

The area of the site which is not built or otherwise committed totals some 1,746 acres. This acreage is not random in nature, but is the residual acreage of a tract of land identified by early port planners in the 1950s, along with the Corps of Engineers and state Department of Commerce officials. More specific acreage was targeted for port terminal and industrial development in the July, 1966 study titled "A Plan for Development of the Oregon Mid-Columbia River Waterfront" by J.D. Meyers of the Oregon Department of Commerce. In addition, the "John Day Lock and Dam Master Plan" produced and adopted by the U.S. Army Corps of Engineers in July, 1976, provides for port and industrial uses, an orientation carried into the deed by the Corps to the Port of the portion of the Industrial Park which came to the Port from the Corps. The remainder of the lands came to the Port from the State of Oregon who rounded out the waterfront lands with two additional components of the package, the adjacent lands deepening the property available to service the waterfront directly, and two parcels near, but not adjacent to, the block of acreage at and near the waterfront. The two detached parcels provided, in the early thinking as well as today, for such critical, but not necessarily adjacent, uses such as effluent disposal, staging of raw or finished products, cooling or settling ponds, or transportation or transshipment terminals. Hence, the 1,746 are residual acreages, the undeveloped portion of a fast-developing industrial park.

c. The long-term environmental, economic, social and energy consequence resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. As was explained above, no alternative site exist within or outside an UGB. However, several basic comments are appropriate even lacking the comparative aspect of this exception test.

Environmental - The principal environmental impact of approving this exception is the removal of nearly 1,800 acres from resource uses. In a County that has in excess of 1 1/4 million acres of resource lands, this exception will not be significant. Industrial use will be meticulously planned and closely monitored in order

to guarantee consistency with environmental considerations set forth in the County plan and to insure that air quality, water quality, adjacent land uses and other sensitive environmental indicators are not significantly affected. Erosion and other negative components inherent with industrial development will be prevented or minimized, if possible, and closely monitored as well.

Positive environmental impacts include prospective energy efficiencies through the use of barge transportation, a minimum 2:1 saving over competing modes. The Port of Morrow has studied the prospects of establishing a co-generation plant for steam and electricity generation on the Port. Prospective use of such a resource is another positive environmental impact.

Economic - The most positive aspects of industrial use is the addition of jobs and the value added to the County's tax base. Specific additional benefits are the stabilization and diversification opportunities that new industry brings to the County's economy. The City of Boardman has an acknowledged plan which prepares it for growth to a population of 12,000. An influx of construction workers or permanent work forces can be handled with ease. In fact, the local attitude about diversification and growth is extremely positive. The north end of the County has been the establishment of major industries before, bringing 1,000-2,000 workers at once, and leaving behind industries built at costs of hundreds of millions of dollars and employing a total of more than 2,000 workers permanently, hence, it is not just speculative to anticipate that the County is prepared to handle major new industry such as that contemplated for this site.

Social - The potential for or realization of substantial increases of employment have serious social consequences. To reiterate, the nearby communities are growth oriented and new economic and employment opportunities are welcome in the County, especially at Boardman. There is no known opposition in the County to the proposed exception, even though industrial use of the site has been contemplated since 1958.

Energy - As noted above, energy efficiency will result as users of the site are able to utilize barge transportation for the shipment and receiving of goods.

Barge transportation is from 2-4 times as energy efficient as movement of cargo by railroad and from 8-20 times as energy efficient as movement of cargo by truck. If future users of the site handle or process agricultural or forest products from the County and surrounding areas, energy efficiency will result because the raw materials will be hauled very short distances.

As also mentioned above, co-generation is a possibility for energy efficiency/conservation at the site. On-the-ground experiments are currently underway in the County 15 miles from the site wherein trees are being grown for pulp and hog fuel uses under irrigation. Preliminary results indicate that if a co-generation plant is available near the tree farm to utilize the hog fuel, then the prospect of irrigated pulp tree farming is cost-effective.

There is an abundance of conventional energy sources on the site, including a BPA substation.

d. The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. As has been mentioned, adjacent uses are predominately built and committed industrial, including heavy industry, transportation corridors including the Columbia River frontage, and utility corridors; additional adjacent uses include resource land utilized as a bombing range; unused (or intermittently grazed) Class VI and VII resource lands; and cultivated lands. Industrial uses, subject to conditions and constraints set forth in this County Plan, will have no negative influence on the majority of neighboring uses. Every effort will be made through comprehensive planning to minimize adverse impacts and to establish and maintain compatibility. Looking at adjacent uses specifically: Industrial use adjacent to existing industrial use is compatible, industrial use adjacent to transportation corridors is not just compatible, it is complimentary; industrial use adjacent to utility corridors is not just compatible, it is complimentary; industrial use adjacent to the bombing range has no adverse impacts on the bombing range, so long as height and light constraints are observed; industrial use adjacent to poor resource lands used occasionally for grazing brings no adverse impacts; and, industrial uses adjacent to cultivated lands is generally compatible in the County, especially if the industry is functionally related to agriculture which

prosecutive industries in this County might well be. Obvious measures to reduce any potential adverse impacts include minimum setbacks, vegetative buffers, landscaping, and other development standards will be in conformance with the Morrow County Zoning Ordinance and Port of Morrow Master Plan.

6. OAR 660-04-022(3) allows for the siting of rural industrial development when reasons and facts are provided which demonstrate that:

a. The use is significantly dependent upon a unique resource located on agricultural or forest land. (Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports. The proposed industrial site absolutely qualifies for the requested exception under the terms of this administrative rule. Because the 1,800 acre site is at river level and adjacent to nearly a mile of port-owned frontage on the Columbia River Navigation Channel (See Map Sheet No. 1), the site is unique in Oregon and nearly portions of Washington. In addition, industrial development amenities of such a broad array leave the site virtually free of disadvantage: compatible adjacent land uses; adjacent to interstate highway with service from two interchanges; substantial fresh water resources from wells on site (gallons per minute); mainline Union Pacific Railroad service with site-specific rates; natural gas service; insulation from urban or heavily populated areas, yet not remotely or inappropriately located; heavy duty local roads; substantial electric power service including a substation on site; nearby airport; and readily buildable topography and soils.

Despite the fully rounded attractiveness of the site for industrial development the river frontage remains the key.

b. The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas. One of the prospective attractions of the site is a wood waste co-generation facility which is a clear example of the type of use that requires a large site, major transportation components, and handling and production facilities that are less than desirable in densely populated or urban areas. In addition, existing

opportunities on the site such as industrial cooling water, fire protection water, sanitary sewer service facilities (especially evaporation ponds), and available suitable land for evaporation, stabilization, disposal, or pollution control ponds can, either jointly or severally, be incompatible in urban or densely populated areas.

Another asset of the site is that heavy traffic to and from future industries located thereon will not have to pass through urban or heavily populated areas on local or arterial streets and roads. Heavy traffic has ingress/egress by way of two interstate highway interchanges adjacent to and serving the site.

Opportunities on the site for transportation facilities like railroad loop tracks for cargo handling or unit train usage would be virtually impossible to site in or adjacent to an UGB especially in Morrow County. The "attractive nuisance" of industrially developed waterfront, with above and in water structures, barges, towboats, and attendant facilities including fuel tanks, repair facilities, and Chandler's goods are best placed with some insulation from urban and densely populated areas.

Certain prospective industries for the site which support the agricultural economy are patently incompatible with urban or densely populated areas, but are nonetheless desirable--for example, the production or handling of nitrogen-based fertilizers. Therefore, one of the components making this site so potentially attractive is the fact that it is not within an UGB or near an urban or densely populated area.

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). In the highly competitive (at least nationwide) field of industrial development--as is the case in real estate marketing--the most important component of a site is the location. The Port of Morrow

Industrial Park site is not only an ideal location for industrial development but is also blessed with a number of other attributes. The combination of physical advantages of the site with other amenities in the area make the site even more "unique" than all of the other "unique" industrial sites throughout Oregon. A broadly skilled and productive work force; a nearby city with room and expressed intentions to grow; financial opportunities for development through the owner of the site (Port of Morrow); attractive climate and quality of life; recreational and civic amenities; and, a progressive attitude among residents all combine with the physical characteristics and location of the site to make it "world-class."

The physical characteristics set forth in paragraph 4 above compare in a superlative manner with Site Selection Criteria for Major Industries as set forth by the Industrial Development Research Council, Inc. (Atlanta), in periodic publications to their membership.

Land at water level provides opportunities to attract production or import/export industries that can take advantage of the site location as a "window to the world" for cost-effective, energy efficient and safe transportation of cargoes to or from international markets. The ability to move raw materials or finished products by barge is to be competitive advantage of substantial magnitude, especially if dealing with agricultural or forest product commodities which often times are high volume, of low value, and available from several sources in the world marketplace.

In addition to the absolute competitive advantages of the site in the marketplace, it is essential that industrial designation and development of the site be comparatively advantageous to the County economy. Discussion above addressed the transportation and resource advantages which support the exception.

Recent (during the past ten years) developments by the Port of Morrow on 931 acres of industrial land adjacent to the site have seen the construction and operation of factories and attendant facilities with capital value in place of nearly \$100,000,000. This amount comprises some 12% of the tax base in the County. Figuring a conservative 50% of that amount per acre for the future capital value in place on the subject site, a prospective \$100,000,000 could easily be added to the

County's tax base. Current development on the same 900 acres provides approximately 1,800 direct jobs. Again, conservatively figuring 50% of those jobs on a proportional basis, the proposed site would generate 1,800 new jobs. That compares with a current estimated employment on the site of 18. The loss of resource land productivity is minimal because only about 2/3 of the subject acreage is cultivated, hence the removal of 1,300 acres from production has no significant influence in the County. Cropping patterns are such that no exotic or critical production will be affected.

In summary, the Port of Morrow Industrial Park site is an extremely well-suited and appropriate candidate for exception from Goal Three. It is a unique site at water level on the Columbia River Navigation Channel. A broad array of site-specific characteristics and amenities currently exist. Industrial use will be compatible with adjacent land uses. Adverse effects of industrial use will be minimal. The proposed industrial development is consistent with and supportive of the economic development statement in this County Plan. The foregoing section provides the justification for exception from resource land designation. Last, but not least, industrial designation and development is the highest and best use of the site.

Exception Statement for the 1889 Acre Portion of the Port of Morrow Industrial Property

A. Background

This document sets forth justification for an industrial comprehensive plan designation and zoning for an 1889 acre portion of the Port of Morrow property which is located in Sections 1, 2, 11, and 12 of Township 4 North, Range 25 East, W.M.; Sections 6 and 18 of Township 4 North, Range 26 East, W.M.. The subject property is owned entirely by the Port of Morrow, a county-wide port district. Soils on this portion of the property are SCS Classes V and VI dryland and SCS Class IV if irrigated. Because such soils constitute "agricultural land" as that term is defined in Statewide Goal 3 (Agricultural Lands), an exception to that goal must be taken in accordance with Statewide Goal 2, ORS 197.732, and OAR 660-04-000 et. seq. Furthermore, because the uses and services anticipated at this location might reasonably be deemed "urban", an

exception to Goal 11 (Public Facilities and Services) and Goal 14 (Urbanization) is also necessary.

The 1889 acres in question are part of a larger Port of Morrow Industrial Park containing 3465 acres. Of that total, 635 acres lie within the City of Boardman's urban growth boundary (UGB) and 2825 acres are outside the UGB. Previously an exception was taken for the 2825 acres located outside the UGB. That exception identified 931 acres as "physically developed" or "irrevocably committed" to industrial use pursuant to ORS 197.732 (1)(a) and ORS 197.732 (1)(b). The exception also set forth "reasons" why the remaining 1889 acres should be designated and zoned for industrial use pursuant to ORS 197.732(1)(c).

On March 6, 1986, the Land Conservation and Development Commission (LCDC) acknowledged Morrow County's plan, including its exception for these 2825 acres, as in compliance with the statewide planning goals. That decision was appealed to the Oregon Court of Appeals by 1000 Friends of Oregon, which alleged, in part, that the county had not justified a need for the 1889 acres; that some of the uses allowed by the zoning on the 1889 acres were not consistent with the purposes of the exception; that the proposed uses of the site were not adequately identified; that the amount of acreage contained within the site had not been justified; and that the exception lacked substantial evidence demonstrating that certain alternative locations identified for industrial uses could not reasonably accommodate the proposed use.

On December 9, 1987, the Oregon Court of Appeals reversed and remanded LCDC's acknowledgment order for Morrow County, but only with respect to the 1889 acres for which the county had taken a "reasons" exception. 1000 Friends of Oregon v. LCDC (Morrow County), 88 Or App 517 (1987). The court agreed with 1000 Friends of Oregon that the justification provided for the reasons exception was for "port-related" development, and that the uses authorized by the applicable zoning must therefore be limited to those which are "port-related." The court found that LCDC had not properly determined that all uses authorized by the applicable zoning were in fact port-related, and therefore remanded the matter back to LCDC. With respect to 1000 Friends of Oregon's other allegations regarding the 1889 acre site, the court stated that 1000 Friends' arguments "would not

warrant reversal of the order in themselves. However, LCDC's resolution on remand of the issue we have addressed, as well as any further county proceedings on that issue, may have an impact on other matters which bear on the compliance of the exception with state standards. Our remand, therefore, is for reconsideration of the exception and is not restricted to the zoning and uses issue."

On February 17, 1988, LCDC reconsidered Morrow County's request for acknowledgment. LCDC heard testimony from interested persons and then voted to adopt the staff recommendation to (1) acknowledge Morrow County's comprehensive plan and land use regulations as complying with the statewide goals (except for the 1889 acre Port of Morrow site), and (2) continue the county's plan and land use regulations for the 1889 acre Port of Morrow site to comply with statewide goals 2 and 3.

Because the Court of Appeals did not expressly find error with the LCDC-acknowledged reasons exception, but determined only that LCDC had erred in the approach it took in reviewing the county's exception for the 1889 acres, it may be unnecessary for Morrow County to amend its exception for this portion of the site. The County reminds LCDC of the court's conclusion that 1000 Friends of Oregon's challenges to the exception, on grounds other than uses permitted by the zoning applied to the site, "would not warrant reversal of the order in themselves." However, because the court left open the opportunity for LCDC and others to reconsider this exception in all its facets, Morrow County and the Port deem it prudent to amend the prior exception, but only with respect to these 1889 acres, to provide additional facts, justification and analysis through the adoption of this document as part of the Morrow County Comprehensive Plan.

This document is intended to amend the prior exception taken for the 1889 acre site. It is not intended to amend or supercede the prior exception with respect to any other portion of the Port of Morrow Industrial Park. Moreover, this document does not amend any acknowledged portion of Morrow County's Comprehensive Plan, including those portions involving other property owned by the Port of Morrow.

The staff report which LCDC approved on February 17, 1988 continued the plan and land use regulations for

this property "to comply with Statewide Planning Goals 2 and 3." However, it can reasonably be argued that industrial uses such as those proposed for this site are "urban." Accordingly, this document takes an exception to Goals 11 and 14 as well.

B. Site Description

The 1889 acres are located approximately one mile east of the eastern edge of the City of Boardman's urban growth boundary (UGB). The site is separated from the UGB by other portions of the Port of Morrow Industrial Park that have been acknowledged by LCDC as built and committed to industrial uses.

Because the property is a mile distant from the nearest urban growth boundary, and because the land between this site and that urban growth boundary has been acknowledged for rural industrial use, it is impracticable to extend the UGB to this site. Accordingly, an exception is taken to Goal 14 and Goal 11.

C. Public Facilities and Services

The following public facilities and services are currently in place in the Port of Morrow Industrial Park and are available to serve the subject property.

1. An eight-inch, high pressure gas line. This gas line is tapped directly into the Canadian gas pipeline. It comes across the full length of the subject property on the southern end and extends into the industrial area to the west. The line can accommodate large volume gas users.

2. Dual electrical transmission power lines. These lines are located on the eastern edge of the site. They provide major access for industries that are large users of electrical energy (e.g., industries that would require an electrical substation). The transmission lines and distribution lines are owned by Bonneville Power Administration, Umatilla Electric Cooperative Association, the Port of Morrow, and various tenants.

3. A water supply system, owned by the Port, providing 4.5 to 5.0 million gallons per day of potable water to Port industrial tenants. The system includes six wells, 16 pumps totalling 1710 horsepower, two

storage tanks and 11.5 miles of pipeline. The pipeline includes pipes up to 12 inches in diameter for fresh water and up to 24 inches in diameter to remove effluent. The water system has the capability of providing up to 8000 gallons of water per minute -- enough to supply a city of 23,000 inhabitants. Furthermore, the site contains a major transmission pipeline (72") for water, with a capacity of 150,000 gallons per minute, which is available to industrial users.

4. Rail facilities, including the Union Pacific Railroad east-west transcontinental mainline and industrial siding.

5. Interstate Highway facilities, consisting of Interstate 84, the Port of Morrow Industrial Park interchange (Exit 165), and the interchange at Exit 168.

6. A local road system containing approximately 12 miles of roads and streets, most of which were constructed to withstand heavy truck and industrial vehicle traffic.

7. Dock facilities, including loading docks, ramps, and other water-related port facilities.

8. A wastewater disposal system including a package plant for treating 50,000 to 100,000 gallons of sanitary wastes daily, an intertie with the City of Boardman sanitary sewer system, and an effluent disposal system which pumps the process waters from tenant industries to land disposal areas.

9. A circle and solid-set irrigation system developed to dispose of effluent as required by DEQ permit #100252 and presently covering nearly 1400 acres. It is anticipated that this system will be replaced by a waste treatment plant during the planning period.

10. Three water wells.

The acreage consumed by rights of ways and easements of the above-identified facilities totals 143, leaving a net acreage of 1746 acres for development within the exception area.

D. Historical Background of Port of Morrow Industrial Park

The subject property has long been identified and designated for future industrial use. The 1889 acres in question is the residual acreage of a much larger tract of land identified by early port planners in the 1950's, along with the Corps of Engineers and Oregon Department of Commerce officials.

In 1966 this acreage, together with additional properties to the east, south and west, was identified for waterfront industrial development by the Mid-Columbia Planning Council, a regional agency established pursuant to state statute on August 17, 1961, to represent the county courts and port districts of Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla counties on all regional planning matters. See Meyers, Joseph D., A Plan for Development of the Oregon Mid-Columbia River Waterfront, Oregon Department of Commerce, Division of Planning and Development, 1966. In its report, the Mid-Columbia Planning Council noted that the economic base of this six-county region was predominantly resource (agriculture and forestry) related, but found that "employment in the primary phases of agriculture and forestry will decline over the years." The Council thus determined that the region would experience a need for economic diversity in the coming years, and it concluded that its plan would help stimulate further development of the industrial, commercial and recreational potentials of the region, particularly along the Columbia River waterfront. Id. at 18.

The mid-Columbia Planning Council's plan identified the Port of Morrow property as having "excellent physical potential" for use as a river-oriented industrial site. Id. at 25. It found the site particularly suitable for industries requiring isolated tracts over 500 acres in size that are held in single ownerships, noting that "where water for industrial processing can be economically pumped from the Columbia, such lands are potentially suitable for chemical and primary metal industries as well as for the aerospace industries which use extensive amounts of land." Id. at 26. The plan identified land immediately adjacent to the site as suitable for public port facilities "to receive and ship bulk products by river barge transportation." Id. at 27.

In 1976 the U.S. Army Corps of Engineers produced the John Day Lock and Dam Master Plan, which also identified this site as appropriate for future port and industrial uses. That orientation was carried into the deed by the Corps of Engineers to the Port of Morrow for the portion of the Industrial Park that came from the Corps. The remainder of the lands in the Industrial Park came from the State of Oregon, which rounded out the waterfront lands with two additional components of the package, the adjacent lands deepening the property available to service the waterfront directly, and the two parcels near, but not immediately adjacent to, the block of acreage at or near the waterfront. Those two detached parcels provided, in the early thinking as well as today, for such critical uses as effluent disposal from industrial uses, staging of raw or finished products, cooling or settling ponds, or transportation or transshipment terminals.

Compliance with Exceptions Criteria

A. Introduction

As noted above, this exception amends the prior "reasons" exception taken for the 1889 acre parcel in question. Pursuant to Goal 2 and ORS 197.732 (1)(c), a local government may adopt an exception to a particular goal or goals, for land not "built upon" or "irrevocably committed" to uses not allowed by an applicable goal, where the following standards are met:

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

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

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

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

The requirements of ORS 197.732(1)(c) and Goal 2 (Exceptions) have been interpreted in administrative rules adopted by LCDC, OAR 660-04-000. Of particular relevance to this exception statement are OAR 660-04-018 (Planning and Zoning for Exception Areas), OAR 660-04-020 (Goals 2, Part II(c) Exception Requirements), and OAR 660-04-022 (Reasons Necessary to Justify an Exception under Goal 2, Part II(c)).

