BEFORE THE ENERGY FACILITY SITING COUNCIL

FOR THE STATE OF OREGON

OREGON FACILITY SITING COUNCIL EXEMPTION

FOR

NEXT RENEWABLE FUELS OREGON, LLC

PORT WESTWARD RENEWABLE DIESEL PROJECT

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Prepared for:

NEXT Renewable Fuels, Oregon, LLC

1.0 INTRODUCTION

NEXT Renewable Fuels Oregon, LLC (NEXT), a Delaware limited liability company, proposes to construct a renewable diesel facility (the "Facility") at the Port Westward Industrial Park in Columbia County, Oregon.

NEXT plans to build a flexible Renewable Diesel Facility utilizing the UOP Ecofining™ Green Diesel technology. The UOP Ecofining™ process is a versatile solution for producing renewable diesel from a range of sustainable feedstocks such as used cooking oil, animal fats and tallow, and inedible corn oil. Renewable diesel produced in the Ecofining™ process is a drop-in fuel that can directly replace up to 100-percent petroleum-based diesels.

NEXT has secured a lease with the Port of Columbia County "Port" for a total of 115.37 acres within the Port's existing Port Westward Industrial Park, along the Columbia River. NEXT has also purchased an adjacent 25.5 acres of private land and has entered a long-term lease of 4.4 acres of private land for rail access. (See Figure 1, Location and Vicinity Map and Figures 2A and 2B, Aerial Photo). The lease option with the Port of Columbia County consists of the following tax lots in the indicated Township, Range and Sections in the Willamette Meridian (See Figure 3A through 3E, Tax Lot Maps for details):

- Production Facility: T8N, R4W, Section 22 Lots 100 and 200
- Driveway: T8N, R4W, Section 21, Lot 700; T8N, R4W, Section 22, Lot 1100;
- Pipe rack: T8N, R4W, Section 16, Lots 200 and 300; Section 21, Lot 700; T8N, R4W, Section 22, Lot 1100; T8N, R4W,
- Rail Branch Line: T8N, R4W, Section 21, Lots 600, T8N, R4W, Section 22, Lots 400, 500, and 600; T8N, R4W, Section 23, Lots 800 and 900; T8N, R4W, Section 23 BO 700

The land that NEXT purchased consists of the following tax lot in the indicated Township, Range, and Section in the Willamette Meridian:

- Production Facility: T8N, R4W, Section 22 Lots 300

The private land that NEXT has leased consists of the following tax lot in the indicated Township, Range, and Section in the Willamette Meridian:

- Rail Branch Line: T8N, R4W, Section 23 BO, Lot 800

The Facility will be capable of processing up to 50,000 barrels per day (BPD) of renewable biomass feedstocks. The Facility is being permitted for its maximum design and production capacity. This equates to production of renewable fuels capable of being burned to produce the equivalent of 287.6 billion BTUs per day, thus meeting the definition of "Energy facility" under ORS 469.300 (11)(a)(G).

1.1 Oregon Energy Facility Siting Council (EFSC)

Pursuant to ORS 469.320(1), "no facility shall be constructed or expanded unless a [EFSC] site certificate has been issued for the site . . . ." A "facility" is defined as "an energy facility together with any related or supporting facilities." ORS 469.300(14).

The definition of "energy facility" includes "[a] plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day." ORS 469.300(11)(a)(G).

There is a statutory exemption (ORS 469.320 (2)(f)) from the EFSC site certification requirement if the facility satisfies the following:

(A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel; (see page 4-5)

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility; (see page 12)

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; (see page 6)

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge; and (see page 13)

(E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy. (see page 5)

The following sections describe the Facility, address how the Facility satisfies the ORS 4 69.320(2)(f) exemption, and provides the information required by OAR 345-015-0360(7).

2.0 DESCRIPTION OF PROPOSED FACILITY

The Facility will utilize liquid biomass feedstocks. Feedstocks will arrive via vessel and barge at the existing Port of Columbia County owned dock at Port Westward, Columbia River Mile 53. A terminaling company that is already operating at Port Westward will unload the feedstock and transfer it via pipeline to the new on-site storage tanks. The feedstock will be refined through an Ecofining™ process

unit into renewable diesel. Renewable diesel produced in the process can directly replace petroleum-based diesel. Finished products will be stored on-site before being transferred back to the terminaling provider via pipeline to ship via barge and vessel from the Port Westward dock.

The Facility consists of the following major components (See Figure 4, Site Layout):

- Three new product and feedstock pipelines from the Facility to the confluence with the terminaling provider
- Ten larger product and feedstock tanks (125,000 to 225,000 barrels each) and fourteen smaller feedstock and process tanks (10,000 to 50,000 barrels each))
- Rail storage tracks
- Biomass Pre-Treatment Plant
- Hydrogen Facility
- Ecofining^{TM} conversion units
- Fresh, storm and process water treatment system
- Office, warehouse and other buildings

The new pipelines and transmission lines will run through the Facility and extend along Port property to the existing connection points (entirely within the Resource Industrial Planned Development zone). None of the new pipelines or transmission lines required for the project meet the definition of "energy facility" in ORS 469.300(11), and therefore do not require a site certification.

2.1 Location

NEXT has entered into a lease option with the Port of Columbia County for 115.37 acres of land within the Port Westward Industrial Park. The land is zoned Resource Industrial Planned Development ("RIPD") (See Figure 5, Zoning Map). NEXT has also purchased 25.5 acres of privately owned land adjacent to the Port parcel. Together these properties will compose "the site" of the Facility. As described above, NEXT will construct pipelines from the site across Port property. NEXT will also lease a 4.4-acre private parcel, zoned Agricultural, for use in rail logistics. This 4.4-acre parcel will enable transfer of railcars from the main line to the site.

The site is located within a levee system and outside the flood zone. The land is currently used for grazing. Low value wetlands exist on site and will be mitigated as permitted and approved by Oregon Department of State Lands (DSL) and US Army Corps of Engineers (USACE).

2.2 Biomass Feedstock

The design of the Facility will be based on processing up to 50,000 BPD of biomass[1] to include virgin vegetable oils, animal fats and tallows, Used Cooking Oils (UCOs), distillers corn oils, and yellow and white greases. Below is an example of the biomass mix that

[1] The majority of the biomass products proposed for use by NEXT are specifically identified in ORS 469.320. Additional biomass intended for use in this process, such as animal tallow and white and yellow greases, are subsumed within the definition of "Biomass" in other parts of Oregon Revised Statue, such as ORS 315,141, which includes "Offal and tallow from animal rendering;" in the definition of biomass.

could be refined. No palm or other non-sustainable oils will be sourced or used in the process.

Raw Oil Feedstock	Oil	Wt%
Soybean and Canola Oils	Veg Oil	30
Distillers Corn Oil	Veg Oil	15
Used Cooking Oil	Veg Oil	15
Beef Tallow	Animal Fat	20
Choice White Grease (Pork Oil)	Animal Fat	10
Yellow Grease (Chicken Fats)	Animal Fat	10

Feedstock will be received by the terminaling provider via barge and ship at the existing Port Westward dock. NEXT will take custody of the product at the pipeline confluence, and the feedstock will be transported by 18"-inch pipeline and stored in six on-site tanks.The biomass feedstock will be fed to the Raw Oil Pretreatment System. The Facility will include up to 4 pre-treatment units. Each unit will be comprised of a multi-stage processing system which includes degumming, polyethylene (PE) removal, filtering and bleaching units. The goal is to remove feed gums, metals, soaps, color and phospholipids with minimal loss of free fatty acids.

As stated above the Facility will exclusively use biomass including oilseeds, waste vegetable oil and waste animal fats as the source of material for conversion to a liquid fuel, thus satisfying the exemption requirement of ORS 469.320(2)(f)(A).

2.3 Production

From pre-treatment, the feedstock will move to 1 of 4 Ecofining™ Units. These units will process the treated oils from the Raw Oil Pretreat facilities into renewable diesel and other renewable products.

The Ecofining™ process requires hydrogen. Hydrogen will be supplied by an on-site hydrogen unit. The hydrogen unit will primarily operate using recycled renewable off-gases produced in the Ecofining process with supplemental natural gas input to produce the required hydrogen.

The Ecofining™ Unit equipment will be designed for a range of feedstocks and operating modes. The finished products generated from the UOP Ecofining™ Process will be:

Renewable Fuels Product	Barrels per Day (Based on 358/year)	Barrels per Year
Renewable Diesel	46,500 BPD	16,647,000 BPY
Renewable Naphtha	2,700 BPD	966,600 BPY
	49,200 BPD	17,613,600 BPY

Finished product will be stored in 4 large tanks and 3 small tanks. Product will be transported by a 20-inch and a 12-inch pipeline to the pipeline confluence with the terminaling provider. The terminaling provider will transfer the products to barges and ships, which will transport the products to market.

2.4 Energy Consumption

2.4.1 Natural Gas and Conversion Energy

The Facility will utilize 14.2 million standard cubic feet per day (15,400 MMBtu/day) of natural gas for conversion energy to fire boilers, heaters and other process equipment. The average carbon intensity of the natural gas to be used for conversion energy is 115.9 pounds of carbon dioxide per million Btu consumed. No other fossil fuels will be used for conversion energy at the Facility.

At 115.9 pounds of carbon dioxide per MMBtu of natural gas the Facility will emit less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy thus satisfying the exemption requirement of ORS 469.320(2)(f)(E).

Natural gas will be provided via the existing Northwest Natural pipeline, which passes within 3,800 feet of the Facility. An interconnecting 8"-inch pipeline will be constructed below grade between the existing pipeline and the Facility. The interconnecting pipeline will be approximately 3,800-feet long and entirely within the RIPD zone. The new connector line does not meet the definition of "energy facility" under ORS 469.300(11).

2.4.2 Electric Power

The Facility will utilize approximately 40 MW of electrical power per day. Electricity will be supplied by the existing Clatskanie Public Utility District (PUD) transmission lines. The electrical service will require a new 1,100-foot service line connecting an existing power pole to an on-site substation. No new transmission towers or lines are required. The new service line does not meet the definition of "energy facility" under ORS 469.300(11).

As stated in 2.4.1 and 2.4.2 above, the Facility requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of ORS 469.320, thus satisfying the exemption requirement of ORS 469.320(2)(f)(C).

2.5 Raw Water

Water will be supplied from raw river water drawn from an existing Port owned intake structure under an existing Port water permit. The water intake pipeline from the existing intake structure to the raw water tank at the Facility will be located below grade within the RIPD zone. 1,350 gallons per minute (gpm) of water will be required. The raw water

storage tank supplies water for utility water, potable water, fire water, cooling water and boiler feed water systems.

2.5.1 Water Discharge

Process and stormwater will be treated on-site at the Facility and discharged through the Port's wastewater discharge system. The wastewater discharge pipeline lateral connecting the Facility to the Port's wastewater discharge system will be located below grade within the RIPD zone. Sanitary sewage will be captured in a storage tank and transported off-site to an approved disposal site.

3.0 LAND USE

3.1 Zoning

The Facility, feedstock and product pipelines, water intake pipeline, wastewater discharge pipeline, gas connector pipeline, construction staging area, and access road are located entirely within Columbia County's planning jurisdiction. As a result, these facilities will be subject to certain provisions of the Columbia County Zoning Ordinance ("CCZO"), Oregon Administrative Rules ("OARs"), and ORSs.

3.1.1 Resource Industrial Planned Zone (RIPD)

The Port of Columbia County owns the Port Westward Industrial Park (Port Westward), a 905-acre rural industrial exception area with 4,000 feet of deep-water frontage along the Columbia River. In the 1970s, the county adopted an exception to Statewide Planning Goals 3 (Agricultural Lands) for Port Westward and planned and zoned it for rural industrial uses. Port Westward is zoned Rural Industrial Planned Development (RIPD). The majority of the Facility and Site, including the pipelines and utilities will be located in the RIPD zone. The following delineates the tax lots that are zoned RIPD and the intended use:

- Production Facility: Tax Map 8-4-22, Lots 100, 200, and 300
- Driveway: Tax Map 8-4-22, Lot 1100; Tax Map 8-4-21, Lot 700
- Pipe rack: Tax Map 8-4-22, Lot 1100; Tax Map 8-4-21, Lot 700; Tax Map 8-4-16, Lots 200

Within the RIPD zone, the proposed Facility is categorized as "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities." This use is permitted as a "Use Subject to Prescribed Conditions" under the criteria set forth in CCZO 683. Pursuant to CCZO 685, any uses approved under CCZO 683 must also satisfy the site design criteria of CCZO 1550.

The Facility is located within the Wetland Area Overlay Zone (CCZO 1180). Criteria and standards of this overlay zones are applied to any required land use permit necessary for the proposed use.

3.1.2 Columbia County PA-80 Zone

NEXT intends to construct a rail branchline to provide ancillary service from manifest rail. (See Figures 6A through 6C, Rail Branch Line Site Plan) In addition to the production plant site, two small properties zoned PA-80 (Primary Agriculture, 80 acre minimum) and totaling 29.4 acres will be used for "rail logistics," which will include construction of a new rail connection (branchline) from the existing rail line to serve the facility. The tax lots that will be utilized for the rail connection and are zoned PA- 80 are listed below:

- 8-4-21 Lot 600
- 8-4-22 Lots 400, 500, and 600
- 8-4-23BO Lots 700 and 800

As the PA-80 zone is an exclusive farm use zone subject to ORS 215.283, a rail branchline is permitted according to the requirements of OAR 660-012-0065(3)(j), which section provides that "railroad mainlines and branchlines" are permitted in exclusive farm use zones if they can satisfy the criteria set forth in ORS 215.296. In turn, ORS 215.296 allows such uses if they will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

In addition to satisfying ORS 215.296 as required by OAR 660-012-0065, CCZO 303 provides that certain transportation improvements allowed in the PA Zone must also meet the Conditional Use criteria set forth in CCZO 306.9, 307, and 308.

The rail improvements within the PA-80 zone area affect two overlay zones, the Riparian, Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone (CCZO 1170) and the Wetland Area Overlay Zone (CCZO 1180). Criteria and standards of these overlay zones are applied to any required land use permit necessary for the proposed use.

3.2 County Land Use Approvals

The County approved the proposed Facility within the RIPD zone and rail components located within the PA-80 zone separately.

3.2.1 Land Use Permits for the Renewable Diesel Production Plant and Associated Rail Improvements within the RIPD Zone

On February 9, 2022, the Columbia County Board of Commissioners tentatively voted to approve with conditions a Type II Site Design Review, Use Permitted under Prescribed Conditions in the RIPD Zone, and Variance for the Facility and all rail improvements located within the RIPD zone. The County applied the CCZO and relevant goals and

policies of the Comprehensive Plan to the application, including the Wetland Area Overlay Zone. The County's Plan and relevant standards and criteria of the CCZO are acknowledged. No statewide planning goals, statues, or administrative rules apply directly to the applications. The County adopted its final decision approving the above-referenced applications, along with final findings of fact and conclusions of law, on March 23, 2022. (See Exhibit A, Facility Use Permit Findings)

For this reason, the Council can find that ORS 469.320(2)(f)(B) is satisfied with respect to all components of the Facility on the RIPD-zoned portion of the project site.

3.2.2 Land Use Permit for Rail Improvements within the PA-80 Zone.

On February 9, 2022, the Columbia County Board of Commissioners tentatively voted to approve with conditions a Type III Conditional Use Permit for the portions of the rail improvements on portions of the site area zoned PA-80. The County applied the CCZO and relevant goals and policies of the Comprehensive Plan to the application, including the Riparian, Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone and the Wetland Area Overlay Zone. The County's Plan and relevant standards and criteria of the CCZO are acknowledged. No statewide planning goals applied directly to the application.

However, a state administrative rule and state statute applied directly to the County's decision on the application. OAR 660-012-0065 "Transportation Improvements on Rural Lands" allows "(j) Railroad mainlines and branchlines," but requires local governments to apply the farm impacts analysis of ORS 215.296, explained above**.** The County adopted its final decision approving the above-referenced applications, along with final findings of fact and conclusions of law, on March 23, 2022. (See Exhibit B, Use Permit for a Rail Branchline) The decision included findings explaining how the application was allowable under OAR 660-012-0065 and met the criteria of ORS 215.296; the County's findings on OAR 660-012-0065 and ORS 215.296 are expressly incorporated into this exemption request and are summarized below.

For these and the following reasons, the Council can find that ORS 469.320 (2)(f)(B) is satisfied with respect to all rail improvements associated with the Facility on the PA-80-zoned portion of the project site.

3.2.3 OAR 660-012-0065

The CCZO expressly allows a number of non-agricultural uses in the PA-80 zone and certain other non-agricultural uses as conditional uses. The Board may approve roads, highways, and other transportation facilities and improvements as set forth in Oregon Administrative Rule 660-012-0065 as a conditional use. CCZO 306.9. Oregon Administrative Rule ("OAR") 660-012-0065(1) "identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with [statewide planning] Goals 3, 4, 11, and 14 without a goal exception." Specifically, "[r]ailroad mainlines and branchlines" are consistent with the identified Goals and may be permitted on rural lands. OAR 660-012-0065(3)(j).

Neither the CCZO, nor Oregon's statutes or administrative rules provide a relevant definition of the term "rail branchline." However, the Oregon Supreme Court has embraced a "commonly understood" meaning that a branchline is "nothing more nor less than an offshoot from the mainline or stem." *Union P. R. Co. v. Anderson*, 167 Or 687, 712, 120 P2d 578, 588 (1941). This meaning is reflected by the following passage cited in *Union P.R. Co*:

> "It denotes a road connected, indeed, with the main line, but not a mere incident of it, not constructed simply to facilitate the business of the chief railway, but designed to have a business of its own, for the transportation of persons or property to and from places not reached by the principal route."

Union P. R. Co., 167 Or at 711-12, citing *State v. United New Jersey R. and Canal Co.*, 43 N.J.L. 110 (1881) (emphasis added).

NEXT also obtained a letter from Portland and Western Railroad (Exhibit C, Letter from PWR) that outlines Portland and Western Railroad's conclusion that the proposed rail branchline is in fact a "branchline," and not some other distinct type of rail improvement such as railyard or switchyard. The letter states that the Applicant's rail branchline tracks are "considered industry track, which is another term for branchline or spur." The letter goes on to say that "[a]s a general matter, 'branchline' is a broad term that encompasses any track that branches off from mainline track."

For the above reasons, the Council can find that the proposed rail improvements are a "branchline" and therefore permitted in the PA-80 zone pursuant to the requirements of OAR 660-012-0065(3)(j).

3.2.4 ORS 215.296

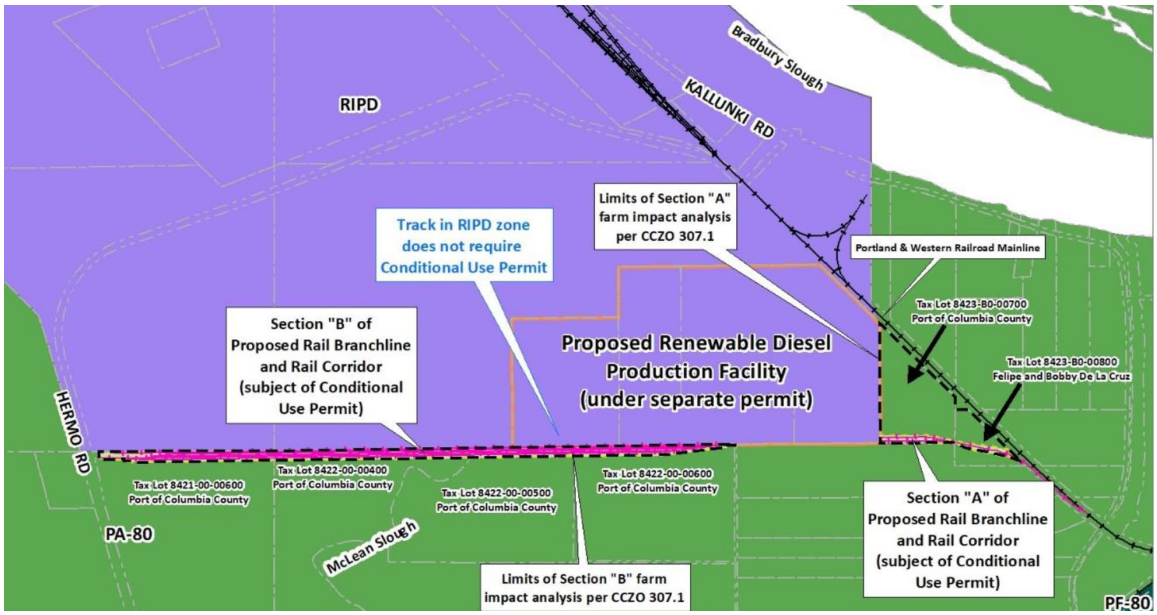
Consistent with the Oregon Supreme Court's ruling in *Stop the Dump Coalition v. Yamhill County*, NEXT conducted a farm-by farm analysis for the farm impacts test. Two separate impact areas were examined: the first is the impact area associated with Branchline Section A (which extends from the Portland & Western Railroad mainline to the proposed renewable diesel production facility) and the second is the impact area associated with Branchline Section B (which begins at the southern boundary of the proposed renewable diesel production facility and extends westward toward Hermo Road). The analysis then characterized existing agricultural practices in the two impact areas and demonstrates that the proposed rail branchline satisfies both ORS 215.295(a) and (b). Responses to each criterion are outlined below.

A. The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

In *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 459 (2019), the Oregon Supreme Court explained the significant change/significant cost test in ORS 215.296(1) and (2) as follows:

"To summarize, when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice, the farm impacts test in ORS 215.296(1) requires an applicant to prove that the proposed nonfarm use (1) will not force a significant change in the accepted farm practice and (2) will not significantly increase the cost of that practice. A "significant" change or increase in cost is one that will have an important influence or effect on the farm. For each relevant accepted farm practice, if the applicant cannot prove both of those elements without conditions of approval, the local government must consider whether, with conditions of approval, the applicant will meet the farm impacts test."

For ease of reference, the branchline site has been further broken down into two sections as depicted below:



Section A of the proposed rail branchline crosses two (2) parcels: one (1) owned by Felipe and Bobby De La Cruz (tax lot 8423-B0-00800) and one (1) owned by the Port of Columbia County (tax lot 8423-B0-00700). Section B of the proposed rail branchline crosses four (4) parcels owned by the Port of Columbia County (tax lots 8421-00-00600, 8422-00-00400, 8422-00-00500, and 8422-00-00600). As illustrated in the map above, all six parcels are zoned PA-80. Adjacent resource lands include property zoned PA-80 in all directions. Based on the location of the Portland & Western Railroad mainline, which bifurcates a small amount of resource land, the only area affected by the proposed branchline will be land north of the branchline and south and west of the existing Portland & Western mainline. Furthermore, since the proposed rail branchline will isolate a triangle bounded by the rail mainline to the northeast, the proposed rail

branchline to the south, and the proposed renewable diesel production facility to the west and north (on land zoned RIPD), the impact area analyzed for this standard is limited to portions of the six parcels that will be crossed by the rail branchline.

Turning first to the analysis area for branchline Section A, totaling 14.1 acres, aerial photography and the Cropland Data Layer indicates that the northern tip of the De La Cruz parcel is wetland. The central portion of the De La Cruz parcel (within and north of the proposed rail branchline corridor), has been farmed in recent years with hay/grassland and row crops such as mint. Similarly, the single Port parcel west of the De La Cruz parcel contains wetlands, though it appears that in recent years portions have been vegetated with grassland and mint as well. Hay and row crops are fairly resilient and are not sensitive to the sound or vibration associated with rail traffic, as evidenced by the proximity of these crops to the existing rail mainline.

Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, irrigation, spraying fertilizer, managing weeds, mowing, and harvesting. Construction and operation of the branchline could cause minor changes in access routes to fields (for instance, the branchline will cross an existing access route) and changes in patterns of cultivation, seeding, fertilizing, and harvesting near the facility.

Train traffic could also lead to increased time to access farm fields north of the branchline and east of the proposed renewable diesel production facility, though these delays would be brief and infrequent on the proposed branchline. Trains are anticipated to have a maximum length of 6,630 feet. The maximum single length of track within the proposed branchline is roughly 7,500 feet, more than enough storage to accommodate the largest train without requiring backing movements or crossing delays. The maximum delay time at the only nearby road crossing—Kallunki Road—is estimated to be approximately 7.5 minutes for a maximum length train at 10 miles per hour. Accordingly, the rail branchline to serve the project will only have one road crossing and the maximum time it could delay traffic is 7.5 minutes. All told, the project would be expected to generate three (3) trains per week. A less than 10 minute delay in time to access fields or an alteration of field access routes is not a significant change in farming practices nor a significant increase in the cost of those practices. The risk of conflict between farm equipment and trains on the branchline would be relatively low since the trains will be infrequent and moving slowly due to their proximity to their origin and destination.

NEXT will construct a private rail crossing to allow the passage of farm equipment to the fields north of the branchline. A proposed private rail crossing will address impacts from the branchline by providing access to the fields north of the branchline and east of the renewable diesel facility. Thus, the farming activities north of the proposed rail line could continue even with the construction of the rail branchline.

Taken individually, neither alterations to access routes nor increased time to access fields is by itself a condition that would cause farm operators to significantly change

their farm practices. Furthermore, in the aggregate, the cumulative effect of these changes does not require farm operators to significantly change their practices. Based on this information, the Council can conclude that the proposed rail branchline will not force a significant change in farm or forest practices within the Section A impact area.

Turning next to the analysis area for branchline Section B, totaling 10.7 acres, the four Port parcels south of the renewable diesel production facility are largely in tree farm use. A nominal amount of grassland is present north of McLean Slough, but this grassland would be removed to accommodate the rail branchline. Management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. Elimination of the existing tree farm and grassland acreage would not cause farm operators within the impact area to significantly change their farm practices, as the owner (the Port) is willingly taking the impact area out of agricultural production within those specific boundaries to accommodate the rail branchline. As the rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, it will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for all required tree farm management activities. The proposed rail corridor will not isolate or split tree farm areas into smaller areas. Based on this information, the Council can conclude that the proposed rail branchline will not individually or cumulatively force a significant change in farm or forest practices within the Section B impact area.

B. The proposed use will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

As discussed in the response to criterion A, only six (6) parcels are within the impact area that have the potential to be affected by the proposed rail branchline. Again, as noted above, all parcels within the impact area contain wetlands, though portions have been used for grass/hay and mint and tree farms in recent years. The Section A impact area contains one (1) parcel owned by Felipe and Bobby De La Cruz and one (1) parcel owned by the Port of Columbia County.

Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, spraying fertilizer, managing weeds, mowing, and harvesting. Construction and operation of the branchline does not interfere with these activities by increasing land values (e.g., by converting agricultural land to nonfarm/residential use) or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. Trains are designed to stay on their tracks, so unlike a roadway or path, the rail branchline would not introduce automobiles, pedestrians, or cyclists into agricultural lands where they were not previously present. As a result, no additional measures need to be taken by farmers to prevent trespassers.

Based on these farm practices, construction and operation of the branchline could cause minor changes in access routes to farm fields (for instance, the branchline will cross an existing access route), which may result in changes in the timing of cultivation, seeding, fertilizing, and harvesting near the facility. NEXT will construct a private rail crossing to

allow the passage of farm equipment to the fields north of the branchline. A proposed private rail crossing will address impacts from the branchline by providing access to the fields north of the branchline and east of the renewable diesel facility. Trains are anticipated to have a maximum length of 6,630 feet. The maximum single length of track within the proposed branchline is roughly 7,500 feet, more than enough storage to accommodate the largest train without requiring backing movements or crossing delays. The maximum delay time at the only nearby road crossing—Kallunki Road—is estimated to be approximately 7.5 minutes for a maximum length train at 10 miles per hour. Accordingly, the rail branchline to serve the project will only have one road crossing, and the maximum time it could delay traffic is 7.5 minutes. All told, the Project would be expected to generate three (3) trains per week. A less than 10-minute delay in time to access fields or an alteration of field access routes is not a significant change in farming practices nor a significant increase in the cost of those practices.

Train traffic on the rail branchline will not lead to any appreciably higher level of dust than is currently present from the Portland & Western Railroad mainline which already borders the impact area (all portions of the impact area are already within 800 feet of the rail mainline). Consequently, construction of the rail branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The rail branchline will not increase the cost of farming inputs (seed, fertilizer, pesticides, etc.) and will not increase farmers' liability or financial exposure. The impact area is not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks. The applicant proposes to construct a private rail crossing at its own expense to allow passage of farm equipment to the PA-80 property that would be isolated by the rail branchline.

Based on this information, the Council can conclude that the proposed rail branchline will not individually or cumulatively significantly increase the cost of farm or forest practices within the Section A impact area.

The Section B impact area contains four (4) parcels owned by the Port of Columbia County, and the analysis area is largely in tree farm use. Management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. Construction and operation of the branchline does not interfere with these activities by increasing land values or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. As the rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, it will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for all required tree farm management activities.

Tree farms are not sensitive to dust from nearby rail lines. Consequently, construction of the rail branchline will not cause adjoining tree farm operators to incur costs to utilize additional water or pumping equipment to suppress dust. The rail branchline will not increase the cost of farming inputs (saplings, fertilizer, pesticides, etc.) and will not increase farmers' liability or financial exposure. The impact area is in tree farm use and

not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks.

Based on this information, the Council can conclude that the proposed rail branchline will not individually or cumulatively significantly increase the cost of farm or forest practices within the Section B impact area.

3.2.5 Statewide Planning Goals

The Facility is located within the Columbia County RIPD zone, which implements the Port Westward Exception Area. The Exception Area was created in 1984 for the existing PGE Beaver generating plant and tank farm. Pursuant to Goal 2 (Land Use Planning), the County took an exception from statewide planning Goals 3 (Agricultural Lands) and 14 (Urbanization) for the following uses: the Beaver generating plant, dock, railroads, tank farm, certain buildings, onsite utilities, and filled areas. It also created the RIPD exception zone which allows, as a conditional use, "production, processing, assembling, packaging or treatment of materials; and storage and distribution of services and facilities."

The County's Plan and Port Westward Goal Exception were acknowledged by the Oregon Land Conservation and Development Commission. ORS 197.175(2)(d) provides that where Comprehensive Plans are deemed acknowledged, land use decisions must be "in compliance with the acknowledged plan and land use regulations." "If the local government's action is merely an action under its acknowledged comprehensive plan, then that action only need comply with the plan." *Foland v. Jackson County*, 311 Or. 167, 180, 807 P.2d 801 (1991). Therefore, the statewide planning goals do not apply directly to this exemption request.

If the Council believes that the goals nonetheless apply to this exemption request, it can find that this exemption request is consistent with applicable goals and policies as follows:

1. Goal 1 (Citizen Involvement). Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. As Goal 1 requires specific action of local governments and not permit applicants, it is not directly applicable to industrial development within the RIPD zone. Even if it applied directly, the Council can conclude that development of the proposed Facility will be consistent with Goal 1. This is because the County's current citizen involvement program requires, for any industrial development within the RIPD zone, that a hearing be held on the conditional use application before the County Planning Commission, which provides an opportunity for public participation in the decision and a right of appeal. CCZO 686.

2. Goal 2 (Land Use Planning). Goal 2 essentially requires local governments to prepare comprehensive plans and implementing regulations, and to make land use decisions in compliance with those provisions. For this reason, it is not directly applicable to the Facility. However, even if it were, the Facility will be consistent with Goal 2. As noted above, the County has an acknowledged plan and implementing land use regulations, and a goal exception consistent with Goal 2 has been taken for properties subject to the RIPD zone. For these reasons, the Council can conclude that development of the proposed Facility will be consistent with Goal 2.

3. Goal 3 (Agricultural Lands). Except for the properties proposed to be used for the rail branchline, the Site is not designated as Goal 3 land. This goal does not apply the RIPD-zoned portions of the Facility because that zone was created as an exception to Goal 3 in the County's Comprehensive Plan, which exception was acknowledged. As for the PA-80 zoned properties to be used for the rail branchline, the Council can find that the rail branchline is consistent with Goal 3 because the County found that it was permissible under OAR 660-012-0065 and meets the criteria of ORS 215.296.

4. Goal 4 (Forest Lands). The Site is not designated as Goal 4 land. This goal does not apply.

5. Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources). Goal 5 requires local governments to inventory, map, and adopt regulations to protect its Goal 5 resources. The County reviewed onsite wetlands and determined that they were not protected by its Goal 5 program. The only Goal 5 resource identified on the overall project site is a portion of the McLean Slough. The County determined that the project was permissible within the slough because it was "water related," as permitted by the County's Goal 5 implementing standards. (See Exhibit B, Use Permit for Rail Branchline)

6. Goal 6 (Air, Water and Land Resource Quality). This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as air and water pollution. Goal 6 only requires that the local government establish that there is a "reasonable expectation" that the use for which approval is requested will be able to comply with the state and federal environmental quality standards. *Hess v. City of Corvallis*, 70 Or LUBA 283 (2014). The Council can find that the proposed Facility will be consistent with Goal 6 because the Facility shall be designed to meet applicable state and federal clean air and water standards, will not be operated until required air and water permits are issued, and there is no evidence that the Facility cannot comply with state and federal clean air and water standards.

7. Goal 7 (Areas Subject to Natural Disasters and Hazards). Goal 7 requires that local governments apply "appropriate safeguards" (floodplain zoning, for example) when planning for development. The Council can find that Goal 7 does not apply to the Site for two reasons. First, the site is essentially flat, meaning that there are no landslide hazards present. Second, the Federal Emergency Management Agency (FEMA) has designated the Site as an "Area with Reduced Flood Risk Due to Levee." It is not listed as having a 1-percent (100 year) or 0.2-percent (500 year) annual flood risk, and therefore not determined to be subject to a flood hazard. See FIRM 41009C0050D, available at https://hazards.fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd.

8. Goal 8 (Recreation Needs). Goal 8 requires communities to evaluate their recreational facilities and develop plans to meet recreational demand. The Site is not designated for and does not support any recreational facilities. For these reasons, Goal 8 does not apply to the proposed Facility.

9. Goal 9 (Economy). Goal 9 asks communities to inventory commercial and industrial lands, Facility future needs for such lands, and plan and zone enough land to meet those needs. RIPD zoning implements the County's Goal 9 policies, and is "intended to accommodate rural and natural resource related industries which: (.1) are not generally labor intensive; (.2) are land intensive; (.3) require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access; (.4) complement the character and development of the surrounding rural area; (.5) are consistent with the rural facilities and services existing and/or planned for the area; and (.6) will not require public facility and or/service improvements at significant public expense.

The County found that the project meets all these criteria, as explained in its adopted findings. (See Exhibit A, Facility Use Permit Findings)

10. Goal 10 (Housing). The Site is not designated for housing and housing is not permitted in the RIPD zone as a stand-alone use.

11. Goal 11 (Public Facilities). Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. As this is a local government planning requirement, it does not apply directly to the Facility. However, even if it did, Council can conclude that the Facility is consistent with Goal 11 because the Facility will not require any additional public facilities to be constructed a public expense.

12. Goal 12 (Transportation). Goal 12 requires local governments to prepare and adopt transportation system plans. It also applies to post-acknowledgement

plan amendments (zone changes) by requiring that such changes not have a significant effect on the transportation system, or that such affects are mitigated. *See* OAR 660-012-0060. The County has an acknowledged Transportation System Plan; therefore, Goal 12 does not directly apply to the RIDP-zoned portions of the Facility.

The proposed branchline is subject to OAR 660-012-0065, which allows certain transportation improvements on rural lands without a Statewide Planning Goal Exception. This regulation was addressed above in Section 3.2.3. As the proposed branchline can satisfy OAR 660-012-0065, the Council can find that it is consistent with Goal 12.

13. Goal 13 (Energy Conservation). Goal 13 requires comprehensive plans to consider ways to "conserve energy," but does not require that comprehensive plans ensure a net decrease in energy use or prohibit any plan amendment that would result in a net increase in energy use. *Setniker v. ODOT*, 66 Or LUBA 54 (2012). It also does not impose any substantive requirements on land use decisions; therefore, the Council can conclude that Goal 13 does not apply to the Facility. However, to the extent that the Council concludes otherwise, it can conclude that the proposed Facility furthers energy conservation by recycling existing waste products into a viable fuel.

14. Goal 14 (Urbanization). Goal 14 requires local governments to adopt urban growth boundaries and to prohibit urban development outside of those boundaries. The Site is located within the Port Westward Exception Area, which was established through an acknowledged exception to Goal 14. Therefore, Goal 14 does not apply to the proposed Facility.

An exception to Goal 14 is not required because the proposed branchline meets the applicable requirements of OAR 660-012-0065.

15. Goal 15 (Willamette Greenway). The Site is not located along the Willamette River; Goal 15 does not apply.

16. Goal 16 (Estuarine Resources). The Site is not adjacent to an estuarine resource; Goal 16 does not apply.

17. Goal 17 (Coastal Shorelands). This goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. The site is not located within the designated Goal 17 area; therefore, Goal 17 does not apply.

18. Goal 18 (Beaches and Dunes). The Site is not located near beaches or dunes; Goal 18 does not apply.

19. Goal 19 (Ocean Resources). Goal 19 applies to the nearshore ocean and continental shelf; Goal 19 does not apply.

For the above reasons, the Council can conclude that the Facility can comply with the statewide planning goals to the extent that they apply.

4.0 SYNTHETIC FUEL PRODUCTION AND TRANSPORT

The Facility will produce 46,500 BPD of renewable diesel and 2,700 BPD of renewable naphtha derived from biomass. While "synthetic fuel" is not explicitly defined in ORS 469.320, its inclusion under ORS 469.320(2)(f) suggests that biomass derived fuels are considered synthetic. The state has affirmed this definition by including ethanol and other biomass derived fuels under this rule.

4.1 Feedstock and Product Transportation

Over 95-percent of the biomass feedstock received, and renewable fuels produced, at the Facility will be transported via ship or barge at the existing Port Westward dock. Approximately 5 ships per month or ~60 ships per year will transport finished products primarily to domestic markets. NEXT will utilize an existing third-party logistics provider who has secured priority dock access through a long-term lease and use agreement with the Port.

A small portion of the fuel, less than five percent, may be transported via rail or truck for local consumption within the Portland/Vancouver market.

4.2 Rail Use

The NEXT rail system is being designed to handle intermittent cargo (possibly up to 5-percent of the liquid barrels transported per month) and certain supplies. The main use of the rail system is expected to be the import of bleaching earth for the feed pretreat unit. The rail system is being designed to accommodate:

- Unloading of feedstock 10 railcars/week
- Loading of renewable diesel 3 railcars/week
- Unloading of bleaching earth material 20 railcars/week

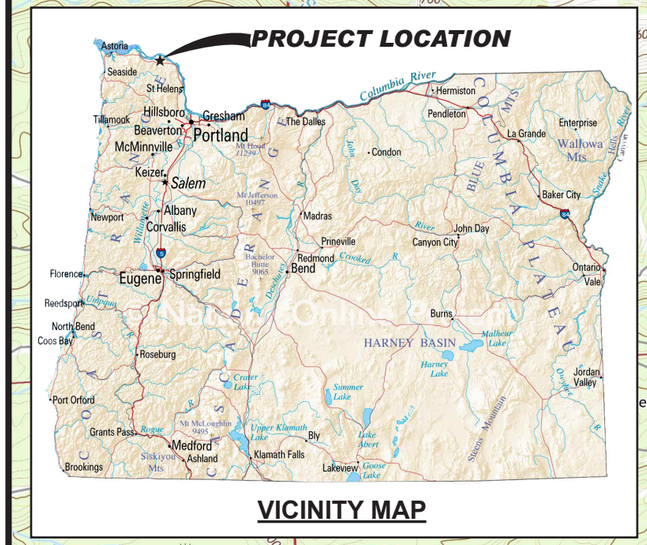
The rail system consists of approximately 15,000 linear feet of track with a 10-bay feed unloading system and a 10-bay diesel loading and bleaching earth unloading system. The majority of the rail track is for storage to minimize the number of rail movements to and from the site and to allow for moving of cars to the loading/unloading bays.

The Facility will produce only synthetic fuel, at least 95 percent of which will be transported from the Facility by rail or barge thus satisfying the exemption requirement of ORS 469.320(2)(f)(D).

Figures

EFSC Figures 1 – 6

Next Renewable Fuels, Oregon, LLC.
EFSC Revision
March 2022



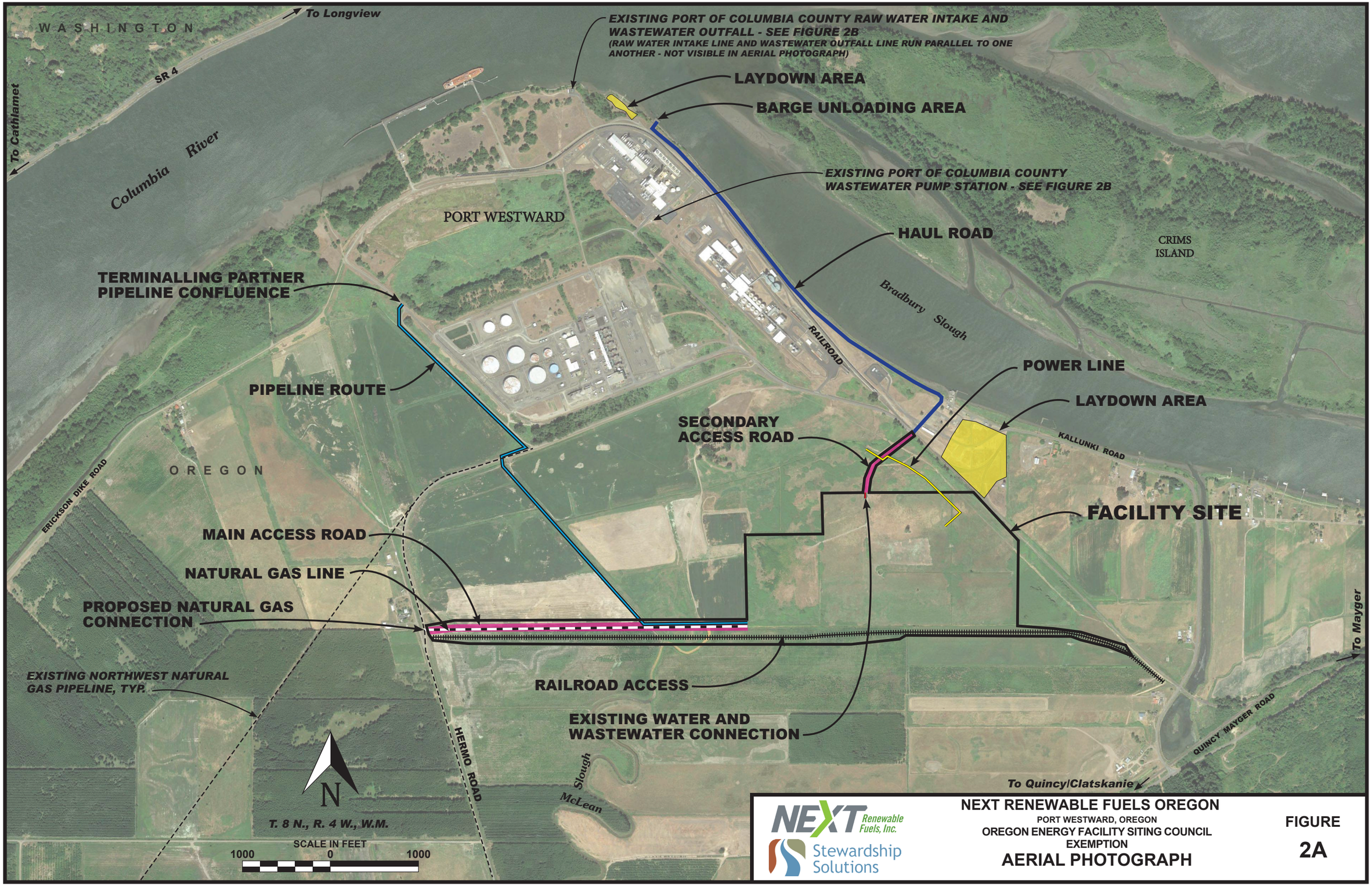
NEXT Renewable Fuels, Inc.
Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON - FACILITY SITE
OREGON ENERGY FACILITY SITING COUNCIL
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

LOCATION AND VICINITY MAPS

FIGURE 1

NEXT-PortWestward Feb. 23, 2021



NEXT Renewable Fuels, Inc.
Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION
AERIAL PHOTOGRAPH

FIGURE 2A

NEXT-PortWestwardJPA-Rev Sep. 14, 2021





N

T. 8 N., R. 4 W., W.M.

SCALE IN FEET

100 0 100

NEXT Renewable Fuels, Inc.

Stewardship Solutions

NEXT RENEWABLE FUELS OREGON

PORT WESTWARD, OREGON

OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

AERIAL PHOTOGRAPH

FIGURE 2B

NEXT-PortWestwardJPA-Rev Sep. 14, 2021

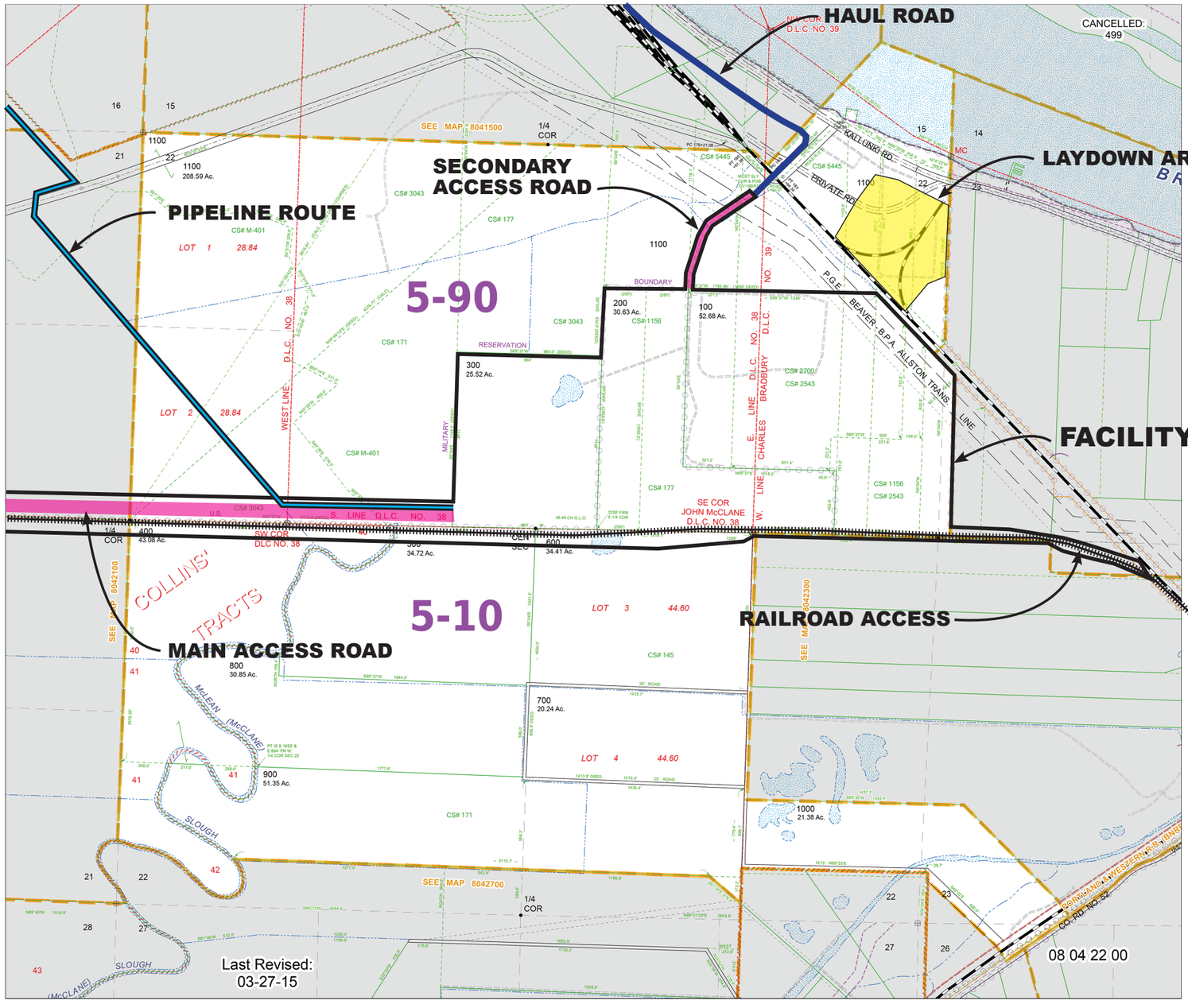
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

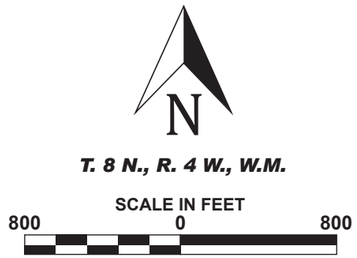
0 100 200 400 Feet

SECTION 22 T.8N. R.4W. W.M.

COLUMBIA COUNTY

08 04 22 00





NOTE:
SEE AERIAL PHOTOGRAPH FIGURE 2 FOR SCHEMATIC UTILITY LOCATIONS FOR FACILITY SITE.

NEXT Renewable Fuels, Inc.
Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION
TAX LOT MAP 1 - 080422

FIGURE
3A

NEXT-PortWestwardJPA-Rev Sep. 9, 2021

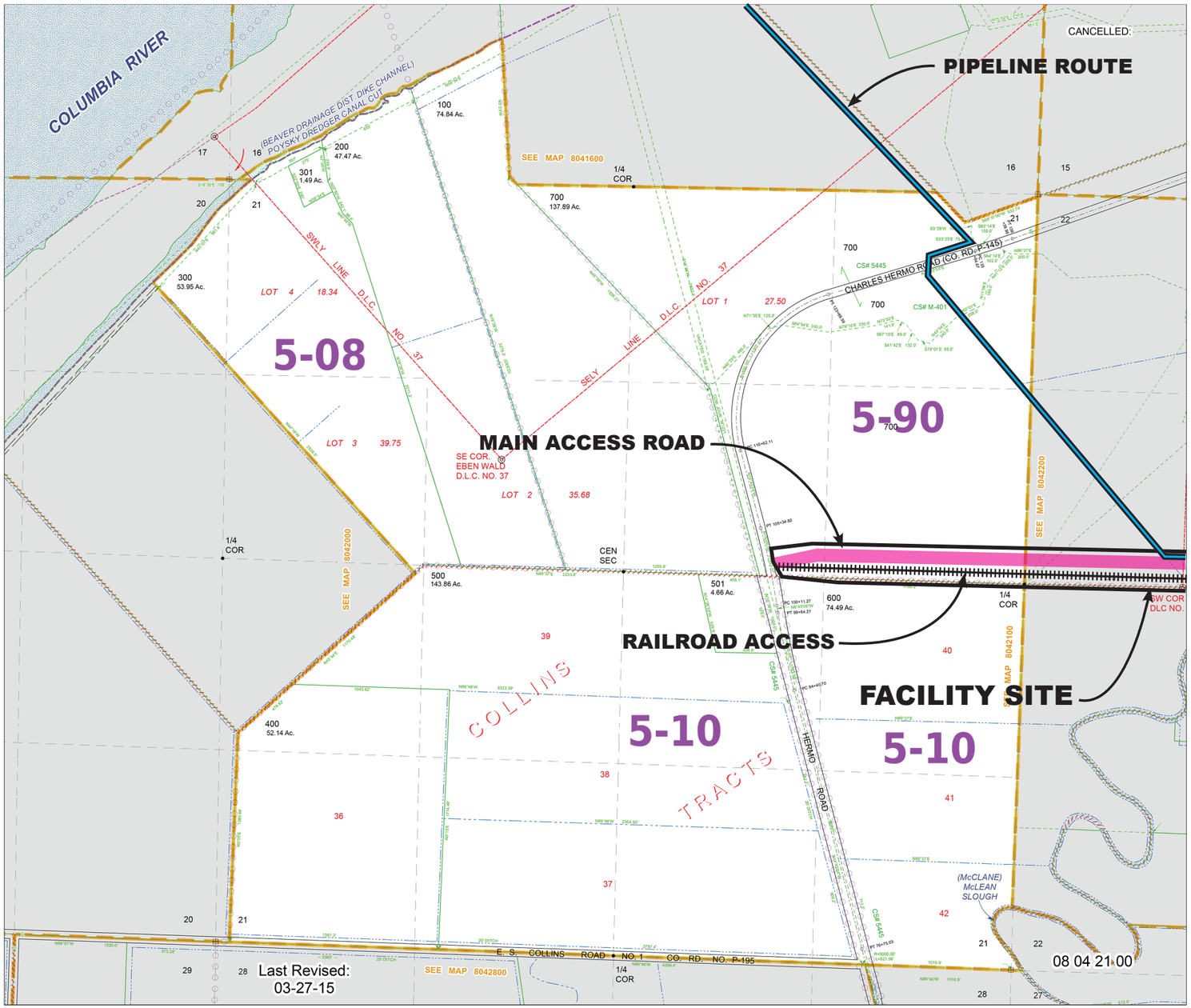
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 100 200 400 Feet

SECTION 21 T.8N. R.4W. W.M.

COLUMBIA COUNTY

08 04 21 00



Last Revised:
03-27-15



NOTE:
SEE AERIAL PHOTOGRAPH FIGURE 2 FOR SCHEMATIC UTILITY LOCATIONS FOR FACILITY SITE.

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PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

TAX LOT MAP 2 - 080421

FIGURE
3B

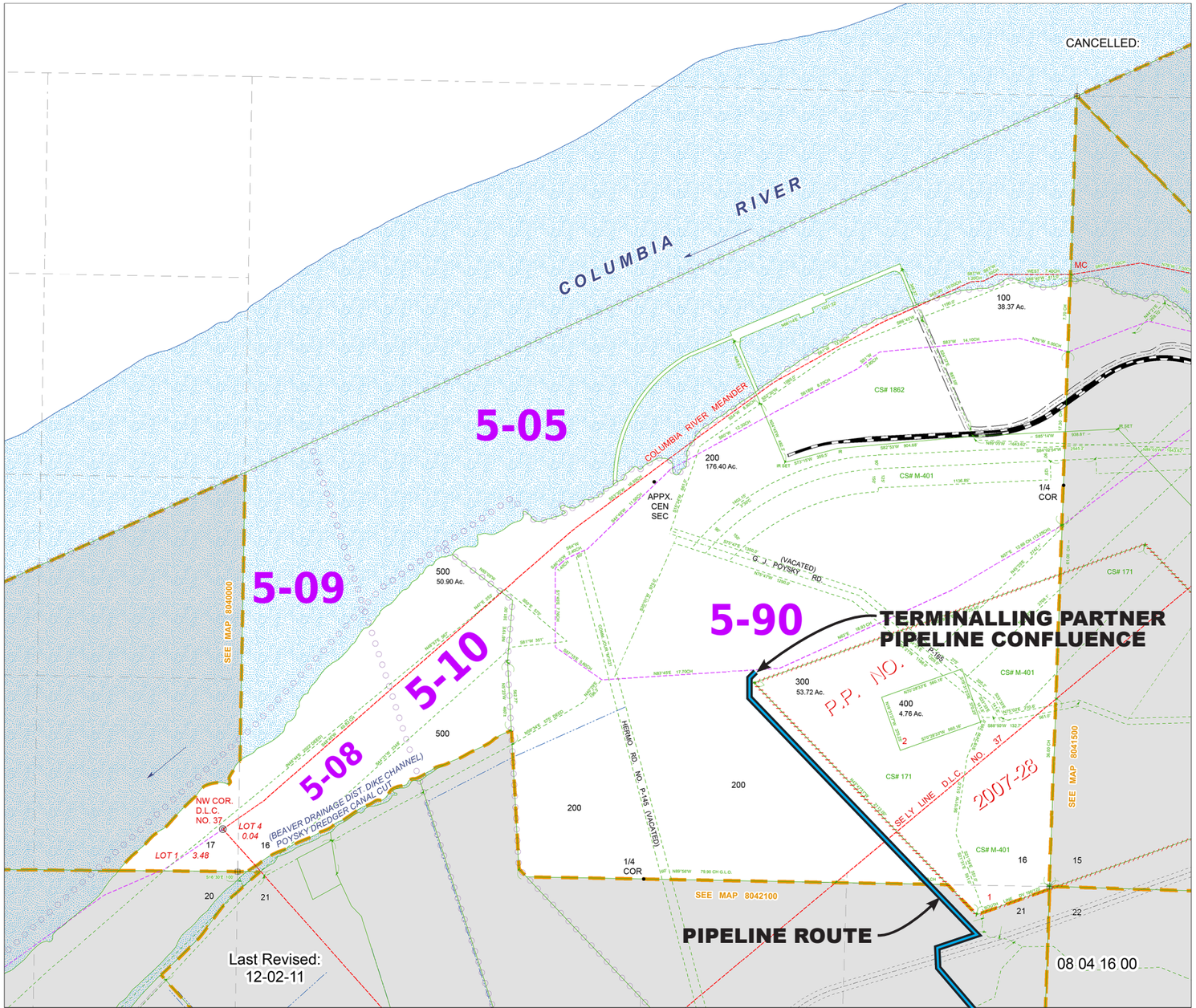
NEXT-PortWestwardJPA-Rev Jul. 10, 2021

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 100 200 400 Feet

SECTION 16 T.8N. R.4W. W.M.
COLUMBIA COUNTY

08 04 16 00



N

T. 8 N., R. 4 W., W.M.

SCALE IN FEET
800 0 800

NOTE:
SEE AERIAL PHOTOGRAPH FIGURE 2 FOR SCHEMATIC UTILITY LOCATIONS FOR FACILITY SITE.

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Stewardship Solutions

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PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL
EXEMPTION

TAX LOT MAP 3 - 080416

FIGURE
3C

NEXT-PortWestwardJPA-Rev Jun. 21, 2021

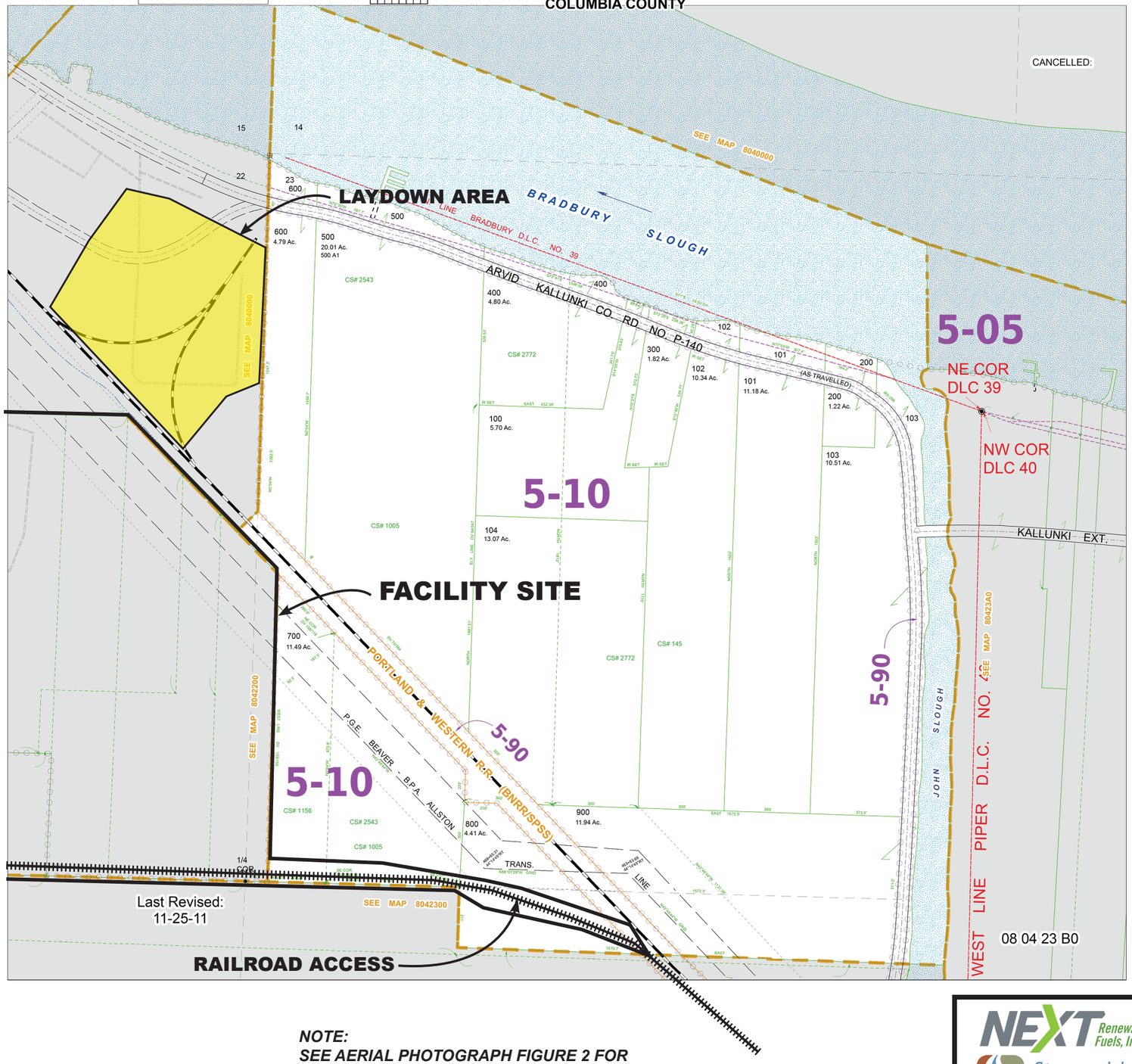
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 50 100 200 Feet

N.W.1/4 SEC.23 T.8N. R.4W. W.M.

COLUMBIA COUNTY

08 04 23 B0



Last Revised:
11-25-11

08 04 23 B0

N

T. 8 N., R. 4 W., W.M.

SCALE IN FEET

400 0 400

NOTE:
SEE AERIAL PHOTOGRAPH FIGURE 2 FOR SCHEMATIC UTILITY LOCATIONS FOR FACILITY SITE.

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PORT WESTWARD, OREGON

OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

TAX LOT MAP 4 - 080423B

FIGURE

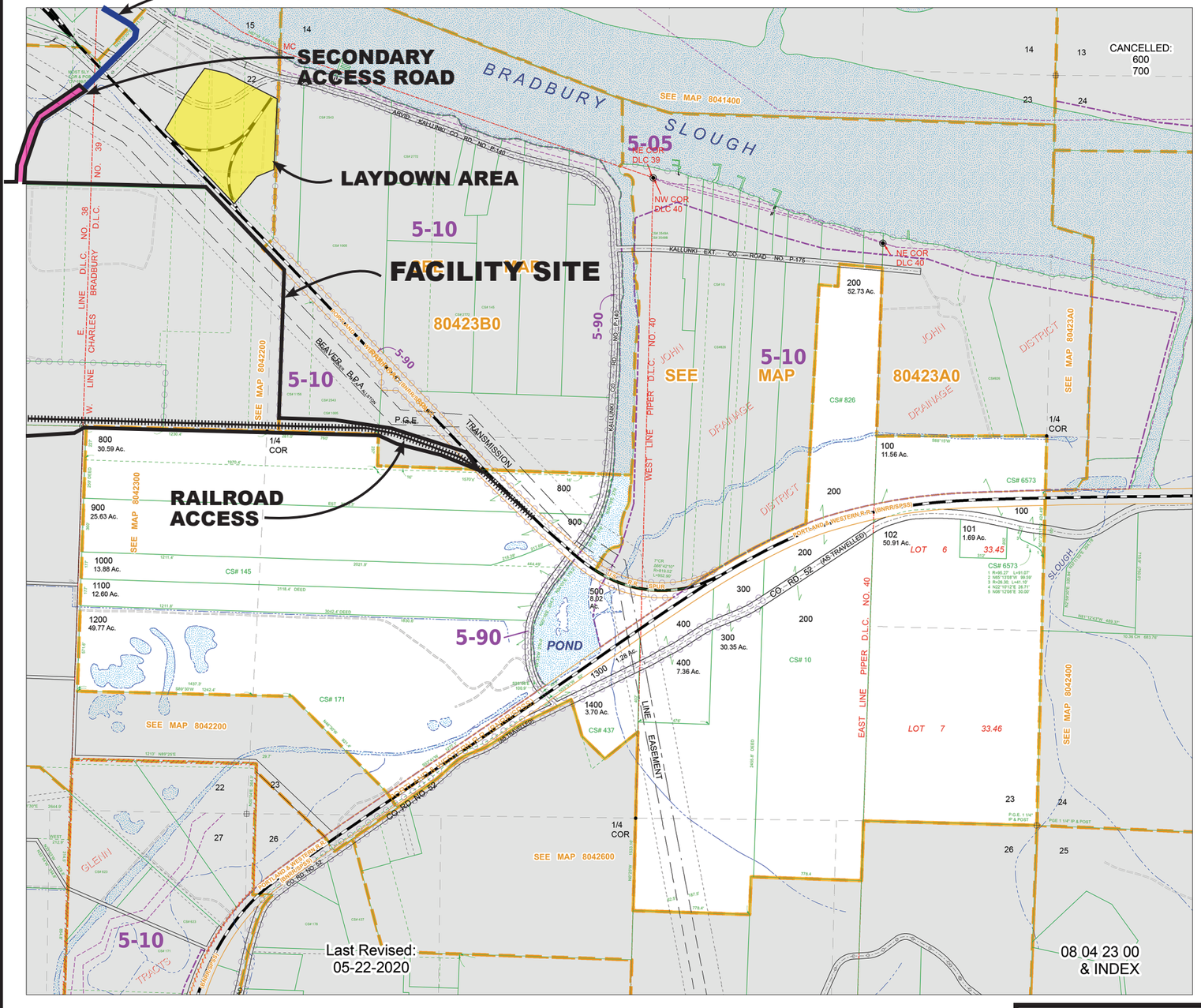
3D

NEXT-PortWestwardJPA-Rev Jul. 10, 2021

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

SECTION 23 T.8N. R.4W. W.M.
COLUMBIA COUNTY

08 04 23 00
& INDEX



Last Revised:
05-22-2020

08 04 23 00
& INDEX

N

T. 8 N., R. 4 W., W.M.

SCALE IN FEET
800 0 800

NOTE:
SEE AERIAL PHOTOGRAPH FIGURE 2 FOR SCHEMATIC UTILITY LOCATIONS FOR FACILITY SITE.

NEXT Renewable Fuels, Inc.
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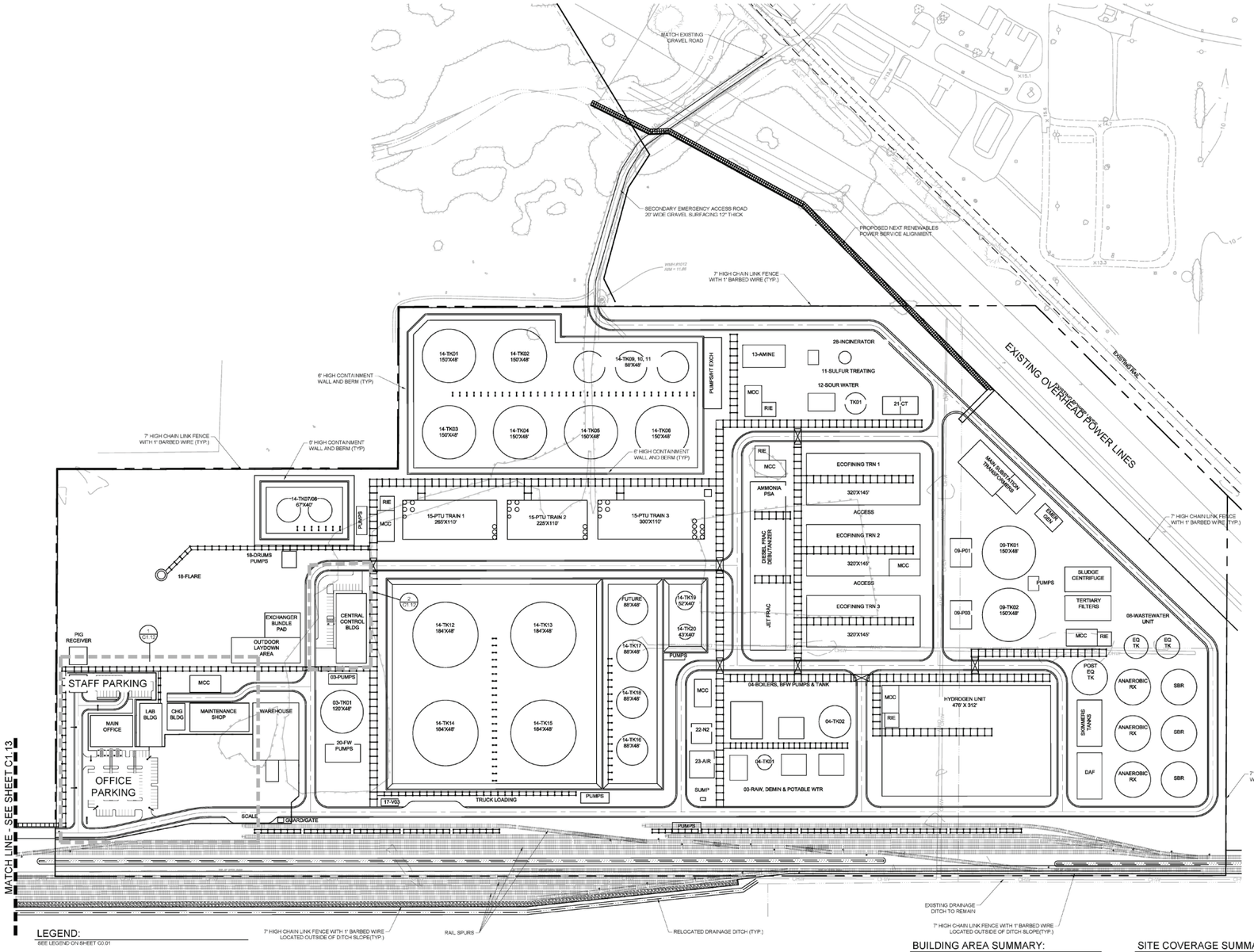
PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION
TAX LOT MAP 5 - 080423

FIGURE
3E

NEXT-PortWestwardJPA-Rev Sep. 9, 2021



LEGEND:

SEE LEGEND ON SHEET C0.01

PARKING SUMMARY:

	STANDARD SPACES	ACCESSIBLE SPACES	TOTAL SPACES
OFFICE PARKING	79	5	84
STAFF PARKING	20	0	20
CONTROL BLDG PARKING	23	1	24
TOTAL PARKING	122	6	128

PROPOSED SITE PLAN

100 0 50 100 200 400

(IN FEET)

BUILDING AREA SUMMARY:

MAIN OFFICE:	20,250 SF
LAB:	7,500 SF
CHANGE BUILDING:	3,750 SF
WAREHOUSE:	21,025 SF
MAINTENANCE:	13,335 SF
CENTRAL CONTROL :	12,590 SF
TOTAL BUILDING FLOOR AREA:	78,330 SF

SITE COVERAGE SUMMARY:

TOTAL SITE AREA:	6,327,777 SF	(145.27 AC)
PROPOSED PAVED AREA:	1,175,130 SF	(26.98 AC)
PROPOSED GRAVEL AREA:	2,332,620 SF	(53.55 AC)
PROPOSED ROOF AREA:	829,187 SF	(19.04 AC)
PROPOSED TANK AREA:	266,593 SF	(6.10 AC)
PROPOSED IMERVIOUS AREA:	4,602,530 SF	(105.66 AC)
PROPOSED LANDSCAPE AREA:	1,725,247 SF	(39.61 AC)

7/8/2021

NOTE:
ACCESS ROADS, RAILROAD ACCESS, UTILITIES, ETC. NOT SHOWN ON THIS FIGURE FOR CLARITY. SEE AERIAL PHOTOGRAPH, FIGURE 2, FOR SCHEMATIC LOCATIONS.

SITE PLAN PROVIDED BY MACKENZIE

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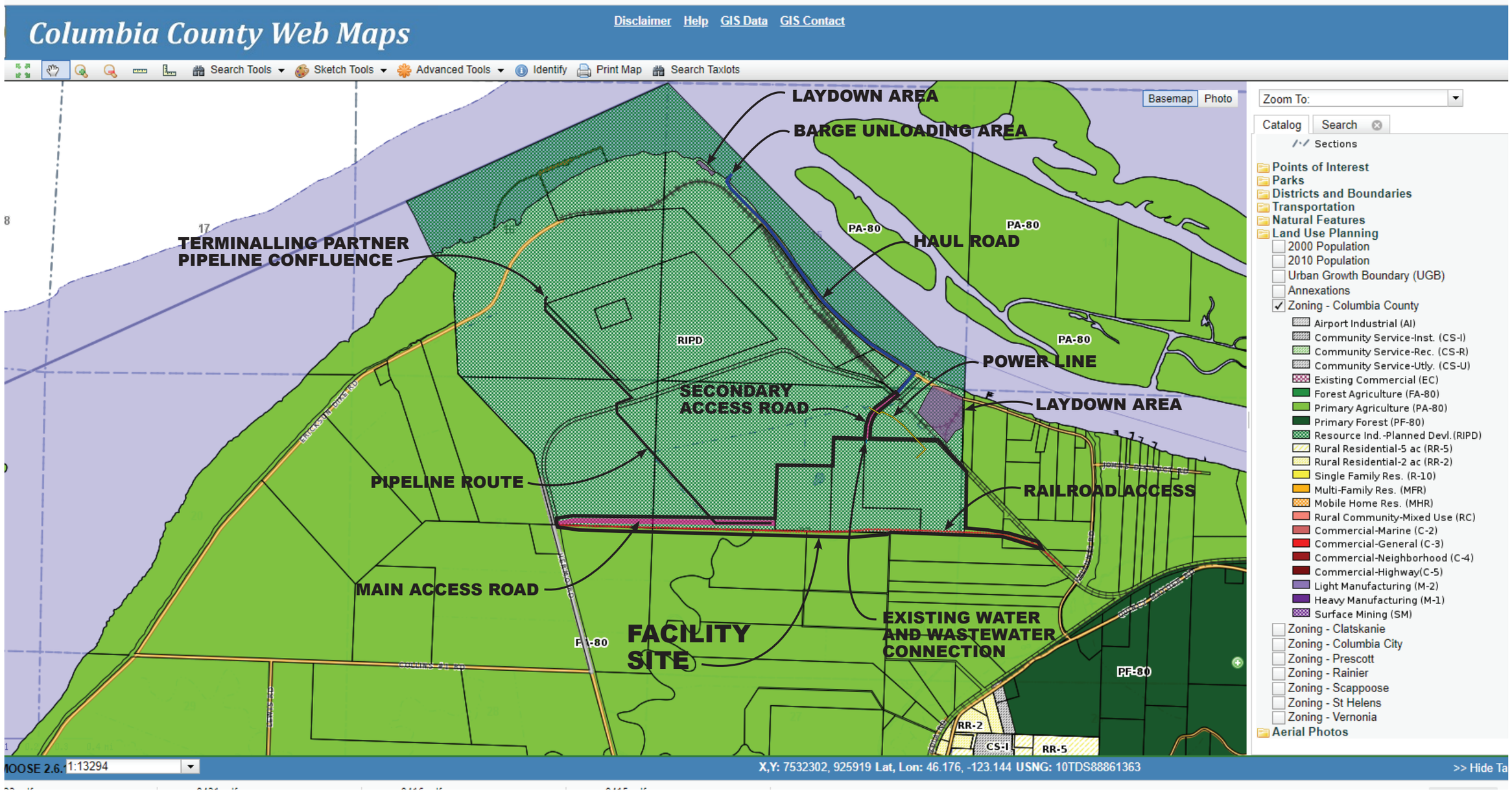
NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

SITE LAYOUT

FIGURE 4

NEXT-PortWestwardJPA-Rev Sep. 10, 2021



N

T. 8 N., R. 4 W., W.M.
N.T.S.

MAP OBTAINED FROM:
https://www.columbiacountyor.gov/gis-mapping

NEXT Renewable Fuels, Inc.
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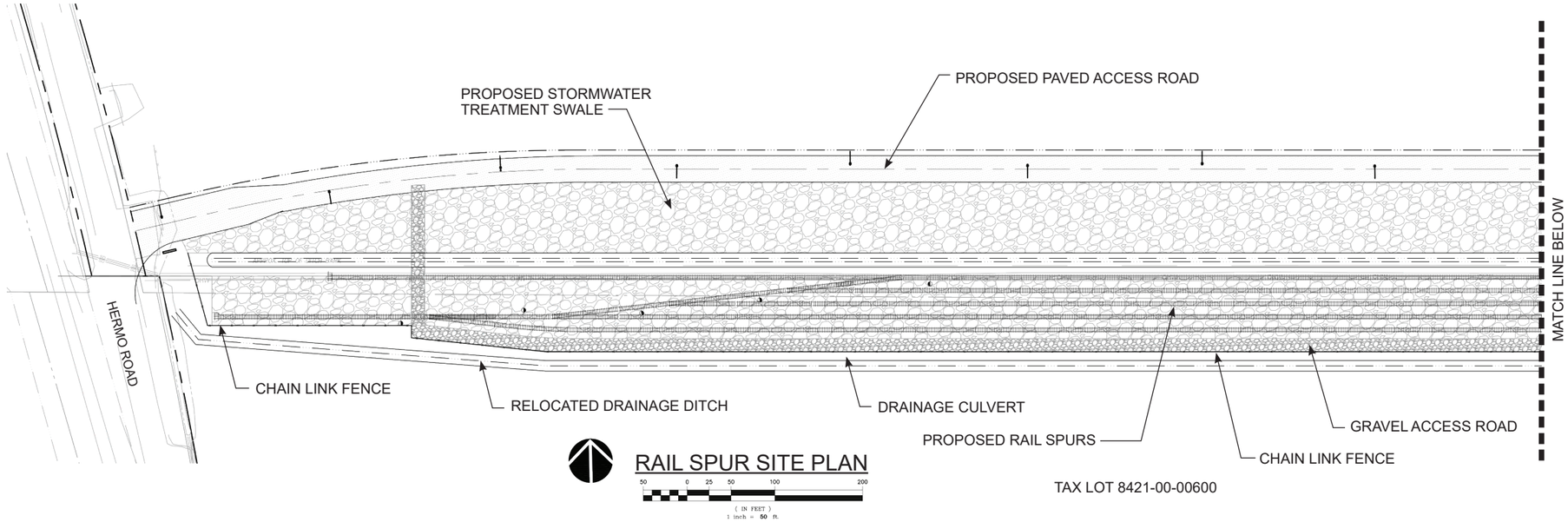
NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL
EXEMPTION

ZONING MAP

FIGURE
5

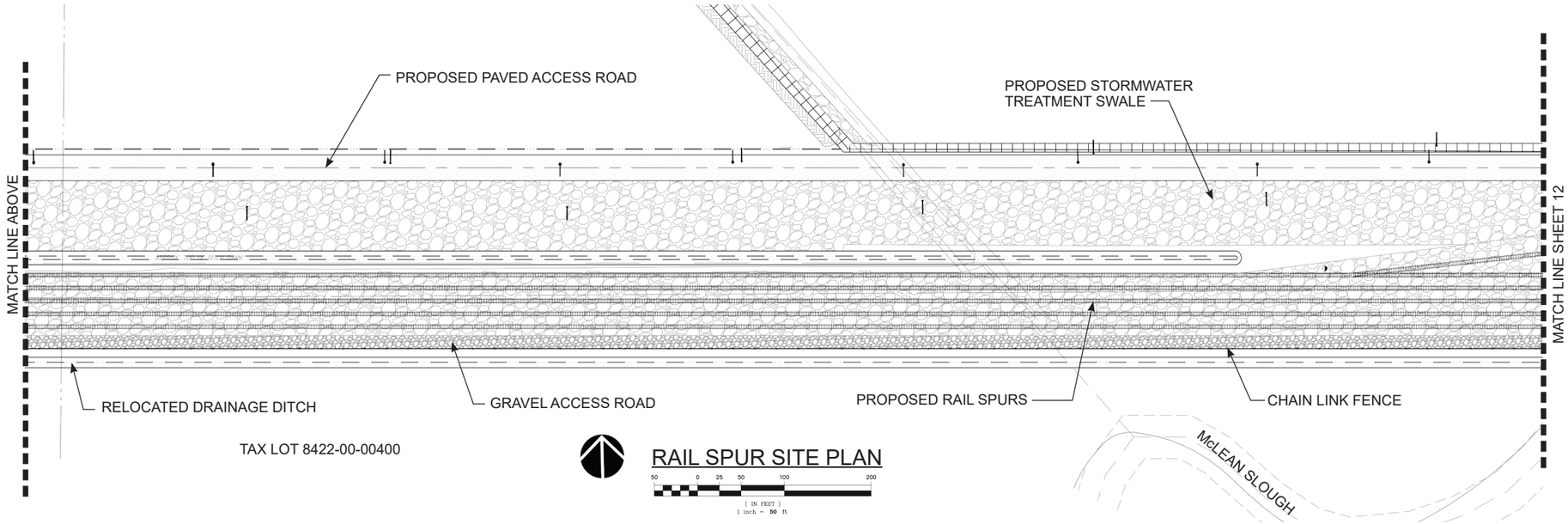
NEXT-PortWestwardJPA-Rev Sep. 9, 2021



RAIL SPUR SITE PLAN

50 0 25 50 100 200

(IN FEET)
1 inch = 50 ft.



RAIL SPUR SITE PLAN

50 0 25 50 100 200

(IN FEET)
1 inch = 50 ft.

NOTES:
PLAN SHEET PROVIDED BY MACKENZIE.

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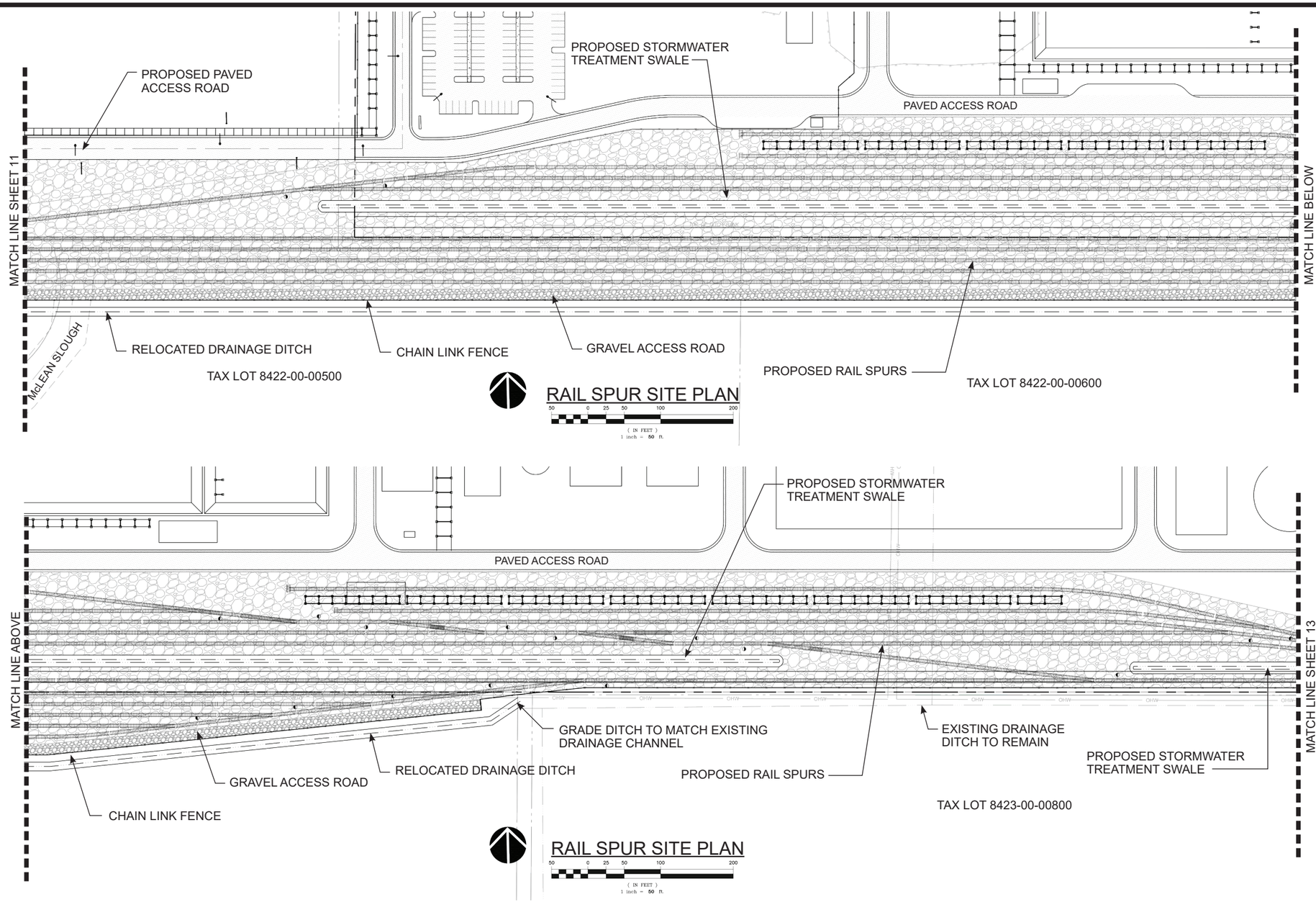
Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL
EXEMPTION

RAIL SPUR SITE PLAN 1

SHEET
6A

NEXT-PortWestwardJPA-Rev Jul. 22, 2021



NOTES:
PLAN SHEET PROVIDED BY MACKENZIE.

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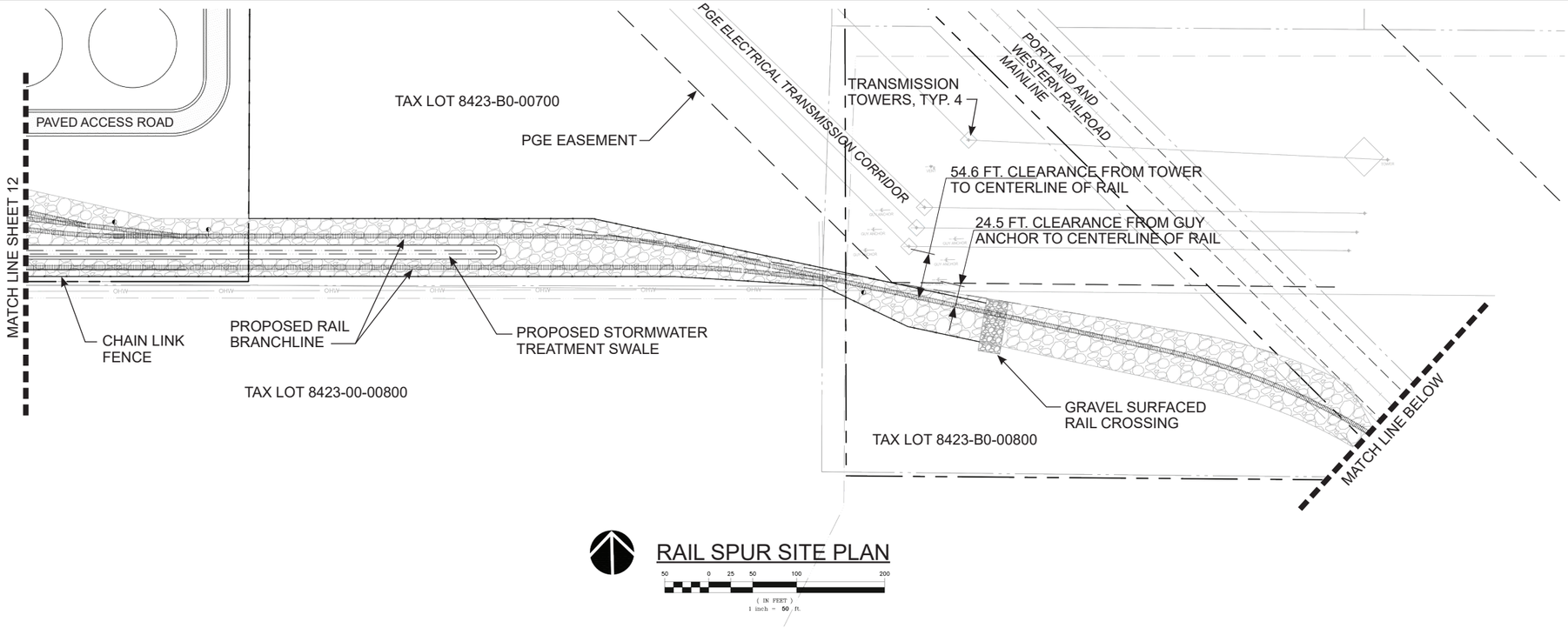
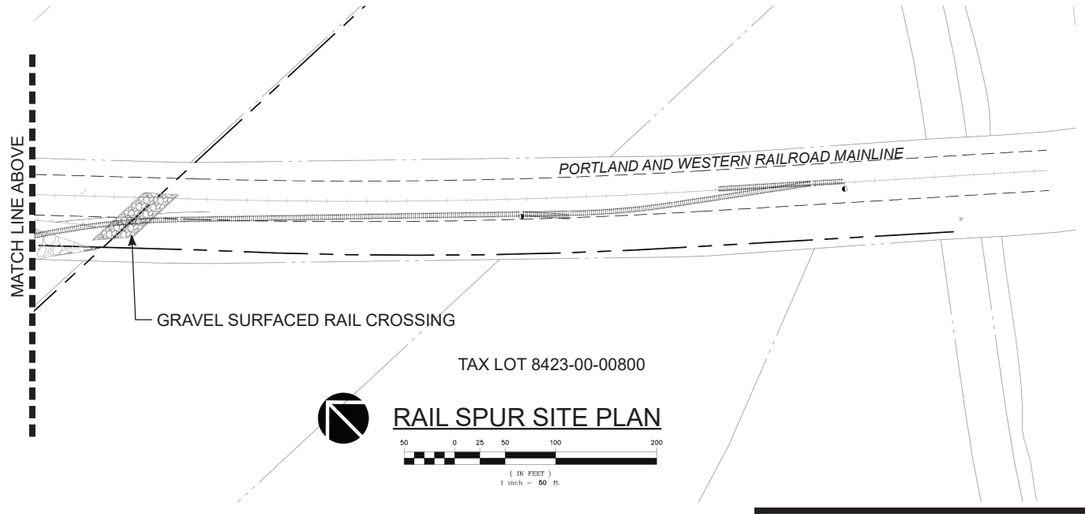
PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

RAIL SPUR SITE PLAN 2

SHEET
6B

NEXT-PortWestwardJPA-Rev Jul. 22, 2021





NOTES:
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PORT WESTWARD, OREGON
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

RAIL SPUR SITE PLAN 3

SHEET
6C

NEXT-PortWestwardJPA-Rev Jul. 22, 2021

Attachment A

Facility Use Permit Findings

Next Renewable Fuels, Oregon, LLC.
EFSC Revision
March 2022

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by NEXT Renewable Fuels Oregon, LLC for a Use Permitted Under Prescribed Conditions, Site Design Review and Variance for a Renewable Diesel Production Facility at Port Westward (DR 21-03; V 21-05)	)))))	FINAL ORDER NO. 12-2022

WHEREAS, on January 19, 2021, NEXT Renewable Fuels Oregon, LLC (hereinafter, the "Applicant" or "applicant"), submitted an application for a Use Permitted Under Prescribed Conditions in the Resource Industrial - Planned Development (RIPD) Zone and a Site Design Review for a proposed renewable diesel production facility and a Variance to buffering and screening requirements for the development; and

WHEREAS, the proposed site, which is approximately 150 acres, is located in the RIPD Zone in the Port Westward Industrial Park, near Clatskanie, Oregon, and identified as Tax Map ID Numbers 8422-00-00100, 8422-00-00200, 8422-00-01100, 8421-00-00700, 8416-00-00200, 8416-00-00300 and 8422-00-00300; and

WHEREAS, County planning staff deemed the application incomplete on February 17, 2021, and on July 13, 2021, the Applicant submitted revised application materials to address some of the outstanding items identified in the County's incompleteness letter. The Applicant also requested that the County deem the application complete in accordance with ORS 215.427; and

WHEREAS, staff consequently deemed the application complete on July 15, 2021, and proceeded with processing the application; and

WHEREAS, staff transitions and multiple revisions of application materials resulted in a lengthier review of the application, and in order to comply with statutory review timeframes, the Board of County Commissioners (hereinafter, the "Board") took original jurisdiction over the application on October 20, 2021, in accordance with Sections 1603 and 1612 of the Columbia County Zoning Ordinance and Section 11 of the Columbia County Planning Commission Ordinance (Ordinance No. 91-2, as amended); and

WHEREAS, the Applicant submitted revised application materials on December 14, 2021, to address critical issues raised by staff; and

WHEREAS, following proper notice by publication in the *Clatskanie Chief* and the *Chronicle* on December 29, 2021, and the *Spotlight* on December 31, 2021, and notice by mailing to those entitled on December 23, 2021, the Board held a hearing on the application on January 19, 2022, at which time the Board admitted all written evidence submitted prior to the hearing; and

WHEREAS, at the conclusion of the hearing, the Board left the record open for seven days (until January 26, 2022) for new written testimony and evidence, followed by seven days (until February 2, 2022) for written testimony and evidence in rebuttal, and then seven days (until February 9, 2022) for the Applicant's final argument; and

WHEREAS, the Board continued its deliberations to February 9, 2022, at which time the Board admitted all written evidence and testimony received during the open record period, except for comments by Jan Bays, Barbara Green, Helen Shaw, Mark Uhart, and Sandra Moilanen, which were submitted during the rebuttal period but did not contain rebuttal evidence or testimony. The Board also admitted the Applicant's final argument, which was submitted on February 7, 2022; and

WHEREAS, staff then presented a revised recommendation addressing issues raised at the hearing and during the open record period; and

WHEREAS, following its deliberations, the Board voted to tentatively approve Application DR 21-03 and V 21-05, subject to conditions, as presented in staff's revised recommendation;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

A. The Board of County Commissioners adopts the following as findings in support of its decision:

    1. The Supplemental Findings of Fact and Conclusions of Law, attached hereto as Exhibit A and incorporated herein by this reference; and

    2. The findings and conclusions in the Applicant's pre-hearing testimony, dated January 17, 2022, attached hereto as Exhibit B and incorporated herein by this reference, to the extent those findings are consistent with this Final Order and the Supplemental Findings of Fact and Conclusions of Law; and

    3. The Applicant's final argument, attached hereto as Exhibit C and incorporated herein by this reference, to the extent those findings are consistent with this Final Order and the Supplemental Findings of Fact and Conclusions of Law. The County specifically rejects statements in Exhibit C to the effect that CCZO Section 681 is not an approval criterion; and

    4. The findings and conclusions in the Staff Report to the Board of County Commissioners dated January 12, 2022, which is attached hereto as Exhibit D and incorporated herein by this reference, to the extent those findings are consistent with this Final Order and the Supplemental Findings of Fact and Conclusions of Law; and

    5. The above recitals.

B. Based on the foregoing and the whole record on this matter, the Board of County Commissioners **APPROVES DR 21-03 and V 21-05** for the development of the proposed renewable diesel facility and associated development on property identified as Tax Lot numbers 8422-00-00100,

8422-00-00200, 8422-00-01100, 8421-00-00700, 8416-00-00200, 8416-00-00300 and 8422-00-00300**, subject to the following conditions**:

1. This Design Review approval, Use Permitted under Prescribed Conditions in the RIPD Zone, and Variance shall remain valid for two (2) years from the date of the final decision. This permit shall become void, unless the proposal has commenced in conformance with all conditions and restrictions established herein within the two-year validity period. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop.

2. All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing site clearing or development activities.

3. The applicant shall obtain necessary approvals for required onsite wastewater and sewage systems in accordance with Oregon DEQ regulations. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits.

4. Any proposal to discharge stormwater and/or industrial wastewater under an NPDES permits shall be authorized by the appropriate permitting authority. Engineered storm water plans or ground water protection plans shall be reviewed by the authority having jurisdiction. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits.

5. Operation of the facility shall comply with all state and federal requirements. Permit approvals shall be obtained prior to receiving occupancy permits. Documentation of the permits and ongoing compliance shall be maintained and provided to the County within seven (7) days of written request from the County.

6. Transport of feedstock and/or fuel products to and from the facility shall be by water, or as a contingency, by rail. Transport of feedstock and/or fuel products to and from the facility by more than twenty (20) truck trips per day shall require an amendment to the Site Design Review and the approval of a revised Traffic Impact Study.

7. Rail transport to and from the site shall be limited to no more than 318 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained, and shall be provided to the County within seven (7) days of written request from the County.

8. All applicable permits for any proposed future signage shall be obtained. These proposals shall meet all requirements in Section 1300 as well as any other applicable sections of the Columbia County Zoning Ordinance.

9. The proposed development area shall be sited as presented in the applicant's submitted site plans and specifications reviewed and approved by the Board. This shall include all improvements including the proposed stormwater retention areas.

10. The applicant shall obtain approval from Clatskanie Rural Fire Protection District prior to Final Site Plan authorization.

11. The applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details in compliance with County regulations; a building permit will not be issued until the plan is approved by the County.

12. The applicant shall prepare a Final Erosion Control Plan in compliance with County regulations; a building permit will not be issued until the plan is approved by the County.

