

ORDINANCE No. 1086-A

Introduced by Commissioner: Frank Orrell

Amending the text of the City of Warrenton Development Code (City File #OTA-05-1) in Chapters 2.11 (Water Dependent Industrial Shorelands/Industrial-2), 2.12 (Urban Recreation/Resort), 2.13 (Aquatic Development/A-1), and other sections of the Warrenton Development Code to adopt provisions related to the protection of natural resources, establish consistency with the Transportation Planning Rule, clarify the permitted uses in the I-2 zone, remove inconsistencies related to the 2001 amendments to the Comprehensive Plan, amend the City of Warrenton's Zoning Map to rezone the land and water areas as described in City File RZ-05-1; and Adopting Findings of Fact.

The City of Warrenton ordains as follows:

WHEREAS, certain changes are necessary to revise, update and amend the Warrenton Development Code and Zoning Map to reflect the rezoning of certain land and water areas, as described in City File RZ-05-1; and

WHEREAS, Skipanon Natural Gas, LLC has requested these amendments for certain land and water areas known as the East Skipanon Peninsula and adjacent aquatic areas; and

WHEREAS, the Warrenton City Commission received the Planning Commission's recommendation on this matter, and conducted a public hearing on November 17, 2005, closed the public hearing on that date but left the record open for additional argument and evidence until December 9, 2005; and

WHEREAS, the Warrenton City Commission has determined to approve this application and adopt the Findings of Fact, described in Exhibit 'A' (attached hereto and incorporated by reference) and amendments to the Development Code Text, described in Exhibit 'B' (attached hereto and incorporated by reference), and the amendments to rezone certain land and water areas on the City's Zoning Map, described in Exhibit 'C' (attached hereto and incorporated by reference).

Section 1: The City of Warrenton Development Code Text (Exhibit 'B') and Zoning Map (Exhibit 'C') are amended as shown on the attached exhibits.

Section 2: This ordinance shall become a final land use decision upon its second reading, enactment, and its signing by the Mayor.

Section 3: This ordinance shall become effective thirty (30) days from the date of its adoption.

Section 4: If any article, section, subsection, phrase, clause, sentence or word in this ordinance shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of the ordinance but shall be confined to the article, section, subdivision, clause, sentence or word so held invalid or unconstitutional.

First Reading: January 10, 2006

Second Reading: January 24, 2006

PASSED by the City Commission of the City of Warrenton, Oregon, this 24th day of January, 2006.
APPROVED by the Mayor of the City of Warrenton this 24th day of January, 2006.



Gil Gramson, Mayor

ATTEST:



Linda Engbretson, City Recorder

EXHIBIT 'A'

**Findings of Fact and Conclusions of Law
Of the Warrenton City Commission
Approving the Applications for Zoning Code Text and
Map Amendments in File No's: OTA-05-1, AND
RZ-05-1**

Date of Adoption:

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I. Summary

On August 23, 2005, Skipanon Natural Gas, LLC ("SNG") submitted concurrent applications for several amendments to the Warrenton Comprehensive Plan Map and Text (the "Comprehensive Plan Amendments") and several amendments to the Warrenton Development Code and Zoning Map (the "WDC Amendments"). Together these amendments (the "Amendments") designate and zone the shoreland portion of the northern 96 acres of the East Skipanon Peninsula (the "ESP") for water-dependent industrial development (ESWD Shorelands/I-2) and the aquatic areas of the ESP and certain adjacent aquatic areas for aquatic development (Aquatic Development/A-1). The combined shoreland and aquatic areas subject to the Amendments are depicted on Figure 1 (the "Site"). The Amendments also include a number of minor, related amendments that clarify and resolve inconsistencies within the Comprehensive Plan and WDC and bring those planning documents into compliance with state law. As set out in the findings below, SNG (sometimes referred to herein as "Applicant") has presented substantial evidence in support of all the Amendments, and the City Commission approves the Amendments, subject to the conditions of approval set out in Section VII.

II. Background

A. Brief Planning History of the East Skipanon Peninsula

The East Skipanon Peninsula ("ESP") is located within one of the State's three recognized deep draft estuaries, estuaries that have been substantially altered to support commerce and development. The ESP itself was formed through the deposit of dredge spoils starting in the early 1920s.¹ For decades the ESP, with its convenient access to the Columbia River navigation channel and relative isolation from incompatible land uses, has been viewed by the City as a site with unique potential for water-dependent industrial development.²

¹ Columbia River Estuary Study Taskforce (CREST). 1979. *Columbia River Estuary Regional Management Plan*. Page IV-34 (1979).

² Swan and Wooster Engineering. 1969. *Land Use Study of the Skipanon Area for the Port of Astoria, Oregon* (identifying the various virtues of using the north end of the East Skipanon Peninsula as the site for the location of an aluminum plant); *Columbia River Estuary Regional Management Plan*, at IV-35 (recognizing the development value of the ESP); Institute for Environmental Mediation. 1981. *Mediation Panel Agreement Regarding Certain Water-Dependent Development Sites Included with the CREST Plan of June 1979* (recognizing that the East Skipanon Peninsula has both high development and high natural resource value, and proposing two Goal 16 exceptions to permit development in aquatic areas adjacent to the ESP).

The earliest documentation of the ESP's suitability for water-dependent industrial development was in 1969 when the Port of Astoria commissioned a land use study to look at the Site's development potential. The site analysis concluded that berthing a ship on the north end of the ESP would be preferable to a terminal on the Skipanon River because, unlike a Skipanon River site, the ESP "provides easy and safe access for navigation of ship traffic at all times."³

The 1979 Columbia River Estuary Management Plan (the "CREST Plan") represented the first estuary-wide planning effort, and it specifically addressed the appropriate use for the ESP. The CREST Plan concluded that "both peninsulas of the Skipanon River are especially suitable for water-dependent industry."⁴ In furtherance of this use, the CREST Plan proposed to designate the aquatic area that lies within 1,500 feet of the Mean Higher High Water Mark ("MHHW") on the east shoreline of the ESP and out to the Columbia River navigation channel as Aquatic Development.

The 1980 City of Warrenton Comprehensive Plan designated the ESP shoreland as ESWD Shorelands. The ESP was included in the Mouth of the Skipanon Subarea, also called Subarea 5, which covered the same shoreland and aquatic areas as the CREST Plan's Subarea 42.06. The CREST Plan's Subarea 42.06 map was included in the 1980 Comprehensive Plan as the City's Subarea 5 map.⁵ All of the aquatic areas in Subarea 5 were designated Aquatic Development in the 1980 Comprehensive Plan.

In 1981 the City, Clatsop County, DLCD and other stakeholders entered into the 1981 Mediation Panel Agreement. This agreement included several provisions related to the ESP and Subarea 5. Among the findings for the area was that "[t]his site is suitable for water-dependent heavy industrial use which may or may not require alteration of the aquatic area on the east side of the peninsula."

The 1981 Mediation Panel Agreement contemplated two development options for Subarea 5 that were subsequently incorporated into the City's 1987 acknowledged Comprehensive Plan and the Warrenton Development Code ("WDC") through the creation of the hybrid East Bank ("EB") zone. The EB zone extended across all of the land and water areas in Subarea 5.⁶

³ Swan Wooster Engineering.

⁴ CREST Plan at IV-34.

⁵ The CREST Plan described Subarea 5 as extending all the way to the Columbia River navigation channel and as being entirely within the Warrenton city limits.

⁶ The first development option, Alternative I, anticipated aquatic development on "some or the entire approximately 25 acre Exception site" along the eastern shore of the ESP and mitigation site on the southern part of the ESP. The second development option, Alternative II, involved neither the 25 acre

In adopting the 1981 Mediation Panel Agreement development options for Subarea 5, the 1987 Comprehensive Plan declared that "both peninsulas of the Skipanon River are especially suitable for water-dependent development," and that the ESP is "considered suitable for a bulk shipping facility or heavy water-dependent industrial use."⁷ The EB zone remained in place across Subarea 5 until 2001.

The City removed the Mediation Panel Agreement's provisions, including the EB Zone, from the Mouth of the Skipanon Subarea in 2001 in response to an application from the Port of Astoria, which anticipated the development of a golf course on the ESP. The amendments also removed the ESP from the ESWD Shorelands designation in the Comprehensive Plan and applied the Comprehensive Plan's Other Shoreland designation. This change reflected a momentary loss of confidence by the City in the ability to attract water-dependent industrial development to the location.

Within only a short time after the change, however, a new market demand has developed for use of the northern 96 acres of the ESP and the adjacent aquatic areas to the north and east of the ESP (collectively, the "Site") as a water-dependent industrial area. Based on the expert written testimony provided by Applicant, a shift in the international and national energy markets has created an unprecedented demand for the development of a Liquefied Natural Gas ("LNG") import terminal in the region and the ESP is uniquely suited for such a facility.

The Comprehensive Plan and WDC amendments proposed by SNG and approved here by the City Commission include several map and text amendments that are necessary pre-requisites for the subsequent development of an LNG import terminal on the ESP and in the adjacent aquatic areas. The changes adopted here are similar to those implemented through the 1981 Mediation Panel Agreement in that they balance the unique suitability of the area to water-dependent industrial development with the known natural resource values of the adjacent aquatic areas. The Amendments do not approve the development of an LNG import terminal on the Site, they merely establish the requisite plan and zoning use designations to allow the Applicant to enter the site design review and permitting phase to obtain approval to develop such a facility.

development nor the mitigation site. Both alternatives anticipated an exception being taken for a pile supported access way to the north of the ESP.

⁷ The 1987 Comprehensive Plan is internally inconsistent with respect to the aquatic areas in Subarea 5. The plan first declares that in the area "east of the east peninsula, the aquatic area which lies 1500 feet of MHHW on the east shoreline of the Skipanon River and out to the main navigation channel is designated Development." It then also reproduces the 1981 Mediation Panel Agreement development alternatives, which limit the aquatic development areas on and around the ESP to two goal 16 exceptions areas. The 1993 Comprehensive Plan fixed the problem by leaving in place only 1981 Mediation Panel Agreement development options.

B. Current Plan and Zone Designations

The current 2003 Comprehensive Plan Map designates the ESP shoreland area as Other Shorelands and the aquatic areas to the existing city limits as "Urban Development Areas – Aquatic Locations." Consistent with the Other Shorelands designation, the shoreland area is zoned URR. The Urban Development Areas – Aquatic Locations are required by the Comprehensive Plan text to be zoned A-1.⁸ There is an inconsistency, however, between the Plan Map and both the textual description of the aquatic areas within the Comprehensive Plan's Mouth of the Skipanon Subarea, Subarea 5, and the zoning district for the Site's aquatic area indicated on the Zoning Map.

In the Comprehensive Plan's textual description of Subarea 5's aquatic areas, only the Skipanon waterway and the "flowlane disposal area south of the main channel (600 feet wide or to the 20-foot bathymetric contour, whichever is narrower)," are designated Aquatic Development. The subtidal area between the 3-foot bathymetric contour and the flowlane disposal area east of the Skipanon Channel are designated Aquatic Conservation. Finally, outdated text states in a general way that certain aquatic areas adjacent to the ESP are designated "Natural Aquatic" based on references to the 1981 Mediation Panel Agreement that should have been amended out of the Comprehensive Plan in 2001. The current Zoning Map further adds to the confusion by extending the URR zone across all of Subarea 5, including both the shoreland and aquatic areas, notwithstanding the fact that URR is clearly not an aquatic zone.

That portion of the aquatic area that lies to the north of the City's pierhead line and which was recently annexed by the City of Warrenton (most of which is in the Youngs Bay Subarea), is currently designated pursuant to Clatsop County's Comprehensive Plan and Development Code as Aquatic Conservation (A-2) and Aquatic Development (A-1).

In January 2004, the City amended its zoning code, conducted an inventory of 26 riparian corridors in the City, conducted an analysis of the Environmental, Social, Economic, and Energy ("ESEE") consequences of the City's decision to allow, limit, or prohibit certain conflicting uses in significant riparian corridors, and implemented a program for regulating uses in significant riparian corridors, including the Wetland and Riparian Corridor Development Standards Ordinance.⁹

⁸ The Comprehensive Plan is inconsistent in its naming of the A-1 Zone; in Article 5 it refers to it as the "Development Aquatic Zone (A-1)" and in Article 3 it refers to it as the "Aquatic Development Zone (A-1)." The WDC calls it the "Aquatic Development Zone," so that will be the usage throughout this application.

⁹ City of Warrenton. 2004. *Riparian Corridor Inventory and ESEE Analysis*. Astoria, Oregon.

Riparian quality in the Columbia River (Youngs Bay: Mouth of Skipanon River to Youngs Bay Bridge) riparian corridor was deemed to be mixed by the City: "low" at the eastern end, and "medium" along parts of the ESP. The document stated that little characteristic vegetation exists along this corridor. Riparian function in the lower Skipanon River Corridor was rated "low" by the City due to shoreline development, diking, and channel alterations.¹⁰ Some riparian vegetation is present along portions of this corridor.

Because of the lack of natural resource values provided by the riparian vegetation in the lower Skipanon River Corridor inventory unit, the City concluded that this inventory unit is considered "non-significant" for regulatory Goal 5 purposes.

While not specifically part of Amendments adopted herein, the City Commission previously adopted, as a final decision of the City, a related Planning Commission determination requested by the Applicant in a separate application that an LNG import terminal, with its accessory uses and activities, is a form of marine cargo transfer facility, a permitted use in the I-2 zone (the "Code Interpretation"). A copy of the Code Interpretation is in the record. The accessory uses and activities referenced in the Code Interpretation include the regasification of the LNG in between modes of conveyance from ship to the interstate pipeline. The City Commission herein adopts a text amendment that codifies this Code Interpretation.

C. Summary of the Adopted Amendments

The Amendments adopted here redesignate a portion of the ESP shorelands as Especially Suited for Water-dependent ("ESWD") Shorelands and rezone the same land area as Water-dependent Industrial Shorelands ("I-2"). The Amendments also confirm the designation of certain aquatic areas on and adjacent to the ESP as Aquatic Development, as shown on the City's Comprehensive Plan Map (also called the General Land and Water Uses Areas Map), and amend certain additional aquatic areas from Aquatic Conservation to Aquatic Development. There are also a number of minor amendments to the Comprehensive Plan and the WDC that fully implement the 2001 removal of the 1981 Mediation Panel Agreement from applicability to the ESP, bring Warrenton's planning documents into conformity with state law and implement the Code Interpretation.

Specifically, the amendments:

¹⁰ The Lower Skipanon River riparian corridor includes about 27,500 linear feet of shoreline on both sides of the lower Skipanon River, between the river mouth and the Eighth Street dam. Both sides of the corridor are diked, except along the East and West Skipanon Peninsulas.

- I. Amend the Comprehensive Plan map and text to re-designate the shoreland portion of the northern 96 acres of the ESP (approximately 40 acres) as ESWD Shorelands (map) and Water-Dependent Development Shoreland (text); and
- II. Amend the Comprehensive Plan map and text to designate the aquatic portions of the northern 96 acres of the ESP (approximately 56 acres), and additional portions of the aquatic areas in the Mouth of the Skipanon and Youngs Bay subareas, including certain portions of areas recently annexed to the City of Warrenton, as Aquatic Development (altogether approximately 370 acres); and
 - . Amend the Comprehensive Plan text to take care of certain related housekeeping changes, including updating the Goal 5 resource protection language to comply with state regulations and removing extraneous language that should have been removed as part of a 2001 amendment to the Comprehensive Plan; and
 - . Amend the WDC zoning map to place the shoreland portion of the northern 96 acres of the ESP in the I-2 zone; and
 - . Amend the WDC text to codify the Code Interpretation determination that "Liquefied Natural Gas importation, regasification, and transfer" is a permitted use in the I-2 zone; and
 - . Amend the WDC zoning map to designate the aquatic portion of the northern 96 acres of the ESP (approximately 56 acres), and additional portions of the aquatic areas in the Mouth of the Skipanon and Youngs Bay subareas, including certain portions of areas recently annexed to the City of Warrenton, as Aquatic Development (A-1); and
 - . Amend the WDC text to make natural resource restoration and mitigation a permitted use in the Urban Recreation/Resort zone; and
 - . Amend the WDC text to make certain changes related to the protection of natural resources and the Transportation Planning Rule consistent with state law, to clarify the permitted uses in the I-2 zone, and to fully implement the 2001 amendments to the Comprehensive Plan and WDC.

The northern 96-acre parcel of the ESP is subleased by Skipanon Natural Gas, LLC from the Port of Astoria. The Port of Astoria leases the parcel from the Oregon Department of State Lands ("DSL"). Both DSL and the Port of Astoria have consented to this application in writing.

D. Procedural History

Applicant submitted its Application on August 23, 2005, and supplemented it on September 2, 2005. The Planning Commission held the first *de novo* hearing on the

Amendments on October 12, 2005. At the conclusion of that hearing, the Planning Commission voted to recommend approval of the Amendments to the City Commission, subject only to the conditions that the Applicant address issues raised by the Oregon Department of Transportation ("ODOT") with respect to the Applicant's traffic impact analysis ("TIA"), and the Department of Land Conservation and Development ("DLCD") with respect to the evidence submitted by Applicant in support of designating the affected aquatic areas as Aquatic Development management units.

The City Commission held a *de novo* hearing on November 17, 2005, at which time the Applicant presented evidence that both the conditions placed on the Planning Commission's recommendation had been satisfied. The public hearing was closed the same evening, but the record was held open for additional written argument and evidentiary submissions by all parties until the 30th of November, 2005, then until the December 7th, 2005 for responsive argument and evidence by all parties, and then, with the consent of the Applicant, the Applicant had two days, until December 9, 2005, to submit final argument. The City Commission met again on December 15 and voted to tentatively approve the Amendments subject to certain conditions.

The City Commission acknowledges that the entire Planning Commission record in this case, including the Applications, the Applicant's Narrative, staff reports, public testimony, and Planning Department correspondence and other materials were placed before the City Commission and are therefore part of the record.

E. Notification

The City forwarded notification of the proposed Amendments to DLCD on August 25, 2005, 48 days before the first evidentiary hearing before the Planning Commission. In accordance with WDC 4.1.6 and WDC 4.7.3 and ORS 197-763, notification of the Planning Commission and City Commission public hearings was mailed to property owners within 200 feet of the site, all interested parties, and all those who requested to be notified on September 21, 2005, and was published in the Daily Astorian on September 30, 2005. In accordance with WDC 4.1, 4.1.6 and 4.7.3, and ORS 197-763, notice of the November 17, 2005 public hearing before the City Commission was mailed to property owners within 200 feet of the site, all interested parties who appeared at the Planning Commission hearing, and all those who requested notification on October 21, 2005 and was published in the Columbia Press and Daily Astorian on November 4, 2005. The notices contained all of the information required by WDC 4.1.6 and 4.7.3, as well as ORS 197.763.

F. Local Procedure

The City employed a hybrid review process in approving the Amendments, employing the quasi-judicial procedure set forth in the Oregon Revised Statutes, ORS 197.763, and the Type IV process set forth in the WDC for map amendments, which

provides at WDC Section 4.1.6.G.4 that "compliance with Chapter 4.7 shall be required for Comprehensive Plan Amendments and Land Use District Map and text amendments." The City's hybrid procedure provided the most opportunity for public input and due process.¹¹ The City employed the procedures required for Type IV applications, except where doing so was inconsistent with the requirements of WDC Section 4.7 or the quasi-judicial procedures set out in ORS 197.763. Specifically, the City Commission did not allow testimony from the Applicant or any other persons during its December 15, 2005 deliberations following close of the record, in order to ensure that no new evidence was introduced without the parties having the statutorily required opportunity to respond. City staff employed the process required for quasi-judicial decisions because of the inter-relatedness of the proposed amendments that were site-specific and the other text amendments, the importance of the decision, and the breadth of public input that is accommodated by use of the quasi-judicial decision making process. Decisions made under both the quasi-judicial decision making process set forth in ORS 197.763 and the WDC must include findings to support the decision that address the criteria for approval.

G. Incorporation

The City hereby incorporates by reference the following documents: 1) the Planning Commission Staff Report and findings; and 2) SNG's August 23, 2005 Application, as updated September 2, 2005 and as supplemented thereafter. To the extent that the findings or proposed findings set out in the above documents are inconsistent with the findings set out herein, the findings in this decision shall take precedence. Where a particular finding contained herein incorporates by reference another finding contained herein, that finding is incorporated only to the extent it is consistent with the finding into which it is being incorporated.

III. Comprehensive Plan Map and Text Amendments (see Ordinance 1085-A)

¹¹ The WDC is somewhat inaccurate as to its labeling of Type III (Quasi-Judicial) and Type IV (Legislative and Map Amendments) procedures. The primary process difference between the Type III and Type IV procedures is that the Type III procedure can result in a final decision being rendered by the Planning Commission (unless appealed to the City Commission), where the Type IV process requires a hearing before the City Commission following a hearing before and a recommendation from the Planning Commission. However, in spite of the Type IV label in the WDC, the Type IV process can be used for either legislative or quasi-judicial applications, depending on the nature of the subject matter. Thus, quasi-judicial map and text amendments are made under the City's Type IV procedure (requiring dual evidentiary hearings before both the Planning Commission and City Commission), modified as necessary by the state's minimum quasi-judicial hearing procedures under ORS 197.763.

IV. Development Code Zone Map and Text Amendments

A. Summary

Applicant has proposed to amend the Warrenton Development Code's Land Use District Map (the "Zoning Map") to change the zoning of the aquatic areas in the Mouth of the Skipanon Subarea, as expanded by the recent annexation, from URR to Aquatic Development ("A-1"). In addition, a portion of the Young's Bay Subarea to the east of the Mouth of the Skipanon Subarea between the 20 foot bathymetric line and the northern edge of the Columbia River navigation channel will be zoned Aquatic Development. And the shoreland portion of the northern 96 acres of the ESP (approximately 40 acres) will be rezoned from URR to I-2 (collectively, the "Zoning Map amendments"). See Figure 5 for the Zoning Map, as amended. Applicant has also proposed a number of additional text amendments implementing past decisions of the City Commission, bringing the text of the WDC into conformance with the Comprehensive Plan, bringing the transportation impact analysis requirement into conformance with state law, and adding mitigation as a permitted use in the URR zone (collectively with the Zoning Map amendments, the "WDC Amendments"). Specifically, the WDC Amendments include:

- Amend WDC Chapter 2.11.110 to clarify that an "Liquefied Natural Gas importation, regassification, and transfer facility" is a permitted use in the I-2 zone;
- Amend WDC Chapter 2.11.130(17) to clarify that the 1981 Mediation Panel Agreement no longer controls the land use in Subarea 5 of the Comprehensive Plan;
- Amend WDC Chapter 2.13.130(3) to clarify that the 1981 Mediation Panel Agreement no longer controls the land use in Subarea 5 of the Comprehensive Plan;
- Amend WDC Chapter 3.11.11(19) and (21) to remove references to the "East Bank Mediated Development Shoreland Zone" which is no longer in existence.
- Amend WDC Chapter 3.10 to incorporate the provisions of OAR 660-023-0240, which establish that where a natural resource is potentially subject to the protections of Goals 15, 16, 17, or 19 and Goal 5, the protections of Goals 15, 16, 17, and 19 take precedence;
- Amend WDC 4.7.6 to remove out-dated language from the TPR and clarify that the WDC standards for demonstrating "significant affect" are to be the then current standards set out in the TPR.

- Amend WDC 2.12 to add wetland and other natural resource mitigation, restoration, creation and enhancement as a permitted use in the URR zone.

Section 4.7.3 of the WDC requires that any amendment to the WDC text and Zoning Map must be consistent with the Comprehensive Plan Map and all applicable Comprehensive Plan polices and all applicable standards and criteria in the WDC, and that it be based on a change in the community or neighborhood, or on a mistake or inconsistency in the comprehensive plan or zoning map. The findings in this Section IV should be read to address the proposed WDC Amendments collectively, except where the findings, or portions of findings, identify specific amendments to which they are or are not applicable.

B. Warrenton Development Code Text Amendments

1. WDC Chapter 2.11.110 – Water-dependent Shorelands (I-2) District

Section 2.11.110, Permitted Land Uses, of the WDC is amended as follows:

The following uses and activities and their accessory uses and activities are permitted in the I-2 zone if the zoning administrator determines that the uses conform to the standards in Section 2.11.130, applicable Zoning Ordinance standards, and other City laws:

(1) The following water-dependent industrial or port uses:

- a. Industrial docks, piers, moorage facilities.
- b. Marine cargo transfer facilities. c. Seafood receiving and processing.
- d. Liquefied Natural Gas (LNG) importation, regasification, and transfer terminal.

...

Purpose and Intent: The purpose and intent of this amendment is to codify the Code Interpretation previously approved by the Planning Commission and adopted by the

City Commission as a final decision of the City finding that the existing I-2 permitted use "marine cargo transfer facilities" includes a liquefied natural gas importation, regasification, and transfer terminal.

2. WDC Section 2.11.130 – Development Standards

Section 2.11.130 of the WDC, Development Standards, is amended as follows:

The following standards are applicable in the I-2 zone:

...

(16) Other Standards: All other standards, including those pertaining to signs, off-street parking and loading requirements, shall apply as set forth in Chapter 3.3 and Chapter 3.7.

(17) Proposals for development in the area covered by the 1981 Mediation Panel Agreement, other than the Mouth of the Skipanon Subarea, must meet the requirements of the Agreement.

...

