660-004-0020(2)(d). "Generally, whether a comprehensive plan amendment complies with an applicable statewide planning goal or an administrative rule implementing the goal must be determined before the plan amendment is adopted, and cannot be deferred to a subsequent permit proceeding after the plan amendment is adopted." *Riverkeeper I,* 70 Or LUBA at 205. In order for such a deferral of compliance to be permissible, the Port and County must demonstrate that later permitting processes are "'infused' with the same participatory rights" as this goal exception proceeding. *Id.* at 204–05 (citing *Gould v. Deschutes County*, 216 Or App 150, 162 (2007)). The Report makes no reference to the participatory rights involved in any of the numerous and potentially applicable federal, state, or local regulatory programs.

VII. Conclusion

The Port has had multiple chances to attempt to demonstrate that its open-ended and undefined proposal to expand the Port Westward Industrial Park satisfies the standards for taking an exception to Goal 3. Yet, after 7 years the Port has still failed to adequately identify the scale and extent of likely adverse impacts from the proposed uses, or to properly recognize the sensitive and important agricultural and natural resource uses that surround the rezone area. For the reasons presented above, the Port has failed to demonstrate that the proposed rezone satisfies the compatibility standard of the goal exception rules. Riverkeeper urges the Board of Commissioners to deny this application.

Respectfully,

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Enclosures:

- Table of Exhibits
- Exhibits 1–40

Table of Exhibits
Columbia Riverkeeper & 1000 Friends of Oregon
Testimony on Port of Columbia County Rezone Application – Second Remand
January 20, 2021

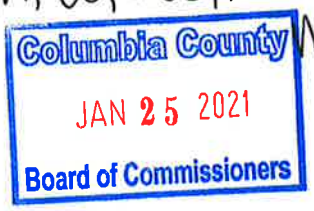
Exhibit	Document Description
1	Dr. Richard R. Horner, *Assessment of the Port of Columbia County's Compatibility Report for Industrial Development at Port Westward*. Nov. 2, 2020.
2	Google Maps image, Port Westward area showing Seely Mint farm. Accessed December 21, 2020.
3	Oregon Farm Bureau webpage for Poysky Farm. Accessed November 30, 2020.
4	Oregonic Farms, website homepage. Accessed December 21, 2020.
5	Article: *Oregon poplar acreage headed for auction*. Capital Press. November 4, 2019.
6	Port of Columbia County News Release: *Port approves new agricultural lease agreements with Seelys and Columbia River Ranch*. June 3, 2020.
7	U.S. Fish & Wildlife Service, Lewis and Clark and Julia Hansen Butler National Wildlife Refuges Comprehensive Conservation Plan and Environmental Impact Statement, August 2010. (Excerpts)
8	Oregon Conservation Strategy, Columbia River-Blind Slough Swamp, CAO 006. Accessed December 3, 2020.
9	NRCS, Long Range Strategic Approach to Conservation in Columbia County, Oregon. December 2010. (Excerpts)
10	NRCS, DRAFT Watershed Plan – Environmental Assessment for Lower Columbia Watershed Partnership Regional Conservation Partnership Program. May 4, 2019. (Excerpts)
11	U.S. Army Corps of Engineers, Portland District, Phase I Levee System Evaluation for National Flood Insurance Program Accreditation, Beaver Drainage District. March 19, 2014.
12	Oregon DEQ, Source Water Assessment Report, PGE Beaver Generating Station, Oregon. December 14, 2000.
13	Natural Research Council, *Urban Stormwater Management in the United States*. 2009. The National Academies Press. (Excerpts)
14	Photos of rezone area and surrounding lands experiencing flooding, groundwater inundation. Taken January 3, 2021.
15	FEMA, National Flood Insurance Program, Flood Insurance Rate Map No. 41009C0050D. November 26, 2010.
16	DOGAMI Hazard Maps for Port Westward Area. Generated via https://gis.dogami.oregon.gov/maps/hazvu/
17	George Plaven, *Developing dispute: NW Oregon port, farmers at odds over industrial expansion*. Capital Press. December 17, 2020.
18	Bulk Carrier Guide, Grain loading standards for seagoing bulk carriers – Limitations involved. (Accessed December 16, 2020).

