

BEFORE THE MORROW COUNTY COURT
OF MORROW COUNTY

AN ORDINANCE CHANGING THE
COMPREHENSIVE PLAN DESIGNATION FROM
AGRICULTURAL TO INDUSTRIAL ON
APPROXIMATELY 510 ACRES AND TO CHANGE
THE COMPREHENSIVE PLAN DESIGNATION FROM
INDUSTRIAL TO AGRICULTURAL ON
APPROXIMATELY 515 ACRES; TO AMEND THE
COMPREHENSIVE PLAN MAP ACCORDINGLY TO
APPLY THE PORT INDUSTRIAL USE ZONE TO
APPROXIMATELY 510 ACRES AND APPLY THE
EXCLUSIVE FARM USE ZONE TO APPROXIMATELY
515 ACRES; AND AMEND THE ZONING MAP
ACCORDINGLY.

COUNTY ORDINANCE

NO. mc-1-2011

WHEREAS, ORS 203.035 authorizes Morrow County to exercise authority within the county over matters of County concern; and

WHEREAS, Morrow County adopted a Comprehensive Land Use Plan which was acknowledged by the Land Conservation and Development Commission on January 15, 1986; and

WHEREAS, the Port of Morrow made application to amend the Morrow County Comprehensive Plan Text and Map and Zoning Map and adopt exceptions to Goals 3, 11 and 14, with supporting findings of fact and statement of reasons; and

WHEREAS, the Morrow County Planning Commission held hearings to review the request and consider testimony on September 14 and October 12, 2010, at the Port of Morrow Riverfront Center in Boardman, Oregon; and

WHEREAS, the Morrow County Planning Commission unanimously recommended approval of the request and adopted Planning Commission Final Findings of Fact; and

WHEREAS, the Morrow County Court held a hearing to consider the recommendation of the Morrow County Planning Commission on December 15, 2010, at the Port of Morrow Riverfront Center in Boardman, Oregon; and

WHEREAS, the Morrow County Court did consider the testimony and evidence presented to them;

NOW THEREFORE THE COUNTY COURT OF MORROW COUNTY ORDAINS AS FOLLOWS:

Section 1 Title of Ordinance:

This Ordinance shall be known, and may be cited, as the "2010 Port of Morrow Comprehensive Plan and Zone Change Amendment."

Comprehensive Plan and Map Amendment
Zoning Ordinance and Map Amendment
2010 Port of Morrow Zone Change
Page 1

Section 2 Affected Documents

1. Morrow County Comprehensive Plan will be amended by including appropriate text from the attached application and Findings of Fact labeled Exhibit 1.
2. Morrow County Comprehensive Plan Map will be amended as identified on the attached map labeled Exhibit 2
3. Morrow County Zoning Ordinance Map will be amended as identified on the attached map labeled Exhibit 3.

Section 3 Effective Date

This ordinance shall be effective on March 1, 2011.

Date of First Reading: January 12, 2011

Date of Second Reading: January 19, 2011

DONE AND ADOPTED BY THE MORROW COUNTY COURT THIS 19th DAY OF JANUARY 2011

ATTEST:



*Bobbi Childers by
Theresa Crawford Deputy Clerk*
 Bobbi Childers
 County Clerk

MORROW COUNTY COURT:

Terry K. Tallman
 Terry K. Tallman, Judge

Ken a. Grieb
 Ken Grieb, Commissioner

APPROVED AS TO FORM:

 Ryan Swinburnson
 County Counsel

ABSENT
 Leann Rea, Commissioner

MORROW COUNTY, OREGON **CJ2011-0009**
 Commissioners' Journal 01/20/2011 02:58:08 PM



I, Bobbi Childers, County Clerk for Morrow County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Bobbi Childers - County Clerk



Comprehensive Plan and Map Amendment
 Zoning Ordinance and Map Amendment
 2010 Port of Morrow Zone Change
 Page 2

**Morrow County Planning Commission
Final Findings of Fact
AC-031-10 Comprehensive Plan Amendment
AC(M)-032-10 Comprehensive Plan Map Amendment
AZ-033-10 Zoning Ordinance Amendment
AZ(M)-034-10 Zoning Map Amendment
Port of Morrow East Beach Industrial Park
Amended October 1, 2010
*Finalized October 12, 2010***

REQUEST: (1) Change the Comprehensive Plan designation from "Agricultural" to "Industrial" on approximately 510 acres and to change the Comprehensive Plan designation from "Industrial" to "Agricultural" on approximately 515 acres. (2) Amend the Comprehensive Plan Map accordingly. (3) Apply the "Port Industrial Use Zone" to approximately 510 acres and apply the "Exclusive Farm Use Zone" to approximately 515 acres. (4) Amend the Zoning Map accordingly.

APPLICANT: Port of Morrow
P.O. Box 200
Boardman, OR 97818

PROPERTY OWNERS: Port of Morrow
P.O. Box 200
Boardman, OR 97818

Westland Enterprises, LLC
822 Highway 395 South
Hermiston, OR 97838

PROPERTY DESCRIPTION: Tax lots 901, 1999 and 1201 of Assessor's Map 4N 25 11
Tax lots 200, 300, 301 and 901 of Assessor's Map 4N 25 12
Tax lots 100 and 200 of Assessor's Map 4N 25 07
Tax lot 202 of Assessor's Map 4N 25 08

PROPERTY LOCATION: The property changing from Exclusive Farm Use (EFU) to Port Industrial (PI) is located north of the Interstate 84 and Highway 730 interchange. The property changing from General Industrial (MG) to EFU is located along the west side of Bombing Range Road, south of Wilson Lane and just north of the Bombing Range.

I SUMMARY OF APPLICATION AND PROCESS:

The Port of Morrow (Port) has a large industrial complex north and east of the City of Boardman which was established in the 1960s and has grown over the past five decades. In the current Morrow County Comprehensive Plan there is extensive work justifying the Port's facilities including the necessary exceptions to allow urban scale development outside of the Boardman Urban Growth Boundary. This application seeks to expand the current footprint of the Port operations with a primary goal being to support the transportation network necessary to facilitate movement of goods, services

and employees into and out of the Port and in particular the East Beach Industrial Park. This is also a first and necessary step to support the development of a transportation network connecting the Port to Highway 730 and to the Interstate 84/Highway 730 interchange. Work is currently underway to develop required Interchange Area Management Plans (IAMPs) for the Port interchange and the proposed enhancements to the Interstate 84/Highway 730 interchange.

Attached is the Port's application which addresses the Exceptions process described under Goal 2 for the Port to apply for and have approved a "reasons" exception. The application addresses the necessary Goals, State Statute and Rule, and the necessary portions of the Morrow County Comprehensive Plan and Zoning Ordinance. Planning staff have worked with the applicant and their consultant on this process and would concur with the application as presented.

During the course of the public hearing process both the Morrow County Planning Commission and the Morrow County Court will need to review the application for consistency with the necessary criteria (briefly outlined above) to determine if the threshold for approval has been met.

Upon completion of this action the Comprehensive Plan, Comprehensive Plan Map, and the Zoning Ordinance Map will be amending. New portions will be added to the Comprehensive Plan outlining the justifications put forth for the requested changes. The two maps will reflect new Comprehensive Plan designations and use zones.

Over the course of the next several months there will be held at a minimum two Planning Commission public hearings and one County Court public hearing. The dates and places for those hearings is identified later in these findings.

Prior to the first Planning Commission public hearing on September 14 Planning Director Carla McLane received from Jon Jinnings, DLCD Regional Representative an email (see attached) with three questions. Those were presented at the public hearing and the applicant did respond to the issues presented. Additional comments concerning those issues appears later in these findings.

Between the first and second public hearing additional comment was received from the Oregon Department of Transportation (ODOT). Region 5 Planning Manager Teresa Penninger provided comment in a letter dated September 29 (see attached). Additional comments concerning the ODOT request can be found later in these findings.

- II SUMMARY OF APPLICABLE CRITERIA** The applicable criteria can be found in the Morrow County Comprehensive Plan Review and Revision Process, the Morrow County Zoning Ordinance Article 8 Amendments, the Morrow County Transportation System Plan (TSP), the Statewide Planning Goals (predominately 3, 11, 12 and 14), and Oregon Administrative Rule Chapter 660 Division 4 and Division 14. Both the Comprehensive Plan and Zoning Ordinance criteria are reviewed below by staff. The TSP does not have specific review criteria to analyze an application against, but the applicant has done an analysis of the TSPs Goals and Policies. The application also does a thorough review of the Statewide Planning Goals and Oregon Administrative Rule Chapter 660 Divisions 4 and 14. Planning staff would concur with those analyses.

The Morrow County Comprehensive Plan Review and Revision Process requires “**at a minimum, the review should determine Plan and Implementing Ordinance conformity with changes in:**

1. The Oregon Revised Statutes;

No change in Oregon Revised Statute or Oregon Administrative Rule are prompting this request.

2. Oregon Case Law;

No case law is requiring this action.

3. Oregon Statewide Planning Goals;

Changes in the Statewide Planning Goals are not causing or directing this amendment or zone change. However a number of the Goals should be and shall be considered as part of this action. The application addresses the Goals that are required to be reviewed as part of this application. Those applicable are Goals 1, 2, 3, 6, 9, 11, 12, 13 and 14. Specifically exceptions must be taken to Goals 3, 11 and 14 allowing for the proposed uses. The type of exception to be taken is a “reasons” exception which is explained and analyzed within the application. Staff support the application in this manner.

Also to be considered is Goal 12 and the Transportation Planning Rule. The Port of Morrow is also currently doing work on two IAMPs and an Access Management Plan for the proposed connections to the State Interstate and Highway system. Those IAMPs will meet the requirements of Goal 12 and the Transportation System Plan. The ODOT is requesting in their letter dated September 29 that this approval should be conditioned as follows, “Prior to development (issuance of zoning and building permits) of the land proposed to be zoned Port Industrial an Interchange Area Management Plan will be completed and adopted by the County.” Planning staff would find this request to be reasonable and are incorporating the Condition below.

Comment received from Jon Jinnings concerning the necessary ESEE analysis is a function of Goal 2, the exceptions process. His question is how reverting the southern property back to EFU is or isn't supported by the ESEE analysis to convert the northern property to Port Industrial. The ESEE analysis to convert the approximately 510 acres north of I-84 to Portland Industrial also strongly supports the conversion of the southern 515-acre property back to an EFU zoning. Economically, needed public facilities and services are already located at the East Beach Industrial Park but are not located on the southern property. Accordingly, it will be far less expensive and far more cost effective to extend public facilities and services to the approximately 510 acres proposed for industrial development immediately adjacent to the East Beach Industrial Park than to extend them across Interstate 84 and then a mile south along Bombing Range Road to reach the southern property. Likewise, the UP mainline rail cuts directly through the northern area proposed for industrial development but is more than a mile from the southern property. Extending a rail line across I-84 to the southern property would be extremely expensive compared to providing a spur off the existing mainline north of I-84. Socially, the Port's proposal would expand industrial development in an area that already has a significant industrial character. It would, in effect, expand the East Beach Industrial Park to Oregon 730, which as an arterial highway would provide a good boundary separating industrial uses to the west and agricultural uses to the east. In contrast, establishing industrial uses on the industrial property south of I-84, while permitted under current zoning, would significantly change the existing agricultural

character of that area. Environmentally, neither site contains any significant natural resources. However, from an energy standpoint, using the approximately 510 acres north of I-84 and adjacent to Oregon 730 to access rail and highways would be more energy efficient than using the 515 acres to the south given the shorter distance to the UP mainline and major roadways like I-84 and Oregon 730, and because less energy would be needed to accommodate more unit trains because a new rail line would not need to be extended to a location more than a mile south of the UP mainline.

4. Requirements of the County and Cities;

There are no specific requirements of the County or any effected cities requiring the proposed changes.

5. Needs of residents or landowners within the County and Urban growth areas.

The residents of Morrow County look to the Port to act as the economic development agency to support job growth. This action to bring additional acreage into the Port, specifically the East Beach Industrial Park, and facilitate a local transportation network to serve the Port does meet the needs of the residents and landowners of Morrow County.

One of the questions posed by Jon Jinnings has to do with economic opportunities and unit trains. At the September 14 public hearing Port Engineer Ron McKinnis provided credible testimony that increasing the Port of Morrow's capacity to accommodate unit trains will create additional economic opportunities at the Port's East Beach Industrial Park. Mr. McKinnis stated that in 2005, the Port completed its unit train facility serving the East Beach Industrial Par, and in 2007 Pacific Ethanol completed its ethanol plant and began utilizing that facility. Then in 2008 and 2009 the facility began receiving wind tower trains, at which time Union Pacific raised concerns about access to the facility for future development. Union Pacific was particularly concerned that one train might get stuck on the mainline for many hours while another unit train was loading or unloading on Port property, and this would hold up other rail traffic on the mainline. For this reason, UP did not want more development reliant on unit trains going on the property. Mr. McKinnis testified that the Port lost some clients for East Beach because of this, and that the proposed application, which provides siding along the mainline to use for staging, would resolve the issue by allowing adequate space to avoid train backups on the mainline. He said this approach is acceptable to Union Pacific and will result in more development, including a new Transload facility.

A second question posed by Jon Jinnings was why the property can't be included in the Boardman Urban Growth Boundary. While with option could be considered it is not reasonable or practical for several reasons. First and foremost the subject property is not contiguous to Boardman's UGB. At its closest point, the area proposed for rezoning is approximately 1/4 mile away from the UGB. Most of the area identified in the application is located a substantial distance from Boardman's UGB—from 1.5 to 3 miles. Additionally the current East Beach Industrial Park is not in the Boardman UGB and it is the East Beach Industrial Park that is being extended. It is not practical or logical and would not result in an efficient urban form to expand the UGB at this point in time.