Purpose and Intent: The purpose and intent of this amendment is to clarify that while the 1981 Mediation Panel Agreement provisions may otherwise remain applicable, following the 2001 amendments to the Comprehensive Plan and WDC, the provisions of that agreement no longer govern development in the Mouth of the Skipanon Subarea.

3. WDC Section 2.12 – Urban Recreational/Resort (URR) District

Section 2.12.110 of the WDC, titled Permitted Land Uses, is amended as follows:

The following uses and their accessory uses are permitted outright in this zone subject to the development standards of this zone, other applicable development standards in the City's ordinances, and state and federal regulations:

1. Golf courses.
2. Driving range.
3. Tennis courts.

4. Eating and drinking establishments as part of a golf course.
5. Overnight lodging, but not including recreation vehicle (RV) parks.
6. Pedestrian, bicycle or equestrian trails.
7. Transportation facilities and improvements subject to the standards of Section 2.0.4.
8. Wetland and other natural resource mitigation, restoration, creation, and enhancement.

...

Purpose and Intent: The purpose and intent of this amendment is to implement the City's determination that permitting wetland and other natural resource mitigation, restoration, creation, and enhancement in the URR zone is appropriate given its applicability to large tracts of estuary shoreland and because the list of other permitted uses is consistent with natural resource preservation and enhancement efforts.

4. WDC Chapter 2.13 – Aquatic Development (A-1) District

Section 2.13.130 of the WDC, titled Development Standards, is amended as follows:

The following standards are applicable in the A-1 zone:

- (1) All uses and activities must satisfy applicable Columbia River Estuary Aquatic and Shoreland Area Development Standards in Chapter 3.11.
- (2) A proposal involving several uses and activities shall be reviewed in aggregate under the more stringent procedure.
- (3) All applicable policies in the City's Comprehensive Plan, Mediation Agreement and Goal Exceptions shall be met, except that no Mediation Agreement policies shall be applied in the Mouth of the Skipanon Subarea.
- (4) All other applicable Code requirements shall be satisfied.

...

Purpose and Intent: The purpose and intent of the amendment is the same as for amendment 2 above.

5. WDC Chapter 3.10.1 – Wetland and Riparian Corridor Development Standards Ordinance: Purpose

Section 3.10.1 of the WDC, titled Purpose, is amended as follows:

This ordinance provides development standards for wetland and riparian corridors in the City of Warrenton and the Warrenton Urban Growth Area to comply with Statewide Planning Goal 5 (OAR Division 660 Chapter 23) including the provisions of OAR 660-023-240. The City of Warrenton has inventoried its wetland and riparian corridor resources, made a determination of significance for each resource unit, and produced applicable development standards that are contained in this ordinance.

Purpose and Intent: The purpose of this amendment is to clarify within the WDC the priority that state law assigns among multiple goals, including goals 16, 17, and 5, that may each purport to regulate the protection and development of the same natural resources.

6. WDC Chapter 3.10.2 – Wetland and Riparian Corridor Development Standards Ordinance: Applicability

Section 3.10.1 of the WDC, titled Applicability, is amended as follows:

- (1) This ordinance applies to all lands lying within the City of Warrenton and the Warrenton Urban Growth Area.
- (2) OAR 660-023-0024 (2) establishes that the requirements of Statewide Planning Goals 16 and 17, as well as 15 and 19, supersede the requirements of Statewide Planning Goal 5 for natural resources that are also subject to and regulated by those goals.
- (3) Notwithstanding the development standards established below in 3.10.3, 3.10.35 and 3.10.5, pursuant to OAR 660-023-0024 development of wetlands and riparian corridors in estuarine and coastal shoreland areas shall be regulated by the requirements of Statewide Planning Goals 16 and 17, as implemented by this Code.

Purpose and Intent: The purpose and intent of this amendment is the same as for amendment 5 above.

7. WDC Chapter 3.11 – Columbia River Estuary Shoreland and Aquatic Area Development Standards

Section 3.11.11 of the WDC, titled Mitigation and Restoration, is amended as follows:

Standards in this subsection are applicable to estuarine restoration and mitigation projects in aquatic areas and adjacent shorelands.

...

(18) The developer implementing a mitigation action shall be responsible for all costs associated with the mitigation project unless an alternative agreement for cost responsibility is negotiated between the landowner and the developer.

(19) Shorelands in the Marine Commercial Shorelands Zone and Water-Dependent Industrial Shorelands Zone can only be used for mitigation subject to a finding that the use of the site for mitigation will not preclude or conflict with water-dependent uses.

(20) Significant Goal 17 resource areas (major marshes, significant wildlife habitat, and exceptional aesthetic resources) can only be used for mitigation subject to a finding that the use of the site for mitigation will be consistent with protection of natural values.

(21) Shorelands in the Marine Commercial Shorelands Zone and Water-Dependent Industrial Shorelands Zone can only be used for restoration subject to a finding that the use of the site for restoration will not preclude or conflict with water-dependent uses.

(22) Priority 2, Level 3 and 4 mitigation sites shall be designated as mitigation sites until they are proposed for restoration outside of the context of mitigation. At this time restoration shall be considered an allowed use subject to the 30 day freeze restrictions presented in mitigation standard 17. Restoration shall only be allowed at Priority 2 sites subject to a finding that the site is no longer required for mitigation.

...

Purpose and Intent: The purpose and intent of these amendments is to remove outdated lingering references to the EB Zone from the WDC, which should have been

removed pursuant to the 2001 Comprehensive Plan and WDC amendments that created and applied the URR zone to the Mouth of the Skipanon Subarea.

8. WDC Chapter 4.7 – Land Use District Map and Text Amendments

Section 4.7.6 of the WDC, titled Transportation Planning Rule Compliance is amended as follows:

A. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060, as it may be amended (the "Transportation Planning Rule"). See also Chapter 4.13, Traffic Impact Study.

B. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one or more of the methods allowed under the Transportation Planning Rule.

Purpose and Intent: The purpose and intent of these amendments is to implement the City's intention that applicants for certain types of development applications be required to determine whether the proposed development will have a significant affect on traffic facilities and, if so, to demonstrate consistency, as those concepts are defined in the state's transportation planning rule. The existing WDC language codified language from an earlier version of the TPR which has since been amended. The current language therefore has the unintended consequence of imposing a different standard on applicants than the current TPR. This amendment is intended to remedy this situation and prevent it from occurring again the next time that the TPR is amended.

C. Compliance with All Applicable Comprehensive Plan Policies and Map

WDC 4.7.3.B.1: Demonstration of compliance with all applicable comprehensive plan policies and map designations.

1. Consistency with Comprehensive Plan Map Designations

The Applicant has proposed to apply the A-1 zone to aquatic areas in the Mouth of the Skipanon Subarea. The current URR zoning in the aquatic areas of Subarea 5 is a mapping error; it is not consistent with the current Comprehensive Plan designation for

the subarea, which can only be implemented by the City's aquatic zones (which do not include the URR zone). As discussed above, pursuant to the proposed amendment adopted here, the Aquatic Development Plan Map designation will also be amended to no longer be an "Urban Development Areas" designation, and the northern boundary of the Mouth of the Skipanon Subarea, as depicted on the Plan Map, will be extended to the northern edge of the Columbia River navigation channel in conformance with the recently approved annexation and given a new City Aquatic Development Plan Map designation (amending the existing County designation). Applying the A-1 zoning designation to the entire area of the Mouth of the Skipanon Subarea will, therefore, be consistent with the Plan Map, as it is amended.

The Applicant has also proposed to designate as A-1 an appropriate 110 acre aquatic area in the Youngs Bay Subarea, north of the 20 foot bathymetric line, that is currently depicted on the City Comprehensive Plan Map and the County's Comprehensive Plan Map as Aquatic Conservation. Pursuant to the Plan Map amendments, however, the area will be designated Aquatic Development on the City's Plan Map. Applying the A-1 zone designation to this area of the Youngs Bay Subarea will thus be consistent with the Plan Map designation, as amended.

Finally, the Applicant has proposed to apply the I-2 zone to the shoreland portion of the northern 96 acres of the ESP. Those acres are currently designated as "Other Shorelands" but will be redesignated pursuant to the Comprehensive Plan Amendments as "ESWD Shorelands." The I-2 zone designation will bring the zoning into compliance with the Plan Map and the Comprehensive Plan.

The City Commission finds that the proposed Zoning Map amendments satisfy the consistency requirement imposed by this criterion. The criterion is not applicable to the other WDC Amendments.

2. Consistency with Comprehensive Plan Policies

a. Article 1

WDC Chapter 1.2.4.

Each development and land use application and other procedure initiated under this Code shall be consistent with the adopted comprehensive plan of Warrenton as implemented by this Code, and with applicable state and federal laws and regulations. All provisions of this Code shall be construed in conformity with the adopted comprehensive plan.

The City Commission finds that the proposed WDC Amendments are consistent with this policy. The Amendments have been processed in conformance with the procedures set out in the WDC, the Comprehensive Plan, and applicable state statutes, as described in Section II. For the reasons outlined in these findings, the Amendments are

consistent with applicable state law, regulations, the Comprehensive Plan and with the applicable provisions of the WDC.

The proposed amendment to WDC 3.10 ensures that proposals to develop natural resources that are potentially protected by Goals 16 or 17 and Goal 5 are evaluated in conformance with the adopted Comprehensive Plan and with the hierarchy of protections established by state law.

Amending WDC 4.7.6. ensures that traffic impacts and consistency determinations are made by applicants for comprehensive plan or zone changes using the appropriate standards set out in state law and that there is no inconsistency between the Comprehensive Plan, the WDC, and state regulatory requirements.

The WDC amendments that remove lingering references to the 1981 Mediation Panel Agreement and EB Zone, as applied to the Mouth of the Skipanon Subarea, serve to ensure that there is consistency between the Comprehensive Plan and the WDC, and that it is possible to make proposals for development in the area that are consistent with the Comprehensive Plan and the WDC.

Finally, the inclusion of LNG import terminal as a listed permitted use in the I-2 zone simply codifies the City's prior Code Interpretation decision which determined that the already listed permitted use, marine cargo transfer facilities, includes LNG import terminals. This codification is consistent with the policy because it helps to ensure that applicants are able to make applications that are consistent with the WDC and Comprehensive Plan. The remaining WDC Amendments further satisfy this criterion in that they implement the Comprehensive Plan Amendments.

b. Article 2 - Community Development

2.310 Land and Water Use Classification

(1) All land and water areas will be classified as appropriate for urban development, rural uses, recreation, conservation or preservation.

This policy has been amended as provided in III.B.1 to bring it into compliance with the statewide planning goals, which do not treat or characterize the Goal 16 aquatic development management unit designation as an "urban development" for purposes of Goal 14. The revised policy states that: "All land and water areas will be classified as appropriate for urban development, rural uses, recreation, aquatic development, conservation, and or preservation." The proposed Zone Map amendments are consistent with this policy because they apply the Aquatic Development (A-1) Zone designation to an area that is designated as Aquatic Development on the Plan Map and the I-2 Zone to an area that is designated ESWD Shorelands. The policy is not applicable to the remaining WDC amendments. The City Commission finds that this policy is satisfied.

(2)(b) Other Urban Shorelands: Other urban shorelands are more desirable for other uses or are suitable for a wider range of uses than ESWD Shorelands. They are located in one of the following zoning districts: High Density Residential, Medium Density Residential, Intermediate Density Residential, General Commercial, Recreation Commercial, Urban Recreation/Resort, or General Industrial.

This policy is applicable only to the WDC Amendment IV.B.3., which adds wetland and other natural resource mitigation, restoration, creation and enhancement ("Natural Resource Improvements") as a permitted use in the URR Zone. The City Commission finds that the amendment is consistent with this policy because it is consistent with the recognition that Other Shorelands are appropriate for a wider range of uses than ESWD Shorelands. Natural Resource Improvements are allowed conditionally in both ESWD Shorelands zones, I-2 and C-2.

(4) Aquatic Development Areas: Aquatic development areas include areas suitable for deep-draft or shallow-draft navigation, including shipping, channels, access channels and turning basins; dredged material disposal sites and mining/mineral extraction areas; and areas adjacent to developed or developable shorelines which may need to be altered to provide navigational access or to create new land areas for water-dependent uses. These areas are managed for navigation and other water-dependent uses in a manner consistent with the need to minimize damage to the estuarine ecosystem. Some water-related and non-water-related uses may be permitted. All aquatic development areas are in an Aquatic Development zoning district.

NOTE: This is the policy as relocated and renamed pursuant to the Comprehensive Plan Amendment, III.B.1. The content of the policy has not changed.

This policy implements the Aquatic Development management unit classification under Goal 16. The analysis in Attachment 1, which is incorporated by reference into this finding, demonstrates that classifying the Site's aquatic areas as Aquatic Development in the Comprehensive Plan, to the extent that they are not already so classified, is consistent with Goal 16 and, by necessary implication, that it is consistent with this policy to zone those areas A-1. The City Commission finds that the aquatic areas on the Site are properly considered to be "areas adjacent to developed or developable shorelines which may need to be altered to provide navigational access or to create new land areas for water-dependent uses." SNG submitted substantial evidence in the form of extensive evidence of the planning history of the ESP for water-dependent industrial uses, the EOA, which identifies the ESP as the best available site for marine cargo importation and transfer, such as the development of an LNG import terminal, and the Alternative Sites/Need Analysis that reached the same result, in support of the conclusion that the ESP is the location most suitable for this particular form of water-

dependent industrial development. It is therefore appropriate for the City Commission to find that the Site is especially suited to water-dependent industrial development. For these same reasons, the City Commission finds that the opponents' objection that the Site does not satisfy the definitional requirements for aquatic development areas is not well taken.

With respect to the requirement that Aquatic Development areas be "managed ...in a manner consistent with the need to minimize damage to the estuarine ecosystem," SNG presented substantial and credible evidence that this would be feasible. SNG submitted a Wildlife Study, a Preliminary Habitat Report, and a report by CH2M Hill and Ellis Ecological Services in response to DLCD regarding the "Estuarine Impacts of the Proposed Skipanon Natural Gas Facility," as well as written and oral testimony from Frank Flynn, demonstrating that the natural resource features of the aquatic areas of the Site are such that any impacts from development can be avoided, minimized, and mitigated so as to prevent damage to the estuarine ecosystem. In addition, WDC Chapters 3.11 and 3.12 require that prior to any development being approved on the Site there must be an Impact Assessment of the project on the estuary and demonstration of how ecosystem impacts are avoided, minimized, and mitigated. The Applicant has presented substantial evidence through the testimony of Frank Flynn and other evidence in the record that it will be required to make a similar showing in order to obtain the various state and federal permits that will be required in order to engage in in-water development on the Site. For all these reasons, the City Commission finds that the Zoning Map amendments designating the aquatic areas of the Site as A-1 are consistent with this Comprehensive Plan policy. The policy is not applicable to the other WDC Amendments.

Other than as discussed above, the opponents have not specifically raised objections under this policy. Their various objections to the validity of designating and zoning the aquatic areas of the Site for Aquatic Development are addressed in Attachment I and in Section VI, and those findings are incorporated herein to the extent applicable.

(5) Conservation Areas: Land and water areas providing resource or ecosystem support functions, or with value for low intensity recreation or sustained yield resources (such as agriculture), or poorly-suited for development, should be designated for non-consumptive uses. Non-consumptive uses are those which can utilize resources on a sustained-yield basis, while minimally reducing opportunities for other uses of the area's resources. These areas are in the City's Aquatic Conservation Zone, and in the Open Space, Parks & Institutional Zone.

NOTE: This policy was renumbered but did not suffer any language changes as a result of Comprehensive Plan Text Amendment III. B. 1.

This policy implements the Aquatic Conservation management unit definition in Goal 16 and the Conservation areas provisions of Goal 17. Applicant's proposal to rezone aquatic areas that are currently designated Aquatic Conservation as A-1 and the shoreland areas I-2 is not inconsistent with this policy, as set out in the Goal 16 aquatic management unit analysis in Attachment 1 and the analysis of Goal 17 above, which are incorporated by reference into this finding. Opponents have not raised objections specifically under this policy. The shoreland area currently has a development designation and as the findings under Goal 17 demonstrate, it is appropriate to re-designate the shorelands for water-dependent development. Their more general objections alleging that the Site must retain its current designations are addressed in Attachment 1, the Goal 17 findings, and Section VI and are found to be without merit.

c. Article 3 - Land and Water Use

3.330 Industrial Lands:

(1) It is the City's policy to support the establishment of a variety of well-designed industrial facilities in appropriate locations in order to expand employment opportunities, make use of land best suited for industry, increase the local tax base and insure a stable economy. Industrial development shall take place in the following areas:

...

(b) Water-Dependent Industrial Shoreland areas have unique characteristics that make them especially suited for water-dependent development. Characteristics that contribute to suitability for water-dependent development include:

- (1) deep water close to shore with supporting land transportation facilities suitable for ship and barge facilities;*
- (2) potential for aquaculture;*
- (3) protected areas subject to scour which would require little dredging for use as marinas;*
- (4) potential for recreational utilization of coastal waters or riparian resources.*

The City Commission finds that the Zoning Map amendments are consistent with this policy and that the policy is not applicable to the remaining WDC Amendments. The record contains substantial evidence that the Site has the unique characteristics that make it appropriate for water-dependent industrial development. The Columbia River Estuary was inventoried by CREST in the 1979 CREST Plan, which was later adopted by the City

of Warrenton as its Goal 16 inventory. The CREST Plan concluded that the ESP is "especially suitable for water-dependent industry." As later outlined in the City's Comprehensive Plan, "the close proximity of the deep water areas of the Columbia River bar to the ESP and shoreline allows deep draft vessels to arrive within the city limits of Warrenton on one tide after crossing the bar. This unique feature enables water-dependent development sites within the City to be situated to provide facilities for the handling of bulk commodities for the entire Columbia River basin and the western United States." This recognition of the ESP shorelands as appropriate for water-dependent industrial development has persisted throughout the planning history for the Site. The decision to remove the ESP from the inventory of ESWD Shorelands in 2001 did not represent a determination that the property was not suitable for water-dependent development, only that the City had not succeeded in attracting an appropriate water-dependent use.

The CREST Plan's inventory also recognized the need to have the aquatic areas adjacent to the ESP designated as Aquatic Development in order to fulfill the water-dependent development potential of the ESP. The CREST Plan established the Mouth of the Skipanon Subarea, which then extended over the ESP north to the Columbia River navigation channel and in which the entire aquatic area was to be designated Aquatic Development. The Plan Map to this day maps the Subarea 5 aquatic areas as Aquatic Development.

Applicant has provided substantial and credible expert testimony establishing the unique suitability of the Site for an LNG import terminal and the positive impacts that such a facility could have on the City of Warrenton's economy. Based on the oral testimony of the Applicant's representatives, the EOA, the EcoNorthwest Analysis, the Alternative Sites/Need Analysis, and the various natural resource reports submitted into the record on behalf of the Applicant, as well as other evidence in the record, the City Commission concludes that the Site is uniquely appropriate for a properly designed and engineered LNG import terminal, that such a facility would diversify the City's economic base, bring family-wage jobs to the community, and increase the local tax base. The proposed Zoning Map amendments are thus consistent with the above policy. The policy is not applicable to the other WDC Amendments.

Opponents have not raised objections specifically under this Comprehensive Plan policy, but have raised concerns regarding the economic impacts of an LNG import terminal on the City of Warrenton. Those concerns are addressed above in response to Goal 9, below in response to the Goal 9 Comprehensive Plan policies, and in Section VI; the findings in these sections are hereby incorporated into this finding.

3.320.1.(e) The purpose of the Urban Recreation/Resort Zone is to control development on certain shoreland areas designated Other Urban Shorelands in the Comprehensive Plan. This zone is appropriate for large tracts of land suitable for development of golf course and other uses listed in the zone.

The proposed text amendment to add Natural Resource Improvements as a permitted use within the URR zone is consistent with the purpose of the zone. The zone is applied to large tracts of land in shoreland areas and involves the development of uses, like golf courses, with substantial open space features. Natural Resource Improvements, like golf course and the other uses currently permitted in the zone, is a use well suited to large tracts of shoreland area. This policy is not applicable to the other WDC Amendments.

3.340 Agriculture, Forestry, Wetlands and Open Space:

(1) Open Space: It is the City's policy to encourage efficient urban development, protect environmentally sensitive areas, and otherwise benefit the public by setting aside appropriate locations for open space, agriculture and forestry. Rural development and conservation areas or zones, described elsewhere in this plan, include important open-space tracts, such as portions of Fort Stevens State Park. Cluster development, appropriate landscaping and other efforts to preserve open space are encouraged in urban development areas. The extensive estuarine areas within the City limits and UGB are a significant open space resource.

The City Commission finds that the proposed WDC Amendments are consistent with this policy. The portions of the aquatic areas currently zoned Aquatic Conservation ("A-2") are properly removed from their current designations and rezoned as A-1 for all the reasons specified in Attachment 1, which are incorporated by reference into this finding. The shoreland area is currently designated for development and as set out in the Goal 17 findings incorporated herein, is properly redesignated for water-dependent industrial development. Opponents' arguments that these re-designations are improper are not specifically addressed to this policy and are responded to in the above referenced and incorporated sections.

The only other WDC Amendment to which this policy is applicable is amendment IV.B.3., which adds Natural Resource Improvements as a permitted use in the URR zone. The City Commission finds that the amendment is consistent with this policy because the ability to make natural resource improvements in a zone helps protect environmentally sensitive areas within that zone. Allowing natural resource improvements in the URR zone will also increase the available options for preserving open space in urban development areas, in particular estuary shoreland areas, which are recognized by this policy as being a significant open space resource.

Article 4 – Natural Features

4.310 Soils

(1) Hazards resulting from poor soils shall be minimized by using sound soils data and engineering principles to determine public and private development techniques and by requiring those developing property, when appropriate, to assume responsibility for certain hazard-related costs.

Applicant has offered testimony indicating that the Site contains soils that have been identified as potentially hazardous to development. The Site is therefore included in the WDC's Soil Hazard Overlay (SHO) District. The SHO is not applicable to the proposed WDC Amendments, and to the extent that it is applicable, there is no prohibition on zoning areas within the SHO as I-2 or A-1. Any proposed development on the Site will be required to demonstrate compliance with the special documentation, design, engineering and construction requirements imposed by the SHO. In addition, any proposed Large-Scale Development, including the approval of any LNG import terminal during the FERC process, will be required to demonstrate compliance with the provisions of WDC 3.19.2. The City Commission finds that to the extent the policy is applicable, the proposed WDC Amendments are consistent with this policy.

At least one opponent objected that the Applicant should have been required as part of this Application to demonstrate compliance with various aspects of the SHO. The City Commission finds that this objection is not well taken. The requirements of that zoning district, and WDC Chapter 3.19, are properly imposed at the time that a specific development is proposed for the Site. As is made clear in policies (2) and (3) of this Section 4.310, on-site soil surveys and reports showing how a proposed development will be engineered to address soil hazards are to be required "prior to the issuance of a building permit" and prior to "approving a structure." The Application requests neither of these two things. For each of these reasons and those reasons provided above, the City Commission finds that the opponents' objections are not well taken.

4.320 Flood Hazards

(1) Public and private losses due to flood conditions shall be reduced by requiring buildings in flood hazard areas to be properly elevated or flood-proofed and by undertaking other measures necessary to avoid hazardous situations.

This policy is implemented through the WDC's Flood Hazard Overlay District ("FHO"). Applicant has offered testimony that the Site is located within a designated flood hazard area. Thus, any proposed development of the Site will be required to demonstrate compliance with the requirements of the FHO. As stated above regarding the SHO district, the FHO is not applicable to the proposed WDC Amendments, and to the extent that they are, the City Commission finds that the proposed WDC Amendments are consistent with this policy because there is no prohibition on zoning areas in the FHO I-2 or A-1 and any development on the Site will be required to be properly elevated and protected to avoid hazardous situations as required by the FHO.

Opponents have argued that the Applicant should be required to demonstrate compliance with the requirements of the FHO as part of these Applications. For the reasons stated here, the City Commission finds that this objection is not well taken. The Applicant is not seeking approval to build a particular project. The WDC Amendments do not permit the construction of any structure without the specific proposed design of that structure first being reviewed for compliance with the requirements of the applicable zone districts, including the FHO, and all of the other applicable site design review standards set out in the WDC. Demonstrating compliance with the requirements of the FHO is not an approval criterion for the proposed WDC Amendments and opponents' suggestions otherwise are found to be without merit.

4.330 Drainage and Erosion

(1) Runoff and water erosion shall be controlled by requiring sound management practices in new subdivisions and large-scale developments and by preparing and implementing comprehensive storm drainage study.

This policy is implemented through WDC Chapters 3.6, Surface Water Management, and WDC Chapter 3.19, which requires a detailed analysis of surface water runoff and erosion issues prior to the approval of any Large-Scale Development. The City Commission finds that the policy is not applicable to the proposed WDC Amendments, and to the extent that it is applicable, the WDC Amendments are consistent with this policy because the policy does not prohibit zoning the Site I-2/A-1, it merely establishes potential approval criteria through the WDC for any proposed development, including Large-Scale Developments, on the Site. The policy is not otherwise applicable to the WDC Amendments.

4.350 Water Quality

(1) The City supports protection of water quality by responsibly managing and constructing various public facilities, adequately controlling private development practices and taking other actions to avoid water pollution.