13. Any changes to approved plan(s) and/or elevations shall be reviewed and approved by the County prior to implementation in compliance with the applicable provisions of the Oregon Structural Specialty and Fire Codes. All work shall accurately reflect County approved plans.

Prior to the Issuance of Occupancy:

14. The applicant shall complete the following road improvements: The complete reconstruction of approximately 1.65 miles of Hermo Road between Quincy-Mayger Road and the entrance to the Port Westward Industrial site. These improvements shall include two 12-foot travel lanes, rock shoulders, safety slopes, and roadside ditches. The improvement shall also consist of paving the entire length of Hermo Road to final grade between Quincy-Mayger Road to Kallunki Road and bringing the entire road up to current County road standards. This work includes final design, permitting, and construction.

15. A minimum of three street lights are required:
    a. Along Hermo Road at the sharp turn approximately half-way between Quincy-Mayger Road and the approved entrance to the facility;
    b. The intersection of Collins Road and Hermo Road; and
    c. At the Main Gate entrance on Hermo Road into the Port property.

    The final design and location of the street lights shall be subject to County approval.

16. A Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), an EPA-approved Spill Prevention Control and Countermeasure Plan and any other required spill response plan shall be provided prior to occupancy. Documentation of any updates to the plans and ongoing compliance with the plans shall be maintained and provided to the County within seven (7) days of written request from the County.

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17. Prior to occupancy, Planning Staff shall conduct a site visit and shall verify that all required parking and landscaping improvements have been constructed as approved.

DATED this 23rd day of March, 2022.

BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

By: _____
Henry Heimuller, Chair

By: _____
Casey Garrett, Commissioner

By: _____
Margaret Magruder, Commissioner

Approved as to form

By: _____
Office of County Counsel

EXHIBIT A

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR

FINAL ORDER NO. 12-2022

I. INTRODUCTION

NEXT Renewable Fuels, LLC (the "Applicant") proposes to develop a renewable diesel production facility at Port Westward, with related Columbia River dock access and rail connections (collectively, the "Project"). The Project consists of two land use applications that are separate and related. The Site Design Review Application seeks approval for Use Permitted under Prescribed Conditions in Resource Industrial-Planned Development ("RIPD") Zone, Site Design Review, and Variance, for a renewable diesel production facility (the "Facility"). The branchline application seeks a Conditional Use Permit for a rail branchline. Applicant submitted the branchline application separately because a portion of it is to be located on Primary Agricultural Use Zone (PA-80) land.

The vast majority of the Project is located entirely within the RIPD zone, which is intended to accommodate both rural and natural resource related industries. The Facility will be located entirely within the RIPD zone. A small portion of the proposed rail branchline will touch land zoned differently, zoned PA-80. These supplemental Findings of Fact and Conclusions of Law address the applications for the Use under Prescribed Conditions, Site Design Review, and Variance (together, the "Application").

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Facility Meets the Development Standards of the RIPD Zone with the Proposed Conditions of Approval

The Facility is entirely within the RIPD zone, and the Project is consistent with the uses intended for the zone. The use category proposed in the Application is "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities," which are allowable uses under Columbia County Zoning Ordinance ("CCZO") 683.1. Because Port Westward has one of only five Oregon deep water ports, the Port Westward Exception Area (as adopted in the County's Comprehensive Plan) was specifically intended to facilitate heavy industry that relies on marine transportation. *See* Comp. Plan, Pt. XII § VII.1.b (pg. 124) (describing Port Westward as a unique economic asset to encourage Columbia County industrial development).

The Board finds that the Project is consistent with the uses and development standards that the County provided for industrial development within Port Westward by adopting the Port Westward exception area and the RIPD zone. This is because the Facility will take advantage of marine transportation available on the Columbia River, specifically the deep water port; will use existing dock facilities; will utilize existing rail connections; will allow renewable diesel production to be located far from population centers, thus avoiding hazardous or incompatible impacts on densely populated areas; and because the proposed facility is similar to the existing tank farm, PGE electrical generating facilities, and the Columbia Pacific Bio-Refinery.

Importantly, few project opponents have argued that the Renewable Diesel Facility itself should be denied or fails to meet the approval criteria. The sole argument that appears to have

been raised is a general statement that the Project does not "complement the character of the surrounding rural area," as provided in the purpose statement of the RIPD zone (CCZO 681.4). CCZO 681 provides that the purpose of the RIPD zone is "to implement the policies of the Comprehensive Plan for Rural Industrial Areas**…** to accommodate rural and natural resource related industries which: **…** (3) Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access; (4) Complement the character and development of the surrounding rural area; (5) Are consistent with rural facilities and services existing and/or planned for the area. . ."

The Board finds that the Project complements the character of the surrounding rural area for the following reasons:

First, the Board finds the County's policy to accommodate rural and natural resource related industries on land zoned RIPD to uses that "complement the character and development on the surrounding rural area" must be read in context with the County's decision to allow the following use categories in the RIPD zone: "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities" subject to the additional criteria designed to mitigate adverse impacts and ensure adequacy of services. Regarding compatibility with surrounding uses, the Port Westward Exception Statement explains that:

1. The 900-acre site is large enough to allow [an] adequate buffer area to protect adjacent agricultural users.

2. These types of large-scale industrial users do not create pressure for housing or other uses on adjacent farmland.

3. The requirements of the Department of Environmental Quality will assure that new industry does not pollute the adjacent air, water, or land.

The Port Westward Exception Area, which encompasses the land on which the Facility is proposed, is intended to provide an industrial activity or an energy facility with a comparative advantage due to its location with access to the Columbia River, the existing dock facilities, railroad and urban services, and PGE's Beaver Power Plant. The County's Comprehensive Plan has already determined that the Port Westward Exception Area is suitable for uses such as "a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant."

Second, there are also already substantial existing industrial developments in the area. The PGE Port Westward Generating Plant, the PGE Beaver Generating Plant Tank Farm, the Columbia Pacific Bio-Refinery, and the Clatskanie People's Utility District substation are currently existing industrial developments operating on land in the vicinity of the proposed Facility. The existing industrial activities at Port Westward demonstrate how industrial uses "complement the character and development of the surrounding rural area" and demonstrate how industrial and rural uses can coexist. The Board finds the Facility is consistent with these types of industrial developments that are already existing, will complement these existing facilities that are already in the area, and that the Facility will be compatible with nearby agricultural uses in ways similar to these existing industrial uses. This because, like these existing industrial uses, the Facility is anticipated to be serviced nearly entirely by river and rail transportation, not via truck and trailer, and because there is no substantial evidence in the record that the renewable diesel processing activity will itself adversely impact surrounding agricultural operations or residences.

The Board also finds that the existing agricultural uses to the east and south are not likely to be negatively impacted by the proposed industrial use due to the applicable County land use regulations and standards, the fire code provisions implemented by the Clatskanie Rural Fire Protection District, and the multiple state and Federal permits which Applicant must obtain prior to beginning operation of the Facility. In total, these permit programs and applicable development standards ensure that hazardous chemical spills can be contained entirely onsite, that contaminated runoff will not flow onto surrounding farmlands, that uncontaminated water discharge will not flood surrounding farmlands, and that a fire at the Facility can be contained onsite. These permit requirements and development standards are assured through the following conditions of approval:

> "2) All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the landowner prior to commencing site clearing or development activities.
>
> 3) The applicant shall obtain necessary approvals for required onsite wastewater and sewage systems in accordance with Oregon DEQ regulations. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits.
>
> 4) Any proposal to discharge stormwater and/or industrial wastewater under an NPDES permits shall be authorized by the appropriate permitting authority. Engineered storm water plans or ground water protection plans shall be reviewed by the authority having jurisdiction. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits.

5) Operation of the facility shall comply with all state and federal requirements. Permit approvals shall be obtained prior to receiving occupancy permits. Documentation of the permits and ongoing compliance shall be maintained and provided to the County within seven (7) days of written request from the County.

* * *

10) The Applicant shall obtain approval from Clatskanie Rural Fire Protection District prior to Final Site Plan authorization.

11) The Applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details in compliance with County regulations; a building permit will not be issued until the plan is approved by the County.

12) The Applicant shall prepare a Final Erosion Control Plan in compliance with County regulations; a building permit will not be issued until the plan is approved by the County.

* * *

16) A Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), an EPA-approved Spill Prevention Control and Countermeasure Plan and any other required spill response plan shall be provided prior to occupancy. Documentation of any updates to the plans and ongoing compliance with the plans shall be maintained and provided to the County within seven (7) days of written request from the County."

The Board finds that these permitting program and development standards can feasibly be met. First, there is no evidence in the record that the Facility will be unable to meet the any of the above permitting programs and/or development standards. Second, there is substantial evidence

in the record demonstrating the Facility is likely to meet such programs and standards. This evidence includes, but is not limited to the following:

- A Post-Construction Stormwater Management Plan which demonstrates how the Project will satisfy the SLOPES V regulations administered by the U.S. Army Corps of Engineers ("USACE") and the National Marine Fisheries Service, Oregon's 1200-Z industrial stormwater discharge permit, and the Columbia County Stormwater and Erosion Control Ordinance (2001). The most stringent of these standards, SLOPES V, requires the stormwater system to fully treat 50% of the cumulative rainfall from the 2-year 24-hour storm, or 1.40 inches of rainfall depth in a 24-hour period. Oily water will be treated via a sewer basin that connects to the existing wastewater system at Port Westward and will be wholly directed away from surrounding farmlands.
- A memorandum from GSI Water Solutions dated Jan. 25, 2022 explains, in detail, the groundwater protection measures proposed for the Facility and how those will satisfy the Oregon Department of Environmental Quality's Groundwater Protection Rules.
- An annotated site plan demonstrating the proposed spill prevention facilities that will be installed below each equipment pad. There are also facts in the record which demonstrate that the Facility will be served both by a rural fire protection district and an existing private fire suppression system.

The Project will also complement existing agriculture in the area by improving access for farm vehicles with the proposed construction of the Hermo Road extension that will be completed at Applicant's expense. The Board does not agree with the arguments that the infrastructure required to construct and operate the Facility will harm the rural character. The Board finds that is not accurate because the necessary public infrastructure for the Facility (including power, water,

fire suppression, and roads) is largely in place. The only significant additional public and private infrastructure that must be constructed to serve the Facility is an improvement of Hermo Road. As this is an existing road, there is no evidence that this will destroy the rural character. On the contrary, the improvement of Hermo Road is likely to improve the ability of farm vehicles to operate in the area and mitigate dust impacts on the nearby mint farm caused by vehicles traveling on the gravel road. This is a critical improvement because the mint contains essential oils and cannot be washed.

The Board thoroughly evaluated the nearby uses, both industrial and agricultural. The Board finds the Facility meets the applicable goals and policies of the Resource Industrial plan element, as contextualized by the Port Westward Exception Statement. The County concludes the Facility meets the purpose statements of CCZO 681 for the same reasons.

B. The Facility is Permitted within the County's Environmental Overlay Zones

The Facility satisfies the conditions of the County's environmental overlay zones in CCZO 1100 to 1190 as described below. The Board finds that as discussed in the Staff Report, the Facility is not in the Flood Hazard Area Overlay (CCZO 1100) because the Facility site is protected from flooding by dikes and stormwater conveyance and pumps.

The Board finds the Facility is not in the County Sensitive Bird Habitat Overlay (CCZO 1120) because the proposed Facility is not within identified habitat areas. The Columbia County Comprehensive Plan, Part XVI, Article VIII(F), Non-Game Wildlife Habitat, lists areas identified as significant nesting sites by the Oregon Department of Fish and Wildlife ("ODFW"). Part XVI, Article VIII(G) of the Comprehensive Plan, Upland Game Habitat, lists habitat for band-tailed pigeons. The proposed Facility is not located in the County's Non-Game Wildlife Habitat or

Upland Game Habitat areas. Therefore, the Site is not subject to the Sensitive Bird Habitat Overlay Zone.

The Board also finds the Facility is not subject to the County's Historic Overlay (CCZO 1130) because none of the historic and culturally significant sites and structures identified in Article XI of the Comprehensive Plan are on or adjacent to the Facility site.

1. **The Application is consistent with the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay under CCZO 1170 and 1175.**

The County Riparian Corridor Overlay Zone (CCZO 1170) ("Riparian Corridor") states that riparian corridor boundaries will be established based upon streams and lakes as identified in the maps referenced in the CCZO 1172.A and for wetlands if they are significant as identified in the State Wetlands Inventory and the Local Wetlands Inventories. The Board finds that the Facility is not with the Riparian Corridor boundary because there are no County-designated streams or lakes on the Facility site and because the wetlands on the Facility site are not significant, as explained in more detail below.

The Facility will not enter or abut any lake, river, or stream areas mapped in the Columbia County Stream Classification Maps and in the map "Lakes of Columbia County", which are attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B). The Board recognizes that under CCZO 1172, the Riparian Corridor boundary may apply to also include all or portions of a "significant wetland." (CCZO 1172.A.5). Applicant submitted a wetland delineation report for the Facility with its Application. (Exhibit 11 to Application, Anderson Perry Wetland Delineation Report). The report indicates there are wetlands in the Facility site. The

Oregon Department of State Lands ("DSL") reviewed the wetland delineation report for the Facility site and agreed with its delineation. DSL provided a memorandum dated December 15, 2021, which recommended that the County find the wetlands are not significant. The County agrees with DSL's recommendation and finds that Applicanthas provided substantial evidence that the wetlands on the Facility site are not significant and therefore, are not regulated by the County's Riparian Corridor overlay. (CCZO 1172).

If the Facility were within the Riparian Corridor boundary, the Board may approve development within the Riparian Corridor boundary where a use is "water-related" or "water-dependent." (*See* CCZO 1175.B.5). However, because the Facility is not proposed to be located within a Riparian Corridor and therefore is not subject to CCZO Chapter 1170, the Board finds that it need not decide for purposes of the Application whether the Facility is "water-related" or "water-dependent."

2. The Wetland Area Overlay, CCZO 1180, does not prohibit modification of wetlands on the Facility site because the onsite wetlands are not significant.

The Board finds the County's Wetland Area Overlay set forth in CCZO 1180 does not prohibit development of the Facility because the wetlands that will be impacted by Applicant's Facility are not "significant wetlands." As discussed above, Applicant's wetlands consultant delineated the wetlands on the Facility site and DSL approved the delineation. The County's Wetland Area Overlay states that use and development activities in the overlay zone are permitted outright or conditionally if they will not destroy or degrade a "significant wetland" as defined in CCZO 1182. (CCZO 1183).

CCZO 1183 provides that "Uses and development activities permitted outright or conditionally in the underlying zone shall be permitted in the Wetland Area Overlay Zone if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or degrade a significant wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands under Oregon Department of Agriculture wetland rules shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands. Existing drainage ditches may be cleared to original specifications without County review." Given that the Wetland Overlay Zone can apply to "significant wetlands" or "wetlands," the Board interprets CCZO 1183 to allow uses permitted outright or conditionally in the underlying zone within non-significant wetlands, and finds that same section allows filling of non-significant wetlands for such uses. The Facility is a "use permitted under prescribed conditions," and the Board finds that the Facility is thus a use permitted conditionally for purposes of CCZO 1183.

Significant wetlands are also defined in both the Comprehensive Plan (Article X(A)(1)) and CCZO 1182 as:

> A significant wetland is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. **In case of dispute over whether an area is of biological value and should be considered a significant wetland, the County shall obtain the recommendation of the Oregon Department of Fish and**

Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands.

(Emphasis added). The definition of "significant wetland" in CCZO 1182 allows the County to determine significance in two ways. First, it can find that the wetland at issue is not "inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions." Second, in the case of disputes over whether an area should be considered a significant wetland—even if the wetland is depicted on the State Wetland Inventory ("SWI") or Local Wetland Inventory ("LWI") map—the Board can determine the significance of a wetland based on the recommendations of ODFW, the Columbia Soil and Water Conservation District (the "Columbia SWCD"), and DSL.

Columbia County does not have an LWI for the Facility site. The National Wetlands Inventory ("NWI") map does identify wetlands on the Facility site, but it is not an official determination of the presence or absence of wetlands. The NWI is incorporated to the SWI, but the SWI does not identify any "significant" wetlands near the Facility site. (*See* Exhibit 14 to the Staff Report, Anderson Perry Wetland Memo (Dec. 8, 2021)).

Applicant disputed the significance of the wetland and submitted evidence from its wetland biologist dated December 8, 2021, which suggests that the wetlands proposed to be impacted by the Facility do not contain "a prevalence of vegetation typically adapted for life in saturated soil conditions." According to this biologist, "vegetation solely adapted to wetland conditions is not prevalent in the delineated wetlands, which are dominated by pasture grasses and invasive species that are able to grow in both wetland and non-wetland conditions." The biologist also concluded

that "the wetlands did not show consistently high scores for functions and values and have minimal riparian buffer habitat along the ditches." Based on this evidence, the County found that Applicant's dispute over the significance of the wetland was reasonable.

Applicant then submitted a more detailed analysis of the wetlands' biological value for input from DSL, ODFW, and Columbia SWCD. Consistent with Section 1182, the County requested and received recommendations from DSL, ODFW, and the Columbia SWCD to determine whether the wetlands delineated on the Facility site are significant wetlands. As explained below, the County finds that Applicant demonstrated that the wetlands impacted by the Facility are not "significant" for purposes of the CCZO based on the second sentence of CCZO 1182.

DSL is the state agency the 2006 Oregon legislature[1] directed to establish criteria that rate the functions and values of wetlands. DSL provided the County with a definitive statement that the wetlands impacted by the Facility are not significant:

> "Based on the finding of the [Oregon Freshwater Wetland Assessment Methodology] OFWAM Assessment tool, the wetlands located behind the levee (inside the levee within the Beaver Drainage District and associated with the propose[d] Applicant Project) in the Resource Industrial Planned Development area at Port Westward are NOT significant, nor are the wetlands that continue off the project site that were converted for farming and are zoned Primary Agriculture."

[1] House Bill 2899 (2003) addressed wetland mitigation and from it, DSL and a work group convened a Technical Advisory Committee to address the need for wetland assessment methods statewide.

(*See* Exhibit 11(a) to County Staff Report, DSL Dec. 15, 2021 OFWAM letter). DSL evaluated the Project under CCZO 1182 and using the OFWAM. In determining that the wetlands behind the levee on the Applicant Facility site are not significant DSL concluded:

> "None of the four ecological functions, wildlife habitat, fish habitat, water quality, or hydrologic control scored high enough to be considered significant. There are no rare wetland plant communities, there are no critical habitats present, and the wetland is isolated by the levee and heavily impacted by the drainage district.
>
> The wetlands located behind the levee (within the drainage district) in the Resource Industrial Planned Development area at Port Westward and the wetlands that were converted for farming and are zoned Primary Agriculture are NOT significant under OFWAM."

ODFW similarly concluded that while the area supports some habitat and wildlife functions, the existing wetlands are subject to cattle grazing, dominated by nonnative species, and "are degraded by current practices and infestations of non-native plants." In a January 18, 2022 email to Columbia County staff, ODFW provided further clarification that: (1) "[t]he developer is proposing habitat mitigation that, once completed, the department expects should provide a net benefit to the affected fish and wildlife species that currently utilize the impacted habitat"; and (2) "[t]he department believes this proposed renewable energy project is sited appropriately, and it is consistent with the department's climate goals." (*See* Exhibit 3 to Applicant's Final Written Argument).

The Columbia SWCD stated that it had no comment on the significance of the wetlands, but would defer to DSL's determination of the significance of any wetlands "as DSL is one of the

main regulating authorities as it relates to wetlands in the State." (*See* Exhibit 11(c) to County Staff Report, SWCD Jan. 5, 2022 letter).

Accordingly, the Board finds the wetlands on the Facility site lack the biological value to be considered significant for purposes of CCZO Chapter 1180. Therefore, the Board finds that development of the Facility within delineated non-significant wetlands is permitted pursuant to CCZO 1183.

C. Responses to Specific Public Comments

1. The Board followed permissible procedures to approve the Application and provided adequate public comment.

Some opponents suggest that the County's process to consider Applicant's Application was improper. That is inaccurate. The Board finds the County's procedures to hear and approve Applicants Application were in accordance with Columbia County's Zoning Ordinance and Planning Commission Ordinance, ORS 197.763, ORS 197.797, and that no person demonstrated that holding the initial evidentiary hearing before the Board prejudiced their substantial rights.

There are two independent and sufficient bases in the CCZO that allow the Board to hold an initial evidentiary hearing on a quasi-judicial land use application without holding an initial planning commission hearing.

First, the Board of Commissioners has authority to approve Applicant's Application pursuant to the procedures in CCZO 1603 (quasi-judicial public hearings). The County Zoning Ordinance provides that "[a]pproval of any action by the Planning Commission at the public hearing shall be by procedure outlined in Ordinance 91-2." (CCZO 1603.4). Section 11 of Ordinance No. 91-2 is the Planning Commission ordinance, and it states in pertinent part that "[t]he

Board may also assert original jurisdiction over any land use application and bypass prior Planning Commission review."

Second, the Board has the absolute authority to hold an initial evidentiary hearing on any quasi-judicial matter. Under CCZO 1612 "Special Hearings": "The Board of County Commissioners, in its discretion, may order any quasi-judicial land use application or type of quasi-judicial land use application to be heard at a Special Hearing in lieu of a hearing before the Planning Commission or the Board of County Commissioners." This gives the Board the absolute right to hold a hearing on any quasi-judicial land use application without first holding a planning commission hearing.

In this instance, the Board's authority to hold an initial evidentiary hearing derived from CCZO 1603 and County Ord. 91-2. The Board finds that its holding the initial evidentiary hearing does not violate CCZO 1503 and 1558 and does not trigger a remand via Oregon Administrative Rule 661-0010-0071(2)(c). CCZO 1558 states that "[t]he Planning Commission shall hold a public hearing for all Type 2 Design Review applications according to Sections 1603, 1604, and 1608 of this ordinance." Yet as stated above, CCZO 1603 provides that the Planning Commission ***or*** the Board of Commissioners may approve actions that are in conformance with the provisions of the CCZO. CCZO 1503 is not applicable to this Application because it only pertains to conditional use applications, which this Application is not.

Although the Board understands that opponents may have wished for a two-stage hearing process, the Board has seen no evidence that holding the initial evidentiary hearing before the Board has prejudiced any party's substantial rights. This is particularly so for the following reasons: First, the Application did not substantially change between the date when public notice issued and when the record in this matter was closed. Second, the Board hearing lasted over five

hours and included oral testimony from more than 35 individuals opposed to the Application; there is no evidence that this was not an adequate allowance for public testimony. The Board then held the record open for one week after the hearing for anyone to present additional public testimony, and the Board received more than 100 written comments on the Application prior to the end of the first open record period. Third, the Board held the record open for one additional week after that to allow any person to submit evidence or argument to respond to evidence and argument submitted during the first open record period. Moreover, the Board finds that opponents' assertion that by skipping planning commission, the County deprived them of the opportunity for a local appeal, does not demonstrate prejudice to their substantial rights. That is because any appeal would have been through a hearing before the Board. The Board held a hearing on the Application. Opponents therefore have not shown how the outcome would have been different or how their substantial rights were prejudiced. Finally, no person has claimed that the Board's consideration of the Application violated any applicable requirement of ORS 197.797 or its predecessor, ORS 197.763.

The Board received a request for a 30-day extension of public review and comment. The Board considered and then rejected the request, as it is allowed to do under ORS 197.797. Pursuant to ORS 197.797, the Board is obligated to give at least one additional week for new evidence and testimony, which it granted. The Board also gave all parties an additional week to submit responsive testimony and evidence. There is no evidence or argument in the record that the Planning Commission would have been required to grant the request for a continuance or provide more opportunities for comment than the Board did.

In summary, the Board has the authority under the CCZO to hold an initial evidentiary hearing and the Board held that hearing according to the applicable procedures in the CCZO and

ORS 197.797 (formerly ORS 197.763). Aside from speculation that more testimony could have occurred through a two-part hearing process, there is no substantial evidence that a single evidentiary hearing prejudiced any persons' substantial rights to participate in the review process were prejudiced.

2. The proposed uses within the RIPD zone are consistent with existing land uses and available facilities and services, CCZO 683.1.B.2.

Opponents have raised numerous concerns about various impacts to drainage and adjacent agricultural operations. One such comment suggests that Applicant's Facility (and the rail branchline that is not subject to this Application) will impact road access and remove and relocate a Beaver Drainage Improvement Company ("BDIC") ditch in a manner that violates CCZO 300, 681(B)(2), and 1170 because it will impact drainage and irrigation of adjacent agricultural operations. The Board finds CCZO 300 is inapplicable to this Application because it is criteria solely applicable to development in the primary agriculture use zone-80 (PA-80). Applicant's Facility for purposes of this Application is solely in the RIPD zone and is not located in the PA-80 zone. As discussed above in Section IV.B.1, the Board finds the Facility site is not within a Riparian Corridor boundary. The impacts of the Facility on drainage and irrigation of nearby agricultural operations are thoroughly discussed below.

The Board also notes that CCZO 681(B)(2) does not exist. To the extent that BDIC meant to refer to CCZO 683.1.B.2, the Board finds that it is met for the following reasons.

CCZO 683 "Uses Permitted Under Prescribed Conditions" include a mix of criteria (such as 683.1.A and C) and factors which the Board must consider in crafting any necessary conditions of approval. (CCZO 683.1.B). Thus, CCZO 683.1.B obligates the Board to consider certain potential impacts of a given use, but is not a list of approval criteria which can be answered with a "yes or

no" answer. In this vein, the Board finds that CCZO 683.1.B.2 is a factor—not a criterion—which requires a consideration of potential impacts from the proposed use on "existing land uses and both private and public facilities and services in the area," whether those impacts must be mitigated in some way, and if so, how they must be mitigated.

The Board reiterates the Staff Report's conclusion regarding this criterion, as set forth below:

> "The nearby industrial uses are not sensitive to expansion of industrial activity at Port Westward. The existing dock serves these industrial uses and is particularly well suited for serving the proposed use for shipment of feedstock and finished products. The existing agricultural uses to the east and south are not likely to be negatively impacted by the proposed industrial use due to the applicable County land use regulations and permit standards, fire code provisions implemented by the Clatskanie Rural Fire Protection District, and multiple state and Federal permits which the Applicant will need to obtain prior to beginning operation of the facility. The proposed site development is consistent with existing land uses and available facilities and services."

Based on the public testimony received during the Application review process, the Board finds that the following issues warrant conditions of approval to ensure the protection of surrounding agricultural and industrial land uses based on the potential impacts of the Facility.

- Truck traffic;
- Spill containment;
- Drainage and erosion control;
- The frequency of potential rail trips to the Facility; and

- Fire protection.

The Board finds that these concerns are addressed by the same facts, findings, permitting requirements, development standards, and conditions of approval adopted in Section II.A., above, relating to existing industrial and agricultural uses within the surrounding rural area; and which are adopted herein by reference.

The Board finds that these permitting programs, development standards and conditions of approval can feasibly be met.

First, there is no evidence in the record that the Facility will be unable to meet any of the identified permitting programs and/or development standards. Second, there is substantial evidence in the record demonstrating that the Facility is likely to meet such programs and standards. This evidence includes, but is not limited to the Post-Construction Stormwater Management Plan, memorandum from GSI Water Solutions regarding proposed groundwater protection measures, and annotated site plan showing the proposed spill prevention facilities that are identified in Section II.A., above.

The Application also included a complete transportation impact analysis provided by a traffic engineer which concluded that:

> "All study area intersections are projected to operate within ODOT [Oregon Department of Transportation] and Columbia County operations standards during the AM and PM peak hours with the addition of project trips. Therefore, no mitigation strategies are proposed. With the planned improvements, Hermo Road will have adequate capacity to safely accommodate the volumes and truck traffic generated by the site, as well as traffic currently traveling to Port Westward."

There is no other evidence of equal weight or authority in the record that disputes this conclusion. The Project will also complement existing agriculture in the area by improving access for farm vehicles with the proposed construction of the Hermo Road extension that will be completed at Applicant's expense. Finally, the Board finds that the Facility will not impede farm field access and, while not part of this Decision, the Board also finds based on a map provided with Applicant's second open record submittal that farm field access will remain viable after the proposed railroad branchline is constructed.

The Board finds that public infrastructure for the Facility (including power, water, fire suppression, and roads) is largely in place. The only significant additional public and private infrastructure that must be constructed to serve the Facility is an improvement of Hermo Road. As this is an existing road, there is no evidence that this will adversely impact existing land uses and both private and public facilities and services in the area, particularly because it will provide better access in the area generally and because a railroad crossing of Hermo Road is not proposed.

The Board addresses the arguments raised by BDIC and any derivative arguments raised by Mike Seeley, Warren Seeley, 1000 Friends of Oregon, and Columbia River Keepers as follows:

First, the Board finds that relocation of the existing drainage ditch running along the south of the Facility property will not adversely impact existing uses in the area and does not warrant additional mitigation. This is because the Facility will include an adequate onsite drainage system that will drain directly through Port Westward's existing outfall to the Columbia River, as explained on page 11 of Applicant's Post Construction Stormwater Management Plan. There is no evidence in the record that use of Port Westward's existing onsite drainage system by the Facility will adversely impact BDIC's operations. Even if it did, the County is not required by any

applicable standard or criteria to evaluate the potential hydrological impacts of the Facility on BDIC's flood management system.

Second, the Board finds that the ditch proposed to be relocated to accommodate the site access can be relocated without disrupting stream flow and will maintain connections to other existing ditches, as explained in the Applicant's second open record submittal. To the extent that Applicant may require BDIC to relocate the ditch, that consideration is not relevant to the approval criteria or CCZO 683.1.B.2.

Third, the Board finds that there is no risk of fire spreading from the proposed access drive or rail branchline because the access road will be paved and because the rail branchline will be isolated on one side by a water quality swale and another access road and drainage ditch on the opposite side. This is reflected in a cross section provided with Applicant's second open record period submittal. The Board finds that this design will provide adequate separation between any sparks generated by the rail branchline and surrounding farmland.

Fourth, the Board finds BDIC's comments about "future livestock grazing" do not offer evidence of existing livestock uses that would be adversely impacted by the Facility and do not demonstrate a need for livestock fencing.

Fifth, the Board does not agree with BDIC's comments regarding "waivers to adjacent agricultural operators" because there is no evidence that surrounding agricultural activities could disrupt operations of the Facility to the extent that liability waivers need be required. Even if they were, such waivers are an inappropriate requirement for the Facility because it is located in the RIPD zone, not in an exclusive farm use zone. BDIC has identified no legal requirement that such

waivers "must be in place prior to any consideration of the project by BDIC," but that is an issue between Applicant's and BDIC and is not relevant to the County's approval criteria.

Sixth, to the extent that access easements may be required to cross BDIC-owned facilities, such a requirement is a real estate issue between BDIC and Applicant's and is not relevant to the County's decision. Similarly, the lease obligations between Applicant and the Port are relevant to the Application only insofar as the Port authorizes Applicant to make a land use application for its property. And even if such lease obligations could be considered by the Board, BDIC has not offered any evidence that it is a party to the lease or could otherwise cause enforcements of the lease obligations.

Seventh, Applicant has provided substantial evidence in the form of a preliminary spill containment plan (submitted with Applicant's first open record materials) that all liquid storage on the Facility site will be protected by a spill containment basin. Applicant has explained that it will be required to prepare and obtain approval for a Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), and an EPA-approved Spill Prevention Control and Countermeasure Plan prior to construction. The Board finds that imposition of condition of approval 16, which requires Applicant provide such plans to the County prior to occupancy, is sufficient to address BDIC's concerns regarding spill containment.

Eighth, the Board does not agree with BDIC's argument that the proposed wetland mitigation plan (which has yet to be approved by DSL or USACE) is an "impact" relevant to the criteria or factors applicable to the Facility. The Board notes that the particular mitigation is not before the Board as part of the Application and that mitigation is not required by the approval criteria, rather it is a requirement for a Wetland Fill/Removal permit issued by DSL and USACE.

The Board also notes that wetland creation and enhancement is permitted outright in all Exclusive Farm Use zones in Oregon, including the PA-80 zone. The Board finds that there is no evidence that wetland restoration on lands owned or controlled by Applicant will adversely affect "existing land uses and both private and public facilities and services in the area". Even if it did, the Board finds that, because wetland mitigation is a permit requirement from separate state and federal agencies, the Board is without the legal authority to prohibit or otherwise condition such mitigation in this instance.

Finally, the Board finds that it is not required to enforce, as a third party regulatory entity, any of the authority BDIC may assert under Oregon law, and BDIC has not provided an explanation otherwise. The provisions of ORS Chapter 547 cited in BDIC's comments address a drainage district's authority to enter upon land and to construct works and improvements. ORS chapter 190 addresses the authority of local governments to mke intergovernmental agreements. ORS Chatper 195 pertains to regional coordination of planning ctivities. Nothing in ORS chapters 547, 190 or 195 require that the Board or the Applicant obtain any written approval from BDIC before the County may approve the Application.

While it would have been desirable for Applicant and BDIC to have reached an accommodation prior to approval of the Application, the lack of such cooperation is not relevant to the approval criteria or factors, nor is it, in and of itself, an adverse impact on "existing land uses and both private and public facilities."

3. Concerns about impacts of the proposed wetland mitigation are not relevant because the wetland mitigation Applicant will complete is not part of the Application.

Opponents have contended that the County must consider effects from the wetland mitigation Applicant will complete at a different location that is not the Facility site and is not subject to this Application. Applicant has applied for state and federal permits from DSL and the USACE to develop the Facility and a condition of approval from those agencies will require Applicant to conduct off-site wetlands mitigation. The Board notes that the particular mitigation is not before the Board as part of the Application and that mitigation is not required by the approval criteria, rather it is a requirement for a Wetland Fill/Removal Permit issued by DSL and USACE. The Board also notes that wetland creation and enhancement is permitted outright in all exclusive farm use zones in Oregon, including the PA-80 zone. Off-site wetlands mitigation is not a Columbia County requirement. Applicant did include a copy of its wetlands delineation with its Application, as is required by CCZO 1554. However, neither CCZO 1554 nor any other provision of the criteria applicable to this Application requires the County substantively review the off-site wetland mitigation plan. Even if it did, the Board finds that, because wetland mitigation is a permit requirement from separate state and federal agencies, the Board is without the legal authority to prohibit or otherwise condition such mitigation in this instance.

4. Concerns about impacts to the water table, hydrology, and impacts to drainage do not relate to the County's approval criteria.

The Port received comments from Columbia Riverkeeper, BDIC, and the Oregon Department of Land Conservation and Development regarding the potential impacts on hydrology and impacts to drainage, but these do not relate to approval criteria for Applicant's Application. Nonetheless, Applicant's Application and information submitted in the record adequately address these concerns. To the extent the comments relate to Applicant's wetlands mitigation, the wetland mitigation is not part of the Application or subject to review by the County. The comments

concerning impacts to water levels raise speculative and undefined concerns regarding potential impacts of the local water table and to BDIC.

As shown in the site plans submitted with Applicant's Application, the ditch and culverts that will be affected by Applicant's branchline conditional use application will be relocated and tied into the existing ditches. Evidence in the record demonstrates that the ditch proposed to be replaced will be sized to convey at least as much water as the existing ditch. (*See* Applicant's Waterway Exhibits attached it Applicant's Second Open Record Submittal). Applicant's conditional use permit application discusses that culverts are proposed where existing ditches will be crossed by Applicant's rail branchline and existing ditches will be relocated around the branchline as needed to accommodate flows. Existing ditches within the footprint of the proposed Facility do not convey water through the Facility site, but rather collect runoff from the site. Accordingly, these ditches are proposed to be filled since site runoff will be managed by the proposed stormwater collection system.

None of the County's approval criteria require the County to consider impacts to hydrology. As discussed above, the County is not reviewing the adequacy of Applicant's off-site mitigation plan. The USACE and DSL will review the sufficiency of Applicant's mitigation plan. Nonetheless, Applicant submitted an attachment during the first open record period that extensively and thoroughly explains the changes in ditches that will occur on the off-site mitigation property and how those changes are intended to enhance the hydrologic function of the mitigation site. (*See* Attachment E to Applicant First Open Record Period Submittal, Dec. 3, 2021 Letter from Stewardship Solutions to Dan Cary, DSL).

The Oregon Department of Land Conservation and Development also submitted questions regarding groundwater quality. The Facility will obtain applicable DEQ permits to protect surface water and groundwater quality during construction and operation. The Board finds as a condition of approval:

> "3) The Applicant shall obtain necessary approvals for required onsite wastewater and sewage systems in accordance with Oregon DEQ regulations. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits."

Furthermore, the Facility will implement best management practices to protect groundwater quality in accordance with DEQ standards; these are described in the GSI Water Solutions memorandum regarding Groundwater Protectiveness Measures submitted during the first open record period, as well as Applicant's updated drainage plan also submitted during the first open record period. Additionally, the County acknowledges that local governments are preempted from regulating ground water quantity concerns, which is the sole purview of the Oregon Water Resources Department.[2]

Concerns about drainage are also adequately addressed in Applicant's stormwater report, which was submitted with its Application. The Board finds that Applicant's Application demonstrates adequate drainage will be provided to dispose of runoff generated by the impervious surface area and drainage will not adversely affect adjoining property. (CCZO 1414). Applicant's stormwater report depicts grading and drainage patterns for how stormwater will be captured and

[2] *See Ashland Drilling, Inc. v. Jackson County,* 168 Or App 624 (2000).

conveyed to the wastewater treatment facility at the Facility site. As discussed above, the Board considered evidence of Applicant's Post-Construction Stormwater Management Plan, which demonstrates how the Project will satisfy the SLOPES V regulations administered by the USACE and the National Marine Fisheries Service, Oregon's 1200-Z industrial stormwater discharge permit, and the Columbia County Stormwater and Erosion Control Ordinance (2001). The Board also adopts the following conditions of approval:

> "4) Any proposal to discharge stormwater and/or industrial wastewater under an NPDES permits shall be authorized by the appropriate permitting authority. Engineered storm water plans or ground water protection plans shall be reviewed by the authority having jurisdiction. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits.
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> * * *
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> 11) The Applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details in compliance with County regulations; a building permit will not be issued until the plan is approved by the County."

Accordingly, the Board concludes that concerns about impacts to the water table and hydrology are not a part of the Board's approval criteria. The Board finds that the Application adequately addresses the County's requirements for drainage and with the Board's condition of approval.

5. The Project will not damage existing dikes, levees, dike roads, and surrounding infrastructure.

Some commenters were concerned that the Project could damage dikes, levees, and dike roads. There is no evidence or discussion in those comments explaining which dikes, levees, or dike roads will be impacted or how the operation of the Facility will impact them. These concerns are not relevant to the approval criteria and can be rejected. The dikes, levees, and dike roads will not be affected by the Application because they are not located on the Facility site. As discussed further below in Section V.C.9, the Transportation Impact Analysis ("TIA") analyzed transportation impacts to the roads that will be utilized in construction and operation of the Facility and only identified necessary upgrades to Hermo Road. Accordingly, the Board finds that as a condition of approval, Applicant's must satisfy the County Public Works Department's requirements for necessary improvements to Hermo Road and complete the road improvements in condition of approval 14.

To the extent these comments relate to flood mitigation, the Board adopts the findings and conditions of approval regarding onsite drainage, as explained in detail above. There is no evidence that any "dike roads" will be required for access to the Facility. On the contrary, the primary proposed access is Hermo Road.

6. The Project is designed to minimize risks to water quality and the Board finds it meets all water quality related approval criteria.

Opponents argue that the Project could harm local water quality. The Board disagrees and finds that water quality will be protected due to the extensive local, state, and federal regulations protecting water quality and with which Applicant's will comply. The County's Riparian Corridor Overlay Zone and Wetland Overlay Zone (CCZO 1170 and 1180) protect water quality by carefully assessing proposed development based upon its proximity to rivers, streams, lake, and

significant wetlands, as outlined in CCZO 1170 and 1180. As discussed in Sections IV.B.1 and 2, the Facility is not within the Riparian Corridor Overlay and the wetlands are not significant so the Facility is also not within the Wetland Overlay. By determining that the Facility is not within either of these overlays, the Board acted to protect water quality by analyzing and applying, where applicable, its regulations.

The County also regulates water quality under its Stormwater and Erosion Control Ordinance. The Board finds Applicant's must comply with the County Stormwater and Erosion Control Ordinance, which requires submitting and obtaining approval of an erosion control plan. As discussed above, there is substantial evidence in the record demonstrating that the Facility will meet the County's requirements. Applicant's submitted a Post-Construction Stormwater Management Plan that demonstrates how the Project will satisfy the SLOPES V regulations administered by the USACE and the National Marine Fisheries Service, Oregon's 1200-Z industrial stormwater discharge permit, and the Columbia County Stormwater and Erosion Control Ordinance (2001). Applicant will also treat oily water via a sewer basin that connects to the existing wastewater system at Port Westward and will be wholly directed away from surrounding farmlands.

In sum, Applicant will implement robust water quality practices in compliance with the County's Stormwater and Erosion Control Ordinance with a firm intention to minimize any risk to water quality. Applicant is also required to comply with all state and federal laws that protect water quality. As discussed in the groundwater protection memo prepared by GSI Water Solutions ("GSI") for DEQ, Applicant will operate in compliance with DEQ's groundwater protection rules. (*See* Attachment C to Applicant's January 26, 2022 First Open Record Submittal). GSI's memo summarizes potential groundwater quality and flow impacts from construction of the Facility,

particularly in light of the construction method Applicant will use to mitigate against liquefaction. The Board finds the memo persuasive in addressing water quality concerns because it concludes that the Facility "will be regulated under multiple DEQ permits and rule sets . . . [that] meet DEQ's groundwater protection rules." The Board finds that the following conditions will ensure that the Project will meet any and all state permit requirements, including water quality requirements:

"2) All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the landowner prior to commencing site clearing or development activities."

"3. The Applicant shall obtain necessary approvals for required onsite wastewater and sewage systems in accordance with DEQ regulations. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits."

"4. Any proposal to discharge stormwater and/or industrial wastewater under an NPDES permits shall be authorized by the appropriate permitting authority Engineered storm water plans or ground water protection plans shall be reviewed by the authority having jurisdiction. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits.

"5. Operation of the facility shall comply with all state and federal requirements. Permit approvals shall be obtained prior to receiving occupancy permits. Documentation of the permits

and ongoing compliance shall be maintained and provided to the County within seven (7) days of written request from the County."

"11. The Applicant shall prepare a Final Stormwater plan including specific swale design plan and profile details in compliance with County regulations; a building permit will not be issued until the plan is approved by the County."

"12. The Applicant shall prepare a Final Erosion Control Plan in compliance with County regulations; a building permit will not be issued until the plan is approved by the County. "

"16. A Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), an EPA-approved Spill Prevention Control and Countermeasure Plan and any other required spill response plan shall be provided prior to occupancy. Documentation of any updates to the plans and ongoing compliance with the plans shall be maintained and provided to the County within seven (7) days of written request from the County."

7. There is no evidence in the record to support the concern that the Facility could harm fish habitat, nor is this an approval criterion.

Some comments suggested that fish habitat might be threatened by pollution from the Facility. It is unclear from comments about threats to fish habitat to what County approval criteria the comments were directed. There are no County approval criteria that directly consider impacts on fish habitat. Further, there is no evidence in the record that there is fish habitat on the Facility site. Nonetheless, as discussed above, the Board determined the Facility is not within the Riparian Corridor Overlay Zone, which is intended to protect fish and wildlife habitat, because the wetlands on the Facility site are not significant. As discussed above, the County also finds that Applicant's Application adequately addresses potential sources of pollution, including water pollution.

The Board received evidence from ODFW that the Facility site is well-suited for Applicant's renewable diesel facility. ODFW commented that on the Facility site, "the current habitat is impacted and degraded by past and current management practices." (*See* Exhibit 3 to Applicant'sFinal Written Argument). ODFW similarly concluded that while the area supports some habitat and wildlife functions, the existing wetlands are subject to cattle grazing, dominated by nonnative species, and "are degraded by current practices and infestations of non-native plants." (*See* ODFW January 18, 2022 email to Columbia County). Further demonstrating its determination that fish will not be threatened by the Facility, including any pollution from the Facility, ODFW's January 18, 2022 email to Columbia County staff states "[t]he department believes this proposed renewable energy project is sited appropriately, and it is consistent with the department's climate goals."

Additionally, the Board is conditioning approval of Applicant's Application upon a requirement in Condition 2 that Applicant's obtain all applicable permits from state and federal agencies prior to site clearing and development activities. Therefore, the Board finds, in concurrence with ODFW, that Applicant's Application will comply with all state and federal laws and regulations to prevent harm to fish habitat.

8. The Board adequately addressed the impacts of the Facility on wildlife and wildlife habitat pursuant to the County's approval criteria.

The Board finds that the Application adequately addressed impacts to wildlife and wildlife habitat as required by CCZO Section 1170. Columbia County Comprehensive Plan, Part XVI, Article VIII(F), Non-Game Wildlife Habitat, lists areas identified as significant nesting sites by

the Oregon Department of Fish and Wildlife. Port Westward is not a listed area for Bald Eagle nests, Blue Heron rookeries, or Northern Spotted Owl nests. As illustrated in Application attachments 5 and 6, the Facility site is not within any areas identified as Natural Areas, Non-Game Areas, or Sensitive Areas on the County's Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map. Columbia County Comprehensive Plan, Part XVI, Article VIII(G), Upland Game Habitat, lists three mineral spring areas identified as habitat for band-tailed pigeons, none of which include Port Westward. As illustrated in Application attachments 5 and 6, the Facility site is not within an identified Upland Game Habitat area in the County's Wildlife Game Habitat map. Since the Facility site is not within the identified habitat areas, development at the Facility site is not subject to the Sensitive Bird Habitat Overlay Zone. (CCZO 1120).

Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three types of big game habitat. As depicted in attachment 6 of the Application, the Facility site is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County's Wildlife Game Habitat map. Therefore, the Board Finds the Application is not subject to the County's Big Game Habitat Overlay Zone. (CCZO 1190).

Further, as recognized in the Staff Report, Applicant's is pursuing DSL and USACE permits and approvals, which include requirements to mitigate the loss of fish and wildlife habitat. Therefore, the Board finds the County adequately addressed the impacts of the Facility on wildlife habitat as required by the County's approval criteria.

9. Applicant's Traffic Impacts Analysis demonstrates adequate transportation facilities exist and Applicant will satisfy the Public Works

requirements for necessary improvements through a condition of approval.

The Board received comments related to considering impacts from Applicant'sFacility on local infrastructure and traffic. Commenters expressed concern about an increase in heavy truck traffic on Highway 30, and traffic on: the Lewis and Clark Bridge, Alston Mayger Road, and Beaverfalls Road.

Part XIII of the Resource Industrial Development goals seeks for "new development to contribute a fair and proportionate share toward appropriate off-site improvements to county roads whenever a development results in a major increase in traffic on an existing county road." The County may also require new development to contribute a share toward off-site improvements to county roads when a development results in a major increase in traffic on an existing county road. (*See* Part XIII of the Resource Industrial Development goals).

The Board also evaluated potential impacts to local roadways pursuant to CCZO 1450, which requires the TIA that Applicant submitted with its Application. CCZO 1450.3 requires that the TIA demonstrate that adequate transportation facilities exist to serve the proposed development or identifies mitigation measures to resolve any issues and for non-highway facilities, that mobility standards adopted by the County have been met.

Applicant completed a TIA to evaluate the potential impacts to local roadways. According to the TIA, the Facility is anticipated to generate 667 weekday trips. The County coordinated with affected agencies and partners and Applicant coordinated with the Port, Columbia County, and Oregon Department of Transportation ("ODOT") staff with respect to site design and transportation analysis. The TIA determined that all study intersections meet applicable Columbia County, ODOT, and City of Clatskanie mobility standards. Hermo Road is a local road and the

closest public roadway to the Facility. The TIA also concluded that the existing transportation system is adequate to accommodate the projected trips, such that no additional mitigation is warranted. Based on the analysis in the TIA, Hermo Road is the County Road that will be most utilized to access the Facility and will see the largest share of the increase in traffic. Therefore, the Board finds that as a condition of approval, Applicant must satisfy the County Public Works requirements for necessary improvements to Hermo Road, as outlined in condition of approval 14. The County's assessment of the TIA does not find that improvements are necessary for other county roads.

Part XIII of the Resource Industrial Development goals states that the County will manage access to roadways to reduce congestion and will work with ODOT to limit the number of access points onto principle arterials, including limiting direct access to Highway 30 if practicable. The Board finds Applicant's Facility does not have direct access to Highway 30 and it is not within the County's land use approval criteria to manage increases in traffic on Highway 30 and the Lewis and Clark Bridge. However, if those were concerns, ODOT could have raised them when working with Columbia County staff on scoping the TIA.

Additionally, a comment suggested Applicant must obtain access easements to access its Facility. This is inaccurate. As demonstrated throughout Applicant's Application, and as further analyzed as part of the TIA, access to Applicant's Facility will be via Hermo Road. The Board finds that Applicant will use solely public roads to access the Facility.

The Board concludes that Applicant adequately considered transportation effects and effects on local transportation infrastructure as supported by the TIA. Accordingly, the Board

finds that Applicant must complete the road improvements as specified in condition of approval 14, which will involve reconstruction of a stretch of Hermo Road.

10. Risks from liquefaction are not related to the approval criteria.

Commenters raised concerns about liquefaction, earthquake risks, and risk from a high soil subsidence rate at the proposed Facility site. These risks are not related to approval criteria and should not affect the Board's decision. Additionally, there is already existing industrial development similar to Applicant's proposed industrial development at Port Westward. Regardless, Applicant has stated that all infrastructure will meet seismic requirements outlined in the 2019 Oregon Structural Specialty Code and prior to final design of the facility Applicant will complete a geotechnical survey to further refine the design. (*See* Attachment E to Applicant's January 26, 2022 First Open Record Submittal). The Board finds that the Facility is subject to and will comply with all related local, state, and federal requirements that are applicable to construction and operation of the Facility, some of which are inherently designed to minimize risks associated with liquefaction and earthquakes.

11. The Project incorporates waste and spill prevention measures that meet or exceed state and federal standards, but these concerns do not relate to any County approval criteria.

The Board fielded comments raising concerns about waste, "toxicity components", and spill prevention measures at the Facility. There were also speculative questions about contaminated soils on the property that could be encountered during development. Management of hazardous waste and spill prevention measures are not a component of the County's approval

criteria. State and federal laws and regulations govern management of hazardous waste and spill prevention measures.

Regarding concerns about hazardous chemicals and spill containment, evidence submitted during the first open record period establishes that Applicant will incorporate and adopt waste and spill prevention measures that meet or exceed state and federal standards. (*See* Attachment E to Applicant's January 26, 2022 First Open Record Submittal). Applicant will properly handle all soil during excavation and construction of the Facility in accordance and state and federal laws and regulations.

Evidence submitted during the first open record period also establishes that Applicant will develop a Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), and an EPA-approved Spill Prevention Control and Countermeasure Plan. To graphically illustrate spill containment measures at the proposed facility, the facility drainage plan Exhibit 5, Sheet C1.30 of Applicant's Final Written Argument, February 2, 2022 is annotated to depict the proposed spill containment berms around tanks, the equipment pads with spill containment areas, and the proposed stormwater swales. All runoff from the facility will be conveyed to a centralized treatment facility designed to remove potential contamination from the stormwater before it is discharged from the site. Railroad operators are further required by federal and state law to prepare oil spill response plans and to utilize rail cars meeting the latest safety standards to minimize the potential for impacts on nearby lands.

The County's approval criteria do not specifically require waste and spill prevention measures because those are subject to extensive state and federal regulation. However, the Board is requiring as condition of approval 2 that Applicant obtain all applicable permits from state and

federal agencies. Relatedly, the Board is also requiring Condition 16 which requires " A Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), an EPA-approved Spill Prevention Control and Countermeasure Plan and any other required spill response plan shall be provided prior to occupancy. Documentation of any updates to the plans and ongoing compliance with the plans shall be maintained and provided to the County within seven (7) days of written request from the County."

12. The Board undertook all environmental review required by the County's approval criteria.

The Board received comments that it should complete an Environmental Impact Statement ("EIS") prior to approving Applicant's Application. An EIS is not a requirement of the County's approval criteria. An EIS is solely a federal agency process that is required to evaluate the effects of an agency action under the federal National Environmental Policy Act ("NEPA"). Because Applicant's Facility requires a federal Clean Water Act Section 404 permit from the USACE, the USACE will complete a NEPA analysis to analyze the environmental effects if the USACE approves Applicant's Section 404 permit. The County has no authority or requirement to conduct an EIS under NEPA or any other law. The Board finds it conducted all environmental review required by the County's approval criteria for Applicant's Application.

13. Noise pollution is not a consideration in the County's approval criteria, but Applicant **must comply with the County's noise ordinance.**

The Board received comments about concerns of potential noise pollution from the Project. Noise pollution is not a consideration of the Board's approval criteria and thus is not an appropriate reason to deny the Application. However, Columbia County Ordinance No. 91-8 prohibits

excessive noise as outlined in the ordinance. The Board finds that **Applicant** must comply with the County's noise ordinance, and that there is no evidence in the record that the Facility cannot do so.

14. Air and odor pollution are not considerations in the County's approval criteria, but are adequately addressed nonetheless.

Commenters raised concerns about potential air and odor pollution from the Project. Air emissions, including emissions from Applicant's gas flare, are regulated by DEQ through its Air Contaminant Discharge Permitting program. Applicant has applied to DEQ for an air contaminant discharge permit for its operations. Condition 2 of the County's approval of the Facility is that Applicant obtain all applicable state and federal permits, which includes obtaining the air permit necessary for Applicant's operations. The County's approval criteria for Applicant's application do not pertain to air pollution.

The County's approval criteria for Applicant's application also do not pertain to odor pollution because it falls within the purview of state regulation. State laws authorize DEQ to regulate odors that cause a nuisance. (Oregon Administrative Rules chapter 340, division 208). The County's approval criteria do not evaluate odor concerns, yet the Board finds that Applicant must comply with state laws, including controlling odors from the Facility so that they do not create a nuisance.

Therefore, the Board finds operation and construction of Applicant's Facility requires that Applicant comply with all state and federal laws and obtain all approvals, including those regulating air and odor pollution, prior to beginning development. Accordingly, the Board adopts

condition of approval 2 requiring that Applicant must obtain all applicable permits from state and federal agencies prior to commencing site clearing and development activities.

15. Federal regulations require an evaluation of the effects of the Facility on Native American Tribes, but the County's approval criteria do not have such requirement.

A commenter raised a concern that the Facility is proposed in a location that is critical to Tribes. The County's approval criteria do not require an evaluation of the effects of the Facility on Tribes and tribal interests. However, federal actions, like the USACE' evaluation of Applicant's Clean Water Act Section 404 Permit application, require that the federal agency conduct tribal consultation. The USACE must comply with Section 106 of the National Historic Preservation Act, which requires federal agencies to ensure that authorizations or permits issued do not impact historical or cultural resources. Applicant conducted a cultural resources investigation of the Facility site in November 2020. (*See* Attachment E to Applicant's January 26, 2022 First Open Record Submittal). As part of initiating the Section 106 process, Applicant's cultural resources consultant invited cultural resources staff of the Confederated Tribes of Grand Ronde, the Confederated Tribes of Siletz Indians, the Cowlitz Indian Tribe, the Shoalwater Bay Tribe, the Chinook Indian Tribe, and the Confederated Tribes of the Warm Springs for initial discussions about the Project area. Accordingly, the Board finds there is no County approval criteria related to evaluating the effects of the proposed Facility on Tribes. The Board also finds that a condition of approval of Applicant's Facility requires that Applicant comply with all state and federal laws, a component of which will require the USACE to conduct tribal consultation.

16. Comments regarding Chris Efird's other business activities are not applicable to the County's approval criteria.

The County's land use approval criteria do not require consideration of subjective character evaluations that some comments seeks to elicit about Applicant CEO Chris Efird's other business activities. These comments do not address the approval criteria and are not relevant to Applicant's Application.

17. Concerns about the size of Applicant**'s Facility are not relevant to the County's approval criteria.**

The County's approval criteria do not evaluate a project based on its size, despite what some commenters suggest should be a requirement. There is nothing in the County's approval criteria that would prohibit Applicant's Facility based on its size. As explained above, the County's approval criteria do consider whether the Facility will complement the character of the area, and the Board finds that Applicant's Facility will.

18. The Board finds the proposed rail service to the Facility meets all relevant approval criteria.

A commenter suggested that bringing in feedstock by rail is unacceptable. The Board's approval criteria for the Application does not prohibit the Facility from relying in part on rail service; however, construction of a rail brancline is subject to a separate land use approval. In fact, CCZO 681.3 states the purpose of the RIPD zone is for an industry that "require[s] a rural location *to take advantage of rail* . . . and/or deep water port access." As explained during Mr. Gene Cotten's testimony at the January 19 hearing, the Facility is designed and intended to receive 100 percent of its feedstocks via marine transportation and to export 100 percent of its products

the same way. The only material that is required to be imported by rail is clay, which is necessary for renewable diesel processing and amounts to a single 20-car train per week.

The import/export capacity for the rail branchline serves a contingency role for times when river transportation is disrupted or otherwise unavailable. This allows the Facility to keep operating and keep its employees working. Applicant explained that the trains are anticipated to have a maximum length of 6,630 feet. The maximum single length of track within the proposed branchline is roughly 7,500 feet, more than enough storage to accommodate the largest train without requiring backing movements or crossing delays. The maximum delay time at the only nearby road crossing—Kallunki Road—is estimated to be approximately 7.5 minutes for a maximum length train at 10 miles per hour. Accordingly, the Board finds the rail branchline to serve the Applicant Facility will only have one road crossing, and the maximum time it could delay traffic is 7.5 minutes. All told, including the clay import and running at full rail capacity (as contingency for any lack of available marine transportation), the Project would be expected to generate three (3) trains per week. (*See* Applicant Second Open Record Submittal, February 2, 2022, Memo from Gene Cotten).

The Board finds that the use of rail to serve the Facility is consistent with the goals in CCZO section 680 and the Comprehensive Plan, as discussed extensively in Section IV.A., because the Facility takes advantage of existing rail and is similar in nature and will complement existing industrial development at Port Westward that is serviced by rail.

Relatedly, the Board heard concerns regarding that trains might block traffic or EMS services. The Board finds there is already rail service serving Port Westward. Applicant's Facility proposes to be served by a new rail branchline. Although most of the branchline is not a

component of this Application since it is being considered by the Board under Applicant's conditional use permit application given its location in the PA-80 zone , the Board evaluated any effects that may be caused by trains arriving to and departing from Applicant's Facility. The Board will impose two conditions of approval to address rail transport and ensure the addition of the rail branchline to the Facility does not impede access:

> "6) Transport of feedstock and/or fuel products to and from the facility shall be by water, or as a contingency, by rail. Transport of feedstock and/or fuel products to and from the facility by more than twenty (2)) truck trips per hay shall require an amendment to the Site Design Review and the approval of a revised Traffic Impact Study.
>
> 7) Rail transport to and from the site shall be limited to no more than 318 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained, and shall be provided to the County within seven (7) days of written request from the County."

Additionally, the Facility site is within the Clatskanie Rural Fire Protection District. The Board finds pursuant to CCZO 683.B.4 that the proposed on-site fire protection facilities are capable of serving the proposed use. Approval from the District is required under Condition 10. Applicant

19. The County approval criteria do not require an evaluation of international impacts from sourcing feedstock.

A commenter suggested that the Board must consider and Applicant must address the worldwide impacts of sourcing feedstock. The Board's approval criteria do not evaluate a project based on the source of the inputs that the private business will use in its industrial process. Accordingly, there is nothing in the Board's approval criteria that would prohibit Applicant's Facility based on its use of feedstock or the location of origin of the feedstock. As explained above, the County's approval criteria do consider whether the Facility will complement the character of the area, and the Board finds it will.

20. The Board adequately considered whether the rural fire protection service will serve the Facility.

Commenters asked the County about the fire control provisions related to Applicant's Application. The Board finds that the Facility location is served by the Clatskanie Rural Fire Protection District. (See Comprehensive Plan, Part XIV(2)(D)). As outlined in the County staff report, the Facility's location within the Fire Protection District capitalizes on the District's experience and partnership with existing Port Westward industrial operations to ensure appropriate levels of fire protection. Condition 10 requires the Applicant to participate in the District.

III. CONCLUSION

Based upon the evidence in the whole record and the documents incorporated herein, the Commissioners finds that Applicant's Application meets all applicable criteria and should be APPROVED on that basis subject to the conditions in the Final Order.

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January 17, 2022

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RE: Applicant's Response to Public Comments; Columbia County Board of Commissioners, App DR 21-03; V 21-05 and CU 21-04 (NEXT Renewables Fuels Oregon, LLC)

Dear Chair Heimuller, Commissioner Magruder, and Commissioner Garrett:

This office represents NEXT Renewable Fuels Oregon, LLC ("NEXT"). This letter constitutes its pre-hearing testimony and responds to the public comments submitted in the above-referenced matter.

1. INTRODUCTION AND OVERVIEW

NEXT is proposing to develop a renewable diesel production facility at Port Westward with related Columbia River dock and rail connections (together, the "Project"). Renewable diesel does not rely on petroleum and instead utilizes plant and animal-based byproducts. According to the Oregon DEQ, using renewable diesel can cut lifecycle greenhouse gas emissions up to 85% depending on what materials it is made from. Renewable diesel also runs cleaner, blends with petroleum diesel at any fraction, and provides identical efficiency to petroleum diesel. **Exhibit 1.**

The Project is anticipated to create more than 3500 construction jobs and 240 permanent jobs, and is planned to operate for 80 years or more. The Project represents a roughly $2 billion investment by NEXT will result in a substantial expansion of the County's tax base (estimated at $16 million/year) and a new income stream to the Port of Columbia County, which can be used for future Port expansion and improvement.

NEXT's facility is centered on a renewable diesel production facility consisting of multiple buildings (office, laboratory, warehouse, maintenance, process, controls, etc.), parking, private roads, storage tanks, processing equipment, a gas flare, wastewater treatment facilities, outdoor laydown yards, electrical equipment, landscaping, and security fencing. Primary access to the site is proposed from a driveway to Hermo Road (which NEXT proposes to improve) and secondary emergency access from Kallunki Road.

A substantial portion of product and feed stocks (raw materials) will be transported by vessels utilizing the Port of Columbia County-owned dock on the Columbia River. NEXT also proposes

a rail branchline to connect to Portland & Western's rail line that is on the east side of the proposed facility site. The branchline will facilitate shipment of raw materials and finished product to and from the proposed renewable diesel production facility. A portion of the rail branchline is outside the RIPD zone and within the Primary Agriculture (PA-80) zone. The brachline includes side tracks located both in RIPD and PA-80 zoning to allow for the circular movement of train cars without causing train traffic to back up onto the Portland and Western Railroad line already serving Port Westward.

In order to construct its facility and the rail branchline, NEXT submitted applications for: (1) a Site Design Review (which includes findings for a "Use Permitted Under Prescribed Conditions in the RIPD Zone") and Variance for the renewable diesel production facility (DR 21-03); and (2) a Conditional Use application for portions of the rail branchline located the PPA-80 Zone (CU 21-04) (collectively, "Applications").

a. The Project is consistent with applicable zoning.

The Applications are quasi-judicial, not legislative, and subject to the current zoning of the subject parcels—RIPD and PA-80. NEXT understands that the Board and has recently considered an expansion of Port Westward through a complex legislative Statewide Planning Goal Exception. Please note that the Applications are not subject to the same goal exception criteria, which require a far more detailed analysis of need, comparative sites, and compatibility.

With the exception of a section of proposed rail branchline, the Project is located entirely within the RIPD zone. The particular use category proposed in the Site Design Review application is the "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities," which is allowed under CCZO 683.1.

The RIPD zone was adopted with the County's 1984 Comprehensive Plan as an "exception area," which specifically allows development that would not otherwise be permitted on resource lands. The Port Westward exception area grew around a U.S. Army ammunition depot that was constructed during World War II and later developed with the PGE diesel tank farm and the Beaver generating plant, and further developed with PGE's natural gas Port Westward Generating Plan and Global Partners' Columbia Pacific Bio-Refinery ethanol plant.

Port Westward is one of only five deep water ports in Oregon[1] and presents a unique industrial and transportation resource for Columbia County. For this reason, the Port Westward Exception Area was specifically intended to facilitate development of heavy industry that relies on marine transportation:

> "Because of its location on the Columbia River, Port Westward is a unique site specific resource that is important to the economy of Columbia County. This fact was recognized by the Port of St. Helens in 1966 when it entered into a long-term

[1] The only others are the Ports of Coos Bay, Astoria, Newport, and Portland.

> lease for the property, on the condition that it be put to industrial uses to provide jobs.
>
> Port Westward is unique for several other reasons as well. Most importantly, it offers prospective users a large existing dock facility. Existence of the dock facility reduces the lead-time for commencement of operation, allowing prospective users to achieve a head start on the competition. It also eliminates uncertainty and delay which might otherwise exist, due to the process requirements to obtain permits for building docks on navigable waters. Another important characteristic of Port Westward is that the basic infrastructure of urban services already exists on the property, although upgrading such services would likely be required when significant development occurs. Neither government nor the developer would be called upon to bear the large cost necessary to create a completely new infrastructure.
>
> The Port Westward site is also large enough to accommodate loop rail systems that could handle 100-car unit trains. In this case, the site size for the exception is recommended based on the ownership pattern and the legal lease requirements to develop the land for industrial development. Past history and commitment support the 900-acre site size."

Comp. Plan, Pt. XII § VII.1.b (pg. 124) (1984). The Comprehensive Plan also speculated that uses appropriate for Port Westward would include "a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant." Comp. Plan. Pt. XII § V (pg. 122-23) (1984).

As the implementing mechanism for the Port Westward Exception Area, the RIPD zone is intended for uses which:

> ".1 Are not generally labor intensive;
>
> .2 Are land extensive;
>
> .3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;
>
> .4 Complement the character and development of the surrounding rural area;
>
> .5 Are consistent with the rural facilities and services existing and/or planned for the area; and,
>
> .6 Will not require facility and/or service improvements at significant public expense.

> The uses contemplated for this district are not appropriate for location within Urban Growth Boundaries due to their relationship with the site specific resources noted in the Plan and/or due to their hazardous nature."

CCZO 681. As demonstrated in the Application and Staff Report, the Project specifically relies on the Port Westward dock for access to marine transportation and the river itself for process water. Thus, the Project is entirely consistent with the legislative purposes underpinning Port Westward.

The rail branchline can be best viewed in three segments. The first is a segment of bi-directional track that connects the Project through a small portion of PA-80 zoned land to the Portland and Western Railroad already serving Port Westward. The second is a series of side tracks located in the RIPD-zoned portion of the site, which are allowed as part of the Site Design Review/Use Permitted under Prescribed Conditions Application. The third is a second series of side tracks located on PA-80 zoned land owned by the Port of Columbia County, which land is proposed for eventual inclusion within the RIPD expansion area. Rail improvements on PA-80 zoned land are specifically permitted under OAR 660-12-0065 ("Transportation Improvements on Rural Lands") as "(j) Railroad mainlines and branchlines." Together, these rail facilities provide a "looped" branchline that allows safe and efficient flow into and out of the renewable diesel facility.

b. NEXT supports staff's recommendation for approval and accepts staff's proposed conditions of approval.

Since submitting its applications in early 2021, NEXT has met with the County planning, engineering, and legal staff on a number of occasions and, based on staff's feedback, refined its applications several times to ensure that they comprehensively address all applicable criteria and development issues. County planning staff has extensively reviewed the applications and issued its Staff Report on January 12, 2022, recommending that the County Board of Commissioners approve the Applications with conditions.

The Applicant wishes to make a few clarifications on some of the facts/analysis presented in the Staff Report:

- First, findings 37 and 75 (pages 18 and 29) incorrectly assert that the fuel production facility impacts riparian areas associated with McLean Slough. In fact, the facility itself is not proposed within the riparian buffer; rather, the only proposed impact to the riparian buffer is from a portion of the proposed rail branchline.

- Second, finding 65 (page 26) discusses a proposed construction laydown area, but this laydown area is no longer proposed and tree plantings are proposed in its place.

- Finally, it should be noted that the question of whether the facility is "water related" or "water dependent" is relevant only to the proposed rail branchline crossing of McLean Slough. The Board can find that the Project is water dependent for the reasons stated in

the Application; namely, because the Project depends on marine transportation and a direct water intake from the Columbia River for its industrial processes.

Otherwise, NEXT supports the Staff Report and accepts the Staff Report's recommended conditions. NEXT urges the County Board of Commissioners to accept staff's recommendation and approve the Applications.

2. RESPONSE TO COMMENTS REGARDING NEXT'S APPLICATIONS

NEXT recognizes that while many people support NEXT's renewable diesel production facility, others have questions and concerns about the facility. The following addresses opponent comments made available by staff by January 14, 2022.

The Applications are quasi-judicial, which means that relevant issues are constrained to the applicable approval criteria, as identified in the Application and Staff Report. ORS 215.427(3). Therefore, the Board can and should reject comments that do not address the approval criteria.

The vast majority of written materials submitted by project opponents thus far were included in a large package of documents submitted by Save Port Westward. The majority of these address NEXT's Joint Permit Application to the Oregon Department of State Lands ("DSL") and U.S. Army Corps of Engineers ("USACE") for a removal/fill permit (the "Joint Permit"). As part of this process, NEXT is working with the Army Corps and DSL on plans for a roughly 480-acre wetland mitigation site. The mitigation area is located on PA-80 zoned land, in which "creation, restoration or enhancement of wetlands" is an outright permitted use and requires no County approval. ORS 215.283(1)(m). The Joint Permit is not before the Board; therefore the vast majority of these comments do not address the approval criteria.

Rather, the County must find that wetlands and riparian areas shall be in compliance with State and Federal laws. CCZO Section 1563.B. As explained above, the adequacy of that proposed mitigation site is evaluated by DSL and the USACE under their respective laws to determine whether the mitigation is sufficient, based on the condition and extent of wetlands the Project will impact. The County can find that the Applications can satisfy State and Federal laws concerning wetland impacts through the ongoing Joint Permit process. The Staff Report's proposed Condition 2 – which NEXT accepts – requires that all state and federal permits will be obtained prior to commencing site clearing or development activities.

Opposition comments can typically be categorized in two manners: (1) comments that are inapplicable or irrelevant to the County's approval criteria; and (2) comments pertaining to issues addressed by NEXT's Applications and/or evaluated in the County Staff Report. Based on our review, few if any opposition comments submitted thus far clearly address an approval criterion. As explained below, the Board can reject the opposition comments submitted thus far and approve the Applications.

a. Response to Beaver Drainage Improvement Company, Inc. Comments

The Beaver Drainage Improvement Company, Inc.'s ("Drainage Company") comments address NEXT's wetland mitigation plan, which is not before the Board. As explained above, NEXT's wetland mitigation proposal is part of its DSL/USACE Joint Permit application. The Drainage Company did not appear to submit any written comments regarding the Applications; rather, they were included in Save Port Westward's large packet of comments addressing the Joint Permit. Accordingly, the Drainage Company's comments do not address the applicable criteria.

b. Response to Columbia Riverkeeper's Comments

Like the Drainage District's comments, Columbia Riverkeeper's ("Riverkeeper") comments are directed at the Joint Permit, not the Applications. Riverkeeper did not appear to submit any written comments on its own; rather, they were included in Save Port Westward's large packet of comments addressing the Joint Permit. As with Drainage District Comments, the County can reject Riverkeeper's comments because they address the Joint Permit, not the Applications.

c. Response to Comments submitted by "Community opposed to the NEXT proposal"

The Save Port Westward document package includes a list of people and entities opposed to the Project, but the comments that appear to have been written by Save Port Westward; it is not clear whether these comments were actually written on behalf of the named individuals and entities. Many of these comments are duplicative of comments raised by the Drainage Company or Riverkeeper.

i. "NEXT and PCC have yet to acknowledge potentially highly contaminated soils such as the historical tree farm dumpsite containing pesticides and other toxic chemicals, the PGE sand pile, and other soils on the recently purchased Teevin Bros. land which have been removed and filled without proper permitting."

RESPONSE: Management of hazardous waste and contaminated property falls within the purview of the Oregon Department of Environmental Quality ("DEQ"). The applicable criteria do not evaluate the presence or management of hazardous waste. NEXT will comply with all state and federal laws related to the management and disposal of hazardous waste.

For the above reasons, the Board can reject the above-quoted comment.

ii. NEXT's has not disclosed its "full waste treatment protocol and the specific toxicity and ingredients that would travel via the highway 30 railway."

RESPONSE: As stated in the response above, NEXT will comply with all state and federal laws related to the management and disposal of solid and hazardous waste. The Board can reject the above-quoted comment.

iii. "NEXT continues to change their proposal for water and land traffic, leaving the impact on local infrastructure and impacts to local school traffic throughout the county unclear."

RESPONSE: The Applications include a complete Transportation Impact Analysis ("TIA"), with which County staff concurs. River and rail transportation capacity varies substantially over time, and the Project is sized to account for the maximum extent of NEXT's potential transportation needs. As such, there is no approval criterion or submittal requirement for a specific mix of "water and land traffic." NEXT will be required by Condition 3 to "prepare a management plan for the rail crossings providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and means to resolve conflicts." The Applicant also will be required to fully improve Hermo Road between Quincy-Mayger Road and the Port Westward entrance (Condition 11). NEXT accepts these conditions.

For the above reasons, the Board can reject the above-quoted comment.

iv. "NEXT and the Port of Columbia County have yet to produce a clear docking schedule between Global's transloading operations and NEXT's fully water dependent operations."

RESPONSE: Neither the applicable criteria nor the application submittal requirements require a docking schedule. Further, the County Board of Commissioners' decision regarding NEXT's Applications does not evaluate the business logistics decisions of private companies using the Port of Columbia County dock.

For the above reasons, the Board can reject the above-quoted comment.

d. Response to Save Port Westward Comments

Save Port Westward raised many of comments noted above, the responses to which are not duplicated below. Other than those, Save Port Westward made the following comments:

i. Comments regarding Christopher Efird's other business activities.

RESPONSE: The land use approval criteria in the CCZO and Comprehensive Plan do not involve the type of highly subjective character evaluations these comments seeks to elicit. These comments are inappropriately ad hominem, do not address the approval criteria, and are not relevant to NEXT's Applications. The Board should reject such comments accordingly.

ii. NEXT's process requires virgin oil crops and animal fat derived from the same crops that has agricultural practices that destroy soil and promote greenhouse gas emissions.

RESPONSE: The above comment is simply incorrect. As the Oregon DEQ opines in **Exhibit 1**, renewable diesel has the potential to substantially reduce greenhouse gas impacts when compared with petroleum based diesel.

Regardless, the above comment does not address the approval criteria and should be rejected on that basis alone.

e. Response to Protect Farms' Comments

iii. The NEXT project will "shut down one of Oregon's last remaining mint farmers, two of Oregon's beloved local blueberry farmers, and one woman-owned grass-fed cattle ranch."

RESPONSE: As an initial matter, the renewable diesel facility itself only impacts land owned by NEXT, the Port, and a small portion of the De La Cruz parcel. None of this land is used for mint or blueberry farming, nor are they part of a woman-owned grass-fed cattle ranch.

The vast majority of the Project site is zoned RIPD, not exclusively for farm use. However, the proposed rail branchline does impact some PA-80 zoned land. The branchline will cross a portion of the De La Cruz parcel, which has been farmed recently with hay/grassland and row crops, such as mint. De La Cruz is a willing participant in the Project. Other than the portion of the property that the train will cross, hay and row crops are resilient and not sensitive to the vibration associated with rail traffic. And while the construction and operation of the branchline could cause minor changes in access routes to fields and patterns of cultivation, the changes will be minor. The Port of Columbia County-owned land is used for similar activities and is similarly insensitive to the presence of rail traffic.

County staff evaluated this proposal under its Comprehensive Plan Goals and Policies found that the rail branchline complies with the County's policy to protect agricultural lands and permit non-farm uses when not in conflict with agricultural activities. County staff also evaluated the PA-80 zone impacts under ORS 215.296, and found the rail branchline will not cause a change in accepted farm practice or significantly increase the cost to farm on nearby lands. The Staff Report concluded that there is no evidence the proposed rail branchline – the portion of the proposed facility that is on agricultural zoned lands – will cause significant impacts to farm activities.

To the extent that Protect Farms' comments relate to the wetland mitigation area, this is not before the Board. As explained above, creation, restoration or enhancement of wetlands" is an outright permitted use and requires no County approval. ORS 215.283(1)(m).

f. Response to Elaine Sharp's Comments

RESPONSE: There are state and federal permits/authorizations that protect against each of the concerns raised by this comment and NEXT will comply with the laws applicable to each of those concerns. As stated above, NEXT is agreeable to staff's proposed Condition 2, which requires NEXT to obtain all applicable permits from state and federal agencies prior to commencing site clearing or development activities.

g. Response to Other Comments

The Board of Commissioners should reject the other arguments raised in Save Port Westward's document package. These comments relate to: the manner in which NEXT has conducted voluntary public outreach and voluntarily responded to public questions; the source of NEXT's financial backing; recommending putting infrastructure development promises into contracts; arguments that NEXT must disclose its "feedstock agreements" and "that their feedstock sourcing will promote the worldwide destruction of soils, communities, and habitats," and concerns about soil liquefaction. These comments do not address any specifics of the Applications, nor do they address any applicable approval criterion.

With respect to soil liquefaction, the Facility will be required to meet all applicable structural codes, which require an adequate foundation system suitable to onsite conditions. The Applicant will be conducting a complete geotechnical analysis as part of its design engineering to ensure that the appropriate design and construction techniques are used to prevent any potential hazards from unstable soils.

For the above reasons, the Board can reject the comments identified above.

3. CONCLUSION

For the above reasons, the Board should reject the opposition comments and approve the Application with the conditions of approval proposed in the Staff Report.

Best regards,

Garrett H. Stephenson

GST:lmt
Enclosure

PDX\133639\242725\LTH\32746112.2

State of Oregon Department of Environmental Quality

Renewable Diesel 101

Contact: OregonCleanFuels@deq.state.or.us
700 NE Multnomah Street Suite 600 Portland, OR 97232

What is renewable diesel?

Renewable diesel is produced by running fats and oils from plants and animals instead of crude through a refinery, resulting in a biofuel that meets the ASTM D975 standard for diesel. Renewable diesel can be made from many waste or renewable materials including: rendered tallow, fish waste, used cooking oil, inedible corn oil, soybean oil, canola oil, and others. A typical facility can switch between or run multiple different materials.

Renewable diesel is a drop-in fuel which means it can be used as a one-for-one replacement for diesel or can be mixed with diesel at any rate to produce a blended product requiring no changes to the vehicles or fueling infrastructure.

Is renewable diesel the same as biodiesel?

While they can be made from the same materials, biodiesel and renewable diesel have different manufacturing processes that result in products with different molecular structures - biodiesel is a methyl-ester and renewable diesel is a hydrocarbon. The difference in the chemical properties of biodiesel is what limits the amount that can be blended with petroleum diesel, which is also a hydrocarbon. There is no limit for the amount of renewable diesel that can be blended with petroleum diesel because they are chemically identical. Biodiesel, renewable diesel, and petroleum diesel can all be blended together for use in diesel vehicles.

What are the emissions benefits from using renewable diesel?

Using renewable diesel can cut lifecycle greenhouse gas emissions up to 85% depending on what materials it is made from. Waste products such as tallow and used cooking oil have the greatest reductions while vegetable oils are slightly less. Renewable diesel lowers tailpipe emissions such as particulate matter, carbon monoxide, total hydrocarbons, and nitrogen oxide.

What are the other benefits from using renewable diesel?

Renewable diesel has gained in popularity largely because its lower carbon footprint, but also because it:

- has a higher cetane value than biodiesel
- has the same fuel economy or power as petroleum diesel
- produces a much cleaner exhaust and dramatically reduces the need for regeneration in vehicles with particulate filters, which in turn reduces maintenance costs for fleet owners
- does not contain oxygen, which avoids problems that biodiesel has with freezing, storage, and algae growth
- is made from products that would otherwise be sent to a landfill

Is renewable diesel available in Oregon?

The production of renewable diesel has grown significantly over the last several years and this trend will continue as billions of gallons of additional capacity have been recently announced. Tens of millions of gallons have already been delivered to Oregon because of the Clean Fuels Program, and that demand will remain strong as DEQ expands its targets beyond 2025. Contact your fuel supplier to find out current prices and availability of renewable diesel.

How is renewable diesel treated under the Oregon Renewable Fuel Standard?

The Oregon Renewable Fuel Standard recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement for diesel.

How is renewable diesel treated under the Portland Renewable Fuel Standard?

The Portland Renewable Fuel Standard does not recognize renewable diesel as a way to achieve their renewable fuel standard.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

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February 2, 2022

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RE: Application's Final Written Argument; Columbia County Board of Commissioners, App DR 21-03; V 21-05 and CU 21-04 (NEXT Renewables Fuels Oregon, LLC)

Dear Chair Heimuller, Commissioner Magruder, and Commissioner Garrett:

This office represents NEXT Renewable Fuels Oregon, LLC ("NEXT"). The following is NEXT's final written argument in this matter. The letter is respectfully submitted prior to the end of the final written argument period at 5:00 p.m. on Wednesday, February 9, 2022. Please note that it addresses public comments made available to the applicant by February 4, 2022.

I. EXECUTIVE SUMMARY

NEXT proposes to develop a renewable diesel production facility at Port Westward, with related Columbia River dock and rail connections (collectively, the "Project"). The Project consists of two land use applications (the "Applications") that are separate and related. The Site Design Review Application seeks approval for Use Permitted under Prescribed Conditions in RIPD Zone, Site Design Review, and Variance, for a renewable diesel production facility (the "Production Facility"). The Branchline Application seeks a Conditional Use Permit for a Rail Branchline. NEXT submitted the Branchline Application separately because a portion of it is to be located on PA-80 land.

As will be discussed in more detail below, the Project will contribute to local, state, and global efforts to reduce the impacts of climate change. Renewable diesel can cut the lifecycle of greenhouse gas emissions up to 85% and lower tailpipe emissions. The Oregon Department of Environmental Quality recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement under the Oregon Renewable Fuel Standard. The Oregon Department of Fish and Wildlife believes this proposed renewable energy project is "sited appropriately," and that facilities like this are "essential" to solve the climate crisis.

Moreover, the Project will confer substantial economic benefit to Columbia County. It will bring an estimated 3,500 construction jobs and 240 permanent jobs to the area. An economic

multiplier effect from NEXT's investment and other supportive industries will create a rising economic tide that sustains local businesses, stabilizes school funding and programs, and fuels economic growth for years to come.

Importantly, the Project is entirely consistent with the intended uses of the Port of Columbia County. The Project is dependent on its Columbia River location to take advantage of efficiencies made possible by the Port Westward deep-water dock, an asset Columbia County invested in specifically to attract development like the Project. The vast majority of the Project is located entirely within the Resource Industrial-Planned Development ("RIPD") zone, which is intended to accommodate both rural and natural resource related industries like NEXT's proposed Production Facility that will be located entirely within that zone. Only a small portion of the proposed rail branchline will touch land zoned differently, but in a manner well within established approval criteria, as will be described in more detail below.

In fact, the Project satisfies all applicable approval criteria. NEXT has heard and responded to written and oral comments from members of the local community and other concerned parties, and will expand its responses below. Further, thousands of local residents—workers, families, educators, businesses, elected officials, service providers, County staff—support the Project and recommend the Board approve it. For the reasons that follow, NEXT respectfully asks the Board to approve the Applications.

II. THE PROJECT WILL BENEFIT THE CLIMATE, THE COUNTY, AND THE PORT OF COLUMBIA COUNTY.

Before turning to the legal aspects of the Applications, NEXT reiterates the benefits that the Project would create, both locally and globally, if the Board approves it.

A. The Project reduces greenhouse gas and will help the nation transition to a low-carbon economy.

As explained by the Oregon Department of Environmental Quality ("DEQ"), DEQ recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement under the Oregon Renewable Fuel Standard. **Exhibit 1**. According to DEQ, renewable diesel can cut the lifecycle of greenhouse gas emissions up to 85%, and lowers tailpipe emissions such as particulate matter, carbon monoxide, total hydrocarbons, and nitrogen oxide. *Id*. It has the same fuel economy and power as petroleum diesel, but produces a much cleaner exhaust and is made from products that otherwise end up in landfills.

It is estimated that the Project will result in an annual net reduction of 5,409,379 metric tons of greenhouse gas ("GHG") emissions. **Exhibit 2**. This is equivalent to removing approximately 1.2 million passenger vehicles from the roadways. *Id*. The Oregon Department of Fish and Wildlife commented that the Project is a renewable energy development project and that it "considers development of renewable energy infrastructure to be essential to solve the climate crisis." **Exhibit 3**. Simply put, the Project "will be a net positive impact to public health and safety by constructing and operating the proposed facility." **Exhibit 2**.

B. Local organizations recognize the project's dramatic contribution to a thriving Columbia County economy.

The Project will also provide a major economic benefit to Columbia County. As explained in NEXT's pre-hearing testimony, the Project is anticipated to create 3,500 construction jobs and 240 permanent jobs, and is planned to operate for 80 years or more. The Clatskanie City Council commented that the Project "will bring significant economic benefits to the City, let alone the County and State," including around 240 proposed jobs and $16 million in estimated property tax revenue. The Council comments that the Project "will have a consequential positive impact on the local districts that rely on property tax revenue." The Columbia Economic Team offered similar comments and also encouraged the Board to approve the Applications.

The Columbia Pacific Building Trades Council, writing on behalf of 15,000 members, commented that the Project will help thousands of Columbia County-resident tradespeople stay in the region to build the facility. The Trades Council also described how the new, permanent jobs the Project creates "will inevitably lead to more money spent in our retail and grocery stores, on tourism and local recreation, and with local non-profits and organizations."

The January 11, 2022 Staff Report also found this multiplier effect important:

> "In addition to the on-site employees, the project will also result in supportive jobs such as those for the terminaling company operating at the dock. Employees are also likely to patronize area businesses in and around Clatskanie, creating new indirect employment opportunities in surrounding areas. Products to support this facility will be imported via the river and rail from beyond the County, further contributing to economic growth in the immediate area and beyond."

Staff Report at 12.

Approval of the Project will have a profoundly positive effect on the Clatskanie School District. The superintendent of the Clatskanie School District testified that the additional tax revenue generated by the Project would be a sea-change for the District: "rather than a rural declining district, we're going to have a very robust instructional program." *Columbia County Board Hearing*, Jan. 19, 2022 at 2:09:33. The Clatskanie School Board also unanimously supported a letter emphasizing its support:

> "Bringing NEXT Renewable Fuels to our area will provide our community with 200+ high paying jobs as well as providing sustainable funding to our local taxing districts, and most importantly to us, our school district. We will not have to wait every biennium to see what the Oregon economic forecast is to know what our budget will allow—if teachers can be maintained or laid off, and if exciting new programs can be added or our offerings reduced even further."

As was made clear in the written and oral hearing testimony, the Project can greatly enhance the local economy while also reducing GHG emissions globally.

C. The Project is consistent with the uses intended for Port Westward.

As described in our letter to the Board dated January 17, 2022, the Project is also consistent with the uses intended for its location. The particular use category proposed in the Site Design Review Application is "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities," which are allowed under CCZO 683.1. Because Port Westward has one of only five Oregon deep-water ports, the Port Westward Exception Area (as adopted in the County's Comprehensive Plan) was specifically intended to facilitate heavy industry that relies on marine transportation. *See* Comp. Plan, Pt. XII § VII.1.b (pg. 124) (describing Port Westward as a unique economic asset to encourage Columbia County industrial development).

The Port of Columbia County supports the Project specifically because it "will be situated on land intended to be used for industrial activities that can take advantage of the port's unique deep-water marine terminal." The Port's Executive Director, Sean Clark, testified at the public hearing that the County invested in the Port and the Project would make specific use of its existing infrastructure. The City of Clatskanie's written comments include that the Project "is consistent with heavy industrial and energy uses already established at Port Westward. …[T]he project's impact on farm-zoned land is very minimal and amounts to a small corridor of land necessary to extend rail service to the project, the vast majority of which is owned by the Port of Columbia County and is intended for industrial development and operation." The Project exemplifies the kind of development specifically encouraged by the County's 2007 Comprehensive Plan Exception Statement: a rural-industrial use that gains competitive advantage from its location, benefits the local economy, and has minimal impact on productive resource land. *See* Staff Report at 12.

Except for a portion of the proposed rail branchline, the Project is located entirely within the RIPD zone, and the Production Facility is located entirely within that zone. As demonstrated in the Applications and Staff Report, and described in more detail below, the Project specifically relies on the Port Westward dock for access to marine transportation and the river itself for industrial process water. Thus, the Project is entirely consistent with the legislative purposes underpinning Port Westward.

III. THE PROJECT SATISFIES ALL APPLICABLE CRITERIA

Most importantly, the Project satisfies all applicable criteria. For the following reasons, as well as those in the Staff Report and NEXT's prior testimony, the Board should find that the Application satisfies all applicable criteria.

A. The Project is consistent with uses allowed in the RIPD zone and satisfies the criteria in CCZO 681.

The Staff Report found that the Project is consistent with the uses and development standards that the County provided for industrial development within Port Westward by adopting the Port Westward exception area and the RIPD zone. More specifically, Finding 1 of the Staff Report

concluded that "[t]he requested use conforms with the goals and policies of the Comprehensive Plan specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies. Staff Report at 10. The Staff Report also found of the Project that:

> • it will take advantage of marine transportation available on the Columbia River, specifically the deepwater port;
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> • it will use existing dock facilities;
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> • it will utilize existing rail connections;
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> • it will allow renewable diesel production to be located far from population centers, thus avoiding hazardous or incompatible impacts on densely populated areas; and
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> • the proposed facility is similar to the existing tank farm, PGE electrical generating facilities, and the Columbia Pacific Bio-Refinery.

Id. at 11. After quoting the 2007 Comprehensive Plan Exception Statement, Finding 4 determined that "[t]his application is consistent with this statement" because it: (1) will take advantage of existing infrastructure; (2) will be in proximity to existing industrial operations with similar impacts; and (3) it will bring temporary construction jobs and permanent ongoing operations jobs to Port Westward." Staff Report at 12.

Some public comments raised concerns about the Project's compatibility with surrounding agricultural uses. The Staff Report considered this issue and concluded that, in addition to satisfying all of the policies and goals applicable to the development:

> "The existing agricultural uses to the east and south are not likely to be negatively impacted by the proposed industrial use due to the applicable County land use regulations and permit standards, fire code provisions implemented by the Clatskanie Rural Fire Protection District, and multiple state and Federal permits which the applicant will need to obtain prior to beginning operation of the facility. The proposed site development is consistent with existing land uses and available facilities and services."

Staff Report at 18–19. Succinctly put, multiple layers of county, state, and federal requirements ensure the Project's current and ongoing compatibility with nearby agricultural uses.

B. The rail branchline is permissible in the PA-80 zone and satisfies the criteria of ORS 215.296.

Rail branchline issues featured prominently in public comments and written submissions. As mentioned, a portion of the proposed branchline will impact some PA-80 zoned land. However,

as detailed in the Branchline Application and Staff Report—and as further described below—the proposed branchline satisfies all applicable criteria and requirements.

Columbia County's PA-80 zoning generally protects agricultural uses to support food and fiber production while enhancing certain natural values. CCZO 301. The Code expressly allows a number of non-agricultural uses in this zone, and certain other non-agricultural uses may be allowed under Conditional Use Permits. Among the allowable conditional uses, the Board may approve roads, highways, and other transportation facilities and improvements as set forth in Oregon Administrative Rule 660-012-0065. That OAR "identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with [statewide planning] Goals 3, 4, 11, and 14 without a goal exception." Specifically, "[r]ailroad mainlines and branchlines" are consistent with the identified Goals and may be permitted on rural lands.

The relevant statutes provide no set definition of the term "branchline." However, the Oregon Supreme Court has embraced a "commonly understood" meaning that a branchline is "nothing more nor less than an offshoot from the mainline or stem." *Union P. R. Co. v. Anderson*, 167 Or 687, 712, 120 P2d 578, 588 (1941). County staff concluded that the Portland & Western Railroad Letter (Attachment 6h to the Staff Report) constituted sufficient evidence that the proposed rail development can be classified as a rail branchline. Staff Report at 46.

County staff evaluated the PA-80 zone impacts under ORS 215.296, which sets out the standards for approval of certain uses in exclusive farm zones. NEXT's application addressed how the portions of the rail branchline subject to the farm impacts test—noted as Sections A and B of the branchline in the Branchline Application—will not force a significant change or significantly increase the costs of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Much of this detailed analysis is reproduced on pages 44–55 of the Staff Report. Across multiple findings throughout this section, County staff: (1) found no evidence that the proposed branchline will alter the character of the surrounding area in a manner that will substantially limit, impair, or preclude the use of surrounding properties for farm or forest uses; and (2) found no evidence the branchline will significantly increase the cost of accepted farm or forest practices on agricultural lands.

C. The Project is consistent with the County's environmental overlays.

Only one element of the Project—the crossing of McLean Slough with the branchline in the PA-80 zone—is subject to a County-designated natural resource zone. As explained below, the CUP application satisfies this requirement.

1. The Applications are consistent with the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay, CCZO 1170.

Finding 194 of the Staff Report concluded the Project does not enter or abut any mapped lake, river, or stream areas, although the proposed branchline intersects with McLean Slough. According to County staff, "Riparian impacts are limited to the crossing and not a wholesale

displacement of the riparian corridor." Staff Report at 59. There are no other protected riparian areas impacted by the project.

As explained in the Staff Report, the Board may approve the minimal impact at the crossing because the Project is water dependent or water related. *See* CCZO 1175(A)(2) and (B)(5).[1] Neither the CCZO nor the Columbia County Comprehensive Plan define the terms "water-related" or "water-dependent," except as relevant to the Willamette River Greenway, which is not applicable at this location. The County's riparian area and wetland regulations are components of the County's Statewide Planning Goal 5 program, which purports to adopt a "safe harbor" approach as discussed in Article X of the Comprehensive Plan. However, the Comprehensive Plan's Goals and Policies do not categorically intend to prohibit uses conflicting with riparian areas or wetlands. Rather, the Plan's stated intent is to protect such areas from "nonwater-dependent uses." *See, e.g.*, Article X.E., Policy 9.

As explained in the Application, the Board can find that the Project is "water-dependent" because it requires access to the water body (namely, the Columbia River) for marine transportation. The applicant proposes to import and export renewable diesel product and renewable diesel feedstocks by water-borne vessels on the Columbia River, including ships and barges. This connection is reflected in Exhibit 15 to the CUP Application, which shows the piping directly connecting the facility to the Port Westward docks. Also, the Production Facility relies on Columbia River water as part of the renewable diesel production process—namely for steam production, cooling tower process water, and fire water reserve. This is also reflected on Exhibit 15 to the CUP Application.

Consequently, the Board can find that the proposed rail branchline located on PA-80 lands is also "water-dependent." The purpose of the proposed rail branchline is to deliver renewable diesel feedstocks to the renewable diesel production plant for conversion into renewable diesel, to export such renewable diesel, and to remove waste products from the facility. As the branchline exists only to serve the renewable diesel production plant and is part of the overall project, it is just as river-dependent as the production plant itself. Put another way, the branchline is water-dependent because, like the renewable diesel production plant, it relies on river transportation as the other end of the renewable diesel supply/production chain. The export of waste products also makes the rail line a necessary component of the overall water-dependent use.

If the Board does not find that the branchline is "water-dependent," the Board can nonetheless find that it is "water-related." This is because the Project as a whole is intended to provide "goods […] that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered." There is no dispute that the Project is intended to import and export "goods" (in this case, feedstocks and renewable diesel) to and from the Port Westward dock via pipeline, shown

[1] Note that there is no criterion that requires the Board to find that the Production Facility is "water related" or "water dependent." Such a finding is necessary only for the crossing of McLean Slough by the westernmost portion of the branchline.

in Branchline Application Exhibit 15. As explained above, the renewable diesel facility must be located near the water because the use itself depends on river water and transportation, and would not be viable without a water-adjacent location. If the PA-80 portion of the proposed branchline is not located adjacent to the renewable diesel production plant, the efficiency of the renewable diesel use would suffer substantially because a large portion of the necessary feedstocks could not be economically imported to the Project, which would make the Project itself infeasible.

Some public comments argued that the Project cannot be water-dependent or water-related because it is technically possible to import and export all products overland. However, as just described, the Project depends on efficiencies made possible by Port Westward's deep-water port and river transportation in general. And, as explained by Mr. Gene Cotten's oral testimony at the Jan. 19 hearing, the rail is capable of serving only up to 40% of the Project's overall production capacity. Therefore, even maximizing use of overland infrastructure the Project would not be viable without its river connection. Thus, the Board may find the Project water-dependent or water-related even if some portion of its operations could be carried out overland.

2. The Wetlands Area Overlay, CCZO 1180, does not prohibit modification of onsite wetlands because the Oregon Department of State Lands and Oregon Department of Fish and Wildlife have determined that the onsite wetlands are not significant for Statewide Planning Goal 5 purposes.

