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May 20, 2013

Columbia County Planning Commission
c/o Todd Dugdale, Director
Columbia County Land Development Services
Planning Division
230 Strand Street
St. Helens, OR 97051

RE: Second Comments on the Port of St. Helens' Application for Comprehensive Plan Map and Text Amendment and Zone Change to Reclassify and Rezone Property from PA-80 to RIPD; Goal 2 Exception to Goal 3; File No. PA 12-02 & ZC 13-01

Dear Chairman Letourneau and Planning Commissioners:

Columbia Riverkeeper (Riverkeeper) submits the following testimony on the Port of St. Helens' (Port) application to double the size of Port Westward to nearly two thousand acres. As Riverkeeper explained in its initial testimony to the Planning Commission, submitted May 3, 2013 (hereafter "First Comments"), the Port's application contains significant factual and legal errors that render the application inadequate and incomplete. The Port's arguments before the Commission at the May 3rd hearing and in recent submittals fail to address the flaws highlighted in the Staff Report, public testimony, and Riverkeeper's written comments and testimony. Riverkeeper submits the following, additional comments to address recent developments, arguments, and evidence submitted by the Port. Overall, the Port's application fails to meet the minimum requirements of the County's Comprehensive Plan, Zoning Ordinance, and state law. The County, therefore, must deny the Port's application.¹

¹ Riverkeeper hereby incorporates by reference testimony and arguments contained therein submitted May 20, 2013 by Leslie Ann Hauer, Planning & Land Use Services, 6100 Collins Rd., West Richland, WA 99353.

Throughout the Port's application and recent submittals on traffic impacts, the Port argues that the County will have another bite at the apple when specific projects are proposed at the rezoned industrial property. Setting aside the merits of this argument, the Port is not telling the whole story. The Port's arguments conveniently ignore the Port's true plans: to remove the County from decision-making about future uses at the 957 acre property and eliminate the traditional public process on land use decisions. Specifically, the Port's application is part of the Port's larger effort to reduce local control over siting industrial development at Port Westward. Port Resolution 2012-65 and 2012-43 contemplate rezoning the 957 acre property for the purpose of nominating the land for SB 766's fast-track land use process. Exs. 56 and 60.² SB 766 passed during the 2011 legislative session and creates an expedited state permitting process on land deemed regionally significant for industrial use or projects selected as "Industrial Development Projects of State Significance." Ex. 57. Under the new law, the County's local decision-making process, including the public process, is supplanted by a state-wide review board, the Economic Recovery Review Council. Ex. 58. The Port should, at a minimum, explain its vision for removing the County from decision-making using the SB 766 process while at the same time living up to the promises in its application.

PROCEDURAL REQUEST

Riverkeeper requests that the public record remain open and the hearing be continued for at least seven days to allow for an opportunity to respond to any new evidence or argument presented at the public hearing.

RECENT DEVELOPMENTS: STATUS OF KINDER MORGAN'S PROPOSED COAL EXPORT TERMINAL

On May 8, 2013, Kinder Morgan announced its decision to drop plans for a proposed coal export terminal at Port Westward. Ex. 59. The company's announcement came over a year after Kinder Morgan and the Port signed a lease option to pursue siting a coal export terminal at the existing 905 acre Port Westward property. Ex. 16.

Is coal export therefore off the table as a future use at the property the Port proposes to rezone as Rural Industrial Planned Development (RIPD)? Absolutely not. The County must consider all public testimony and evidence related to coal export. This testimony demonstrates that the Port's proposal is inconsistent with the rural facilities and services existing and/or planned for the area and, therefore, fails to meet the requirements of CCZO § 681. First, the Port's application states that potential future uses include coal handling. *See* Application at 6. Second, the Port has demonstrated its strong interest in coal export and willingness to sign leases

² Exhibits submitted in support of Riverkeeper's Second Comments begin with Exhibit 56. Riverkeeper submitted Exhibits 1 through 55 in support of Riverkeeper's First Comments.

with coal export companies, regardless of the strong opposition to coal export in Columbia County and across the State of Oregon. Third, Kinder Morgan's decision not to site a coal terminal at the existing Port Westward site only increases the likelihood that Kinder Morgan or another coal export company will pursue siting a coal export terminal, or multiple coal terminals, at the property the Port proposes to rezone in the instant application. In short, arguments presented in Riverkeeper's First Comments and public testimony related to coal export, and other uses that will result in significant increases in unit train traffic, are in no way diminished by Kinder Morgan's recent announcement.

FAILURE TO COMPLY WITH APPLICATION APPROVAL CRITERIA

For the reasons explained in Riverkeeper's First Comments and testimony before the Commission, the Port's application fails to satisfy the criteria of the Columbia County Zoning Ordinance (CCZO) and is inconsistent with the Columbia County Comprehensive Plan. The Port also fails to demonstrate that a Goal 2 "reasons exception" to Goal 3 is warranted. Riverkeeper provides the following, additional comments in response to the Port's May 3, 2013 testimony, May 6, 2013 memorandum to Glen Higgins, and preliminary traffic impact analysis.