The City Commission finds that the proposed Zoning Map amendments are consistent with this policy. The City does not interpret this policy to prohibit zoning shoreland and aquatic areas for water-dependent development, as this would be inconsistent with other policies of the Comprehensive Plan. Instead, the City has implemented the policy's mandate to "control[] private development practices" through various provisions of the WDC that are applied to development proposals. Because of its estuarine location, any development proposed for the ESP will be required, for example, to comply with the requirements of WDC Chapter 3.11.17, Water Quality, which requires an evaluation of "potential adverse impacts on water quality," including turbidity, salinity, water temperature, etc., from any proposed dredging, filling, water intake or withdrawal, and more. Similarly, WDC Chapter 3.12.3 requires the applicant for any

development that could impact the Columbia River Estuary to prepare an Impact Assessment that includes impacts on all aspects of water quality. Finally, WDC Chapter 3.11 requires that any development activity in the estuary minimize potential adverse impacts on natural resources. The policy is not applicable to the other WDC Amendments.

Several opponents have raised concerns about the potential water quality impacts of an LNG import terminal on the Columbia River estuary. They have raised issues regarding ballast water, the potential for heated water to be pumped into the estuary, the impact of dredging on water turbidity and others concerns. As demonstrated above, the City has assigned consideration of these issues to the site design review process, which, for an LNG import terminal, will occur during the FERC's LNG permitting process. The City Commission therefore finds opponents' objections to be without merit. In addition, in response to similar concerns raised by DLCD, the Applicant submitted into the record a "Letter Regarding Estuarine Impacts" authored by CH2M Hill and Ellis Ecological Services, which provides, together with other evidence in the record, substantial evidence that it will be feasible to avoid, minimize, and mitigate the potential adverse water quality and other environmental impacts associated with a potential LNG import terminal. Substantial evidence in the record also demonstrates that the Applicant will be required to avoid, minimize and mitigate adverse water quality impacts in order to obtain the various state and federal permits required by the FERC process in order to obtain approval to develop an LNG import terminal.

The WDC IV.B.3., which adds Natural Resource Improvements as a permitted use in the URR zone, is also consistent with this policy. The City Commission finds the amendment to be consistent with the policy because wetland and riparian areas provide vital water quality functions. Because of the location of the URR zone in shoreland areas, having the ability to mitigate, enhance, and restore these vital natural resources is particularly critical to the preservation of water-quality. The proposed amendment is thus consistent with this policy.

4.360 Air Quality and Noise

(1) to preserve air quality and minimize noise through compliance with applicable state and federal regulations, use of additional local requirements and other means.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. The policy does not prohibit zoning the Site I-2/A-1, and it is not applicable to any of the other WDC Amendments. This policy is implemented through the WDC and applied at the time that a development proposal is made.

4.370 Fish and Wildlife

(1) supports maintenance of important fish and wildlife habitat by protecting vegetation along many water bodies, classifying suitable land and water locations as conservation areas and otherwise encouraging protection of valuable fish and wildlife habitat.

The City Commission finds that the WDC Amendments are consistent with this policy. The policy is only applicable to the proposed Zoning Map amendments. Zoning the Site I-2 and A-1 will create the possibility of development on the Site that could impact certain fish and wildlife habitat. With respect to "classifying suitable land and water locations as conservation areas," the City Commission hereby adopts the analysis in Attachment 1 that demonstrates that it is appropriate to reclassify the portions of the Site currently classified as Aquatic Conservation as Aquatic Development and the Goal 17 analysis that demonstrates that it is appropriate to continue the shoreland as a development site and to move it to ESWD Shorelands. With respect to the remainder of the policy, which requires the City to "encourag[e] protection of valuable fish and wildlife habitat," it is applied at the site design review and permitting stage when a specific development proposal is presented for approval, which, for an LNG import terminal proposal, will occur during the FERC's LNG permitting process. WDC Chapters 3.11 and 3.12 both require an analysis of potential fish and wildlife habitat impacts. WDC Chapter 3.11.7, Fish and Wildlife Habitat, imposes express impact avoidance, minimization, and mitigation requirements on any project with the potential to adversely affect important fish and wildlife habitat. As the evidence submitted by the Applicant indicates, the same is true of the various state and federal permits that anyone seeking to do in-water development, such as dredging or filling, is required to obtain.

Various opponents have raised concerns about the potential impacts of an LNG import terminal on fish and wildlife habitat on the Site. They have raised concerns about the fact that the Applicant's conceptual facilities plan indicates that dredging, piling, and fill would all be required on portions of the Site. The City Commission finds that these objections to the WDC Amendments are not well taken. As discussed above, the City has assigned consideration of these issues to the need to demonstrate compliance with the site design review standards during the FERC's LNG permitting process. In addition, Applicant has submitted a Preliminary Habitat Report, a Wildlife Study, and a "Letter Regarding Estuarine Impacts," all prepared by qualified experts and all site-specific, which taken together provide substantial evidence that if an LNG import terminal proposal were to be made it would be feasible to meet the applicable avoidance, minimization, and mitigation requirements with respect to the existing fish and wildlife habitat on the Site. For each of these reasons, the opponents' objections are found to be without merit.

(2) Identified riparian vegetation along rivers, sloughs, coastal lakes and significant wetlands shall be maintained except where direct water access is required for water-dependent or water-related uses.

The City Commission finds that with the exception of Amendment IV.B.3., this policy is not applicable to the WDC Amendments, and that, to the extent the policy is considered applicable, the WDC Amendments are consistent with this policy. The WDC Amendment IV.B.3 specifically advances this policy by permitting the creation and enhancement of natural resources in the URR zone. The policy is otherwise implemented through the WDC 3.10 and 3.11 governing the protection of Goal 5 resources and Goal 16 and 17 resources respectively. This policy in no way prohibits zoning the Site I-2 and A-1. Any proposed development on the Site consistent with the permitted uses in those zones will be required to demonstrate compliance with the applicable design review standards in the WDC, including those implementing this policy. For these same reasons the City Commission finds that the opponents' arguments objecting to the potential impacts of an LNG import terminal on the riparian vegetation and wetlands on the Site are not well taken.

(3) Fish and wildlife resources will be protected in part by including an extensive amount of local water area, including Alder Cove and Youngs Bay in "conservation aquatic" or "natural aquatic" zones. In addition, identified significant shoreland and wetland habitats will be included in a conservation category to protect these areas from uses inconsistent with the preservation of natural values.

The City Commission finds that the WDC Amendments are consistent with this policy. The policy is only applicable to the proposed Zoning Map amendments, which would designate a portion of Youngs Bay as Aquatic Development. The City Commission does not interpret this policy to mean that in order to protect fish and wildlife resources, all of Youngs Bay will be designated conservation aquatic or natural aquatic, because that is not what the plain language of the policy requires. Such an interpretation would also create an internal inconsistency within the existing Comprehensive Plan because the Youngs Bay Subarea already designates certain portions of Youngs Bay, including the navigation channels, as Aquatic Development. The City Commission instead reads and interprets this policy to require that an "extensive amount" of Youngs Bay be designated "conservation aquatic" or "natural aquatic." Approval of the rezoning of the Youngs Bay portion of the Site to A-1 does not alter the fact that extensive amounts of Youngs Bay remain designated as "conservation aquatic" and "natural aquatic." With respect to the requirement that identified significant shoreland and wetland habitats be included in a conservation category, the Applicant has addressed habitat issues fully in Attachment 1 and in the Goal 17 analysis above, which are incorporated herein by reference, as are the City Commission's responses to opponents' related objection.

4.380 Scenic and Historic Resources

to enhance the scenic quality of the area by requiring that adequate visual buffers, suitable landscape plans and other techniques be used in appropriate new developments; and to work with individuals to identify and protect important historical and archaeological sites.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that the policy is considered applicable, the WDC Amendments are consistent with this policy. This policy in no way prohibits zoning the Site I-2 and A-1. Instead, the policy is implemented through the site design review standards in the WDC, including, for example WDC 3.2, Landscaping, Street Trees, Fences, and Walls, which will be applied to any proposed development of the Site. The I-2 zone also includes special development standards that serve to implement this policy, including required buffers, screening, and height limitation near adjacent uses. For these same reasons, opponents' objections related to the potential visual impacts of the LNG import terminal on the Site, to the extent they arise in relationship to this policy, are found by the City Commission to be not well taken.

4.390 Energy Conservation

to guide land development, land management, community facility improvements and transportation systems in a manner that maximizes the conservation of energy, based on sound economic principles.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the proposed WDC Amendments are consistent with the policy. This policy does not prevent zoning the Site I-2 and A-1. The policy is implemented through the WDC's development and site design review criteria, and any development proposed for the Site will be required to demonstrate compliance with these standards. In addition, the Applicant has presented substantial evidence, through oral and written testimony in the record, that should an LNG import terminal locate on the Site, it would increase the supply and reduce the cost of natural gas in the area, which is a comparatively clean burning and efficient fuel source.

Article 5 – Columbia River Estuary and Estuary Shorelands

SECTION 5.100 FINDINGS

Development Aquatic areas are designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses. The objective of the Development Aquatic design is to ensure optimum utilization of appropriate aquatic areas by providing for intensive development.

Development Shoreland areas are designated to provide for water-related and water-dependent development along the estuary's shoreline.

Water-Dependent Development Shoreland areas have unique characteristics that make them especially suited for water-dependent development.

Characteristics that contribute to suitability for water-dependent development include:

-) Deep water close to shore with supporting land transportation facilities suitable for ship and barge facilities;***

The City Commission finds that the WDC Amendments are consistent with this policy. The policy is only directly applicable to the Zoning Map amendments. The City Commission hereby incorporates by reference into this finding the applicable analysis in Section IV.C.2.b., Attachment 1, Section VI, and the Goal 17 analysis above, all of which establish that the record contains substantial evidence in support of the conclusion that the aquatic and shoreland portions of the Site meet the requirements for designation as Aquatic Development and Water-Dependent Industrial Development respectively. The Site features both deep water close to shore and land transportation facilities suitable for ship and barge facilities, in particular for the specific needs of LNG importation. The City Commission further incorporates by reference its responses to opponents' arguments against the appropriateness of these designations contained in those same sections and reaffirms that they are not well taken. The policy does not have implications for the other WDC Amendments.

5.301 Deep-Water Navigation, Port and Industrial Development.

- (1) Shorelands with adjacent deep-water access, adequate rail or road access, and sufficient backup land shall be reserved for water-dependent recreational, commercial, industrial, or port development.***

The City Commission concludes that the proposed WDC Amendments are consistent with this policy. The policy applies directly to the Zoning Map amendments that would designate the shoreland portion of the ESP as I-2. The shoreland portion of the ESP is properly zoned I-2 under the requirements of this policy because of its proximity to the Columbia River navigation channel, the ability to locate water-dependent development on the ESP without having a significant adverse impact on traffic, see the discussion of Goal 12, and the availability of sufficient land to support the accessory uses and activities associated with water-dependent industrial development. The City Commission hereby incorporates into this finding the analysis and conclusion contained in the discussion of Goal 17 regarding the designation of the shoreland portion of the Site as ESWD Shorelands as well as its discussions under Goal 9 of the unique

suitability of the Site for LNG importation. The policy does not implicate the other WDC Amendments.

(5) Evaluation of proposals involving treated or untreated wastewater discharge into the estuary will rely on the point source water pollution control programs administered by the Oregon Department of Environmental Quality and the Washington Department of Ecology.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. The Zoning Map amendments will permit, under certain circumstances, industrial development on the Site that could involve proposals to discharge wastewater into the estuary. This policy, however, is implemented through the development standards and the site design review criteria in the WDC. Any development proposal for the Site will be required to demonstrate compliance with the applicable WDC criteria that implement this policy. The policy relates to development proposals not the proposed WDC Amendments. For these reasons, the City Commission finds as well that opponents' arguments regarding the possibility of waste water discharges associated with an LNG import terminal are not well taken and are not applicable to the proposed WDC Amendments.

5.305 Dredging and Dredged Material Disposal.

(1) New and maintenance dredging shall be allowed only:

a) If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable zone; and

The City Commission finds that this policy is not applicable to the proposed WDC Amendments and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. The Zoning Map amendments would designate the aquatic areas of the Site as A-1. The A-1 zone allows dredging under certain circumstances, including where dredging is required to support navigation and water-dependent uses. Any dredge proposal related to an LNG import terminal, however, is subject to demonstration of compliance with the impact and mitigation requirements set out in WDC Chapters 3.11 and 3.12 during the FERC's LNG permitting process. Again, this policy is applied to specific dredging proposals through the WDC, not to proposed WDC amendments.

Opponents have raised various concerns related to the possibility of an LNG import terminal locating on the Site and the new and maintenance dredging that such a facility would require. The Application, however, does not include a specific development proposal or a request for authorization to dredge, therefore compliance with the WDC development standards and site design review criteria that implement this

policy are not applicable approval criteria for the Application. The City Commission finds that these objections are not well taken.

b) Dredging and dredged material disposal shall not disturb more than the minimum areas necessary for the project and shall be conducted and timed so as to minimize impacts on wetlands and other estuarine resources.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. The Zoning Map amendments that designate the aquatic areas as A-1 create the possibility of new and maintenance dredging under certain circumstances. There is no inconsistency between designation of the aquatic areas of A-1 and this policy however. The policy is implemented through the development standards and site design review criteria of the WDC and these will be applied at the time dredging is proposed during FERC's LNG permitting process. For these reasons the City Commission also finds that opponents' arguments regarding the scope and timing of potential dredge activity associated with an LNG import terminal to be not well taken and not applicable to the proposed WDC Amendments. The policy is not implicated by any of the other WDC Amendments.

5.307 Estuarine Construction.

(2) Proposals for new or enlarged navigational structures, or for removal of existing structures, must demonstrate that expected benefits outweigh potential adverse impacts on estuarine productivity

The City Commission finds that this policy is not applicable to the WDC Amendments, and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. The Zoning Map amendments applying the I-2 and A-1 zoning designation to the Site will permit, under certain circumstances, the development of new or enlarged navigation structures. There is no inconsistency between applying the I-2 and A-1 zones to the Site and this policy however. The policy is implemented through WDC Chapter 3.11.5 and Chapter 3.12, which specifically requires a demonstration that "the project's potential public benefits will equal or exceed expected adverse impacts." These provisions of the WDC are applied to specific development proposals and no proposal to develop a navigational structure on the Site is being made at this time. For these same reasons the City Commission rejects opponents' objections related to the potential impacts of new navigational structures associated with an LNG import terminal as not well taken and not applicable to the proposed WDC Amendments. The policy is not applicable to any of the other WDC Amendments.

(4) Piling or dolphin installation, structural shoreline stabilization, and other structures not involving dredge or fill, but which could alter the estuary may be allowed only if all of the following criteria are met:

- (a) A substantial public benefit is demonstrated; and*
- (b) The proposed use does not unreasonably interfere with public trust rights; and*
- (c) Feasible alternative upland locations do not exist; and*
- (d) Potential adverse impacts, as identified in the impact assessment, are minimized.*

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. The Zoning Map amendments designating the Site A-1 and I-2 allow the uses specified in this policy under certain circumstances. There is no inconsistency between applying these zones to the Site and this policy however. The policy is implemented through the WDC Chapter 3.11 and Chapter 3.12, which are applied at the time that a specific development with the potential to impact the estuary is made, which, in the event of a proposed LNG terminal, will occur during FERC's LNG permitting process. The Application does not contain a proposal to install piling or engage in the other activities addressed in this policy. The policy is not applicable to any of the other proposed WDC Amendments. For these reasons the City Commission also finds that the opponents' objections to the possibility of piling and other activities covered by this policy are not well taken and are not applicable to the proposed WDC Amendments.

5.309 Fill.

- (2) Reduction of surface area or volume of aquatic areas and significant non-tidal wetlands in shoreland areas shall be minimized in the location and design of facilities requiring fill.*
- (3) Construction on piling is preferred over construction on fill.*
- (4) Mitigation may be required for fills.*
- (5) Fill in estuarine aquatic areas may be permitted only if all of the following criteria are met:*
 - (a) If required for navigation or for other water-dependent uses requiring an estuarine location, or if specifically allowed under the applicable aquatic zone; and*
 - (b) A substantial public benefit is demonstrated; and*

- (c) The proposed fill does not unreasonably interfere with public trust rights; and;***
- (d) Feasible upland alternative locations do not exist; and***
- (e) Adverse impacts, as identified in the impact assessment, are minimized.***

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent it is considered applicable, the WDC Amendments are consistent with the policy. The Zoning Map Amendments designating the aquatic areas as A-1 will allow fill activity under certain circumstances. There is no inconsistency between applying the A-1 zone to the Site and this policy. The policy is implemented through WDC Chapter 3.11 and Chapter 3.12, which apply the policy's criteria for fill at the time a fill proposal is made, which, in the event of a proposed LNG terminal, will occur during FERC's LNG permitting process. The Application does not contain a proposal to fill. For the same reasons, City Council finds that opponents' objections related to the potential for fill activity associated with an LNG import terminal are not well taken and not applicable to the proposed WDC Amendments. The policy has no applicability to the other WDC Amendments

5.311 Fish and Wildlife Habitat.

- (1) Endangered or threatened species habitat shall be protected from incompatible development.***

The City Commission finds that the proposed WDC Amendments are consistent with this policy to the extent applicable, but that the policy is generally inapplicable until the time of development. The policy is only potentially considered applicable to the Zoning Map Amendments, which could permit development that could be incompatible with endangered or threatened species habitat, if it were not properly regulated and if impacts were not properly mitigated. There is nothing inherently inconsistent between this policy and zoning the Site I-2 and A-1. First, there is substantial site-specific expert testimony in the record that establishes that the ESP does not include critical habitat for threatened or endangered wildlife species and that impacts on such habitat as does exist can be effectively avoided, minimized, and mitigated. The City Commission hereby incorporates the analysis and findings in Attachment 1 and its earlier discussion of Goal 17. Second, this policy is implemented through the WDC's development standards and site design review criteria, including WDC Chapters 3.11 and 3.12. These require, among other things, any applicant seeking a permit to develop in the estuary to conduct an Impact Analysis that includes potential impacts on critical wildlife habitat and give the City the ability to deny a permit if those impacts cannot be adequately avoided, minimized, and mitigated, which, in the event of a proposed LNG terminal, will occur during FERC's LNG permitting process. For these same reasons, the City Commission

finds that opponents' arguments regarding the potential impact of an LNG import terminal development on endangered and threatened species are not well taken.

(2) Measures shall be taken protecting nesting, roosting, feeding and resting areas used by either resident or migratory bird populations.

The City Commission finds that the proposed WDC Amendments are consistent with this policy. There is nothing inconsistent between zoning the Site I-2 and A-1 and the policy of taking measures to protect the nesting, roosting, feeding and resting areas used by either resident or migratory bird populations. First, there is substantial site-specific scientific evidence in the record that the Site does not include critical nesting, roosting, feeding, or resting areas for resident or migratory bird populations. Second, to the extent that such areas exist and the zoning permits uses that might impact such areas, any proposal to develop an LNG import terminal use on the Site will be required to demonstrate compliance with all applicable development standards and site design review criteria in the WDC, including Chapters 3.11 and 3.12 during FERC's LNG permitting process, which require both an assessment of impacts on estuarine resources and a demonstration of measures taken to avoid, minimize, and effectively mitigate any such impacts. The policy is not applicable to the other WDC Amendments. For these same reasons the City Commission finds that opponents' arguments regarding the potential impacts of an LNG import terminal development on resident and migratory birds are not well taken and not applicable to the proposed WDC Amendments

(3) Major non-tidal marshes, significant wildlife habitat, coastal headlands, and exceptional aesthetic resources within the Estuary Shorelands Boundary shall be protected. New uses in these areas shall be consistent with the protection of natural values, and may include propagation and selective harvest of forest products, grazing, harvesting, wild crops, and low intensity water-dependent recreation.

The City Commission finds that that the proposed WDC Amendments are consistent with this policy. In support of this finding, the City Commission incorporates into this finding the analysis and evidence relied upon in the above analysis of Goal 17, which establishes that it is appropriate to designate the Site's shorelands as ESWD Shorelands. As indicated in that discussion, substantial evidence in the record supports the conclusion that the Site does not encompass major non-tidal marshes, significant wildlife habitat, a coastal headland, or an exceptional aesthetic resource. Moreover, such natural resources as do exist on the Site are protected through the criteria applied to any proposed development in the estuary through WDC Chapters 3.11 and 3.12, the demonstration of compliance with which for a proposed LNG terminal will occur during the FERC's LNG permitting process. Opponents' arguments challenging these determinations are addressed by and in the Goal 17 analysis above and are found to be without merit. The policy is not otherwise applicable to the proposed WDC Amendments.

5.315 Land Transportation System.

(4) New land transportation routes shall be located so as not to reduce or downgrade the potential for development of Marine Commercial Shorelands, Water-Dependent Industrial Shorelands, or Development Aquatic areas.

The City Commission finds that the proposed WDC Amendments are consistent with this policy. The policy is only applicable to the Zoning Map amendments. The City has no plans to install land transportation routes on or near the Site that would reduce or downgrade the potential for development of the Site for a water-dependent industrial use.

(5) Construction of new land transportation facilities and maintenance of existing land transportation facilities shall be undertaken in a manner that minimizes expected impacts on aquatic and shoreland estuarine resources.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. Zoning the Site I-2 and A-1 may lead to the development of new land transportation facilities on the ESP, but this is not inconsistent with the policy. The policy is implemented through the WDC design review criteria and any applicant for a permit to develop a transportation facility on the Site will be required to satisfy the applicable WDC criteria, including those in Chapters 3.11 and 3.12 that require all natural resource impacts from any proposed development to be assessed, avoided, minimized, and mitigated. The policy is not applicable to the other proposed WDC Amendments.

5.321 Mitigation and Restoration.

(1) Any fill activities that are permitted in Columbia River Estuary aquatic areas or dredging activities in intertidal and shallow to medium depth subtidal areas shall be mitigated through project design and/or compensatory mitigation (creation, restoration or enhancement) to ensure that the integrity of the estuary ecosystem is maintained. The Comprehensive Plan shall designate and protect specific sites for mitigation which generally correspond to the types and quantity of aquatic area proposed for dredging or filling.

The City Commission finds that, with the exception of amendment IV.B.3, this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. The Zoning Map amendments that designate the aquatic areas on the Site A-1 create the possibility of dredge and fill activities on the Site. The requirements of this policy with respect to any such activities, however, are implemented through WDC Chapters 3.11 and 3.12, which require, among many other criteria, that the amount of dredge and fill activity be minimized and that any impacts be mitigated through avoidance,

minimization, and only then through compensatory mitigation. The City Commission finds, therefore that these amendments are consistent with this policy, to the extent that it is applicable.

The only WDC amendment to which this policy is clearly applicable is IV.B.3, which makes wetland mitigation, restoration, and enhancement a permitted use in the URR zone. Implementation of this policy requires that there be suitable sites available for compensatory mitigation that will "ensure that the integrity of the estuary ecosystem is maintained." Because the URR zone applies to large tracts of estuary shoreland, it is critical that, when appropriate, areas within that zone can be used for natural resource improvements. The proposed amendment is therefore consistent with this policy.

(9) No mitigation action shall endanger or obstruct adjacent properties. The potential for present or future endangerment or obstruction shall be determined in advance of the mitigation action. Responsibility for rectifying potential damage to adjacent property shall be determined prior to permit approval.

This policy is applicable only to proposed WDC amendment IV.B.3. The City Commission finds that the amendment is consistent with the policy because the policy effectively limits the number of available mitigation sites and places a premium on ensuring that natural resource improvements are allowed in areas where there is less likelihood of those improvements endangering or obstructing adjacent properties. The URR zone allows for the development of recreational uses, including uses involving large areas of open space. These uses are among those least likely to be endangered or obstructed by mitigation efforts. Moreover, because the URR zone is found only in shoreland areas, any proposed mitigation activity on a URR site will be subject to the applicable approval criteria in Chapters 3.11 and 3.12, which serve to implement this policy. The proposed amendment is therefore consistent with this policy. For these reasons, the City Commission also finds the opponents' objection to including natural resource improvements as a permitted use in the URR zone on the grounds that it could interfere with adjacent and other potential uses to be not well taken.

(29) All restoration projects shall serve to revitalize, return, replace or otherwise improve the wetland and aquatic ecosystems in the Columbia River Estuary area. Examples include restoration of natural biological productivity, fish and wildlife habitat, aesthetic or historic resources that have been diminished or lost due to past alterations, activities, or catastrophic events. In selecting projects, priority shall be given to those projects which provide substantial public benefits and which restore those wetland and aquatic habitat types, resources, or amenities which are in shortest supply compared to past abundance.

This policy is applicable only the proposed WDC amendment IV.B.3. The City Commission finds that the amendment is consistent with this policy because the policy requires that restoration projects serve to benefit the wetland and aquatic ecosystems in

the Columbia River Estuary area. Projects will typically have to be located in or adjacent to the wetland and aquatic areas of the estuary in order to satisfy this requirement. Because the URR zone is applied to large areas of estuarine shoreland, it is vital to the implementation of this policy that natural resource improvements are permitted in the zone.

31) Restoration of economically marginal and unused low-lying diked areas to estuarine wetland shall be encouraged; active restorations to provide potential for diverse habitat (e.g., mudflat and marsh) as well as passive restorations are encouraged. Except through public condemnation procedures, removal of dikes or excavation on private lands shall not occur without consent of the landowner.

This policy is only applicable to the proposed WDC amendment IV.B.3. The City Commission finds that the amendment is consistent with this policy because the URR zone is a shoreland zone and thus may encompass low-lying diked areas that are unused or economically marginal. The amendment will allow shoreland property that falls in this category and is zoned URR to be used for restoration activities.