19	Associated Press, *Officials Investigating if Earthquake Triggered Explosion, Fire at Bay Area Fuel Storage Facility*. KTLA5. October 16, 2019.
20	Katie Dowd, *Massive fire at refinery in Crockett sends flames, black smoke into air*. SF Gate. October 16, 2019.
21	Alix Martichoux, *I-80 reopens in both directions after crews contain fire at NuStar in Crockett*. SF Gate. October 15, 2019.
22	Crosby, S., et al. Transporting Alberta's Oil Sands Products: Defining the Issues and Assessing the Risks. March 22, 2013. (Appendices and references omitted).
23	Andy Rowell, *Transporting Tar Sands "As Dangerous" As Shale Oil*, Oil Change International. March 2, 2015.
24	Associated Press, *14 oil train cars derail in Columbia River Gorge, railcars erupt in flames; i-84 reopens*. KATU. June 3, 2016.
25	Associated Press, *Railroad: Northwest Iowa oil train derailment was related to flooding*. August 10, 2018.
26	Associated Press, *Train with liquefied gas derails, strikes overpass support beam in Portland*. September 8, 2019.
27	Elise Takahama, et al., *Investigation continues around oil-train derailment, fire in Custer, Whatcom County*. Seattle Times. December 22, 2020.
28	Webpage: Spirit of the Salmon Plan, *The Tribes' Treaty Reserved Fishing Rights*. CRITFC. (Accessed January 12, 2021).
29	Summary Report of Oregon DEQ Enforcement Actions November 2019 through November 2020.
30	Complaint, *Columbia Riverkeeper v. Port of Longview*, Case No. 3:20-cv-05981, Dkt. 1 (W.D. Wash. Oct. 2, 2020).
31	Letter: Notice of Intent to Sue Under the Clean Water Act. From: Kampmeier & Knutsen PLLC, obo Columbia Riverkeeper; To: Port of Vancouver. November 5, 2020.
32	National Academies of Sciences, Engineering, and Medicine 2019. *Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges*. Washington, DC. The National Academies Press. (Excerpts). February 20, 2019 News Release included.
33	Tony Schick, *Oregon Settles Lawsuit Over Stormwater Pollution*. Oregon Public Broadcasting. August 20, 2018.
34	Letter: Draft Industrial Stormwater National Pollution Discharge Elimination System Permit for Tesoro-Savage d/b/a/ Vancouver Energy. From: Earthjustice, obo Columbia Riverkeeper, et al; To: State of Washington, EFSEC. August 22, 2017.
35	Order on Cross Motions for Summary Judgment, *Columbia Riverkeeper, et al. v. U.S. Army Corps of Engineers, et al.*, Case No. 19-6071-RJB, Dkt. 83 (W.D. Wash. Nov. 23, 2020).
36	Minutes of May 22, 2019 Board Meeting of Port of Columbia County.
37	Anna Del Savio, *Methanol company switches land option at Port Westward*. Pamplin Media Group. May 10, 2019.

38	Complaint, *Columbia Riverkeeper v. Perennial Power Holdings, Inc., et al.*, Case No. 2:20-cv-2256, Dkt. 1 (D. Or. Dec. 28, 2020).
39	Ted Sickinger, *Despite troubled past, critics say Oregon Department of Energy is ignoring rules to benefit power plants.* The Oregonian. October 27, 2020.
40	Letter: Notice of Intent to File Suit for Violations of the Clean Water Act, From: Kampmeier & Knutsen PLLC, obo Columbia Riverkeeper and Willamette Riverkeeper; To: Zenith Energy Terminal Holdings, LLC. January 11, 2021.

