

APPLICANT’S RESPONSE REGARDING
PROPOSED ADDITIONAL SPECIAL CONDITIONS

Special Conditions 1-13 have been agreed to by Applicant as part of the Planning Commission approval process. Applicant is only willing to agree to the version of the additional Special Conditions as attached hereto.

Applicant provides the following responses to the additional Special Conditions 14-33 prepared by City staff and attorney presented to the Council in your packet.

EXHIBIT H
SPECIAL CONDITIONS

The following Special Conditions are made a part of the Port of St. Marys Industrial & Logistics Center Planned Development District Text, J-25467.0001 (hereafter “PD Text”) and included therein as Exhibit H. These conditions apply to all property depicted in that Text and all exhibits thereto which are incorporated herein by reference as modified by these Special Conditions (hereafter “Property” or “the Property”). In the event of any conflict between these Special Conditions and any portion of the Port of St. Marys Industrial & Logistics Center Planned Development District Text, J-25467.0001 or the City of St. Marys, Georgia Zoning Ordinance (hereafter “Zoning Ordinance”), these Special Conditions shall govern. These Special Conditions are conditions of the Port of St. Marys Industrial & Logistics Center Planned Development District. Before any building permits for improvements on the Property may be applied for or issued, there must be a site plan showing the improvement which has been approved by the City of St. Marys (hereafter called “City”).

- 1. Special Use Permits.** Any Special Use Permit (also known as a Special Permit Use) (hereafter “SUP”) issued for a use to be conducted upon property entirely within the territory of the Port of St. Marys Industrial & Logistics Center Planned Development District as defined in the Port of St. Marys Industrial & Logistics Center Planned Development District Text which is owned by Old Weed & Ready Plantation, LLC as shown on Exhibit B to the PD Text– Boundary Survey dated October 26, 2015 (Parcel A, Parcel B, Parcel C, and Parcel D) (hereafter “the Property”) shall continue to be valid so long as the use for which it was issued shall be continuously conducted without interruption and shall not be limited to an annual duration as set forth in the Zoning Ordinance Section 110-145 (5). The SUP shall be transferrable or assignable to any future owner.

- 2. Development Plan.** Prior to any development, a Plot Plan for Planned Development, as described in 110-68(c), shall be submitted to the Community Development Department, for review and approval by the Planning Commission, that addresses all Special Conditions set forth herein, the applicable portion of the Zoning Ordinance, Subdivision Regulations and any development agreement. Without the submittal and approval of a Plot Plan, all subsequent development not shown thereon will not be approved nor any building permits issued therefor. Prior to any development, a Final Plot Plan (Development Plan), as described in 110-68(c), shall be submitted to the Community Development Department, for review and approval by the Planning Commission, that addresses all applicable conditions. Without the submittal and approval of a Final Plot Plan, all subsequent development, including building permits, will not be issued or approved. In addition to the PD conditions of approval, the Property Owner (as used herein, that term shall mean any owner or person or entity holding a leasehold interest or other interest entitling them to possess the Property or any portion thereof) shall comply with all St. Marys ordinances. The Property Owner has acknowledged that the site must adhere to a Brownfield Corrective Action Plan, administered by the Georgia Environmental Protection Division and will cooperate with all parties to achieve the Plan as it now exists or as it may be amended from time to time.
- 3. Height Overlay District.** No buildings may be constructed or permitted on the Property which exceed 65 feet in height unless 1) the building is clearly shown on the Plot Plan and is subsequently approved and 2) the Property Owner at its own expense provides all funds necessary for the City of St. Marys to purchase firefighting equipment and provide the City Fire Department personnel training in the use of the equipment and firefighting methods sufficient for the City Fire Department to combat fires in the building contemplated considering the size and contents of the contemplated building. The equipment and training shall be those identified by City and the equipment shall be and remain the property of City. The Property Owner's obligations may be placed in a development agreement between the owner and City. The height chart contained in the PD text is superseded by these conditions and should be overwritten with "See Special Conditions".
- 4. Maritime Heritage District.** The Property shall not be considered a part of the Maritime Heritage District (MHD) and the provisions of Sec. 110-78. - Maritime Heritage District (MHD) shall not apply thereto.
- 5. Water and Sewer Services.** Any water or sewer lines and improvements necessary or desirable but not extant at the time of this rezoning serving the Property shall be constructed in conformity with City design standards by the

owner of the Property at owner's sole expense. Once completed, the improvements shall be dedicated to City at no expense to the City.