It may be appropriate at some future date to have a conversation with the City, County, Port and other involved landowners and parties concerning an UGB expansion. This would not be an appropriate time or mechanism for such a discussion. As there is no need to obtain necessary services from the City of Boardman, or to connect to other aspects of city infrastructure, that discussion is best left for a later date.

In summary, if the subject property involved land immediately adjacent to the UGB that was compact in its form and would be served by the City of Boardman, an UGB amendment might be appropriate. But that is not the case here. The subject property is rural in nature with connections to the East Beach Industrial Park.

6. Concerns of the County and other affected governmental units.

No specific concerns have been brought forward requiring this proposed action.

The applicant makes the case that as this is an applicant request the above section would not directly apply, however Planning staff prefer to review this criteria to assure that the request can be locally supported.

The Morrow County Zoning Ordinance **ARTICLE 2 ESTABLISHMENT OF ZONES SECTION 2.020 LOCATION OF ZONES AND SECTION 2.030 ZONING MAP** require that map amendments be accomplished by ordinance. This action, if completed in its entirety, will include an adoption by ordinance of a new Zoning Map applying the Port Industrial and Exclusive Farm Use zone to the subject properties.

Also to be considered is **ARTICLE 8 AMENDMENTS SECTION 8.050 BURDEN AND CRITERIA** which states **The proponent of the application or permit has the burden of proving justification for its approval. The more drastic the request or the greater the impact of the application or permit on the neighborhood, area, or county, the greater is the burden on the applicant. The following criteria shall be considered by the Planning Commission in preparing a recommendation and by the County Court in reaching their decision.**

A. That conditions have changed since the adoption of the Comprehensive Plan and zoning map that warrant an amendment, or that there was a mistake in the original designation.

There was no mistake. During the past 30 plus years the Port has grown, resulting in the need for more land appropriately planned and zoned for industrial and supporting uses. The application also supports activities to connect the eastern portion of the Port, the East Beach Industrial Park, to the larger regional transportation network.

B. That public services and facilities are sufficient to support a change in designation, including, but not limited to, streets and roads (refer to the Transportation System Plan and Transportation Planning Rule).

1. Amendments to the zoning ordinance or zone changes which significantly affect a transportation facility shall assure that land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

- a. Limiting allowed land uses to be consistent with the planned function of the transportation facility or roadway;**
- b. Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,**
- c. Altering land use designations, densities, or design requirements to reduce demand for automobile travel to meet needs through other modes.**

2. **A plan or land use regulation amendment significantly affects a transportation facility if it:**
 - a. **Changes the functional classification of an existing or planned transportation facility;**
 - b. **Changes standards implementing a functional classification;**
 - c. **Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or**
 - d. **Would reduce the level of service of the facility below the minimal acceptable level identified in the Transportation System Plan.**

The application submitted by the Port completes a thorough review of these criteria as part of section III Compliance with Goal Exception Criteria. ~~Planning staff would not add any additional comment but to affirm that it has been met.~~ Planning staff have made additional comment above based on comment received from ODOT and have added a Condition of Approval. These criteria have been met.

- C. **That the proposed amendment is consistent with unamended portions of the Comprehensive Plan and supports goals and policies of the Comprehensive Plan, that there is a public need for the proposal, and that the need will be best served by allowing the request. If other areas in the county are designated for a use as requested in the application, then a showing of the necessity for introducing that use into an area not now so zoned and why the owners there should bear the burden, if any, of introducing that zone into their area.**

The application submitted by the Port completes a thorough review of these criteria as part of section V Compliance with Morrow County Comprehensive Plan and Land Use Requirements A Compliance with Morrow County Comprehensive Plan. Portions of the Comprehensive Plan reviewed include citizen involvement, general land use, agricultural lands, economy, public facilities and services, transportation, energy conservation and urbanization. Planning staff would find the analysis completed to be thorough and appropriate for the application. We would find this criterion to be met.

- D. **The factors listed in ORS 215.055 or others which relate to the public need for healthful, safe and aesthetic surroundings and conditions.**

This criterion reflects a portion of Statute that has been repealed and is now supported through the statewide land use planning Goals. The section of the application that addresses the Goals would be sufficient in meeting this criterion. Please see section IV Compliance with Statewide Planning Goals.

- | | | |
|-----|---|---|
| III | DLCD 45 DAY NOTICE: | July 29, 2010 |
| IV | PROPERTY OWNER NOTICE: | August 25, 2010 |
| V | LEGAL NOTICE: | Heppner Gazette Times and East-Oregonian
September 1and 28, 2010 |
| VI | AGENCIES NOTIFIED: Linda Hayes-Gorman and Phil Richerson, Department of Environmental Quality; Jon Jinnings and Angela Houck, Department of Land Conservation and Development; Teresa Penninger and Marilyn Holt, Oregon | |

Department of Transportation; Mike Ladd, Oregon Water Resources; Marc Rogelstad, Boardman RFPD; Karen Pettigrew and Barry Beyeler, City of Boardman; Greg Sweek, Morrow County Assessor; Burke O'Brien, Morrow County Public Works; Tony Justus, Watermaster.

VII HEARING DATES:

Planning Commission
September 14, 2010
Port of Morrow Riverfront Center
Boardman, Oregon

October 12, 2010
Port of Morrow Riverfront Center
Boardman, Oregon

County Court (Tentative)
December 15, 2010
Port of Morrow Riverfront Center
Boardman, Oregon

VIII RECOMMENDATION OF THE MORROW COUNTY PLANNING COMMISSION:

Recommend to the Morrow County Court approval of the application as follows:

- Amend the Comprehensive Plan incorporating the application to serve as the justification statement for the 'reasons' exception.
- Amend the Comprehensive Plan Map changing the designation from "Industrial" to "agriculture" on approximately 515 acres and changing the designation from "agriculture" to "industrial" on approximately 510 acres.
- Amend the Zoning Map changing the designation from "General Industrial" to "Exclusive Farm Use" on approximately 515 acres and changing the designation from "Exclusive Farm Use" to "Port Industrial" on approximately 510 acres.
- Apply the Exclusive Farm Use Zone to the approximate 515 acres and apply the Port Industrial Use Zone to the approximate 510 acres as shown on the amended Zoning Map.

Recommend the application of the following Condition(s) of Approval:

- Prior to the development (issuance of zoning and building permits) of the land proposed to be zoned Port Industrial an Interchange Area Management Plan will be completed and adopted by the County.



David Sykes, Chair

20/14/2010

Date

Attachments:

Vicinity Map

Email from Jon Jinnings dated September 14, 2010

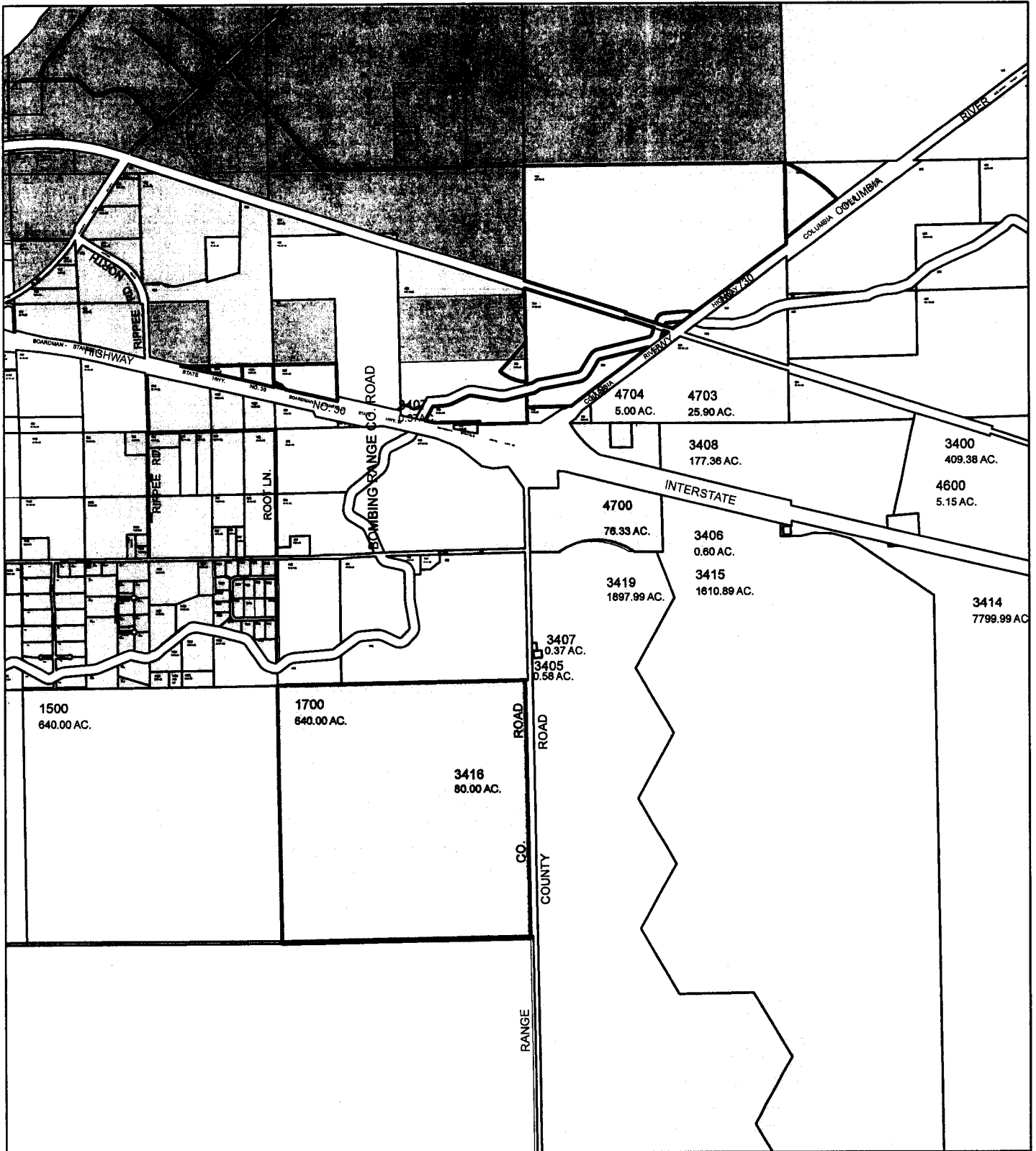
Letter from Teresa Penninger dated September 29, 2010

Written comments from Ron McKinnis presented at September 14, 2010 public hearing

Application

Vicinity Map - POM Zone Change

AC-031-10, AC(M)-032-10
AZ-033-10, AZ(M)-034-10



Subject Properties to be re-zoned	EFU	MG	RRI	SR1
AI	FR	PI	RSC	SR1A
C	FR2	PUB	SAI	
CG	FU	RLI	SF40	



Carla Mclane

From: Jinings, Jon [jon.jinings@state.or.us]
Sent: Tuesday, September 14, 2010 12:35 PM
To: 'Carla Mclane'
Cc: 'Lisa Mittelsdorf'; 'gneal@portofmorrow.com'
Subject: Port of Morrow Plan Amendment and Zone Change

Good Afternoon, Carla.

Thanks for taking the time to visit with me on phone today. We understand this proposal to include two blocks of land, each including about 515-acres +/- . One block is located south of I-84 and is currently designated for industrial activities. The other block is located north of I-84 and is designated for farming activities. If approved, the plan and zone designations for these blocks would essentially be swapped. The northern block would become available for Port related industrial activities and the southern block would revert to an exclusive farm use designation.

We believe additional explanation in the following areas could be helpful:

The prospect of capturing additional economic opportunities due to increasing the Port's capacity to support unit trains;

Why the northern property can't be included in the city of Boardman's urban growth boundary; and

How reverting the southern property back to EFU is or isn't supported by the ESEE analysis to help justify converting the northern property to Port Industrial.

If additional findings are necessary they should be developed prior to the hearing before the Morrow County Board of Commissioners. We don't recommend delaying or extending the planning commission's review period based on these comments.

Thanks again and please include this message in the record. I would also really appreciate it if someone could forward this message to Mark Greenfield. I've been unable to hunt down his e-mail address.

Jon

Jon Jinings | Community Services Specialist
Community Services Division
Oregon Dept. of Land Conservation and Development
888 NW Hill Street, Suite 2 | Bend, OR 97701
Office: (541) 318-2890 | Cell: (541) 325-6928 | Fax: (541) 318-8361
jon.jinings@state.or.us | www.oregon.gov/LCD



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation

Region 5

3012 Island Avenue

La Grande, OR 97850

541-963-3177

FAX 541-963-9079

September 29, 2010

FILE CODE:

Carla McLane
Planning Director
Morrow County
P.O. Box 40
Irrigon, OR 97844

RE: Port of Morrow Comprehensive Plan Amendment and Zone Change

Dear Carla:

ODOT has reviewed the application submitted by the Port of Morrow addressing the goal exceptions, comprehensive plan amendment and zone change 1) redesignating approximately 510 acres from Agricultural to Industrial adjacent to US 730 and the Port of Morrow Industrial Park, north of I-84, and 2) converting 515 acres of Industrial land to Agricultural uses on property located approximately one mile south of I-84.

ODOT is requesting that the County approve the proposal with the following condition:

“Prior to the development (issuance of zoning and building permits) of the land proposed to be zoned Port Industrial an Interchange Area Management Plan will be completed and adopted by the County.”

ODOT is requesting this condition since there is no substantial evidence (traffic impact study) in the record to support findings that the proposed land use actions will not substantially impact the operation of the transportation facilities. The Port and ODOT are developing an Interchange Area Management Plan (IAMP) over the course of the next 12 months that will address OAR 660-012-0060 of the Transportation Planning Rule for the proposed plan amendment and zone change.

Thank you for the opportunity to comment.

