

AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

Based on the outcome of the Public Hearings held on December 11, 2019, January 2, 2020, and January 15, 2020, the item before you is the 2nd Reading of the Adopting Ordinance.

2. FISCAL IMPACT:

There is no direct fiscal impact to the County.

3. SUGGESTED ACTION(S)/MOTION(S):

After the 2nd Reading the motion would be,
"I move approval of Ordinance Number ORD-2020-1 amending the Morrow County Comprehensive Plan to change the designation of approximately 89.6 acres of real property on Bombing Range Road from Industrial to Agricultural, and changing the Zoning Map from General Industrial to Exclusive Farm Use, and amending the Morrow County Comprehensive Plan taking an Exception to Goals 3, 11 and 14, changing the Comprehensive Plan designation of approximately 89.6 acres of real property on Paterson Ferry Road from Agricultural to Industrial, changing the Zoning Map from Exclusive Farm Use to Port Industrial and applying the Limited Use Overlay, and authorizing this to be effective on May 5, 2020."

Attach additional background documentation as needed.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MORROW COUNTY, OREGON**

| | | |
|--|---|------------------|
| AN ORDINANCE AMENDING THE MORROW |) | Ordinance Number |
| COUNTY COMPREHENSIVE PLAN TO CHANGE THE |) | ORD-2020-1 |
| DESIGNATION OF APPROXIMATELY 89.6 ACRES OF |) | |
| REAL PROPERTY ON BOMBING RANGE ROAD FROM |) | |
| INDUSTRIAL TO AGRICULTURAL, AND CHANGING |) | |
| THE ZONING MAP FROM GENERAL INDUSTRIAL TO |) | |
| EXCLUSIVE FARM USE, AND AMENDING THE |) | |
| MORROW COUNTY COMPREHENSIVE PLAN TAKING |) | |
| AN EXCEPTION TO GOALS 3, 11 AND 14, CHANGING |) | |
| THE COMPREHENSIVE PLAN DESIGNATION OF |) | |
| APPROXIMATELY 89.6 ACRES OF REAL PROPERTY ON |) | |
| PATERSON FERRY ROAD FROM AGRICULTURAL TO |) | |
| INDUSTRIAL, AND CHANGING THE ZONING MAP |) | |
| FROM EXCLUSIVE FARM USE TO PORT INDUSTRIAL |) | |
| AND APPLYING THE LIMITED USE OVERLAY TO THE |) | |
| SUBJECT PROPERTY |) | |

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 first acknowledged by the Land Conservation and Development Commission on January 15, 1986, with the Economic Element update acknowledged in May 2016; and

WHEREAS, the Morrow County Planning Department received an application to change the Comprehensive Plan designation from Industrial to Agricultural on 89.6 acres on Bombing Range Road, and to change the zoning map from General Industrial to Exclusive Farm Use, and for exceptions to Goals 3, 11 and 14, to change the Comprehensive Plan designation from Agricultural to Industrial on 89.6 acres on Paterson Ferry Road, and to change the zoning map from Exclusive Farm Use to Port Industrial; and

WHEREAS, the Morrow County Planning Commission held a public hearing on Tuesday, October 29, 2019, at the Port of Morrow Riverfront Center in Boardman, Oregon, to consider the request; and

WHEREAS, the Morrow County Planning Commission received testimony in favor of the application, and after discussion, recommended approval of the request to the Morrow County Board of Commissioners. In doing so, the Morrow County Planning Commission adopted the Final Findings of Fact recommending approval of the change in Comprehensive Plan designation from Industrial to Agricultural of 89.6 acres on Bombing Range Road, with the change in zoning from General Industrial to Exclusive Farm Use, and Exceptions to Goals 3, 11 and 14, the change in Comprehensive Plan designation from Agricultural to Industrial, and the change in zoning from Exclusive Farm Use to Port Industrial of 89.6 acres on Paterson Ferry Road; and

WHEREAS, the Morrow County Board of Commissioners held a public hearing to consider the change in Comprehensive Plan designation from Industrial to Agricultural of property on Bombing Range Road, and the request to rezone the subject property from General Industrial to Exclusive Farm Use, and to consider Exceptions to Goals 3, 11 and 14, the change in Comprehensive Plan designation from

Agricultural to Industrial of property on Paterson Ferry Road, and the request to rezone the subject property from Exclusive Farm Use to Port Industrial that came to the Board of Commissioners with a 'do adopt' recommendation from the Morrow County Planning Commission on December 11, 2019, at the Oregon Trail Library District Community Room in Irrigon, Oregon; and

WHEREAS, the Morrow County Board of Commissioners received testimony in favor and in opposition of the request; and

WHEREAS, the Morrow County Board of Commissioners closed the hearing, and held the record open for evidence to be submitted until December 20, 2019 and allowed for rebuttal testimony from the applicant until December 27, 2019; and

WHEREAS, the Morrow County Board of Commissioners continued the public hearing to Thursday, January 2, 2020, to further consider the request; and

WHEREAS, the Morrow County Board of Commissioners moved to tentatively approve the applications and directed staff to prepare Final Findings of Fact and Conclusions of Law; and

WHEREAS, the Morrow County Board of Commissioners continued the hearing to Wednesday, January 15, 2020 to review and approve the Final Findings of Fact and Conclusions of Law, determined the effective date to be May 5, 2020, and approved the request in a 3-0 vote.

NOW THEREFORE THE MORROW COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS THAT THE MORROW COUNTY BOARD OF COMMISSIONERS AMENDS THE MORROW COUNTY COMPREHENSIVE PLAN URBANIZATION ELEMENT TO REFLECT APPROVAL OF EXCEPTIONS TO GOALS 3, 11 AND 14, A CHANGE IN COMPREHENSIVE PLAN DESIGNATION FROM AGRICULTURAL TO INDUSTRIAL, AND A CHANGE IN ZONING FROM EXCLUSIVE FARM USE TO PORT INDUSTRIAL ON AN APPROXIMATELY 89.6 ACRE PARCEL ON PATERSON FERRY ROAD, APPLYING THE LIMITED USE OVERLAY ZONE TO THE SUBJECT PROPERTY. THE MORROW COUNTY BOARD OF COMMISSIONERS ALSO AMENDS THE MORROW COUNTY COMPREHENSIVE PLAN DESIGNATION FROM INDUSTRIAL TO AGRICULTURAL, AND A CHANGE IN ZONING FROM GENERAL INDUSTRIAL TO EXCLUSIVE FARM USE ON AN APPROXIMATELY 89.6 ACRE PARCEL ON BOMBING RANGE ROAD.

Section 1 Title of Ordinance:

This Ordinance shall be known, and may be cited, as the "2020 Paterson Ferry Zone Change and Swap."

Section 2 Affected and Attached Documents:

The Morrow County Comprehensive Plan Urbanization Element is amended to include information about this Exception to Goals 3, 11 and 14 and reflect the change in Comprehensive Plan designation from Agricultural to Industrial (Exhibit A). The Morrow County Zoning Map is changed from General Industrial to Exclusive Farm Use at the Bombing Range Road property and changed from Exclusive Farm Use to Port Industrial with the Limited Use Overlay at the Paterson Ferry Road property (Exhibit B). The Board adopts the findings of fact and conclusions of law in Exhibit C in support of this decision.

Section 3 Effective Date:

This ordinance shall be effective 90 days from February 5, 2020, on May 5, 2020.

Date of First Reading: January 15, 2020
Date of Second Reading: February 5, 2020

ADOPTED BY THE MORROW COUNTY BOARD OF COMMISSIONERS THIS 5TH DAY OF FEBRUARY 2020.

**BOARD OF COMMISSIONERS OF
MORROW COUNTY, OREGON**

Melissa Lindsay, Chair

Don Russell, Commissioner

Jim Doherty, Commissioner

Approve as to Form:

Morrow County Counsel

**BEFORE THE BOARD OF COMMISSIONERS
OF MORROW COUNTY, OREGON**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT
OF APPROVAL OF THE APPLICATIONS**

In the Matter of Applications for: (1) Comprehensive Plan and Zoning Map Amendments to Change the Designations of Approximately 89.6 Acres of Real Property on Bombing Range Road (Map #4N 25E 24, Tax Lot 1700) from Industrial to Agriculture and from MG to EFU; (2) Comprehensive Plan and Zoning Map Amendments to Change the Designations of Approximately 89.6 Acres of Real Property on Paterson Ferry Road (Map #4N 26E 09, Tax Lot 100) from Agriculture to Industrial and from EFU to PI; and (3) Comprehensive Plan Text Amendment to Adopt Reasons Exceptions to Statewide Planning Goals 3, 11, and 14 to Authorize Development of a Data Center Use.

**COUNTY FILE NOS.
AC-130-19, ACM-131-19, AZM-132-19**

I. INTRODUCTION

In this matter, the Morrow County ("County") Board of Commissioners ("Board") approved applications for: (1) Comprehensive Plan and Zoning Map Amendments to change the designations of approximately 89.6 acres of real property on Bombing Range Road (Map #4N 25E 24, Tax Lot 1700) ("Bombing Range Road Property") from Industrial to Agriculture and from MG to EFU; (2) Comprehensive Plan and Zoning Map Amendments to change the designations of approximately 89.6 acres of real property on Paterson Ferry Road (Map #4N 26E 09, Tax Lot 100) ("Paterson Ferry Road Property") from Agriculture to Industrial and from EFU to PI; and (3) Comprehensive Plan Text

Amendment to adopt reasons exceptions to Statewide Planning Goals (“Goals”) 3, 11, and 14 to authorize development of a data center use and related public facilities and services on the Paterson Ferry Road Property (together, “Applications”). In support of this decision, the Board adopts the following findings of fact and conclusions of law.

II. PROCEDURAL FINDINGS

A. Initiation and Completeness of Applications

In this case, on September 17, 2019, the Port of Morrow (“Applicant” or “Port”) submitted the Applications on the required forms and with the required information and fees to the County. On September 23, 2019, the County deemed the Applications complete.

The Board finds that the Port is eligible to submit the Applications. Pursuant to Morrow County Zoning Ordinance (“MCZO”) 8.010, “a property owner” may submit an application for map and text amendments. The Board finds that the Port is “a property owner” in the County. Although the Port is not an owner of either the Bombing Range Road Property or the Paterson Ferry Road Property, MCZO 8.010 does not require that an applicant be the owner of the property subject to the amendment, only that the applicant be “a property owner.” The Port easily meets this test. The contention to the contrary misconstrues the MCZO and inserts requirements that were not included in MCZO 8.010 in contravention of ORS 174.010.

Further, the Board finds that, even though the Port no longer retained fee simple ownership of the Bombing Range Road Property, the Port reserved the right in the deed of conveyance to seek a rezoning of the Bombing Range Road Property. As support for this conclusion, the Board relies upon a copy of the deed, which was included in the record.