City water system shall be utilized as the source for all domestic service. The City of St. Marys Point Peter Wastewater Treatment Facility shall receive all industrial and domestic wastewater from this site. All industrial wastewater shall only be treated by City pursuant to contract with the owner of the Property setting conditions, pretreatment required and rates for such effluent. Use of the on-site wells for industrial purposes is regulated by GA EPD.

6. Storage. There shall be no storage of refuse not generated on site, coal ash, or any particulate matter that may escape or emit noxious odors to surrounding areas, including trash to steam processing. Rail cars or containers shall only be stored (defined as remaining in place for more than 48 hours) processed (loaded or unloaded) or repaired in the areas designated on the Plot Plan.

7. Streets and Roads. All transportation facilities will be to City standards and a traffic study for required improvement should be a condition of approval. Proposed Port of St. Marys Industrial & Logistics Center Planned Development District (PDD) Section II shall meet minimum design standards for Streets, Lanes, Alleys, Right of Ways, Lots, Blocks, Utility Easements, easement locations and open space. Overall site design should be harmonious in terms of landscaping, enclosure of principal and accessory uses, sizes and street patterns, and use relationships. Access to the Property by truck traffic shall be limited to Finley Street and St. Patrick Street, while keeping all storage yards interior and well-protected from surrounding uses through buffering and screening. Access to portions of the Property abutting Meeting Street shall be limited where possible to limit the impact to surrounding commercial and residential areas. All transportation facilities will be built and maintained to City standards and a traffic study for required improvement should be a condition of approval.

All roads shall be privately maintained unless and until dedicated to and accepted by the City. Prior to Development, the Property Owner shall provide a ten-foot wide non-motorized public access easement to the Camden County PSA or City, at City's option, for use by citizens of St. Marys for a multi-use path along the western boundary of the site.

8. Parking. Parking standards for the City should be amended to provide parking requirements for each new facility at time of plot plan and special use permitting.

9. Amendments to Existing Planned Development Districts.

- a. Any request pertaining to amending a PD District shall be considered an amendment to the Zoning Ordinance and shall be processed in accordance with the regulations set forth in the City of St. Marys, Georgia Zoning Ordinance, Article VII, Amendments.
- b. All information required in subsections (c) and (d) of Section 110-68 of the Zoning Ordinance shall be submitted to the planning commission and subsequently forwarded to the city council with the recommendations of the planning commission.
- c. If the amendment is approved by the city council, all information pertaining to the proposal, presented or agreed to by the applicant shall be deemed conditions of approval. All permits granted in the PD District shall be in conformance with those conditions.
- d. Before approval of an amended Planned Development District, the city council may require a contract with safeguards satisfactory to the city attorney guaranteeing completion of the development according to the criteria listed herein. Such guarantee may include the submission of a performance bond or letter of credit in an amount set by the city council.

10. Buffers and Open Areas. Setbacks, buffers and open areas shall meet the minimum requirement established herein provided, however, that any required wetlands and salt marsh jurisdictional setbacks shall also apply according to law throughout the Property. There shall be a 200' buffer around the designated Conservation Area (CA) a portion of which must be a planted buffer as set forth herein. There shall be a 300 foot buffer from all storage, processing and portage of hazardous material facilities, as identified on the Final Plot Plan, and adjacent to residential property lines. All boundaries adjacent to other properties not part of the PD zone shall be separated by a continuous planted 30 foot buffer sufficient to block all views from ground level at the property line of the I-P portions of the property from view from adjacent properties and roads (except at two entry gates). Such buffer strip shall be composed of healthy plants which possess growth characteristics of such a nature as to produce a dense, compact planting screen that are opaque from ground level to a minimum of six feet from ground level. The plantings shall be not less than six feet high at planting and shall contain sufficient plants which have a growth potential height of 30 feet and can block views continuously up to that height in the locations required herein. Landscaped earthen berms 10 feet high can be substituted for the buffers required herein. Property Owner shall be responsible to nurture, maintain and replace any plantings in any buffer.

11. Changes to Definitions. The following changes are made to Section 2, E Definitions of Land Use Terms and Density Terms:

- a. Section 2 Marine Facilities listing of allowed uses is amended to replace the first listed allowed use with the following: “Shipping facilities for shallow draft barges and vessels”
- b. Section 2 Marine Facilities listing of allowed uses is amended to replace the tenth listed allowed use with the following: “Bunker (Fuel) storage facilities limited to 100,000 gallons”
- c. Section 3 Neighborhood Commercial listing of permitted uses is amended to add the following provisions:
 - i. (3) No Drive Thru facilities permitted
 - ii. (4) No Single-family dwellings permitted
 - iii. (5) All non-specified commercial uses shall be special permitted uses (SUP)

12. Utilities. A 10’ Public Utility Easement to City is required on all interior lot lines, and adjacent to all exterior boundary lines.