B. Reasons Justifying an Industrial Designation and Zoning for the 1889-Acre Property.

1. Nature of Uses

OAR 660-04--018(3) provides that when a local government takes a "reasons" exception, plan and zone designations must limit the uses and activities "to only those uses and activities which are justified in the exception." The uses authorized by this exception are port-related and aerospace-related industrial uses. As used in this exception, the term "port-related" includes all industrial uses typically or appropriately located on port properties, including but not limited to water-dependent industrial uses, chemical and primary metal industrial uses, wood products industries, transportation-related industrial uses, power generation and utility facilities, oil module production and shipping, manufacture of semiconductors and related solid state devices, manufacture of synthetics and related products, aluminum foundries and related industrial uses, ship building and repair, telecommunications and electronic-related industrial uses, and other industrial uses authorized by ORS 777.250. Industrial uses are deemed to include activities such as manufacturing, warehousing, processing, packaging, compounding, constructing, treatment, assembly, storage, testing, finishing, refinishing, repair, and wholesale sale and distribution of products.

It is the County's and Port's intention to utilize this property as a port-related industrial sanctuary. The exception will permit some very limited commercial use of this land as a conditional use, with such commercial uses cumulatively occupying no greater than 10,000 square feet of gross area, to assure that such uses are limited to the needs of employees of the port-related industrial uses on the property.

It is most likely that the uses that develop on this property will be water-dependent. However, ORS Chapter 777 does not limit port-related uses to those which are water-dependent port-related uses. ORS 777.250 broadly defines the uses which ports may allow on their properties. ORS 777.250(1) states:

"A port may construct buildings or other improvements and acquire personal properties including but not limited to machinery and equipment considered necessary whether or not now in existence or under construction, suitable for use by any industry for the manufacturing, refining, processing or assembling of any agricultural, mining, or other product or by any commercial enterprise in storing, warehousing, distributing or selling or servicing any products of agriculture, mining or industry or by profit or nonprofit enterprise for research and development..."

ORS 777.250(2) further provides that a port may develop land as an industrial park for research and development, or develop land "in a manner compatible with other uses in the area in which the industrial or research and development park is located..." ORS 777.250(2)(b).

It is the County's and Port's expectation that businesses attracted to this site will wish to take advantage of available river access. That has been the history of this particular parcel, and there is no reason to expect otherwise in the future. However, Morrow County and the Port of Morrow desire the flexibility allowed by ORS Chapter 777. The Port is located nearby the 20,000-acre Boeing Industrial Park. That property is used solely for aerospace-related research and development. That property is not available for aerospace-related industrial uses except those pertaining to research and development. Hence, should (for example) an aerospace-related manufacturing industry show interest in locating in this area, it would need to consider the Port of Morrow site rather than the Boeing Industrial Park, since the use does not pertain to research or development. The Port would wish to accommodate that industry, even if such industry does not require the use of the river.

The Port and County are aware that an exception has already been taken and acknowledged by LCDC for

airport-related uses at other Port-owned property. Because adequate land is available elsewhere for airport-related uses, which are defined in Section 3.071 of the Morrow County Zoning Ordinance, this exception does not purport to authorize airport-related uses on this 1889-acre site.

2. Justification for Rural Industrial Development

OAR 660-04-022 sets forth specific criteria for taking a "reasons" exception. OAR 660-04-022(1)(a) requires the County to demonstrate need for the proposed use, based on one or more of the requirements of Statewide Goals 3 to 19. OAR 660-04-022(1)(b) requires the County to demonstrate either that the resource upon which the proposed site is dependent can be reasonably obtained only at the proposed exception site, and the use or activity requires a location near the resource, or that the proposed use has special features or qualities that necessitates its location on or near the proposed exception site.

OAR 660-04-022(1)(a) and (b) provide the general framework for an exception to a goal or goals. For rural industrial development, i.e., industrial development located outside of an urban growth boundary, "appropriate reasons and facts" include but are not limited to criteria set forth in OAR 660-04-022(3). Those criteria are:

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

"(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

"(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the

county's gain from the industrial use, and the specific transportation and resource advantages which support the decision."

The County and Port note that most industrial uses, by their nature and intensity, have distinctly "urban" qualities. The County and Port view OAR 660-04-022(3) as allowing such uses outside urban growth boundaries, notwithstanding their urban qualities, upon a demonstration of compliance with OAR 660-04-022(3) and the other exception standards in OAR 660-04-020. Hence, to the extent the uses which may go on this site might be deemed "urban", this exception is taken to Goal 14 (Urbanization), which otherwise prohibits urban uses on rural lands.

This exception also is taken to Goal 11 (Public Facilities and Services), which otherwise prohibits the extension of urban services onto rural lands. With respect to Goal 11, it is the County's position that the port-dependent uses justified for this site will require services that may be deemed "urban", including significant water and electrical services and possible sewage services. Because the uses are justified herein, this exception is taken to Goal 11 to allow their proper servicing even if such servicing entails the extension of "urban" facilities to the site. In any event, whatever additional facilities are extended to the site (if any) would be only those that are appropriate for and limited to the needs of the uses placed thereon.

a. Need for Industrial Uses at the Site

OAR 660-04-022(1)(a) requires a demonstration of need for the proposed use or activity, based on one or more statewide goals. Because the use involved is port-related industrial use, which is an economic use, the goal at issue is Goal 9, Economy of the State. Goal 9 provides: "To diversify and improve the economy of the state." The goal mandates that state and federal economic plans be coordinated; that plans and policies "contribute to a stable and healthy economy in all regions of the state"; that plans be based on inventories of areas suitable for increased economic growth and activity, considering a variety of factors; and that economic growth be encouraged in areas that want increased growth and activity.

It is clear that Morrow County and the Port of Morrow want increased growth and activity. It is also plain that the site in question is suitable for increased economic growth and activity, as the history of this site demonstrates. To repeat, this site was identified over 30 years ago by early port planners, the Corps of Engineers and the Oregon Department of Commerce as appropriate for port-related industrial development. It has been planned for industrial development for decades. It has been found particularly well suited for land-intensive industrial use. The Oregon Economic Development Department considers this site to be one of very few prime sites in the State of Oregon for industrial users seeking large vacant industrial properties. Hence, it is part of the economic plans of both federal and state agencies.

In taking this exception the County and the Port are eager to diversify the economy of Morrow County. Goal 9 defines "diversify" as "increasing the variety, type, scale, and location of business, industrial and commercial activities." As has been stated earlier, the need to diversify Morrow County's economy was foreseen as early as 1966 by the Mid-Columbia Planning Council. The Council correctly predicted back then that employment in the areas of agriculture and forestry would decline, such that new industries would be needed. This prediction has proven particularly accurate for the agricultural industry of Morrow County, and has particular significance because Morrow County has the largest county farm income per capita in the State.

In 1988 the East Central Oregon Association of Counties and the staff of the Oregon Economic Development Department issued an economic analysis for Morrow County showing that population has increased dramatically in Morrow County since 1970, but that total employment has been falling. The report states that farm related employment in the County has dropped 35 percent since 1980. The report also shows that employment in lumber and wood-related industries has dropped since 1980, although some recover is now occurring.

The report concludes that "the potential is present for a continuing gradual decline in employment unless there is development of new markets, both domestic and foreign, and new value-added products." (emphasis added). Regarding value-added products (i.e., any

manufacturing process that takes raw products and adds value to it through processing, packaging, assembling and the like), the report indicates that new and alternative crops with value-added processing hold a strong potential for the large agricultural base. Such uses currently are present at the Port of Morrow Industrial Park, and the subject property provides additional capacity for value-added uses. Furthermore, a regional strategies subcommittee of Morrow County, established consistent with Governor Goldschmidt's "Oregon Comeback Plan" to develop a regional economic strategy for the county that is attainable and consistent with the regional resource base, will recommend to the Morrow County Court that "value-add" be adopted as the official strategy of Morrow County.

Morrow County's declining agricultural industry is demonstrated by some revealing statistics. Presently there are 442,352 acres of cropland zoned for exclusive farm use in Morrow County. Of this, approximately 25 percent, or 110,000 acres, are eligible for the federal Conservation Reserve Program (CRP). Under that program, farmers are paid to keep their lands out of any kind of agricultural production for 10 years. Currently 106,352 acres in Morrow County, or nearly 100% of total eligible acres are under this program. Only 3,648 acres remain eligible for the program. As might be expected, the program has already had substantial negative impacts on Morrow County's economy. For example, one spray plane business has closed its doors because over 100,000 acres are no longer available for spraying. The Morrow County Grain Growers are looking at employee cutbacks. These impacts provide just a small demonstration of the need to diversify the county's economy.

While the need to diversify has been shown, such a need, by itself does not warrant the designation of more land within the county for industrial development. The mere desire a county may have to diversify its economy is not carte blanche for that county to randomly add vacant acreage to its industrial lands inventory. Absent a showing of reasonable likelihood that industrial development will occur on such lands during the planning period, such action runs counter to the state's interest in preserving resource lands for resource uses.

In short, Goal 9 does not provide an excuse for counties to engage in "pie in the sky" land use

decisionmaking based on far fetched and starry-eyed dreams that Tektronix or some other major industrial enterprise will construct a plant in the area. But Goal 9 does permit planning for industrial development where a showing can reasonably be made that identified industrial development is likely.

With respect to the subject property, it is very likely, based on recent experience and the expansion of Pacific Rim trade, that the site will be developed within the 20 year planning period. Moreover, it is likely that the entire site will be utilized. Support for this assertion lies in the substantial interest that this site has already attracted from major industrial developers over the past six years, and in the continued interest being given this site. Since 1982 this site came so close, so often, to having major development that a reasonable person would conclude it is really just a matter of time before the site is selected for significant port-related (or aerospace related) industrial development).

Since 1982 the industries listed below each considered this site, with the site often making the final cut. That history demonstrates a substantial likelihood of continued and regular interest in the property for port-related development, plus a likelihood that the property will be snapped up and developed, probably sooner than later. If the property is designated and zoned for industrial use at this time, it becomes more attractive to industry, since the time delay factor for plan amendments and zone changes (including potential for appeals) is gone. If the site must await plan and zone changes at some future date, that advantage is lost and desired industries which might have developed at this location may choose to go elsewhere. Because the interest in the property has been steady and substantial for the past six years, it is consistent with Goal 2, ORS 197.732 and OAR 660-04-000 to take this exception at this time.

It is anticipated that the site will remain in "agricultural use" pending its actual development for industrial uses. It must be noted, however, that this statement is misleading, because the present "farm use" of this site produces products that have limited commercial value and cannot be sold on the open market due to their heavy concentration of toxins. This issue is addressed in greater detail below.

During the past six years the following interest has been shown in the specific property that is the subject of this exception:

1. In 1987 an out-of-state corporation approached the Port about using 1500 acres of the site for development of a space age park to develop the next space shuttle booster. The corporation needed a facility with waterfront access that was also within 10 miles of a secure area (i.e., an area secure for government testing of rockets). The use could not locate within the Boeing Industrial Park, as that park is reserved for research and testing only. The use proposed here involved manufacturing. The use required major road access (provided by I-84) and major structure capacity along such access (to handle oversize and overweight loads). Due to transportation requirements, it was prohibitive to locate the use more than 30 miles from the secure area. The use also required a waterfront for transportation, to transport the products upon their manufacturing. The Port of Morrow made the final cut on this project. It was the only Oregon site to make the final cut, and one of only a handful of sites nationwide. However, the use ultimately was located along the Mississippi River system.

With economic growth and the expansion of trade along the Pacific Rim (which is a key mission of the State of Oregon), the types of industries presently locating along the Mississippi River system are likely to appear along the Columbia/Snake River system. For environmental reasons such uses would not all congregate together but would spread out along the system. Hence, expansion of Pacific Rim trade enhances the likelihood that the Port of Morrow site will be developed in the near future.

2. Also in 1987, a different out-of-state corporation proposed the same type of use for this property as that identified above. The result was the same -- the corporation ultimately chose a site along the Mississippi River.

3. Also in 1987 a pulp mill approached the Port, looking for a site approximately 1000 acres in size. The company required a rail loop as well as waterfront access. The rail was needed to ship materials in and out. Water access was needed to ship wood resources and

other supplies and materials up and down the river. Total investment of this project was estimated at \$300,000,000 -- a significant investment for Morrow County's economy. Other locations in the region would not have sufficed because they either lacked large acreage, the availability of large volumes of water, or the needed riverfront access. The site was one of five to make the final cut, but the company ultimately decided to locate outside the region, closer to other mills which it owns. However, its interest shows the suitability of this site for such a use.

4. Around or in 1985, a glass company showed interest in about 300 acres of the site. The company needed a rail loop, which would have entailed additional acreage. Rail was needed to ship products out and raw materials in. Water frontage also was required to ship in raw materials (soda ash) by barge. No interest in other sites in the region was shown because they did not have the combination of facilities (water, rail, highway, etc.) that this site offered. The use required an ability to excavate to a depth greater than is available at the airport site (where there is surface basalt and ground water problems). The estimated value of this business was \$250,000,000. The company ultimately selected a location in California.

5. About 1982, a coal company showed interest in this site for power generation. The investment was estimated at \$35,000,000. The company required 600 acres, plus a rail loop requiring additional acreage. It needed a major coal unloading area; rail facilities to bring in coal from the western United States; and water access to allow for shipments to Japan and Korea. It was interested in this site because the property is the most eastern location at which the Columbia River, transcontinental rail lines, and transcontinental highway lines meet. It should be noted that barge transportation is more energy efficient than rail by a ratio of 2:1, and more energy efficient than highway (truck) by a ratio of 20:1. Hence, the site has distinct advantages not found elsewhere. The Port of Morrow property again made the final cut. Indeed, the applicant was ready to locate on the site. However, at the final moment the applicant received a more favorable offer for a much larger facility elsewhere and moved to that location.

6. About 1985, the Union Pacific Railroad had a client that considered using the entire site for assembly of major mechanical components. The company needed rail facilities along the Union Pacific main line, with freeway access nearby. The company did not necessarily require water access. The proposal was later withdrawn.

In summary, in the past six years at least six major companies have seriously considered this site for extensive industrial development. On several occasions the site made the final cut in searches that were regional or national in scope. In each instance the favorable impact on the area's economy would have been tremendous. In each instance the development would provide badly needed diversity to Morrow County's economy. The important fact is not that these companies ultimately chose another location, but that they retained interest in this site down to the final cut. The fact indicates that this site is special, that it has something very valuable to offer that other sites in the region do not have, and that companies capable of making significant investments are likely to continue to show interest in the site.

Presently, the Port of Morrow is actively pursuing many industries, including those involved in oil module production and shipping to Alaskan oil fields. With the continued expansion of Japanese industries and Pacific Rim trade, the Port believes that major use of the site is likely to occur within the next five years.

The Port also is considering the location of a co-generation plant at this site. In 1983, the Port commissioned a Portland engineering firm (SJO) to do a bio-mass study. The study assessed the feasibility of locating a co-generation plant at this site. The amount of bio-mass fuel in the area, together with the potential for steam use in the food processing park and electric use in the rest of the industrial area provide the co-generation option. The interactive nature of bio-mass conversion to two energy forms is a very fine one from the standpoint of economic viability. The Port of Morrow is one of those few locations where the probability of this economic viability exists. The landfill, along with existing agricultural and timber bio-mass, provides the fuel source. The existing industry and space to locate new industry provides the outlet and the viability. For purposes of this

exception, a co-generation plant is deemed to be a port-related use.

It also bears mention that a Target Industry Report (Foresite Group, Inc., 1987) has been prepared for the Port of Morrow. This document identifies the Port as particularly well suited for agricultural processing (value-added products), aerospace-related industrial uses, wood products manufacturing, the manufacturing of semiconductors and related solid state devices, the manufacturing of synthetic resins, plastic materials and non-vulcanizable elastomers, aluminum foundries, computer related manufacturing, and boatbuilding and repair. Other identified target industries include biotechnical industries, telecommunications manufacturing, and manufacturing of electronic equipment. All of these uses fall within the definition of port-related uses set forth in ORS 777.250 and as used in this exception document.

Accordingly, Morrow County has demonstrated need for industrial diversity, need for additional land for port and aerospace-related uses (notwithstanding the fact that there are other vacant lands in the county planned and zoned for industrial uses), specific interest in this particular piece of property, and continuous interest in this property by different companies that operate on a national or international scale. Morrow County has demonstrated real interest in this site, not speculative or hypothetical interest. Morrow County has demonstrated reasons that go well beyond the typical "wish list" for economic development. These reasons are adequate to justify an exception to Goal 3.

b. Special Site Features Justifying the Exception

OAR 660-04-022(3) sets forth several criteria that may justify the location of industrial lands outside urban growth boundaries. Two of those three criteria (subsection 3(a) and 3(c)) would apply at this location to virtually any development proposal. The third criterion (subsection 3(b)) might apply for a specific project.

(i) OAR 660-04-022(3)(a)

OAR 660-04-022(3)(a) allows justification of a rural industrial designation where the use is

"significantly dependent upon a unique resource located on agricultural or forest land." One such resource expressly identified is "river ports." This site meets this criterion under the plain language of the criterion. But the justification goes well beyond this. As noted above, this site is the easternmost point where the Columbia River, the transcontinental railroad and the Interstate Highway system converge. For port-related industries requiring shipment of materials and products by rail and barge, there are significant cost advantages to locating here, as barge transportation is much cheaper than rail or truck transportation and is capable of handling extremely heavy or oversize loads. The site is at river level. It is adjacent to, and has use of, in excess of one mile of Port-owned frontage on the Columbia River Navigation Channel. Moreover, the site is blessed with significant natural gas, electrical, and water resources to serve highly consumptive users. Those resources are described above in greater detail. The proof that the river port has attracted interest is demonstrated by the interests in this site described above. Simply put, corporations seeking to develop port-related uses have shown substantial, significant interest in this site, in large measure due to the water, rail and highway resource on site.

The proximity of water reservoirs is another resource identified in this subsection that is found at this location. The site is located near two major dams, McNary Dam (about 15 miles upstream) and the John Day Dam (about 30 miles downstream). The ability of industries to locate near to the power source cuts power losses for those industries due to the very short distance required for transfer of electricity. This energy availability, at lower costs than would occur at greater distances from the reservoirs, is important to the types of port-related industries which would locate here.

(ii). OAR 660-04-022(3)(c).

OAR 660-04-022(3)(c) allows justification of a rural industrial use where the use would have a significant comparative advantage due to its location which would benefit the local economy and cause only minimal loss to productive resource lands. The comparative advantage for port-related industrial use at the Port of Morrow property comes from the convergence

of water, intercontinental rail and interstate highway access to this site. The rail access is the main stem of the Union Pacific Railroad. Additional advantage comes from the availability of electric power, natural gas, and water for high-consumption users. As shown above, there are significant cost advantages for port-related industries to locate very near to the source of electrical power. A third comparative advantage comes from the very close proximity of the Boeing research and development park. Uses authorized at that park are restricted to those involving aerospace-related research and development. Manufacturing is not permitted at that site. Still, aerospace-related manufacturing does occur, and its proximity to such a site is desirable. At least two aerospace industries have shown substantial interest in the subject parcel in the past year for this very reason. Such uses are port related, particularly as they require water access for oversized and overweight products not easily transportable by rail or truck. Of equal importance, the interest shown to this site has come from companies engaged in regional or nationwide searches for sites to develop, with this site often making the final cut.

To summarize the advantages that make this Port of Morrow property so attractive, the site offers the following:

- (1). 1889 acres under Port of Morrow ownership.
- (2). Location at water level, with access to nearly a mile of Port-owned frontage along the Columbia River.
- (3). Adjacent uses committed to heavy industry or buffer corridors.
- (4). Proximity to the Boeing Industrial Park.
- (5). Ability to accommodate land-intensive port related industrial development.
- (6). Direct access to the main line of the Union Pacific Railroad and Interstate 84.
- (7). Availability of fresh water resources.

(8). Availability of natural gas and an eight-inch, high pressure gasline.

(9). Port-owned roads in and to the site, including paved roads constructed to withstand heavy truck and industrial vehicular traffic and unpaved roads providing access throughout the whole of the 1889-acre site.

(10). Electrical transmission lines, distribution lines and a Bonneville Power Administration substation serving the site, with close proximity to dams generating electrical power.

(11). Ten minute access to the Boardman airport.

(12). Soil that is readily and inexpensively buildable.

(13). Ability to install maritime services, facilities and structures with little or no dredging.

OAR 660-04-022(3)(c) also requires consideration of the impact of the use on resource productivity and values. This aspect of this site previously has not been fully explained in the exception statement and is the subject of significant public misconception and misunderstanding. The site contains a highly visible irrigation system. The site also produces alfalfa, some corn and some livestock. At face value, with irrigation and agricultural production, the site appears to have substantial resource value. In this instance, however, the appearances are deceiving.