The Board finds that, according to staff, owners of both the Bombing Range Road Property and the Paterson Ferry Road Property received notice and authorized the Applications.

The Board finds that the Applications have been correctly initiated and are complete for review.

B. Notice

The Board finds that the County provided adequate notice of the public hearings for the Applications consistent with state and local law. Specifically, the County took the following notice actions:

- Mailed a completed Notice of Amendment form to the State Department of Land Conservation and Development (“DLCD”) on September 23, 2019, which was more than 35 days in advance of the initial County public hearing as required by OAR 660-018-0020(1).
- Mailed notice to owners of property within 500 feet of the Property on October 9, 2019, which was at least 20 days in advance of the initial County public hearing in this matter, as required by Morrow County Zoning Ordinance (“MCZO”) 9.050.B.1. and ORS 197.763(2)(a)(C).
- Published notice in both *Heppner Gazette Times* and *East Oregonian* newspapers on October 9, 2019, with both dates being at least 20 days in advance of the initial County public hearing in this matter.
- Notice to public agencies identified at page 5 of the County staff report on October 18, 2019.

During the local proceedings, no one objected on the grounds that they did not receive adequate notice in this matter. For these reasons, the Board finds that the County provided adequate notice in this matter.

C. Public Hearings

The Board finds that the public hearings in this matter complied with applicable law.

On October 29, 2019, the Planning Commission held a public hearing for the Applications. With a quorum of the Planning Commission present, the Planning Commission Chair opened the public hearing for this matter. After the Chair opened the public meeting and called for disclosures by Planning Commission members, County staff presented the staff report. After that, the Applicant presented its case. Following Applicant’s testimony, the Planning Commission accepted public testimony. The Planning Commission then accepted oral rebuttal from Applicant’s representatives.

At the conclusion of the testimony, the Planning Commission closed the public hearing and approved a motion to recommend that the requested Goal 3, 11 and 14 exceptions be approved, that the Comprehensive Plan Designation be changed from Industrial to

Agricultural and that the Zoning Designation be changed from General Industrial to Exclusive Farm Use on the Bombing Range Road Property, and that the Comprehensive Plan Designation be changed from Agricultural to Industrial and the Zoning Designation be changed from Exclusive Farm Use to Port Industrial on the Paterson Ferry Road Property, subject to amendments to Conditions of Approval 1 and 2 to require completion prior to development and to Conditions of Approval 3 and 4 to require completion prior to occupancy.

After the Planning Commission hearing, County Planning staff received a letter from 1000 Friends of Oregon ("Friends") dated October 29, 2019 and addressed to the Planning Commission in opposition to the Applications. That letter requested that the Planning Commission hold the record for an additional seven days. The Planning Commission was not able to act on the request because staff did not receive the letter in a timely manner and therefore was not able to place it before the Planning Commission. The Friends' letter was placed into the record before the Board of Commissioners. Further, after the Planning Commission hearing, the Board held a noticed public hearing and held the record open after that hearing for additional argument and evidence, which provided ample opportunity for public review and comment on the Applications.

On December 11, 2019, the Board opened the public hearing for this matter. A quorum of the Board was present, consisting of Chair Jim Doherty and Commissioners Melissa Lindsay and Don Russell. Chair Doherty inquired whether any Board members needed to disclose any *ex parte* communications, site visits, conflicts of interest, or bias. Both Chair Doherty and Commissioner Lindsay disclosed discussion with Port Executive Director Ryan Neal that did not hinder their ability to make a decision. Commissioner Russell declared that he had a potential, but not actual, conflict of interest due to his role as a shareholder and Board member for a potential service provider to the Paterson Ferry Road Property and due to the possibility that approval of the Applications, together with a series of other actions, could (but not necessarily would) affect his financial interest as described in ORS Chapter 244. Because Commissioner Russell determined that he had only a potential (and not an actual) conflict of interest, he determined that he could participate and vote in this matter. No other disclosures were made.

County staff presented the staff report. After that, representatives for Applicant presented Applicant's case. Following Applicant's testimony, the Board accepted oral testimony from three proponents and one opponent (Friends). Friends submitted new written testimony and evidence and requested that the Board hold the record open for seven days. The Board then accepted oral rebuttal from Applicant's representatives.

At the conclusion of the testimony, the Board closed the public hearing and approved a motion, 3-0, to hold the record open for argument and evidence on any issue relevant to the proceedings until December 20, 2019, followed by a seven-day period ending on December 27, 2019, to allow Applicant to submit its final written argument. The Board accepted testimony from Applicant and Friends during the first open record period and then accepted Applicant's final written argument during the second open record period.

On January 2, 2020, the Board reconvened to deliberate and make a final decision on the Applications. A quorum of the Board was present at the meeting. At the commencement of the meeting, Chair Lindsay introduced the item and, under direction of counsel, called for members of the Board to disclose any *ex parte* communications, site visits, conflicts of interest, or bias. Commissioner Doherty disclosed prior discussions with Port Executive Director Ryan Neal that did not hinder his ability to make a decision. Commissioner Russell declared that he had a potential, but not actual, conflict of interest due to his role as a shareholder and Board member for a potential service provider to the Paterson Ferry Road Property and due to the possibility that approval of the Applications, together with a series of other actions, could (but not necessarily would) affect his financial interest as described in ORS Chapter 244. Because Commissioner Russell determined that he had only a potential (and not an actual) conflict of interest, he determined that he could participate and vote in this matter. No other disclosures were made. No concerns were raised from the public about any Commissioners participating in discussion or deliberations. After that, the Board approved a motion tentatively approve the approve the application and direct staff to prepare Final Findings of Fact and Conclusions of Law in Support of the decision for Board review and approval on January 15, 2020.

On the basis of these facts and conclusions, the Board finds that the County has conducted lawful proceedings in this matter consistent with established quasi-judicial principles and applicable local and state requirements.

III. SUBSTANTIVE FINDINGS

A. Compliance with Goal Exception Criteria

Where an urban use and urban scale public facilities and services are proposed to be located on rural agricultural lands, an applicant must demonstrate compliance with the applicable standards for goal exceptions in both OAR 660, Division 4 and OAR 660, Division 14. *VinCEP v. Yamhill County*, 215 Or App 414 (2007). For reasons exceptions, those standards are (1) OAR 660-004-0018 through 660-004-0022, which address

reasons exceptions on rural agricultural lands; and (2) OAR 660-014-0040, which addresses the establishment of new urban development on undeveloped rural lands. Additionally, OAR 660-011-0060 applies to Goal 11 exceptions. Compliance with these rules is addressed below.

1. Compliance with OAR 660, Division 4.

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

For the reasons further explained below, in this decision, the Board grants exceptions to Goals 3, 11 and 14 to allow an urban-scale data center and sewer and water utilities for data center use on the Paterson Ferry Road Property, which is currently agriculturally designated and zoned. As used in this decision, an “urban-scale” use is an industrial use in a building of a size that is greater than would otherwise be permitted on rural lands without goal exceptions under OAR 660-022-0030(11).¹ “Urban-scale” public facilities and services are public facilities and services sized to serve urban-scale uses on rural lands.

To facilitate development of the data center, the Board assigns the Port Industrial (PI) zoning designation, which permits data centers, subject to obtaining a zoning permit. MCZO 3.073.A.17.

By taking Goal 11 and Goal 14 exceptions, the size of the data center buildings and the scale of the related public facilities and services will not be limited only to such sizes and scales that are appropriate for rural uses. Instead, urban-scale uses and public facilities and services would be allowed.

The Goal 11 exception granted in this decision is to allow for their extension onto the newly designated Paterson Ferry Road Property. The Goal 11 exception is needed because OAR 660-011-0060(2)(c) prohibits extensions of sewer systems currently serving lands outside UGBs in order to serve uses outside such boundaries that were not served by the system on July 28, 1998. It is also taken to extend urban scale potable water lines to serve a data center use on rural lands.

¹ 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.

Consistent with the justification in this decision, the Board limits the uses, density, public facilities and services, and activities to the Paterson Ferry Road exception area to the urban-scale data center use and related public facilities and services described herein.

660-004-0020(1): *“If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.”*

As explained below, there are reasons consistent with OAR 660-004-0022 to use resource lands for uses and public facilities or services not allowed by Goals 3, 11 and 14. The Board adopts the following justification for these exceptions to be set forth, together with the adopting ordinance, in the Exceptions Element of the County’s Comprehensive Plan.

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

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

Under OAR 660-004-0020(2)(a), for reasons exceptions, an applicant must justify why the state policy in the applicable Goals should not apply. For this exception, as with the original 1988 reasons exception allowing port-related industrial uses on the original 1889 acres (discussed below), the Goals for which Goal exceptions are being taken are Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization). The affected Goal 3 policy that would not apply is the policy to preserve agricultural lands for farm use. The affected Goal 11 policy is the policy to provide public facilities (including transportation) appropriate for but limited to the needs of the urban or rural area being served. Goal 11 also prohibits the extension of urban scale sewer and potable water to serve urban industrial uses on rural lands. The affected Goal 14 policy directs that urban uses be located inside urban growth boundaries or within urban communities. These Applications require exceptions because they would allow urban scale industrial uses (defined and limited below) on rural agricultural land that Goal 3 protects for exclusive farm use, and it would allow the Port to extend public facilities

and services sized to accommodate urban-scale uses. The exceptions would apply to the use of the Paterson Ferry Road Property only.

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

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

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

The Board finds that developing a data center would have a significant comparative advantage on the Paterson Ferry Road Property for three reasons. First, the Paterson Ferry Road Property is well-situated for development of data center because it is located near the East Beach Industrial Park with buildable public services, including the following described in the narrative for the Applications:

- A water supply system providing over 10 million gallons per day of potable water to Port industrial tenants. This system includes eight wells, eight pumps, two storage tanks and over five miles of pipeline, including pipes up to 30 inches in diameter for fresh water;
- A local road system, including internal circulation off of Paterson Ferry Road (a County Road) with a direct interchange connection to Interstate 84 at the Paterson Ferry Interchange;
- High pressure gas lines;
- Fiber optic infrastructure;
- Dual electrical transmission power lines and distribution lines owned by the Bonneville Power Administration, Umatilla Electric Cooperative Association, the Port, and various tenants; and

- A 30-inch industrial wastewater line that proposed re-use water to neighboring farms needing additional water due to Critical Groundwater Area limitations.

The Board further finds that, based upon the findings and evidence summarized in response to OAR 660-004-0020(2)(b) below, the data center developer had specific site requirements, which it determined could reasonably be accommodated by the Paterson Ferry Road Property. The Board finds that these facts support the conclusion that the data center development is location-dependent, which causes the Paterson Ferry Road Property to have a significant comparative advantage over other sites.

As quoted above, OAR 660-004-0022(3) permits a county to justify an exception for rural industrial development based upon various reasons, which are not limited to those set forth in the rule (“appropriate reasons and facts include, but are not limited to”).

