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May 3, 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: 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. If granted, the Port's proposal would facilitate large-scale industrial development on farmland and wetlands adjacent to high quality salmon habitat. The Port's proposal is a direct threat to the health and quality of life of Columbia County citizens and our region's investment in salmon recovery. Riverkeeper urges Columbia County (County) to reject the Port's proposal because it fails to meet the minimum requirements of the state law and the Columbia County Comprehensive Plan and Zoning Ordinance. The application also contains significant factual errors that render the application inadequate and incomplete.

If granted, the Port's proposal will pave the way for coal export, oil export, and other industrial development on the Lower Columbia River. The Port's application ignores the significant impacts of increased unit train traffic on communities in Columbia County. This is a major oversight. Impacts to communities from mile-and-half long trains on the Portland & Western Railroad line include increased traffic, reduced response time for emergency response vehicles, and health impacts to children and other sensitive populations from diesel pollution and coal dust. The Port also fails to disclose fully the cost to taxpayers of adding 957 acres of

industrial land in a rural area, and explain why the current 905 acre Port Westward site cannot absorb industrial development demands.

Riverkeeper's mission is to protect and restore the water quality of the Columbia River, from the headwaters to the mouth. The organization represents thousands of members and supporters, including many members who live, work, and recreate in Columbia County. For the reasons explained below, Riverkeeper urges the County to reject the Port's proposal.

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.

FAILURE TO COMPLY WITH APPLICATION APPROVAL CRITERIA

I. County Code Section 680

The Port seeks to rezone the subject property Resource Industrial-Planned Development (RIPD). The Port's application fails to demonstrate the proposal is consistent with the purpose of the RIPD zone. Columbia County Zoning Ordinance (CCZO) § 681 states:

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 generally not 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 Port's application fails to explain how adding 957 acres of large-scale industrial development "[c]omplements the character and development of the surrounding rural area." The Port's application, instead, focuses exclusively on the proposal's complementary character with the existing Port Westward site. This rationale ignores the difference between the existing indoor industrial development at Port Westward and the sprawling nuisance developments, like coal export terminals, which the Port proposes under this application. The Port reasons that "[t]here is no evidence that . . . industrial uses have significantly impacted or altered adjacent farming and tree farming operations." The Port's rationale lacks any discussion of how the *proposed* uses, including outdoor coal storage, complement the surrounding rural area. For

example, coal export terminals and trains are dirty and have negative impacts on adjacent landowners. Exs. 27, 31, 32, 34. In addition, the Port fails to address how the proposed uses complement the surrounding rural area, including rural residences and farms.

The Port also fails to point to evidence in support of its claim that the proposal is “consistent with the rural facilities and services existing and/or planned for the area.” The application describes rural facilities and services that support the *existing* Port Westward property. The Port, however, fails to provide any evidence to demonstrate that 957 *additional* acres would be served by existing and/or planned rural facilities. By the same token, the Port states that the 957 acres of agricultural land will not require facility and/or service improvements at significant public expense. The Port again fails to support this claim with evidence. For example, the Port fails to acknowledge that Hermo Road requires significant upgrades to support industrial traffic. Ex. 21 at 5, 24, 28, 31, 40, 42. The Port also fails to account for the cost of additional rail sidings required to accommodate unit train traffic serving the expanded Port Westward site. Ex. 47. For these reasons, the Port’s application is not consistent with CCZO § 681(4) – (6).

II. County Zone Change (Major Map Amendment) Standards

A. CCZO § 1502(1)(A)(1)

The Port seeks a Major Map Amendment under CCZO § 1502. Section 1502 states: “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 [that] . . . the proposed Zone Change is consistent with the policies of the Comprehensive Plan.” CCZO § 1502(1)(A)(1). The Port fails to satisfy the requirements of CCZO § 1502(1)(A)(1) for the following reasons.

1. Part II – Citizen Involvement

The County failed to meet the minimum public notice requirements for the Port’s application. ORS 197.732(5) states: “Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.” The County’s first public notice, dated February 20, 2013, failed to meet both requirements of ORS 197.732(5). The County failed to: (1) note that the Port proposed a goal exception, and (2) failed to summarize the issues. In the County’s second public notice, dated April 10, 2013, the County revised the notice, noting the Port’s proposed goal exception. The County, however, failed to meet minimum requirements of ORS 197.732(5) because the notice failed to summarize the issues in an understandable manner. For example, the public notice failed to describe any of the issues associated with obtaining or meeting the requirements of a goal exception. Instead, the notice cross-referenced the Staff Report.

The public notice also failed to describe the accurate County review process for the Port’s application. CCZO § 1502(1)(A) states:

The Commission shall hold 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[.]

CCZO § 1502(1)(B) states: “Final approval of a Major Map Amendment may be given by the Board of Commissioners.” The Staff Report explains the process for reviewing the Port’s application, stating: “This Zone Change is a Major Map Amendment. The Planning Commission shall hold a public hearing and forward their recommendation to the Board.” The public notice, in contrast, fails to mention any role that the Board of Commissioners has in reviewing the application, with one exception. The notice states that “[t]he failure to raise an issue at the hearing, in person or by letter, or the failure to provide sufficient specificity to afford the Commission an opportunity to respond to the issue, precludes appeal to the Board of County Commissioners based on that issue.” Ex. 43 at 1 (Public Notice PA 13-02).

The Port’s application is inconsistent with Comprehensive Plan’s citizen involvement requirements because the public notice failed to: (1) summarize the issues in an understandable manner, and (2) describe the accurate procedural process for obtaining the requested Goal Exception and Major Map Amendment. These procedural errors have the potential to prejudice the substantial rights of community members who might otherwise engage in the public process and review for this application.

2. Part III – Planning Coordination

The Plan requires the County to coordinate its decision making process with affected governments and agencies, including providing notice and opportunity to comment. For the same reasons the County and the applicant failed to demonstrate consistency with the Plan’s Citizen Involvement policies, the County and the applicant likewise failed to satisfy the Plan’s Planning Coordination policy.

3. Part IV – Forest Lands

The Port’s narrative application and supporting evidence fail to address how the proposed zone change is consistent with the Forest Lands policies. *See* Application at 8 (omitting Part IV- Forest Lands from discussion of consistency with Comprehensive Plan policies). The Second Staff Report likewise states that the subject property is not Forest Land. *See* Staff Report at 10. The Port proposes rezoning land that, by definition, contains “Forest Lands.” *See* Ex. 2 (showing forested wetlands at the Thompson property). The Comprehensive Plan defines Forest Lands, stating:

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Forest Lands in Columbia County are defined as:

1. Those lands composed of existing and potential forest lands that are suitable for commercial production;
2. Other forest lands needed for watershed protection, wildlife and fisheries habitat, and recreation;
3. Lands where extreme conditions of climate, soil, and topography require the maintenance of vegetative cover irrespective of use; and
4. Other forested lands in urban and agricultural areas that provide urban buffers, wind breaks, and wildlife and fisheries habitat, livestock habitat, scenic corridor and recreation use.