Approximately 1400 acres of this 1889 acre site are presently subject to a water pollution control facilities permit from the Department of Environmental Quality. That permit controls effluent disposal resulting from processing of potatoes at existing Port of Morrow facilities. In the early 1970's two potato processors were attracted to the Port of Morrow and established businesses on other Port-owned property. Those businesses are presently known as Lamb Weston and Oregon Potato Company. Both presently engage in potato processing. Indeed, Morrow County is the largest potato producing county in Oregon. Both businesses are large users of water, and their businesses entail the disposal of large amounts of effluent. The nature of the potato processing business is such that the potatoes come in

dirty and must be washed, but the water cannot be recycled very often. In the early 1970's it was determined that using large volumes of water to clean potatoes was more environmentally sound than the old method of using lye to clean potatoes. However, when potatoes are washed, they release nitrates which are water soluble and become part of the water very quickly. The water containing those nitrates cannot safely be consumed by humans or other living creatures. If released directly into the Columbia River, the contaminated water would kill fish. Hence, a large area was needed for the disposal of the water, and a method was needed to purify the water. The DEQ permit serves this function.

The DEQ permit provides for disposal of wastewater through irrigation systems established on the site. Over time, DEQ has required the Port to increase the acreage used for this purpose. Alfalfa is grown on those acres because, when supersaturated, it is highly effective at removing nitrogen from the soils. The alfalfa produced at this site contains approximately 1800 to 4000 parts per million of nitrogen. Cattle can feed on alfalfa with 500 parts per million with no adverse effect, but above that level, alfalfa presents health dangers to cattle. Hence, this alfalfa has very limited commercial value because it must be heavily diluted with normal feed to allow safe consumption by cattle.

The alfalfa raised on the site is neither a product that can be sold on the open market nor a product that can be sold without warning. Its market is very limited; it must be sold to a very large livestock producer who is capable of diluting it with normal feed. Presently, the Port of Morrow markets the alfalfa and brings in some cattle to feed on it. However, this is simply for purposes of cutting the losses associated with the effluent disposal system. Because of the quality and nature of the alfalfa, the return from the alfalfa does not match the investment in the effluent disposal system.

Some corn is grown on the property, to provide needed rotation and to retain eligibility within the payment-in-kind program. This corn has commercial value as feed. However, corn removes considerably less nitrogen from the soil and is therefore less valuable than alfalfa for the intended purpose. The corn also

grows at about two-thirds of normal production capacity because of the quality of water applied.

In short, alfalfa and corn are grown on this site not for the purpose of enhancing or contributing to Morrow County's agricultural resource, but to remove toxins from water used to clean and process potatoes. The alfalfa has limited commercial value; cattle which have ingested it undiluted have gotten sick from it. Most livestock owners will not buy it because of the time, expense and inconvenience involved in supplements to create safe and acceptable feed. The corn has some commercial value, but it is not grown for that purpose.

Hence, the alfalfa and corn, for all intents and purposes, are not part of the county's agricultural resource, but are used in connection with industrial development, and have been so used since the early 1970's. For this reason, the Port and the County also assert that this land is irrevocably committed to industrial use, since the land has been used for that purpose for well over a decade. The Port and County note that a similar system is used by the City of Boardman, and those lands are not deemed agricultural lands.

It should be noted that if this land develops for other industrial uses, a sewage treatment plant would be required to handle the effluent currently handled in the manner described above. The estimated cost of such a plant runs between \$5 million and \$11 million, according to Port officials. Construction of such a facility will be feasible only when this property converts to industrial development and related revenues are forthcoming to the Port of Morrow.

It also bears repetition that Morrow County farmers are being paid not to farm over 100,000 acres in Morrow County. Hence, even were this land farmable, it probably would not contribute to the county's agricultural enterprise.

(iii). OAR 660-04-022(3)(b).

OAR 660-04-022(3)(b) allows rural industrial development where a use is too hazardous to, or incompatible with, dense population to warrant inclusion within an urban growth boundary. Whether or not this subsection is met depends on the specific use

considering the site. Aerospace development requiring 1500 acres and access to security might reasonably require a location away from people for security reasons. A pulp mill produces very unpleasant odors that many people prefer to avoid. Hence, based on the types of major industries that have shown interest in this property in the past, the chances are excellent that such industry would fit within this subsection. However, that statement is not true for all potential industries using this site.

C. Areas Not Requiring a New Exception Cannot Reasonably Accommodate the Use.

OAD 660-04-020(2)(b) requires an applicant for a reasons exception to show that areas which do not require a new exception cannot reasonably accommodate the use. Under this rule, the applicant must explain why the proposed use cannot be reasonably accommodated: (1) on nonresource land that would not require an exception; (2) on resource land that is already irrevocably committed to nonresource uses; and (3) inside an urban growth boundary. The explanation may include economic factors along with other relevant factors.

The rule further provides that the standard may be met by a broad view of similar types of areas rather than a review of specific alternative sites. It states that site-specific comparisons need not be made unless a party to the local proceeding can describe why there are more specific sites that can more reasonably accommodate the proposed use. In this instance, 1000 Friends of Oregon has identified seven sites it claims might accommodate the use, although reasons why those sites can "more reasonably" accommodate port-related uses are not fleshed out. This may be due to the fact that the prior exception for this site was not precise as to the nature of the use, hence making that exercise difficult. In any event, those sites will be examined herein, together with three additional sites.

1. The Uses Cannot Reasonably Be Located on Nonresource Lands not Requiring an Exception or on Lands Irrevocably Committed to Nonresource Use.

1000 Friends has identified seven alternative locations as appropriate for the uses proposed for the Port of Morrow property. Those sites are identified and

discussed below. Each of those sites is appropriate for industrial development, as recognized by 1000 Friends of Oregon and by LCDC. However, those sites are not appropriate for the types of port-related or aerospace-related industrial uses which the Port of Morrow expects to attract. Accordingly, those sites cannot reasonably serve the proposed uses.

a. The Cook Tract and Hermiston UGB.

The Cook Tract and other industrially-designated lands inside the City of Hermiston's urban growth boundary contain about 900 acres available for industrial development. The sites previously included over 1300 acres, but the City removed about 440 acres following 1000 Friends of Oregon's successful appeal of LCDC's decision acknowledging the Hermiston UGB.

The combined properties have been designated for industrial use, although some commercial and residential uses are allowed. The site does not have river access, although it has rail access. The site is not along a freeway, and to get to the freeway, vehicles must travel through the City of Stanfield. The absence of direct freeway access and river access distinguish this site from the Port of Morrow site and make it less attractive, or not attractive at all, for the types of port-related and aerospace-related industries that have shown interest in the Port of Morrow property. For example, uses requiring oversized and overweight loads will prefer not to travel through Stanfield. Uses that involve security risks will be reluctant to travel through an urban area. None of the water-dependent industrial uses that have shown interest in the Port of Morrow property over the past six years could use this site.

Moreover, Hermiston's desire is to attract labor-intensive industrial uses to this site if possible. The Port of Morrow site is predominantly aimed at attracting land-intensive users. Hence, the types of port-related industrial uses anticipated at the Port of Morrow site could not reasonably be accommodated on either the Cook Tract or on other lands within Hermiston's UGB.

Finally, unlike the Port of Morrow site, this site lies wholly within an area designated by the Oregon Department of Water Resources as a critical ground water

zone. This means that all existing ground water is under allocation and new wells cannot be drilled at this location. As noted earlier, one of the attractions of the Port of Morrow site is the availability of water in significant quantities. The Cook/Hermiston site cannot accommodate such uses.

b. The McNary Site.

The McNary site is a 1400-acre site located along the Columbia River about 25 miles northeast of the Port of Morrow property. Much of the site was included within the old Alumax proposal. The land is in two ownerships, with the Port of Umatilla owning a portion of the land and leasing portions of the land. As with the Port of Morrow property, the Oregon Economic Development Department deems this site most appropriate for land-intensive uses.

Despite its location next to the Columbia River, water access is not easily available. This is because the site is situated predominantly on a cliff that rises above the river by about 100 to 150 feet. To obtain water access, a conveyor process would be required. This would be quite expensive and detracts from the attraction of the site. Hence, for all intents and purposes, the site is not supportive of water-dependent uses.

The site can be distinguished from the Port of Morrow property in other significant ways as well. There is rail access to the site, but not on the site, as with the Port of Morrow property. U.S. Highway 730 runs along the southern border of the site, but the site lacks interior roads, unlike the Port of Morrow property. Unlike the soils on the Port of Morrow property, the soils here are very rocky, with basalt outcroppings scattered over the site. The shallow soil depth limits the types of uses which may go at this location. There are no facilities on the site, meaning that development costs for the site would be very high. The Port of Morrow property already has substantial public facilities available. Finally, like the Cook Tract, the site lies within a critical ground water area and is not available for drilling new wells.

Due to its lack of water access, its soil conditions, water constraints, and the lack of facilities, the types of uses which have shown interest

in the Port of Morrow property could not reasonably be accommodated at the McNary site. Indeed, McNary has not made the final cut for the specific industries identified above.

c. Port of Arlington.

The Port of Arlington is located along the Columbia River approximately 25 miles west of the Port of Morrow. The site cannot reasonably accommodate the types of uses anticipated at the Port of Morrow property because the land supply simply is not there. The Port of Arlington contains an approximately eight-acre vacant site, plus a larger tract of about 56 acres (Willow Creek). The larger tract is not served by rail. Total vacant acreage is under 100 acres, which is insufficient to meet the needs of the industries attracted to the Port of Morrow site.

d. Stanfield.

The Stanfield industrial site, located about 30 miles east of the Port of Morrow, contains 376 acres in undeveloped land in three industrial zones. This acreage simply is inadequate to meet the needs of land-intensive users, like those identified above, which have shown interest in the Port of Morrow property. Hence, this site cannot reasonably accommodate the use.

e. Pendleton UGB.

Like the Stanfield site, this site, containing about 435 acres in vacant industrial land, is too small to accommodate the uses anticipated at the Port of Morrow property. Moreover, this site does not have water access and is in a large urban area, creating potential security problems for aerospace-related industries that have shown interest in the Port of Morrow property. Hence, this site cannot reasonably accommodate the use.

f. Boardman.

Boardman has 158 acres of vacant land. According to 1000 Friends of Oregon, this is "enough for a population five times its present size, according to the county's exception for the Boeing Air/Industrial Park." If the Port of Morrow site were intended predominantly to serve as a site for labor-intensive industrial uses,

1000 Friends' point would be well taken. However, the types of users which have shown interest in the site over the past six years have been land-intensive sites within the State of Oregon, with the Port of Morrow and the McNary site being two of them. Arguments which reasonably apply to labor-intensive uses like aerospace-related manufacturing, a pulp mill, or a coal plant. The Boardman site cannot reasonably accommodate those uses.

g. Port of Morrow Airport.

The Port of Morrow airport property, not identified by 1000 Friends as an alternative location, contains about 1300 acres of developable land. Uses allowed on those acres are restricted to uses which are airport related. Hence, the site is not in competition with the 1889-acre site. Moreover, the airport site does not have direct river access. It does not have available the range of utilities found on the Port of Morrow property. Due to its proximity to the airport, height restrictions would apply that limit potential users of the site. Uses like pulp mills could not go on that site because of the safety hazards they pose in the event of heavy fog, weather inversions and the like. Indeed, any uses generating steam or smoke, creating electrical interference or significant light emissions are also precluded from using the airport site. The site's location west (upwind) of the City of Boardman also means that any bad odors or particulates would blow directly into a populated area. Finally, the airport property consists of surface basalt which would be extremely costly to excavate. For these reasons, this site cannot reasonably accommodate the uses proposed for the Port of Morrow property.

h. Boeing Space Age Industrial Park.

The Boeing Corporation leases approximately 20,000 acres from the Department of Veteran's Affairs for use as a space age industrial park. This property, not identified by 1000 Friends of Oregon, is used for antenna range, electronics, aerospace, aircraft, space vehicle and related research and development. The site is located approximately four miles southwest of Boardman and is bordered by the Boardman bombing range, farmland, the Boardman airport and the PGE coal-fired electrical plant. The site is part of a 100,000 acre tract intended for aerospace-related activities.

The Boeing site is not available as an alternative location because it is reserved solely for space age industrial research and development. The site is not available for manufacturing.

However, its proximity to the Port of Morrow site makes the latter site attractive for aerospace-related manufacturing uses that support activities on the Boeing property. Indeed, the more attractive the Boeing property becomes for research and development, the more desirable the 1889-acre Port property will be for aerospace-related industrial uses.

i. Boeing Waterfront Property.

Additional waterfront property owned and controlled by Boeing is located approximately six miles west of the Port of Morrow site. The site, not identified by 1000 Friends of Oregon, is approximately 1600 acres in size. It is underlain with basalt and would be more expensive than the Port of Morrow site to develop. The site has very limited freeway access, no road system, and no gas or water facilities. Due to the basalt, it would be very expensive to place gas lines in the ground. The site also is located west (upwind) of the Boardman population area, meaning that particulates or odors in the air would carry over the population center. Finally, river access is not presently available and activities required to attain needed depth would be costly. In contrast, the Port of Morrow site has three working docks, plus a road and utility system to provide immediate support for the waterfront activity. While some of the uses which could go at the Port of Morrow site also might be located here (although at considerably greater expense), the site cannot reasonably accommodate other uses (like heavier industries) which could reasonably locate at the Port of Morrow site.

2. The Proposed Use Cannot Reasonably be Located Inside an Urban Growth Boundary.

On February 17, 1988, LCDC acknowledged Morrow County's plan, with the exception of this 1889-acre parcel. That acknowledgment had the effect of approving, as rural land, certain lands separating the Port of Morrow site from the City of Boardman's urban growth boundary. It is impractical to leapfrog over

those lands to include this property within the UGB. For reasons stated above, the use cannot reasonably locate within the UGB's of other cities in the region which 1000 Friends of Oregon has identified.

Because industrial uses may be urban in character, it is appropriate generally to locate such uses inside urban growth boundaries when feasible. Because of the distance between the Boardman UGB and this site, it is not feasible in this instance. Moreover, the types of uses that have shown interest in this site over the past six years include uses relating to national security. As a practical matter, such uses (such as development of the space shuttle booster) may be incompatible with urban areas.

Finally, it should be noted that OAR 660-04-022(3) expressly provides for "rural" industrial development upon a demonstration of compliance with the criteria contained therein. The Port of Morrow and Morrow County have made that demonstration. It is reasonable to assume that such demonstration renders compliance with OAR 660-04-020(2)(b)(B)(iii) unnecessary. In any event, reasons satisfying that standard have been provided, and this exception is taken to Goal 14 as well because of the urban qualities exhibited by many industrial uses.

D. 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.

This criterion requires a demonstration that the ESEE consequences resulting from the proposed use at the proposed site will not be significantly more adverse than would typically result from the same proposal being located at other areas "requiring a goal exception." This criterion does not apply to other areas for which a goal exception is not required. Hammack & Associates, Inc. V. Washington County, ___ Or LUBA ___ (87-037) (1987).

For the reasons stated under the alternative locations analysis of this exception, there are no adequate alternative sites which could reasonably accommodate the port-related uses proposed for this property. Accordingly, an analysis of this site to the

other sites would be a useless exercise. Notwithstanding that fact, it is useful to consider the ESEE consequences that would occur on the proposed site if the site is developed for industrial uses. This is particularly useful in light of the fact that the site presently gives the appearance of being suitable for farm use. Moreover, because the McNary site also allows for land-intensive development, a comparison will be made as appropriate.

1. Environmental Consequences.

The principal environmental impact of utilizing this site for industrial development is the removal of about 1800 acres from apparent farm use. A person visiting this site should notice a highly visible irrigation system. In the summer, alfalfa can be seen growing on the site. This gives the clear appearance that the land is resource land capable of productive, commercial farm use.

As explained earlier in this exception document, this appearance is misleading, as the irrigation system has been mandated by DEQ for effluent disposal and the alfalfa grown is toxic. Irrigation is required due to the extremely high concentrations of nitrogen in the water resulting from the washing of potatoes in nearby potato processing plants. The alfalfa is grown because of its recognized ability to remove nitrogen from water when applied to the soil.

In the absence of any new development of this site, this system will remain. It bears repetition that the crops grown have limited commercial value. The crops are not "crops" in the commonly understood sense of the word. The use of the site is not "farm use" as defined in ORS 215.203 because the land is not employed "for the primary purpose of obtaining a profit in money" by raising and harvesting crops for sale. Alfalfa is grown for the purpose of removing nitrogen from the soil. It is grown for health purposes and for protection of the environment, not for economic reasons. Moreover, this system has been in effect since 1974. The Port and County contend that under these circumstances, the property is irrevocably committed to nonfarm uses, and that uses of this land for commercial farm purposes is impracticable due to the toxicity of the soil resulting from the spraying of effluent upon the land. The Port

and County expressly rely on this as a separate justification for this exception.

Even if the property legitimately could be considered agricultural land capable of productive farm use, its removal from the county's agricultural base would have no significant effect because of the status of agriculture in Morrow County. It has already been noted that nearly 25 percent of the cropland in the county is under the federal Conservation Reserve Program with farmers being paid not to farm for 10 years. It makes little sense to be adding this land to the agricultural base, at a time when farmers are paid not to farm, when the land in question is recognized and identified by state and federal agencies for its industrial potential. The CRP program clearly indicates the need for economic diversity within Morrow County, and this site has clearly shown the potential to provide it. Accordingly, the environmental impacts of allowing the proposed use on this site are miniscule.

The only other site perhaps capable of providing for land-intensive industrial uses is the McNary site. However, that site does not provide for water-dependent development. There apparently is some question whether the McNary site has resource value. Even if it does not, that fact does not put it in any better stead than the Port of Morrow site, since the crops produced at the Port of Morrow site have limited commercial value. The provision of facilities to the McNary site on the scale present at the Port of Morrow site would have significant negative environmental consequences associated with road building, utility construction, ground disturbance, water and sewer system expansion, visual impact, and the like. Moreover, because of the critical groundwater problem in Umatilla County, no new wells could be built there. For these reasons, the environmental impacts at the McNary site would likely be more adverse than those which would occur at the Port of Morrow site.

2. Social Consequences.

Development of this site for industrial uses would have positive social impacts in that it would diversify and thereby help stabilize the Morrow County economy. With diversity, the area will be better able to weather a recession or other downturn in the economy.

Because of the site's location downwind of Boardman, the site should not create negative social impacts caused by the noise, dust, particulates, odors, or other by-products of industrial activity on the site. The industrial uses placed on the site may be less visually attractive than sprinklers and alfalfa, but this is not considered to be a significant adverse impact.

It bears mention that there is no known opposition to this land use designation for this site within Boardman or the County. It should be recalled that the site has been identified for industrial development since the 1950's.

Social impacts at the McNary site are similar to those at the Port of Morrow. Again, such development is deemed beneficial. Like the Morrow County site (but unlike the Boeing property), this site is downwind of development. It's location high on a cliff might result in a somewhat greater visual impact from development. Hence, development at the Port of Morrow site would not have significantly more adverse social impacts, and would probably be deemed not to have adverse social impacts.

3. Economic Consequences.

Industrial development of this property can only benefit the area. It would do so by providing jobs and economic diversity, thereby helping to stabilize the economy in the event of an economic downturn. It is recognized that the uses likely to locate here will be land intensive rather than labor intensive. The number of jobs associated with such industries will be low on a per-acre basis. However, the total investment of industries located at the site will likely be high, adding to the value of the property and assisting the local and regional economy. This kind of investment is badly needed in Morrow County, and this site has shown the capacity to attract it. Because the alfalfa produced on the site at this time has limited commercial value, the loss of its production will have no negative economic impact. However, the loss of this acreage for effluent disposal would require construction of a waste treatment facility that would carry a hefty pricetag. However, the benefits from the new port-related industry would exceed the costs of building the waste treatment facility.

In comparison, land-intensive industrial development at the McNary site would benefit Umatilla County's economy and provide diversity. Because that site does not have facilities and services available, the costs of preparing the site for industrial use would be significantly greater than at the Port of Morrow site. A conveyor process to allow water access at McNary would be very expensive and would probably not be sufficient to permit water-dependent uses at that location. Consequently, the development of the McNary site would likely have more adverse economic impacts than development at the Port of Morrow site for industrial uses, although both sites would likely have an overall beneficial effect to the local economies.

4. Energy Consequences.

Industrial development at the Port of Morrow site, as opposed to other sites, will be energy efficient due to the immediate proximity and availability of electricity, natural gas, water, and transportation facilities. The site has direct access to the Columbia River and Union Pacific rail facilities. Interstate 84 passes the site, with two freeway interchanges available to serve the site. The site contains a local road system, dock facilities, and rail facilities. These types of facilities are not found at other large sites like McNary and the Boeing property. Moreover, the cost of installing such facilities at McNary could be expensive due to its distance from Interstate 84, its thin, rocky soils, and the absence of adequate water access.

In summary, the Port of Morrow site is ideally suited for port-related industrial development and such development would not have significant environmental, social, economic or energy consequences. Compared to other sites like McNary, the location of port-related industrial use at the Port of Morrow is likely to have less adverse consequences due to the current availability of facilities on site.

E. The Proposed Uses are Compatible with Other Adjacent Uses.

OAR 660-04-0202 (2)(d) requires a showing that the proposed uses are or can be made compatible with adjacent land uses. Compatibility is not a problem at

the Port of Morrow site, where the site has been identified for industrial development for decades. Adjacent land uses are predominantly built and committed industrial uses, including heavy industry transportation corridors including the Columbia River frontage, and utility corridors. Other adjacent and nearby uses are resource land utilized as a bombing range; unused or intermittently used Class VI and VII rangeland; and cultivated lands. A portion of the northern boundary of the site is a wildlife area.