Second, development of the Paterson Ferry Road Property consistent with the Applications will generate significant economic benefits to the County and its residents, including new jobs. According to the developer, development of each building at the data center campus will drive new jobs. See Port memorandum dated December 20, 2019. In addition, at any given time, there will typically be 100+ construction workers involved at the site engaged in constructing new buildings or in interior improvements for existing buildings. See Port memorandum dated December 20, 2019.

Third, due to the companion zone change of the Bombing Range Road Property, there will be no net loss of agriculturally-zoned property upon approval of the Applications. Additionally, as explained in the narrative for the Applications, the Bombing Range Road Property is better-situated for agricultural use than the Paterson Ferry Road Property.

The exchange neither increases the amount of land available for industrial use in the area nor decreases the region’s agricultural land supply, but for both types of uses, the Board finds that the zone changes make sense. The 89.6 acres of industrially-zoned lands located south of I-84 are less well suited for industrial uses than the 89.6 acres for which the plan amendment and zone change to industrial/PI is proposed, because they are more isolated from existing industrial development and related facilities and services. Because the acres south of I-84 are surrounded by other agricultural lands and are fully irrigated, the Board finds they can provide greater value to the agricultural economy than those lands that are surrounded by state highways and industrial land and where competition for water rights exists.

In summary, from a transportation and economic standpoint, the Board finds that there is a significant comparative advantage to locating new industrial development near other Port-related industrial development at the East Beach Industrial Park rather than

locating new industrial development in an undeveloped area surrounded by farm land with no immediate access to Port-owned and developed industrial infrastructure. Similarly, from an agricultural standpoint, there is a significant advantage to retaining farm use on lands that have full irrigation rights, are surrounded by other agricultural uses, and are located away from industrial development.

For these reasons, rezoning the Paterson Ferry Road Property to allow data center development would have a significant comparative advantage that would benefit the County economy and, in this case, it would result in no net loss of agriculturally-zoned property (due to the companion zone change of the Bombing Range Road Property to EFU).

The Board finds that these reasons are consistent with OAR 660-004-0022(3) (quoted above), which establishes “appropriate reasons and facts” for exceptions to allow rural industrial development.

According to the developer, the data center campus needs at least 85 acres to develop. See letter from Ryan Neal dated December 6, 2019. The Board finds that the Paterson Ferry Road Property is approximately 89 acres, meaning it is not only right-sized for the use but also will minimize the amount of land included in the exception. Moreover, as explained above, the use requires a location on resource land because the proposed location, would have a significant comparative advantage (particularly over the existing, isolated location on Bombing Range Road) that would benefit the County economy and, in this case, result in no net loss of agriculturally-zoned property.

The Board finds that permissible reasons justify exceptions to Goals 3, 11, and 14 to permit the Paterson Ferry Road Property to be rezoned for industrial use and utilized for data center development and facilities and services sized to serve that development.

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

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

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

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

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

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

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

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

The Board finds that reasonable alternative locations that do not require an exception cannot reasonably accommodate the proposed use. As support for this conclusion, the Board relies upon the detailed alternatives analysis prepared by the Port and dated December 20, 2019. In this analysis, the Port presented specific reasons why each of the alternatives identified by Friends, including those within existing Port industrial parks, could not reasonably accommodate the proposed use. *Id.* The Board finds that the Port's analysis was based upon the site-selection limitations applicable to the data center use. *Id.* The Board finds that Friends' testimony does not undermine the detailed and credible alternatives analysis presented by the Port. Additionally, the Board notes that the rule actually places a higher burden on a party that presents alternative sites, namely, that such sites must be "more reasonable" than the selected site. OAR 660-004-0020(2)(b)(C) (language used in two places when discussing alternatives from another party). Based upon the evidence summarized above, the Board finds that Friends have not demonstrated that alternative sites are as reasonable as the Paterson Ferry Road Property, let alone that they are "more reasonable." The Board also relies upon testimony from two cities near the Paterson Ferry Road Property (Boardman to the west and Irrigon to the east) that they could not accommodate the proposed data center campus within their respective city limits. See letter from City of Boardman dated December 5, 2019, and letter from City of Irrigon dated December 9, 2019.

According to the developer, a buffer from rail lines is required to protect data center servers from damage resulting from a chemical spill/vapor release resulting from a train derailment. See Footnote 1 in Port memorandum dated December 20, 2019. The damage would not only interfere with the ability of the data center operator to serve clients but also could require costly repairs to the servers themselves. *Id.* The developer also confirmed that the data center sites identified by the Port satisfied the buffer. *Id.*

For these reasons, the Board finds that the exception satisfies this subsection of the rule.

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

(c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limit to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by the irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts.”

The long-term environmental, economic, social, and energy consequences resulting from the data center use at the Paterson Ferry Road Property with measures designed to reduce adverse impacts are not significantly more adverse than would result from the same proposal being located in areas requiring an exception other than the Paterson Ferry Road Property. As support for this conclusion, the Board relies upon the following analysis:

There are minimal adverse environmental consequences to developing the data center use at the Paterson Ferry Road Property. The record reflects that there are no inventoried Goal 5 resources at the site. Further, the data center operator will be required to obtain all required state and federal permits, which will ensure compliance with applicable environmental standards. Finally, the development will be subject to County review for compliance with applicable stormwater regulations. Other sites that

include or are close to Goal 5 inventoried resources would experience more adverse environmental impacts.

The economic consequences of developing the data center use at the Paterson Ferry Road Property are net positive. According to the developer, development of each building at the data center campus will drive approximately 40 direct jobs and approximately 50-75 vendor positions, and at any given time, there will typically be 100+ construction workers involved at the site engaged in constructing new buildings or in interior improvements for existing buildings. See Port memorandum dated December 20, 2019. The Board further finds that, according to testimony submitted by Friends, similar data center campus sites have had improvements of several hundred million dollars and have generated millions of dollars of tax revenue. See Exhibit 5 to Friends letter dated December 11, 2019. Development of the data center use will result in a loss of land that is currently farmed, but the Board finds that there is no evidence in the record to support the conclusion that this loss of farmland will result in job or income losses that exceed the gains associated with the new development. Further, as stated in the narrative for the Applications, the Paterson Ferry Road Property is currently Class VII farmland if not irrigated, so developing the site would not lead to the loss of high-value farmland. Finally, development of the data center use will help sustain surrounding agricultural uses because it will discharge cooling water that can be used for irrigation.

The social consequences of developing the data center development at the Paterson Ferry Road Property are also net positive. The development will generate social benefits associated with increased employment and incomes. The development will not displace any neighborhoods. Development on the site will not create adverse visual impacts to these properties because the area north of Interstate 84 and east of Oregon 730 already has a distinctive ag/industrial character. Industrial development on the site also will not displace any dwellings or impact neighborhood cohesion. It is possible that there could be impacts associated with truck traffic entering the property from Paterson Ferry Road, but many trucks already travel on Paterson Ferry and Interstate 84 such that additional noise impacts should be negligible, especially with trucks traveling at slow speeds near the interchange.

In terms of energy, the availability of proposed industrial scale utilities will be a net positive for the Paterson Ferry Road Property. For trucks travelling from or to locations to the north or east, the ability to use the Paterson Ferry Interchange will minimize congestion.

Finally, the Board finds that alternative sites identified by Friends on the record do not require further consideration under this aspect of the rule for two reasons. First, the

Board is only required to conduct a “detailed evaluation of specific alternative sites” when the sites are “specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts.” The Board finds that Friends’ list of alternative sites did not present this “specific” factual description. Additionally, the Board finds that none of the sites identified by Friends could host the use for the reasons explained in the Port’s December 20, 2019 alternatives analysis.

The Board finds that the requested exception is consistent with this subsection of the rule.

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

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

The Board finds that the proposed data center use is compatible with adjacent uses, which in this case are agricultural, or will be so rendered through measures designed to reduce adverse impacts. As support for this conclusion, the Board relies upon the testimony from the Port Executive Director in his December 20, 2019 memorandum:

“The data center will be compatible with surrounding agricultural uses because, like the existing data centers at the Port, the proposed data center will not generate significant off-site impacts in terms of noise, dust, smoke, odor, or stormwater runoff. Further, the facility will be fenced and set back from adjacent property lines. It will be required to obtain applicable state and federal permits. As discussed in the December 6, 2019 memo, the data center will also discharge non-contact cooling water when the outside temperatures are warmest, and such discharged water can be re-used for agricultural operations. Because this discharge is tied to warm outdoor temperatures, it will coincide with the regional growing season.”

Finally, the Board finds that the data center development will be subject to obtaining Site Plan Review approval pursuant to MCZO 4.165 as part of obtaining a zoning permit.

Such review will constitute a measure that is designed to further reduce impacts of the proposed development.

For all of these reasons, the Board finds that the proposed exception is compatible with, or will be rendered compatible with, other adjacent uses.

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

2. Compliance with OAR 660-011-0060 (Public Facilities Planning).

(2) Except as provided in sections (3), (4), (8), and (9) of this rule, and consistent with Goal 11, a local government shall not allow:

(a) The establishment of new sewer systems outside urban growth boundaries or unincorporated boundaries;

(b) The extension of sewer lines from within urban growth boundaries or unincorporated boundaries in order to serve uses on lands outside those boundaries;

(c) The extension of sewer systems that currently serve land outside urban growth boundaries and unincorporated community boundaries in order to serve uses that are outside such boundaries and are not served by the system on July 28, 1998.

As explained below, the Port's Goal 11 exception does not implicate the activities described in sections (3), (4), or (8) of this rule, and the Board finds that these sections are not applicable to the request. Section (9) is applicable and is satisfied for the reasons explained below. Therefore, the Board finds that valid reasons justify granting the Goal 11 exception to allow extension of an existing sanitary sewer system to serve an urban-scale data center use on the Paterson Ferry Road Property.

(3) Components of a sewer system that serve lands inside an urban growth boundary (UGB) may be placed on lands outside the boundary provided that the conditions in subsections (a) and (b) of this section are met, as follows: ...

The proposed sanitary sewer system service to the Paterson Ferry Road Property will not serve lands inside a UGB. Therefore, the Board finds that this provision is not applicable to the Applications.

(4) A local government may allow the establishment of a new sewer system, or the extension of an existing sewer system, to serve land outside urban growth boundaries and unincorporated community boundaries in order to mitigate a public health hazard, provided that the conditions in subsections (a) and (b) of this section are met, as follows:

...

The proposed sanitary sewer system service to the Paterson Ferry Road Property is not being established to mitigate a public health hazard. Therefore, the Board finds that this provision is not applicable to the Applications.

(8) A local government may allow a residential use to connect to an existing sewer line provided the conditions in subsections (a) through (h) of this section are met: ...

The Applications do not propose any new residential uses or authorize any existing residential uses to connect to an existing sewer line. Therefore, the Board finds that this provision is not applicable to the Applications.