The Port fails to explain how rezoning Primary Agriculture land to Rural Industrial Planned Development is consistent with Forest Lands Policy 1. This policy states:

It shall be the policy of Columbia County to:

1. Conserve forest land for forest uses, including:
 - A. The production of trees and the processing of forest products;
 - B. Open space;
 - C. Buffers from noise;
 - D. Visual separation from conflicting uses;
 - E. Watershed protection;
 - F. Wildlife and fisheries habitat;
 - G. Soil protection from wind and water;
 - H. Maintenance of clean air and water;
 - I. Compatible recreation activities;
 - J. Grazing land for livestock.

The Port's proposal to rezone 957 acres of agricultural land (PA-80), which contains forest lands, to industrial (RIPD) is inconsistent with Forest Lands Policy 1. Forest lands on the property include the Thompson parcel, *see* Ex. 22, land currently used for the production and processing of trees, and forested areas within agricultural areas that provide wildlife and fisheries habitat. *See* Staff Report at 7; *see generally* Exs. 1, 22, 24, 25, 26, 30. Rezoning the property fails to conserve forest lands for the processing of forest products, watershed protection, soil protection, maintenance of clean air and water, open space, and noise buffers.

4. Part V – Agriculture

The Port's proposed rezone is inconsistent with the policies in Part V-Agriculture. In turn, the Port seeks a Goal 2 "reasons exception" to Goal 3, which protects agricultural lands. The goal exception will facilitate the Port's requested Comprehensive Plan map and text amendment and zone change to reclassify and rezone approximately 957 acres from Primary Agriculture-80 (PA-80) to Rural Industrial-Planned Development (RIPD).

The Port's application is factually incorrect. The Port's application notes that "the majority of the property does not contain productive soils." The evidence shows otherwise. *See infra* at § III.A; Ex. 44 (Columbia County Comprehensive Plan USDA Plan Soil Map). In addition, the April 23, 2014 Staff Report (hereafter "Second Staff Report") acknowledges this factual error. *See* Second Staff Report at 5 ("The application mistakenly represented the agricultural capability of a huge portion of the soils on the property as being poor Class VI farm soils. Actually, the soil classification for Wauna Locola silt loam is Class III w, consider high-valued farm soil.").

Even if the Port were correct in its description of soil productivity—which it is not—the land is zoned Primary Agriculture, the Comprehensive Plan defines agricultural lands based on factors other than soil classification, and the land is used and has been historically used for agriculture. *See infra* at § III.A. Because the Port's application is inconsistent with the Comprehensive Plan's agriculture policies, a Goal 3 Exception is required. For the reasons set forth in section III the application fails to meet the requirements of a goal exception.

5. Part VIII – Rural Communities

The Port's application and the Second Staff Report fail to address the application's consistency with the Comprehensive Plan's Rural Communities policies. At a minimum, the Port must explain why Part VIII—Rural Communities does not apply to the application.

6. Part IX - Urbanization

The Port fails to explain how the application is consistent with the Comprehensive Plan's Urbanization policies. For example, the Port fails to describe how rezoning 957 acres to RIPD is consistent with Policies 8 and 20. Policy 8 states that it shall be the policy of the County to "[l]ocate major public and private developments where they will not encourage residential growth outside the designated boundary." Policy 20 states that it shall be the policy of the County to "[l]imit development outside of the urban growth boundary to densities which do not require an urban level of public facilities or services and are consistent with Goal 14 and OAR 660, Division 4." The Port's application is premised on job creation. The Port, therefore, must explain how job creation in a rural area (at the levels promised by the Port) is consistent with Part IX – Urbanization.

7. Part X – Economy

The Goal of Part X is twofold: (1) to strengthen and diversify the County's economy and ensure stable economic growth, and (2) to utilize the County's natural resources and advantages for expanding and diversifying the economic base. The Port fails to demonstrate how doubling the size of Port Westward with land-intensive and low-employment industries is consistent with the policies of Part X. By definition, the RIPD zone is not an engine for job growth. CCZO § 681(1) ("rural and natural resource related industries which are generally not labor intensive."). The Port also points to reports identifying the need for more land for industrial development in

the State of Oregon, but fails to explain how the proposed uses will promote stable economic growth. For example, the Port critiques the “cyclical nature” of the forest products industry and the declining “importance” of agriculture. *See* Application at 9. Yet the Port fails to acknowledge the cyclical nature of industrial developments, including coal export and the Port’s the failed ethanol facility at Port Westward. *See* Exs. 35, 55. The Port also fails to explain how the rezone is consistent with Policy 12, which provides for “encourag[ing] new industrial growth within the urban areas so as to utilize existing public facilities.”

8. Part XII – Industrial Siting

Part XII of the Comprehensive Plan addresses industrial siting and existing exceptions to allow for industrial siting, including the Port Westward Exception. The Port’s application states “[t]he [plan] amendment will specifically encourage the creation of new and continuous employment opportunities; encourage a stable and diversified economy; reserve valuable industrial sites for industrial use; and support improvements to local infrastructure.” The Port raised virtually identical arguments when it sought the first Port Westward exception. Many of these promises, including the promise of 200-800 new jobs, remain unfulfilled.

The Port’s application relies heavily on deep water access and the potential to support a dock in 42 feet of water at the subject property. The Port fails to present any evidence supporting these claims. In fact, little or none of the proposed rezone property has reasonable deep water access. The area of the Columbia River next to the Thompson property proposed for rezoning is much shallower than the area of the river where the existing Port Westward dock is located. *See* Ex. 10. To reach areas of the river with depths of 42 feet (as contemplated in the Port’s application), the Port would have to build a dock that extends *substantially* farther out into the river than the existing Port Westward dock. *Id.* The Port’s application provides no useful information on where a deep water dock might be located and fails to acknowledge the significant challenges of building a new dock large enough to serve deep draft vessels at the proposed rezone property. Additionally, if the Port intends to dredge portions of the Columbia to increase deep water access, the Port’s application is incomplete for failing to explain the expenses and impacts associated with dredging.

Even if the Port demonstrates that the proposed rezone property could feasibly support a deep water dock, various environmental and navigation regulations restrict the Port’s ability to build a dock at the Thompson property and the adjacent river area. Contrary to the Port’s application, the Thompson property and associated near-shore area is protected wetlands. *See* Ex.22. Further, the Columbia River near the site and the parts of the Thompson property below the ordinary high water line are designated critical habitat under the federal Endangered Species Act for thirteen separate evolutionarily significant populations of salmon and steelhead. Exs. 1, 24; *see also* Ex. 3 at 2. In addition, Section 10 of the Rivers and Harbors Act restricts construction of structures in the Columbia River. 33 U.S.C. § 403.

The Port states summarily that the property will not require facilities and/or service improvements at the public expense, but fails to provide evidence to support this assertion. The

Port claims that (1) “facilities and services serving the site are already in place,” and (2) conditions of approval can ensure that new users mitigate for development impacts. *See* Application at 10. The Port fails to explain how facilities and services serving the existing Port Westward site will magically serve the additional 957 acres without additional improvements. Furthermore, the Port is incorrect that facilities and serving the existing site are already in place. For example, the Port and the County have identified improvements to Hermo Road as a major impediment to further industrial growth at the existing Port Westward site. Ex. 21. The County and Port plan to use taxpayer dollars to fund Hermo Road improvements. *Id.* The Port also fails to acknowledge the public investment required in rail improvements along the Portland & Western Railroad line. *But see* Ex. 45, 46, 47 (describing additional public funding needed to construct rail siding to support more unit train traffic to Port Westward).