The Wetland Area Overlay set forth in CCZO 1180 does not prohibit development of the Project because the impacted wetlands are not "significant wetlands." The Oregon Department of State Lands ("DSL") evaluated the Project under CCZO 1182 and using the Oregon Freshwater Wetland Assessment Method ("OFWAM"). It determined that the wetlands associated with the proposed Project are "NOT significant, nor are the wetlands that continue off the project site that were converted for farming and are zoned Primary Agriculture." DSL concluded that the relevant fish habitat, water quality, hydrologic control, education and recreation potential, and aesthetic quality are either degraded, lost, or not appropriate. Although the site includes some wildlife habitat and areas potentially sensitive because of water removal by drainage ditches, "[t]here is moderate to little enhancement potential because the four ecological functions are impacted or lost, and the wetland is isolated by the levee." DSL concluded:

> "None of the four ecological functions, wildlife habitat, fish habitat, water quality, or hydrologic control scored high enough to be considered significant. There are no rare wetland plant communities, there are no critical habitats present, and the wetland is isolated by the levee and heavily impacted by the drainage district.
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> "The wetlands located behind the levee (within the drainage district) in the Resource Industrial Planned Development area at Port Westward and the wetlands that were converted for farming and are zoned Primary Agriculture are NOT significant under OFWAM."

The Oregon Department of Fish & Wildlife ("ODFW") similarly concluded that while the area supports some habitat and wildlife functions, the existing wetlands are subject to cattle grazing, dominated by nonnative species, and "are degraded by current practices and infestations of non-native plants." In a January 18, 2022 email to Columbia County staff, ODFW provided further clarification that: (1) "[t]he developer is proposing habitat mitigation that, once completed, the department expects should provide a net benefit to the affected fish and wildlife species that currently utilize the impacted habitat"; and (2) "[t]he department believes this proposed renewable energy project is sited appropriately, and it is consistent with the department's climate goals." **Exhibit 3**.

IV. NEXT'S RESPONSES TO SPECIFIC PUBLIC COMMENTS

A. Clarifications of the operational scope of the proposed rail branchline.

The vast majority of public opposition testimony pertained to the proposed rail branchline. Before providing specific responses to these comments, NEXT wishes to summarize the intent and design basis of the rail branchline. This was addressed by the testimony and evidence submitted during the second open record period in response to concerns about potential impacts to farm access.

As explained during Mr. Gene Cotten's testimony at the January 19 hearing, the facility is designed and intended to receive 100 percent of its feedstocks via marine transportation and to export 100 percent of its products the same way. The only material that is required to be imported by rail is clay, which is necessary for renewable diesel processing and amounts to a single 20-car train per week.

The import/export capacity for the rail branchline serves a contingency role for times when river transportation is disrupted or otherwise unavailable. This allows the facility to keep operating and keep its employees working. Therefore, the branchline is designed to handle at most 40% of the feedstock import. As explained in the evidence submitted during the second open record period, the maximum capacity of the branchline for feedstock import and renewable diesel export is approximately 100 train cars per week. All told, including the clay import and running at full rail capacity (as contingency for any lack of available marine transportation), the Project would be expected to generate three (3) trains per week.

These trains are anticipated to have a maximum of 100 cars and a maximum length of 6,630 feet with two locomotives. The maximum single length of track within the proposed branchline is roughly 7,500 feet, more than enough storage to accommodate the largest train without requiring backing movements or crossing delays. The maximum delay time at the only nearby road crossing—Kallunki Road—is estimated to be approximately 7.5 minutes for a maximum length train at 10 miles per hour.

As Mr. Cotten's February 2 memorandum explains, the design basis for the car storage component of the rail branchline was largely driven by requests of Burlington Northern-Santa Fe and Portland & Western railroad lines for more car capacity than NEXT originally proposed.

The railroads have requested 40,000 feet of siding track on the branchline, but NEXT is proposing 25,000 feet total, substantially smaller than the railroads would prefer.

In summary, the railroad branchline is not anticipated to operate anywhere near its capacity except in cases where marine transportation is disrupted. Staff proposes condition of approval no. 3, which provides as follows:

> "Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts."

NEXT has no objection to this condition. Should the Board wish to limit the rail activities to only those proposed, the Board could impose the following additional condition, which we understand will also be recommended by staff:

> "Rail transport to and from the site shall be limited to no more than 350 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained, and shall be provided to the County within seven (7) days of written request from the County."

NEXT supports this condition as well.

B. Response to comments submitted by DLCD, 1,000 Friends of Oregon, and Columbia Riverkeeper.

Despite having timely notice, the Oregon Department of Land Conservation and Development ("DLCD") did not submit any official comments until 9:30 p.m. the evening before the Board Hearing. This obviously made it extremely difficult for NEXT to provide a detailed response to the comments during the hearing, thus NEXT does so now.

DLCD raised two primary issues regarding the Applications. First, DLCD essentially argued that the proposed rail branchline was actually a "rail yard" or something other than a "rail branchline," and therefore not allowable on PA-80 zoned-land. Second, DLCD raised a number of issues concerning NEXT's farm impacts analysis required under ORS 197 as described above. As explained below, the Board can and should reject DLCD's comments.

1. The proposed rail branchline is not a "railyard."

DLCD is incorrect as a matter of law that the proposed rail branchline is a "railyard" or "switchyard." This is because there are no applicable definitions of any of the above terms in DLCD's rules, applicable statutes, or other governing law. As explained above, Oregon courts have accepted the common industry definition of the term "branchline," and a letter from Portland & Western Railroad explains that the proposed rail improvements are indeed a "branchline." **Exhibit 4**.

As a practical matter, the branchline provides a connection to the available rail line in the area and is configured to allow cars to be loaded and unloaded. As Mr. Cotten explained during the hearing, the rail layout is intended to allow cars to be brought in, unloaded, and turned around. The branchline does not serve as a railyard that would, for example, move many types of freight from truck to rail, nor does it serve as a "switch yard," because it does not direct multiple trains into different travel directions.

2. The Application satisfies the farm impacts test.

NEXT has provided substantial evidence responding to DLCD's and 1000 Friends/Columbia Riverkeeper concerns regarding the farm impacts test.

DLCD and 1000 Friends of Oregon submitted written testimony on the day of the hearing. 1000 Friends submitted additional testimony in cooperation with Columbia Riverkeeper on January 26. Much of this testimony parroted the concerns identified by DLCD, namely that the County Staff Report and the Applications had failed to sufficiently identify and analyze accepted farm practices under the farm impacts test.

To varying degrees, DLCD and1000 Friends mischaracterize the significant change/significant cost analysis. In *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 459 (2019), the Oregon Supreme Court explained the significant change/significant cost test in ORS 215.296(1–2) as follows:

> "To summarize, when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice, the farm impacts test in *ORS 215.296(1)* requires an applicant to prove that the proposed nonfarm use (1) will not force a significant change in the accepted farm practice *and* (2) will not significantly increase the cost of that practice. A "significant" change or increase in cost is one that will have an important influence or effect on the farm. For each relevant accepted farm practice, if the applicant cannot prove both of those elements without conditions of approval, the local government must consider whether, with conditions of approval, the applicant will meet the farm impacts test."

As explained above, NEXT's application addressed how the portions of the rail branchline subject to the test—noted as Sections A and B in the Applications—will not force a significant change or significantly increase the costs of accepted farm or forest practices on surrounding lands devoted to farm or forest use. NEXT did so by identifying the potential farm lands impacted by the rail branchline (namely, those parcels that are adjacent to the branchline) and the accepted farm practices on those lands (namely, hay and other crop production). The Application explains that such crops are relatively immune to the presence of rail and railcars, but also identified the project's potential impacts on farm vehicle access.

The original application was bolstered by additional evidence and argument submitted by NEXT on December 14, which analyzed both sections of the rail branchline (the De La Cruz parcel and

the siding track located between the proposed production facility and Hermo Road) separately. Staff concluded that there is no evidence that the proposed branchline could force a significant change in, or significantly increase the costs of accepted farm practices on lands surrounding the branchline. Mr. Mike Seely provided additional information regarding his particular mint harvesting practices and the potential impacts of the rail branchline on his ability to impact some of his fields. NEXT addressed that information in its second open record submittal and again in this letter, below.

To ensure that rail crossings could be managed consistently with the access needs of surrounding landowners, County staff proposes Condition 3, which requires NEXT to "prepare a management plan for the rail crossings providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts. The plan shall be subject to County review and approval." The Applicant accepts this condition.

In identifying accepted farm practices, an applicant is not required to be omniscient in its understanding of the peculiarities of each farm practice, and when analyzing the potential impacts of a non-farm use on surrounding farmlands a local government "is not required to perform the impossible task of proving a negative." *Gutoski v. Lane County*, 34 Or LUBA 219 (1998). Neither 1000 Friends, DLCD, nor Columbia Riverkeeper has identified accepted farm practices beyond those identified by NEXT and Mr. Mike Seely; therefore, the Board can conclude that NEXT has carried its initial burden under the significant change/significant cost test.

DLCD argues that the *Stop the Dump* case, cited above, requires a "cumulative impacts" test which was not done in the CUP application. The Board should reject this comment because it mischaracterizes *Stop the Dump* and ignores the facts in the record.

As an initial matter, the CUP application examined potential cumulative impacts (see CUP application at 17–18) and concluded that there were no non-significant impacts which in aggregate could create a significant change or significantly increase the costs of an existing farm activity.

The Court's formulation of the farm impacts test at least recognizes that not all applications require the same level of searching inquiry: it qualifies the inquiry to situations "when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice." *Id.* NEXT identified the farm practices it believed to be potentially impacted by the rail branchline and the most likely potential impacts (farm access disruptions). Farm access for mint harvesting was also raised by Mr. Seely and 1000 Friends of Oregon/Columbia Riverkeeper, and their arguments are addressed below. Other than these, no parties have identified another existing "particular accepted farm practice" that could be affected by the rail branchline and which could be combined with other impacts of the branchline to create a cumulative impact. Accordingly, there is no evidence in the record of "cumulative impacts" that the County has failed to consider.

3. DLCD's speculations regarding impacts to the Beaver Drainage Improvement Company, water table impacts, and spill containment were addressed in the second open record period.

DLCD raised a number of speculative and undefined concerns regarding potential impacts of the local water table, Beaver Drainage Improvement Company ("BDIC"), and hazardous chemicals on surrounding farm activities. As an initial matter, the Board should reject these comments for the following reasons. First, they are mere speculation about impacts and not supported by evidence. Second, DLCD's comments about hazardous chemicals and spill response for the Production Facility are not relevant to the significant change/significant cost test because the Production Facility is located in an industrial zone and is not subject to that test. Finally, concerns regarding the potential impacts on water levels and the BDIC due to potential wetland mitigation are not relevant because NEXT's wetlands mitigation is not part of the Applications. Even if they did, wetland mitigation is an outright permitted use in the PA-80 zone and therefore is not subject to County approval.

Nonetheless, the Applicant provided evidence during the first open record period that addresses each of these arguments.

With regard to DLCD's questions about potential impacts to ground water associated with crossing and relocating existing drainage infrastructure ditches and filling wetlands, evidence in the record (as explained in more detail in response to BDIC's comments) demonstrates that the ditch proposed to be replaced will be sized to convey at least as much water as the existing one does, and the proposed renewable diesel production facility will obtain applicable DEQ permits to protect groundwater quality during construction and operation. Furthermore, the facility will implement best management practices to protect groundwater quality in accordance with DEQ standards; these are described in the GSI Water Solutions memorandum regarding Groundwater Protectiveness Measures submitted during the first open record period, as well as NEXT's updated drainage plan also submitted during the first open record period.

DLCD's apparent speculation regarding impacts to groundwater quantity are misplaced. At least as far as the Production Facility is concerned, evidence submitted by NEXT demonstrates that the only component of the Project subject to the significant change/significant cost test—the rail branchline—will be drained via a swale that meets the DEQ's SLOPES V standard. Thus, the Board can conclude that the branchline will re-infiltrate much of the surface storm water. However, as local governments are preempted from regulating ground water quantity, which is the sole purview of the Oregon Water Resources Department,[2] the Board should reject DLCD's comments regarding ground water quantity.

With regard to concerns about hazardous chemicals and spill containment, evidence submitted during the first open record period establishes that NEXT will develop a Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), and an EPA-approved Spill Prevention

[2] *See Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624 (2000).

Control and Countermeasure Plan. To graphically illustrate spill containment measures at the proposed facility, Mackenzie engineers have annotated the facility drainage plan (Sheet C1.30, **Exhibit 5**) to depict the proposed spill containment berms around tanks, the equipment pads with spill containment areas, and the proposed stormwater swales. All runoff from the facility will be conveyed to a centralized treatment facility designed to remove potential contamination from the stormwater before it is discharged from the site. Railroad operators are further required by federal and state law to prepare oil spill response plans and to utilize rail cars meeting the latest safety standards to minimize the potential for impacts on nearby lands.

With regard to NEXT's involvement with the BDIC, all landowners in the Beaver Drainage District are assessed an annual fee, and NEXT Renewable Fuels will pay the assessment as required. The applicant will maintain its own private stormwater maintenance facilities and will provide access to the Beaver Drainage Improvement Company to maintain their facilities in accordance with their access rights conveyed under existing easements.

4. The Project will not force a significant change in, or significantly increase the costs of, Mr. Seely's mint farming activities.

During the first open record period, 1000 Friends and Columbia Riverkeeper submitted comments arguing that the proposed rail branchline could cut off Mr. Seely from his mint fields due to train movements.[3] During the second open record period, NEXT provided responsive testimony and evidence that demonstrates the following:

- Mr. Seely will have unbroken access to his east fields via Kallunki Road and west fields via Hermo Road.
- The proposed rail branchline does not cut off Mr. Seely from any of his other fields because he does not have a leasehold interest in Port of Columbia County property south of the branchline.
- The proposed branchline provides a train storage length of roughly 7,500 feet, substantially longer than the longest (6,630 feet) train that the facility is designed to accept. This means that the largest possible train to ever service the facility can be stored on NEXT's branchline without it having to be broken up or without any backing movements on existing crossings.
- The maximum potential length of time required to cross the Kallunki Road is approximately 7.6 minutes with the largest possible train.

[3] This testimony appears to assume that a new rail crossing of Hermo Road is proposed; this is not the case. Therefore, there is no way for a train to block Hermo Road for any length of time under the proposed design.

The record demonstrates that with the maximum train size, Mr. Seely would experience a delay of approximately 7.5 minutes crossing Kallunki Road, and no delay crossing Hermo Road. This potential delay would only pertain to Mr. Seely's smaller parcels east of Kallunki Road. However, the Board can find that this impact is not significant because there is no evidence or argument that such a short delay[4] could cause a significant change in or significantly increase the costs of Mr. Seely's mint farming. Even so, the chances of such a delay occurring with any frequency are minimal because they would occur only if a train of maximum length happened to be crossing Kallunki road at the same time Mr. Seely's equipment was waiting to cross the tracks.

C. Comments regarding the negotiations between NEXT and the Beaver Drainage Improvement Company are not relevant to the approval criteria.

Generally, most comments submitted by and about the Beaver Drainage Improvement Company pertain to NEXT's wetland mitigation plan, which is not before the Board.[5] As stated in our January 17 letter, NEXT's wetland mitigation proposal is part of its DSL/USACE Joint Permit Application. Accordingly, the Board should reject the BDIC's comments addressing the wetland mitigation plan.

BDIC's comments regarding the proposed relocation of an existing drainage ditch were addressed by NEXT in its second open record submittal, dated February 2nd. This submittal included a plan showing how the proposed relocated ditch can and will provide equivalent or better flow as the existing ditch.

The BDIC also commented that the Project violates CCZO 300, 681(B)(2) and 1170 because it will impact drainage and irrigation. Note that in doing so, the BDIC does not identify any specific farms or farming practices that could be affected, and does not offer an evidence to support its claims, so its comments (like DLCD's) are entirely speculative. CCZO 300 sets out the standards applicable in the PA-80 zone, which, as already discussed, is germane only as to the proposed branchline. In that regard, Staff Report Finding 174 concluded that, "[d]ue to its relatively small area (approximately 12.3 acres), the proposed rail branchline can be conditioned to resolve potential conflicts with agricultural activities as detailed in the response to Section 300, and there are not nearby forest zones with forestry activities." Staff Report at 55. Further, "[w]ith the proposed condition of approval, existing agricultural uses will continue to function consistent with to the current status quo of farmland adjacent to existing rail and electrical transmission lines." On this basis, the Board can reject the BDIC's comments concerning compliance with CCZO 300.

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[4] Note that Mr. Seeley's window for mint harvest was days, not mere minutes.

5 As explained above, Wetland creation and enhancement is permitted outright in all EFU zones in Oregon, including PA-80, and therefore cannot be considered a non-farm impact for purposes of the farm impacts test. Regardless, the vast majority of wetlands required to be mitigated are impacted by the Production Facility, not the rail branchline; these impacts cannot be considered as part of the farm impacts test because the Production Facility is located in the RIPD zone.

There is no CCZO 681(B)(2). However, CCZO 683.1(B)(2) requires uses within the RIPD zone to address any impact on the development area and mitigate adverse impacts considering "[e]xisting land uses and both private and public facilities and services in the area." The Staff Report found this condition satisfied, observing that:

> "The nearby industrial uses are not sensitive to expansion of industrial activity at Port Westward. The existing dock serves these industrial uses and is particularly well suited for serving the proposed use for shipment of feedstock and finished products. The existing agricultural uses to the east and south are not likely to be negatively impacted by the proposed industrial use due to the applicable County land use regulations and permit standards, fire code provisions implemented by the Clatskanie Rural Fire Protection District, and multiple state and Federal permits which the applicant will need to obtain prior to beginning operation of the facility. The proposed site development is consistent with existing land uses and available facilities and services."

Staff Report at 18–19.

CCZO 1170 sets out standards for the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone. The Staff Report observes that the only related impact from the Project is the branchline's intersection with McLean Slough. These concerns have been addressed above in Section III.C.1.

The BDIC also argued that future (not current) farm activities (such as livestock grazing) could be affected by the rail spur. The Board should reject this argument because speculates about future land uses, not current ones, and because neither NEXT nor the County is required to consider future or speculative farm practices under the farm impacts test. *See, e.g., Womelsdorf v. Jackson County*, 62 Or LUBA 34 (2010).

The Board should also reject BDIC's argument that NEXT's application lacks a required liability waivers for normal farm activities. These are not required as part of the County's criteria or application requirements, rather they are required as a condition of approval. County staff proposes this condition and NEXT will provide the required waivers if the application is approved.

To the extent comments by or about the BDIC pertain to application approval criteria, the Applications have addressed these comments and the Staff Report has found the concerns sufficiently addressed by the Applications and conditions for approval that NEXT does not object to. Regarding the BDIC's issues pertaining to NEXT's wetland mitigation plan, that plan is not before the Board. In any event, the mitigation plan will not burden landowners. As noted in the Applications and Staff Report, sufficient infrastructure is in place or proposed to collect, treat, and discharge runoff. Branchline Application at 33; Staff Report at 69–70 ("Staff finds the proposal can be conditioned to be consistent with the County's Stormwater and Erosion Control Ordinance.").

Finally, no local, state, or federal law gives the BDIC veto power over the Board's approval as recommended by the Staff Report, and NEXT is not required to obtain an approvals from BDIC prior to obtaining approval from the County on its application. NEXT will provide access easements for any relocated BDIC ditch or other infrastructure, but like any arms-length real estate transaction necessary to implement a development plan, that is between NEXT and the BDIC, and not a matter for consideration by the Board. Similarly, the lease between the Port and NEXT is purely a matter of real estate law and has no regulatory relevant to the Applications.

For the above reasons, the Board should reject BDIC's comments.

V. THE BOARD SHOULD REJECT OTHER OPPOSITION COMMENTS.

A significant portion of the public comments describe issues that are unrelated to the criteria, which should not factor into the Board's decision. A fair number of those comments—which raised general concerns about fuels production, rail operations, and farm/habitat conflicts—are from people who live outside Columbia County, either Portland or other parts of Oregon and Washington; these comments generally discuss broad issues such as sustainability, a general opposition to any fuels production, and the regional habitat. NEXT nevertheless responds to the key issues that fall within this category.

A. The Project will complement the character and development of the surrounding area.

As described above, the Project includes two applications, one for the facility and one for the rail branchline. These are separate but related. Importantly, few project opponents have argued that the Renewable Diesel facility itself should be denied or fails to meet the approval criteria. The sole argument that appears to have been raised is a general statement that the Project does not "compliment the character of the surrounding rural area," as provided in the purpose statement of the RIPD zone (CCZO 681).

As an initial matter, CCZO 681 is a purpose statement and not an approval criterion. *Ellison v. Clackamas County*, 28 Or LUBA 521, 525 (1995). The Rural Industrial goal and policies include a related provision to which the Application must conform as a general matter. However, that specific policy is that the Project "complement the character and development of the surrounding area," not the surrounding "rural" area. Regardless, the Board can find that the Project compliments the character of the surrounding area and surrounding rural area for the following reasons.

First, the County's Comprehensive Plan has already determined that the Port Westward Exception Area is suitable for uses such as "a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant." With regard to compatibility, the Port Westward Exception Statement explains that:

> 1. The 900-acre site is large enough to allow [an] adequate buffer area to protect adjacent agricultural users.

2. These types of large-scale industrial users do not create pressure for housing or other uses on adjacent farmland.

3. The requirements of the Department of Environmental Quality will assure that new industry does not pollute the adjacent air, water, or land.

Second, the Application explains that there are already substantial existing industrial developments in the vicinity, "including the Columbia Pacific Bio-Refinery, the PGE Tank Farm, the PGE Port Westward Generating Facility, the PGE Beaver Generating Facility, the Clatskanie People's Utility District electrical substation, roadways, rail lines, utilities, drainage facilities, levees, pipelines, electrical transmission lines, the dock, and associated support facilities, such as electrical facilities, stacks, a water tower, wastewater treatment facilities, parking, and wetland conservation." SDR Application at 10. The Application also explains, and the Staff Report concurs, that the existing industrial activities at Port Westward demonstrate how industrial and surrounding uses can coexist. It is also worth noting that the Board has voted on more than one occasion to expand the RIPD zone. If this decision is upheld, the Project will enjoy a substantial buffer of additional RIPD-zoned land between it and the vast majority of PA-80 zoned land in the vicinity.

Third, there is no substantial evidence that the production facility itself would adversely impact farmland. Just the opposite: the Project will actually improve access for farm vehicles with the proposed construction of the Hermo Road extension at the applicant's expense. Also, the Project will be required to have a complete spill containment and hazard management plan approved by DEQ that will ensure that no hazardous materials could spill from the site onto surrounding farmland. As shown on **Exhibit 5**, this plan is integrated into the engineering of the Production Facility. Regarding availability of crossing access for farm activities at times consistent with farming activity needs, County staff recommended a "condition of approval for crossing access and management to address this issue." Staff Report at 49. NEXT agrees to such condition, as described above. But, staff found "no evidence the proposed rail development—the subject of the CU application—will force a significant change in farm or forest practices." *Id*.

Fourth, to the extent that considerations related to this policy overlap with the farm impacts test, the Project's satisfaction of that requirement has been discussed in detail, above.

In summary, there is no substantial evidence in the record to suggest that the Renewable Diesel facility itself is not compatible with the surrounding areas.

B. The Project is designed to minimize risks to water quality.

Some public comments raised concerns about how the Project may impact general water quality. These concerns were largely addressed above in Section IV.B.3. In sum, the Project will involve DEQ permits to protect groundwater quality during construction and operation, and NEXT will

implement robust water quality practices with a firm intention to minimize any risk to water quality.

C. Any increase in vehicle and rail traffic will be within established limits and capacities.

Several comments raised concerns about increases in vehicle and rail traffic association with the Project. These concerns are not related to an approval criterion and the Board can approve the Applications despite these concerns. However, the Applications include a traffic impact analysis ("TIA") that found, as summarized in the Staff Report, "all study intersections meet applicable Columbia County, Oregon Department of Transportation, and City of Clatskanie mobility standards in 2020, in 2024 without NEXT Renewable Fuels, and in 2024 with NEXT Renewable Fuels and improvements to Hermo Road as proposed by the Applicant. The TIA did not identify a need for mitigation strategies." Staff Report at 29. There is thus no evidence that the Project will create any particular hardships regarding increased traffic.

D. The Project will not damage dike roads and surrounding infrastructure.

Relatedly, some commenters were concerned that the Project could damage dike roads and surrounding infrastructure. Again, these concerns are not relevant to the approval criteria and can be rejected. Moreover, the TIA did not identify any such concerns and the Project is thus not expected to involve any related higher risk than any other type of development.

E. The Project is designed to minimize risks from liquefaction.

Similarly, liquefaction and earthquake risks appeared in some public comments. These risks are not related to approval criteria and should not affect the Board's decision. Regardless, the Project is subject to and will comply with all related local, state, and federal requirements to minimize risks associated with liquefaction and earthquakes.

F. The Project incorporates waste and spill measures that meet or exceed state and federal standards.

Some commenters raised concerns about waste and spill measures. These are also addressed above in Section IV.B.3. Importantly, NEXT intends to incorporate and adopt waste and spill measures that meet or exceed state and federal standards.

G. Noise, air, and odor pollution are not included in approval criteria

In the same vein, some commenters are concerned about noise, air, and odor pollution. These are not approval criteria and are thus not appropriate reasons to deny the Applications.

VI. CONCLUSION

The Applications satisfy all applicable criteria and enjoy support from Columbia County residents who recognize the Project's positive impact on the local economy and environment, as well as its pronounced importance in combatting global climate change. County staff recommends approving the Applications. NEXT respectfully asks that the Board approve the Application with the conditions proposed by County staff.

Best regards,



Garrett H. Stephenson

GST/jmhi
Enclosures

PDX\133639\242725\AMU\32899600.3

State of Oregon Department of Environmental Quality

Renewable Diesel 101

Contact: OregonCleanFuels@deq.state.or.us
700 NE Multnomah Street Suite 600 Portland, OR 97232

What is renewable diesel?

Renewable diesel is produced by running fats and oils from plants and animals instead of crude through a refinery, resulting in a biofuel that meets the ASTM D975 standard for diesel. Renewable diesel can be made from many waste or renewable materials including: rendered tallow, fish waste, used cooking oil, inedible corn oil, soybean oil, canola oil, and others. A typical facility can switch between or run multiple different materials.

Renewable diesel is a drop-in fuel which means it can be used as a one-for-one replacement for diesel or can be mixed with diesel at any rate to produce a blended product requiring no changes to the vehicles or fueling infrastructure.

Is renewable diesel the same as biodiesel?

While they can be made from the same materials, biodiesel and renewable diesel have different manufacturing processes that result in products with different molecular structures - biodiesel is a methyl-ester and renewable diesel is a hydrocarbon. The difference in the chemical properties of biodiesel is what limits the amount that can be blended with petroleum diesel, which is also a hydrocarbon. There is no limit for the amount of renewable diesel that can be blended with petroleum diesel because they are chemically identical. Biodiesel, renewable diesel, and petroleum diesel can all be blended together for use in diesel vehicles.

What are the emissions benefits from using renewable diesel?

Using renewable diesel can cut lifecycle greenhouse gas emissions up to 85% depending on what materials it is made from. Waste products such as tallow and used cooking oil have the greatest reductions while vegetable oils are slightly less. Renewable diesel lowers tailpipe emissions such as particulate matter, carbon monoxide, total hydrocarbons, and nitrogen oxide.

What are the other benefits from using renewable diesel?

Renewable diesel has gained in popularity largely because its lower carbon footprint, but also because it:

- has a higher cetane value than biodiesel
- has the same fuel economy or power as petroleum diesel
- produces a much cleaner exhaust and dramatically reduces the need for regeneration in vehicles with particulate filters, which in turn reduces maintenance costs for fleet owners
- does not contain oxygen, which avoids problems that biodiesel has with freezing, storage, and algae growth
- is made from products that would otherwise be sent to a landfill

Is renewable diesel available in Oregon?

The production of renewable diesel has grown significantly over the last several years and this trend will continue as billions of gallons of additional capacity have been recently announced. Tens of millions of gallons have already been delivered to Oregon because of the Clean Fuels Program, and that demand will remain strong as DEQ expands its targets beyond 2025. Contact your fuel supplier to find out current prices and availability of renewable diesel.

How is renewable diesel treated under the Oregon Renewable Fuel Standard?

The Oregon Renewable Fuel Standard recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement for diesel.

How is renewable diesel treated under the Portland Renewable Fuel Standard?

The Portland Renewable Fuel Standard does not recognize renewable diesel as a way to achieve their renewable fuel standard.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

MAUL FOSTER ALONGI
3140 NE Broadway Street | Portland, OR 97232 | 971 544-2139 | www.maulfoster.com

January 25, 2022
Project No. 1724.01.03

Garrett Stephenson
Schwabe Williamson & Wyatt
1211 SW Fifth Avenue Suite 1900
Portland, OR 97204

Re: NEXT Renewable Fuels Oregon, LLC—Greenhouse Gas Emissions Summary

Dear Garrett:

NEXT Renewable Fuels Oregon, LLC (NEXT) is proposing to construct a renewable diesel, naphtha, and jet fuel manufacturing facility in Clatskanie, Oregon (proposed facility). The proposed facility will receive and process raw oil feedstocks, including vegetable oils and animal fats, to produce renewable fuel products for sale in markets in western states with Low Carbon Fuel Standards (LCFS). Implementation of LCFS creates an inelastic marketplace requiring that lower carbon fuels replace conventional petroleum-based fuels in ever-increasing amounts. The renewable fuels produced by NEXT may represent a component of the lower carbon fuel portfolios necessary to achieve LCFS program goals.

LCFS programs establish carbon intensity targets for transportation fuels. Carbon intensity represents a measure of greenhouse gas (GHG) emissions over the entire lifecycle of a fuel, accounting for extraction, production, transportation, and end consumption. During construction and operation of the proposed facility, GHG emissions will be emitted by anthropogenic sources such as non-electrical construction equipment, non-renewable source of electricity generation, and the combustion of natural gas in process equipment, and biogenic sources such as the combustion of gases generated from renewable feedstocks in the Hydrogen Plant.

All GHGs remain in the atmosphere long enough to become well mixed, meaning the amount of GHGs measured in the atmosphere is roughly the same all over the world, regardless of the source of emissions (EPA 2021a). Climate change impacts result from the incremental addition of GHG emissions from millions of individual sources, which collectively have a large impact on a global scale (CEQ 2016). As a result, it is currently not possible to correlate how the proposed facility will directly contribute to a specific climate change effect on public health and safety. GHGs do not have direct human health effects like some other regulated pollutants. Instead, the overall significance of GHG emissions from the proposed facility should be evaluated by analyzing the carbon intensity of the renewable fuel products from NEXT in relation to that of conventional petroleum-based fuels.

The proposed facility will produce approximately 17,700,000 barrels per year of renewable diesel and much smaller volumes of renewable naphtha and renewable jet fuel. This means the production of renewable diesel from NEXT will offset an equivalent amount of conventional petroleum-based fuels in the marketplace, leading to an overall net reduction in GHG emissions from existing conditions, as detailed below.

The carbon intensity for conventional diesel is 100.74 grams of carbon dioxide equivalents per megajoule of fuel (g-CO_2e/MJ). NEXT will produce renewable diesel with a weighted average carbon intensity of 48.4 g-CO_2e/MJ, accounting for each raw oil feedstock, as derived from the approved fuel pathways established under the Oregon Clean Fuels Program. In other words, NEXT will produce fuels that emit less than half (48.4%) as much GHG over their lifecycle as compared to conventional diesel. Because the renewable diesel produced by NEXT will displace conventional diesel, it will actually reduce the amount of GHG emissions by 51.6% from the existing condition. As demonstrated in the table below, NEXT's renewable diesel will result in a net reduction of approximately 5,409,379 metric tons of CO_2e per year ($MTCO_2e/yr$) in the LCFS transportation fuels market.

Table 1. Net Reduction in Lifecycle GHG Emissions from the Proposed Facility

Fuel Type	Default High Heat Value [1] (MMBtu/gal)	Annual Production Rate [2] (bbl/yr)	Carbon Intensity (g-CO_2e/MJ)	Annual GHG Emissions Estimate ($MTCO_2e/yr$)
Renewable Diesel	0.123	17,709,902	48.4 [3]	4,667,499 [a]
Conventional Diesel	0.127	17,709,902	100.74 [4]	10,076,877 [a]
Total Net Reduction in Annual GHG Emissions Estimate =				**-5,409,379 [b]**

NOTES:
[a] Annual emissions estimate ($MTCO_2e/yr$) = (carbon intensity [g-CO_2e/MJ]) x (1,055.06 MJ/MMBtu) x (42 gal/bbl) x (default high heat value [MMBtu/gal]) x (annual production rate [bbl/yr]) x (lb/453.592 g) x (ton/2,000 lb) x (MT/1.102 US tons)
[b] Total net reduction in annual GHG emissions estimate ($MTCO_2e/yr$) = (renewable diesel annual emissions estimate [$MTCO_2e/yr$]) - (conventional diesel annual emissions estimate [$MTCO_2e/yr$])

REFERENCES:
[1] Value derived from Oregon Administrative Rule (OAR) 340-253-8010, Table 6 "Oregon Energy Densities of Fuels."'
[2] Represents proposed facility maximum renewable diesel operating mode.
[3] Carbon intensity derived from Oregon Clean Fuels Program regulatory default carbon intensity per OAR 340-253-8010, Table 9. New legislation to establish a Clean Fuels Program in the state of Washington is currently in rulemaking that may establish carbon intensity standards for transportation fuels used in Washington. The carbon intensity value for renewable diesel specific to the Washington Clean Fuels Program is expected to be similar to the California and Oregon-specific carbon intensity values.
[4] See OAR 340-253-8010, Table 4 "Oregon Carbon Intensity Lookup Table."

To put this in perspective, the net reduction of 5,409,379 metric tons of GHG emissions is equivalent to removing approximately 1.2 million passenger vehicles from roadways, assuming the typical passenger vehicle emits about 4.6 metric tons of GHGs per year (EPA 2021b).

Hence, there will be a net positive impact to public health and safety by constructing and operating the proposed facility.

Sincerely,

Maul Foster & Alongi, Inc.



Brian Snuffer Zukas, PE
Project Air Quality Consultant

Attachments: References

cc: Gene Cotten, NEXT Renewable Fuels Oregon, LLC
Brien Flanagan, Schwabe, Williamson & Wyatt
Chad Darby, Maul Foster & Alongi, Inc.

REFERENCES

(EPA 2021a) EPA. July 27, 2021. Overview of Greenhouse Gases. https://www.epa.gov/ghgemissions/overview-greenhouse-gases (accessed September 28, 2021).

(EPA 2021b) EPA. July 21, 2021. Greenhouse Gas Emissions from a Typical Passenger Vehicle. https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle (accessed January 25, 2022).

(CEQ 2016) Council on Environmental Quality. August 1, 2016. Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews. https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf (accessed September 29, 2021).

[redacted]

From: BARNES Susan P * ODFW <Susan.P.BARNES@odfw.oregon.gov>
Date: January 18, 2022 at 1:46:20 PM PST
To: Robin McIntyre <Robin.McIntyre@columbiacountyor.gov>
Cc: CARY Dan * DSL <Dan.CARY@dsl.oregon.gov>, Catie Kerns <ckerns@stewardshipsolutionsinc.com>
Subject: NEXT Renewables - ODFW clarification

Robin;

The Oregon Department of Fish and Wildlife (department) would like to provide additional clarity on its input to Columbia County (dated 12-21-21) regarding NEXT Renewables' proposed biofuels development project. The department considers development of renewable energy infrastructure to be essential to solve the climate crisis. The department supports well-sited, adequately mitigated, and responsibly operated renewable energy developments. Well-sited, adequately mitigated, and responsibly operated renewable energy developments are:

1. sited in locations that avoid or minimize impacts on fish, wildlife, and their habitats;
2. assessed to determine how unavoidable impacts may be adequately mitigated;
3. implemented with temporally and spatially adequate mitigation in place; and
4. operated in compliance with regulatory requirements or conditions established to protect fish, wildlife, and their habitats.

The proposed facility is a renewable energy development project. The proposed project site is zoned for industrial development. While the site does provide some habitat functions and values to fish and wildlife the current habitat is impacted and degraded by past and current management practices. The developer is proposing habitat mitigation that, once completed, the department expects should provide a net benefit to the affected fish and wildlife species that currently utilize the impacted habitat. The department remains available if the Department of State Lands requests technical assistance on elements of the mitigation plan specifically intended to compensate for effects on fish and wildlife habitats.

In summary, the department typically seeks to direct new terrestrial and freshwater developments to already degraded, low functioning habitats that are unlikely to be become high functioning. The department believes this proposed renewable energy project is sited appropriately, and it is consistent with the department's climate goals.

Thank you for the opportunity to provide input.

susan

Susan Barnes
Regional Wildlife Conservation Biologist
West Region – Northwest

Oregon Department of Fish and Wildlife
17330 SE Evelyn Street

Clackamas, OR 97015
Email: susan.p.barnes@odfw.oregon.gov
Phone: 971-673-6010

November 19, 2021

Mr. Gene Cotten
NEXT Renewable Fuels, Inc
11767 Katy Freeway, Suite 705
Houston, TX 77079

Gene,

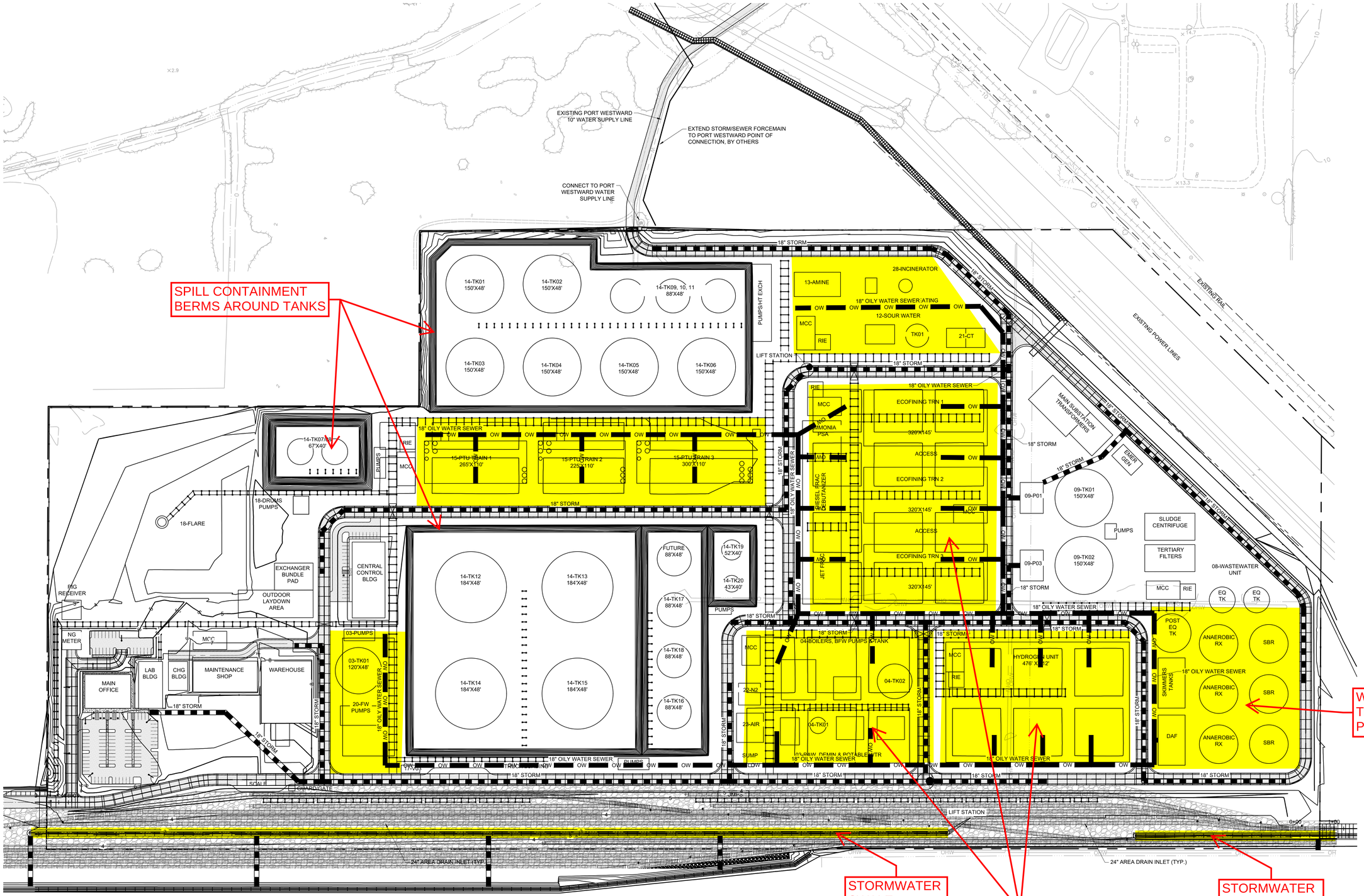
I understand the Columbia County planning staff has raised questions regarding the classification of the tracks that will built to support NEXT's Renewable Diesel facility at Port Westward. For PNWR contractual purposes, NEXT's rail tracks will be considered industry track, which is another term for branch line or spur. NEXT's track will connect to the existing branch line that services Port Westward. As a general matter, "branch line" is a broad term that encompasses any track that branches off from mainline track.

Portland & Western Railroad, Inc. also does not consider the tracks at NEXT's facility a "switch or rail yard." All cars entering and exiting NEXT's facility will be for NEXT's sole use at the site itself. A switch/rail yard's goal is to block cars for furtherance to other destination points. Let me know if you have additional questions.

Sincerely,

Matthew Artz

Matt Artz
Director, Sales and Marketing
Portland & Western Railroad, Inc.
1710 Midway Court
Centralia, WA 98531



WASTEWATER TREATMENT PLANT

STORMWATER SWALE

STORMWATER SWALE

EACH EQUIPMENT PAD WILL HAVE SPILL CONTAINMENT

LEGEND:

REFER TO SHEET C0.01 FOR GENERAL LEGEND

1 C1.30 DRAINAGE PLAN

100 0 50 100 200 400

(IN FEET)
1 inch = 100 ft.

Architecture ▪ Interiors
Planning ▪ Engineering

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Client
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Project
NEXT RENEWABLE FUELS, INC. PORT WESTWARD COLUMBIA COUNTY, OR

REGISTERED PROFESSIONAL ENGINEER OREGON JUNE 2, 2010 BRENT D. NIELSEN
EXPIRES: 12/31/22

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REVISION SCHEDULE

Delta	Issued As	Issue Date

SHEET TITLE:
DRAINAGE PLAN

DRAWN BY: CAM

CHECKED BY: BDN

SHEET
C1.30

JOB NO. **2200315.01**

COMPLETENESS SUBMITTAL SET - 7/8/2021

2200315\00\DRAWINGS\CIVIL\15-C1.30.DWG BDN 07/08/21 10:21 1:100

EXHIBIT D

COLUMBIA COUNTY BOARD OF COMMISSIONERS STAFF REPORT

January 12, 2022

Site Design Review, Use Permitted Under Prescribed Conditions in the RIPD Zone, Variance - Type II

Conditional Use Review – Type III

HEARING DATE:	January 19, 2022
FILE NUMBER:	DR 21-03, CU 21-04 & V 21-05
APPLICANT:	NEXT Renewable Fuels, Inc., Attn: Christopher Efird 11767 Katy Freeway, Suite 705 Houston, TX 77079 chris@nextrenewables.com (661) 201-2653
OWNERs:	Port of Columbia County PO Box 190 Columbia City, OR 97018 (503) 397-2888 NEXT Renewable Fuels, Inc. Felipe and Bobby De La Cruz 80393 Kallunki Rd Clatskanie, OR 97016
CONTACT:	Mackenzie, Attn: Brian Varricchione 1515 SE Water Avenue, Suite 100 Portland, OR 97214 (503) 224-9560 bvarricchione@mcknze.com
LOCATION:	81009 Kallunki Rd. Clatskanie, Oregon
TAX MAP ID #:	<u>Facility</u> Port of Columbia County: 8422-00-00100, 8422-00-00200, 8422-00-01100, 8421-00-00700, 8416-00-00200, 8416-00-00300 NEXT Renewable Fuels, Inc.: 8422-00-00300 <u>Branch Line</u> Port of Columbia County: 8421-00-00600, 8422-00-00400, 8422-00-00500, 8422-00-00600, 8423-B0-00700 De La Cruz: 8423-B0-00800
TAX ACCOUNT #:	<u>Facility</u> Port of Columbia County: 28060, 28063, 28064, 28065, 28107 NEXT Renewable Fuels, Inc.: 28062 <u>Branch Line</u> Port of Columbia County: 28060, 28063, 28064, 28065, 28107 De La Cruz: 28108

ZONING:	Facility Resource Industrial – Planned Development (RIPD) Branch Line Primary Agricultural Use Zone (PA-80) Both Riparian Corridors (RP); Wetland Area (WA)
SIZE:	Site 680 Acres Facility Development Area Approx. 150 Acres - 109 acres for the primary site development, ~41 acres for driveway, pipelines and associated improvements. Branch Line Development Area 12.3 Acres
REQUEST:	• Use Permitted Under Prescribed Conditions in the RIPD zone, Site Design Review for a proposed renewable diesel production facility at Port Westward Industrial Park • Variance to buffering and screening standards • Conditional use to allow a rail branch line in the PA-80 zone
APPLICATION COMPLETE:	07/15/21
150 DAY DEADLINE:	02/23/22

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SUMMARY

The applicant, NEXT Renewable Fuels proposes to develop a renewable diesel production facility at the Port Westward Industrial Park (Port Westward), within the Resource Industrial-Planned Development (RIPD) zone. The facility will produce renewable diesel fuel from materials such as cooking oil, animal fats and tallow, and corn oil. The applicant has submitted two separate applications, which the County has consolidated for review: (1) an application for a Site Design Review, Use Permitted Under Prescribed Conditions in the RIPD zone and Variance for the facility; and (2) a Conditional Use for the rail branchline in the Primary Agriculture – 80 Acres (PA-80) Zone.

The project proposed with this application includes the construction of a renewable diesel production facility consisting of multiple buildings (office, laboratory, warehouse, maintenance, process, controls, etc.), parking, private roadways, storage tanks, processing equipment, a gas flare, wastewater treatment facilities, outdoor laydown yards, electrical equipment, landscaping, and security fencing. Development of the proposed facility within the RIPD zone requires a **Site Design Review** application and approval of a Use Permitted Under Prescribed Conditions in the RIPD zone. Due to security requirements relating to fence height and line-of-sight, a **Variance** from landscaping and fencing requirements is proposed.

Primary site access is proposed from a driveway to Hermo Road, with secondary emergency access to Kallunki Road. The driveway is proposed within the RIPD zone. The applicant also proposes to develop a "rail branchline" that will be accessory to and serve the proposed renewable diesel production facility. The branchline is proposed to connect to Portland & Western Railroad's facilities to accommodate shipment of additional materials and potentially a small amount of finished product. Rail transport may amount to approximately 313 rail cars per week, on average. Access to the branchline will be from the Portland & Western Railroad line and the proposed fuel facility site. A gravel-surfaced rail crossing will be provided on Tax Lot 8423-00-00800. A portion of the rail branchline is outside the RIPD zone and within the Primary Agriculture (PA-80) zone southeast and southwest of the site – development of the branchline in the PA-80 zone requires a **Conditional Use** application.

Water, wastewater, and storm drainage utilities operated by the Port are proposed to be extended to the site to accommodate this rural industrial development. Electrical, natural gas, and telecommunications facilities are also proposed to be extended to the site.

Finished product and raw materials for facility operations will largely be transported by vessels utilizing the Port of Columbia County-owned dock on the Columbia River. A terminaling company that already operates at Port Westward will unload the feedstock and transfer it via their existing pipeline to the confluence with the Applicant's newly constructed pipeline. This is where the Applicant will take possession. The feedstock will be refined into renewable diesel. Finished products will be stored on-site before being transferred back to the terminal via pipeline to ship via barge and vessel from the Port Westward dock. A gravel service road is proposed adjacent to a portion of the pipe rack to allow maintenance access to the pipes.

The proposed construction of facility, pipelines, and branchline will result in temporary and permanent impacts to wetlands. The County requested recommendations from the Department of State Lands (DSL), Oregon Department of Fish & Wildlife (ODFW), and the Columbia Soil and Water Conservation District (SWCD) regarding the significance of the wetlands and received a recommendation from DSL that the impacted wetlands are not significant. The applicant has submitted applications to the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and proposes to perform off-site wetland mitigation south of the site. The proposed wetland removal and mitigation requires approval by the Department of State Lands and the US Army Corps of Engineers.

Application Timeline

The brief timeline below provides an overview of materials received by the County for the NEXT application. Staff raised concerns regarding the proposed branchline definition, water-related use definition, and wetland significance. The Applicant responded with updated application submissions on December 14, 2021.

- NEXT Pre-Application Conference: February 6, 2020
- NEXT Application Submissions: January 19, 2021
- County Incompleteness Letters: February 17, 2021
- NEXT Updated Application Submissions: July 13, 2021
    - Including significant changes to rail location and rail volume.
- NEXT ORS 215.427 Completeness: July 15, 2021
- NEXT Updated Application Submissions: August 12, 2021
- NEXT Memorandum on Interpretation of CCZO 1175.B, 1184.E and OAR 660-012-0065: September 30, 2021
- County Memo Identifying Critical Issues: sent October 25, 2021
- NEXT Updated Application Submissions: December 14, 2021

Staff Summary

Staff notes this multi-faceted application and staff report are complex and lengthy. In general, Staff finds the proposed facility is well-suited to the adopted intent of the Port Westward exception area and implementing RIPD zone. The RIPD zone is designed to be supportive of large-scale development and has relatively few requirements. As discussed in these findings, Staff finds the facility and associated branchline, driveway access, pipelines and utilities generally meet the development standards of the base zones, or can be met with proposed conditions of approval.

Where base zone requirements for landscaping and screening are not met, the applicant has requested a variance. There are also elements of the application's interaction with County code that have received additional scrutiny and are worth County Board review and determination. These items are outlined below.

- The applicant has provided evidence that indicates a variance to landscaping and screening standards to meet security requirements for sightlines and fence height is merited. Staff concurs. Please see Staff findings under Section 1504 for further information on the variance proposal.
- The proposed rail development through the PA-80 zone raised definitional concerns related to design of the proposed use and applicability of the statutory exemption for railroad branchlines in farmland. However, the applicant provided evidence from Portland & Western Railroad clarifying the design and definition of the proposed branchline and addressing Staff concerns. Please see Staff findings under Section 303 for further information on the railroad branchline use.
- A small portion of the project crosses the 25-foot riparian boundary of the McLean Slough. The application provides evidence the project relies on proximity and access to the waters of the Columbia River, and therefore can meet the County's code exemption for water-related uses. Please see Staff findings under Section 1170 for further information on riparian area protection and exemptions.
- The proposed facility and nearly all associated improvements interact with delineated wetland areas. In response to Staff concerns, the applicant worked diligently with DSL to evaluate and address significance of these wetlands. Consistent with County code provisions, the County has received a recommendation from DSL, and the applicant has provided evidence, that the delineated wetlands are not significant and should therefore

not be regulated by the County's wetlands overlay. The County has requested and received additional feedback from ODFW and CSWCD. All agency comments are included in Attachment 7. To be clear, regardless of County regulations the applicant must still meet DSL and Army Corps of Engineers requirements for wetlands fill, removal and mitigation. Please see Staff findings under Section 1180 for further information on wetlands significance and protection.

The remainder of this report includes findings for the proposed NEXT facility and associated rail branchline in relation to the applicable standards in the Columbia County Zoning Ordinance as well as the Columbia County Stormwater and Erosion Control Ordinance.

Figure 1 Aerial Map of Subject Property

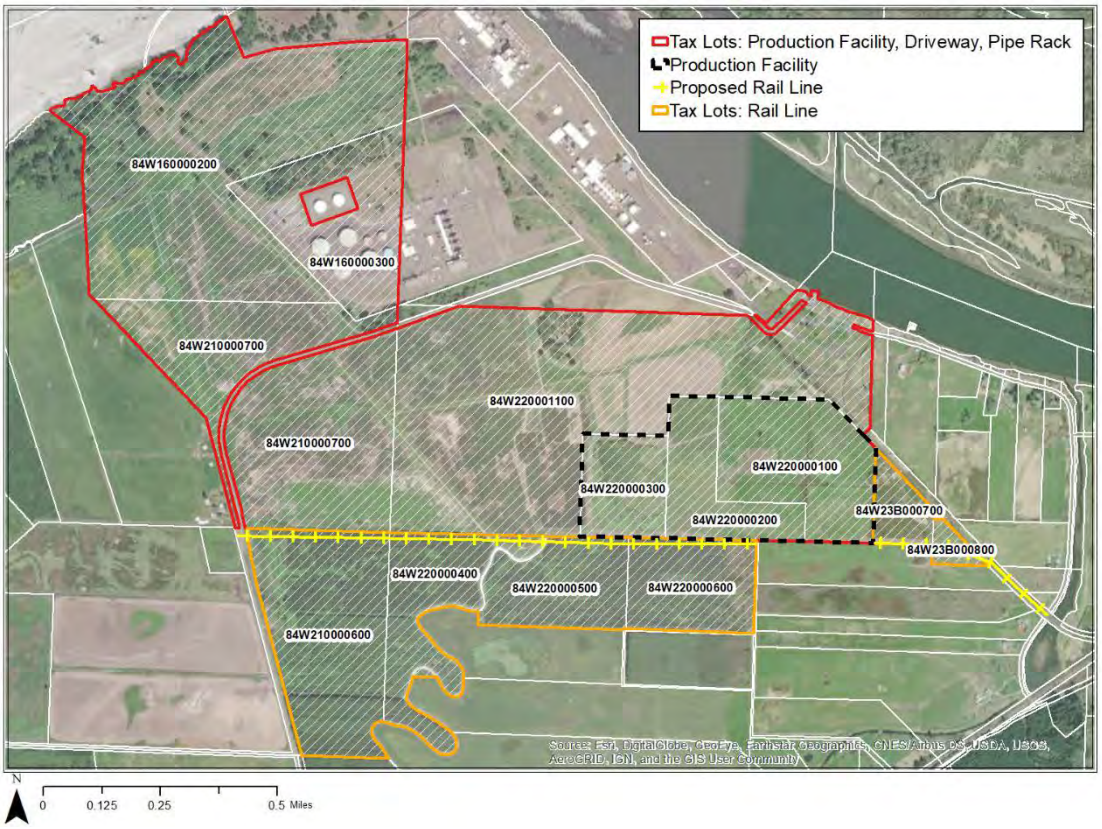
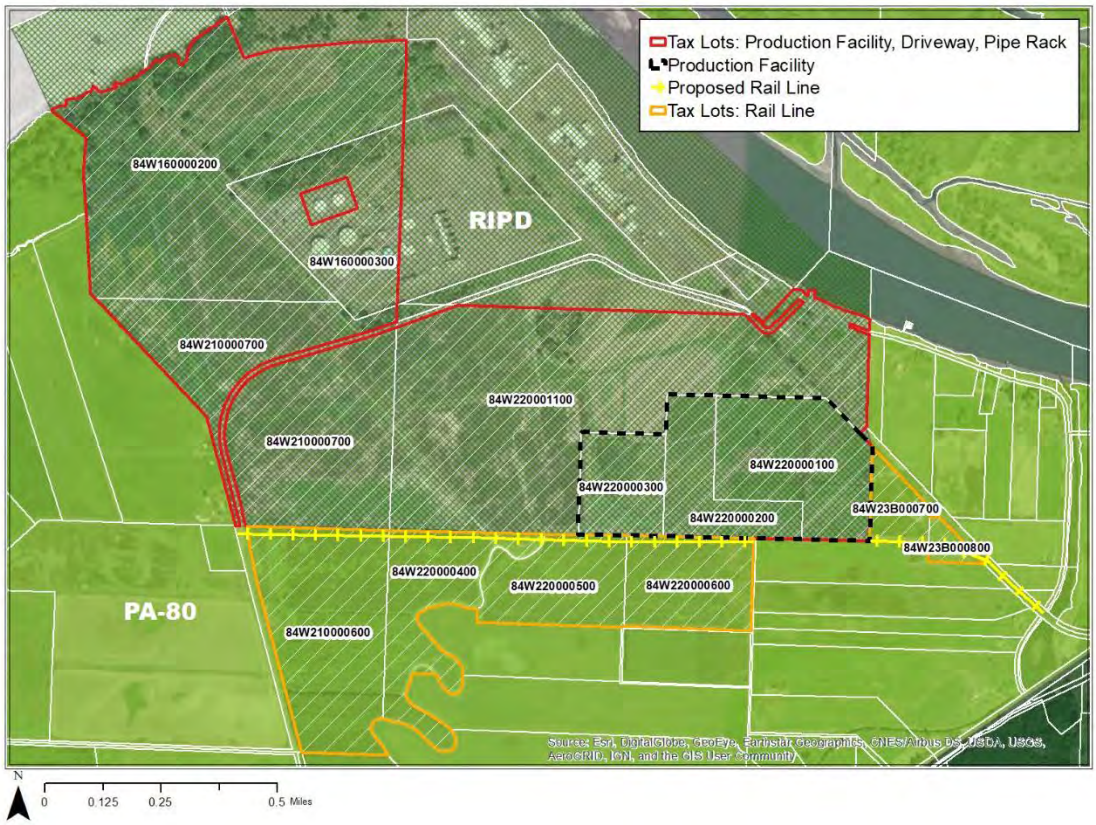


Figure 2 Zoning Map



REVIEW CRITERIA & FINDINGS - COLUMBIA COUNTY ZONING ORDINANCE:

Criteria Specific to the facility (DR 21-03 & V 21-05). The proposed facility, driveway access, pipelines, and utilities are located within the RIPD zone. These elements are addressed in findings for:

- Section 680 Resource Industrial – Planned Development (RIPD)
- Section 1550 Site Design Review
- Section 200 General Provisions
- Section 1300 Signs
- Section 1400 Off-Street Parking and Loading
- Section 1450 Transportation Impact Analysis
- Section 1504 Variances

Criteria Specific to the Rail Branchline in the PA-80 zone. Where the proposed rail branchline traverses the PA-80 zone, this staff report provides findings for:

- Section 300 Primary Agriculture Use Zone-80 (PA-80)
- Section 1503 Conditional Use Review

Criteria Applicable to Both Applications. Overlay zones are addressed for all elements of the proposal in findings for:

- Section 1100 Flood Hazard
- Section 1120 Sensitive Bird Habitat
- Section 1130 Historic Overlay
- Section 1170 Riparian Corridors
- Section 1180 Wetland Areas
- Section 1185 Natural Area Overlay
- Section 1190 Big Game Habitat
- Section 1603 Quasijudicial Public Hearings

Criteria Specific to the Facility

Section 680 Resource Industrial-Planned Development (RIPD)

681 Purpose:

The purpose of this district is to implement the policies of the Comprehensive Plan for Rural Industrial Areas. These provisions are intended to accommodate rural and natural resource related industries which:

.1 Are not generally labor intensive;
.2 Are land extensive;
.3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;
.4 Complement the character and development of the surrounding rural area;
.5 Are consistent with the rural facilities and services existing and/or planned for the area; and,
.6 Will not require facility and/or service improvements at significant public expense.

683 Uses Permitted Under Prescribed Conditions:

The following uses may be permitted subject to the conditions imposed for each use:

.1 Production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities subject to the following findings:

Finding 1: The proposed renewable diesel production facility falls within the category of permitted uses noted above and is allowed if the conditions below are satisfied. The applicant is proposing a facility and associated accessory infrastructure (pipelines, rail spur, electrical lines, etc.) that will convert recycled organic materials into renewable transportation fuels.

A. The requested use conforms with the goals and policies of the Comprehensive Plan specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies.

Finding 2: This application proposes development of an industrial facility, associated pipelines to the Port, rail access, and a private drive access. For development within the RIPD zone, applicable goals and policies are specified as related to rural industrial development and the relevant Port Westward exception statement. These policies include:

- Part X. Economy
- Part XII. Industrial Siting
- Industrial Lands Exceptions
- Port Westward Exception Statement

- Part XIV: Public Facilities and Services

RIPD-Applicable Goals and Policies.

The following information demonstrates how the use conforms to applicable Comprehensive Plan goals and policies, specifically those pertaining to the Goal Exceptions to accommodate rural industrial development at Port Westward.

1986 Comprehensive Plan Exception Statement

I. Proposal

The proposed use designation is Rural Industrial, and it is intended to take advantage of the location on the Columbia River, the existing dock facilities, railroad, and urban services, as well as potential linkages to the electric generating facilities.

V. Proposed Use Of The Property

Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm.

[***]

Uses likely to be located here are best illustrated by four proposals submitted to the current leaseholder since 1980. Proposals have included a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant. […].

[***]

VII. LCDC Evaluation

A. Goal 2 Factors

1. "Why these other uses should be provided for."

[***]

d. Types of industrial users allowed on resource land.

The LCDC rules outline three specific types of industrial uses which might be used to justify an exception on resource land. Port Westward is an appropriate site for all three types of industrial uses.

The first types are "unique site-specific resources" which include a river or ocean port. Port Westward is already a partially developed, deep draft river port.

The second attribute is uses which are "hazardous or incompatible with densely populated areas." Port Westward clearly is an appropriate site for this type of user. The 80-acre petrochemical tank farm identified earlier is a clear example.

Those uses often require rail, harbor facilities, and large sites.

A third type of use includes those which would have a "significant competitive advantage due to the location of energy facilities."

Finding 3: The above excerpts explain the intended purpose of the Port Westward Exception Area. This application is consistent with its intended purpose for the following reasons:

- It will take advantage of marine transportation available on the Columbia River, specifically the deepwater port.
- It will use existing dock facilities.
- It will utilize existing rail connections.
- It will allow renewable diesel production to be located far from population centers, thus avoiding hazardous or incompatible impacts on densely populated areas.
- The proposed facility is similar to the existing tank farm, PGE electrical generating facilities, and the Columbia Pacific Bio-Refinery.

2007 Comprehensive Plan Exception Statement

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

The County's Comprehensive Plan has designated 905 acres of the Port Westward area as a Goal 3 exception. The property is located adjacent to the Port Westward rural industrial area and can take advantage of the location with access to the Columbia River, and the existing dock facilities, railroad and urban services, including PGE's Beaver Power Plant. Allowing future rural industrial development on the Property would benefit the County's economy by bringing jobs to the area for construction of a project and then a lesser level of employment for the operation and management of any facility.

Finding 4: The above excerpts explain why the Board of Commissioners expanded the Port Westward Exception Area in 2007. This application is consistent with this statement for the following reasons:

- It will take advantage of the existing infrastructure (noted above).
- It will be in proximity to existing industrial operations with similar impacts.
- It will bring temporary construction jobs and permanent ongoing operations jobs to Port Westward.

PART X – ECONOMY

Goals:

1. *To strengthen and diversify the economy of Columbia County and insure stable economic growth.*

Finding 5: The proposed facility will require a significant amount of construction activity, resulting in high-paying construction jobs to build the project for approximately 24 months. Once built, the facility will employ office, management, and operations staff, at the following estimated staffing levels:

ESTIMATED STAFFING LEVELS				
Weekdays			Weekends	
Office/Mgt.	Shift 1	Shift 2	Shift 1	Shift 2
8:00 AM – 5:00 PM	6:00 AM – 6:00 PM	6:00 PM – 6:00 AM	6:00 AM – 6:00 PM	6:00 PM – 6:00 AM
83	35	35	35	35

In addition to the on-site employees, the project will also result in supportive jobs such as those for the terminaling company operating at the dock. Employees are also likely to patronize area businesses in and around Clatskanie, creating new indirect employment opportunities in surrounding areas. Products to support this facility will be imported via the river and rail from beyond the County, further contributing to economic growth in the immediate area and beyond.

The applicant will make a significant investment to construct and operate an industrial facility, broadening the County's employment base while complementing the existing uses at Port Westward.

2. To utilize Columbia County's natural resources and advantages for expanding and diversifying the economic base.

Finding 6: The project will utilize one of the County's best natural resources: the efficient transportation corridor provided by the Columbia River, designated as part of the U.S. Department of Transportation's M-84 Marine Highway Corridor. This resource was one of the main advantages during the site selection process. The proposed use does not yet exist at the Port, which contributes to the County's expanding and diversification of its economic base.

Policies: It shall be a policy of the County to:

1. Encourage the creation of new and continuous employment opportunities.

Finding 7: As noted above, following construction of the proposed facility, it will provide direct employment opportunities for office, management, and operations staff with approximately 220 new jobs and is anticipated to result in supportive jobs at area companies. The approximately 24-month construction duration is also expected to create temporary construction jobs on site.

2. Encourage a stable and diversified economy.

Finding 8: The proposed facility will increase the size and value of the County's industrial sector, which is an important part of Columbia County's overall economic base. The proposed development is planned to be a long-term facility to support renewable diesel fuel production on the site, showing a long term and stable commitment to the regional economy.

3. Reflect the needs of the unemployed and of those persons who will enter the labor market in the future.

Finding 9: The approximately 220 jobs created by the project will be family wage jobs, as opposed to lower-paying retail and consumer-facing service sector jobs.

6. Preserve prime maritime industrial sites from pre-emptive uses until needed for industrial uses.

Finding 10: As the project relies on a large site served by river and rail transportation and is isolated from a population center, it is entirely consistent with the intended purpose and uses of Port Westward and fulfills the County's policy of utilizing land set aside for marine-related industrial uses.

8. Preserve valuable industrial sites for industrial uses.

Finding 11: The proposed industrial project is proposed to be constructed on land zoned Resource Industrial - Planned Development. The industrial use is consistent with the zone.

12. Encourage new industrial growth within the urban areas so as to utilize existing public facilities.

Finding 12: Port Westward is an exception area located outside urban growth boundaries. When the Port Westward Exception Statement was adopted, the County found that the unique features of Port Westward made it substantially different from urban industrial land, and therefore likely to attract industries that could not necessarily use urban industrial land.

> *"Port Westward, Reichhold Chemicals, and the Bernet site are compatible with industrial uses that are either land extensive, incompatible with the urban environment, marine related or a combination of the above. These types of uses do not compete with industrial areas within urban growth boundaries but are complementary to those uses."*

The proposed use is consistent with the Port Westward Exception Statement as detailed earlier because it is land extensive, has impacts that are potentially hazardous in densely populated areas, and requires marine access.

PART XII – INDUSTRIAL SITING

INDUSTRIAL DEVELOPMENT: GOALS AND POLICIES

Goals

1. *To strengthen and diversify the economy of Columbia County and insure stable economic growth.*

Finding 13: The proposed facility will require a significant amount of construction activity, resulting in high-paying construction jobs to build the project. Once built, the facility will employ approximately 220 office, management, and operations staff. In addition to the on-site employees, the project will also result in supportive jobs such as those for the terminaling company operating at the dock. Employees are also likely to patronize area businesses in and around Clatskanie.

3. *To encourage industrial growth in Columbia County to diversify its economy. New industry should locate to take maximum advantage of existing public and private investments.*

Finding 14: The proposed renewable diesel production facility will result in both construction and ongoing operational jobs, which helps improve economic diversification and results in Port fees and local property tax revenue. The site's location allows the facility to take advantage of the existing deepwater port, rail facilities, and both public and private utilities serving Port Westward.

Policies: It shall be policy of the County to establish, implement, and maintain an industrial development program that:

1. *Encourages the creation of new and continuous employment opportunities.*

Finding 15: As noted above, following construction of the proposed facility, it will provide approximately 220 employment opportunities for office, management, and operations staff and is anticipated to result in supportive jobs at area companies.

5. *Recognizes the existence of sites suitable to be developed as deep-water ports but are not needed at this time.*

Finding 16: The proposed facility will utilize the existing deepwater port at Port Westward, one of five (5) deepwater ports in the state.

11. *Directs industries that are either land extensive, resource related, marine related, and/or incompatible with urban populations to those sites which are appropriate to the use and are currently zoned for that use.*

Finding 17: As detailed above, the proposed facility is land extensive (requiring 109 acres excluding off-site acreage for the driveway, pipe rack, etc.), and marine related (utilizing the Columbia River and the existing dock at the deepwater port). The facility will perform operations that are potentially hazardous and are thus appropriate outside urban locations. The site's location in the RIPD zone is consistent with this policy.

12. *Is consistent with the exception statements for those sites requiring an exception to the applicable resource goal.*

Finding 18: Consistency with the exception statements for Port Westward is demonstrated above.

RESOURCE INDUSTRIAL DEVELOPMENT: GOALS AND POLICIES

Goal: It is a goal of the County to provide for industrial development on rural lands when such development can be shown to support, utilize, or in some manner be dependent upon, the natural resources of the area.

Finding 19: The County has provided for industrial development within Port Westward by adopting the Port Westward exception area and the RIPD zone. The proposed facility will utilize a natural resource (the Columbia River) as it will depend on the deepwater port for the tanker vessels that will transport materials to and from Port Westward. As the project is consistent with the intended and allowed uses within Port Westward, it is consistent with this goal.

Policies: It shall be a policy of the County to:

3. *Restrict industrial development on land zoned Resource Industrial Planned Development to those uses that:*
    - *A. Are not generally labor intensive;*
    - *B. Are land extensive;*
    - *C. Are located with adequate rail and/or vehicle and/or deep water port and/or airstrip access;*
    - *D. Complement the character and development of the surrounding area;*
    - *E. Are consistent with the rural facilities and existing and/or planned for the area; and,*
    - *F. Will not require facility and/or service improvements at public expense; or,*

Finding 20: Policies 3A through 3F are nearly identical to the purpose statement outlined in CCZO Section 681. The applicant provided responses to that section to demonstrate how the proposed facility is consistent with the purpose of the RIPD zone so the responses to those items are not repeated here.

- *G. Are not appropriate for location within Urban Growth Boundaries due to their hazardous nature.*

Finding 21: The proposed use will rely on the deepwater port facility at Port Westward. While regulated by federal and state safety protocols, production of renewable diesel involves flammable inputs and outputs, chemical emissions, and heavy transportation infrastructure, which may present potential hazards to incompatible uses, such as residential living. For these reasons, the Board can find that the proposed use is consistent with Policy 3G.

PART XIII – TRANSPORTATION

Objectives:

1. *To maximize efficient use of transportation infrastructure for all users and modes.*

Finding 22: The project will be served by existing transportation infrastructure, including marine, rail, and roadways. Consistent with TSP Project #9, the Applicant proposes to satisfy Public Works requirements for necessary improvements to Hermo Road. A condition of approval is proposed to meet this standard. The applicant will install a rail branchline connecting to Portland & Western Railroad's existing rail line, providing rail access to Astoria and the Portland region.

Policies:

2. *The dedication of adequate rights-of-way to meet the standards set in the Transportation Plan shall be required of any person seeking a Zone Change, Conditional Use Permit, Subdivision, or Partition. […].*

Finding 23: The applicant is not seeking a Zone Change, Conditional Use Permit, Subdivision, or Partition as part of this application for the development of the facility. The applicant is seeking a Conditional Use permit for accessory rail infrastructure through farmland in a separate application. The closest public roadway is Hermo Road, which is classified as a local road in the 2017 Columbia County TSP.

The TSP recommends an optimum right-of-way width of 50 feet and an optimum roadway width of 28 feet (to accommodate ten-foot lanes and four-foot shoulders). The existing right-of-way width at the driveway location is 60 feet. Therefore, no right-of-way dedication is merited.

The closest segment of Kallunki Road (to which the site will have secondary emergency access) is also designated as a local road. This roadway has a 40-foot right-of-way, which is below the TSP's stated optimum right-of-way width.

However, as the existing roadway fits within the right-of-way and the site does not immediately abut Kallunki Road, no right-of-way dedication is required for this application.

3. *All expanding or new development shall contribute a fair and proportionate share toward appropriate off-site improvements to county roads whenever a development results in a major increase in traffic on an existing county road.*

Finding 24: As discussed in the Transportation Impact Analysis (Attachment 2n), the proposed facility is anticipated to generate 667 weekday trips, 91 of which will occur in the AM peak hour and 84 of which will occur within the PM peak hour. The report analyzed traffic operations at six study area intersections in 2020 and in 2024, both with and without the proposed development. The report found that all six (6) study intersections meet applicable Columbia County, Oregon Department of Transportation, and City of Clatskanie mobility standards in 2020, in 2024 without NEXT Renewable Fuels, and in 2024 with NEXT Renewable Fuels and improvements to Hermo Road, which the Applicant proposes to fund through a road improvement agreement with the County. A condition of approval for Hermo Road improvements is proposed to meet this standard.

Based on this analysis, the TIA does not recommend any mitigation strategies as a result of the proposed facility. The County has a planned project (TSP Project #9) to improve Hermo Road in the vicinity of the project site. The Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road, through a condition of approval.

4. *County will manage access to roadways to reduce congestion and conflicting travel patterns. The County will work with the Oregon Department of Transportation (ODOT) to limit the number of access points onto Principle Arterials. Direct access to U.S. Highway 30 will be limited as much as is practical in order to reduce the potential for congestion and conflicting traffic patterns which would disrupt the flow of traffic.*

Finding 25: The project will not have direct access onto Highway 30 or Principal Arterials.

5. *The County shall work to enhance freight efficiency, access, capacity and reliability, including access to intermodal facilities such as ports and airports. Industrial uses shall be encouraged to locate in such a manner that they may take advantage of the water and rail transportation systems which are available to the County.*

Finding 26: Although this is a policy for the County to implement, the project is consistent with this policy because it is specifically located at Port Westward to take advantage of existing water and rail transportation facilities.

6. *The County will support reducing the number of rail crossings and will support measures to enhance safety at rail crossings.*

Finding 27: The project does not require a new public road rail crossing.

7. *The County will work with the Port of [Columbia County] to encourage the establishment and use of dock facilities.*

Finding 28: The project will utilize the Port of Columbia County's existing deepwater dock facilities at Port Westward.

9. Restriction of the location of new pipelines and high voltage transmission lines to within existing rights-of-way will be encouraged whenever possible.

Finding 29: The proposal is to develop pipelines within the project site; the proposed pipelines cross Hermo Road and are within the Hermo Road right-of-way to the extent possible.

20. The County will coordinate transportation and land use planning and decision-making with other transportation agencies and public service providers, such as ODOT, cities within the County, and the Port, when their facilities or services may be impacted by a County decision or there may be opportunities to increase the efficiency and benefits of a potential improvement.

Finding 30: As part of its evaluation of land use applications including this one, the County coordinates with affected agencies and partners. The applicant has also coordinated with Port, County, and ODOT staff with respect to site design and transportation analysis.

PART XIV – PUBLIC FACILITIES AND SERVICES

Policies

.1 Require that adequate types and levels of public facilities and be provided in advance of or concurrent with development.

Finding 31: Port Westward Industrial Park already contains multiple public and private facilities that can accommodate development of the site. Port Westward has the PGE electrical generating facilities, the Clatskanie People's Utility District electrical substation, roadways, rail lines, utilities, drainage facilities, levees, pipelines, electrical transmission lines, and associated support facilities. The project will be served by existing transportation infrastructure, including marine, rail, and roadways. Consistent with TSP Project #9, the Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road, through a proposed condition of approval. Taken together, these conditions provide adequate types and levels of public facilities for the proposed project.

.2 Require that the level of facilities and [sic] provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential, Rural Center, Existing Commercial, and Rural Industrial areas are:

- *A. Public or community water systems.*
- *B. Public or community sewage systems.*
- *C. Collector and/or arterial street systems.*
- *D. Fire protection by a rural fire protection district, or an equivalent level of service.*

Finding 32: The site is within a Rural Industrial zone (Rural Industrial – Planned Development). Port Westward is served by private water systems and a small private industrial wastewater system (see Attachment 2p), local roads, and the Clatskanie Rural Fire Protection District, consistent with this policy. No expansions to these systems are proposed or required for this project.

4. Encourage new development on lands within urban growth boundaries or built and committed exception areas.

Finding 33: The site is outside an urban growth boundary but is within an exception area that was created to accommodate industrial development that capitalizes on the unique combination of rail and deepwater port access available at Port Westward. The proposed development is consistent with this policy.

13. Support a level of fire safety and service in all areas of the County sufficient to minimize the risk of fire damage to life and property.

Finding 34: The site's location within the Clatskanie Rural Fire Protection District capitalizes on the District's experience and partnership with existing Port Westward industrial operations to ensure appropriate levels of fire protection.

PART XV – ENERGY CONSERVATION

Policies

3. The County shall encourage the development of recycling facilities and the use of recycled resources.

Finding 35: The proposed renewable diesel production facility will create fuel by using recycled organic materials such as used cooking oil, which is fully supportive of this policy.

4. The County will encourage the development of alternative energy sources.

Finding 36: The proposed renewable diesel production facility will create fuel by recycling existing materials rather than by refining fossil fuels. This facility will help implement the County's policy.

Contd. 683 Uses Permitted Under Prescribed Conditions:

B. The potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated considering the following factors:

.1 Physiological characteristics of the site (i.e., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements;

Finding 37: The site is relatively flat, with existing elevations that vary by less than 10 feet across the entire production facility site (see Attachment 2c, Sheet C1.10), which is ideal for large industrial development. The site is protected from flooding by the Beaver Drainage District's dikes and associated stormwater conveyance and pumps and is therefore adequately drained. As detailed in the preliminary stormwater report (Attachment 2m), sufficient infrastructure is in place or proposed to collect, treat, and discharge runoff. The site has been planned for industrial development for many years and the proposed use is appropriate given its physiological characteristics.

However, proposed development in this application impacts riparian areas associated with McLean Slough (allowance of impacts to the riparian area relies on definition of the project as "water-dependent" or "water related" – see discussion under Section 1170), mapped NWI wetlands (prohibited – see discussion under Section 1180), and additional delineated wetlands that will be impacted by the proposed development (Attachment 2k). The applicant is also seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and has proposed off-site wetland mitigation.

.2 Existing land uses and both private and public facilities and services in the area;

Finding 38: The site is part of the Port Westward Industrial Park, which is home to multiple industrial uses (PGE power generation facilities, Columbia Pacific Bio-Refinery, Clatskanie PUD substation) and supporting facilities and services (roadways, rail lines, utilities, drainage facilities, levees, pipelines, and electrical transmission lines, private water system, and wastewater system). The nearby industrial uses are not sensitive to expansion of industrial activity at Port Westward. The existing dock serves these industrial uses and is particularly well suited for serving the proposed use for shipment of feedstock and finished products. The existing agricultural uses to the east and south are not likely to be negatively impacted by the proposed industrial use due to the applicable County land use regulations and permit

standards, fire code provisions implemented by the Clatskanie Rural Fire Protection District, and multiple state and Federal permits which the applicant will need to obtain prior to beginning operation of the facility. The proposed site development is consistent with existing land uses and available facilities and services.

.3 The demonstrated need for the proposed use is best met at the requested site considering all factors of the rural industrial element of the Comprehensive Plan.

Finding 39: The goals and policies of the Comprehensive Plan's rural industrial element were addressed above. As explained, the project is consistent with all the applicable rural industrial goals and policies, and the site is suitable for the proposed use given the existing services available to serve rural industrial development at the site.

C. The requested use can be shown to comply with the following standards for available services:

.1 Water shall be provided by an on-site source of sufficient capacity to serve the proposed use, or a public or community water system capable of serving the proposed use.

Finding 40: The Port has water rights authorizing intake of water from the Columbia River/Bradbury Slough. Port Westward Industrial Park is served by private water systems that utilize wells and draw from the river. As illustrated on Attachment 2c, Sheet C1.30, a connection to the existing water supply will be made near the north end of the site. The Port has indicated that sufficient capacity is available within the Port's existing water rights (see Attachment 2p).

.2 Sewage will be treated by a subsurface sewage system, or a community or public sewer system, approved by the County Sanitarian and/or the State DEQ.

Finding 41: Port Westward Industrial Park has a private industrial wastewater system and a discharge system for tenants' process water (see Attachment 2p). As illustrated on Attachment 2c, Sheet C1.11, the applicant is proposing a wastewater pretreatment facility for all storm and greywater prior to discharging to the sewer system near the north end of the site. Discharge from domestic use within buildings may be stored in holding tanks prior to being hauled off or may be treated via sand filters and leach fields pending results of on-site system evaluation. The applicant will obtain all necessary permits from County Sanitarian and/or the Oregon Department of Environmental Quality, as applicable.

.3 Access will be provided to a public right-of-way constructed to standards capable of supporting the proposed use considering the existing level of service and the impacts caused by the planned development.

Finding 42: The applicant proposes to construct a private driveway between the site and Hermo Road. Hermo Road, a public right-of-way, is currently gravel near the site. Consistent with TSP Project #9, the Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road through a proposed condition of approval. The TIA (Attachment 2n) demonstrates that the roadway network, following improvements consisting of roadway widening and paving along Hermo Road, has adequate capacity for the proposed development. In light of the applicant's plan to improve the roadway, the TIA does not recommend any additional mitigation strategies. The site will have secondary emergency access to Kallunki Road (a public right-ofway) but the secondary access is not proposed for regular use.

.4 The property is within, and is capable of being served by, a rural fire district; or, the proponents will provide on-site fire suppression facilities capable of serving the proposed use. On-site facilities shall be approved by either the State or local Fire Marshall

Finding 43: Port Westward Industrial Park has an existing high-pressure fire suppression system designed to accommodate development in the industrial park, and the site is within the Clatskanie Rural Fire Protection District. The proposed on-site fire protection facilities will be designed per Oregon Fire Code standards and industry best practices

and will be reviewed and approved by the Fire Marshal prior to utilization, consistent with a proposed condition of approval.

.2 Accessory buildings may be allowed if they fulfill the following requirements:

A. If attached to the main building or separated by a breezeway, they shall meet the front and side yard requirements of the main building.

B. If detached from the main building, they must be located behind the main building or a minimum of 50 feet from the front lot or parcel line, whichever is greater.

C. Detached accessory buildings shall have a minimum setback of 50 feet from the rear and/or side lot or parcel line.

Finding 44: The proposed site plan (Attachment 2c, Sheet C1.11) depicts the proposed structures within the facility. Accessory buildings include office and maintenance buildings on site. Accessory buildings are shown at least 50 feet from lot lines.

.3 Signs as provided in Chapter 1300.

Finding 45: Prior to sign installation, the applicant will obtain all necessary permits and submit signage designs to County staff for review where required by code, consistent with a proposed condition of approval. Preliminary signage designs are depicted in Attachment 2c, Sheet C1.40.

.4 Off street parking and loading as provided in Chapter 1400.

Finding 46: The proposed use complies with applicable parking and loading standards, as discussed below in the responses to Section 1400.

Conclusion: Staff finds that this proposal is consistent with the purpose of the RIPD Zone and the provisions for Uses Permitted Under Prescribed Conditions in Section 683.3 with conditions.

Contd. Section 680 Resource Industrial-Planned Development (RIPD)

685 Standards:

.1 The minimum lot or parcel size for uses allowed under Section 682 shall be 38 acres.

Finding 47: The proposed use is allowed under CCZO Section 683 rather than CCZO Section 682. Therefore, the 38-acre minimum parcel size does not apply. Even if it did, the combined site area under the Applicant's control is approximately 109 acres, thereby exceeding this standard.

.2 The minimum lot or parcel size, average lot or parcel width and depth, and setbacks for uses allowed under Section 683, shall be established by the Planning Commission, and will be sufficient to support the requested rural industrial use considering, at a minimum, the following factors:

A. Overall scope of the project. Should the project be proposed to be developed in phases, all phases shall be considered when establishing the minimum lot size.

Finding 48: The site for the production facility, which consists of property owned by NEXT Renewable Fuels and property leased by NEXT Renewable Fuels from the Port of Columbia County, will have an area of approximately 109 acres (not counting off-site acreage for the driveway, pipe rack, etc.). As illustrated in the proposed site plan (Attachment 2c, Sheet C1.11), this size is sufficient for facility operations, including office, warehouse, production areas, staging areas, pipe racks, electrical equipment, storage tanks, wastewater treatment, a flare, and a rail spur. The project is not proposed to be developed in phases. This standard is met.

B. Space required for off street parking and loading and open space, as required.

Finding 49: Parking requirements in the CCZO are set forth in Section 1400. As discussed in the response to that section, the applicant is proposing 128 parking spaces, which complies with the 118-space minimum requirement for the proposed manufacturing use. The applicant proposes loading docks on the warehouse, together with multiple outdoor storage areas and rail loading/unloading areas. This standard is met.

C. Setbacks necessary to adequately protect adjacent properties.

Finding 50: The site for the production facility consists of property owned by NEXT Renewable Fuels and property leased by NEXT Renewable Fuels from the Port of Columbia County. Only minimal setbacks are merited due to the existing and planned development of the adjacent (off-site) properties. Properties to the north and west are within the Port Westward Industrial Park and zoned RIPD. Properties immediately to the south and east are currently in agricultural use (primarily crops) and do not contain sensitive receptors such as residences, schools, churches, hospitals, etc. As illustrated in the proposed site plan (Attachment 2c, Sheet C1.11), all proposed buildings are set back at least 95 feet from the site boundary, which is appropriate for the proposed use in this site context. Landscape buffers are provided on the south and east boundaries where facing other uses and where not precluded by overhead power lines and rail lines (see Attachment 2c , Sheets L1.10-L1.11 and Exhibit 17). This standard is met.

.3 Access shall be provided to a public right-of-way of sufficient construction to support the intended use, as determined by the County Roadmaster.

Finding 51: The applicant proposes to construct a private driveway between the site and Hermo Road. Hermo Road, a public right-of-way, is currently gravel near the site. Consistent with TSP Project #9, the Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road through a proposed condition of approval. The TIA (Attachment 2n) demonstrates that the roadway network, following improvements consisting of roadway widening and paving along Hermo Road, will have adequate capacity for the proposed development. In light of the obligations in the Development Agreement, the TIA does not recommend any mitigation strategies. The site will have secondary emergency access to Kallunki Road (a public right-of-way) but the secondary access is not proposed for regular use. For the above reasons, the County Roadmaster, and by extension the County Board, can find that the proposed access is "sufficient to support the intended use."

686 Review Procedures:

The Planning Commission shall review, in accordance with Section 1600, all requests made pursuant to Section 683 to assure that:

.1 The use conforms to the criteria outlined in Section 681.
.2 The conditions outlined in Section 683 can be met.
.3 The Design Review Board or Planning Commission reviewed the request and found it to comply with the standards set out in Section 1550 and the minimum lot or parcel size provisions set out in Section 684.

Finding 52: The County Board of Commissioners has taken jurisdiction of the hearing consistent with Ordinance 91-2. Findings reviewing Sections 681, 683, 684, and 1550 are included in this staff report.

Section 1550 SITE DESIGN REVIEW

The Site Design Review process shall apply to all new development, redevelopment, expansion, or improvement of all community, governmental, institutional, commercial, industrial and multi-family residential (4 or more units) uses in the County.

1551 Types of Site Design Review:

B. Type 2: Projects, developments and building expansions which meet any of the following criteria:

1. *Have an area of 5,000 sq. or more, or are 10% or more of the square footage of an existing structure.*
2. *Change the category of use (e.g., commercial to industrial, etc.).*
3. *New off-site advertising signs or billboards.*
4. *Any project meeting any of the Type 2 criteria shall be deemed a Type 2 Design Review application.*

Finding 53: The proposed development within the RIPD zone is classified as a Type 2 project since it affects greater than 5,000 square feet. The applicant is seeking Type 2 Design Review approval with this application. This standard is met.

1552 Design Review Process:

The Planning Director shall review and decide all Type 1 Site Design Review applications. The Planning Commission shall review all Type 2 Design Review applications. Applications shall be processed in accordance with Sections 1600 and 1700 of this ordinance.

Finding 54: The proposed development is classified as a Type 2 project since it affects greater than 5,000 square feet. The applicant is seeking Type 2 Design Review approval. The County Board of Commissioners has taken jurisdiction of this review consistent with Ordinance 91-2. This standard is met.

1553 Pre-application Conference:

A pre-application conference is required for all projects applying for a Site Design Review, unless the Director or his/her designate determines it is unnecessary. The submittal requirements for each application are as defined in this section and the standards of the applicable zone, and will be determined and explained to the applicant at the preapplication conference.

Finding 55: A pre-application conference for this application was held with County staff on February 6, 2020.

1554 Pre-application Conference Committee:

The committee shall be appointed by the Planning Director and shall consist of at least the following officials, or their designated staff members.
Only affected officials need to be present at each pre-application conference.

A. The County Planning Director.
B. The County Director of Public Works.
C. The Fire Marshal of the appropriate Rural Fire District.
D. The County Building Official.
E. The County Sanitarian.
F. A city representative, for projects inside Urban Growth Boundaries.
G. Other appointees by the Planning Director, such as an Architect, Landscape Architect, real estate agent, appropriate officials, etc.

Finding 56: This is a Type 2 Design Review. A Pre-application conference was held on February 6, 2020 where the applicant was given the submittal requirements prior to Land Development Services accepting an application for this land use proposal in the RIPD Zone. Notice of this pre-application meeting was sent to the County Public Works Department, Columbia River Fire and Rescue, the County Building Official, County Sanitarian, and the applicant. Staff finds the criteria in Sections 1551.B, 1552 and 1553 have been met.

1554 Submittal documents:

The following documents, when applicable, are required for a Site Design Review. The scope of the drawings and documents to be included will be determined at the preapplication conference by the Pre-application Conference Committee, and a Site Design Review Submittal Checklist will be given to the applicant, documenting which items are deemed not applicable or not necessary to determine compliance with County and State standards, with a short explanation given for each item so determined.

A. History.
B. Project narrative.
C. Existing site plan.
D. Proposed site plan.
E. Grading plan.
F. Drainage plan.
G. Wetland mitigation plan. Goal 5 Resource Protection Plans (streams, wetlands, riparian areas, natural areas, fish and wildlife habitat).
H. Landscaping plan.
I. Architectural plans.
J. Sign drawings.
K. Access, parking and circulation plan.
L. Impact assessment.
M. Site Design Review Submittal Checklist.

Finding 57: Applicant provided A, B, C, D, E, F, G, H, J, K, and L. Applicant did not include I (Architectural Plans) or M (Site Design Review Submittal Checklist). Applicant was notified of missing items in an incompleteness letter dated February 17, 2021. Applicant required the County to proceed with review of the application despite the missing information in a letter dated July 15, 2021 as allowed by ORS 215.427.

1560 Existing Site Plan:

The degree of detail in the existing site plan shall be appropriate to the scale of the proposal, or to special site features requiring careful design. An existing site plan shall include the following, unless it is determined by the Planning Director that the information is not applicable or is not necessary to determine compliance with County and State standards, and a short explanation will be given for each item so determined:

A. A vicinity map showing location of the property in relation to adjacent properties, roads, pedestrian ways and bikeways, and utility access. Site features, manmade or natural, which cross property boundaries are to be shown.

Finding 58: Vicinity maps are included as Attachment 2b and Attachment 2c, Sheet G0.01.

B. A site description map at a suitable scale (i.e. 1"=100'; 1"=50'; or 1"=20') showing parcel boundaries and gross area, including the following elements, when applicable:
    1. Contour lines at the following minimum intervals:
        a. 2 foot intervals for slopes 0-20%;
        b. 5 or 10 foot intervals for slopes exceeding 20%;
        c. Identification of areas exceeding 35% slope.
    2. In special areas, a detailed slope analysis may be required. Sources for slope analysis include maps located at the U.S. Natural Resources Conservation Service office.
    3. Potential natural hazard areas, including potential flood or high ground water, landslide, erosion, and drainage ways. An engineering geologic study may be required.

4. *Wetland areas, springs, wildlife habitat areas, wooded areas, and surface features such as mounds and large rock outcroppings.*
5. *Streams and stream corridors.*
6. *Location, species and size of existing trees proposed to be removed.*
7. *Significant noise sources.*
8. *Existing structures, improvements, utilities, easements and other development.*
9. *Adjacent property structures and/or uses.*

Finding 59: An existing conditions plan depicting these elements is included as Attachment 2c, Sheets V1.10 and V1.11.

1556 Site Plan Submittal and Analysis:

Columbia County Stormwater and Erosion Control Ordinance *an application and any necessary supplemental information as required by this ordinance to the Land Development Services Department. The Planning Director or designate shall review the application and check its completeness and conformance with this ordinance. Once a Type 2 application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission. A staff report shall be prepared and sent to the applicant, the Planning Commission, and any interested party requesting a copy.*

Finding 60: Applicant was notified of missing items in an incompleteness letter dated February 17, 2021. Applicant required the County proceed with review of the application despite the missing information in a letter dated July 15, 2021 as allowed by ORS 215.427.

1561 Proposed Site Plan:

A complete application for design review shall be submitted, including the following plans, which may be combined, as appropriate, onto one or more drawings, unless it is determined by the Planning Director that the information is not applicable or is not necessary to determine compliance with County and State standards, and a short explanation will be given for each item so determined:

A. *Site Plan: The site plan shall be drawn at a suitable scale (i.e. 1"=100', 1"=50', or 1"=20') and shall include the following:*
    1. *The applicant's entire property and the surrounding area to a distance sufficient to determine the relationships between the applicant's property and proposed development and adjacent properties and developments.*
    2. *Boundary lines and dimensions of the property and all proposed property lines. Future buildings in phased development shall be indicated.*
    3. *Identification information, including names and addresses of project designers.*
    4. *Natural features which will be utilized in the site plan.*
    5. *Location, dimensions and names of all existing or platted roads or other public ways, easements, and railroad rights-of-way on or adjacent to the property, city limits, section lines and corners, and monuments.*
    6. *Location and dimensions of all existing structures, improvements, or utilities to remain, and structures to be removed, all drawn to scale.*
    7. *Historic structures, as designated in the Comprehensive Plan.*
    8. *Approximate location and size of storm water retention or detention facilities and storm drains.*
    9. *Location and exterior dimensions of all proposed structures and impervious surfaces.*
    10. *Location and dimension of parking and loading areas, pedestrian and bicycle circulation, and related access ways. Individual parking spaces shall be shown.*
    11. *Orientation of structures, showing entrances and exits.*
    12. *All exterior lighting, showing type, height, wattage, and hours of use.*

13. *Drainage, Stormwater and Erosion Control, including possible adverse effects on adjacent lands.*
14. *Service areas for waste disposal and recycling.*
15. *Noise sources, with estimated hours of operation and decibel levels at the property boundaries.*
16. *Goal 5 Resource Protection Plans. Indicate how project will protect streams, wetlands, riparian areas, natural areas, and fish and wildlife habitat from negative impacts.*
17. *A landscaping plan which includes, if applicable:*
    a. *Location and height of fences, buffers, and screening;*
    b. *Location of terraces, decks, shelters, play areas, and common open spaces;*
    c. *Location, type, size, and species of existing and proposed shrubs and trees; and*
    d. *A narrative which addresses soil conditions and erosion control measures.*

B. *Grading Plans: A preliminary grading plan indicating where and to what extent grading will take place, including general contour lines, slope ratios, slope stabilization proposals, and natural resource protection proposals.*

C. *Architectural Drawings:*
    1. *Building elevations and sections;*
    2. *Building materials (color and type);*
    3. *Floor plan.*

Finding 61: On July 15, 2021 the applicant indicated the application for DR 21-03 was complete and required the County to process the application under ORS 215.427. Documentation submitted with DR 21-03 included civil, landscaping, and stormwater plans. The application did not include building elevations, sections, materials information or floor plans.

1562 Landscaping: Buffering, Screening and Fencing:

A. *General Provisions*
    1. *Existing plant materials on a site shall be protected to prevent erosion. Existing trees and shrubs may be used to meet landscaping requirements if no cutting or filling takes place within the dripline of the trees or shrubs.*

Finding 62: The majority of existing vegetation will be removed from the site to accommodate the proposed development. Appropriate erosion control measures will be implemented as depicted in Attachment 2c, Sheets EC1.10-EC5.10.

    2. *All wooded areas, significant clumps or groves of trees, and specimen conifers, oaks or other large deciduous trees, shall be preserved or replaced by new plantings of similar size or character.*

Finding 63: The site is nearly devoid of trees and does not contain wooded areas, significant clumps or groves of trees, or specimen conifers, oaks or other large deciduous trees. This standard does not apply.

B. *Buffering Requirements*
    1. *Buffering and/or screening are required to reduce the impacts on adjacent uses which are of a different type. When different uses are separated by a right of way, buffering, but not screening, may be required.*

Finding 64: Adjacent properties to the north and west are zoned RIPD and are in the Port Westward Industrial Park, so no buffering or screening is required to the north and west. Adjacent properties to the south and east are agricultural, so buffering is required to the south and east.

2. *A buffer consists of an area within a required setback adjacent to a property line, having a width of up to 10 feet, except where the Planning Commission requires a greater width, and a length equal to the length of the property line adjacent to the abutting use or uses.*

Finding 65: Portland General Electric has provided comments discouraging the planting of any trees under the nearby transmission lines (see Attachment 2q). As depicted on Attachment 2c, Sheet L1.10, 10 feet of perimeter plantings are provided on the south and east fence lines where facing other uses and where not precluded by overhead power transmission lines and rail lines. This standard is not met but can be met through a variance to buffering and screening requirements. Perimeter plantings are also proposed south of the paved permanent laydown yard south of the driveway.

3. *Buffer areas shall be limited to utilities, screening, pedestrian and bicycle paths, and landscaping. No buildings, roads, or parking areas shall be allowed in a buffer area.*

Finding 66: As depicted on Attachment 2c, Sheet L1.10, no buildings, roads, or parking are proposed in the required buffers along the south and east boundaries. This standard is met.