(9) A local government may allow the establishment of new sewer systems or the extension of sewer lines not otherwise provided for in section (4) of this rule, or allow a use to connect to an existing sewer line not otherwise provided for in section (8) of this rule, provided the standards for an exception to Goal 11 have been met and provided the local government adopts land use regulations that prohibit the sewer system from serving any uses or areas other than those justified in the exception. Appropriate reasons and facts for an exception to Goal 11 include but are not limited to the following:

(a) The new system, or extension of an existing system, is necessary to avoid an imminent and significant public health hazard that would otherwise result if the sewer service is not provided; and, there is no practicable alternative to the sewer system in order to avoid the imminent public health hazard; or,

(b) The extension of an existing sewer system will serve land that, by operation of federal law, is not subject to statewide planning Goal 11, and if necessary, Goal 14.

The standards for a Goal 11 exception have been met for the reasons identified in Section III.A. of this decision. The Board incorporates those reasons herein by reference. Additionally, as required by this rule, in conjunction with the approval of the Applications, the Board is adopting land use regulations that prohibit the sewer system from serving any uses or areas other than those justified in the exception. Specifically, as explained in Section III.C.3. of this decision, the Board is applying the LU Overlay Zone

to the Paterson Ferry Road Property to limit the uses thereon to urban-scale data centers and to prohibit the sanitary sewer system from serving any uses or areas other than such data centers.

OAR 660-011-0060(9)(a) and (b) identify “[a]ppropriate reasons and facts for an exception to Goal 11,” but the plain language of the rule provides that the permissible “reasons and facts” are expressly “not limited to” those listed in the rule. Therefore, as stated, the Board relies upon the reasons identified in Section III.A. of this decision to justify the Goal 11 exception.

Finally, an opponent suggested that the County’s decision was not consistent with *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 455 (2016). In *Central Oregon Landwatch*, LUBA concluded that a county erred by approving a Goal 11 exception to allow a contingent future sewer extension that could serve 11,000 undefined lots over a 180-square mile area. *Id.* Specifically, LUBA was concerned by the excessive scope and area and the contingent nature of the exception. *Id.* No such concerns are at issue in the present proceeding. The size and scope of the Paterson Ferry Road Property is defined and limited (approximately 89 acres), the exception is limited to a specific use, and it is not conditioned upon the potential occurrence of certain events. Because the facts of the present case differ from those at issue in *Central Oregon Landwatch*, the Board finds that this decision is applicable to the present case.

On the basis of these findings, the Board concludes that reasons justify allowing the extension of an existing sanitary sewer system to the Paterson Ferry Road Property to serve a data center use.

3. Compliance with OAR 660-014-0040 (Application of Goal 14 to Rural Residential Areas).

The Board finds that there is adequate justification to take exceptions to Goal 3, 11, and 14 to allow urban-scale data center use and related supporting public facilities and services on rural lands, based upon the responses to the applicable standards in OAR 660-014-0040 below.

660-014-0040(1): *“As used in this rule, ‘undeveloped rural land’ includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed*

exceptions to Goals 3 or 4 but not developed at urban density or committed to urban levels of development.”

The exception applies to the Paterson Ferry Road Property, which is undeveloped rural land. It is outside of a UGB and is not currently committed to urban development.

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

The reasons justifying future development of a data center and sewer and water utilities for data center use only on the Paterson Ferry Road Property are set out in the discussion of compliance with OAR 660-004-0020(2)(a), incorporated herein by this reference. The Goal 14 exception is taken because the size of industrial buildings could exceed the size authorized on rural lands without Goal exceptions.

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

(a) That Goal 2, Part II(c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities.

The inability of the existing Boardman and Irrigon UGBs to reasonably accommodate the proposed urban development is addressed above in the discussion of compliance with OAR 660-004-0020(2)(b), incorporated herein by this reference. There are no other existing rural communities elsewhere in close vicinity to the Paterson Ferry Road Property.

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

“(b) That Goal 2, Part II(c)(3) is met by showing that the long-term environmental, economic, social, and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

“(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate; and

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

The Board finds that the long-term environmental, economic, social and energy consequences resulting from proposed data center development at the Paterson Ferry Road Property are not significantly more adverse than would result from the same proposal being located on other undeveloped rural lands based upon the findings adopted in this decision in response to OAR 660-004-0020(2)(c), which findings are incorporated herein by this reference.

The Board further finds that the amount of land included within the boundaries of the proposed urban development is appropriate. According to the developer, the data center needs at least 85 acres to develop. See letter from Port Executive Director dated December 6, 2019. The Paterson Ferry Road Property is approximately 89.6 acres, meaning it is not only right-sized for the use but also will minimize the amount of land included in the exception.

The Board further finds that urban development of the Paterson Ferry Road Property will not be limited by not will it adversely affect air, water, land, or energy resources of the surrounding area. In support of this conclusion, the Board incorporates the findings adopted in response to OAR 660-004-0020(2)(d) and OAR 660-014-0040(3)(b).

The Board finds that the proposed exception satisfies this rule.

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

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

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

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

The Board finds that the proposal assures the potential for continued resource management of land at present levels surrounding and nearby the Paterson Ferry Road Property. The Board reaches this conclusion for three reasons. First, as explained in the Port's December 20, 2019 memorandum, the data center will also discharge non-contact cooling water when the outside temperatures are warmest, and such discharged water can be re-used for agricultural operations. Because this discharge is tied to warm outdoor temperatures, it will coincide with the regional growing season and benefit area agricultural uses. Second, as explained in the groundwater memorandum from the Port's Executive Director dated December 18, 2019, development of a potable water line to the Paterson Ferry Road Property may ultimately benefit local dairies in the event the State imposes additional groundwater curtailments in the region that threaten the dairies' viability and the line is extended to these dairies. Third, the Board is not authorizing an extension of public facilities and services to serve other urban uses on surrounding resource lands. Therefore, the exception is not a prelude to future exceptions.

The Board further finds that the proposed urban development will not detract from the ability of existing cities and service districts to provide services. As support for this conclusion, the Board relies upon the letters in the record from the City of Boardman dated December 5, 2019 (development of the proposed data center use "will not limit future development inside the City Limit boundaries of Boardman") and the City of Irrigon dated December 9, 2019 ("[d]evelopment of this property in this manner will not limit the City's ability to provide services to its residents").

For these reasons, and based upon the referenced evidence, the Board finds that the requested exceptions comply with this subsection.

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;"

The Board finds that an appropriate level of public facilities and services is likely to be provided in a timely and efficient manner to the data center use on the Paterson Ferry Road Property. As explained in the narrative for the Applications, these facilities and services would be extended from the existing Port industrial park northwest of the Paterson Ferry Road Property and are of sufficient size and capacity to serve the proposed development. The facilities and services include the following:

- A water supply system providing over 10 million gallons per day of potable water to Port industrial tenants. This system includes eight wells, eight pumps, two storage tanks and over five miles of pipeline, including pipes up to 30 inches in diameter for fresh water and up to 24 inches in diameter to remove effluent;
- A local road system, including internal circulation off of Paterson Ferry Road (a County Road) with a direct interchange connection to Interstate 84 at the Paterson Ferry Interchange;
- High pressure gas lines;
- Fiber optic infrastructure;
- Dual electrical transmission power lines and distribution lines owned by the Bonneville Power Administration, Umatilla Electric Cooperative Association, the Port, and various tenants; and
- A 30-inch industrial wastewater line that proposed re-use water to neighboring farms needing additional water due to Critical Groundwater Area limitations.

Additionally, the Board finds that County Planning staff coordinated with the various entities that would have responsibility for serving an urban development of Paterson Ferry Road Property, and all agencies confirmed that they could deliver their respective services to the site. See pp. 3-4 of County staff report. They also conferred regarding coordination of installation of services to minimize adverse impacts to the community. *Id.*

The Board finds that the present existence of appropriately sized public facilities and services in the area and the coordination with relevant agencies to verify feasibility to extend these facilities and services supports the conclusion that such facilities and services can be made available in a timely and efficient manner.

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.”*

The Board finds that the Port has coordinated with the County Planning Director in the preparation of this proposal, as explained in the narrative for the Applications. The Board further finds that the new urban development is consistent with the County’s Plan for the reasons explained in Section III.C.1. of this decision, which reasons are incorporated herein by reference.

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

B. Compliance with Statewide Planning Goals.

The Applications include both comprehensive plan map amendments for the two properties and a text amendment, which describes the Goal exception. The Statewide Planning Goals apply to plan amendments. The Goals identified below are the only Goals applicable to the plan amendments requested in the Applications. Goals not identified do not apply.

1. Goal 1 (Citizen Involvement).

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

The County's procedures for reviewing and deciding upon comprehensive plan amendment applications include notice to the public and to DLCDC; and public hearings before the County Planning Commission and the County Board of Commissioners. Compliance with these regulations results in compliance with Goal 1. As explained in Section II of these findings, the County has followed its adopted citizen involvement procedures when considering the Applications. Therefore, the Board finds that the County has processed the Applications consistent with Goal 1.

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

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

Goal 2, Part I also requires coordination with affected governments and agencies, evaluation of alternatives, and an adequate factual base. As stated in the staff report, County staff provided notice of the Applications and information on how to comment on the Applications to various local, state, and federal agencies, including the following: DLCDC, Oregon Department of Environmental Quality, Oregon Department of Agriculture, Oregon Department of Transportation ("ODOT"), Oregon Water Resources Department, U.S. Navy, Oregon Military Department, County Public Works, County

Assessor, Boardman Rural Fire Protection District, and Irrigon Rural Fire Protection District.

The supporting documents and evidence submitted into the record in support of the Applications provide an adequate factual base to support adoption of the Applications. For these reasons, the Board finds that Goal 2, Part I is met.

2b. 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; OAR 660-011-0060; and OAR 660-014-0040. The Board has adopted findings explaining compliance with these standards in Section III.A. Based upon these referenced findings, the Board finds that the Applications are consistent with Goal 2, Part II.

3. Goal 3 (Agricultural Lands).

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

Goal 3 does not allow nonfarm uses like industrial development on lands zoned for exclusive farm use unless a local government adopts findings justifying an exception to Goal 3. The Board has justified the Goal 3 exception for the Paterson Ferry Road Property for the reasons set out in Section III.A. of these findings.

Subject to the approved exception, the Applications are consistent with Goal 3.

4. Goal 6 (Air, Water and Land Resources Quality).

Goal 6 concerns the quality of air, water and land resources. At the Paterson Ferry Road Property, the proposed development is a data center use, which would, in the PI zone, be subject to obtaining a zoning permit. MCZO 3.073.A.17. The County must conduct site plan review in conjunction with approving any zoning permit. MCZO 4.165. That site plan review will consider compliance with stormwater and water quality standards. MCZO 4.165.D., E. Compliance with these provisions, which are acknowledged to be consistent with Goal 6, will ensure consistency with Goal 6.