Re-zone at Port Westward

HM, CC, DEB, Karen Matt



TOM GORDON <tndgardens@comcast.net>
Thu 1/21/2021 10:42 PM
To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Board of County Commissioners
Columbia County, Oregon

RE: Re-zone Proposal for Port Westward

Gentlemen:

I understand that the comment period for the re-zone proposal at Port Westward is still open and I still had a few concerns after my December comment.

The area proposed for the re-zone is prime agricultural land, Class II farmland, I understand. The area near Pt Westward is known for blueberry and mint production and Oregon ranks 2nd in the nation for both of these products.

The study for the re-zone confined itself to about 2000 feet from the site of the proposed area, less than half a mile. However, if a fossil fuel plant, for example, located there, its effects might well extend greater than 2000'. At the very least, local pollution and water usage would increase. Would storm water from the plant run off into farms? And there is always the danger of a spill or explosion. Fossil fuel production can be pretty smelly also and not the best neighbor for farms.

I think agriculture is by far the best use for this land. It contributes sustainably and directly to Oregon's economy. In addition, farm products enhance farmers' markets and shops with Made in Oregon products. Tourism counts farmland as an asset; also, safeguarding the Columbia River Estuary's salmon runs is important to anglers from all over. There are many reasons to protect this area.

I think you should shelve this re-zone proposal until you are certain that what might go in there would be non-polluting, not produce tons of greenhouse gases, and have many family-wage jobs per acre that would actually go to local people.

Diana Gordon
642 I Street
Washougal, Washington98671
tndgardens@comcast.net
1/21/21

Hem, cc, Karen, Matt Deb

Columbia County
JAN 25 2021
Board of Commissioners

Proposed Re-Zoning at Port Westward

Julia <jjgies@frontier.com>
Sun 1/24/2021 10:07 PM
To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

January 24, 2021
Cedar Hills, OR

Columbia County Board of Commissioners
230 Strand Street
St. Helens, OR 97051

Dear Commissioners Garrett, Heimuller, and Magruder,

I am writing to oppose the proposed re-zoning of 837 acres of farmland at Port Westward for fossil fuel and heavy industrial development. Columbia County is blessed to have high-value mint and blueberry crops, as well as salmon-supporting wetlands. This is exactly the type of world-class agriculture that the Oregon Land Board of Appeals (LUBA) was created to protect.

The proposed industrial site will increase traffic, pollution, and water use in the area. These external effects are not compatible with agriculture in the area.
Moreover, the proposed fossil fuel development will contribute to global warming, which is a threat not just to Columbia County, but to all of Oregon, the U.S., and the planet.

For these reasons I urge you to reject the proposal to re-zone the farmland surrounding the Port to industrial use.

Thank you.

Sincerely,
Julia Gies
Cedar Hills

Sent from Mail for Windows 10

HCM, CC, Karen, Matt DCB

Columbia County
JAN 25 2021
Board of Commissioners

January 25th, 2021

Columbia County Board of Commissioners
230 Strand Street
St. Helens, OR 97051

Dear Commissioners Garrett, Magruder, and Heimuller:

The comments contained in this letter are mine as a private citizen. They do not necessarily represent the views of the Port of Columbia County or the Oregon State University Extension Service.

The remaining remand element to be satisfied in the path to rezone ~800 acres in the Beaver Drainage District and a significant wetland outside of the dike is whether converting the agricultural land to industrial use can be done without adversely impacting adjacent farmers within the District (e.g. the Agricultural Compatibility Test).

The County's response to the remand limits its comments to farms very close to the proposed rezone land. This dismisses the character of the District where impacts to water in one location can spread throughout the District by the nature of the hydrology and management of the District pumping. In addition, significant portions of the land discussed are going out of hybrid poplar production (a non-food crop) and will likely return to food crops historically produced in the area.