The Port’s fallback position is that future users would be subject to conditions of approval that address infrastructure expenses. This promise is not enough. The Port’s reliance on future conditions of approval does not satisfy the Code’s Comprehensive Plan consistency requirement.

9. Part XII – Transportation

The Plan calls for creating efficient, safe, and diverse transportation systems to serve the needs of County residents. The Port’s application fails to demonstrate consistency with the Plan’s Transportation policies. This includes Policy 1, which incorporates by reference the Columbia County Rural Transportation System Plan. *See* CCCP at 201; Ex. 8 (Columbia County Rural Transportation System Plan (1998)).

In general, the Port fails to address the significant impact of unit trains that would serve the expanded Port Westward site. *But see* Ex. 7, 17, 46, 47. The application focuses exclusively on the transportation impacts within the footprint of the 957 acre property, without explaining how the rezone is consistent with the Transportation policies as they apply to nearby properties and the county. For example, the application states:

Rail lines run through the eastern portion of the property and throughout Port Westward, connecting to the Portland & Western Railroad line serving the area. Within the past four years, \$6.3 million was spent to improve the rail facilities serving the property. Exhibit 17. With spurs as needed, each portion of the subject property can be served by rail transportation.

The Port’s myopic approach to the Plan’s transportation policies is inadequate.

The rezone would facilitate increased unit train traffic to and from the expanded Port Westward site. Application at 6 (“Probable uses will be a combination of maritime and industrial users that will benefit from the existing services, the moorage and deepwater access . . . the railroad . . .”); *id.* (“The Port has been approached by several different companies representing several different industries For example, a natural resource export facility

would utilize river barge and/or rail shipments to move material to Port Westward for loading onto ships.”); *id.* at 31 (“The deep water location of the Columbia River, rail lines, and proximity to international trade routes—3 crucial components to a successful port operation—are attributes that no other land or facility in the area possesses.”).

The County has not planned for this increase in unit train traffic and the associated impacts on emergency services, traffic, and quality of life. The Columbia County Rural Transportation System Plan contains virtually no discussion of the transportation impacts associated with increased unit train traffic. The Plan contains one sentence on the issue, stating: “None of the at-grade railroad crossings in the County warrants grade separation at current levels of railroad activities.” Ex. 8 at 4-11. Overall, the Port fails to explain how rezoning agriculture land for industrial development that is heavily dependent on rail is consistent with the Comprehensive Plan’s transportation policies.

The Port also fails to support its assertion that “[t]he property is and can be adequately served by county roads.” The Port acknowledges that the County has spent \$8 million in road improvements to the existing Port Westward site. The Port, however, fails to address needed road improvements on Hermo Road and impacts to Highway 30. *See supra* at § I. The County’s February 20, 2013 Staff Report (hereafter “First Staff Report”) notes “the current local roads serving Port Westward are insufficient to support new industrial development at the scale proposed by this application[.]” First Staff Report at 6. The First Staff Report also states that “any new industrial user in the Port Westward Area will be required to pay a Transportation Improvement Fee to address the uses transportation impacts.” *Id.* The Port nonetheless fails to explain how—even assuming the payment of a Transportation Improvement Fee—the development of the property would not require facilities and/or service improvements at public expense. For example, the existing Port Westward exception predicts 200 to 800 jobs at the current acreage. The Port fails to explain how doubling the size of the property will impact roads, assuming jobs are generated and the County experiences an increase in commuter traffic.

The Second Staff Report acknowledges that the Port must submit additional information on road impacts. The Second Staff Report states:

The State ODOT is concerned that the applicant did not submit a Traffic Impact Analysis (TIA) for this re-zone. Staff’s position was that enforceable agreements with future industrial users would provide the measures necessary to keep local roads in compliance with their functional capacity. The applicant must submit additional information formalizing the local road impacts and providing the impact of the re-zone to State Highway 30.

See Second Staff Report at 7. The County cannot reach a consistency determination under Part XII until further information is submitted by the applicant and, therefore, the Staff Report’s “approval” recommendation, *see* Second Staff Report at 16, is not supported by the record.

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10. Part XIV - Public Facilities and Services

Part XIV of the Comprehensive Plan seeks to ensure timely, orderly, and efficient arrangement of public services. The Port's application states that the 957 acre property can be adequately served by existing county roads. For the reasons explained in Section I, the Port fails to demonstrate that the application is consistent with the policies of Part XIV. Specifically, the Port fails to address how the application is consistent with Policies 4, 9, 13, and 15.

Policy 4 provides for "[e]ncourage[ing] new development on lands within urban growth boundaries or built and committed exception areas." Similarly, Policy 9 provides for "[d]irecting new development in areas where [sic] exist or are proposed within a reasonable time frame." The County should reject the Port's unsupported argument for why new industrial development cannot occur within urban growth boundaries or built and committed exception areas, including the Port Westward exception area. Specifically, the Port committed the vast majority of the Port Westward site to a single leaseholder—PGE—and now relies on this business decision to justify doubling the size of the Port Westward exception area.

The Port argues that the entire Port Westward site is leased and unavailable for future development. *See* Application at 5. The Port's application states:

PGE leases 862 acres of the 905 acre Port Westward Industrial Park and has developed approximately 120 of those acres for the Beaver Generating Plant. Exhibit 9. Columbia Pacific Bio-refinery leases the remaining 43 acres . . . While areas of PWIP appear vacant and "available" for additional development, they are not in fact so. Nearly the entirety of the area inside the existing PWIP and not currently developed is identified by the County as wetlands. Exhibit 6. Additionally, PGE—the leaseholder—controls which uses, if any it may allow on the leased property pursuant to the terms of its 99 year lease.

Application at 5.

The Comprehensive Plan's current Port Westward exception conflicts with the Port's application. For example, the existing Port Westward exception identifies the entire site as prime development property. CCCP at 119. The Port Westward exception states:

Undeveloped, unfilled portions of the site are Class II and Class V agricultural soils and are used as pasture. The terrain of the site is flat with slopes of less than 3 percent. Portions of the site have been filled and are at an average elevation of 15 to 20 ft. [above] mean sea level. Unfilled portions of the site are at an elevation of 8 to 10 ft. [above] mean sea level. There is a small grove of trees near the generating plant and some natural vegetation existing along the western portion of the Columbia River shoreline. Because the area is drained and diked, there are no on-site ponding areas.

CCCP at 119. The Plan also states that

[T]he full 900-acre site is under the ownership of the Port of St. Helens, and 855 acres is leased to Portland General Electric. *These parcels would allow virtually any industry to lease a site of almost any size and to deal with a single owner.*

Id. at 130 (emphasis added). The Port Westward exception also states that “the Port of St. Helens and PGE recognize that the site has potential for further development and are aggressively responding to all inquiries.” *Id.* at 131; *see also* Ex. Now, the Port claims that large sections of the site are undevelopable. The Port must reconcile the inconsistent evidence on the suitability of the existing Port Westward site for development.