Industrial uses, subject to conditions and constraints set forth in the Comprehensive Plan, will have no negative impact on the majority of neighboring uses. No incompatibility is seen with respect to adjoining industrial uses. Similarly, industrial use is not incompatible with transportation and utility corridors. Industrial uses adjacent to bombing ranges will create no adverse impacts so long as height and light constraints are observed. This can be achieved through conditions imposed on development. Industrial uses alongside poor grazing lands used intermittently for such purposes should have no harmful impacts. There has been no sign of negative impacts on cattle which presently utilize these acres on an intermittent basis. Similarly, industrial use should not negatively affect cropland, unless the use releases toxic particulates into the air. Such releases, however, would be subject to compliance with applicable federal and state health and safety standards.

Industrial development also should not adversely affect the nearby wildlife refuge. The Port of Morrow property contains Messner Pond, which is utilized by wildlife without any indication of adverse impacts from surrounding industrial uses. The Oregon Department of Fish and Wildlife has not objected to industrial development at this site, and we note that considerable wildlife habitat is found, and that wildlife successfully coexists, near Port of Portland industrial properties along the Columbia River, the Columbia Slough and the Willamette River. To the extent necessary and appropriate, conditions can be placed on development (such as buffering) to protect nearby wildlife and agricultural uses.

In summary, port-related industrial development should have minimal, if any, negative effect on adjacent uses. Site-specific planning will be accomplished to

mitigate any significant potential negative impacts through the application of conditions, including setbacks, landscaping, buffers or other appropriate actions. This is sufficient to comply with this exception criterion.

F. Compliance with OAR 660-14-040.

In addition to the exceptions standards contained in OAR 660-04-000 et. seq., OAR 660-14-040 sets forth standards that may apply to this exception. OAR 660-14-000 et. seq. addresses the incorporation of new cities. The thrust of this rule seems to focus on urban levels of population in rural areas. Indeed, OAR 660-14-040 applies the heading "Incorporation of New Cities on Undeveloped Rural Lands." Notwithstanding this heading, OAR 660-14-040(2) provides: "A county can justify an exception to Goal 14 to allow incorporation of a new city or establishment of new urban development on undeveloped rural land..." (emphasis added). Because that language arguably applies to this proposal, and because Morrow County assumes, for purposes of this exception, that the industrial development likely to locate on this property might be deemed "urban" in nature, the Port and County will address herein the standards set forth in that rule.

The specific standards governing Goal 14 exceptions appear in OAR 660-14-040 (3). Many of these standards are similar to standards contained in OAR 660-04-020 and 660-04-022. To the extent there is overlap and repetition, the Port and County rely on the analysis provided above.

OAR 660-14-040(3)(a) requires a demonstration that the proposed development cannot reasonably be accommodated in or through the expansion of existing urban growth boundaries, or by intensification of development within existing rural center. As noted above, this site cannot reasonably be included within the City of Boardman urban growth boundary because of its approximately one-mile distance from that boundary. Lands between the site and the boundary have already been acknowledged as rural by LCDC. Because of the site-specific nature of this exception, and the showing of inadequacy of other alternative locations, the proposed urban development (including the uses likely to situate at this location) cannot reasonably locate

within or through the expansion of other urban growth boundaries in Morrow County or the region. Again, this is one of two major land-intensive sites in eastern Oregon with Columbia River access, the other site being McNary. Reasons showing why the use cannot reasonably locate at the McNary site have been provided above. Landlocked urban areas are inadequate to provide the types of port-related facilities which the subject property provides and which serve as the principal basis for this exception.

OAR 660-14-040(3)(b) requires an analysis of environmental, economic, social and energy consequences resulting from the proposed development. This standard has been addressed above. The amount of acreage contained in the exception has been justified based on recent interest in the property and the substantial likelihood that all of the property will develop within the planning period. Urban port-related and aerospace-related industrial uses are not limited by air, water, energy or land resources at this location, but instead greatly benefit by the availability of those resources at this specific location. Access to the Columbia River, the availability of electricity and natural gas, the location downwind of the nearby urban area and the vast land resource suitable for land-intensive industrial uses all make the site particularly suitable for the intended industrial uses. Anticipated and authorized uses at the site should not have significant adverse impacts on the air, land, water and energy resources of the surrounding area, as the site would be part of an existing port district, energy resources are readily available, adjacent land impacts would be minimal, and the site's location downwind of Boardman would minimize impacts on the urban area. Existing industrial uses on adjacent Port of Morrow property have demonstrated no significant adverse impacts on the air, water, land and energy resources of the surrounding lands, and the County and the Port have no reason to expect otherwise with this site.

OAR 660-14-040(3)(c) requires consideration of the compatibility of the proposed urban use with adjacent uses. For the most part, this issue has been addressed elsewhere in this exception statement. However, the Port and County add that the proposed port-related industrial uses, like existing Port of Morrow industrial uses, should not detract in any way from the ability of the City of Boardman to provide urban services to its

residents, nor should it adversely affect adjacent land uses, including adjacent industrial and agricultural uses. Farm-related uses, including grazing, occur on properties adjacent to and nearby existing industrial development at the Port of Morrow without negative consequences, and no change is anticipated as a result of this location of the new port-related uses at this exception site. Accordingly, this criterion is met.

OAR 660-14-040-(3)(d) requires a demonstration that an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner. The availability of facilities has been addressed above. As noted above, the site has outstanding water, energy and road facilities already on site. In the event a sewage plant would be required, such a plant could be constructed in a timely and orderly manner.

Finally, OAR 660-14-040(3)(e) requires, in relevant part, a coordination with the comprehensive plans of affected jurisdictions. This exception, approved by Morrow County, is jointly offered by both the County and the Port of Morrow. It has been the subject of several public hearings. The exception effectively expands the area of the already-acknowledged Port of Morrow exception area deemed to be coordinated with the City of Boardman's comprehensive plan. The County concludes that this site will not cause any problems with plans of affected jurisdictions, but will be a benefit to the City of Boardman, Morrow County and the region.

III. CONCLUSION

The 1889-acre Port of Morrow property is especially well suited for land-intensive port-related uses. Unlike any other site in the region, it contains large vacant acreage that is readily accessible by water, rail, and interstate highway and that is presently serviced with water, gas, and electricity. These features have not gone unnoticed. In the past six years the site has attracted significant interest on a national level. The site has come close several times; from its recent history, a reasonable person would conclude that significant port-related (including aerospace-related) development on the site will happen soon. The exceptions criteria do not require a county to show, as a precondition to approval of an exception, that a specific industry has agreed to develop a

specific, quantifiable portion of a site. Such an interpretation would have the effect of impeding economic development by adding the potential for substantial time delay into the process. At the same time, mere wishing for economic development is not enough. To justify an exception, a county must demonstrate a reasonable likelihood that property will develop for the intended use within the planning period.

It is widely recognized that having serviced land available helps to attract industry in the first instance. The Port of Morrow site has an advantage over other sites precisely because of the services that it offers, including three working docks. It is also widely recognized that having land already planned and zoned for industrial use helps attract industry to those locations, as land use delays may be avoided. The land use planning program provides for cities and counties to adopt plans to accommodate growth over a 20-year period. Here, Morrow County and the Port of Morrow have shown the likelihood of the use of this property, and indeed, of all of this property, within the planning period by showing specific interest in the property over the past six years. It has been demonstrated here that this site does attract interest and is likely to continue to attract interest. That showing of a reasonable likelihood of industrial development on this parcel, together with the showing why other properties cannot reasonably accommodate the use, is adequate reason for allowing the exception.

This exception is not based on population needs for employment. It is based, instead, on the availability of a site with attributes demonstrated to be highly desirable by water-related, port-related and/or aerospace-related industries. It is based on interest shown previously and on the likelihood of future interest in the property. It is based on the fact that industries are seriously interested in this site, not on the ground that the Port or county wish that were so. It is based on the fact that the industries showing serious interest in the site are not showing the same interest for other sites within the area, such as the McNary and Boeing sites. It is also based on the need for economic diversity within the county that can reasonably be met at this site.

In summary, this site, due to its location and facilities, is unusually well suited for the proposed

use. That statement isn't hype -- it's fact. Accordingly, this exception is taken consistent with and in full conformance with the applicable exceptions criteria in Goal 2 and OAR 660-04-000 to allow port-related industrial development at the Port of Morrow site.

Kinzua Property

This is a timber processing complex of some 120 acres lying one-half mile from the UGB of Heppner. It has been developing since the 1950's and is stable in size.

Eastern Oregon Farms

This parcel of 27 acres was developed in the early 1970's. It consists of a pellet-cubing plant and was zoned Industrial at the time it was built. It is located on the railroad near Irrigon.

Western Oregon Farms

This parcel of 33 acres was zoned and developed in the late 1970's. It consists of a pellet-cubing plant and other associated industrial uses.

KLM Leasing

A parcel of 7.84 acres near Irrigon developed in the 1970's for storage and repair of heavy farm equipment and supplies and related activities.

Riverfront Boeing Industrial Tract

This 1,700 acre site is a narrow strip of land adjacent to the Columbia River, north of Interstate 84 and Union Pacific Railroad, and between the City of Boardman and Gilliam County. The County is obligated by the Supremacy Clause of the U.S. Constitution to maintain this property in a zoning designation which allows the property to be developed for port and industrial purposes. That is because the original deed which transferred the land from the federal government to the state was

"made under and pursuant to the powers and authority contained in section 108 of the Act of Congress approved July 14, 1980 (Public Law 86-645, 74 Stat 486 (33 USC #578))."

That federal law requires that land thus transferred shall be used only for port or industrial purposes.

Article VI of the U.S. Constitution requires that

"the Laws of the United States ... shall be the supreme law of the land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State notwithstanding."

Consequently, even if the land use planning laws of this state required that the property have some other land use designation, we are without authority to so order.

In addition, even if not bound by the Supremacy Clause of the United States Constitution, the land in question is designated by ORS 273.382, et seq. as a space age industrial park. Designation of a particular use by a specific statute would take precedence over application of a general statute regarding land use planning. ORS 174.020. In any event, an industrial land use designation is justifiable because of the poor

to very poor soils located on and adjacent to this site. To justify this site as nonresource or land where Goal 3 does not apply, substantial evidence addressing the following factor is discussed below:

1. The land is not predominately Class I through VI soils;

2. The land is not other land suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy input requirements, or accepted farming practices; and

3. The land is not in other classes which are necessary to permit farm practices to be undertaken in adjacent or nearby lands. (Source: Statewide Planning Goals, p. 6).

Factor (1):

The 1,700 acres is characterized by Prosser-Rock Outcrop Complex and Quinton Rock Outcrop Complex. According to soil maps, and interpretation by SCS soil scientists, approximately 450 acres (26%) consist of Class VII and VIII soils. These nonagricultural soils do not contain any Class VI or better agricultural soils. However, the remaining 1,250 acres of Class VI soils (Prosser) contains 20 percent Class VII soils (Quinton) and 20 percent Class VIII soils (Rock-outcrop) (Soil Survey of Morrow County, December 1983, p. 50). The result is that of the 1,700 acres designated for industrial development 56 percent (950 acres) consist of Class VII and VIII soils. Therefore, the land is not predominately Class I through VI soils. (See: Map Sheet No. 9.) Factor (1) has been met.

Factor (2):

The rock outcroppings make it impossible to drive a tractor on the land to try and work any of the shallow soil. Potential grazing use of the land is limited to a couple of weeks in the spring and late fall when rains green up the sparse grasses, according to several individuals that have leased the property for limited grazing. The soils on this property are very poor and because of the rough terrain associated with the bedrock

and basalt outcroppings and the narrow shape of the parcel, irrigation from the Columbia River would not be economically feasible. Pumping water to only a few sparse shallow areas within the site would be too expensive. Factor (2) has been met.

Factor (3):

The subject property is not necessary to permit farming practices to be undertaken on adjacent land. The subject property is completely isolated from farm land to the south which consists of the same poor agricultural soils. Interstate 84 and the Union Pacific Railroad severly isolates this parcel from any other land. Land to the east and west of the property would not be effected because of the long narrow shape of the parcels and the inclusion of bedrock and drainage ways. The 1,700 acre sites best agricultural soils consist of only 750 acres of Class VI Prosser soils which are abundant in Northern Morrow County west of Boardman. This is not to say that the same circumstances that apply to the Boeing riverfront property apply to the Class VI soils south of Interstate 84. These Class VI soils are in large blocks of single ownerships and are relatively free of resource limitations that exist along the Boeing riverfront property. Therefore, areas south of Interstate 84 are defined as Agricultural Lands and requires a full "need" exception to allow nonresource development. Such an exception is being taken for the Boardman Air/Industrial Park. Factor (3) has been met.

Other Considerations

Statewide Planning Goal 14 requires that urban growth boundaries separate urban from rural uses. Development on rural lands (outside UGB's) must be limited to rural types and densities. Statewide Planning Goal 11 requires public facilities and services to be limited to the needs and requirements of the rural areas to be served. Because the 1,700 acre Boeing riverfront property is designated for industrial development, the above goal requirements need to be addressed.

The type and density of development that is anticipated will be rural in nature and not urban. The size, shape and topography of the site, the lack of urban services and the development objectives set forth for the site will limit the size and scale of

development in such a manner resulting in only a rural level of development. Boeing officials indicate that the property will be used primarily for separate river docking facilities along approximately 1.5 miles of river frontage. Other sites along the Columbia River will be used primarily for storage and pumping facilities. Site limitations will create separate entities along the river and open space around each site. The resultant development will be rural uses appropriate for rural areas.

Boeing Corporation Space Age Industrial Park

The Oregon Department of Veterans' Affairs (DVA) has requested Morrow County to rezone approximately 14,000 acres of existing EFU zoned lands south of Boardman. The Boeing Corporation who leases the land from DVA has proposed rezoning the area for the purpose of developing a Space Age Industrial Park. Morrow County is requesting taking an exception to Goal 3 to make the proposed uses consistent with the Comprehensive Plan and Zoning Ordinance. The proposal, Space Age Industrial Zoning, which will allow for antenna range or electronics, aerospace, aircraft, space vehicle research and development, and other related activities are not only the most socially and economically viable, but is justifiable, considering the carrying capacity of the land relative to proposed use. The site is approximately four miles to the southwest of the City of Boardman and is bordered on the east by the Boardman bombing range, on the west by a highly intensive agricultural area, on the north by the Boardman airport, and on the south by the PGE coal-fired electrical plant.

The approximately 14,000-acre area is undeveloped, has not been farmed in any manner during the past number of years except for some minor cattle grazing and is nearly road free.

Under its delegated authority, the Land Conservation and Development Commission (LCDC) has promulgated OAR 660-04-020 and 022, which applies to reasons exceptions. Oregon Administrative Rule 660-04-020 (2) states:

"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 shall not apply"...

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

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

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

In 1983, the legislature adopted ORS 197.732 and thereby revised the LCDC's former "need" exception into the present "reasons" exception standards. In changing from a "need" exception to a "reasons" exception, the LCDC and the legislature moved away from the general "public need" standard. The LCDC has described by rule general and specific reasons which may be relied upon in taking a reasons exception.

OAR 660-04-022 (1) states:

"An exception under Goal 2, Part II (c), can be taken for any use not allowed by applicable goals. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

(1) For uses not specifically provided for in subsequent sections of this rule or OAR 660 Division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity based on one or more of the requirements of Statewide Goals 3 to 19; and either

(b) A resource upon which the proposed use for activity is dependent can be reasonably attained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include analysis of the

market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site."

OAR 660-04-022 also identifies specific reasons which may be used to justify rural industrial development.

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

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

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas or;

(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision" (OAR 660-04-22(3) (emphasis added).

The county must make findings under OAR 660-14-040(2) which states: "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 which is dependent upon adjacent or nearby natural resource."

The county adopts the following goal exception statement:

A. Reasons justify why the state policy embodied in the applicable goals should not apply.

This exception statement and findings are presented pursuant to ORS 197, Section 732, which allows local governments to adopt exceptions to LCDC goals when the standards of OAR 660 Division 4 are met. Morrow County is taking an exception to Goal 3, "Agricultural Lands," for approximately 14,000 acres of which the location is the southeast one-quarter of Section 15 (southwest one-quarter of Section 18), the west one-half of Section 19, the east one-half of Section 22, the south one-half of Section 25, the south one-half of Section 26, Sections 27 through 29, Sections 32 through 36, Township 4 North, Range 24 East, and Sections 1 through 5, the north one-half of Section 8, and Sections 9, 16, and 21 through 24 of Township 3 North, Range 24 east, Willamette Meridian, Morrow County, Oregon. The acreage which is the subject of the application is hereinafter called the "Property." The entire area is leased by Boeing from the Oregon Department of Veterans' Affairs, ORS 273.382(3).

The site is located on Class VII soils and Class IV if irrigated. However, due to extensive rock outcrops, it is not economically viable for agricultural use. Soils are subject to severe erosion during frequent windstorms. Irrigation has not been utilized in this area, nor is it contemplated.

Land use consistency issues involve an exception to Goal 3 and adopting findings of consistency with statewide planning goals and county comprehensive plan. The following is a summary of the reasons why the Space Age Industrial Park is justified: (1) The 1963 Oregon legislature indicated that the land be used for space age industrial park development; (2) That the request meets the requirements of the lease agreement between Boeing and DVA; (3) County policies specifically economic development policies require economic diversity.

Certain planning documents and studies have been used in this report to support the exception and are hereby incorporated into the record:

1. Morrow County Comprehensive Plan
2. Morrow County Economic Statement
3. Port of Morrow Airport Environmental Assessment
4. Port of Morrow Airport Exception Statement and Masterplan
5. Background report for phase II of the Boeing Remote Site Antenna Test Range.
6. The Morrow County Planning Commission staff reports

Boeing has already invested in interim improvements in this area in conjunction with an existing antenna range. This request will enable the Boeing Company to establish larger and permanent facilities. The request will provide unique industrial uses that meets county policy for diversification and expansion of its economic base without interference with adjacent agricultural operations.

The area is part of a 100,000 acre tract that was put together under Governor Mark Hatfield's Administration. It was to become the Cape Canaveral of the west. The demise of the Saturn program forced a change in these plans and the state had to take a different course of action. The state began negotiations with the Boeing Company. The negotiations resulted in the execution of the lease and adoption of ORS 273,382-273,405 in 1963. Article IV, Section 1 of the lease requires Boeing to use the park primarily for industrial or industrial research and development purposes.

In 1970, a "Multiple-use" arrangement was made by Boeing and the state, allowing for development of portions of the park amenable to agriculture for agricultural purposes. In 1971, the Director of Veterans' Affairs advised Boeing that the multiple use arrangement did not excuse continued testing operations by Boeing, or efforts by Boeing to obtain additional industrial operations in the park.

In 1975, an agreement was reached between the Department of Veterans' Affairs, PGE, and Boeing to allow the construction by PGE of a 550 megawatt coal-fired thermal power plant on the site.

In October 1983, 2,700 acres of the Boeing lease were released by Boeing and leased to the Port of Morrow for the planned development of an air industrial park.

The county's comprehensive plan, adopted after extensive citizen input and numerous public hearings, documents the need and support for the development of the Space Age Industrial Park. The plan sites as a specific goal diversification of local business, industries and commercial activities, and the promotion of the economic growth and stability of the county.

The county's economy, primarily agricultural (resource) based, has historically fluctuated with agricultural and commercial timber markets. Economic advantages are an integral part of the request. The projects that could be developed in the area will create additional jobs and offer opportunities for the introduction of noncyclical business and employment into the county's economic base.

Special Qualities Necessitating Location at this Site:

1. The site meets the privacy and remoteness requirements of the proposed use. The background report for phase II of the Boeing Remote Site Antenna Test Range explains in detail the privacy and remoteness of the area. The primary features Boeing was searching for are topography, electronic quietness, privacy, security and proximity to Seattle research and logistics support.

2. The site meets the requirements of the state lease which required Boeing to "make use of the premises primarily for industrial research and development purposes."

3. Is compatible with adjacent industrial airport and farming operations.

4. Provides a unique setting for preservation of flora-fauna and various species native to the area.

B. Areas which do not require an exception process cannot reasonably accommodate the proposed use.

1. There were no reasonable alternatives which do not require an exception that can accomplish the proposed use. Adjacent to the south, PGE Coal Fired Plant is built; to the north, the Port of Morrow Airport is planned and zoned for airport related use only; to the east, the Navy Bombing Range which prohibits any development; to the west, irrigated farmlands which Boeing has invested more than \$10 million in a water pumping and pipeline facility to bring water from Willow Creek on the Columbia River to irrigate approximately 35,000 acres of grazing land.

2. Equivalent amenities are not available at alternative sites for the proposed use. The area in question is ideal for the proposed uses planned by Boeing. Relative remoteness from typical urban uses, and access to a multi-modal transportation system. The area is served by utilities and is readily available for development without undue development costs.