Crops currently being grown adjacent to the proposed rezone location include blueberries for fresh and processing markets; mint sold as essential oil, tea leaves, and valued-added candies; pasture-grazed beef sold as high-end products through wholesalers for grocery and restaurant sales; and hybrid poplars which are chipped for paper or sometimes used for finished lumber. The poplars aren't being replanted due to poor long-term market prospects. Historic crops in the Beaver District included fresh market vegetables, cabbage for sauerkraut, onions, potatoes, flax for linen, grass seed, and small grains like wheat, oats, and barley.

Proposed industrial development on Beaver Drainage District land adjacent to farms could create compatibility concerns including possible crop contamination through air and/or water discharges; disruption of irrigation water supply; disruption of drainage capacity within the Drainage District; and transportation congestion that might affect timely crop harvesting and delivery to on-farm handling and shipping facilities and markets.

There are a number of well-known plant/chemical interactions (phytotoxicity) that can injure or kill plants, native and cultivated. But there are also interactions that have never been tested between specific crops and specific emissions since they have never been brought together before. A major event in Oregon involved fluoride emissions from a Washington aluminum smelter near The Dalles that caused significant damage to commercial stone fruit (peach, plum, cherry, and apricot) crops. It took several years of OSU research in the late 1950s to the early 1960s to definitively pinpoint the problem.

Various types of industrial operations are more or less likely to produce phytotoxic emissions than others. For example, sawmills are far less likely than modern chemical plants to produce phytotoxic compounds.

Significant road dust and dust from bulk commodity trans-loading of materials like coal, grain, potash and others can, if not properly managed, move in the wind and render a crop unsaleable.

It is felt by farmers in the area that the hydrology within the Beaver District is complex. Water levels are managed to reduce flooding in the winter and to provide crop irrigation in the summer. A system of interconnected drainage canals support the water management process. The dike system which, at this time, is uncertified and un-certifiable without a lot more investment, protects the farms, houses, and existing industrial operations behind it from flooding. Water is pumped out of the District into the Columbia River most of the winter and the pumps are run especially hard during high rainfall events.

Industrial pollution that that might get into groundwater behind the dike can potentially circulate throughout the entire drainage district. The mitigation plan proposed by the County would turn off the pumps to contain a facility spill. First, it is not clear how well a spill could be contained to a given area within the District even with the pumps turned off. And second, turning off the pumps in the event of a spill in a winter-spring high water event could put most of the farms and houses in the District underwater. If a spill contaminated water behind the dike, crops could be damaged in ways that affected yield and/or made crops unsaleable, due to contamination, for an indefinite period. A better spill management plan to prevent ground water contamination and agricultural damage is needed. And a better understanding of the hydrological impacts of industrial or even wetland construction within the District is needed.

Transportation ag compatibility mainly involves the ability to get crops harvested and shipped on schedule, allows the movement of agricultural equipment along nearby roads in a timely fashion, and minimizes local accidents. This would require some transportation coordination and speed limits in some areas but doesn't seem insurmountable. Construction workers could cause significant disruption but which, again, could be managed by good planning. Spills of hazardous products being transported by road, rail, rail or ship into or out of a facility would still be a significant concern. There just needs to be a lot more thought and effort to address these potential agricultural compatibility concerns. The "by-pass" taken in the Remand response is to assume that regulatory reviews during permitting for a facility will cover any potential concerns.

The list of regulatory authorities presented by Columbia County is extensive yet there is little evidence that any of these entities have the power to pursue issues of agricultural compatibility unless those issues also directly affect human health and safety. But a crop can be rendered unsaleable or much more expensive to grow without creating a direct threat to human health.

For agricultural compatibility to be ensured, there has to be a regulatory infrastructure that formally recognizes agricultural compatibility as a critical issue. The regulatory infrastructure has to have the legal authority to require detailed industrial process and other operational disclosures from prospective clients, and the responsibility and authority to make judgements based on what they learn to protect agricultural operations.