11. Part XV – Energy Conservation

Part XV of the Plan promotes the County’s goal of “striv[ing] for an energy efficient land use pattern based upon sound economic principles.” Developing nearly a thousand acres of farmland for large-scale industrial development is inconsistent with the Plan’s Energy Conservation policies. The Port reasons that property is adjacent to Port Westward and, therefore, the expanded site would allow similar industrial uses to exist in close proximity. The Port fails to explain how doubling the size of the Port Westward site promotes energy conservation given the large amount of developable property remaining at Port Westward.

12. Part XVI – Open Space, Scenic and Historic Areas, and Natural Areas

The Port fails to address consistency with Comprehensive Plan Part XVI. The Staff Reports, however, acknowledge that the subject property contains open space. *See* Second Staff Report at 8 (“Given the zoning designation alone, open space could conceivably be compromised.”). For the reasons explained below, the Port’s proposal is inconsistent with the policies of Part XVI.

The Comprehensive Plan defines “Open Space,” stating:

A. DEFINITION: Open Space is defined by the Goal as consisting of lands used for agricultural or forest uses, and any land area that would, if preserved and continued in its present use:

1. Conserve and enhance natural and scenic resources;
2. Protect air or streams or water supply;
3. Promote conservation of soils, wetlands, beaches, or tidal marshes;
4. Conserve landscaped areas, such as public or private golf courses, that reduce air pollution and enhance the value of abutting or neighboring property;
5. Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space;
6. Promote orderly urban development.

The subject property falls within the definition of open space because: (1) the land is used for agricultural uses, and (2) if preserved and continued in its present use it would effectuate criteria 1 – 6 in the definition of “Open Space.”

The Port’s proposal is inconsistent with the Open Space Goals and Policies. *See* CCCP at 222. Specifically, the proposal is not consistent with the County’s goal of “conserve[ing] open space in Columbia County.” The proposal is also inconsistent with Policy 1, to “[r]ecognize the economic and aesthetic value of open space as it relates to planning for agriculture, forestry, wetlands, and other open space resources.” *Id.* The Port also fails to explain how the proposal is consistent with Policy 3, which recognizes the need for public access to the Columbia River and other scenic and recreational features. *Id.*

The Port’s application fails to address how the proposal is consistent with Part XVI, Art. VIII, “Fish and Wildlife Habitat,” Part XVI, Art. X, “Water Resources,” and Part XVIII, “Air, Land and Water Quality.” The First Staff Report states: “With regards to wildlife, the site is identified as being within major waterfowl habitat.” The applicant fails to disclose this fact or explain how the proposal is consistent with the Comprehensive Plan’s Fish and Wildlife Habitat goals and policies. Similarly, the Port fails to address how the proposal is consistent with Part XVI, Art. X. The First Staff Report states that “the site does not contain any significant wetlands, however there are some wetlands associated with crossing sloughs and drainage ways.” First Staff Report at 7. There is no evidence in the record that supports the Staff Report’s conclusion on the quality of the wetlands. According to the National Wetlands Inventory map, the site contains Freshwater Emergent and Freshwater Forested/Shrub wetlands. Ex. 22.

In addition, the Port’s application fails to address how the proposal is consistent with Part XIX, Natural Disasters and Hazards. Contrary to the Port’s assertion, the site contains land within the 100-year floodplain. The Port’s application addresses “Environmental Consequences” in the context of a different approval criterion, stating: “According to Federal Emergency Management Agency (FEMA) flood hazard insurance maps, the proposed site and all access roads are outside the 100-year floodplain and are not include[d] within an identified flood hazard area.” Application at 40 – 41. The Port submits no evidence to support this statement. And evidence submitted by Riverkeeper contradicts the Port’s claim. Ex. 2, 53 (Map, generated using Columbia County’s mapping software and data, showing the Port Westward area with the FEMA 2009 Floodplain in blue overlay).

According to Countywide FEMA Floodplain Maps, effective November 26, 2010, the entire section of waterfront property the Port seeks to rezone, including the Thompson property, is within the 100-year floodplain. The Port’s application, however, fails to address how the proposal is consistent with the Comprehensive Plan Part XIX, Natural Disasters and Hazards, including the Plan’s Flood Plain goals and policies. *See* CCCP at 323. For example, the proposal is inconsistent with Policy 3, which states: “Open space uses such as recreation or agriculture shall be encouraged within identified flood plain areas.” The proposal is also

inconsistent with Policy 6, which states that it is the policy of Columbia County to “[r]etain and restore natural or other suitable vegetation adjacent to waterways.

B. CCZO § 1502(1)(A)(2)

Under CCZO § 1502(1)(A)(2), the Port must demonstrate that the application is consistent with Statewide Planning Goals. The Port fails to meet this standard for the following reasons.

1. Goal 1 – Citizen Involvement

The Port fails to demonstrate consistency with Goal 1 for the same reason the Port fails to demonstrate consistency with the Plan’s Citizen Involvement policies. To avoid repetition, Riverkeeper incorporates by reference comments on the Plan’s Citizen Involvement policies.

2. Goal 3 – Agricultural Lands

The Port seeks to exclude 957 acres from the requirements of Goal 3 by way of a Goal 2 reasons exception. For the reasons explained in Section III.A, the Port misconstrues the applicability of Goal 3 to the subject property, and mischaracterizes the type of soil contained at the site.

3. Goal 5 – Natural Resources, Scenic and Historic Areas and Open Spaces

Goal 5 provides for protecting natural resources and conserving scenic and historic areas and open spaces. The Port fails to address the proposal’s consistency with Goal 5. Riverkeeper incorporates by reference the comments set forth in in Section II.A.12. For similar reasons, the proposal is inconsistent with Goal 5.

4. Goal 6 – Air, Water and Land Resources

The purpose of Goal 6 is to maintain and improve the quality of air, water and land resources. The Port states that future development will comply with state and federal laws. *See* Application at 14. The Port’s summary treatment of the Goal 6 fails to acknowledge the degraded state of the Columbia River and Endangered Species Act-listed species that use the River adjacent to the subject property. *See* Ex 11. The Port must demonstrate, and the County must find, that compliance with state and federal environmental laws is feasible. The application lacks any discussion of applicable state and federal environmental laws, which include the Clean Water Act, Clean Air Act, and Endangered Species Act, among others. The County should not approve the goal exception application in the absence of any information regarding how compliance with applicable environmental laws can be ensured.

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5. Goal 7 – Areas Subject to Natural Hazards

The Port carries the burden of demonstrating how the proposal is consistent with Goal 7. The purpose of Goal 7 is “[t]o protect people and property from natural hazards.” The Port’s application is silent on consistency with Goal 7. However, Goal 7 applies to the Port’s application because the subject property includes land within the 100-year floodplain. This issue is addressed in greater detail in Sections II.A.12 and III.A, which are hereby incorporated by reference.