3. This proposal is located in the most appropriate area to provide an area which is remote to allow testing and buffers to confine noise and other possible nuisance. Privacy and security are required for this use. The subject property is accessible only by a private road controlled by Boeing. It is buffered by the Navy Bombing Range, PGE's facilities and agriculture on land subleased from Boeing. No other site, except areas within military reservations or extremely remote public lands, is comparable to the subject property with respect to privacy and security.

C. Environmental, economic, social and energy consequences

The exceptions process provides a means for identifying potential impacts, including environmental, economic, social and energy, as well as any possible mitigations of potential adverse impacts. The county comprehensive plan states as a county policy "to insure in the planning process that economic and environmental considerations are balanced."

The following summary address impact criteria:

1. Noise--The antenna range now in place under a limited use overlay zone does not generate any noise. A noise problem is not anticipated as a result of a space age industrial park or the other proposed uses.

2. Topography--Areas to be left in a natural state surrounding the actual operation will not be disturbed, nor will the operation of the test site and other proposed uses create any adverse impacts.

3. Land Use--The land surrounding the proposed space age industrial park is designated for agriculture, airport, industrial, and urban development. All adjacent areas are vacant and existing and planned uses surrounding the site, including resources, are considered compatible with the proposed use.

The proposal, Space Age Industrial Zoning, which will allow for antenna range or electronics, aerospace, aircraft, space vehicle research and development, and other related development are not only the most socially and economically viable, but is justifiable, considering the carrying capacity of the land relative to resource use.

4. Housing--The proposal may result in a need for additional residences; however, this need can likely be met in the existing UGB's of Morrow County.

5. Socioeconomic Impacts--It is anticipated that impacts from electronics, aerospace, aircraft or space vehicle uses will have positive long-term socioeconomic impacts related to employment and support of existing business activities. Further, it provides the potential for attracting new business interests to the county.

The proposal may ultimately include roadway improvements, including access to the airport. Negative impacts are not expected, rather they will contribute to the smooth flow of vehicular traffic, augmenting and enhancing the existing transportation system. The existing system also includes the I-84 freeway, the Columbia River, and Union Pacific Railroad. Either individually or together, these systems can provide not only access but transportation of heavy construction and research equipment to the area.

There do not appear to be any negative socioeconomic impacts to be mitigated relative to this proposal.

6. Safety--No known hazards were identified or are known to exist. The area may be fenced and security guards may be at the site at all times.

7. Air Quality-- Pollution emissions affecting air quality are believed to be minimized if not nonexistent. All state and federal rule regulations will be complied with by the applicant and Boeing, who leases the property.

8. Water and Water Quality--A DEQ permit for subsurface sewage disposal will be required. All state and federal rule regulations will be complied with by the applicant and Boeing, who leases the property.

9. Special Land Uses--No mitigating measures are required in this category as there are no wildlife refuges parks, or other recreational facilities in the area. The land is managed by the State Department of Veterans' Affairs and leased to Boeing for space age development. the proposed use meets the lease requirements.

10. Historical, Architectural, Archeological, and Cultural Resources--An archeological survey of the area has not been conducted according to SHPO, the county plan and SHPO indicate there are no known historic, architectural, archeological, or cultural resources in the vicinity. No mitigating measures are considered necessary at this time. Should any of these resources be discovered, steps would be taken in conjunction with SHPO for evaluation and preservation of the resources.

11. Flora and Fauna--With the exception of the long-billed curlew, the area does not support any population of threatened or endangered wildlife species according to the Fish and Wildlife Service. The long-billed curlew is known to nest in the area. However, the very nature of the proposed use (i.e., large areas of unformed and undisturbed land, assure excellent protection for this species). No significant long-term impacts to be mitigated related to the curlew due to this development. In fact, a positive impact can be found.

The existing area is situated in a sparsely populated, arid, nonforested region and has been designated as "steppe." Most of the undisturbed vegetation is dominated by a variety of bunch-grasses. There is little vegetative cover to provide natural habitat for unique species.

12. Geology and Soils--These have been covered in earlier reports in this statement. It is important, however, to discuss the geological restrictions which make irrigation infeasible for the subject area. The land has historically been used for marginal intermittent grazing as the only farm related use. Loss of productive agricultural lands will be minimal. Thus, there are no significant impacts to be mitigated.

13. Energy Supply and Natural Resources--During the past this area has been identified as possible sites for Nuclear Power Plant coolant potential for water irrigation reservoirs. However, the possibility of nuclear development has decreased to the point where it is not planned in the near future. There is no other energy resources known to exist in the area.

14. Light Emissions and Glare--Due to the highly secretive nature of the projects that may occur in the area, it is not known if the operation produces an adverse impact. However, due to the sparsely populated area (i.e., the nearest dwelling is approximately four miles from the area) and the land use surrounding the area, no significant impacts to the community are anticipated. Further, the need for isolation in testing of the type proposed requires this type of operation to be as far as possible from an urban area to reduce interference from urban activities.

D. Compatibility with other adjacent uses

The impact of the proposal at the area would be less than that expected for an alternative location.

The proposed uses are compatible with adjacent uses.

The proposal is exceptional in its compatibility with existing and proposed land uses. Adjacent land is zoned EFU, and Industrial. The use is compatible with PGE, agriculture and the Port of Morrow Airport. The

buffer zones will, in addition, provide open space separating the other uses.

E. Planning and zoning for a "Space Age Industrial Park"

The rule requires that when a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-04-020 through 660-04-022, plan and zone designation must limit uses and activities to only those uses and activities which is justified in the exception (OAR 660-04-018(3)(a)). Morrow County has developed a new zone designation, Space Age Industrial (SAI), to limit the uses to those proposed in this exception.

Concluding Remarks

The proposed request for change of zone to allow for permanent electronic, aerospace, aircraft, space vehicle research and other related activities imposes no detrimental impacts upon the area or adjacent lands. There does not appear to be any environmental, locational, or economic reasons to vary from the request.

The positive impacts are advantageous. Further, the applicant has agreed to work with the county, Port of Morrow, and state agencies (LCDC) in preparing a long-range comprehensive plan for the area and related development standards to insure future compatability to the multi-use concept set forth by the Oregon State Legislature.

In conclusion, the county finds that the area is not suitable for agricultural or urban use and therefore shows that the exception for the Boeing Industrial Park is justified. Due to the remoteness of the site, and to the ability for security and maintaining a relatively radio-free and transmission-free area, the county does concur that an exception is justified.

BEFORE THE MORROW COUNTY COURT
OF MORROW COUNTY

AN ORDINANCE AMENDING THE MORROW COUNTY COMPREHENSIVE PLAN, THE COMPREHENSIVE PLAN MAP, THE ZONING ORDINANCE, AND THE ZONING ORDINANCE MAP TO PLAN AND ZONE THE MORROW COUNTY PORTION OF THE UMATILLA ARMY DEPOT.

COUNTY ORDINANCE

NO. ORD-2014-4

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 Umatilla Army Depot has been in operation since the 1940s with limited review under Oregon's statewide planning goals; and

WHEREAS, Morrow County is a partner in the Local Reuse Authority (LRA) which is working to receive property at the Umatilla Army Chemical Depot (UMCD) upon its closure under the Base Realignment and Closure process and planning and zoning those lands is a necessary task; and

WHEREAS, Morrow County did take limited action in 1994 to plan and zone a portion of the southwest corner of the Umatilla Army Depot; and

WHEREAS, based on work of the Local Reuse Authority Morrow County initiated work to plan and zone all of the Umatilla Army Depot lands within Morrow County; and

WHEREAS, the Morrow County Planning Commission held two public hearings to review the request on April 29, 2014, at the Heppner City Hall in Heppner, Oregon, and on May 27, 2014, at the Port of Morrow Riverfront Center in Boardman, Oregon; and

WHEREAS, the Morrow County Planning Commission heard testimony from Stan Hutchison, Oregon Military Department, initially in opposition at the April 29 public hearing and changing his testimony to support at the May 27 public hearing based on changes made to the Umatilla Army Depot Transition Zone changing it to the Umatilla Army Depot Military Zone; 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 public hearing to consider the recommendation of the Morrow County Planning Commission on June 18, 2014; and

WHEREAS, the Morrow County Court accepted further testimony in support of the recommendation from Roy Swafford of the Oregon Military Department; and

WHEREAS, the Morrow County Court deemed the amendments appropriate to facilitate development of the Umatilla Army Depot lands.

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 2014 Planning and Zoning of the Umatilla Army Depot.

Section 2 Affected Documents:

Comprehensive Plan: Attachment A will be added to the Comprehensive Plan with the Chapter titled "Goal Exceptions Statement for Rural Residential, Rural Service Centers and Industrial Lands" and more specifically under the "Industrial Lands" section under a new heading of "Umatilla Army Depot District."

Comprehensive Plan Map: Attachment B is the Depot Plan District Comprehensive Plan Map identifying areas as Agricultural, Military, Industrial, and Wildlife Habitat.

Zoning Map: Attachment C is the Depot Plan District Zoning Map identifying areas as Exclusive Farm Use, Umatilla Army Depot Military Zone, Port Industrial, UMCD Port Industrial Limited Use Overlay Zone and Umatilla Army Depot Wildlife Habitat Zone.

Use Zones: Attachment D includes the five Use Zones to be applied as listed immediately above. Two are current Use Zones - Exclusive Farm Use and Port Industrial. Three are new and this action also adds them to our list of Use Zones. They are UMCD Port Industrial Limited Use Overlay Zone, Umatilla Army Depot Military Zone and Umatilla Army Depot Wildlife Habitat Zone. Additionally the Umatilla Army Depot Transition Zone is being replaced by the Umatilla Army Depot Military Zone and the new zone retains the Article 3 Section number of 3.074.

Ordinance MC-C-3-94 originally created the Umatilla Army Depot Transition Zone, applied it to certain lands at the Umatilla Army Depot, and adopted two Comprehensive Plan changes. This action Plans and Zones all of the Morrow County portion of the Umatilla Army Depot and the more recently created Reuse Plan adopted by the Local Reuse Authority more accurately addresses the items added to the Comprehensive Plan by Ordinance MC-C-3-94. This action repeals, or removes, those policy and findings statements from the Comprehensive Plan (shown at the bottom of page 3 and the top of page 4 of Ordinance MC-C-3-94).

Section 3 Effective Date

As the transfer of land from the Federal Government to the Local Reuse Authority is not scheduled to take place until at least 2015 and more likely 2016, the Morrow County Court would not declare an emergency. This Adopting Ordinance and changes to its affected documents would be effective on November 1, 2014.

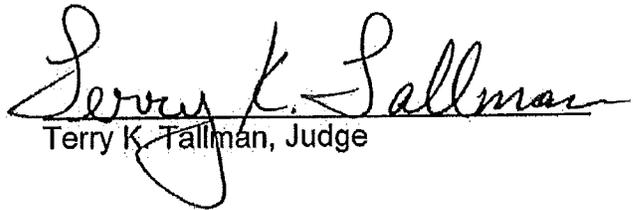
Date of First Reading: July 2, 2014

Date of Second Reading: July 9, 2014

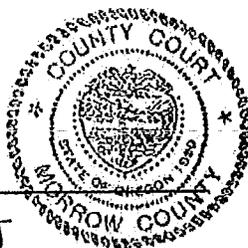
DONE AND ADOPTED BY THE MORROW COUNTY COURT THIS 9th DAY OF JULY, 2014

MORROW COUNTY COURT:

ATTEST:


Terry K. Tallman, Judge


Bobbi Childers Deputy
County Clerk Clerk




Ken Grieb, Commissioner


Leann Rea, Commissioner

Goal Exceptions Statement for Rural Residential, Rural Service Centers and Industrial Lands

Industrial Lands

Umatilla Army Depot District

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 section of the report has been prepared to serve as findings of fact and a statement of reasons to support exceptions to Goals 11 and 14 for the area identified for Port Industrial zoning on Figure 8. Should Morrow County approve this application, the LRA asks that the County reference or incorporate this document into its comprehensive plan as its findings of fact and statement of reasons in support of the application.*

A. Prior Approved Exception to Goal 3 (Agricultural Land)

As a follow-up action to the preparation of the 1993 Comprehensive Development Plan for the Umatilla Army Depot (described in Section II.B of this report) – Morrow County took land use actions in May of 1994 to implement the plan and zoning designations for the Morrow County portion of the Depot.

Specifically, the Planning Commission and the Morrow County Court held public hearings and adopted an ordinance to amend the Morrow County Comprehensive Plan, Zoning Ordinance and Zoning Map to establish the “Umatilla Army Depot Transition Zone” (UADTZ) for “developed and committed” areas based on the 1993 Comprehensive Development Plan and supporting reports.¹ The exhibit attached to the adopting ordinance clearly included the developed warehouse areas in the southwest corner of the Depot. Additionally, the purpose statement for the UADTZ Zone stated:

“The UADTZ Zone is intended to recognize only those areas designated in the master plan for the Morrow County area of the Depot as Phase I and VI, which are those areas devoted to, or most suitable for, development of built and committed areas.”²

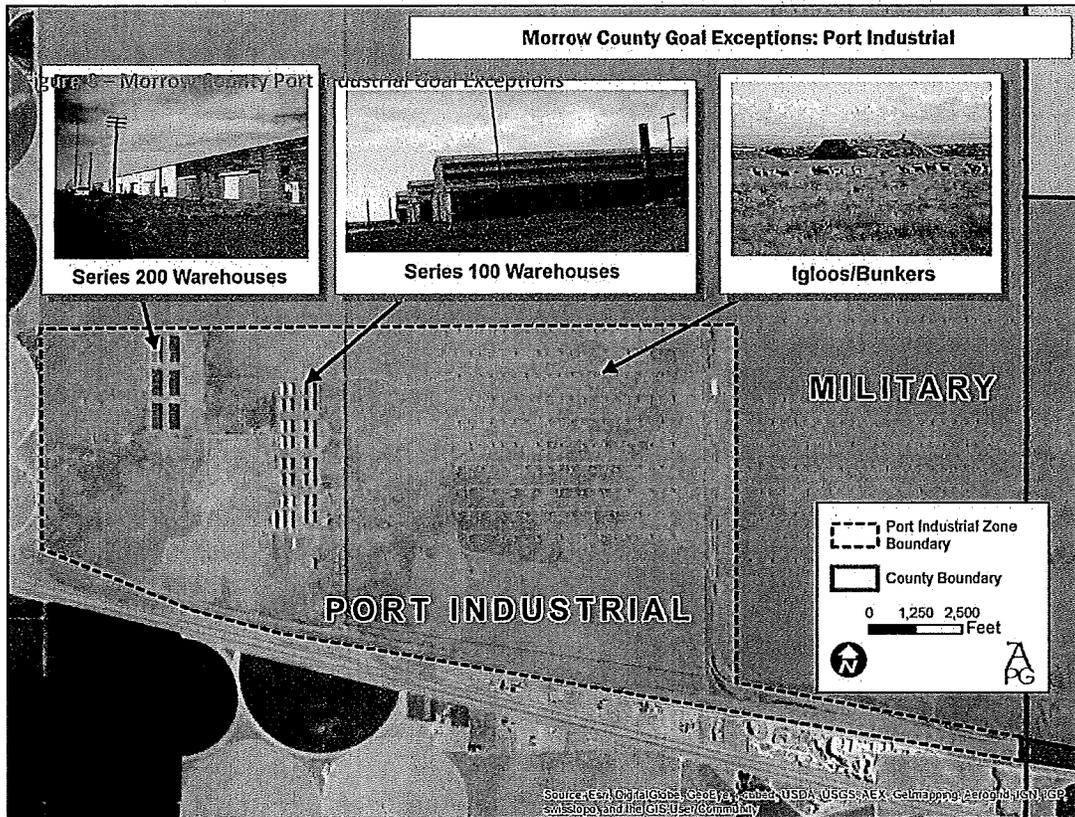
The UADTZ zone permitted a limited range of uses (warehousing, railroad related uses, container storage and trans-shipment facilities, etc.) using existing buildings and structures. Construction of new buildings or structures required Planning Commission review and approval of a conditional use permit.

The Planning Commission held two public hearings on the proposed amendments, and there were no written or oral comments in opposition to the findings, recommendations or actions. Morrow County submitted a Notice of Adoption to DLCD on June 3, 1994 which included a reference that the amendments included a goal exception, presumably to Goal 3. The decision was not appealed and the plan and ordinance amendments are therefore acknowledged.

While Morrow County approved a plan and ordinance framework in 1994 to accommodate heavy and light industrial uses in the southwest portion of the Depot, the Umatilla Army Depot

¹ See Ordinance No. MC-C-3-94 and supporting information.

² See Morrow County Zoning Ordinance, Section 3.074.



Transition Zone has never been applied because no areas have been released by the U.S. Army. However, the 1994 approvals document that the warehouse area in the southwest portion of the Depot site has been recognized and acknowledged as a “developed and committed” area.

Morrow County is supplementing the approved Goal 3 exception with exceptions to Goals 11 (Public Facilities and Services) and 14 (Urbanization) based on new administrative rule provisions and case law which have come into play since 1994. Additionally, Figure 8 depicts more defined boundaries for the developed and committed area and the Port Industrial Zone is recommended to be applied to the area instead of the Umatilla Army Depot Transition Zone. Finally, the subject property in Morrow County almost exclusively contains Class VII soils and does not have access to water for irrigation (see Appendix for Soils Map). Therefore, the exception area is not categorized as agricultural land under the Statewide Planning Goals and an exception to Goal 3 is not required.

Soil Name, Unit Number, Description	Land Capability Class Dry	Land Capability Class Irrigated
39 C: Quincy fine sand	7e	Not irrigated
40 C: Quincy loamy fine sand	7e	Not irrigated

Soil Survey of Morrow County Area, Morrow County Planning Department, July 2013

B. Exception Requirements for Lands Irrevocably Committed to Urban Levels of Development (Goals 11 and 14)

Where an urban use and urban scale public facilities and services are proposed to be located on rural lands, an applicant must demonstrate compliance with the applicable standards for goal exceptions in OAR 660, Division 14. *VinCEP v. Yamhill County*, 215 Or App 414 (2007).³

OAR 660-014-0030 outlines the standards for rural lands irrevocably committed to urban levels of development.

- (1) *A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goal 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.*
- (2) *A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.*
- (3) *A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:*
 - (a) *Size and extent of commercial and industrial uses;*
 - (b) *Location, number and density of residential dwellings;*
 - (c) *Location of urban levels of facilities and services; including at least public water and sewer facilities; and*
 - (d) *Parcel sizes and ownership patterns.*
- (4) *A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.*
- (5) *More detailed findings and reasons must be provided that land is committed to urban development that would be required if the land is currently built upon at urban densities.*

Findings: As shown in Figure 8, a total of 1,872 acres in the southwest portion of the Depot site are identified for Port Industrial zoning and exceptions to Goals 11 and 14.

³ 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).

Existing development in this area includes the following Army structures and supporting infrastructure:⁴

- Series 100 Warehouses – there are thirty buildings located in this area, with an aggregate building area of 455,210 square feet. Overall average building size is approximately 15,000 square feet. There are four larger Series 100 warehouses of approximately 30,000 square feet each.
- Series 200 Warehouses – there are six buildings on the west side of the complex with an aggregate of 518,400 square feet. The area of each building is over 44,000 square feet.
- Igloos/Bunkers – there are ninety (90) concrete igloos/bunkers located in the easterly portion of this exception area. Each igloo is approximately 1,608 square feet in size. The structures are distributed evenly over a land area of approximately 430 acres.
- A spur line from the Union Pacific Railway parallels the entire south boundary of the Depot; a rail car classification and storage yard is also visible in the easterly portion of the Port Industrial exception area.
- Other miscellaneous facilities in this exception area include electricity, telephone, and gravel access roads. Historically, the Series 100 and 200 warehouses were served with on-site sewerage facilities. The larger depot site includes a system of on-site wells, water storage facilities and localized water distribution systems for developed portions of the site (excluding storage bunkers).

This portion of the Depot has been under Federal ownership for more than 70 years. There are no residential dwellings in the exception area and the property has not been divided into parcels.

As noted above, Morrow County took an exception to Goal 3 for this area in 1994 because the land was physically developed with warehouses and related facilities and committed to “industrial” use. The Goal 3 exception was not appealed and is acknowledged. Because this area encompasses predominantly Class VII soils and does not have access to water for irrigation, the site is not technically defined as “agricultural land” and an exception to Goal 3 isn’t required.

However, this application seeks to allow urban-scale port-related industrial uses and public facilities and services on rural lands and exceptions to Goals 11 and 14 are required. 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).⁵ “Urban-scale” public facilities and services are public facilities and services sized to serve urban-scale uses on rural lands. As noted above, the existing Series 200 warehouses located in the westerly portion of the exception area exceed 44,000 square feet. Generally, industrial uses in buildings 35,000 square feet or smaller have been considered to be rural in scale.

Under ORS 197.713, counties outside the Willamette Valley may authorize industrial development in buildings of any size and type in exception areas that were planned and zoned for industrial use on January 1, 2004. Morrow County took an exception and adopted the

⁴ Information from Facility List Spreadsheet for UMCD (5/8/2013).