13. Timing of Development. The provisions of Section 110-185 (b)(7)(f) shall not apply to this rezoning of the Property. City shall not take action to rezone property to original zoning as described therein.

14. Materials. The handling, storage, production or transit through the property of coal or coal ash, wood chips, wood pellets, medical waste, hazardous materials (as defined in the U.S. Comprehensive Environmental Response, Compensation & Liability Act of 1980 (CERCLA)) not produced on site, bulk petroleum or other fuels including, without limitation, Liquid Natural Gas, medical waste (disposable equipment, instruments, utensils, human tissue, laboratory waste, blood specimens, or other substances that could carry pathogenic organisms), radioactive materials, radioactive waste, sawdust, scrap metal or other recyclables, garbage, waste material or more than 100 cubic feet of concrete or other aggregates are prohibited on the Property. The disposal of garbage and waste material generated on site are allowed. The handling, storage, production or transit through the property of the following materials: construction or demolition waste, municipal solid waste, rigid plastic bottles, rigid plastic containers, retreadable casings, scrap tires, used tires, yard trimmings all as defined in O.C.G.A. § 12-8-22 on the Property are prohibited. The handling, storage, production or transit through the property of the following materials:

explosives, blasting agents, detonators, all as defined in 18 U.S.C.A. § 841 on the Property are prohibited.

Applicant is willing to accept a revised version of this proposed additional Special Condition. (see attached).

CERCLA does not have such a list for hazardous material or any such definition, so using that as a definition is unacceptable. Attached is the U.S. Department of Health's Agency for Toxic Substances and Disease Registry's priority list of hazardous substances. It should be noted that there are 785 substances that are considered hazardous. Prohibiting use of these on site would most likely preclude any use of the site. Point being, a hazardous substance is just that, a hazardous substance. Proper use and handling of these substances is a daily occurrence and will continue to be almost everywhere. It should not be construed that a hazardous substance should be prohibited on site. This would render the site economically useless, even possibly for residential use.

Regarding the prohibition on concrete and aggregates, per the Bankruptcy Trustee Mike Newsome, there are presently 1000's of cubic yards of concrete and aggregates on the property right now.

Almost all modern industrial production involves some use of recyclable material. The State of Georgia is actively promoting and recruiting industries that utilize re-used materials in their processes. Applicant has committed that this site will not be a junk yard, but this list is unacceptable as it severely limits or negates the economic viability of the site.

- 15. Entranceways.** All entranceways to the industrial portion of the Property including the pond at Osborn and Meeting Streets shall be aesthetically improved and maintained including landscaping and shown on any site plan submitted to City for approval prior to any development of the industrial portion of the Property.

Applicant is willing to accept the substance of this proposed additional Special Condition, but Applicant combined it in with Buffers below. (see attached)

---Applicant inserted a new proposed #15 (see attached) to reflect that many of these requirements may be found to conflict with state or federal law, and it must be understood that state and federal law would trump over a local zoning text. ---

16. Lighting. All lighting on the property must be shielded so the source of the light is not visible off the Property. Normal street lighting is excepted from this provision.

Applicant is willing to commit to this proposed additional Special Condition.

17. Brownfield Program. The Property Owner shall ensure that the Property remains in Georgia Environmental Protection's (EPD) Division's Brownfield Program and the owner shall cooperate with the EPD and all parties to achieve the Plan as it now exists or as it may be amended from time to time.

Applicant is willing to commit to a revised version of this proposed additional Special Condition (see attached). Neither Applicant nor any successor or leaseholder or user of this property has the authority to ensure this property remains in the Brownfields program. The Applicant and any successor or leaseholder or user can and does commit to comply with the Brownfields program's Corrective Action Plan in its current form and as amended as long as the property is designated as a Brownfields site.

18. Storage containers. Storage containers, such as gas or oil barrels or conex boxes which are located or stored on the property should be screened so they cannot be seen by a person standing on the ground at the perimeter of the Property.

Applicant accepts this proposed additional Special Condition.