Further, the Board finds that it is reasonable to expect that the proposed data center use will be able to satisfy applicable federal and state environmental standards, including air and water quality standards. As support for this conclusion, the Board relies upon the Port Executive Director's memorandum dated December 20, 2019, which explained that existing data centers in the area have not generated significant off-site impacts in terms of noise, dust, smoke, or stormwater runoff and that the new data center use will be required to obtain applicable state and federal permits in order to operate. The Board finds that those permitting processes will ensure compliance with applicable standards. Moreover, the Board finds, based upon the Port's testimony included with its Applications, that: (1) it is feasible to implement Best Management Practices at the data center use for erosion and sediment control and spill control and prevention to achieve compliance with clean water standards.

The Board finds that the Applications are consistent with Goal 6.

5. Goal 9 (Economic Development).

Goal 9 requires local governments to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens. The County's comprehensive plan has been acknowledged to comply with Goal 9. The plan recognizes and encourages industrial development on the Port's property near Boardman. The two zone changes approved in this decision will consolidate industrial development and related services east of Boardman to the area north of I-84. Additionally, the Board finds that the Paterson Ferry Property rezone will facilitate development of an urban-scale industrial (data center) use, and that development of each building at the data center campus will drive approximately 40 direct jobs and approximately 50-75 vendor positions. In addition, at any given time, there will typically be 100+ construction workers involved at the site engaged in constructing new buildings or in interior improvements for existing buildings. As support for this conclusion, the Board relies upon the memorandum from the Port Executive Director dated December 20, 2019. For these reasons and based upon the cited evidence, the Board finds the Applications are consistent with Goal 9.

6. Goal 11 (Public Facilities and Services).

Goal 11 requires local governments to plan and develop a timely, orderly, and efficient arrangement of public facilities and services. The goal provides that urban and rural development "be guided and supported by types and levels of services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served." The Public Facilities Planning Rule, OAR 660, Division 11, implements Goal 11. The

Board finds that new urban services to the Bombing Range Road Property are not proposed with the Applications, which is consistent with that property's rural nature and its status as resource land. The Board finds that the rezone of the Bombing Range Road Property is consistent with Goal 11.

7. 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 ("TPR"), OAR 660, Division 12. The TPR 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 I-84/Paterson Ferry interchange currently operates well below its capacity and performance standards, no significant effect is anticipated. As support for this conclusion, the Board relies upon the Port engineer's Transportation Impact Analysis submitted with the Applications, which assessed project impacts and concluded that mitigation measures are not necessary under either the TPR or the Paterson Ferry Road/I-84 Interchange Area Management Plan ("IAMP") at this time as no triggers have been reached as a result of this proposed zone change request. No one presented testimony that questioned or undermined the Port Engineer's testimony on this issue. Although the Applications will not significantly affect any transportation facilities, the Board has determined, based upon staff, Oregon Department Of Transportation, and Planning Commission recommendation, that, in order to maintain a "safe, convenient, and economical transportation system," the Port's data center development should be conditioned upon the Port's completion of the following street improvements within six (6) months after commencement of construction of the data center:

- Construct a left-hand turn lane northbound on Paterson Ferry Road at the primary point of access to the Paterson Ferry Road Property;
- Construct a right-hand refuge lane southbound on Paterson Ferry Road at the primary point of access to the Paterson Ferry Road Property;
- Coordinate the permitting and installation of services to the Paterson Ferry Road Property with affected service providers to limit travel impacts to Paterson Ferry Road; and
- Construct a left-hand turn lane at the northbound intersection of Paterson Ferry Road and Highway 730.

The Board imposes conditions on the decision to this effect. Subject to these conditions, the Board finds that approval of the Applications will be consistent with the IAMP, the TPR, and Goal 12.

8. Goal 13 (Energy Conservation).

Goal 13 directs cities and counties to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based upon sound economic principles. The proposed amendments will provide for efficient use of land and energy by locating the proposed development (data centers) near existing electric utility lines rather than locating them farther from utility lines and then extending such lines. The Applications will help conserve energy by consolidating industrial lands and their related facilities and services in the area north of I-84. The Board finds that the Applications are consistent with Goal 13.

9. Goal 14 (Urbanization).

As relevant to the Applications, 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. No urban uses or expansion of any UGBs are proposed or approved with the rezone of the Bombing Range Road Property. The Board finds that this rezone is consistent with Goal 14. Based upon the findings of fact and conclusions of law in Section III.A. of this decision, the Board has approved an exception to Goal 14

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

1. Compliance with Morrow County Comprehensive Plan.

The County Comprehensive Plan policies identified below are the policies that are relevant and potentially applicable to the plan amendments identified in the Applications. As explained below, based upon their text and context, some policies are mandatory in nature while other policies are either more aspirational or directory to the County or more general in nature, directing or encouraging or supporting an action or result rather than requiring that action or result. While it is appropriate to address these aspirational policies where relevant to these Applications, the Board finds that these

policies do not in themselves constitute applicable review criteria upon which approval or denial is based. Finally, as explained below, some Plan provisions are not applicable because they implement Goals for which an exception has been justified and granted in this decision.

a. Citizen Involvement.

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

b. General Land Use.

General Land Use Policy 9 requires that all plan and zone changes comply with all applicable Statewide Planning Goals and County policies and procedures. This policy is satisfied for the reasons set out in Section III.A., B., and C. of this decision.

c. Agricultural Lands.

Agricultural Land Objective 3 seeks to minimize and prevent conflict between farm and nonfarm uses. The Applications are consistent with this policy for two reasons. First, as explained in the narrative for the Applications, rezoning the Bombing Range Road Property for farm uses minimizes conflicts in that location because it is an area that is irrigated and surrounded by other agricultural lands. Second, for the reasons explained in the Port Executive Director's memorandum dated December 20, 2019, the data center use of the Paterson Ferry Road Property will be compatible with surrounding agricultural uses, including by providing effluent used by agriculture as irrigation water for crops.

Agricultural Land Policy 1 is an aspirational policy that seeks to balance economic and environmental considerations, limit incompatible nonagricultural development, and maintain a high level of livability in the County. While not a mandatory review criterion, this policy is met because the companion zone changes will exchange an equivalent amount of industrial land for agricultural land and because, for the reasons stated immediately above, the proposed industrial use is not incompatible with adjoining agricultural uses.

Agriculture Policy 2 permits development outside of UGBs only where conflicts with productive agricultural areas are minimal and where the development complies with the Comprehensive Plan. As described above, conflicts between the proposed industrial and agricultural uses are minimal. Further, the Applications comply with the Plan for the reasons explained in this section of the decision.

Agriculture Policy 6 provides for the County to consider the needs of the farm community in evaluating future development projects in other sectors of the economy. This policy is satisfied because in return for converting agricultural land to industrial land, other industrial land will be converted to agricultural land, thereby benefitting the agricultural community. Further, through its consideration of compliance with applicable exceptions criteria, the County has considered the impacts of the proposed plan amendment on nearby agricultural uses. Agricultural and port-related industrial uses have co-existed well together for decades in the Boardman area, and the proposed data center use is compatible with surrounding agricultural lands for the reasons stated in the December 20, 2019 memorandum from the Port Executive Director.

Finally, although Friends contend that the zone change and exception for the Paterson Ferry Road Property are not consistent with Plan Goal 3 and related Objectives 1-4, Policies 1, 2, 6, and 17, the Board denies this contention. It is well-settled that when a local government approves a Goal exception for a proposed development, plan policies that implement the Goal for which the exception is granted do not apply to that development. *See Friends of Marion County v. Marion County*, 59 Or LUBA 323, 350-351, *aff'd* 233 Or App 488, 227 P3d 198 (2010) (so holding). In the present case, the Board is granting an exception to Goal 3 to facilitate development of the Paterson Ferry Road Property. Plan Goal 3 and its related objectives and policies directly implement Statewide Planning Goal 3. Therefore, as an alternative to the above findings of compliance with Plan Goal 3, the Board finds that these Plan provisions are not applicable to the development of the Paterson Ferry Road Property consistent with the exception. As a result, non-compliance with these provisions is not a basis to deny or further condition that development.

d. Economy.

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

Economic Goal 1 provides direction to the County relating to economical housing facilities and affordable utilities to meet housing needs and is not directly applicable to the Applications, which concern agricultural and industrial development.

Economic Goal 2 and its various economic policies direct the County to reduce unemployment as well as promote various factors to decrease outmigration of the County's youth through growth of the County workforce. The Applications are consistent with this section, which will optimize the location of the County's industrially-zoned lands to attract development and jobs. By consolidating the industrial zoning to lands that can accommodate the services to attract developers and development, the County ensures the highest opportunity for development and job growth. Moreover, as explained in the Port Executive Director's letter dated December 6, 2019 and memorandum dated December 20, 2019, the rezone of Paterson Ferry Road will facilitate development of a data center use, which will generate both construction and full-time operational jobs.

Economic Goals 2 and 3 seeks to diversify local business, industry and commercial activity. While this plan amendment application cannot ensure diversification of job opportunities, a developer has plans to develop a data center use, which based upon testimony from the developer through the Port, could lead to diversification of both construction and operational job opportunities in the County.

Economic Goal 4 encourages compatible land uses throughout the County. The amendments further these goals by providing new industrial development opportunities on agricultural land that is more suitable for industrial development because of its location near the Port's existing industrial park, and by providing new agricultural protections on industrial land whose location is not adjacent to the existing industrial park or transportation network but is surrounded by other agricultural uses.

Economic Goal 5 seeks to minimize noise levels and heavy traffic volumes as well as other undesirable effects of heavy commercial and industrial developments. This plan amendment meets these goals as it aims to target industrial zoning along a region of highway that is already accustomed to high traffic volumes and noises associated with Interstate 84 and Paterson Ferry Road. Additionally, this area is already planned to become a high activity area with the zoning of the southeast corner of the Depot to industrial and already experiences high levels of traffic and noise due to 24-7 value-added agricultural activities that occur year-round.

Economic Goal 6 seeks to maintain a balance between economic and environmental activities. The site proposed to be rezoned for industrial is located in an area with

readily available access to the Port of Morrow's industrial process water re-use line and the site proposed to be changed from industrial to agriculture is not. Therefore, the site proposed for industrial zoning is in a better position to accommodate industrial activity with minimal impact to the environment as all process effluent will be re-used by surrounding agriculture resulting in no net impact to water resources and potentially a net benefit to nutrient up-take and bioremediation of process wastewater.

Economic Goal 7 requires the County ensure adequate water supplies to meet all needs associated with economic development. The proposed industrial site is better suited to meeting this Goal as it is strategically located to be served by Port of Morrow raw and potable water services. This site is also located in an area that could take advantage of a winter recharge effort to utilize winter Columbia River water for potable and non-potable needs while the current industrial zoned parcel is not.

e. Public Facilities and Services.