(36) Restoration of riparian vegetation around wetlands and waterways in the Columbia River Estuary planning area is a high priority. Protection of these areas shall be implemented using various strategies (e.g., zoning, acquisitions, easements, and transfer of development rights).

This policy is only applicable to the proposed WDC amendment IV.B.3. The City Commission finds that the amendment is consistent with this policy because the URR zone is a shoreland zone that encompasses vegetation around wetlands and waterways in the Columbia River Estuary. By adding the natural resource improvements to the allowed uses within the zone, the URR zoning designation will become a means of appropriately protecting these resources. The amendment is therefore consistent with this policy.

5.323 Public Access.

(1) Existing public ownerships, right-of-ways, and similar public easements in estuary shorelands which provide access to or along the estuary shall be retained or replaced if sold, exchanged or transferred.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that the policy is considered applicable, the proposed WDC Amendments are consistent with the policy. There is no inconsistency between zoning the Site for water-dependent industrial development and the policy that public right-of-ways that provide access to or along the estuary be maintained or replaced. This policy is implemented through the WDC and any future development proposed for the Site that would require the sale, exchange, or transfer of an applicable public easement

would be required to replace such easement. The other proposed WDC Amendments are not implicated by this policy.

(2) Public access in urban areas shall be preserved and enhanced through water-front restoration and public facilities construction, and other actions consistent with Warrenton's public access plan.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent it is considered applicable, proposed WDC Amendments are consistent with the policy. The Zoning Map amendments designating the shoreland portion of the ESP as I-2 would permit outright or conditionally certain water-dependent or water-related public access developments to occur, but it will not be a violation of this policy if the zoning leads to the development of a water-dependent industrial facility that is not compatible with improved public access. With respect to preserving existing public access, this policy is implemented through the public access design review criteria in the WDC, which will be applied at the time that a development is proposed for the Site. The other proposed WDC Amendments are not implicated by this policy.

(3) Proposed major shoreline developments shall not, individually or cumulatively, exclude the public from shoreland access to areas traditionally used for fishing, hunting, or other shoreline activities.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the proposed WDC Amendments are consistent with the policy. On its face, the policy applies to "proposed major shoreline developments," not to proposed zone changes. In any event, zoning the shoreland I-2 is not inconsistent with this policy. Zoning the Site I-2 will not have any direct impact on fishing, hunting or other shoreline activities. And any future industrial development approved for the Site will not exclude the public from shoreland access to areas traditionally used for fishing, hunting, or other shoreline activities because the ESP has not traditionally provided shoreland access to such activities. Moreover, because this policy is implemented through the WDC site design review criteria, any disputes with respect to existing uses of the Site will be addressed at the time a specific development is proposed.

(4) Special consideration shall be given toward making the estuary accessible for the physically handicapped or disabled.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. This policy does not create a mandatory approval criterion for the proposed WDC Amendments. In addition, the WDC Amendments do not have any implications for the implementation of this policy.

5.327 Residential, Commercial and Industrial Development.

(2) Residential, commercial or industrial development requiring new dredging or filling of aquatic areas may be permitted only if all of the following criteria are met:

(a) The proposed use is required for navigation or other water-dependent use requiring an estuarine location, or if specifically allowed in the applicable aquatic zone; and

(b) A substantial public benefit is demonstrated; and

(c) The proposed use does not unreasonably interfere with public trust rights; and

(d) Feasible alternative upland locations do not exist; and

(d) Potential adverse impacts are minimal.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is applicable, the WDC Amendments are consistent with this policy. The Zoning Map amendments that would designate the aquatic areas of the Site as A-1 would allow dredging and filling under certain circumstances, including where such activity is required to support water-dependent industrial uses. The amendments are consistent with the policy, however, because the policy is implemented through the site design review standards of WDC Chapters 3.11 and 3.12, which will require any LNG terminal development proposal involving dredge or fill activity on the Site to demonstrate compliance with the above criteria during the FERC's LNG permitting process. For the same reasons, the City Commission finds that the opponents' objections to the potential dredge and fill requirements of an LNG import terminal are not well taken and are not applicable to the proposed WDC Amendments.

(3) Piling or dolphin installation, structural shoreline stabilization, and other structures not involving dredge or fill, but which could alter the estuary may be allowed only if all of the following criteria are met:

(a) A substantial public benefit is demonstrated; and

(b) The proposed use does not unreasonably interfere with public trust rights; and

(c) Feasible alternative upland locations do not exist; and

(c) Potential adverse impacts are minimized.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments and that, to the extent considered applicable, the WDC Amendments are

consistent with the policy. The Zoning Map amendments that would designate the aquatic areas of the Site as A-1 and shoreland area I-2 create the possibility of the activities covered by this policy occurring on the Site under certain circumstances. The amendments are consistent with the policy, however, because the policy is implemented through the site design review standards in WDC Chapters 3.11 and 3.12, which are applied to specific development proposals with the potential to alter the estuary; if an LNG import terminal is proposed for the Site, the demonstration of compliance with the criteria in these chapters will occur during FERC's LNG permitting process. For these same reasons, the City Commission finds that the opponents' objections regarding the possible estuarine impacts of an LNG import facility on the Site are not well taken and not applicable to the proposed WDC Amendments.

5.331 Significant Areas.

(1) Significant estuarine aquatic and shoreland resources shall be protected from degradation or destruction by conflicting uses and activities.

The City Commission finds that the WDC Amendments are consistent with this policy. The City Commission hereby incorporates by reference into this finding the conclusions of the Goal 17 and Goal 16 (Attachment 1) analyses, which demonstrate that it is appropriate to designate the shoreland and aquatic areas of the Site for water-dependent development rather than as conservation or natural areas. Notwithstanding the Site's zoning for water-dependent development, this policy is also implemented through development standards and site design review criteria applicable to the zoning districts and any developments within the Columbia River Estuary with the potential to impact the estuary, in particular WDC Chapters 3.11 and 3.12. These provisions ensure, among other things, that any applicant for a permit to develop an LNG terminal on the Site will be required to demonstrate, during FERC's LNG permitting process, how adverse impacts on the estuary's natural resources are avoided, minimized, and mitigated and that the public benefits of the proposed development equal or exceed the adverse impacts.

(2) Major marshes, significant wildlife habitat, and exceptional aesthetic resources shall be protected.

The City Commission finds that the WDC Amendments are consistent with this policy. This policy is applicable to the Zoning Map amendments that designate the shoreland portion of the Site as I-2. That zoning is consistent with this policy for the reasons set out above in the above Goal 17 analysis, which establishes that the shoreland is properly designated ESWD Shorelands because substantial, site specific expert testimony and other evidence in the record demonstrates that there are no major marshes, significant wildlife habitats, or exceptional aesthetic resources on the shoreland portion of the Site. The Goal 17 analysis is hereby incorporated by reference into this finding. Moreover, notwithstanding the ESWD/I-2 shoreland designation, the natural resources on the shoreland portion of the Site are protected by the requirement that any proposed LNG

terminal development on the Site will be required to demonstrate compliance, curing FERC's LNG permitting process, with the applicable approval criteria in WDC Chapters 3.11 and 3.12, which require, among other things, a natural resources Impact Assessment, and a demonstration that the impacts have been avoided, minimized, and mitigated. The policy is not applicable to the other WDC Amendments. For these same reasons, the City Commission finds that the opponents' objections to the potential natural resource impacts of an LNG import terminal on the Site are not well taken.

(3) Significant riparian vegetation shall be protected to the extent identified in local comprehensive plans, except as provided for in Zoning Ordinance Significant Area Standards 1, 2, and 5.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is considered applicable, the WDC Amendments are consistent with the policy. None of the WDC Amendments will alter the obligation of an applicant proposing development on the Site to demonstrate compliance with the applicable WDC development standards and site design review standards in the WDC, including those in Chapters 3.11 and 3.12 that protect significant natural resources, including riparian vegetation, in the Columbia River Estuary.

5.335 Water-Dependent Development Areas.

(1) Shorelands zoned Marine Commercial Shorelands or Water-Dependent Industrial Shorelands shall be protected for water-dependent use.

The City Commission finds that the WDC Amendments are consistent with this policy. The Shoreland portion of the ESP will be zoned I-2, and none of the amendments alters the preference for water-dependent uses in the I-2 zone. This policy is satisfied.

(2) Shorelands especially suited for water-dependent recreational, commercial and industrial uses shall be placed in either a Water-Dependent Industrial Shorelands, Marine Commercial Shorelands Zone.

The City Commission finds that the WDC Amendments are consistent with this policy. The policy applies only to the amendment that places the I-2 zone on the ESWD Shoreland portion of the ESP. The amendment directly implements this policy.

5.347 Mouth of the Skipanon River Subarea

(1) Development of shorelands and adjacent aquatic areas in the East and West Peninsulas of the Skipanon River shall include provision for vegetative buffers and other means for shielding the developed areas from adjacent marshes and flats.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments and that, to the extent that it is applicable, the WDC Amendments are consistent with the policy. None of the amendments impacts this policy or the ability of the City of Warrenton to apply it through the WDC to proposed developments for the Site.

(2) The Development Aquatic designations along both sides of the Skipanon are provided to accommodate future water-dependent uses.

The City Commission finds that the proposed WDC Amendments are consistent with this policy. The Zoning Map amendments bring the zoning into compliance with the terms of this policy. Unlike URR, the I-2 zone is a water-dependent development zone, and establishing that the adjacent aquatic areas are A-1 is necessary to make the water-dependent shoreland designation meaningful.

(8) Portions of this subarea are subject to provisions of the 1981 Mediation Panel Agreement. Developments in this area must be consistent with the relevant portions of the Agreement.

As discussed in Section II and III above and in Section VI below, this policy has not been effective since the 2001 Comprehensive Plan and WDC amendments that sought to remove the provisions of the 1981 Mediation Panel Agreement from the Mouth of the Skipanon Subarea. The EB Zone was a hybrid aquatic area and shoreland designation that limited development to two very specific industrial development options. The 2001 amendments necessarily voided this policy because it would not be possible to pursue the permitted uses under the Other Shorelands/URR zone designation that applied to the Site after the 2001 amendments and also comply with the requirements of this policy. The record contains substantial evidence that the City intended to remove the Mediation Panel Agreement's applicability from the Mouth of the Skipanon Subarea and the City Commission finds that this policy was simply overlooked in the amendment process and is properly stricken from the Comprehensive Plan and thus not relevant to the WDC Amendments.

Opponents' various arguments regarding the continued applicability of the Mediation Panel Agreement to the Mouth of the Skipanon Subarea are found to be without merit for the reasons stated in this finding, as well as those stated in Section III and below in Section VI.

(9) The City will pursue the possibility of constructing bicycle/walking paths on top of the City dikes along the Columbia River, Youngs Bay and the Skipanon River. The priority order of construction should be:

(a) The west bank of the Skipanon River from Harbor Drive south to SW Third Street.

(b) A trail between downtown and the Youngs Bay Plaza area. This trail could follow the old right-of-way west of the downtown intersection a distance of one mile, and follow the dike for approximately 3,000 feet to its intersection with US 101, near the shopping center.

(c) The Airport loop from US 101 at the Youngs Bay Bridge to the old Youngs Bay River Bridge. The trail then follows Airport Road back to US 101.

(d) The east bank of the Skipanon River dike from Harbor Drive to SE Eighth Street.

The City Commission finds that the proposed WDC Amendments are consistent with this policy. The policy does not create an obligation to construct any of the trails listed, only to pursue the possibility of creating such trails. None of the trail segments would be precluded from being developed by virtue the WDC Amendments. The policy is therefore satisfied, even though it does not constitute a mandatory approval criterion.

5.349 Youngs Bay Subarea

(1) Proposed developments shall be evaluated for their impact on existing aquaculture operations.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent it is considered applicable, the WDC Amendments are consistent with this policy. The WDC Amendments do not propose a development, therefore the policy is facially inapplicable. None of the WDC Amendments alters this policy or prevents its full implementation through the WDC. The rezoning of a portion of Youngs Bay from the Clatsop County equivalent of A-2 to A-1 creates the possibility of development that could impact existing aquaculture operations, but, as discussed repeatedly in the sections above, any such development proposal would be required under WDC Chapters 3.11 and 3.12 not just to provide an analysis of impacts on aquaculture but to demonstrate how such impacts will be avoided, minimized and mitigated. In addition, there is no evidence in the record that the particular area of Youngs Bay is utilized for any aquaculture operations as that term is defined in the WDC.

f. Article 7 – Community Facilities and Services

7.310 Community Facilities and Services

(1) It is the City's policy to meet community needs by establishing a capital improvements program, using appropriate site acquisition methods, carefully selecting service activities, and undertaking other desirable actions.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent that it is applicable, the proposed WDC

Amendments are consistent with the policy. Substantial evidence in the record demonstrates that the proposed WDC Amendments are a prerequisite to taking advantage of the opportunity to site an LNG import terminal in the City of Warrenton and that, should such development occur, it would bring substantial new tax revenues into the City. Such tax revenues could, if appropriate, be used to better meet community needs for facilities and services.

Opponents' arguments regarding potential increases in demands for public facilities and services are addressed above in the findings regarding Goal 11, as well as below in Section VI. The discussion and conclusions in those sections are incorporated into this finding. As stated above, under the applicable WDC site design review criteria for development in the Columbia River Estuary, the proposal for an LNG terminal will need to demonstrate, during the FERC permitting process, that its potential benefits to the public do, in fact, outweigh its adverse impacts, including any potential increases in public facilities and services costs. Under the applicable provisions of the WDC, however, as well as pursuant to the commitments made by the Applicant, the monetary cost for such increases would be born by the developer of the Site. The City Commission finds the opponents' objections regarding this issue to be not well taken.

7.320 Water, Sewer and Storm Drainage/Flood Control

(7) Before new subdivisions are approved or building permits are issued for new large-scale developments in Warrenton, the City will assess their impact on the capacity of the community's water, sewer and storm water runoff facilities. Such developments will only be allowed if sufficient capacity exists or suitable evidence indicates it will exist prior to completion of development construction. In deciding the sufficiency of capacity, consideration will be given to possible increases in flows resulting from activities of existing system users and facilities which are likely to be built due to the proposed use but which are not a part of the development.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments and that, to the extent it is considered applicable, the WDC Amendments are consistent with this policy. None of the WDC Amendments modify this policy or limits the City's ability to fully implement the policy through the application of the implementing WDC design review criteria to any proposal to develop the Site. I-2 zoning on the Site will allow for proposals for Large-Scale Developments, but under the express terms of the WDC, no permit will be issued for such a development unless it complies with the WDC provisions, including WDC 3.19, Large-Scale Developments, which implements the specific requirements of this policy.

(8) New subdivisions, new large-scale developments and certain other uses in Warrenton will not be allowed unless satisfactory provisions are made for water supply, sewage disposal and storm water runoff facilities. Satisfactory

provision, in part, means that the size of any water lines, sewer lines and drainage ways will be sufficient to meet the needs of development and, where desirable, be able to accommodate growth in other areas. Suitable arrangements, including dedication of land and use of easements, shall be made so that the City will be able to maintain appropriate water, sewer, and drainage facilities. The construction of lengthy pressure-forced sewer lines to the site, which by-pass undeveloped properties, will be discouraged.

The City Commission finds that this policy is not applicable to the proposed WDC Amendments, and that, to the extent it is considered applicable, the WDC Amendments are consistent with this policy. None of the WDC Amendments modify this policy or limit the City's ability to fully implement the policy with respect to the Site. I-2 zoning on the Site will allow for proposals for Large-Scale Developments, but under the express terms of the WDC, no permit will be issued for such a development unless it complies with the WDC provisions, including WDC 3.19, Large-Scale Developments, which implement the specific requirements of this policy.

g. Article 8 – Transportation

8.350 Multi-Mode Transportation

(4) Expansion of local boating and shipping activities is advocated by the City. This should be supported by proper management and maintenance of local waterways – such as increasing channel depths where desirable, undertaking periodic dredging to maintain appropriate channel depths, prohibiting reduction of channel areas and setting and enforcing speed limits for the Skipanon Channel. Locations suitable for waterfront development activities include the Skipanon River from the mouth to the Eighth Street dam,... and some relatively small areas in Youngs Bay and Alder Cove that are near the peninsulas adjacent to the Skipanon River. Potential water quality and other environmental hazards must be minimized to the extent feasible. See also Water System Inventory of Section 2 of the TSP.

The City Commission finds that the WDC Amendments are consistent with this policy. By rezoning the Site to permit water-dependent industrial development, the City will create the possibility of increased shipping activity in the Mouth of the Skipanon Subarea. The policy also recognizes that in order to increase shipping activities, it is necessary to make a relatively small portion of Youngs Bay adjacent to the ESP available as Aquatic Development. The City Commission finds that the aquatic areas proposed to be zoned A-1 come within the meaning of "relatively small areas" in Youngs Bay.

(5) Deep-draft facilities which can make use of the draft depth of the Skipanon should be encouraged to develop along both east and west banks, near the River's mouth.

The City Commission finds that the WDC Amendments are consistent with this policy. The Zoning Map amendments are necessary to implement this policy because the current Other Shorelands/URR designation of the ESP would not permit a deep-draft facility to locate on the ESP near the River's mouth. The proposed ESWD Shorelands/I-2 designation of the northern portion of the ESP, in contrast, will permit such a use. None of the other WDC Amendments alter this policy or are otherwise inconsistent with its implementation.

h. Article 9 – Economy

9.310 City Economy

(1) It is the City's policy to increase desired industrial and commercial activities in the City by zoning sufficient land for these purposes, expanding public facilities and services, carrying out various economic growth projects, obtaining adequate funding for activities to achieve economic gains, and undertaking other appropriate actions

The City Commission finds that the WDC Amendments are consistent with this policy. The Zoning Map amendments will increase the City's opportunity for water-dependent industrial development in the form of an LNG import terminal. Based on substantial evidence in the record, the City Commission finds that the existing ESWD Shorelands either lack the unique combination of land and water features required for an LNG import terminal or are committed to other uses. The Site has unique features which make it the best suited location for an LNG import terminal in the region, but no proposal to develop such a facility on the Site can be considered until the appropriate zoning is in place. The City Commission also concludes based on substantial evidence in the record that attracting an LNG import terminal to the Site would generate new revenues for the City that could be used to expand public facilities and services and pursue other economic growth opportunities. None of the remaining WDC Amendments amend this policy or otherwise adversely affect the City's ability to fully implement this policy.

Opponents' arguments that an LNG import terminal would adversely impact the City of Warrenton's economy are addressed in Section VI, and those responses are incorporated by reference into this finding. In short, the City Commission is not persuaded by those arguments because they are based on evidence that the City Commission finds to be less reliable and entitled to less weight than the evidence presented by the Applicant. The City Commission therefore finds that these objections are not well taken.

(3) The City shall encourage and support local industrial development in order to diversify beyond the City's three predominant industrial sectors (wood processing, seafood processing, and commercial fishing), while maintaining strong support for these sectors.

The City Commission finds that the WDC Amendments are consistent with this policy. Designating the aquatic areas as Aquatic Development/A-1 and the shoreland as ESWD Shorelands/I-2 in order to take advantage of the emerging opportunities in LNG furthers this policy. Marine cargo transfer facilities and, more specifically, the bulk importation of LNG, are not among the City's existing industrial sectors. The designation of the ESP as suitable for water-dependent industrial development creates an opportunity for industrial development and does not preclude the City from continuing its strong support for existing predominant industrial sectors, all of which rely on industrial zoning designations. None of the other WDC Amendments adversely affect the City's ability to fully implement this policy.

Opponents have argued that putting an LNG import terminal on the ESP would harm the predominant existing industrial sectors, in particular commercial fishing. The City Commission finds that this objection is not well taken. The WDC Amendments do not approve the development of an LNG import terminal on the Site and water-dependent industrial zoning by itself is not only consistent with but necessary to the City's traditional industries. An LNG import terminal would be a permitted use on the Site once the zoning is in place, but any proposal to develop such a facility would be required to demonstrate consistency with the applicable WDC development standards and site design review criteria during the FERC's LNG permitting process and several of the WDC criteria would prohibit approval of the development if it unduly interfered with commercial fishing and other uses of the estuary. Moreover, Applicant has provided substantial and credible evidence that it is feasible to develop an LNG import terminal on the Site without significantly impacting boating activity, including commercial fishing activities. The City Commission finds that the WDC amendments are consistent with the policy of diversifying the City's industrial base while maintaining strong support for traditional industrial sectors.

(5) Tourist-oriented establishments shall be encouraged to locate in Warrenton. Efforts to increase tourism shall include activities undertaken to provide, protect, and enhance scenic and recreational attractions in the area.

The City Commission finds that the WDC Amendments are consistent with this policy. The City Commission does not interpret this policy to foreclose additional water-dependent industrial development in the City, as evidenced by the other policies in the Comprehensive Plan that favor such development. The ESP has not traditionally been, nor is it today, a designated scenic or recreational attraction. Notwithstanding its rezoning to URR in 2001, the Site has not attracted any recreational or tourist oriented

development proposals, including the original golf course that was the motivation for the rezone. The City Commission finds that rezoning the Site for water-dependent industrial development is also consistent with this policy because doing so in no way prevents the City from continuing its existing efforts to encourage tourist-oriented establishments to locate in Warrenton.

Opponents have argued that locating an LNG import terminal on the ESP would create a disincentive to tourism activity, including cruise ships and recreational boating, and have offered ideas for recreational and tourist uses of the ESP. The City Commission finds that these objections are not well taken. Again, this policy does not require every land-use decision to advance tourism as opposed to the industrial or other sectors of Warrenton's economy. The City Commission finds based on the evidence in the record, that jobs in the industrial sector are less seasonal, higher paying, and provide better benefits than the jobs in the tourism sector. Adopting the WDC Amendments does not prevent the City Commission from pursuing its other initiatives aimed at increasing tourism activity in Warrenton. Opponents' arguments regarding the specific potential adverse effects of an LNG import terminal on the ESP are also premature. The WDC Amendments do not approve the development of an LNG import terminal on the Site, and the proponent of such a development would be required to demonstrate compliance with the WDC site design review criteria, during FERC's LNG permitting process, including establishing public need and that public benefits meet or exceed any adverse impacts. Moreover, Applicant has presented substantial and credible evidence that it is feasible to develop an LNG import terminal on the Site and to avoid, minimize, and mitigate the kinds of impacts on the Skipanon River and the Estuary that could substantially interfere with Warrenton's water-oriented tourism industry. For each of these reasons, the City Commission finds that the opponents' objections related to impacts on tourism are not well taken.

(9) While the City recognizes the desirability of encouraging tourism, its economic well-being depends primarily on the continued economic well-being and expansion plans of present employers within the City. Recognizing the public interest, the City will encourage present employers to expand their operations and aid them in doing what is necessary to maintain an economic base for employment within the City.

The City Commission finds that the proposed WDC Amendments are consistent with this policy. Given the nature of Warrenton's predominant industries, zoning the ESP for water-dependent industrial development is consistent with the objective of assisting current employers in expanding their operations and maintaining the economic base for employment. The City Commission finds, based on substantial evidence in the record, that Warrenton's predominant industrial sectors are also reliant on the availability of affordable natural gas and that creating the possibility for the importation of LNG furthers their interest in limiting energy costs. Substantial evidence in the record also

persuades the City Commission that it is reasonable to conclude that a new large-scale industrial development on the ESP, including in particular an LNG import terminal, would generate new buying power in the community that would, in turn, support existing businesses and create the demand for new employees in certain sectors. The new revenues that would be generated from a large-scale water-dependent industrial development on the Site would also allow the City to provide additional assistance to existing employers to maintain and expand their operations, including through improved infrastructure. For all these reasons, the City Commission concludes that the opponents' objections to an LNG import terminal on the Site based on alleged impacts on existing employers are not well taken.

(12) The City has placed the East Bank of the Skipanon River in the Urban Recreation/Resort Zone to facilitate the development of a golf course on this site.

As demonstrated above in Section III, amendment of this policy to indicate that the northern portion of the ESP has been placed in the ESWD Shorelands/I-2 zone, is consistent with the Statewide Planning Goals. As amended, the policy is consistent with the proposed WDC Amendments.

D. Compliance with All Applicable WDC Standards and Criteria

WDC Chapter 4.7.3(B)(2) requires as criteria for quasi-judicial amendments to the WDC a "demonstration of compliance with all applicable standards and criteria of this Code, and other applicable implementing ordinances." The City Commission finds that this section does not require a demonstration of compliance with all standards and criteria of the Code, only those which are applicable to the proposed amendments. The City Commission finds that the standards and criteria related to development proposals are not applicable to the proposed WDC Amendments.

1. Chapter 4.7.3(B)(1) and (3)

Criteria for Quasi-Judicial Amendments. A recommendation or decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

- a. A demonstration of compliance with all applicable comprehensive plan policies and map designations.**

This requirement is satisfied with respect to all the WDC Amendments as demonstrated in this Section IV.

b. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property which is the subject of the application; and the provisions of Section 4.7.6, as applicable

This requirement is satisfied as demonstrated through the findings in Sections IV. D. and E.