6. Goal 9 – Economic Development

The purpose of Goal 9 is “[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.” OAR 660-015-0000(9). The Port’s application mischaracterizes the purpose of Goal 9. *See* Application at 14. The Port also fails to demonstrate how rezoning 957 acres of Primary Agriculture lands for land-intensive, low-employment industries advances Goal 9. For example, the Port fails to address how doubling the size of Port Westward adds “variety” given the existing 905 acre Port Westward site and other industrial development within and adjacent to Columbia County. Instead, the Port sites to the general benefits of industrial and port development. *See* Application at 14. The Port, however, fails to explain how the type of uses intended at the subject property, and associated employment, would advance Goal 9.

7. Goal 11 – Public Facilities and Services

The purpose of Goal 11 is “[t]o plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” Riverkeeper incorporates by reference Section II.A.10 above. For the same reasons the application is inconsistent with Part XIV - Public Facilities and Services.

8. Goal 12 – Transportation

The purpose of Goal 12 is “to provide and encourage a safe, convenient and economic transportation system.” OAR 660-015-0000(12). Goal 12 is implemented through the Transportation Planning Rule, OAR Division 12. Under OAR 660-012-0060, the County must conduct a two part analysis. First, the County must determine whether the Port’s plan amendment “would significantly affect an existing or planned transportation facility.” Second, if the plan amendment is “significant,” then the County must demonstrate compliance with OAR 660-012-0060(2) – (4). OAR 660-012-0005 (30) defines “Transportation Facilities” as “any physical facility that moves or assist in the movement of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage and water systems.” OAR 660-012-0020 identifies “transportation facilities,” which include roads, “mainline and branchline railroads” and, in general, “railroad facilities.”

The Port's proposal would significantly affect railroad traffic on the Portland & Western Railroad line and, therefore, the County must demonstrate compliance with OAR Division 12. The Port's proposed plan amendment is premised on using the Portland & Western Railroad line. *See e.g.*, Application at 3 ("Rail lines run through the eastern portion of the subject property and throughout Port Westward, connecting to the Portland & Western Railroad line serving the area. Within the past four years, \$6.3 million was spent to improve the rail facilities serving the property. With spurs as needed, each portion of the subject property can be served by rail transportation."); *id.* at 6 ("Probable uses will be a combination of maritime and industrial users that will benefit from the existing services, the moorage and deepwater access . . . the railroad . . ."); *id.* ("The Port has been approached by several different companies representing several different industries For example, a natural resource export facility would utilize river barge and/or rail shipments to move material to Port Westward for loading onto ships."); *id.* at 31 ("The deep water location of the Columbia River, rail lines, and proximity to international trade routes—3 crucial components to a successful port operation—are attributes that no other land or facility in the area possesses."). For example, just one coal export terminal would significantly increase unit train traffic on the Portland & Western Railroad line. *See Exs.* 45, 46. In the first phase of development, Kinder Morgan's proposal to export 15 million tons of coal per year would require three, 125-car trains per day. *Ex.* 45. Rail traffic would double when Kinder Morgan carries out plans to export 30 million tons of coal per year.

Columbia County has not planned for any increase in rail traffic on the Portland & Western Railroad line, let alone a significant increase. The Lower Columbia River Rail Corridor Safety Study (May 2009) states:

Because the residents of towns along US 30 use that highway as a 'main street' for local connectivity north and south, the local short hops on and off US 30, with associated accelerating, slowing, weaving and turning movements add to the congestion and time delays in the more populated segments of the highway. This situation is exacerbated by queuing for turns off US 30 when those turns are blocked by a train, as well as turns onto the highway from east-west side streets. A significant safety problem occurs when vehicles straddling the tracks waiting to turn onto US 30 cannot escape onto the highway to get out of the way of an approaching train.

Ex. 17 at 13; *see also id.* at 21. The Report also describes the impact of unit trains on traffic delay, stating: "[v]ehicle delay at railroad crossing is a primary concern of the corridor stakeholders. It is not only an inconvenience, but it also has implications for emergency response in situations on the other side of the tracks." *Id.* at 27.

Mile-and-half long coal trains and other rail traffic to the subject property would impact at-grade crossing throughout the County, impacting emergency response time and traffic congestion. Notably, the Columbia County Rural Transportation System Plan contains virtually no discussion of the transportation impacts associated with increased unit train traffic on the Portland & Western Railroad line. The Plan contains one sentence on the issue of unit train traffic on the line, stating: "None of the at-grade railroad crossings in the County warrants grade

separation at current levels of railroad activities.” Ex. 8 at 4-11. The Port, however, concludes summarily that “[t]he subject comprehensive plan amendment does not ‘significantly affect’ a transportation facility as described in 660-012-0060(1).” Application at 16. The Port’s conclusion is not supported by substantial evidence in the record.

The Port’s argument for doubling the size of Port Westward rests in large part on rail access. You can’t have your cake and eat it too. Because the plan amendment would increase rail traffic significantly, the County must comply with the requirements in OAR 660-012-0060(2) – (4).

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

The Port seeks a Goal 2 “reasons exception” to Goal 3. State law authorizes three categories of goal exceptions: (1) physically developed exceptions, (2) irrevocably committed exceptions, and (3) reasons exceptions. ORS 197.732(2)(c) sets for the criteria for the County’s reasons exception analysis,¹ stating:

(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;

(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.

The County must also determine that the standards for a reasons exception are met pursuant to OAR 660-004-0000(2) and 660-004-0015. For the reasons explained below, the Port fails to meet the requirements for a Goal 2 reasons exception to Goal 3. At various points the Staff Reports acknowledges that the Port fails to demonstrate that a reasons exception is warranted.

¹ ORS 197.732(2)(a) provides for an exception if land is “physically developed to the extent that it is no longer available for uses allowed by the applicable goal,” and ORS 197.732(2)(b) provides for an exception if land is “irrevocably committed” to other uses and uses allowed by the applicable goal are “impracticable.” Unlike the existing Port Westward goal exception, the Port does not argue that a goal exception is warranted under ORS 197.732(2)(a) or (b). This makes sense: the land is currently agricultural land without industrial development, whereas the existing Port Westward property was historically used for industrial purposes. *See* CCCP at 120.

See Second Staff Report at 10 (stating “Staff has a concern that applicant’s Goal 2 Reasons Exception for Rural Industrial Development analysis does not adequately address the amount of land needed for the expansion, see OAR 660-004-0020(2)(a) In anticipation of receiving additional information from the applicant, the criteria for an exception to Goal 3 can be met.”); see also *id.* at 12 (explaining that that until a Traffic Impact Analysis “is submitted and subsequently review, the County staff can not find that the proposal complies with Goal 12.”). Nevertheless, the Staff recommends approval. For the reasons explained below, Riverkeeper urges the County to reject the Port’s arguments, which are not supported by substantial evidence in the record.