Sincerely,

Teresa Penninger
Region 5 Planning Manager

Port of Morrow PA/ZC Application

Port of Morrow - Ron McKinnis

Port Development History

- In 2005 the Port of Morrow Completed the Unit Train Facility
- In 2007 Pacific Ethanol Completed their Ethanol Plant and began utilizing the Unit Train Facility - (Approx. 1 Unit Train of Corn every 8 Days)
- In 2008 & 2009 The Unit Train Facility began receiving Wind Tower Trains
- 2007- 2008 UP began to limit their access to our Facility for Future Development
- The Port Proposed a Mainline Siding and successfully received COIL Funding to develop the Siding and Northwest Container Facility. (Unit Train of Containers)

The Port proposed the Siding to convince UP to allow future Development of the East Beach Industrial Park for More Unit Train Service.

UP Agreed

- 2008-2009 The Port Expanded the East Beach Industrial Park and extended Lewis & Clark Drive.
- 2009 - The Port received HB 2001 Funding to Make connections of Lewis & Clark Drive to

U.S. Highway #730 & The I-84/#730 Interchange.

- 2010 The Port Re-Acquired the Property Necessary to make development of Rail & Roads Possible.

The request to convert ag land to industrial land is Necessary to:

- Build Industrial facilities (Northwest Container / Rail Siding) on currently Ag Zoned Lands Adjacent to Port Industrial Zoned Lands.
- Build Roads and Connect to U.S. Highway # 730 & I-84 Interchange on Currently AG Zoned Lands Adjacent to Port Industrial Zoned Lands

PORT SERVICES AVAILABLE —

- PORT PROVIDED INDUSTRIAL / DOMESTIC / FIRE WATER —
- PORT PROVIDED DOMESTIC SEWER ^{SYSTEM} — BY AGREEMENT & DELIVERY TO THE CITY OF BOARDMAN.
- PORT PROVIDED INDUSTRIAL WASTEWATER COLLECTION & TREATMENT SYSTEM. BY WPCF W/ OREGON DEPT. OF ENVIRONMENTAL QUALITY — PERMIT
- RAIL & PUBLIC ROADS —

OTHER FRANCHISE UTILITIES AVAILABLE → Public R/W
by EASEMENT OR ACCESS to Public R/W

GAS — CASCADE NATURAL GAS

ELECTRIC — WECA —

PHONE/FIBER — CENTURY LINK — WINDWAVE COMMUNICATIONS

Application to Amend the Morrow County Comprehensive Plan Text and Map and Zoning Map and Adopt Exceptions to Goals 3, 11 and 14, with Supporting Findings of Fact and Statement of Reasons

Port of Morrow, Applicant

I. Introduction.

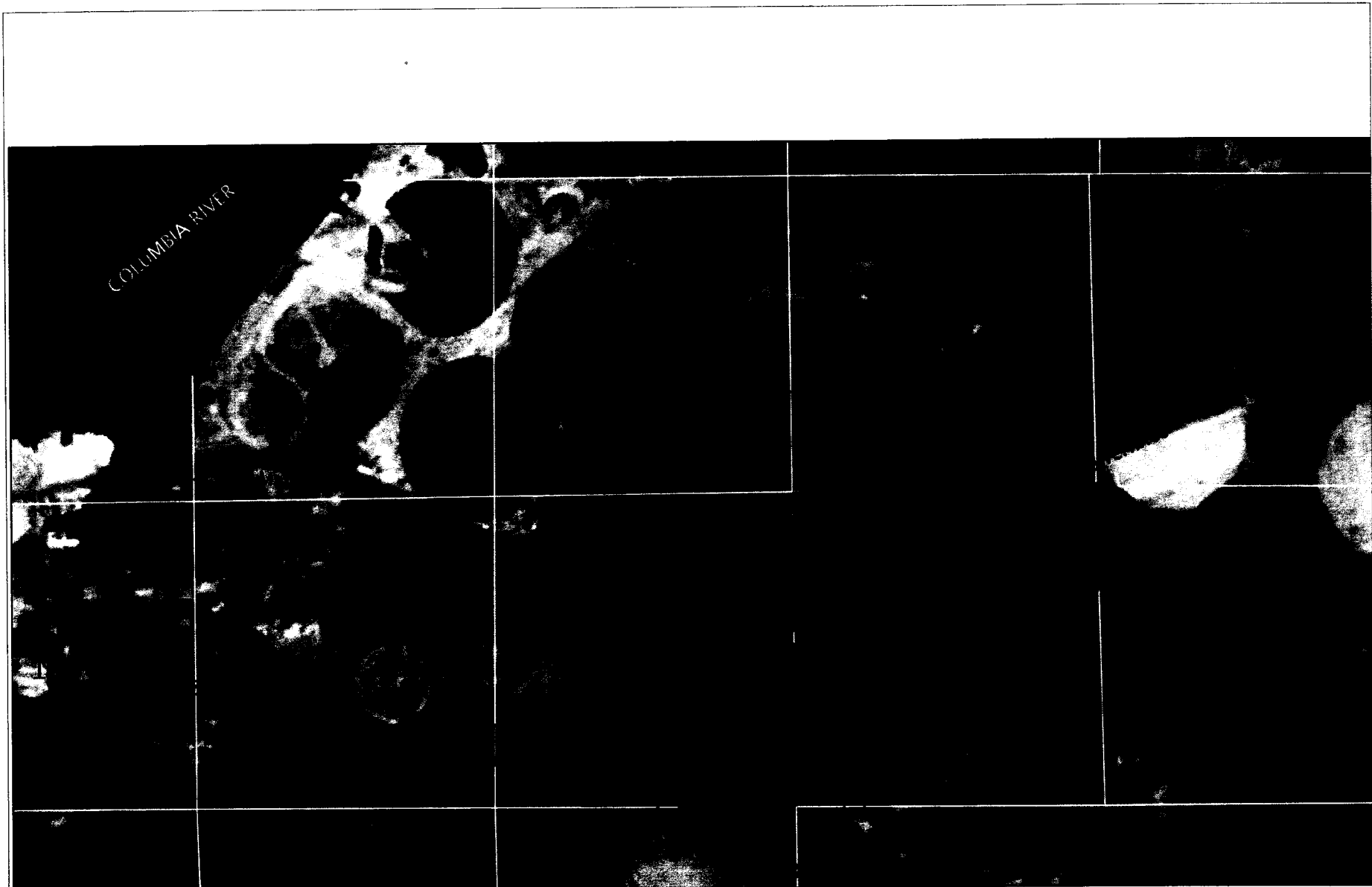
Applicant Port of Morrow (the Port) requests Morrow County approval of this application to amend the Morrow County Comprehensive Plan and Zoning Map to convert approximately 514 acres of agricultural land zoned Exclusive Farm Use (EFU) to industrial land zoned Port Industrial (PI), and to convert 515 acres of industrial land zoned PI to agricultural land zoned EFU. More specifically, the Port requests the following:

- Redesignating approximately 514 acres from Agriculture to Industrial and rezoning those acres from EFU to PI. These acres are located in Sections 7, 8, 11 and 12 of Township 4 North, Range 25 East, W.M. They include Tax Lot numbers 4N 25 11-0901, 4N 25 11-1000, 4N 25 11-1201, 4N 25 12-0200, 4N 25 12-00000901, 4N 25 12-0300, 4N 25 12-0301, 4N 25 07-0100, 4N 25 07-0200, and 4N 25 08-0202.
- Redesignating 515 acres from Industrial to Agriculture and rezoning those acres from PI to EFU. These acres are located in Section 24 of Township 4 North, Range 25 East, W.M.

The 514 acres identified for conversion to industrial use are bounded on the east by Oregon 730; on the south by Interstate 84 (I-84); and on the west and north by the Port of Morrow Industrial Park, including the Port's recently developed East Beach Industrial Park.¹ The Union Pacific Railroad mainline crosses east to west through the middle of this proposed acreage. **See Figure 1.**

The 515 acres identified for conversion to agricultural use are part of a larger, 640-acre property located about one mile south of I-84, bordering Bombing Range Road on the west. **See Figure 2.** This property is owned by Westland Enterprises, LLC, which purchased the land from the Port. In the sales agreement, the Port retained the right to convert the zoning from industrial to agricultural.

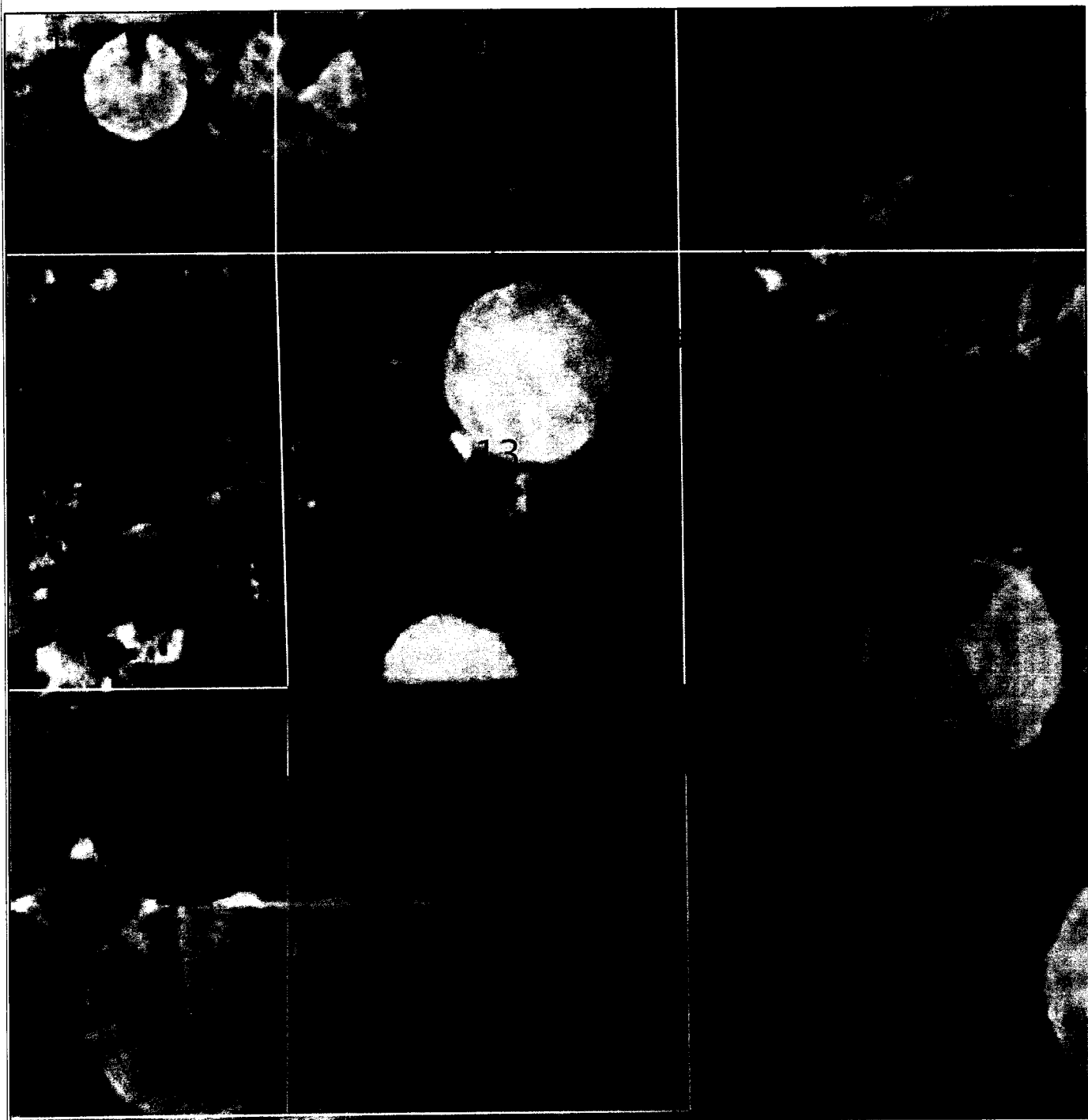
¹ The "East Beach Industrial Park" is a newly developed industrial area within the "Port of Morrow Industrial Park" referred to in the 1988 reasons exception. It is located west of Columbia Avenue and north of the Union Pacific Railroad mainline. A rail loop sufficient to accommodate unit trains runs through the East Beach Industrial Park.



COLUMBIA RIVER



Zoned EFU changed to PI
513.86 Acres



Zoned MG changed to EFU
515 Acres



Zoned MG Unchanged
125 Acres

The plan and zoning amendments to convert agricultural land to industrial land to allow port-related industrial uses require exceptions to Statewide Planning Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization). These exceptions extend to those Morrow County Comprehensive Plan policies and land use regulations adopted pursuant to those goals which would otherwise prohibit authorizing port-related industrial uses on the subject property or otherwise function to frustrate the purpose of this exception. As defined in ORS 197.732, an “exception” is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that: (1) is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability; (2) does not comply with some or all goal requirements applicable to the subject properties or situations; and (3) complies with the standards for goal exceptions.

Under Oregon Administrative Rules (OAR) 660-004-0015(1), a local government approving an exception must adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met. **This document has been prepared to serve as findings of fact and a statement of reasons to support the exceptions requested herein. Should Morrow County approve this application, the Port asks that the County incorporate this document into its comprehensive plan as its findings of fact and statement of reasons in support of the application.**

Because this is a “reasons” exception, the applicable standards are those in ORS 197.732(2)(c). Those standards are repeated in LCDC Goal 2 (Land Use Planning), Part II, and are implemented through the relevant provisions in OAR 660, Division 4 and OAR 660, Division 14, addressed below. Further, plan amendments must demonstrate compliance with the statewide planning goals and with applicable unamended Morrow County comprehensive plan policies. The relevant goals and policies also are addressed below.

II. Background and Site Description.

In 1988, the Port sought and obtained from Morrow County approval of reasons exceptions to Statewide Planning Goals 3, 11 and 14 to allow 1889 acres then located approximately one mile east of the City of Boardman’s urban growth boundary (UGB) to be planned for port-related industrial development.² The site was separated from the UGB by other portions of the Port of Morrow Industrial Park that the Land Conservation and Development Commission (LCDC) previously acknowledged as “physically developed or committed” to industrial

² Boardman’s UGB has since moved east to I-84 Exit 165 and north towards the railroad tracks.

uses.³ LCDC subsequently acknowledged that reasons exception and the lands were approved for Port industrial uses.