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

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

General Policy F calls for the siting of utility lines and facilities on or adjacent to existing public or private right-of-way or through generally unproductive lands to avoid dividing existing farm units. Utility lines already serve the industrial park and will be extended through the subject property to reach the Depot. These extensions can be accommodated through existing rights of way and existing rights of way are the preferred mode of development as depicted in figure 1.

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

General Policy K is an aspirational policy that establishes a goal of achieving a maximum balance of public costs versus benefits and revenues in the provision of public facilities and services. While this policy is not a mandatory review criterion, it will be satisfied because industrial development locating at the proposed site will contribute to the costs of the facilities and services they use. This will enable the Port and County to increase cost share and minimize costs of extending services to the Depot in the future, which is anticipated.

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

Water and Sewer Policy A provides that when development occurs in unincorporated areas, minimum State sanitation and health requirements be met, including an approved subsurface sewage disposal system. The Port has an approved industrial process wastewater line directly adjacent to the site. Solid Waste Policies A and B can be met by new industrial development using the same processes for which solid waste management occurs elsewhere in the County.

Finally, an issue was raised regarding whether the zone change and exception for the Paterson Ferry Road Property are consistent with Plan Goal 11 and related General Policies 1, A, B, D, E, F, G, K, and M. When a local government approves a Goal exception for a proposed development, plan policies that implement the Goal for which

the exception is granted do not apply to that development. *See Friends of Marion County*, 59 Or LUBA at 350-351 (so holding). In the present case, the Board is granting an exception to Goal 11 to facilitate development of the Paterson Ferry Road Property. Plan Goal 11 and its related objectives and policies directly implement Statewide Planning Goal 11. Therefore, as an alternative to the above findings of compliance with these provisions, the Board finds that these provisions are not applicable to the development of the Paterson Ferry Road Property consistent with the exception. As a result, non-compliance with these provisions is not a basis to deny or further condition that development.

f. Transportation.

The Comprehensive Plan contains transportation policies and objectives. Transportation goals and policies also are included in the 1998 Morrow County Transportation System Plan, addressed in Subsection B below. This section deals only with those policies contained in the Comprehensive Plan.

Several Transportation Objectives and Policies apply to these plan and land use regulation amendments. While most of the objectives are very general in nature and directory towards the County, one, Objective 14, applies more directly to the plan amendments at issue in this application. This objective calls for a transportation system that is current, flexible, and coordinated with the overall Comprehensive Plan. This application complies with Objective 14 because it supports greater access to rail and barge lines than lands south of Interstate 84. The site is also located directly by the I-84/Paterson Ferry interchange, thereby reducing traffic volumes on interchanges to the west and closer to residential areas and ensuring consistency with highway performance standards.

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

Transportation Policy 6 seeks to avoid dividing existing economic farm units unless no feasible alternative exists. Because goal exceptions are justified to convert existing farm

land to industrial land, economic farm units won't be divided. No public roads will divide those lands being converted back to agricultural zoning.

Transportation Policy 7 provides that plans for transportation systems shall consider the carrying capacity of the air, land and water resources and be consistent with applicable Comprehensive Plan policies. By moving industrial land from the south side of I-84 to the north and by providing a greater choice of access into the industrial park, the amendments will help reduce congestion and improve air quality over the current zoning mix between the two parcels. The road system will not impact any water resources, and the land is capable of accommodating an extension of the existing local road system to improve connections to I-84 when and if warranted.

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

Policy 10 requires that road improvements necessitated by development be constructed in accordance with street classification policies and financed by the developer. Any future widening of Paterson Ferry Road, should it be required, would be paid for by the Port.

Policy 11 requires the County to limit development that would prevent streets from serving their identified functions. The subject property is served by Paterson Ferry Road, a major collector.

Policy 19 directs the County to work with the Port, private concerns and state and federal agencies to evaluate and develop those Port facilities that are most economically desirable for full utilization of the Port's geographic advantages. As explained at pages 3-4 of the County staff report, the County Planning Director has coordinated with area service providers, who have indicated that it is feasible to serve the Paterson Ferry Road Property with their respective urban facilities and services.

g. Energy Conservation.

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

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

h. Urbanization.

The Urbanization element of the Morrow County Comprehensive Plan contains provisions to allow nonresource uses outside of urban growth boundaries. This element includes the prior goal exceptions for the Port of Morrow Industrial Park east of Boardman acknowledged in the 1980s. The Goal 11/14 exceptions set out in Section III of this application constitute amendments to the County's Comprehensive Plan to authorize urban-scale data center development outside of the UGB and near the industrial park.

Finally, an issue was raised whether the zone change and exception for the Paterson Ferry Road Property are consistent with Plan Goal 14 and its related policies. When a local government approves a Goal exception for a proposed development, plan policies that implement the Goal for which the exception is granted do not apply to that development. *See Friends of Marion County v. Marion County*, 59 Or LUBA 323, 350-351, *aff'd* 233 Or App 488, 227 P3d 198 (2010) (so holding). In the present case, the Board is granting an exception to Goal 14 to facilitate development of the Paterson Ferry Road Property with urban-scale uses. Plan Goal 14 and its related policies directly implement Statewide Planning Goal 14. Therefore, as an alternative to the above findings of compliance with these provisions, the Board finds that these provisions are not applicable to the development of the Paterson Ferry Road Property consistent with the exception. As a result, non-compliance with these provisions is not a basis to deny or further condition that development.

i. Review and Revision Processes.

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

The proposed redesignation and rezoning of 89.6 acres of agricultural land to industrial land, and the proposed redesignation and rezoning of 89.6 acres of industrial land to farm land, constitute major revisions to the plan. As such, they take the form of Comprehensive Plan and land use regulation amendments. Consistent with state law, they have been developed to conform with applicable statutes, the statewide planning goals, and relevant unamended portions of the County's Comprehensive Plan, as demonstrated in these findings.

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

The Comprehensive Plan element addressing plan review and revision also contains language requiring that the plan and its implementing regulations be evaluated in relation to changing public policies and circumstances. Because this provision is directory to the County and appears in the context of a discussion calling for periodic plan review and update, it is not a mandatory approval standard applicable to landowner-initiated quasi-judicial amendments. However, if it did apply, the Port notes that, as explained in the Port Executive Director's letter dated December 6, 2019, this proposal improves the Port's ability to attract new industry that will benefit the region's economy.

j. Forest Land

Plan Goal 4, Objective 1 calls for the conservation of the County's forest land base. None of the subject properties are designated forest land. As a result, the Board finds that this objective is not applicable to the Applications.

2. Compliance with Morrow County Transportation System Plan.

The Morrow County Transportation System Plan (TSP) is an element of the County's Comprehensive Plan that Morrow County adopted pursuant to LCDC's Transportation Planning Rule, OAR 660, Division 12. It includes transportation related goals and policies, some of which are relevant to this application. The applicable goals and policies are identified below. Those not identified do not apply to this application.

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

TSP Goal 2 requires that land use planning be supported with appropriate transportation improvements. Policy 2.3 requires that new development proposals, plan amendments and zone changes conform to the TSP, as required by OAR 660-012-0045(2)(g). Under that rule, local governments must adopt regulations that assure "that amendments to land use designations, densities and design standards are consistent with the functions, capacities and levels of service of facilities identified in the TSP." Compliance with this policy is addressed in the analysis of compliance with OAR 660-012-0060/Goal 12. Policy 2.4 requires new development to provide appropriate access to the transportation system. Exhibit #2 address compliance with these plan goals and policies.

Policy 2.5 requires new development to identify transportation impacts and provide appropriate mitigation. Exhibit 2 provides documentation regarding compliance with this policy.

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

TSP Goal 3 and Policy 3.1 address economic development. The goal seeks to enhance economic development through transportation improvements. An IAMP has been developed to guide future investments in the region in close coordination with Depot industrial development.

TSP Goal 4 directs the County to promote a high quality of life by providing a well-developed transportation system that is appropriate to its surroundings. The roadway improvements proposed in this application are intended to provide a transportation system adequate to serve the freight and mobility needs of Port industrial users. Because road improvements have already been anticipated to serve Depot development demands in the future, impacts to non-industrial rural areas are minimized.

TSP Goal 5 calls for a safe and efficient roadway system. Consistent with the Goal and Policy 5.1, roadway improvements can and will be constructed in accordance with applicable County or State of Oregon design standards. Policy 5.7 provides for improved roadway connectivity in the county. Policy 5.8 provides for improved access for emergency vehicles. The use of an existing, high functioning arterial road (Paterson Ferry) meets this criterion.

3. Compliance with Morrow County Zoning Ordinance.

MCZO 8.040 identifies criteria for the Planning Commission and Board to consider, respectively, in preparing a recommendation for and reaching a decision on a proposed zoning ordinance text or map amendment. The Board finds that the Applications are consistent with MCZO 8.040 for the reasons set forth at pages 3-5 of the County Planning staff report, which reasons are incorporated herein by reference.

Additionally, the Board finds that there is a public need for the proposal, and the need will be best served by allowing the request, as required by MCZO 8.040.C. The public need for the proposal is economic development and job growth while maintaining a steady amount of agriculturally-zoned property. The Board finds the need will be best-served by allowing this request because the companion zone changes will site industrial zoning in the only location a data center developer has identified can accommodate its proposed use and will rezone a like-sized industrial site with farmland for farm uses.

The necessity for locating the use on the Paterson Ferry Road Property is addressed in response to the Goal exception criteria in Section III.A. of this decision. The reasons set forth in that section are incorporated herein by reference.

MCZO 8.040.D also directs the County to consider the public health and welfare impacts of the proposed request. The thrust of this section is to direct counties to adopt comprehensive plans that promote the public health, safety and general welfare, based on considerations such as characteristics of the county, the suitability of areas for particular land uses, the land uses and improvements in the area, the need for economic

enterprise in the future development of the areas, needed access, natural resources, prospective needs for development, and the public need for healthful, safe and aesthetic surroundings and conditions. The Board has adopted findings in response to these issues in Section III.A., B. and C.1 of this decision (the Goal exception criteria, the Goals, and the County Plan provisions), which responses are incorporated herein by reference.

The Board finds that application of the Limited Use (LU) Overlay Zone to the Paterson Ferry Road Property in conjunction with the Goal exceptions is warranted. When the LU zone is applied, the uses permitted in the underlying zone are limited to those uses and activities specifically referenced in the ordinance adopting the LU zone. This section also authorizes the County to impose reasonable conditions that it deems necessary to carry out the provisions of the Comprehensive Plan and Zoning Ordinance. It is required by OAR 660 Division 04 to limit the uses permitted on the Paterson Ferry Property to only the data center use and facilities to serve that use because these are the uses for which the exception was taken. *See* OAR 660-004-0018(4)(a).

The Board does not impose an additional requirement that the County approve the location of buildings, access and parking, and other project elements on the Paterson Ferry Road Property because that requirement already applies to the proposed use. *See* MCZO 3.073.A.17 (use allowed subject to obtaining a zoning permit) and MCZO 4.165 (Site Design Review required for uses requiring a zoning permit).