⁵ 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.

Umatilla Army Depot Transition Zone (UADTZ) that allowed industrial uses in May 1994, prior to the 2004 date, but never applied the zone to the subject property. For that reason, ORS 197.713 does not apply.

The Series 100 and 200 warehouses have sat largely unused for more than two decades. A majority of the buildings are dilapidated and are considered an environmental hazard and a threat to public safety.⁶ The LRA intends to negotiate with the U.S. Army to either demolish the warehouses prior to a land transfer, or provide funding for the LRA to demolish the warehouses following a land transfer.

The Morrow County exception area provides excellent opportunities for industrial users of a variety of sizes and needs. The parcel can provide opportunities for rail car storage, shipping, multi-modal transportation hubs, and/or marshaling yard opportunities. Higher intensity rail users will require significant upgrades to ties, ballast, and the rails. Morrow County is taking exceptions to Goals 11 and 14 to assure that the industrial reuse potential of this area is not constrained by requirements to use the existing buildings, building size limitations or prohibitions on extension of urban water lines.

As shown in Figure 8, the LRA has recommended designating and zoning the Morrow County exception area for Port Industrial use. "Port-related industrial uses" are those uses permitted outright or conditionally under Section 3.073, Port Industrial (PI) Zone of the Morrow County Zoning Ordinance.⁷ Uses authorized in the PI zone include, but are not limited to, 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 777.250.⁸

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.⁹

In summary, the Morrow County exception area has been developed and committed to "industrial" types of uses (warehousing, storage, freight movement, etc.) since initial construction of the Umatilla Army Depot in the early 1940's. Because the area is not predominantly characterized by buildings exceeding 35,000 square feet, and because existing buildings are expected to be removed, the area is neither developed nor committed to an urban scale of industrial use. Consequently the County is proceeding with reasons exceptions to Goals 11 and 14 to provide the opportunity and flexibility for appropriate reuse of this area for urban level development that is consistent with the County's Port Industrial zone. Planning

⁶ Donohoe Report, May 7, 2013

⁷ The PI zone reflects the port-related uses that were authorized in the acknowledged 1988 reasons exception for the Port of Morrow Industrial Park.

⁸ ORS 777.250 defines the uses that ports may allow on port properties.

⁹ In *Foland v. Jackson County*, 239 Or App 60 (2011), the Oregon Court of Appeals clarified that where a Goal 14 exception is taken to allow urban-scale non-residential uses on rural lands, a corresponding Goal 11 exception is required to allow the extension of public facilities to serve the use.

efforts reaching back more than twenty years have consistently targeted this area as the most suitable and appropriate location for industrial uses in the Morrow County portion of the Depot site.

C. Requirements for Reasons Exceptions (Goals 11 and 14)

The Goal 14 administrative rule also provides for “reasons” exceptions for proposed urban uses on rural lands. 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.”*

Findings: In 1994, Morrow County adopted an ordinance approving a “built and committed” exception for the southwest portion of the Depot site. The exception was largely based on the availability of the existing Series 100 and 200 warehouses that could be transitioned to non-military use with land transfers. The condition of the warehouses has deteriorated dramatically with general lack of use and maintenance over the past twenty years and the LRA is pursuing options to have the buildings demolished by the federal government or secure funding for demolition of the buildings following land transfer.

Even if the existing warehouse buildings are demolished, there are reasons to designate this area for urban-scale industrial uses.

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.”*

Findings: The reasons justifying future development of urban scale port-related industrial uses and public facilities sized to serve these uses are set out in numerous plans prepared for the Depot site, including the 2010 Redevelopment Plan and the more recent Development Feasibility Analysis and Land Use Analysis.¹⁰ The Goal 14 exception is taken because the size of future industrial buildings could exceed the size authorized on rural lands without goal exceptions under established LCDC practice.

As stated in the prior plans and reports, the southwesterly portion of the Depot site in Morrow County offers significant comparative advantages for industrial development based on the following location and site characteristics:

1. Unique proximity to two interstate freeways (I-84 and I-82) with accessibility to two existing interchanges. There are only seven locations in Oregon where interstate freeways and/or connecting loop freeways intersect,¹¹ and six of the seven locations are in the Willamette Valley. The locational advantages of such access cannot be overstated. This very close proximity to two interstate freeways makes the Morrow County site, as well as the Umatilla County portions of the Depot site, a significant site for job creation.
2. The Union Pacific (UP) rail line parallels the southerly boundary of the Depot site and UP’s Hinkle Rail Classification Yard is located nearby in Hermiston. Therefore, in

¹⁰ See discussion in Sections II and III of this report.

¹¹ See Table 2 on page 14 of this report.

addition to interstate highway accessibility, the Depot site offers unique accessibility to UP's transcontinental railroad system and makes the site, particularly the southwestern portion in Morrow County, ideal for industrial users who desire rail facilities.

3. The depot site is also located within about 2-3 miles of the Columbia River and existing Port facilities for barge transportation on the Columbia River system.
4. The westerly area targeted for Port Industrial development is a very large (+900 acres), level area ideally suited to large-lot industrial users (including but not limited to warehousing and distribution facilities, inter-modal freight transfer facilities, etc.).

As noted above, the Morrow County site already is physically developed or committed to industrial uses and identified for such uses in the county's comprehensive plan. Because of the site's exceptional locational advantages and very large, flat developable area, it makes good common sense to allow industrial activities, including warehouse and distribution uses, to occur here at *any* scale, urban or rural. A parallel can be drawn with the Westland Road portion of Umatilla County, for which a Goal 14 exception was previously approved and acknowledged. Located very close to the I-84 and I-82 freeways, that area already has developed with a number of urban scale uses, including an approximately 100,000 square foot FedEx warehouse and distribution facility; 350,000 square foot Lamb Weston Food Processing plant; 160,000-square foot Americold building; and approximately 180,000 square foot Hermiston Generating Company Power Plant and Substation. With the potential for very large lot industrial development, the Morrow County site likewise is extremely well suited to accommodate this kind of development, and given its existing commitment to industrial uses, this level of development warrants encouragement.

Throughout its long history, many individuals who have worked on construction or other activities at the Depot have been dependent on nearby communities for access to housing, retail and other services. No housing is proposed for the Depot site. Consistent with the long history of military use of the site, it is anticipated that employees of the industrial areas will generally live and shop in nearby communities. By designating this area of the Depot for industrial uses, free of restrictions on whether the uses are "rural" or "urban" in character or size, Morrow County and the Port will have the flexibility needed to market and maximize the economic development and job development potential of this area (approximately 11% of the Depot site acreage). By taking exceptions to Goals 11 and 14, Morrow County will position the southwest portion of the site for large-scale industrial development, consistent with reuse objectives to create as much employment as possible to compensate for jobs that will be lost with closure of the Depot.

By transitioning the southwest portion of the Depot to industrial use, residents and businesses in nearby communities will be able to leverage nearby jobs & demand for services as military employment is replaced by private employment.

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.

Findings: The Depot site is not contiguous with the UGB's of any nearby cities (Hermiston, Boardman, Irrigon or Umatilla). Additionally, there are no designated rural communities in the vicinity of the Depot site. Staff with DLCD submitted comments to the LRA on the 2010

Redevelopment Plan. Excerpts from the DLCD letter are provided below and address the issue of UGB expansion.

“...The department believes the Depot presents opportunities to achieve multiple win-win outcomes that advance the economic, social and environmental well being of the region and its communities. The department supports dedicating a portion of the Depot property for use by the Oregon National Guard and other areas to be managed by the US Fish and Wildlife Services. The department also agrees that existing development at the Depot makes some areas strong candidates for an exception to natural resource land uses. The department is less certain that currently undeveloped areas of the Depot property could qualify for exceptions to allow urban or rural industrial or commercial uses. Exceptions to justify commercial activities, particularly those that provide urban levels of commercial activity outside an urban growth boundary, can be particularly difficult to justify. Further, it does not appear that any portion of the Depot property is eligible for inclusion in an urban growth boundary at this time.”¹² (emphasis added).

This exception recognizes that a significant amount of urban scale industrially zoned land is available in Morrow County, as shown in Figures 6 of this report and the Regional Economic Opportunities Analysis,¹³ Morrow County has zoned approximately 7,500 acres for industrial development within 3 miles of interchanges to I-84. The majority of the designated industrial sites encompass parcels 50 acres and larger. Zoning designations include General Industrial (MG), Port Industrial (PI) and Airport Industrial (AI). In addition to this county inventory, there are about 110 acres of Port industrial park within the City of Boardman UGB. Notwithstanding this supply of available industrial land for urban scale uses, a Goal 14 exception to authorize urban scale industrial development on this property is appropriate because:

1. This property is committed to industrial development; and
2. This property is ideal for warehouse, distribution, rail-related and similar uses that may reasonably require more than 35,000 square foot buildings to serve their purposes.

In planning for future uses of the Depot site, local and regional leaders have attempted to be proactive and plan for and target specific uses that are most appropriate for the Depot site. The southwest portion of the Depot site has long been targeted as an appropriate area for warehousing, distribution and rail related uses. The Port Industrial zoning proposed for this site will not be targeted to airport related uses that are envisioned for the Airport Industrial zoned area near the Boardman Airport. Additionally, the Port Industrial zoning proposed for this site will not be targeted to agricultural processing or other industrial uses that require large volumes of water and are better accommodated at other Port industrial sites with access to municipal water supplies.

In summary, the land intensive Port Industrial uses proposed for the Morrow County portion of the Depot site cannot reasonably be accommodated in or through expansion of existing UGB's or by intensification of development in designated rural communities.

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

¹² Letter from Jon Jinings and Grant Young (DLCD) to LRA regarding 2010 Redevelopment Plan (April 27, 2010).

¹³ Regional Economic Opportunities Analysis, prepared by Johnson Reid, June 2013 – Appendix B.

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.

Findings: Industrial development in the Port Industrial exception area would not be limited by or adversely affect air, water, land or energy resources at or near the site. The airshed at the Depot site is not identified as in violation of any air quality regulations. The various missions and activities at the Depot have resulted in releases of contaminants to the environment in portions of the installation. Environmental remediation and investigation have been taking place since the 1980's and the entire facility has been thoroughly examined and environmental issues have been largely resolved.¹⁴ There is no surface water on the Depot due to the small amount of precipitation and the porous soils. As summarized in Section IV.E of this report, the Depot site is within two of the four critical groundwater areas in the Umatilla River Basin designated by the Oregon Water Resource Department in 1976. Morrow County is not targeting large water users (such as agricultural processing plants) for this exception area. Instead, this industrial area is likely to be attractive to low-water users such as warehouse, distribution and rail-related facilities because of the proximity to rail and the interstate system.

As shown on Figure 1, about 959 acres of the designated Port Industrial lands will be subject to an overlay zone and land disturbance activities will be limited or in some cases prohibited in the area shown. This agreement was negotiated during development of the 2010 Redevelopment Plan to provide additional protection of the shrub-steppe habitat. In essence, only the 913 acres in the southwesterly portion of the exception area will be available for development of new industrial buildings and uses. The 90 existing concrete igloos/bunkers located in the restricted area will be available for storage or other uses (including but not limited to solar panels, communications facilities, etc.).

Given the long history of military warehouse and storage uses and structures in the southwest portion of the Depot – this is a reasonable area to target similar types of industrial uses when the property is transitioned from military use. Industrial uses at this location would be compatible with anticipated uses at the Oregon National Guard training area to the north and east of the exception area. Additionally, existing agricultural uses to the south and west of the industrial exception area would not be adversely affected, largely because Port Industrial development would not encroach into or fragment existing designated EFU areas.

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;”

Findings: The proposed urban uses in the southwesterly portion of the exception area will be industrial uses allowed in Morrow County's existing Port Industrial Zone, including but not

¹⁴ Umatilla Chemical Depot Site Assessment Report, May 2, 2006.

limited to warehouse, distribution and rail-related uses. 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 it is expected that water and sewer services will generally be provided via on-site systems.

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;”

Findings: Only the administrative area of the Depot is served with a piped sanitary sewer system leading to a treatment facility. The system was installed in the 1940's. Individual septic tanks and drain fields provide for treatment of domestic sewage at locations other than the administrative area. In the Series 100 and 200 warehouse areas, the majority of the buildings have been vacant for years and sewer systems receive no attention.

The water system at the Depot consists of wells, pipeline, and storage reservoirs. The system is divided into two subsystems. One part serves the northwest and north-central portions of the facility and the other system serves the warehouse and administrative areas. The northern system includes three wells providing 2,030 gallons per minute (gpm) and has 120,000 gallons of elevated storage. The southern system includes three wells providing 2,120 gpm and has 250,000 gallons of elevated storage.¹⁵

The LRA and Morrow County recognize that improvements to on-site infrastructure will be needed to accommodate large-scale new industrial development in the exception area. It is anticipated that the Port will target land extensive, relatively low density industrial uses such as warehousing and distribution that do not require sewer and water services that are provided to industrial sites inside the UGB's. However, the county is coordinating with the newly formed Umatilla Basin Water Commission to explore options to locate wells in the areas of the Depot site designated for industrial development as a component of implementation of the regional aquifer recharge project. Because the facilities provided to the property may serve urban scale uses an exception to Goal 11 is being taken. Goal 11 requires that public facilities and services be appropriate for the needs of rural and urban scale uses.

The existing internal roadway system on the Depot provides a roadway connection east along the southerly boundary of the exception area to the existing Army Depot Interchange to I-84. With improvements, this established right-of-way will accommodate near-term industrial uses in the Morrow County exception area. On a longer-term basis, Morrow County and the Port will coordinate on the potential extension of a roadway to connect the Depot exception area to the west to the Patterson Ferry Road interchange to I-84. Figure 4-9 of the Morrow County Transportation System Plan (2012) already shows this potential road connection.

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.”*

Findings: Because the Umatilla Army Depot has been under federal jurisdiction – the Morrow and Umatilla County Comprehensive Plans have never controlled development in the 17,000

¹⁵ Umatilla Chemical Depot Site Assessment Report (May 2, 2006), page 24.

acre area. Morrow County and the Morrow Port District have been actively involved in planning for reuse of the Umatilla Army Depot for decades. Designating the southwest portion of the Depot for Port Industrial use is consistent with the "developed and committed" exception that Morrow County took for this area in 1994. Additionally, the Port Industrial designation is consistent with the following objective in the Morrow County Comprehensive Plan:

*"The industrial land designated in the Plan and on the land map reflects the needs of industry for (a) access to highway, rail, and water transportation; (b) access to electric power and natural gas; (c) extensive, level building sites; and (d) room for expansion."*¹⁶

Angelo Planning Group met with the Morrow County Planning Director and Port District staff on May 14, 2013 to review both the Umatilla Army Depot Transition Zone (UADTZ)¹⁷ and the Port Industrial Zone (PI)¹⁸ for applicability to the industrial exception area. As described in Section VI.A – the UADTZ was added to the Morrow County Zoning Ordinance when the "developed and committed" exception for this area was approved in 1994. Uses permitted outright in the zone are limited to uses of existing buildings. Construction of new buildings requires Planning Commission conditional use permit approval.

Because of the dilapidated condition of the Series 100 and 200 warehouses, it is now expected that the buildings will need to be demolished. Morrow County recently updated the Port Industrial zone to function as an "industrial sanctuary" zone. The Port Industrial zone provides broader flexibility to accommodate a range of port-related uses outright, without the requirement for conditional use review for new buildings. The Planning Director and Port representative both recommended that the Port Industrial Zone be applied to this exception area. Therefore, as part of the public review and adoption process for the exception to Goals 11 and 14, the Port Industrial Zone will be implemented when this exception area is transferred out of federal jurisdiction. In a related action, the Umatilla Army Depot Transition Zone will be deleted from the Morrow County Zoning Ordinance.

In addition, planning for reuse of the Depot has consistently included notice and opportunities for participation by nearby cities (including Boardman, Irrigon, Hermiston and Umatilla) to assure coordination of plans.

Summary

For all of these reasons, the Port Industrial exception area shown in Figure 8 complies with the relevant exception standards in OAR 660-014-0030 and -0040 and exceptions to Goals 11 and 14 are justified.

Statewide Planning Goal and Comprehensive Plan Findings

A goal exception is a comprehensive plan amendment.¹⁹ 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 that local governments provide citizens with opportunities to participate in several phases of land use planning, ranging from broad scale public involvement in the

¹⁶ Morrow County Comprehensive Plan, page 37.

¹⁷ See Morrow County Zoning Ordinance, Section 3.074.

¹⁸ See Morrow County Zoning Ordinance, Section 3.073.

¹⁹ ORS 197.732(8).

development of comprehensive plans and implementing ordinances to more site-specific review of plan and development proposals. Generally, 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)²⁰; 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.

The County has gone beyond the basic citizen involvement efforts required by Goal 1 before initiating the goal exceptions/plan amendments for the Umatilla Army Depot. Morrow County and Umatilla County coordinated to hold a joint public meeting of their respective Planning Commissions on August 12, 2013 to provide an overview of the goal exceptions and recommended land use actions for the Depot. Public notice of this meeting was provided to surrounding property owners, agencies and local jurisdictions in proximity to the Depot.

In addition, an Industrial Lands Forum held on June 22, 2013 and meetings with the Umatilla Army Depot Local Reuse Authority (LRA) on May 14, 2013 and July 11, 2013 provided other opportunities for public input to shape the land use strategies for the Depot. For all of these reasons, Goal 1 is met.

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

Goal 2, Part I requires coordination with affected governments and agencies, evaluation of alternatives, and an adequate factual base to support plan amendments. Morrow County representatives have been active participants in planning for redevelopment of the Depot for more than 20 years. Extensive and detailed technical studies and reports have been prepared to support the redevelopment plan for the Depot, including but not limited to market studies, environmental studies, land use studies and infrastructure studies. Numerous agencies have been actively involved in the planning process over a 10-20 year period, including but not limited to DLCD, the Governor's Office, DEQ, ODOT and Business Oregon. Copies of the draft goal exceptions included in this report were provided to DLCD staff and other state agencies for an early review in advance of the 35-day notice for a post-acknowledgement plan amendment.

A regional economic opportunities analysis was prepared to provide context for the unique economic opportunities and constraints available at the Depot. A variety of technical reports were also available from the Redevelopment Plan completed by the Dana Mission Support Team and provided additional information and evidence in support of the goal exceptions and proposed comprehensive plan and zoning recommendations.²¹

The goal exceptions, together with the supporting documents and evidence submitted in support of the exceptions, provide an adequate factual base to support the proposal to apply the Industrial comprehensive plan designation and Port Industrial zoning to the southwest portion of the Depot when lands are transferred out of federal jurisdiction. For these reasons, Goal 2, Part I is met.

²⁰ 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.

²¹ See Final Redevelopment Plan documents at http://umadra.com/f_redevelopment1.html

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 Section VI of 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.

Existing development in the southwest portion of the Depot proposed for the Industrial comprehensive plan designation and Port Industrial zoning includes the following Army structures and supporting infrastructure:

- Series 100 Warehouses – there are thirty buildings located in this area, with an aggregate building area of 455,210 square feet.
- Series 200 Warehouses – there are six buildings on the west side of the complex with an aggregate building area of 518,440 square feet.
- Igloos/Bunkers – there are ninety concrete igloos/bunkers located in the easterly portion of the proposed Port Industrial Zone. The igloos are distributed evenly over a land area of approximately 430 acres.
- A spur line from the Union Pacific Railway parallels the entire south boundary of the Depot; a rail car classification and storage yard is located in the easterly portion of the proposed Port Industrial zone area.

In addition to the historical commitment to warehouse buildings and igloos/bunkers in the area proposed for Port Industrial zoning, underlying soils are almost exclusively Class VII Quincy soils and the area does not have access to water for irrigation.

Soil Name, Unit Number, Description	Land Capability Class	
	Dry	Irrigated
39 C: Quincy fine sand	7e	Not irrigated
40 C: Quincy loamy fine sand	7e	Not irrigated

Soil Survey of Morrow County Area, Morrow County Planning Department, July 2013

Therefore, the exception area is not categorized as agricultural land under the Statewide Planning Goals and an exception to Goal 3 is not required to apply the Industrial comprehensive plan designation and Port Industrial zoning. Army warehouse uses have operated compatibly with agricultural uses to the west and south of the proposed Port Industrial zoning for decades.

E. Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources).

Goal 5 requires that local governments adopt programs to protect significant natural resources and conserve significant scenic, historic, and open space resources for present and future generations. The procedures and requirements for complying with Goal 5 are outlined in OAR 660, Division 23.