Air and water quality standards typically have set upper limits for release based mostly (and properly) on direct impacts to humans being exposed. There are also water quality standards for fish protection but this is an emerging science and current standards are generally acknowledged by the scientific community to be well-short of the protections needed.

There is little mention of agricultural phytotoxicity issues or contamination of agricultural crops as a trigger for enforcement. While the response the County submitted lists lots of regulatory agencies, there was no reference to any standards within the purview of any of these bodies to protect agricultural crops. The Oregon Department of Environmental Quality has very tight sideboards when it comes to their regulatory authority. Same with many of the other public regulatory agencies listed. If it isn't explicit as part of their regulatory responsibility, can they address it at all much less regulate around agricultural compatibility? If a proposed industrial facility was going to emit a compound that would have an adverse impact on a crop in the area but the emission was well below the action standard that currently existed for that compound, would the state/county be required to turn that project down? That isn't at all clear.

What would happen if the crop/emission interaction was discovered after the facility was in operation? Would the plant be required by existing county, state or federal regulatory protocols to stop operation until a fix, possibly costing in the millions of dollars to change a manufacturing process or otherwise control the emission, was in place? Would the attorneys representing the county in this matter agree that the facility, in that situation, be shut down even though no existing air or water emission standards had been breached and the facility had been properly permitted in regards to existing air and water standards at the time?

Could county/state regulatory authorities require pollution controls that exceed existing air and water standards to manage a crop compatibility concern? How would that requirement stand up if litigated by a company? If not well, how does that list of regulatory authorities provide much protection for agriculture since crop compatibility is, seemingly by omission, largely outside of their purview.

There is a lot of uncertainty about how any of these regulatory bodies could or would respond to an industrial pollution issue vis-a-vis agriculture. This needs to be clarified and addressed in more detail.

One option would be to dramatically narrow the types industrial facilities that could be sited on the rezone land that would be more protective of the surrounding agriculture. For example, automobile or equipment imports would present few if any concerns. Sawmills producing dimensional lumber or a facility exporting raw logs would increase traffic in the area and along Highway 30 but not pose a crop contamination risk. Bulk trans-loading facility risks are mixed and would depend on the means available to control fugitive dust and/or fumes from materials being transported to the dock and loaded onto ships. Industrial chemical or metallurgical facilities have significantly higher pollution risks, so might not be the best fit adjacent to agricultural land.

Another option would be to rezone portions of the land as needed for a specific client after a thorough review of the potential agricultural issues that might be associated with that client's proposed operation had been completed. That would reduce speculation about agricultural compatibility and focus on developing solutions, as needed, for the project to move forward.

Finally, in the County's answer to LUBA, the juxtaposition of industrial pollution and farm "pollution" in the document compares apples to oranges. First, the agricultural community is highly regulated. Pesticides (organic or conventional) have a label that is, functionally, a legal document that defines the terms for its use quite specifically re crops it can be applied to, timing, and rates of application. Second, there is a requirement that the application stay on the crop for which it was labeled and not leave the application site. Farmers are very familiar with the concept of "chemical trespass" and are attentive to eliminating off-site spray drift. The Oregon Department of Agriculture has enforcement tools for both off-label use and off-target spread that are specific and effective. Third, crop protection applications are done a few times a year on a crop, depending on the crop and the challenges for that growing year. This is nothing like a 24/7 industrial facility that would likely have a continuous water and/or "airshed-based" emissions permit and activity.

This isn't an easy knot to untie. There are pre-approval protocol/options that need more consideration. Thank you allowing me to comment. Please feel free to contact me if you have any questions.