4. *The minimum improvements within a buffer area shall include:*
    a. *One row of trees, or groupings of trees equivalent to one row of trees. At the time of planting, these trees shall not be less than 10 feet high for deciduous trees and 5 feet high for evergreen trees, measured from the ground to the top of the tree after planting. Spacing of trees at maturity shall be sufficient to provide a year round buffer.*
    b. *In addition, at least one 5-gallon shrub shall be planted for each 100 square feet of required buffer area.*
    c. *The remaining area shall be planted in grass or ground cover, or spread with bark mulch or other appropriate ground cover (e.g. round rock). Pedestrian and bicycle paths are permitted in buffer areas.*

Finding 67: As depicted on Attachment 2c, Sheets L1.10 and L1.11, the proposed buffers will have a row of trees, shrubs, and groundcover, except in locations where a variance is requested due to PGE requirements. Should a variance be approved, this standard is met.

C. Screening Requirements

1. *Where screening is required, the following standards shall apply in addition to those required for buffering:*
    a. *A hedge of evergreen shrubs shall be planted which will form a four-foot high continuous screen within two years of planting; or,*
    b. *An earthen berm planted with evergreen plant materials shall be provided which will form a continuous screen six feet in height within two years. The unplanted portion of the berm shall be planted in lawn, ground cover or bark mulch; or,*
    c. *A five foot or taller fence or wall shall be constructed to provide a continuous sight obscuring screen. Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, brick, or other materials approved by the Director. Corrugated metal is not an acceptable fencing material. Chain link fences with slats may be used if combined with a continuous evergreen hedge.*

Finding 68: The applicant has requested a variance to buffering and screening requirements in order to meet PGE and Homeland Security requirements. Please see variance findings under Section 1504.

2. *When the new use is downhill from the adjoining zone or use being protected, the prescribed heights of required fences, walls, or landscape screening along the common property line shall be measured from the actual grade of the adjoining property at the common property line. This requirement may be waived by the adjacent property owner.*

Finding 69: Adjoining properties are at the same elevation as the proposed use. This standard does not apply.

3. *If four or more off-street parking spaces are required, off-street parking adjacent to a public road shall provide a minimum of four square feet of landscaping for each lineal foot of street frontage. Such landscaping shall consist of landscaped berms or shrubbery at least 4 feet in total height at maturity. Additionally, one tree shall be provided for each 50 lineal feet of street frontage or fraction thereof.*

Finding 70: All proposed parking areas are at least a third of a mile from Hermo Road. Therefore, no screening is required between parking areas and the road.

4. *Landscaped parking areas may include special design features such as landscaped berms, decorative walls, and raised planters.*

Finding 71: No berms, walls, or raised planters are proposed in the parking area landscaping.

5. *Loading areas, outside storage, and service facilities must be screened from adjoining properties.*

Finding 72: A variance for screening is proposed to meet Homeland Security-related sight line regulations.

D. Fences and Walls

1. *Fences, walls or combinations of earthen berms and fences or walls up to four feet in height may be constructed within a required front yard. Rear and side yard fences, or berm/fence combinations behind the required front yard setback may be up to six feet in height.*
2. *The prescribed heights of required fences, walls, or landscaping shall be measured from the lowest of the adjoining levels of finished grade.*
3. *Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, brick, or other materials approved by the Director. Corrugated metal is not an acceptable fencing material. Chain link fences with slats may be used if combined with a continuous evergreen hedge.*
4. *Re-vegetation: Where natural vegetation or topsoil has been removed in areas not occupied by structures or landscaping, such areas shall be replanted to prevent erosion.*

Finding 73: As illustrated on Attachment 2c, Sheet C1.11, the applicant proposes to surround the majority of the facility (except for the office area) with seven-foot-high chain link fencing topped by one foot of barbed wire per ASTM F2611-15 for security as required by U.S. Department of Homeland Security requirements (see Attachments 4 and 6b). The applicant is seeking a variance to authorize fencing taller than the specified six-foot limit and to authorize chain link without slats and without a continuous an evergreen hedge due to the need to maintain sight lines to the facility. With the approval of the variance request, this standard is met.

1563 Standards for Approval:

The Planning Commission or Director shall make a finding with respect to each of the following criteria when approving, approving with conditions, or denying an application:

A. Flood Hazard Areas: See CCZO §1100, Flood Hazard Overlay Zone. All development in Flood Hazard Areas must comply with State and Federal Guidelines.

Finding 74: CCZO Section 1102 identifies the "Area of Special Flood Overlay" as "the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V." According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map 41009C0050D, dated November 26, 2010, the site is in shaded Zone X, which is outside the Special Flood Hazard Area (see Attachments 2d & 3d). Therefore, the Board can find that this standard does not apply.

B. Wetlands and Riparian Areas: Alteration of wetlands and riparian areas shall be in compliance with State and Federal laws.

Finding 75: As detailed in the responses to Sections 1170 and 1180, proposed development in this application impacts the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone and the Wetland Area Overlay. The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and has proposed off-site wetland mitigation south of the site. Staff recommends a condition requiring approval from the Army Corps of Engineers and DSL prior to issuance of any development permits.

C. Natural Areas and Features: To the greatest practical extent possible, natural areas and features of the site shall be preserved.

Finding 76: The applicant is proposing a renewable diesel production facility as permitted in the RIPD zone under prescribed conditions. The site contains mapped NWI wetlands; the applicant also identified delineated wetlands extending across most of the main facility site. All wetlands on the main facility site are proposed for removal. There are no other significant natural areas or features on the site. As detailed in the responses to Sections 1120, 1185, and 1190, the site is outside the Sensitive Bird Habitat Overlay, Natural Area Overlay, and Big Game Habitat Overlay. The applicant will perform stormwater management in accordance with applicable standards (as outlined in the stormwater report, Attachment 2m) and will obtain all necessary environmental permits to minimize impacts on off-site natural areas and features.

D. Historic and Cultural sites and structures: All historic and culturally significant sites and structures identified in the ~~1984~~ Comprehensive Plan, or identified for inclusion in the County Periodic Review, shall be protected if they still exist.

Finding 77: Historic and culturally significant sites and structures are identified in Article XI of the Comprehensive Plan. None of the listed sites and structures are on or adjacent to the site. This standard does not apply.

E. Lighting: All outdoor lights shall be shielded so as to not shine directly on adjacent properties and roads.

Finding 78: Proposed lighting will be provided as illustrated in Attachment 2c, Sheets C1.50 and C1.51. Light fixtures are proposed to be shielded and placed far enough from property lines so they focus light on the work area rather than casting light on adjoining properties or public streets. This standard is met.

F. Energy Conservation: Buildings should be oriented to take advantage of natural energy saving elements such as the sun, landscaping and land forms.

Finding 79: The proposed buildings will be oriented along axes corresponding to cardinal directions, allowing for solar effects to the east, south, and west faces. The site is relatively flat so slopes do not affect building orientation.

G. Transportation Facilities: Off-site auto and pedestrian facilities may be required by the Planning Commission, Planning Director or Public Works Director consistent with the Columbia County Road Standards and the Columbia County Transportation Systems Plan.

Finding 80: The TIA (Attachment 2n) found that all study intersections meet applicable Columbia County, Oregon Department of Transportation, and City of Clatskanie mobility standards in 2020, in 2024 without NEXT Renewable Fuels, and in 2024 with NEXT Renewable Fuels and improvements to Hermo Road as proposed by the Applicant. The TIA did not identify a need for mitigation strategies. Hermo Road is currently gravel near the site but the County has a planned project (TSP Project #9) to improve the road from Quincy Mayger Road to just west of the existing rail spur south of the PGE site. The Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road through a proposed condition of approval.

There is an existing paved roadway from Kallunki Road to the PGE Beaver Generation site and this road has an existing paved rail crossing. The applicant's proposed secondary driveway is the existing gravel driveway that connects to this existing paved roadway west of the rail line, so no rail improvements are required. No changes are proposed to this existing paved roadway or rail crossing. Attachment 2c, Sheet C1.11 specifies that the secondary driveway will be 20 feet wide and surfaced with gravel. Final design of signage and gates will be deferred to the building permit stage of the project, though conceptual wording of the "emergency access only" signage is shown on Sheet C1.40.

1564 Final Site Plan Approval:

If the Planning Director or Planning Commission approves a preliminary site plan, the applicant shall finalize all the site drawings and submit them to the Director for review. If the Director finds the final site plan conforms with the preliminary site plan, as approved by the Director or Planning Commission, the Director shall give approval to the final site plan. Minor differences between the preliminary site plan and the final site plan may be approved by the Director. These plans shall be attached to the building permit application and shall become a part of that permit.

Finding 81: The preliminary site plan, once approved, is forwarded to the County Building Official and other departments. Its contents dictate their review and standards. As such the final site plan shall be approved only if it conforms to the preliminary site plan reviewed and approved by the Board. In addition, the County Building Official will require the project to comply with all applicable requirements of the County Codes related to Building, Safety and Fire Protection Standards in effect at the time of building permit applications. Staff finds that the criteria in Section 1563 will be met with conditions.

Section 200 GENERAL PROVISIONS

215 Ingress and Egress:

Every use of property shall hereafter have a defined point of usable ingress and egress onto any street. Such defined points of access shall be approved at the time of issuance of a building permit.

Finding 82: As depicted on Attachment 2c, Sheets G0.01 and C1.13, the proposed development will utilize a driveway to Hermo Road as its primary access point, with secondary emergency egress to Kallunki Road. Each of these serves as a defined ingress and egress point. This standard is met.

Section 1300 SIGNS

1301 Use:

No sign may be established, altered, or expanded hereafter in any district in Columbia County, except in accordance with the provisions outlined in this Section. The sign provisions apply to signs established in conjunction with any use in the county.

Finding 83: Prior to sign installation, the applicant will obtain all necessary permits and submit signage designs to County staff for review where required by code.

1302 General Provisions:

.1 Design Review: In addition to complying with the standards in this Section, the design and color of commercial and industrial signs and supporting structures of signs 100 square feet or larger in size shall be compatible with the architectural design and color of existing and proposed buildings on the site as determined during site design review according to the provisions of Section 1550 of this Ordinance.

Finding 84: The applicant is not proposing any signage over 100 square feet. See Attachment 2c, Sheet C1.40. This standard does not apply.

.2 Setbacks:

A. All signs shall be situated in a manner so as not to adversely affect safety, corner vision, or other similar conditions and shall not overhang or encroach upon public rights of way.

Finding 85: As illustrated in Attachment 2c, Sheet C1.40, no signage is proposed in locations that affect vehicle sight lines or overhang or encroach upon Hermo Road or Kallunki Road. This standard is met.

B. Unless otherwise specified, all signs in residential zoning districts shall observe the yard setback requirements of the zoning district in which they are located.

Finding 86: The site is not in a residential zoning district. This standard does not apply.

C. No setbacks from property lines shall be required for signs in non-residential zoning districts except that in all zoning districts, setbacks shall be required at corners as may be necessary to provide adequate corner vision or in cases where a sign is placed adjacent to a street, as provided is 1302.2(D), below.

Finding 87: As illustrated in Attachment 2c, Sheet C1.40, no signage is proposed in locations that obstruct corner vision. This standard is met.

D. Setbacks shall be required which comply with setback requirements of the abutting residential zoning district when a sign is placed on a parcel abutting a street (except Highway 30), which separates a non-residential parcel from a residential parcel or when a sign is placed on a property line separating a nonresidential parcel from a residential parcel.

Finding 88: The site does not abut a residential zoning district and is not near a residential parcel. This standard does not apply.

.3 Visual Obstructions: No sign shall be situated in a manner which results in the complete visual obstruction of an existing sign.

Finding 89: There are no existing signs in the vicinity of the site. This standard does not apply.

.4 Illuminated Signs: Artificially illuminated signs, or lights used to indirectly illuminate signs, shall be placed, shielded, or deflected so as not to shine into residential dwelling units or structures. The light intensity of an illuminated sign shall not exceed the following standards:

A. No exposed reflective type bulb, par spot or incandescent lamp, which exceeds twenty-five (25) Watts, shall be exposed to direct view from a public street or highway, but may be used for indirect light illumination of the display surface of a sign.

Finding 90: As depicted on Attachment 2c, Sheet C1.40, the proposed sign near Hermo Road will be externally illuminated. The proposed LED lamps will be shielded so as not to be directly visible from the street. This standard is met.

B. When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing shall not exceed three hundred (300) milliamperes rating for white tubing or one hundred (100) milliamperes rating for any colored tubing.

Finding 91: No neon tubing is proposed. This standard does not apply.

C. When fluorescent tubes are used for the interior illumination of a sign […]

Finding 92: No fluorescent tubes are proposed. This standard does not apply.

.6 Sign Clearance: A minimum of 8 feet above sidewalks and 15 feet above driveways shall be provided under free-standing signs.

Finding 93: As illustrated in Attachment 2c, Sheet C1.40, no signage is proposed over sidewalks or driveways. All signage will be monument signage. This standard does not apply.

1313 Commercial and Industrial Districts:

.1 Signs Permitted: Signs shall be permitted in Commercial and Industrial zoning districts subject to the provisions of this Section, except to the extent such provisions conflict with the specific development standards for signs in the underlying zoning district.

Finding 94: Prior to sign installation, the applicant will obtain all necessary permits and submit signage designs to County staff for review where required by code. The RIPD zone has no specific development standards for signage and instead to defers to the provisions of Section 1300.

.2 Limit on Sign Area: Except as otherwise permitted in Section 1302.5, no sign having a sign area greater than 200 square feet shall be permitted.

Finding 95: As illustrated in Attachment 2c, Sheet C1.40, no sign over 200 square feet is proposed. This standard is met.

.3 Aggregate Sign Area Per Parcel.

A. Except as otherwise provided herein, the maximum permitted area of all signs, including the total area of each face of a double-faced sign, or the sole face of a single faced sign for each parcel, is as follows: 40 square feet; plus

1)For the first fifty (50) linear feet of building frontage on a public road, an additional square foot of sign area per linear foot of building frontage on such public road; plus

2)For the next two hundred and twenty (220) linear feet of building frontage on a public road, an additional one-half (½) square foot of sign area per linear foot of building frontage on such public road.

B. For the purpose of this section, "building frontage" means the linear length of a building facing a public right of way or the linear length of the public right of way facing a building, whichever is smaller.

Finding 96: This standard allows the site to have 40 square feet of signage plus an additional 160 square feet for the 285 feet of buildings facing Hermo Road, for a total allowable sign area of 200 square feet. The proposed signage depicted on Attachment 2c, Sheet C1.40 will have a total area of approximately 65 square feet. This standard is met.

C. The area of any legal non-conforming sign which is greater than 200 square feet in size shall not be included in the calculation of maximum sign area per parcel under this Section.

Finding 97: The site has no existing signage. This standard does not apply.

D. The area of any temporary sign permitted under 1313.7 shall not be included in the calculation of maximum sign area per parcel under this section.

Finding 98: Any temporary signage will be permitted in accordance subsection 1313.7, irrespective of the area limits for permanent signage.

.4 Free Standing Signs: Free standing signs, including ground mounted signs, must comply with the following additional standards:

A. Height: Free standing signs shall not exceed 20 feet in height above grade or above road grade, whichever is higher.

Finding 99: The proposed signage depicted on Attachment 2c, Sheet C1.40 will have a height of approximately 4 feet. This standard is met.

B. Total Area: The total sign area of all freestanding signs allowed by this section plus the area of all other allowed signs on the parcel shall not exceed the aggregate sign limits for the parcel as provided in Section 1313.3.

Finding 100: Section 1313.3 allows up to 200 square feet of signage at this location. The proposed signage depicted on Attachment 2c, Sheet C1.40 will have a total area of approximately 65 square feet. This standard is met.

C. Center/Complex Signs: Only one freestanding sign shall be allowed for a center/complex even when there is more than one parcel in or owner of the center/complex, unless one additional sign is needed to provide identification of the development at a major public access point on a different roads. No more than two freestanding signs will be allowed. For purposes of this Section, "Center/Complex" means any number of businesses greater than one which share the same site using common points of ingress and egress and/or common parking facilities. Legal non-conforming signs shall not be included in the calculation of the number of freestanding signs per parcel under this Section.

Finding 101: No center/complex signage is proposed. This standard does not apply.

D. Illumination: Free standing signs may be illuminated subject to subsection 1302.4.

Finding 102: Compliance with the illumination standards is addressed in the response to subsection 1302.4. This standard is met.

.5 Building Mounted Signs: Signs mounted or painted on buildings must comply with the following additional standards:

A. Area. The total sign area of all building mounted signs allowed pursuant to this section in addition to the area of all other allowed signs per parcel shall not exceed the aggregate sign limits for the parcel as provided in section 1313.3.
B. Height. Building mounted signs shall not extend more than four (4) feet above the roof of the building on which it is mounted.
C. Illumination. Building mounted signs may be illuminated subject to the illumination standards set forth in subsection 1302.4.

Finding 103: The applicant may later choose to paint a logo on one or more tanks. If the County classifies a logo on a tank as a building sign, the applicant will seek the appropriate permits prior to installation.

.6 Traffic Control/Directional Signs: On-site traffic control and directional identification signs shall be required as may be necessary, commensurate with the size and use of the site, in conjunction with site design review, if such review is required. Centers/ complexes combining several uses shall provide tenant directories, or building identification and directional signing oriented toward on-site vehicle and pedestrian circulation.

Finding 104: No directional signs are needed for the facility with the exception of the information proposed on the signage depicted on Attachment 2c, Sheet C1.40. The applicant proposes to defer internal site signage design to the permitting stage to provide the opportunity for coordination with the Fire Marshal. The anticipated protocol is that emergency responders would be escorted by facility staff from the security gate to any locations requiring assistance. This standard is met.

.7 Temporary Signs. Signs of a temporary nature may be allowed provided they meet the following standards. For purposes of this section, "temporary" shall mean not to exceed one year.
A. The temporary sign area shall not exceed 60 square feet.
B. The temporary sign shall observe the setback provisions under subsection 1302.2.
C. Only one temporary sign shall be permitted per parcel.
D. The temporary sign shall not be artificially illuminated.
E. The temporary sign shall be removed from the premises after the one year temporary sign period has expired.

Finding 105: Any temporary signage will be permitted in accordance with this section.

.8 Animated or Video Signs Prohibited: No sign shall contain, include, or be illuminated by any flashing, intermittent, revolving, rotating, or moving light or move or have any animated or moving parts except that this Section shall not apply to:
A. Traffic control signs.
B. Signs, displays, devices, or portions thereof with lights that may be changed at intermittent intervals by electronic process or remote control. The maximum size of the display area for such changing numbers or letters is ten (10) square feet.

Finding 106: No animated or video signs are proposed. This standard is met.

1314 Calculating Sign Area:

The structure supporting or appearing to support a freestanding sign shall not be included in the area of the sign, unless such structural element is typically used to carry signage. In calculating the square footage of a sign, the width shall be measured at the widest part of the sign, including any cut-outs, and the length shall be

measured at the longest part of the sign, including any cut-outs. The maximum square footage limitation of the sign shall be calculated such that no cutouts or other Copy shall be permitted outside of the size limitation.

Finding 107: The proposed signage depicted in Attachment 2c, Sheet C1.40 has been measured in accordance with this provision.

1315 Copy Area:

Copy is allowed only on the face of the sign. Copy is prohibited in the ledger area of the sign, on the post of the sign, or other structure of the sign, except to the extent that the sign owner's logo or other disclosure is required by law to be placed on the ledger, post or other structure of the sign. For purposes of this Section, "copy" is defined as any text or image.

Finding 108: The proposed signage depicted in Attachment 2c, Sheet C1.40 has been designed in accordance with this provision.

Section 1400 OFF-STREET PARKING AND LOADING

1401 General Provisions:

At the time of the erection of a new building, or an addition to an existing building, or any change in the use of an existing building, structure, or land which results in an intensified use by customers, occupants, employees, or other persons, off-street parking and loading shall be provided according to the requirements of this section.

Finding 109: The applicant proposes to provide parking and loading for the new facility for the convenience of site users and employees. As detailed below, the proposed parking and loading conforms to applicable code standards. This standard is met.

1402 Continuing Obligation:

The provisions for and maintenance of off-street parking and loading facilities shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance, or regulation shall be issued with respect to off street parking and loading, or land served by such land, until satisfactory evidence is presented that the property is, and will remain, available for the designated use as a parking or loading facility.

Finding 110: The applicant acknowledges the ongoing responsibility to maintain the parking and loading areas. This standard is met.

1403 Use of Space:

.1 Required parking spaces shall be available for parking of vehicles of customers, occupants, and employees.

Finding 111: The applicant proposes to construct the parking areas illustrated in Attachment 2c, Sheets C1.11 and C1.12 for use by vehicles of site users as required. Most of the proposed parking is located on the southeast portion of the site, near the main office building, with the balance near the central control building. This standard is met.

.2 No parking of trucks, equipment, or the conduct of any business activity shall be permitted on the required parking spaces.

Finding 112: The applicant does not propose to park trucks or equipment in the required off-street parking spaces. This standard is met.

.3 Required loading spaces shall be available for the loading and unloading of vehicles concerned with the transportation of goods and services.

Finding 113: The applicant proposes to construct truck loading areas including docks on the warehouse building as illustrated in Attachment 2c, Sheets C1.11 and C1.12. This standard is met.

.4 Excepting residential and local commercial districts only, loading areas shall not be used for any other purpose than for loading and unloading.

Finding 114: The applicant does not propose to utilize loading areas for any use other than loading. This standard is met.

.5 In any district it shall be unlawful to store or accumulate goods in a loading area in a manner which would render the area temporarily or permanently incapable of immediate use for loading operations.

Finding 115: The applicant does not propose to serve store goods in a loading area in such a way that the loading spaces become unusable. As illustrated in Attachment 2c, Sheets C1.11 and C1.12, the applicant proposes outdoor storage areas which are separate from loading areas. This standard is met.

1404 Joint Usage of Facilities:

Owners of two or more uses, structures, or parcels of land may agree to utilize jointly the same parking and loading spaces when hours of operation do not overlap, provided that satisfactory legal evidence is presented to the Planning Director in the form of deeds, leases, or contracts securing full access to such parking or loading areas for all the parties jointly using them.

Finding 116: The applicant does not propose to share parking spaces with uses on other sites. This standard does not apply.

1405 Plans Required:

A plot plan shall be submitted in duplicate to the Director with each application for a building permit or for a change of classification to OP. The plot plan shall include the following information:

.1 Dimensions of the parking lot.
.2 Access to streets and location of curb cuts.
.3 Location of individual parking spaces.
.4 Circulation pattern.
.5 Grade and drainage.
.6 Abutting property.
.7 A landscaping plan which shall include the location and names of all vegetation, and the location and size of fencing or other screening material. This plan shall be approved by the Director.

Finding 117: The proposed site plan depicts the parking areas in Attachment 2c, Sheets C1.11 and C1.12, while Sheet C1.20 depicts proposed grading and Sheets L1.10-L1.11 depict proposed landscaping. This standard is met.

1406 Location:

.1 Spaces required by this section shall be provided on the site of the primary uses, provided that, when practical difficulties prevent their establishment upon the same site, the Planning Director may permit the facility to be located within 300 feet therefrom, measured in a straight line (including streets and alleys) from the nearest property line to the nearest parking space; but in any case the location shall meet all provisions of this ordinance which apply.
.2 Loading spaces and maneuvering area shall be located only on or abutting the property served.

Finding 118: As illustrated on Attachment 2c, Sheet C1.11 and C1.12, parking and loading spaces are proposed within the site boundaries. Truck turning diagrams are included where necessary to demonstrate that adequate clearance has been provided. This standard is met.

1407 Change of Use:

In case of enlargement or change of use, the number of parking or loading spaces required shall be based upon the total area involved in the enlargement or change in use.

Finding 119: No enlargement or change of use is proposed as the site currently has no structures or parking areas. This standard does not apply.

1408 Design Standards:

.1 Scope:

A. These design standards shall apply to all parking, loading, and maneuvering areas except those for single and two-family residential dwellings on individual lots.

B. All parking and loading areas shall provide for the turning, maneuvering, and parking of all vehicles on the lots.

Finding 120: As illustrated on Attachment 2c, Sheet C1.11, parking and loading areas are proposed with widths adequate to allow for efficient site circulation of vehicles. Truck turning diagrams are included where necessary to demonstrate that adequate clearance has been provided. This standard is met.

1409 Loading Spaces:

.1 Apartment: Each required space shall be at least 12 feet in width and 25 feet in length.
.2 Commercial: Each required space shall be at least 12 feet in width and 35feet in length.
.3 Industrial: Each required space shall be at least 12 feet in width and 60 feet in length.
.4 Clearance: The height of each required loading space shall provide a minimum vertical clearance of 13 feet.

Finding 121: As illustrated on Attachment 2c, Sheet C1.12, in conformance with the Industrial standard noted above, three loading dock spaces are proposed on the warehouse, with widths exceeding 12 feet and lengths of 60 feet and no limitations on vertical clearance. This standard is met.

1410 Size:

.1 The standard size of a parking space shall be 9 feet by 18 feet.
.2 Handicapped parking spaces shall be 12 feet by 18 feet.
.3 Parallel parking, the length of the parking space shall be increased to 22 feet.

Finding 122: As illustrated on Attachment 2c, Sheet C1.12, all standard parking spaces are proposed to be 9 feet wide and 18 feet long, while handicapped parking spaces are proposed to be 9 feet wide and 18 feet long with 9-foot access aisles. No parallel parking spaces are proposed. This standard is met.

1411 Aisles:

Aisles shall not be less than:
.1 25'0" in width for 90 degree parking;
.2 20'0" in width for 60 degree parking;
.3 20'0" in width for 45 degree parking; and
.4 12'0" in width for parallel parking.

Finding 123: As illustrated on Attachment 2c, Sheet C1.12, all parking areas are proposed to utilize 90-degree parking with aisles at least 25 feet wide. This standard is met.

1412 Access:

There shall be no more than one 45-foot-wide curb cut driveway per 150 feet of street frontage, or fraction thereof, permitted per site.

Finding 124: As illustrated on Attachment 2c, Sheet C1.13, the proposed driveway will utilize a 45-foot curb cut to Hermo Road. Mackenzie civil engineers have performed truck turning simulations to confirm that the driveway connection has adequate width for incoming and outbound vehicles. This standard is met.

1413 Surfacing and Marking:

.1 The surfacing of each parking area shall meet minimum County standards to handle the weight of the vehicles which will use the parking area. All areas used for parking and maneuvering of vehicles shall be marked in accordance with the approved plan and such marking shall be continuously maintained. Handicapped parking spaces shall be marked with a wheelchair symbol.

.2 The parking and loading areas for commercial, industrial, or apartment uses shall be paved with concrete, asphaltic concrete, or another comparable surface.

Finding 125: The proposed driveway and all parking areas will be hard-surface paved, with parking spaces marked with paint and handicapped spaces marked in accordance with the Oregon Structural Specialty Code. This standard is met.

1414 Drainage and Lighting:

Adequate drainage shall be provided to dispose of the run-off generated by the impervious surface area to the parking area. The drainage system shall function so it will not adversely affect adjoining property.

Artificial lighting shall be provided in such a manner as to insure the safety of the parking area without interfering with adjoining properties or creating traffic hazards on adjoining streets.

Finding 126: The proposed grading and drainage patterns are depicted in Attachment 2c, Sheets C1.20 and C1.30, respectively. Stormwater will flow into catch basins in the parking area before being conveyed to the wastewater treatment facility at the north end of the site, which will discharge to the existing Port Westward stormwater system. Further discussion of stormwater management is included in Attachment 2m.

Parking lot lighting will be provided as illustrated in Attachment 2c, Sheets C1.50 and C1.51; light fixtures are proposed to be placed far enough from property lines so they will not cast light on adjoining properties or public streets. This standard is met.

1415 Parking Areas:

All parking areas, excluding one and two-family dwellings, shall meet the following requirements:

.1 All parking areas of less than 20 parking spaces shall have one handicapped parking space.

Parking areas with more than 20 spaces shall provide one handicapped parking space for every 50 standard parking spaces.

Finding 127: The proposed handicapped spaces will be provided at the rate specified in the Oregon Structural Specialty Code, which is higher than that required by this code provision. This standard is met.

.2 All parking areas shall be divided into bays of not more than 20 parking spaces. Between, and at the end of each parking bay, there shall be planters which have a minimum width of 5 feet and be at least 17 feet in length. Each planter shall contain one major structural tree and ground cover which has been deemed appropriate by the Director. Truck loading areas need not comply with the preceding requirements.

Finding 128: As illustrated on Attachment 2c, Sheet C1.12, the proposed parking area utilizes landscape islands to separate the space into bays with 20 or fewer spaces. Landscaping is provided in each of the planter bays as illustrated on Attachment 2c, Sheet L1.11. This standard is met.

.3 Parking areas shall be separated from the exterior wall of a structure, exclusive of paved pedestrian entranceways, by a 5 foot strip of landscaping.

Finding 129: As illustrated on Attachment 2c, Sheet C1.12, all proposed parking areas are at least five feet from buildings, with sidewalks provided between the parking and buildings as illustrated on Attachment 2c, Sheets C1.11 and C1.12. Since these sidewalks are paved, landscaping is not required between the parking and the building. This standard is met.

.4 Industrial or commercial parking areas, which abut a residential or apartment district, shall meet the building setback of the most restrictive adjoining residential or apartment district.

Finding 130: The site does not abut a residential or apartment district. This standard does not apply.

.5 When industrial or commercial parking areas adjoin a residential or apartment district, there shall be a sight obscuring planting, which is at least 80 percent opaque and when viewed horizontally from between 2 and 8 feet above ground level. This planting shall be composed of materials which are an adequate size so as to achieve the required degree of screening within 12 months after installation.

Finding 131: The site does not adjoin a residential or apartment district. This standard does not apply.

.6 Parking areas shall be set back from a lot or parcel line adjoining a street. The setback area shall be landscaped.

Finding 132: As illustrated on Attachment 2c, Sheets G0.01 andC1.11, the parking area is proposed on TL 8422-00-00300, which does not have a lot line adjoining a street. This standard is met.

.7 All parking area setbacks shall be landscaped with major trees, shrubs, and ground cover as approved by the Director.

Finding 133: No parking area setback is required as noted above. This standard is met.

.8 A minimum of 10 percent of the parking area shall be landscaped and maintenance of the landscaping shall be the owner's responsibility.

Finding 134: Based on the parking area and landscape areas denoted on Attachment 2c, Sheet L1.10, the north parking lot will include 46% landscaping, the southern parking lot will include 20% landscaping, and the central control building parking lot will include 32% landscaping. The applicant acknowledges the continuing obligation to maintain landscaping. This standard is met.

.9 Internal pedestrian connections shall be provided in parking lots with greater than ten (10) parking spaces. These connections shall be a minimum of five (5) feet wide and distinguished from vehicular areas through changes in elevation or contrasting paving materials (such as light-color concrete inlay between asphalt). Paint or thermo-plastic striping and similar types of non-permanent applications may be approved for crossings of parking lot areas that do not exceed 24 feet in crossing length.

Finding 135: As illustrated on Attachment 2c, Sheet C1.12, parking lots have more than 10 parking spaces and thus provide the required pedestrian connections. The pedestrian connections are five feet wide. This standard is met.

.10 In urban growth boundaries and urban unincorporated communities, parking lots for commercial, industrial, and public/quasi-public uses that have designated employee parking and more than 20 parking spaces shall provide at least 10% of the employee parking spaces (with a minimum of two spaces) as preferential long-term carpool and vanpool parking spaces. Preferential carpool and vanpool parking spaces shall be closer to the entrances of the building than other parking spaces, with the exception of ADA accessible parking spaces.

Finding 136: The site is not within an urban growth boundary and is not within an urban unincorporated community. This standard does not apply.

.11 A portion of existing parking areas may be redeveloped for transit-oriented improvements, such as a bus stops and pullouts, bus shelters, park and ride stations, transit-oriented developments, and similar facilities, where identified in or consistent with an adopted County transit plan. Subject sites incorporating transit improvements as part of a development proposal are eligible for up to a 10% reduction in required vehicular parking spaces.

Finding 137: The site does not have an existing parking area, and no transit improvements are proposed. This standard does not apply.

1416 Minimum Required Off-Street Parking Space:

.5 Industry
Manufacturing: One space per employee on the largest shift.

Finding 138: Estimated staffing levels by shift are denoted in the table below.

ESTIMATED STAFFING LEVELS				
Weekdays			Weekends	
Office/Mgt.	Shift 1	Shift 2	Shift 1	Shift 2
8:00 AM – 5:00 PM	6:00 AM – 6:00 PM	6:00 PM – 6:00 AM	6:00 AM – 6:00 PM	6:00 PM – 6:00 AM
83	35	35	35	35

Based on this information, the largest shift will occur weekdays between 8:00 AM and 5:00 PM, during which time there will be a total of 118 employees. As illustrated on Attachment 2c, Sheets C1.11 and C1.12, the applicant proposes 128 parking spaces which meets the standard of at least one space per employee of the largest shift. This standard is met.

1417 Unspecified Uses:

Any use not specifically listed in the foregoing list shall have the requirements of the listed use or uses deemed equivalent by the Director.

Finding 139: The proposed manufacturing use has a parking ratio specified in Section 1416. This standard does not apply.

1418 Minimum Required Off-Street Loading Spaces:

.3

MINIMUM REQUIRED OFF-STREET LOADING SPACES (EXCERPT)		
USE	SQUARE FEET OF FLOOR USE OR LAND AREA	MINIMUM LOADING SPACES REQUIRED
Manufacturing, Wholesale Storage or Hospital	under 5,000	0
	5,000 - 39,999	1
	40,000 - 99,999	2
	100,000 - 159,999	3
	160,000 - 239,999	4
	240,000 - 319,999	5
	320,000 - 399,999	6
	400,000 - 489,999	7
	490,000 - 579,999	8
	580,000 - 669,999	9
	670,000 - 759,999	10
	760,000 - 849,999	11
	850,000 - 939,999	12
	940,000 - 1,029,999	13
	over 1,030,000	14

Finding 140: As noted on Attachment 2c, Sheet C1.11, the combined floor area for the proposed buildings is approximately 78,330 square feet. Based on the table above, the facility therefore will need at least two loading spaces. The applicant proposes loading docks on the warehouse building to serve loading needs, together with multiple outdoor storage areas and rail loading/unloading areas. The proposed loading dock area shown on Attachment 2c, Sheet C1.12 can accommodate three trucks. This standard is met.

1419 Minimum Required Bicycle Parking Spaces:

.1 All Public and Semi-Public buildings and uses, Retail uses, Apartment Dwelling uses and Commercial Recreation uses […]

.2 The following are the required number of bicycle parking spaces: […]

.3 Single-family dwellings, mobile homes, warehouse, storage and wholesale businesses, and manufacturing establishments shall be exempted from the requirements of Subsection 1419 Bicycle Parking.

Finding 141: The proposed manufacturing use is exempt from providing bicycle parking via criterion .3. This standard is met.

Section 1450 TRANSPORTATION IMPACT ANALYSIS

1450 Transportation Impact Analysis:

Transportation Impact Analysis (TIA) must be submitted with a land use application if the proposal is expected to involve one or more of the conditions in 1450.1 (below) in order to minimize impacts on and protect transportation facilities, consistent with Section 660-012-0045(2)(b) and (e) of the State Transportation Planning Rule.

.1 Applicability – A TIA shall be required to be submitted to the County with a land use application if the proposal is expected to involve one (1) or more of the following:

- *A. Changes in land use designation, or zoning designation that will generate more vehicle trip ends.*
- *B. Projected increase in trip generation of 25 or more trips during either the AM or PM peak hour, or more than 400 daily trips.*
- *C. Potential impacts to intersection operations.*
- *D. Potential impacts to residential areas or local roadways, including any nonresidential development that will generate traffic through a residential zone.*

E. Potential impacts to pedestrian and bicycle routes, including, but not limited to school routes and multimodal roadway improvements identified in the TSP.
F. The location of an existing or proposed access driveway does not meet minimum spacing or sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles are likely to queue or hesitate at an approach or access connection, thereby creating a safety hazard.
G. A change in internal traffic patterns may cause safety concerns.
H. A TIA is required by ODOT pursuant with OAR 734-051.
I. Projected increase of five trips by vehicles exceeding 26,000-pound gross vehicle weight (13 tons) per day, or an increase in use of adjacent roadways by vehicle exceeding 26,000-pound gross vehicle weight (13 tons) by 10 percent.

Finding 142: Mackenzie transportation engineers estimate that the proposed development will generate 667 weekday trips, 91 of which will occur in the AM peak hour and 84 of which will occur within the PM peak hour. Accordingly, the applicant has provided a TIA as required (Attachment 2n). This standard is met.

.2 Consistent with the County's Guidelines for Transportation Impact Analysis (TIA), a landowner or developer seeking to develop/redevelop property shall contact the County at the project's outset. The County will review existing transportation data to establish whether a TIA is required. It is the responsibility of the applicant to provide enough detailed information for the County to make a determination. An applicant should have the following prepared, preferably in writing:
A. Type of uses within the development
B. The size of the development C. The location of the development
C. Proposed new accesses or roadways
D. Estimated trip generation and source of data
E. Proposed study area

If the County cannot properly evaluate a proposed development's impacts without a more detailed study, a TIA will be required. The County will provide a scoping summary detailing the study area and any special parameters or requirements, beyond the requirements set forth in the County's Guidelines for Transportation Impact Analysis, when preparing the TIA.

Finding 143: The applicant's transportation engineers submitted a scoping letter for review and approval by Columbia County staff and Oregon Department of Transportation staff prior to commencing the TIA. The scoping letter identified those items that would be addressed as part of the analysis. This standard is met.

.3 Approval Criteria. When a TIA is required, a proposal is subject to the following criteria:
A. The TIA addresses the applicable elements identified by the County Public Works Director and the County's Guidelines for Transportation Impact Analysis;
B. The TIA demonstrates that adequate transportation facilities exist to serve the proposed development or, identifies mitigation measures that resolve identified traffic safety problems in a manner that is satisfactory to the County Public Works Director and, when state highway facilities are affected, to ODOT;
C. For affected non-highway facilities, the TIA establishes that mobility standards adopted by the County have been met; and
D. Proposed public improvements are designed and will be constructed consistent with County Road Standards and access spacing standards in the Transportation System Plan.

Finding 144: The project TIA (Attachment 2n) addresses those items identified in the scoping letter approved by County and ODOT staff to ensure compliance with approval standards. The TIA indicates that the proposed development will generate 667 weekday trips, 91 of which will occur in the AM peak hour and 84 of which will occur within the PM peak hour. The report analyzed traffic operations at six study area intersections in 2020 and in 2024, both with and without the proposed development.

The report found that all six study intersections meet applicable Columbia County, Oregon Department of Transportation, and City of Clatskanie mobility standards in 2020, in 2024 without NEXT Renewable Fuels, and in 2024 with NEXT Renewable Fuels and improvements to Hermo Road. The report also found that existing and future traffic queues can be accommodated within the existing storage areas at all study intersections. Based on this analysis, the TIA does not recommend any mitigation strategies as a result of the proposed facility.

The site does not abut any public rights-of-way but is near Hermo Road, which is classified as a local road in the 2017 Columbia County Transportation System Plan (TSP). The TSP recommends an optimum right-of-way width of 50 feet and an optimum roadway width of 28 feet (to accommodate ten-foot lanes and four-foot shoulders). The existing right-of-way width at the driveway location is 60 feet so no right-of-way dedication is merited. Hermo Road is currently gravel near the site but the County has a planned project (TSP Project #9) to improve the road from Quincy Mayger Road to just west of the existing rail spur south of the PGE site. The Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road through a proposed condition of approval.

Based on the information noted above and the full TIA, the applicant has demonstrated compliance with the identified approval criteria.

.4 Conditions of Approval.

A. The County may deny, approve, or approve a proposal with conditions necessary to meet operational and safety standards; provide the necessary right-of-way for improvements; and to require construction of improvements to ensure consistency with the future planned transportation system.

B. Construction of off-site improvements may be required to mitigate impacts resulting from development that relate to capacity deficiencies and public safety; and /or to upgrade or construct public facilities to County Standards. Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on transportation facilities. Findings in the development approval shall indicate how the required improvements directly relate to and are roughly proportional to the impact of development.

Finding 145: The Applicant proposes to satisfy Public Works requirements for necessary improvements to Hermo Road through a road improvement agreement. Staff recommends a condition of approval to ensure Public Works requirements are met.

Section 1500 DISCRETIONARY PERMITS (Variances)

1504 Variances:

Except as provided in Section 1504.4 below, there are 2 classes of variances to the standards established in this ordinance. A Minor Variance is defined as a request for a variance of less than 25% from a dimensional requirement such as setbacks, height, lot or parcel coverage, lot or parcel width, or lot or parcel depth, or a request for a variance of less than 10% from a minimum lot or parcel size requirement.

All other variances are defined as Major Variances. Use variances are not permitted under this ordinance except as permitted under Section 1505.1 "Temporary Permits: Use Not Allowed in District".

Major Variances from the lot or parcel size requirements of the Primary Agriculture (PA-38), Forest Agriculture (FA-19), Primary Forest (PF-76) and Rural Residential (RR-5) zones are not permitted under this ordinance.

Finding 146: To comply with PGE requirements and Department of Homeland Security regulations, the applicant is proposing a variance to screening and buffering standards by not planting trees under PGE powerlines, and proposing eight foot-fencing (seven feet of chain link topped by one foot of barbed wire per ASTM F2611-15) with no slats or associated plantings (see Attachment 2c, Sheet C1.11). As a result, the applicant is requesting a Major Variance from CCZO Section 1562.B and 1562.D, which includes requirements for buffering, and limits fences to four feet in height in front yards and six feet in height in rear and side yards and also specifies that chain link fences with slats may be used if combined with a continuous evergreen hedge. The applicant has provided evidence below responding to applicable approval criteria for the requested variance.

.1 Major Variances: The Planning Commission may permit and authorize a variance from the requirements of this ordinance when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest.

A. A variance shall be made only when all the following conditions and facts exist:

1. The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property;

Finding 147: Granting the proposed variance will help improve public safety and maintain health and welfare by ensuring that the facility complies with Department of Homeland Security fencing and sight-line regulations (see Attachments 4 and 6b). Security around the facility requires that the surrounding area be visible in order to detect any unauthorized persons attempting to enter the site. A chain link fence provides security with good visibility. By contrast, utilizing fencing that complies with CCZO Section 1562.D would create a security risk that could result in serious harm due to inadequate height and impaired sightlines. The proposed fencing will be located within the site boundaries and thus will not be injurious to other properties.

2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;

Finding 148: The proposed variance is unique in that the Port Westward Industrial Park is one of the locations in the County where a facility such as this could be authorized under the zoning designation. Other nearby areas outside Port Westward are in agricultural or rural residential use and thus do not require the type of security fencing and sight-lines necessary for a fuel production facility. The need for the variance is related to the unique security requirements of the facility.

3. Approval of the application will allow the property to be used only for purposes authorized by the Zoning Ordinance;

Finding 149: Approval of the proposed variance will have no effect on the types of uses occurring at the site; the applicant proposes a renewable diesel fuel production facility which is consistent with *Uses under Prescribed Conditions* in the RIPD zone.

4. Strict compliance with the Zoning Ordinance would create an unnecessary hardship;

Finding 150: Compliance with the standards of CCZO Section 1562.B and D would result in buffering and screening that does not comply with Department of Homeland Security regulations and could impact the viability of the facility.

5. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor violate any other provision of the Zoning Ordinance.

Finding 151: This narrative demonstrates how the proposed use is consistent with applicable portions of the Comprehensive Plan and how the proposal complies with the CCZO. The proposed variance for buffering and screening does not adversely affect this determination of consistency. Rather, the variance will allow productive use of the land for which this site has been planned for many years. The variance will provide the requisite level of security without adversely affecting the objectives of the Comprehensive Plan or violating the CCZO.

B. A variance so authorized shall become void after the expiration of 1 year if the next step in the development process has not been applied for.

Finding 152: The applicant intends to seek appropriate approvals and permits prior to the specified expiration period.

C. The Planning Commission may impose whatever reasonable requirements it feels will fulfill the intent of this ordinance.

Finding 153: Based on the evidence that the proposed variance does not cause negative impacts on area properties, no additional requirements are necessary in this instance.

Criteria Specific to the Rail Branchline in the PA-80 Zone

Section 300 PRIMARY AGRICULTURE USE ZONE – 80 (PA-80)

301 Purpose:

The Primary Agriculture Zone or Exclusive Farm Use (EFU) This district is intended to preserve, enhance, and stabilize those prime agricultural lands and farm use areas within the County which are being used, and offer the greatest potential, for food and fiber production. This district also provides for open space, watershed protection, maintenance of clean air and water, and fish and wildlife habitat, including the creation, restoration and enhancement of wetlands.

303 Table of Authorized Uses and Development:

The following uses, activities and development are authorized in the Primary Agriculture Zone, subject to review and approval under applicable regulatory standards:

TABLE OF AUTHORIZED USES & DEVELOPMENT			
Roads, highways and other transportation facilities, requiring an exception	CUP/PC	CUP/PC	306.9, 307, 308

TRANSPORTATION – 306 CUP:

.9 Roads, Highways and other Transportation Facilities and Improvements as set forth in OAR 660-012-0065 related to Transportation Improvements on Rural Lands and not otherwise provided for in this Section, subject to adoption of an Exception to Statewide Planning Goal 3 and to any other applicable goal with which the facility or improvement does not comply, subject to compliance with Section 307, General Review Standards and Section 1503.

Finding 154: The application narrative provides the following response to this criterion:

> "The proposed rail branchline is a transportation facility subject to Conditional Use Permit approval. This narrative provides responses to the cited Sections 306.9, 307, and 308. However, it should be noted that contrary to the language in the table regarding such facilities "requiring an exception," no goal exception is required for this use pursuant to ORS 215.283(3), ORS 215.296, and OAR 660-012-0065. Those statutes and rules are discussed below, in the response to subsection 306.9."

The application continues:

> "Specifically, ORS 215.283(3) states that:
>
> *Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:*
>
> *(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or*
>
> *(b) ORS 215.296 (Standards for approval of certain uses in exclusive farm use zones) for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.*
>
> Criterion (b) refers both to ORS 215.296 and to the "…rules of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993." These rules are codified at OAR 660-012-0065, Transportation Improvements on Rural Lands, which states in part that:
>
> *(1) This rule identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with Goals 3, 4, 11, and 14 without a goal exception.*
>
> *(3) The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:*
>
> *(b) Transportation improvements that are allowed or conditionally allowed by ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993), 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) or OAR chapter 660, division 6 (Forest Lands);*
>
> *(j) Railroad mainlines and branchlines;*
>
> ORS 215.296, Standards for approval of certain uses in exclusive farm use zones, states that:

(1) A use allowed under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (2) or (11) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:
(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (2) or (11) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

The provisions above outline the rationale through which the rail branchline should be authorized by the County. The analysis required by ORS 215.296 is included in the response to Section 307.1, below."

Staff has questioned whether the proposed rail development constitutes a "mainline" or "branchline" because it serves one property and appears to function more like an accessory access and rail yard. In response, the Applicant has provided a letter from Portland and Western Railroad stating that the Applicant's tracks are "considered industry track, which is another term for branch line or spur." The letter goes on to say that "[a]s a general matter, 'branch line' is a broad term that encompasses any track that branches off from mainline track." As "branchline" and "mainline" are industry terms, and neither are defined in OAR 660-012, staff finds the applicant has provided evidence in Attachment 6h (Portland & Western Railroad Letter) that the proposed rail development can be classified as a rail branchline. If the Board finds that the proposed rail development is a rail branchline, the use does not require a goal exception as described in the applicant's submission.

307 General Review Standards:

.1 All uses in the Primary Agriculture Zone shall meet the review standards found in the above enabling Sections 304, 305 or 306. To also ensure compatibility with farming and forestry activities, the Planning Director, hearings body or Planning Commission shall determine that a use authorized by Sections 304, 305, or 306, except as specifically noted, shall meet the following requirements:

Finding 155: Findings for Section 307 generally begin by quoting large/entire sections of the applicant's narrative responses in order to capture the applicant's argument. These large quotes are followed by staff evaluation and findings. The application narrative addresses Section 307 criteria as follows:

"Consistent with the Oregon Supreme Court's ruling in *Stop the Dump Coalition v. Yamhill County*, this narrative provides a farm-by farm analysis for the farm impacts test. Two separate impact areas are examined: the first is the impact area associated with Branchline Section A (which extends from the Portland & Western Railroad mainline to the proposed renewable diesel production facility and the second is the impact area associated with Branchline Section B (which begins at the southern boundary of the proposed renewable diesel production facility and extends westward toward Hermo Road). The analysis then characterizes existing agricultural practices in the two impact areas and demonstrates that the proposed rail branchline does not violate either of the approval criteria in this subsection. Responses to each criterion are outlined below."

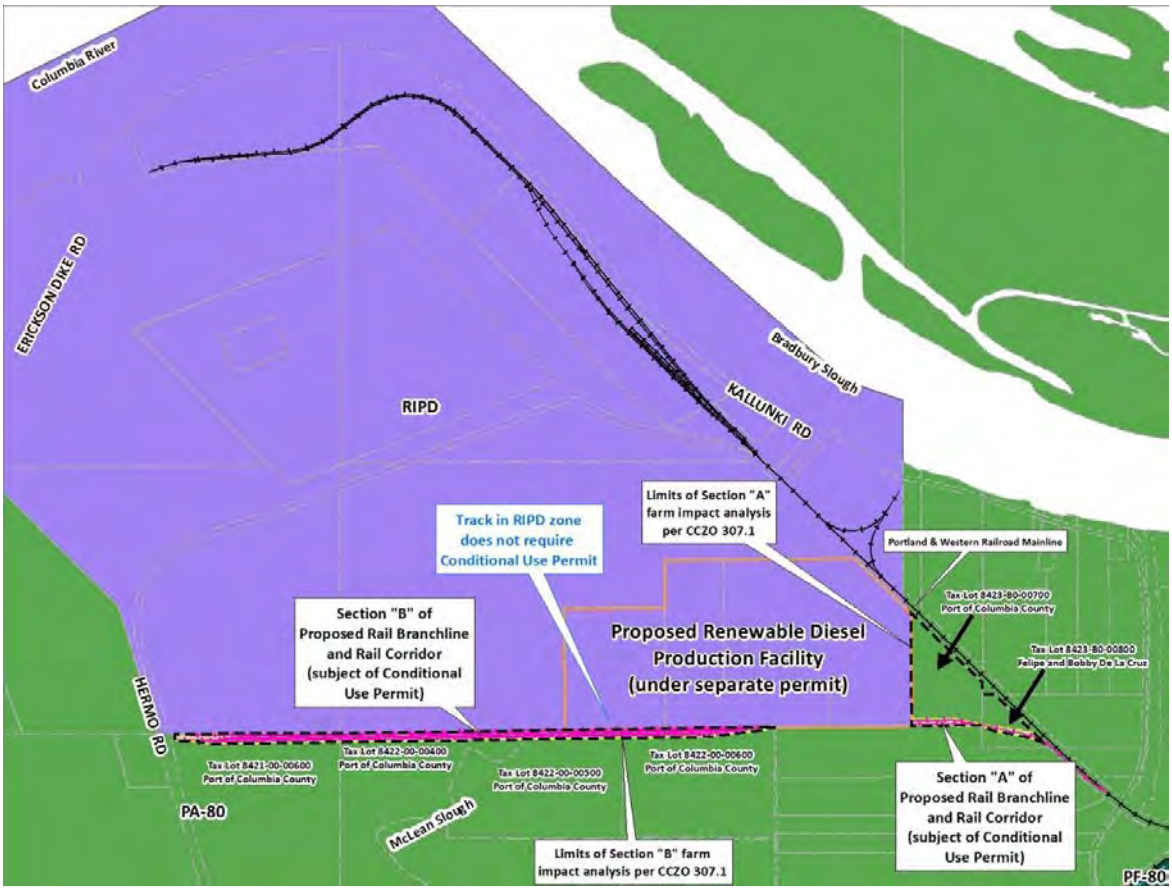
A. The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

Finding 156: The application narrative provides the following rationale to address this criterion:

"As illustrated in Figure 3, Section A of the proposed rail branchline crosses two (2) parcels: one (1) owned by Felipe and Bobby De La Cruz (tax lot 8423-B0-00800) and one (1) owned by the Port of Columbia County (tax lot 8423-B0-00700). Section B of the proposed rail branchline crosses four (4) parcels owned by the Port of Columbia County (tax lots 8421-00-00600, 8422-00-00400, 8422-00-00500, and 8422-00-00600). As illustrated in Figure 3 and the zoning map in Exhibit 2, all six parcels are zoned PA-80. Adjacent resource lands include property zoned PA-80 in all directions.

Based on the location of the Portland & Western Railroad mainline, which bifurcates a small amount of resource land, the only area affected by the proposed branchline will be land north of the branchline and south and west of the existing Portland & Western mainline. Furthermore, since the proposed rail branchline will isolate a triangle bounded by the rail mainline to the northeast, the proposed rail branchline to the south, and the proposed renewable diesel production facility to the west and north (on land zoned RIPD), the impact area analyzed for this standard is limited to portions of the six parcels that will be crossed by the rail branchline. For ease of reference, the branchline site has been further broken down into two sections as depicted in Figure 1 and Figure 3 [*Figure 3 reproduced below*].

Figure 3 Area Zoning and Limits of Farm Impacts Analysis (Application Submission Figure 3)



Turning first to the analysis area for branchline Section A, totaling 14.1 acres, aerial photography and the Cropland Data Layer8 indicates that the northern tip of the De La Cruz parcel is wetland. The wetland delineation report (Exhibit 11) depicts rail branchline Section A as a wetland, but the report did not analyze the remainder of the Section A impact area. The central portion of the De La Cruz parcel (within and north of the proposed rail branchline corridor), has been farmed in recent years with hay/grassland and row crops such as mint. Similarly, the single Port parcel west of the De La Cruz parcel contains wetlands, though it appears that in recent years portions have been vegetated with grassland and mint as well. Hay and row crops are fairly resilient and are not sensitive to the sound or vibration associated with rail traffic, as evidenced by the proximity of these crops to the existing rail mainline.

Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, irrigation, spraying fertilizer, managing weeds, mowing, and harvesting. Construction and operation of the branchline could cause minor changes in access routes to fields (for instance, the branchline will cross an existing access route) and changes in patterns of cultivation, seeding, fertilizing, and harvesting near the facility.

Train traffic could also lead to increased time to access farm fields north of the branchline and east of the proposed renewable diesel production facility, though these delays would be brief and infrequent on the proposed branchline. The farming activities north of the proposed rail line could continue even with the construction of the rail branchline since the applicant (as the owner of the rail branchline) proposes to provide a private rail crossing to allow passage of farm equipment (see Exhibit 3, Sheets C1.17 and C1.18). The risk of

conflict between farm equipment and trains on the branchline would be relatively low since the trains will be infrequent and moving slowly due to their proximity to their origin and destination.

Taken individually, neither alterations to access routes nor increased time to access fields is by itself a condition that would cause farm operators to significantly change their farm practices. Furthermore, in the aggregate, the cumulative effect of these changes does not require farm operators to significantly change their practices. Based on this information, the Commission can conclude that the proposed rail branchline will not force a significant change in farm or forest practices within the Section A impact area.

Turning next to the analysis area for branchline Section B, totaling 10.7 acres, the four Port parcels south of the renewable diesel production facility are largely in tree farm use. A nominal amount of grassland is present north of McLean Slough, but this grassland would be removed to accommodate the rail branchline. The wetland delineation report (Exhibit 11) depicts the Section B impact area is classified as a wetland.

Management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. Elimination of the existing tree farm and grassland acreage would not cause farm operators within the impact area to significantly change their farm practices, as the owner (the Port) is willingly taking the impact area out of agricultural production within those specific boundaries to accommodate the rail branchline. As the rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, it will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for all required tree farm management activities. The proposed rail corridor will not isolate or split tree farm areas into smaller areas.

Based on this information, the Commission can conclude that the proposed rail branchline will not individually or cumulatively force a significant change in farm or forest practices within the Section B impact area."

Staff notes that applicant has not clearly defined the frequency of unit trains entering or leaving the site or if crossing access will be available to farming activities at times consistent with farming activity needs. Staff recommends a condition of approval for crossing access and management to address this issue. At the writing of this staff report, staff has seen no evidence the proposed rail development – the subject of the CU application – will force a significant change in farm or forest practices.

B. The proposed use will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

Finding 157: The application narrative provides the following rationale to address this criterion:

"As discussed in the response to criterion A, only six (6) parcels are within the impact area that have the potential to be affected by the proposed rail branchline. Again, as noted above, all parcels within the impact area contain wetlands, though portions have been used for grass/hay and mint and tree farms in recent years. The Section A impact area contains one (1) parcel owned by Felipe and Bobby De La Cruz and one (1) parcel owned by the Port of Columbia County. See Figure 3. [*Figure 3 reproduced above*]

Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, spraying fertilizer, managing weeds, mowing, and harvesting. Construction and operation of the branchline does not interfere with these activities by increasing land values (e.g., by converting agricultural land to non-farm/residential use) or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. Trains are designed to stay on their tracks, so unlike a roadway or path, the

rail branchline would not introduce automobiles, pedestrians, or cyclists into agricultural lands where they were not previously present. As a result, no additional measures need to be taken by farmers to prevent trespassers.

Train traffic on the rail branchline will not lead to any appreciably higher level of dust than is currently present from the Portland & Western Railroad mainline which already borders the impact area (all portions of the impact area are already within 800 feet of the rail mainline). Consequently, construction of the rail branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The rail branchline will not increase the cost of farming inputs (seed, fertilizer, pesticides, etc.) and will not increase farmers' liability or financial exposure. The impact area is not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks. The applicant proposes to construct a private rail crossing at its own expense to allow passage of farm equipment to the PA-80 property that would be isolated by the rail branchline (see Exhibit 3, Sheets C1.17 and C1.18).

Based on this information, the Commission can conclude that the proposed rail branchline will not individually or cumulatively significantly increase the cost of farm or forest practices within the Section A impact area.

The Section B impact area contains four (4) parcels owned by the Port of Columbia County, and the analysis area is largely in tree farm use. Management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. Construction and operation of the branchline does not interfere with these activities by increasing land values or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. As the rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, it will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for all required tree farm management activities.

Tree farms are not sensitive to dust from nearby rail lines. Consequently, construction of the rail branchline will not cause adjoining tree farm operators to incur costs to utilize additional water or pumping equipment to suppress dust. The rail branchline will not increase the cost of farming inputs (saplings, fertilizer, pesticides, etc.) and will not increase farmers' liability or financial exposure. The impact area is in tree farm use and not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks.

Based on this information, the Commission can conclude that the proposed rail branchline will not individually or cumulatively significantly increase the cost of farm or forest practices within the Section B impact area."

At time of writing this staff report, staff has seen no evidence the proposed rail development will significantly increase the cost of accepted farm and forest practices.

.2 In addition to the requirements in 307.1A. and B., the applicant may demonstrate that the standards for approval will be satisfied by imposing clear and objective conditions to ensure conformance to applicable standards of the proposed PA-80 use.

Finding 158: Staff proposes a condition of approval to prepare a management plan for the rail crossing to ensure farm activities will not be significantly affected by unit train activities. Staff has not received evidence that the proposed rail branchline will cause significant impacts to farm activities at the time of writing this staff report.

308 Development Standards:

.1 The minimum average lot width shall be 100 feet for all activities except farming and forestry.

.2 The minimum average lot depth shall be 100 feet for all activities except farming and forestry.

.3 All newly created lots or parcels and those with permitted, reviewed or conditional uses, shall have a minimum of 50 foot frontage on a public or private right-of-way and an approved access in accordance with this ordinance, the Columbia County Road Standards and the Rural Transportation System Plan.

Finding 159: The parcels included in this application are well over 100 feet deep and wide. The proposal is to develop within an easement; the proposal does not create new lots or parcels. The proposal is for a rail use – access to the use is proposed via the proposed fuel facility and the existing rail spur serving Port Westward. The site includes well over 50 feet of frontage along Hermo Road at Tax Lot 8421-00-00600. These standards are met.

.4 Setbacks. The following are minimum setbacks for all buildings and structures. In addition, all structures are subject to any special setback lines, where specified on designated arterial or collectors.

A. No structure shall be constructed closer than 30 feet to a property line. In the event the subject property is bordered by a zone with more restrictive setbacks, the more restrictive setback of the adjoining zone shall control on the side of the subject property adjoining the more restrictive setback.

Finding 160: As this criterion applies to the rail branchline and not the facility, no structures subject to setback standards are proposed.

B. Setbacks in wetland areas shall be required in accordance with Sections 1170 and 1180 of the Columbia County Zoning Ordinance.

Finding 161: The proposed rail development extends through the McLean Slough riparian area and traverses delineated wetlands for nearly the entire length of the proposal. To the extent Sections 1170 and 1180 are met, this standard is met. Please see responses to Section 1170 and 1180.

.5 Height. There shall be a height limitation of 100 feet in the PA-80 Zone for farm use structures, except for on those lands containing abandoned mill sites that were rezoned to industrial uses pursuant to ORS 197.719 or are subject to Airport Overlay Zone, or any structure which has received a conditional use or variance approval which allows a greater height of said structure. Unless otherwise prohibited, the maximum building height for all non-farm, non-forest structures shall be 50 feet or 2½ stories, whichever is less.

Finding 162: No buildings or structures regulated by height requirements are proposed as part of the rail branchline development. This standard is met.

.6 Signs. The standards and requirements described in Section 1300 of the Columbia County Zoning Ordinance shall apply to all signs and name plates in the Exclusive Farm Use Zone.

Finding 163: The application indicates that "no advertising signs are proposed" and that "signs pertaining to rail safety are not regulated by Section 1300". A condition of approval is proposed to ensure sign standards are met.

.7 The Oregon Department of Fish & Wildlife shall be notified and provided with the opportunity to comment on any development within a Goal 5 protected wildlife habitat area.

.8 Dwellings and other structures to be located on a parcel within designated big game habitat areas pursuant to the provisions of Section 1190 are also subject to the additional siting criteria contained in Section 1190.

Finding 164: Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three (3) types of big game habitat. As depicted in Attachment 2f, the site is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County's Wildlife Game Habitat map. The map does identify the area as major waterfowl habitat and ODFW has provided comment on this application (Attachment 7b). Please see additional findings under Section 1190.

Section 1503 CONDITIONAL USE

.1 Status: Approval of a conditional use shall not constitute a change of zoning classification and shall be granted only for the specific use requested; subject to such reasonable modifications, conditions, and restrictions as may be deemed appropriate by the Commission, or as specifically provided herein.

.2 Conditions: The Commission may attach conditions and restrictions to any conditional use approved. The setbacks and limitations of the underlying district shall be applied to the conditional use. Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds, and other reasonable conditions, restrictions, or safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use being allowed.

.3 Conditional Use Permit: A Conditional Use Permit shall be obtained for each conditional use before development of the use. The permit shall stipulate any modifications, conditions, and restrictions imposed by the Commission, in addition to those specifically set forth in this ordinance. On its own motion, or pursuant to a formal written complaint filed with the Planning Department, upon proper notice and hearing as provided by Sections 1603 and 1608 of this ordinance, the Commission, (or Board on appeal) may, but is not required to, amend, add to or delete some or all of the conditions applied to Conditional Use Permits issued by the Planning Commission or Board of Commissioners. The power granted by this subsection may only be exercised upon a finding such amendment, addition or deletion is reasonably necessary to satisfy the criteria established by Section 1503.5 below.

Finding 165: Staff notes that Sections 300, 1170 and 1180 are directly relevant to Conditional Use applicability. If any of these Sections are not met, the Conditional Use cannot be permitted. These relationships are directly discussed below.

.5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:

A. The use is listed as a Conditional Use in the zone which is currently applied to the site;

Finding 166: This standard requires a determination of consistency with Section 300. As discussed in findings under Section 306, Staff has received a letter from Portland & Western Railroad (Attachment 6h) that the proposal is a rail branchline. Should the Board find the proposed rail development is a transportation facility defined as a "rail branchline" consistent with Section 300, this standard is met.

B. The use meets the specific criteria established in the underlying zone;

Finding 167: This standard requires a determination of consistency with Sections 300, 1170 and 1180. Staff finds the proposed rail development is consistent with standards in Section 300, the County has received evidence from DSL that the delineated wetlands should not be considered "significant" (Attachment 7a, also see Section 1180), and the Board

can find the proposed rail development is water-related (See Section 1170). Should the Board concur the delineated wetlands are not significant and the proposed rail development is water-related, this standard is met.

C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;

Finding 168: The land use application provides the following rationale:

"The most persuasive evidence of the site's suitability for a rail branchline is that it will branch off the nearby existing Portland & Western Railroad mainline. The branchline alignment is suitable because it is the most direct route to the portion of the site needing rail access (the southern end) and the size of the proposed rail corridor is relatively limited, consisting of a corridor identified as the minimum necessary by Portland & Western Railroad, with a total area of approximately 12.3 acres. The branchline will be located close to the existing mainline, which has operated for many years and has not been identified as being incongruous with the adjacent farm uses.

The rail branchline site is nearly flat. The site is protected from flooding by the Beaver Drainage District's dikes and associated stormwater conveyance and pumps, and is therefore adequately drained. Culverts are proposed where existing ditches will be crossed by the rail infrastructure. As detailed in the preliminary stormwater report (Exhibit 13), sufficient infrastructure is in place or proposed to collect, treat, and discharge runoff. While the site does contain wetlands that will be impacted by the proposed development, the applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and will perform over 480 acres of off-site wetland mitigation south of the site in accordance with Federal and State law."

Staff agrees the proposed rail development area is large, generally flat, protected from flood, and can be designed to manage stormwater. The proposed rail corridor development area also includes natural features, such as the McLean Slough riparian area regulated by Section 1170 and wetlands potentially regulated by Section 1180. To the extent the application meets Section 1170 and 1180 requirements, as discussed below, this standard is met.

D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;

Finding 169: The land use application provides the following rationale:

"The proposed rail branchline is intended to serve a renewable diesel production facility being proposed under a separate Site Design Review application. The rail line will not in itself generate more traffic on the area roadway system as it will instead facilitate increased usage of the Portland & Western Railroad mainline to move materials that would otherwise be shipped by truck. The rail line does not create a demand for public facilities as it needs no potable water, sanitary sewer, natural gas, or other utilities. The rail line does not impede existing or planned public facilities identified for the area surrounding the Port Westward Industrial Park."

Staff finds there is no evidence that the proposed rail development will conflict with provision of transportation, public facilities, or services for the area. County engineering has reviewed the project and has not identified concerns relating to adequacy of service for the rail development.

E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;

Finding 170: The land use application provides the following rationale:

"The new rail branchline will not alter the character of the area as the surroundings are already traversed by the Portland & Western Railroad mainline serving Port Westward Industrial Park. In the RIPD zone to the west and north, the primary permitted uses include farm and forest uses and industrial operations including "Production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities" (CCZO 683.1). The current character of the RIPD property includes both agricultural land and industrial uses. The proposed rail branchline will complement the RIPD zone by serving a proposed renewable diesel production facility immediately to the west and north.

In the abutting PA-80 zone, the primary permitted uses include farm and forest uses and their accessory structures, including farm dwellings. The current character of the PA-80 property includes agricultural land, which can continue to exist in proximity to the proposed branchline (e.g., a rail crossing will be installed to allow passage of farm equipment, see Exhibit 3, Sheets C1.17 and C1.18). The response to Section 307.1 provides further evidence that the proposed rail branchline will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on lands.

The facility will comply with all applicable Federal, state, and local regulations regarding construction and operations to ensure that off-site impacts comply with governing standards."

Staff concurs with the applicant and finds that while approximately 12.3 acres of farmland will no longer be farmable due to the proposed rail development, staff has seen no evidence the proposed use will alter the character of the surrounding area in a manner that will substantially limit, impair or preclude the use of surrounding properties for farm or forest uses.

F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;

Finding 171: The following findings address Comprehensive Plan goals and policies applicable to the rail branchline conditional use application.

Rail Conditional Use Goals and Policies:

PART V – AGRICULTURE
Goal: To preserve agricultural land for agricultural uses.

Finding 172: The proposed area for rail development is relatively small in size, totaling approximately 12.3 acres. Allowing this area to be developed with rail infrastructure will not result in a significant reduction in agricultural acreage. The response to Section 307.1 provides further evidence that the proposed rail development will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on agricultural lands.

Policies: It shall be a policy of the County to:
4. Protect agricultural lands from non-farm encroachments.

Finding 173: The proposed rail development will be located in an area already heavily impacted by the existing Portland & Western Railroad line and electrical transmission lines, corridors, and easements. Farm use can continue in the vicinity of these existing impediments, so the proposed rail development does not represent a significant encroachment onto other adjacent agricultural lands.

15. Permit non-farm/non-forest uses only when not in conflict with agricultural or forestry activities.

Finding 174: Due to its relatively small area (approximately 12.3 acres), the proposed rail branchline can be conditioned to resolve potential conflicts with agricultural activities as detailed in the response to Section 300, and there are no nearby forest zones with forestry activities. The response to Section 307.1 provides further evidence that the proposed rail branchline, with the proposed condition of approval related to the rail crossing, will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on nearby lands. With the proposed condition of approval, existing agricultural uses will continue to function consistent with to the current status quo of farmland adjacent to existing rail and electrical transmission lines.

16. Require that an applicant for a non-farm use record a waiver of the right to remonstrate against accepted farm or forest practices including spraying.

Finding 175: A condition of approval requiring a waiver of remonstrance is proposed to meet this standard.

17. Allow non-farm uses in accordance with ORS 215.283 and ORS 215.284.

Finding 176: As discussed in responses to Sections 303 and 306, the proposed rail development relies on a determination by the Board that it is a rail branchline – a transportation facility authorized by ORS 215.283.

PART X – ECONOMY

Goals:

1. To strengthen and diversify the economy of Columbia County and insure stable economic growth.

Finding 177: The proposed rail development will improve the efficiency and augment an adjoining renewable diesel fuel production facility, proposed under a separate site design review application. That facility will generate both construction jobs and long-term office, management, and operational positions, contributing to economic growth in the immediate area and beyond.

2. To utilize Columbia County's natural resources and advantages for expanding and diversifying the economic base.

Finding 178: The proposed rail development will facilitate efficient transportation to and from a proposed adjoining renewable diesel production facility that will rely upon on Port Westward's dock and deepwater port facilities. Port Westward is home to a 1,500-foot dock on the Columbia River and is one of only five public deepwater ports in the state of Oregon, with a 43-foot navigation channel to accommodate vessels needing deepwater port access. The production facility itself will make use of this natural resource and strategic advantage, and the rail development will augment the facility by allowing for additional transportation options of limited amounts of material.

Policies: It shall be a policy of the County to:

1. Encourage the creation of new and continuous employment opportunities.

Finding 179: As noted above, following construction of the renewable diesel fuel production facility, the use will provide direct employment opportunities for office, management, and operations staff. The proposed rail development will support this proposed employment opportunity.

2. Encourage a stable and diversified economy.

Finding 180: The renewable diesel fuel production facility proposed under a separate application will increase the size and value of the County's industrial sector, which is an important part of Columbia County's overall economic base. The proposed rail development will support this employment opportunity and help diversify the County's economy.

6. Preserve prime maritime industrial sites from pre-emptive uses until needed for industrial uses.

Finding 181: The applicant proposes to construct and operate a renewable diesel production facility at Port Westward, which is a unique deepwater port resource unavailable elsewhere within Columbia County. Construction of the facility will be consistent with the County's policy of utilizing the prime maritime site for an industrial use that relies upon the port and dock. The proposed rail development will support the production facility by providing additional efficient transportation options for materials and product.

8. Reserve valuable industrial sites for industrial uses.

Finding 182: The proposed renewable diesel production facility makes use of land zoned Resource Industrial - Planned Development and identified as appropriate for industrial development by the County Board of Commissioners. The proposed rail development, though located on agriculturally zoned land, is limited in size and scope and will promote a significant investment at a site zoned for industrial development.

10. Support improvements in local conditions in order to make the area attractive to private capital investment. Consideration of such factors as the following shall be undertaken:
A. Tax incentives
B. Land use controls and ordinances
C. Capital improvements programming

Finding 183: This policy calls upon the County to implement strategies that make the site attractive for private development. The applicant is willing to make a sizable investment in site and infrastructure upgrades as needed to accommodate the proposed renewable diesel production facility on property west of and adjacent to the proposed rail development. As noted by the applicant, the County can help realize some of this policy direction by granting the applicant's requested conditional use permit for the rail development in accordance with State and County land use regulations.

PART XIII – TRANSPORTATION
Goal: The creation of an efficient, safe, and multi-modal transportation system to serve the needs of Columbia County residents.

Finding 184: The proposed rail development capitalizes on the proximity of the existing rail line and will allow movement of materials that would otherwise be shipped by truck to and from the planned manufacturing use adjoining to the west. Proposed conditions of approval related to transportation needs for the facility are sufficient to meet this goal.

Objectives:
1. To maximize efficient use of transportation infrastructure for all users and modes.

Finding 185: The proposed rail development capitalizes on the proximity of the existing rail line and will allow movement of materials that would otherwise be shipped by truck to the proposed renewable diesel production facility. Proposed conditions of approval related to transportation needs for the facility are sufficient to meet this objective.

Policies:
5. The County shall work to enhance freight efficiency, access, capacity and reliability, including access to intermodal facilities such as ports and airports. Industrial uses shall be encouraged to locate in such a manner that they may take advantage of the water and rail transportation systems which are available to the County.

Finding 186: The proposed rail development is consistent with this policy because it will allow a proposed rural industrial use at Port Westward Industrial Park to take advantage of existing rail transportation facilities, namely Portland & Western Railroad's existing line. This will increase freight efficiency and provide added capacity to move product while minimizing impacts on roadways.

6. The County will support reducing the number of rail crossings and will support measures to enhance safety at rail crossings.

Finding 187: The project does not require a new public road crossing of any rail lines.

20. The County will coordinate transportation and land use planning and decision-making with other transportation agencies and public service providers, such as ODOT, cities within the County, and the Port, when their facilities or services may be impacted by a County decision or there may be opportunities to increase the efficiency and benefits of a potential improvement.

Finding 188: As part of its evaluation of land use applications including this one, the County coordinates with affected agencies and partners. The applicant has also coordinated with Port, County, and ODOT staff with respect to site design and transportation analysis.

Contd. Section 1503 Conditional Use:

G. The proposal will not create any hazardous conditions.

Finding 189: The applicant will be required to follow all applicable safety laws and regulations in constructing and operating the proposed rail development, as approved by Portland & Western Railroad and required by state and Federal regulations.

.6 Design Review: The Commission may require the Conditional Use be subject to a site design review by the Design Review Board or Planning Commission.

Finding 190: The proposed rail development contains no structures regulated by design review. Design review findings for the facility are found under Section 1550.

Criteria Related to Facility and Rail

Section 1100 FLOOD HAZARD OVERLAY (FH)

Finding 191: The site is protected from flooding by dikes and associated stormwater conveyance and pumps within the Beaver Drainage District. According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map 41009C0050D, dated November 26, 2010, the dike system has been provisionally accredited by FEMA. See Attachments 2d & 3d. This map indicates that the site is in FEMA's shaded Zone X, corresponding to areas protected by levees from 1% annual chance flood. The proposed driveway and pipe rack are also in shaded Zone X. Therefore, the site is not in the Special Flood Hazard Area and is not subject to the standards of this chapter.

Section 1120 SENSITIVE BIRD HABITAT OVERLAY (SBH)

Finding 192: Columbia County Comprehensive Plan, Part XVI, Article VIII(F), Non-Game Wildlife Habitat, lists areas identified as significant nesting sites by the Oregon Department of Fish and Wildlife. Port Westward is not a listed area for Bald Eagle nests, Blue Heron rookeries, or Northern Spotted Owl nests. As illustrated in Attachments 2e & 3e, the site is not within any areas identified as Natural Areas, Non-Game Areas, or Sensitive Areas on the County's Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map. Columbia County Comprehensive Plan, Part XVI, Article VIII(G), Upland Game Habitat, lists three mineral spring areas identified as habitat for band-tailed pigeons, none of which include Port Westward. As illustrated in Attachments 2f & 3f, the site is not within an identified Upland Game Habitat area in the County's Wildlife Game Habitat map.

Since the site is not within the identified habitat areas, development at the site is not subject to the Sensitive Bird Habitat Overlay Zone.

Section 1130 HISTORIC OVERLAY (HO)

Finding 193: Historic and culturally significant sites and structures are identified in Article XI of the Comprehensive Plan. None of the listed sites and structures are on or adjacent to the site. Development at the site is not subject to the Historic Overlay.

Section 1170 RIPARIAN CORRIDORS, WETLANDS, WATER QUALITY, AND FISH AND WILDLIFE HABITAT PROTECTION OVERLAY ZONE (RP)

1172 Riparian Corridor Standards:

A. The inventory of Columbia County streams contained in the Oregon Department of Forestry Stream Classification Maps specifies which streams and lakes are fish-bearing. Fish-bearing lakes are identified on the map entitled, "Lakes of Columbia County." A copy of the most current Stream Classification Maps is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B) for reference. The map, "Lakes of Columbia County" is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B), and is incorporated therein. Based upon the stream and lake inventories, the following riparian corridor boundaries shall be established:

1. *Lakes. Along all fish-bearing lakes, the riparian corridor boundary shall be 50-feet from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below.*
2. *Fish-Bearing Streams, Rivers and Sloughs (Less than 1,000 cfs). Along all fish bearing streams, rivers, and sloughs with an average annual stream flow of less than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 50-feet from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below.*

   Average annual stream flow information shall be provided by the Oregon Water Resources Department.
3. *Fish-Bearing and Non-Fish-Bearing Streams, Rivers and Sloughs (Greater than 1,000 cfs). Along all streams, rivers, and sloughs with an average annual stream flow greater than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 75-feet upland from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*

4. *Other rivers, lakes, streams, and sloughs. Along all other rivers, streams, and sloughs, the riparian corridor boundary shall be 25 feet upland from the top-ofbank, except as provided in CCZO Section 1172(A)(5), below.*
5. *Wetlands. Where the riparian corridor includes all or portions of a significant wetland, as identified in the State Wetlands Inventory and Local Wetlands Inventories, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland. Significant wetlands are also regulated under provisions in the Wetland Overlay Zone, Columbia County Zoning Ordinance, Section 1180.*

Finding 194: Proposed facility development does not enter or abut any mapped lake, river or stream areas. However, the proposed rail branchline development intersects with McLean Slough.

The wetland delineation report (Attachments 2k & 3k), which has now been approved by the Oregon department of State Lands, indicates that the wetlands in the study area are supported by precipitation, irrigation water, surface runoff, and groundwater rather than rivers, streams, or sloughs (the wetlands fall into the "flats" rather than "riverine" hydrogeomorphic class). Therefore, the distance to the riparian corridor boundary need not be measured from the edge of the wetlands since the wetlands are not riparian in nature.

Based on this information, construction of the proposed rail branchline is subject to the riparian overlay as a portion falls within McLean Slough's 25-foot riparian buffer established by criterion (A)(4).

B. Distance Measurement.
1. *Except as provided in Subsection 1172(5) above, the measurement of distance to the riparian corridor boundary shall be from the top-of-bank. In areas where the top-of-bank is not clearly delineated, the riparian corridor boundary shall be measured from the ordinary high water level, or the line of non-aquatic vegetation, whichever is most landward.*
2. *The measurement shall be a slope distance. In areas where the predominant terrain consists of steep cliffs, the distances to the corridor boundary shall be measured as a horizontal distance until the top of the cliff is reached, and as a slope distance on from that point.*

Finding 195: The 25-foot buffer (per CCZO Section 1172(A)(4)) for McLean slough is illustrated on the plans in Attachment 3c.

1173 Activities Prohibited within the Riparian Corridor Boundary:

In addition to the prohibitions in the underlying zone, the following activities are prohibited with in a riparian corridor boundary, except as provided for in Sub-sections 1175 and 1176 of this Section:

A. The alteration of a riparian corridor by grading, placement of fill material, and/or impervious surfaces, including paved or gravel parking areas, or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Building Code, as amended.
B. The removal of riparian trees or vegetation.

Finding 196: The proposed branchline will cross McLean Slough, the only identified riparian area. Riparian impacts are limited to the crossing and not a wholesale displacement of the riparian corridor. The applicant argues the proposal is water-related or water-dependent and therefore exempt from riparian protection per sub-sections 1175(A)(2) and 1175(B)(5). Should the Board find the use is water-related or water-dependent, the proposal is exempted from riparian protections and can be permitted. This is discussed under Section 1175 below.

1175 Permitted Uses and Activities:

Notwithstanding the prohibitions set forth in Subsection 1173 above, the following activities are allowed within the riparian corridor boundary:

- *A. The following riparian vegetation may be removed within the riparian corridor boundary: […]*
  - *1. Vegetation which is necessarily removed for the development of approved water-related or water dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water-dependent and water-related use. […]*
- *B. The following development is allowed within the riparian corridor boundary.*
  - *5. Water-related and water-dependent uses. […]*

Finding 197: Proposed construction of the rail branchline will result in temporary and permanent impacts to the McLean Slough riparian corridor. This is only allowable through exemptions for "water-related" or "water-dependent" uses. The applicant argues the project as a whole (the renewable diesel production facility and associated infrastructure including the proposed rail branchline) depends upon the dock and falls under the category of water-related and water-dependent uses. The applicant's full argument from the rail application narrative submission is provided below:

> "The renewable diesel production facility (under separate application) is proposed to be located at Port Westward because of the presence of the dock and proximity to the Columbia River. As noted above, Port Westward is one of only five public deepwater ports in the state of Oregon. This invaluable resource, which was largely the basis of the County's 1986 and 2007 Goal Exceptions for Port Westward Industrial Park, is necessary for the efficient operation of the production facility.
>
> The 1986 Exception statement codified in the Comprehensive Plan relied in part upon Port Westward's "unique site-specific resource" in the deep draft river port and further noted the following:
>
> > *I. Proposal*
> >
> > *The proposed use designation is Rural Industrial, and it is intended to take advantage of the location on the Columbia River, the existing dock facilities, railroad, and urban services, as well as potential linkages to the electric generating facilities.*
> >
> > *V. Proposed Use Of The Property*
> >
> > *Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm.*
> >
> > *[***]*
> >
> > *Uses likely to be located here are best illustrated by four proposals submitted to the current leaseholder since 1980. Proposals have included a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant. […].*
>
> Similarly, the 2007 Exception statement codified in the Comprehensive Plan noted that:
>
> > *The property is located adjacent to the Port Westward rural industrial area and can take advantage of the location with access to the Columbia River, and the existing dock facilities, railroad and urban services, including PGE's Beaver Power Plant. Allowing future rural industrial development on the*

Property would benefit the County's economy by bringing jobs to the area for construction of a project and then a lesser level of employment for the operation and management of any facility

Taken together, these Exception statements indicate that the intent of zoning land RIPD at Port Westward was to both accommodate and encourage industrial uses that take advantage of the dock, rail, and energy generating sources.

As explained below, the Renewable Diesel Production Facility, including its rail component, is a "water-dependent" and/or "water-related" use.

Columbia County Zoning Ordinance (CCZO) Sections 1170 and 1180 allow development within riparian areas and wetland riparian areas for projects that are either "water dependent" or "water related." The only identified riparian corridor within or near the site is McLean Slough, which will be crossed by the portion of the proposed rail branchline on PA-80 land.

Neither the CCZO nor the Columbia County Comprehensive Plan define the terms "water-related" or "water-dependent," except as relevant to the Willamette River Greenway, which is not applicable at this location. The County's riparian area and wetland regulations are a component of the County's Statewide Planning Goal 5 program, which purports to adopt a "safe harbor" approach as discussed in Article X of the Comprehensive Plan. However, the Comprehensive Plan's Goals and Policies do not categorically intend to prohibit uses conflicting with riparian areas or wetlands; rather, the Plan's stated intent is to protect such areas from "nonwater-dependent uses." See, e.g. Article X.E, Policy 9.

The Goal 5 safe harbor process essentially requires local governments to directly implement certain Goal 5 rules in Oregon Administrative Rules (OAR) 660 Division 23. Consequently, the County's riparian and wetland regulations roughly resemble the riparian rules in OAR 660-023-0090 and -0100, except that they notably do not include the variance provisions required under OAR 660-023-0100(4)(b)(B). These sections allow development of "water-dependent or water-related uses" within riparian areas and wetlands and allow removal of riparian vegetation "as necessary for development of water-related or water-dependent uses." The OARs require less strict riparian protections in farm and forest zones: OAR 660-023-0090(8)(c) provides that "(c) Notwithstanding subsection (b) [regulating removal of riparian vegetation] of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4."

The definition of "water-dependent" and "water-related" in the Statewide Planning Goals is helpful in interpreting those terms in the CCZO. In the current version of the Statewide Planning Goals, those terms are defined as follows:

WATER-DEPENDENT. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

WATER-RELATED. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

The County can find that the proposed renewable diesel production facility within the existing RIPD zone is "water-dependent" because the facility requires access to the water body (namely, the Columbia River) for riverine transportation. Renewable diesel product and renewable diesel feedstocks are proposed to be imported and exported by water-borne vessels on the Columbia River, including ships and barges. This connection is reflected in Exhibit 15, which shows the piping directly connecting the facility to the Port Westward docks. Also, the facility relies on Columbia River water as part of the renewable diesel production process – namely for steam production, cooling tower process water, and fire water reserve. This is also reflected on Exhibit 15.

In summary, the facility is proposed at Port Westward entirely due to its location at one of Oregon's few deepwater ports capable of being served by cargo ships.5 Therefore, the County can find that the renewable diesel facility within the existing RIPD zone "can be carried out only […] adjacent to water areas because the use requires access to the water body for water-borne transportation" and as a "source of water."

For the same reasons, the County can find that the proposed rail branchline located on PA-80 lands is also "water-dependent." The purpose of the proposed rail branchline is to deliver renewable diesel feedstocks to the renewable diesel production plant for conversion into renewable diesel, to export such renewable diesel, and to remove waste products from the facility. As the branchline exists only to serve the renewable diesel production plant and is part of the overall project, it is just as river-dependent as the production plant itself. Put another way, the branchline is water-dependent because, like the renewable diesel production plant, it relies on river transportation as the other end of the renewable diesel supply/production chain. The export of waste products also makes the rail line a necessary component of the overall water-dependent use.

Although the PA-80 portion of the branchline is requested in a separate application from the renewable diesel production facility, it is exclusively associated with, part of, and entirely dependent on the renewable diesel plant. It was proposed in a separate application because a portion of the rail branchline is to be located just outside of the existing Port Westward Exception Area and within an exclusive farm use zone, and is therefore subject to the criteria of ORS 215.296; rail not located within that zone is not subject to those criteria.

If the County does not find that the renewable diesel production plant or rail branchline is "water-dependent," the County can nonetheless find that they are "water-related." This is because the facility as a whole is intended to provide "goods […] that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered." There is no dispute that the Project is intended to import and export "goods" (in this case, feedstocks and renewable diesel) to and from the Port Westward Dock via pipeline, shown in Exhibit 15. As explained above, the renewable diesel facility must be located near the water because the use itself depends on river water and transportation, and would not be viable without a water-adjacent location. Put in terms of the above definition, without a water-adjacent location, the facility would "result in a public loss of quality in the goods or services offered" because it could not economically provide the proposed goods or services without a river-adjacent location. Likewise, if the PA-80 portion of the proposed branchline is not located adjacent to the renewable diesel production plant, the efficiency of the renewable diesel use would suffer substantially because a large portion of the necessary feedstocks could not be economically imported to the Project, which would make the Project itself infeasible."

As the applicant states, "water-related" is not defined in the County's zoning ordinance or Comprehensive Plan. The term is defined in the Statewide Planning Goals, and the Board can apply that definition here.

Staff notes that the "water-dependent" and "water-related" definitions from Statewide Planning Goals (cited by the applicant above) both indicate these uses are located "on or adjacent to" water. However, neither the fuel facility nor the rail branchline are "on or adjacent to" the Columbia River – the water body the applicant indicates the use is dependent on and related to. No portion of the project interacts with the mapped Columbia River riparian area. The County-regulated riparian area the project impacts is the McLean Slough – a water body located over ½ mile from the Columbia River that no use applied for in this application is dependent on or related to. Staff considers the applicant's argument and use of terminology to be highly irregular.

Although staff questions whether the branchline is water-related under the State's definition, staff concedes that an argument can be made, as the applicant has done, that it is. In light of the ambiguity, staff consulted with DLCD regarding application of State definitions of water-related and water-dependent. DLCD feedback indicated that "water-dependent" would not be a viable definition for this proposal from their perspective but "water-related" has enough uncertainty to defer to a local determination. Given the lack of a County definition and the ambiguity of the State definition, the Board can interpret water-related either way. In order to meet this standard, the Board must find the project and associated rail branchline are "water-related" uses.

1177 Requirements for new activities and development identified in Sub-section 1175 and 1176, above, shall be allowed in the riparian corridor boundary subject to the following requirements:

- *A. All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing the use or activity.*
- *B. For activities and development for which land use permits, building permits, grading permits, variances or stormwater/erosion control permits are required, the County shall provide notification to ODFW of the proposed development activity. The County shall consider the recommendations of ODFW, including any mitigation recommendations, prior to issuance of permits and may condition permit approval on recommended measures to mitigate loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415.*

Finding 198: The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland and waterway alterations and will perform over 480 acres of off-site wetland mitigation south of the site in accordance with Federal and State law, as permitted by this subsection. The County has provided notice to ODFW and received comments (see Attachment 7b).

Section 1180 WETLAND AREA OVERLAY (WA)

1182 Definition:

A significant wetland is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. In case of dispute over whether an area is of biological value and should be considered a significant wetland, the County shall obtain the recommendation of the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands.

Finding 199: Columbia County Comprehensive Plan, Part XVI, Article X(A), Wetlands, provides the following clarification on the County's determination of wetland significance:

> *2. INVENTORY AND SIGNIFICANCE: Columbia County will apply the "safe harbor" provisions of Goal 5 to significant wetlands. The adopted inventory of wetlands for Columbia County is the State Wetlands Inventory*

(SWI), as amended. A current copy of the SWI is contained in the Technical Appendix Part XVI, Article X(A), for reference. All wetlands inventoried on the SWI or any more detailed inventories such as the Local Wetlands Inventories (LWI) produced by individual cities are considered significant for the purposes of Goal 5. The State Wetlands Inventory incorporates wetlands identified on the National Wetlands Inventory (NWI). The Wetland Overlay Zone shall be applied to locations of wetlands as shown on the SWI or LWIs. However, a wetland not listed in an inventory may still be protected by relevant Oregon Administrative Rules (OAR) and policies set forth by the Oregon Division of State Lands. It shall be the responsibility of individual landowners to verify the existence or nonexistence of wetlands on any property prior to any development activity or other impact.

Essentially, the County's Goal 5 program begins with the assumption that all wetlands mapped on the SWI are significant. The definition for "significant wetland" provided in Section 1182 is verbatim the national (EPA, Corps) and state (DSL) definition of "wetland". However, the definition also provides a method for determining whether the wetland should be considered significant if there is a dispute over an area's biological value.

The applicant's conditional use (rail) narrative indicates the wetlands are not significant:

> "Potential wetlands exist within the vicinity of the rail branchline site as illustrated in the Statewide Wetlands Inventory excerpt in Exhibit 10 and in the County's map in Exhibit 7. The applicant therefore engaged a wetlands consultant to perform a site-specific wetland delineation, with the resulting report attached as Exhibit 11. As discussed in Exhibit 14, based on the wetland delineation report approved by DSL, the presence of plants adapted solely to wetlands is very low, as most of the plants consist of species that grow in wetlands and non-wetlands. Since the vegetation within the delineated wetland does not constitute a prevalence of plants "adapted for life in saturated soil conditions," the wetlands do not meet the County's adopted definition of significant wetlands.
>
> In addition to the vegetation profile, the biological value of the delineated wetlands is limited. Exhibit 14 notes that the wetland delineation report analyzed 17 functions, of which only four received higher ratings, while five received moderate ratings, and seven received lower ratings. Since the wetland delineation report has been approved by DSL so there does not appear to be any dispute by subject matter experts on whether these wetlands have little biological value. The Applicant expects DSL to issue a written statement explaining the non-significance of affected wetlands in December, 2021. This further supports the contention that the wetlands do not meet the County's adopted definition of "significant" wetlands."

Because there is a reasonable dispute over the significance of the wetlands, consistent with Section 1182, the County requested and received recommendations of DSL, ODFW, and the Columbia SWCD related to significance of the delineated wetland areas proposed for development. These materials are provided in Attachment 7. While there was some variance in feedback between agencies, as one might expect given different mandates, DSL provided a definitive statement regarding significance of the wetlands impacted by the proposed facility and rail development:

> "Based on the finding of the OFWAM Assessment tool, the wetlands located behind the levee (inside the levee within the Beaver Drainage District and associated with the propose NEXT Project) in the Resource Industrial Planned Development area at Port Westwards are NOT significant, nor are the wetlands that continue off the project site that were converted for farming and are zoned Primary Agriculture."

Staff finds the evidence presented is persuasive and recommends the Board find the impacted wetlands are not significant based on the recommendation of DSL.

1183 Permitted Uses:

Uses and development activities permitted outright or conditionally in the underlying zone shall be permitted in the Wetland Area Overlay Zone if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or degrade a significant wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands under Oregon Department of Agriculture wetland rules shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands. Existing drainage ditches may be cleared to original specifications without County review.

Finding 200: The applicant is proposing a renewable diesel production facility as permitted in the RIPD zone, and a rail branchline as permitted through the Conditional Use process in the PA-80 zone. No development is allowed that will impact significant wetlands. If the Commission finds the wetlands are not significant consistent with DSL's recommendation, the proposed facility and rail development are allowed. If the Commission finds the wetlands are significant, the proposed facility and rail development are not allowed. As noted under Section 1182 findings, Staff finds that based on DSL's recommendation, the wetlands lack the biological value to be considered significant.

While Section 1180 prohibits development that will destroy or degrade significant wetlands, it allows limited development within riparian corridors – essentially mirroring the riparian corridor development standards of Section 1170.

1184 Development Standards:

A. *Riparian Corridor Standards for Wetlands. For the purposes of this Section, "Fish-bearing streams" shall mean all streams identified as being fish-bearing, by the Oregon Department Forestry in the Stream Classification Maps, as amended, and "Fish-bearing lakes" shall mean those streams identified in "Lakes of Columbia County". The current Oregon Department of Forestry Stream Classification Map is attached to the Comprehensive Plan, Technical Appendix, Part XVI, Article X(B), for reference. The Map, "Lakes of Columbia County" is also attached to the Comprehensive Plan, Technical Appendix, Part XVI, Article X(B), and is incorporated therein. Significant Wetlands are identified on the State Wetlands Inventory (SWI), and Local Wetlands Inventories (LWI's).*

   The SWI is attached to the Comprehensive Plan, Part XVI, Article X(A), for reference.

   1. *Fish-Bearing Lakes. Along all wetlands associated with fish-bearing lakes, the riparian corridor boundary shall be 50 feet from the upland edge of the wetland.*
   2. *Streams, Rivers, and Sloughs (Greater than 1,000 cfs). Along all wetlands associated with all fish-bearing rivers, streams and sloughs, with an average annual stream flow greater than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 75 feet from the upland edge of the wetland. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*
   3. *Fish-Bearing Streams, Rivers and Sloughs (Less than 1,000 cfs). Along all wetlands associated with fish bearing streams, rivers, and sloughs, with an average annual stream flow less than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 50 feet from the upland edge of the wetland. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*

4. *Other Rivers and Streams, or Sloughs. For all other wetlands associated with streams, rivers, or sloughs, the riparian corridor boundary shall be 25 feet from the upland edge of the wetland.*

Finding 201: As discussed under Section 1170, delineated wetlands are adjacent to McLean Slough. The application narrative indicates these wetlands are not associated with the slough. Staff finds the protections of Section 1170 apply to riparian areas, but non-significant wetlands are not regulated by Section 1180. Therefore, the riparian protections of 1170 are the extent of riparian protection on the development site. Please see findings under Section 1170.

5. *Wetlands not associated with Streams, Rivers, Sloughs, or Fish-Bearing Lakes. Along all wetlands not associated with a stream, river, slough, or non-fish-bearing lake, there shall not be a protective riparian corridor boundary. However, development is prohibited from encroaching within a delineated wetland boundary.*

Finding 202: As discussed above, the proposed facility and rail development impact delineated wetlands. However, if these wetlands are not considered to be significant, this standard does not apply.

B. *Corridor Boundary Measurement: The riparian corridor boundary begins at the upland edge of the wetland and is measured outward, further upland, the required riparian corridor boundary distance.*

Finding 203: As noted above, Staff finds Section 1180 applies only to significant wetlands; should the Board concur with DSL's recommendation that the delineated wetlands are not significant, this standard does not apply. Riparian corridors not associated with significant wetlands are addressed in Section 1170.

C. *Activities Prohibited within the Wetland Riparian Corridor Boundary. In addition to the prohibitions of the underlying zone, the following development activities are prohibited in wetland riparian corridor boundaries, except as provided for in Sub-sections 1184(E) and (F) of this Sub-section:*
   1. *The alteration of the wetland riparian corridor by grading, the placement of fill material, and/or impervious surfaces, including paved or gravel parking areas or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Building Code, as amended, or other land use permit.*
   2. *The removal of riparian trees or vegetation.*

Finding 204: Staff finds the riparian corridor regulation in Section 1180 applies only to significant wetlands; should the Board concur with DSL's recommendation that the delineated wetlands are not significant, this standard does not apply.