A. ORS 197.732(2)(c)(A)

The Port fails to meet the requirements of ORS 197.732(2)(c)(A). Substantial evidence in the record fails to demonstrate that the Port’s reasons for the Goal 2 exception “justify why the state policy embodied in the applicable goals should not apply.” The Port’s argument hinges on a factual error: the Port claims the “[t]he majority of the property does not contain productive soils.” *Id.* at 19. This is not the case. See Ex. 18, 19, 44; Second Staff Report at 5. Even if the Port were correct, the soil class alone is not determinative of whether a reasons exception is warranted. Furthermore, the Port relies on evidence on the need for industrial land in the State of Oregon, without providing substantial evidence on why a reasons exception is warranted for 957 acres adjacent to the largely unoccupied 905 acre Port Westward, and why other areas cannot accommodate the use.

First, substantial evidence in the record does not support the Port’s claim that the majority of the 957 acres is not productive agricultural land. Ex. 18, 19, 44. The Application states, “the majority of the property does not contain productive soils. Soil types consist of 35 acres of Class II, 300 acres of Class III, and 622 acres of Class VI...Thus 622 acres may not even meet the definition of “agricultural land” in OAR 660-33-0020(1)(a).”

The application is incorrect. See Second Staff Report at 5. The application asserts that soil type 68 – Wauna-Locoda Silt Loam (protected) – is an unproductive Class VI soil. In stark contrast to the application, the Natural Resource Conservation Service (NRCS) soil survey for the Port Westward area clearly indicates that the land is viable for agriculture. The NRCS describes the Wauna-Locoda silt loams as a Class III soil viable for agriculture. Ex. 49 at 73.

The applicant argues that the soil type 68 falls under capability subclass VI. Current NRCS maps and the most current soil survey draw a different conclusion, and designate the area as subclass III. According to the Columbia County soil survey, the area proposed for rezoning has potential agricultural value for producing hay and providing pasture for grazing. According to NRCS soil maps, less than 222 acres (22%) of the overall site qualify as Class VI soils. Over 300 acres of Wauna-Locoda silt loams, protected, soils are class II or III soils. Exs. 18, 19, 49. As a result, the application understates the agricultural viability of the area proposed for rezoning to industrial use.

Second, even if the Port's characterization of 622 acres as "not productive" was correct, this argument still fails to justify a Goal 2 reasons exception. OAR 660-33-0020(1) defines "agricultural land" for the purposes of Division 660. The definition of "agricultural land" includes: (1) "[l]ands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon;" (2) "[l]and in other soil classes that is suitable for farm use;" (3) land that "is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands;" and (4) land that is "intermingled" with soil classes I-IV/I-VI within a farm unit. OAR 660-33-0020(1)(a)-(b). Land that is "suitable for farm use" must be capable of being farmed for economic gain, but this includes small-scale farms. *Wetherell v. Douglas County*, 54 Or LUBA 646, 652 (2007). Further, land in the fourth category, intermingled lands, qualifies as agricultural lands even though that land "may not be cropped or grazed." OAR 660-33-0020(1)(b).

Several courts have suggested that before any land that is currently zoned as "agricultural land" is rezoned, it must fail to meet each of the categories of "agricultural land" described above. *See Friends of Yamhill County v. Yamhill County*, 47 Or LUBA 508, 525 (2004) (stating that lands with poorer soil than class I-IV "may also qualify as agricultural land" under the other provisions of the definition of "agricultural land"); *Emmons v. Lane County*, 48 Or LUBA 457 (2005) (petitioners argue that there are four classes of agricultural lands included in the definition, but the court doesn't reach that argument); *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008) (reversing and remanding county's rezoning of agricultural land because the county did not adequately consider the parcel in conjunction with nearby land). In *Evenson v. Jackson County*, a case that closely resembles the facts here, a petitioner appealed a decision of Jackson County denying a non-farm use on a small parcel of land with class V soils that was zoned as Exclusively Farm Use. 35 Or LUBA 251 (1999). The petitioner argued that "if one presumes that Class I-IV soils are agricultural lands, then it follows that Class V-VIII soils are presumed to be non-agricultural lands." *Id.* at 255 (1999). The court rejected this logic, stating "[u]nder the agricultural lands definition, Class V soils are not presumed to be non-agricultural, nor is the presence of Class V soils determinative, in itself, as to whether land is generally unsuitable for farm use." *Id.* at 256. Thus, the Port's argument that because the soils are not class I-IV, the land may not meet the definition of "agricultural land" is of little import.

Third, the property's proximity to the Columbia River does not justify a Goal 2 reasons exception. The Port argues that the property "is ideally located adjacent to a naturally deep section of the [Columbia] River and served by a 43 foot shipping channel." Substantial evidence in the record does not support the Port's claim. *See* Ex. 10. While the existing Port Westward property is adjacent to a naturally deep section of the Columbia, the waterfront portion of the proposed rezone is not "naturally deep." The Port also fails to address the severe building constraints facing the waterfront property (*i.e.*, the Thompson property): the land is within the floodplain and identified by the National Wetlands Inventory as wetland. Ex. 22. In contrast to the Port's assertion, proximity to the Columbia River in fact supports retaining this land as open space for flood protection, hazards, habitat, and farming.

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B. ORS 197.732(2)(c)(B)

The Port's application does not meet the requirements for a Goal 3 Exception because substantial evidence in the record does not support a finding that "[a]reas that do not require a new exception cannot reasonably accommodate the use." ORS 197.732(2)(c)(B).

1. The existing Port Westward Exception could reasonably accommodate the Port's proposed uses.

The Port's proposed uses are virtually identical to the proposed uses for the existing Port Westward Exception. The Port Westward Exception states:

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 road, the site is not likely to attract any heavy highway users. Uses likely to be located here are best illustrated by four proposals submitted the current leaseholder since 1980. Proposals have included a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and 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.

The Port's 2013 Goal 2 exception application describes similar potential uses. *See* Application at 6 (describing potential industries, including renewables, power plants, petroleum based products, and natural resources including coal and other bulk commodities).

The Port fails to explain the inherent contradictions between the existing Port Westward Exception and the current application. The Port argues that: (1) the majority of the Port Westward site is leased to PGE (862 acres of the 905 acre site), and (2) "[n]early the entirety of the area inside the existing PWIP [Port Westward Industrial Park] and not currently developed is identified by the County as wetlands." These arguments are not persuasive. Substantial evidence in the record fails to support the Port's claim that the existing Port Westward Exception area cannot reasonably accommodate the use.

As an initial matter, the County's existing exception relied upon and contemplated development within PGE's leasehold to justify the exception. Now, the Port states that development at Port Westward is hindered by PGE. These statements run counter to evidence in the record that describe PGE and the Port's plans to attract new industry to PGE's leasehold. *See* Exs. 5, 23, 48. The Port's application states:

PGE – the leaseholder – controls which uses, if any, it may allow on the leased property pursuant to the terms of its 99 year lease. Besides the two existing generating plant and tanks already on the site, PGE – through an Integrated Resources Plan (IRP) issued in 2010 – is proposing to construct an additional 200 MW [power plant] at the site. Given the buffer required by PGE to protect its facilities, the fact that some property is located within the flood zone, extensive wetlands, existing easements and rail tracks throughout the site, there is minimum property remaining within the current already zone RIPD area.

Application at 24.