2. WDC 2.17: Flood Hazard Overlay District

The City Commission finds that the WDC Amendments are consistent with the requirements of the Flood Hazard Overlay District. The proposed amendments involve rezoning land that is located within the Flood Hazard Overlay District. As stated above in the findings regarding Goal 7 and the Comprehensive Plan's natural hazards policies, which are hereby incorporated by reference into this finding, the FHO district's requirements are not approval criteria for the proposed Amendments. Any development proposal for the Site, however, including an LNG import terminal, will have to demonstrate compliance with all applicable provisions of the FHO district prior to receiving the necessary development permits. As indicated earlier, opponents have raised objections to the WDC Amendments based on concerns related to the ability of an LNG import terminal to be adequately secured against natural hazards. For the reasons stated here and above in the findings on Goal 7 and the natural hazards Comprehensive Plan policies, the City commission finds that these objections are not well take and are not applicable to the proposed WDC Amendments.

3. WDC 2.19: Soils Hazard Overlay District

The proposed WDC Amendments involve rezoning property that is located within the Soils Hazard Overlay District. WDC Chapter 2.10.100 provides that the stated purpose of this zone is "to avoid development hazards in areas of the City which, according to available soils information, may have moderate to highly compressible soils. These regulations apply to areas in the City which have Braillier, Bergsvik, Coquille-Clatsop Complex and Coquille Variant soils."

The National Resources Conservation Service soil survey for the proposed amendment area show two soil types on the ESP: Troposammments (67) and Coquille-Clatsop Complex (11A).¹² Because the proposed amendment area contains soils that are

¹² National Resources Conservation Service (NRCS). 1988. *Soil Survey Report for Clatsop County*.

classified in the Coquille-Clatsop Complex (11A), the SHO District applies and regulations provided in WDC Chapter 2.19 must be met by all development proposed in this area.

The City Commission finds that the WDC Amendments are consistent with the requirements of the SHO. As stated above in the findings regarding Goal 7 and the Comprehensive Plan's natural hazards policies, which are hereby incorporated by reference into this finding, the SHO district's requirements are not approval criteria for the proposed Amendments. Any development proposal for the Site, however, including an LNG import terminal, will have to demonstrate compliance with all applicable provisions of the SHO district prior to receiving the necessary development permits. As indicated earlier, opponents have raised objections to the WDC Amendments based concerns related to the ability of an LNG import terminal to be adequately secured against natural hazards, including soil adequacy issues. For the reasons stated here and above in the findings on Goal 7 and the natural hazards Comprehensive Plan policies, the City Commission finds that these objections are not well take and are not applicable to the proposed WDC Amendments.

4. Chapter 2.12 – URR Zone

The standards and criteria of this Chapter are directly applicable only to WDC Amendment IV.B.3, which establishes Natural Resource Improvements as a permitted use in the URR zone.

2.12.100 Purpose

The purpose of the Urban Recreation/Resort Zone is to control development on certain shoreland areas designated Other Urban Shorelands in the Comprehensive Plan. This zone is appropriate for large tracts of land suitable for development of the uses listed in this zone.

The proposed amendment is consistent with the purpose of the URR zone. See discussion above in Section IV.C.2, which is hereby incorporated by reference into this finding.

2.12.110 Permitted Land Uses

The following uses and their accessory uses are permitted outright in this zone subject to the development standards of this zone, other applicable development standards in the City's ordinances, and state and federal regulations:

1. Golf courses.

- 2. Driving range.*
- 3. Tennis courts.*
- 4. Eating and drinking establishments as part of a golf course.*
- 5. Overnight lodging, but not including recreation vehicle (RV) parks.*
- 6. Pedestrian, bicycle or equestrian trails.*
- 7. Transportation facilities and improvements subject to the standards of Section 2.0.4.*

The City Commission finds that Natural Resource Improvements is an appropriate use to include on this list for the reasons discussed above, and hereby incorporated by reference, in Section IV.B.2. In particular, because the zone is applied in estuarine shoreland areas and anticipates recreational uses that typically involve significant amounts of open space, the City Commission finds that it is consistent with the resource conservation and estuary protection policies of the Comprehensive Plan to include the use as a permitted use within this zone. For these same reasons the City Commission finds that opponents' objections to including the use as a permitted use in the zone are not well taken.

2.12.120 Conditional Uses

The following uses and their accessory uses may be permitted as conditional uses subject to the Conditional Use Criteria and Standards in Section 4.4, the development standards of this zone, other applicable development standards in the City's ordinances, and state and federal regulations:

- 1. Single-family and multi-family residences as part of a master planned development that also includes a golf course.*
- 2. Retail uses related to the primary recreational activity in this zone.*
- 3. Eating and drinking establishments other than those permitted under Section 2.12.110(4) of this zone.*
- 4. Conference center.*

The proposed amendment is not inconsistent with, nor does it require any amendment to, the text of the conditional use provisions of this Chapter. The amendment is consistent with these provisions.

2.13.130 Development Standards

- 1. Off-street parking shall be provided in accordance with Section 3.3.***
- 2. Landscaping shall be provided in accordance with Section 3.2.***
- 3. Storm-water drainage plans shall be reviewed by the City prior to issuance of any development permits in this zone that result in new or enlarged impervious surfaces, or alter existing drainage patterns.***
- 4. Site plans shall be reviewed for consistency with wetland conservation measures in the City's comprehensive plan and Development Code, including Chapter 3.10, prior to issuance of a development permit.***
- 5. Projects in this zone requiring wetland fill permits from the Oregon Division of State Lands or the US Army Corps of Engineers must be reviewed by the City for consistency with this zone and other applicable City development standards and requirements.***
- 6. Development in this zone must demonstrate that the proposed site plans provide for the development of an ADA-compliant waterfront trail consistent with the 1994 Warrenton Waterfront Revitalization Plan.***
- 7. A traffic impact study is required for any conditional use or outright use approved in this zone. Traffic mitigation measures identified in the traffic impact study must be included as approval conditions of the project.***

The proposed amendment is not inconsistent with, nor does it require any amendment to, the design review provisions of this Chapter. The amendment is consistent with these provisions.

5. WDC 4.7.6: Transportation Planning Rule Compliance

A. When a development application includes a comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060. See also Chapter 4.13, Traffic Impact Study. Significance means the proposal would:

- 1. Change the functional classification of an existing or planned transportation facility. This would occur, for example, when a proposal causes future traffic to exceed the capacity for "collector" street classification, requiring a change in the***

classification to an "arterial" street, as identified by the Transportation System Plan, or

*2. Change the standards implementing a functional classification system;
or*

3. Allow types or levels of land use that would result in levels of travel or access that [sic] are inconsistent with the functional classification of a transportation facility; or

4. Reduce the level of service of the facility below the minimum acceptable level identified in the Transportation System Plan.

B. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

1. Limiting allowed land uses to be consistent with the planned function of the transportation facility; or

2. Amending the Transportation System Plan to ensure that existing improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirements of the Transportation Planning Rule; or,

3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.

WDC Amendment IV.B.8. amends this policy to eliminate the existing and potential for future internal inconsistencies within this policy created by the fact that the policy is intended to require applicants to demonstrate compliance with the TPR but then codifies provisions of the TPR which have subsequently been amended. The Applicant has prepared a TIA which, subject to the ODOT Condition, satisfies the requirements of this policy as amended, and as currently written. Subject to satisfaction of the ODOT Condition, the City Commission finds that the record contains substantial evidence that the Amendments will not have a significant affect on existing or planned transportation facilities. The City Commission hereby incorporates by reference its discussion of Goal 12.

E. Evidence of Change in Neighborhood/Community or Mistake/Inconsistency in Comprehensive Plan/Land Use District Map

Chapter 4.2(B) requires that every amendment to the WDC zoning map or text be supported by evidence of neighborhood or community change, or a demonstration of a mistake or inconsistency with the Comprehensive Plan or land use district (zoning) map. The City Commission finds, as set out below, that each of the proposed WDC Amendments satisfies one or more of these conditions.

The City Commission finds that the Zoning Map amendments are justified by a change in the community, namely the emerging demand for an LNG importation terminal in the lower Columbia River. Applicant has provided substantial and credible evidence of this growing demand and of the unique suitability of the Site for the development of such a facility. The Zoning Map amendments, while not constituting an approval of an LNG import terminal on the Site, are a prerequisite to the ability to apply for siting and permitting approval for any such development. The Site has long been considered appropriate for water-dependent industrial development but was redesignated and rezoned in 2001 after the City's efforts to attract such a use over many years had not succeeded. At that time it appeared that there might be a market for a recreational facility on the site, in particular a golf course. The market has not yet produced a golf course development. Instead this new water-dependent industrial development prospect has emerged and, based upon the evidence in the record, presents a real and potentially very positive economic development opportunity for the City of Warrenton.

The City Commission finds that the Zoning Map Amendments are also necessary to correct existing mapping errors and establish consistency with the Comprehensive Plan Map, as amended. The current Zoning Map designates the aquatic areas in Subarea 5 as URR, which is a mistake. As set out in the Comprehensive Plan, URR is not an aquatic zone. Regardless of whether the Comprehensive Plan classifies an aquatic area as Development, Conservation, or Natural, there is no provision for zoning an aquatic area URR. In order to be consistent with the Comprehensive Plan Map, as amended, the Zoning Map needs to be amended to show the aquatic areas in the enlarged Subarea 5, and that portion of Young's Bay reclassified as Aquatic Development, as being in the A-1 zone, and the shoreland portion of the northern 96 acres of the ESP as I-2.

The City Commission finds that the WDC Amendments that remove references to the 1981 Mediation Panel Agreement from the Mouth of the Skipanon Subarea are needed to correct various mapping and textual inconsistencies and inaccuracies created by the City's failure to fully execute its determination in 2001 that the demands for use of the ESP and adjacent aquatic areas had changed and that it was necessary and appropriate to remove from the Comprehensive Plan and the WDC the provisions implementing the 1981 Mediation Panel Agreement with respect to the Mouth of the Skipanon Subarea. The amendments were necessitated in 2001 by the fact that the URR zone and its

permitted uses were not contemplated by the 1981 Mediation Panel Agreement and were not consistent with the EB zone and its two development options that implemented that agreement in the Comprehensive Plan and WDC. The 2001 amendments removed most references to the EB zone and 1981 Mediation Panel Agreement as applied to the Mouth of the Skipanon Subarea, but neglected to remove them all. The result has been incompatible requirements for development on the ESP; it would not be possible, for example, to both satisfy the requirements for development in the URR zone and comply with the requirements of the 1981 Mediation Panel Agreement, as the current WDC would require. The City Commission finds, therefore, that the proposed Amendments related to the 1981 Mediated Panel Agreement are needed to establish consistency with the Comprehensive Plan, both as currently acknowledged and as amended by the proposed Comprehensive Plan amendments, as well as to complete implementation of an earlier recognized change in the community.

The amendments to WDC Chapter 3.10 related to the protection of Goal 5 resources address the circumstance in which a natural resource is potentially both a Goal 5 and a Goal 16 or 17 resource. The amendment gives priority to regulation under Goals 16 and 17, as required by OAR 660-023-0240. Although this regulation is not new, the City of Warrenton only completed its Goal 5 periodic review in 2002 and has recently begun confronting the tension between the natural resource protection requirements of the various goals. The City Commission finds that incorporating the provisions of OAR 660-023-0240 is the appropriate and necessary response to this emerging tension because it ensures that the issue will be resolved consistent with the requirements of state law. The amendment is thus warranted by the need to establish consistency with state law, the Comprehensive Plan, as amended by the proposed Comprehensive Plan amendments, and by virtue of changes in the community with respect to how natural resource protection and development issues are regulated.

Similarly, the amendment to WDC Section 4.7.6, which removes language from the WDC taken from the outdated version of the state Transportation Planning Rule and replaces it with text that will ensure ongoing consistency between the WDC's TPR requirements and the actual language of the TPR, is necessary to maintain desired consistency with state law, the Comprehensive Plan's implementation of Goal 12, and to address a recent change in the community, namely the state's decision to amend the TPR. Opponents have suggested that this amendment removes standards that, while inconsistent with the current TPR, are nonetheless desirable to the City of Warrenton. Opponents have not offered any suggestions of which inconsistencies are desirable and why, and have offered no evidence in support of the contention. The argument is thus also insufficiently developed to permit either the Applicant or the City Commission a reasonable opportunity to respond. It is the City's desire that its TPR requirements be those of the then current TPR and the proposed amendment implements this policy choice.

The City Commission finds that the inclusion of Natural Resource Improvement as a permitted use in the URR zone is appropriate to establish consistency with the Comprehensive Plan and to fully implement the City's determination in 2001 to adopt the new shoreland zone. The URR zone was first introduced into the City's Comprehensive Plan and the WDC in 2001 and was applied exclusively to the ESP, a large tract of Columbia River Estuary shoreland. As indicated by the review of the Comprehensive Plan policies governing mitigation and restoration in this Section IV, it was inappropriate, and likely just an oversight, not to include natural resource improvements as a permitted use in the URR zone. The fact that any development in the URR zone will impact the natural resource systems of the Columbia River Estuary, that the shorelands included in the zone are Other Shorelands and are deemed appropriate for a wider variety of uses than ESWD Shorelands, and that the type of development anticipated within the URR zone is likely to be very compatible with natural resource improvement efforts, establishes that the amendment is necessary to ensure consistency between the Comprehensive Plan policies and the WDC and to fulfill the purpose of the recently created URR zone.

Finally, the City Commission finds that it is appropriate to list LNG import terminal as a permitted use in the I-2 zone. The record contains evidence of the City Commission's recent code interpretation that an "LNG importation, regasification, and transfer facility" is a marine cargo transfer facility, an existing permitted use in the I-2 zone. This interpretation was made necessary by the change in the community represented by the emerging demand for an LNG import terminal in the Lower Columbia River. Prior to this, there had been no need to specifically address the question. The Amendment is merely a codification of the prior code interpretation decision, which is a final decision which was not appealed, and does not involve a substantive amendment to the WDC. Opponents' efforts to, in effect, collaterally challenge the City Commission's prior code interpretation through these WDC Amendments are not appropriate. The code interpretation was conducted in accordance with the applicable provisions of the WDC. The opponents who have objected to this amendment were part of the code interpretation process and had the opportunity to appeal the decision to the Land Use Board of Appeals but chose not to. Objections to the code interpretation were raised and addressed by the Planning Commission and the City Commission in findings that were not appealed. The City Commission therefore finds that the opponents' current objections to the codification of the code interpretation are not well taken.

V. The City Commission's LNG Issues

The City Commission requested of the City Staff that it set out the WDC sections that address the eight issues related to LNG that the City Commission identified during the City's Tansy Point lease amendment process and where in the record these issues are addressed by the Applicant. The City Commission has been advised by the City Attorney that these issues are not applicable approval criteria and so finds, except to the extent the

issues are addressed elsewhere in these findings. The issues are addressed by the WDC and in the record as follows.

1. Safety Aspects Including Tsunami and Seismic Concerns.

The Warrenton Development Code Land Use District and Site Design chapters address these issues:

Chapter 2.17 – Flood Hazard Overlay District. This overlay imposes special construction requirements on developments in a flood hazard zone.

Chapter 2.19 – Soils Hazard Overlay District. This overlay imposes special soil study and construction engineering requirements on developments proposed in certain types of soil conditions.

Chapter 3.11.2 – This section requires applicants for port and industrial development involving dredge or fill to demonstrate that "potential adverse impacts are minimized." Adverse impacts are defined in the WDC as any measurable impacts from development, including pollution, noise, dust, etc.

Chapter 3.12.3 – This section requires applicants for any development that could potentially impact the estuary to prepare an "Impact Assessment" that includes a "... (8) Demonstration that proposed structures or devices are properly engineered."

The Applicant provided written testimony with regard to these risks as follows:

August 23 Application Narrative - Pgs. 18, 63

November 30, 2005 Letter from Perkins Coie – Pg. 2

The Applicant provided documentary evidence of the natural hazard design standards that are applicable to an LNG facility in support of its written testimony on November 30, 2005:

NFPA 59A – Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG). Seismic Design requirements for LNG containers are contained in Sections 7.2.2, 7.2.7.8, 7.3.2.8(2)(a), 12.3.3.7, 13.3.14, A.7.2.2.4.

NBSIR 84-2833 - Data Requirements for the Seismic Review of LNG Facilities

Regulations Implementing the National Environmental Policy Act
(18 CFR Part 380).

2. Impact on Commercial and Recreational Boating

The Site Design Review criteria of the WDC require an applicant for development in the estuary to address these issues:

Chapter 3.11.2 – This section allows new port and industrial development requiring dredge fill, or that could affect the estuary "only if all the following criteria are met: ...b. A need (i.e. a substantial public benefit) is demonstrated; and c. The proposal does not unreasonably interfere with public trust rights," which would include commercial and recreational boating per Frank Flynn's testimony.

Chapter 3.12.3 – This section requires an applicant for development that could affect the estuary to prepare an Impact Assessment that includes information on "(6) Public access to the estuary and shoreline, including information on ...effect on public boat launches, marinas and docks...[and a] (9) Demonstration that the project's potential public benefits will equal or exceed expected adverse impacts," which would include potential impacts on commercial fishing and boating.

The Applicant provided oral testimony on this issue at the December 17, 2005 City Commission hearing.

The Applicant provided written testimony on this issue as follows:

August 23 Application Narrative – Pg. 20

October 12, 2005 Letter from Frank Flynn – Pg. 2-4 re: Need/public benefit & public trust criteria in permitting

November 30, 2005 Letter from Perkins Coie – Pg. 5

December 7, 2005 Letter from Perkins Coie – Pgs. 5-7

The Applicant provided documentary evidence on this issue on November 30, 2005:

OAR 141-085-0029 (State Fill/Removal Permit) – Applicable permit criteria include non-interference with health and safety and that the public need outweighs harm.

33 CFR Section 320.2 (Federal Permit) –Applicable permit approval criteria include a public interest review, navigation & fishing impacts, and public need.

December 7, 2005 Memorandum from Ferrarini & Associates –
Evaluates evidence of impact on boating near other LNG facilities.

3. Environmental Impacts

The WDC's Site Design Review criteria address in detail the potential environmental impacts of proposed developments in the Columbia River Estuary:

Chapter 3.10 – "Wetland and Riparian Corridor Development Standards Ordinance." Any development in an I-2 zone must meet all the applicable criteria in this Chapter.

Chapter 3.11 – "Columbia River Estuary Shoreland and Aquatic Area Development Standards." Any proposed development that could impact the estuary is required to demonstrate compliance with this Chapter, including 3.11.2: "...b. A need (i.e., a substantial public benefit) is demonstrated; ...d. Feasible alternative upland locations do not exist; and e. Potential adverse impacts are minimized."

Chapter 3.12.3– This section requires an "Impact Assessment at the time a permit is reviewed" for any development that could impact the estuary. The Impact Assessment must address: "(1) Aquatic life forms and habitat...impacts...(2) Shoreland life forms and habitat...impacts...(3) Water quality including information on : sedimentation and turbidity...contaminated sediments...(4) Hydraulic characteristics...(5) Air quality..." and others.

Environmental impacts are addressed throughout the Applicant's written and oral testimony, as well as in various supplemental environmental impact reports. The environmental reports include the Wildlife Inventory, attached as Exhibit 5 to the Application, the Preliminary Habitat Report, filed with the Planning Commission on October 12, 2005, the LNG Import Terminal Site Selection Analysis, submitted November 8, 2005, the Estuarine Impacts response to DLCDC submitted November 8, 2005, the December 7, 2005 Memorandum from Ellis Ecological Services, and materials submitted by Frank Flynn on October 12, 2005.

4. Land Use Laws

The presence of zoning that permits an LNG import terminal is only the first necessary step for the development of an LNG import terminal on the East Skipanon Peninsula.

An LNG import terminal would be a development larger than two acres and thus would be "Large-Scale Development" pursuant to WDC Chapter 3.19 and all development permits, therefore, would have to be approved through a Type III process, with mandatory public notice and a hearing before the Planning Commission. That same procedure would be required by Section 4.2.4.A.2 of the WDC.

In order to satisfy the requirements of Chapter 3.19, Large-Scale Development proposals must demonstrate the adequacy of "2) Soil Suitability...3) Storm Water Management...4) Utilities in general...5) Schools...[and] 6) Landscape suitability..." Pursuant to Section 3.19, the City may require the developer to "post a performance bond to assure that improvements required to comply with the provisions of ...section [3.19] are completed."

Development in an I-2 zone must comply with all of the site design review standards set out in Chapter 2.11.130, including those in Chapter 3.11 (see above), limits on lighting, heat and glare, vibration, and all those in Chapter 3.10 (wetland and riparian corridor ordinance) to the extent applicable.

Development in the A-1 zone involving dredge and fill must comply with all of the site design review standards set out in Chapter 2.13.130, including all the applicable standards in Chapter 3.11 and Chapter 3.12.

Any development that could potentially impact the estuary must comply with the standards in Chapter 3.11 and Chapter 3.12.

Finally, development of the Site would require Site Design Review under Section 4.2.4 *et al.* of the WDC. Section 4.2.6 establishes the relevant criteria, including 4.2.6(ii) regarding "other application section of the Development Code," which includes Chapters 3.11 and 3.12.

5. Financial Cost Benefit/Return to City and its Citizens

The Site Design Review criteria of the WDC address this issue:

Chapter 3.11.2 – This section provides that no port or industrial development involving dredge or fill may be allowed unless "...b. A need (i.e. substantial public benefit) is demonstrated;..."

Chapter 3.12.3 – This section requires an "Impact Assessment" prior to the issuance of a permit for development in the estuary and that Impact Assessment must include a "(9) Demonstration that the project's potential public benefits will equal or exceed expected adverse impacts."

The Applicant provided oral testimony on this issue at the November 17, 2005 City Commission hearing.

The Applicant provided written testimony on this issue as follows:

August 23, 2005 Application Narrative – Pgs. 18-20

November 30, 2005 Letter from Perkins Coie – Pg. 8

December 7, 2005 Letter from Perkins Coie – Pgs. 3-7.

The Applicant provided supporting documentation on this issue as follows:

Economic Opportunity Analysis (Exhibit 1 to August 23, 2005 Application)

Economic and Socioeconomic Impact Study (Exhibit 2 to August 23, 2005 Application)

December 7, 2005 Memorandum from Ferrarini and Associates.

6. Aesthetic Issues

The Site Design Review criteria of the WDC address this issue:

Chapter 3.11.2– This section requires that no development that could impact the estuary be allowed unless: "...b. A need (i.e., a substantial public benefit) is demonstrated; ...e. Potential adverse impacts are minimized." Adverse impacts are defined by WDC as any measurable impacts from development and could be interpreted to include aesthetic impacts.

Chapter 3.11.12 – "Public Access to the Estuary and its Shoreline." This section applies to "all uses and activities in shoreland and aquatic areas which directly or indirectly affect public access" and "public access" includes "aesthetic access (viewing opportunities, for example)."

Chapter 3.12.3 – This section requires an applicant for development that could affect the estuary to prepare an Impact Assessment that

includes information on "(6) Public access to the estuary and shoreline, including information on ...effect on public boat launches, marinas and docks...[and a] (9) Demonstration that the project's potential public benefits will equal or exceed expected adverse impacts."

The Applicant provided oral testimony on this issue at the November 17, 2005 City Commission hearing.

The Applicant provided written testimony on this issue as follows:

August 23, 2005 Application Narrative– Pg. 65

November 30, 2005 Letter from Perkins Coie– Pgs. 4-5

The Applicant has provided supporting documentation on this issue as follows:

33 CFR Parts 321-324 (Federal Permits) – re: "Public Interest Review" includes "aesthetics."

Regulations Implementing the National Environmental Policy Act (18 CFR Part 380). Section 380.15 specifically states that "[t]he siting, construction and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic...values" and requires in paragraph (4) that "[t]he exterior of aboveground facilities should be harmonious with the surroundings and other building in the area."

7. Utilization of Latest LNG Technology

The Zoning District and Site Design Review criteria of the WDC address this issue:

Chapter 2.17 – "Flood Hazard Overlay District." This overlay imposes special construction requirements on developments in a flood hazard zone.

Chapter 2.19 – "Soils Hazard Overlay District." This overlay imposes special soil study and construction engineering requirements on developments proposed in certain types of soil conditions.

Chapter 3.11.2 – This section requires an applicant for port and industrial development in the estuary to demonstrate that "potential adverse impacts are minimized." 3.11.2(2)e and (3)d. Adverse

impacts are defined as any measurable impacts from development, including pollution, noise, dust, etc.

Chapter 3.12.3 – This section requires applicants for any development that could potentially impact the estuary to prepare an "Impact Assessment" that includes a "(8) Demonstration that proposed structures or devices are properly engineered."

Applicant addressed this issue through oral testimony from Peter Hansen at the November 17, 2005 City Commission hearing.

Applicant addressed this issue through written testimony as follows:

November 30, 2005 Letter from Perkins Coie – Pgs 5-6.

Applicant provided documentary evidence of the stringent design criteria that will be applied to the LNG facility on November 30, 2005:

NFPA 59A – Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG).

NBSIR 84-2833 - Data Requirements for the Seismic Review of LNG Facilities

8. Financial Qualifications of the Operator

The Site Design Review criteria of the WDC address this concern:

Chapter 4.2.7 – This section permits the City to require a bonding and assurances from an applicant for projects that include public improvements.

Applicant addressed this issue through written testimony:

November 30, 2005 Letter from Perkins Coie – Pgs. 7-8.

VI. Opposition Issues

Many of the issues raised in opposition to the Amendments have been addressed above in response to specific approval criteria. These will not be addressed again here, except as necessary to expand on previous discussions, but those issues and responses are incorporated by reference into this section. The following are additional issues that opponents have raised, or more expansive responses to issues addressed elsewhere, and the City Commission's findings with respect to each.