D. *Exempted Activities. This Overlay Zone does not apply to land legally used for commercial forestry operations or standard farm practices, both of which are exempt from the riparian corridor protection standards of this Section. The use of land for commercial forestry is regulated by the Oregon Department of Forestry. The use of land for standard farm practices is regulated by the Oregon Department of Agriculture, with riparian area and water quality issues governed specifically by ORS 568.210 to ORS 568.805.*

Finding 205: The applicant is not proposing commercial forestry operations or standard farm practices. This standard does not apply.

E. *Exceptions to prohibited activities. Notwithstanding the prohibitions set forth in sub-section (C), above, the following development activities are allowed within the wetland riparian corridor boundary:*
   1. *The following wetland riparian vegetation may be removed:*
      a. *Non-native vegetation, invasive species, and noxious weeds, if replaced with native plant species. The replacement vegetation shall cover, at a minimum, the area from which*

vegetation was removed, and shall provide for maximum soil retention and shade cover. Replacement vegetation shall, upon maturity, maintain 75%-100% canopy and ground cover.

b. Vegetation which is necessarily removed for the development of water related and water dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water dependent and/or water related use.

c. Trees and vegetation in danger of falling and/or posing a hazard to life or property. If no hazard will be created, the trees, once felled, shall be left in place in the riparian area.

2. The following development is allowed within the riparian corridor boundary:

a. Streets, roads, and driveways, if:

i It is not possible to locate the street, road or driveway outside of the riparian corridor boundary; and

ii The street, road or driveway is designed to minimize intrusion into the riparian corridor boundary;

b. Pedestrian walkways, paths and trails;

c. Fencing and signs, not including billboards;

d. Drainage facilities, utilities and irrigation pumps;

e. Water-related and water-dependent uses;

f. New or expanded shoreline stabilization and flood control grading and structures;

g. Portable furniture, and other portable outdoor equipment for the private use of the property owner/resident. For purposes of this subsection, "portable" shall mean that the item is not affixed to the ground, other than with a chain or other lock which is capable of being removed at any time.

Finding 206: Staff finds the riparian protections relating to Section 1180 are only applicable to significant wetlands. If the Board finds the delineated wetlands are not significant, proposed development is not regulated by Section 1180.

F. Legal non-conforming uses are allowed to continue within the wetland riparian corridor boundary subject to the requirements in Section 1506, ORS 215.130, applicable state laws, and the following additional requirements:

1. For replacement of legal non-conforming structures with new structures, any new structure shall be located in the same location and in the same footprint as the existing structure, and shall not disturb additional riparian surface area within the wetland riparian corridor boundary.

2. For expansion or alteration of legal non-conforming structures existing fully or partially within the riparian corridor, the expansion or alteration shall not occur within the wetland riparian corridor boundary. If the pre-existing structure is completely within the riparian corridor, expansion is allowed only on the side opposite the water resource.

3. Legal non-conforming lawn within the riparian corridor boundary may be maintained. However, such lawn shall not be expanded within the riparian corridor boundary.

4. Legal non-conforming shoreline stabilization and flood control structures may be maintained.

Finding 207: There are no existing non-conforming structures, lawns, or shoreline stabilization and flood control structures on site. This standard does not apply.

G. New activities and development identified in Sub-section 1184(E) and 1184(F), above, shall be allowed in the wetland riparian corridor boundary subject to the following requirements:

1. *All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing the use or activity.*
2. *For activities and development for which land use permits, building permits, grading permits, variances or stormwater/erosion control permits are required, the County shall provide notification to ODFW of the proposed development activity. The County shall consider the recommendations of ODFW, including any mitigation recommendations, prior to issuance of permits and may condition permit approval on recommended measures to mitigate loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415.*

Finding 208: The applicant is pursuing DSL and Corps approval for removal of approximately 109 acres of delineated wetlands for facility, driveway, and rail development. The applicant shall obtain all applicable permits and approvals from the Oregon Department of Fish and Wildlife and the Department of State Lands regarding all new activities and development within all identified wetland areas. These approvals include, but are not limited to, mitigation recommendations to mitigate the loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415. A condition of approval is proposed requiring approval of all applicable state and federal permits.

H. Variance Provisions

1. *In cases where encroachment into the riparian corridor boundary by activities and development not otherwise allowed by Sub-section 1184(E), or 1184(F) cannot be avoided, a property owner may request a Variance to the riparian corridor boundary prohibition. In addition to the criteria found in Section 1504, and the requirements in Sub-section 1184(G), a variance to the riparian corridor boundary prohibitions shall not be granted unless all of the following criteria are met:*

Finding 209: The applicant is not requesting a variance to riparian corridor protections.

Section 1185 NATURAL AREA OVERLAY (NA)

Finding 210: The Oregon State Register of Natural Heritage Resources (Attachments 2l & 3l), does not include any sites in the vicinity of Port Westward. Furthermore, the Nature Conservancy does not own any natural areas within Columbia County. Finally, the inventory of natural areas in Columbia County Comprehensive Plan, Part XVI, Article IX, Natural Areas, does not identify any sites in the vicinity of Port Westward. Therefore, development at the site is not subject to the Natural Area Overlay Zone.

Section 1190 BIG GAME HABITAT OVERLAY (BGR)

Finding 211: Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three types of big game habitat. As depicted in Attachments 2f & 3f, the site is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County's Wildlife Game Habitat map. Therefore, development at the site is not subject to the Big Game Habitat Overlay Zone.

Section 1603 QUASIJUDICIAL PUBLIC HEARINGS

.1 The applicant shall submit an application and any necessary supplemental information as required by this ordinance to the Planning Department. The application shall be reviewed for completeness and the applicant notified in writing of any deficiencies. The application shall be deemed complete upon receipt of all pertinent information. If an application for a permit or zone change is incomplete, the Planning Department shall notify the applicant of exactly what information is missing within 5 days of receipt of the application and allow the applicant to submit the missing information. The application shall be

deemed complete for the purpose of this section upon receipt by the Planning Department of the missing information.

.2 Once an application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission or Hearings Officer. The Director will publish a notice of the request in a paper of general circulation not less than 10 calendar days prior to the scheduled public hearing. Notices will also be mailed to adjacent individual property owners in accordance with ORS 197.763

Finding 212: The review and process for DR 21-03, CU 21-04, and V 21-05 has been lengthy with several iterations of application materials. In order to meet process requirements and statutory review timeframes, the County Board of Commissioners took jurisdiction of the hearing consistent with Ordination 91-02. Process dates from pre-application conference to the first Board of Commissioners hearing are identified below:

- NEXT Pre-Application Conference: February 6, 2020
- NEXT Application Submissions: January 19, 2021
- County Incompleteness Letters: February 17, 2021
- NEXT Updated Application Submissions: July 13, 2021
    - Including significant changes to rail location and rail volume.
- NEXT ORS 215.427 Completeness: July 15, 2021
- NEXT Updated Application Submissions: August 12, 2021
- NEXT Memorandum on Interpretation of CCZO 1175.B, 1184.E and OAR 660-012-0065: September 30, 2021
- County Board of Commissioners took jurisdiction consistent with Ordinance 91-2: October 20, 2021
- County Memo Identifying Critical Issues: sent October 25, 2021
- County Board Hearing Scheduled: December 6, 2021
- NEXT Updated Application Submissions: December 14, 2021
- Notice provided to Clatskanie Chief newspaper for December 29, 2021publication: December 22, 2021
- Notice sent to adjacent property owners: December 23, 2021
- County Staff Report published: January 12, 2022
- County Board Hearing Date: January 19, 2022

Columbia County Stormwater and Erosion Control Ordinance

I. INTRODUCTION B. Applicability

1. Provisions of this ordinance apply to:

a. Building permits for residential, commercial, industrial and accessory uses that involve disturbing more than 2000 square feet of land or activities disturbing more than 1000 square feet of land on sites with known and apparent erosion problems;

Finding 213: The proposal requested for DR 21-03 involves disturbing over 100 acres of land. Attachments 2m & 3m include the applicant's Preliminary Storm Report.

1. The submittal generally meets the intent of the Columba County Stormwater and Erosion Control Ordinance, however a Final Stormwater Plan is required and a Building Permit will not be issued until the plan is approved by the county.

2. For the "Oily Water Sewer Basin and "Main Plant Stormwater Basin" (45.16 acres and 57.30 acres, respectively or 72% of the total existing site area) it appears that the applicant is meeting or exceeding the standards set forth in the Ordinance. Specific areas of stormwater are being intercepted and directed by pipeline to an onsite treatment plant to then be discharged into the Columbia River (a tidal waterbody) using the Port of Columbia County's existing outfall. The intercepted and treated runoff is exempt from the peak runoff control measures by Ordinance because of its discharge into a tidal waterbody.

The overall result of this is the applicant is proposing to intercept stormwater that was infiltrating or otherwise making it to conveyances, thereby reducing the overall amount of runoff leaving the site once developed. It is assumed that the treated stormwater will meet or exceed water quality standards.

3. The "Pipeline Maintenance and Rail Spur Basins" are proposed to maintain "existing drainage paths" including sheet flow over land, therefore causing no difference between pre-development and post-development conditions and no need for specific conveyance system sizing. The applicant is however proposing water filter strips along the roadway and rail for water quality and sizing them to meet the 9-minute residence time.

4. The "Access Road Basin" (10.44 acres) is the only stormwater basin that will need to have peak runoff control measures. The applicant is proposing to use drainage swales with weirs and check dams to address both water quality and quantity requirements. The proposed design appears to meet or exceed the water quality and quantity requirements of the Ordinance. The Final Stormwater Plan should include specific swale design plan and profile details for review by the County.

5. Erosion Control Plan. Looking at the Site Design Review Plans (Attachment 2c), the applicant has met the intent of the Ordinance. A Final Erosion Control Plan will be required and a Building Permit will not be issued until the plan is approved by the county.

Staff finds the proposal can be conditioned to be consistent with the County's Stormwater and Erosion Control Ordinance.

Agency Comments

County Building Official: Obtain all permits for construction. Engineered plans with Code Summary is required.

County Sanitarian: No comments have been received.

County Engineering Technician: Has reviewed the proposal and has no objections to its approval.

County Assessor: No comments have been received.

Clatskanie Rural Fire and Protection District: No comments have been received as of the date of this report.

Clatskanie-Quincy CPAC: No comments have been received.

CONCLUSION, RECOMMENDATION & CONDITIONS

Based on the above findings, if the Board finds:

1. The delineated wetlands on the site are not "significant" consistent with DSL recommendation;
2. The proposed renewable fuel facility and associated development (including the rail branchline) are "water-related" uses consistent with the applicant's definition; and
3. The proposed rail development meets the definition of a "rail branchline" consistent with Portland & Western Railroad's definition.

Planning Staff recommends **APPROVAL** of this Type II Site Design Review and Variance **(DR 21-03)** and Type III Conditional Use (**CU 21-04**) to allow the development of the proposed renewable fuel facility and associated development (including the rail branchline) on properties within the RIPD Zone and PA-80 Zone associated with the Tax Lot numbers:

Facility

- Port of Columbia County: 8422-00-00100, 8422-00-00200, 8422-00-01100, 8421-00-00700, 8416-00-00200, 8416-00-00300
- NEXT Renewable Fuels, Inc.: 8422-00-00300

Branch Line

- Port of Columbia County: 8421-00-00600, 8422-00-00400, 8422-00-00500, 8422-00-00600, 8423-B0-00700
- De La Cruz: 8423-B0-00800

Subject to the following conditions:

CONDITIONS OF APPROVAL

1) This Design Review, Variance and Conditional Use shall remain valid for two (2) years from the date of the final decision. This permit shall become void, unless the proposal has commenced in conformance with all conditions and restrictions established herein within the two-year validity period. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop.

2) All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing site clearing or development activities.

3) Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts.

4) The property owner shall sign and record, in the deed records of Columbia County, a Waiver of Remonstrance regarding past, current or future accepted farm or forest operations of adjacent and nearby lands. A copy of this recorded document shall be submitted to LDS.

5) The applicant shall obtain all applicable permits for any proposed future signage. These proposals shall meet all requirements in Section 1300 as well as any other applicable sections of the Columbia County Zoning Ordinance.

6) The proposed development area shall be sited as presented in the applicant's submitted site plans and specifications reviewed and approved by the Board. This shall include all improvements including the proposed stormwater retention areas.

7) The applicant shall obtain approval from Clatskanie Rural Fire Protection District prior to the authorization of the Final Site Plan.

8) The applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details; a Building Permit will not be issued until the plan is approved by the county.

9) The applicant shall prepare a Final Erosion Control Plan; a Building Permit will not be issued until the plan is approved by the county.

10) Any changes to approved plan(s) and/or elevations shall be reviewed and approved by the County prior to implementation in compliance with the applicable provisions of the Oregon Structural Specialty and Fire Codes. All work shall accurately reflect County approved plans.

Prior to the Issuance of Occupancy:

11) The applicant shall complete the following road improvements: The complete reconstruction of approximately 1.65 miles of Hermo Road between Quincy-Mayger Road to the entrance to the Port Westward Industrial site to include two 12-foot travel lanes, rock shoulders, safety slopes, and roadside ditches then paving of the entire length of Hermo Road to final grade between Quincy-Mayger Road to Kallunki Road to bring the entire road up to current County road standards. This work includes final design, permitting, and construction.

12) Planning Staff shall review all proposed parking and landscaping improvements in order to conduct a site visit to ensure that all requirements have been constructed as proposed. This site visit is required prior to final planning approval.

ATTACHMENTS

1) Site Design Review Application Form, Variance Application Form, Conditional Use Application Form, and Owner Authorization Letters
2) Applicant Prescribed Use, Site Design Review, and Variance Submission Package January 19, 2021
    a. Prescribed Use, Site Design Review, and Variance Narrative
    b. Exhibit 02 SDR Vicinity Map and Zoning Map
    c. Exhibit 03 Site Design Review Plans
    d. Exhibit 04 Flood Insurance Rate Map 41009C0050D, dated November 26, 2010 (annotated)
    e. Exhibit 05 Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
    f. Exhibit 06 Clatskanie-Quincy CPAC Wildlife Game Habitat map, Beak Consultants Inc., June 1995 (annotated)

g. Exhibit 07 Clatskanie-Quincy CPAC Wetland and Hydric Soils map, Beak Consultants Inc., June 1995 (annotated)
h. Exhibit 08 Stream Data Map
i. Exhibit 09 Excerpt from Lakes of Oregon, Volume 1, Clatsop, Columbia, and Tillamook Counties, U.S. Geological Survey, 1973
j. Exhibit 10 Statewide Wetland Inventory (annotated)
k. Exhibit 11 Anderson Perry Wetland Delineation Report
l. Exhibit 12 Oregon State Register of Natural Heritage Resources
m. Exhibit 13 Preliminary Stormwater Report
n. Exhibit 14 Transportation Impact Analysis
o. Exhibit 15 Architectural Rendering

3) Applicant Conditional Use Submission Package January 19, 2021
a. Conditional Use Narrative
b. Exhibit 02 CUP Vicinity Map and Zoning Map
c. Exhibit 03 Conditional Use Permit Plans
d. Exhibit 04 Flood Insurance Rate Map 41009C0050D, dated November 26, 2010 (annotated)
e. Exhibit 05 Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
f. Exhibit 06 Clatskanie-Quincy CPAC Wildlife Game Habitat map, Beak Consultants Inc., June 1995 (annotated)
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h. Exhibit 08 Stream Data Map
i. Exhibit 09 Excerpt from Lakes of Oregon, Volume 1, Clatsop, Columbia, and Tillamook Counties, U.S. Geological Survey, 1973
j. Exhibit 10 Statewide Wetland Inventory (annotated)
k. Exhibit 11 Anderson Perry Wetland Delineation Report
l. Exhibit 12 Oregon State Register of Natural Heritage Resources
m. Exhibit 13 Preliminary Stormwater Report

4) Applicant Prescribed Use, Site Design Review, and Variance Submission Package August 12, 2021
a. Prescribed Use, Site Design Review, and Variance Narrative
b. Exhibit 02 SDR Vicinity Map and Zoning Map
c. Exhibit 03 Site Design Review Plans
d. Exhibit 04 Flood Insurance Rate Map 41009C0050D, dated November 26, 2010 (annotated)
e. Exhibit 05 Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
f. Exhibit 06 Clatskanie-Quincy CPAC Wildlife Game Habitat map, Beak Consultants Inc., June 1995 (annotated)
g. Exhibit 07 Clatskanie-Quincy CPAC Wetland and Hydric Soils map, Beak Consultants Inc., June 1995 (annotated)
h. Exhibit 08 Stream Data Map
i. Exhibit 09 Excerpt from Lakes of Oregon, Volume 1, Clatsop, Columbia, and Tillamook Counties, U.S. Geological Survey, 1973
j. Exhibit 10 Statewide Wetland Inventory (annotated)
k. Exhibit 11 Anderson Perry Wetland Delineation Report

   l. Exhibit 12 Oregon State Register of Natural Heritage Resources
   m. Exhibit 13 Preliminary Stormwater Report
   n. Exhibit 14 Transportation Impact Analysis
   o. Exhibit 15 Architectural Rendering
   p. Exhibit 16 Port of Columbia County Utility Service Letter
   q. Exhibit 17 Portland General Electric Correspondence Regarding Trees Near Transmission Lines
5) Applicant Conditional Use Submission Package August 12, 2021
   a. Conditional Use Narrative
   b. Exhibit 02 CUP Vicinity Map and Zoning Map
   c. Exhibit 03 Conditional Use Permit Plans
   d. Exhibit 04 Flood Insurance Rate Map 41009C0050D, dated November 26, 2010 (annotated)
   e. Exhibit 05 Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
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   g. Exhibit 07 Clatskanie-Quincy CPAC Wetland and Hydric Soils map, Beak Consultants Inc., June 1995 (annotated)
   h. Exhibit 08 Stream Data Map
   i. Exhibit 09 Excerpt from Lakes of Oregon, Volume 1, Clatsop, Columbia, and Tillamook Counties, U.S. Geological Survey, 1973
   j. Exhibit 10 Statewide Wetland Inventory (annotated)
   k. Exhibit 11 Anderson Perry Wetland Delineation Report
   l. Exhibit 12 Oregon State Register of Natural Heritage Resources
   m. Exhibit 13 Preliminary Stormwater Report
6) NEXT Memorandum on Interpretation of CCZO 1175.B, 1184.E and OAR 660-012-0065 (September 30, 2021)
7) County Memo Identifying Critical Issues (sent October 25, 2021)
8) NEXT Supplemental Fence Height Evidence (November 2, 2021)
9) NEXT Supplemental Landscape Buffer and Screening Variance Evidence (November 2, 2021)
10) Applicant Submission Package December 14, 2021
   a. Prescribed Use, Site Design Review, and Variance Narrative (December 14, 2021)
   b. Exhibit 18 PIP Chain Link Fence and Gates Installation Specification (December 2016)
   c. Exhibit 19 Anderson Perry Wetland Memo (December 8, 2021)
   d. Exhibit 20 Pipeline and Water Intake Map
   e. CUP Narrative (December 14, 2021)
   f. Exhibit 14 Anderson Perry Wetland Memo (December 8, 2021)
   g. Exhibit 15 Pipeline and Water Intake Map
   h. Exhibit 16 Portland and Western Railroad Letter (November 19, 2021)
11) Agency Comments
   a. Department of State Lands (December 15, 2021)
   b. Oregon Department of Fish & Wildlife (December 21, 2021)
   c. Columbia Soil & Water Conservation District (January 5, 2022)
12) Waiver of Remonstrance

Attachment B

Branchline

Next Renewable Fuels, Oregon, LLC.
EFSC RIA Response
February 2021

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application by NEXT Renewable Fuels Oregon, LLC for a Conditional Use Permit for a Rail Branchline in the Primary Agriculture (PA-80) Zone Near Port Westward (CU 21-04)	)))))	FINAL ORDER NO. 13-2022

WHEREAS, on January 19, 2021, NEXT Renewable Fuels Oregon, LLC (hereinafter, the "Applicant"), submitted an application to establish a "rail branchline" to connect a renewable diesel facility, which is proposed through Application CU 21-04, to Portland & Western Railroad's facilities; and

WHEREAS, the approximately 203-acre site of which approximately 12.3 acres will be developed as a rail branchline, is located in the Primary Agriculture (PA-80) Zone, adjacent to the Port Westward Industrial Park, near Clatskanie, Oregon, and identified as Tax Map ID Numbers 8421-00-00600, 8422-00-00400, 8422-00-00500, 8422-00-00600, 8423-B0-00700 and 8423-B0-00800; and

WHEREAS, County planning staff deemed the application incomplete on February 17, 2021, and on July 13, 2021, the Applicant submitted revised application materials to address some of the outstanding items identified in the County's incompleteness letter. The Applicant also requested that the County deem the application complete in accordance with ORS 215.427; and

WHEREAS, staff consequently deemed the application complete on July 15, 2021, and proceeded with processing the application; and

WHEREAS, staff transitions and multiple revisions of application materials resulted in a lengthier review of the application, and in order to comply with statutory review timeframes, the Board of County Commissioners (hereinafter, the "Board") took original jurisdiction over the application on October 20, 2021, in accordance with Sections 1603 and1612 of the Columbia County Zoning Ordinance and Section 11 of the Columbia County Planning Commission Ordinance (Ordinance No. 91-2, as amended); and

WHEREAS, the Applicant submitted revised application materials on December 14, 2021, to address critical issues raised by staff; and

WHEREAS, following proper notice by publication and by mailing to adjacent property owners, the Board held a hearing on the application on January 19, 2022, at which time the Board admitted all written evidence submitted prior to the hearing; and

WHEREAS, at the conclusion of the hearing, the Board left the record open for seven days for new written testimony and evidence, followed by seven days for written testimony and evidence in rebuttal, and then seven days for the Applicant's final argument; and

WHEREAS, the Board continued its deliberations to February 9, 2022, at which time the Board admitted all written evidence and testimony received during the open record period, except for comments by Jan Bays, Barbara Green, Helen Shaw, Mark Uhart, and Sandra Moilanen, which were submitted during the rebuttal period but did not contain rebuttal evidence or testimony; and

WHEREAS, staff then presented a revised recommendation addressing issues raised at the hearing and during the open record period; and

WHEREAS, following its deliberations, the Board voted to tentatively approve Application CU 21-04, subject to conditions, as presented in staff's revised recommendation;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

A. The Board of County Commissioners adopts the following as findings in support of its decision:

1. The Supplemental Findings of Fact and Conclusions of Law, attached hereto as Exhibit A and incorporated herein by this reference; and

2. The findings and conclusions in the Applicant's pre-hearing testimony, dated January 17, 2022, attached hereto as Exhibit B and incorporated herein by this reference, to the extent those findings are consistent with this Final Order and the Supplemental Findings of Fact and Conclusions of Law; and

3. The Applicant's final argument, attached hereto as Exhibit C and incorporated herein by this reference, to the extent those findings are consistent with this Final Order and Supplemental Findings of Fact and Conclusions of Law; and

4. The findings and conclusions in the Staff Report to the Board of County Commissioners dated January 12, 2022, which is attached hereto as Exhibit D and incorporated herein by this reference, to the extent those findings are consistent with this Final Order and the Supplemental Findings of Fact and Conclusions of Law; and

5. The above recitals.

B. Based on the foregoing and the whole record on this matter, the Board of County Commissioners **APPROVES CU 21-04** for the development of the proposed rail branchline in the Primary Agriculture (PA-80) Zone on property identified as Tax Lot numbers 8421-00-00600, 8422-00-00400, 8422-00-00500, 8422-00-00600, 8423-B0-00700 and 8423-B0-00800**, subject to the following conditions**:

1. This Conditional Use permit authorizes the establishment of a rail branchline to serve the facility authorized by Final Order No. 12-2022. The permitted rail branchline shall be sited as presented in the applicant's submitted site plans and specifications as reviewed and approved by the Board.

2. This Conditional Use permit shall remain valid for two (2) years from the date of the final decision. This permit shall become void, unless the proposal has commenced in conformance with all conditions and restrictions established herein within the two-year validity period. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop.

3. All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing site clearing or development activities.

4. Rail transport to and from the site shall be limited to no more than 318 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained and shall be provided to the County within seven (7) days of written request from the County.

5. Use of the private rail branch line shall be limited to active loading and unloading, and shall not be used for long-term storage of rail cars and/or materials. A rail car shall not remain on site for more than 14 consecutive days.

6. Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts. The plan shall be submitted to the Land Development Services Department for review and approval prior to final planning approval.

7. The property owner shall sign and record, in the deed records of Columbia County, a Waiver of Remonstrance regarding past, current or future accepted farm or forest operations of adjacent and nearby lands. A copy of this recorded document shall be submitted to the Land Development Services Department.

8. The applicant shall obtain all applicable permits for any proposed future signage. These proposals shall meet all requirements in Section 1300 as well as any other applicable sections of the Columbia County Zoning Ordinance.

9. The proposed development area shall be sited as presented in the applicant's submitted site plans and specifications reviewed and approved by the Board. This shall include all improvements including the proposed stormwater retention areas.

10. The applicant shall obtain approval from Clatskanie Rural Fire Protection District prior to the authorization of the Final Site Plan.

11. The applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details in compliance with County regulations; a building permit will not be issued until the plan is approved by the County.

12. The applicant shall prepare a Final Erosion Control Plan in compliance with County regulations; a building permit will not be issued until the plan is approved by the County.

13. Any changes to approved plan(s) and/or elevations shall be reviewed and approved by the County prior to implementation in compliance with the applicable provisions of the Oregon Structural Specialty and Fire Codes. All work shall accurately reflect County approved plans.

14. A Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), an EPA-approved Spill Prevention Control and Countermeasure Plan and any other required spill response plan shall be provided prior to occupancy. Documentation of any updates to the plans and ongoing compliance with the plans shall be maintained and provided to the County within seven (7) days of written request from the County.

15. Planning Staff shall review all proposed improvements in order to conduct a site visit to ensure that all requirements have been constructed as proposed. This site visit is required prior to final planning approval.

DATED this 23 day of March, 2022.

BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

By: _____
Henry Heimuller, Chair

By: _____
Casey Garrett, Commissioner

By: _____
Margaret Magruder, Commissioner

Approved as to form

By: _____
Office of County Counsel

EXHIBIT A

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

FOR FINAL ORDER NO. 13-2022

I. INTRODUCTION

NEXT Renewable Fuels, LLC ("the Applicant") proposes to develop a renewable diesel production facility at Port Westward, with related Columbia River dock access and rail connections (collectively, the "Project"). The Project consists of two land use applications that are separate and related. The renewable diesel production facility application seeks approval for Use Permitted under Prescribed Conditions in the Resource Industrial-Planned Development ("RIPD") Zone, Site Design Review, and Variance. The rail branchline application seeks a Conditional Use Permit for a rail branchline (the "Application"). The Applicant submitted the rail branchline application separately because a portion of the rail branchline is to be located on Primary Agricultural Use Zone (PA-80) land.

The vast majority of the Project is located entirely within the RIPD zone, which is intended to accommodate both rural and natural resource related industries. The proposed renewable diesel facility will be located entirely within the RIPD zone. A portion of the proposed rail branchline will touch land zoned differently, zoned PA-80. These supplemental Findings of Fact and Conclusions of Law address the application for a Conditional Use Permit for a rail branchline in the PA-80 zone.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The proposed rail development is a "rail branchline" for purposes of OAR 660-012-0065(3)(j) and is authorized as a transportation improvement under CCZO 306(9) and OAR 660-012-0065(3)(j).

The Columbia County Zoning Ordinance ("CCZO") expressly allows a number of non-agricultural uses in the PA-80 zone and certain other non-agricultural uses may be allowed under Conditional Use Permits. The Board may approve roads, highways, and other transportation facilities and improvements as set forth in Oregon Administrative Rule 660-012-0065 as a conditional use. CCZO 306.9. Oregon Administrative Rule ("OAR") 660-012-0065(1) "identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with [statewide planning] Goals 3, 4, 11, and 14 without a goal exception." Specifically, "[r]ailroad mainlines and branchlines" are consistent with the identified Goals and may be permitted on rural lands. OAR 660-012-0065(3)(j).

Neither the CCZO, nor Oregon's statutes or administrative rules provide a relevant definition of the term "rail branchline."[1] However, the Oregon Supreme Court has embraced a "commonly understood" meaning that a branchline is "nothing more nor less than an offshoot from the mainline or stem." *Union P. R. Co. v. Anderson*, 167 Or 687, 712, 120 P2d 578, 588 (1941). The Board also finds persuasive the following passage cited in *Union P.R. Co*:

> "It denotes a road connected, indeed, with the main line, but not a mere incident of it, not constructed simply to facilitate the business of the chief railway, but designed

[1] In particular, there is no definition of these terms in OAR Chapter 660, nor any reference to definitions in other rules or statutes.

to have a business of its own, for the transportation of persons or property to and from places not reached by the principal route."

Union P. R. Co., 167 Or at 711-12, *citing State v. United New Jersey R. and Canal Co.*, 43 N.J.L. 110 (1881) (*emphasis added*). The County hereby adopts the Oregon Supreme Court's "commonly understood" definition, above.

The Applicant submitted a letter from Portland and Western Railroad (Attachment 6h to the Staff Report) that outlines Portland and Western Railroad's conclusion that the proposed rail branchline is in fact a "branchline," and not some other distinct type of rail improvement such as railyard or switchyard.[2] The letter states that the Applicant's rail branchline tracks are "considered industry track, which is another term for branch line or spur." The letter goes on to say that "[a]s a general matter, 'branch line' is a broad term that encompasses any track that branches off from mainline track." The Applicant has also described the rail branchline as providing a connection to the available rail line in the area and that it will be configured to allow cars to be loaded and unloaded. In his testimony at the January 19, 2022 hearing, Mr. Gene Cotten explained how the Applicant has designed the rail layout to allow cars to be brought in, unloaded, and turned around. Mr. Cotten's memorandum submitted during the second open record period also further specified how trains would utilize the proposed rail branchline. NEXT's Second Open Record Period

[2] While not essential to reach the legal conclusion that the Applicant's proposed rail improvements consist of a "rail branchline," the Board finds that rail yards typically serve intermodal transportation purposes with multiple customers and products. In this instance, the only current customer is the Applicant and the rail facilities do not offer transfers of multi-customer bulk or containerized freight service. The Board also finds that the proposed rail improvements are not a "switch" or "switching yard" because the primary purpose of the branchline is to move renewable diesel products, processing materials, and feedstocks directly in and out of the facility. This is informed by Portland and Western's opinion that a switch or rail yard is intended to "to block cars for furtherance to other destination points."

Submittal. The Board finds that the evidence in Attachment 6h (Portland & Western Railroad Letter) to the Application is the most persuasive evidence on the question of whether the Applicant's proposed rail improvements are a "rail branchline" because it reflects a common use of the term by rail service providers consistent with the Court's definition, above, and opines that the proposed rail improvements can be considered a "branchline" or "spur," and that the rail improvements are not a "switch or rail yard."

Written comments from 1000 Friends of Oregon ("1000 Friends"), Columbia Riverkeeper ("Riverkeeper"), and the Oregon Department of Land Conservation and Development ("DLCD") questioned whether the proposed branchline is a rail branchline or by contrast was actually a "rail yard" or something other than a "rail branchline," and therefore not allowable on PA-80 zoned-land. DLCD commented that it did not believe the Board had the necessary information to determine whether the proposed rail improvements qualified as a "rail branchline" under OAR 660-012-0065(3)(j). Both letters included legal arguments concerning the term "rail branchline" but neither letter included evidence to rebut the evidence submitted by the Applicant on this issue.

There are no applicable definitions of any of the above terms in OAR 660, applicable statutes, or other governing law. As explained above, Oregon courts (and now the County) have accepted a fairly broad definition of the term "branchline." Neither DLCD, 1000 Friends, nor Riverkeeper identified any definitions in applicable rules, statutes, or even a citation to parallel statutes or rules that undermines the County's interpretation of the term "branchline" for purposes of OAR 660-012-0065(3)(j). The Board disagrees with arguments made by 1000 Friends and Riverkeeper in their joint Jan. 19, 2022 letter advocating for a "dictionary" definition; in this instance, reference to a dictionary is unnecessary. Even if it were, the dictionary definitions offered by 1000 Friends/Riverkeeper do not preclude the County's definition because they do not define

the term "branch line" or word "branchline," but only define "line" and "spur." Neither DLCD nor 1000 Friends/Riverkeeper's comments offer any definition or support for the proposition that the proposed branchline is instead a railyard.[3] The only evidence on this question was provided by Portland and Western Railroad in its November 19 letter: "Portland & Western Railroad, Inc. also does not consider the tracks at NEXT's facility a "switch or rail yard." All cars entering and exiting NEXT's facility will be for NEXT's sole use at the site itself. A switch/rail yard's goal is to block cars for furtherance to other destination points." The Board finds that this statement is the best evidence on whether the Applicant's proposed rail improvements are a railyard or switchyard, and supports the Board's conclusion that they are not.

In summary, the proposed rail branchline provides a connection to the available rail line in the area and is configured to allow cars to be loaded and unloaded. Evidence in the record demonstrates that the proposed branchline is, or is part of, "an offshoot from the main line or stem," is "designed to have a business of its own," (renewable diesel) and is intended "for the transportation of persons or property to and from places not reached by the principal route" (transportation of renewable diesel, processing material, and feedstocks to and from the existing Portland and Western Railroad). The Board finds that it does not serve as a railyard (that would, for example, move many types of freight from truck to rail), nor does it serve as a "switch yard," because it does not direct multiple trains into different travel directions. As explained in Mr. Cotten's memo submitted during the Second Open Record Period, the rail track design is a requirement of Burlington Northern Santa Fe and Portland and Western Railroads because the rail system is a secondary logistic mode that could receive deliveries of trains that are approximately

[3] It appears that the 1000 Friends/Riverkeeper letter dated Jan. 19, 2022 includes a hyperlink to a document regarding railyards. However, documents that are only hyperlinked and not actually placed before the Board are not part of the record. *Fernandez* v. *City of Portland* 72 Or LUBA 482, 488 (2015).

80-100 cars, and Portland and Western seeks to ensure that the rail branchline is large enough to move the entire 100-car train off its tracks. The Board finds that Portland and Western's letter, and the information provided by Mr. Cotten at the public hearing and his memo submitted during the Second Open Record Period provide the Board with sufficient evidence to find that the proposed rail branchline is within the Oregon Supreme Court's "commonly understood" definition of branchline as an "offshoot from the mainline or stem."

Accordingly, because the Board finds that the proposed rail is a branchline, it is a transportation facility as set forth in OAR 660-012-0065 related to transportation improvements on rural lands.

B. The rail branchline satisfies the "farm impacts test" criteria of ORS 215.296 as it will not force a significant change or a significant increase in cost in accepted farm practices CCZO 307.1.A, 307.1.B, and ORS 215.296.

A portion of the proposed rail branchline is located on six parcels that in the exclusive farm use PA-80 zone. As detailed in the Application and Staff Report—and as further described below—the proposed rail branchline satisfies all applicable criteria and requirements.

As required by CCZO 307.1 and ORS 215.296, the Board must determine that a proposed use in the Primary Agriculture Zone "will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use" and "will not significantly increase the cost of accepted farm or forest practices on land devoted to farm or forest use." CCZO 307.1.A and 307.1.B. Relatedly, ORS 215.296(1) also only allows an approval of a use in exclusive farm use zones only where the use is allowed under 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) and the use will not force a significant change or

significantly increase the cost in accepted farm practices. ORS 215.296(1). An applicant for a use allowed under ORS 215.213 or 215.283 may demonstrate that standards for approval in ORS 215.296(1) may be met through the imposition of clear and objective conditions. As outlined in Section IV.A., the rail branchline is a use allowed under 215.283 because railroad branchlines are transportation facilities that may be permitted on rural lands and DLCD's rules have found branchlines are consistent with Statewide Goals 3, 4, 11, and 14.

In *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 459 (2019), the Oregon Supreme Court explained the significant change/significant cost test in ORS 215.296(1) and (2) as follows:

> "To summarize, when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice, the farm impacts test in *ORS 215.296(1)* requires an applicant to prove that the proposed nonfarm use (1) will not force a significant change in the accepted farm practice *and* (2) will not significantly increase the cost of that practice. A "significant" change or increase in cost is one that will have an important influence or effect on the farm. For each relevant accepted farm practice, if the applicant cannot prove both of those elements without conditions of approval, the local government must consider whether, with conditions of approval, the applicant will meet the farm impacts test."

In identifying accepted farm practices, an applicant is not required to be omniscient in its understanding of the peculiarities of each farm practice and when analyzing the potential impacts of a non-farm use on surrounding farmlands a local government "is not required to perform the

impossible task of proving a negative." *Gutoski v. Lane County*, 34 Or LUBA 219 (1998). The Court's formulation of the farm impacts test at least recognizes that not all applications require the same level of searching inquiry: it qualifies the inquiry to situations "when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice." *Id*.

As an initial matter, the Application examined potential cumulative impacts (Application at 17–18) and concluded that there were no non-significant impacts which, in aggregate, could create a significant change or significantly increase the costs of an existing farm activity. Specifically, the Applicant identified the farm practices it believed to be potentially impacted by the rail branchline and the most likely potential impacts (farm access disruptions). Farm access for mint harvesting was also raised by Mr. Seely and 1000 Friends of Oregon/Columbia Riverkeeper, and their arguments are addressed below. Other than these, no person has identified another existing "particular accepted farm practice" that could be affected by the rail branchline and which could be combined with other impacts of the branchline to create a cumulative impact. Accordingly, there is no evidence in the record of "cumulative impacts" that the County has failed to consider. Therefore, the Board finds that the Applicant has carried its initial burden under the significant change/significant cost test.

The Application evaluated impacts on farm practices on lands surrounding the proposed rail branchline. (*See* Sections A and B in the Application). The Application identified the potential farm lands impacted by the rail branchline (namely, those parcels that are adjacent to the branchline) and the accepted farm practices on those lands (namely, hay, mint, and other crop production). To evaluate the potential farm impacts, the County broke them into sections.

The rail branchline crosses two parcels, identified as Section A in the Application, which consists of a parcel owned by the De La Cruz's and one parcel owned by the Port of Columbia County ("the Port"). The central portion of the De La Cruz parcel has been farmed with hay/grassland and row crops, such as mint. The northern portion of the De La Cruz parcel is wetland that has not been farmed in recent years. The Port parcel has been farmed with grassland and mint.

The rail branchline crosses four parcels of land owned by the Port, identified as Section B in the Application. Those parcels are largely in tree farm use and a nominal amount of grassland that is present north of McLean Slough.

Based on these farm practices, construction and operation of the branchline could cause minor changes in access routes to farm fields (for instance, the branchline will cross an existing access route), which may result in changes in the timing of cultivation, seeding, fertilizing, and harvesting near the facility. The Applicant will construct a private rail crossing to allow the passage of farm equipment to the fields north of the branchline, and the Applicant provided a map in its second open record submittal that shows how routes to various fields will largely be unencumbered by the proposed branchline. A proposed private rail crossing will address impacts from the branchline by providing access to the fields north of the branchline and east of the renewable diesel facility.

The Applicant has provided evidence and testimony that the import/export capacity for the rail branchline serves a contingency role for times when river transportation is disrupted or otherwise unavailable. The Applicant explained that the trains are anticipated to have a maximum length of 6,630 feet. The maximum single length of track within the proposed branchline is roughly

7,500 feet, more than enough storage to accommodate the largest train without requiring backing movements or crossing delays. The maximum delay time at the only nearby road crossing—Kallunki Road—is estimated to be approximately 7.5 minutes for a maximum length train at 10 miles per hour. Accordingly, the Board finds the rail branchline to serve the Facility will only have one road crossing, and the maximum time it could delay traffic is 7.5 minutes. All told, the Project would be expected to generate three (3) trains per week. *See* the Applicant's Second Open Record Submittal, February 2, 2022.

The Board also finds that the following conditions of approval are required and will further ensure that the Application will not significantly change or increase the cost of accepted farm practices on surrounding lands:

> "1) This Conditional Use permit authorizes the establishment of a rail branchline to serve the facility authorized by Final Order No. 12-2022. The permitted rail branchline shall be sited as presented in the applicant's submitted site plans and specifications as reviewed and approved by the Board.
>
> * * *
>
> 4) Rail transport to and from the site shall be limited to no more than 318 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained and shall be provided to the County within seven (7) days of written request from the County.

5) Use of the private rail branch line shall be limited to active loading and unloading, and shall not be used for long-term storage of rail cars and/or materials. A rail car shall not remain on site for more than 14 consecutive days.

6) Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts. The plan shall be subject to County review and approval."

Farm practices for hay/grassland production and row crops include activities such as tilling/soil preparation, planting, irrigation, spraying fertilizer, managing weeds, mowing, and harvesting. There is no evidence that construction and operation of the rail branchline will affect the ability to conduct these farm practices beyond the access concerns discussed above. Evidence in the record demonstrates that farming operations located east of the facility could be delayed by approximately 7.5 minutes if a train travels into or out of the renewable diesel facility while any of these farming operations are occurring. However, the Board finds that a less than 10 minute delay in time to access fields or an alteration of field access routes is not a significant change in farming practices nor a significant increase in the cost of those practices. Additionally, construction of the rail branchline does not alter the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. Trains are designed to stay on their tracks, so unlike a roadway or a path, the rail branchline will not introduce objects into agricultural lands in areas other than the railroad bed and the train that will stay entirely within the rail bed.

Train traffic on the rail branchline will not lead to any appreciably higher level of dust than is currently present from the Portland and Western Railroad mainline which already borders the impact area (all portions of the impact area are already within 800 feet of the rail mainline). Consequently, construction of the rail branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products. And, the required paving of Hermo Road could actually reduce current road dust generation in the area.

The rail branchline will not increase the cost of farming inputs (e.g. seed, fertilizer, pesticides.) and will not increase farmers' liability or financial exposure. The impact area is not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks. The applicant proposes to construct a private rail crossing at its own expense to allow passage of farm equipment to the PA-80 property that would be isolated by the rail branchline. *See* Application Exhibit 3, Sheets C1.17 and C1.18.

In evaluating the potential impacts of the proposed rail branchline on tree farm use to determine the impact to the four Port parcels in the Section B impact area, management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. The rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, so the rail branchline will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for tree farm management activities.

There is no evidence that tree farms are sensitive to dust from nearby rail lines. Consequently, construction of the rail branchline will not cause adjoining tree farm operators to incur costs to utilize additional water or pumping equipment to suppress dust. The rail branchline will not increase the cost of farming inputs (saplings, fertilizer, pesticides, etc.) and will not

increase farmers' liability or financial exposure. The impact area is in tree farm use and not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks.

Therefore, the Board finds that construction and operation of the branchline does not interfere with these farming activities by increasing land values or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses

Mr. Mike Seely and Mr. Warren Seely, in conjunction with 1000 Friends of Oregon and Columbia Riverkeeper submitted comments to the County describing the Seely's mint farming operations and identifying farming practices. (*See* 1000 Friends of Oregon Jan. 26, 2022 letter). During the second open record period, the Applicant provided responsive testimony and evidence that demonstrates the following:

- Mr. Seely will have unbroken access to his east fields via Kallunki Road and west fields via Hermo Road.

- The proposed rail branchline does not cut off Mr. Seely from any of his other fields because he does not have a leasehold interest in Port of Columbia County property south of the branchline.

- The proposed branchline provides a train storage length of roughly 7,500 feet, substantially longer than the longest (6,630 feet) train that the facility is designed to accept. This means that the largest possible train to ever service the facility can be stored on the Applicant's branchline without it having to be broken up or without any backing movements on existing crossings.

- The maximum potential length of time required to cross the Kallunki Road is approximately 7.5 minutes with the largest possible train.

The record demonstrates that with the maximum train size, Mr. Seely would experience a delay of approximately 7.5 minutes crossing Kallunki Road, and no delay crossing Hermo Road. This potential delay would only pertain to Mr. Seely's smaller parcels east of Kallunki Road. However, the Board finds that this impact is not significant because there is no evidence or argument that such a short delay[4] could cause a significant change in or significantly increase the costs of Mr. Seely's mint farming. Even so, the chances of such a delay occurring with any frequency are minimal because they would occur only if a train of maximum length happened to be crossing Kallunki road at the same time Mr. Seely's equipment was waiting to cross the tracks. The Applicant also submitted field access maps that illustrate existing access locations to fields and the proposed rail branchline and depict that no existing field access points (including those used by the Seelys) are eliminated by the proposed branchline. *See* Applicant's Second Open Record Period Submission, Feb. 2, 2022, Exhibit 1.

Additionally, concerns that future (not current) farm activities (such as livestock grazing) could be affected by the rail spur are dismissed because this argument speculates about future land uses, not current ones, and because neither the Applicant nor the County is required to consider future or speculative farm practices under the farm impacts test. *See, e.g.*, *Womelsdorf v. Jackson County*, 62 Or LUBA 34 (2010).

[4] Note that Mr. Seely's statement attached to 1000 Friends' Jan. 26, 2022 letter states that his window for mint cutting, drying, and distilling is 2-3 days and his concern of train delays is the impact on his harvest if delays are for a couple of hours, not minutes.

Commenters also raised questions about the proposed relocation of drainage ditches or impacts to the water table that might be related to crossing and relocating drainage infrastructure to fill the wetlands and construct the rail branchline. The Applicant must obtain a removal/fill permit from the Oregon Department of State Lands ("DSL") and the U.S. Army Corps of Engineers ("USACE") to fill wetlands, and a requirement of that permit is to mitigate for any effects from filling the wetland. Mitigation of effects from filling wetlands is not a component of the County's approval criteria. Additionally, the proposed mitigation site is not the subject of this Application.

The Applicant also submitted information to demonstrate where drainage ditches will be relocated and reconnected, and an evaluation of the hydrologic and water quality effects. The Applicant submitted evidence during the second open record period that the drainage ditch that will be relocated southward as a result of construction of the rail branchline will serve the same function as the existing ditch. *See* Applicant's Second Open Record Period Submission, Feb. 2, 2022. The Applicant states it will install culverts where existing ditches will be crossed by the rail infrastructure. The Applicant also states that ditches will be relocated around the rail branchline as needed to accommodate flows. According to the Applicant, the proposed culverts will be designed and sized as part of final engineering drawings during the permitting phase of the Project, as will the proposed ditch relocation. In sum, the culverts and ditches will continue to convey water in nearly the same locations after construction as today, meaning impacts to the water table will be negligible.

Accordingly, the Board concludes that changes in the relocation of ditches and the construction of the rail branchline will not force a significant change in or significantly increase

the cost of farming. To ensure the adequacy of the branchline's stormwater conveyance system, the Board imposes the following condition of approval:

> "11) The applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details in compliance with County regulations; a building permit will not be issued until the plan is approved by the County."

Comments were received raising concerns about sparks generated from rail traffic. For the following reasons, the Board finds that the potential fire danger of the tracks is minimal and will not force a significant change in or significantly increase the costs of accepted farm practices: First, the railroad tracks will be constructed on a gravel bed that minimizes fire potential from any sparks that may be generated. Second, the Applicant submitted information describing and depicting that the proposed rail branchline will also be buffered from adjoining agricultural operations by the driveway to Hermo Road, by a landscape strip, and by the relocated ditch. (*See* Applicant's Second Open Record Period Submission, Feb. 2, 2022, Exhibit 1).

Another comment raised a concern about unspecified impacts to agriculture from vibrations from trains on the proposed rail branchline. The Board dismisses this comment because it is speculative and includes no evidence that farm crops are sensitive to rail vibration.

Accordingly, the Board finds that pursuant to CCZO 307.1.A, the proposed rail branchline will not force a significant change in accepted farm practices on surrounding lands devoted to farm use. The Board similarly finds that after applying the Farm Impacts Test, and in accordance with its findings under ORS 215.283 that the rail branchline is allowed in exclusive farm use zones, pursuant to ORS 215.296(1), the proposed rail branchline will not force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices. Additionally,

the Board finds that through its conditions of approval, the proposed rail branchline will further satisfy the standards for approval in ORS 215.296(1).

C. The characteristics of the rail branchline site are suitable for the proposed use, CCZO 1503.5.C.

The Board evaluates whether to approve a conditional use subject to CCZO Section 1503. A component of CCZO Section 1503 requires that "[t]he characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features." CCZO 1503.5.C. Comments submitted by 1000 Friends and Riverkeeper raised concerns that 1503.5.C is unmet because they claim that a renewable diesel production facility "does not complement the character of neighboring successful agricultural operations in any way." 1000 Friends and Riverkeeper Jan. 19, 2022 letter. The comment then references that the facility will "stand out starkly against the surrounding rural uses" and that it will cause pollution—without further specificity about how such pollution might be caused.

These comments appear to pertain only to the production facility, and do not pertain to the approval criteria in CCZO 1503.5.C that direct the Board to consider the characteristics of the PA-80 parcels across which the proposed rail branchline is proposed, or whether there is anything about the topography or existing improvements that makes the site unsuitable for a rail branchline. The Applicant has demonstrated that the rail branchline will take the most direct route from the Portland and Western Railroad mainline to the facility and the proposed location is in close proximity to the existing Portland and Western Railroad mainline. The Applicant has demonstrated that the size of the rail branchline corridor is the minimum necessary, the site is flat, and it is protected from flooding by the Beaver Drainage Improvement Company's ("BDIC") dikes and

associated stormwater conveyance system. Additionally, natural features and existing improvements, such as the existing ditches that will be crossed by the rail infrastructure do not make the site unsuitable, particularly because the Applicant will install culverts and reconnect the existing drainage ditch that will be relocated.

The County's Zoning Ordinance does not further define what makes a site "suitable" or unsuitable under CCZO 1503.5.C. However, the common definition of "suitable" is "acceptable or right for someone or something."[5] The Board finds that the characteristics of the PA-80 parcels the rail branchline will cross – flat, in close proximity to existing rail, protected from floods, and that existing drainage ditches that will be relocated and reconnected – demonstrate that the PA-80 zone parcels are suitable for the rail branchline.

Some commenters suggested that the use must complement the character of the surrounding rural area under CCZO 681.4. CCZO 681.4 is the part of the purpose statement of the RIPD zone and is not applicable to this Application. As such, the Board finds that the rail branchline is not required to "complement the character of the surrounding rural area" under CCZO 681.4.

D. The Rail Branchline will not alter the character of the surrounding area in a manner that substantially limits the use of surrounding properties, CCZO 1503.5.E.

In approving a conditional use application the Board must ensure "[t]he proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district."

[5] Cambridge Dictionary Online, *Suitable*, https://dictionary.cambridge.org/dictionary/english/suitable.

CCZO 1503.5.E. Based on the evidence in the record the Board finds the "surrounding area" for purposes of the Application to be characterized by the land bounded by the river to the north, Kallunki Road to the east, Hermo Road to the West, and the Port of Columbia County ("Port")-owned agricultural lands to the south of McLean Slough, which are used for tree farms and animal feed production. There are also single-family homes near the intersection of Kallunki Road and Johns District Road, but the closest of such homes is roughly 0.25 miles from the Facility site and is located on the other side of the existing Portland and Western Railroad. There are substantial existing industrial developments in the area. The PGE Port Westward Generating Plant, the PGE Beaver Generating Plant Tank Farm, the Columbia Pacific Bio-Refinery, and the Clatskanie People's Utility District substation are currently existing industrial developments operating on land in the vicinity of the proposed rail branchline.

As an initial matter, the Board adopts the Applicant's statement of how the Application satisfies the above criterion:

> "The new rail branchline will not alter the character of the area as the surroundings are already traversed by the Portland & Western Railroad mainline serving Port Westward Industrial Park. In the RIPD zone to the west and north, the primary permitted uses include farm and forest uses and industrial operations including "Production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities" (CCZO 683.1). The current character of the RIPD property includes both agricultural land and industrial uses. The proposed rail branchline will complement the RIPD zone by serving a proposed renewable diesel production facility immediately to the west and north.

> "In the abutting PA-80 zone, the primary permitted uses include farm and forest uses and their accessory structures, including farm dwellings. The current character of the PA-80 property includes agricultural land, which can continue to exist in proximity to the proposed branchline (e.g., a rail crossing will be installed to allow passage of farm equipment, see Exhibit 3, Sheets C1.17 and C1.18). The response to Section 307.1 provides further evidence that the proposed rail branchline will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on lands."

Some comments suggest that approval of a rail branchline on the PA-80 zone parcels will alter the character of the surrounding area in a way that impacts farming by causing delays in crop harvests due to slow-moving rail cars that will impede access to fields during harvest time. As already addressed in Section IV.B., above, which discusses CCZO 307.1.A and the Farm Impacts Test, the rail branchline will not force a significant change in farming practices or alter the character of the surrounding lands for continued agricultural use. The Board finds that evidence which demonstrates that the Application satisfies the Farm Impacts Test also addresses CCZO 1503.5.E, as follows:

First, the Applicant will construct a private rail crossing to allow the passage of farm equipment to the fields north of the branchline. The private rail crossing will address impacts from the branchline by providing access to the fields north of the branchline.

Second, the maximum delay time that will be caused at the only railroad crossing near agricultural fields—Kallunki Road—will be approximately 7.5 minutes for a maximum length train at 10 miles per hour. That potential delay time is based upon the time it would take a train of

the maximum length that will come into or leave the renewable diesel facility. Additionally, the proposed branchline provides a train storage length of roughly 7,500 feet, substantially longer than the longest (6,630 feet) train that the facility is designed to accept. This means that the largest possible train to ever service the facility can be stored on the Applicant's branchline without it having to be broken up or without any backing movements on existing crossings. The Project is expected to generate three (3) trains per week. *See* the Applicant's Second Open Record Submittal, February 2, 2022, Memo from Gene Cotten.

Third, the Board finds that the following conditions of approval will ensure that the rail branchline will not alter the character of the surrounding agricultural land in a manner that limits, impairs, or precludes the use of those lands for continued agricultural use:

> "1) This Conditional Use permit authorizes the establishment of a rail branchline to serve the facility authorized by (Board Order). The permitted rail branchline shall be sited as presented in the applicant's submitted site plans and specifications as reviewed and approved by the Board."

> "4) Rail transport to and from the site shall be limited to no more than 318 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained and shall be provided to the County within seven (7) days of written request from the County."

> "5) Use of the private rail branch line shall be limited to active loading and unloading, and shall not be used for long-term storage of rail cars and/or materials. A rail car shall not remain on site for more than 14 consecutive days."

"6) Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts. The plan shall be subject to County review and approval."

Fourth, the area is already traversed by the Portland and Western Railroad mainline serving Port Westward Industrial Park. Therefore, the agricultural uses in the PA-80 area near the rail branchline already co-exist with a railroad in close proximity.

Fifth, train traffic on the rail branchline will not lead to any appreciably higher level of dust than is currently present from the Portland and Western Railroad mainline which already borders the impact area. Consequently, construction of the rail branchline will not cause farmers to incur significant costs or change their farming practices to utilize additional water or pumping equipment to suppress dust or wash their products. In fact, the Board finds that improvement of Hermo Road could reduce dust created by use of that road below current conditions.

Sixth, as discussed above, the Board finds that the proposed rail branchline will not significantly increase fire danger in the vicinity because it will be constructed on a non-flammable railroad bed, and is bounded by access roads, water quality swales, and ditches.

Seventh, as discussed above, the Applicant submitted information related to the relocation of drainage ditches associated with construction of the rail branchline and involving filling some wetlands. The Applicant demonstrated where drainage ditches will be relocated and reconnected, and submitted an evaluation of the hydrologic and water quality effects. The Applicant must obtain a removal/fill permit from the DSL and the USACE to fill wetlands, and a requirement of that permit is to mitigate for any effects from filling the wetland. The Applicant submitted evidence

during the Second Open Record Period that the drainage ditch that will be relocated southward as a result of construction of the rail branchline will serve the same function as the existing ditch. *See* Applicant's Second Open Record Period Submission, Feb. 2, 2022. The Applicant states it will install culverts where existing ditches will be crossed by the rail infrastructure. The Applicant also states that ditches will be relocated around the rail branchline as needed to accommodate flows. The proposed culverts will be designed utilizing standard engineering practices to ensure that the cross-section and slope of the culverts and the relocated ditches provide adequate hydraulic capacity to convey water flows from their upstream contributing areas to their existing downstream channels. In sum, the culverts and ditches will continue to convey water in nearly the same locations after construction as today, meaning impacts to the water table will be negligible and the rail branchline will not alter the character of the surrounding area in a way that substantially impairs the continued agricultural uses.

Finally, the Board will require the following conditions of approval ensuring appropriate stormwater management, which assures that the rail branchline will not substantially impair continued agricultural uses in the surrounding area:

> "9) The proposed development area shall be sited as presented in the applicant's submitted site plans and specifications reviewed and approved by the Board. This shall include all improvements including the proposed stormwater retention areas."

> "11) The applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details in compliance with County regulations; a building permit will not be issued until the plan is approved by the County."

"12) The applicant shall prepare a Final Erosion Control Plan in compliance with County regulations; a building permit will not be issued until the plan is approved by the County."

Accordingly, the Board finds that the rail branchline will not alter the character of the surrounding agricultural uses in the PA-80 zone in a manner which substantially limits, impairs, or precludes the continued agricultural uses.

E. The rail branchline satisfies the applicable goals and policies of the Comprehensive Plan applicable to the rail branchline, CCZO 1503.5.F.

To approve a conditional use application, the County must find that the proposal satisfies the goals and policies of the Columbia County Comprehensive Plan that apply to the use. CCZO 1503.5.F. The Board finds that the word "satisfies" does not make each goal or policy of the Comprehensive Plan a mandatory criterion. Rather, the Board finds that it must consider relevant goals and policies in context to determine whether there is contextual comprehensive plan language that expressly assigns a particular role to any disputed goals or policies, and that even if a goal or policy constitutes a relevant standard, it may represent a required consideration that must be balanced with other relevant considerations.

First, under Part V, the County's goal is to preserve agricultural land for agricultural uses and the policy is to protect agricultural lands from non-farm encroachments. *See* Comp. Plan, Pt. V, policy 4. The Board finds that the rail branchline is relatively small in size, totaling approximately 12.3 acres. Allowing this area to be developed with rail infrastructure will not result in a significant reduction in agricultural acreage. Additionally, as analyzed above, the rail branchline will not force a significant change in accepted farm or forest practices and will not

significantly increase the cost of accepted farm or forest practices on agricultural lands. Further, the rail branchline will be located in an area already heavily impacted by the existing Portland and Western Railroad line and electrical transmission lines, corridors, and easements. Farm uses can continue in the vicinity of these existing impediments, so the proposed rail development does not represent a significant encroachment onto other adjacent agricultural lands.

Part V of the Comprehensive Plan also states that the County will permit non-farm uses only when not in conflict with agricultural activities and to allow the uses in accordance with ORS 215.283 and 215.284. *See* Comp. Plan, Pt. V, policies 15 and 17. Due to its relatively small area (approximately 12.3 acres), the proposed rail branchline can be conditioned to resolve potential conflicts with agricultural activities. The Board finds that with the following proposed conditions of approval, the rail branchline will not conflict with agricultural activities:

> "1) This Conditional Use permit authorizes the establishment of a rail branchline to serve the facility authorized by Final Order No. 12-2022. The permitted rail branchline shall be sited as presented in the applicant's submitted site plans and specifications as reviewed and approved by the Board."

> "4) Rail transport to and from the site shall be limited to no more than 318 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained and shall be provided to the County within seven (7) days of written request from the County."

"5) Use of the private rail branch line shall be limited to active loading and unloading, and shall not be used for long-term storage of rail cars and/or materials. A rail car shall not remain on site for more than 14 consecutive days."

"6) Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts. The plan shall be subject to County review and approval."

And as analyzed in Section IV.A., above, the Board finds that the Application proposes a "rail branchline," authorized by ORS 215.283 and OAR 660-012-0065.

Finally, another policy under Part V of the Comprehensive Plan states that the County will require that an applicant for a non-farm use record a waiver of the right to remonstrate against accepted farm practices including spraying. *See* Comp. Plan, Pt. V, policy 16. Consequently, the Board imposes the following condition:

"7) The property owner shall sign and record, in the deed records of Columbia County, a Waiver of Remonstrance regarding past, current or future accepted farm or forest operations of adjacent and nearby lands. A copy of this recorded document shall be submitted to the Land Development Services Department."

The goals and policies of Comprehensive Plan Part X require that the use strengthen and diversify the economy of Columbia County, and utilize the County's natural resources. The Board finds that the rail branchline as a part of the Project will generate construction jobs and long-term jobs, contributing to economic growth in the immediate area and

beyond. The rail branchline will facilitate efficient transportation to and from a proposed adjoining renewable diesel production facility that will rely upon Port Westward's dock and deepwater port facilities. The renewable diesel production facility itself will make use of this natural resource and strategic advantage, and the rail development will augment the facility by allowing for additional transportation options of limited amounts of material.

The goals and policies of Comprehensive Plan Part XIII are to maximize efficient use of transportation infrastructure, enhance freight efficiency, access, and reliability, and enhance safety at rail crossings. The rail branchline capitalizes on the proximity of the existing rail line and will allow movement of materials that would otherwise be shipped by truck to the proposed renewable diesel production facility. The rail branchline will also take advantage of existing rail transportation facilities, namely Portland and Western Railroad's existing line. This will increase freight efficiency and provide added capacity to move product while minimizing impacts on roadways. Additionally, the Applicant coordinated with the Port, the County, and ODOT with respect to site design and transportation analysis. *See* Comp. Plan, Pt. XIII, policy 20.

Accordingly, the Board finds that the Application satisfies the goals and policies of the Comprehensive Plan as required under CCZO 1503.5.F.

F. The Rail Branchline is permitted within the County's Environmental Overlay Zones.

The rail branchline satisfies the conditions of the County's environmental overlay zones in CCZO 1100 to 1190 as described below. The Board finds that as discussed in the Staff Report, the rail branchline is not in the Flood Hazard Area Overlay (CCZO 1100) because the rail branchline

site is protected from flooding by dikes and stormwater conveyance and pumps.

The Board finds the rail branchline is not in the County Sensitive Bird Habitat Overlay (CCZO 1120) because the proposed rail branchline is not within identified habitat areas. The Columbia County Comprehensive Plan, Part XVI, Article VIII(F), Non-Game Wildlife Habitat, lists areas identified as significant nesting sites by the Oregon Department of Fish and Wildlife ("ODFW"). Part XVI, Article VIII(G) of the Comprehensive Plan, Upland Game Habitat, lists habitat for band-tailed pigeons. The proposed rail branchline is not located in the County's Non-Game Wildlife Habitat or Upland Game Habitat areas. Therefore, the rail branchline is not subject to the Sensitive Bird Habitat Overlay Zone.

The Board also finds the rail branchline is not subject to the County's Historic Overlay (CCZO 1130) because none of the historic and culturally significant sites and structures identified in Article XI of the Comprehensive Plan are on or adjacent to the rail branchline parcels.

1. The Rail Branchline is permitted in the Riparian Corridor boundary because it is water-related under CCZO 1170 and 1175.

The County Riparian Corridor Overlay Zone (CCZO 1170) ("Riparian Corridor") states that riparian corridor boundaries will be established based upon streams and lakes as identified in the maps referenced in the CCZO 1172.A and for wetlands if they are significant as identified in the State Wetlands Inventory and the Local Wetlands Inventories. The Board finds that the rail branchline intersects with McLean Slough and as such, a portion of the branchline falls within McLean Slough's 25-foot riparian buffer established by the criterion in 1172.A.4.

The Board recognizes that under CCZO 1172, the Riparian Corridor overlay may apply to also include all or portions of a "significant wetland." CCZO 1172.A.5. The Applicant submitted

a wetland delineation report for the rail branchline with its Application. Exhibit 11 to Application, Anderson Perry Wetland Delineation Report. The report indicates there are wetlands in the Facility site. The DSL reviewed the wetland delineation report for the Facility site and agreed with its delineation. DSL provided a memorandum dated December 15, 2021, which recommended that the County find the wetlands are not significant. The County agrees with DSL's recommendation and finds that the Applicant has provided substantial evidence that the wetlands on the Facility site are not significant and therefore, should not be regulated by the County's Riparian Corridor overlay. CCZO 1172.

Within the Riparian Corridor Boundary, the County prohibits alteration of the corridor by grading, placing fill material, and/or impervious surfaces or the removal of riparian trees or vegetation, except as authorized under CCZO 1175 and 1176, within the Riparian Corridor Boundary. CCZO 1173.A and 1173.B. However, within the Riparian Corridor Boundary development is allowed for "water-related and water-dependent uses." CCZO 1175.B.5. The Application proposes the rail branchline as a conditional use in the PA-80 zone. The construction will result in temporary and permanent impacts to the McLean Slough riparian corridor. The Project, both the rail branchline and the renewable diesel facility, depend upon the use of the Port Westward deepwater port and the proximity to the Columbia River.

Neither the CCZO nor the Columbia County Comprehensive Plan define the terms "water-related" or "water-dependent", except as relevant to the Willamette River Greenway, which is inapplicable to this Project location. The County's Riparian Corridor and wetland overlay, discussed below, are a component of the County's Statewide Planning Goal 5 program, which purports to adopt a "safe harbor" approach as discussed in Article X of the Comprehensive Plan. However, the Comprehensive Plan's Goals and Policies do not categorically intend to prohibit

uses conflicting with riparian areas or wetlands. Rather, the Comprehensive Plan's stated intent is to protect such areas from "non-water-dependent uses." *See, e.g.*, Article X.E., Policy 9.

The Goal 5 safe harbor process essentially requires local governments to directly implement certain Goal 5 rules in OAR chapter 660 division 23. Consequently, the County's riparian and wetland regulations roughly resemble the riparian rules in OAR 660-023-0090 and -0100, except that they notably do not include the variance provisions required under OAR 660-023-0100(4)(b)(B). These sections allow development of "water-dependent or water-related uses" within riparian areas and wetlands and allow removal of riparian vegetation "as necessary for development of water-related or water-dependent uses." The OARs require less strict riparian protections in farm and forest zones: OAR 660-023-0090(8)(c) provides that "(c) Notwithstanding subsection (b) [regulating removal of riparian vegetation] of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4."

Accordingly, the definition of "water-related" and "water-dependent" in the Statewide Planning Goals is helpful in interpreting those terms in the CCZO. Those terms are defined in the Statewide Planning Goals as follows:

> WATER-DEPENDENT. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.
>
> WATER-RELATED. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would

> result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

The Board further finds, after consultation with DLCD regarding application of the State definitions of water-related and water-dependent, that "water-related" is a broad definition and that it is appropriate to defer to a local determination of its application to a particular project. For the following reasons, the Board finds that the Application for the rail branchline is a water-related use.

First, the Applicant is specifically proposing the Project to be located at Port Westward because of the presence of the Port Westward deepwater port dock and the proximity to the Columbia River. Port Westward is one of only five public deepwater ports in the state of Oregon. This resource was the basis of the County's Goal Exception for Port Westward Industrial Park, which was expanded in 2007 to include the property subject to the renewable diesel facility application. Ord. 2007-10. The Port Westward statement noted that probable uses in the rural industrial zone "would likely be related to the existing services, including the railroad, the dock, and the tank farm." Comprehensive Plan Exception Statement § V. Similarly, Ord. 2007-10 noted that the intent of the Port Westward rural industrial area is to take advantage of the location with access to the Columbia River and the existing dock facilities and railroad.

The Applicant proposes a renewable diesel production facility on rural industrial zoned land as part of a separate application. The Applicant proposes the rail branchline that is the subject of this Application to serve the renewable diesel production facility. A portion of the rail branchline will be located on land that is in the rural industrial zone, but a portion of the rail branchline – the subject of this Application – will be located on land in the PA-80 zone, which intersects McLean Slough. The renewable diesel facility is proposed at Port Westward due to its location as one of Oregon's few deepwater ports that is capable of being served by cargo ships. The Applicant has proposed that finished renewable diesel product and renewable diesel feedstocks are proposed to be imported and exported by water-borne vessels on the Columbia River, including ships and barges. Piping will directly connect the renewable diesel facility to the Port Westward dock. *See* Exhibit 15 of Prescribed Use, Site Design Review, and Variance Submission Package. The renewable diesel production process also relies directly on the Columbia River for steam production, cooling tower process water, and fire reserve water.

The County understands that the purpose of the proposed rail branchline is to deliver renewable diesel feedstocks to the renewable diesel production plant for conversion into renewable diesel, to export such renewable diesel, and to remove waste products from the facility. As the branchline exists only to serve the renewable diesel production facility and is part of the overall project, it is just as dependent on the Columbia River as the renewable diesel production facility itself. That is, but for the necessary connection of the proposed renewable diesel production use, the rail branch would not exist in this location.

The Applicant has explained that the renewable diesel production facility is intended to provide "goods […] that are directly associated with water-dependent land or

waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered." The Project is intended to import and export "goods" (feedstocks and renewable diesel) to and from the Port Westward Dock via pipeline. The renewable diesel facility is proposed to be located near the water because it depends upon river water for use in its processes and for transportation, and according to the Applicant, would not be viable without a water-adjacent location. Put in terms of the definition of a "water-related use," without a water-adjacent location, the renewable diesel production facility would "result in a public loss of quality in the goods or services offered" because it could not economically provide the proposed goods or services without a river-adjacent location. Likewise, if the PA-80 portion of the proposed rail branchline subject to this Application is not located adjacent to the renewable diesel production plant, the efficiency of the renewable diesel use would suffer substantially because the Project will use rail as a means to economically import the necessary feedstocks and other production materials to the renewable diesel facility.

This Application is requested in a separate application from the renewable diesel production facility; however, the Board finds that it is exclusively associated with, part of, and entirely dependent on the renewable diesel plant. It is a separate application because a portion of the rail branchline is just outside the existing Port Westward Exception Area within an exclusive farm use zone, but not all of the rail is within that zone, as stated above.

The production facility and rail branchline "provide goods [renewable diesel] that are directly associated with waterway use [shipping feedstock and renewable diesel by vessels requiring a deepwater port for docking and use of Columbia River water for steam and cooling tower processes]," and which, requires deepwater port access to make

production of the good feasible. The rail branchline is a component of the development of the renewable diesel facility and the movement of feedstock and renewable diesel to and from the facility and the Columbia River.

Some public comments argued that the Project cannot be water-dependent or water-related because it is technically possible to import and export all products overland and that use of water transportation is merely a preference. However, as just described, the Project depends on efficiencies made possible by Port Westward's deepwater port and river transportation in general. And, as explained by Mr. Gene Cotten's oral testimony at the January 19 hearing, the rail is capable of serving only up to 40% of the Project's overall production capacity. Therefore, even maximizing use of overland infrastructure the Project would not be viable without its river connection. Thus, the definition of water-related supports the Board's finding that the Project is water-related even if some portion of its operations could be carried out overland.

Accordingly, the Board finds that the rail branchline, which is wholly dependent on the renewable diesel production facility, is "water-related" for purposes of CCZO 1175.B.5. Because the Board finds the Applicant's proposed rail branchline is a water-related use, the Board also finds that the riparian corridor overlay prohibitions set forth in CCZO 1173 do not prohibit construction of the rail branchline.

The Board also finds that pursuant to CCZO 1177.A and 1177.B, for all activities and development that will occur within the riparian corridor as permitted by CCZO 1175, the Applicant must have all applicable state and federal permits prior to commencing the use. Accordingly, the Board imposes the following condition of approval: "3) All

applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing site clearing or development activities."

2. The Wetland Area Overlay does not prohibit modification of wetlands on the Rail Branchline site because the onsite wetlands are not significant, CCZO Section 1180.

The Board finds the County's Wetland Area Overlay set forth in CCZO 1180 does not prohibit development of the rail branchline because the wetlands that will be impacted by the Applicant's rail branchline are not "significant wetlands." The Applicant's wetlands consultant delineated the wetlands on the rail branchline parcels and the renewable diesel production facility site and DSL approved the delineation. The County's Wetland Area Overlay states that use and development activities in the overlay zone are permitted outright or conditionally if they will not destroy or degrade a "significant wetland" as defined in CCZO 1182. CCZO 1183.

CCZO 1183 provides that "Uses and development activities permitted outright or conditionally in the underlying zone shall be permitted in the Wetland Area Overlay Zone if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or degrade a significant wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands under Oregon Department of Agriculture wetland rules shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands. Existing drainage ditches may be cleared to original specifications without County review." Given that the Wetland Overlay Zone can apply to

"significant wetlands" or "wetlands," the Board interprets CCZO 1183 to allow uses permitted outright or conditionally in the underlying zone within non-significant wetlands, and finds that same section allows filling of non-significant wetlands for such uses. Although the Facility is a "use permitted under prescribed conditions," the Board finds that the Facility is equivalent to a "conditional use" for purposes of CCZO 1183.

Significant wetlands are also defined in both the Comprehensive Plan (Article X(A)(1)) and CCZO 1182 as:

> A significant wetland is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. **In case of dispute over whether an area is of biological value and should be considered a significant wetland, the County shall obtain the recommendation of the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands.**

Emphasis added. The definition of "significant wetland" in CCZO 1182 allows the County to determine significance in two ways. First, it can find that the wetland at issue is not "inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." Second, in the case of disputes over whether an area should be considered a significant wetland—even if the wetland is depicted on the State Wetland Inventory ("SWI") or Local Wetland Inventory ("LWI") map—the Board can determine the significance of

a wetland based on the recommendations of ODFW, the Columbia Soil and Water Conservation District (the "Columbia SWCD"), and DSL.

Columbia County does not have an LWI for the Facility site. The National Wetlands Inventory ("NWI") map does identify wetlands on the rail branchline site, but it is not an official determination of the presence or absence of wetlands. The NWI is incorporated to the SWI, but the SWI does not identify any "significant" wetlands near the Facility site. *See* Exhibit 14 to the Staff Report, Anderson Perry Wetland Memo (Dec. 8, 2021).

The Applicant disputed the significance of the wetland and submitted evidence from its wetland biologist dated December 8, 2021, which suggests that the wetlands proposed to be impacted by the rail branchline do not contain "a prevalence of vegetation typically adapted for life in saturated soil conditions." According to this biologist, "vegetation solely adapted to wetland conditions is not prevalent in the delineated wetlands, which are dominated by pasture grasses and invasive species that are able to grow in both wetland and non-wetland conditions." The biologist also concluded that "the wetlands did not show consistently high scores for functions and values and have minimal riparian buffer habitat along the ditches." Based on this evidence, the County found that Applicant's dispute over the significance of the wetland was reasonable. .

Thethen submitted a more detailed analysis of the wetlands' biological value for input from DSL, ODFW, and Columbia SWCD. Consistent with Section 1182, the County requested and received recommendations from DSL, ODFW, and the Columbia SWCD to determine whether the wetlands delineated on the rail branchline site are significant wetlands. As explained below, the Board finds that the Applicant demonstrated that the wetlands impacted by the rail branchline are not "significant" for purposes of the CCZO based on the second sentence of CCZO 1182.

DSL is the state agency the 2006 Oregon legislature[6] directed to establish criteria that rate the functions and values of wetlands. DSL provided the County with a definitive statement that the wetlands impacted by the rail branchline are not significant:

> "Based on the finding of the [Oregon Freshwater Wetland Assessment Methodology] OFWAM Assessment tool, the wetlands located behind the levee (inside the levee within the Beaver Drainage District and associated with the propose[d] [sic] the Applicant Project) in the Resource Industrial Planned Development area at Port Westward are NOT significant, nor are the wetlands that continue off the project site that were converted for farming and are zoned Primary Agriculture."

See Exhibit 11(a) to County Staff Report, DSL Dec. 15, 2021 OFWAM letter. DSL evaluated the Project under CCZO 1182 and using the OFWAM. In determining that the wetlands behind the levee on the Applicant renewable diesel production facility site are not significant DSL concluded:

> "None of the four ecological functions, wildlife habitat, fish habitat, water quality, or hydrologic control scored high enough to be considered significant. There are no rare wetland plant communities, there are no critical habitats present, and the wetland is isolated by the levee and heavily impacted by the drainage district.
>
> The wetlands located behind the levee (within the drainage district) in the Resource Industrial Planned Development area at Port Westward and the wetlands that were

[6] House Bill 2899 (2003) addressed wetland mitigation and from it, DSL and a work group convened a Technical Advisory Committee to address the need for wetland assessment methods statewide.

converted for farming and are zoned Primary Agriculture are NOT significant under OFWAM."

ODFW similarly concluded that while the area supports some habitat and wildlife functions, the existing wetlands are subject to cattle grazing, dominated by nonnative species, and "are degraded by current practices and infestations of non-native plants." In a January 18, 2022 email to Columbia County staff, ODFW provided further clarification that: (1) "[t]he developer is proposing habitat mitigation that, once completed, the department expects should provide a net benefit to the affected fish and wildlife species that currently utilize the impacted habitat"; and (2) "[t]he department believes this proposed renewable energy project is sited appropriately, and it is consistent with the department's climate goals." *See* Exhibit 3 to the Applicant's Final Written Argument.

The Columbia SWCD stated that it had no comment on the significance of the wetlands, but would defer to DSL's determination of the significance of any wetlands "as DSL is one of the main regulating authorities as it relates to wetlands in the State." *See* Exhibit 11(c) to County Staff Report, SWCD Jan. 5, 2022 letter.

Accordingly, the Board finds the wetlands on the rail branchline site lack the biological value to be considered significant for purposes of CCZO Chapter 1180. Therefore, the Board finds that development of the rail branchline within delineated non-significant wetlands is permitted pursuant to CCZO 1183.

G. Responses to Specific Public Comments

1. The Board followed permissible procedures to approve the Application and provided adequate public comment.

Some opponents suggest that the County's process to consider the Application was improper. That is inaccurate. The Board finds the County's procedures to hear and approve the Application were in accordance with Columbia County's Zoning Ordinance and Planning Commission Ordinance, ORS 197.763, ORS 197.797, and that no person demonstrated that holding the initial evidentiary hearing before the Board prejudiced their substantial rights.

There are two independent and sufficient bases in the CCZO that allow the Board to hold an initial evidentiary hearing on a quasi-judicial land use application without holding an initial planning commission hearing.

First, the Board of Commissioners has authority to approve the Application pursuant to the procedures in CCZO 1603 (quasi-judicial public hearings). The County Zoning Ordinance provides that "[a]pproval of any action by the Planning Commission at the public hearing shall be by procedure outlined in Ordinance 91-2." CCZO 1603.4. Section 11 of Ordinance No. 91-2 is the Planning Commission ordinance, and it states in pertinent part that "[t]he Board may also assert original jurisdiction over any land use application and bypass prior Planning Commission review." Second, the Board has the absolute authority to hold an initial evidentiary hearing on any quasi-judicial matter. Under CCZO 1612 "Special Hearings": "The Board of County Commissioners, in its discretion, may order any quasi-judicial land use application or type of quasi-judicial land use application to be heard at a Special Hearing in lieu of a hearing before the Planning Commission or the Board of County Commissioners." This gives the Board the absolute right to hold a hearing on any quasi-judicial land use application without first holding a planning commission hearing.

In this instance, the Board's authority to hold an initial evidentiary hearing derived from CCZO 1603 and County Ord. 91-2. The Board finds that its holding of the initial evidentiary hearing does not violates CCZO 1503 and 1558 and does not trigger a remand via OAR 661-0010-

0071(2)(c). CCZO 1503(5) states that "[t]he Commission may grant a Conditional Use Permit after conducting a public hearing . . . ." Commenters suggest that CCZO 1503.3, authorizing the Commission or the Board on appeal to amend, add, or delete some or all of the conditions applied to conditional use permits by the Planning Commission or Board of Commissioners indicates that only the Planning Commission has the duty to hold a hearing on conditional use permits. Yet as stated above, CCZO 1603 provides that the Planning Commission ***or*** the Board of Commissioners may approve actions that are in conformance with the provisions of the CCZO, including for conditional use permits. CCZO 1558 is not applicable to this Application because it only pertains to Type 2 Design Review, which this Application is not.

Although the Board understands that opponents may have wished for a two-stage hearing process, the Board has seen no evidence that holding the initial evidentiary hearing before the Board has prejudiced any party's substantial rights. This is particularly so for the following reasons: First, the Application did not substantially change between the date when public notice issued and when the record in this matter was closed. Second, the Board hearing lasted over five hours and included oral testimony from more than 35 individuals opposed to the Application; there is no evidence that this was not an adequate allowance for public testimony. The Board then held the record open for one week after the hearing for anyone to present additional public testimony, and the Board received more than 100 written comments on the Application prior to the end of the first open record period. Third, the Board held the record open for one additional week after that to allow any person to submit evidence or argument to respond to evidence and argument submitted during the first open record period. Moreover, the Board finds that opponent's assertion that by skipping planning commission, the County deprived them of the opportunity for a local appeal, does not demonstrate prejudice to their substantial rights. That is because any appeal

would have been through a hearing before the Board. The Board held a hearing on the Application. Opponents therefore have not shown how the outcome would have been different or how their substantial rights were prejudiced. Finally, no person has claimed that the Board's consideration of the Application violated any applicable requirement of ORS 197.797 or its predecessor, ORS 197.763.

The Board received a request for a 30-day extension of public review and comment. The Board considered and then rejected the request, as it is allowed to do under ORS 197.797. Pursuant to ORS 197.797, the Board is obligated to give at least one additional week for new evidence and testimony, which it granted. The Board also gave all parties an additional week to submit responsive testimony and evidence. There is no evidence or argument in the record that the Planning Commission would have been required to grant the request for a continuance or provide more opportunities for comment than the Board did.

In summary, the Board has the authority under the CCZO to hold an initial evidentiary hearing and the Board held that hearing according to the applicable procedures in the CCZO and ORS 197.797 (formerly ORS 197.763). Aside from speculation that more testimony could have occurred through a two-part hearing process, there is no substantial evidence that a single evidentiary hearing prejudiced any persons' substantial rights to participate in the review process..

2. The characteristics of the rail branchline site are suitable for the proposed use as required by CCZO 1503.5.C., but CCZO 681.4 (complement the surrounding area) is not applicable to the approval criteria.

As discussed in Section IV.C, above, the characteristics of the site are suitable for the proposed use as required by CCZO 1503.5.C. Opponents have raised numerous concerns about

various impacts to drainage and adjacent agricultural operations. One such comment suggests that the Applicant's rail branchline will impact road access and remove and relocate a BDIC ditch in a manner that violates CCZO 300, 681(B)(2), and 1170 because it will impact drainage and irrigation of adjacent agricultural operations. The Board finds CCZO 681.B.2 (which does not exist, but may intend to refer to CCZO 683.1.B.2) is inapplicable to this Application because it is criteria solely applicable to development in the RIPD zone. The rail branchline for purposes of this Application is solely in the PA-80 zone and is not located in the RIPD zone. The impacts of the rail branchline on drainage and irrigation of nearby agricultural operations are thoroughly discussed below.

In conjunction with comments pertaining to CCZO 1503.5.C., 1000 Friends of Oregon and Columbia Riverkeeper argued that CCZO 681.4 is not satisfied by the Application. As already stated, CCZO Section 681 is not applicable to the Application. However, the Board addresses the arguments raised by BDIC and any derivative arguments raised by Mike Seely, Warren Seely, 1000 Friends of Oregon, and Columbia Riverkeeper as follows:

First, the Board finds that relocation of the existing drainage ditch running along the north of the rail branchline will not adversely impact existing uses in the area and does not warrant additional mitigation. This is because the Facility will include an adequate onsite drainage system that will drain directly through Port Westward's existing outfall to the Columbia River, as explained on page 11 of the Applicant's Post Construction Stormwater Management Plan. There is no evidence in the record that use of Port Westward's existing onsite drainage system by the renewable diesel facility will adversely impact BDIC's operations. Even if it did, the County is not required by any applicable standard or criteria to evaluate the potential hydrological impacts of the rail branchline on BDIC's flood management system.

Second, the Board finds that the ditch proposed to be relocated to accommodate the site access can be relocated without disrupting stream flow and will maintain connections to other existing ditches, as explained in the Applicant's second open record submittal. To the extent that the Applicant may require BDIC to relocate the ditch, that consideration is not relevant to the approval criteria or CCZO 683.1.B.2.

Third, the Board finds that there is no risk of fire spreading from the proposed access drive or rail branchline because the access road will be paved and because the rail branchline will be isolated on one side by a water quality swale and another access road and drainage ditch on the opposite side. This is reflected in a cross section provided with the Applicant's second open record period submittal. The Board finds that this design will provide adequate separation between any sparks generated by the rail branchline and surrounding farmland.

Fourth, the Board finds BDIC's comments about "future livestock grazing" do not offer evidence of existing livestock uses that would be adversely impacted by the Facility and do not demonstrate a need for livestock fencing.

Fifth, the Board does not agree with BDIC's comments regarding "waivers to adjacent agricultural operators" because there is no evidence that surrounding agricultural activities could disrupt operations of the Facility to the extent that liability waivers need be required. BDIC has identified no legal requirement that such waivers "must be in place prior to any consideration of the project by BDIC," but that is an issue between the Applicant and BDIC and is not relevant to the County's approval criteria.

Sixth, to the extent that access easements may be required to cross BDIC-owned facilities, such a requirement is a real estate issue between BDIC and the Applicant, and is not relevant to

the County's decision. Similarly, the lease obligations between the Applicant and the Port are relevant to the Application only insofar as the Port authorizes the Applicant to make a land use application for its property. And even if such lease obligations could be considered by the Board, BDIC has not offered any evidence that it is a party to the lease or could otherwise cause enforcements of the lease obligations.

Seventh, the Applicant has provided substantial evidence in the form of a preliminary spill containment plan (submitted with the Applicant's first open record materials) that all liquid storage on the renewable diesel facility site will be protected by a spill containment basin. The Applicant has explained that it will be required to prepare and obtain approval for a Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), and an EPA-approved Spill Prevention Control and Countermeasure Plan prior to construction. The Board finds that imposition of condition of approval 14, which requires the Applicant provide such plans to the County prior to occupancy, is sufficient to address BDIC's concerns regarding spill containment.

Eighth, the Board does not agree with BDIC's argument that the proposed wetland mitigation plan (which has yet to be approved by DSL or USACE) is an "impact" relevant to the criteria or factors applicable to the rail branchline. The Board notes that the particular mitigation is not before the Board as part of the Application and that mitigation is not required by the approval criteria, rather it is a requirement for Wetland Fill/Removal Permits issued by DSL and USACE. The Board also notes that wetland creation and enhancement is permitted outright in all Exclusive Farm Use zones in Oregon, including the PA-80 zone. The Board finds that there is no evidence that wetland restoration on lands owned or controlled by the Applicant will adversely affect "existing land uses and both private and public facilities and services in the area." Even if it did, the Board finds that, because wetland mitigation is a permit requirement from separate state and

federal agencies, the Board is without the legal authority to prohibit or otherwise condition such mitigation in this instance.

Finally, the Board finds that it is not required to enforce, as a third party regulatory entity, any of the authority BDIC may assert under Oregon law, and BDIC has not provided an explanation otherwise. The provisions of ORS chapter 547 cited in BDIC's comments address a drainage district's authority to enter upon land and to construct any works and improvements. ORS chapter 190 addresses the authority of local governments to make intergovernmental agreements. ORS chapter 195 pertains to regional coordination of planning activities. Nothing in ORS chapters 547, 190, or 195 require that the Board or the Applicant obtain any written approval from BDIC prior to approving the Application. Comments assert that Oregon Revised Statutes ORS 547.305 to 547.310, ORS chapter 190, and ORS chapter 195 allow BDIC to have a final say on proposed uses within the BDIC district, but that is inaccurate..

While it would have been desirable for the Applicant and BDIC to have reached an accommodation prior to approval of the Application, the lack of such cooperation is not relevant to the approval criteria or factors, nor is it, in and of itself, an adverse impact on "existing land uses and both private and public facilities".

3. Concerns about impacts of the proposed wetland mitigation are not relevant because the wetland mitigation the Applicant will complete is not part of the Application.

Opponents have contended that the County must consider effects from the wetland mitigation the Applicant will complete at a different location that is not the Facility site and is not subject to this Application. The Applicant has applied for state and federal permits from DSL and

the USACE to develop the Facility and a condition of approval from those agencies will require the Applicant to conduct off-site wetlands mitigation. The Board notes that the particular mitigation is not before the Board as part of the Application and that mitigation is not required by the approval criteria, rather it is a requirement for Wetland Fill/Removal Permits issued by DSL and USACE. The Board also notes that wetland creation and enhancement is permitted outright in all exclusive farm use zones in Oregon, including the PA-80 zone. Off-site wetlands mitigation is not a Columbia County requirement. The Applicant included a copy of its wetland delineation with its Application, as is required by CCZO 1554. However, neither CCZO 1554 nor any other provision of the criteria applicable to this Application requires the County substantively review the off-site wetland mitigation plan. Even if it did, the Board finds that, because wetland mitigation is a permit requirement from separate state and federal agencies, the Board is without the legal authority to prohibit or otherwise condition such mitigation in this instance.

4. Concerns about impacts to the water table, hydrology, and impacts to drainage do not relate to the County's approval criteria.

The Port received comments from Columbia Riverkeeper, BDIC, and the DCLD regarding the potential impacts on hydrology and impacts to drainage, but these do not relate to approval criteria for the Application. Nonetheless, the Application and information submitted in the record adequately address these concerns. To the extent the comments relate to the Applicant's wetlands mitigation, the wetland mitigation is not part of the Application or subject to review by the County. The comments concerning impacts to water levels raise speculative and undefined concerns regarding potential impacts to the local water table and to BDIC.

As shown in the site plans submitted with the Application, the ditch and culverts that will be affected by the rail branchline will be relocated and tied into the existing ditches. Evidence in the record demonstrates that the ditch proposed to be replaced will be sized to convey at least as much water as the existing ditch. *See* the Applicant's Waterway Exhibits attached it the Applicant's Second Open Record Submittal. The Applicant's conditional use permit application discusses that culverts are proposed where existing ditches will be crossed by the Applicant's rail branchline and existing ditches will be relocated around the branchline as needed to accommodate flows. Existing ditches within the footprint of the proposed Facility do not convey water through the Facility site, but rather collect runoff from the site. Accordingly, these ditches are proposed to be filled since site runoff will be managed by the proposed stormwater collection system.

None of the County's approval criteria require the County to consider impacts to hydrology. As discussed above, the County is not reviewing the adequacy of the Applicant's off-site mitigation plan. The USACE and DSL will review the sufficiency of the Applicant's mitigation plan. Nonetheless, the Applicant submitted an attachment during the first open record period that extensively and thoroughly explains the changes in ditches that will occur on the off-site mitigation property and how those changes are intended to enhance the hydrologic function of the mitigation site. *See* Attachment E to the Applicant First Open Record Period Submittal, Dec. 3, 2021 Letter from Stewardship Solutions to Dan Cary, DSL.

The DLCD also submitted questions regarding groundwater quality. The Applicant will obtain applicable DEQ permits to protect surface water and groundwater quality during construction and operation of the renewable diesel facility and construction of the rail branchline. The Board finds as a condition of approval:

"3) The applicant shall obtain necessary approvals for required onsite wastewater and sewage systems in accordance with Oregon DEQ regulations. Required approvals and plans shall be provided to the County prior to the issuance of any facility building permits."

* * *

"11) The applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details in compliance with County regulations; a building permit will not be issued until the plan is approved by the County.

12) The applicant shall prepare a Final Erosion Control Plan in compliance with County regulations; a building permit will not be issued until the plan is approved by the County."

Accordingly, the Board concludes that concerns about impacts to the water table and hydrology are not a part of the Board's approval criteria. The Board finds that the Application adequately addresses the County's requirements for drainage and with the Board's condition of approval.

5. The Project will not damage existing dikes, levees, dike roads, and surrounding infrastructure.

Some commenters were concerned that the Project could damage dikes, levees, and dike roads. There is no evidence or discussion in those comments explaining which dikes, levees, or dike roads will be impacted or how the rail branchline will impact them. These concerns are not relevant to the approval criteria and are dismissed. The dikes, levees, and dike roads will not be affected by the Application because they are not located at the locations of the proposed rail

branchline. The Transportation Impact Analysis report that was completed as a requirement of the renewable diesel facility site application, but is not a requirement of the rail branchline, analyzed transportation impacts to the roads that will be utilized in construction and operation of the renewable diesel production facility and only identified necessary upgrades to Hermo Road. The Transportation Impact Analysis is not required of this Application, but it did not find that there would be damage to existing dike roads, dikes, or levees requiring upgrades to those facilities.

To the extent these comments relate to flood mitigation, the Board adopts the findings and conditions of approval regarding onsite drainage, as explained in detail above. There is no evidence that any "dike roads" will be crossed by the rail branchline. On the contrary, the primary proposed access is Hermo Road.

6. The Project is designed to minimize risks to water quality and the Board finds it meets all water quality related approval criteria.

Opponents argue that the Project could harm local water quality. The Board disagrees and finds that water quality will be protected due to the extensive local, state, and federal regulations protecting water quality and with which the Applicant will comply. The County's Riparian Corridor Overlay Zone and Wetland Overlay Zone (CCZO 1170 and 1180) protect water quality by carefully assessing proposed development based upon its proximity to rivers, streams, lake, and significant wetlands, as outlined in CCZO 1170 and 1180. As discussed in Sections IV.F.1 and 2, above, the rail branchline is subject to the Riparian Corridor Boundary, but is a permitted development within the Riparian Corridor Boundary because the rail branchline is a water-related use. And, the wetlands affected by the rail branchline are not significant so the rail branchline is not within the Wetland Overlay. By determining that the rail branchline is within the Riparian

Corridor Boundary but a permitted use and not prohibited by the Wetland Overlay, the Board acted to protect water quality by analyzing and applying, where applicable, its regulations.

The County also regulates water quality under its Stormwater and Erosion Control Ordinance. The Board finds the Applicant must comply with the County Stormwater and Erosion Control Ordinance, which requires submitting and obtaining approval of an erosion control plan. As discussed above, the evidence in the record demonstrates the rail branchline will meet the County's requirements. At the renewable diesel facility, the Applicant will also treat oily water via a sewer basin that connects to the existing wastewater system at Port Westward and will be wholly directed away from surrounding farmlands.

In sum, the Applicant will implement adequate water quality practices in compliance with the County's Stormwater and Erosion Control Ordinance with a firm intention to minimize any risk to water quality. The Applicant is also required to comply with all state and federal laws that protect water quality. As discussed in the groundwater protection memo prepared by GSI Water Solutions ("GSI") for DEQ, the Applicant will operate in compliance with DEQ's groundwater protection rules. *See* Attachment C to the Applicant's January 26, 2022 First Open Record Submittal. GSI's memo summarizes potential groundwater quality and flow impacts from construction and operation of the renewable diesel facility and upon construction of the rail branchline. The Board finds the memo persuasive in addressing water quality concerns because it concludes that the Facility "will be regulated under multiple DEQ permits and rule sets . . . [that] meet DEQ's groundwater protection rules." The Board finds that in addition to conditions 3, 11, and 12 referenced above, condition 14 (Applicant will prepare a Facility Response Plan, a DEQ

approved Oil Spill Contingency Plan (OSCP), an EPA-approved Spill Prevention Control and Countermeasure Plan) will ensure that the Project will meet any and all state permit requirements.

7. There is no evidence in the record to support the concern that the rail branchline could harm fish habitat, nor is this an approval criterion.

Some comments suggested that fish habitat might be threatened by pollution from the rail branchline. It is unclear from comments about threats to fish habitat to what County approval criteria the comments were directed. There are no County approval criteria that directly consider impacts on fish habitat. Further, there is no evidence in the record that there is fish habitat on the rail branchline parcels. Nonetheless, as discussed above, the Board determined the rail branchline, partially within the Riparian Corridor Boundary because it will intersect McLean Slough, but under the County's Riparian Corridor Overlay, the riparian buffer around McLean Slough is 25-feet because it is not one of the streams or sloughs identified in CCZO 1772.A.1 through 1172.A.3 that is fish bearing. As discussed above, the Board also finds that the Application adequately addresses potential sources of pollution, including water pollution.

The Board received evidence from ODFW on the renewable diesel site, "the current habitat is impacted and degraded by past and current management practices." *See* Exhibit 3 to the Applicant's Final Written Argument. ODFW's comment does not specify the extent to which it was also considering the rail branchline location when it generally referred to the renewable diesel site; however, the rail branchline mostly will abut the renewable diesel site. ODFW similarly concluded that while the area supports some habitat and wildlife functions, the existing wetlands are subject to cattle grazing, dominated by nonnative species, and "are degraded by current practices and infestations of non-native plants." *See* ODFW January 18, 2022 email to Columbia

County. Further demonstrating its determination that fish will not be threatened by the Project including any pollution from the renewable diesel facility or the rail branchline, ODFW's January 18, 2022 email to Columbia County staff states "[t]he department believes this proposed renewable energy project is sited appropriately, and it is consistent with the department's climate goals."

Additionally, the Board is conditioning approval of the Application upon a requirement in Condition 3 that the Applicant obtain all applicable permits from state and federal agencies prior to site clearing and development activities. Therefore, the Board finds, in concurrence with ODFW, that the Application will comply with all state and federal laws and regulations to prevent harm to fish habitat.

8. The Board adequately addressed the impacts of the rail branchline on wildlife and wildlife habitat pursuant to the County's approval criteria.