Over time, lands in the Port Of Morrow Industrial Park have developed with a broad range of port-related industrial uses.⁴ In 2005, the East Beach Industrial Park development began with the construction of a unit train rail loop located west of Columbia Avenue between the Union Pacific Railroad tracks and Lewis & Clark Drive. **See Figure 3.** The rail loop has successfully attracted a number of industries to the industrial park, including Pacific Ethanol, RDO-Calbee Foods, a Port of Morrow Trans-Load Warehouse facility to be leased to Cascade Specialties, Altra BioFuels, Inc., Oregon Ethanol, Inc., ZeaChem, Inc., and HBS BioEnergy, Inc. These businesses rely on the movement of raw materials and processed goods by freight to obtain supplies or to reach markets.

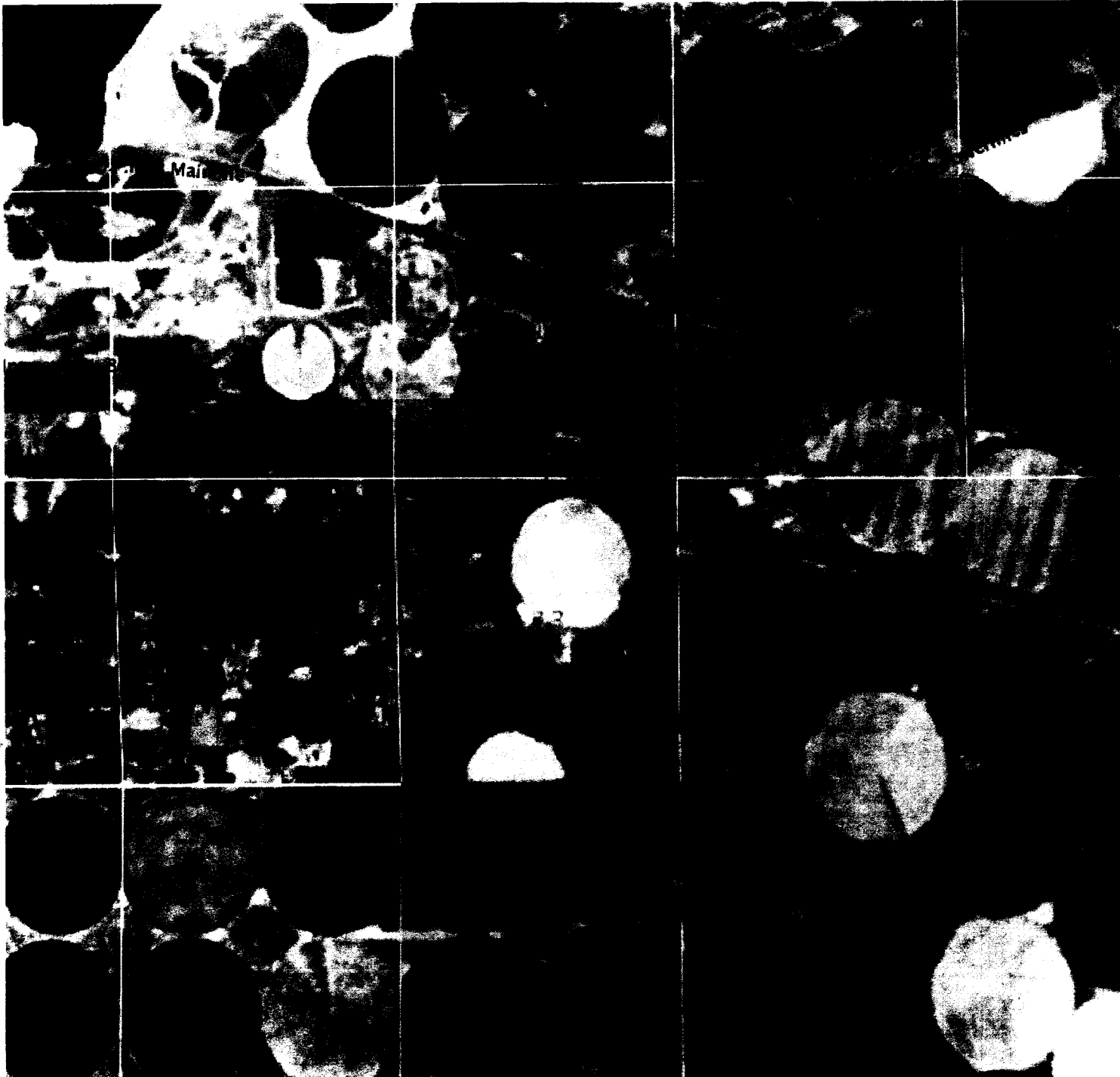
With the success of development at the East Beach Industrial Park, new development is starting to push farther to the east, closer to Oregon 730, a state highway connecting Boardman with the City of Umatilla. Like the development at the East Beach Industrial Park, the new industrial uses anticipated to come to the area will want and require a convenient transportation network, including freight and rail connections and loading and unloading facilities in addition to what exists today farther to the west.

The principal reason for this application is to facilitate expansion of development into the easterly portion of the Port of Morrow Industrial Park. To do this, the Port needs additional area adequately sized and located to accommodate another loading area for unit trains.⁵ Because the Port's need is primarily locational in nature, *i.e.*, for a site that that accommodate unit trains to serve development in the industrial park, rather than a need for more industrial land in the Boardman area, the Port is proposing an *exchange* whereby, in return for redesignating and rezoning 514 acres for port-related industrial uses, 515 acres of existing land designated and zoned for industrial development located south of the industrial park would be redesignated and rezoned for exclusive farm use. This exchange would be beneficial to agriculture not only because no net agricultural acres are lost, but because the proposed 515 acres, unlike the property proposed for industrial uses, are fully irrigated and surrounded by agricultural lands.

³ In 1986, LCDC issued an acknowledgment order acknowledging goal exceptions for all of the Port's land outside Boardman's UGB, but on appeal, the Oregon Court of Appeals upheld the acknowledgment only for those areas identified as physically developed or committed to industrial uses.

⁴ Industrial uses on the Port property include a wide range of food products and processing industries, ethanol and bio-fuel producers, warehousing, and other industrial uses.

⁵ A unit train is a train with at least 100 rail cars. Unit trains are commonly used to haul freight on railroad tracks.



Zoned EFU changed to PI
513.86 Acres

Zoned MG changed to EFU
515 Acres

Zoned MG Unchanged
125 Acres

Tax Lot Number	Acreege
4N 25 11 - 0901	0.74
4N 25 11 - 1000	3.22
4N 25 11 - 1201	5.20
4N 25 12 - 0106	2.80 - PI
4N 25 12 - 0200	20.83
4N 25 12 - 0300	28.86
4N 25 12 - 0301	5.43 - Half PI
4N 26 07 - 0100	341.85
4N 26 07 - 0200	81.50
4N 26 08 - 0202	23.43

TOTAL Acreege to PI = 513.86

Tax Lot Number	Acreege
4N 25 - 1700	640.00

TOTAL Existing Acres MG = 640.00

POM
PORT OF MORROW

P.O. BOX 200, #2 MARINE DRIVE
BOARDMAN, OR 97818
541-481-7678

Ronald V. McKinnis PE, PLS, WRE
Port of Morrow Engineer

The 514 acres for which the Port is taking this reasons exception are currently in farm use. This acreage is currently being used to grow potatoes and alfalfa. Historically, these acres also have been used to grow wheat and other row crops such as sorghum, peas, corn, onions, and mint. The acreage north of the railroad tracks is fully irrigated. The acreage south of the railroad tracks is partially irrigated and partially without irrigation.

The 515 acres which the Port would have redesignated and rezoned for agricultural use is currently being used to grow corn. Historically, this property has been used for row crops and grain, including corn, potatoes, alfalfa and wheat. This property is fully irrigated.

For both affected properties, current farm practices include irrigation (where permitted) and aerial spraying. Both properties have essentially the same agricultural soils. For the lands north of I-84, the agricultural soils are 98% Quincy loamy fine sand, 2 to 12% slopes (Class IVs⁶ irrigated, VIIe dryland) and 2% Dune land (Class VIIIe). For the 515-acre parcel south of I-84, the agricultural soils are 93% Quincy loamy fine sand, 2 to 12% slopes, and 7% Dune land.

The existing Port industrial park is served with a full range of facilities and services that are of sufficient size and capacity to accommodate both existing and future industrial development. Many of these facilities and services predated the 1988 goal exceptions and helped provide a basis for the Goal 11 and Goal 14 exceptions authorizing urban scale public facilities and services and urban scale industrial uses on the Port property. If this plan amendment application is approved, these facilities also would serve new development locating on the subject 514 acres. The facilities and services include:

- a community sewer system, including (1) an intertie with the City of Boardman sanitary sewer system, and (2) an effluent disposal system which pumps the process waters directly from tenant industries to land disposal areas pursuant to a Water Pollution Control Facilities permit issued by the Oregon Department of Environmental Quality.
- a water supply system providing over 10 million gallons per day of potable water to Port industrial tenants. This system includes eight wells, eight pumps, two storage tanks and over five miles of pipeline, including pipes up to 30 inches in diameter for fresh water and up to 24 inches in diameter to remove effluent.
- a local road system, including internal circulation on Columbia Avenue (a County road), Industrial Way, Rail Loop Drive, Dewey West Drive, Lewis & Clark Drive, and Gar Swanson Drive, with a direct interchange connection to Interstate 84 at Columbia Avenue (Exit 165).
- Rail facilities, including the Union Pacific Railroad east-west transcontinental mainline and industrial siding.

⁶ The "s" refers to shallow, droughty or stony soils.

- Barge facilities, including six terminals, ramps and other water-related port facilities.
- An eight inch high pressure gas line.
- Dual electrical transmission power lines and distribution lines owned by the Bonneville Power Administration, Umatilla Electric Cooperative Association, the Port of Morrow and various tenants.

III. Compliance with Goal Exception Criteria.

Where an urban use and urban scale public facilities and services are proposed to be located on rural agricultural lands, an applicant must demonstrate compliance with the applicable standards for goal exceptions in both OAR 660, Division 4 and OAR 660, Division 14. *VinCEP v. Yamhill County*, 215 Or App 414 (2007). For reasons exceptions, those standards are (1) OAR 660-004-0018 through 660-004-0022, which address reasons exceptions on rural agricultural lands; and (2) OAR 660-014-0040, which addresses the establishment of new urban development on undeveloped rural lands.⁷ Compliance with both rules is addressed below, beginning with OAR 660, Division 4.

A. Compliance with OAR 660, Division 4.

660-004-0018(4): *(a) When a local government takes an exception under the “Reasons” section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.*

This application seeks exceptions to Goals 3, 11 and 14 to allow urban-scale port-related industrial uses and public facilities and services on agriculturally designated and zoned lands. As used in this application, “urban-scale” uses are industrial uses in buildings of sizes that are greater than would otherwise be permitted on rural lands without goal exceptions under OAR 660-022-0030(11).⁸ “Urban-scale” public facilities and services are public facilities and services sized to serve urban-scale uses on rural lands. “Port-related industrial uses” are those

⁷ In *VinCEP*, the Oregon Court of Appeals overturned long-standing Land Use Board of Appeals (LUBA) precedent that for urban scale uses on rural *agricultural* land, OAR 660-014-0040 was the applicable exception standard and OAR 660, Division 4 did not apply. The court determined that an exception to Goal 3, which is governed under OAR 660, Division 4, is fundamentally different than a Goal 14 exception, stating that reasons that might justify an urban use on rural non-resource land do not necessarily justify an urban use on rural resource land. See also *VinCEP v. Yamhill County*, 55 Or LUBA 433 (2007) (LUBA’s decision on remand from the Court of Appeals).

⁸ OAR 660-022-0030(11) allows new or expanding industrial uses in unincorporated communities without goal exceptions if they are small scale, low impact uses, defined as uses in a building or buildings not exceeding 40,000 square feet of floor space in rural unincorporated communities. Outside of unincorporated communities, industrial uses in buildings 35,000 square feet or smaller have been considered to be rural in scale.

uses permitted outright or conditionally under Section 3.073, Port Industrial (PI) Zone of the Morrow County Zoning Ordinance.⁹ Uses authorized in the PI zone include, but are not limited to, water dependent industrial uses; port-related chemical and metal industrial uses; manufacturing, refining, processing or assembly of any agricultural, mining or industrial product; power generating and utility facilities; ship building and repair; rail loop and spur dependent uses; and effluent disposal of industrial wastes and agricultural activities in conjunction therewith. Authorized uses also include manufacturing, warehousing, packaging, processing, compounding, constructing, treatment, assembly, storage, testing, finishing, refinishing, repair, and wholesale sale and distribution of products, and any other industrial use authorized by ORS 777.250.¹⁰

The PI zone is an industrial sanctuary zone wherein commercial uses are limited to those appropriate and necessary to serve the needs of the workers employed in the zone. The zone provides appropriate limits as to the uses that can be located in the exception area. By taking Goal 11 and Goal 14 exceptions, the size of industrial buildings and the scale of industrial uses and public facilities and services will not be limited only to such sizes and scales that are appropriate for rural uses. Instead, urban-scale uses and public facilities and services would be allowed.