1. Consistency with the Warrenton Vision Statement

Several opponents objected to the Amendments as inconsistent with the outcome of the City of Warrenton's Community Visioning Project conducted in 2001. The City Commission finds that this objection is not well taken. There is no evidence in the record that the Community Visioning Project's conclusions have in any form been adopted into the Comprehensive Plan or the WDC, or have otherwise been made approval criteria for Comprehensive Plan or WDC amendments.

2. Precluding uses other than LNG on the ESP

Several opponents objected to a condition proposed by SNG in its Application that would impose a condition on the I-2 and A-1 zoning for the ESP such that the only permitted use would be an LNG import terminal. The City Commission has determined not to impose the condition because it is not necessary to do so in order to approve the Applications.

3. Applicant's payment of charges for services rendered by the City of Warrenton

Mr. Shannon argued both in written and oral testimony before the Planning Commission that the practice of the City billing the Applicant for the time devoted by City Staff, including the City Attorney (who billed the city for their time, not the Applicant), to the processing and evaluating the Applications constituted a violation of Goals 1 and 2. He alleged that payment of these charges, together with contacts between the City Staff and the Applicant, biased the opinions of the City Staff, including the City Attorney. He further alleged that Planning Commission members, had they known that the City was billing for its services on an hourly basis, would have voted differently on the Code Interpretation. The City Commission finds that these objections are entirely without merit.

Mr. Shannon has provided no evidence of any bias on the part of City Staff. There is no evidence that City Staff failed to exercise independent judgment in processing the Application. There is no evidence that City Staff were less willing to assist opponents than the Applicant or the proponents. The hourly billing for City services rather than imposition of a flat fee, while unusual for simpler applications, was entirely appropriate given the anticipated unprecedented workload that would be created by these Amendments. Any other approach would have created an unreasonable risk that the Application would become a financial and staff resource drain on the City. Mr. Shannon's allegations that the outcome of the Planning Commission hearing on the Code Interpretation would have been different had the billing practice been known is entirely without evidentiary support, in addition to being entirely inapplicable to the proposed Amendments. Mr. Shannon placed all evidence of the billing system in the record at the Planning Commission hearing on the Amendments and testified to it at that hearing as

well. The Planning Commission expressed no concern about the system or about the independent judgment of City Staff. The City Commission similarly voted to approve the Amendments and expressed no concerns regarding the unbiased judgment of City Staff, including the City Attorney. The City Commission finds that the City's practice of charging for its Staff services by the hour is not inconsistent with Goal 1 or Goal 2 and rejects Mr. Shannon's arguments and assertions to the contrary.

4. The impact of the Amendments on the City's Public Facilities

Opponents have asserted that the Amendments are inconsistent with Statewide Planning Goal 11 because of the potential impact of an LNG import terminal on Warrenton's public facilities. Specifically, Mr. Shannon, in his September 22, 2005 letter to the Planning Commission argued that "Warrenton should analyze the impact of a LNG terminal on the infrastructure and public facilities in Warrenton." The City Commission finds that these objections are not well taken. The City Commission hereby incorporates its Goal 11 findings set out above by reference and finds additionally as follows.

Demonstrating that the Comprehensive Plan Amendments comply with Goal 11 does not require establishing that public facilities on the ESP are adequate to serve an LNG import terminal. The Comprehensive Plan includes acknowledged policies that implement Goal 11 and those policies, are, in turn, implemented through the WDC. The Amendments do not in any way modify these policies and implementing ordinances. Neither the Comprehensive Plan nor the WDC requires a demonstration of the adequacy of services for a prospective use in conjunction with the Amendments. Instead, the Comprehensive Plan policies defer such considerations to the development stage. Policy 7.320(8), for example, which governs large-scale developments (which would include an LNG import terminal), provides that "new large-scale developments...in Warrenton will not be allowed unless satisfactory provisions are made for water supply, sewage disposal and storm water runoff facilities."

Comprehensive Plan policy 7.320(8) is implemented by WDC Chapter 3.19 "Large-Scale Developments" which expressly prohibits the issuance of a *permit* unless the Planning Commission confirms the adequacy of a) the soil; b) storm water management plans; c) utilities in general; d) schools and other services to meet the needs of the development. And there are similar site design review standards applicable to all developments. WDC Chapter 3.5 provides that "no development may occur unless required public facilities are in place or guaranteed." Thus, a demonstration of the ability to provide the requisite services for an LNG import terminal is reserved for future site design review and LNG permitting processes.

The Goal 11 Comprehensive Plan policies also establish that "persons developing property will generally be responsible for the cost of any water, sewer, or storm drainage facilities which are required to meet the needs of the site being developed." Policy

7.320(9). Therefore, any costs associated with extending necessary services to the Site to serve an LNG import terminal will be born by the developer.

The City's policy of deferring to the site design review and permitting stage the determination of whether the existing public facilities serving a site within the City's UGB are adequate to meet the needs of a particular potential development, rather than requiring this determination at the time that zoning is applied, is entirely consistent with Goal 11. *Just v. City of Lebanon*, 45 Or LUBA 179 (2003) (holding that Goal 11 provides municipalities substantial flexibility in how to ensure that necessary urban facilities are available to the a particular piece of property and rejecting the notion that Goal 11 requires a demonstration).

5. Amendments do not require further coordination with CREST

The City of Warrenton was among the local jurisdictions that participated in the formulation of the Columbia River Estuary Regional Management Plan (the "CREST Plan"), first adopted by the Columbia River Estuary Study Taskforce (CREST) in 1979. That document sought to provide a basis for a coordinated approach to managing the resources and development of the Columbia River Estuary at a time when the local jurisdictions were largely without their own planning departments. By its own terms, however, the CREST Plan "has no legal authority except as it is implemented by local governments in revised comprehensive plans."

Opponents contend that the Amendments to the City of Warrenton's Comprehensive Plan require "coordination with CREST." This may be the proposal set out in the CREST Plan, but it is not a policy that has been adopted by the City of Warrenton in its Comprehensive Plan. Opponents cite to two Comprehensive Plan policies in support of the alleged coordination requirement. The first requires coordination with CREST prior to permit applications. SNG has not applied for any permit. Opponents next cite the policy which states that "Amendments to the *Columbia River Estuary Regional Management Plan* must be coordinated with . . . CREST." SNG is not proposing to amend the CREST Plan, it is amending provisions of the City of Warrenton's Comprehensive Plan. See Comprehensive Plan 5.337(1) and (3).

Both the plain language of the coordination policy and the City of Warrenton's practice of amending its Comprehensive Plan without requiring applicants to coordinate those amendments with CREST, including the amendments to the Mouth of the Skipanon Subarea that removed the Mediation Panel Agreement designations in 2001, demonstrate that the City does not interpret the policy to require CREST coordination when it is amending its Comprehensive Plan provisions related to the estuary. Such a practice would ascribe to CREST a regional, quasi-governmental role which it does not have, especially now that local jurisdictions, including the City of Warrenton, have their own

planning departments and the capacity to oversee land use decisions for their jurisdictions.

Even it were the case that SNG's proposed Comprehensive Plan amendments required coordination with CREST, substantial evidence in the record confirms that SNG has satisfied this obligation through repeated contacts with CREST seeking its input on the Amendments and reliance on CREST for relevant materials used in preparing its Application. The City Commission finds that the opponents' objection is not well taken.

6. SNG as the Applicant

Opponents have objected that SNG was not permitted to be the applicant for the Amendments under the terms of the Warrenton Development Code. The WDC expressly allows owners of property to allow their agents to make applications for Comprehensive Plan and Zone changes. The record contains consents from the Port of Astoria and the Department of State Lands to SNG applying for the Amendments. The City Commission finds that SNG applied as the agent of the property owners, within the meaning of the WDC, and that the opponents' objection is not well taken.

7. Calpine Corporation's Financial Situation

Opponents offered into the record evidence of the financial difficulties faced by SNG's parent company, Calpine. Most opponents made no attempt to tie this information to any of the applicable approval criteria for the Amendments. Mr. VandenHeuvel, in his December 7, 2005, argues that Calpine's financial difficulties are tied to applicable approval criteria but his arguments are without merit. Comprehensive Plan policy 2.310(2) requires that urban development areas be served or be capable of being served by adequate public facilities within 20 years. Calpine's financial difficulties are irrelevant to whether the Site is served or is capable of being served by adequate public facilities. Under the applicable site design review approval criteria in the WDC, as discussed in the Goal 11 findings above, SNG will be required to demonstrate that adequate services are either already available to the Site or that it will provide them at the time that a development is proposed. If it is unable to do so at that time, it will not satisfy the requirements for development approval in the WDC. This response applies to as well to Mr. VandenHeuvel's suggestion that Calpine's financial difficulties make the approval of the Amendments inconsistent with Comprehensive Plan policies related to Large- Scale Developments. As discussed above, these policies are implemented through the WDC, in this case Chapter 3.19, and are applied at the time of site design review, which, in the case of an LNG import terminal proposal, will occur during FERC's LNG permitting process. With respect to these two policies, the City Commission finds these objections to be not well taken.

Mr. VandenHeuvel asserts that "Calpine's financial ability is applicable through Article 3 (Land and Water Use), Article 7, Article 8 (Transportation) and Article 9

(Economy)", but does not identify any specific applicable Comprehensive Plan policies. The City Commission finds that with respect to these Articles, Mr. VandenHeuvel has failed to sufficiently develop an argument to allow the Applicant or the City Commission a reasonable opportunity to respond and thus finds these objections to be not well taken.

Mr. VandenHeuvel also argues that the Calpine's financial situation "is applicable" to statewide planning goals 6, 9, 11, and 12. The City Commission finds that these arguments are without merit. The proposed Amendments do not approve an application by the Applicant to develop an LNG import terminal on the Site. The goal provisions cited by Mr. VandenHeuvel each are properly implemented through the Comprehensive Plan. None of the Amendments affects the implementation of those Goal provisions. Moreover, none of the Amendments affects the implementation of the applicable comprehensive plan policies through the WDC. Calpine's financial situation is simply not evidence relevant to any of the applicable approval criteria for the proposed Amendments.

In the alternative, the City Commission finds that if for some reason Calpine's financial situation were found to be relevant to an applicable approval criterion, there is not substantial evidence in the record that Calpine's financial situation would preclude its subsidiary, alone or in partnership with another party, to meet the design review, development and financial obligations that would be imposed by the City through the applicable provisions of the WDC as part of the approval of an LNG import terminal on the Site. SNG submitted evidence into the record of its parent company's experience in developing and financing large scale projects of this nature and its willingness to bring appropriate partners into the project. The City Commission is not persuaded by the excerpts from newspaper articles, websites, and other evidence submitted by Mr. VandenHeuvel and other opponents regarding Calpine's financial situation that SNG would not be able to meet development standards and the financial obligations that would be imposed under the WDC in order to develop an LNG import terminal.

8. Deferring Certain Determinations to the Development Stage

Opponents have objected to deferring certain determinations to the site design review and LNG permitting stages as being somehow inconsistent with the applicable approval criteria for the Amendments. Mr. VandenHeuvel, for example, argues that "[i]t is illogical for the Comprehensive Plan to require the Commission to defer decisions on amending the Comprehensive Plan to the development stage." The City Commission finds these arguments to be without merit. The Comprehensive Plan does not defer decisions on amending the Comprehensive Plan to the development stage, it defers approval of specific development proposals to a development stage. Contrary to the assumption made by opponents, including Mr. VandenHeuvel, none of the proposed Amendments approves the development of an LNG import terminal on the Site. The Amendments make modifications to the Comprehensive Plan and WDC that the Applicant has supported with substantial evidence. The only decisions that are deferred

to the development stage are those that relate to a specific development proposal rather than appropriate comprehensive plan and zoning designations of the Site. The Comprehensive Plan does not contain approval criteria for a development proposal; it contains policies that are implemented through provisions in the WDC, which then establish the approval criteria for individual development applications. The City Commission therefore finds these objections by opponents to be without merit.

9. The Continuing Role of the 1981 Mediation Panel Agreement

Various opponents have argued that the provisions of the Mediation Panel Agreement remain applicable to the Mouth of the Skipanon Subarea. They argue on the one hand that the 2001 Comprehensive Plan and WDC Amendments were not intended to end the applicability of the Mediation Panel Agreement to Subarea 5, and they cite in support the remaining language in the Comprehensive Plan and the WDC that makes reference to the agreement. As the City Commission has explained at length above, and those explanations are hereby incorporated by reference, the ordinance adopting the 2001 Comprehensive Plan and WDC amendments, which is in the record, can only be reasonably read to have been intended to eliminate the provisions of the Mediation Panel Agreement from the Mouth of the Skipanon Subarea. This is so because of the plain language of the ordinance and because the development proposals for the Mouth of the Skipanon Subarea in the Mediation Panel Agreement cannot be reconciled with the effect of the 2001 amendments, which was to eliminate the hybrid land and water EB Zone and the two associated land and water development options. Therefore, the City Commission finds this objection to the Mediation Panel Agreement-related amendments to be without merit.

Alternatively, some opponents have argued that the City is not permitted to remove the provisions of the Mediation Panel Agreement from its Comprehensive Plan or the WDC without the permission of the other parties to that agreement. The City Commission finds that this argument is without merit. First, as explained above, the decision to remove those provisions from the Mouth of the Skipanon Subarea was made and was final in 2001. If there was a legitimate objection to that decision, the time to make it has long passed. Second, the terms of the Mediation Panel Agreement impose no such obligation on the City. In fact, it is quite the opposite. By its own terms the Mediation Panel Agreement provides that all parties thereto agree that the Mediation Panel Agreement does not foreclose future comprehensive plan amendments and, contrary to the opponents' suggestion, there is no requirement that the parties to the Mediation Panel Agreement later be consulted, much less consent to, changes to a local comprehensive plan that are inconsistent with the Mediation Panel Agreement. For these reasons the City Commission finds that the objections are not well taken.

Finally, Mr. VandenHeuvel argues that at a minimum the aquatic area designations "put in place" by the 1981 Mediation Panel Agreement remain in place. This is not the case, for the reasons set out above, but it is also not an objection which, if

true, would alter the City Commission's findings with respect to any of the Amendments. The Applicant, as discussed at length in Attachment 1 and elsewhere, has provided substantial, site-specific expert testimony and evidence that it is appropriate under the applicable provisions of Goal 16 to designate all of the aquatic areas on the Site for Aquatic Development. In other words, whatever the current aquatic area designations are, the Applicant has provided the evidence necessary to have them designated Aquatic Development going forward.

10. The Economic Impacts of LNG

As discussed above in relation to Goal 9 and the Comprehensive Plan policies implementing Goal 9, the City Commission finds that the Applicant has provided substantial site-specific expert testimony indicating that an LNG import terminal represents a substantial economic development opportunity for the City of Warrenton, provided that any actual proposed development satisfies the applicable WDC criteria. Opponents have submitted a substantial amount of material into the record in an effort to rebut the Applicant's evidence. The City Commission finds that this evidence is not reliable and is based on feared impacts that, should they become a real possibility, would be addressed as part of the site design review during FERC's LNG permitting stage.

Opponents have offered a laundry list of potential economic impacts from an LNG import terminal but no systematic site-specific analysis to determine whether any of these impacts – positive or negative – would likely materialize in Warrenton, and what the relative costs and benefits would actually be. In contrast, the Applicant has offered expert analysis of the predictable economic impacts of an LNG import terminal on the City of Warrenton's economy.

The letters, newspaper articles, and other documents offered by opponents in support of their contention that an LNG import terminal would undermine commercial fishing, the cruise industry, and other river commerce because of the presence of safety and security zones around the LNG import vessels are also not persuasive. They are based on speculation and assumptions about what the size and scope of these zones will be, as well as worst case scenarios and reports that rely on questionable methodologies. Substantial evidence in the record suggests that the actual size of these zones and the scope of limitations that they impose vary, are adapted to the specific needs and requirements of a particular locations, and are determined in part based on potential adverse impacts on competing uses. The precise size and scope of these zones will be determined by the Coast Guard. Not until that determination is made can the actual impacts be assessed during FERC's LNG permitting process through the application of the WDC's Chapter 3.11 and 3.12 criteria regarding, for example, interference with public trust rights, public need, and the requirements to demonstrate that the public benefits of a development outweigh its adverse impacts.

Opponents also offered various documents suggesting that the safety risk posed by the presence of an LNG import terminal will adversely affect tourism and retirement-oriented development in the City of Warrenton. Again, the proposed economic impacts are based on speculation and/or studies of sites not similar to Warrenton. With respect to the risk posed by LNG, substantial evidence in the record (including some submitted by the opponents themselves) supports the conclusion that LNG has a very good fifty year safety record, that there are ever improving technologies to protect LNG cargo, and that the developers of LNG import terminals are subject to numerous federal, state, and local requirements with respect to design, engineering and construction, that address the site-specific risks of natural hazards, accidents, and other events that might otherwise cause an LNG spill.

The City Commission finds the opponents' economic objections to remapping and rezoning the Site to permit the Applicant to submit a development proposal for an LNG import terminal on the Site are not well taken for all the reasons stated here.

11. Information Received After Close of the Record

Members of the City Commission received communications both directly and indirectly regarding these Amendments after the close of the record and after the tentative decision to approve the Amendments. The City Commission members hereby find that they have not considered the information contained in those communications for purposes of deciding whether to adopt these findings and the final decision on these Amendments.

12. Other Objections

Opponents have asserted a variety of other objections to one or more the Amendments, but these have not identified a specific applicable approval criterion and/or have not been sufficiently developed to permit the Applicant or the City Commission a reasonable opportunity to respond. Therefore, the City Commission finds that these objections are not well taken.

VII. Conditions of Approval

The City Commission finds based upon all of the foregoing findings and the evidence in the record, that SNG's proposed Amendments are approved, subject to the following conditions:

- 1) The applicant shall comply with the conditions of approval recommended in ODOT's November 17, 2005 letter to the Warrenton City Commission, as follows:
 - a. The applicant shall provide the traffic mitigation measures described in the traffic impact study by CH2M Hill and consistent

with the City of Warrenton Transportation System Plan, including: (1) the provision of a new or realigned local street north of Harbor Street, designed to align with the intersection of Marlin Avenue and Harbor Street, and (2) the signalization of the intersection of Harbor Street and Marlin Avenue if and when ODOT determines that the intersection meets standard signal warrants and a signal is approved for this location (see Page 14, Traffic Impact Study, as revised and updated on October 24, 2005).

b. The Applicant will seek approval of an ODOT access permit for either a new city street or private drive access to the north side of the reconfigured intersection of Marlin Avenue and Harbor Street.

2) Prior to issuance of permits to develop the Site for an LNG importation, regasification and transfer facility, the Applicant shall, in a Type III Quasi-Judicial procedure, demonstrate compliance with all applicable land use laws, provisions and procedures, which shall include the City of Warrenton Development Code; specifically, but not limited to: Site Design Review criteria of Chapter 4.2, the estuarine development provisions of Chapter 3.11 (Columbia River Estuary Shoreland and Aquatic Area Development Standards), Chapter 3.12 (Impact Assessments and Resource Capability), with Section 3.11.2(2)(c) requiring demonstration that an LNG import terminal will not unreasonably interfere with the public trust rights, such as commercial and recreational boating in the Skipanon Waterway.

ATTACHMENT I – Goal 16 Findings

GOAL 16 FINDINGS

Goal 16: Classification of the Aquatic Areas as Aquatic Development

The City Commission makes the following findings in support of its determination that the aquatic areas that are part of the Site are properly classified as Aquatic Development under Goal 16.

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

1. INTRODUCTION TO THE RULE

Under Goal 16, each estuary is categorized into one of three types: Natural, Conservation, or Development. Each estuary is then inventoried on the basis of its physical, biological, social, and economic resources. Based on this inventory, and other factors set out in the rule, each estuary is then classified into management units, typically natural, conservation, and development. Although the biology of the particular area is a significant consideration in the classification process, it is just one factor among several (including economic and social factors) that go into the determination of the appropriate classifications in particular areas of the estuary.

2. APPLICATION OF OAR 660-015-0010(1)

To assure diversity among the estuaries of the State, by June 15, 1977, LCDC with the cooperation and participation of local governments, special districts, and state and federal agencies shall classify the Oregon estuaries to specify the most intensive level of development or alteration which may be allowed to occur within each estuary.

The Columbia River is one of three estuaries in Oregon that are classified as a "deep-draft development" estuary. (OAR 660-017-0015(4)). Deep-draft development estuaries are anticipated to have aquatic development designations. The City Commission finds that Applicant's proposal to classify the aquatic areas as Aquatic Development is consistent with the highest level development permitted in this type of estuary.

The general priorities (from highest to lowest) for management and use of estuarine resources as implemented through the management unit designation and permissible use requirements listed below shall be:

1. *Uses which maintain the integrity of the estuarine ecosystem;*
2. *Water-dependent uses requiring estuarine location, as consistent with the overall Oregon Estuary Classification;*
3. *Water-related uses which do not degrade or reduce the natural estuarine resources and values;*
4. *Nondependent, nonrelated uses which do not alter, reduce or degrade estuarine resources and values.*

The City Commission finds that Applicant's proposal to reclassify the aquatic areas as Aquatic Development is consistent with these priorities. As discussed below, the areas to be classified as Aquatic Development have been substantially altered by development activities in the past in anticipation of their use for bulk marine cargo importation. Specifically, because of the significant alteration by, in particular, fill, they are of comparatively limited biological significance within the overall estuarine ecosystem. In addition, once the Aquatic Development management unit designation is in place, any actual development proposal for the aquatic area will have to comply with numerous environmental impact avoidance, minimization and mitigation requirements imposed by the federal, state, and local governmental permitting processes for in-water development in the Columbia River Estuary. Therefore, the reclassification will also be consistent with the priority of maintaining the integrity of the estuarine ecosystem.

Inventories shall be conducted to provide information necessary for designating estuary uses and policies. These inventories shall provide information on the nature, location, and extent of physical, biological, social, and economic resources in sufficient detail to establish a sound basis for estuarine management and to enable the identification of areas for preservation and areas of exceptional potential for development.

The Columbia River Estuary was inventoried by CREST in the 1979 Columbia River Estuary Regional Management Plan and later largely incorporated into the City's comprehensive plan. The CREST Plan inventoried the ESP and concluded that it is "especially suitable for water-dependent industry." It was the CREST Plan that first pointed out that the close proximity of the deep water areas of the Columbia River bar to the ESP and shoreline allows deep draft vessels to arrive within the city limits of Warrenton on one tide after crossing the bar. This unique feature enables water-dependent development sites within the City to be situated to provide facilities for the handling of bulk commodities for the entire Columbia River basin and the western United States. The CREST Plan's inventory also recognized the need to have the aquatic areas adjacent to the ESP designated as Aquatic Development in order to fulfill the water-dependent development potential of the ESP.

In 2001 the City Commission approved the removal of the ESP shorelands from the inventory of water-dependent development shorelands and in doing so removed the need to have the aquatic areas mapped and zoned for aquatic development. This did not change the fact, however, that the Site is well suited for deep-draft shipping and bulk cargo importation. At the time, there was simply no market for such uses. As Applicant's evidence demonstrates, there is now a market for such a use, namely LNG importation. The City Commission finds based on substantial evidence in the record that the ESP is uniquely suited to the development of an LNG import terminal, that LNG importation promises significant economic and social benefits for the City and the wider region, and that the biology of the relatively small aquatic areas to be designated for development within the Site is not so significant that it must be protected entirely from development; Applicant has provided substantial evidence that the likely impacts from an LNG import terminal would be born by parts of the estuary that are of less than significant biological value and that the impacts can be effectively mitigated. The City Commission concludes therefore that it is appropriate, in conjunction with the return of the ESP shorelands to its water-dependent development designation to include the Site's aquatic areas in the City's inventory of Aquatic Development areas. The area so classified is larger than just the original Mouth of the Skipanon Subarea and extends into the northwest corner of Youngs Bay, but the Applicant has provided substantial evidence that this additional area is the minimum area necessary to accommodate potential design requirements to be imposed through the balancing of development and resource considerations, including the safety and security issues of the FERC and U.S. Coast Guard, which will be done during the federal LNG permitting process, and that the actual development will impact only a lesser fraction of the total area available to aquatic development.

Based upon inventories, the limits imposed by the overall Oregon Estuary Classification, and needs identified in the planning process, comprehensive plans for coastal areas shall:

1. Identify each estuarine area;

Applicant's proposal does not affect the Comprehensive Plan's identification of the estuarine areas within Warrenton. The City Commission finds that this criterion is satisfied.

2. Describe and maintain the diversity of important and unique environmental, economic and social features within the estuary;

Applicant's proposal does not alter the Comprehensive Plan's description and maintenance of the diversity of important and unique environmental, economic, and social features within the estuary. The City Commission finds that the Comprehensive Plan Amendments are consistent with this policy.

3. *Classify the estuary into management units; and*

The Comprehensive Plan Amendments classify the Site's aquatic areas as Aquatic Development management units and thus this policy is satisfied.

4. *Establish policies and use priorities for each management unit using the standards and procedures set forth below.*

The Amendments will not impact the policies and use priorities established in the Comprehensive Plan for each management unit. The City Commission finds the Amendments to be consistent with this policy.