The following resources are addressed under Goal 5:

• Riparian Corridors	• Wetlands
• Wildlife Habitat	• Federal Wild & Scenic Rivers
• Oregon Scenic Waterways	• Groundwater Resources
• Approved Oregon Recreation Trails	• Natural Areas
• Wilderness Areas	• Mineral & Aggregate Resources
• Energy Sources	• Historic Resources
• Open Space	• Scenic Views & Sites

Morrow County has an acknowledged comprehensive plan and land use regulations. The proposal to apply the Industrial plan designation and Port Industrial zoning is defined as a "post-acknowledgement plan amendment" (PAPA) under the Goal 5 rule. OAR 660-023-0250 outlines the applicability of Goal 5 to PAPAs as follows:

- (1) *The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.*
- (2) *The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996.*
- (3) *Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*
 - (a) *The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource to address specific requirements of Goal 5;*
 - (b) *The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
 - (c) *The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*
- (4) *Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, Division 16.*

The proposal to apply an Industrial plan designation and Port Industrial zoning to the southwesterly portion of the Depot shown in Figure 1 does not create or amend the County's Goal 5 resource list, create or amend a land use regulation adopted to protect a significant Goal 5 resource, or amend an acknowledged urban growth boundary. Therefore, the only portion of the Goal 5 rule potentially applicable to this PA/ZC application is OAR 660-023-0250(3)(b), which requires the County to determine whether the PAPA will allow a new use that could be a conflicting use with a particular significant Goal 5 resource on the County's acknowledged resource list. The uses that will be allowed under the Port Industrial zoning (warehouses, rail

related uses, distribution, etc.) are very similar to the historical types of uses that occurred in the Series 100 & 200 warehouses located in the southwesterly portion of the Depot.

As described in Section III of this goal exception report, portions of the Umatilla Army Depot and Boeing Lease Lands in Morrow County contain the largest remaining bitterbrush shrub-steppe habitats in the Columbia Basin. As such, the Depot provides valuable habitat for native plant and animal species.

Planning for the Depot has consistently emphasized three overarching goals for future use of the site:

- Military Reuse (accommodating the needs and plans of the Oregon National Guard)
- Environmental Preservation (with a special emphasis on the shrub-steppe habitat)
- Economic Development (job creation)

Figure 1 illustrates how these goals will be achieved with adoption of a Depot Plan District and zoning as part of the Morrow and Umatilla County Comprehensive Plans.

As shown in Figure 1, a total of 5,678 acres are set aside for wildlife habitat. While ownership and management of the Habitat area is not yet confirmed, zoning is being applied and a significant area of shrub-steppe habitat will be protected, consistent with the objectives of Goal 5.

Additionally, Morrow County will apply a "Limited Use Overlay" to the easterly 959 acres of the Port Industrial Area shown with cross-hatch in Figure 1. Land disturbance activities will be limited to provide additional protection of shrub-steppe habitat. Use and maintenance of the existing bunkers and roadways in this area will be allowed for uses permitted in the Port Industrial Zone under the Limited Use Overlay, but ground disturbance activities will be limited or in some cases not permitted.

The Depot site is within two critical groundwater areas (Ordnance Basalt and Gravel) designated by the Oregon Water Resource Department (OWRD) in 1976. The critical groundwater areas have been closed to further groundwater appropriation and, in some subareas, existing water uses have been curtailed. However, the critical groundwater areas are regulated by OWRD and are not regulated under Goal 5. None of the other resources addressed under Goal 5 have been identified in the area proposed for Port Industrial zoning.

Therefore, applying the Industrial plan designation and Port Industrial zoning to the area shown in Figure 1 is consistent with Goal 5.

F. 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 do not seek approval of a specific development. Rather, applying Morrow County's existing Port Industrial zone to the southwest portion of the Depot will accommodate a broad range of industrial uses, including but not limited to manufacturing, warehousing, processing, packaging, compounding, assembly, storage and distribution of products.

New development will require a Zoning Permit, and conditions on development would include requirements to obtain permits to assure compliance with relevant air and water quality standards. This could include air quality or water discharge permits from DEQ for certain industrial processes. Where new areas are paved, water cannot penetrate the soils. This can

increase erosion, increase the movement of fine sediments, and increase pollutant loads in watercourses. 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.

The uses authorized by the requested plan amendments should not create noise that differs from the types of industrially-related noise associated with the long history of Army activity in the area. The location of these uses in close proximity to the rail corridor and I-84 will reduce overall noise impacts because highway and railroad generated noise muffles and obscures other noises located nearby. The EFU zoning to the west and south of the proposed Port Industrial zoning and very low density of dwellings in the vicinity means any new noise impacts associated with new Port Industrial development would be negligible.

Therefore, it is reasonable to expect that future Port Industrial development at this location could satisfy state and federal environmental standards for maintaining and improving the quality of air, water and land resources as required by Goal 6.

G. 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.

A key objective of the Morrow County Comprehensive Plan is to accommodate industry without encroaching on residential or agricultural development. Additionally, industry is to be protected from encroachment by incompatible uses.

Morrow County has designated land for industrial uses based on the needs of industry for (a) access to highway, rail, and water transportation; (b) access to electric power and natural gas; (c) extensive, level building sites; and (d) room for expansion.²²

Technically, the administrative rule that implements Goal 9 applies only to lands inside UGBs.²³ Planning for industrial and commercial uses outside of UGBs is not required or restricted by LCDC's rule implementing Goal 9. However, Morrow and Umatilla Counties went beyond the requirements of the Goal 9 administrative rule and cooperated to prepare a Regional Economic Opportunities Analysis (Regional EOA) to support the land use planning strategy for the Depot.²⁴

Key economic development assets of the region are highlighted in the Regional EOA and include:

- Transportation linkages
- Substantial inventory of industrial sites to accommodate a range and intensity of uses
- Abundant energy supplies
- Well-organized and supportive economic development climate

This application will supplement the County's inventory of industrial lands in a location that has a long history of "industrial scale" uses. This is consistent with the objective of Goal 9 to "contribute to a stable and healthy economy in all regions of the state."

²² Morrow County Comprehensive Plan, Page 37.

²³ See OAR 660-009-0010(1).

²⁴ Johnson Reid LLC, Regional Economic Opportunities Analysis for Morrow and Umatilla Counties (July 2013)

H. 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."

Counties are not required to prepare Public Facilities Plans under Goal 11. Outside of the UGB's, the level of service provided to the proposed Port Industrial area 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.

I. 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 permitting and facilitating rail related uses on the spur lines that extend into the Port Industrial area.

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 historical levels of activity at the 17,000-acre Umatilla Army Depot have ceased and because the existing I-84 / Army Depot Interchange currently experiences very light traffic, operates well below its capacity and performance standards, no significant effect is anticipated.

Additionally, the Umatilla Army Depot Reuse Authority is currently developing coordinated interchange area management plans (IAMPs) for the three existing interchanges that will influence future development on the Depot site (Patterson Ferry / I-84, Army Depot / I-84 and Westland / I-82). This transportation planning work is being done within the context of a broader Subarea Transportation Plan. The Subarea Transportation Plan will identify connections between the interchanges, lay out the local circulation system that will support future activity on the Depot site, and identify phased implementation steps to achieve the overall transportation system and mitigate any potential transportation impacts from future development.

Developing the three IAMPs in a comprehensive manner will give Morrow and Umatilla counties the ability to coordinate the adoption of the IAMPs into their respective Transportation System Plans (TSPs). The IAMP process is expected to be completed in 2014 and applying the Industrial plan designation and Port Industrial zoning is consistent with Goal 12 and the TPR.

J. Goal 13 (Energy Conservation).

Goal 13 directs cities and counties to manage and control land uses 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 proximity to existing railroad and interstate highway facilities and providing opportunities for jobs in proximity to housing located in nearby UGBs.

K. 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 VI of this application.

Transportation Strategy

To accommodate the requirements of Goal 12, the Transportation Planning Rule (TPR) and to address the unique circumstances associated with future use of the Umatilla Army Depot, a specialized joint transportation planning effort between UMADRA, Morrow County, Umatilla County, and ODOT is now underway for the site. The Umatilla Transportation System Subarea Plan / Combined Interchange Area Management Plan will focus on the following key elements:

- Quantifying the transportation impacts associated with potential future reuse and redevelopment activities. This planning effort will acknowledge that there has historically been an employment presence on the site – whether related to military operations or to the more than 1,000 employees who worked at the Umatilla Chemical Disposal Facility (UMCDF) as the stockpiled chemical weapons were incinerated. This level of employment at a single industrial site is of a scale that would be considered “urban” in terms of employment densities and existing traffic generation (primarily accessing via the 1-82 / Westland interchange).
- Creating a local circulation plan - Currently lacking a transportation infrastructure capable of supporting future reuse and redevelopment activities, the planning effort would identify the outline of a local circulation network within both Morrow and Umatilla Counties.
- Identifying regional access impacts at existing freeway interchanges - The Oregon Highway Plan (OHP) policies direct the Oregon Department of Transportation (ODOT) to actively plan for and manage freeway interchange areas to ensure they function safely and efficiently. The Umatilla Army Depot site is situated near the confluence of I-84 and I-82 and has varying degrees of access to both freeways. As such, the transportation planning effort will need to address the special interchange area planning requirements (typically referred to as Interchange Area Management Plan or IAMPs) in accordance with the provisions of OAR 734-051-7010. Based on initial discussions with ODOT, the following three interchanges would be influenced by future development of the Umatilla Army Depot site and would need to be included in the planning process:
 1. I-82/Westland Road Interchange
 2. I-84/Army Depot Interchange
 3. I-84/Patterson Ferry Road Interchange

The Umatilla Army Depot Transportation Subarea Plan will address safety, existing and planned land use, local circulation, and operations/access management elements associated with the three interchanges. The plan will identify any needed transportation improvements and access management needs at the study interchanges and identify phasing, if appropriate, for identified improvements, and state and local policy changes that will be needed to implement the plan. Policies to guide subsequent decision-making by local government agencies to take actions that are consistent with and implement the overall transportation plan will be developed.

The overall transportation plan will include the following outcomes:

- **Identify and prioritize a local circulation network to accommodate potential land use modifications and subsequent future development;**

- Identify and prioritize interchange improvements to the three study area interchanges. This would include access management techniques along the crossroads such as driveway consolidation, parallel road improvements, median control, and acquisition of access to properties;
- Identify land use strategies and ordinances that may be used to preserve highway capacity, safety, and performance standards of the three interchanges;
- Identify improvements for all transportation modes, including multi-modal facilities and pedestrian and bicycle needs;
- Include street cross-section standards and streetscape designs;
- Include likely funding sources and clear requirements for the construction of the infrastructure and facility improvements as new development is approved. The plan must identify partnerships where cooperative management responsibility for projects will be necessary in the future. The plan will include language requiring coordinated review of land use decisions affecting transportation facilities.

Preparation of the Umatilla Transportation System Subarea Plan is expected to be complete by September 2014. Following completion, the transportation planning recommendations will be used to:

- Address the requirements of Statewide Planning Goal 12 – Transportation and the Transportation Planning Rule (TPR);
- Coordinate with the Oregon Department of Transportation on management plans for the three interstate interchanges that could potentially be affected by the land use recommendations; and
- Identify implementation actions and amendments to the Morrow and Umatilla Counties Transportation System Plans.

Comprehensive Plan Findings and Policies

Findings

1. The Umatilla Army Depot (Depot) is a unique facility and land use in the State of Oregon. Established more than seventy years ago by the U.S. Army, the Depot site encompasses approximately 17,000 acres spanning Morrow and Umatilla Counties. Due to its federal ownership, the Depot in its entirety has never been zoned by Morrow and Umatilla Counties. Early in the Reuse process in the early 1990s Morrow County did identify a portion of the southwest corner for potential development and took a Goal 3 exception, and created and applied the Umatilla Army Depot Transition Zone.
2. Morrow County has been an active partner in the years of planning to transition the Depot away from military operations toward a more comprehensive use of the property. Planning for the Depot has consistently emphasized three overarching goals for future use of the site:

- Military Reuse (accommodating the needs and plans of the Oregon National Guard)
 - Environmental Preservation (with a special emphasis on the shrub-steppe habitat)
 - Economic Development (job creation)
3. In 2013, the Umatilla Army Depot Local Reuse Authority (LRA) endorsed an economic development and land use strategy for the Depot.
 4. To implement the economic development goals for the Depot, Morrow County is proceeding with Statewide Planning Goal Exceptions to Goals 11 (Public Facilities & Services) and 14 (Urbanization) to apply Port Industrial zoning to approximately 1,872 acres within Morrow County in the southwest corner of the Depot as land is transferred out of federal jurisdiction.
 5. About 959 acres of the designated Port Industrial lands will be subject to a Limited Use Overlay Zone and land disturbance activities will be limited or in some cases prohibited. The existing concrete igloos/bunkers located in the Limited Use Overlay Zone will be available for storage or other uses (including but not limited to solar panels, communications facilities, etc.).

Policies

1. As land within the Depot is transferred out of federal ownership, Morrow County will apply an Industrial comprehensive plan designation and Port Industrial zoning to the southwestern corner of the Army Depot.
2. By taking Goal 11 and 14 exceptions, urban-scale industrial uses and public facilities and services will be allowed in the area zoned Port Industrial and building size will not be restricted.
3. Morrow County will apply EFU zoning to the approximately 634 acres north of the military area when that area is transferred out of federal ownership.
4. Morrow County is applying the Umatilla Army Depot Transition Zone to the area designated for Military use to be available when that property would become available for reuse. The County expects the Oregon National Guard and the Oregon Military Department to coordinate with the County as they develop a facility plan for the site, consistent with state agency coordination requirements in ORS 197.180.
5. Morrow County is applying the Umatilla Depot Wildlife Habitat Zone to the area designated for Wildlife Habitat if and when that land is transferred out of federal ownership.
6. Morrow County is participating in the Transportation System Subarea Plan/Combined Interchange Area Management Plan (IAMP) for the three existing interchanges that have the potential to be influenced by the redevelopment plan and land use changes proposed. This will assure a coordinated and comprehensive approach to identifying the

timing/phasing of land development and associated transportation improvements (including local circulation and interchange improvements). Transportation system recommendations from this planning effort will be incorporated into Morrow County's Transportation System Plan.

Filed 10-20-03
Barbara Bloodworth
Morrow County Clerk

BEFORE THE MORROW COUNTY COURT
OF MORROW COUNTY

AN ORDINANCE AMENDING THE MORROW)
COUNTY COMPREHENSIVE PLAN ON)
REMAND FROM THE LAND USE BOARD)
OF APPEALS ACKNOWLEDGING AN)
EXCEPTION TO GOAL 3 TO ALLOW FOR THE)
SITING OF A SPEEDWAY AND RELATED)
FACILITIES AT THE BOARDMAN AIRPORT)

ORDINANCE NUMBER MC-1-1-03

The County of Morrow does ordain as follows:

WHEREAS, the Port of Morrow applied in 2001 to Morrow County for amendments to the Morrow County Comprehensive Plan, the Morrow County Transportation System Plan, and the official Morrow County Plan/Zoning Map to authorize a speedway and related uses on approximately 1400 acres of land located at the Boardman airport and to authorize associated roadway improvements; and

WHEREAS, following public notice and hearings before the Morrow County Planning Commission and the Morrow County Court, the Morrow County Court on July 10, 2002, adopted Ordinance No. MC-C-2-02, approving the requested amendments with modifications and conditions; and

WHEREAS, Ordinance No. MC-C-2-02 was appealed to the Land Use Board of Appeals (LUBA), which remanded the decision to Morrow County to take a Goal 3 exception and to justify speedway lodging; and

WHEREAS, following LUBA's remand, the Port of Morrow submitted a revised goal exception application that included a Goal 3 exception in addition to the original Goal 11 and 14 exceptions and deleted the request for speedway lodging; and

WHEREAS, following public notice, the Morrow County Court held public hearings on the remanded application on September 24, 2003 and October 15, 2003; and

WHEREAS, the Morrow County Court has considered the evidence and testimony in the record and the recommendations of its staff; and

WHEREAS, the Morrow County Court, on October 15, 2003, voted to accept and approve the application with conditions of approval;

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

SECTION 1. MORROW COUNTY COMPREHENSIVE PLAN AMENDMENTS.

The exceptions to Goals 3, 11 and 14 authorizing a speedway and speedway related uses, as set out in Section VII of the Port's application and as modified to include the changes required by LUBA's remand, are hereby incorporated within and made a part of the Morrow County Comprehensive Plan. Section VII of the application is attached.

SECTION 2. MORROW COUNTY TRANSPORTATION SYSTEM PLAN AND OFFICIAL PLAN/ZONING MAP AMENDMENTS.

The Morrow County Transportation System Plan and the Official Plan/Zoning Map, which were amended by Ordinance MC-C-2-02, are not further amended by this decision. The amendments identified in Sections 2 and 3 of Ordinance MC-C-2-02 are reaffirmed and readopted herein and remain in full force and effect.

SECTION 3: FINDINGS OF FACT AND CONCLUSIONS OF LAW; SUBJECT CONDITIONS OF APPROVAL

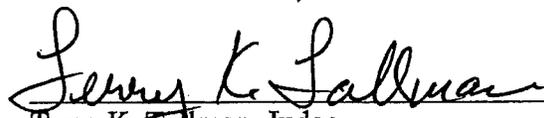
The Findings of Fact and Conclusions of Law of the Morrow County Court dated October 15, 2003, are hereby incorporated into this Ordinance. Amendments contained in this Ordinance are subject to the conditions contained in the Findings of Fact and Conclusions of Law dated June 21, 2002, as amended by the October 15, 2003 findings and decision.

SECTION 4: EFFECTIVE DATE

Given that it is the policy of the State of Oregon that time is of the essence in deciding Land Use matters, and that this application has been before Morrow County for nearly two years, and based on findings made by the Court, an emergency is declared to exist, and this ordinance shall be effective immediately upon execution.

First Reading: October 15, 2003
Second Reading: October 15, 2003

DONE AND ADOPTED BY THE MORROW COUNTY COURT THIS 15th DAY OF OCTOBER, 2003.


Terry K. Tallman, Judge


John E. Wenholz, Commissioner



Ray Grace, Commissioner

ATTEST:



County Clerk



APPROVED AS TO FORM



County Counsel

filed 10-20-03
Barbara Bloodworth
Morrow County Clerk

BEFORE THE COUNTY COURT
OF THE COUNTY OF MORROW

October 15, 2003

IN THE MATTER OF an Application by the Port)	FINDINGS OF FACT AND
of Morrow for Comprehensive Plan and Zoning)	CONCLUSIONS OF LAW
Amendments to Allow the Siting of a Speedway)	(On Remand from Land Use
and Related Facilities at the Port of Morrow's)	Board of Appeals)
Boardman Airport Property)	

Following public notice, this matter came before the Morrow County Court on September 24, 2003 for a public hearing on remand from the Land Use Board of Appeals (LUBA) in *Doherty v. Morrow County*, 44 Or LUBA 141 (2003) ("*Doherty*"). Having carefully considered LUBA's decision, the revised exception document, and the testimony and evidence that was offered into the hearing record both at the public hearing and during the seven day period that the record remained open following the September 24, 2003 public hearing, the County Court makes and adopts the following findings of fact and conclusions of law in support of its decision on the application.

1. This matter is before the County Court on remand from LUBA in *Doherty v. Morrow County*. On remand, the only issues before the County Court are those that were expressly remanded by LUBA.. With regard to all other issues, including issues that LUBA considered and affirmed in *Doherty* and issues that the County Court addressed in its previous decision but which were not appealed to LUBA, the earlier decision remains in full force and effect as set out in Ordinance MC-C-2-02 (adopted July 10, 2002) and the supporting findings of fact and conclusions of law dated June 21, 2002, incorporated herein by this reference. To the extent that those June 21, 2002 findings are inconsistent with the findings set forth below, *i.e.* with respect to the matters remanded, these new findings will control.

2. In *Doherty*, petitioner Doherty challenged the County Court's decision adopting exceptions to Statewide Planning Goals 11 and 14 and amending the County's Comprehensive Plan and Zoning Ordinance to authorize a major motorsport speedway and a mix of speedway associated uses at the Boardman airport. The petitioner challenged virtually all of the uses approved by the County Court, claiming that the County improperly approved the reason exceptions to Goals 11 and 14 to allow these urban uses on rural lands. More particularly, petitioner Doherty challenged the justifications for the various uses, claiming that the County failed to demonstrate that areas that do not require new goal exceptions could not reasonably accommodate these uses, and she attacked the adequacy of the analysis of economic, social, environmental and energy (ESEE) consequences in the exceptions.

Also in her appeal, petitioner Doherty alleged that the County erred by failing to adopt a new or modified exception to Goal 3 to allow "the new mix of uses" associated with the speedway. More specifically, she claimed that "the new and expanded range of urban uses, different from those analyzed in the 1985 Goal 3 exception, require a new or modified reasons exception to

Goal 3." Further, she alleged that the County's decision violated provisions in the Morrow County Zoning Ordinance.

In its decision issued on March 11, 2003, LUBA rejected all but two of petitioner Doherty's assignments and subassignments of error. In all regards, LUBA upheld the Goal 11 and Goal 14 reasons exceptions for the speedway and for all the associated speedway uses identified in the application, with the sole exception of speedway lodging. Also, LUBA agreed with petitioner Doherty that a new or modified exception to Goal 3 was required to justify the speedway and the speedway associated uses.