The public facilities and services serving the proposed exception area would be extensions of the same urban-scale facilities and services that were approved in the 1988 exception to serve the Port's Industrial Park. The Goal 11 exception contained in this application is to allow for their extension onto the newly designated industrial lands. The Goal 11 exception is needed because OAR 660-011-0060(2)(c) prohibits extensions of sewer systems currently serving lands outside UGBs in order to serve uses outside such boundaries that were not served by the system on July 28, 1998. It is also taken as a precaution in the event a Goal 11 exception is needed to extend urban scale water to rural lands.¹¹

660-004-0020(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."*

This application requests that the justification for the exceptions taken to Goals 3, 11 and 14 be set forth in the Morrow County Comprehensive Plan as an

⁹ The PI zone reflects the port-related uses that were authorized in the acknowledged 1988 reasons exception for the Port of Morrow Industrial Park.

¹⁰ ORS 777.250 defines the uses that ports may allow on port properties.

¹¹ Neither Goal 11 nor its implementing rule, OAR 660, Division 11, appear to prohibit the extension of urban *water* facilities to rural areas to serve *industrial* uses. However, in *Foland v. Jackson County*, ___ Or LUBA ___ (LUBA No. 2009-109, 112, 113) (June 4, 2010), LUBA held that such extensions require a Goal 11 exception both for residential uses and for urban-scale non-residential uses. That ruling is presently before the Court of Appeals on appeal by the Oregon Department of Transportation, who was the applicant in *Foland*.

exception. The reasons consistent with OAR 660-004-0022 are stated below in the discussion of OAR 660-004-0020(2)(a).

660-004-0020(2)(a): *“The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:*

(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;

Under OAR 660-004-0020(2)(a), for reasons exceptions, an applicant must justify why the state policy in the applicable goals should not apply. For this exception, as with the original 1988 reasons exception allowing port-related industrial uses on the adjoining 1889 acres (discussed below), the goals for which goal exceptions are being taken are Statewide Planning Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization). The affected Goal 3 policy that would not apply is the policy to preserve agricultural lands for farm use. The affected Goal 11 policy is the policy to provide public facilities (including transportation) appropriate for but limited to the needs of the urban or rural area being served. Goal 11 also prohibits the extension of urban scale sewer (and possibly water) to serve industrial uses on rural lands. The affected Goal 14 policy directs that urban uses be located inside urban growth boundaries or within urban communities. This application requires exceptions because it would allow urban scale industrial uses on rural agricultural land that Goal 3 protects for exclusive farm use, and it would allow the Port to extend public facilities and services sized to accommodate urban-scale uses, including sewer service extended from the Port’s existing community sewer system with ties to the City of Boardman’s sanitary sewer system, and water associated with the Port’s existing water supply system.

OAR 660-004-0022 identifies non-exclusive types of reasons that may be used to justify certain types of uses not allowed on resource lands. For rural industrial development, OAR 660-004-0022(3) provides in relevant part:

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

“* * *

“(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 which support the decision."

Port-related industrial use would have a significant comparative advantage at the proposed exception location because of its immediate proximity to the existing East Beach Industrial Park, the availability of a full range of public facilities and services that could be extended to serve the exception area, and the immediate availability of rail and freeway access that would facilitate easy shipping and reduce energy costs. Electrical power and natural gas are available at the site. While 514 acres of agricultural land would be converted to industrial use, there would be no loss of resource productivity because 515 acres of industrial land of comparable agricultural productivity value would be converted back to agricultural land.

The primary purpose for adding the subject properties east of the East Beach Industrial Park is transportation related. To serve new development moving into the eastern portion of the existing industrial park, the Port needs to provide additional area off of the Union Pacific Railroad mainline that can accommodate loading/unloading facilities for and storage of unit trains.

Currently, unit train storage and loading/unloading occurs off a spur located along the Union Pacific mainline farther to the west of the subject property. That spur loops into and around the East Beach Industrial Park, providing rail access to industries located there. Now that new development is pushing onto lands farther east, additional unit train capacity is needed to serve their freight needs. By Port estimates, another 18,000 lineal feet of track are needed for rail car storage and for loading/unloading facilities beyond the 18,000 lineal feet already on Port property. Adding this additional storage area requires the Port to redesignate and rezone for industrial purposes agricultural lands it owns that are adjacent to the railroad. Redesignating the subject property for industrial use would be consistent with the Port Industrial zone, which allows outright "Rail loop and spur dependent uses." MCZO Section 3.073(A)(14).

The Port's existing rail spur located west of the subject property cannot sufficiently accommodate the additional lineal feet of needed track. Union Pacific has informed the Port that it may have only one spur access off of the mainline into the Port property to serve Port industries. To accommodate the new area for development and the existing East Beach Industrial Park, the Port must relocate the spur farther east and close off the existing spur access.

The new spur and unit train storage area will require only a portion of the 514 acres proposed for industrial uses. The remainder would be used for a Trans-Load facility to load/unload rail cars and transfer goods and materials between

rail and truck, and by industries attracted by the convenient rail access. By its immediate proximity to the railroad, this land will be far more efficient and cost-effective to develop and serve as industrial land than the Port-owned industrial lands one mile south of Interstate 84 for which the exchange is proposed.

The exchange neither increases the amount of land available for industrial use in the area nor decreases the region's agricultural land supply, but for both types of uses, it makes sense. The 515 acres of industrially-zoned lands located south of I-84 are less well suited for industrial uses than the 514 acres for which the plan amendment and zone change to industrial/PI is proposed, because they lack the immediate proximity to the rail and highway network and to other industrial uses. The 514 agriculturally-zoned acres surrounding the railroad tracks north of I-84 are less well suited for agricultural use than the 515 acres located south of I-84 because they are not fully irrigated or entirely surrounded by farm uses. Because the 515 acres south of I-84 are surrounded by other agricultural lands and are fully irrigated, they can provide greater value to the agricultural economy than those lands that are surrounded by state highways and industrial land and do not have full irrigation rights.

In summary, from a transportation and economic standpoint, there is a significant comparative advantage to locating new industrial development adjacent both to other port-related industrial development and to a major railroad that provides a freight connection to the East Beach Industrial Park, rather than locating new industrial development in an undeveloped area surrounded by farm land with no immediate access to rail. Similarly, from an agricultural standpoint, there is a significant advantage to retaining farm use on lands that have full irrigation rights, are surrounded by other agricultural uses, and are located away from industrial development.¹²

The proposed industrial uses require a location on resource lands because all of the lands surrounding the railroad along the east side of the industrial area are in farm use. The Port of Morrow Industrial Park extends eastward from the Boardman UGB to Oregon 730. The subject properties are the only properties adjoining the railroad west of Oregon 730, north of Interstate 84, east of Boardman and south of the Port industrial area that are not designated and zoned for industrial use. They are the logical location for rail-related development to support future Port industrial development.

660-004-0020(2)(b): *"The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are: * * **

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

¹² At some future time, it may be appropriate for the Port to exchange the remaining 125 acres of industrially zoned land south of I-84 for other lands better located for industrial development.

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The areas 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 which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor 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 rural centers, 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?

The area proposed for industrial development is shown in Figure 1. The 515 acres located south of Interstate 84 that would return to an agricultural designation and zoning are shown in Figure 2. These 515 acres could reasonably accommodate port-related industrial development, but they cannot reasonably accommodate a rail spur, unit trains and a loading/unloading facility because of their location away from the Union Pacific railroad mainline and on the other side of Interstate 84 from the remainder of the large Port of Morrow industrial site.¹³

There are no other areas available for this purpose that would not require an exception. Lands north of I-84 on the east side of Oregon 730 are in farm use. Similarly, lands north of the Port's industrial park, and lands south of I-84 outside of Boardman, are in farm use. There are no nonresource lands, lands irrevocably committed to nonresource uses, or rural areas near the industrial park and the railroad. The subject property is located between I-84 exits 165 and 168, from about one-quarter mile at the nearest point to about three miles distance at the farthest point, making expansion of that UGB impractical as well.

Because the Port's primary need is for additional space and facilities to load, unload and store unit trains that haul freight and materials to and from Port industries, and to link the rail network with truck transportation, the proposed use is not of a nature that could reasonably be accommodated through increasing densities on the Port property. Furthermore, the Port site provides significant

¹³ Including industrial lands inside Boardman's UGB, the industrial park is nearly 3500 acres in size.

economic advantages to land-extensive industries wishing to locate in northcentral Oregon, including rail, truck and barge access and selection from a number of large industrial sites, many of which lie adjacent to or near the area proposed for port industrial development. Development at these sites would benefit substantially through the convenient and efficient location of unit trains and loading/unloading docks in close proximity to their properties. Within the existing Port of Morrow Industrial Park, there are no other areas adjacent to the Union Pacific mainline of sufficient length or appropriately located to store unit trains.

660-004-0020(2)(c): *“The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are: * * **

(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 other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for 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 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 limit to, 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 the irreversible removal of the land from the resource base. Other possible impacts 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.”

Because the primary need for the additional acreage is to accommodate unit trains and a loading/unloading facility adjacent to the railroad mainline, and because the subject acreage adjoins the Union Pacific Railroad mainline on both sides of the tracks, no other areas requiring exceptions that might reasonably accommodate the need have been identified. That stated, for the following reasons, the environmental, economic, social and energy consequences resulting from the use at the proposed site still would not be significantly adverse in any event.

Environmentally, there is no significant environmental impact because the proposed location does not include any inventoried significant Goal 5 resources.

Economically, the immediate proximity of the subject area to the industrial park and to the railroad mainline provides a very positive impact. With the ability to place a loading/unloading facility next to the mainline, the costs to the Port are minimized. In terms of development costs and accessibility to industrial users, other lands in the area simply do not compare as well to this land economically.

Socially, there are only two dwellings near the subject site, both located on the east side of Oregon 730 in very close proximity to the I-84/Oregon 730 interchange. One dwelling is close to the I-84/Oregon 730 Interchange north side exit and entrance ramps. The other is set back some distance from Oregon 730, closer to where the westbound Interstate 84/Oregon 703 Interchange exit ramp begins to leave the freeway. Development on the site will not create adverse visual impacts to these properties because the area north of Interstate 84 and west of Oregon 730 already has a distinctive industrial character. Industrial development on the site also will not displace any dwellings or impact neighborhood cohesion. It is possible that there could be impacts associated with truck traffic entering the property from Oregon 730, but many trucks already travel on Oregon 730 and Interstate 84 such that additional noise impacts should be negligible, especially with trucks traveling at slow speeds near the interchange.

In terms of energy, the availability of excellent rail and freight access and a container trans-load facility will be a positive impact. Also, new connections to Oregon 730 through the property will provide additional accesses to the industrial site and relieve traffic on the single freeway interchange at Exit 165. For trucks travelling from or to locations to the north or east, the ability to use Exit 168 will save energy.

In terms of resource productivity, the types of soils and the types of agricultural products grown on the lands to be converted to industrial use and on the lands to be returned to an agricultural designation are similar. For both sites, the predominant soil is Quincy loamy fine sand, a Class IV soil when irrigated and class VII without irrigation. Because only a portion of the site immediately north of I-84 is irrigated, while all of the 515 acres south of I-84 are irrigated, the exchange should increase overall agricultural productivity.¹⁴ Because the 515 acres being returned to an agricultural designation are surrounded by farm uses, the net ability to sustain resource uses in the area should be improved. That said, the industrial uses in the industrial park are not incompatible with farm use. Indeed, the effluent disposal from industrial wastes is employed as part of the agricultural practices in the region.

660-004-0020(2)(d): *“The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are: * * **

¹⁴ The availability of irrigation to the entire acreage should more than make up for the fact that a slightly larger percentage of the 515 acres is Class VIII Dune land.

(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."

The uses adjacent to the subject site are I-84 and agricultural lands to the south, industrial lands to the west and north, and Oregon 730, agricultural lands and two residences to the east. While the proposed amendment would increase truck activity at the I-84/Oregon 730 interchange, that interchange experiences very low traffic volumes. The Oregon Department of Transportation (ODOT) and the Port are developing an Interchange Area Management Plan (IAMP) for this Interchange and for the Exit 165 Interchange to protect the functions of those interchanges for the future. Because the allowed uses would be of the same nature as those located on existing industrial land west and north of the site, there would be no incompatibilities with those uses. As to the farming, for decades commercial scale farming has existed in immediate proximity to the industrial park, on lands to the north, east and south. The industrial park benefits many of these farming enterprises by providing effluent for irrigation. There is no reason to believe that these two uses cannot continue to co-exist together in a compatible manner. Impacts to the two dwellings were addressed in the analysis of environmental, economic, social and energy consequences. The two dwellings exist in the immediate vicinity of an interstate highway and a large industrial park. The proposal will not substantially change the nature of uses in the vicinity of those dwellings.

For all of these reasons, the application complies with the relevant exception standards in OAR 660-004-0018 through 660-004-0022.

B. Compliance with OAR 660-014-0040.

As noted above, for proposed urban uses on rural lands, the exception standards in OAR 660, Division 14 apply. For reasons exceptions, the applicable standards are those in OAR 660-014-0040.

660-014-0040(1): *"As used in this rule, 'undeveloped rural land' includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban levels of development."*

The property for which the Port is requesting goal exceptions is rural agricultural land.

OAR 660-014-0040(2): *“A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.”*

The reasons justifying future development of urban scale port-related industrial uses and public facilities sized to serve these uses are set out in the discussion of compliance with OAR 660-004-0020(2)(a), incorporated herein by this reference. The Goal 14 exception is taken because the size of industrial buildings could exceed the size authorized on rural lands without goal exceptions under established LCDC practice.

As stated in the 1988 exception, the Port property offers significant comparative advantages for industrial development. These come from the convergence of water, intercontinental rail and interstate highway access to the site. The rail access is the mainline of the Union Pacific Railroad. Water access is to the Columbia River, which reaches east to Lewiston and Clarkston and west to Portland, Vancouver and the Pacific Ocean. The interstate highway is I-84. Additional advantage comes from the availability of electric power, natural gas, and water for high-consumption users.

OAR 660-014-0040(3)(a): *“To approve an exception under section (2) of this rule, a county must also show:*

(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.

The inability of the existing Boardman UGB to reasonably accommodate the proposed urban development is addressed above in the discussion of compliance with OAR 660-004-0020(2)(b), incorporated herein by this reference. There are no existing rural communities elsewhere in close vicinity to the subject property.