19. Rookery. Owner of Property shall provide at no expense to City at least four observation blinds for viewing of the rookery without disturbing the rookery together with access and parking for the public use thereof all to be shown and located on a site plan submitted to City for approval prior to any development of the Property. Property Owner will use its best efforts to secure any necessary permits for the improvements required in this provision. Owner of Property shall preserve the Conservation Area as a natural area and rookery for wood storks perpetually.

Applicant is willing to agree to a revised version of this proposed additional Special Condition (see attached) to reflect the fact that no one can commit to providing any such items and any timing thereof without specific authorization from appropriate state and federal agencies.

- 20. Ponds.** The existing industrial sludge ponds between the North River and the area designated as the conservation area should be stabilized and maintained where possible in conjunction with the overall site stormwater management plan subject to federal and state laws and regulations.

Applicant is not willing to accept this proposed additional Special Condition because it is an incorrect statement and is not possible from a civil engineering or environmental perspective. Per Bankruptcy Trustee, there are no industrial stormwater ponds on the property. These areas are referred to as Sludge Holding Basins No. 1 through No. 4 and an Aerated Stabilization Basin (ASB). The ASB was a component of the process for treating Mill process water for discharge into North River. The basins do not function as stormwater areas or ponds. The Army Corps of Engineers has determined that the basins are not wetlands. Management of the stormwater will be determined by the land usage and is not related to the disposition of these aforementioned industrial process basins settling ponds. This request shows a misunderstanding of the current state of the property.

- 21. Wetlands.** All wetlands and salt marshes on Property shall be protected and maintained as part of all development plans in accordance with state and federal laws, regulations and permitting requirements.

Applicant is not willing to accept this proposed additional Special Condition because it appears to place more onerous requirements over and above what state and federal laws already require, and the ability to seek wetland impact permits is key to development of this site. For example, completing the southern entrance (including the buffer and other development requirements) may require a wetlands impact permit in order to complete the work.

- 22. Barge Limit.** No more than ___ vessels designed to carry cargo shall be allowed to access the Property during any given 24 hour day.

Applicant is not willing to accept this proposed additional Special Condition as the concern will be addressed by the requirements of the U.S. Navy and Coast Guard as well as the docks approval process which will address capacity. The City of St. Marys will be allowed input in the dock approval process, and any restriction of vessels at this time would be uninformed and completely arbitrary.

- 23. Dredging.** Property Owner shall not perform or allow any dredging or deepening of the North River without strict compliance with Federal and State regulations and Property Owner's full cooperation with the Environmental Protection Agency and the U.S. Army Corps of Engineers.

Applicant accepts this proposed additional Special Condition with the minor change of expanding the term Property Owner to include Developer and Users as well. (see attached)

- 24. Fossil Fuel Exploration.** No off-shore fossil fuel exploration staging/support facilities shall be allowed on the Property.

Applicant is not willing to accept this proposed additional Special Condition. The United States Department of the Interior in March of 2016 issued a decision that will result in no oil and gas exploration in the Mid and South Atlantic for the next five years. See attached Press Release. Thus, this use would not be allowed for the next five years, but the Applicant is not willing to be limited in this regard forever and wants to be able to explore this use as a possibility when and if the United States allows such fossil fuel exploration to resume.

- 25. Odors.** No odor shall be produced on the Property that is detectable at or beyond the Property boundary which are objectionable to an ordinary, reasonable man.

Applicant is not willing to accept this proposed additional Special Condition. Odors are already a trigger for a use to have to seek a Special Use Permit pursuant to St. Marys Code of Ordinances 110-73, and such Special Use Permit already requires a public hearing as part of the approval process set forth in St. Marys Code of Ordinances 110-145. This restriction would prohibit many manufacturing and industrial processes or would require a rezoning of the entire Planned Development Text to seek approval of any specific odor.

26. Height Restriction. No building or other structure shall be allowed to be constructed or emplaced on the Property exceeding 65 feet in height. Property Owner may request an amendment to this provision and any site plan applicable thereto with the need therefor clearly spelled out.

Applicant to not willing to accept this proposed additional Special Condition. Special Condition #3 which Applicant agreed to at the Planning Commission approval level already addresses this issue. This restriction proposed here as it is worded would also prohibit some specific uses that may need to exceed 65' or would require a rezoning of the entire Planned Development Text to seek approval of any specific height exception.