3. Following LUBA's remand to Morrow County, applicant Port of Morrow submitted a revised reasons exception statement for the speedway and speedway associated uses. The revised exception supplements the earlier Goal 11 and 14 exceptions with an exception to Goal 3. Also at that time, the applicant withdrew its requested exceptions to Goals 11 and 14 to allow speedway lodging at the Boardman airport property. With regard to speedway lodging, the applicant believes that Goal 3, 11 and 14 exceptions can be justified for marketing and operational reasons. However, the applicant has chosen not to pursue those exceptions at this time.

4. Based on the applicant's decision to no longer pursue goal exceptions to justify speedway lodging at the airport, the County Court finds that speedway lodging has not been justified at that location, and it amends its earlier decision to no longer allow speedway lodging at the Boardman airport. To the extent that the earlier decision authorized and imposed conditions on speedway lodging, it is superseded by this decision.

5. Regarding the Goal 3 exception for the speedway and for all of the identified racing-associated and accessory speedway related uses other than speedway lodging, the County Court first finds that because this application would allow new uses that were not authorized by the County's 1985 Goal 3 exception, a new Goal 3 exception is required. To the extent that the earlier decision found that a new Goal 3 exception was not required to justify these uses, it is superseded.

6. In *Flying J. Inc. v. Marion County*, 38 Or LUBA 149 (2000), LUBA determined that when an application would expand or change the uses that were justified under a previously approved Goal 3 exception, a new Goal 3 exception is required to justify the new or expanded uses. This new exception is required to ensure that, like the uses approved in the previous Goal 3 exception, the new uses warrant and justify not applying the policy in Goal 3 on their own merits. For the reasons stated below, the County Court finds that exceptions to Goal 3 are justified to allow future development of a speedway and the identified speedway associated and accessory uses at the Boardman airport. More specifically, the County finds that these reasons justify why state policy to preserve and maintain agricultural land for farm use should not apply in this circumstance.

7. The 1985 Goal 3 exception that LCDC acknowledged for the Boardman airport was taken primarily to provide for the aviation and economic development needs of Morrow County. It was taken in an effort to provide needed diversity to local businesses, industries and

commercial activities and to promote the economic growth and stability of the County. It was taken because the airport includes special features and qualities that can be used to promote and facilitate a more diversified and healthy economy in the County. It also was taken in recognition of Morrow County Comprehensive Plan policies recognizing the importance of the airport for economic growth and stability in the County and to strengthen the regional transportation network.

As noted in Findings B.3 and B.4 of the June 21, 2002 findings, Morrow County has been identified as economically distressed for many years. Despite the 1985 exception aimed at utilizing the airport to attract new industry that would facilitate economic growth and stability, there has been virtually no industrial or commercial growth at that location.

As explained in the original Goal 11/14 reasons exceptions statement, a major speedway would change that. A major speedway near the airport will generate a significant amount of new air travel to and from the Boardman airport. On average, 35 drivers out of the 60 or 70 who attempt to qualify for events fly to the major speedways, either on private or chartered planes. Each racing league also brings 50 to 70 event coordinators to their events, who are always flown to the nearest airport. Also, team sponsors (on average, 15 to 20 per team) send corporate representatives to events, and major advertisers fly their representatives to these events. Accordingly, a major speedway located near the airport would significantly expand the volume of air traffic at the Boardman airport. This substantial increase in flight activity justifies expenditures for airport improvements, including a planned runway expansion and improvements to the taxiways and hangar/tie down areas. These improvements will allow the airport to accept the types of jets typically associated with racing events. They also, in turn, will make the airport much more attractive to the types of industrial and commercial uses authorized by the 1985 exception and go a long way to help the County achieve the goals identified in its 1985 exception. Those goals continue to apply to the approximately 1300 acres at the Boardman airport that are not affected by this application. The County Court expressly finds that these 1300 acres that remain subject to the original exception will remain available for airport related and dependent uses and can meet the region's needs for those uses for the next 50 years.

Also as explained in the original Goal 11/14 exceptions document and in findings B.3, B.5 and F.49, the speedway, including its accessory uses, will have significant positive economic effects on the region because it will attract many people to the facility who will spend money in the Boardman area and elsewhere in the region. The original Goal 11/14 exceptions and findings explain this in detail. They are incorporated herein by this reference.

Indeed, the County incorporates all of the reasons used to justify the exceptions to Goals 11 and 14, as stated in that exception statement and in the adopted June 21, 2002 findings, as additional support to justify a modified Goal 3 exception.

8. The County Court further finds that a Goal 3 exception is justified at the Boardman airport location because it believes this state should support the siting of a recreational facility like a major speedway in Oregon; because such a use, due to its potential significant adverse impacts associated with noise and traffic, cannot reasonably locate inside an urban growth boundary or in rural nonresource areas occupied by noise sensitive uses like residences; and

because this specific site can provide for the use with only minimal impacts to agricultural use and productivity and minimal interference to noise-sensitive uses.

As the original Goals 11/14 exceptions and their supporting findings explained, the proposed speedway would serve the recreational and sporting needs of a large percentage of Oregonians who enjoy and follow professional motorsports racing. It would be a major facility, on a par with a major league baseball stadium or a football stadium for a National Football League team. It would provide racing fans in Oregon and in neighboring states with an opportunity to see the best motorsports racers in the world compete in various types of automobile racing activities. The County Court believes that opportunity to witness such events should be made available in Oregon. It also believes that DLCD supports this conclusion, as reflected in the testimony of Jon Jinings as summarized in Finding B.6 of the June 21, 2002 findings. As stated in that finding, DLCD found the exception for the speedway to be consistent with the reasons identified in LCDC's 1986 Acknowledgment Order for Morrow County recognizing a demonstrated need for economic development at the Boardman airport. In short, the uses may be changed, but the justification for a Goal 3 exception at the airport remains. The County Court agrees and finds that this adds further support and justification for a modified Goal 3 exception.

Also as explained in the original Goal 11/14 exceptions and their supporting findings, major speedways have significant noise impacts that preclude their locations in urban areas and near noise sensitive uses. The proposed site is 2.4 miles from the nearest residence, allowing a speedway at this location to avoid significant adverse noise impacts. *See, e.g.*, Finding B.12 and the discussion of social consequences in the ESEE analysis in the Goal 11/14 exceptions. At the same time, granting this exception will have practically no adverse impact on agricultural productivity. As LCDC noted when it acknowledged the 1985 Goal 3 exception, the subject property, which consists of non-irrigated Class VI and VII soils, was appraised by the State of Oregon as having only one-quarter the valuation of nearby dry land farms. This indicates that while the site may have enough suitability for grazing to qualify as agricultural land, it still is only marginally productive at best. Consequently, its removal from the inventory of agricultural land will have very little if any adverse impact on the agricultural economy of the area.

Indeed, the County Court finds that this property has been identified for non-farm uses for at least 40 years, dating back well before the adoption of Oregon's land use laws. It finds that while Goal 3 technically applies to this property, in actuality, this property was removed long ago from the agricultural land base and identified instead for non-farm industrial and commercial uses. Moreover, the industrial zoning of surrounding lands on virtually all sides makes this land more appropriate for non-agricultural uses.

This finding regarding marginal Goal 3 productivity has added importance because of the inability to locate a use like the speedway inside an urban growth boundary due to noise conflicts. That inability means that the use needs a rural location. Potential rural locations include resource lands such as farm or forest lands; exception areas identified for rural residential or industrial uses; and nonresource lands. Here, the applicant identified and addressed the potential of other non-resource lands and exception areas to accommodate the identified need and determined that such lands cannot reasonably do so, due to size limitations, conflicting uses in the area or for other reasons. The County Court agrees with the applicant for the reasons set

out in the revised application (Goal 3 exception). It also finds that the new evidence provided by the Port, including testimony submitted by Ron McKinnis of the Port, is believable evidence that supports the conclusions reached in the Goal 3 exception. Finally, it re-emphasizes a point made in its original findings, that the subject property already had been determined by LCDC to be more appropriate for airport related industrial and commercial uses than for agricultural use.

9. The special features of the Boardman airport site that LCDC recognized when it acknowledged the 1985 Goal 3 exception authorizing airport related industrial uses are also important to the success of a speedway and help justify locating a speedway here. These include proximity to Interstate 84; separation from Boardman's urban growth boundary; the availability of a very large tract of land; and the availability of public facilities and services at the site. These features all contribute to the justification for a Goal 3 exception for speedway uses.

Also, as noted in the original Goal 11/14 exceptions and their supporting findings, this site provides a significant comparative advantage in terms of its central location among major metropolitan areas in Oregon, Washington and Idaho, which allows the speedway to serve and benefit all of these areas, and in terms of its dry and mild climate, which allows for an extended racing season. These features make a major speedway economically feasible at this location, again with virtually no adverse impact to the policy of preserving and maintaining agricultural land for farm use. This site simply makes good, common sense for the proposed use, and the proposed use makes a lot of sense for this site, especially given its marginal productivity for agricultural uses and the fact that this site is predominantly surrounded by industrial lands.

10. A Goal 3 exception was not initially taken because, among other things, the Department of Land Conservation and Development erroneously concluded, as did the Port and County, that a new Goal 3 exception was not needed. LUBA Rec. at 1143. But while DLCD felt that a Goal 3 exception was not needed, it also concluded that the reasons provided for the exceptions taken to Goals 11 and 14 justified those exceptions and supported a speedway at this location. Further, as noted above, it found that the application was consistent with the reasons it found justified the 1985 exception to Goal 3. It is important to re-emphasize that those reasons included the lack of any adverse impact to productive agricultural lands.

DLCD did not take issue with that assessment. As noted earlier in these findings, LCDC found in its 1986 exception order that this property has very low value even for dry land farming. Indeed, the acknowledged 1985 Goal 3 exception stated that the airport property has extensive rock outcrops and geologic formations that render it "not economically viable for agricultural use." The fact that DLCD supported the exception for the speedway and continues to support that exception now lends additional support to the County Court's finding that approval of these different uses will have negligible if any adverse impact on achieving Goal 3's policy to preserve and maintain agricultural lands. On the other hand, the speedway could provide a tremendous boost to the County and the region in terms of achieving County objectives related to Goals 8, 9, 12 and 14 (livability), as described in the original and modified exception statements and in the County's June 21, 2002 findings, and also to achieving the economic development objectives in House Bill 2011 (2003 Legislative Assembly), which assigns the highest priority to promoting job development in Oregon. The negligible loss to the farming economy by removal of this land from the agricultural inventory, compared with the potentially very significant economic gains to

the County associated with the speedway and improvement of the airport, justify allowing a speedway to be located on this property contrary to the policy objectives in Goal 3.

11. As part of the initial exceptions to Goals 11 and 14, the applicant considered and addressed the availability of alternative locations to accommodate a speedway and its associated uses. In particular, the applicant considered locations west of the Cascades as well as locations north or east of the Cascades, including Hood River, The Dalles, Pendleton, Prineville, Madras, Bend, Redmond, and along the I-84 corridor. The applicant considered urban growth boundary expansions and locations in rural areas, including intensification at rural centers.

Before the County, petitioner Doherty testified that sites east of the Cascades adequate to accommodate a use the scale and intensity of the speedway simply do not exist, except possibly at Boise or Spokane. On appeal petitioner Doherty argued that the use could be sited near Spokane, Boise or Tri-Cities, but she did not succeed in her argument and this matter is not before the County on remand.

12. In support of its Goal 3 exception, the modified application reexamines whether rural nonresource sites in Hood River, Wasco, Gilliam, Morrow and Umatilla counties might reasonably accommodate the use. It concludes, and the County Court agrees for the reasons stated in the modified application, that rural nonresource sites cannot reasonably accommodate the uses, based mostly on findings that available sites are too small to accommodate the approved speedway and its related uses. The County Court also agrees with the Port that the larger Columbia Industrial site in Gilliam County has uncertain access and topography that would make development of the proposed project difficult. For the reasons set out in the modified application, incorporated herein by this reference, the County Court concludes that the net adverse impacts associated with developing the Boardman property would be less adverse than the net adverse impacts associated with developing this Gilliam County property. In reaching this decision, the County Court takes into consideration both the significantly more adverse traffic costs associated with the Columbia Industrial site, and the absence of significant noise impacts at the Boardman site as demonstrated by the applicant's noise expert, Daly Standlee and Associates.

However, the County Court also finds that analysis of the Columbia Industrial site was likely unnecessary. This is because (1) the legal standard in OAR 660-014-0040(3) is whether the need can be met through expansion of existing urban growth boundaries or intensification of development at existing rural sites, (2) the Port previously engaged in this analysis; and (3) LUBA resolved this issue in favor of the County in *Doherty*. The County Court understands why the Port addressed this matter further, given *dicta* in LUBA's opinion that an analysis of alternative sites for Goal 11 and 14 purposes might not be sufficient for Goal 3 purposes if a suitable rural nonresource site that did not include agricultural lands was available to accommodate that use. However, the County Court finds that the Port's initial analysis was fully responsive to the applicable legal standard, and thus does not see how this *dicta* would apply here. Accordingly, the County Court adopts the finding in the paragraph immediately above only as a safeguard in the event that the applicant was required to address this issue further notwithstanding LUBA's denial of the appeal on this issue in the *Doherty* case.

13. For all of the reasons stated above and in the original Goal 11/14 exceptions and the June 21, 2002 findings, the County Court believes, finds and concludes that the analysis that was done to justify the exceptions to Goals 11 and 14 also justifies an exception to Goal 3. It believes that a major speedway is a use that should be permitted in Oregon under the statewide planning program, and it believes that the nature of a major speedway is such that it requires a rural rather than an urban location due to significant incompatibilities associated with noise. Moreover, the County Court believes that the subject site has very little agricultural value compared to other dry land farms in the area, such that its continued removal from the inventory of agricultural lands through a modified Goal 3 exception will have at best marginal, if any, adverse impact on the agricultural economy of Morrow County. It also finds that this site can accommodate the traffic generated by a premier event at a major speedway. For these reasons, it concludes that a modified Goal 3 exception is justified for the Boardman airport.

14. In *Doherty*, LUBA rejected the Port's argument that the exceptions taken to Goal 11 and 14 obviated the need to take a Goal 3 exception. However, LUBA recognized that the justifications provided for the exceptions taken to Goals 11 and 14 might be adequate as well to justify a Goal 3 exception where one is needed.

As LUBA noted in its opinion, for proposed urban uses on rural lands, the relevant criteria are set out in OAR 660-014-0040(3). Those criteria require an applicant to show that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or intensification of development at rural centers. As noted above in these findings, the County Court finds that the applicant earlier made such a showing and that the petitioner's challenge to LUBA on this issue was rejected. This issue cannot be and is not revisited here. The County Court also finds that the applicant's discussion of ESEE consequences and compatibility contained in the earlier exceptions considers farm impacts and applies with equal force to and justifies the Goal 3 exception as well.

15. In testimony submitted following the September 24 public hearing, Kelly Doherty raises a number of issues and arguments to support her request for denial of the application. The County Court finds that several of these issues are unrelated to the Goal 3 exception and cannot be raised now. Ms. Doherty's argument that the speedway will generate few jobs for the region, and her questioning whether the speedway is good for the community, appear to relate more to the previously approved Goal 14 exception (reasons for allowing the speedway) than to the particular concerns of the Goal 3 exception. The County Court made detailed findings addressing the economic benefits of the speedway in its initial decision in this matter. It believes it is too late to challenge those findings now. Likewise, Ms. Doherty's comment that the application merely assumes, rather than proves, that a rural location is appropriate for the speedway goes to the Goal 14 exception to allow urban uses in rural lands and is untimely. Her statement regarding the amount of land remaining for airport related uses over the next 50 years also concerns a matter that was addressed in the earlier application (see Century West Engineering/Aron Faegre report at page 1069 of the *Doherty* record) and thus could have been challenged in the earlier proceeding. Similarly, her comments regarding weather and impacts on nearby dairies could have been raised in the earlier LUBA appeal, as these issues were addressed and findings about them were made in the initial proceeding. If these arguments are somehow relevant to the Goal 3 exception, then the County Court is not persuaded by them.

16. The County Court also is not persuaded by the arguments offered by Ms. Doherty that are relevant to Goal 3. This is particularly so in light of the facts that the County Court previously approved the Goals 11/14 exceptions as warranted; that those exceptions demonstrated why the proposed uses cannot reasonably be accommodated in urban areas or unincorporated communities; and that LUBA upheld those determinations and denied Ms. Doherty's assignments of error challenging the speedway and the alternatives analysis. Stated another way, LUBA affirmation of the Goals 11 and 14 exceptions and the alternative sites analysis reflects a need to locate the speedway and its associated uses either on agricultural lands or nonresource lands. Yet Ms. Doherty's opposition tends to be primarily philosophically based, i.e. that the Goal 3 exception should be denied by the mere fact that it would impact agricultural land, without serious regard to the quality, productivity or history of the affected land, surrounding land use designations and zoning, and other relevant factors. The County Court does not accept or endorse such an absolutist response to the Goal 3 exception process. Had LCDC or the legislature wanted that result, they would not have provided for such opportunities. Instead, they created the exceptions process to allow uses on agricultural lands when justified.

Ms. Doherty's comments regarding the class VI and VII soils on the subject property and the low valuation for agriculture on the airport site relate to evidence that was provided in the initial proceeding. That evidence was relevant to the Goal 11 and 14 exceptions as well as this Goal 3 exception. Ms. Doherty did not challenge that evidence in the previous appeal, and she has not now provided argument or evidence so undermining the credibility of that evidence such that the County Court should no longer continue to rely on it. The County Court finds that the mere fact the subject soils may be farmable does not compel it to conclude that this property necessarily would contribute to the County's agricultural enterprise in a substantial way. The County Court continues to believe and find credible the information regarding the nature and productivity of these soils contained in the Soil Survey for Morrow County and in the original, acknowledged Goal 3 exception for the County.

Regarding alternative sites, Ms. Doherty again argues, as she did previously to both the County Court and LUBA, that the speedway should locate elsewhere. However, she does not identify other rural, nonresource sites that could reasonably accommodate the speedway and its associated uses. She also does not identify other agricultural lands that could reasonably accommodate the speedway with less impact to the area's agricultural enterprise.

In summary, the County Court previously determined that a speedway and related uses are justified on rural lands. Those findings include a finding that the use cannot reasonably be accommodated in or near urban areas, due particularly to noise impacts associated with speedways. These Goal 11/14 exceptions were upheld on appeal by LUBA. That leaves a choice of locating the use on agricultural lands, on rural nonresource lands, or not at all based on consideration of Goal 3 policy objectives. The applicant has demonstrated that other lands are not practically available. It also has shown, and the County Court agrees and finds, that the subject property does not contribute substantially to the agricultural enterprise of the area, thus rendering the subject site more appropriate than other sites in terms of overall impact to agriculture. And, too, it has stated reasons why the reasons for the Goal 11/14 exception (which included Goal 3 related concerns) should extend to an exception to Goal 3. While the County

Court cares about the agricultural resources in Morrow County, it does not believe that the policy objectives of Goal 3 warrant denial of a Goal 3 exception in this instance. Indeed, it believes that the agricultural land in question would likely compare poorly, in terms of agricultural quality and productivity, to other lands in the County zoned for agricultural use. It again finds that the subject property is only marginally productive. Its conversion to a different kind of nonfarm use (speedway instead of airport related industrial) will not have any significant impact on the agricultural economy of the area.

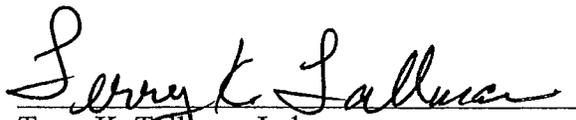
Decision.

Based on the findings, analysis and conclusions provided or incorporated herein and the public record in this matter, the County Court hereby reaffirms its earlier decision approving the Port's application, provided however that the County Court does not approve speedway lodging at the speedway site.

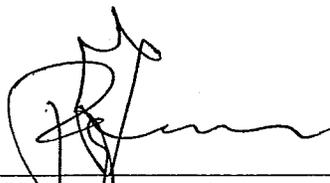
The conditions attached to the Board's Findings of Fact and Conclusions of Law dated June 21, 2002 shall remain in effect, except as follows:

1. The first sentence of Condition 1 is amended to begin with the words "Except for speedway lodging, ". With this decision on remand, speedway lodging is no longer a permitted use at the Boardman airport property.
2. Conditions 3, 23, 24, 26 and 27 all make reference to the associated racing related uses identified in Paragraph A.4 of the original findings. Those uses including speedway lodging. Because this decision does not authorize or approve development of speedway lodging at the airport, all references to Paragraph A.4 in the conditions hereafter shall be deemed to no longer include speedway lodging as a permitted use at the Boardman airport property.
3. Condition 7 is deleted.
4. Condition 25 is amended by striking the words "at the 250 room speedway lodging facility and".

Approved and adopted by the Morrow County Court this 15TH day of OCTOBER, 2003.


Terry K. Tallman, Judge


John E. Wenholz, Commissioner



Ray Grace, Commissioner

ATTEST



County Clerk



APPROVED AS TO FORM:



County Counsel