OAR 660-014-0040(3)(b): *“To approve an exception under section (2) of this rule, a county must also show: * * *.*

“(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.

The long-term environmental, economic, social and energy consequences resulting from proposed urban industrial development at the site were addressed in the discussion of compliance with OAR 660-004-0020(2)(c), incorporated herein by this reference. Because the amount of land being included in the boundary of the proposed urban development is equivalent to the amount of industrial land being removed from industrial designation and zoning, the amount of land is appropriate. See, e.g., *Reed v. Jackson County*, LUBA No. 2009-136 (June 2, 2010) (LUBA sees no reason why a net reduction in potential residential development density on rural land could not be a sufficient reason under OAR 660-014-0040 to allow a lesser amount of open space land to be rezoned for residential development).

As to limitations, industrial development at an expanded Port of Morrow industrial park would not be limited by or adversely affect air, water, land or energy resources at or near the site. The airshed at the Port of Morrow Industrial Park area is not identified as in violation of any air quality regulations, and the ability of rail to service the site should help reduce reliance on truck traffic. A full range of public facilities and services is readily available, including public sewer and water, electricity and gas. Likewise, a full range of transportation facilities and services are available, including state and interstate highways, intercontinental rail and barge. By their support for existing development, the soils have shown themselves as being capable of accommodating future industrial development.

Urban development at the site also should not adversely affect the air, water, energy or land resources of the surrounding area. The site is downwind of and well buffered from urban development inside Boardman. The exchange of lands proposed by this application will accommodate more efficient industrial development near the industrial park while adding protection to farm lands south of Interstate 84. By facilitating and improving rail service to the industrial park, the urban development will help reduce fossil fuel consumption. Treated effluent benefits surrounding agricultural lands for its use as irrigation water.

OAR 660-014-0040(3)(c): “To approve an exception under section (2) of this rule, a county must also show: * * *

(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;”*

The compatibility of the proposed urban industrial uses with adjacent uses is addressed above in the discussion of compliance with OAR 660-004-0020(2)(d), incorporated herein by this reference. The proposed urban uses will be port-related industrial uses of the same kind permitted in the adjoining East Beach Industrial Park. Such uses have co-existed successfully for decades alongside agricultural uses in the area, thus demonstrating that the uses are compatible and that resource management of surrounding lands zoned EFU can continue. The proposed urban development will not detract from the ability of existing cities and service districts to provide services because all services will be provided from already existing facilities within the industrial park. Regarding sewer service, the City of Boardman has adequate capacity to serve both its long-term needs and future development needs of the Port of Morrow.¹⁵

OAR 660-014-0040(3)(d): “To approve an exception under section (2) of this rule, a county must also show: * * *.

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

Public facilities are addressed in detail in this application. The same facilities serving the existing industrial park would serve the additional acres added to that park. These include natural gas and electricity, a community sewer system with links to the City of Boardman sanitary sewer system, a water system serving the industrial park, telephone, and transportation facilities including roadways for internal circulation, access onto Oregon 730 and I-84, and rail and barge access. The existence of these facilities and services in the industrial park, and their adequate capacity to serve additional industrial development, assures their provision in a timely and efficient manner. Further, approval of this application will allow the industrial park to accommodate additional unit trains that are needed to serve new industrial development locating within the eastern portion of the industrial park.

OAR 660-014-0040(3)(e): “To approve an exception under section (2) of this rule, a county must also show: * * *.

“(e) That * * * establishment of new urban development on undeveloped rural land is coordinated with the comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.”

¹⁵ Beyond the capacity to accommodate its own anticipated growth, the City of Boardman has reserved sewer capacity at the Port to accommodate 900 employees.

The Port discussed this proposal with the Morrow County Planning Director before filing the application. She did not foresee any problems in terms of consistency with the Morrow County Comprehensive Plan. Such consistency is demonstrated in Section V of this application. Encouraging economic development on Port-owned lands designated and zoned for industrial development is consistent with the statutory role of port districts.

For all of these reasons, the application complies with the relevant exception standards in OAR 660-014-0040.

IV. Compliance with Statewide Planning Goals.

A goal exception is a comprehensive plan amendment.¹⁶ In addition to the relevant exception standards, the statewide planning goals apply to plan amendments. The goals identified below are the only goals applicable to the plan amendments requested in this application. Goals not identified do not apply.

A. Goal 1 (Citizen Involvement).

Goal 1 requires opportunity for citizens to be involved in all phases of the planning process. For plan amendments, Goal 1 is satisfied when a local government follows the public involvement procedures for plan amendments set out in its acknowledged comprehensive plan and land use regulations.

Morrow County's regulations for comprehensive plan amendments include notice to the public and to the Department of Land Conservation and Development (DLCD)¹⁷; public hearings before the Morrow County Planning Commission (which makes a recommendation to the County Court); and public hearings before the Morrow County Court. Compliance with these regulations results in compliance with Goal 1.

B. Goal 2 (Land Use Planning), Part I.

Goal 2, Part I requires that actions related to land use be consistent with acknowledged comprehensive plans of cities and counties. The proposed amendments' consistency with applicable provisions in Morrow County's Comprehensive Plan is demonstrated in Section V. below.

Goal 2, Part I also requires coordination with affected governments and agencies, evaluation of alternatives, and an adequate factual base. In preparing

¹⁶ ORS 197.732(8).

¹⁷ ORS 197.610 requires local governments to provide DLCD with advance notice of proposed comprehensive plan or land use regulation amendments. ORS 197.732(5) requires that each notice of a public hearing on a proposed exception shall specifically note that goal exceptions are being proposed and summarize the issues in an understandable way.

the application, the Port met with Morrow County's planning director and contacted representatives of both DLCD and the Oregon Department of Transportation (ODOT).

The goal exceptions, together with the supporting documents and evidence submitted in support of the exceptions, provide an adequate factual base to support the proposed plan and land use regulation amendments required to adopt these exceptions. For these reasons, Goal 2, Part I is met.

C. Goal 2 (Land Use Planning), Part II.

Goal 2, Part II sets out the standards for goal exceptions. For urban uses and urban scale public facilities and services on rural lands, Goal 2 Part II is implemented through OAR 660, Division 4 and OAR 660-014-0040. Goal 2, Part II is satisfied for the reasons set out in the goal exceptions analysis included in this application.

D. Goal 3 (Agricultural Lands).

Goal 3 requires counties to preserve and maintain agricultural lands for farm uses. Counties must inventory agricultural lands and protect them by adopting exclusive farm use zones consistent with ORS 215.203 et. seq.

Goal 3 does not allow nonfarm uses like industrial development on lands zoned for exclusive farm use unless a local government adopts findings justifying an exception to Goal 3. That justification is set out in the goal exceptions analysis included in this application. The redesignation and rezoning of land from industrial (PI) to agricultural (EFU) is consistent with the purpose and intent of Goal 3.

E. 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 amendments will improve air quality by better facilitating the movement of freight by rail and by avoiding future congestion at I-84 Interchange 165 by providing alternative access to Oregon 730 and Exit 168. Industrial uses at the new location will increase impervious surface, although by no more than could have occurred at the site south of I-84 that is being removed from industrial development. Where areas are paved, water cannot penetrate the soils so it rushes over the surface. This can increase erosion, increase the movement of fine sediments, and increase pollutant loads in watercourses. However, these

impacts can adequately be mitigated through the use of effective land-based stormwater treatment systems. The use of construction techniques that include temporary and permanent Best Management Practices for erosion and sediment control and spill control and prevention also can achieve compliance with clean water standards.

Noise is defined as unwanted sound. The uses authorized by the requested plan amendments should not create noise that differs from the types of industrially-related noise already in the area. The location of these uses in very close proximity to I-84 and Oregon 730 will reduce overall noise impacts because highway generated noise muffles and obscures other noises located nearby. The presence of only two dwellings nearby, both in very close proximity to the freeway, means any new noise impacts would be negligible.

F. Goal 9 (Economic Development).

Goal 9 requires local governments to adopt comprehensive plans and policies that "contribute to a stable and healthy economy in all regions of the state." Morrow County's comprehensive plan has been acknowledged to comply with Goal 9. The plan recognizes and encourages port-related industrial development on the Port's property near Boardman. The exchange of lands proposed in this application will consolidate industrial development east of Boardman to the area north of I-84, and it will improve the economic movement of freight by facilitating storage and loading/unloading of unit trains where industry is located. This is consistent with Goal 9.

G. 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. The goal 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 Public Facilities Planning Rule, OAR 660, Division 11, implements Goal 11.

Outside Boardman's UGB, the level of service provided by the Port of Morrow may exceed the level considered to be appropriate for and needed to serve the rural area. Accordingly, the plan amendments to allow industrial development on rural lands included in this application require and have taken Goal 11 exceptions.

H. Goal 12 (Transportation).

Goal 12 requires local governments to "provide and encourage a safe, convenient and economic transportation system." Goal 12 is implemented through the Transportation Planning Rule, OAR 660, Division 12. That rule encourages a multi-modal transportation system. The proposed amendments support such a system

by facilitating unit trains to serve industrial development on the properties that are the subject of this application and on adjoining Port property in the industrial park.

OAR 660-012-0060 provides that where a plan amendment would significantly affect an existing or planned transportation facility, measures must be taken to assure that the allowed land uses are consistent with the identified function, capacity and performance standards of the facility. Because the level of service (LOS) on existing Port property near the I-84/Port of Morrow Interchange (Exit 165) is LOS A or B, and because the I-84/Exit 730 interchange (Exit 168) currently experiences very light traffic, operates well below its capacity and performance standards, and is more closely situated to the property that is the subject of this application than Exit 165, no significant effect is anticipated. Indeed, by improving opportunities for more industrial development to locate on lands bordering Oregon 730, and by facilitating new connections from the industrial park to Oregon 730, the amendment should help relieve overall traffic volumes at Exit 165. Further, by facilitating storage of more unit trains, this application should reduce truck traffic volumes from what they otherwise would be absent such storage and loading/unloading capacity.

The Port and ODOT are developing an Interchange Area Management Plan (IAMP) aimed at providing an internal circulation network that distributes traffic between Exits 165 and 168 to ensure long-term protection of the function and performance standards applicable to those interchanges.¹⁸ The IAMP process is linked to funds made available by House Bill 2001 (2009) that contribute towards the extension of Lewis & Clark Drive to Oregon 730.

I. 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 proposed amendments will help conserve energy by consolidating industrial lands in the area north of I-84 west of Oregon 730, and by facilitating the use of unit trains that can help reduce less energy efficient truck traffic along I-84 and Oregon 730.

J. Goal 14 (Urbanization).

As relevant to this application, Goal 14 prohibits urban uses on rural lands. To locate urban uses on rural lands, local governments either must expand their UGBs to include the subject property or take a Goal 14 exception setting forth reasons why urban development should be allowed on rural land and explaining why the urban use cannot reasonably be located inside the UGB. This application includes an exception to Goal 14 to allow urban scale industrial development on rural lands. The justification for that exception is set out in Section III of this application.

¹⁸ The Port anticipates that some of the traffic using Exit 165 will shift to using Exit 168. No mitigation has been identified as needed at this time.

V. Compliance with Morrow County Comprehensive Plan and Land Use Regulations.

A. Compliance with Morrow County Comprehensive Plan.

The Morrow County Comprehensive Plan policies identified below are the policies that are relevant and applicable to the plan amendments identified in this application. No other policies apply. Some of the applicable policies contain mandatory ("shall") language. The application must demonstrate compliance with these policies to gain approval. The remaining policies are either more aspirational or directory to the County or more general in nature, directing or encouraging or supporting an action or result rather than requiring that action or result. While it is appropriate to address these policies where relevant to this application, the policies do not in themselves constitute applicable review criteria upon which approval or denial is based.

1. Citizen Involvement.

The Citizen Involvement Goal is to develop and implement a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. Citizen Involvement Policy 3 encourages people to attend and participate in Morrow County Planning Commission and County Court meetings and hearings. The goal and policy are satisfied through the opportunities afforded to the public to participate at public hearings before the Planning Commission and County Court on the proposed amendments, as provided for by state law and the County's land use regulations.

2. General Land Use.

General Land Use Policy 9 requires that all plan and zone changes comply with all applicable statewide planning goals and County policies and procedures. This policy is satisfied for the reasons set out in the analysis of compliance with the statewide goals, the Morrow County Comprehensive Plan, and applicable County zoning provisions that are contained in this application.

3. Agricultural Lands.

Agricultural Land Objective 3 seeks to minimize and prevent conflict between farm and nonfarm uses. The proposed exceptions are consistent with this policy because, as demonstrated by their decades of co-existence, port-related industrial and agricultural uses are compatible. Indeed, Port industrial users provide effluent used by agriculture as irrigation water for crops.

Agricultural Land Policy 1 is an aspirational policy that seeks to balance economic and environmental considerations, limit incompatible nonagricultural development, and maintain a high level of livability in the County. While not a

mandatory review criterion, this policy is met because this application will exchange an equivalent amount of industrial land for agricultural land and because port-related industrial uses are not incompatible with adjoining agricultural uses.

Agriculture Policy 2 permits development outside of urban growth boundaries only where conflicts with productive agricultural areas are minimal and where the development complies with the Comprehensive Plan. As described above, conflicts between port industrial and agricultural uses are minimal. Port industrial development is consistent with the Comprehensive Plan, as reflected by the existence of a Port Industrial zone.

Agriculture Policy 6 provides for the County to consider the needs of the farm community in evaluating future development projects in other sectors of the economy. This policy is satisfied because in return for converting agricultural land to industrial land, other industrial land will be converted to agricultural land, thereby benefitting the agricultural community. Further, through its consideration of compliance with applicable exceptions criteria, the County has considered the impacts of the proposed plan amendment on nearby agricultural uses. As noted above, agricultural and port-related industrial uses have co-existed well together for decades in the Boardman area.