27. Buffer. There shall be a 200 foot planted buffer along that portion of Osborne Street which abuts any portion of the Property landscaped with grass and various plantings to make it aesthetically pleasing. Property Owner shall install a fountain on the existing pond within this buffer and a sign within 50 feet thereof with only the words "Welcome to Historic St. Marys" placed thereon in lettering of sufficient size to be viewed from Osborne Street. A site plan for the fountain and sign shall be submitted to City for approval within 30 days of any approval of this Planned Development District and the fountain and sign shall be completed within 6 months of the approval of the site plan. Property Owner shall erect a 30 foot high planted earthen berm along the edge of the 200 foot buffer farthest from Osborne Street except at any location which lies within wetlands under the jurisdiction of any federal or state agency. The planting plan and details of other improvements other than the fountain or sign above shall be shown on a site plan submitted to City for approval prior to any development of the Property and constructed at the same time as the improvements on the site plan. The buffer, plantings and other improvements in this area of buffer must be continuously maintained in good and attractive order by Property Owner.

Applicant is willing to agree to a revised version of this proposed additional Special Condition. (see attached) The revisions are to the timeline as well as seeking for the landscaping and any berm requirements to be drawn out on a proposed site plan for approval rather than arbitrary requirements that may not make practical sense for the topography of the areas. See attached.

28. Timeline. Property Owner at its sole expense shall bring the greater of 10% of the buildable portion of the Property or 50 acres thereof to a "shovel ready" condition each and every year after any approval of this Planned Development

District. For purposes of this section, “shovel ready” means all environmental pollution remediated, the property brought to finish grade and provided with all utility lines (water, sewer, electrical and gas) and road and other appropriate transport lines such as rail service provided. If Property Owner fails to meet the requirements of this condition of approval for three one year periods, the City may rescind the approval of this Planned Development District and no further improvements consistent therewith shall be permitted thereafter.

Applicant will not accept this proposed additional Special Condition. Applicant cannot commit to any schedule regarding environmental remediation except to commit that the property owner shall follow the direction of the applicable Brownfield Corrective Action Plan(s) and their applicable timelines, to achieve No Further Action status for the site.

29. Naval Vessels. Property Owner shall coordinate routes and shipping volumes for vessels entering or leaving the Property and shall develop a de-confliction procedure with the U. S. Navy and conform thereto. The transit of naval assets in and out of the Intracoastal Waterway shall not be interfered with by vessels entering or leaving the Property.

Applicant is willing to accept this proposed additional Special Condition with the minor change of expanding the term Property Owner to include Developer and Users as well. (see attached)

30. Traffic. The Property Owner will coordinate with the City of St. Marys and the Georgia Department of Transportation (GDOT) regarding traffic and site access and to that end will, at no expense to City provide a detailed traffic study acceptable to GDOT.

Applicant is willing to accept this proposed additional Special Condition with the minor change of expanding the term Property Owner to include Developer and Users as well. (see attached)

31. Noise. All present or future owners or occupiers of any portion of the Property shall strictly comply with all St. Marys Ordinances including, without limitation, the noise ordinance Section 46-69.

Applicant is willing to accept this proposed additional Special Condition with the minor change of revising the term “all present or future owners or

occupiers of any portion of the Property” to state Developer/Property Owner/User. (see attached)

32. Process. The Port of St. Marys Industrial & Logistics Center Planned Development District (hereinafter referred to as “District” or “the District”) and each of the exhibits attached thereto (Exhibits A through H) as altered by these Special Conditions are incorporated into this rezoning planned development ordinance and made a part hereof. The applicants and any successors in interest in the developments of the District shall comply with and be bound by the Planned Development District text and each of the aforesaid exhibits. The District shall be rezoned to those zoning classifications as shown on exhibit A and only those uses authorized by the District plan in the respective zoning classifications as identified in SECTION II B. **Allowed Land Uses** shall be permitted. Prior to any development or improvement including any building or structure on any property or portion of the Property within the District, a Plot Plan or Site Plan (those terms being used interchangeably in this Exhibit H and the entire PD Text and Exhibits) of any area to be improved at such time must be filed with the City requesting approval as provided in Sec. 110-68(c) of the Zoning Ordinance of the City of St. Marys. No building permit or other development permit required under the ordinances of St. Marys shall issue nor shall any application therefor be accepted until the Plot Plan is approved by the City under the provisions of the Zoning Ordinance.

Applicant is willing to accept this proposed additional Special Condition.

33. Independent Port. No portion of the Property shall be used as a laydown yard or storage area or as an accessory or subsidiary operation to any other port.

Applicant is not willing to accept this proposed additional Special Condition because these concerns are covered elsewhere in Applicant’s commitment of how it will handle certain materials, and the definitions proposed herein are too vague and overly restrictive.