5. *Consider and describe in the plan the potential cumulative impacts of the alterations and development activities envisioned. Such a description may be general but shall be based on the best available information and projections.*

The Comprehensive Plan addresses the cumulative impact of potential alterations and development activities within the Columbia River Estuary in part through its incorporation of the CREST Plan and its resource management strategy for the estuary and adjacent shorelands. See Article 5, Section 5.100. The proposed Comprehensive Plan does not alter the applicable provisions of the Comprehensive Plan and thus the criterion is not applicable. Alternatively, to the extent that the criterion is applicable, the City Commission finds that the proposed aquatic area amendments are consistent with the criterion. Consistent with the CREST Plan, the Plan Map designates the Subarea 5 aquatic areas as Aquatic Development and the proposed amendments bring the text into conformity with the Plan Map. As discussed elsewhere, the text of the Comprehensive Plan is currently ambiguous with respect to current aquatic designations in the Mouth of the Skipanon Subarea, but the Comprehensive Plan continues to identify the ESP as an area especially suited for water-dependent development and recognizes the potential need to alter the surrounding aquatic areas to support such a use. For these reasons the City Commission finds that the Amendments are consistent with Comprehensive Plan's cumulative impact analysis. The opponents have not raised any objections to the Amendments specifically under this criterion that would allow the Applicant or the City Commission a reasonable opportunity to respond. The opponents' more general objections to the Goal 16 analysis are set out below.

Diverse resources, values, and benefits shall be maintained by classifying the estuary into distinct water use management units. When classifying estuarine areas into management units, the following shall be considered in addition to the inventories:

The proposed amendments would classify the aquatic areas of the Site as Aquatic Development.

1. *Adjacent upland characteristics and existing land uses;*

The record contains substantial evidence that the shoreland areas adjacent to the aquatic areas have long been recognized as uniquely appropriate for water-dependent industrial uses, and they are especially well suited for the location of an LNG import terminal. The upland areas are of sufficient size to support an LNG import terminal and will also require relatively few modifications in order to meet traffic, service, and cargo distribution needs.

At the same time, Applicant has provided substantial evidence, in the form of expert reports and testimony, that demonstrates that the adjacent upland areas have comparatively little biological significance in the estuary, and that such resources as do exist can be protected through impact minimization, mitigation, and restoration. The East and West Skipanon Peninsulas were created by dredge spoils starting in the late 1920s. Through the early 1990s the Corps of Engineers used the ESP as a disposal site for dredging in the Skipanon Channel. The Corps currently uses two in-water disposal sites on the south side of the Columbia River navigational channel, between River Miles 10 (Tansy Point) and 11 (confluence of the Skipanon Channel with the Columbia River navigational channel).

The upland portion of the ESP is largely composed of sandy dredge spoils and the use of the area by off-road vehicles and dirt bikes has left large areas without vegetation. Where riparian vegetation is present, it is dominated by non-native plants, such as Himalayan blackberry (*Rubus discolor*) and Scotch broom (*Cytisus scoparius*). The record contains a Wildlife Report that concludes that the uplands provide habitat for very few songbirds. Similarly, very few observations of reptiles, amphibians, and mammals were made during the spring and early summer surveys. Because the mean high tide does not reach the adjacent riparian area, very little nutrient exchange occurs between the riparian area and the Columbia River, Skipanon River, or Youngs Bay. Such riparian vegetation as exists provides little detritus to the adjacent wetland and rivers. This is only a part of the relevant biological information that Applicant placed in the record in support of the aquatic development classification. The City Commission finds that the nature of the adjacent shoreland supports classification of the aquatic portions of the Site as Aquatic Development.

2. Compatibility with adjacent uses;

The City Commission finds that classifying the aquatic areas of the Site as Aquatic Development is compatible with adjacent uses. The City Commission hereby incorporates into this finding the analysis contained above in 1. In addition, the aquatic area to the west is the Skipanon River channel, which is already designated Aquatic Development. To the north is the Columbia River navigation channel, a deep-draft shipping channel also currently designated as Aquatic Development. To the east of the area to be classified is the northern portion of Youngs Bay, which carries an Aquatic Conservation designation. Given the obligation of any proposed developer of the Site to

demonstrate compliance with the impact avoidance, minimization, and mitigation requirements of the WDC Chapter 3.11 and 3.12, during FERC's LNG permitting process, as well as a host of state and federal permitting requirements that are spelled out in the record, the City Commission concludes that there is no necessary incompatibility between the Aquatic Development management units and Aquatic Conservation management units -- and their respective uses. The same is true of those areas where Aquatic Development and Aquatic Natural management uses are adjacent to one another along the southeastern portion of the Site. In fact, DLCD has specifically rejected the practice of putting an Aquatic Conservation buffer between any Aquatic Development area and an adjacent Aquatic Natural area. With respect to actual existing uses of aquatic and shoreland areas adjacent to the aquatic areas of the Site, there are none that necessarily conflict with making the aquatic areas available for aquatic development. Again, any development will be required under the terms of the WDC to identify and address how impacts on adjacent aquatic and shoreland uses are avoided, appropriately minimized, and then mitigated.

3. *Energy costs and benefits; and*

The City Commission finds based on the evidence in the record that the energy consequences of classifying the aquatic areas as Aquatic Development would be neutral in general, but positive to the extent that the classification and companion zoning lead to the development of an LNG import terminal on the Site.

Applicant has provided substantial evidence that an LNG import terminal would result in an increased supply of a clean and affordable fuel source to the Pacific Northwest and could potentially increase energy production from the accessory combined cycle cogeneration system (CCCS) that is a proposed accessory heat source for the regasification component of the import terminal.

Although the heat generation source that would be used in a given LNG import terminal is not an applicable approval criterion, the City Commission notes that the Applicant has proposed to supply heat from a CCCS because this is one of the most energy efficient and environmentally friendly of the available options. If the CCCS system is approved during the permitting process, the LNG import terminal will be qualified as a High Efficient Cogeneration Facility under the rules of the Oregon Department of Energy due to the integration of the CCCS and the Gas Evaporation, Preparation, and Conditioning (GEPC) system. The qualification requires a very efficient use of primary energy, which will be accomplished by utilizing large quantities of waste heat for each unit of electricity generated. For reliability and safety reasons, the CCCS must be capable of operating independently from the rest of the facility in order to provide back-up power; however, its primary function will be to provide waste heat for the operation of the GEPC in a very energy efficient manner.

While most of the electric power produced by the CCCS will be consumed by the LNG import terminal, some of the power may also be available to the local public utility for distribution to the consumers in the region. The limited capacity of the electrical grid in Clatsop County severely restricts the amount of power that can be injected into the grid at the LNG import terminal; thus, a design has been chosen for the CCCS that minimizes the size of the cogeneration system while optimizing the amount of waste heat utilized. The City Commission finds on the basis of this and other evidence in the record that the proposed aquatic management unit designation is consistent with this policy.

4. *The extent to which the limited water surface area of the estuary shall be committed to different surface uses.*

The surface water area of the Columbia River estuary is the point of reference. Based on substantial and credible evidence in the record, the proposed amendment could result in about 3 percent of the estuarine area of Youngs Bay and about 0.2 percent of the Columbia River estuary being committed to a water-dependent use. These estimates are based on acreage of habitat types reported in a 1983 CREST study of the estuary by D.W. Thomas.¹³ The area proposed for Aquatic Development represents approximately 12 percent of the deep and medium depth acreages reported by Thomas for Youngs Bay or about 0.3 percent of deep and medium depth habitat of the entire estuary.¹⁴ The area of the estuary that will actually be put to other than its current use is significantly less than the above amounts, based on the substantial evidence in the record of the requirements imposed by local, state, and federal permitting processes to avoid, minimize, and mitigate the impacts of any in-water development, including an LNG import terminal. Because the WDC and various state and federal permitting programs require a demonstration that a proposed development will avoid, minimize, and mitigate adverse impacts to the estuary, no more of the estuary's water surface will be devoted to actual development activity than is necessary to accommodate a particular development; and any development will first have to be shown to have a public benefit that outweighs its potential adverse impacts.

As a minimum, the following kinds of management units shall be established:

- 1. *Natural -- in all estuaries, areas shall be designated to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural,***

¹³ Thomas, D. W. 1983. *Changes in Columbia River Estuary Habitat Types Over the Past Century*. Prepared for CREST, Astoria, Oregon.

¹⁴ *Id.*

geological, and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tideflats, and seagrass and algae beds.

Notwithstanding the "Development" designation of the Columbia River Estuary, significant portions of the estuary have been designated Aquatic Natural in order to assure the protection of significant fish and wildlife habitats. Included within these natural areas are all major tracts of salt marsh, tideflats, and seagrass and algae beds.

The record contains substantial and credible evidence that the areas to be classified as Aquatic Development under the Amendments, to the extent that they are not already so classified, do not include major tracts of salt marsh, tideflats, or seagrass and algae beds. Salt marsh, seagrass, and algae beds are not present. The tidal marshes and mudflats that are present in the affected aquatic areas constitute about 2.0 percent of the remaining tidal marsh land in Youngs Bay and approximately 0.2 percent of the total area of tidal marsh land in the Lower Columbia River Estuary. In fact, mudflats have increased by 10 percent in the Lower Columbia Estuary since 1870. Approximately 84 acres of mudflats are located around the northern tip of the ESP, only about 5 acres of which are proposed for impact. No net loss of mudflats below the 1870 benchmark reviewed by Thomas in 1983 would occur as a result of the proposed amendments. The Aquatic Development designations of the aquatic areas will not remove a major tract of tidal marsh from an Aquatic Natural designation.

With respect to those areas of the estuary that could potentially be impacted by development under the Aquatic Development classification, the record contains substantial evidence that the limited development that would occur (given the conditions to be imposed on the companion zoning and the required siting and permitting processes) in these areas will not interfere with the continued biological productivity within the estuary, scientific or educational opportunities, or the dynamic natural, geological, and evolutionary processes within the estuary.

The wetlands below the highest tide and mudflats at the northern tip of the ESP are features that were created within the past 100 years, the result of the deposition of dredge spoils at various times over a number of years. The northern tip of the ESP was not created by natural geologic or evolutionary processes and does not have features that are characteristic of historic estuarine marshes. Tidal channels, which are characteristic of historic mudflats and marshes, are absent in the northern tip. Additionally, the plant communities on the ESP are not unique nor do they have significant characteristics.

Applicant has provided expert reports that recognize that mudflat and deepwater habitats provide rearing and migration habitat for salmonids, some of which are listed as threatened. The reports find, and there is no contrary site-specific evidence in the record, that the area around the ESP is used by salmonids primarily for rearing and migration, not for spawning. Salmonid reproduction is not dependent on the area around the ESP.

There will be no impediments to fish passage in and out of the estuary and no indirect impacts to the remainder of the estuary. Salmon are ubiquitous in the Columbia River. The presence of salmon, a significant resource, does not require that all areas of the estuary be designated as Natural. Such a case would preclude any shoreline development designation and contradict policy goals to support water-dependent economic development.

Biological productivity will continue in the estuary. The area proposed for Aquatic Development is too small in relationship to the total estuary to eliminate or pose a threat to biological productivity. Because of the overall size of the watershed—Thomas reported that there are 119,220 acres in the Columbia River estuary¹⁵—it would be nearly impossible to attribute a decline in biological productivity, especially salmon, simply to the relatively small percentage of the Aquatic Development areas that would potentially be dedicated to dredge, fill, and piling activities associated with the development of an LNG import terminal. In addition, substantial evidence in the record supports the conclusion that on this particular site, lack of characteristic landforms, lack of natural processes, lack of salmonid habitat within the marshes, lack of unique and abundant wildlife, and relatively small area add up to concluding the area under consideration is not consistent with characteristics to support the Natural designation.

As further evidence of the appropriateness of classifying the aquatic areas as Aquatic Development, Applicant provided evidence that the Army Corps of Engineers conducted a biological and environmental assessment for proposed dredging in the Skipanon Channel in the late 1990s. The assessment area overlaps the area proposed for designation as Aquatic Development. The study resulted in a finding of no significant impact (FONSI). Proposed dredging was found to be consistent with Coastal Zone Management Act and local planning.

For all of these reasons, the City Commission finds that it is appropriate not to classify the aquatic areas as Aquatic Natural.

2. ***Conservation -- In all estuaries, except those in the overall Oregon Estuary Classification which are classed for preservation, areas shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. They shall include tracts of significant habitat smaller or of less***

¹⁵ *Id.*

biological importance than those in (1) above, and recreational or commercial oyster and clam beds not included in (1) above. Areas that are partially altered and adjacent to existing development of moderate intensity which do not possess the resource characteristics of natural or development units shall also be included in this classification.

Significant portions of the Columbia River Estuary, including a portion of the aquatic areas to be classified Aquatic Development under the Comprehensive Plan Amendments, are classified as Aquatic Conservation. Applicant has submitted substantial and credible evidence that the section of Youngs Bay that Applicant proposes to reclassify as Aquatic Development and any portion of the Mouth of the Skipanon Subarea that is classified as Aquatic Conservation, by contrast, are not necessary for the maintenance and enhancement of biological productivity, recreation and aesthetic uses, or aquaculture. The area does not constitute a significant habitat, nor is it used for oyster or clam beds. The City Commission finds that the area does possess characteristics that make it suitable for classification as Aquatic Development.

The aquatic areas proposed to be classified aquatic development lie directly south of the Columbia River shipping channel. Their direct values for recreational fishing are limited. Some recreational fishing occurs in deepwater habitat that might be impacted if an LNG import terminal is built in the Aquatic Development area, but such impacts would have to be avoided and minimized to the extent practicable under the provisions of WDC Chapter 3.11, 3.12, as well as under state and federal permitting requirements. No commercial fishing or clamming occurs within the relevant aquatic area. While the areas do support salmon, as discussed above, there is nothing unique about this particular area that will cause any particular adverse impact on salmon, and the design review and permitting restrictions on development of the area, which, based on the evidence in the record shall be exclusively dredge activity and dock/pier pilings, will prevent adverse consequences to fish as a result of such habitat impacts as may occur. For these reasons and based upon the other relevant evidence in the record, the City Commission finds that it is appropriate not to designate the Site's aquatic areas as Conservation.

3. ***Development -- In estuaries classified in the overall Oregon Estuary Classification for more intense development or alteration, areas shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alterations of the estuary not included in (1) and (2) above.***

The Columbia River Estuary is a Development estuary. Within the estuary, the ESP has been described as one of the best large acreage water-dependent development. The Skipanon River's eastern peninsula is one of only six sites in the lower 50 miles of the Columbia River that is generally recognized as having significant potential for water-dependent development requiring deep-draft navigational access. The City's 1980 comprehensive plan concluded that the ESP, in addition to five other unique sites, should "probably be considered scarce resources and reserved primarily for water-dependent uses." Reasons for this uniqueness include the "proximity to the river mouth, (River Mile 11.5) and access to the main 40 foot navigation channel 2,100 feet to the north."

In addition to this historic recognition of the suitability of the Site for water-dependent industrial use and deep draft shipping, the record contains substantial evidence that the ESP and surrounding aquatic areas are uniquely well situated to take advantage of the opportunity to site an LNG import terminal on the lower Columbia River.

The City Commission finds, based on the written and oral testimony in the record, that the aquatic areas of the Site are also appropriately classified Aquatic Development because of their "minimal biological significance"; the significance of the aquatic areas is limited to salmonid habitat in mudflats and deepwater habitats. The City conducted a Goal 5 inventory of significant riparian areas and wetlands, and the wetlands inventoried as "significant" for purposes of Goal 5 are located within the Goal 16 area. However, the site-specific information in the record supports the conclusion that these wetlands are providing minimal environmental function to adjacent fish habitat, wildlife, and recreationists.

The City Commission finds that the wetland habitat on the ESP has been severely impacted by the effects of dams upstream, dredging of the Skipanon and Columbia Rivers, diking, and fill and is not pristine habitat. The largest wetland within the aquatic areas is a tidal marsh wetland; however, habitat and functions are not homogenous over the entire wetland. The mudflats provide the highest functional value to salmonids and other fish by providing feeding and resting areas; however, no channels into the tidal marsh are present to allow fish access to these areas. Furthermore, Applicant has provided substantial evidence that functional losses in tidal marsh and mudflat habitats are replaceable through mitigation.

The interspersion of wildlife habitat is low. Land connectivity to other habitat is in only one of four compass directions (i.e., this area has limited connectivity to other habitat). The wetland habitat does have connectivity to riverine habitat; however the site is in a degraded state and provides moderate to low quality habitat to fish and birds. The wetlands are not supporting upland wildlife because the adjoining upland habitat is severely degraded and has little use by wildlife. Additionally, the Site is degraded by frequent and consistent intrusion by unauthorized off-road vehicles.

On the basis of this evidence and the other evidence in the record, the City Commission finds that given the need to have the aquatic areas available for limited

development in order to take advantage of the new and substantial economic opportunity in LNG importation and transfer, and the comparatively minimal biological significance of the area to be impacted, it is appropriate for the City of Warrenton to classify, to the extent it has not previously done so, the aquatic areas of the Site as Aquatic Development.

IMPLEMENTATION REQUIREMENTS

1. ***Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow-lane disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.***

The City Commission finds that the Comprehensive Plan amendments classifying the Site's aquatic areas as Aquatic Development are consistent with this requirement. The policy is not applicable to the other amendments. The amendments are consistent with the requirement because the requirement is expressly implemented through WDC Chapter 3.12, which requires an Impact Assessment for any proposed development that could have an adverse impact on the estuary. The amendments in no way affect the WDC's implementation of this requirement.

2. ***Dredging and/or filling shall be allowed only:***
 - a. ***If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this goal; and***
 - b. ***If a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and***
 - c. ***If no feasible alternative upland locations exist; and,***
 - d. ***If adverse impacts are minimized.***

The City Commission finds that the Comprehensive Plan Amendments are consistent with this requirement. The requirement is only applicable to the aquatic areas amendments. Those amendments will not affect either the Comprehensive Plan policies

that implement this requirement, nor will they affect the implementation of this requirement through the WDC, specifically WDC Chapter 3.11. Notwithstanding the Aquatic Development designation, no dredge or fill activity will be allowed on the Site unless these criteria, which are also present in state and federal permitting processes, have been satisfied

Other uses and activities which could alter the estuary shall only be allowed if the requirements in (b), (c), and (d) are met. All or portions of these requirements may be applied at the time of plan development for actions identified in the plan. Otherwise, they shall be applied at the time of permit review.

The City Commission finds that the proposed Comprehensive Plan Amendments are consistent with this requirement. The requirement is applicable only to the aquatic areas amendments. WDC 3.11 and WDC 3.12 implement this requirement at the development permitting stage. There is thus no inconsistency between the policy and the amendments.

3. *State and federal agencies shall review, revise, and implement their plans, actions, and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries. Local government shall recognize these authorities in managing lands rather than developing new or duplicatory management techniques or controls.*

Existing programs which shall be utilized include:

- a. *The Oregon Forest Practices Act and Administrative Rules, for forest lands as defined in ORS 527.610-527.730 and 527.990 and the Forest Lands Goal;*
- b. *The programs of the Soil and Water Conservation Commission and local districts and the Soil Conservation Service, for Agricultural Lands Goal;*
- c. *The nonpoint source discharge water quality program administered by the Department of Environmental Quality under Section 208 of the Federal Water Quality Act as amended in 1972 (PL92-500); and*
- d. *The Fill and Removal Permit Program administered by the Division of State Lands under ORS 541.605 - 541.665.*

The City Commission finds that these provisions are not applicable to the Comprehensive Plan Amendments; none of those amendments alters or impacts those elements of City's Comprehensive Plan that implement this goal requirement.

4. *The State Water Policy Review Board, assisted by the staff of the Oregon Department of Water Resources, and the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Division of State Lands, and the U.S. Geological Survey, shall consider establishing minimum fresh-water flow rates and standards so that resources and uses of the estuary, including navigation, fish and wildlife characteristics, and recreation, will be maintained.*

The City Commission finds that this requirement is not applicable.

5. *When dredge or fill activities are permitted in intertidal or tidal marsh areas, their effects shall be mitigated by creation, restoration or enhancement of another area to ensure that the integrity of the estuarine ecosystem is maintained. Comprehensive plans shall designate and protect specific sites for mitigation which generally correspond to the types and quantity of intertidal area proposed for dredging or filling, or make findings demonstrating that it is not possible to do so.*

The City Commission finds that the Comprehensive Plan Amendments are consistent with this requirement. The amendments to the aquatic areas designations create the possibility of dredge and fill activity on the Site, but they in no way alter or affect the implementation of this policy through the Comprehensive Plan and WDC. Any proposed dredge or fill activity on the Site associated with a proposed LNG import terminal, for example, will only be permitted to the extent that it satisfies the mitigation criteria imposed on such activities in WDC Chapter 3.11. during FERC's LNG permitting process, and equivalent criteria that are present in the state and federal permitting processes.

6. *Local government and state and federal agencies shall develop comprehensive programs, including specific sites and procedures for disposal and stock-piling of dredged materials. These programs shall encourage the disposal of dredged material in uplands or ocean waters, and shall permit disposal in estuary waters only where such disposal will clearly be consistent with the objectives of this goal and state and federal law. Dredged material shall not be disposed in intertidal or tidal marsh estuarine areas unless part of an approved fill project.*

The City Commission finds that the Comprehensive Plan Amendments do not impact any existing plans for the disposal and stock-piling of dredged materials. This requirement is not applicable.

7. *Local government and state and federal agencies shall act to restrict the proliferation of individual single-purpose docks and piers by encouraging community facilities common to several uses and interests. The size and shape of a dock or pier shall be limited to that required for the intended use. Alternatives to docks and piers, such as mooring buoys, dryland storage, and launching ramps shall be investigated and considered.*

The City Commission finds that the Comprehensive Plan Amendments do not alter or otherwise impact the implementation of this requirement in the Comprehensive Plan or the WDC. To the extent that an LNG import terminal on the Site will require a dock and pier, the applicant for such a project will be required to demonstrate compliance with the WDC's implementation of this requirement during FERC's LNG permitting process. There is thus no inconsistency between designating the aquatic areas for Aquatic Development and the implementation of this requirement.

8. *State and federal agencies shall assist local government in identifying areas for restoration. Restoration is appropriate in areas where activities have adversely affected some aspect of the estuarine system, and where it would contribute to a greater achievement of the objective of this goal. Appropriate sites include areas of heavy erosion or sedimentation, degraded fish and wildlife habitat, anadromous fish spawning areas, abandoned diked estuarine marsh areas, and areas where water quality restricts the use of estuarine waters for fish and shellfish harvest and production, or for human recreation.*

The City Commission finds that this requirement is not applicable to the proposed Comprehensive Plan Amendments.

GUIDELINES

A. INVENTORIES

In detail appropriate to the level of development or alteration proposed, the inventories for estuarine features should include:

1. *Physical characteristics*
 - a. *Size, shape, surface area, and contour, including water depths;*

- b. Water characteristics including, but not limited to, salinity, temperature, and dissolved oxygen. Data should reflect average and extreme values for the months of March, June, September, and December as a minimum; and*
 - c. Substrate mapping showing location and extent of rock, gravel, sand, and mud.*
- 2. *Biological characteristic--Location, Description, and Extent of:*
 - a. The common species of benthic (living in or on bottom) flora and fauna;*
 - b. The fish and wildlife species, including part-time residents;*
 - c. The important resting, feeding, and nesting areas for migrating and resident shorebirds, wading birds and wildlife;*
 - d. The areas important for recreational fishing and hunting, including areas used for clam digging and crabbing;*
 - e. Estuarine wetlands;*
 - f. Fish and shellfish spawning areas;*
 - g. Significant natural areas; and*
 - h. Areas presently in commercial aquaculture.*
- 3. *Social and economic characteristics--Location, Description, and Extent of:*
 - a. The importance of the estuary to the economy of the area;*
 - b. Existing land uses surrounding the estuary;*
 - c. Man-made alterations of the natural estuarine system;*
 - d. Water-dependent industrial and/or commercial enterprises;*
 - e. Public access;*
 - f. Historical or archaeological sites associated with the estuary; and*
 - g. Existing transportation systems.*

The City Commission finds that although these guidelines are not binding approval criteria, the terms of the guidelines are satisfied by and not inconsistent with the proposed Comprehensive Plan Amendments, in particular the amendments that would classify the aquatic areas of the Site as Aquatic Development. The City has adopted the CREST Plan as its inventory of the Columbia River Estuary for purposes of this goal requirement and has incorporated aspects of the information sought here into the Comprehensive Plan through the subarea findings. As discussed previously, the CREST Plan concludes that the ESP is "especially suitable for water-dependent industry." The CREST Plan discusses that the wildlife values are low to moderate on the ESP and that natural habitat value and productivity in the transition marsh area is low. The CREST Plan discusses the fact that "[u]se of the eastern peninsula for water-dependent development is consistent with the deep draft development estuary designation given to the Columbia River estuary by the state." The CREST Plan also discusses the importance of the ESP to the local economy and to the economy of the State of Oregon. CREST concluded that development of the ESP with a water-dependent development would lead to "greater diversity in the area's economy, high seasonal unemployment rates will decrease, and per capita earnings will increase." These conclusions remain accurate today, especially in light of the tremendous economic development opportunity offered by LNG importation, regasification and transfer facilities.

Applicant has provided additional substantial and credible evidence regarding the physical characteristics of the site, the biology of the site, and the socioeconomic aspects of the estuary and the Site in particular. This evidence is found in the Preliminary Habitat Report, the Wildlife Report, the Letter to DLCDC from CH2M Hill and Ellis Ecological Services and the supplemental report from Ellis Ecological Services responding to the environmental reports submitted by project opponents. This additional evidence reinforces much of the information in the CREST Plan and also establishes that the Aquatic Development classification is appropriate for the aquatic areas of the Site.