I. CCZO 1502.1(A)(1).

CCZO 1502.1(A)(1) requires consistency with the Comprehensive Plan. The staff report makes no findings applying plan policies to this proposal. In addition, the application fails to identify the applicable standards and explain how they are satisfied. For example, Goal 5 Agriculture calls for the "protection of agricultural lands from non-farm encroachments" and to "encourage agricultural activities on designated agricultural lands." Agricultural plan policies also prohibit the extension of urban facilities and services, as well as roads, through agricultural lands. The Port has not identified any evidence explaining what roads or other utilities and services will be necessary to approve this use making it impossible to determine whether urban-scaled utilities will be required.

II. CCZO 1502.1(A)(2).

CCZO 1502.1(A)(2) requires compliance with the Statewide Planning Goals. As noted by Riverkeeper and others, this application remains woefully incomplete.

A. Goal 7 Areas Subject to Natural Hazards.

According to the Port's application, the subject property is not within the flood plain. Application at 40 – 41. The Port's assertion is incorrect and contradicted by the Port's own evidence. The Port's preliminary traffic analysis states: "The subject property includes 786 developable acres and *171 acres within the flood plain.*" Technical Memo from Michael Ard,

PE, to Gary Shepard (May 6, 2013) at 1 (emphasis added). As Riverkeeper explained in its First Comments, Goal 7 applies to the Port's application because the subject property includes land within the 100-year flood plain. The Port's application, however, fails to (1) acknowledge that the subject property is within the flood plain, and (2) address Goal 7. The County must deny the Port's application because the proposed rezone is inconsistent with Goal 7.

B. Goal 12 Transportation and the Transportation Planning Rule.

The Port's application fails to demonstrate consistency with the Plan's Transportation policies, Goal 12, and the Transportation Planning Rule. As an initial matter, the Port failed to submit a transportation impact analysis (TIA) as part of its application. The Oregon Department of Transportation recognized this error and, on May 6, 2013, the Port submitted a preliminary TIA. To date, the Port has not submitted a final TIA. Based on the Riverkeeper's review of the incomplete TIA, Riverkeeper highlights a selection of the significant errors in the Port's analysis:

- The Transportation Planning Rule applies to all "Transportation Facilities" and not just state highway facilities. It includes "any physical facility that moves or assist in the movement of people or goods" including county roads, branchline railroads and railroad facilities. The Port's analysis, however, is incomplete and cannot be deferred to a future development review.
- The Port's traffic engineer notes that the worst-case scenario for traffic generation from an industrial development is 6,445 AM peak hour trips and 6,705 PM peak hour trips or 48,080 daily trips. To meet the level of service standards for the US 30 intersections, the engineer is recommending severe reductions in the intensity for this development or 209 AM and 209 PM peak hour trips or a total of 1,576 total daily trips. The traffic engineer goes on to recommend evaluation of impacts of truck traffic on local roads as development occurs. The Port has misconstrued this recommendation to suggest that the overall trip cap can be exceeded so long as future road adequacy analysis is done in that future stage. The problem with this is that the Transportation Planning Rule will not apply to these future reviews. Additionally, the trip cap concept is not proposed as a condition of approval for this development.
- The trip cap reduces the overall employment generation capacity for this entire 786 developable acres to less than 400 employees. In addition to raising questions about how generating less than two employees per acre of land justifies a claim for providing jobs at the expense of agricultural uses, the application states that there is a need for large lot industrial land in the county of between 50-300 acres and that natural resource export facility, the only particular use identified in the application, would create over 100 jobs.

If we just average the land demand per use to 125 acres and divide that by the 786 developable acres, we get 6.25 of these export facility-type uses. If they generate 100+ jobs, that would be 600+ jobs. This very rough calculation suggests that either the trip cap projection is too low or the amount of land dedicated for industrial is too large to meet the need.