Comparing the Port’s proposal to double the size of Port Westward to the County’s existing Port Westward Exception begs the question: what changed? The existing Port Westward Exception contains no reference to the flood zone, “extensive wetlands,” or existing easements and rail tracks as a barrier to development. Even with the PGE’s 200 MW power plant, hundreds of acres remain available for development. The Port must reconcile the serious inconsistencies between the representations in its application and the existing Port Westward Exception.

For example, the Port must reconcile how PGE’s control of the uses within its leasehold supports a finding that the existing Port Westward Exception area cannot accommodate the wide-range of potential uses the Port identifies in its application. The Port argues PGE’s facilities require a buffer. What is the size of this buffer? Can certain industries operate within PGE’s leasehold? Evidence in the record contradicts the Port’s effort to paint PGE’s lease and interests in a buffer as a barrier to development. *See* Exs. 5, 23, 48.

PGE’s concerns about certain industries adjacent to its operations do not suggest that the site is not developable. Here is what we know: In 2012, PGE rejected the Port’s effort to site a 100 to 150 acre coal export terminal at Port Westward. Exs. 5 and 14; *see also* Ex.16. Specifically, PGE rejected coal export due to concerns about the impact of coal dust on its operations. *Id.* Coal export, however, is only one of several proposed uses the application cites. *See* Application at 6 (stating “The Port has been approached by several different companies representing several different industrials ranging from renewables, such as biodiesel, biomass, and solar; petroleum based products; grain; wood chips; cement; power plants; automobiles; and natural resources including coal and other bulk commodities). Coal export is a bad neighbor. And PGE’s interest in protecting its operations may prove a barrier to coal export at Port Westward. But this does not suggest that PGE is unwilling to support other development in its leasehold. *See* Exs. 5, 23, 48. In the end, the County must reconcile conflicting statements in the existing Port Westward Exception and the Ports proposal for a similar exception.

Lastly, the existing Port Westward Exception is silent on the issue of development limits posed by wetlands, saying only: “Because the area is drained and diked, there are no on-site ponding areas.” CCCP at 119. The Port must address serious contradictions between the existing Port Westward Exception and the Port’s proposal to exempt an additional 957 acres from the resource land protections contained in Goal 3.

2. Available non-resource land in Columbia County could reasonably accommodate the Port's proposed uses.

The Port's application purports to identify non-resource lands outside of Port Westward and explain why these lands cannot accommodate the Port's preferred use. Application at 34–36. For the reasons below, the Port's explanations about why available non-resource lands cannot accommodate the Port's proposed uses are inadequate to justify a Goal 3 exception.

The Port analyzed an improperly limited set of areas that would not require a goal exception in order to accommodate industrial development. The Port erred by limiting its consideration and analysis to areas in Columbia County that the Port already owns. *See* Application at 34–35. ORS § 197.732(2)(c)(B) says nothing about land ownership, and the Port therefore should have analyzed the ability of land not owned by the Port that does not require a goal exception to accommodate industrial development.

For instance, the Port should have analyzed the suitability of land zoned for industrial use in Rainer, Oregon. *See* Ex. 50 (zoning map of area around Rainer with industrially zoned areas shown in purple and light purple). This land appears to be relatively undeveloped, served by rail, and with at least as much potential for deep water access as the Port's proposed rezone land at Port Westward. *See* Ex. 38 (NOAA Depth Chart of the Columbia River near Rainer). Similarly, the Port should have analyzed the industrially-zoned area around Prescott, Oregon. *See* Ex. 44 (Zoning Map of Industrial Area at Prescott, which includes green dots representing area zoned "Resource Industrial – Planned Development," the same zoning as Port Westward); *see also* Ex. 51 (describing the industrial potential of the Prescott area). Again, this area is located near the railroad with river access. *See* 39 (NOAA Depth Chart of the Columbia River near Prescott). These are just two of many possible sites that could potentially accommodate the uses the Port envisions without requiring a goal exception. The fact that the Port does not own these sites does not relieve the Port of its burden under ORS § 197.732(2)(c)(B) to show that these sites cannot accommodate the Port's proposed uses.

The Port further erred by limiting its consideration and analysis to properties in Clatsop County where a deep water dock could be constructed on-site. *See* Application at 34–35. Though the Port's application focuses on the potential for a deep water dock at the Thompson Property, a new deep water dock is not actually necessary for the types of industry the Port seeks to attract. This is because there are other easily-accessible deep water docks in the area; most notably, the existing deep water dock at Port Westward. The existing Port Westward dock is connected to the rail line that serves or passes nearby nearly every industrial property in Columbia County. The Port points to no evidence that the existing Port Westward dock is inadequate or functioning at capacities that prohibit new industries from using it. Accordingly, the Port erred in asserting that deepwater access at the proposed site is critical for industrial development and therefore erred by limiting its consideration to properties with on-site deep water access.

Finally, the Port erred by considering other available areas piecemeal rather than in aggregate. *See* Application at 34–35. ORS § 197.732(2)(c)(B) directs proponents of Goal 3 exceptions to analyze “areas”—plural—that could accommodate the proposed use without requiring a goal exception. Allowing a Goal 3 exception when a few nearby industrially-zoned areas, taken together, could accommodate the proposed use would circumvent the purpose of ORS § 197.732(2)(c)(B), namely to develop existing industrially-zoned areas before converting non-industrial lands to industrial use. Nevertheless, the Port fails to even discuss the possibility that the areas described at pages 35 through 38 of the Narrative statement—along with the other non-Port-owned areas described above—could, when considered all together, provide sufficient area for the Port’s industrial use goals.

For the same reasons stated above, the Port also fails meet the requirements of OAR OAR 660-004-0022(3)(b) and (c).

C. ORS 197.732(2)(c)(C)

The Port’s application does not meet the requirements for a Goal 3 Exception because substantial evidence in the record does not support a finding that “[t]he long term environmental, economic, social and energy consequences resulting from the uses at the proposed site . . . are not significantly more adverse than would typically result from the same proposal being located in [other] areas *requiring a goal exception*. . . .” ORS 197.732(2)(c)(C) (emphasis added).

First, and most basically, the Port’s application does not mention other potential development sites that would also require goal exceptions, and certainly does not compare the “environmental, economic, social and energy consequences” of developing those sites against developing the proposed site. *But see* ORS 197.732(2)(c)(C). For this reason alone, the Port’s findings regarding ORS 197.732(2)(c)(C) are not supported by substantial evidence.

Second, the Port’s findings under ORS 197.732(2)(c)(C) are not supported by substantial evidence because the Port’s application mischaracterizes or ignores the environmental consequences of the proposed Goal exception. The Port’s application states the proposed development “will not have any negative effect on sensitive environmental features.” Application at 40. The Port offers no evidence to support this assertion; in fact, it is patently false. The Port’s analysis ignores the Comprehensive Plan’s recognition that agricultural lands protect environmental benefits and the reality that rezoning and developing the Port and Thompson properties would seriously degrade important habitat for ESA-listed salmon.