Sincerely,

Chip Bubl

Chip Bubl
32221 Church Road
Warren, OR 97053
503 397-5566
chipandnancybubl@comcast.net

MCH, CC, Deb, Karen, Matt

Columbia County
JAN 25 2021
Board of Commissioners

Clatskanie rezone, to The Commissioners

Cass Martinez <cassidymart@gmail.com>
Mon 1/25/2021 2:14 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

To the County Commissioners:

New information from FEMA has recently identified Cowlitz County as the most-endangered county in the US from sea level rise. This is an oncoming and inevitable problem now impacting places like Miami and New York, so Cowlitz' inclusion and first place designation was a surprise, even to the Cowlitz County emergency manager, who is quoted in this news story:

https://www.scientificamerican.com/article/riskiest-spot-for-rising-seas-is-50-miles-from-the-ocean/

It appears that at the Columbia River entrance to Cowlitz County there is a very large farm-zoned acreage which would mitigate the damage to Cowlitz County if it remains farm-zoned, and which would aggravate the effects to Cowlitz County if rezoned and reused as industrial land.

I hope the commissioners will study FEMA's report, and consult with our neighbors across the river before committing themselves to a rezone decision.

This re-zone is before you at the request of the Columbia County Port Commission. The Port's purchase of this land, and its request for a rezone, came as a great surprise to the citizens of Columbia County, and to the new Port Commissioners called upon to vote on it shortly after taking office.

In addition, newly obtained information on the loss of our county's operating funds was published in a multi-part series sponsored by ProPublica, The Oregonian, and Oregon Public Broadcasting. In summary, the big timber corporations pulled a fast one on the Oregon legislature. County Commissioners should press the state legislature to reinstate these lost taxes. Columbia County, with its preponderance of corporate-owned timber land, has been one of the biggest victims of this tax swindle, which the journalists believe is in the billions of dollars.

https://features.propublica.org/oregon-timber/severance-tax-cut-wall-street-private-logging-companies/

Thank you for looking at these new pieces of information. It is my hope that close attention to them will lead you to question the rezone of the Clatskanie acreage sought by the Port of Columbia County. It seems to me we are looking for new property tax money, at a detriment to the county in terms of pollution and lost farm land, while ignoring the existing tax dollars now in plain sight on the table.

Cass Martinez
255 N 18th St #11
St Helens OR 97051
cassidymart@gmail.com
503-734-0113

Port Westward Land Use Application. PA 13-02/ZC 13-01

Theresa Smith <tsmithpottery@yahoo.com>

Mon 1/25/2021 3:14 PM

To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>

Board of Columbia County Commissioners
203 Strand Street
St. Helens, OR 97051

Delivered via email: jacyn.normine@columbiacountyor.gov

Re: Port Westward Land Use Application. PA 13-02/ZC 13-01

Dear Commissioners,

I am the owner of a property at 80661 Kallunki Rd, a little over an acre, which I have been working the past couple of years to develop into a primary residence and herb farm as well as a place to make the soap, pottery, and artwork that have been my livelihood for the past 38 years. I have been extremely alarmed at the prospect of an expansion of industrial zoning which would encroach very near my property. In the twenty five years that I have had this property I have always placed a high value on the agricultural aspect of the area, the wildlife and the river, as well as the very quiet rural character of the area which would be extremely incompatible with this proposed expansion.

The expansion proposal includes very unsatisfactory plans for any possible contaminating spills that would pose an unacceptable risk to nearby homes and farms. I certainly do not want to be subject to the possibility of my dwelling, soil or water being affected by such a spill, or to any ongoing air or water pollutants, nor do I in any way relish the idea of looking out at what is now beautiful farmland and the peaceful river and seeing instead an industrial zone with accompanying traffic and noise. Beyond the livability aspect I also have to wonder how this might impact the resale value or even salability of the property. The plans I have been making to grow herbs to use in my soap making business and to expand my line of products will be very unlikely go forward if this expansion passes; I don't think it would be at all compatible, and that is a shame, considering the amazing soil and climate there. In short, all the best aspects and my long planned uses of my property will be impacted negatively by an expansion, which I hope will not go forward for the sake of all of the neighboring residents, the wildlife, and the best use of the land as agricultural.

sincerely,
Theresa Smith

Hem, cc, Karen, matt DCB
Columbia County
JAN 25 2021
Board of Commissioners