For these reasons, the Board finds that the Applications are consistent with applicable provisions of the MCZO.

D. Additional Issues.

1. Need for Goal 4 Exception.

An exception is only required for uses or public facilities and services not allowed by an “applicable Goal.” OAR 660-004-0020(1). In the present case, before approval of these Applications, the Paterson Ferry Road Property is farmland subject to Goal 3; it is not forestland subject to Goal 4. Therefore, the Port is not required to request, and the County is not required to grant, an exception to Goal 4 in conjunction with the Applications. The Board finds that no Goal 4 exception is required in this case.

2. Size of Paterson Ferry Road Remainder Parcel.

An opponent questioned whether the Port had demonstrated that, after the proposed zone change of the Paterson Ferry Road Property, the remainder parcel would comply with the minimum parcel size for the EFU zone, the Board.

The Board finds that, pursuant to the plain language of MCZO 3.010.L, the minimum parcel size requirement (160 acres) only applies to new parcels, and the Applications do not propose a land division and thus do not technically create any new parcels. Opponents do not cite to any provision of local or state law that precludes a split-zoned parcel.

To the extent the 160-acre standard is applicable to the remainder parcel, the Board finds that it will be met in this case. The Board finds that the remainder parcel is also zoned EFU and is much larger than 160 acres. As support for this conclusion, the Board relies upon the zoning map submitted by Friends and on the color, scaled "Zoning Change Map" attached to the County staff report. The "Zoning Change Map" outlines the "subject parcels" in red, which shows that the parcel that includes the Paterson Ferry Road Property is comprised of multiple tax lots. Further, the map outlines the Paterson Ferry Road Property, which is 89.6 acres, separately. As the map demonstrates, the remainder of the parcel comprising the Paterson Ferry Road Property is multiple times larger than the 89.6-acre area being rezoned, which indicates that the remainder will exceed 160 acres. Further, as shown on the Friends' zoning map, the entire area is zoned EFU. The Board finds that the remainder parcel will exceed minimum parcel standards in the EFU zone to the extent they apply.

IV. CONCLUSION

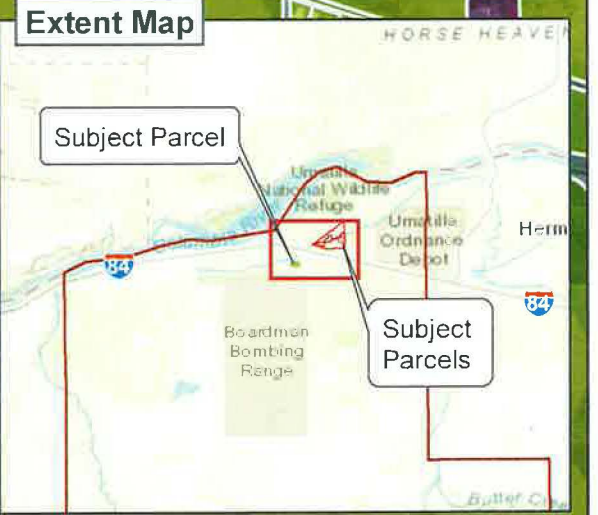
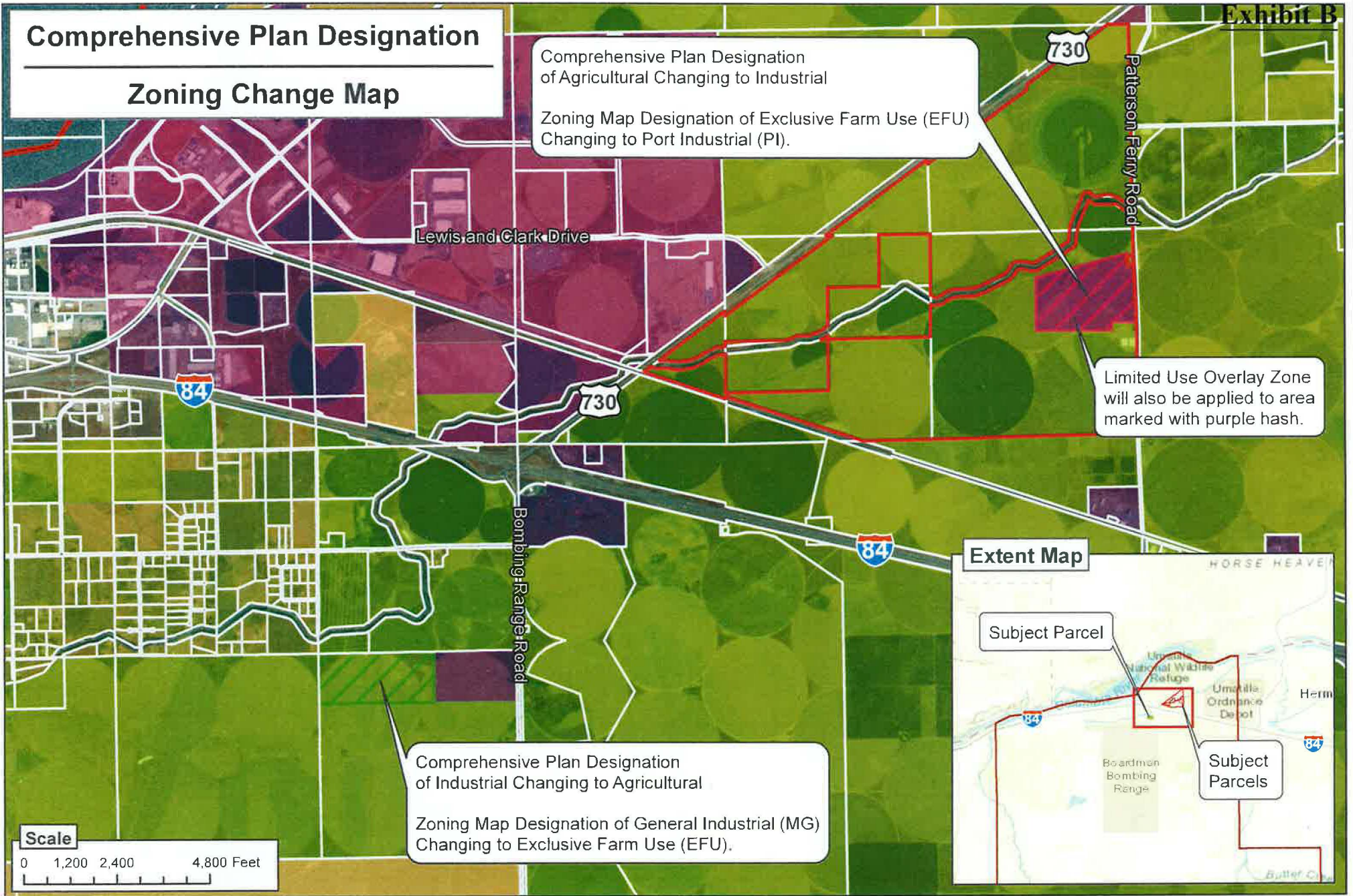
Based upon the evidence and argument identified above, the Board finds that the Applications satisfy all applicable approval criteria. Accordingly, the Board approves the Applications, subject to completion of the following conditions within six months after construction begins at the Paterson Ferry Road Property:

1. The applicant or the purchaser shall construct a left-hand turn lane northbound on Paterson Ferry Road at the primary point of access into the property subject to the zone change.

2. The applicant or the purchaser shall construct a right-hand refuge lane southbound on Paterson Ferry Road at the primary point of access into the property subject to the zone change.
3. The applicant or the purchaser shall work with service providers, coordinating the permitting and installation of services to the property subject to the zone change, limiting travel impacts to Paterson Ferry Road, and coordinating construction activities that could impact Paterson Ferry Road.
4. Based upon input from the Oregon Department of Transportation, construct a left-hand turn lane at the northbound intersection of Paterson Ferry Road and Highway 730 to be completed prior to occupancy of any building constructed on the property subject to the zone change.
5. The Limited Use Overlay (LU) Zone designation is applied to the Paterson Ferry Road property, limiting the use to a data center.

Comprehensive Plan Designation

Zoning Change Map



AC-130-19
ACM-131-19
AZM-132-19
 The Port of Morrow
 4N25E TL1700 and
 4N26E09 Multiple Tax Lots

Legend

103 Taxlots

Subject Parcels

Cartography By: Stephen Wrecsics
 Morrow County Planning Department
 Date Saved: 1/13/2020 2:17:43 PM

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601
 Projection: Lambert Conformal Conic
 Datum: North American 1983 HARN



AGENDA ITEM COVER SHEET
Morrow County Board of Commissioners
 (Page 1 of 2)

(For BOC Use)
 Item #
 50

Please complete for each agenda item submitted for consideration by the Board of Commissioners
 (See notations at bottom of form)

Presenter at BOC: Greg Close Phone Number (Ext): 541-989-9500
 Department: Morrow County Parks Requested Agenda Date: February 5 2020
 Short Title of Agenda Item:
(No acronyms please) **Contract for the Landing lodge Kitchen**



This Item Involves: (Check all that apply for this meeting.)

| | |
|---|--|
| <input type="checkbox"/> Order or Resolution | <input type="checkbox"/> Appointments |
| <input type="checkbox"/> Ordinance/Public Hearing: | <input type="checkbox"/> Update on Project/Committee |
| <input type="checkbox"/> 1st Reading <input type="checkbox"/> 2nd Reading | <input type="checkbox"/> Consent Agenda Eligible |
| <input type="checkbox"/> Public Comment Anticipated: | <input type="checkbox"/> Discussion & Action |
| Estimated Time: | Estimated Time: 5 to 10 minutes |
| <input type="checkbox"/> Document Recording Required | <input type="checkbox"/> Purchase Pre-Authorization |
| <input checked="" type="checkbox"/> Contract/Agreement | <input type="checkbox"/> Other |

N/A Purchase Pre-Authorizations, Contracts & Agreements

Contractor/Entity:
 Contractor/Entity Address:
 Effective Dates – From: **May 2020** Through: **November 2020**
 Total Contract Amount: **ten percent of gross earnings** Budget Line: **238-300-3-40-4330**
 Does the contract amount exceed \$5,000? Yes No

Reviewed By:

| | | |
|--|---------------------|--|
|  _____ DATE: 2/3/2020 | Department Director | Required for all BOC meetings |
|  _____ DATE: 2/3/20 | Administrator | Required for all BOC meetings |
| _____ DATE: | County Counsel | *Required for all legal documents |
| _____ DATE: | Finance Office | *Required for all contracts; other items as appropriate. |
| _____ DATE: | Human Resources | *If appropriate |

*Allow 1 week for review (submit to all simultaneously). When each office has notified the submitting department of approval, then submit the request to the BOC for placement on the agenda.