The Board finds that the Application adequately addressed impacts to wildlife and wildlife habitat as required by CCZO Section 1170. Columbia County Comprehensive Plan, Part XVI, Article VIII(F), Non-Game Wildlife Habitat, lists areas identified as significant nesting sites by ODFW. Port Westward is not a listed area for Bald Eagle nests, Blue Heron rookeries, or Northern Spotted Owl nests. As illustrated in Application attachments 5 and 6, the rail branchline is not within any areas identified as Natural Areas, Non-Game Areas, or Sensitive Areas on the County's Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map. Columbia County Comprehensive Plan, Part XVI, Article VIII(G), Upland Game Habitat, lists three mineral spring areas identified as habitat for band-tailed pigeons, none of which include Port Westward. As illustrated in Application attachments 5 and 6, the rail branchline is not within an identified Upland Game Habitat area in the County's Wildlife Game Habitat map. Since the rail branchline

is not within the identified habitat areas, development at the rail branchline is not subject to the Sensitive Bird Habitat Overlay Zone. (CCZO 1120).

Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three types of big game habitat. As depicted in attachment 6 of the Application, the rail branchline is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County's Wildlife Game Habitat map. Therefore, the Board Finds the Application is not subject to the County's Big Game Habitat Overlay Zone. (CCZO 1190).

Further, as recognized in the Staff Report, the Applicant is pursuing DSL and USACE permits and approvals, which include requirements to mitigate the loss of fish and wildlife habitat. Therefore, the Board finds the County adequately addressed the impacts of the rail branchline on wildlife habitat as required by the County's approval criteria.

9. The Application satisfies the Comprehensive Plan goals and policies for transportation.

The Board received comments related to considering impacts from the Project on local infrastructure and traffic. Commenters expressed concern about an increase in heavy truck traffic on Highway 30, and traffic on: the Lewis and Clark Bridge, Alston Mayger Road, and Beaverfalls Road.

Pursuant to CCZO 1503.5.F, the Application must satisfy the goals and policies of the Comprehensive Plan. Part XIII of the Plan states the County's goal is the "creation of an efficient, safe, and multi-modal transportation system to serve the needs of Columbia County Residents. *See* Part XIII of the Columbia County Comprehensive Plan. The County Comprehensive Plan

objectives to meet that goal include maximizing efficient use of transportation infrastructure, enhancing freight efficiency, capacity, and reliability, support measures to enhance safety at rail crossings, and coordinate transportation planning with ODOT, cities in Columbia County, and the Port. *Id.*

As discussed in Section V.E., above, the rail branchline meets the County's Comprehensive Plan goals by maximizing existing Portland and Western Railroad infrastructure and enhancing safety at the private rail crossing that will cross the rail branchline through the County's condition of approval that the Applicant prepare a management plan for rail crossings with timeframes for unobstructed use of the rail crossing.

The rail branchline will not add any additional traffic to roadways. The purpose of the rail branchline is to reduce truck traffic that would serve the Project on the local roadways.

Additionally, a comment suggested the Applicant must obtain access easements to access the renewable diesel facility site. This is inaccurate and inapplicable to the County's approval criterion for this Application.

The Board concludes that the Applicant adequately addressed the County Comprehensive Plan goals and policies considering the efficient use of transportation infrastructure. Accordingly, the Board finds the rail branchline satisfies the policies of Part XIII of the Comprehensive Plan.

10. Risks from liquefaction are not related to the approval criteria.

Commenters raised concerns about liquefaction, earthquake risks, and risk from a high soil subsidence rate at the renewable diesel facility site and the proposed rail branchline. These risks are not related to approval criteria and should not affect the Board's decision. Additionally, there is already existing industrial development similar to the Applicant's proposed industrial

development at Port Westward, including the already existing Portland and Western Railroad. Regardless, the Applicant has stated that prior to final design of the renewable diesel facility and surrounding area the Applicant will complete a geotechnical survey to further refine the design for the renewable diesel facility. *See* Attachment E to the Applicant's January 26, 2022 First Open Record Submittal. The Board also finds that the rail branchline is subject to and will comply with all related local, state, and federal requirements that are applicable to construction and operation of a rail branchline.

11. The Project incorporates waste and spill prevention measures that meet or exceed state and federal standards, but these concerns do not relate to any County approval criteria.

The Board fielded comments raising concerns about waste, "toxicity components", and spill prevention measures at the renewable diesel facility and the rail branchline. There were also speculative questions about contaminated soils on the facility property that could be encountered during development. Management of hazardous waste and spill prevention measures are not a component of the County's approval criteria. State and federal laws and regulations govern management of hazardous waste and spill prevention measures.

Regarding concerns about hazardous chemicals and spill containment, evidence submitted during the first open record period establishes that the Applicant will incorporate and adopt waste and spill prevention measures that meet or exceed state and federal standards. *See* Attachment E to the Applicant's January 26, 2022 First Open Record Submittal. The Applicant will properly handle all soil during construction of the rail branchline in accordance with state and federal laws and regulations.

Evidence submitted during the first open record period also establishes that the Applicant will develop a Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), and an EPA-approved Spill Prevention Control and Countermeasure Plan. Railroad operators are required by federal and state law to prepare oil spill response plans and to utilize rail cars meeting the latest safety standards to minimize the potential for impacts on nearby lands. Additionally, spill containment measures at the renewable diesel facility are graphically illustrated in Exhibit 5, Sheet C1.30 of the Applicant's Final Written Argument, February 2, 2022, which depicts the proposed spill containment berms around tanks, the equipment pads with spill containment areas, and the proposed stormwater swales. All runoff from the facility will be conveyed to a centralized treatment facility designed to remove potential contamination from the stormwater before it is discharged from the site.

The County's approval criteria do not specifically require waste and spill prevention measures because those are subject to extensive state and federal regulation. However, the Board is requiring as condition of approval 3 that the Applicant obtain all applicable permits from state and federal agencies. Relatedly, the Board is also requiring Condition 14, which requires "A Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), an EPA-approved Spill Prevention Control and Countermeasure Plan and any other required spill response plan shall be provided prior to occupancy. Documentation of any updates to the plans and ongoing compliance with the plans shall be maintained and provided to the County within seven (7) days of written request from the County."

12. The Board undertook all environmental review required by the County's approval criteria.

The Board received comments that it should complete an Environmental Impact Statement ("EIS") prior to approving the Application. An EIS is not a requirement of the County's approval criteria. An EIS is solely a federal agency process that is required to evaluate the effects of an agency action under the federal National Environmental Policy Act ("NEPA"). Because the Facility requires a federal Clean Water Act Section 404 permit from the USACE, the USACE will complete a NEPA analysis to analyze the environmental effects if the USACE approves the Applicant's Section 404 permit. The County has no authority or requirement to conduct an EIS under NEPA or any other law. The Board finds it conducted all environmental review required by the County's approval criteria for the Application.

13. Noise pollution is not a consideration in the County's approval criteria, but the Applicant must comply with the County's noise ordinance.

The Board received comments about concerns of potential noise pollution from the Project. Noise pollution is not a consideration of the Board's approval criteria and thus is not an appropriate reason to deny the Application. However, Columbia County Ordinance No. 91-8 prohibits excessive noise as outlined in the ordinance. Additionally, there are already trains operating on the Portland and Western line in the same vicinity as the rail branchline. The Board finds that the Applicant must comply with the County's noise ordinance and that there is no evidence in the record that the rail branchline cannot do so.

14. Air and odor pollution are not considerations in the County's approval criteria, but are adequately addressed nonetheless.

Commenters raised concerns about potential air and odor pollution from the Project. The County's approval criteria for the Application do not pertain to air pollution. If the Applicant is

required to obtain an air construction permit for construction of the rail branchline, the Applicant will be required to do so pursuant to the Board's required condition of approval 3 requiring that the Applicant obtain all applicable state and federal permits.

The County's approval criteria for the Application also do not pertain to odor pollution because it falls within the purview of state regulation. State laws authorize DEQ to regulate odors that cause a nuisance. Oregon Administrative Rules chapter 340, division 208. The County's approval criteria do not evaluate odor concerns, yet the Board finds that the Applicant must comply with state laws, including controlling odors so that they do not create a nuisance.

Therefore, the Board finds operation and construction of the Facility requires that the Applicant comply with all state and federal laws and obtain all approvals, including those regulating air and odor pollution. Accordingly, the Board adopts condition of approval 3 requiring that the Applicant must obtain all applicable permits from state and federal agencies prior to commencing site clearing and development activities.

15. Federal regulations require an evaluation of the effects of the Facility on Native American tribes, but the County's approval criteria do not have such requirement.

A commenter raised a concern that the Project is proposed in a location that is critical to Native American tribes. The County's approval criteria do not require an evaluation of the effects of the Project on tribes and tribal interests. However, federal actions, like the USACE' evaluation of the Applicant's Clean Water Act Section 404 Permit application, require that the federal agency conduct tribal consultation. The USACE must comply with Section 106 of the National Historic Preservation Act, which requires federal agencies to ensure that authorizations or permits issued

do not impact historical or cultural resources. The Applicant conducted a cultural resources investigation of the renewable diesel facility and rail branchline properties in November 2020. *See* Attachment E to the Applicant's January 26, 2022 First Open Record Submittal. As part of initiating the Section 106 process, the Applicant's cultural resources consultant invited cultural resources staff of the Confederated Tribes of Grand Ronde, the Confederated Tribes of Siletz Indians, the Cowlitz Indian Tribe, the Shoalwater Bay Tribe, the Chinook Indian Tribe, and the Confederated Tribes of the Warm Springs for initial discussions about the Project area. Accordingly, the Board finds there is no County approval criteria related to evaluating the effects of the Project on Tribes. The Board also finds that a condition of approval of the rail branchline requires that the Applicant comply with all state and federal laws, a component of which will require the USACE to conduct tribal consultation.

16. Comments regarding Chris Efird's other business activities are not applicable to the County's approval criteria.

The County's land use approval criteria do not require consideration of subjective character evaluations that some comments seeks to elicit about NEXT CEO Chris Efird's other business activities. These comments do not address the approval criteria and are not relevant to the Application.

17. Concerns about the size of the renewable diesel facility are not relevant to the County's approval criteria.

The County's approval criteria does not evaluate a project based on its size, despite what some commenters suggest should be a requirement. There is nothing in the County's approval criteria that would prohibit the rail branchline based on the size of the renewable diesel facility.

18. The Board finds the proposed rail service meets all relevant approval criteria.

A commenter suggested that bringing in feedstock by rail is unacceptable. The Board's approval criteria for the Application does not prohibit the renewable diesel facility from relying in part on rail service nor from prohibiting rail service merely because it could transport feedstock. As discussed throughout these Supplemental Findings, the Board finds that the rail branchline meets all relevant County criteria for approval. The Board further finds that its conditions of approval 4 through 6 ensure the rail branchline use is limited to certain train sizes and frequency of trains.

Relatedly, the Board heard concerns regarding that trains might block traffic or EMS services. The Board finds there is already rail service serving Port Westward. The Board will impose conditions of approval to address rail transport and ensure the addition of the rail branchline to the renewable diesel facility does not impede access:

> "4) Rail transport to and from the site shall be limited to no more than 318 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained and shall be provided to the County within seven (7) days of written request from the County.
>
> "5) Use of the private rail branch line shall be limited to active loading and unloading, and shall not be used for long-term storage of rail cars and/or materials. A rail car shall not remain on site for more than 14 consecutive days.

"6) Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts. The plan shall be subject to County review and approval."

Additionally, the rail branchline is within the Clatskanie Rural Fire Protection District. The Board finds pursuant to CCZO 683.B.4 that the proposed on-site fire protection facilities are capable of serving the proposed use. Approval from the District is required under Condition 10.

19. The approval criteria do not require an evaluation of international impacts from sourcing feedstock.

A commenter suggested that the Board must consider and the Applicant must address the worldwide impacts of sourcing feedstock. The Board's approval criteria do not evaluate a project based on the source of the inputs that the private business will use in its industrial process. Accordingly, there is nothing in the Board's approval criteria that would prohibit the rail branchline based on its transportation of feedstock or the location of origin of the feedstock.

20. The Board adequately considered whether the rural fire protection service will serve the rail branchline.

Commenters asked the County about the fire control provisions related to Application. The Board finds that the rail branchline is served by the Clatskanie Rural Fire Protection District. (See Comprehensive Plan, Part XIV(2)(D)). As outlined in the County staff report, the rail branchline's location within the Fire Protection District capitalizes on the District's experience and partnership with existing Port Westward industrial operations to ensure appropriate levels of fire protection. Condition 10 requires the Applicant to participate in the District.

III. CONCLUSION

Based upon the evidence in the whole record and the documents incorporated herein, the Board finds that the Application meets all applicable criteria and should be APPROVED on that basis subject to the conditions in the Final Order.

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January 17, 2022

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RE: Applicant's Response to Public Comments; Columbia County Board of Commissioners, App DR 21-03; V 21-05 and CU 21-04 (NEXT Renewables Fuels Oregon, LLC)

Dear Chair Heimuller, Commissioner Magruder, and Commissioner Garrett:

This office represents NEXT Renewable Fuels Oregon, LLC ("NEXT"). This letter constitutes its pre-hearing testimony and responds to the public comments submitted in the above-referenced matter.

1. INTRODUCTION AND OVERVIEW

NEXT is proposing to develop a renewable diesel production facility at Port Westward with related Columbia River dock and rail connections (together, the "Project"). Renewable diesel does not rely on petroleum and instead utilizes plant and animal-based byproducts. According to the Oregon DEQ, using renewable diesel can cut lifecycle greenhouse gas emissions up to 85% depending on what materials it is made from. Renewable diesel also runs cleaner, blends with petroleum diesel at any fraction, and provides identical efficiency to petroleum diesel. **Exhibit 1.**

The Project is anticipated to create more than 3500 construction jobs and 240 permanent jobs, and is planned to operate for 80 years or more. The Project represents a roughly $2 billion investment by NEXT will result in a substantial expansion of the County's tax base (estimated at $16 million/year) and a new income stream to the Port of Columbia County, which can be used for future Port expansion and improvement.

NEXT's facility is centered on a renewable diesel production facility consisting of multiple buildings (office, laboratory, warehouse, maintenance, process, controls, etc.), parking, private roads, storage tanks, processing equipment, a gas flare, wastewater treatment facilities, outdoor laydown yards, electrical equipment, landscaping, and security fencing. Primary access to the site is proposed from a driveway to Hermo Road (which NEXT proposes to improve) and secondary emergency access from Kallunki Road.

A substantial portion of product and feed stocks (raw materials) will be transported by vessels utilizing the Port of Columbia County-owned dock on the Columbia River. NEXT also proposes

a rail branchline to connect to Portland & Western's rail line that is on the east side of the proposed facility site. The branchline will facilitate shipment of raw materials and finished product to and from the proposed renewable diesel production facility. A portion of the rail branchline is outside the RIPD zone and within the Primary Agriculture (PA-80) zone. The brachline includes side tracks located both in RIPD and PA-80 zoning to allow for the circular movement of train cars without causing train traffic to back up onto the Portland and Western Railroad line already serving Port Westward.

In order to construct its facility and the rail branchline, NEXT submitted applications for: (1) a Site Design Review (which includes findings for a "Use Permitted Under Prescribed Conditions in the RIPD Zone") and Variance for the renewable diesel production facility (DR 21-03); and (2) a Conditional Use application for portions of the rail branchline located the PPA-80 Zone (CU 21-04) (collectively, "Applications").

a. The Project is consistent with applicable zoning.

The Applications are quasi-judicial, not legislative, and subject to the current zoning of the subject parcels—RIPD and PA-80. NEXT understands that the Board and has recently considered an expansion of Port Westward through a complex legislative Statewide Planning Goal Exception. Please note that the Applications are not subject to the same goal exception criteria, which require a far more detailed analysis of need, comparative sites, and compatibility.

With the exception of a section of proposed rail branchline, the Project is located entirely within the RIPD zone. The particular use category proposed in the Site Design Review application is the "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities," which is allowed under CCZO 683.1.

The RIPD zone was adopted with the County's 1984 Comprehensive Plan as an "exception area," which specifically allows development that would not otherwise be permitted on resource lands. The Port Westward exception area grew around a U.S. Army ammunition depot that was constructed during World War II and later developed with the PGE diesel tank farm and the Beaver generating plant, and further developed with PGE's natural gas Port Westward Generating Plan and Global Partners' Columbia Pacific Bio-Refinery ethanol plant.

Port Westward is one of only five deep water ports in Oregon[1] and presents a unique industrial and transportation resource for Columbia County. For this reason, the Port Westward Exception Area was specifically intended to facilitate development of heavy industry that relies on marine transportation:

> "Because of its location on the Columbia River, Port Westward is a unique site specific resource that is important to the economy of Columbia County. This fact was recognized by the Port of St. Helens in 1966 when it entered into a long-term

[1] The only others are the Ports of Coos Bay, Astoria, Newport, and Portland.

> lease for the property, on the condition that it be put to industrial uses to provide jobs.
>
> Port Westward is unique for several other reasons as well. Most importantly, it offers prospective users a large existing dock facility. Existence of the dock facility reduces the lead-time for commencement of operation, allowing prospective users to achieve a head start on the competition. It also eliminates uncertainty and delay which might otherwise exist, due to the process requirements to obtain permits for building docks on navigable waters. Another important characteristic of Port Westward is that the basic infrastructure of urban services already exists on the property, although upgrading such services would likely be required when significant development occurs. Neither government nor the developer would be called upon to bear the large cost necessary to create a completely new infrastructure.
>
> The Port Westward site is also large enough to accommodate loop rail systems that could handle 100-car unit trains. In this case, the site size for the exception is recommended based on the ownership pattern and the legal lease requirements to develop the land for industrial development. Past history and commitment support the 900-acre site size."

Comp. Plan, Pt. XII § VII.1.b (pg. 124) (1984). The Comprehensive Plan also speculated that uses appropriate for Port Westward would include "a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant." Comp. Plan. Pt. XII § V (pg. 122-23) (1984).

As the implementing mechanism for the Port Westward Exception Area, the RIPD zone is intended for uses which:

> ".1 Are not generally labor intensive;
>
> .2 Are land extensive;
>
> .3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;
>
> .4 Complement the character and development of the surrounding rural area;
>
> .5 Are consistent with the rural facilities and services existing and/or planned for the area; and,
>
> .6 Will not require facility and/or service improvements at significant public expense.

> The uses contemplated for this district are not appropriate for location within Urban Growth Boundaries due to their relationship with the site specific resources noted in the Plan and/or due to their hazardous nature."

CCZO 681. As demonstrated in the Application and Staff Report, the Project specifically relies on the Port Westward dock for access to marine transportation and the river itself for process water. Thus, the Project is entirely consistent with the legislative purposes underpinning Port Westward.

The rail branchline can be best viewed in three segments. The first is a segment of bi-directional track that connects the Project through a small portion of PA-80 zoned land to the Portland and Western Railroad already serving Port Westward. The second is a series of side tracks located in the RIPD-zoned portion of the site, which are allowed as part of the Site Design Review/Use Permitted under Prescribed Conditions Application. The third is a second series of side tracks located on PA-80 zoned land owned by the Port of Columbia County, which land is proposed for eventual inclusion within the RIPD expansion area. Rail improvements on PA-80 zoned land are specifically permitted under OAR 660-12-0065 ("Transportation Improvements on Rural Lands") as "(j) Railroad mainlines and branchlines." Together, these rail facilities provide a "looped" branchline that allows safe and efficient flow into and out of the renewable diesel facility.

b. NEXT supports staff's recommendation for approval and accepts staff's proposed conditions of approval.

Since submitting its applications in early 2021, NEXT has met with the County planning, engineering, and legal staff on a number of occasions and, based on staff's feedback, refined its applications several times to ensure that they comprehensively address all applicable criteria and development issues. County planning staff has extensively reviewed the applications and issued its Staff Report on January 12, 2022, recommending that the County Board of Commissioners approve the Applications with conditions.

The Applicant wishes to make a few clarifications on some of the facts/analysis presented in the Staff Report:

- First, findings 37 and 75 (pages 18 and 29) incorrectly assert that the fuel production facility impacts riparian areas associated with McLean Slough. In fact, the facility itself is not proposed within the riparian buffer; rather, the only proposed impact to the riparian buffer is from a portion of the proposed rail branchline.

- Second, finding 65 (page 26) discusses a proposed construction laydown area, but this laydown area is no longer proposed and tree plantings are proposed in its place.

- Finally, it should be noted that the question of whether the facility is "water related" or "water dependent" is relevant only to the proposed rail branchline crossing of McLean Slough. The Board can find that the Project is water dependent for the reasons stated in

the Application; namely, because the Project depends on marine transportation and a direct water intake from the Columbia River for its industrial processes.

Otherwise, NEXT supports the Staff Report and accepts the Staff Report's recommended conditions. NEXT urges the County Board of Commissioners to accept staff's recommendation and approve the Applications.

2. RESPONSE TO COMMENTS REGARDING NEXT'S APPLICATIONS

NEXT recognizes that while many people support NEXT's renewable diesel production facility, others have questions and concerns about the facility. The following addresses opponent comments made available by staff by January 14, 2022.

The Applications are quasi-judicial, which means that relevant issues are constrained to the applicable approval criteria, as identified in the Application and Staff Report. ORS 215.427(3). Therefore, the Board can and should reject comments that do not address the approval criteria.

The vast majority of written materials submitted by project opponents thus far were included in a large package of documents submitted by Save Port Westward. The majority of these address NEXT's Joint Permit Application to the Oregon Department of State Lands ("DSL") and U.S. Army Corps of Engineers ("USACE") for a removal/fill permit (the "Joint Permit"). As part of this process, NEXT is working with the Army Corps and DSL on plans for a roughly 480-acre wetland mitigation site. The mitigation area is located on PA-80 zoned land, in which "creation, restoration or enhancement of wetlands" is an outright permitted use and requires no County approval. ORS 215.283(1)(m). The Joint Permit is not before the Board; therefore the vast majority of these comments do not address the approval criteria.

Rather, the County must find that wetlands and riparian areas shall be in compliance with State and Federal laws. CCZO Section 1563.B. As explained above, the adequacy of that proposed mitigation site is evaluated by DSL and the USACE under their respective laws to determine whether the mitigation is sufficient, based on the condition and extent of wetlands the Project will impact. The County can find that the Applications can satisfy State and Federal laws concerning wetland impacts through the ongoing Joint Permit process. The Staff Report's proposed Condition 2 – which NEXT accepts – requires that all state and federal permits will be obtained prior to commencing site clearing or development activities.

Opposition comments can typically be categorized in two manners: (1) comments that are inapplicable or irrelevant to the County's approval criteria; and (2) comments pertaining to issues addressed by NEXT's Applications and/or evaluated in the County Staff Report. Based on our review, few if any opposition comments submitted thus far clearly address an approval criterion. As explained below, the Board can reject the opposition comments submitted thus far and approve the Applications.

a. Response to Beaver Drainage Improvement Company, Inc. Comments

The Beaver Drainage Improvement Company, Inc.'s ("Drainage Company") comments address NEXT's wetland mitigation plan, which is not before the Board. As explained above, NEXT's wetland mitigation proposal is part of its DSL/USACE Joint Permit application. The Drainage Company did not appear to submit any written comments regarding the Applications; rather, they were included in Save Port Westward's large packet of comments addressing the Joint Permit. Accordingly, the Drainage Company's comments do not address the applicable criteria.

b. Response to Columbia Riverkeeper's Comments

Like the Drainage District's comments, Columbia Riverkeeper's ("Riverkeeper") comments are directed at the Joint Permit, not the Applications. Riverkeeper did not appear to submit any written comments on its own; rather, they were included in Save Port Westward's large packet of comments addressing the Joint Permit. As with Drainage District Comments, the County can reject Riverkeeper's comments because they address the Joint Permit, not the Applications.

c. Response to Comments submitted by "Community opposed to the NEXT proposal"

The Save Port Westward document package includes a list of people and entities opposed to the Project, but the comments that appear to have been written by Save Port Westward; it is not clear whether these comments were actually written on behalf of the named individuals and entities. Many of these comments are duplicative of comments raised by the Drainage Company or Riverkeeper.

i. "NEXT and PCC have yet to acknowledge potentially highly contaminated soils such as the historical tree farm dumpsite containing pesticides and other toxic chemicals, the PGE sand pile, and other soils on the recently purchased Teevin Bros. land which have been removed and filled without proper permitting."

RESPONSE: Management of hazardous waste and contaminated property falls within the purview of the Oregon Department of Environmental Quality ("DEQ"). The applicable criteria do not evaluate the presence or management of hazardous waste. NEXT will comply with all state and federal laws related to the management and disposal of hazardous waste.

For the above reasons, the Board can reject the above-quoted comment.

ii. NEXT's has not disclosed its "full waste treatment protocol and the specific toxicity and ingredients that would travel via the highway 30 railway."

RESPONSE: As stated in the response above, NEXT will comply with all state and federal laws related to the management and disposal of solid and hazardous waste. The Board can reject the above-quoted comment.

iii. "NEXT continues to change their proposal for water and land traffic, leaving the impact on local infrastructure and impacts to local school traffic throughout the county unclear."

RESPONSE: The Applications include a complete Transportation Impact Analysis ("TIA"), with which County staff concurs. River and rail transportation capacity varies substantially over time, and the Project is sized to account for the maximum extent of NEXT's potential transportation needs. As such, there is no approval criterion or submittal requirement for a specific mix of "water and land traffic." NEXT will be required by Condition 3 to "prepare a management plan for the rail crossings providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and means to resolve conflicts." The Applicant also will be required to fully improve Hermo Road between Quincy-Mayger Road and the Port Westward entrance (Condition 11). NEXT accepts these conditions.

For the above reasons, the Board can reject the above-quoted comment.

iv. "NEXT and the Port of Columbia County have yet to produce a clear docking schedule between Global's transloading operations and NEXT's fully water dependent operations."

RESPONSE: Neither the applicable criteria nor the application submittal requirements require a docking schedule. Further, the County Board of Commissioners' decision regarding NEXT's Applications does not evaluate the business logistics decisions of private companies using the Port of Columbia County dock.

For the above reasons, the Board can reject the above-quoted comment.

d. Response to Save Port Westward Comments

Save Port Westward raised many of comments noted above, the responses to which are not duplicated below. Other than those, Save Port Westward made the following comments:

i. Comments regarding Christopher Efird's other business activities.

RESPONSE: The land use approval criteria in the CCZO and Comprehensive Plan do not involve the type of highly subjective character evaluations these comments seeks to elicit. These comments are inappropriately ad hominem, do not address the approval criteria, and are not relevant to NEXT's Applications. The Board should reject such comments accordingly.

ii. NEXT's process requires virgin oil crops and animal fat derived from the same crops that has agricultural practices that destroy soil and promote greenhouse gas emissions.

RESPONSE: The above comment is simply incorrect. As the Oregon DEQ opines in **Exhibit 1**, renewable diesel has the potential to substantially reduce greenhouse gas impacts when compared with petroleum based diesel.

Regardless, the above comment does not address the approval criteria and should be rejected on that basis alone.

e. Response to Protect Farms' Comments

iii. The NEXT project will "shut down one of Oregon's last remaining mint farmers, two of Oregon's beloved local blueberry farmers, and one woman-owned grass-fed cattle ranch."

RESPONSE: As an initial matter, the renewable diesel facility itself only impacts land owned by NEXT, the Port, and a small portion of the De La Cruz parcel. None of this land is used for mint or blueberry farming, nor are they part of a woman-owned grass-fed cattle ranch.

The vast majority of the Project site is zoned RIPD, not exclusively for farm use. However, the proposed rail branchline does impact some PA-80 zoned land. The branchline will cross a portion of the De La Cruz parcel, which has been farmed recently with hay/grassland and row crops, such as mint. De La Cruz is a willing participant in the Project. Other than the portion of the property that the train will cross, hay and row crops are resilient and not sensitive to the vibration associated with rail traffic. And while the construction and operation of the branchline could cause minor changes in access routes to fields and patterns of cultivation, the changes will be minor. The Port of Columbia County-owned land is used for similar activities and is similarly insensitive to the presence of rail traffic.

County staff evaluated this proposal under its Comprehensive Plan Goals and Policies found that the rail branchline complies with the County's policy to protect agricultural lands and permit non-farm uses when not in conflict with agricultural activities. County staff also evaluated the PA-80 zone impacts under ORS 215.296, and found the rail branchline will not cause a change in accepted farm practice or significantly increase the cost to farm on nearby lands. The Staff Report concluded that there is no evidence the proposed rail branchline – the portion of the proposed facility that is on agricultural zoned lands – will cause significant impacts to farm activities.

To the extent that Protect Farms' comments relate to the wetland mitigation area, this is not before the Board. As explained above, creation, restoration or enhancement of wetlands" is an outright permitted use and requires no County approval. ORS 215.283(1)(m).

f. Response to Elaine Sharp's Comments

RESPONSE: There are state and federal permits/authorizations that protect against each of the concerns raised by this comment and NEXT will comply with the laws applicable to each of those concerns. As stated above, NEXT is agreeable to staff's proposed Condition 2, which requires NEXT to obtain all applicable permits from state and federal agencies prior to commencing site clearing or development activities.

g. Response to Other Comments

The Board of Commissioners should reject the other arguments raised in Save Port Westward's document package. These comments relate to: the manner in which NEXT has conducted voluntary public outreach and voluntarily responded to public questions; the source of NEXT's financial backing; recommending putting infrastructure development promises into contracts; arguments that NEXT must disclose its "feedstock agreements" and "that their feedstock sourcing will promote the worldwide destruction of soils, communities, and habitats," and concerns about soil liquefaction. These comments do not address any specifics of the Applications, nor do they address any applicable approval criterion.

With respect to soil liquefaction, the Facility will be required to meet all applicable structural codes, which require an adequate foundation system suitable to onsite conditions. The Applicant will be conducting a complete geotechnical analysis as part of its design engineering to ensure that the appropriate design and construction techniques are used to prevent any potential hazards from unstable soils.

For the above reasons, the Board can reject the comments identified above.

3. CONCLUSION

For the above reasons, the Board should reject the opposition comments and approve the Application with the conditions of approval proposed in the Staff Report.

Best regards,

Garrett H. Stephenson

GST:lmt
Enclosure

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State of Oregon Department of Environmental Quality

Renewable Diesel 101

Contact: OregonCleanFuels@deq.state.or.us
700 NE Multnomah Street Suite 600 Portland, OR 97232

What is renewable diesel?

Renewable diesel is produced by running fats and oils from plants and animals instead of crude through a refinery, resulting in a biofuel that meets the ASTM D975 standard for diesel. Renewable diesel can be made from many waste or renewable materials including: rendered tallow, fish waste, used cooking oil, inedible corn oil, soybean oil, canola oil, and others. A typical facility can switch between or run multiple different materials.

Renewable diesel is a drop-in fuel which means it can be used as a one-for-one replacement for diesel or can be mixed with diesel at any rate to produce a blended product requiring no changes to the vehicles or fueling infrastructure.

Is renewable diesel the same as biodiesel?

While they can be made from the same materials, biodiesel and renewable diesel have different manufacturing processes that result in products with different molecular structures - biodiesel is a methyl-ester and renewable diesel is a hydrocarbon. The difference in the chemical properties of biodiesel is what limits the amount that can be blended with petroleum diesel, which is also a hydrocarbon. There is no limit for the amount of renewable diesel that can be blended with petroleum diesel because they are chemically identical. Biodiesel, renewable diesel, and petroleum diesel can all be blended together for use in diesel vehicles.

What are the emissions benefits from using renewable diesel?

Using renewable diesel can cut lifecycle greenhouse gas emissions up to 85% depending on what materials it is made from. Waste products such as tallow and used cooking oil have the greatest reductions while vegetable oils are slightly less. Renewable diesel lowers tailpipe emissions such as particulate matter, carbon monoxide, total hydrocarbons, and nitrogen oxide.

What are the other benefits from using renewable diesel?

Renewable diesel has gained in popularity largely because its lower carbon footprint, but also because it:

- has a higher cetane value than biodiesel
- has the same fuel economy or power as petroleum diesel
- produces a much cleaner exhaust and dramatically reduces the need for regeneration in vehicles with particulate filters, which in turn reduces maintenance costs for fleet owners
- does not contain oxygen, which avoids problems that biodiesel has with freezing, storage, and algae growth
- is made from products that would otherwise be sent to a landfill

Is renewable diesel available in Oregon?

The production of renewable diesel has grown significantly over the last several years and this trend will continue as billions of gallons of additional capacity have been recently announced. Tens of millions of gallons have already been delivered to Oregon because of the Clean Fuels Program, and that demand will remain strong as DEQ expands its targets beyond 2025. Contact your fuel supplier to find out current prices and availability of renewable diesel.

How is renewable diesel treated under the Oregon Renewable Fuel Standard?

The Oregon Renewable Fuel Standard recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement for diesel.

How is renewable diesel treated under the Portland Renewable Fuel Standard?

The Portland Renewable Fuel Standard does not recognize renewable diesel as a way to achieve their renewable fuel standard.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

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February 2, 2022

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RE: Application's Final Written Argument; Columbia County Board of Commissioners, App DR 21-03; V 21-05 and CU 21-04 (NEXT Renewables Fuels Oregon, LLC)

Dear Chair Heimuller, Commissioner Magruder, and Commissioner Garrett:

This office represents NEXT Renewable Fuels Oregon, LLC ("NEXT"). The following is NEXT's final written argument in this matter. The letter is respectfully submitted prior to the end of the final written argument period at 5:00 p.m. on Wednesday, February 9, 2022. Please note that it addresses public comments made available to the applicant by February 4, 2022.

I. EXECUTIVE SUMMARY

NEXT proposes to develop a renewable diesel production facility at Port Westward, with related Columbia River dock and rail connections (collectively, the "Project"). The Project consists of two land use applications (the "Applications") that are separate and related. The Site Design Review Application seeks approval for Use Permitted under Prescribed Conditions in RIPD Zone, Site Design Review, and Variance, for a renewable diesel production facility (the "Production Facility"). The Branchline Application seeks a Conditional Use Permit for a Rail Branchline. NEXT submitted the Branchline Application separately because a portion of it is to be located on PA-80 land.

As will be discussed in more detail below, the Project will contribute to local, state, and global efforts to reduce the impacts of climate change. Renewable diesel can cut the lifecycle of greenhouse gas emissions up to 85% and lower tailpipe emissions. The Oregon Department of Environmental Quality recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement under the Oregon Renewable Fuel Standard. The Oregon Department of Fish and Wildlife believes this proposed renewable energy project is "sited appropriately," and that facilities like this are "essential" to solve the climate crisis.

Moreover, the Project will confer substantial economic benefit to Columbia County. It will bring an estimated 3,500 construction jobs and 240 permanent jobs to the area. An economic

multiplier effect from NEXT's investment and other supportive industries will create a rising economic tide that sustains local businesses, stabilizes school funding and programs, and fuels economic growth for years to come.

Importantly, the Project is entirely consistent with the intended uses of the Port of Columbia County. The Project is dependent on its Columbia River location to take advantage of efficiencies made possible by the Port Westward deep-water dock, an asset Columbia County invested in specifically to attract development like the Project. The vast majority of the Project is located entirely within the Resource Industrial-Planned Development ("RIPD") zone, which is intended to accommodate both rural and natural resource related industries like NEXT's proposed Production Facility that will be located entirely within that zone. Only a small portion of the proposed rail branchline will touch land zoned differently, but in a manner well within established approval criteria, as will be described in more detail below.

In fact, the Project satisfies all applicable approval criteria. NEXT has heard and responded to written and oral comments from members of the local community and other concerned parties, and will expand its responses below. Further, thousands of local residents—workers, families, educators, businesses, elected officials, service providers, County staff—support the Project and recommend the Board approve it. For the reasons that follow, NEXT respectfully asks the Board to approve the Applications.

II. THE PROJECT WILL BENEFIT THE CLIMATE, THE COUNTY, AND THE PORT OF COLUMBIA COUNTY.

Before turning to the legal aspects of the Applications, NEXT reiterates the benefits that the Project would create, both locally and globally, if the Board approves it.

A. The Project reduces greenhouse gas and will help the nation transition to a low-carbon economy.

As explained by the Oregon Department of Environmental Quality ("DEQ"), DEQ recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement under the Oregon Renewable Fuel Standard. **Exhibit 1**. According to DEQ, renewable diesel can cut the lifecycle of greenhouse gas emissions up to 85%, and lowers tailpipe emissions such as particulate matter, carbon monoxide, total hydrocarbons, and nitrogen oxide. *Id*. It has the same fuel economy and power as petroleum diesel, but produces a much cleaner exhaust and is made from products that otherwise end up in landfills.

It is estimated that the Project will result in an annual net reduction of 5,409,379 metric tons of greenhouse gas ("GHG") emissions. **Exhibit 2**. This is equivalent to removing approximately 1.2 million passenger vehicles from the roadways. *Id*. The Oregon Department of Fish and Wildlife commented that the Project is a renewable energy development project and that it "considers development of renewable energy infrastructure to be essential to solve the climate crisis." **Exhibit 3**. Simply put, the Project "will be a net positive impact to public health and safety by constructing and operating the proposed facility." **Exhibit 2**.

B. Local organizations recognize the project's dramatic contribution to a thriving Columbia County economy.

The Project will also provide a major economic benefit to Columbia County. As explained in NEXT's pre-hearing testimony, the Project is anticipated to create 3,500 construction jobs and 240 permanent jobs, and is planned to operate for 80 years or more. The Clatskanie City Council commented that the Project "will bring significant economic benefits to the City, let alone the County and State," including around 240 proposed jobs and $16 million in estimated property tax revenue. The Council comments that the Project "will have a consequential positive impact on the local districts that rely on property tax revenue." The Columbia Economic Team offered similar comments and also encouraged the Board to approve the Applications.

The Columbia Pacific Building Trades Council, writing on behalf of 15,000 members, commented that the Project will help thousands of Columbia County-resident tradespeople stay in the region to build the facility. The Trades Council also described how the new, permanent jobs the Project creates "will inevitably lead to more money spent in our retail and grocery stores, on tourism and local recreation, and with local non-profits and organizations."

The January 11, 2022 Staff Report also found this multiplier effect important:

> "In addition to the on-site employees, the project will also result in supportive jobs such as those for the terminaling company operating at the dock. Employees are also likely to patronize area businesses in and around Clatskanie, creating new indirect employment opportunities in surrounding areas. Products to support this facility will be imported via the river and rail from beyond the County, further contributing to economic growth in the immediate area and beyond."

Staff Report at 12.

Approval of the Project will have a profoundly positive effect on the Clatskanie School District. The superintendent of the Clatskanie School District testified that the additional tax revenue generated by the Project would be a sea-change for the District: "rather than a rural declining district, we're going to have a very robust instructional program." *Columbia County Board Hearing*, Jan. 19, 2022 at 2:09:33. The Clatskanie School Board also unanimously supported a letter emphasizing its support:

> "Bringing NEXT Renewable Fuels to our area will provide our community with 200+ high paying jobs as well as providing sustainable funding to our local taxing districts, and most importantly to us, our school district. We will not have to wait every biennium to see what the Oregon economic forecast is to know what our budget will allow—if teachers can be maintained or laid off, and if exciting new programs can be added or our offerings reduced even further."

As was made clear in the written and oral hearing testimony, the Project can greatly enhance the local economy while also reducing GHG emissions globally.

C. The Project is consistent with the uses intended for Port Westward.

As described in our letter to the Board dated January 17, 2022, the Project is also consistent with the uses intended for its location. The particular use category proposed in the Site Design Review Application is "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities," which are allowed under CCZO 683.1. Because Port Westward has one of only five Oregon deep-water ports, the Port Westward Exception Area (as adopted in the County's Comprehensive Plan) was specifically intended to facilitate heavy industry that relies on marine transportation. *See* Comp. Plan, Pt. XII § VII.1.b (pg. 124) (describing Port Westward as a unique economic asset to encourage Columbia County industrial development).

The Port of Columbia County supports the Project specifically because it "will be situated on land intended to be used for industrial activities that can take advantage of the port's unique deep-water marine terminal." The Port's Executive Director, Sean Clark, testified at the public hearing that the County invested in the Port and the Project would make specific use of its existing infrastructure. The City of Clatskanie's written comments include that the Project "is consistent with heavy industrial and energy uses already established at Port Westward. …[T]he project's impact on farm-zoned land is very minimal and amounts to a small corridor of land necessary to extend rail service to the project, the vast majority of which is owned by the Port of Columbia County and is intended for industrial development and operation." The Project exemplifies the kind of development specifically encouraged by the County's 2007 Comprehensive Plan Exception Statement: a rural-industrial use that gains competitive advantage from its location, benefits the local economy, and has minimal impact on productive resource land. *See* Staff Report at 12.

Except for a portion of the proposed rail branchline, the Project is located entirely within the RIPD zone, and the Production Facility is located entirely within that zone. As demonstrated in the Applications and Staff Report, and described in more detail below, the Project specifically relies on the Port Westward dock for access to marine transportation and the river itself for industrial process water. Thus, the Project is entirely consistent with the legislative purposes underpinning Port Westward.

III. THE PROJECT SATISFIES ALL APPLICABLE CRITERIA

Most importantly, the Project satisfies all applicable criteria. For the following reasons, as well as those in the Staff Report and NEXT's prior testimony, the Board should find that the Application satisfies all applicable criteria.

A. The Project is consistent with uses allowed in the RIPD zone and satisfies the criteria in CCZO 681.

The Staff Report found that the Project is consistent with the uses and development standards that the County provided for industrial development within Port Westward by adopting the Port Westward exception area and the RIPD zone. More specifically, Finding 1 of the Staff Report

concluded that "[t]he requested use conforms with the goals and policies of the Comprehensive Plan specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies. Staff Report at 10. The Staff Report also found of the Project that:

> • it will take advantage of marine transportation available on the Columbia River, specifically the deepwater port;
>
> • it will use existing dock facilities;
>
> • it will utilize existing rail connections;
>
> • it will allow renewable diesel production to be located far from population centers, thus avoiding hazardous or incompatible impacts on densely populated areas; and
>
> • the proposed facility is similar to the existing tank farm, PGE electrical generating facilities, and the Columbia Pacific Bio-Refinery.

Id. at 11. After quoting the 2007 Comprehensive Plan Exception Statement, Finding 4 determined that "[t]his application is consistent with this statement" because it: (1) will take advantage of existing infrastructure; (2) will be in proximity to existing industrial operations with similar impacts; and (3) it will bring temporary construction jobs and permanent ongoing operations jobs to Port Westward." Staff Report at 12.

Some public comments raised concerns about the Project's compatibility with surrounding agricultural uses. The Staff Report considered this issue and concluded that, in addition to satisfying all of the policies and goals applicable to the development:

> "The existing agricultural uses to the east and south are not likely to be negatively impacted by the proposed industrial use due to the applicable County land use regulations and permit standards, fire code provisions implemented by the Clatskanie Rural Fire Protection District, and multiple state and Federal permits which the applicant will need to obtain prior to beginning operation of the facility. The proposed site development is consistent with existing land uses and available facilities and services."

Staff Report at 18–19. Succinctly put, multiple layers of county, state, and federal requirements ensure the Project's current and ongoing compatibility with nearby agricultural uses.

B. The rail branchline is permissible in the PA-80 zone and satisfies the criteria of ORS 215.296.

Rail branchline issues featured prominently in public comments and written submissions. As mentioned, a portion of the proposed branchline will impact some PA-80 zoned land. However,

as detailed in the Branchline Application and Staff Report—and as further described below—the proposed branchline satisfies all applicable criteria and requirements.

Columbia County's PA-80 zoning generally protects agricultural uses to support food and fiber production while enhancing certain natural values. CCZO 301. The Code expressly allows a number of non-agricultural uses in this zone, and certain other non-agricultural uses may be allowed under Conditional Use Permits. Among the allowable conditional uses, the Board may approve roads, highways, and other transportation facilities and improvements as set forth in Oregon Administrative Rule 660-012-0065. That OAR "identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with [statewide planning] Goals 3, 4, 11, and 14 without a goal exception." Specifically, "[r]ailroad mainlines and branchlines" are consistent with the identified Goals and may be permitted on rural lands.

The relevant statutes provide no set definition of the term "branchline." However, the Oregon Supreme Court has embraced a "commonly understood" meaning that a branchline is "nothing more nor less than an offshoot from the mainline or stem." *Union P. R. Co. v. Anderson*, 167 Or 687, 712, 120 P2d 578, 588 (1941). County staff concluded that the Portland & Western Railroad Letter (Attachment 6h to the Staff Report) constituted sufficient evidence that the proposed rail development can be classified as a rail branchline. Staff Report at 46.

County staff evaluated the PA-80 zone impacts under ORS 215.296, which sets out the standards for approval of certain uses in exclusive farm zones. NEXT's application addressed how the portions of the rail branchline subject to the farm impacts test—noted as Sections A and B of the branchline in the Branchline Application—will not force a significant change or significantly increase the costs of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Much of this detailed analysis is reproduced on pages 44–55 of the Staff Report. Across multiple findings throughout this section, County staff: (1) found no evidence that the proposed branchline will alter the character of the surrounding area in a manner that will substantially limit, impair, or preclude the use of surrounding properties for farm or forest uses; and (2) found no evidence the branchline will significantly increase the cost of accepted farm or forest practices on agricultural lands.

C. The Project is consistent with the County's environmental overlays.

Only one element of the Project—the crossing of McLean Slough with the branchline in the PA-80 zone—is subject to a County-designated natural resource zone. As explained below, the CUP application satisfies this requirement.

1. The Applications are consistent with the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay, CCZO 1170.

Finding 194 of the Staff Report concluded the Project does not enter or abut any mapped lake, river, or stream areas, although the proposed branchline intersects with McLean Slough. According to County staff, "Riparian impacts are limited to the crossing and not a wholesale

displacement of the riparian corridor." Staff Report at 59. There are no other protected riparian areas impacted by the project.

As explained in the Staff Report, the Board may approve the minimal impact at the crossing because the Project is water dependent or water related. *See* CCZO 1175(A)(2) and (B)(5).[1] Neither the CCZO nor the Columbia County Comprehensive Plan define the terms "water-related" or "water-dependent," except as relevant to the Willamette River Greenway, which is not applicable at this location. The County's riparian area and wetland regulations are components of the County's Statewide Planning Goal 5 program, which purports to adopt a "safe harbor" approach as discussed in Article X of the Comprehensive Plan. However, the Comprehensive Plan's Goals and Policies do not categorically intend to prohibit uses conflicting with riparian areas or wetlands. Rather, the Plan's stated intent is to protect such areas from "nonwater-dependent uses." *See, e.g.*, Article X.E., Policy 9.

As explained in the Application, the Board can find that the Project is "water-dependent" because it requires access to the water body (namely, the Columbia River) for marine transportation. The applicant proposes to import and export renewable diesel product and renewable diesel feedstocks by water-borne vessels on the Columbia River, including ships and barges. This connection is reflected in Exhibit 15 to the CUP Application, which shows the piping directly connecting the facility to the Port Westward docks. Also, the Production Facility relies on Columbia River water as part of the renewable diesel production process—namely for steam production, cooling tower process water, and fire water reserve. This is also reflected on Exhibit 15 to the CUP Application.

Consequently, the Board can find that the proposed rail branchline located on PA-80 lands is also "water-dependent." The purpose of the proposed rail branchline is to deliver renewable diesel feedstocks to the renewable diesel production plant for conversion into renewable diesel, to export such renewable diesel, and to remove waste products from the facility. As the branchline exists only to serve the renewable diesel production plant and is part of the overall project, it is just as river-dependent as the production plant itself. Put another way, the branchline is water-dependent because, like the renewable diesel production plant, it relies on river transportation as the other end of the renewable diesel supply/production chain. The export of waste products also makes the rail line a necessary component of the overall water-dependent use.

If the Board does not find that the branchline is "water-dependent," the Board can nonetheless find that it is "water-related." This is because the Project as a whole is intended to provide "goods […] that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered." There is no dispute that the Project is intended to import and export "goods" (in this case, feedstocks and renewable diesel) to and from the Port Westward dock via pipeline, shown

[1] Note that there is no criterion that requires the Board to find that the Production Facility is "water related" or "water dependent." Such a finding is necessary only for the crossing of McLean Slough by the westernmost portion of the branchline.

in Branchline Application Exhibit 15. As explained above, the renewable diesel facility must be located near the water because the use itself depends on river water and transportation, and would not be viable without a water-adjacent location. If the PA-80 portion of the proposed branchline is not located adjacent to the renewable diesel production plant, the efficiency of the renewable diesel use would suffer substantially because a large portion of the necessary feedstocks could not be economically imported to the Project, which would make the Project itself infeasible.

Some public comments argued that the Project cannot be water-dependent or water-related because it is technically possible to import and export all products overland. However, as just described, the Project depends on efficiencies made possible by Port Westward's deep-water port and river transportation in general. And, as explained by Mr. Gene Cotten's oral testimony at the Jan. 19 hearing, the rail is capable of serving only up to 40% of the Project's overall production capacity. Therefore, even maximizing use of overland infrastructure the Project would not be viable without its river connection. Thus, the Board may find the Project water-dependent or water-related even if some portion of its operations could be carried out overland.

2. The Wetlands Area Overlay, CCZO 1180, does not prohibit modification of onsite wetlands because the Oregon Department of State Lands and Oregon Department of Fish and Wildlife have determined that the onsite wetlands are not significant for Statewide Planning Goal 5 purposes.

The Wetland Area Overlay set forth in CCZO 1180 does not prohibit development of the Project because the impacted wetlands are not "significant wetlands." The Oregon Department of State Lands ("DSL") evaluated the Project under CCZO 1182 and using the Oregon Freshwater Wetland Assessment Method ("OFWAM"). It determined that the wetlands associated with the proposed Project are "NOT significant, nor are the wetlands that continue off the project site that were converted for farming and are zoned Primary Agriculture." DSL concluded that the relevant fish habitat, water quality, hydrologic control, education and recreation potential, and aesthetic quality are either degraded, lost, or not appropriate. Although the site includes some wildlife habitat and areas potentially sensitive because of water removal by drainage ditches, "[t]here is moderate to little enhancement potential because the four ecological functions are impacted or lost, and the wetland is isolated by the levee." DSL concluded:

> "None of the four ecological functions, wildlife habitat, fish habitat, water quality, or hydrologic control scored high enough to be considered significant. There are no rare wetland plant communities, there are no critical habitats present, and the wetland is isolated by the levee and heavily impacted by the drainage district.
>
> "The wetlands located behind the levee (within the drainage district) in the Resource Industrial Planned Development area at Port Westward and the wetlands that were converted for farming and are zoned Primary Agriculture are NOT significant under OFWAM."

The Oregon Department of Fish & Wildlife ("ODFW") similarly concluded that while the area supports some habitat and wildlife functions, the existing wetlands are subject to cattle grazing, dominated by nonnative species, and "are degraded by current practices and infestations of non-native plants." In a January 18, 2022 email to Columbia County staff, ODFW provided further clarification that: (1) "[t]he developer is proposing habitat mitigation that, once completed, the department expects should provide a net benefit to the affected fish and wildlife species that currently utilize the impacted habitat"; and (2) "[t]he department believes this proposed renewable energy project is sited appropriately, and it is consistent with the department's climate goals." **Exhibit 3**.

IV. NEXT'S RESPONSES TO SPECIFIC PUBLIC COMMENTS

A. Clarifications of the operational scope of the proposed rail branchline.

The vast majority of public opposition testimony pertained to the proposed rail branchline. Before providing specific responses to these comments, NEXT wishes to summarize the intent and design basis of the rail branchline. This was addressed by the testimony and evidence submitted during the second open record period in response to concerns about potential impacts to farm access.

As explained during Mr. Gene Cotten's testimony at the January 19 hearing, the facility is designed and intended to receive 100 percent of its feedstocks via marine transportation and to export 100 percent of its products the same way. The only material that is required to be imported by rail is clay, which is necessary for renewable diesel processing and amounts to a single 20-car train per week.

The import/export capacity for the rail branchline serves a contingency role for times when river transportation is disrupted or otherwise unavailable. This allows the facility to keep operating and keep its employees working. Therefore, the branchline is designed to handle at most 40% of the feedstock import. As explained in the evidence submitted during the second open record period, the maximum capacity of the branchline for feedstock import and renewable diesel export is approximately 100 train cars per week. All told, including the clay import and running at full rail capacity (as contingency for any lack of available marine transportation), the Project would be expected to generate three (3) trains per week.

These trains are anticipated to have a maximum of 100 cars and a maximum length of 6,630 feet with two locomotives. The maximum single length of track within the proposed branchline is roughly 7,500 feet, more than enough storage to accommodate the largest train without requiring backing movements or crossing delays. The maximum delay time at the only nearby road crossing—Kallunki Road—is estimated to be approximately 7.5 minutes for a maximum length train at 10 miles per hour.

As Mr. Cotten's February 2 memorandum explains, the design basis for the car storage component of the rail branchline was largely driven by requests of Burlington Northern-Santa Fe and Portland & Western railroad lines for more car capacity than NEXT originally proposed.

The railroads have requested 40,000 feet of siding track on the branchline, but NEXT is proposing 25,000 feet total, substantially smaller than the railroads would prefer.

In summary, the railroad branchline is not anticipated to operate anywhere near its capacity except in cases where marine transportation is disrupted. Staff proposes condition of approval no. 3, which provides as follows:

> "Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts."

NEXT has no objection to this condition. Should the Board wish to limit the rail activities to only those proposed, the Board could impose the following additional condition, which we understand will also be recommended by staff:

> "Rail transport to and from the site shall be limited to no more than 350 rail cars per week, excluding return cars. Trains serving the site shall be no more than 100 attached cars in length. A manifest documenting rail transport to and from the site shall be maintained, and shall be provided to the County within seven (7) days of written request from the County."

NEXT supports this condition as well.

B. Response to comments submitted by DLCD, 1,000 Friends of Oregon, and Columbia Riverkeeper.

Despite having timely notice, the Oregon Department of Land Conservation and Development ("DLCD") did not submit any official comments until 9:30 p.m. the evening before the Board Hearing. This obviously made it extremely difficult for NEXT to provide a detailed response to the comments during the hearing, thus NEXT does so now.

DLCD raised two primary issues regarding the Applications. First, DLCD essentially argued that the proposed rail branchline was actually a "rail yard" or something other than a "rail branchline," and therefore not allowable on PA-80 zoned-land. Second, DLCD raised a number of issues concerning NEXT's farm impacts analysis required under ORS 197 as described above. As explained below, the Board can and should reject DLCD's comments.

1. The proposed rail branchline is not a "railyard."

DLCD is incorrect as a matter of law that the proposed rail branchline is a "railyard" or "switchyard." This is because there are no applicable definitions of any of the above terms in DLCD's rules, applicable statutes, or other governing law. As explained above, Oregon courts have accepted the common industry definition of the term "branchline," and a letter from Portland & Western Railroad explains that the proposed rail improvements are indeed a "branchline." **Exhibit 4**.

As a practical matter, the branchline provides a connection to the available rail line in the area and is configured to allow cars to be loaded and unloaded. As Mr. Cotten explained during the hearing, the rail layout is intended to allow cars to be brought in, unloaded, and turned around. The branchline does not serve as a railyard that would, for example, move many types of freight from truck to rail, nor does it serve as a "switch yard," because it does not direct multiple trains into different travel directions.

2. The Application satisfies the farm impacts test.

NEXT has provided substantial evidence responding to DLCD's and 1000 Friends/Columbia Riverkeeper concerns regarding the farm impacts test.

DLCD and 1000 Friends of Oregon submitted written testimony on the day of the hearing. 1000 Friends submitted additional testimony in cooperation with Columbia Riverkeeper on January 26. Much of this testimony parroted the concerns identified by DLCD, namely that the County Staff Report and the Applications had failed to sufficiently identify and analyze accepted farm practices under the farm impacts test.

To varying degrees, DLCD and1000 Friends mischaracterize the significant change/significant cost analysis. In *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 459 (2019), the Oregon Supreme Court explained the significant change/significant cost test in ORS 215.296(1–2) as follows:

> "To summarize, when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice, the farm impacts test in *ORS 215.296(1)* requires an applicant to prove that the proposed nonfarm use (1) will not force a significant change in the accepted farm practice *and* (2) will not significantly increase the cost of that practice. A "significant" change or increase in cost is one that will have an important influence or effect on the farm. For each relevant accepted farm practice, if the applicant cannot prove both of those elements without conditions of approval, the local government must consider whether, with conditions of approval, the applicant will meet the farm impacts test."

As explained above, NEXT's application addressed how the portions of the rail branchline subject to the test—noted as Sections A and B in the Applications—will not force a significant change or significantly increase the costs of accepted farm or forest practices on surrounding lands devoted to farm or forest use. NEXT did so by identifying the potential farm lands impacted by the rail branchline (namely, those parcels that are adjacent to the branchline) and the accepted farm practices on those lands (namely, hay and other crop production). The Application explains that such crops are relatively immune to the presence of rail and railcars, but also identified the project's potential impacts on farm vehicle access.

The original application was bolstered by additional evidence and argument submitted by NEXT on December 14, which analyzed both sections of the rail branchline (the De La Cruz parcel and

the siding track located between the proposed production facility and Hermo Road) separately. Staff concluded that there is no evidence that the proposed branchline could force a significant change in, or significantly increase the costs of accepted farm practices on lands surrounding the branchline. Mr. Mike Seely provided additional information regarding his particular mint harvesting practices and the potential impacts of the rail branchline on his ability to impact some of his fields. NEXT addressed that information in its second open record submittal and again in this letter, below.

To ensure that rail crossings could be managed consistently with the access needs of surrounding landowners, County staff proposes Condition 3, which requires NEXT to "prepare a management plan for the rail crossings providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts. The plan shall be subject to County review and approval." The Applicant accepts this condition.

In identifying accepted farm practices, an applicant is not required to be omniscient in its understanding of the peculiarities of each farm practice, and when analyzing the potential impacts of a non-farm use on surrounding farmlands a local government "is not required to perform the impossible task of proving a negative." *Gutoski v. Lane County*, 34 Or LUBA 219 (1998). Neither 1000 Friends, DLCD, nor Columbia Riverkeeper has identified accepted farm practices beyond those identified by NEXT and Mr. Mike Seely; therefore, the Board can conclude that NEXT has carried its initial burden under the significant change/significant cost test.

DLCD argues that the *Stop the Dump* case, cited above, requires a "cumulative impacts" test which was not done in the CUP application. The Board should reject this comment because it mischaracterizes *Stop the Dump* and ignores the facts in the record.

As an initial matter, the CUP application examined potential cumulative impacts (see CUP application at 17–18) and concluded that there were no non-significant impacts which in aggregate could create a significant change or significantly increase the costs of an existing farm activity.

The Court's formulation of the farm impacts test at least recognizes that not all applications require the same level of searching inquiry: it qualifies the inquiry to situations "when the parties dispute whether a nonfarm use will force a significant change to a particular accepted farm practice or significantly increase the cost of that practice." *Id.* NEXT identified the farm practices it believed to be potentially impacted by the rail branchline and the most likely potential impacts (farm access disruptions). Farm access for mint harvesting was also raised by Mr. Seely and 1000 Friends of Oregon/Columbia Riverkeeper, and their arguments are addressed below. Other than these, no parties have identified another existing "particular accepted farm practice" that could be affected by the rail branchline and which could be combined with other impacts of the branchline to create a cumulative impact. Accordingly, there is no evidence in the record of "cumulative impacts" that the County has failed to consider.

3. DLCD's speculations regarding impacts to the Beaver Drainage Improvement Company, water table impacts, and spill containment were addressed in the second open record period.

DLCD raised a number of speculative and undefined concerns regarding potential impacts of the local water table, Beaver Drainage Improvement Company ("BDIC"), and hazardous chemicals on surrounding farm activities. As an initial matter, the Board should reject these comments for the following reasons. First, they are mere speculation about impacts and not supported by evidence. Second, DLCD's comments about hazardous chemicals and spill response for the Production Facility are not relevant to the significant change/significant cost test because the Production Facility is located in an industrial zone and is not subject to that test. Finally, concerns regarding the potential impacts on water levels and the BDIC due to potential wetland mitigation are not relevant because NEXT's wetlands mitigation is not part of the Applications. Even if they did, wetland mitigation is an outright permitted use in the PA-80 zone and therefore is not subject to County approval.

Nonetheless, the Applicant provided evidence during the first open record period that addresses each of these arguments.

With regard to DLCD's questions about potential impacts to ground water associated with crossing and relocating existing drainage infrastructure ditches and filling wetlands, evidence in the record (as explained in more detail in response to BDIC's comments) demonstrates that the ditch proposed to be replaced will be sized to convey at least as much water as the existing one does, and the proposed renewable diesel production facility will obtain applicable DEQ permits to protect groundwater quality during construction and operation. Furthermore, the facility will implement best management practices to protect groundwater quality in accordance with DEQ standards; these are described in the GSI Water Solutions memorandum regarding Groundwater Protectiveness Measures submitted during the first open record period, as well as NEXT's updated drainage plan also submitted during the first open record period.

DLCD's apparent speculation regarding impacts to groundwater quantity are misplaced. At least as far as the Production Facility is concerned, evidence submitted by NEXT demonstrates that the only component of the Project subject to the significant change/significant cost test—the rail branchline—will be drained via a swale that meets the DEQ's SLOPES V standard. Thus, the Board can conclude that the branchline will re-infiltrate much of the surface storm water. However, as local governments are preempted from regulating ground water quantity, which is the sole purview of the Oregon Water Resources Department,[2] the Board should reject DLCD's comments regarding ground water quantity.

With regard to concerns about hazardous chemicals and spill containment, evidence submitted during the first open record period establishes that NEXT will develop a Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), and an EPA-approved Spill Prevention

[2] *See Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624 (2000).

Control and Countermeasure Plan. To graphically illustrate spill containment measures at the proposed facility, Mackenzie engineers have annotated the facility drainage plan (Sheet C1.30, **Exhibit 5**) to depict the proposed spill containment berms around tanks, the equipment pads with spill containment areas, and the proposed stormwater swales. All runoff from the facility will be conveyed to a centralized treatment facility designed to remove potential contamination from the stormwater before it is discharged from the site. Railroad operators are further required by federal and state law to prepare oil spill response plans and to utilize rail cars meeting the latest safety standards to minimize the potential for impacts on nearby lands.

With regard to NEXT's involvement with the BDIC, all landowners in the Beaver Drainage District are assessed an annual fee, and NEXT Renewable Fuels will pay the assessment as required. The applicant will maintain its own private stormwater maintenance facilities and will provide access to the Beaver Drainage Improvement Company to maintain their facilities in accordance with their access rights conveyed under existing easements.

4. The Project will not force a significant change in, or significantly increase the costs of, Mr. Seely's mint farming activities.

During the first open record period, 1000 Friends and Columbia Riverkeeper submitted comments arguing that the proposed rail branchline could cut off Mr. Seely from his mint fields due to train movements.[3] During the second open record period, NEXT provided responsive testimony and evidence that demonstrates the following:

- Mr. Seely will have unbroken access to his east fields via Kallunki Road and west fields via Hermo Road.
- The proposed rail branchline does not cut off Mr. Seely from any of his other fields because he does not have a leasehold interest in Port of Columbia County property south of the branchline.
- The proposed branchline provides a train storage length of roughly 7,500 feet, substantially longer than the longest (6,630 feet) train that the facility is designed to accept. This means that the largest possible train to ever service the facility can be stored on NEXT's branchline without it having to be broken up or without any backing movements on existing crossings.
- The maximum potential length of time required to cross the Kallunki Road is approximately 7.6 minutes with the largest possible train.

[3] This testimony appears to assume that a new rail crossing of Hermo Road is proposed; this is not the case. Therefore, there is no way for a train to block Hermo Road for any length of time under the proposed design.

The record demonstrates that with the maximum train size, Mr. Seely would experience a delay of approximately 7.5 minutes crossing Kallunki Road, and no delay crossing Hermo Road. This potential delay would only pertain to Mr. Seely's smaller parcels east of Kallunki Road. However, the Board can find that this impact is not significant because there is no evidence or argument that such a short delay[4] could cause a significant change in or significantly increase the costs of Mr. Seely's mint farming. Even so, the chances of such a delay occurring with any frequency are minimal because they would occur only if a train of maximum length happened to be crossing Kallunki road at the same time Mr. Seely's equipment was waiting to cross the tracks.

C. Comments regarding the negotiations between NEXT and the Beaver Drainage Improvement Company are not relevant to the approval criteria.

Generally, most comments submitted by and about the Beaver Drainage Improvement Company pertain to NEXT's wetland mitigation plan, which is not before the Board.[5] As stated in our January 17 letter, NEXT's wetland mitigation proposal is part of its DSL/USACE Joint Permit Application. Accordingly, the Board should reject the BDIC's comments addressing the wetland mitigation plan.

BDIC's comments regarding the proposed relocation of an existing drainage ditch were addressed by NEXT in its second open record submittal, dated February 2nd. This submittal included a plan showing how the proposed relocated ditch can and will provide equivalent or better flow as the existing ditch.

The BDIC also commented that the Project violates CCZO 300, 681(B)(2) and 1170 because it will impact drainage and irrigation. Note that in doing so, the BDIC does not identify any specific farms or farming practices that could be affected, and does not offer an evidence to support its claims, so its comments (like DLCD's) are entirely speculative. CCZO 300 sets out the standards applicable in the PA-80 zone, which, as already discussed, is germane only as to the proposed branchline. In that regard, Staff Report Finding 174 concluded that, "[d]ue to its relatively small area (approximately 12.3 acres), the proposed rail branchline can be conditioned to resolve potential conflicts with agricultural activities as detailed in the response to Section 300, and there are not nearby forest zones with forestry activities." Staff Report at 55. Further, "[w]ith the proposed condition of approval, existing agricultural uses will continue to function consistent with to the current status quo of farmland adjacent to existing rail and electrical transmission lines." On this basis, the Board can reject the BDIC's comments concerning compliance with CCZO 300.

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[4] Note that Mr. Seeley's window for mint harvest was days, not mere minutes.

5 As explained above, Wetland creation and enhancement is permitted outright in all EFU zones in Oregon, including PA-80, and therefore cannot be considered a non-farm impact for purposes of the farm impacts test. Regardless, the vast majority of wetlands required to be mitigated are impacted by the Production Facility, not the rail branchline; these impacts cannot be considered as part of the farm impacts test because the Production Facility is located in the RIPD zone.

There is no CCZO 681(B)(2). However, CCZO 683.1(B)(2) requires uses within the RIPD zone to address any impact on the development area and mitigate adverse impacts considering "[e]xisting land uses and both private and public facilities and services in the area." The Staff Report found this condition satisfied, observing that:

> "The nearby industrial uses are not sensitive to expansion of industrial activity at Port Westward. The existing dock serves these industrial uses and is particularly well suited for serving the proposed use for shipment of feedstock and finished products. The existing agricultural uses to the east and south are not likely to be negatively impacted by the proposed industrial use due to the applicable County land use regulations and permit standards, fire code provisions implemented by the Clatskanie Rural Fire Protection District, and multiple state and Federal permits which the applicant will need to obtain prior to beginning operation of the facility. The proposed site development is consistent with existing land uses and available facilities and services."

Staff Report at 18–19.

CCZO 1170 sets out standards for the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone. The Staff Report observes that the only related impact from the Project is the branchline's intersection with McLean Slough. These concerns have been addressed above in Section III.C.1.

The BDIC also argued that future (not current) farm activities (such as livestock grazing) could be affected by the rail spur. The Board should reject this argument because speculates about future land uses, not current ones, and because neither NEXT nor the County is required to consider future or speculative farm practices under the farm impacts test. *See, e.g., Womelsdorf v. Jackson County*, 62 Or LUBA 34 (2010).

The Board should also reject BDIC's argument that NEXT's application lacks a required liability waivers for normal farm activities. These are not required as part of the County's criteria or application requirements, rather they are required as a condition of approval. County staff proposes this condition and NEXT will provide the required waivers if the application is approved.

To the extent comments by or about the BDIC pertain to application approval criteria, the Applications have addressed these comments and the Staff Report has found the concerns sufficiently addressed by the Applications and conditions for approval that NEXT does not object to. Regarding the BDIC's issues pertaining to NEXT's wetland mitigation plan, that plan is not before the Board. In any event, the mitigation plan will not burden landowners. As noted in the Applications and Staff Report, sufficient infrastructure is in place or proposed to collect, treat, and discharge runoff. Branchline Application at 33; Staff Report at 69–70 ("Staff finds the proposal can be conditioned to be consistent with the County's Stormwater and Erosion Control Ordinance.").

Finally, no local, state, or federal law gives the BDIC veto power over the Board's approval as recommended by the Staff Report, and NEXT is not required to obtain an approvals from BDIC prior to obtaining approval from the County on its application. NEXT will provide access easements for any relocated BDIC ditch or other infrastructure, but like any arms-length real estate transaction necessary to implement a development plan, that is between NEXT and the BDIC, and not a matter for consideration by the Board. Similarly, the lease between the Port and NEXT is purely a matter of real estate law and has no regulatory relevant to the Applications.

For the above reasons, the Board should reject BDIC's comments.

V. THE BOARD SHOULD REJECT OTHER OPPOSITION COMMENTS.

A significant portion of the public comments describe issues that are unrelated to the criteria, which should not factor into the Board's decision. A fair number of those comments—which raised general concerns about fuels production, rail operations, and farm/habitat conflicts—are from people who live outside Columbia County, either Portland or other parts of Oregon and Washington; these comments generally discuss broad issues such as sustainability, a general opposition to any fuels production, and the regional habitat. NEXT nevertheless responds to the key issues that fall within this category.

A. The Project will complement the character and development of the surrounding area.

As described above, the Project includes two applications, one for the facility and one for the rail branchline. These are separate but related. Importantly, few project opponents have argued that the Renewable Diesel facility itself should be denied or fails to meet the approval criteria. The sole argument that appears to have been raised is a general statement that the Project does not "compliment the character of the surrounding rural area," as provided in the purpose statement of the RIPD zone (CCZO 681).

As an initial matter, CCZO 681 is a purpose statement and not an approval criterion. *Ellison v. Clackamas County*, 28 Or LUBA 521, 525 (1995). The Rural Industrial goal and policies include a related provision to which the Application must conform as a general matter. However, that specific policy is that the Project "complement the character and development of the surrounding area," not the surrounding "rural" area. Regardless, the Board can find that the Project compliments the character of the surrounding area and surrounding rural area for the following reasons.

First, the County's Comprehensive Plan has already determined that the Port Westward Exception Area is suitable for uses such as "a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant." With regard to compatibility, the Port Westward Exception Statement explains that:

> 1. The 900-acre site is large enough to allow [an] adequate buffer area to protect adjacent agricultural users.

2. These types of large-scale industrial users do not create pressure for housing or other uses on adjacent farmland.

3. The requirements of the Department of Environmental Quality will assure that new industry does not pollute the adjacent air, water, or land.

Second, the Application explains that there are already substantial existing industrial developments in the vicinity, "including the Columbia Pacific Bio-Refinery, the PGE Tank Farm, the PGE Port Westward Generating Facility, the PGE Beaver Generating Facility, the Clatskanie People's Utility District electrical substation, roadways, rail lines, utilities, drainage facilities, levees, pipelines, electrical transmission lines, the dock, and associated support facilities, such as electrical facilities, stacks, a water tower, wastewater treatment facilities, parking, and wetland conservation." SDR Application at 10. The Application also explains, and the Staff Report concurs, that the existing industrial activities at Port Westward demonstrate how industrial and surrounding uses can coexist. It is also worth noting that the Board has voted on more than one occasion to expand the RIPD zone. If this decision is upheld, the Project will enjoy a substantial buffer of additional RIPD-zoned land between it and the vast majority of PA-80 zoned land in the vicinity.

Third, there is no substantial evidence that the production facility itself would adversely impact farmland. Just the opposite: the Project will actually improve access for farm vehicles with the proposed construction of the Hermo Road extension at the applicant's expense. Also, the Project will be required to have a complete spill containment and hazard management plan approved by DEQ that will ensure that no hazardous materials could spill from the site onto surrounding farmland. As shown on **Exhibit 5**, this plan is integrated into the engineering of the Production Facility. Regarding availability of crossing access for farm activities at times consistent with farming activity needs, County staff recommended a "condition of approval for crossing access and management to address this issue." Staff Report at 49. NEXT agrees to such condition, as described above. But, staff found "no evidence the proposed rail development—the subject of the CU application—will force a significant change in farm or forest practices." *Id*.

Fourth, to the extent that considerations related to this policy overlap with the farm impacts test, the Project's satisfaction of that requirement has been discussed in detail, above.

In summary, there is no substantial evidence in the record to suggest that the Renewable Diesel facility itself is not compatible with the surrounding areas.

B. The Project is designed to minimize risks to water quality.

Some public comments raised concerns about how the Project may impact general water quality. These concerns were largely addressed above in Section IV.B.3. In sum, the Project will involve DEQ permits to protect groundwater quality during construction and operation, and NEXT will

implement robust water quality practices with a firm intention to minimize any risk to water quality.

C. Any increase in vehicle and rail traffic will be within established limits and capacities.

Several comments raised concerns about increases in vehicle and rail traffic association with the Project. These concerns are not related to an approval criterion and the Board can approve the Applications despite these concerns. However, the Applications include a traffic impact analysis ("TIA") that found, as summarized in the Staff Report, "all study intersections meet applicable Columbia County, Oregon Department of Transportation, and City of Clatskanie mobility standards in 2020, in 2024 without NEXT Renewable Fuels, and in 2024 with NEXT Renewable Fuels and improvements to Hermo Road as proposed by the Applicant. The TIA did not identify a need for mitigation strategies." Staff Report at 29. There is thus no evidence that the Project will create any particular hardships regarding increased traffic.

D. The Project will not damage dike roads and surrounding infrastructure.

Relatedly, some commenters were concerned that the Project could damage dike roads and surrounding infrastructure. Again, these concerns are not relevant to the approval criteria and can be rejected. Moreover, the TIA did not identify any such concerns and the Project is thus not expected to involve any related higher risk than any other type of development.

E. The Project is designed to minimize risks from liquefaction.

Similarly, liquefaction and earthquake risks appeared in some public comments. These risks are not related to approval criteria and should not affect the Board's decision. Regardless, the Project is subject to and will comply with all related local, state, and federal requirements to minimize risks associated with liquefaction and earthquakes.

F. The Project incorporates waste and spill measures that meet or exceed state and federal standards.

Some commenters raised concerns about waste and spill measures. These are also addressed above in Section IV.B.3. Importantly, NEXT intends to incorporate and adopt waste and spill measures that meet or exceed state and federal standards.

G. Noise, air, and odor pollution are not included in approval criteria

In the same vein, some commenters are concerned about noise, air, and odor pollution. These are not approval criteria and are thus not appropriate reasons to deny the Applications.

VI. CONCLUSION

The Applications satisfy all applicable criteria and enjoy support from Columbia County residents who recognize the Project's positive impact on the local economy and environment, as well as its pronounced importance in combatting global climate change. County staff recommends approving the Applications. NEXT respectfully asks that the Board approve the Application with the conditions proposed by County staff.

Best regards,



Garrett H. Stephenson

GST/jmhi
Enclosures

PDX\133639\242725\AMU\32899600.3

State of Oregon Department of Environmental Quality

Renewable Diesel 101

Contact: OregonCleanFuels@deq.state.or.us
700 NE Multnomah Street Suite 600 Portland, OR 97232

What is renewable diesel?

Renewable diesel is produced by running fats and oils from plants and animals instead of crude through a refinery, resulting in a biofuel that meets the ASTM D975 standard for diesel. Renewable diesel can be made from many waste or renewable materials including: rendered tallow, fish waste, used cooking oil, inedible corn oil, soybean oil, canola oil, and others. A typical facility can switch between or run multiple different materials.

Renewable diesel is a drop-in fuel which means it can be used as a one-for-one replacement for diesel or can be mixed with diesel at any rate to produce a blended product requiring no changes to the vehicles or fueling infrastructure.

Is renewable diesel the same as biodiesel?

While they can be made from the same materials, biodiesel and renewable diesel have different manufacturing processes that result in products with different molecular structures - biodiesel is a methyl-ester and renewable diesel is a hydrocarbon. The difference in the chemical properties of biodiesel is what limits the amount that can be blended with petroleum diesel, which is also a hydrocarbon. There is no limit for the amount of renewable diesel that can be blended with petroleum diesel because they are chemically identical. Biodiesel, renewable diesel, and petroleum diesel can all be blended together for use in diesel vehicles.

What are the emissions benefits from using renewable diesel?

Using renewable diesel can cut lifecycle greenhouse gas emissions up to 85% depending on what materials it is made from. Waste products such as tallow and used cooking oil have the greatest reductions while vegetable oils are slightly less. Renewable diesel lowers tailpipe emissions such as particulate matter, carbon monoxide, total hydrocarbons, and nitrogen oxide.

What are the other benefits from using renewable diesel?

Renewable diesel has gained in popularity largely because its lower carbon footprint, but also because it:

- has a higher cetane value than biodiesel
- has the same fuel economy or power as petroleum diesel
- produces a much cleaner exhaust and dramatically reduces the need for regeneration in vehicles with particulate filters, which in turn reduces maintenance costs for fleet owners
- does not contain oxygen, which avoids problems that biodiesel has with freezing, storage, and algae growth
- is made from products that would otherwise be sent to a landfill

Is renewable diesel available in Oregon?

The production of renewable diesel has grown significantly over the last several years and this trend will continue as billions of gallons of additional capacity have been recently announced. Tens of millions of gallons have already been delivered to Oregon because of the Clean Fuels Program, and that demand will remain strong as DEQ expands its targets beyond 2025. Contact your fuel supplier to find out current prices and availability of renewable diesel.

How is renewable diesel treated under the Oregon Renewable Fuel Standard?

The Oregon Renewable Fuel Standard recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement for diesel.

How is renewable diesel treated under the Portland Renewable Fuel Standard?

The Portland Renewable Fuel Standard does not recognize renewable diesel as a way to achieve their renewable fuel standard.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

MAUL FOSTER ALONGI
3140 NE Broadway Street | Portland, OR 97232 | 971 544-2139 | www.maulfoster.com

January 25, 2022
Project No. 1724.01.03

Garrett Stephenson
Schwabe Williamson & Wyatt
1211 SW Fifth Avenue Suite 1900
Portland, OR 97204

Re: NEXT Renewable Fuels Oregon, LLC—Greenhouse Gas Emissions Summary

Dear Garrett:

NEXT Renewable Fuels Oregon, LLC (NEXT) is proposing to construct a renewable diesel, naphtha, and jet fuel manufacturing facility in Clatskanie, Oregon (proposed facility). The proposed facility will receive and process raw oil feedstocks, including vegetable oils and animal fats, to produce renewable fuel products for sale in markets in western states with Low Carbon Fuel Standards (LCFS). Implementation of LCFS creates an inelastic marketplace requiring that lower carbon fuels replace conventional petroleum-based fuels in ever-increasing amounts. The renewable fuels produced by NEXT may represent a component of the lower carbon fuel portfolios necessary to achieve LCFS program goals.

LCFS programs establish carbon intensity targets for transportation fuels. Carbon intensity represents a measure of greenhouse gas (GHG) emissions over the entire lifecycle of a fuel, accounting for extraction, production, transportation, and end consumption. During construction and operation of the proposed facility, GHG emissions will be emitted by anthropogenic sources such as non-electrical construction equipment, non-renewable source of electricity generation, and the combustion of natural gas in process equipment, and biogenic sources such as the combustion of gases generated from renewable feedstocks in the Hydrogen Plant.

All GHGs remain in the atmosphere long enough to become well mixed, meaning the amount of GHGs measured in the atmosphere is roughly the same all over the world, regardless of the source of emissions (EPA 2021a). Climate change impacts result from the incremental addition of GHG emissions from millions of individual sources, which collectively have a large impact on a global scale (CEQ 2016). As a result, it is currently not possible to correlate how the proposed facility will directly contribute to a specific climate change effect on public health and safety. GHGs do not have direct human health effects like some other regulated pollutants. Instead, the overall significance of GHG emissions from the proposed facility should be evaluated by analyzing the carbon intensity of the renewable fuel products from NEXT in relation to that of conventional petroleum-based fuels.

The proposed facility will produce approximately 17,700,000 barrels per year of renewable diesel and much smaller volumes of renewable naphtha and renewable jet fuel. This means the production of renewable diesel from NEXT will offset an equivalent amount of conventional petroleum-based fuels in the marketplace, leading to an overall net reduction in GHG emissions from existing conditions, as detailed below.

The carbon intensity for conventional diesel is 100.74 grams of carbon dioxide equivalents per megajoule of fuel (g-CO_2e/MJ). NEXT will produce renewable diesel with a weighted average carbon intensity of 48.4 g-CO_2e/MJ, accounting for each raw oil feedstock, as derived from the approved fuel pathways established under the Oregon Clean Fuels Program. In other words, NEXT will produce fuels that emit less than half (48.4%) as much GHG over their lifecycle as compared to conventional diesel. Because the renewable diesel produced by NEXT will displace conventional diesel, it will actually reduce the amount of GHG emissions by 51.6% from the existing condition. As demonstrated in the table below, NEXT's renewable diesel will result in a net reduction of approximately 5,409,379 metric tons of CO_2e per year ($MTCO_2e/yr$) in the LCFS transportation fuels market.

Table 1. Net Reduction in Lifecycle GHG Emissions from the Proposed Facility

Fuel Type	Default High Heat Value [1] (MMBtu/gal)	Annual Production Rate [2] (bbl/yr)	Carbon Intensity (g-CO_2e/MJ)	Annual GHG Emissions Estimate ($MTCO_2e/yr$)
Renewable Diesel	0.123	17,709,902	48.4 [3]	4,667,499 [a]
Conventional Diesel	0.127	17,709,902	100.74 [4]	10,076,877 [a]
Total Net Reduction in Annual GHG Emissions Estimate =				**-5,409,379 [b]**

NOTES:
[a] Annual emissions estimate ($MTCO_2e/yr$) = (carbon intensity [g-CO_2e/MJ]) x (1,055.06 MJ/MMBtu) x (42 gal/bbl) x (default high heat value [MMBtu/gal]) x (annual production rate [bbl/yr]) x (lb/453.592 g) x (ton/2,000 lb) x (MT/1.102 US tons)
[b] Total net reduction in annual GHG emissions estimate ($MTCO_2e/yr$) = (renewable diesel annual emissions estimate [$MTCO_2e/yr$]) - (conventional diesel annual emissions estimate [$MTCO_2e/yr$])

REFERENCES:
[1] Value derived from Oregon Administrative Rule (OAR) 340-253-8010, Table 6 "Oregon Energy Densities of Fuels."'
[2] Represents proposed facility maximum renewable diesel operating mode.
[3] Carbon intensity derived from Oregon Clean Fuels Program regulatory default carbon intensity per OAR 340-253-8010, Table 9. New legislation to establish a Clean Fuels Program in the state of Washington is currently in rulemaking that may establish carbon intensity standards for transportation fuels used in Washington. The carbon intensity value for renewable diesel specific to the Washington Clean Fuels Program is expected to be similar to the California and Oregon-specific carbon intensity values.
[4] See OAR 340-253-8010, Table 4 "Oregon Carbon Intensity Lookup Table."

To put this in perspective, the net reduction of 5,409,379 metric tons of GHG emissions is equivalent to removing approximately 1.2 million passenger vehicles from roadways, assuming the typical passenger vehicle emits about 4.6 metric tons of GHGs per year (EPA 2021b).

Hence, there will be a net positive impact to public health and safety by constructing and operating the proposed facility.

Sincerely,

Maul Foster & Alongi, Inc.



Brian Snuffer Zukas, PE
Project Air Quality Consultant

Attachments: References

cc: Gene Cotten, NEXT Renewable Fuels Oregon, LLC
Brien Flanagan, Schwabe, Williamson & Wyatt
Chad Darby, Maul Foster & Alongi, Inc.

REFERENCES

(EPA 2021a) EPA. July 27, 2021. Overview of Greenhouse Gases. https://www.epa.gov/ghgemissions/overview-greenhouse-gases (accessed September 28, 2021).

(EPA 2021b) EPA. July 21, 2021. Greenhouse Gas Emissions from a Typical Passenger Vehicle. https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle (accessed January 25, 2022).

(CEQ 2016) Council on Environmental Quality. August 1, 2016. Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews. https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf (accessed September 29, 2021).

[redacted]

From: BARNES Susan P * ODFW <Susan.P.BARNES@odfw.oregon.gov>
Date: January 18, 2022 at 1:46:20 PM PST
To: Robin McIntyre <Robin.McIntyre@columbiacountyor.gov>
Cc: CARY Dan * DSL <Dan.CARY@dsl.oregon.gov>, Catie Kerns <ckerns@stewardshipsolutionsinc.com>
Subject: NEXT Renewables - ODFW clarification

Robin;

The Oregon Department of Fish and Wildlife (department) would like to provide additional clarity on its input to Columbia County (dated 12-21-21) regarding NEXT Renewables' proposed biofuels development project. The department considers development of renewable energy infrastructure to be essential to solve the climate crisis. The department supports well-sited, adequately mitigated, and responsibly operated renewable energy developments. Well-sited, adequately mitigated, and responsibly operated renewable energy developments are:

1. sited in locations that avoid or minimize impacts on fish, wildlife, and their habitats;
2. assessed to determine how unavoidable impacts may be adequately mitigated;
3. implemented with temporally and spatially adequate mitigation in place; and
4. operated in compliance with regulatory requirements or conditions established to protect fish, wildlife, and their habitats.

The proposed facility is a renewable energy development project. The proposed project site is zoned for industrial development. While the site does provide some habitat functions and values to fish and wildlife the current habitat is impacted and degraded by past and current management practices. The developer is proposing habitat mitigation that, once completed, the department expects should provide a net benefit to the affected fish and wildlife species that currently utilize the impacted habitat. The department remains available if the Department of State Lands requests technical assistance on elements of the mitigation plan specifically intended to compensate for effects on fish and wildlife habitats.

In summary, the department typically seeks to direct new terrestrial and freshwater developments to already degraded, low functioning habitats that are unlikely to be become high functioning. The department believes this proposed renewable energy project is sited appropriately, and it is consistent with the department's climate goals.

Thank you for the opportunity to provide input.

susan

Susan Barnes
Regional Wildlife Conservation Biologist
West Region – Northwest

Oregon Department of Fish and Wildlife
17330 SE Evelyn Street

Clackamas, OR 97015
Email: susan.p.barnes@odfw.oregon.gov
Phone: 971-673-6010

November 19, 2021

Mr. Gene Cotten
NEXT Renewable Fuels, Inc
11767 Katy Freeway, Suite 705
Houston, TX 77079

Gene,

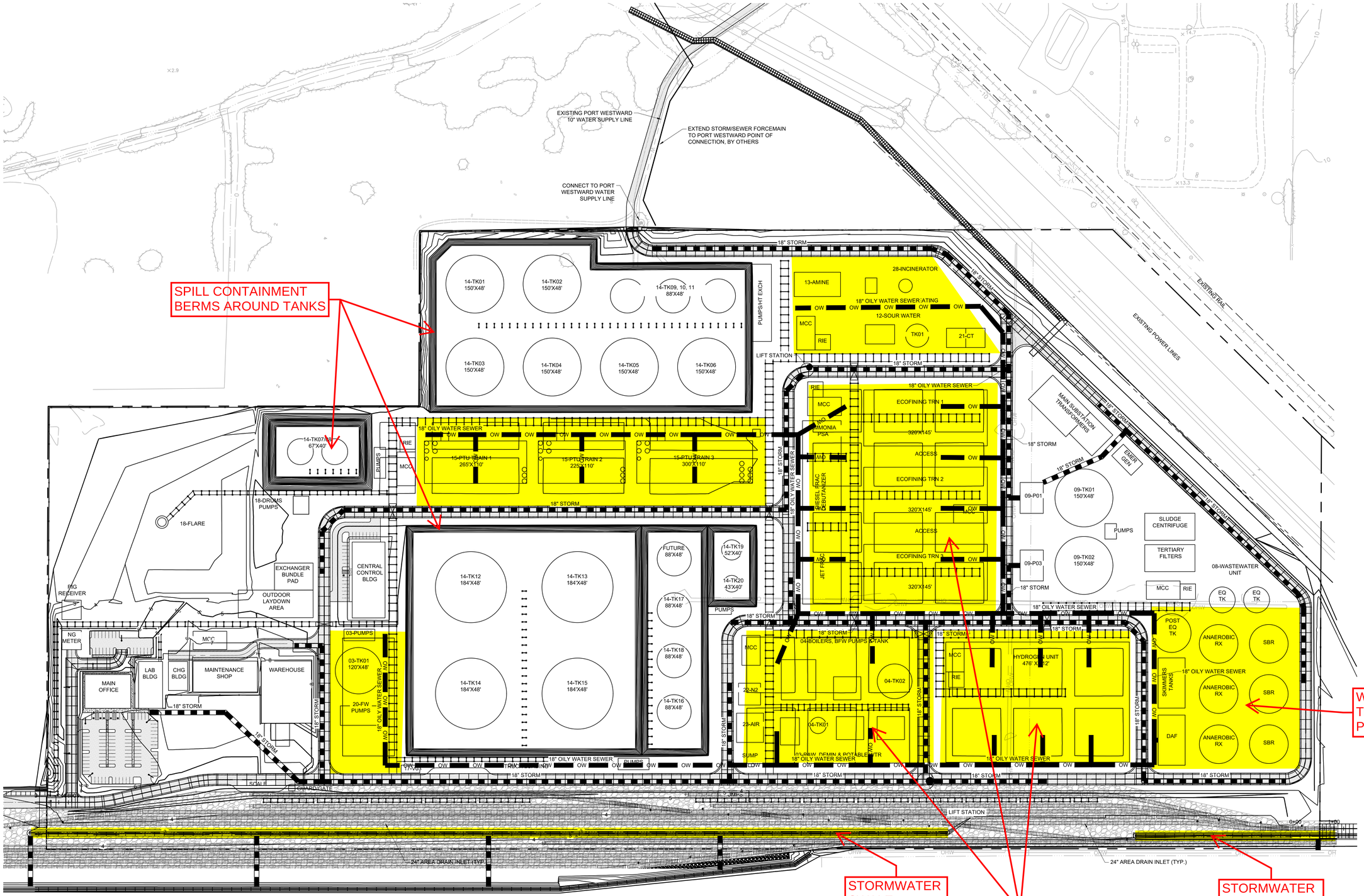
I understand the Columbia County planning staff has raised questions regarding the classification of the tracks that will built to support NEXT's Renewable Diesel facility at Port Westward. For PNWR contractual purposes, NEXT's rail tracks will be considered industry track, which is another term for branch line or spur. NEXT's track will connect to the existing branch line that services Port Westward. As a general matter, "branch line" is a broad term that encompasses any track that branches off from mainline track.

Portland & Western Railroad, Inc. also does not consider the tracks at NEXT's facility a "switch or rail yard." All cars entering and exiting NEXT's facility will be for NEXT's sole use at the site itself. A switch/rail yard's goal is to block cars for furtherance to other destination points. Let me know if you have additional questions.

Sincerely,

Matthew Artz

Matt Artz
Director, Sales and Marketing
Portland & Western Railroad, Inc.
1710 Midway Court
Centralia, WA 98531



LEGEND:

REFER TO SHEET C0.01 FOR GENERAL LEGEND

1 C1.30 DRAINAGE PLAN

100 0 50 100 200 400

(IN FEET)
1 inch = 100 ft.

Architecture ▪ Interiors
Planning ▪ Engineering

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Client
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Project
NEXT RENEWABLE FUELS, INC. PORT WESTWARD COLUMBIA COUNTY, OR

REGISTERED PROFESSIONAL ENGINEER OREGON JUNE 2, 2010 BRENT DANIEL WIELSEN
EXPIRES: 12/31/22

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REVISION SCHEDULE

Delta	Issued As	Issue Date

SHEET TITLE:
DRAINAGE PLAN

DRAWN BY: CAM

CHECKED BY: BDN

SHEET
C1.30

JOB NO. **2200315.01**

COMPLETENESS SUBMITTAL SET - 7/8/2021

2200315\00\DRAWINGS\CIVIL\315-C1.30.DWG BDN 07/08/21 10:21 1:100

EXHIBIT D

COLUMBIA COUNTY BOARD OF COMMISSIONERS STAFF REPORT

January 12, 2022

Site Design Review, Use Permitted Under Prescribed Conditions in the RIPD Zone, Variance - Type II

Conditional Use Review – Type III

HEARING DATE:	January 19, 2022
FILE NUMBER:	DR 21-03, CU 21-04 & V 21-05
APPLICANT:	NEXT Renewable Fuels, Inc., Attn: Christopher Efird 11767 Katy Freeway, Suite 705 Houston, TX 77079 chris@nextrenewables.com (661) 201-2653
OWNERs:	Port of Columbia County PO Box 190 Columbia City, OR 97018 (503) 397-2888 NEXT Renewable Fuels, Inc. Felipe and Bobby De La Cruz 80393 Kallunki Rd Clatskanie, OR 97016
CONTACT:	Mackenzie, Attn: Brian Varricchione 1515 SE Water Avenue, Suite 100 Portland, OR 97214 (503) 224-9560 bvarricchione@mcknze.com
LOCATION:	81009 Kallunki Rd. Clatskanie, Oregon
TAX MAP ID #:	<u>Facility</u> Port of Columbia County: 8422-00-00100, 8422-00-00200, 8422-00-01100, 8421-00-00700, 8416-00-00200, 8416-00-00300 NEXT Renewable Fuels, Inc.: 8422-00-00300 <u>Branch Line</u> Port of Columbia County: 8421-00-00600, 8422-00-00400, 8422-00-00500, 8422-00-00600, 8423-B0-00700 De La Cruz: 8423-B0-00800
TAX ACCOUNT #:	<u>Facility</u> Port of Columbia County: 28060, 28063, 28064, 28065, 28107 NEXT Renewable Fuels, Inc.: 28062 <u>Branch Line</u> Port of Columbia County: 28060, 28063, 28064, 28065, 28107 De La Cruz: 28108

ZONING:	Facility Resource Industrial – Planned Development (RIPD) Branch Line Primary Agricultural Use Zone (PA-80) Both Riparian Corridors (RP); Wetland Area (WA)
SIZE:	Site 680 Acres Facility Development Area Approx. 150 Acres - 109 acres for the primary site development, ~41 acres for driveway, pipelines and associated improvements. Branch Line Development Area 12.3 Acres
REQUEST:	• Use Permitted Under Prescribed Conditions in the RIPD zone, Site Design Review for a proposed renewable diesel production facility at Port Westward Industrial Park • Variance to buffering and screening standards • Conditional use to allow a rail branch line in the PA-80 zone
APPLICATION COMPLETE:	07/15/21
150 DAY DEADLINE:	02/23/22

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SUMMARY

The applicant, NEXT Renewable Fuels proposes to develop a renewable diesel production facility at the Port Westward Industrial Park (Port Westward), within the Resource Industrial-Planned Development (RIPD) zone. The facility will produce renewable diesel fuel from materials such as cooking oil, animal fats and tallow, and corn oil. The applicant has submitted two separate applications, which the County has consolidated for review: (1) an application for a Site Design Review, Use Permitted Under Prescribed Conditions in the RIPD zone and Variance for the facility; and (2) a Conditional Use for the rail branchline in the Primary Agriculture – 80 Acres (PA-80) Zone.

The project proposed with this application includes the construction of a renewable diesel production facility consisting of multiple buildings (office, laboratory, warehouse, maintenance, process, controls, etc.), parking, private roadways, storage tanks, processing equipment, a gas flare, wastewater treatment facilities, outdoor laydown yards, electrical equipment, landscaping, and security fencing. Development of the proposed facility within the RIPD zone requires a **Site Design Review** application and approval of a Use Permitted Under Prescribed Conditions in the RIPD zone. Due to security requirements relating to fence height and line-of-sight, a **Variance** from landscaping and fencing requirements is proposed.

Primary site access is proposed from a driveway to Hermo Road, with secondary emergency access to Kallunki Road. The driveway is proposed within the RIPD zone. The applicant also proposes to develop a "rail branchline" that will be accessory to and serve the proposed renewable diesel production facility. The branchline is proposed to connect to Portland & Western Railroad's facilities to accommodate shipment of additional materials and potentially a small amount of finished product. Rail transport may amount to approximately 313 rail cars per week, on average. Access to the branchline will be from the Portland & Western Railroad line and the proposed fuel facility site. A gravel-surfaced rail crossing will be provided on Tax Lot 8423-00-00800. A portion of the rail branchline is outside the RIPD zone and within the Primary Agriculture (PA-80) zone southeast and southwest of the site – development of the branchline in the PA-80 zone requires a **Conditional Use** application.

Water, wastewater, and storm drainage utilities operated by the Port are proposed to be extended to the site to accommodate this rural industrial development. Electrical, natural gas, and telecommunications facilities are also proposed to be extended to the site.

Finished product and raw materials for facility operations will largely be transported by vessels utilizing the Port of Columbia County-owned dock on the Columbia River. A terminaling company that already operates at Port Westward will unload the feedstock and transfer it via their existing pipeline to the confluence with the Applicant's newly constructed pipeline. This is where the Applicant will take possession. The feedstock will be refined into renewable diesel. Finished products will be stored on-site before being transferred back to the terminal via pipeline to ship via barge and vessel from the Port Westward dock. A gravel service road is proposed adjacent to a portion of the pipe rack to allow maintenance access to the pipes.