B. HISTORIC, UNIQUE, AND SCENIC WATERFRONT COMMUNITIES

Local government comprehensive plans should encourage the maintenance and enhancement of historic, unique, and scenic waterfront communities, allowing for non water-dependent uses as appropriate in keeping with such communities.

The City Commission finds that this guideline is not applicable because the ESP is not historic, unique, or scenic waterfront community.

C. TRANSPORTATION

Local governments and state and federal agencies should closely coordinate and integrate navigation and port needs with shoreland and upland transportation facilities and the requirements of the Transportation Goal. The cumulative

effects of such plans and facilities on the estuarine resources and values should be considered.

The City Commission finds that this guideline is not a binding approval criterion and is, in any event, consistent with the proposed Comprehensive Plan amendments. None of the amendments effect the Comprehensive Plan's implementation of this guideline, or its implementation through the WDC. Designating the aquatic areas of the Site Aquatic Development does create the possibility of shipping activity on the Site that could impact shoreland and upland transportation facilities. The record contains a TIA prepared on behalf of the Applicant that demonstrates that, with appropriate mitigation, prospective impacts from such development would not have a significant affect on transportation facilities. Applicant prepared and amended the TIA in consultation with the Oregon Department of Transportation, and the City Commission is adopting a condition of approval with this decision that requires the Applicant to continue to coordinate its mitigation efforts with ODOT. The City Commission finds that while not required to do so, the Comprehensive Plan Amendments comply with this guideline.

TEMPORARY ALTERATIONS

The provision for temporary alterations in the Goal is intended to allow alterations to areas and resources that the Goal otherwise requires to be preserved or conserved. This exemption is limited to alterations in support of uses permitted by the Goal; it is not intended to allow uses which are not otherwise permitted by the Goal. Application of the resource capabilities test to temporary alterations should ensure:

- 1. That the short-term damage to resources is consistent with resource capabilities of the area; and***
- 2. That the area and affected resources can be restored to their original condition.***

The City Commission finds that this guideline is not applicable, as Applicant is not proposing a temporary alteration.

3. Opposition Arguments

Opponents offered extensive testimony and a significant volume of documents in opposition to the Applicant's proposal to classify the aquatic management units on the Site as Aquatic Development. The City Commission has considered the arguments and evidence and finds that the Applicant's analysis and site-specific expert testimony regarding the natural features of the Site are more credible and directly responsive to the applicable approval criteria, and therefore the City Commission finds that the opponents' objections with respect to the Aquatic Development management unit designation of the aquatic areas of the Site are not well taken.

Opponents offered argument and evidence regarding the biological significance of Youngs Bay and argue on that basis that designating the aquatic areas on and adjacent to the ESP as Aquatic Development is not consistent with Goal 16 or the applicable Comprehensive Plan policies. The opponents are incorrect. SNG's Application acknowledges the biological importance of Youngs Bay as a whole. That, however, is not the salient issue. As the environmental reports submitted on behalf of the Applicant demonstrate, the issue is the biological significance of the specific portion of Youngs Bay that SNG proposes to reclassify. Opponents offer no credible evidence on this issue, and as the Applicant's environmental reports conclude, the available evidence suggests that the proposed Aquatic Development area does not contain any unique habitat, as that term is defined by the Oregon Department of Fish and Wildlife.

Even if the proposed development area were of particular biological significance, moreover, by itself this would not foreclose its designation as aquatic development under Goal 16. Opponents read Goal 16 to impose a categorical prohibition on applying a development classification to biologically sensitive areas. The Goal 16 management unit classification, however imposes no such categorical prohibition; it is a policy choice that places substantial importance on the biological significance of the impacted area, but allows this to be balanced against other community needs. In this case, SNG has established both the low to moderate biological significance of the impacted aquatic area and the greater importance of competing community needs that warrant an Aquatic Development designation on the Site.

The City Commission also finds that opponents are mistaken when they argue that SNG's application fails to demonstrate compliance with the Goal 16 provision that states "actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration." The Warrenton Development Code expressly implements the above Goal 16 requirement by requiring anyone seeking a "permit" to do development that would impact the estuary -- including dredging, aquatic fill, and in-water structures -- to provide an Impact Assessment that includes information on the impacts on aquatic life forms and habitat, shoreland life forms and habitat, water quality, hydrology, air quality, public access, and more. See WDC 3.12.

Goal 16 does not require, and the City of Warrenton has not adopted, a policy of providing an Impact Assessment in conjunction with a plan amendment or zone change in the estuary. Even if impacts of potential future developments needed to be addressed, however, SNG placed substantial evidence into the record regarding such potential impacts related to a conceptual facilities plan as part of its effort to be responsive to DLCDC's and the community's concerns. As a result of those evidentiary submissions, DLCDC concluded that the Applicant had provided sufficient evidence to allow approval of its proposed management unit designation amendments, and the City Commission agrees; the area proposed for reclassification is needed in conjunction with the designation of the adjacent shoreland as ESWD Shorelands to allow the large-scale

importation of bulk marine cargo to service the Columbia River basin and the western United States.

EXHIBIT 'B'

Chapter 2.11 — Water Dependent Industrial Shorelands (I-2) District

Sections:

2.11.100	Purpose
2.11.110	Permitted Land Uses
2.11.120	Conditional Uses
2.11.130	Development Standards

2.11.100 Purpose

Water-Dependent Industrial Shoreland areas have unique characteristics that make them especially suited for water-dependent development. Characteristics that contribute to suitability for water-dependent development include:

- (1) deep water close to shore with supporting land transportation facilities suitable for ship and barge facilities;
- (2) potential for aquaculture;
- (3) protected areas subject to scour which would require little dredging for use as marinas;
- (4) potential for recreational utilization of coastal waters or riparian resources.

Uses of Water-Dependent Industrial Shorelands areas shall maintain the integrity of the estuary and coastal waters. Water-dependent uses receive highest priority, followed by water-related uses. Uses which are not water-dependent or water-related are provided for, but only when they do not foreclose options for future higher priority uses and do not limit the potential for more intensive uses of the area.

2.11.110 Permitted Land Uses

The following uses and activities and their accessory uses and activities are permitted in the I-2 zone if the zoning administrator determines that the uses conform to the standards in Section 2.11.130, applicable Zoning Ordinance standards, and other City laws:

- (1) The following water-dependent industrial or port uses:
 - a. Industrial docks, piers, moorage facilities.
 - b. Marine cargo transfer facilities.
 - c. Seafood receiving and processing.
 - d. Liquefied Natural Gas (LNG) importation, regasification, and transfer terminal.
- (2) Navigation aids.
- (3) Repair and maintenance of existing structures or facilities.

- b. 30 feet for buildings and structures more than six feet high but not more than ten feet high; and
 - c. Ten feet for structures no more than six feet high.
- (12) Height: There is no height limitation except:
- a. Within 100 feet of a zone other than I-1 or I-2, in which case the maximum height shall be the same height as the abutting district; or
 - b. Within the Airport Hazard Overlay Zone, in which case the maximum height shall be governed by the Airport Hazard Overlay Zone height restrictions.
- (13) Vibration: No vibration other than that caused by highway vehicles, trains, and aircraft shall be permitted which is discernible without instruments at the property line of the use concerned.
- (14) Heat and glare: Except for exterior lighting, operations producing heat or glare shall be conducted entirely within an enclosed building.
- (15) Industrial activities may be carried on either outside or inside enclosed structures, but the impact of such activities on surrounding properties shall be minimized by taking into consideration screening and other possibilities for buffering.
- (16) Other Standards: All other standards, including those pertaining to signs, off-street parking and loading requirements, shall apply as set forth in Chapter 3.3 and Chapter 3.7.
- (17) Proposals for development in the area covered by the 1981 Mediation Panel Agreement, other than the Mouth of the Skipanon Subarea, must meet the requirements of the Agreement.
- (18) Uses that are water-dependent must meet the criteria in Section 3.11.18(1). Uses that are water-related must meet the criteria in Section 3.11.18(2).
- (19) Uses and activities permitted under Section 2.11.110 of this zone are subject to the public notice provisions of Section 4.1.4C if an impact assessment is required pursuant to Section 3.11, or if the zoning administrator determines that the permit decision will require interpretation or the exercise of factual, policy or legal judgment.
- (20) All developments shall comply with the wetland and riparian area protection standards of Chapter 3.10.

Chapter 2.12 — Urban Recreational/Resort (URR) District

Sections:

- 2.12.100 Purpose
- 2.12.110 Permitted Land Uses
- 2.12.120 Conditional Uses
Development Standards

2.12.100 Purpose

The purpose of the Urban Recreation/Resort Zone is to control development on certain shoreland areas designated Other Urban Shorelands in the Comprehensive Plan. This zone is appropriate for large tracts of land suitable for development of the uses listed in this zone.

2.12.110 Permitted Land Uses

The following uses and their accessory uses are permitted outright in this zone subject to the development standards of this zone, other applicable development standards in the City's ordinances, and state and federal regulations:

1. Golf courses.
2. Driving range.
3. Tennis courts.
4. Eating and drinking establishments as part of a golf course.
5. Overnight lodging, but not including recreation vehicle (RV) parks.
6. Pedestrian, bicycle or equestrian trails.
7. Transportation facilities and improvements subject to the standards of Section 2.0.4.
8. Wetland and other natural resource mitigation, restoration, creation, and enhancement.

2.12.120 Conditional Uses

The following uses and their accessory uses may be permitted as conditional uses subject to the Conditional Use Criteria and Standards in Section 4.4, the development standards of this zone, other applicable development standards in the City's ordinances, and state and federal regulations:

1. Single-family and multi-family residences as part of a master planned development that also includes a golf course.
2. Retail uses related to the primary recreational activity in this zone.
3. Eating and drinking establishments other than those permitted under Section 2.12.110(4) of this zone.

- (7) Dredged material disposal at sites designated for dredged material disposal in the Comprehensive Plan.
- (8) Covered moorage in an approved marina.
- (9) Dredging and filling, pursuant to the applicable standards in Section 3.11, for any of the conditional uses 1 through 8 listed above.
- (10) Water-related recreational uses.
- (11) Water-related commercial or industrial uses other than those listed under Section 2.13.110(13) of this zone.
- (12) Communication facilities subject to the standards of Chapter 3.8.
- (13) Piling as necessary for any of the conditional uses 1 through 12 listed above.
- (14) Temporary uses.

2.13.130 Development Standards

The following standards are applicable in the A-1 zone:

- (1) All uses and activities must satisfy applicable Columbia River Estuary Aquatic and Shoreland Area Development Standards in Chapter 3.11.
- (2) A proposal involving several uses and activities shall be reviewed in aggregate under the more stringent procedure.
- (3) All applicable policies in the City's Comprehensive Plan, Mediation Agreement and Goal Exceptions shall be met, except that no Mediation Agreement policies shall be applied in the Mouth of the Skipanon Subarea.
- (4) All other applicable Code requirements shall be satisfied.
- (5) Uses that are not water-dependent shall be located either on a floating structure or on pilings, and shall not increase the need for fill if in association with a water-dependent use located on fill.
- (6) Uses that are not water-dependent shall not preclude or conflict with existing or probable future water-dependent uses on the site or in the vicinity.
- (7) Maximum height of structures shall be 60 feet above MLLW.
- (8) A proposal which requires new dredging, fill, in-water structures, rip-rap, new log storage areas, water intake, in-water disposal of dredged material, beach nourishment, or other activities which could affect the estuary's physical processes or biological resources is subject to an Impact Assessment, Chapter 3.12.

Chapter 3.10 – Wetland and Riparian Area Protection Ordinance¹

Sections:

- 3.10.1 Wetland and Riparian Corridor Development Standards
- 3.10.2 Wetland Area Protection Standards
- 3.10.3 Hardship Variance Procedure
- 3.10.4 Riparian Area Protection Standards
- 3.10.5 Class 1 Riparian Area Protection Standards
- 3.10.6 Class 2 Riparian Area Protection Standards

3.10.1 Wetland and Riparian Corridor Development Standards

Purpose: This ordinance provides development standards for wetland and riparian corridors in the City of Warrenton and the Warrenton Urban Growth Area to comply with Statewide Planning Goal 5 (OAR Division 660 Chapter 23) including the provisions of OAR 660-023-240. The City of Warrenton has inventoried its wetland and riparian corridor resources, made a determination of significance for each resource unit, and produced applicable development standards that are contained in this ordinance.

(1) This ordinance applies to all lands lying within the City of Warrenton and the Warrenton Urban Growth Area.

(2) OAR 660-023-0024(2) establishes that the requirements of Statewide Planning Goals 16 and 17, as well as 15 and 19, supersede the requirements of Statewide Planning Goal 5 for natural resources that are also subject to and regulated by those goals.

(3) Notwithstanding the development standards established below in 3.10.3, 3.10.4 and 3.10.5, pursuant to OAR 660-023-0024 development of wetlands and riparian corridors in estuarine and coastal shoreland areas shall be regulated by the requirements of Statewide Planning Goals 16 and 17, as implemented by this Code.

3.10.2 Wetland Area Protection Standards

(1) Wetland areas in the City of Warrenton are identified on the 1":400' maps entitled *City of Warrenton Wetland Conservation Plan Inventory* dated October 17, 1997. These maps show approximate wetland boundaries for wetland areas within the Warrenton Urban Growth Boundary.

- a. Applications to the City of Warrenton for development permits, grading permits, or building permits that would alter land within 25 feet of a mapped wetland area, or portion thereof, shall contain the following:

¹ This ordinance serves as an interim protection ordinance for Goal 5 resources in the City of Warrenton. The Oregon Land Conservation and Development Commission (LCDC) has ordered the City to immediately apply this interim ordinance until the City adopts a final ordinance that complies with Goal 5. (Periodic Review Order No. 001284 – Amendment #2)

the landowner chooses to develop part of all of the site to a degree that would preclude its availability for mitigation use.

- (16) Warrenton shall make the determination of whether a development will preclude all or some of the potential use of the site for mitigation purposes.
- (17) After a mitigation action takes place, Warrenton shall amend its plan and change the designation to reflect its aquatic character.
- (18) The developer implementing a mitigation action shall be responsible for all costs associated with the mitigation project unless an alternative agreement for cost responsibility is negotiated between the landowner and the developer.
- (19) Shorelands in the Marine Commercial Shorelands Zone and Water-Dependent Industrial Shorelands Zone can only be used for mitigation subject to a finding that the use of the site for mitigation will not preclude or conflict with water-dependent uses.
- (20) Significant Goal 17 resource areas (major marshes, significant wildlife habitat, and exceptional aesthetic resources) can only be used for mitigation subject to a finding that the use of the site for mitigation will be consistent with protection of natural values.
- (21) Shorelands in the Marine Commercial Shorelands Zone and Water-Dependent Industrial Shorelands Zone can only be used for restoration subject to a finding that the use of the site for restoration will not preclude or conflict with water-dependent uses.
- (22) Priority 2, Level 3 and 4 mitigation sites shall be designated as mitigation sites until they are proposed for restoration outside of the context of mitigation. At this time restoration shall be considered an allowed use subject to the 30 day freeze restrictions presented in mitigation standard 17. Restoration shall only be allowed at Priority 2 sites subject to a finding that the site is no longer required for mitigation.
- (23) Priority 3, Level 4 mitigation sites shall be designated as mitigation sites until they are specified for restoration outside of the context of mitigation. At this time, restoration shall be considered an allowed use. Restoration shall only be allowed at Priority 3 sites subject to a finding that the site is no longer required for mitigation.
- (24) Significant Goal 17 resource areas (major marshes, significant wildlife habitat, and exceptional aesthetic resources) can only be used for restoration subject to a finding that the use of the site for restoration will be consistent with protection of its natural values.

3.11.12 Public Access to the Estuary and its Shoreline

Standards in this subsection apply to all uses and activities in shoreland and aquatic areas which directly or indirectly affect public access. "Public access" is used broadly here to include direct physical access to estuary aquatic areas (boat ramps, for example), aesthetic access (viewing opportunities, for example), and other facilities that provide some degree of public access to shorelands and aquatic areas.

1. Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive plan amendment shall be a prerequisite to approval;
2. Demonstration of compliance with all applicable standards and criteria of this Code, and other applicable implementing ordinances;
3. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property which is the subject of the application; and the provisions of Section 4.7.6, as applicable.

4.7.4 Conditions of Approval.

A quasi-judicial decision may be for denial, approval, or approval with conditions. A legislative decision may be approved or denied.

4.7.5 Record of Amendments.

The zoning administrator shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.

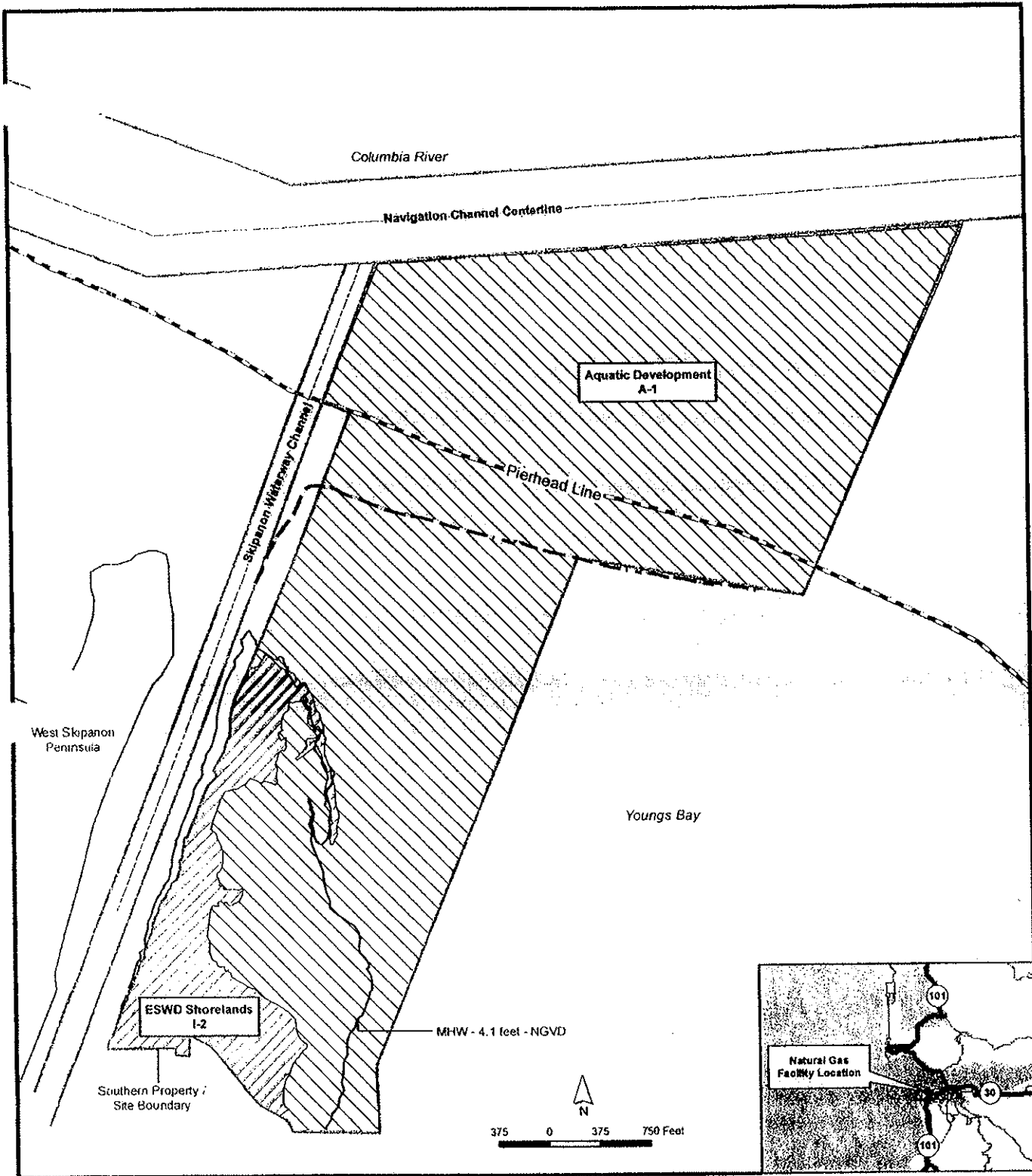
[Note: The following section is interim and subject to revision as part of the Warrenton Transportation System Plan.]

4.7.6 Transportation Planning Rule Compliance.

- A. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060, as it may be amended (the "Transportation Planning Rule"). See Also Chapter 4.13, Traffic Impact Study.
- B. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one or more of the methods allowed under the Transportation Planning Rule.

EXHIBIT 'C'

FIGURE 1



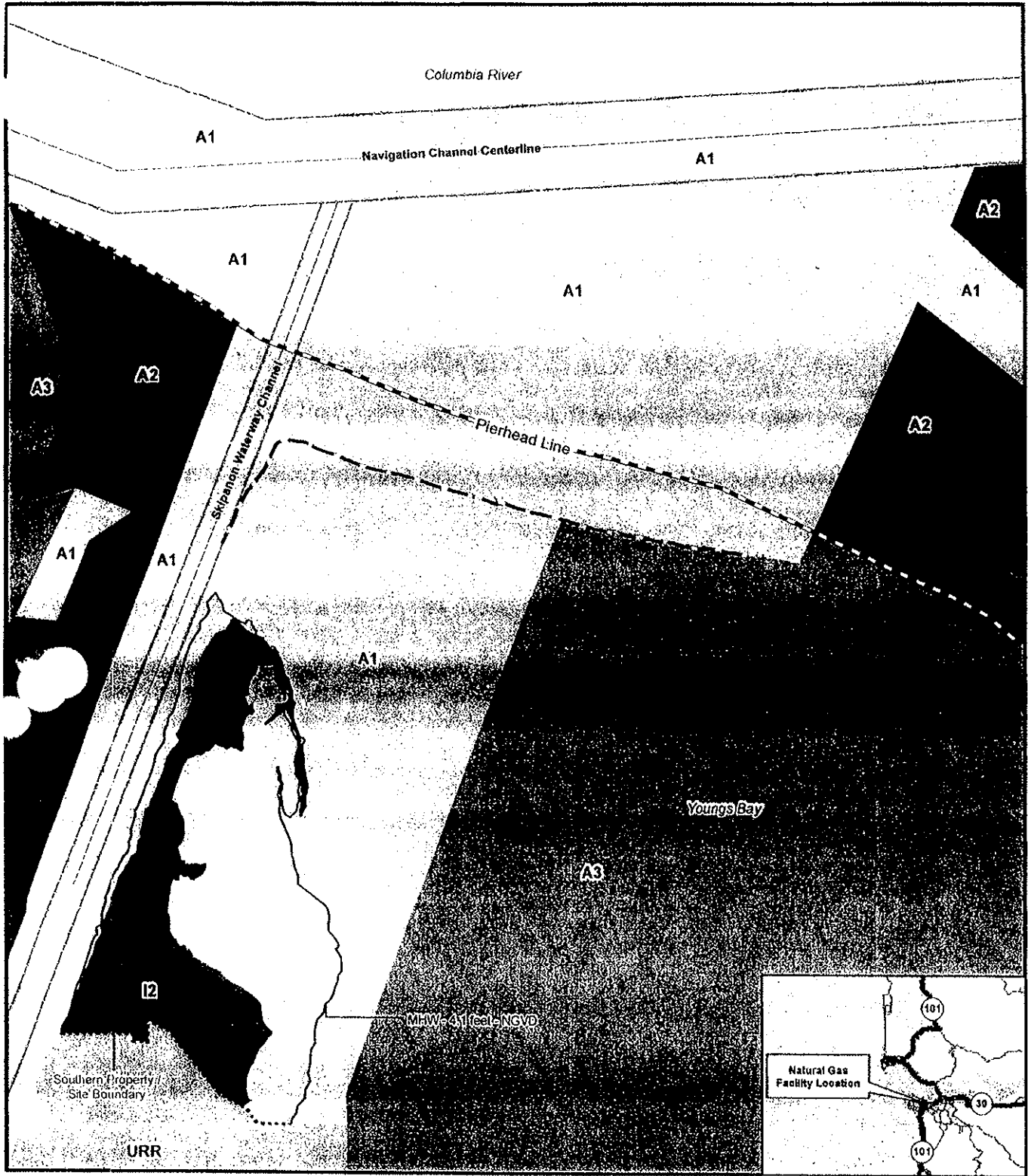
- Legend**
- Aquatic Development A-1
 - Mean High Water (MHW)
 - ESWD Shorelands / Zone I-2
 - Site Boundary
 - Symmetric Contour
 - West Skipanon Peninsula
 - Navigation Channel Centerline
 - Navigation Channel Limits

DISCLAIMER:
 Map data was compiled from various sources listed in the legend. CH2M HILL cannot verify the accuracy of map data from others. This map is for planning purposes only and is not suitable for construction or for local, state, or federal permitting.

Aquatic Development A-1 overlays originally referred to in Subareas 42.06 and 42.07 in the City of Warrenton Comprehensive Plan.

SNG LLC Rezone Application
 Warrenton, Oregon

FIGURE 5



Legend

- Navigation Channel Centerline
- Navigation Channel Limits
- 20 Ft Bathymetric Contour
- I2 - Water Dependent Industrial
- URR - Urban Recreation and Resort
- A1 - Aquatic Development
- A2 - Aquatic Conservation
- A3 - Aquatic Natural

1 inch equals 900 feet
 450 0 450 900 Feet

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