Note: All other entities must sign contracts/agreements before they are presented to the Board of Commissioners (originals preferred). Agendas are published each Friday afternoon, so requests must be received in the BOC Office by 1:00 p.m. on the Friday prior to the Board's Wednesday meeting. Once this form is completed, including County Counsel, Finance and HR review/sign-off (if appropriate), then submit it to the Board of Commissioners Office.

AGENDA ITEM COVER SHEET

Morrow County Board of Commissioners

(Page 2 of 2)

1. ISSUES, BACKGROUND, DISCUSSION AND OPTIONS (IF ANY):

This is a request to advertise for a request for proposal for a contract to reopen the Landing for food services. Justin Nelson and Greg Close worked on this contract to assure a good understanding of the duties and responsibilities of a contractor to operate the kitchen in the Landing. This contract will operate on a ten percent of gross earnings generated from the Landing Lodge Kitchen. When completed Parks will return to the BOC with a contract to be reviewed by the BOC. Attached is the request for proposal.

2. FISCAL IMPACT:

impact on the parks will be monitored by the accounting of cost versus revenue for the 2020 season.

3. SUGGESTED ACTION(S)/MOTION(S):

Parks requests a motion to advertise with this RFP for the upcoming 2020 season.

Attach additional background documentation as needed.

REQUEST FOR PROPOSALS

FOR

Contractor to operate OHV Landing Kitchen

FOR

MORROW COUNTY – PUBLIC WORKS PROJECTS

MORROW COUNTY

365 W Hwy 74
P.O. Box 428
Lexington, Oregon 97839
(541) 989-9500

February 2020

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INTRODUCTION

Morrow County, hereinafter known as the County, is seeking the services of a qualified contractor to provide food preparation services for the Morrow County Off-Highway Vehicle Park Landing Lodge kitchen (approximately 33 miles southwest of Heppner, Oregon, on Highway 207) to provide service for the season. The contract is anticipated to start May 1, 2020 and end around November 30, 2020. The contract may be extended by agreement of both parties at the end of each season. The County reserves the right to amend this contract for additional time if it is in the best interest of the County.

Section 1: RFP Submittal and Closing Date

Six copies of the RFP must be received no later than 4:00 p.m. local time on Thursday, February 27, 2020 may not exceed 25 pages. Neither late nor faxed submittals will be acceptable. Contractors submitting RFPs not in compliance with Section 4 will be considered non-responsive. RFPs must be addressed to the following:

Morrow County
Attn: Sandi Pointer
P.O. Box 428
365 W Hwy 74
Lexington, OR 97839
(541) 989-9500

Section 2: Inquiries

- 2.1 Questions that arise prior to the RFP deadline shall be addressed to the following:

Morrow County
Attn: Sandi Pointer
P.O. Box 428
365 W Hwy 74
Lexington, OR 97839
(541) 989-9500

- 2.2 Contractors shall submit questions in writing to Sandi Pointer no later than TWO days prior to the submittal date. Substantive questions and answers will be provided to all RFP recipients.

Section 3: The Landing Kitchen Policy Scope of Work

Mission Statement for The Landing at Morrow/Grant County OHV Park

The purpose of The Landing is to provide a welcoming environment for the OHV Park guests. The Landing is a place where patrons may gather to relax, visit or to enjoy a meal offered with top service. This experience should enhance the visit for guests staying at the Park.

The Landing Kitchen Policy Scope of Work

- 1) The contractor is required to provide food service to the public as per the agreement. The contractor will be identified as the Park's food service provider and shall follow all food sanitation rules and regulations, including providing all necessary permits and licenses. One full hook-up (power, water, sewer) RV campsite will be provided if necessary.
- 2) At a minimum, proposals must provide a menu for four (4) days per week (must include food service on Thursday, Friday, Saturday, and Sunday) and all holidays during the season.
- 3) The contractor will be required to provide a business plan that will include hours of operation, months of operation and a menu. This plan must be mutually agreed on by the Park's manager, the Public Works Director and the contractor.
- 4) The contractor will provide proof of insurance listing [The County as additional insured with a minimum of General Liability of \\$1,000,000 and a Workers' Compensation policy with a minimum of \\$1,000,000.](#)
- 5) The contractor will submit a monthly statement showing the gross income of the services provided through this contract. Statement must show a detailed list of all sales.
- 6) As part of this agreement and based on the above monthly statements, the contractor will pay the County 10% of the monthly gross income. Payment shall be made out to Morrow County OHV Park, paid by the 15th of the following month, and delivered to the Morrow County Public Works Department.
- 7) The County may renew this contract every year without seeking outside proposals. This will occur if both parties are satisfied with the existing conditions of the agreement. The contractor and the County will review the agreement on or before August 31st each year to aid in effective changes prior to seeking other proposals.

Other duties of the contractor include but are not limited to:

- Be knowledgeable regarding Park rules and regulations.
- Be observant and responsible for conditions or situations occurring in The Landing that would require immediate attention.
- Be aware that you are a visible representative of the County and the Park, even though you are not a County employee and are acting solely as a contractor. Contractor and employees shall be neat and clean in appearance and shall conduct themselves in a

manner which is appropriate for persons in public service. They shall also be courteous, efficient and helpful to everyone in their work and shall do the best job possible on every assignment.

- Be responsible for the cleanliness of the facility. Maintain a sanitary environment by daily cleaning of the kitchen, dining hall and restrooms, checking that dispensers are full of paper products and/or soap.

Additional Notes/Requirements:

- All social media, electronic or digital content and or advertisement used by Contractor during Contractor's performance of the work that utilizes trademarks, name or names (in particular the name "The Landing" and "The Landing Lodge") owned or associated with County shall be conducted in a good faith manner, and shall at all times represent The Landing in a professional manner. Administrative rights to any and all social media, electronic or digital content and or advertisement that utilize trademarks, name or names (in particular the name "The Landing" and "The Landing Lodge") owned or associated to County shall be provided to the Morrow County Public Works Department by Contractor. At termination of contract, all social media or digital media must be discontinued and turned over to County with all exclusive administrative rights. Social media as described in this section includes, but is not limited to, the Facebook page "The Landing Lodge."
- County has sole ownership of facility names: The Landing Lodge and The Landing. Upon termination of this contract, Contractor shall cease use of the name and terms "The Landing Lodge" and "The Landing."
- Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and County, their officers, employees, agents, from and against all claims, suits, or actions, losses, damages, liabilities costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. All advertising will be done at Contractor's expense. All use of trademarks, name or names owned or associated to Morrow County and/or Grant County in any form of advertisement, social media and/or digital media must have written permission from County.
- Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor shall retain and keep accessible all fiscal records, books, documents, papers, and writings for such a time and in such a manner as to comply with all federal, state, and local laws. Contractor acknowledges and agrees that County shall have access to sale records and documents related to calculation of the fee paid to Contractor.

Section 4: RFP Content Requirements

4.0 Contractors Capabilities/Experience/References

Outline the Contractor's capabilities and experience with regard to the requested services. The response shall address the following:

- A. Experience with similar services. Provide references.
- B. Equipment available if any.
- C. Operating hours. Minimum four (4) days per week
 - 1. Days of operation to include Thursday, Friday, Saturday, Sunday and all holidays and special events during the season.
- D. Menu: Provide a detailed menu of items to be offered
 - 1. Menu shall include service times for each selection being offered in menu

4.1 Project Team

Outline the contractor's personnel who would work with the contractor. The response shall address the following:

- A. Identify primary contact person for the duration of the contract.
 - 1. Extent of principal involvement
- B. Names of key members who will be performing the work and their responsibilities. Unless otherwise agreed, the successful respondent shall be responsible for the performance of any subcontractor. The contractor will ensure that any subcontractors abide by all terms and condition/s of the contract.
- C. Certificate of Insurance: Commercial liability insurance of a minimum of \$1,000,000 and Workers' Compensation Insurance with a minimum of \$1,000,000 will need to be presented when the contract is awarded.
- D. Must have or obtain safety and food handlers licenses that will apply to the food sanitation rules and regulations.

4.2 Method of Approach

Outline the contractor's approach to working with the Parks Manager and the Public Works Director.

- A. The response shall include primary contact for communications, scheduling and/or issues that may arise during this contract.

Section 5: Proposal Evaluation and Contractor Selection

5.1 Evaluation Process

Statements of Proposals submitted on time will be reviewed against the Pass/Fail criteria. RFPs meeting those criteria will be forwarded to an evaluation committee for scoring against the evaluation criteria (listed below) and ranking. The outcome of the evaluations may, at the County's sole discretion, result in (A) Notice to a Proposer(s) of selection for tentative contract negotiation and possible award; or (B) further steps to gather more information for further evaluation. The selection process may be canceled if the County determines it is in the public interest to do so.

5.2 Evaluation Criteria

Each proposal will be judged as a demonstration of the contractor's capabilities and understanding of the services requested. Evaluation factors and maximum points will be as follows:

| Criteria | Maximum Score |
|--|----------------------|
| A. Section 4.0: Contractor's Capabilities/Experience/References (Experiences/References, Equipment availability, Operating hours, Menu) | 40 |
| B. Section 4.1: Project Team | 30 |
| C. Section 4.2: Method of Approach | 30 |
| Total Maximum Score: | 100 |

Section 6: General Information

- 6.1 The County may require any clarification or change it needs to understand submitted proposals.
- 6.2 The successful contractor must provide proof of Workers' Compensation Insurance covering work in Oregon. The successful contractor must also submit documents addressing insurance, non-collusion, tax law, debarment, and conflict of interest as part of the personal services contract.
- 6.3 The County reserves the right to reject any or all proposals, and is not liable for any costs the contractor incurs while preparing or presenting the proposal.
- 6.4 The County reserves the right to cancel this RFP upon a good cause finding.
- 6.5 The County may award a contract to the contractor whose proposal, in the opinion of the County, would be most advantageous to the County.
- 6.6 The selected general contractor will be required to assume responsibility for all services outlined in the RFP, whether the contractor or a subcontractor produces them.

— ADVERTISEMENT —

REQUEST FOR PROPOSALS FOR
Contractor to operate OHV Landing Kitchen

Morrow-Grant County OHV Park - Morrow County, Oregon

Morrow County, Oregon, requests proposals for a qualified Contractor to operate OHV Landing Kitchen to provide food handling and preparation services for various events and regular season. Janitorial supplies and equipment are furnished. Contractor will need food inventory and appropriate food handlers' licenses. Contractors submitting proposals shall be considered based upon the following general evaluation criteria:

1. Contractor's Capabilities/References, Equipment Availability, Operating Hours, Menu
2. Project Team
3. Method of Approach

Copies of the Request for Proposals may be obtained from Morrow County Public Works, P.O. Box 428, 365 W Hwy 74, Lexington, Oregon 97839, (541) 989-9500. Complete proposals will be accepted at the same address no later than 4:00 p.m., **Thursday, February 27, 2020.** Any questions or concerns may be addressed to Sandi Pointer, spointer@co.morrow.or.us.