The proposed construction of facility, pipelines, and branchline will result in temporary and permanent impacts to wetlands. The County requested recommendations from the Department of State Lands (DSL), Oregon Department of Fish & Wildlife (ODFW), and the Columbia Soil and Water Conservation District (SWCD) regarding the significance of the wetlands and received a recommendation from DSL that the impacted wetlands are not significant. The applicant has submitted applications to the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and proposes to perform off-site wetland mitigation south of the site. The proposed wetland removal and mitigation requires approval by the Department of State Lands and the US Army Corps of Engineers.

Application Timeline

The brief timeline below provides an overview of materials received by the County for the NEXT application. Staff raised concerns regarding the proposed branchline definition, water-related use definition, and wetland significance. The Applicant responded with updated application submissions on December 14, 2021.

- NEXT Pre-Application Conference: February 6, 2020
- NEXT Application Submissions: January 19, 2021
- County Incompleteness Letters: February 17, 2021
- NEXT Updated Application Submissions: July 13, 2021
    - Including significant changes to rail location and rail volume.
- NEXT ORS 215.427 Completeness: July 15, 2021
- NEXT Updated Application Submissions: August 12, 2021
- NEXT Memorandum on Interpretation of CCZO 1175.B, 1184.E and OAR 660-012-0065: September 30, 2021
- County Memo Identifying Critical Issues: sent October 25, 2021
- NEXT Updated Application Submissions: December 14, 2021

Staff Summary

Staff notes this multi-faceted application and staff report are complex and lengthy. In general, Staff finds the proposed facility is well-suited to the adopted intent of the Port Westward exception area and implementing RIPD zone. The RIPD zone is designed to be supportive of large-scale development and has relatively few requirements. As discussed in these findings, Staff finds the facility and associated branchline, driveway access, pipelines and utilities generally meet the development standards of the base zones, or can be met with proposed conditions of approval.

Where base zone requirements for landscaping and screening are not met, the applicant has requested a variance. There are also elements of the application's interaction with County code that have received additional scrutiny and are worth County Board review and determination. These items are outlined below.

- The applicant has provided evidence that indicates a variance to landscaping and screening standards to meet security requirements for sightlines and fence height is merited. Staff concurs. Please see Staff findings under Section 1504 for further information on the variance proposal.
- The proposed rail development through the PA-80 zone raised definitional concerns related to design of the proposed use and applicability of the statutory exemption for railroad branchlines in farmland. However, the applicant provided evidence from Portland & Western Railroad clarifying the design and definition of the proposed branchline and addressing Staff concerns. Please see Staff findings under Section 303 for further information on the railroad branchline use.
- A small portion of the project crosses the 25-foot riparian boundary of the McLean Slough. The application provides evidence the project relies on proximity and access to the waters of the Columbia River, and therefore can meet the County's code exemption for water-related uses. Please see Staff findings under Section 1170 for further information on riparian area protection and exemptions.
- The proposed facility and nearly all associated improvements interact with delineated wetland areas. In response to Staff concerns, the applicant worked diligently with DSL to evaluate and address significance of these wetlands. Consistent with County code provisions, the County has received a recommendation from DSL, and the applicant has provided evidence, that the delineated wetlands are not significant and should therefore

not be regulated by the County's wetlands overlay. The County has requested and received additional feedback from ODFW and CSWCD. All agency comments are included in Attachment 7. To be clear, regardless of County regulations the applicant must still meet DSL and Army Corps of Engineers requirements for wetlands fill, removal and mitigation. Please see Staff findings under Section 1180 for further information on wetlands significance and protection.

The remainder of this report includes findings for the proposed NEXT facility and associated rail branchline in relation to the applicable standards in the Columbia County Zoning Ordinance as well as the Columbia County Stormwater and Erosion Control Ordinance.

Figure 1 Aerial Map of Subject Property

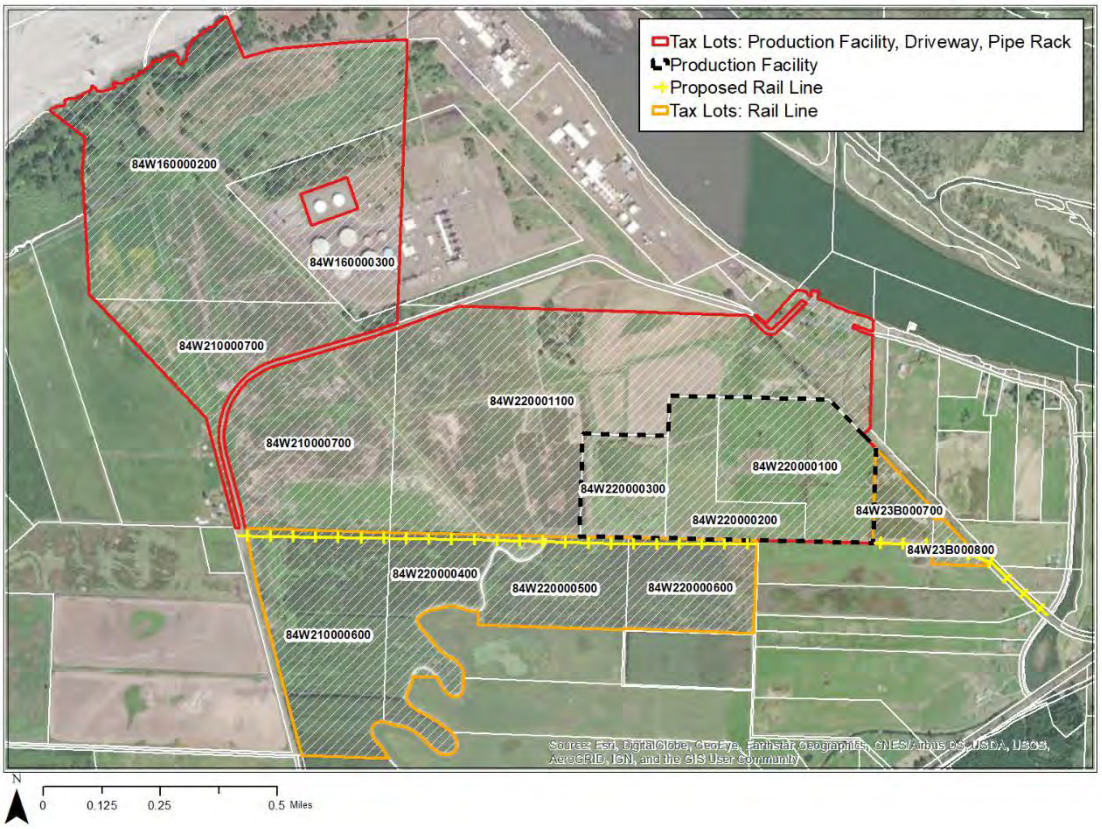
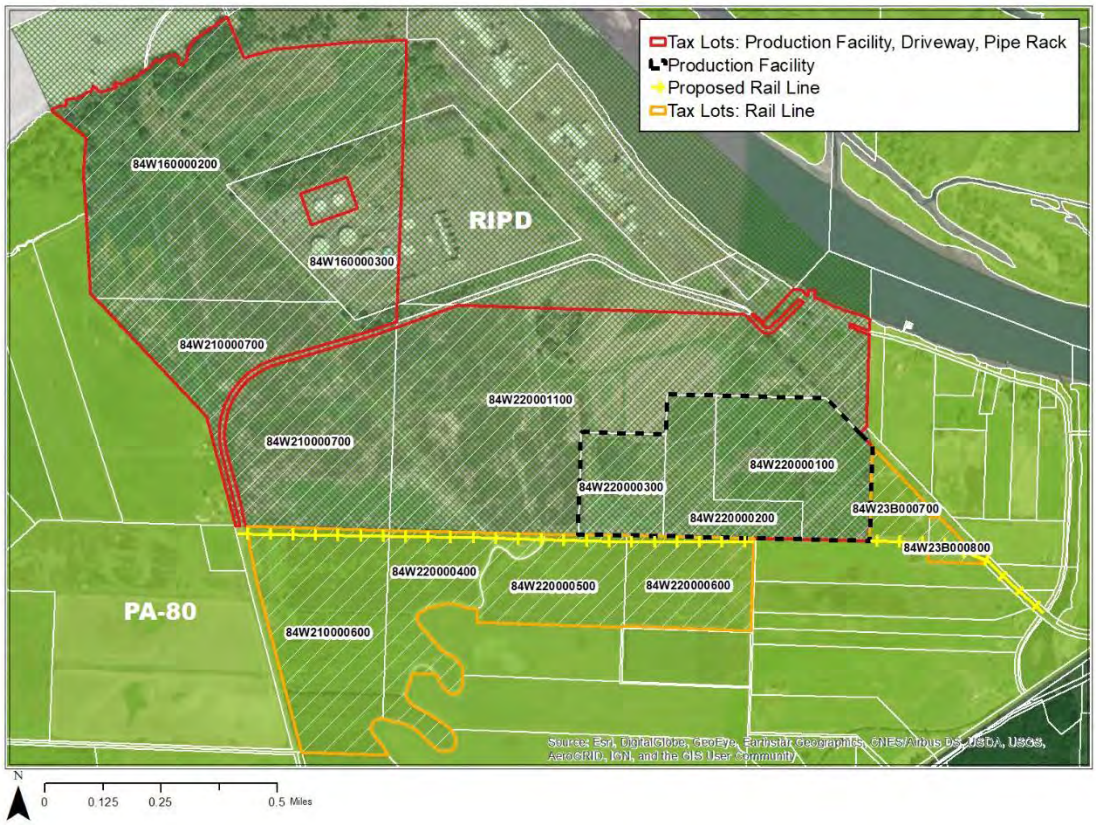


Figure 2 Zoning Map



REVIEW CRITERIA & FINDINGS - COLUMBIA COUNTY ZONING ORDINANCE:

Criteria Specific to the facility (DR 21-03 & V 21-05). The proposed facility, driveway access, pipelines, and utilities are located within the RIPD zone. These elements are addressed in findings for:

- Section 680 Resource Industrial – Planned Development (RIPD)
- Section 1550 Site Design Review
- Section 200 General Provisions
- Section 1300 Signs
- Section 1400 Off-Street Parking and Loading
- Section 1450 Transportation Impact Analysis
- Section 1504 Variances

Criteria Specific to the Rail Branchline in the PA-80 zone. Where the proposed rail branchline traverses the PA-80 zone, this staff report provides findings for:

- Section 300 Primary Agriculture Use Zone-80 (PA-80)
- Section 1503 Conditional Use Review

Criteria Applicable to Both Applications. Overlay zones are addressed for all elements of the proposal in findings for:

- Section 1100 Flood Hazard
- Section 1120 Sensitive Bird Habitat
- Section 1130 Historic Overlay
- Section 1170 Riparian Corridors
- Section 1180 Wetland Areas
- Section 1185 Natural Area Overlay
- Section 1190 Big Game Habitat
- Section 1603 Quasijudicial Public Hearings

Criteria Specific to the Facility

Section 680 Resource Industrial-Planned Development (RIPD)

681 Purpose:

The purpose of this district is to implement the policies of the Comprehensive Plan for Rural Industrial Areas. These provisions are intended to accommodate rural and natural resource related industries which:

.1 Are not generally labor intensive;
.2 Are land extensive;
.3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;
.4 Complement the character and development of the surrounding rural area;
.5 Are consistent with the rural facilities and services existing and/or planned for the area; and,
.6 Will not require facility and/or service improvements at significant public expense.

683 Uses Permitted Under Prescribed Conditions:

The following uses may be permitted subject to the conditions imposed for each use:

.1 Production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities subject to the following findings:

Finding 1: The proposed renewable diesel production facility falls within the category of permitted uses noted above and is allowed if the conditions below are satisfied. The applicant is proposing a facility and associated accessory infrastructure (pipelines, rail spur, electrical lines, etc.) that will convert recycled organic materials into renewable transportation fuels.

A. The requested use conforms with the goals and policies of the Comprehensive Plan specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies.

Finding 2: This application proposes development of an industrial facility, associated pipelines to the Port, rail access, and a private drive access. For development within the RIPD zone, applicable goals and policies are specified as related to rural industrial development and the relevant Port Westward exception statement. These policies include:

- Part X. Economy
- Part XII. Industrial Siting
- Industrial Lands Exceptions
- Port Westward Exception Statement

- Part XIV: Public Facilities and Services

RIPD-Applicable Goals and Policies.

The following information demonstrates how the use conforms to applicable Comprehensive Plan goals and policies, specifically those pertaining to the Goal Exceptions to accommodate rural industrial development at Port Westward.

1986 Comprehensive Plan Exception Statement

I. Proposal

The proposed use designation is Rural Industrial, and it is intended to take advantage of the location on the Columbia River, the existing dock facilities, railroad, and urban services, as well as potential linkages to the electric generating facilities.

V. Proposed Use Of The Property

Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm.

[***]

Uses likely to be located here are best illustrated by four proposals submitted to the current leaseholder since 1980. Proposals have included a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant. […].

[***]

VII. LCDC Evaluation

A. Goal 2 Factors

1. "Why these other uses should be provided for."

[***]

d. Types of industrial users allowed on resource land.

The LCDC rules outline three specific types of industrial uses which might be used to justify an exception on resource land. Port Westward is an appropriate site for all three types of industrial uses.

The first types are "unique site-specific resources" which include a river or ocean port. Port Westward is already a partially developed, deep draft river port.

The second attribute is uses which are "hazardous or incompatible with densely populated areas." Port Westward clearly is an appropriate site for this type of user. The 80-acre petrochemical tank farm identified earlier is a clear example.

Those uses often require rail, harbor facilities, and large sites.

A third type of use includes those which would have a "significant competitive advantage due to the location of energy facilities."

Finding 3: The above excerpts explain the intended purpose of the Port Westward Exception Area. This application is consistent with its intended purpose for the following reasons:

- It will take advantage of marine transportation available on the Columbia River, specifically the deepwater port.
- It will use existing dock facilities.
- It will utilize existing rail connections.
- It will allow renewable diesel production to be located far from population centers, thus avoiding hazardous or incompatible impacts on densely populated areas.
- The proposed facility is similar to the existing tank farm, PGE electrical generating facilities, and the Columbia Pacific Bio-Refinery.

2007 Comprehensive Plan Exception Statement

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

The County's Comprehensive Plan has designated 905 acres of the Port Westward area as a Goal 3 exception. The property is located adjacent to the Port Westward rural industrial area and can take advantage of the location with access to the Columbia River, and the existing dock facilities, railroad and urban services, including PGE's Beaver Power Plant. Allowing future rural industrial development on the Property would benefit the County's economy by bringing jobs to the area for construction of a project and then a lesser level of employment for the operation and management of any facility.

Finding 4: The above excerpts explain why the Board of Commissioners expanded the Port Westward Exception Area in 2007. This application is consistent with this statement for the following reasons:

- It will take advantage of the existing infrastructure (noted above).
- It will be in proximity to existing industrial operations with similar impacts.
- It will bring temporary construction jobs and permanent ongoing operations jobs to Port Westward.

PART X – ECONOMY

Goals:

1. *To strengthen and diversify the economy of Columbia County and insure stable economic growth.*

Finding 5: The proposed facility will require a significant amount of construction activity, resulting in high-paying construction jobs to build the project for approximately 24 months. Once built, the facility will employ office, management, and operations staff, at the following estimated staffing levels:

ESTIMATED STAFFING LEVELS				
Weekdays			Weekends	
Office/Mgt.	Shift 1	Shift 2	Shift 1	Shift 2
8:00 AM – 5:00 PM	6:00 AM – 6:00 PM	6:00 PM – 6:00 AM	6:00 AM – 6:00 PM	6:00 PM – 6:00 AM
83	35	35	35	35

In addition to the on-site employees, the project will also result in supportive jobs such as those for the terminaling company operating at the dock. Employees are also likely to patronize area businesses in and around Clatskanie, creating new indirect employment opportunities in surrounding areas. Products to support this facility will be imported via the river and rail from beyond the County, further contributing to economic growth in the immediate area and beyond.

The applicant will make a significant investment to construct and operate an industrial facility, broadening the County's employment base while complementing the existing uses at Port Westward.

2. To utilize Columbia County's natural resources and advantages for expanding and diversifying the economic base.

Finding 6: The project will utilize one of the County's best natural resources: the efficient transportation corridor provided by the Columbia River, designated as part of the U.S. Department of Transportation's M-84 Marine Highway Corridor. This resource was one of the main advantages during the site selection process. The proposed use does not yet exist at the Port, which contributes to the County's expanding and diversification of its economic base.

Policies: It shall be a policy of the County to:

1. Encourage the creation of new and continuous employment opportunities.

Finding 7: As noted above, following construction of the proposed facility, it will provide direct employment opportunities for office, management, and operations staff with approximately 220 new jobs and is anticipated to result in supportive jobs at area companies. The approximately 24-month construction duration is also expected to create temporary construction jobs on site.

2. Encourage a stable and diversified economy.

Finding 8: The proposed facility will increase the size and value of the County's industrial sector, which is an important part of Columbia County's overall economic base. The proposed development is planned to be a long-term facility to support renewable diesel fuel production on the site, showing a long term and stable commitment to the regional economy.

3. Reflect the needs of the unemployed and of those persons who will enter the labor market in the future.

Finding 9: The approximately 220 jobs created by the project will be family wage jobs, as opposed to lower-paying retail and consumer-facing service sector jobs.

6. Preserve prime maritime industrial sites from pre-emptive uses until needed for industrial uses.

Finding 10: As the project relies on a large site served by river and rail transportation and is isolated from a population center, it is entirely consistent with the intended purpose and uses of Port Westward and fulfills the County's policy of utilizing land set aside for marine-related industrial uses.

8. Preserve valuable industrial sites for industrial uses.

Finding 11: The proposed industrial project is proposed to be constructed on land zoned Resource Industrial - Planned Development. The industrial use is consistent with the zone.

12. Encourage new industrial growth within the urban areas so as to utilize existing public facilities.

Finding 12: Port Westward is an exception area located outside urban growth boundaries. When the Port Westward Exception Statement was adopted, the County found that the unique features of Port Westward made it substantially different from urban industrial land, and therefore likely to attract industries that could not necessarily use urban industrial land.

> *"Port Westward, Reichhold Chemicals, and the Bernet site are compatible with industrial uses that are either land extensive, incompatible with the urban environment, marine related or a combination of the above. These types of uses do not compete with industrial areas within urban growth boundaries but are complementary to those uses."*

The proposed use is consistent with the Port Westward Exception Statement as detailed earlier because it is land extensive, has impacts that are potentially hazardous in densely populated areas, and requires marine access.

PART XII – INDUSTRIAL SITING

INDUSTRIAL DEVELOPMENT: GOALS AND POLICIES

Goals

1. *To strengthen and diversify the economy of Columbia County and insure stable economic growth.*

Finding 13: The proposed facility will require a significant amount of construction activity, resulting in high-paying construction jobs to build the project. Once built, the facility will employ approximately 220 office, management, and operations staff. In addition to the on-site employees, the project will also result in supportive jobs such as those for the terminaling company operating at the dock. Employees are also likely to patronize area businesses in and around Clatskanie.

3. *To encourage industrial growth in Columbia County to diversify its economy. New industry should locate to take maximum advantage of existing public and private investments.*

Finding 14: The proposed renewable diesel production facility will result in both construction and ongoing operational jobs, which helps improve economic diversification and results in Port fees and local property tax revenue. The site's location allows the facility to take advantage of the existing deepwater port, rail facilities, and both public and private utilities serving Port Westward.

Policies: It shall be policy of the County to establish, implement, and maintain an industrial development program that:

1. *Encourages the creation of new and continuous employment opportunities.*

Finding 15: As noted above, following construction of the proposed facility, it will provide approximately 220 employment opportunities for office, management, and operations staff and is anticipated to result in supportive jobs at area companies.

5. *Recognizes the existence of sites suitable to be developed as deep-water ports but are not needed at this time.*

Finding 16: The proposed facility will utilize the existing deepwater port at Port Westward, one of five (5) deepwater ports in the state.

11. *Directs industries that are either land extensive, resource related, marine related, and/or incompatible with urban populations to those sites which are appropriate to the use and are currently zoned for that use.*

Finding 17: As detailed above, the proposed facility is land extensive (requiring 109 acres excluding off-site acreage for the driveway, pipe rack, etc.), and marine related (utilizing the Columbia River and the existing dock at the deepwater port). The facility will perform operations that are potentially hazardous and are thus appropriate outside urban locations. The site's location in the RIPD zone is consistent with this policy.

12. *Is consistent with the exception statements for those sites requiring an exception to the applicable resource goal.*

Finding 18: Consistency with the exception statements for Port Westward is demonstrated above.

RESOURCE INDUSTRIAL DEVELOPMENT: GOALS AND POLICIES

Goal: It is a goal of the County to provide for industrial development on rural lands when such development can be shown to support, utilize, or in some manner be dependent upon, the natural resources of the area.

Finding 19: The County has provided for industrial development within Port Westward by adopting the Port Westward exception area and the RIPD zone. The proposed facility will utilize a natural resource (the Columbia River) as it will depend on the deepwater port for the tanker vessels that will transport materials to and from Port Westward. As the project is consistent with the intended and allowed uses within Port Westward, it is consistent with this goal.

Policies: It shall be a policy of the County to:

3. *Restrict industrial development on land zoned Resource Industrial Planned Development to those uses that:*
    - *A. Are not generally labor intensive;*
    - *B. Are land extensive;*
    - *C. Are located with adequate rail and/or vehicle and/or deep water port and/or airstrip access;*
    - *D. Complement the character and development of the surrounding area;*
    - *E. Are consistent with the rural facilities and existing and/or planned for the area; and,*
    - *F. Will not require facility and/or service improvements at public expense; or,*

Finding 20: Policies 3A through 3F are nearly identical to the purpose statement outlined in CCZO Section 681. The applicant provided responses to that section to demonstrate how the proposed facility is consistent with the purpose of the RIPD zone so the responses to those items are not repeated here.

- *G. Are not appropriate for location within Urban Growth Boundaries due to their hazardous nature.*

Finding 21: The proposed use will rely on the deepwater port facility at Port Westward. While regulated by federal and state safety protocols, production of renewable diesel involves flammable inputs and outputs, chemical emissions, and heavy transportation infrastructure, which may present potential hazards to incompatible uses, such as residential living. For these reasons, the Board can find that the proposed use is consistent with Policy 3G.

PART XIII – TRANSPORTATION

Objectives:

1. *To maximize efficient use of transportation infrastructure for all users and modes.*

Finding 22: The project will be served by existing transportation infrastructure, including marine, rail, and roadways. Consistent with TSP Project #9, the Applicant proposes to satisfy Public Works requirements for necessary improvements to Hermo Road. A condition of approval is proposed to meet this standard. The applicant will install a rail branchline connecting to Portland & Western Railroad's existing rail line, providing rail access to Astoria and the Portland region.

Policies:

2. *The dedication of adequate rights-of-way to meet the standards set in the Transportation Plan shall be required of any person seeking a Zone Change, Conditional Use Permit, Subdivision, or Partition. […].*

Finding 23: The applicant is not seeking a Zone Change, Conditional Use Permit, Subdivision, or Partition as part of this application for the development of the facility. The applicant is seeking a Conditional Use permit for accessory rail infrastructure through farmland in a separate application. The closest public roadway is Hermo Road, which is classified as a local road in the 2017 Columbia County TSP.

The TSP recommends an optimum right-of-way width of 50 feet and an optimum roadway width of 28 feet (to accommodate ten-foot lanes and four-foot shoulders). The existing right-of-way width at the driveway location is 60 feet. Therefore, no right-of-way dedication is merited.

The closest segment of Kallunki Road (to which the site will have secondary emergency access) is also designated as a local road. This roadway has a 40-foot right-of-way, which is below the TSP's stated optimum right-of-way width.

However, as the existing roadway fits within the right-of-way and the site does not immediately abut Kallunki Road, no right-of-way dedication is required for this application.

3. *All expanding or new development shall contribute a fair and proportionate share toward appropriate off-site improvements to county roads whenever a development results in a major increase in traffic on an existing county road.*

Finding 24: As discussed in the Transportation Impact Analysis (Attachment 2n), the proposed facility is anticipated to generate 667 weekday trips, 91 of which will occur in the AM peak hour and 84 of which will occur within the PM peak hour. The report analyzed traffic operations at six study area intersections in 2020 and in 2024, both with and without the proposed development. The report found that all six (6) study intersections meet applicable Columbia County, Oregon Department of Transportation, and City of Clatskanie mobility standards in 2020, in 2024 without NEXT Renewable Fuels, and in 2024 with NEXT Renewable Fuels and improvements to Hermo Road, which the Applicant proposes to fund through a road improvement agreement with the County. A condition of approval for Hermo Road improvements is proposed to meet this standard.

Based on this analysis, the TIA does not recommend any mitigation strategies as a result of the proposed facility. The County has a planned project (TSP Project #9) to improve Hermo Road in the vicinity of the project site. The Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road, through a condition of approval.

4. *County will manage access to roadways to reduce congestion and conflicting travel patterns. The County will work with the Oregon Department of Transportation (ODOT) to limit the number of access points onto Principle Arterials. Direct access to U.S. Highway 30 will be limited as much as is practical in order to reduce the potential for congestion and conflicting traffic patterns which would disrupt the flow of traffic.*

Finding 25: The project will not have direct access onto Highway 30 or Principal Arterials.

5. *The County shall work to enhance freight efficiency, access, capacity and reliability, including access to intermodal facilities such as ports and airports. Industrial uses shall be encouraged to locate in such a manner that they may take advantage of the water and rail transportation systems which are available to the County.*

Finding 26: Although this is a policy for the County to implement, the project is consistent with this policy because it is specifically located at Port Westward to take advantage of existing water and rail transportation facilities.

6. *The County will support reducing the number of rail crossings and will support measures to enhance safety at rail crossings.*

Finding 27: The project does not require a new public road rail crossing.

7. *The County will work with the Port of [Columbia County] to encourage the establishment and use of dock facilities.*

Finding 28: The project will utilize the Port of Columbia County's existing deepwater dock facilities at Port Westward.

9. Restriction of the location of new pipelines and high voltage transmission lines to within existing rights-of-way will be encouraged whenever possible.

Finding 29: The proposal is to develop pipelines within the project site; the proposed pipelines cross Hermo Road and are within the Hermo Road right-of-way to the extent possible.

20. The County will coordinate transportation and land use planning and decision-making with other transportation agencies and public service providers, such as ODOT, cities within the County, and the Port, when their facilities or services may be impacted by a County decision or there may be opportunities to increase the efficiency and benefits of a potential improvement.

Finding 30: As part of its evaluation of land use applications including this one, the County coordinates with affected agencies and partners. The applicant has also coordinated with Port, County, and ODOT staff with respect to site design and transportation analysis.

PART XIV – PUBLIC FACILITIES AND SERVICES

Policies

.1 Require that adequate types and levels of public facilities and be provided in advance of or concurrent with development.

Finding 31: Port Westward Industrial Park already contains multiple public and private facilities that can accommodate development of the site. Port Westward has the PGE electrical generating facilities, the Clatskanie People's Utility District electrical substation, roadways, rail lines, utilities, drainage facilities, levees, pipelines, electrical transmission lines, and associated support facilities. The project will be served by existing transportation infrastructure, including marine, rail, and roadways. Consistent with TSP Project #9, the Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road, through a proposed condition of approval. Taken together, these conditions provide adequate types and levels of public facilities for the proposed project.

.2 Require that the level of facilities and [sic] provided be appropriate for, but limited to, the needs and requirements of the area(s) to be served. The types and level of public facilities allowed within Rural Residential, Rural Center, Existing Commercial, and Rural Industrial areas are:

- *A. Public or community water systems.*
- *B. Public or community sewage systems.*
- *C. Collector and/or arterial street systems.*
- *D. Fire protection by a rural fire protection district, or an equivalent level of service.*

Finding 32: The site is within a Rural Industrial zone (Rural Industrial – Planned Development). Port Westward is served by private water systems and a small private industrial wastewater system (see Attachment 2p), local roads, and the Clatskanie Rural Fire Protection District, consistent with this policy. No expansions to these systems are proposed or required for this project.

4. Encourage new development on lands within urban growth boundaries or built and committed exception areas.

Finding 33: The site is outside an urban growth boundary but is within an exception area that was created to accommodate industrial development that capitalizes on the unique combination of rail and deepwater port access available at Port Westward. The proposed development is consistent with this policy.

13. Support a level of fire safety and service in all areas of the County sufficient to minimize the risk of fire damage to life and property.

Finding 34: The site's location within the Clatskanie Rural Fire Protection District capitalizes on the District's experience and partnership with existing Port Westward industrial operations to ensure appropriate levels of fire protection.

PART XV – ENERGY CONSERVATION

Policies

3. The County shall encourage the development of recycling facilities and the use of recycled resources.

Finding 35: The proposed renewable diesel production facility will create fuel by using recycled organic materials such as used cooking oil, which is fully supportive of this policy.

4. The County will encourage the development of alternative energy sources.

Finding 36: The proposed renewable diesel production facility will create fuel by recycling existing materials rather than by refining fossil fuels. This facility will help implement the County's policy.

Contd. 683 Uses Permitted Under Prescribed Conditions:

B. The potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated considering the following factors:

.1 Physiological characteristics of the site (i.e., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements;

Finding 37: The site is relatively flat, with existing elevations that vary by less than 10 feet across the entire production facility site (see Attachment 2c, Sheet C1.10), which is ideal for large industrial development. The site is protected from flooding by the Beaver Drainage District's dikes and associated stormwater conveyance and pumps and is therefore adequately drained. As detailed in the preliminary stormwater report (Attachment 2m), sufficient infrastructure is in place or proposed to collect, treat, and discharge runoff. The site has been planned for industrial development for many years and the proposed use is appropriate given its physiological characteristics.

However, proposed development in this application impacts riparian areas associated with McLean Slough (allowance of impacts to the riparian area relies on definition of the project as "water-dependent" or "water related" – see discussion under Section 1170), mapped NWI wetlands (prohibited – see discussion under Section 1180), and additional delineated wetlands that will be impacted by the proposed development (Attachment 2k). The applicant is also seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and has proposed off-site wetland mitigation.

.2 Existing land uses and both private and public facilities and services in the area;

Finding 38: The site is part of the Port Westward Industrial Park, which is home to multiple industrial uses (PGE power generation facilities, Columbia Pacific Bio-Refinery, Clatskanie PUD substation) and supporting facilities and services (roadways, rail lines, utilities, drainage facilities, levees, pipelines, and electrical transmission lines, private water system, and wastewater system). The nearby industrial uses are not sensitive to expansion of industrial activity at Port Westward. The existing dock serves these industrial uses and is particularly well suited for serving the proposed use for shipment of feedstock and finished products. The existing agricultural uses to the east and south are not likely to be negatively impacted by the proposed industrial use due to the applicable County land use regulations and permit

standards, fire code provisions implemented by the Clatskanie Rural Fire Protection District, and multiple state and Federal permits which the applicant will need to obtain prior to beginning operation of the facility. The proposed site development is consistent with existing land uses and available facilities and services.

.3 The demonstrated need for the proposed use is best met at the requested site considering all factors of the rural industrial element of the Comprehensive Plan.

Finding 39: The goals and policies of the Comprehensive Plan's rural industrial element were addressed above. As explained, the project is consistent with all the applicable rural industrial goals and policies, and the site is suitable for the proposed use given the existing services available to serve rural industrial development at the site.

C. The requested use can be shown to comply with the following standards for available services:

.1 Water shall be provided by an on-site source of sufficient capacity to serve the proposed use, or a public or community water system capable of serving the proposed use.

Finding 40: The Port has water rights authorizing intake of water from the Columbia River/Bradbury Slough. Port Westward Industrial Park is served by private water systems that utilize wells and draw from the river. As illustrated on Attachment 2c, Sheet C1.30, a connection to the existing water supply will be made near the north end of the site. The Port has indicated that sufficient capacity is available within the Port's existing water rights (see Attachment 2p).

.2 Sewage will be treated by a subsurface sewage system, or a community or public sewer system, approved by the County Sanitarian and/or the State DEQ.

Finding 41: Port Westward Industrial Park has a private industrial wastewater system and a discharge system for tenants' process water (see Attachment 2p). As illustrated on Attachment 2c, Sheet C1.11, the applicant is proposing a wastewater pretreatment facility for all storm and greywater prior to discharging to the sewer system near the north end of the site. Discharge from domestic use within buildings may be stored in holding tanks prior to being hauled off or may be treated via sand filters and leach fields pending results of on-site system evaluation. The applicant will obtain all necessary permits from County Sanitarian and/or the Oregon Department of Environmental Quality, as applicable.

.3 Access will be provided to a public right-of-way constructed to standards capable of supporting the proposed use considering the existing level of service and the impacts caused by the planned development.

Finding 42: The applicant proposes to construct a private driveway between the site and Hermo Road. Hermo Road, a public right-of-way, is currently gravel near the site. Consistent with TSP Project #9, the Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road through a proposed condition of approval. The TIA (Attachment 2n) demonstrates that the roadway network, following improvements consisting of roadway widening and paving along Hermo Road, has adequate capacity for the proposed development. In light of the applicant's plan to improve the roadway, the TIA does not recommend any additional mitigation strategies. The site will have secondary emergency access to Kallunki Road (a public right-ofway) but the secondary access is not proposed for regular use.

.4 The property is within, and is capable of being served by, a rural fire district; or, the proponents will provide on-site fire suppression facilities capable of serving the proposed use. On-site facilities shall be approved by either the State or local Fire Marshall

Finding 43: Port Westward Industrial Park has an existing high-pressure fire suppression system designed to accommodate development in the industrial park, and the site is within the Clatskanie Rural Fire Protection District. The proposed on-site fire protection facilities will be designed per Oregon Fire Code standards and industry best practices

and will be reviewed and approved by the Fire Marshal prior to utilization, consistent with a proposed condition of approval.

.2 Accessory buildings may be allowed if they fulfill the following requirements:

A. If attached to the main building or separated by a breezeway, they shall meet the front and side yard requirements of the main building.

B. If detached from the main building, they must be located behind the main building or a minimum of 50 feet from the front lot or parcel line, whichever is greater.

C. Detached accessory buildings shall have a minimum setback of 50 feet from the rear and/or side lot or parcel line.

Finding 44: The proposed site plan (Attachment 2c, Sheet C1.11) depicts the proposed structures within the facility. Accessory buildings include office and maintenance buildings on site. Accessory buildings are shown at least 50 feet from lot lines.

.3 Signs as provided in Chapter 1300.

Finding 45: Prior to sign installation, the applicant will obtain all necessary permits and submit signage designs to County staff for review where required by code, consistent with a proposed condition of approval. Preliminary signage designs are depicted in Attachment 2c, Sheet C1.40.

.4 Off street parking and loading as provided in Chapter 1400.

Finding 46: The proposed use complies with applicable parking and loading standards, as discussed below in the responses to Section 1400.

Conclusion: Staff finds that this proposal is consistent with the purpose of the RIPD Zone and the provisions for Uses Permitted Under Prescribed Conditions in Section 683.3 with conditions.

Contd. Section 680 Resource Industrial-Planned Development (RIPD)

685 Standards:

.1 The minimum lot or parcel size for uses allowed under Section 682 shall be 38 acres.

Finding 47: The proposed use is allowed under CCZO Section 683 rather than CCZO Section 682. Therefore, the 38-acre minimum parcel size does not apply. Even if it did, the combined site area under the Applicant's control is approximately 109 acres, thereby exceeding this standard.

.2 The minimum lot or parcel size, average lot or parcel width and depth, and setbacks for uses allowed under Section 683, shall be established by the Planning Commission, and will be sufficient to support the requested rural industrial use considering, at a minimum, the following factors:

A. Overall scope of the project. Should the project be proposed to be developed in phases, all phases shall be considered when establishing the minimum lot size.

Finding 48: The site for the production facility, which consists of property owned by NEXT Renewable Fuels and property leased by NEXT Renewable Fuels from the Port of Columbia County, will have an area of approximately 109 acres (not counting off-site acreage for the driveway, pipe rack, etc.). As illustrated in the proposed site plan (Attachment 2c, Sheet C1.11), this size is sufficient for facility operations, including office, warehouse, production areas, staging areas, pipe racks, electrical equipment, storage tanks, wastewater treatment, a flare, and a rail spur. The project is not proposed to be developed in phases. This standard is met.

B. Space required for off street parking and loading and open space, as required.

Finding 49: Parking requirements in the CCZO are set forth in Section 1400. As discussed in the response to that section, the applicant is proposing 128 parking spaces, which complies with the 118-space minimum requirement for the proposed manufacturing use. The applicant proposes loading docks on the warehouse, together with multiple outdoor storage areas and rail loading/unloading areas. This standard is met.

C. Setbacks necessary to adequately protect adjacent properties.

Finding 50: The site for the production facility consists of property owned by NEXT Renewable Fuels and property leased by NEXT Renewable Fuels from the Port of Columbia County. Only minimal setbacks are merited due to the existing and planned development of the adjacent (off-site) properties. Properties to the north and west are within the Port Westward Industrial Park and zoned RIPD. Properties immediately to the south and east are currently in agricultural use (primarily crops) and do not contain sensitive receptors such as residences, schools, churches, hospitals, etc. As illustrated in the proposed site plan (Attachment 2c, Sheet C1.11), all proposed buildings are set back at least 95 feet from the site boundary, which is appropriate for the proposed use in this site context. Landscape buffers are provided on the south and east boundaries where facing other uses and where not precluded by overhead power lines and rail lines (see Attachment 2c , Sheets L1.10-L1.11 and Exhibit 17). This standard is met.

.3 Access shall be provided to a public right-of-way of sufficient construction to support the intended use, as determined by the County Roadmaster.

Finding 51: The applicant proposes to construct a private driveway between the site and Hermo Road. Hermo Road, a public right-of-way, is currently gravel near the site. Consistent with TSP Project #9, the Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road through a proposed condition of approval. The TIA (Attachment 2n) demonstrates that the roadway network, following improvements consisting of roadway widening and paving along Hermo Road, will have adequate capacity for the proposed development. In light of the obligations in the Development Agreement, the TIA does not recommend any mitigation strategies. The site will have secondary emergency access to Kallunki Road (a public right-of-way) but the secondary access is not proposed for regular use. For the above reasons, the County Roadmaster, and by extension the County Board, can find that the proposed access is "sufficient to support the intended use."

686 Review Procedures:

The Planning Commission shall review, in accordance with Section 1600, all requests made pursuant to Section 683 to assure that:

.1 The use conforms to the criteria outlined in Section 681.
.2 The conditions outlined in Section 683 can be met.
.3 The Design Review Board or Planning Commission reviewed the request and found it to comply with the standards set out in Section 1550 and the minimum lot or parcel size provisions set out in Section 684.

Finding 52: The County Board of Commissioners has taken jurisdiction of the hearing consistent with Ordinance 91-2. Findings reviewing Sections 681, 683, 684, and 1550 are included in this staff report.

Section 1550 SITE DESIGN REVIEW

The Site Design Review process shall apply to all new development, redevelopment, expansion, or improvement of all community, governmental, institutional, commercial, industrial and multi-family residential (4 or more units) uses in the County.

1551 Types of Site Design Review:

B. Type 2: Projects, developments and building expansions which meet any of the following criteria:

1. *Have an area of 5,000 sq. or more, or are 10% or more of the square footage of an existing structure.*
2. *Change the category of use (e.g., commercial to industrial, etc.).*
3. *New off-site advertising signs or billboards.*
4. *Any project meeting any of the Type 2 criteria shall be deemed a Type 2 Design Review application.*

Finding 53: The proposed development within the RIPD zone is classified as a Type 2 project since it affects greater than 5,000 square feet. The applicant is seeking Type 2 Design Review approval with this application. This standard is met.

1552 Design Review Process:

The Planning Director shall review and decide all Type 1 Site Design Review applications. The Planning Commission shall review all Type 2 Design Review applications. Applications shall be processed in accordance with Sections 1600 and 1700 of this ordinance.

Finding 54: The proposed development is classified as a Type 2 project since it affects greater than 5,000 square feet. The applicant is seeking Type 2 Design Review approval. The County Board of Commissioners has taken jurisdiction of this review consistent with Ordinance 91-2. This standard is met.

1553 Pre-application Conference:

A pre-application conference is required for all projects applying for a Site Design Review, unless the Director or his/her designate determines it is unnecessary. The submittal requirements for each application are as defined in this section and the standards of the applicable zone, and will be determined and explained to the applicant at the preapplication conference.

Finding 55: A pre-application conference for this application was held with County staff on February 6, 2020.

1554 Pre-application Conference Committee:

The committee shall be appointed by the Planning Director and shall consist of at least the following officials, or their designated staff members.
Only affected officials need to be present at each pre-application conference.

A. The County Planning Director.
B. The County Director of Public Works.
C. The Fire Marshal of the appropriate Rural Fire District.
D. The County Building Official.
E. The County Sanitarian.
F. A city representative, for projects inside Urban Growth Boundaries.
G. Other appointees by the Planning Director, such as an Architect, Landscape Architect, real estate agent, appropriate officials, etc.

Finding 56: This is a Type 2 Design Review. A Pre-application conference was held on February 6, 2020 where the applicant was given the submittal requirements prior to Land Development Services accepting an application for this land use proposal in the RIPD Zone. Notice of this pre-application meeting was sent to the County Public Works Department, Columbia River Fire and Rescue, the County Building Official, County Sanitarian, and the applicant. Staff finds the criteria in Sections 1551.B, 1552 and 1553 have been met.

1554 Submittal documents:

The following documents, when applicable, are required for a Site Design Review. The scope of the drawings and documents to be included will be determined at the preapplication conference by the Pre-application Conference Committee, and a Site Design Review Submittal Checklist will be given to the applicant, documenting which items are deemed not applicable or not necessary to determine compliance with County and State standards, with a short explanation given for each item so determined.

A. History.
B. Project narrative.
C. Existing site plan.
D. Proposed site plan.
E. Grading plan.
F. Drainage plan.
G. Wetland mitigation plan. Goal 5 Resource Protection Plans (streams, wetlands, riparian areas, natural areas, fish and wildlife habitat).
H. Landscaping plan.
I. Architectural plans.
J. Sign drawings.
K. Access, parking and circulation plan.
L. Impact assessment.
M. Site Design Review Submittal Checklist.

Finding 57: Applicant provided A, B, C, D, E, F, G, H, J, K, and L. Applicant did not include I (Architectural Plans) or M (Site Design Review Submittal Checklist). Applicant was notified of missing items in an incompleteness letter dated February 17, 2021. Applicant required the County to proceed with review of the application despite the missing information in a letter dated July 15, 2021 as allowed by ORS 215.427.

1560 Existing Site Plan:

The degree of detail in the existing site plan shall be appropriate to the scale of the proposal, or to special site features requiring careful design. An existing site plan shall include the following, unless it is determined by the Planning Director that the information is not applicable or is not necessary to determine compliance with County and State standards, and a short explanation will be given for each item so determined:

A. A vicinity map showing location of the property in relation to adjacent properties, roads, pedestrian ways and bikeways, and utility access. Site features, manmade or natural, which cross property boundaries are to be shown.

Finding 58: Vicinity maps are included as Attachment 2b and Attachment 2c, Sheet G0.01.

B. A site description map at a suitable scale (i.e. 1"=100'; 1"=50'; or 1"=20') showing parcel boundaries and gross area, including the following elements, when applicable:
    1. Contour lines at the following minimum intervals:
        a. 2 foot intervals for slopes 0-20%;
        b. 5 or 10 foot intervals for slopes exceeding 20%;
        c. Identification of areas exceeding 35% slope.
    2. In special areas, a detailed slope analysis may be required. Sources for slope analysis include maps located at the U.S. Natural Resources Conservation Service office.
    3. Potential natural hazard areas, including potential flood or high ground water, landslide, erosion, and drainage ways. An engineering geologic study may be required.

4. *Wetland areas, springs, wildlife habitat areas, wooded areas, and surface features such as mounds and large rock outcroppings.*
5. *Streams and stream corridors.*
6. *Location, species and size of existing trees proposed to be removed.*
7. *Significant noise sources.*
8. *Existing structures, improvements, utilities, easements and other development.*
9. *Adjacent property structures and/or uses.*

Finding 59: An existing conditions plan depicting these elements is included as Attachment 2c, Sheets V1.10 and V1.11.

1556 Site Plan Submittal and Analysis:

Columbia County Stormwater and Erosion Control Ordinance *an application and any necessary supplemental information as required by this ordinance to the Land Development Services Department. The Planning Director or designate shall review the application and check its completeness and conformance with this ordinance. Once a Type 2 application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission. A staff report shall be prepared and sent to the applicant, the Planning Commission, and any interested party requesting a copy.*

Finding 60: Applicant was notified of missing items in an incompleteness letter dated February 17, 2021. Applicant required the County proceed with review of the application despite the missing information in a letter dated July 15, 2021 as allowed by ORS 215.427.

1561 Proposed Site Plan:

A complete application for design review shall be submitted, including the following plans, which may be combined, as appropriate, onto one or more drawings, unless it is determined by the Planning Director that the information is not applicable or is not necessary to determine compliance with County and State standards, and a short explanation will be given for each item so determined:

A. *Site Plan: The site plan shall be drawn at a suitable scale (i.e. 1"=100', 1"=50', or 1"=20') and shall include the following:*
    1. *The applicant's entire property and the surrounding area to a distance sufficient to determine the relationships between the applicant's property and proposed development and adjacent properties and developments.*
    2. *Boundary lines and dimensions of the property and all proposed property lines. Future buildings in phased development shall be indicated.*
    3. *Identification information, including names and addresses of project designers.*
    4. *Natural features which will be utilized in the site plan.*
    5. *Location, dimensions and names of all existing or platted roads or other public ways, easements, and railroad rights-of-way on or adjacent to the property, city limits, section lines and corners, and monuments.*
    6. *Location and dimensions of all existing structures, improvements, or utilities to remain, and structures to be removed, all drawn to scale.*
    7. *Historic structures, as designated in the Comprehensive Plan.*
    8. *Approximate location and size of storm water retention or detention facilities and storm drains.*
    9. *Location and exterior dimensions of all proposed structures and impervious surfaces.*
    10. *Location and dimension of parking and loading areas, pedestrian and bicycle circulation, and related access ways. Individual parking spaces shall be shown.*
    11. *Orientation of structures, showing entrances and exits.*
    12. *All exterior lighting, showing type, height, wattage, and hours of use.*

13. *Drainage, Stormwater and Erosion Control, including possible adverse effects on adjacent lands.*
14. *Service areas for waste disposal and recycling.*
15. *Noise sources, with estimated hours of operation and decibel levels at the property boundaries.*
16. *Goal 5 Resource Protection Plans. Indicate how project will protect streams, wetlands, riparian areas, natural areas, and fish and wildlife habitat from negative impacts.*
17. *A landscaping plan which includes, if applicable:*
    a. *Location and height of fences, buffers, and screening;*
    b. *Location of terraces, decks, shelters, play areas, and common open spaces;*
    c. *Location, type, size, and species of existing and proposed shrubs and trees; and*
    d. *A narrative which addresses soil conditions and erosion control measures.*

B. *Grading Plans: A preliminary grading plan indicating where and to what extent grading will take place, including general contour lines, slope ratios, slope stabilization proposals, and natural resource protection proposals.*

C. *Architectural Drawings:*
    1. *Building elevations and sections;*
    2. *Building materials (color and type);*
    3. *Floor plan.*

Finding 61: On July 15, 2021 the applicant indicated the application for DR 21-03 was complete and required the County to process the application under ORS 215.427. Documentation submitted with DR 21-03 included civil, landscaping, and stormwater plans. The application did not include building elevations, sections, materials information or floor plans.

1562 Landscaping: Buffering, Screening and Fencing:

A. *General Provisions*
    1. *Existing plant materials on a site shall be protected to prevent erosion. Existing trees and shrubs may be used to meet landscaping requirements if no cutting or filling takes place within the dripline of the trees or shrubs.*

Finding 62: The majority of existing vegetation will be removed from the site to accommodate the proposed development. Appropriate erosion control measures will be implemented as depicted in Attachment 2c, Sheets EC1.10-EC5.10.

    2. *All wooded areas, significant clumps or groves of trees, and specimen conifers, oaks or other large deciduous trees, shall be preserved or replaced by new plantings of similar size or character.*

Finding 63: The site is nearly devoid of trees and does not contain wooded areas, significant clumps or groves of trees, or specimen conifers, oaks or other large deciduous trees. This standard does not apply.

B. *Buffering Requirements*
    1. *Buffering and/or screening are required to reduce the impacts on adjacent uses which are of a different type. When different uses are separated by a right of way, buffering, but not screening, may be required.*

Finding 64: Adjacent properties to the north and west are zoned RIPD and are in the Port Westward Industrial Park, so no buffering or screening is required to the north and west. Adjacent properties to the south and east are agricultural, so buffering is required to the south and east.

2. *A buffer consists of an area within a required setback adjacent to a property line, having a width of up to 10 feet, except where the Planning Commission requires a greater width, and a length equal to the length of the property line adjacent to the abutting use or uses.*

Finding 65: Portland General Electric has provided comments discouraging the planting of any trees under the nearby transmission lines (see Attachment 2q). As depicted on Attachment 2c, Sheet L1.10, 10 feet of perimeter plantings are provided on the south and east fence lines where facing other uses and where not precluded by overhead power transmission lines and rail lines. This standard is not met but can be met through a variance to buffering and screening requirements. Perimeter plantings are also proposed south of the paved permanent laydown yard south of the driveway.

3. *Buffer areas shall be limited to utilities, screening, pedestrian and bicycle paths, and landscaping. No buildings, roads, or parking areas shall be allowed in a buffer area.*

Finding 66: As depicted on Attachment 2c, Sheet L1.10, no buildings, roads, or parking are proposed in the required buffers along the south and east boundaries. This standard is met.

4. *The minimum improvements within a buffer area shall include:*
    a. *One row of trees, or groupings of trees equivalent to one row of trees. At the time of planting, these trees shall not be less than 10 feet high for deciduous trees and 5 feet high for evergreen trees, measured from the ground to the top of the tree after planting. Spacing of trees at maturity shall be sufficient to provide a year round buffer.*
    b. *In addition, at least one 5-gallon shrub shall be planted for each 100 square feet of required buffer area.*
    c. *The remaining area shall be planted in grass or ground cover, or spread with bark mulch or other appropriate ground cover (e.g. round rock). Pedestrian and bicycle paths are permitted in buffer areas.*

Finding 67: As depicted on Attachment 2c, Sheets L1.10 and L1.11, the proposed buffers will have a row of trees, shrubs, and groundcover, except in locations where a variance is requested due to PGE requirements. Should a variance be approved, this standard is met.

C. Screening Requirements

1. *Where screening is required, the following standards shall apply in addition to those required for buffering:*
    a. *A hedge of evergreen shrubs shall be planted which will form a four-foot high continuous screen within two years of planting; or,*
    b. *An earthen berm planted with evergreen plant materials shall be provided which will form a continuous screen six feet in height within two years. The unplanted portion of the berm shall be planted in lawn, ground cover or bark mulch; or,*
    c. *A five foot or taller fence or wall shall be constructed to provide a continuous sight obscuring screen. Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, brick, or other materials approved by the Director. Corrugated metal is not an acceptable fencing material. Chain link fences with slats may be used if combined with a continuous evergreen hedge.*

Finding 68: The applicant has requested a variance to buffering and screening requirements in order to meet PGE and Homeland Security requirements. Please see variance findings under Section 1504.

2. *When the new use is downhill from the adjoining zone or use being protected, the prescribed heights of required fences, walls, or landscape screening along the common property line shall be measured from the actual grade of the adjoining property at the common property line. This requirement may be waived by the adjacent property owner.*

Finding 69: Adjoining properties are at the same elevation as the proposed use. This standard does not apply.

3. *If four or more off-street parking spaces are required, off-street parking adjacent to a public road shall provide a minimum of four square feet of landscaping for each lineal foot of street frontage. Such landscaping shall consist of landscaped berms or shrubbery at least 4 feet in total height at maturity. Additionally, one tree shall be provided for each 50 lineal feet of street frontage or fraction thereof.*

Finding 70: All proposed parking areas are at least a third of a mile from Hermo Road. Therefore, no screening is required between parking areas and the road.

4. *Landscaped parking areas may include special design features such as landscaped berms, decorative walls, and raised planters.*

Finding 71: No berms, walls, or raised planters are proposed in the parking area landscaping.

5. *Loading areas, outside storage, and service facilities must be screened from adjoining properties.*

Finding 72: A variance for screening is proposed to meet Homeland Security-related sight line regulations.

D. Fences and Walls

1. *Fences, walls or combinations of earthen berms and fences or walls up to four feet in height may be constructed within a required front yard. Rear and side yard fences, or berm/fence combinations behind the required front yard setback may be up to six feet in height.*
2. *The prescribed heights of required fences, walls, or landscaping shall be measured from the lowest of the adjoining levels of finished grade.*
3. *Fences and walls shall be constructed of any materials commonly used in the construction of fences and walls such as wood, brick, or other materials approved by the Director. Corrugated metal is not an acceptable fencing material. Chain link fences with slats may be used if combined with a continuous evergreen hedge.*
4. *Re-vegetation: Where natural vegetation or topsoil has been removed in areas not occupied by structures or landscaping, such areas shall be replanted to prevent erosion.*

Finding 73: As illustrated on Attachment 2c, Sheet C1.11, the applicant proposes to surround the majority of the facility (except for the office area) with seven-foot-high chain link fencing topped by one foot of barbed wire per ASTM F2611-15 for security as required by U.S. Department of Homeland Security requirements (see Attachments 4 and 6b). The applicant is seeking a variance to authorize fencing taller than the specified six-foot limit and to authorize chain link without slats and without a continuous an evergreen hedge due to the need to maintain sight lines to the facility. With the approval of the variance request, this standard is met.

1563 Standards for Approval:

The Planning Commission or Director shall make a finding with respect to each of the following criteria when approving, approving with conditions, or denying an application:

A. Flood Hazard Areas: See CCZO §1100, Flood Hazard Overlay Zone. All development in Flood Hazard Areas must comply with State and Federal Guidelines.

Finding 74: CCZO Section 1102 identifies the "Area of Special Flood Overlay" as "the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V." According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map 41009C0050D, dated November 26, 2010, the site is in shaded Zone X, which is outside the Special Flood Hazard Area (see Attachments 2d & 3d). Therefore, the Board can find that this standard does not apply.

B. Wetlands and Riparian Areas: Alteration of wetlands and riparian areas shall be in compliance with State and Federal laws.

Finding 75: As detailed in the responses to Sections 1170 and 1180, proposed development in this application impacts the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone and the Wetland Area Overlay. The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and has proposed off-site wetland mitigation south of the site. Staff recommends a condition requiring approval from the Army Corps of Engineers and DSL prior to issuance of any development permits.

C. Natural Areas and Features: To the greatest practical extent possible, natural areas and features of the site shall be preserved.

Finding 76: The applicant is proposing a renewable diesel production facility as permitted in the RIPD zone under prescribed conditions. The site contains mapped NWI wetlands; the applicant also identified delineated wetlands extending across most of the main facility site. All wetlands on the main facility site are proposed for removal. There are no other significant natural areas or features on the site. As detailed in the responses to Sections 1120, 1185, and 1190, the site is outside the Sensitive Bird Habitat Overlay, Natural Area Overlay, and Big Game Habitat Overlay. The applicant will perform stormwater management in accordance with applicable standards (as outlined in the stormwater report, Attachment 2m) and will obtain all necessary environmental permits to minimize impacts on off-site natural areas and features.

D. Historic and Cultural sites and structures: All historic and culturally significant sites and structures identified in the ~~1984~~ Comprehensive Plan, or identified for inclusion in the County Periodic Review, shall be protected if they still exist.

Finding 77: Historic and culturally significant sites and structures are identified in Article XI of the Comprehensive Plan. None of the listed sites and structures are on or adjacent to the site. This standard does not apply.

E. Lighting: All outdoor lights shall be shielded so as to not shine directly on adjacent properties and roads.

Finding 78: Proposed lighting will be provided as illustrated in Attachment 2c, Sheets C1.50 and C1.51. Light fixtures are proposed to be shielded and placed far enough from property lines so they focus light on the work area rather than casting light on adjoining properties or public streets. This standard is met.

F. Energy Conservation: Buildings should be oriented to take advantage of natural energy saving elements such as the sun, landscaping and land forms.

Finding 79: The proposed buildings will be oriented along axes corresponding to cardinal directions, allowing for solar effects to the east, south, and west faces. The site is relatively flat so slopes do not affect building orientation.

G. Transportation Facilities: Off-site auto and pedestrian facilities may be required by the Planning Commission, Planning Director or Public Works Director consistent with the Columbia County Road Standards and the Columbia County Transportation Systems Plan.

Finding 80: The TIA (Attachment 2n) found that all study intersections meet applicable Columbia County, Oregon Department of Transportation, and City of Clatskanie mobility standards in 2020, in 2024 without NEXT Renewable Fuels, and in 2024 with NEXT Renewable Fuels and improvements to Hermo Road as proposed by the Applicant. The TIA did not identify a need for mitigation strategies. Hermo Road is currently gravel near the site but the County has a planned project (TSP Project #9) to improve the road from Quincy Mayger Road to just west of the existing rail spur south of the PGE site. The Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road through a proposed condition of approval.

There is an existing paved roadway from Kallunki Road to the PGE Beaver Generation site and this road has an existing paved rail crossing. The applicant's proposed secondary driveway is the existing gravel driveway that connects to this existing paved roadway west of the rail line, so no rail improvements are required. No changes are proposed to this existing paved roadway or rail crossing. Attachment 2c, Sheet C1.11 specifies that the secondary driveway will be 20 feet wide and surfaced with gravel. Final design of signage and gates will be deferred to the building permit stage of the project, though conceptual wording of the "emergency access only" signage is shown on Sheet C1.40.

1564 Final Site Plan Approval:

If the Planning Director or Planning Commission approves a preliminary site plan, the applicant shall finalize all the site drawings and submit them to the Director for review. If the Director finds the final site plan conforms with the preliminary site plan, as approved by the Director or Planning Commission, the Director shall give approval to the final site plan. Minor differences between the preliminary site plan and the final site plan may be approved by the Director. These plans shall be attached to the building permit application and shall become a part of that permit.

Finding 81: The preliminary site plan, once approved, is forwarded to the County Building Official and other departments. Its contents dictate their review and standards. As such the final site plan shall be approved only if it conforms to the preliminary site plan reviewed and approved by the Board. In addition, the County Building Official will require the project to comply with all applicable requirements of the County Codes related to Building, Safety and Fire Protection Standards in effect at the time of building permit applications. Staff finds that the criteria in Section 1563 will be met with conditions.

Section 200 GENERAL PROVISIONS

215 Ingress and Egress:

Every use of property shall hereafter have a defined point of usable ingress and egress onto any street. Such defined points of access shall be approved at the time of issuance of a building permit.

Finding 82: As depicted on Attachment 2c, Sheets G0.01 and C1.13, the proposed development will utilize a driveway to Hermo Road as its primary access point, with secondary emergency egress to Kallunki Road. Each of these serves as a defined ingress and egress point. This standard is met.

Section 1300 SIGNS

1301 Use:

No sign may be established, altered, or expanded hereafter in any district in Columbia County, except in accordance with the provisions outlined in this Section. The sign provisions apply to signs established in conjunction with any use in the county.

Finding 83: Prior to sign installation, the applicant will obtain all necessary permits and submit signage designs to County staff for review where required by code.

1302 General Provisions:

.1 Design Review: In addition to complying with the standards in this Section, the design and color of commercial and industrial signs and supporting structures of signs 100 square feet or larger in size shall be compatible with the architectural design and color of existing and proposed buildings on the site as determined during site design review according to the provisions of Section 1550 of this Ordinance.

Finding 84: The applicant is not proposing any signage over 100 square feet. See Attachment 2c, Sheet C1.40. This standard does not apply.

.2 Setbacks:

A. All signs shall be situated in a manner so as not to adversely affect safety, corner vision, or other similar conditions and shall not overhang or encroach upon public rights of way.

Finding 85: As illustrated in Attachment 2c, Sheet C1.40, no signage is proposed in locations that affect vehicle sight lines or overhang or encroach upon Hermo Road or Kallunki Road. This standard is met.

B. Unless otherwise specified, all signs in residential zoning districts shall observe the yard setback requirements of the zoning district in which they are located.

Finding 86: The site is not in a residential zoning district. This standard does not apply.

C. No setbacks from property lines shall be required for signs in non-residential zoning districts except that in all zoning districts, setbacks shall be required at corners as may be necessary to provide adequate corner vision or in cases where a sign is placed adjacent to a street, as provided is 1302.2(D), below.

Finding 87: As illustrated in Attachment 2c, Sheet C1.40, no signage is proposed in locations that obstruct corner vision. This standard is met.

D. Setbacks shall be required which comply with setback requirements of the abutting residential zoning district when a sign is placed on a parcel abutting a street (except Highway 30), which separates a non-residential parcel from a residential parcel or when a sign is placed on a property line separating a nonresidential parcel from a residential parcel.

Finding 88: The site does not abut a residential zoning district and is not near a residential parcel. This standard does not apply.

.3 Visual Obstructions: No sign shall be situated in a manner which results in the complete visual obstruction of an existing sign.

Finding 89: There are no existing signs in the vicinity of the site. This standard does not apply.

.4 Illuminated Signs: Artificially illuminated signs, or lights used to indirectly illuminate signs, shall be placed, shielded, or deflected so as not to shine into residential dwelling units or structures. The light intensity of an illuminated sign shall not exceed the following standards:

A. No exposed reflective type bulb, par spot or incandescent lamp, which exceeds twenty-five (25) Watts, shall be exposed to direct view from a public street or highway, but may be used for indirect light illumination of the display surface of a sign.

Finding 90: As depicted on Attachment 2c, Sheet C1.40, the proposed sign near Hermo Road will be externally illuminated. The proposed LED lamps will be shielded so as not to be directly visible from the street. This standard is met.

B. When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing shall not exceed three hundred (300) milliamperes rating for white tubing or one hundred (100) milliamperes rating for any colored tubing.

Finding 91: No neon tubing is proposed. This standard does not apply.

C. When fluorescent tubes are used for the interior illumination of a sign […]

Finding 92: No fluorescent tubes are proposed. This standard does not apply.

.6 Sign Clearance: A minimum of 8 feet above sidewalks and 15 feet above driveways shall be provided under free-standing signs.

Finding 93: As illustrated in Attachment 2c, Sheet C1.40, no signage is proposed over sidewalks or driveways. All signage will be monument signage. This standard does not apply.

1313 Commercial and Industrial Districts:

.1 Signs Permitted: Signs shall be permitted in Commercial and Industrial zoning districts subject to the provisions of this Section, except to the extent such provisions conflict with the specific development standards for signs in the underlying zoning district.

Finding 94: Prior to sign installation, the applicant will obtain all necessary permits and submit signage designs to County staff for review where required by code. The RIPD zone has no specific development standards for signage and instead to defers to the provisions of Section 1300.

.2 Limit on Sign Area: Except as otherwise permitted in Section 1302.5, no sign having a sign area greater than 200 square feet shall be permitted.

Finding 95: As illustrated in Attachment 2c, Sheet C1.40, no sign over 200 square feet is proposed. This standard is met.

.3 Aggregate Sign Area Per Parcel.

A. Except as otherwise provided herein, the maximum permitted area of all signs, including the total area of each face of a double-faced sign, or the sole face of a single faced sign for each parcel, is as follows: 40 square feet; plus

1)For the first fifty (50) linear feet of building frontage on a public road, an additional square foot of sign area per linear foot of building frontage on such public road; plus

2)For the next two hundred and twenty (220) linear feet of building frontage on a public road, an additional one-half (½) square foot of sign area per linear foot of building frontage on such public road.

B. For the purpose of this section, "building frontage" means the linear length of a building facing a public right of way or the linear length of the public right of way facing a building, whichever is smaller.

Finding 96: This standard allows the site to have 40 square feet of signage plus an additional 160 square feet for the 285 feet of buildings facing Hermo Road, for a total allowable sign area of 200 square feet. The proposed signage depicted on Attachment 2c, Sheet C1.40 will have a total area of approximately 65 square feet. This standard is met.

C. The area of any legal non-conforming sign which is greater than 200 square feet in size shall not be included in the calculation of maximum sign area per parcel under this Section.

Finding 97: The site has no existing signage. This standard does not apply.

D. The area of any temporary sign permitted under 1313.7 shall not be included in the calculation of maximum sign area per parcel under this section.

Finding 98: Any temporary signage will be permitted in accordance subsection 1313.7, irrespective of the area limits for permanent signage.

.4 Free Standing Signs: Free standing signs, including ground mounted signs, must comply with the following additional standards:

A. Height: Free standing signs shall not exceed 20 feet in height above grade or above road grade, whichever is higher.

Finding 99: The proposed signage depicted on Attachment 2c, Sheet C1.40 will have a height of approximately 4 feet. This standard is met.

B. Total Area: The total sign area of all freestanding signs allowed by this section plus the area of all other allowed signs on the parcel shall not exceed the aggregate sign limits for the parcel as provided in Section 1313.3.

Finding 100: Section 1313.3 allows up to 200 square feet of signage at this location. The proposed signage depicted on Attachment 2c, Sheet C1.40 will have a total area of approximately 65 square feet. This standard is met.

C. Center/Complex Signs: Only one freestanding sign shall be allowed for a center/complex even when there is more than one parcel in or owner of the center/complex, unless one additional sign is needed to provide identification of the development at a major public access point on a different roads. No more than two freestanding signs will be allowed. For purposes of this Section, "Center/Complex" means any number of businesses greater than one which share the same site using common points of ingress and egress and/or common parking facilities. Legal non-conforming signs shall not be included in the calculation of the number of freestanding signs per parcel under this Section.

Finding 101: No center/complex signage is proposed. This standard does not apply.

D. Illumination: Free standing signs may be illuminated subject to subsection 1302.4.

Finding 102: Compliance with the illumination standards is addressed in the response to subsection 1302.4. This standard is met.

.5 Building Mounted Signs: Signs mounted or painted on buildings must comply with the following additional standards:

A. Area. The total sign area of all building mounted signs allowed pursuant to this section in addition to the area of all other allowed signs per parcel shall not exceed the aggregate sign limits for the parcel as provided in section 1313.3.
B. Height. Building mounted signs shall not extend more than four (4) feet above the roof of the building on which it is mounted.
C. Illumination. Building mounted signs may be illuminated subject to the illumination standards set forth in subsection 1302.4.

Finding 103: The applicant may later choose to paint a logo on one or more tanks. If the County classifies a logo on a tank as a building sign, the applicant will seek the appropriate permits prior to installation.

.6 Traffic Control/Directional Signs: On-site traffic control and directional identification signs shall be required as may be necessary, commensurate with the size and use of the site, in conjunction with site design review, if such review is required. Centers/ complexes combining several uses shall provide tenant directories, or building identification and directional signing oriented toward on-site vehicle and pedestrian circulation.

Finding 104: No directional signs are needed for the facility with the exception of the information proposed on the signage depicted on Attachment 2c, Sheet C1.40. The applicant proposes to defer internal site signage design to the permitting stage to provide the opportunity for coordination with the Fire Marshal. The anticipated protocol is that emergency responders would be escorted by facility staff from the security gate to any locations requiring assistance. This standard is met.

.7 Temporary Signs. Signs of a temporary nature may be allowed provided they meet the following standards. For purposes of this section, "temporary" shall mean not to exceed one year.
A. The temporary sign area shall not exceed 60 square feet.
B. The temporary sign shall observe the setback provisions under subsection 1302.2.
C. Only one temporary sign shall be permitted per parcel.
D. The temporary sign shall not be artificially illuminated.
E. The temporary sign shall be removed from the premises after the one year temporary sign period has expired.

Finding 105: Any temporary signage will be permitted in accordance with this section.

.8 Animated or Video Signs Prohibited: No sign shall contain, include, or be illuminated by any flashing, intermittent, revolving, rotating, or moving light or move or have any animated or moving parts except that this Section shall not apply to:
A. Traffic control signs.
B. Signs, displays, devices, or portions thereof with lights that may be changed at intermittent intervals by electronic process or remote control. The maximum size of the display area for such changing numbers or letters is ten (10) square feet.

Finding 106: No animated or video signs are proposed. This standard is met.

1314 Calculating Sign Area:

The structure supporting or appearing to support a freestanding sign shall not be included in the area of the sign, unless such structural element is typically used to carry signage. In calculating the square footage of a sign, the width shall be measured at the widest part of the sign, including any cut-outs, and the length shall be

measured at the longest part of the sign, including any cut-outs. The maximum square footage limitation of the sign shall be calculated such that no cutouts or other Copy shall be permitted outside of the size limitation.

Finding 107: The proposed signage depicted in Attachment 2c, Sheet C1.40 has been measured in accordance with this provision.

1315 Copy Area:

Copy is allowed only on the face of the sign. Copy is prohibited in the ledger area of the sign, on the post of the sign, or other structure of the sign, except to the extent that the sign owner's logo or other disclosure is required by law to be placed on the ledger, post or other structure of the sign. For purposes of this Section, "copy" is defined as any text or image.

Finding 108: The proposed signage depicted in Attachment 2c, Sheet C1.40 has been designed in accordance with this provision.

Section 1400 OFF-STREET PARKING AND LOADING

1401 General Provisions:

At the time of the erection of a new building, or an addition to an existing building, or any change in the use of an existing building, structure, or land which results in an intensified use by customers, occupants, employees, or other persons, off-street parking and loading shall be provided according to the requirements of this section.

Finding 109: The applicant proposes to provide parking and loading for the new facility for the convenience of site users and employees. As detailed below, the proposed parking and loading conforms to applicable code standards. This standard is met.

1402 Continuing Obligation:

The provisions for and maintenance of off-street parking and loading facilities shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance, or regulation shall be issued with respect to off street parking and loading, or land served by such land, until satisfactory evidence is presented that the property is, and will remain, available for the designated use as a parking or loading facility.

Finding 110: The applicant acknowledges the ongoing responsibility to maintain the parking and loading areas. This standard is met.

1403 Use of Space:

.1 Required parking spaces shall be available for parking of vehicles of customers, occupants, and employees.

Finding 111: The applicant proposes to construct the parking areas illustrated in Attachment 2c, Sheets C1.11 and C1.12 for use by vehicles of site users as required. Most of the proposed parking is located on the southeast portion of the site, near the main office building, with the balance near the central control building. This standard is met.

.2 No parking of trucks, equipment, or the conduct of any business activity shall be permitted on the required parking spaces.

Finding 112: The applicant does not propose to park trucks or equipment in the required off-street parking spaces. This standard is met.

.3 Required loading spaces shall be available for the loading and unloading of vehicles concerned with the transportation of goods and services.

Finding 113: The applicant proposes to construct truck loading areas including docks on the warehouse building as illustrated in Attachment 2c, Sheets C1.11 and C1.12. This standard is met.

.4 Excepting residential and local commercial districts only, loading areas shall not be used for any other purpose than for loading and unloading.

Finding 114: The applicant does not propose to utilize loading areas for any use other than loading. This standard is met.

.5 In any district it shall be unlawful to store or accumulate goods in a loading area in a manner which would render the area temporarily or permanently incapable of immediate use for loading operations.

Finding 115: The applicant does not propose to serve store goods in a loading area in such a way that the loading spaces become unusable. As illustrated in Attachment 2c, Sheets C1.11 and C1.12, the applicant proposes outdoor storage areas which are separate from loading areas. This standard is met.

1404 Joint Usage of Facilities:

Owners of two or more uses, structures, or parcels of land may agree to utilize jointly the same parking and loading spaces when hours of operation do not overlap, provided that satisfactory legal evidence is presented to the Planning Director in the form of deeds, leases, or contracts securing full access to such parking or loading areas for all the parties jointly using them.

Finding 116: The applicant does not propose to share parking spaces with uses on other sites. This standard does not apply.

1405 Plans Required:

A plot plan shall be submitted in duplicate to the Director with each application for a building permit or for a change of classification to OP. The plot plan shall include the following information:

.1 Dimensions of the parking lot.
.2 Access to streets and location of curb cuts.
.3 Location of individual parking spaces.
.4 Circulation pattern.
.5 Grade and drainage.
.6 Abutting property.
.7 A landscaping plan which shall include the location and names of all vegetation, and the location and size of fencing or other screening material. This plan shall be approved by the Director.

Finding 117: The proposed site plan depicts the parking areas in Attachment 2c, Sheets C1.11 and C1.12, while Sheet C1.20 depicts proposed grading and Sheets L1.10-L1.11 depict proposed landscaping. This standard is met.

1406 Location:

.1 Spaces required by this section shall be provided on the site of the primary uses, provided that, when practical difficulties prevent their establishment upon the same site, the Planning Director may permit the facility to be located within 300 feet therefrom, measured in a straight line (including streets and alleys) from the nearest property line to the nearest parking space; but in any case the location shall meet all provisions of this ordinance which apply.
.2 Loading spaces and maneuvering area shall be located only on or abutting the property served.

Finding 118: As illustrated on Attachment 2c, Sheet C1.11 and C1.12, parking and loading spaces are proposed within the site boundaries. Truck turning diagrams are included where necessary to demonstrate that adequate clearance has been provided. This standard is met.

1407 Change of Use:

In case of enlargement or change of use, the number of parking or loading spaces required shall be based upon the total area involved in the enlargement or change in use.

Finding 119: No enlargement or change of use is proposed as the site currently has no structures or parking areas. This standard does not apply.

1408 Design Standards:

.1 Scope:

A. These design standards shall apply to all parking, loading, and maneuvering areas except those for single and two-family residential dwellings on individual lots.

B. All parking and loading areas shall provide for the turning, maneuvering, and parking of all vehicles on the lots.

Finding 120: As illustrated on Attachment 2c, Sheet C1.11, parking and loading areas are proposed with widths adequate to allow for efficient site circulation of vehicles. Truck turning diagrams are included where necessary to demonstrate that adequate clearance has been provided. This standard is met.

1409 Loading Spaces:

.1 Apartment: Each required space shall be at least 12 feet in width and 25 feet in length.
.2 Commercial: Each required space shall be at least 12 feet in width and 35feet in length.
.3 Industrial: Each required space shall be at least 12 feet in width and 60 feet in length.
.4 Clearance: The height of each required loading space shall provide a minimum vertical clearance of 13 feet.

Finding 121: As illustrated on Attachment 2c, Sheet C1.12, in conformance with the Industrial standard noted above, three loading dock spaces are proposed on the warehouse, with widths exceeding 12 feet and lengths of 60 feet and no limitations on vertical clearance. This standard is met.

1410 Size:

.1 The standard size of a parking space shall be 9 feet by 18 feet.
.2 Handicapped parking spaces shall be 12 feet by 18 feet.
.3 Parallel parking, the length of the parking space shall be increased to 22 feet.

Finding 122: As illustrated on Attachment 2c, Sheet C1.12, all standard parking spaces are proposed to be 9 feet wide and 18 feet long, while handicapped parking spaces are proposed to be 9 feet wide and 18 feet long with 9-foot access aisles. No parallel parking spaces are proposed. This standard is met.

1411 Aisles:

Aisles shall not be less than:
.1 25'0" in width for 90 degree parking;
.2 20'0" in width for 60 degree parking;
.3 20'0" in width for 45 degree parking; and
.4 12'0" in width for parallel parking.

Finding 123: As illustrated on Attachment 2c, Sheet C1.12, all parking areas are proposed to utilize 90-degree parking with aisles at least 25 feet wide. This standard is met.

1412 Access:

There shall be no more than one 45-foot-wide curb cut driveway per 150 feet of street frontage, or fraction thereof, permitted per site.

Finding 124: As illustrated on Attachment 2c, Sheet C1.13, the proposed driveway will utilize a 45-foot curb cut to Hermo Road. Mackenzie civil engineers have performed truck turning simulations to confirm that the driveway connection has adequate width for incoming and outbound vehicles. This standard is met.

1413 Surfacing and Marking:

.1 The surfacing of each parking area shall meet minimum County standards to handle the weight of the vehicles which will use the parking area. All areas used for parking and maneuvering of vehicles shall be marked in accordance with the approved plan and such marking shall be continuously maintained. Handicapped parking spaces shall be marked with a wheelchair symbol.

.2 The parking and loading areas for commercial, industrial, or apartment uses shall be paved with concrete, asphaltic concrete, or another comparable surface.

Finding 125: The proposed driveway and all parking areas will be hard-surface paved, with parking spaces marked with paint and handicapped spaces marked in accordance with the Oregon Structural Specialty Code. This standard is met.

1414 Drainage and Lighting:

Adequate drainage shall be provided to dispose of the run-off generated by the impervious surface area to the parking area. The drainage system shall function so it will not adversely affect adjoining property.

Artificial lighting shall be provided in such a manner as to insure the safety of the parking area without interfering with adjoining properties or creating traffic hazards on adjoining streets.

Finding 126: The proposed grading and drainage patterns are depicted in Attachment 2c, Sheets C1.20 and C1.30, respectively. Stormwater will flow into catch basins in the parking area before being conveyed to the wastewater treatment facility at the north end of the site, which will discharge to the existing Port Westward stormwater system. Further discussion of stormwater management is included in Attachment 2m.

Parking lot lighting will be provided as illustrated in Attachment 2c, Sheets C1.50 and C1.51; light fixtures are proposed to be placed far enough from property lines so they will not cast light on adjoining properties or public streets. This standard is met.

1415 Parking Areas:

All parking areas, excluding one and two-family dwellings, shall meet the following requirements:

.1 All parking areas of less than 20 parking spaces shall have one handicapped parking space.

Parking areas with more than 20 spaces shall provide one handicapped parking space for every 50 standard parking spaces.

Finding 127: The proposed handicapped spaces will be provided at the rate specified in the Oregon Structural Specialty Code, which is higher than that required by this code provision. This standard is met.

.2 All parking areas shall be divided into bays of not more than 20 parking spaces. Between, and at the end of each parking bay, there shall be planters which have a minimum width of 5 feet and be at least 17 feet in length. Each planter shall contain one major structural tree and ground cover which has been deemed appropriate by the Director. Truck loading areas need not comply with the preceding requirements.

Finding 128: As illustrated on Attachment 2c, Sheet C1.12, the proposed parking area utilizes landscape islands to separate the space into bays with 20 or fewer spaces. Landscaping is provided in each of the planter bays as illustrated on Attachment 2c, Sheet L1.11. This standard is met.

.3 Parking areas shall be separated from the exterior wall of a structure, exclusive of paved pedestrian entranceways, by a 5 foot strip of landscaping.

Finding 129: As illustrated on Attachment 2c, Sheet C1.12, all proposed parking areas are at least five feet from buildings, with sidewalks provided between the parking and buildings as illustrated on Attachment 2c, Sheets C1.11 and C1.12. Since these sidewalks are paved, landscaping is not required between the parking and the building. This standard is met.

.4 Industrial or commercial parking areas, which abut a residential or apartment district, shall meet the building setback of the most restrictive adjoining residential or apartment district.

Finding 130: The site does not abut a residential or apartment district. This standard does not apply.

.5 When industrial or commercial parking areas adjoin a residential or apartment district, there shall be a sight obscuring planting, which is at least 80 percent opaque and when viewed horizontally from between 2 and 8 feet above ground level. This planting shall be composed of materials which are an adequate size so as to achieve the required degree of screening within 12 months after installation.

Finding 131: The site does not adjoin a residential or apartment district. This standard does not apply.

.6 Parking areas shall be set back from a lot or parcel line adjoining a street. The setback area shall be landscaped.

Finding 132: As illustrated on Attachment 2c, Sheets G0.01 andC1.11, the parking area is proposed on TL 8422-00-00300, which does not have a lot line adjoining a street. This standard is met.

.7 All parking area setbacks shall be landscaped with major trees, shrubs, and ground cover as approved by the Director.

Finding 133: No parking area setback is required as noted above. This standard is met.

.8 A minimum of 10 percent of the parking area shall be landscaped and maintenance of the landscaping shall be the owner's responsibility.

Finding 134: Based on the parking area and landscape areas denoted on Attachment 2c, Sheet L1.10, the north parking lot will include 46% landscaping, the southern parking lot will include 20% landscaping, and the central control building parking lot will include 32% landscaping. The applicant acknowledges the continuing obligation to maintain landscaping. This standard is met.

.9 Internal pedestrian connections shall be provided in parking lots with greater than ten (10) parking spaces. These connections shall be a minimum of five (5) feet wide and distinguished from vehicular areas through changes in elevation or contrasting paving materials (such as light-color concrete inlay between asphalt). Paint or thermo-plastic striping and similar types of non-permanent applications may be approved for crossings of parking lot areas that do not exceed 24 feet in crossing length.

Finding 135: As illustrated on Attachment 2c, Sheet C1.12, parking lots have more than 10 parking spaces and thus provide the required pedestrian connections. The pedestrian connections are five feet wide. This standard is met.

.10 In urban growth boundaries and urban unincorporated communities, parking lots for commercial, industrial, and public/quasi-public uses that have designated employee parking and more than 20 parking spaces shall provide at least 10% of the employee parking spaces (with a minimum of two spaces) as preferential long-term carpool and vanpool parking spaces. Preferential carpool and vanpool parking spaces shall be closer to the entrances of the building than other parking spaces, with the exception of ADA accessible parking spaces.

Finding 136: The site is not within an urban growth boundary and is not within an urban unincorporated community. This standard does not apply.

.11 A portion of existing parking areas may be redeveloped for transit-oriented improvements, such as a bus stops and pullouts, bus shelters, park and ride stations, transit-oriented developments, and similar facilities, where identified in or consistent with an adopted County transit plan. Subject sites incorporating transit improvements as part of a development proposal are eligible for up to a 10% reduction in required vehicular parking spaces.

Finding 137: The site does not have an existing parking area, and no transit improvements are proposed. This standard does not apply.

1416 Minimum Required Off-Street Parking Space:

.5 Industry
Manufacturing: One space per employee on the largest shift.

Finding 138: Estimated staffing levels by shift are denoted in the table below.

ESTIMATED STAFFING LEVELS				
Weekdays			Weekends	
Office/Mgt.	Shift 1	Shift 2	Shift 1	Shift 2
8:00 AM – 5:00 PM	6:00 AM – 6:00 PM	6:00 PM – 6:00 AM	6:00 AM – 6:00 PM	6:00 PM – 6:00 AM
83	35	35	35	35

Based on this information, the largest shift will occur weekdays between 8:00 AM and 5:00 PM, during which time there will be a total of 118 employees. As illustrated on Attachment 2c, Sheets C1.11 and C1.12, the applicant proposes 128 parking spaces which meets the standard of at least one space per employee of the largest shift. This standard is met.

1417 Unspecified Uses:

Any use not specifically listed in the foregoing list shall have the requirements of the listed use or uses deemed equivalent by the Director.

Finding 139: The proposed manufacturing use has a parking ratio specified in Section 1416. This standard does not apply.

1418 Minimum Required Off-Street Loading Spaces:

.3

MINIMUM REQUIRED OFF-STREET LOADING SPACES (EXCERPT)		
USE	SQUARE FEET OF FLOOR USE OR LAND AREA	MINIMUM LOADING SPACES REQUIRED
Manufacturing, Wholesale Storage or Hospital	under 5,000	0
	5,000 - 39,999	1
	40,000 - 99,999	2
	100,000 - 159,999	3
	160,000 - 239,999	4
	240,000 - 319,999	5
	320,000 - 399,999	6
	400,000 - 489,999	7
	490,000 - 579,999	8
	580,000 - 669,999	9
	670,000 - 759,999	10
	760,000 - 849,999	11
	850,000 - 939,999	12
	940,000 - 1,029,999	13
	over 1,030,000	14

Finding 140: As noted on Attachment 2c, Sheet C1.11, the combined floor area for the proposed buildings is approximately 78,330 square feet. Based on the table above, the facility therefore will need at least two loading spaces. The applicant proposes loading docks on the warehouse building to serve loading needs, together with multiple outdoor storage areas and rail loading/unloading areas. The proposed loading dock area shown on Attachment 2c, Sheet C1.12 can accommodate three trucks. This standard is met.

1419 Minimum Required Bicycle Parking Spaces:

.1 All Public and Semi-Public buildings and uses, Retail uses, Apartment Dwelling uses and Commercial Recreation uses […]

.2 The following are the required number of bicycle parking spaces: […]

.3 Single-family dwellings, mobile homes, warehouse, storage and wholesale businesses, and manufacturing establishments shall be exempted from the requirements of Subsection 1419 Bicycle Parking.

Finding 141: The proposed manufacturing use is exempt from providing bicycle parking via criterion .3. This standard is met.

Section 1450 TRANSPORTATION IMPACT ANALYSIS

1450 Transportation Impact Analysis:

Transportation Impact Analysis (TIA) must be submitted with a land use application if the proposal is expected to involve one or more of the conditions in 1450.1 (below) in order to minimize impacts on and protect transportation facilities, consistent with Section 660-012-0045(2)(b) and (e) of the State Transportation Planning Rule.

.1 Applicability – A TIA shall be required to be submitted to the County with a land use application if the proposal is expected to involve one (1) or more of the following:

- *A. Changes in land use designation, or zoning designation that will generate more vehicle trip ends.*
- *B. Projected increase in trip generation of 25 or more trips during either the AM or PM peak hour, or more than 400 daily trips.*
- *C. Potential impacts to intersection operations.*
- *D. Potential impacts to residential areas or local roadways, including any nonresidential development that will generate traffic through a residential zone.*

E. Potential impacts to pedestrian and bicycle routes, including, but not limited to school routes and multimodal roadway improvements identified in the TSP.
F. The location of an existing or proposed access driveway does not meet minimum spacing or sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles are likely to queue or hesitate at an approach or access connection, thereby creating a safety hazard.
G. A change in internal traffic patterns may cause safety concerns.
H. A TIA is required by ODOT pursuant with OAR 734-051.
I. Projected increase of five trips by vehicles exceeding 26,000-pound gross vehicle weight (13 tons) per day, or an increase in use of adjacent roadways by vehicle exceeding 26,000-pound gross vehicle weight (13 tons) by 10 percent.

Finding 142: Mackenzie transportation engineers estimate that the proposed development will generate 667 weekday trips, 91 of which will occur in the AM peak hour and 84 of which will occur within the PM peak hour. Accordingly, the applicant has provided a TIA as required (Attachment 2n). This standard is met.

.2 Consistent with the County's Guidelines for Transportation Impact Analysis (TIA), a landowner or developer seeking to develop/redevelop property shall contact the County at the project's outset. The County will review existing transportation data to establish whether a TIA is required. It is the responsibility of the applicant to provide enough detailed information for the County to make a determination. An applicant should have the following prepared, preferably in writing:
A. Type of uses within the development
B. The size of the development C. The location of the development
C. Proposed new accesses or roadways
D. Estimated trip generation and source of data
E. Proposed study area

If the County cannot properly evaluate a proposed development's impacts without a more detailed study, a TIA will be required. The County will provide a scoping summary detailing the study area and any special parameters or requirements, beyond the requirements set forth in the County's Guidelines for Transportation Impact Analysis, when preparing the TIA.

Finding 143: The applicant's transportation engineers submitted a scoping letter for review and approval by Columbia County staff and Oregon Department of Transportation staff prior to commencing the TIA. The scoping letter identified those items that would be addressed as part of the analysis. This standard is met.

.3 Approval Criteria. When a TIA is required, a proposal is subject to the following criteria:
A. The TIA addresses the applicable elements identified by the County Public Works Director and the County's Guidelines for Transportation Impact Analysis;
B. The TIA demonstrates that adequate transportation facilities exist to serve the proposed development or, identifies mitigation measures that resolve identified traffic safety problems in a manner that is satisfactory to the County Public Works Director and, when state highway facilities are affected, to ODOT;
C. For affected non-highway facilities, the TIA establishes that mobility standards adopted by the County have been met; and
D. Proposed public improvements are designed and will be constructed consistent with County Road Standards and access spacing standards in the Transportation System Plan.

Finding 144: The project TIA (Attachment 2n) addresses those items identified in the scoping letter approved by County and ODOT staff to ensure compliance with approval standards. The TIA indicates that the proposed development will generate 667 weekday trips, 91 of which will occur in the AM peak hour and 84 of which will occur within the PM peak hour. The report analyzed traffic operations at six study area intersections in 2020 and in 2024, both with and without the proposed development.

The report found that all six study intersections meet applicable Columbia County, Oregon Department of Transportation, and City of Clatskanie mobility standards in 2020, in 2024 without NEXT Renewable Fuels, and in 2024 with NEXT Renewable Fuels and improvements to Hermo Road. The report also found that existing and future traffic queues can be accommodated within the existing storage areas at all study intersections. Based on this analysis, the TIA does not recommend any mitigation strategies as a result of the proposed facility.

The site does not abut any public rights-of-way but is near Hermo Road, which is classified as a local road in the 2017 Columbia County Transportation System Plan (TSP). The TSP recommends an optimum right-of-way width of 50 feet and an optimum roadway width of 28 feet (to accommodate ten-foot lanes and four-foot shoulders). The existing right-of-way width at the driveway location is 60 feet so no right-of-way dedication is merited. Hermo Road is currently gravel near the site but the County has a planned project (TSP Project #9) to improve the road from Quincy Mayger Road to just west of the existing rail spur south of the PGE site. The Applicant will satisfy Public Works requirements for necessary improvements to Hermo Road through a proposed condition of approval.

Based on the information noted above and the full TIA, the applicant has demonstrated compliance with the identified approval criteria.

.4 Conditions of Approval.

A. The County may deny, approve, or approve a proposal with conditions necessary to meet operational and safety standards; provide the necessary right-of-way for improvements; and to require construction of improvements to ensure consistency with the future planned transportation system.

B. Construction of off-site improvements may be required to mitigate impacts resulting from development that relate to capacity deficiencies and public safety; and /or to upgrade or construct public facilities to County Standards. Improvements required as a condition of development approval, when not voluntarily provided by the applicant, shall be roughly proportional to the impact of the development on transportation facilities. Findings in the development approval shall indicate how the required improvements directly relate to and are roughly proportional to the impact of development.

Finding 145: The Applicant proposes to satisfy Public Works requirements for necessary improvements to Hermo Road through a road improvement agreement. Staff recommends a condition of approval to ensure Public Works requirements are met.

Section 1500 DISCRETIONARY PERMITS (Variances)

1504 Variances:

Except as provided in Section 1504.4 below, there are 2 classes of variances to the standards established in this ordinance. A Minor Variance is defined as a request for a variance of less than 25% from a dimensional requirement such as setbacks, height, lot or parcel coverage, lot or parcel width, or lot or parcel depth, or a request for a variance of less than 10% from a minimum lot or parcel size requirement.

All other variances are defined as Major Variances. Use variances are not permitted under this ordinance except as permitted under Section 1505.1 "Temporary Permits: Use Not Allowed in District".

Major Variances from the lot or parcel size requirements of the Primary Agriculture (PA-38), Forest Agriculture (FA-19), Primary Forest (PF-76) and Rural Residential (RR-5) zones are not permitted under this ordinance.

Finding 146: To comply with PGE requirements and Department of Homeland Security regulations, the applicant is proposing a variance to screening and buffering standards by not planting trees under PGE powerlines, and proposing eight foot-fencing (seven feet of chain link topped by one foot of barbed wire per ASTM F2611-15) with no slats or associated plantings (see Attachment 2c, Sheet C1.11). As a result, the applicant is requesting a Major Variance from CCZO Section 1562.B and 1562.D, which includes requirements for buffering, and limits fences to four feet in height in front yards and six feet in height in rear and side yards and also specifies that chain link fences with slats may be used if combined with a continuous evergreen hedge. The applicant has provided evidence below responding to applicable approval criteria for the requested variance.

.1 Major Variances: The Planning Commission may permit and authorize a variance from the requirements of this ordinance when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest.

A. A variance shall be made only when all the following conditions and facts exist:

1. The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property;

Finding 147: Granting the proposed variance will help improve public safety and maintain health and welfare by ensuring that the facility complies with Department of Homeland Security fencing and sight-line regulations (see Attachments 4 and 6b). Security around the facility requires that the surrounding area be visible in order to detect any unauthorized persons attempting to enter the site. A chain link fence provides security with good visibility. By contrast, utilizing fencing that complies with CCZO Section 1562.D would create a security risk that could result in serious harm due to inadequate height and impaired sightlines. The proposed fencing will be located within the site boundaries and thus will not be injurious to other properties.

2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;

Finding 148: The proposed variance is unique in that the Port Westward Industrial Park is one of the locations in the County where a facility such as this could be authorized under the zoning designation. Other nearby areas outside Port Westward are in agricultural or rural residential use and thus do not require the type of security fencing and sight-lines necessary for a fuel production facility. The need for the variance is related to the unique security requirements of the facility.

3. Approval of the application will allow the property to be used only for purposes authorized by the Zoning Ordinance;

Finding 149: Approval of the proposed variance will have no effect on the types of uses occurring at the site; the applicant proposes a renewable diesel fuel production facility which is consistent with *Uses under Prescribed Conditions* in the RIPD zone.

4. Strict compliance with the Zoning Ordinance would create an unnecessary hardship;

Finding 150: Compliance with the standards of CCZO Section 1562.B and D would result in buffering and screening that does not comply with Department of Homeland Security regulations and could impact the viability of the facility.

5. The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor violate any other provision of the Zoning Ordinance.

Finding 151: This narrative demonstrates how the proposed use is consistent with applicable portions of the Comprehensive Plan and how the proposal complies with the CCZO. The proposed variance for buffering and screening does not adversely affect this determination of consistency. Rather, the variance will allow productive use of the land for which this site has been planned for many years. The variance will provide the requisite level of security without adversely affecting the objectives of the Comprehensive Plan or violating the CCZO.

B. A variance so authorized shall become void after the expiration of 1 year if the next step in the development process has not been applied for.

Finding 152: The applicant intends to seek appropriate approvals and permits prior to the specified expiration period.

C. The Planning Commission may impose whatever reasonable requirements it feels will fulfill the intent of this ordinance.

Finding 153: Based on the evidence that the proposed variance does not cause negative impacts on area properties, no additional requirements are necessary in this instance.

Criteria Specific to the Rail Branchline in the PA-80 Zone

Section 300 PRIMARY AGRICULTURE USE ZONE – 80 (PA-80)

301 Purpose:

The Primary Agriculture Zone or Exclusive Farm Use (EFU) This district is intended to preserve, enhance, and stabilize those prime agricultural lands and farm use areas within the County which are being used, and offer the greatest potential, for food and fiber production. This district also provides for open space, watershed protection, maintenance of clean air and water, and fish and wildlife habitat, including the creation, restoration and enhancement of wetlands.

303 Table of Authorized Uses and Development:

The following uses, activities and development are authorized in the Primary Agriculture Zone, subject to review and approval under applicable regulatory standards:

TABLE OF AUTHORIZED USES & DEVELOPMENT			
Roads, highways and other transportation facilities, requiring an exception	CUP/PC	CUP/PC	306.9, 307, 308

TRANSPORTATION – 306 CUP:

.9 Roads, Highways and other Transportation Facilities and Improvements as set forth in OAR 660-012-0065 related to Transportation Improvements on Rural Lands and not otherwise provided for in this Section, subject to adoption of an Exception to Statewide Planning Goal 3 and to any other applicable goal with which the facility or improvement does not comply, subject to compliance with Section 307, General Review Standards and Section 1503.

Finding 154: The application narrative provides the following response to this criterion:

> "The proposed rail branchline is a transportation facility subject to Conditional Use Permit approval. This narrative provides responses to the cited Sections 306.9, 307, and 308. However, it should be noted that contrary to the language in the table regarding such facilities "requiring an exception," no goal exception is required for this use pursuant to ORS 215.283(3), ORS 215.296, and OAR 660-012-0065. Those statutes and rules are discussed below, in the response to subsection 306.9."

The application continues:

> "Specifically, ORS 215.283(3) states that:
>
> *Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:*
>
> *(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or*
>
> *(b) ORS 215.296 (Standards for approval of certain uses in exclusive farm use zones) for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.*
>
> Criterion (b) refers both to ORS 215.296 and to the "…rules of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993." These rules are codified at OAR 660-012-0065, Transportation Improvements on Rural Lands, which states in part that:
>
> *(1) This rule identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with Goals 3, 4, 11, and 14 without a goal exception.*
>
> *(3) The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:*
>
> *(b) Transportation improvements that are allowed or conditionally allowed by ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993), 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) or OAR chapter 660, division 6 (Forest Lands);*
>
> *(j) Railroad mainlines and branchlines;*
>
> ORS 215.296, Standards for approval of certain uses in exclusive farm use zones, states that:

(1) A use allowed under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (2) or (11) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:
(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (2) or (11) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

The provisions above outline the rationale through which the rail branchline should be authorized by the County. The analysis required by ORS 215.296 is included in the response to Section 307.1, below."

Staff has questioned whether the proposed rail development constitutes a "mainline" or "branchline" because it serves one property and appears to function more like an accessory access and rail yard. In response, the Applicant has provided a letter from Portland and Western Railroad stating that the Applicant's tracks are "considered industry track, which is another term for branch line or spur." The letter goes on to say that "[a]s a general matter, 'branch line' is a broad term that encompasses any track that branches off from mainline track." As "branchline" and "mainline" are industry terms, and neither are defined in OAR 660-012, staff finds the applicant has provided evidence in Attachment 6h (Portland & Western Railroad Letter) that the proposed rail development can be classified as a rail branchline. If the Board finds that the proposed rail development is a rail branchline, the use does not require a goal exception as described in the applicant's submission.