Specifically, the Thompson property, which is forested/shrub wetlands, and the surrounding shallow-water areas, including Poysky Slough, are important rearing habitat for juvenile salmon. In 2006 and 2007, the National Marine Fisheries Service found that juvenile Chinook, Coho, and Chum salmon used similar shallow-water habitat near Wallace Island, less than 2 miles downstream from the Thompson property. Ex. 54. The subject property is also near a major salmon habitat restoration project at Crims Island. Ex. 30. Multiple studies and publications have identified shallow-water and off-channel habitats in the Lower Columbia River

and Estuary as vitally important to salmonid rearing and recovery. *See* Exs. 25, 26, 33. Development or destruction of riparian wetlands and shallow-water habitats, and the construction of over-water structures like piers and docks, degrades salmon habitat. *See* Exs. 25, 26, 33. Indeed, diking, filling, and other development activities have decreased the total area of tidal wetlands in the lower Columbia River estuary by more than 50 percent. Ex. 54.

Construction on the Thompson property, and the huge deep water dock(s) the Port intends to build, would further degrade already-scarce salmon habitat in the lower Columbia. Because the Port's application ignores the environmental consequences of developing the proposed site, any 'comparison' between the environmental consequences of developing the proposed site and other sites requiring goal exceptions (as required by ORS 197.732(2)(c)(C)) is not supported by substantial evidence.

Third, the Port's findings regarding ORS 197.732(2)(c)(C) are not supported by substantial evidence because the long-term environmental consequences would be significantly less adverse if the Port's proposed use occurred at a different site requiring a goal exception. Specifically, the environmental consequences would be significantly less adverse because locating the use on other resource lands would not entail industrial development in near-shore, off-channel and wetlands salmon habitat. For example, agricultural land just upriver from Rainer, Oregon, could be rezoned with a goal exception and developed without severely impacting wetlands or off-channel habitats. The area is just upriver from Rainer, and is comprised of a small peninsula and some associated farmland. *See* Ex. 42 (areas zoned agricultural shown in light green). The area has access to the deep water shipping channel, Ex. 38, and is relatively open and undeveloped. Importantly, the river-frontage along the peninsula contains few wetlands and development there would not necessitate building in or over off-channel habitat. Ex. 37. This example shows that other areas requiring a goal exception could be developed with less severe long-term environmental consequences—specifically, without degrading off-channel or wetlands salmon habitat—than the Port's proposal to develop the area around the Thompson property. Accordingly, the Port's proposed goal exception is not appropriate because ORS 197.732(2)(c)(C) is not satisfied.

D. ORS 197.732(2)(c)(D)

The proposed Goal 3 exception is incompatible with other adjacent uses and, therefore, should be denied. Under ORS 197.732(2)(c)(D), the County must find that "[t]he proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." Riverkeeper incorporates by reference Section I above, which explains why the Port fails to satisfy the criteria in ORS 197.732(2)(c)(D).

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CONCLUSION

For the reasons set forth above, Riverkeeper respectfully requests that the County reject 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. Thank you for the opportunity to provide these comments.

Sincerely,

Lauren Goldberg
Staff Attorney, Columbia Riverkeeper

Miles Johnson
Clean Water 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
1	Federal Register Notice, Designation of Critical Habitat for 12 Evolutionarily Significant Units of West Coast Salmon & Steelhead in Washington, Oregon, & Idaho; Final Rule
2	Port Westward Area 100-Year Flood Plain Map, Federal Emergency Management Agency
3	Port of St. Helens Meeting Minutes (Jan. 25, 2012)
4	Fuel Distributors to Buy Ethanol Plant, Portland Tribune
5	PGE, Port of St. Helens seek new marketing terms for Port Westward, Portland Tribune
6	Port Confidential: Papers tell coals tale, Portland Tribune
7	The Human Health Effects of Rail Transport of Coal Through Multnomah County, Oregon
8	Columbia County Rural Transportation System Plan
9	Columbia County Community-Wide Transit Plan & US 30 Transit Access Plan
10	NOAA, Columbia River Depth Chart at Port Westward Area
11	EPA, Columbia River State of the River Report for Toxics
12	A New Critic of Coal Dust: Portland General Electric, OPB
13	Letter from EPA to U.S. Army Corps of Engineers regarding impacts of Morrow Pacific Project Coal Export Proposal
14	<i>Oregonian</i> , Portland General Electric vetoes initial proposal for coal export terminal at Oregon's Port Westward
15	Heavy Traffic Ahead: Rail Impacts of Powder River Basin Coal to Asia by way of Pacific Northwest Terminals
16	Kinder Morgan Lease Option with the Port of St. Helens
17	Lower Columbia River Rail Safety Study
18	NRCS Soil Map, Port Westward Area
19	NRCS Soil Map Land Capability Classification
20	2007 National Resources Inventory Report
21	Port of St. Helens Strategic Business Plan
22	National Wetland Inventory, Port Westward Area
23	Port Westward – Economic Development for Columbia County
24	Federal Register; Designation of Critical Habitat for Lower Columbia River Coho & Puget Sound Steelhead; Proposed Rule
25	Recovery Plan – Columbia River Estuary Module
26	NOAA, Role of the Estuary in the Recovery of Columbia River Basin Salmon & Steelhead

27	Sightline Institute, The Facts About Kinder Morgan
28	<i>The Daily News</i> , Millennium Compared to Kinder Morgan
29	Coal Export Traffic Study for Marysville, WA
30	USGS, Crims Island – Restoration and Monitoring of Juvenile Rearing Habitat in the Columbia River Estuary, Oregon 2004-10
31	Sightline Institute, Northwest Coal Exports
32	BNSF Website, Coal Dust FAQs
33	WDFW & ODFW, Joint Staff Report on Sturgeon and Smelt
34	<i>The Daily News</i> , Westshore provides glimpse of Longview’s future with coal
35	Sightline Institute & Columbia Riverkeeper, Coal Export: A History of Failure
36	Pacific Transloading Lease Option with the Port of St. Helens
37	Map of Wetlands Upstream of Rainier
38	NOAA, Columbia River Chart at Rainier
39	NOAA, Columbia River Chart at Prescott
40	Zoning of Industrial Area at Prescott
41	Zoning of Industrial Area at Rainier
42	Zoning Map of Agricultural Land Near Rainier
43	Public Notice for File No. PA12-02 & ZC13-01
44	Columbia County Comprehensive Plan, USDA Soil Map
45	<i>The Clatskanie Chief</i> , Coal exporters, railroad representatives speak to Kiwanis
46	<i>Oregonian</i> , Coal Clash: Potential for more coal trains in the Northwest raises congestion, pollution concerns
47	Rail Advisory Committee Meeting Minutes (March 14, 2012)
48	Marketing Agreement between PGE and the Port of St. Helens
49	Columbia County Soil Survey
50	Zoning of Industrial Areas at Rainier
51	Columbia County Comprehensive Plan, Prescott Exception
52	2010 Oregon Rail Study
53	Columbia County Map, FEMA 2009 Floodplain Layer in Blue
54	NMFS, Estuarine Habitat and Juvenile Salmon: Current and Historical Linkages in the Lower Columbia River and Estuary (2011).
55	<i>Oregon Business</i> , A tale of two subsidies (May 2009)