- The Port is relying on ORS 660-012-0060(3) as a basis for not requiring the significant affect and impact mitigation requirements of the Transportation Planning Rule. The Port, however, has not shown that the four circumstances necessary to avoid compliance are satisfied. Most particularly, the Port has not shown that either local roadways are inadequate or that development resulting from the amendment will mitigate the impacts of the amendment. Rather, the only applicable subsequent development review will likely be Site Design Review, CCZO Section 1550, which requires only off-site transportation improvements necessary to comply with the adopted Transportation System Plan. The adopted Transportation System Plan does not contemplate the industrial development as proposed. Therefore, it is incapable of requiring the improvements that will be necessary to offset the significant impact resulting from this proposal. Further, future site plan development review can occur through a Type I process without providing notice and an opportunity for a hearing.
- The Port argues that all of the traffic impact analysis can be dealt with through subsequent development review. This is not permissible. First, site and design review in the local code does not authorize the County to review transportation studies to determine significant affect and impose mitigation beyond what the Transportation System Plan identifies. Second, the development of industrial lands per SB 766, which we know the applicant intends to use, requires that the Economic Recovery Review Council apply the local standards only and SB 766 includes severely restricted opportunities for seeking appellate review. Therefore, deferring Transportation Planning Rule review, as the Port proposes, would not comply with the standards and provide for public participation required by state law.
- The Port TIA assumes incorrectly that “[s]ince the land area within the flood plain is not reasonably likely to develop with industrial uses, the zone change analysis was prepared based on the 786 acres of developable property.” This assertion contradicts the Port’s testimony, which contemplates building docks in the flood plain.
- The Port’s TIA fails to acknowledge the poor suitability of local roads, including Beaver Falls and Delena Roads, for heavy traffic volumes and truck traffic.

III. Goal 2 Reasons Exception for Rural Industrial Development Per ORS 197.732(2), OAR 660-004-0020(2) & OAR 660-004-0022(3).

OAR 660-004-0020(2) contains the four standards relevant to taking an exception to a goal. All of these standards are premised on identifying the nature and extent of the use proposed. Without knowing the nature and extent of the use (as the Port argues), it is impossible for the Port to show, or the County to find, that (1) the reasons (*i.e.*, deep draft port and transportation amenities) necessary to serve this particular use are greater than those if the land remains in agricultural use; (2) other areas that do not require an exception are not available; (3) the long-term environmental, economic, social and energy consequences resulting from the use at the proposed site; or (4) whether the use is compatible with the surrounding uses. All of these standards require comparisons based on the “proposed use” rather than any use. If the Port wants to leave the use question open-ended, the alternatives and impacts assessments must be based on the worst-case scenario use that could be approved in the zone which may include coal transport either now or anytime in the future.

A. Inadequate Alternatives Analysis.

One of the exception criteria requires a determination that the proposed use cannot be reasonably accommodated on non-resource land. Rather than engage in the rigorous comparative analysis that the rule requires, the Port is merely claiming that the subject property is better suited to the proposed use. Further evidence has been submitted that there is sufficient land at Port Westward or within existing urban areas to accommodate the use. Again without identifying the use, the Port is incapable of evaluating whether alternative sites are available to accommodate the proposed use.

B. Failure to Request Exceptions to Other Goals.

The Port has failed to take exceptions to the other goals that are not satisfied by this request, including (1) Goal 4 because of loss of forest land, (2) Goal 5 due to the loss of open space, (3) Goal 14 because this allows proposal will allow urban uses on rural land, and is subject to OAR 660-014-0040(2), and (4) Goal 11, OAR 660-011-0060(9), necessary for urban utilities to serve the use. OAR 660-004-0010(3) unequivocally states that an exception for one goal does not suffice for an exception to a different goal.

OAR 660-004-0022(3) contains special need standards for locating industrial uses on resource lands that are also not satisfied. First, it is impossible to show that the use is significantly dependent upon a unique resource located on agricultural land when the use is not identified. The permissible reasons that may be relied on to approve a reasons exception depend on the use or development that the reasons exception is being approved to allow. Second, the County cannot conclude that the use cannot be located inside the urban growth boundary due to

hazardous impacts when the use is not disclosed. For the same reasons, the County cannot determine that there is “a significant comparative advantage due to location.” Finally, the applicant has provided no evidence or analysis to show that the use will cause only a “minimal loss of productive resource lands.”

The burden of proof to establish that a use can be compatible with adjoining uses rests with the applicant and not with opponents.

CONCLUSION

Riverkeeper respectfully requests that the County deny the Port’s proposal to amend the Comprehensive Plan and rezone farmland for large-scale industrial development. The Port’s application does not meet the standards and criteria of the Columbia County Comprehensive Plan and Zoning Ordinance, and the Port has failed to demonstrate that a “reasons exception” to Goal 3 is warranted. Thank you for the opportunity to provide these comments.

Sincerely,

/s Lauren Goldberg

Lauren Goldberg
Staff Attorney, Columbia Riverkeeper

EXHIBITS

**Port of St. Helens' Application for Comprehensive Plan Map and Text Amendment and
Zone Change to Reclassify and Rezone Property from PA-80 to RIPD; Goal 2
Exception to Goal 3; File No. PA 12-02 & ZC 13-01**

EXHIBIT	DESCRIPTION
56	Port of St. Helens, Resolution No. 2012-65
57	Senate Bill 766
58	<i>Oregonian</i> , Losing our way in the reckless quest for jobs (March 19, 2011)
59	<i>Oregonian</i> , Kinder Morgan drops plans to build coal export terminal at Port of St. Helens industrial park (May 8, 2013)
60	Port of St. Helens, Resolution No. 2012-43