4. Economy.

A number of Economic goals and policies apply to these proposed plan amendments. Most of these goals and policies are aspirational or directory to the County, rather than mandatory to an applicant.

Economic Goals 1 and 2 and Economic Policy 1 promote the improvement and diversification of the County's industrial potential and overall economy. Goal 5 seeks diversity in local businesses, industries and commercial activities and the promotion of economic growth and stability in Morrow County. An exchange of lands that would accommodate additional unit train storage and associated loading and unloading facilities and make the industrial park more attractive to industry is consistent with these goals and this policy.

Economic Goal 3 seeks to ensure an adequate water supply to economic interests. For reasons set out in the findings of compliance with exceptions criteria, the Port has the capability to provide that supply. Economic Goal 6 and Policies 10 and 11 seek new industries that will hire local residents and accommodate the growth of the County labor force. Improving the ability to attract new industries to the industrial park supports this goal and these policies.

Economic Goal 7 encourages cooperation between public and private sources who provide funding assistance for needed services and utilities. Goal 8 supports transportation facility improvements within the County. The funding provided

through House Bill 2001 (2009) and the coordination with ODOT on an IAMP for I-84 exits 165 and 168 are consistent with these goals.

Goal 9 encourages compatible land uses throughout Morrow County. Economic Goal 14 and Policy 14 recognize the importance and encourage the development potentials of the Port of Morrow. Goal 18 provides incentives for industrial growth and diversified production. Economic Goal 20 and Policy 2 seek a balance between economic and environmental considerations. The amendments further these goals by providing new industrial development opportunities on agricultural land that is more suitable for industrial development because of its location adjacent to the Port's existing industrial park, I-84, Oregon 730 and the Union Pacific Railroad mainline, and by providing new agricultural protections on industrial land whose location is not adjacent to the existing industrial park or transportation network but is surrounded by other agricultural uses.

5. Public Facilities and Services.

Several Public Facilities and Services goals and policies apply to this application. These include General Policies A, B, C, D, E, F, G, and K; Utilities Policy F; Water and Sewer Policy A; and Solid Waste Policies A and B.

General Policy A provides for a level of service appropriate for, but limited to, the needs of the development to be served. General Policy B provides that such service levels support optimum (maximum density) development, and General Policy C provides that rural areas shall be provided with public facilities and services appropriate for rural use. General Policy A is met through the Goal 11/14 exception allowing urban scale public facilities and services to serve urban uses in the industrial park. This includes extensions of public sewer and water to the area to be added to the industrial park. This exception also provides the basis for allowing a higher level of services than Policy C otherwise permits. General Policy B is met because the services to be provided will be at levels adequate to support optimum development authorized by the Goal 11/14 exception.

General Policy D requires that the provision of public facilities and services to rural areas being changed to urban use shall be based on (1) the least time required to provide the service; (2) the most reliable service; (3) lowest financial cost; and (4) adequate levels of service that satisfy long range needs. General Policy E calls for the coordinated development of all necessary urban facilities and services appropriate to an urban area. Because the existing industrial park already has adequate levels of facilities and services in the ground and available to serve existing and future development, such services can be extended to the subject site in the least amount of time and in the most reliable manner at lowest cost. Further, the Port can and will coordinate with local service providers, including the Boardman Rural Fire District, Century Telephone, Cascade Natural Gas, and local law enforcement officials, to provide those needed facilities and services that the Port is not providing.

General Policy F calls for the siting of utility lines and facilities on or adjacent to existing public or private right-of-way or through generally unproductive lands to avoid dividing existing farm units. Utility lines already serve the industrial park. Through the goal exceptions, existing farms would be converted to industrial lands, thereby removing them from the agricultural land inventory. No other farm units would be divided by utility lines or facilities.

General Policy G requires that public facilities and services not exceed the carrying capacity of the air, land and water resources. This issue is addressed in the findings in Section III of this application addressing compliance with OAR 660-014-0040, incorporated herein by this reference. The Boardman area is an area with very good air quality, with pollution concentrations far below the average ambient air quality standards for the state. Through compliance with DEQ air quality regulations for industries, high air quality standards can be maintained. Similarly, water quality can be maintained through the permitting process. The industrial park has been identified as an appropriate location for port-related industrial development.

General Policy K is an aspirational policy that establishes a goal of achieving a maximum balance of public costs versus benefits and revenues in the provision of public facilities and services. While this policy is not a mandatory review criterion, it will be satisfied because industrial development locating at the industrial park will contribute to the costs of the facilities and services they use. The availability of additional land to load/unload and store unit trains will provide a particularly important public benefit in terms of its ability to attract more industry and jobs to the area.

Utilities Policy F calls for coordination of development with utilities providing electrical, natural gas, cable television and telephone services. The Port uses services provided by Umatilla Electric Cooperative, Cascade Natural Gas, and Century Telephone to serve the industrial park.

Water and Sewer Policy A provides that when development occurs in unincorporated areas, minimum State sanitation and health requirements be met, including an approved subsurface sewage disposal system. The Port has an approved community sewage system at the industrial park with an intertie into the City of Boardman sewage treatment system. Solid Waste Policies A and B can be met by new industrial development using the same processes for which solid waste management occurs elsewhere in the industrial park.

6. Transportation.

The Comprehensive Plan contains transportation policies and objectives. Transportation goals and policies also are included in the 1998 Morrow County

Transportation System Plan, addressed in Subsection B below. This section deals only with those policies contained in the Comprehensive Plan.

Several Transportation Objectives and Policies apply to these plan and land use regulation amendments. While most of the objectives are very general in nature and directory towards the County, one, Objective 14, applies more directly to the plan amendments at issue in this application. This objective calls for a transportation system that is current, flexible, and coordinated with the overall Comprehensive Plan. This application complies with Objective 14 because it supports greater use of rail, Oregon 730 and the I-84/Oregon 730 interchange, thereby reducing traffic volumes on the I-84/Port of Morrow interchange and ensuring consistency with highway performance standards.

The applicable Transportation Policies are policies 1, 2, 6, 7, 9, 10, 11, and 19. Policy 1 parrots LCDC Goal 12. The application is consistent with Policy 1 because it includes transportation improvements that will help facilitate the flow of goods and services relative to the local economy and because it provides for consistency between Comprehensive Plan policies and the transportation network. The application also is consistent with Transportation Policy 2 because proposed roadway improvements are being developed in coordination with ODOT through an IAMP process and are based on current studies.

Transportation Policy 6 seeks to avoid dividing existing economic farm units unless no feasible alternative exists. Because goal exceptions are justified to convert existing farm land to industrial land, economic farm units won't be divided. No public roads will divide those lands being converted back to agricultural zoning.

Transportation Policy 7 provides that plans for transportation systems shall consider the carrying capacity of the air, land and water resources and be consistent with applicable Comprehensive Plan policies. By supporting expansion of rail services at the industrial park, and by providing a greater choice of access into the industrial park, the amendments will help reduce congestion and improve air quality. The road system will not impact any water resources, and the land is capable of accommodating an extension of the existing local road system to improve connections to Oregon 730.

Policy 9 provides for Morrow County to consider transportation according to street classification policies in extending existing development or approving new development. The affected roads are Oregon 730, a state Regional Highway and freight route, and I-84, an Interstate Highway and freight route. These classifications of highways are particularly appropriate to accommodate the movement of freight by trucks from one portion of the region to another or from this region to other regions of the state. Local roads providing internal circulation within the Port property will provide appropriate access to the state highway system.

Policy 10 requires that road improvements necessitated by development be constructed in accordance with street classification policies and financed by the developer. Future extension of Lewis & Clark Drive within the area to be added can and will be paid by the Port.

Policy 11 requires the County to limit development that would prevent streets from serving their identified functions. The Port of Morrow Industrial Park is served by I-84 and Oregon 730, both arterial facilities and freight routes. To ensure proper functioning of I-84 Exit 165, the legislature approved funding for a new access road onto Oregon 730, and the Port and ODOT have agreed to develop an IAMP to protect the functions of that interchange and well as I-84 Exit 168.

Policy 19 directs the County to work with the Port, private concerns and state and federal agencies to evaluate and develop those Port facilities that are most economically desirable for full utilization of the Port's geographic advantages. The industrial park is one such facility. These amendments will encourage the improvement, expansion and use of the industrial park by facilitating improved rail service for industries locating there. The Port is working with Union Pacific Railroad and ODOT to improve the overall transportation network serving the industrial park.

7. Energy Conservation.

Energy Conservation Policies 1 and 14 are applicable to these proposed plan and land use regulation amendments. As with many other Comprehensive Plan policies identified herein, these policies are directory or aspirational in nature, rather than mandatory to an applicant. While they are not standards upon which approval or denial is based, they are nevertheless addressed herein.

Energy Policy 1 encourages the use of renewable and/or efficient energy systems in all new development in the County. The Port is aware of this policy and can strive to comply with it where practicable. Facilitating movement of freight by rail in place of truck is one means to use energy more efficiently. Energy Conservation Policy 14 encourages the County to combine increasing density gradients along high capacity transportation corridors to achieve greater energy efficiency. This proposal is consistent with this policy by consolidating lands for industrial development in an area bordering an Interstate Highway, a state Regional Highway and a railroad mainline, which should encourage greater utilization of the industrial park by industry.

8. Urbanization.

The Urbanization element of the Morrow County Comprehensive Plan contains provisions to allow nonresource uses outside of urban growth boundaries. This

element includes the prior goal exceptions for the Port of Morrow Industrial Park east of Boardman acknowledged in the 1980s. The Goal 11/14 exceptions set out in Section III of this application constitute amendments to the County's Comprehensive Plan to authorize additional port-related urban development adjacent to the industrial park.

9. Review and Revision Processes.

The Comprehensive Plan provides a process to consider major plan revisions. Major revisions include land use changes that have wide-spread and significant impacts beyond the immediate area, such as quantitative changes producing large traffic volumes and qualitative changes in the character of the land use itself. The Plan allows for amendments when such revisions occur.

The proposed redesignation and rezoning of 514 acres of agricultural land to industrial land, and the proposed redesignation and rezoning of 515 acres of industrial land to farm land, constitute major revisions to the plan. As such, they take the form of Comprehensive Plan and land use regulation amendments. Consistent with state law, they have been developed to conform with applicable statutes, the statewide planning goals, and relevant unamended portions of the County's Comprehensive Plan, as demonstrated in these findings.

The Comprehensive Plan establishes standards for biennial review of the Comprehensive Plan. Because these amendments are Port-initiated rather than County-initiated, they fall more into the category of quasi-judicial amendments rather than legislative amendments, and the standards for biennial review do not apply. Still, this application is generally consistent with those standards, as its review will include public notice, opportunity for public review and comment, review and recommendation by the Planning Commission, and review and decision-making by the County Court.

The Comprehensive Plan element addressing plan review and revision also contains language requiring that the plan and its implementing regulations be evaluated in relation to changing public policies and circumstances. Because this provision is directory to the County and appears in the context of a discussion calling for periodic plan review and update, it is not a mandatory approval standard applicable to landowner-initiated quasi-judicial amendments. However, if it did apply, the Port notes that the current economy is in a deep recession and that this proposal improves the Port's ability to attract new industry, especially through the provision of substantially improved rail service and better access to the state highway system.

B. Compliance with Morrow County Transportation System Plan.

The Morrow County Transportation System Plan (TSP) is an element of the County's Comprehensive Plan that Morrow County adopted pursuant to LCDC's

Transportation Planning Rule, OAR 660, Division 12. It includes transportation related goals and policies, some of which are relevant to this application. The applicable goals and policies are identified below. Those not identified do not apply to this application.

TSP Goal 1 addresses coordination and process. The goal is to ensure that the Morrow County TSP is coordinated with other transportation providers, meets applicable regulations, and considers the needs of all transportation system users. The rail improvements and roadway impacts to I-84 and Oregon 730 discussed in these amendments have been coordinated with ODOT and the Union Pacific Railroad. They have been designed to comply with applicable regulations, including ODOT and Morrow County roadway performance standards, and to consider users of impacted transportation networks.

TSP Goal 2 requires that land use planning be supported with appropriate transportation improvements. Policy 2.3 requires that new development proposals, plan amendments and zone changes conform to the TSP, as required by OAR 660-012-0045(2)(g). Under that rule, local governments must adopt regulations that assure "that amendments to land use designations, densities and design standards are consistent with the functions, capacities and levels of service of facilities identified in the TSP." Compliance with this policy is addressed in the analysis of compliance with OAR 660-012-0060, set out in Section IV above. Policy 2.4 requires new development to provide appropriate access to the transportation system. The area proposed for industrial development will be provided with internal circulation connecting it with existing portions of the East Beach Industrial Park, Oregon 730 and the I-84/Oregon 730 interchange, and new loading and unloading facilities for rail to be located on the subject property.

Policy 2.5 requires new development to identify transportation impacts and provide appropriate mitigation. In conjunction with the funding of new access from the East Beach Industrial Park to Oregon 730, the Port and ODOT are developing an IAMP to identify potential future transportation impacts and identify appropriate mitigation measures (if any). As noted in the LCDC Goal 12 findings, the focus of the IAMP will be on a traffic circulation system that divides traffic between I-84 Exits 165 and 168 to ensure that the functions of those interchanges to serve regional and statewide traffic and the movement of freight are protected.

Policy 2.6 requires new development to dedicate right-of-way for transportation system improvements where appropriate. To the extent Port property is affected, required right-of-way can be dedicated if required.

TSP Goal 3 and Policy 3.1 address economic development. The goal seeks to enhance economic development through transportation improvements. Improvements to the rail system serving the industrial park, including the ability to

accommodate more unit trains, will enhance economic development opportunities at the Port of Morrow Industrial Park. Policy 3.1 directs the County to support transportation system improvements that contribute to economic development opportunities. Because improved rail service encourages industrial developers to locate at the industrial park, the County can do so by approving this application.

TSP Goal 4 directs the County to promote a high quality of life by providing a well developed transportation system that is appropriate to its surroundings. The roadway improvements proposed in this application are intended to provide a transportation system adequate to serve the freight and mobility needs of Port industrial users. Because needed rail improvements would be located on industrially zoned lands within an industrial park, impacts to non-industrial rural areas are minimized.

TSP Goal 5 calls for a safe and efficient roadway system. Consistent with the Goal and Policy 5.1, roadway improvements can and will be constructed in accordance with applicable County or State of Oregon design standards. Policy 5.7 provides for improved roadway connectivity in the county. Policy 5.8 provides for improved access for emergency vehicles. The extension of internal roadways within the industrial park and their connection to Highway 730 meets these policies.

TSP Goal 6 is to support other modes of transportation through effective transportation improvements. As noted, these amendments enhance the use of rail transportation by facilitating the siting of a unit train storage area and a trans-load facility to move freight between rail and trucks.

TSP Goal 8 promotes efficient movement of freight and goods throughout the county. Policy 8.3 encourages improvements to rail freight facilities by encouraging improvements to intermodal connections. This goal and policy are met because the additional land capacity to accommodate unit trains in the industrial park will further promote the use of rail to move freight in the county, and because the trans-load facility that the Port can then establish adjacent to the Union Pacific Railroad mainline will strongly support intermodal connections between rail and truck travel as described in Section III of this application.

C. Compliance with Morrow County Zoning Ordinance.

Section 8.050 of the Morrow County Zoning Ordinance sets out criteria for the Morrow County Planning Commission and Morrow County Court to consider, respectively, in preparing a recommendation for and reaching a decision on a proposed zoning ordinance text or map amendment. Through the discussion provided below, these matters are considered as required by the ordinance.

Section 8.050(A) provides for consideration of whether conditions have changed since the adoption of the Comprehensive Plan and zoning map that warrant an amendment, or whether there was a mistake in the original designation. The principal change in conditions since initial plan adoption is that the East Beach Industrial Park has developed along the rail spur to the point where industrial development is now expanding farther to the east. As a consequence of this development activity, the Port now needs more space to accommodate more unit trains and associated loading/unloading facilities.

Section 8.050(B) provides for the County to consider the sufficiency of public facilities and services to support a change in designation, including streets and roads. The adequacy of public facilities and services, including transportation, to support the industrial uses permitted by this plan amendment, is addressed in Section III of this application, incorporated herein by this reference.

Section 8.050(C) provides for the County to consider whether the proposed amendment is consistent with unamended portions of the Comprehensive Plan and supports the goals and policies of the Comprehensive Plan, and whether there is a public need for the proposal that would best be served by allowing the request. If there are other areas of the county designated for the requested use, then the County must consider why it is necessary to introduce the use into an area not now so zoned and why the owners there should bear the burden of introducing that zone into their area.

Consistency with the unamended goals and policies of the Comprehensive Plan is demonstrated in Subsection A of this Section of this application. The public need for the proposal relates primarily to transportation, and in particular, to the need to accommodate additional unit trains within the industrial park to serve industrial development in the eastern portion of the industrial park. These needs benefit the public by providing more family wage jobs to residents of Morrow County. That need is best served at the proposed location because the proposed area borders the Union Pacific Railroad mainline on both sides and is the only new location within the industrial park with sufficient land capacity to accommodate storage and loading/unloading facilities for a unit train. As this application indicates, there are 640 acres zoned for industrial development about one mile south of I-84 along Bombing Range Road, but those lands cannot conveniently accommodate unit trains due to their substantial distance from the Union Pacific mainline and the presence of agricultural lands between I-84 and that property. Moreover, because those acres are not contiguous to an existing industrial park, industrial development at that location cannot occur in as efficient a manner. Because the land proposed for industrial development can more appropriately accommodate such development, the Port has proposed the amendment to convert 515 of those acres south of I-84 back to agricultural land. The owner of the land to be converted to industrial use is the Port. Encouraging economic development is a principal part of the Port's mission. Adjoining property owners should not be adversely impacted by the conversion of this

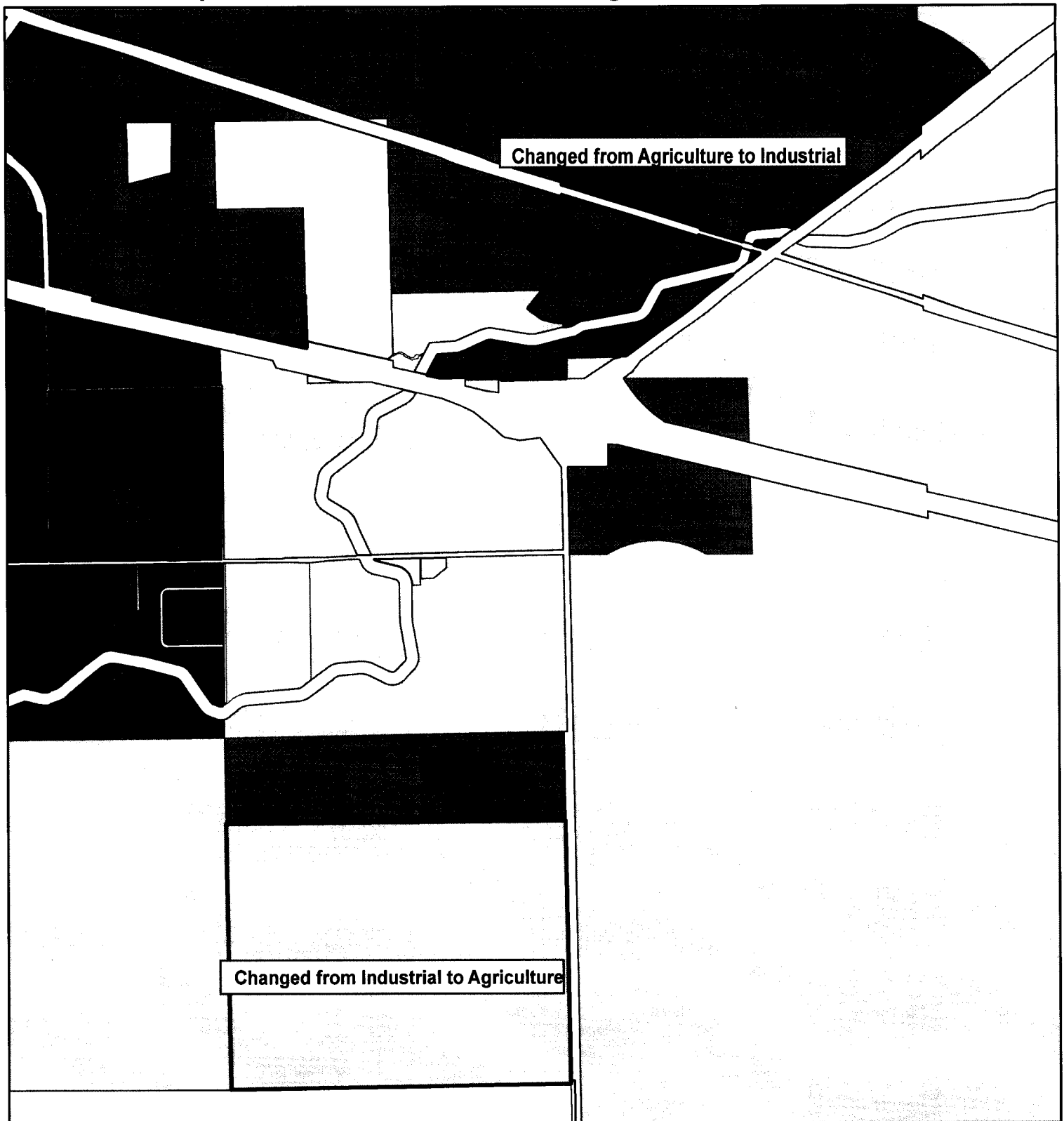
agricultural land to industrial use for the reasons set out in Section III of this application, incorporated herein by this reference.

Section 8.050(D) directs the County to consider the factors listed in ORS 215.055 or others that relate to public need for healthful, safe and aesthetic surroundings and conditions. This section is confusing because it requires consideration of factors in a statute, *former* ORS 215.055, that was repealed in 1977 following LCDC's adoption of the statewide planning goals. The thrust of that former statute was to direct counties to adopt comprehensive plans that promote the public health, safety and general welfare, based on considerations such as characteristics of the county, the suitability of areas for particular land uses, the land uses and improvements in the area, the need for economic enterprise in the future development of the areas, needed access, natural resources, prospective needs for development, and the public need for healthful, safe and aesthetic surroundings and conditions. These issues are addressed in the application, although in the context of compliance with statewide planning goals and acknowledged comprehensive plan policies in this section and in Section IV of this application.

In addition to Section 8.050, this application considers Section 3.110 of the Zoning Ordinance, which describes the purpose and overlay zone requirements of the Limited Use (LU) Overlay Zone. The zone's purpose is to limit the list of permitted uses and activities allowed within the allowing zone to only those uses and activities which are justified in the comprehensive plan "reasons" exception statement. The "requirements" section provides that when the LU zone is applied, the uses permitted in the underlying zone shall be limited to those uses and activities specifically referenced in the ordinance adopting the LU zone. This section also authorizes the County to impose reasonable conditions that it deems necessary to carry out the provisions of the Comprehensive Plan and Zoning Ordinance.

Here, a limited use overlay zone is not necessary because the PI zone limits the uses to those that are consistent with the proposed plan amendment to industrial, and the EFU zone limits the uses to those that are consistent with the proposed plan amendment to agriculture. The PI zone was specifically developed for Port-owned lands identified for industrial uses. That zone applies elsewhere in the Port of Morrow Industrial Park and is appropriate for the industrial park in its entirety.

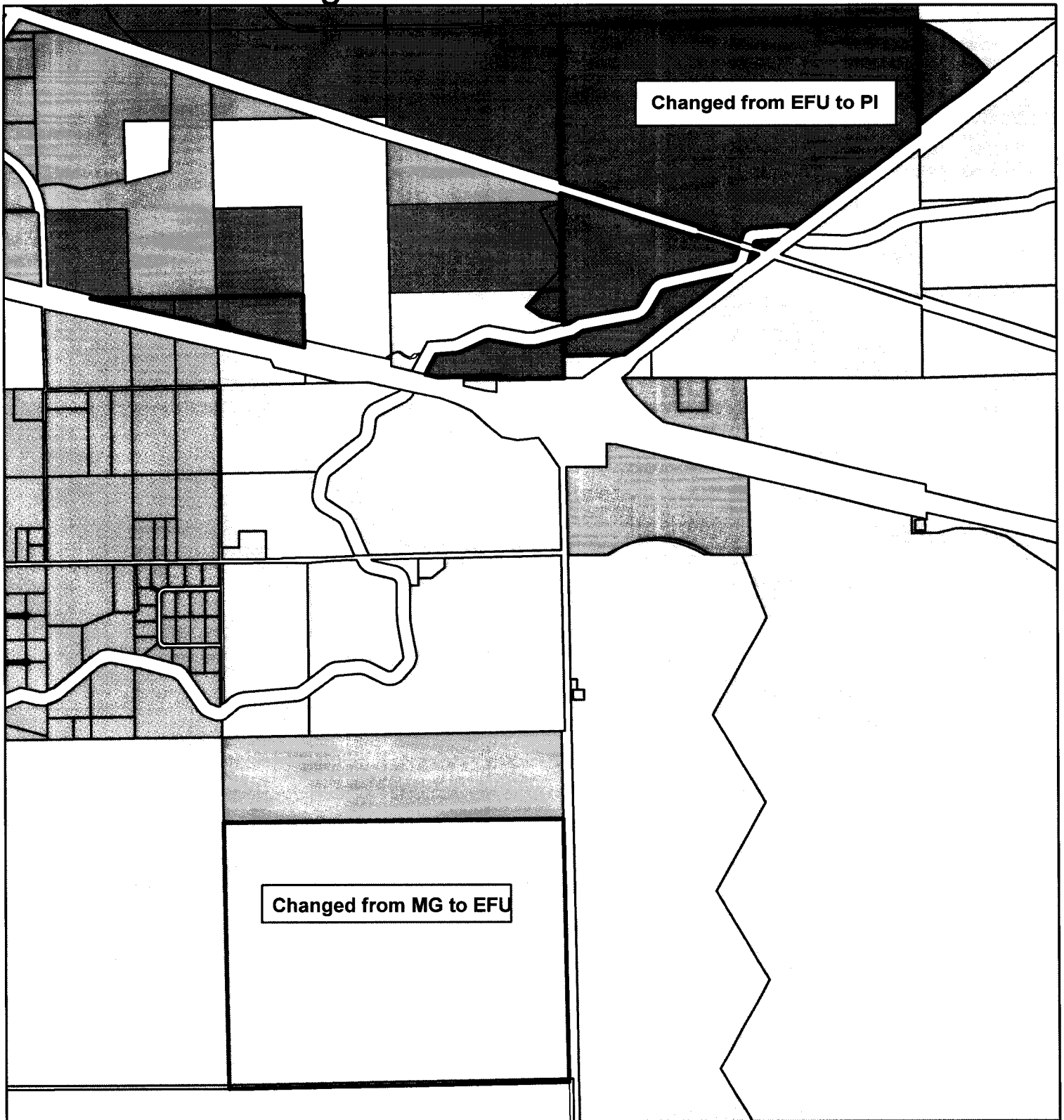
POM Comprehensive Plan Changes



- | | |
|--|--|
|  POM Changed Comp Plan |  Agriculture |
|  Industrial |  Farm Residential |



POM Zone Changes



	POM Changed Zoning		CG		FU		RLI		SF40
	all other values		EFU		MG		RRI		SR1
	AI		FR		PI		RSC		SR1A
	C		FR2		PUB		SAI		