307 General Review Standards:

.1 All uses in the Primary Agriculture Zone shall meet the review standards found in the above enabling Sections 304, 305 or 306. To also ensure compatibility with farming and forestry activities, the Planning Director, hearings body or Planning Commission shall determine that a use authorized by Sections 304, 305, or 306, except as specifically noted, shall meet the following requirements:

Finding 155: Findings for Section 307 generally begin by quoting large/entire sections of the applicant's narrative responses in order to capture the applicant's argument. These large quotes are followed by staff evaluation and findings. The application narrative addresses Section 307 criteria as follows:

"Consistent with the Oregon Supreme Court's ruling in *Stop the Dump Coalition v. Yamhill County*, this narrative provides a farm-by farm analysis for the farm impacts test. Two separate impact areas are examined: the first is the impact area associated with Branchline Section A (which extends from the Portland & Western Railroad mainline to the proposed renewable diesel production facility and the second is the impact area associated with Branchline Section B (which begins at the southern boundary of the proposed renewable diesel production facility and extends westward toward Hermo Road). The analysis then characterizes existing agricultural practices in the two impact areas and demonstrates that the proposed rail branchline does not violate either of the approval criteria in this subsection. Responses to each criterion are outlined below."

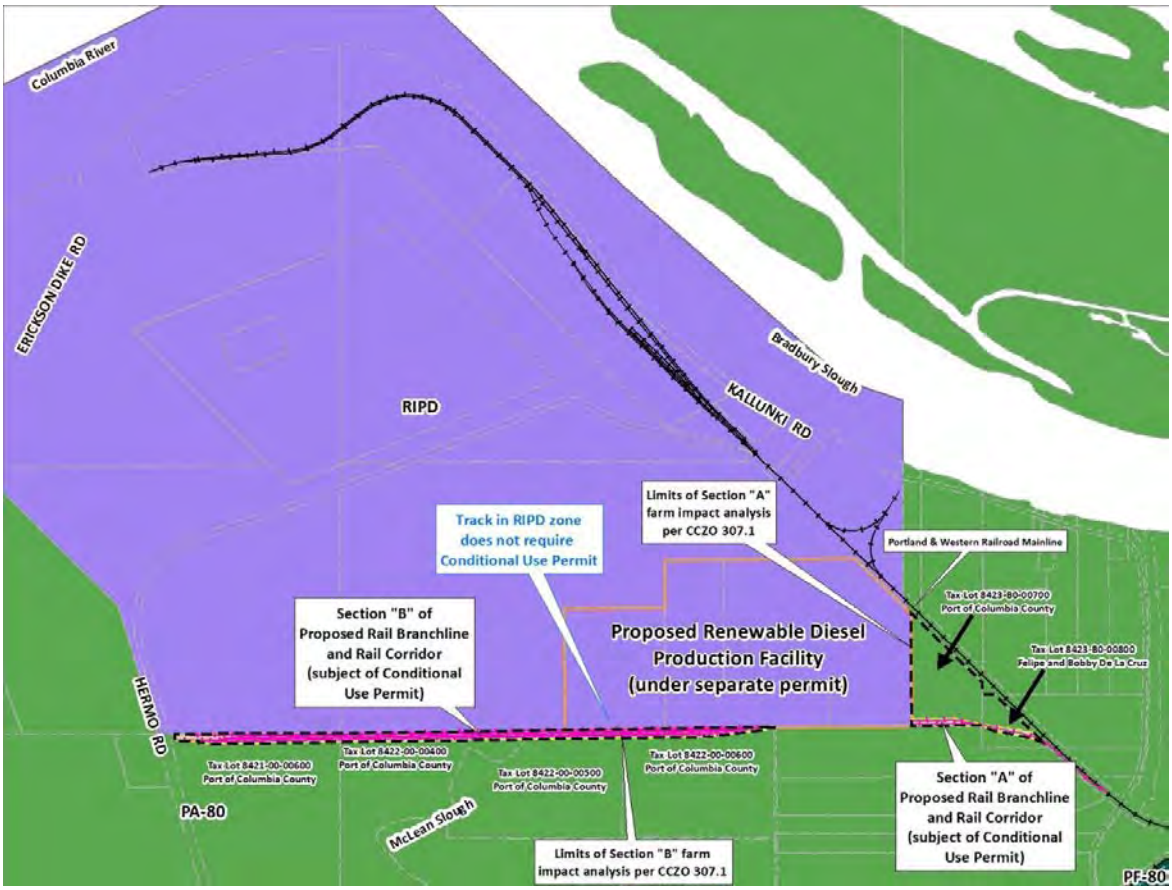
A. The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

Finding 156: The application narrative provides the following rationale to address this criterion:

"As illustrated in Figure 3, Section A of the proposed rail branchline crosses two (2) parcels: one (1) owned by Felipe and Bobby De La Cruz (tax lot 8423-B0-00800) and one (1) owned by the Port of Columbia County (tax lot 8423-B0-00700). Section B of the proposed rail branchline crosses four (4) parcels owned by the Port of Columbia County (tax lots 8421-00-00600, 8422-00-00400, 8422-00-00500, and 8422-00-00600). As illustrated in Figure 3 and the zoning map in Exhibit 2, all six parcels are zoned PA-80. Adjacent resource lands include property zoned PA-80 in all directions.

Based on the location of the Portland & Western Railroad mainline, which bifurcates a small amount of resource land, the only area affected by the proposed branchline will be land north of the branchline and south and west of the existing Portland & Western mainline. Furthermore, since the proposed rail branchline will isolate a triangle bounded by the rail mainline to the northeast, the proposed rail branchline to the south, and the proposed renewable diesel production facility to the west and north (on land zoned RIPD), the impact area analyzed for this standard is limited to portions of the six parcels that will be crossed by the rail branchline. For ease of reference, the branchline site has been further broken down into two sections as depicted in Figure 1 and Figure 3 [*Figure 3 reproduced below*].

Figure 3 Area Zoning and Limits of Farm Impacts Analysis (Application Submission Figure 3)



Turning first to the analysis area for branchline Section A, totaling 14.1 acres, aerial photography and the Cropland Data Layer8 indicates that the northern tip of the De La Cruz parcel is wetland. The wetland delineation report (Exhibit 11) depicts rail branchline Section A as a wetland, but the report did not analyze the remainder of the Section A impact area. The central portion of the De La Cruz parcel (within and north of the proposed rail branchline corridor), has been farmed in recent years with hay/grassland and row crops such as mint. Similarly, the single Port parcel west of the De La Cruz parcel contains wetlands, though it appears that in recent years portions have been vegetated with grassland and mint as well. Hay and row crops are fairly resilient and are not sensitive to the sound or vibration associated with rail traffic, as evidenced by the proximity of these crops to the existing rail mainline.

Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, irrigation, spraying fertilizer, managing weeds, mowing, and harvesting. Construction and operation of the branchline could cause minor changes in access routes to fields (for instance, the branchline will cross an existing access route) and changes in patterns of cultivation, seeding, fertilizing, and harvesting near the facility.

Train traffic could also lead to increased time to access farm fields north of the branchline and east of the proposed renewable diesel production facility, though these delays would be brief and infrequent on the proposed branchline. The farming activities north of the proposed rail line could continue even with the construction of the rail branchline since the applicant (as the owner of the rail branchline) proposes to provide a private rail crossing to allow passage of farm equipment (see Exhibit 3, Sheets C1.17 and C1.18). The risk of

conflict between farm equipment and trains on the branchline would be relatively low since the trains will be infrequent and moving slowly due to their proximity to their origin and destination.

Taken individually, neither alterations to access routes nor increased time to access fields is by itself a condition that would cause farm operators to significantly change their farm practices. Furthermore, in the aggregate, the cumulative effect of these changes does not require farm operators to significantly change their practices. Based on this information, the Commission can conclude that the proposed rail branchline will not force a significant change in farm or forest practices within the Section A impact area.

Turning next to the analysis area for branchline Section B, totaling 10.7 acres, the four Port parcels south of the renewable diesel production facility are largely in tree farm use. A nominal amount of grassland is present north of McLean Slough, but this grassland would be removed to accommodate the rail branchline. The wetland delineation report (Exhibit 11) depicts the Section B impact area is classified as a wetland.

Management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. Elimination of the existing tree farm and grassland acreage would not cause farm operators within the impact area to significantly change their farm practices, as the owner (the Port) is willingly taking the impact area out of agricultural production within those specific boundaries to accommodate the rail branchline. As the rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, it will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for all required tree farm management activities. The proposed rail corridor will not isolate or split tree farm areas into smaller areas.

Based on this information, the Commission can conclude that the proposed rail branchline will not individually or cumulatively force a significant change in farm or forest practices within the Section B impact area."

Staff notes that applicant has not clearly defined the frequency of unit trains entering or leaving the site or if crossing access will be available to farming activities at times consistent with farming activity needs. Staff recommends a condition of approval for crossing access and management to address this issue. At the writing of this staff report, staff has seen no evidence the proposed rail development – the subject of the CU application – will force a significant change in farm or forest practices.

B. The proposed use will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

Finding 157: The application narrative provides the following rationale to address this criterion:

"As discussed in the response to criterion A, only six (6) parcels are within the impact area that have the potential to be affected by the proposed rail branchline. Again, as noted above, all parcels within the impact area contain wetlands, though portions have been used for grass/hay and mint and tree farms in recent years. The Section A impact area contains one (1) parcel owned by Felipe and Bobby De La Cruz and one (1) parcel owned by the Port of Columbia County. See Figure 3. [*Figure 3 reproduced above*]

Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, spraying fertilizer, managing weeds, mowing, and harvesting. Construction and operation of the branchline does not interfere with these activities by increasing land values (e.g., by converting agricultural land to non-farm/residential use) or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. Trains are designed to stay on their tracks, so unlike a roadway or path, the

rail branchline would not introduce automobiles, pedestrians, or cyclists into agricultural lands where they were not previously present. As a result, no additional measures need to be taken by farmers to prevent trespassers.

Train traffic on the rail branchline will not lead to any appreciably higher level of dust than is currently present from the Portland & Western Railroad mainline which already borders the impact area (all portions of the impact area are already within 800 feet of the rail mainline). Consequently, construction of the rail branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The rail branchline will not increase the cost of farming inputs (seed, fertilizer, pesticides, etc.) and will not increase farmers' liability or financial exposure. The impact area is not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks. The applicant proposes to construct a private rail crossing at its own expense to allow passage of farm equipment to the PA-80 property that would be isolated by the rail branchline (see Exhibit 3, Sheets C1.17 and C1.18).

Based on this information, the Commission can conclude that the proposed rail branchline will not individually or cumulatively significantly increase the cost of farm or forest practices within the Section A impact area.

The Section B impact area contains four (4) parcels owned by the Port of Columbia County, and the analysis area is largely in tree farm use. Management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. Construction and operation of the branchline does not interfere with these activities by increasing land values or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. As the rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, it will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for all required tree farm management activities.

Tree farms are not sensitive to dust from nearby rail lines. Consequently, construction of the rail branchline will not cause adjoining tree farm operators to incur costs to utilize additional water or pumping equipment to suppress dust. The rail branchline will not increase the cost of farming inputs (saplings, fertilizer, pesticides, etc.) and will not increase farmers' liability or financial exposure. The impact area is in tree farm use and not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks.

Based on this information, the Commission can conclude that the proposed rail branchline will not individually or cumulatively significantly increase the cost of farm or forest practices within the Section B impact area."

At time of writing this staff report, staff has seen no evidence the proposed rail development will significantly increase the cost of accepted farm and forest practices.

.2 In addition to the requirements in 307.1A. and B., the applicant may demonstrate that the standards for approval will be satisfied by imposing clear and objective conditions to ensure conformance to applicable standards of the proposed PA-80 use.

Finding 158: Staff proposes a condition of approval to prepare a management plan for the rail crossing to ensure farm activities will not be significantly affected by unit train activities. Staff has not received evidence that the proposed rail branchline will cause significant impacts to farm activities at the time of writing this staff report.

308 Development Standards:

.1 The minimum average lot width shall be 100 feet for all activities except farming and forestry.

.2 The minimum average lot depth shall be 100 feet for all activities except farming and forestry.

.3 All newly created lots or parcels and those with permitted, reviewed or conditional uses, shall have a minimum of 50 foot frontage on a public or private right-of-way and an approved access in accordance with this ordinance, the Columbia County Road Standards and the Rural Transportation System Plan.

Finding 159: The parcels included in this application are well over 100 feet deep and wide. The proposal is to develop within an easement; the proposal does not create new lots or parcels. The proposal is for a rail use – access to the use is proposed via the proposed fuel facility and the existing rail spur serving Port Westward. The site includes well over 50 feet of frontage along Hermo Road at Tax Lot 8421-00-00600. These standards are met.

.4 Setbacks. The following are minimum setbacks for all buildings and structures. In addition, all structures are subject to any special setback lines, where specified on designated arterial or collectors.

A. No structure shall be constructed closer than 30 feet to a property line. In the event the subject property is bordered by a zone with more restrictive setbacks, the more restrictive setback of the adjoining zone shall control on the side of the subject property adjoining the more restrictive setback.

Finding 160: As this criterion applies to the rail branchline and not the facility, no structures subject to setback standards are proposed.

B. Setbacks in wetland areas shall be required in accordance with Sections 1170 and 1180 of the Columbia County Zoning Ordinance.

Finding 161: The proposed rail development extends through the McLean Slough riparian area and traverses delineated wetlands for nearly the entire length of the proposal. To the extent Sections 1170 and 1180 are met, this standard is met. Please see responses to Section 1170 and 1180.

.5 Height. There shall be a height limitation of 100 feet in the PA-80 Zone for farm use structures, except for on those lands containing abandoned mill sites that were rezoned to industrial uses pursuant to ORS 197.719 or are subject to Airport Overlay Zone, or any structure which has received a conditional use or variance approval which allows a greater height of said structure. Unless otherwise prohibited, the maximum building height for all non-farm, non-forest structures shall be 50 feet or 2½ stories, whichever is less.

Finding 162: No buildings or structures regulated by height requirements are proposed as part of the rail branchline development. This standard is met.

.6 Signs. The standards and requirements described in Section 1300 of the Columbia County Zoning Ordinance shall apply to all signs and name plates in the Exclusive Farm Use Zone.

Finding 163: The application indicates that "no advertising signs are proposed" and that "signs pertaining to rail safety are not regulated by Section 1300". A condition of approval is proposed to ensure sign standards are met.

.7 The Oregon Department of Fish & Wildlife shall be notified and provided with the opportunity to comment on any development within a Goal 5 protected wildlife habitat area.

.8 Dwellings and other structures to be located on a parcel within designated big game habitat areas pursuant to the provisions of Section 1190 are also subject to the additional siting criteria contained in Section 1190.

Finding 164: Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three (3) types of big game habitat. As depicted in Attachment 2f, the site is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County's Wildlife Game Habitat map. The map does identify the area as major waterfowl habitat and ODFW has provided comment on this application (Attachment 7b). Please see additional findings under Section 1190.

Section 1503 CONDITIONAL USE

.1 Status: Approval of a conditional use shall not constitute a change of zoning classification and shall be granted only for the specific use requested; subject to such reasonable modifications, conditions, and restrictions as may be deemed appropriate by the Commission, or as specifically provided herein.

.2 Conditions: The Commission may attach conditions and restrictions to any conditional use approved. The setbacks and limitations of the underlying district shall be applied to the conditional use. Conditions and restrictions may include a specific limitation of uses, landscaping requirements, off-street parking, performance standards, performance bonds, and other reasonable conditions, restrictions, or safeguards that would uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use being allowed.

.3 Conditional Use Permit: A Conditional Use Permit shall be obtained for each conditional use before development of the use. The permit shall stipulate any modifications, conditions, and restrictions imposed by the Commission, in addition to those specifically set forth in this ordinance. On its own motion, or pursuant to a formal written complaint filed with the Planning Department, upon proper notice and hearing as provided by Sections 1603 and 1608 of this ordinance, the Commission, (or Board on appeal) may, but is not required to, amend, add to or delete some or all of the conditions applied to Conditional Use Permits issued by the Planning Commission or Board of Commissioners. The power granted by this subsection may only be exercised upon a finding such amendment, addition or deletion is reasonably necessary to satisfy the criteria established by Section 1503.5 below.

Finding 165: Staff notes that Sections 300, 1170 and 1180 are directly relevant to Conditional Use applicability. If any of these Sections are not met, the Conditional Use cannot be permitted. These relationships are directly discussed below.

.5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:

A. The use is listed as a Conditional Use in the zone which is currently applied to the site;

Finding 166: This standard requires a determination of consistency with Section 300. As discussed in findings under Section 306, Staff has received a letter from Portland & Western Railroad (Attachment 6h) that the proposal is a rail branchline. Should the Board find the proposed rail development is a transportation facility defined as a "rail branchline" consistent with Section 300, this standard is met.

B. The use meets the specific criteria established in the underlying zone;

Finding 167: This standard requires a determination of consistency with Sections 300, 1170 and 1180. Staff finds the proposed rail development is consistent with standards in Section 300, the County has received evidence from DSL that the delineated wetlands should not be considered "significant" (Attachment 7a, also see Section 1180), and the Board

can find the proposed rail development is water-related (See Section 1170). Should the Board concur the delineated wetlands are not significant and the proposed rail development is water-related, this standard is met.

C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;

Finding 168: The land use application provides the following rationale:

"The most persuasive evidence of the site's suitability for a rail branchline is that it will branch off the nearby existing Portland & Western Railroad mainline. The branchline alignment is suitable because it is the most direct route to the portion of the site needing rail access (the southern end) and the size of the proposed rail corridor is relatively limited, consisting of a corridor identified as the minimum necessary by Portland & Western Railroad, with a total area of approximately 12.3 acres. The branchline will be located close to the existing mainline, which has operated for many years and has not been identified as being incongruous with the adjacent farm uses.

The rail branchline site is nearly flat. The site is protected from flooding by the Beaver Drainage District's dikes and associated stormwater conveyance and pumps, and is therefore adequately drained. Culverts are proposed where existing ditches will be crossed by the rail infrastructure. As detailed in the preliminary stormwater report (Exhibit 13), sufficient infrastructure is in place or proposed to collect, treat, and discharge runoff. While the site does contain wetlands that will be impacted by the proposed development, the applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and will perform over 480 acres of off-site wetland mitigation south of the site in accordance with Federal and State law."

Staff agrees the proposed rail development area is large, generally flat, protected from flood, and can be designed to manage stormwater. The proposed rail corridor development area also includes natural features, such as the McLean Slough riparian area regulated by Section 1170 and wetlands potentially regulated by Section 1180. To the extent the application meets Section 1170 and 1180 requirements, as discussed below, this standard is met.

D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;

Finding 169: The land use application provides the following rationale:

"The proposed rail branchline is intended to serve a renewable diesel production facility being proposed under a separate Site Design Review application. The rail line will not in itself generate more traffic on the area roadway system as it will instead facilitate increased usage of the Portland & Western Railroad mainline to move materials that would otherwise be shipped by truck. The rail line does not create a demand for public facilities as it needs no potable water, sanitary sewer, natural gas, or other utilities. The rail line does not impede existing or planned public facilities identified for the area surrounding the Port Westward Industrial Park."

Staff finds there is no evidence that the proposed rail development will conflict with provision of transportation, public facilities, or services for the area. County engineering has reviewed the project and has not identified concerns relating to adequacy of service for the rail development.

E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;

Finding 170: The land use application provides the following rationale:

"The new rail branchline will not alter the character of the area as the surroundings are already traversed by the Portland & Western Railroad mainline serving Port Westward Industrial Park. In the RIPD zone to the west and north, the primary permitted uses include farm and forest uses and industrial operations including "Production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities" (CCZO 683.1). The current character of the RIPD property includes both agricultural land and industrial uses. The proposed rail branchline will complement the RIPD zone by serving a proposed renewable diesel production facility immediately to the west and north.

In the abutting PA-80 zone, the primary permitted uses include farm and forest uses and their accessory structures, including farm dwellings. The current character of the PA-80 property includes agricultural land, which can continue to exist in proximity to the proposed branchline (e.g., a rail crossing will be installed to allow passage of farm equipment, see Exhibit 3, Sheets C1.17 and C1.18). The response to Section 307.1 provides further evidence that the proposed rail branchline will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on lands.

The facility will comply with all applicable Federal, state, and local regulations regarding construction and operations to ensure that off-site impacts comply with governing standards."

Staff concurs with the applicant and finds that while approximately 12.3 acres of farmland will no longer be farmable due to the proposed rail development, staff has seen no evidence the proposed use will alter the character of the surrounding area in a manner that will substantially limit, impair or preclude the use of surrounding properties for farm or forest uses.

F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;

Finding 171: The following findings address Comprehensive Plan goals and policies applicable to the rail branchline conditional use application.

Rail Conditional Use Goals and Policies:

PART V – AGRICULTURE
Goal: To preserve agricultural land for agricultural uses.

Finding 172: The proposed area for rail development is relatively small in size, totaling approximately 12.3 acres. Allowing this area to be developed with rail infrastructure will not result in a significant reduction in agricultural acreage. The response to Section 307.1 provides further evidence that the proposed rail development will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on agricultural lands.

Policies: It shall be a policy of the County to:
4. Protect agricultural lands from non-farm encroachments.

Finding 173: The proposed rail development will be located in an area already heavily impacted by the existing Portland & Western Railroad line and electrical transmission lines, corridors, and easements. Farm use can continue in the vicinity of these existing impediments, so the proposed rail development does not represent a significant encroachment onto other adjacent agricultural lands.

15. Permit non-farm/non-forest uses only when not in conflict with agricultural or forestry activities.

Finding 174: Due to its relatively small area (approximately 12.3 acres), the proposed rail branchline can be conditioned to resolve potential conflicts with agricultural activities as detailed in the response to Section 300, and there are no nearby forest zones with forestry activities. The response to Section 307.1 provides further evidence that the proposed rail branchline, with the proposed condition of approval related to the rail crossing, will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on nearby lands. With the proposed condition of approval, existing agricultural uses will continue to function consistent with to the current status quo of farmland adjacent to existing rail and electrical transmission lines.

16. Require that an applicant for a non-farm use record a waiver of the right to remonstrate against accepted farm or forest practices including spraying.

Finding 175: A condition of approval requiring a waiver of remonstrance is proposed to meet this standard.

17. Allow non-farm uses in accordance with ORS 215.283 and ORS 215.284.

Finding 176: As discussed in responses to Sections 303 and 306, the proposed rail development relies on a determination by the Board that it is a rail branchline – a transportation facility authorized by ORS 215.283.

PART X – ECONOMY

Goals:

1. To strengthen and diversify the economy of Columbia County and insure stable economic growth.

Finding 177: The proposed rail development will improve the efficiency and augment an adjoining renewable diesel fuel production facility, proposed under a separate site design review application. That facility will generate both construction jobs and long-term office, management, and operational positions, contributing to economic growth in the immediate area and beyond.

2. To utilize Columbia County's natural resources and advantages for expanding and diversifying the economic base.

Finding 178: The proposed rail development will facilitate efficient transportation to and from a proposed adjoining renewable diesel production facility that will rely upon on Port Westward's dock and deepwater port facilities. Port Westward is home to a 1,500-foot dock on the Columbia River and is one of only five public deepwater ports in the state of Oregon, with a 43-foot navigation channel to accommodate vessels needing deepwater port access. The production facility itself will make use of this natural resource and strategic advantage, and the rail development will augment the facility by allowing for additional transportation options of limited amounts of material.

Policies: It shall be a policy of the County to:

1. Encourage the creation of new and continuous employment opportunities.

Finding 179: As noted above, following construction of the renewable diesel fuel production facility, the use will provide direct employment opportunities for office, management, and operations staff. The proposed rail development will support this proposed employment opportunity.

2. Encourage a stable and diversified economy.

Finding 180: The renewable diesel fuel production facility proposed under a separate application will increase the size and value of the County's industrial sector, which is an important part of Columbia County's overall economic base. The proposed rail development will support this employment opportunity and help diversify the County's economy.

6. Preserve prime maritime industrial sites from pre-emptive uses until needed for industrial uses.

Finding 181: The applicant proposes to construct and operate a renewable diesel production facility at Port Westward, which is a unique deepwater port resource unavailable elsewhere within Columbia County. Construction of the facility will be consistent with the County's policy of utilizing the prime maritime site for an industrial use that relies upon the port and dock. The proposed rail development will support the production facility by providing additional efficient transportation options for materials and product.

8. Reserve valuable industrial sites for industrial uses.

Finding 182: The proposed renewable diesel production facility makes use of land zoned Resource Industrial - Planned Development and identified as appropriate for industrial development by the County Board of Commissioners. The proposed rail development, though located on agriculturally zoned land, is limited in size and scope and will promote a significant investment at a site zoned for industrial development.

10. Support improvements in local conditions in order to make the area attractive to private capital investment. Consideration of such factors as the following shall be undertaken:
A. Tax incentives
B. Land use controls and ordinances
C. Capital improvements programming

Finding 183: This policy calls upon the County to implement strategies that make the site attractive for private development. The applicant is willing to make a sizable investment in site and infrastructure upgrades as needed to accommodate the proposed renewable diesel production facility on property west of and adjacent to the proposed rail development. As noted by the applicant, the County can help realize some of this policy direction by granting the applicant's requested conditional use permit for the rail development in accordance with State and County land use regulations.

PART XIII – TRANSPORTATION
Goal: The creation of an efficient, safe, and multi-modal transportation system to serve the needs of Columbia County residents.

Finding 184: The proposed rail development capitalizes on the proximity of the existing rail line and will allow movement of materials that would otherwise be shipped by truck to and from the planned manufacturing use adjoining to the west. Proposed conditions of approval related to transportation needs for the facility are sufficient to meet this goal.

Objectives:
1. To maximize efficient use of transportation infrastructure for all users and modes.

Finding 185: The proposed rail development capitalizes on the proximity of the existing rail line and will allow movement of materials that would otherwise be shipped by truck to the proposed renewable diesel production facility. Proposed conditions of approval related to transportation needs for the facility are sufficient to meet this objective.

Policies:
5. The County shall work to enhance freight efficiency, access, capacity and reliability, including access to intermodal facilities such as ports and airports. Industrial uses shall be encouraged to locate in such a manner that they may take advantage of the water and rail transportation systems which are available to the County.

Finding 186: The proposed rail development is consistent with this policy because it will allow a proposed rural industrial use at Port Westward Industrial Park to take advantage of existing rail transportation facilities, namely Portland & Western Railroad's existing line. This will increase freight efficiency and provide added capacity to move product while minimizing impacts on roadways.

6. The County will support reducing the number of rail crossings and will support measures to enhance safety at rail crossings.

Finding 187: The project does not require a new public road crossing of any rail lines.

20. The County will coordinate transportation and land use planning and decision-making with other transportation agencies and public service providers, such as ODOT, cities within the County, and the Port, when their facilities or services may be impacted by a County decision or there may be opportunities to increase the efficiency and benefits of a potential improvement.

Finding 188: As part of its evaluation of land use applications including this one, the County coordinates with affected agencies and partners. The applicant has also coordinated with Port, County, and ODOT staff with respect to site design and transportation analysis.

Contd. Section 1503 Conditional Use:

G. The proposal will not create any hazardous conditions.

Finding 189: The applicant will be required to follow all applicable safety laws and regulations in constructing and operating the proposed rail development, as approved by Portland & Western Railroad and required by state and Federal regulations.

.6 Design Review: The Commission may require the Conditional Use be subject to a site design review by the Design Review Board or Planning Commission.

Finding 190: The proposed rail development contains no structures regulated by design review. Design review findings for the facility are found under Section 1550.

Criteria Related to Facility and Rail

Section 1100 FLOOD HAZARD OVERLAY (FH)

Finding 191: The site is protected from flooding by dikes and associated stormwater conveyance and pumps within the Beaver Drainage District. According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map 41009C0050D, dated November 26, 2010, the dike system has been provisionally accredited by FEMA. See Attachments 2d & 3d. This map indicates that the site is in FEMA's shaded Zone X, corresponding to areas protected by levees from 1% annual chance flood. The proposed driveway and pipe rack are also in shaded Zone X. Therefore, the site is not in the Special Flood Hazard Area and is not subject to the standards of this chapter.

Section 1120 SENSITIVE BIRD HABITAT OVERLAY (SBH)

Finding 192: Columbia County Comprehensive Plan, Part XVI, Article VIII(F), Non-Game Wildlife Habitat, lists areas identified as significant nesting sites by the Oregon Department of Fish and Wildlife. Port Westward is not a listed area for Bald Eagle nests, Blue Heron rookeries, or Northern Spotted Owl nests. As illustrated in Attachments 2e & 3e, the site is not within any areas identified as Natural Areas, Non-Game Areas, or Sensitive Areas on the County's Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map. Columbia County Comprehensive Plan, Part XVI, Article VIII(G), Upland Game Habitat, lists three mineral spring areas identified as habitat for band-tailed pigeons, none of which include Port Westward. As illustrated in Attachments 2f & 3f, the site is not within an identified Upland Game Habitat area in the County's Wildlife Game Habitat map.

Since the site is not within the identified habitat areas, development at the site is not subject to the Sensitive Bird Habitat Overlay Zone.

Section 1130 HISTORIC OVERLAY (HO)

Finding 193: Historic and culturally significant sites and structures are identified in Article XI of the Comprehensive Plan. None of the listed sites and structures are on or adjacent to the site. Development at the site is not subject to the Historic Overlay.

Section 1170 RIPARIAN CORRIDORS, WETLANDS, WATER QUALITY, AND FISH AND WILDLIFE HABITAT PROTECTION OVERLAY ZONE (RP)

1172 Riparian Corridor Standards:

A. The inventory of Columbia County streams contained in the Oregon Department of Forestry Stream Classification Maps specifies which streams and lakes are fish-bearing. Fish-bearing lakes are identified on the map entitled, "Lakes of Columbia County." A copy of the most current Stream Classification Maps is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B) for reference. The map, "Lakes of Columbia County" is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B), and is incorporated therein. Based upon the stream and lake inventories, the following riparian corridor boundaries shall be established:

1. *Lakes. Along all fish-bearing lakes, the riparian corridor boundary shall be 50-feet from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below.*
2. *Fish-Bearing Streams, Rivers and Sloughs (Less than 1,000 cfs). Along all fish bearing streams, rivers, and sloughs with an average annual stream flow of less than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 50-feet from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below.*

   Average annual stream flow information shall be provided by the Oregon Water Resources Department.
3. *Fish-Bearing and Non-Fish-Bearing Streams, Rivers and Sloughs (Greater than 1,000 cfs). Along all streams, rivers, and sloughs with an average annual stream flow greater than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 75-feet upland from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*

4. *Other rivers, lakes, streams, and sloughs. Along all other rivers, streams, and sloughs, the riparian corridor boundary shall be 25 feet upland from the top-ofbank, except as provided in CCZO Section 1172(A)(5), below.*
5. *Wetlands. Where the riparian corridor includes all or portions of a significant wetland, as identified in the State Wetlands Inventory and Local Wetlands Inventories, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland. Significant wetlands are also regulated under provisions in the Wetland Overlay Zone, Columbia County Zoning Ordinance, Section 1180.*

Finding 194: Proposed facility development does not enter or abut any mapped lake, river or stream areas. However, the proposed rail branchline development intersects with McLean Slough.

The wetland delineation report (Attachments 2k & 3k), which has now been approved by the Oregon department of State Lands, indicates that the wetlands in the study area are supported by precipitation, irrigation water, surface runoff, and groundwater rather than rivers, streams, or sloughs (the wetlands fall into the "flats" rather than "riverine" hydrogeomorphic class). Therefore, the distance to the riparian corridor boundary need not be measured from the edge of the wetlands since the wetlands are not riparian in nature.

Based on this information, construction of the proposed rail branchline is subject to the riparian overlay as a portion falls within McLean Slough's 25-foot riparian buffer established by criterion (A)(4).

B. Distance Measurement.
1. *Except as provided in Subsection 1172(5) above, the measurement of distance to the riparian corridor boundary shall be from the top-of-bank. In areas where the top-of-bank is not clearly delineated, the riparian corridor boundary shall be measured from the ordinary high water level, or the line of non-aquatic vegetation, whichever is most landward.*
2. *The measurement shall be a slope distance. In areas where the predominant terrain consists of steep cliffs, the distances to the corridor boundary shall be measured as a horizontal distance until the top of the cliff is reached, and as a slope distance on from that point.*

Finding 195: The 25-foot buffer (per CCZO Section 1172(A)(4)) for McLean slough is illustrated on the plans in Attachment 3c.

1173 Activities Prohibited within the Riparian Corridor Boundary:

In addition to the prohibitions in the underlying zone, the following activities are prohibited with in a riparian corridor boundary, except as provided for in Sub-sections 1175 and 1176 of this Section:

A. The alteration of a riparian corridor by grading, placement of fill material, and/or impervious surfaces, including paved or gravel parking areas, or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Building Code, as amended.
B. The removal of riparian trees or vegetation.

Finding 196: The proposed branchline will cross McLean Slough, the only identified riparian area. Riparian impacts are limited to the crossing and not a wholesale displacement of the riparian corridor. The applicant argues the proposal is water-related or water-dependent and therefore exempt from riparian protection per sub-sections 1175(A)(2) and 1175(B)(5). Should the Board find the use is water-related or water-dependent, the proposal is exempted from riparian protections and can be permitted. This is discussed under Section 1175 below.

1175 Permitted Uses and Activities:

Notwithstanding the prohibitions set forth in Subsection 1173 above, the following activities are allowed within the riparian corridor boundary:

- *A. The following riparian vegetation may be removed within the riparian corridor boundary: […]*
  - *1. Vegetation which is necessarily removed for the development of approved water-related or water dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water-dependent and water-related use. […]*
- *B. The following development is allowed within the riparian corridor boundary.*
  - *5. Water-related and water-dependent uses. […]*

Finding 197: Proposed construction of the rail branchline will result in temporary and permanent impacts to the McLean Slough riparian corridor. This is only allowable through exemptions for "water-related" or "water-dependent" uses. The applicant argues the project as a whole (the renewable diesel production facility and associated infrastructure including the proposed rail branchline) depends upon the dock and falls under the category of water-related and water-dependent uses. The applicant's full argument from the rail application narrative submission is provided below:

> "The renewable diesel production facility (under separate application) is proposed to be located at Port Westward because of the presence of the dock and proximity to the Columbia River. As noted above, Port Westward is one of only five public deepwater ports in the state of Oregon. This invaluable resource, which was largely the basis of the County's 1986 and 2007 Goal Exceptions for Port Westward Industrial Park, is necessary for the efficient operation of the production facility.
>
> The 1986 Exception statement codified in the Comprehensive Plan relied in part upon Port Westward's "unique site-specific resource" in the deep draft river port and further noted the following:
>
> > *I. Proposal*
> >
> > *The proposed use designation is Rural Industrial, and it is intended to take advantage of the location on the Columbia River, the existing dock facilities, railroad, and urban services, as well as potential linkages to the electric generating facilities.*
> >
> > *V. Proposed Use Of The Property*
> >
> > *Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm.*
> >
> > *[***]*
> >
> > *Uses likely to be located here are best illustrated by four proposals submitted to the current leaseholder since 1980. Proposals have included a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant. […].*
>
> Similarly, the 2007 Exception statement codified in the Comprehensive Plan noted that:
>
> > *The property is located adjacent to the Port Westward rural industrial area and can take advantage of the location with access to the Columbia River, and the existing dock facilities, railroad and urban services, including PGE's Beaver Power Plant. Allowing future rural industrial development on the*

Property would benefit the County's economy by bringing jobs to the area for construction of a project and then a lesser level of employment for the operation and management of any facility

Taken together, these Exception statements indicate that the intent of zoning land RIPD at Port Westward was to both accommodate and encourage industrial uses that take advantage of the dock, rail, and energy generating sources.

As explained below, the Renewable Diesel Production Facility, including its rail component, is a "water-dependent" and/or "water-related" use.

Columbia County Zoning Ordinance (CCZO) Sections 1170 and 1180 allow development within riparian areas and wetland riparian areas for projects that are either "water dependent" or "water related." The only identified riparian corridor within or near the site is McLean Slough, which will be crossed by the portion of the proposed rail branchline on PA-80 land.

Neither the CCZO nor the Columbia County Comprehensive Plan define the terms "water-related" or "water-dependent," except as relevant to the Willamette River Greenway, which is not applicable at this location. The County's riparian area and wetland regulations are a component of the County's Statewide Planning Goal 5 program, which purports to adopt a "safe harbor" approach as discussed in Article X of the Comprehensive Plan. However, the Comprehensive Plan's Goals and Policies do not categorically intend to prohibit uses conflicting with riparian areas or wetlands; rather, the Plan's stated intent is to protect such areas from "nonwater-dependent uses." See, e.g. Article X.E, Policy 9.

The Goal 5 safe harbor process essentially requires local governments to directly implement certain Goal 5 rules in Oregon Administrative Rules (OAR) 660 Division 23. Consequently, the County's riparian and wetland regulations roughly resemble the riparian rules in OAR 660-023-0090 and -0100, except that they notably do not include the variance provisions required under OAR 660-023-0100(4)(b)(B). These sections allow development of "water-dependent or water-related uses" within riparian areas and wetlands and allow removal of riparian vegetation "as necessary for development of water-related or water-dependent uses." The OARs require less strict riparian protections in farm and forest zones: OAR 660-023-0090(8)(c) provides that "(c) Notwithstanding subsection (b) [regulating removal of riparian vegetation] of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4."

The definition of "water-dependent" and "water-related" in the Statewide Planning Goals is helpful in interpreting those terms in the CCZO. In the current version of the Statewide Planning Goals, those terms are defined as follows:

WATER-DEPENDENT. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

WATER-RELATED. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

The County can find that the proposed renewable diesel production facility within the existing RIPD zone is "water-dependent" because the facility requires access to the water body (namely, the Columbia River) for riverine transportation. Renewable diesel product and renewable diesel feedstocks are proposed to be imported and exported by water-borne vessels on the Columbia River, including ships and barges. This connection is reflected in Exhibit 15, which shows the piping directly connecting the facility to the Port Westward docks. Also, the facility relies on Columbia River water as part of the renewable diesel production process – namely for steam production, cooling tower process water, and fire water reserve. This is also reflected on Exhibit 15.

In summary, the facility is proposed at Port Westward entirely due to its location at one of Oregon's few deepwater ports capable of being served by cargo ships.5 Therefore, the County can find that the renewable diesel facility within the existing RIPD zone "can be carried out only […] adjacent to water areas because the use requires access to the water body for water-borne transportation" and as a "source of water."

For the same reasons, the County can find that the proposed rail branchline located on PA-80 lands is also "water-dependent." The purpose of the proposed rail branchline is to deliver renewable diesel feedstocks to the renewable diesel production plant for conversion into renewable diesel, to export such renewable diesel, and to remove waste products from the facility. As the branchline exists only to serve the renewable diesel production plant and is part of the overall project, it is just as river-dependent as the production plant itself. Put another way, the branchline is water-dependent because, like the renewable diesel production plant, it relies on river transportation as the other end of the renewable diesel supply/production chain. The export of waste products also makes the rail line a necessary component of the overall water-dependent use.

Although the PA-80 portion of the branchline is requested in a separate application from the renewable diesel production facility, it is exclusively associated with, part of, and entirely dependent on the renewable diesel plant. It was proposed in a separate application because a portion of the rail branchline is to be located just outside of the existing Port Westward Exception Area and within an exclusive farm use zone, and is therefore subject to the criteria of ORS 215.296; rail not located within that zone is not subject to those criteria.

If the County does not find that the renewable diesel production plant or rail branchline is "water-dependent," the County can nonetheless find that they are "water-related." This is because the facility as a whole is intended to provide "goods […] that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered." There is no dispute that the Project is intended to import and export "goods" (in this case, feedstocks and renewable diesel) to and from the Port Westward Dock via pipeline, shown in Exhibit 15. As explained above, the renewable diesel facility must be located near the water because the use itself depends on river water and transportation, and would not be viable without a water-adjacent location. Put in terms of the above definition, without a water-adjacent location, the facility would "result in a public loss of quality in the goods or services offered" because it could not economically provide the proposed goods or services without a river-adjacent location. Likewise, if the PA-80 portion of the proposed branchline is not located adjacent to the renewable diesel production plant, the efficiency of the renewable diesel use would suffer substantially because a large portion of the necessary feedstocks could not be economically imported to the Project, which would make the Project itself infeasible."

As the applicant states, "water-related" is not defined in the County's zoning ordinance or Comprehensive Plan. The term is defined in the Statewide Planning Goals, and the Board can apply that definition here.

Staff notes that the "water-dependent" and "water-related" definitions from Statewide Planning Goals (cited by the applicant above) both indicate these uses are located "on or adjacent to" water. However, neither the fuel facility nor the rail branchline are "on or adjacent to" the Columbia River – the water body the applicant indicates the use is dependent on and related to. No portion of the project interacts with the mapped Columbia River riparian area. The County-regulated riparian area the project impacts is the McLean Slough – a water body located over ½ mile from the Columbia River that no use applied for in this application is dependent on or related to. Staff considers the applicant's argument and use of terminology to be highly irregular.

Although staff questions whether the branchline is water-related under the State's definition, staff concedes that an argument can be made, as the applicant has done, that it is. In light of the ambiguity, staff consulted with DLCD regarding application of State definitions of water-related and water-dependent. DLCD feedback indicated that "water-dependent" would not be a viable definition for this proposal from their perspective but "water-related" has enough uncertainty to defer to a local determination. Given the lack of a County definition and the ambiguity of the State definition, the Board can interpret water-related either way. In order to meet this standard, the Board must find the project and associated rail branchline are "water-related" uses.

1177 Requirements for new activities and development identified in Sub-section 1175 and 1176, above, shall be allowed in the riparian corridor boundary subject to the following requirements:

- *A. All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing the use or activity.*
- *B. For activities and development for which land use permits, building permits, grading permits, variances or stormwater/erosion control permits are required, the County shall provide notification to ODFW of the proposed development activity. The County shall consider the recommendations of ODFW, including any mitigation recommendations, prior to issuance of permits and may condition permit approval on recommended measures to mitigate loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415.*

Finding 198: The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland and waterway alterations and will perform over 480 acres of off-site wetland mitigation south of the site in accordance with Federal and State law, as permitted by this subsection. The County has provided notice to ODFW and received comments (see Attachment 7b).

Section 1180 WETLAND AREA OVERLAY (WA)

1182 Definition:

A significant wetland is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. In case of dispute over whether an area is of biological value and should be considered a significant wetland, the County shall obtain the recommendation of the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands.

Finding 199: Columbia County Comprehensive Plan, Part XVI, Article X(A), Wetlands, provides the following clarification on the County's determination of wetland significance:

> *2. INVENTORY AND SIGNIFICANCE: Columbia County will apply the "safe harbor" provisions of Goal 5 to significant wetlands. The adopted inventory of wetlands for Columbia County is the State Wetlands Inventory*

(SWI), as amended. A current copy of the SWI is contained in the Technical Appendix Part XVI, Article X(A), for reference. All wetlands inventoried on the SWI or any more detailed inventories such as the Local Wetlands Inventories (LWI) produced by individual cities are considered significant for the purposes of Goal 5. The State Wetlands Inventory incorporates wetlands identified on the National Wetlands Inventory (NWI). The Wetland Overlay Zone shall be applied to locations of wetlands as shown on the SWI or LWIs. However, a wetland not listed in an inventory may still be protected by relevant Oregon Administrative Rules (OAR) and policies set forth by the Oregon Division of State Lands. It shall be the responsibility of individual landowners to verify the existence or nonexistence of wetlands on any property prior to any development activity or other impact.

Essentially, the County's Goal 5 program begins with the assumption that all wetlands mapped on the SWI are significant. The definition for "significant wetland" provided in Section 1182 is verbatim the national (EPA, Corps) and state (DSL) definition of "wetland". However, the definition also provides a method for determining whether the wetland should be considered significant if there is a dispute over an area's biological value.

The applicant's conditional use (rail) narrative indicates the wetlands are not significant:

> "Potential wetlands exist within the vicinity of the rail branchline site as illustrated in the Statewide Wetlands Inventory excerpt in Exhibit 10 and in the County's map in Exhibit 7. The applicant therefore engaged a wetlands consultant to perform a site-specific wetland delineation, with the resulting report attached as Exhibit 11. As discussed in Exhibit 14, based on the wetland delineation report approved by DSL, the presence of plants adapted solely to wetlands is very low, as most of the plants consist of species that grow in wetlands and non-wetlands. Since the vegetation within the delineated wetland does not constitute a prevalence of plants "adapted for life in saturated soil conditions," the wetlands do not meet the County's adopted definition of significant wetlands.
>
> In addition to the vegetation profile, the biological value of the delineated wetlands is limited. Exhibit 14 notes that the wetland delineation report analyzed 17 functions, of which only four received higher ratings, while five received moderate ratings, and seven received lower ratings. Since the wetland delineation report has been approved by DSL so there does not appear to be any dispute by subject matter experts on whether these wetlands have little biological value. The Applicant expects DSL to issue a written statement explaining the non-significance of affected wetlands in December, 2021. This further supports the contention that the wetlands do not meet the County's adopted definition of "significant" wetlands."

Because there is a reasonable dispute over the significance of the wetlands, consistent with Section 1182, the County requested and received recommendations of DSL, ODFW, and the Columbia SWCD related to significance of the delineated wetland areas proposed for development. These materials are provided in Attachment 7. While there was some variance in feedback between agencies, as one might expect given different mandates, DSL provided a definitive statement regarding significance of the wetlands impacted by the proposed facility and rail development:

> "Based on the finding of the OFWAM Assessment tool, the wetlands located behind the levee (inside the levee within the Beaver Drainage District and associated with the propose NEXT Project) in the Resource Industrial Planned Development area at Port Westwards are NOT significant, nor are the wetlands that continue off the project site that were converted for farming and are zoned Primary Agriculture."

Staff finds the evidence presented is persuasive and recommends the Board find the impacted wetlands are not significant based on the recommendation of DSL.

1183 Permitted Uses:

Uses and development activities permitted outright or conditionally in the underlying zone shall be permitted in the Wetland Area Overlay Zone if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or degrade a significant wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands under Oregon Department of Agriculture wetland rules shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands. Existing drainage ditches may be cleared to original specifications without County review.

Finding 200: The applicant is proposing a renewable diesel production facility as permitted in the RIPD zone, and a rail branchline as permitted through the Conditional Use process in the PA-80 zone. No development is allowed that will impact significant wetlands. If the Commission finds the wetlands are not significant consistent with DSL's recommendation, the proposed facility and rail development are allowed. If the Commission finds the wetlands are significant, the proposed facility and rail development are not allowed. As noted under Section 1182 findings, Staff finds that based on DSL's recommendation, the wetlands lack the biological value to be considered significant.

While Section 1180 prohibits development that will destroy or degrade significant wetlands, it allows limited development within riparian corridors – essentially mirroring the riparian corridor development standards of Section 1170.

1184 Development Standards:

A. *Riparian Corridor Standards for Wetlands. For the purposes of this Section, "Fish-bearing streams" shall mean all streams identified as being fish-bearing, by the Oregon Department Forestry in the Stream Classification Maps, as amended, and "Fish-bearing lakes" shall mean those streams identified in "Lakes of Columbia County". The current Oregon Department of Forestry Stream Classification Map is attached to the Comprehensive Plan, Technical Appendix, Part XVI, Article X(B), for reference. The Map, "Lakes of Columbia County" is also attached to the Comprehensive Plan, Technical Appendix, Part XVI, Article X(B), and is incorporated therein. Significant Wetlands are identified on the State Wetlands Inventory (SWI), and Local Wetlands Inventories (LWI's).*

   The SWI is attached to the Comprehensive Plan, Part XVI, Article X(A), for reference.

   1. *Fish-Bearing Lakes. Along all wetlands associated with fish-bearing lakes, the riparian corridor boundary shall be 50 feet from the upland edge of the wetland.*
   2. *Streams, Rivers, and Sloughs (Greater than 1,000 cfs). Along all wetlands associated with all fish-bearing rivers, streams and sloughs, with an average annual stream flow greater than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 75 feet from the upland edge of the wetland. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*
   3. *Fish-Bearing Streams, Rivers and Sloughs (Less than 1,000 cfs). Along all wetlands associated with fish bearing streams, rivers, and sloughs, with an average annual stream flow less than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 50 feet from the upland edge of the wetland. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*

4. *Other Rivers and Streams, or Sloughs. For all other wetlands associated with streams, rivers, or sloughs, the riparian corridor boundary shall be 25 feet from the upland edge of the wetland.*

Finding 201: As discussed under Section 1170, delineated wetlands are adjacent to McLean Slough. The application narrative indicates these wetlands are not associated with the slough. Staff finds the protections of Section 1170 apply to riparian areas, but non-significant wetlands are not regulated by Section 1180. Therefore, the riparian protections of 1170 are the extent of riparian protection on the development site. Please see findings under Section 1170.

5. *Wetlands not associated with Streams, Rivers, Sloughs, or Fish-Bearing Lakes. Along all wetlands not associated with a stream, river, slough, or non-fish-bearing lake, there shall not be a protective riparian corridor boundary. However, development is prohibited from encroaching within a delineated wetland boundary.*

Finding 202: As discussed above, the proposed facility and rail development impact delineated wetlands. However, if these wetlands are not considered to be significant, this standard does not apply.

B. *Corridor Boundary Measurement: The riparian corridor boundary begins at the upland edge of the wetland and is measured outward, further upland, the required riparian corridor boundary distance.*

Finding 203: As noted above, Staff finds Section 1180 applies only to significant wetlands; should the Board concur with DSL's recommendation that the delineated wetlands are not significant, this standard does not apply. Riparian corridors not associated with significant wetlands are addressed in Section 1170.

C. *Activities Prohibited within the Wetland Riparian Corridor Boundary. In addition to the prohibitions of the underlying zone, the following development activities are prohibited in wetland riparian corridor boundaries, except as provided for in Sub-sections 1184(E) and (F) of this Sub-section:*
   1. *The alteration of the wetland riparian corridor by grading, the placement of fill material, and/or impervious surfaces, including paved or gravel parking areas or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Building Code, as amended, or other land use permit.*
   2. *The removal of riparian trees or vegetation.*

Finding 204: Staff finds the riparian corridor regulation in Section 1180 applies only to significant wetlands; should the Board concur with DSL's recommendation that the delineated wetlands are not significant, this standard does not apply.

D. *Exempted Activities. This Overlay Zone does not apply to land legally used for commercial forestry operations or standard farm practices, both of which are exempt from the riparian corridor protection standards of this Section. The use of land for commercial forestry is regulated by the Oregon Department of Forestry. The use of land for standard farm practices is regulated by the Oregon Department of Agriculture, with riparian area and water quality issues governed specifically by ORS 568.210 to ORS 568.805.*

Finding 205: The applicant is not proposing commercial forestry operations or standard farm practices. This standard does not apply.

E. *Exceptions to prohibited activities. Notwithstanding the prohibitions set forth in sub-section (C), above, the following development activities are allowed within the wetland riparian corridor boundary:*
   1. *The following wetland riparian vegetation may be removed:*
      a. *Non-native vegetation, invasive species, and noxious weeds, if replaced with native plant species. The replacement vegetation shall cover, at a minimum, the area from which*

vegetation was removed, and shall provide for maximum soil retention and shade cover. Replacement vegetation shall, upon maturity, maintain 75%-100% canopy and ground cover.

b. Vegetation which is necessarily removed for the development of water related and water dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water dependent and/or water related use.

c. Trees and vegetation in danger of falling and/or posing a hazard to life or property. If no hazard will be created, the trees, once felled, shall be left in place in the riparian area.

2. The following development is allowed within the riparian corridor boundary:

a. Streets, roads, and driveways, if:

i It is not possible to locate the street, road or driveway outside of the riparian corridor boundary; and

ii The street, road or driveway is designed to minimize intrusion into the riparian corridor boundary;

b. Pedestrian walkways, paths and trails;

c. Fencing and signs, not including billboards;

d. Drainage facilities, utilities and irrigation pumps;

e. Water-related and water-dependent uses;

f. New or expanded shoreline stabilization and flood control grading and structures;

g. Portable furniture, and other portable outdoor equipment for the private use of the property owner/resident. For purposes of this subsection, "portable" shall mean that the item is not affixed to the ground, other than with a chain or other lock which is capable of being removed at any time.

Finding 206: Staff finds the riparian protections relating to Section 1180 are only applicable to significant wetlands. If the Board finds the delineated wetlands are not significant, proposed development is not regulated by Section 1180.

F. Legal non-conforming uses are allowed to continue within the wetland riparian corridor boundary subject to the requirements in Section 1506, ORS 215.130, applicable state laws, and the following additional requirements:

1. For replacement of legal non-conforming structures with new structures, any new structure shall be located in the same location and in the same footprint as the existing structure, and shall not disturb additional riparian surface area within the wetland riparian corridor boundary.

2. For expansion or alteration of legal non-conforming structures existing fully or partially within the riparian corridor, the expansion or alteration shall not occur within the wetland riparian corridor boundary. If the pre-existing structure is completely within the riparian corridor, expansion is allowed only on the side opposite the water resource.

3. Legal non-conforming lawn within the riparian corridor boundary may be maintained. However, such lawn shall not be expanded within the riparian corridor boundary.

4. Legal non-conforming shoreline stabilization and flood control structures may be maintained.

Finding 207: There are no existing non-conforming structures, lawns, or shoreline stabilization and flood control structures on site. This standard does not apply.

G. New activities and development identified in Sub-section 1184(E) and 1184(F), above, shall be allowed in the wetland riparian corridor boundary subject to the following requirements:

1. *All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing the use or activity.*
2. *For activities and development for which land use permits, building permits, grading permits, variances or stormwater/erosion control permits are required, the County shall provide notification to ODFW of the proposed development activity. The County shall consider the recommendations of ODFW, including any mitigation recommendations, prior to issuance of permits and may condition permit approval on recommended measures to mitigate loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415.*

Finding 208: The applicant is pursuing DSL and Corps approval for removal of approximately 109 acres of delineated wetlands for facility, driveway, and rail development. The applicant shall obtain all applicable permits and approvals from the Oregon Department of Fish and Wildlife and the Department of State Lands regarding all new activities and development within all identified wetland areas. These approvals include, but are not limited to, mitigation recommendations to mitigate the loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415. A condition of approval is proposed requiring approval of all applicable state and federal permits.

H. Variance Provisions

1. *In cases where encroachment into the riparian corridor boundary by activities and development not otherwise allowed by Sub-section 1184(E), or 1184(F) cannot be avoided, a property owner may request a Variance to the riparian corridor boundary prohibition. In addition to the criteria found in Section 1504, and the requirements in Sub-section 1184(G), a variance to the riparian corridor boundary prohibitions shall not be granted unless all of the following criteria are met:*

Finding 209: The applicant is not requesting a variance to riparian corridor protections.

Section 1185 NATURAL AREA OVERLAY (NA)

Finding 210: The Oregon State Register of Natural Heritage Resources (Attachments 2l & 3l), does not include any sites in the vicinity of Port Westward. Furthermore, the Nature Conservancy does not own any natural areas within Columbia County. Finally, the inventory of natural areas in Columbia County Comprehensive Plan, Part XVI, Article IX, Natural Areas, does not identify any sites in the vicinity of Port Westward. Therefore, development at the site is not subject to the Natural Area Overlay Zone.

Section 1190 BIG GAME HABITAT OVERLAY (BGR)

Finding 211: Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three types of big game habitat. As depicted in Attachments 2f & 3f, the site is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County's Wildlife Game Habitat map. Therefore, development at the site is not subject to the Big Game Habitat Overlay Zone.

Section 1603 QUASIJUDICIAL PUBLIC HEARINGS

.1 The applicant shall submit an application and any necessary supplemental information as required by this ordinance to the Planning Department. The application shall be reviewed for completeness and the applicant notified in writing of any deficiencies. The application shall be deemed complete upon receipt of all pertinent information. If an application for a permit or zone change is incomplete, the Planning Department shall notify the applicant of exactly what information is missing within 5 days of receipt of the application and allow the applicant to submit the missing information. The application shall be

deemed complete for the purpose of this section upon receipt by the Planning Department of the missing information.

.2 Once an application is deemed complete, it shall be scheduled for the earliest possible hearing before the Planning Commission or Hearings Officer. The Director will publish a notice of the request in a paper of general circulation not less than 10 calendar days prior to the scheduled public hearing. Notices will also be mailed to adjacent individual property owners in accordance with ORS 197.763

Finding 212: The review and process for DR 21-03, CU 21-04, and V 21-05 has been lengthy with several iterations of application materials. In order to meet process requirements and statutory review timeframes, the County Board of Commissioners took jurisdiction of the hearing consistent with Ordination 91-02. Process dates from pre-application conference to the first Board of Commissioners hearing are identified below:

- NEXT Pre-Application Conference: February 6, 2020
- NEXT Application Submissions: January 19, 2021
- County Incompleteness Letters: February 17, 2021
- NEXT Updated Application Submissions: July 13, 2021
    - Including significant changes to rail location and rail volume.
- NEXT ORS 215.427 Completeness: July 15, 2021
- NEXT Updated Application Submissions: August 12, 2021
- NEXT Memorandum on Interpretation of CCZO 1175.B, 1184.E and OAR 660-012-0065: September 30, 2021
- County Board of Commissioners took jurisdiction consistent with Ordinance 91-2: October 20, 2021
- County Memo Identifying Critical Issues: sent October 25, 2021
- County Board Hearing Scheduled: December 6, 2021
- NEXT Updated Application Submissions: December 14, 2021
- Notice provided to Clatskanie Chief newspaper for December 29, 2021publication: December 22, 2021
- Notice sent to adjacent property owners: December 23, 2021
- County Staff Report published: January 12, 2022
- County Board Hearing Date: January 19, 2022

Columbia County Stormwater and Erosion Control Ordinance

I. INTRODUCTION B. Applicability

1. Provisions of this ordinance apply to:

a. Building permits for residential, commercial, industrial and accessory uses that involve disturbing more than 2000 square feet of land or activities disturbing more than 1000 square feet of land on sites with known and apparent erosion problems;

Finding 213: The proposal requested for DR 21-03 involves disturbing over 100 acres of land. Attachments 2m & 3m include the applicant's Preliminary Storm Report.

1. The submittal generally meets the intent of the Columba County Stormwater and Erosion Control Ordinance, however a Final Stormwater Plan is required and a Building Permit will not be issued until the plan is approved by the county.

2. For the "Oily Water Sewer Basin and "Main Plant Stormwater Basin" (45.16 acres and 57.30 acres, respectively or 72% of the total existing site area) it appears that the applicant is meeting or exceeding the standards set forth in the Ordinance. Specific areas of stormwater are being intercepted and directed by pipeline to an onsite treatment plant to then be discharged into the Columbia River (a tidal waterbody) using the Port of Columbia County's existing outfall. The intercepted and treated runoff is exempt from the peak runoff control measures by Ordinance because of its discharge into a tidal waterbody.

The overall result of this is the applicant is proposing to intercept stormwater that was infiltrating or otherwise making it to conveyances, thereby reducing the overall amount of runoff leaving the site once developed. It is assumed that the treated stormwater will meet or exceed water quality standards.

3. The "Pipeline Maintenance and Rail Spur Basins" are proposed to maintain "existing drainage paths" including sheet flow over land, therefore causing no difference between pre-development and post-development conditions and no need for specific conveyance system sizing. The applicant is however proposing water filter strips along the roadway and rail for water quality and sizing them to meet the 9-minute residence time.

4. The "Access Road Basin" (10.44 acres) is the only stormwater basin that will need to have peak runoff control measures. The applicant is proposing to use drainage swales with weirs and check dams to address both water quality and quantity requirements. The proposed design appears to meet or exceed the water quality and quantity requirements of the Ordinance. The Final Stormwater Plan should include specific swale design plan and profile details for review by the County.

5. Erosion Control Plan. Looking at the Site Design Review Plans (Attachment 2c), the applicant has met the intent of the Ordinance. A Final Erosion Control Plan will be required and a Building Permit will not be issued until the plan is approved by the county.

Staff finds the proposal can be conditioned to be consistent with the County's Stormwater and Erosion Control Ordinance.

Agency Comments

County Building Official: Obtain all permits for construction. Engineered plans with Code Summary is required.

County Sanitarian: No comments have been received.

County Engineering Technician: Has reviewed the proposal and has no objections to its approval.

County Assessor: No comments have been received.

Clatskanie Rural Fire and Protection District: No comments have been received as of the date of this report.

Clatskanie-Quincy CPAC: No comments have been received.

CONCLUSION, RECOMMENDATION & CONDITIONS

Based on the above findings, if the Board finds:

1. The delineated wetlands on the site are not "significant" consistent with DSL recommendation;
2. The proposed renewable fuel facility and associated development (including the rail branchline) are "water-related" uses consistent with the applicant's definition; and
3. The proposed rail development meets the definition of a "rail branchline" consistent with Portland & Western Railroad's definition.

Planning Staff recommends **APPROVAL** of this Type II Site Design Review and Variance **(DR 21-03)** and Type III Conditional Use (**CU 21-04**) to allow the development of the proposed renewable fuel facility and associated development (including the rail branchline) on properties within the RIPD Zone and PA-80 Zone associated with the Tax Lot numbers:

Facility

- Port of Columbia County: 8422-00-00100, 8422-00-00200, 8422-00-01100, 8421-00-00700, 8416-00-00200, 8416-00-00300
- NEXT Renewable Fuels, Inc.: 8422-00-00300

Branch Line

- Port of Columbia County: 8421-00-00600, 8422-00-00400, 8422-00-00500, 8422-00-00600, 8423-B0-00700
- De La Cruz: 8423-B0-00800

Subject to the following conditions:

CONDITIONS OF APPROVAL

1) This Design Review, Variance and Conditional Use shall remain valid for two (2) years from the date of the final decision. This permit shall become void, unless the proposal has commenced in conformance with all conditions and restrictions established herein within the two-year validity period. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicant is not responsible for failure to develop.

2) All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing site clearing or development activities.

3) Applicant shall prepare a management plan for the rail crossing providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and a means to resolve conflicts.

4) The property owner shall sign and record, in the deed records of Columbia County, a Waiver of Remonstrance regarding past, current or future accepted farm or forest operations of adjacent and nearby lands. A copy of this recorded document shall be submitted to LDS.

5) The applicant shall obtain all applicable permits for any proposed future signage. These proposals shall meet all requirements in Section 1300 as well as any other applicable sections of the Columbia County Zoning Ordinance.

6) The proposed development area shall be sited as presented in the applicant's submitted site plans and specifications reviewed and approved by the Board. This shall include all improvements including the proposed stormwater retention areas.

7) The applicant shall obtain approval from Clatskanie Rural Fire Protection District prior to the authorization of the Final Site Plan.

8) The applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details; a Building Permit will not be issued until the plan is approved by the county.

9) The applicant shall prepare a Final Erosion Control Plan; a Building Permit will not be issued until the plan is approved by the county.

10) Any changes to approved plan(s) and/or elevations shall be reviewed and approved by the County prior to implementation in compliance with the applicable provisions of the Oregon Structural Specialty and Fire Codes. All work shall accurately reflect County approved plans.

Prior to the Issuance of Occupancy:

11) The applicant shall complete the following road improvements: The complete reconstruction of approximately 1.65 miles of Hermo Road between Quincy-Mayger Road to the entrance to the Port Westward Industrial site to include two 12-foot travel lanes, rock shoulders, safety slopes, and roadside ditches then paving of the entire length of Hermo Road to final grade between Quincy-Mayger Road to Kallunki Road to bring the entire road up to current County road standards. This work includes final design, permitting, and construction.

12) Planning Staff shall review all proposed parking and landscaping improvements in order to conduct a site visit to ensure that all requirements have been constructed as proposed. This site visit is required prior to final planning approval.

ATTACHMENTS

1) Site Design Review Application Form, Variance Application Form, Conditional Use Application Form, and Owner Authorization Letters
2) Applicant Prescribed Use, Site Design Review, and Variance Submission Package January 19, 2021
    a. Prescribed Use, Site Design Review, and Variance Narrative
    b. Exhibit 02 SDR Vicinity Map and Zoning Map
    c. Exhibit 03 Site Design Review Plans
    d. Exhibit 04 Flood Insurance Rate Map 41009C0050D, dated November 26, 2010 (annotated)
    e. Exhibit 05 Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
    f. Exhibit 06 Clatskanie-Quincy CPAC Wildlife Game Habitat map, Beak Consultants Inc., June 1995 (annotated)

g. Exhibit 07 Clatskanie-Quincy CPAC Wetland and Hydric Soils map, Beak Consultants Inc., June 1995 (annotated)
h. Exhibit 08 Stream Data Map
i. Exhibit 09 Excerpt from Lakes of Oregon, Volume 1, Clatsop, Columbia, and Tillamook Counties, U.S. Geological Survey, 1973
j. Exhibit 10 Statewide Wetland Inventory (annotated)
k. Exhibit 11 Anderson Perry Wetland Delineation Report
l. Exhibit 12 Oregon State Register of Natural Heritage Resources
m. Exhibit 13 Preliminary Stormwater Report
n. Exhibit 14 Transportation Impact Analysis
o. Exhibit 15 Architectural Rendering

3) Applicant Conditional Use Submission Package January 19, 2021
a. Conditional Use Narrative
b. Exhibit 02 CUP Vicinity Map and Zoning Map
c. Exhibit 03 Conditional Use Permit Plans
d. Exhibit 04 Flood Insurance Rate Map 41009C0050D, dated November 26, 2010 (annotated)
e. Exhibit 05 Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
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j. Exhibit 10 Statewide Wetland Inventory (annotated)
k. Exhibit 11 Anderson Perry Wetland Delineation Report
l. Exhibit 12 Oregon State Register of Natural Heritage Resources
m. Exhibit 13 Preliminary Stormwater Report

4) Applicant Prescribed Use, Site Design Review, and Variance Submission Package August 12, 2021
a. Prescribed Use, Site Design Review, and Variance Narrative
b. Exhibit 02 SDR Vicinity Map and Zoning Map
c. Exhibit 03 Site Design Review Plans
d. Exhibit 04 Flood Insurance Rate Map 41009C0050D, dated November 26, 2010 (annotated)
e. Exhibit 05 Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
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i. Exhibit 09 Excerpt from Lakes of Oregon, Volume 1, Clatsop, Columbia, and Tillamook Counties, U.S. Geological Survey, 1973
j. Exhibit 10 Statewide Wetland Inventory (annotated)
k. Exhibit 11 Anderson Perry Wetland Delineation Report

   l. Exhibit 12 Oregon State Register of Natural Heritage Resources
   m. Exhibit 13 Preliminary Stormwater Report
   n. Exhibit 14 Transportation Impact Analysis
   o. Exhibit 15 Architectural Rendering
   p. Exhibit 16 Port of Columbia County Utility Service Letter
   q. Exhibit 17 Portland General Electric Correspondence Regarding Trees Near Transmission Lines
5) Applicant Conditional Use Submission Package August 12, 2021
   a. Conditional Use Narrative
   b. Exhibit 02 CUP Vicinity Map and Zoning Map
   c. Exhibit 03 Conditional Use Permit Plans
   d. Exhibit 04 Flood Insurance Rate Map 41009C0050D, dated November 26, 2010 (annotated)
   e. Exhibit 05 Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
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   j. Exhibit 10 Statewide Wetland Inventory (annotated)
   k. Exhibit 11 Anderson Perry Wetland Delineation Report
   l. Exhibit 12 Oregon State Register of Natural Heritage Resources
   m. Exhibit 13 Preliminary Stormwater Report
6) NEXT Memorandum on Interpretation of CCZO 1175.B, 1184.E and OAR 660-012-0065 (September 30, 2021)
7) County Memo Identifying Critical Issues (sent October 25, 2021)
8) NEXT Supplemental Fence Height Evidence (November 2, 2021)
9) NEXT Supplemental Landscape Buffer and Screening Variance Evidence (November 2, 2021)
10) Applicant Submission Package December 14, 2021
   a. Prescribed Use, Site Design Review, and Variance Narrative (December 14, 2021)
   b. Exhibit 18 PIP Chain Link Fence and Gates Installation Specification (December 2016)
   c. Exhibit 19 Anderson Perry Wetland Memo (December 8, 2021)
   d. Exhibit 20 Pipeline and Water Intake Map
   e. CUP Narrative (December 14, 2021)
   f. Exhibit 14 Anderson Perry Wetland Memo (December 8, 2021)
   g. Exhibit 15 Pipeline and Water Intake Map
   h. Exhibit 16 Portland and Western Railroad Letter (November 19, 2021)
11) Agency Comments
   a. Department of State Lands (December 15, 2021)
   b. Oregon Department of Fish & Wildlife (December 21, 2021)
   c. Columbia Soil & Water Conservation District (January 5, 2022)
12) Waiver of Remonstrance

Attachment C

Letter from PWR

a Genesee & Wyoming Company

November 19, 2021

Mr. Gene Cotten
NEXT Renewable Fuels, Inc
11767 Katy Freeway, Suite 705
Houston, TX 77079

Gene,

I understand the Columbia County planning staff has raised questions regarding the classification of the tracks that will built to support NEXT's Renewable Diesel facility at Port Westward. For PNWR contractual purposes, NEXT's rail tracks will be considered industry track, which is another term for branch line or spur. NEXT's track will connect to the existing branch line that services Port Westward. As a general matter, "branch line" is a broad term that encompasses any track that branches off from mainline track.

Portland & Western Railroad, Inc. also does not consider the tracks at NEXT's facility a "switch or rail yard." All cars entering and exiting NEXT's facility will be for NEXT's sole use at the site itself. A switch/rail yard's goal is to block cars for furtherance to other destination points. Let me know if you have additional questions.

Sincerely,

Matthew Artz

Matt Artz
Director, Sales and Marketing
Portland & Western Railroad, Inc.
1710 Midway Court
Centralia, WA 98531

Appendix 1

Request for Additional Information Response - 2/26/22

Next Renewable Fuels, Oregon, LLC.
EFSC Revision
January 2021, Revised March 2022

February 26, 2021

Walter Adams, Operations and Policy analyst
Oregon Department of Energy
550 Capitol St NE
Salem, OR 97301

RE: Response to Incompleteness Determination and Request for Additional Information for the Exemption Request for NEXT Renewable Fuels Oregon, LLC

Dear Mr. Adams,

This letter is in response to your Request for Additional Information (RAI) for the NEXT Renewable Fuels Oregon, LLC (NEXT) related to the application requesting exemption from Oregon Energy Facility Siting Council (EFSC) jurisdiction for the proposed NEXT Renewable Fuels facility at Port Westward. NEXT responses are below:

- Request 1 – Section 3.0, ORS 469.320(2)(f)(B) and OAR 345-015-360(7)(c):

  Please provide evidence of land use approval from Columbia County for the project.

  Response – See Attachment A, Email correspondence dated February 24, 2021 to Mr. Walter Adams, DOE from Garrett H. Stephenson, Schwabe, Williamson, and Wyatt, with a letter from Columbia County Planning Department attached regarding the status of the Land Use permitting.

  Attachment "A" explains why EFSC can appropriately grant an exemption now, that is conditioned on obtaining County approval prior to construction. However, as we discussed on our January 20, 2021 conference call, if ODOE finds that EFSC cannot do so at this time, NEXT would greatly appreciate a memorandum from staff opining on the remaining exemption requirements. This is necessary so that NEXT can determine the appropriate course of action with respect to its related permits, which decisions may be subject to EFSC review if a site certificate is ultimately required.

- Request 2 – Section 2.4.1, ORS 469.320(2)(f)(E):

  Please provide either your source of information or the calculation to support the reported value of 115.9 pounds of carbon dioxide per million BTU from fossil fuel used for conversion energy.

  Response – Attachment "B" outlines the calculations to support the value of carbon dioxide per million BTU that will be created from fossil fuel conversion.

- Request 3 – Section 4.1, ORS 469.320(2)(f)(D) and OAR 345-015-0360(7)(f):

Please disclose the name of the third-party logistics provider and provide a copy of their long-term lease and use agreement with the Port (or applicable excerpt thereof).

Response – See Attachment "C", Agreements providing Global Partners' subsidiary Cascade Kelly Holdings, LLC (referred to as Cascade Grain, Cascade or CPBR) the rights to use the Port Westward dock to handle marine loading and unloading of products for NEXT. For ease of review, pertinent sections are as follows: the original Dock Use Agreement (particularly sections 1.02 and 1.03), the Third Amendment to the Dock Use Agreement (establishing priority use of berth one); and the 5th Amendment to the Dock Use Agreement (authorizing renewable diesel). To assist your understanding of the various amendments, we have copied here the summary of the Dock Use Agreement and amendments that is contained in the recitals of the Fifth Amendment to the Dock Use Agreement:

A. Dock Use Agreement 5/31/2006. Port, Cascade Grain Products, LLC ('Cascade"), and PGE were parties to the Dock Use Agreement dated May 31, 2006 ("Dock Use Agreement"). The Dock Use Agreement allowed Cascade to use certain dock facilities owned by the Port and located near the Cascade property. On December 23, 2009, CPBR assumed and was assigned the rights and obligations of Cascade under the Dock Use Agreement pursuant to an Asset Purchase Agreement (and all addenda thereto) between CPBR and Peter C. McKittrick in his capacity as the Trustee for Cascade under the United States bankruptcy Code Chapter 7.
B. First Amendment 9/7/2012. The parties amended the Dock Use Agreement on September 7, 2012 ("First Amendment"). The first amendment amended the Approval Products section to include fuel and petroleum products produced or processed by the CPBR production facility with API gravity ranges from 30-44 degrees.
C. Second Amendment 10/1/2013. The parties amended the Dock Use Agreement on October 1, 2013 ("Second Amendment"). The Second Amendment updated Dockage and Wharfage requirements and established a Capital Reserve Account used for capital improvements.
D. Third Amendment 3/17/2016. The parties amended the Dock Use Agreement on April 6, 2017 ("Third Amendment"). The Third Amendment outlined CPBR's agreement to finance the cost of improvement to Berth One and outlined priority, costs, and other stipulations associated with the improvements.
E. Fourth Amendment. The parties amended the Dock Use Agreement on December 12, 2018 ("Fourth Amendment"). The Fourth Amendment amended the Approved Products section to include fuel and petroleum products produced or processed by the CPBR production facility with API gravity range from 18-44 degrees.
F. Purpose of the Fifth Amendment. The Fifth Amendment authorizes transferring, storing and transloading of renewable diesel. CPBR, the Port, and PGE now wish

to amend Section 1.03 and Section 1.04, 2.10 and 3.08 of the Dock Use Agreement to clarify CPBR's rights thereunder.

- Request 4 – Section 4.1, ORS 469.320(2)(f)(D) and OAR 345-015-0360(7)(f):

  Please provide additional details on capacity of ships to be utilized and/or calculation to support the data provided of approximately 5 ships per month.

  Response – NEXT plans for over 85 percent of the biomass feedstock received, and renewable fuels produced, at the Facility to be moved via ship or barge by the Terminalling Partner at the existing Port Westward dock. Approximately fifteen ships per month, or about 180 ships per year, will transport feedstock and finished products. Feedstock ships will typically be ~30,000 DWT vessels and the finished product ships will typically be ~70,000 DWT vessels. Approximately 5 ships per month is the estimated ship needs to transport the finished product. See "Attachment D" for details of ship calculations. This volume and size of vessel was accounted for the 2006 permitting process for Berth 1.

  Attachment "D" outlines the number of ships and berth days required to import feedstock and ship finished product by marine vessels at 37,500 Bbls of production and 50,000 Bbls of production.

- Request 5 – Section 3.1.3, ORS 469.320(2)(f)(B) and OAR 345-015-360(7)(c):

  Please provide a drawing, sketch or map which clearly shows the new rail spur and distinguishes the new rail from existing rail.

  Response – See Figure 6 - Rail Drawing detail in the figures attached to the exemption request.

In addition to these responses, we have updated language in the EFSC Exemption Request to align with updates in the project design.

Please review our responses and the updated request. Should you have any additional question do not hesitate to reach out.

Best Regards,

Christopher Efird

Executive Chairman
Next Renewable Fuels, Inc
(Sole and Managing Member of NEXT Renewable Fuels Oregon, LLC)

Attachment A

Correspondence

SWW, Columbia County and DOE

Next Renewable Fuels, Oregon, LLC.
EFSC RIA Response
February 2021

Schwabe
WILLIAMSON & WYATT®

February 24, 2021

Garrett H. Stephenson
Admitted in Oregon
T: 503-796-2893
C: 503-320-3715
gstephenson@schwabe.com

VIA E-MAIL

Mr. Walter Adams
Oregon Department of Energy
550 Capitol Street NE, 1st Floor
Salem, OR 97301

RE: Energy Facility Siting Council (EFSC) Exemption Request Pursuant to ORS 469.320(2)(f) by NEXT Energy Group, Inc.

Dear Walter:

As we discussed in our telephone conference on January 20, 2021, we offer you the following further explanation and attached letter from the Columbia County Planning Department in response to the EFSC RFI regarding the status of local land use permitting.

The proposed renewable diesel facility (the "Project") is to be located within Port Westward's Rural Industrial – Planned Development zone ("RIPD"), wherein the Project is considered a "use permitted under prescribed conditions." The RIPD zone was established in the original version of the County's Comprehensive Plan to accommodate the existing Portland General Electric Beaver Generating Plant. Anticipated uses in Port Westward, as explained in the County's Comprehensive Plan, are as follows:

> "Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm. Because of the distance to Portland and the constraints on the access roads, the site is not likely to attract any heavy highway users. Uses likely to be located here are best illustrated by four proposals submitted to the current leaseholder since 1980. Proposals have included a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant. These types of uses NEVER absorb a small amount of acreage each year, but rather occupy large sites and occur at intervals over a number of years. These four uses, plus the generating plants, would have occupied virtually the entire site."

The Project is facially consistent with and similar to the examples of uses that should be allowed in the RIPD zone. This was confirmed by Columbia County Land Development Services' letter dated December 29, 2020 (**Exhibit 1**), which explains as follows:

> "Based on the above statements, the proposed renewable diesel facility would seem to be consistent with the existing and "probable" uses at Port Westward identified in the Exception Statement."

The County's December 29 letter also identifies and explains the applicable criteria. These include three general areas. First, the Application must demonstrate that the Project is consistent with the RIPD policies in the exception statement. As staff noted above, the Project will most likely be able to do so. Second, the Application must demonstrate that there are adequate public or private utilities able to serve the Project. Third, the Application must demonstrate compliance with certain site development standards through a "Site Design Review." A conditional use permit application is not required and the Application need not demonstrate compliance with the Statewide Planning Goals.

EFSC has approved exemptions in similar circumstances. For example, in 2013 EFSC approved an exemption request for ZeaChem, Inc. for a project within the Port of Morrow. EFSC's determination was based on a 2011 letter from the Morrow County Planning Director to the EPA. The letter preceded the date of ZeaChem's exemption request. In its order, EFSC states:

> "[t]he Request for Exemption includes a 2011 letter from Carla McLane ("Exhibit A"), Morrow County Planning Director to the EPA. The letter states that the ethanol facility is a permitted use in the Port Industrial Zone, where the facility is proposed. The letter also states that **ZeaChem must still obtain the required zoning permit and applicable building permits, and that Site Design review under Article 4, Section 4.165 of the Morrow County Zoning Ordinance will be applicable.** In response to the Department's [Oregon Department of Energy's] request regarding the requirements of the exemption criterion, Ms. McLane provided supplemental information by email. Ms. McLane states that no statewide planning goals or Land Conservation and Development Commission rules apply directly to the facility, and that **as ministerial actions, neither the Zoning Permit nor the Site Plan Review required under the Morrow County Zoning Ordinance are land use approvals**. The Council relies on the county's representations to find that the proposed facility meets the land use criterion in ORS 469.320(f)(B)." (Emphasis Added)

EFSC concluded that although not required for the exemption, Morrow County's requirements for zoning permits, building permits and site plan review still apply and must be met prior to construction.

Similarly, EFSC approved another exemption request at the Port of Morrow in 2007 for Pacific Ethanol, Inc. EFSC's determination was based on an April 11, 2006 letter from Carla McLane, Morrow County Planning Director. The letter preceded the date of Pacific Ethanol's exemption request. In its order, EFSC states:

> "[t]he exemption request includes a letter of April 11, 2006 from Carla McLane, Morrow County Planning Director. The letter states that the ethanol facility is an outright permitted use in the Port Industrial zone, where the facility is proposed. The Council has previously found that Morrow County's comprehensive land use plan is acknowledged by LCDC and that for a facility in the Port Industrial zone, no statewide planning goals or rules apply directly to the facility under ORS 197.464. The letter from Carla McLane points out that **Pacific Ethanol must still obtain the required zoning permit and building permits and must still go through county site plan review prior to construction. However, the zoning permit, building permits and site plan review are not considered to be the land use approvals required in criterion (B) of ORS 469.320(2)(f)**. The county planning director's determination that the facility is an outright permitted use is sufficient to meet the exemption criterion. The Council therefore finds that criterion (B) is met." (Emphasis added)

As in the ZeaChem case, EFSC granted the exemption even though a zoning permit and approved site plan review (both of which are land use actions) must be obtained prior to construction.

The above cases demonstrate that where a proposed use is not conditional and where the Statewide Planning Goals do not apply, EFSC has granted exemptions in the past even though land use permits (such as site design review approvals) had yet to be obtained, on the condition that those land use permits were obtains prior to construction. The NEXT Project is proceeding under similar circumstances, and we believe that EFSC could lawfully approve NEXT's exemption request at this time with a similar condition.

We hope you will consider the above and the County's attached letter. Please let me know if you have any questions. As we discussed previously, if ODOE takes the position that EFSC is nonetheless unable to grant the exemption, NEXT would greatly appreciate obtaining staff's initial findings on the non-land use requirements of the exemption criteria in ORS 469.320(2)(f) so that NEXT has some assurance that EFSC will grant the requested exemption once County land use permits are obtained.

Best regards,

Garrett H. Stephenson

GST:jmhi
Enclosure

cc: Mr. Christopher Efird *(via email) (w/enclosure)*
Mr. Gene Cotten *(via email) (w/enclosure)*

Ms. Catie Kerns *(via email) (w/enclosure)*
Ms. Laurie Perry *(via email) (w/enclosure)*
Mr. Brien Flanagan *(via email) (w/enclosure)*

PDX\133639\242725\GST\29987670.1

COLUMBIA COUNTY
Land Development Services

ST. HELENS, OR 97051
230 Strand St.
Direct (503) 397-1501
www.co.columbia.or.us

December 29, 2020

Schwabe, Williamson & Wyatt
Attn: Garrett Stephenson
PacWest Center
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204

RE: NEXT Local Land Use Process

Dear Mr. Stephenson:

We understand that Next Energy Group (NEXT) has submitted a request to the Oregon Energy Facility Siting Council (EFSC) for a statutory exemption to the site certificate requirement, pursuant to ORS 469.320(2)(f). You had asked Columbia County Planning to provide a detailed explanation of the land use permitting process pertaining to NEXT's proposal to establish a renewable diesel plant at Port Westward. We provide that below, and encourage EFSC to consider the following discussion when considering whether to grant NEXT's requested exemption.

The subject property is located within Port Westward's "Resource Industrial – Planned Development" (RIPD) zone. The RIPD zone has three categories of uses: permitted (CCZO 682), "uses permitted under prescribed conditions" (CCZO 683), and "prohibited" uses (CCZO 684). The County considers the NEXT's proposal to be a use for the "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities," which is a "use permitted under prescribed conditions." An application for this use will be subject to review and approval by the Planning Commission. The relevant "conditions" (effectively, the approval criteria) are set forth in CCZO 683.1 as follows:

> "A. The requested use conforms with the goals and policies of the Comprehensive Plan - specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies.
>
> B. The potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated considering the following factors:

.1 Physiological characteristics of the site (ie., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements;

.2 Existing land uses and both private and public facilities and services in the area;

.3 The demonstrated need for the proposed use is best met at the requested site considering all factors of the rural industrial element of the Comprehensive Plan.

C. The requested use can be shown to comply with the following standards for available services:

.1 Water shall be provided by an on-site source of sufficient capacity to serve the proposed use, or a public or community water system capable of serving the proposed use.

.2 Sewage will be treated by a subsurface sewage system or a community or public sewer system, approved by the County Sanitarian and/or the State DEQ.

.3 Access will be provided to a public right-of-way constructed to standards capable of supporting the proposed use considering the existing level of service and the impacts caused by the planned development.

.4 The property is within, and is capable of being served by, a rural fire district; or, the proponents will provide on-site facilities shall be approved by either the state of local Fire Marshall."

The central consideration of whether the proposed use may be located within the RIPD zone is whether it is consistent with PART XII, INDUSTRIAL SITING RESOURCE INDUSTRIAL DEVELOPMENT: GOALS AND POLICIES of the Columbia County Comprehensive Plan. This element of the Comprehensive Plan includes the following substantive policy:

"Restrict industrial development on land zoned Resource Industrial Planned Development to those uses that:

A. Are not generally labor intensive;

B. Are land extensive;

C. Are located with adequate rail and/or vehicle and/or deep water port and/or airstrip access;

D. Complement the character and development of the surrounding area;

E. Are consistent with the rural facilities and existing and/or planned for the area; and,

F. Will not require facility and/or service improvements at public expense; or,

G. Are not appropriate for location within Urban Growth Boundaries due to their hazardous nature."

The factors above are based on the Port Westward Exception Statement, which is integrated into the County's Comprehensive Plan. The Exception Statement anticipated future uses of Port Westward to be as follows:

> "Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm. Because of the distance to Portland and the constraints on the access roads, the site is not likely to attract any heavy highway users. Uses likely to be located here are best illustrated by four proposals submitted to the current leaseholder since 1980. Proposals have included a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant. These types of uses NEVER absorb a small amount of acreage each year, but rather occupy large sites and occur at intervals over a number of years. These four uses, plus the generating plants, would have occupied virtually the entire site."

Based on the above statements, the proposed renewable diesel facility would seem to be consistent with the existing and "probable" uses at Port Westward identified in the Exception Statement.

In addition to demonstrating compliance with the factors and conditions above, NEXT will have to evaluate its project's impacts on the physiological characteristics of the site, surrounding public and private land uses, and public facilities and services. Any adverse impacts identified during the Planning Commission's review will have to be adequately mitigated.

There are also a number of standards intended to ensure that adequate public services are available or can be made available to the subject property listed in CCZO 683.1.C.1-.4 which were listed earlier in this letter. These standards can be satisfied by the applicant providing sufficient infrastructure to serve its property, including water, sewerage, public street access, and fire protection.

In addition to these standards, potential impacts to the existing road system will be reviewed. Pursuant to CCZO 1450, a Transportation Impact Analysis will be required to evaluate the surrounding public road system and determine if any additional improvements will be required to the roads and intersections in order to accommodate the NEXT renewable diesel project.

Finally, NEXT will need to apply for and be granted a Site Design Review approval under CCZO 1550. This permit ensures that the project satisfies essential development standards, including access, parking, setbacks, and landscaping, but does not consider the lawfulness of the land use itself, and involves limited discretion.

We understand that NEXT will soon submit concurrent applications for both the "use permitted under prescribed conditions" and Site Design Review. Representatives from NEXT attended a pre-application conference with County staff and representatives of other affected agencies and local governments on February 6, 2020. While staff cannot opine on the ultimate approvability of NEXT's project until the Planning Commission is able to review the proposed applications, staff has yet to identify any issue that would preclude such approval, assuming the application(s) meet all applicable criteria and development standards.

Feel free to contact me if you would like to discuss this matter further.

Cordially,

Matt Laird
Planning Manager
Columbia County, Oregon
230 Strand Street, St. Helens, OR 97051
503.397.7217
matt.laird@co.columbia.or.us
www.co.columbia.or.us

Attachment B

Carbon Dioxide Calculations

Next Renewable Fuels, Oregon, LLC.
EFSC RIA Response
February 2021

Attachment B - EFSC RAI

Combustion Reaction 'CmHn + (m+n/4)O2 = mCO2 + n/2H2O

Empircally - Moles of C (Carbon) produces equivalent Moles of CO2

				Gross	1 yr Avg	Moles	Moles		Natural Gas Comp Contribution	1 Yr Avg		EIA Emission Factors		
NG Comp		MW	BTU/ft3	BTU/Lb gas	Mole%	Carbon	CO2	lb C02/lb Comp	lb CO2 / MMBTU Comp	lb CO2 / MMBTU NG		lb CO2 / MMBTU Comp	KG CO2 / MMBTU Comp	
N2	-	28.013			0.3	0	0	0	0	0.0				
CO2	-	44.01			0.29	0	0	0	0	0.1				
Methane	CH4	16.043	1010	23860	91.13	1	1	2.743	115.0	104.77	91.13	115		
Ethane	C2H6	30.07	1769.6	22304	6.35	2	2	2.927	131.2	8.33	6.35	131.4	59.6	C2
Propane	C3H8	44.097	2516.1	21625	1.43	3	3	2.994	138.5	1.98	1.43	138.6	62.87	c3
Ibutane	C4H10	58.124	3251.9	21204	0.2	4	4	3.029	142.8	0.29	0.2	143.2	64.94	IC4
Nbutane	C4H10	58.124	3262.3	21272	0.22	4	4	3.029	142.4	0.31	0.22	143.2		
Ipentane	C5H12	72.151	4000.9	21016	0.04	5	5	3.050	145.1	0.06		0.0		
Npentane	C5H12	72.151	4008.9	21058	0.03	5	5	3.050	144.8	0.04	0.09	154.4	70.02	C5+
NHexane	C6H14	86.178	4755.9	20916	0.02	6	6	3.064	146.5	0.03				
									Avg	115.94	lb CO2/MMBTU NG	115.87		

Attachment C

Dock Agreement & Amendments

Next Renewable Fuels, Oregon, LLC.
EFSC RIA Response
February 2021

DOCK USE AGREEMENT

This Dock Use Agreement (this "Agreement") is made effective as of the 31st day of May, 2006 (the "Effective Date") by and among the Port of St. Helens, an Oregon municipal corporation (the "Port"), Cascade Grain Products, LLC, an Oregon limited liability company ("Cascade") and, only for the limited purposes set forth in Section 1.06, Portland General Electric Company, an Oregon corporation ("PGE").

RECITALS

A. The Port has leased to PGE an area of land located in Columbia County, Oregon described on **Exhibit A** attached hereto (the "PGE Property").

B. Pursuant to that certain Amended and Restated Sublease by and between PGE and Cascade, dated as of the 31st day of May , 2006 (the "Sublease"), PGE has subleased to Cascade that portion of the PGE Property described on **Exhibit B** attached hereto (the "Cascade Property") on which Cascade intends to develop an ethanol production facility.

C. To facilitate transportation of the ethanol from the production facility to market, Cascade and the Port desire to enter this Agreement pursuant to which Cascade shall be entitled to use certain dock facilities owned by the Port and located near the Cascade Property.

AGREEMENT

For good, fair and valuable consideration, the receipt and sufficiency of which is acknowledged, the Port and Cascade agree as follows:

ARTICLE 1
DOCK OPERATIONS

1.01 Term

This Agreement shall be for a term beginning on the commencement of the term of the Sublease and continuing through July 31, 2066, together with any Renewal Terms exercised under the Sublease (as provided therein), unless the Sublease is terminated sooner in accordance with the provisions thereof, in which event this Agreement shall terminate on the same day as the Sublease terminates (the "Term").

1.02 Premises

The facilities referred to in this Agreement hereinafter as "Dock Area" shall include the entire PGE Westward Beaver Dock and the two vehicular access trestles extending from the shoreline to each end of the dock and the improvements thereon, other

offshore structures including the debris boom and dolphin and mooring structures, all as more particularly described on **Exhibit C** to this Agreement and depicted on **Exhibit D** to this Agreement. The "Dock Area" shall also include the existing dock as it may be repaired, improved and/or modified, and any replacement dock that may be constructed in the general location of the PGE Westward Beaver Dock. Cascade acknowledges that neither the Port nor PGE has made any representation or warranty with respect to the Dock Area or with respect to the uses to which the Dock Area may be put or the suitability of the Dock Area for the conduct of Cascade's business. Cascade has inspected the Dock Area and accepts the same "AS IS" and subject to the continuing rights of PGE as reflected in Section 9.01.

1.03 Use

Cascade is hereby granted the right to use the Dock Area for (i) the purpose of loading or unloading liquid bulk cargo produced by its proposed production facility on the Cascade Property (collectively, the "Approved Products"), (ii) access to and repair of pipelines and necessary piping and material transfer equipment, and (iii) ingress and egress for all purposes of this Agreement ("Permitted Uses"). Prior to delivering any other cargo to or transporting any other cargo from the Dock Area, Cascade shall obtain the prior written consent of the Port and PGE to the proposed product and the proposed location, storage, and duration and handling procedures. Except for the facilities existing in the Dock Area on the date hereof, Cascade shall furnish and maintain all equipment, supplies, and dunnage necessary to its use of the Dock Area. No foreign flag vessels are to be allowed dockage with out prior approval of PGE. Subject to the foregoing, all other terms and conditions of this Agreement, and the requirements of the Maritime Facilities Security Plan to be developed among Cascade, PGE, the Port, and the U.S. Coast Guard, the Port hereby reserves the right to allow non-Cascade vessels to use the Dock Area subject to the prior written consent of PGE which shall not be unreasonably withheld but may be reasonably conditioned to the extent necessary or appropriate to protect PGE's interests in the Dock Area.

1.04 Ethanol Transfer

Prior to commencing any transfer of Approved Products from the Dock Area, Cascade shall:

(1) provide to the Port an ethanol operations manual that has been approved by the U.S. Coast Guard;

(2) provide to the Port a letter of adequacy issued by the U.S. Coast Guard;

(3) provide to the Port an ethanol spill contingency plan;

(4) ensure that the minimum ethanol spill containment equipment required by the U.S. Coast Guard (33CFR 154.545) is present at the Dock Area;

(5) provide to the Port and the U.S. Coast Guard a current written list of designated, qualified operators to act as person(s)-in-charge of transfer operations at the Dock Area; and

(6) comply with all provisions of the Maritime Facility Plan as developed among Cascade, PGE, the Port, and the U.S. Coast Guard.

1.05 Improvement of the Dock Area. Cascade shall be entitled to construct and install in the Dock Area those certain improvements described on **Exhibit E** attached hereto (the "Cascade Improvements"). Cascade shall make no other improvements or alterations to the Dock Area without the prior written consent of the Port and PGE, which consent shall not be unreasonably withheld, conditioned, or delayed. Cascade shall have (a) exclusive use of the portion of the Dock Area under, and immediately surrounding, the Cascade Improvements as depicted on **Exhibit E** (the "Improvement Area"), (b) exclusive use of the Cascade Improvements, and (c) the right to exclude others from the Improvement Area. The Cascade Improvements shall be the property of Cascade and may be removed from the Dock Area by Cascade or any Mortgagee prior to expiration of this Agreement or within a reasonable time following earlier termination of this Agreement provided that any damage to the Dock Area resulting from such removal is promptly repaired.

1.06 PGE Consent. PGE hereby consents to the execution of this Agreement by the Port and Cascade and agrees, notwithstanding the fact that the Dock Area is currently part of the PGE Property and is subject to its lease from the Port, that the Port shall be entitled to (a) control the Dock Area, (b) collect Dockage and Wharfage under this Agreement, and (c) perform its obligations hereunder, subject to the continuing rights of PGE as reflected in Section 9.01. The foregoing shall not be construed as terminating PGE's lease of the Dock Area. PGE shall, however, as soon as practicable seek approval from the Oregon Public Utilities Commission for termination of its lease of the Dock Area and, after receipt of such approval, terminate its lease of the Dock Area on terms acceptable to PGE in its sole discretion. In consideration for the foregoing and notwithstanding any subsequent termination of its lease of the Dock Area, PGE is an intended third party beneficiary of this Agreement and is hereby granted the right to enforce (a) Cascade's obligation to obtain its consent pursuant to Section 1.03 and Section 1.05, (b) its right to be an additional insured under Cascade's insurance policies as set forth in Section 7.02, and (c) its rights under Section 9.01. PGE shall be entitled to all remedies available to it under the law and equity, including making a claim for damages, injunctive relief, or specific performance.

ARTICLE 2
GENERAL CONDITIONS

2.01 Maintenance of Dock Area. Cascade shall not cause there to exist in the Dock Area any unsafe condition or cause the Dock Area to become cluttered with trash or debris.

2.02 Equipment in Dock Area. The Port shall designate a reasonable portion of the Dock Area as being available for the exclusive use by Cascade for storage of Cascade equipment, which area shall be at least one thousand (1,000) square feet (the "Equipment Storage Area"). Cascade may only leave its equipment in the Equipment Storage Area.

The Port shall reasonably permit the parking of Cascade vehicles or its employee's vehicles in the Dock Area to the extent necessary for repair and other Cascade operations in the Dock Area. Cascade assumes the risk for any damage that may be sustained by such equipment or vehicles.

2.03 Embarking/Debarking Equipment. Cascade shall be responsible for providing the proper equipment (such as gangways, ladders, safety nets, etc.) necessary for safely embarking/debarking from vessels transporting Cascade cargo ("Cascade Vessels").

2.04 Lock Up of Facilities. Upon its completion of any work in the Dock Area, Cascade shall secure and lock all overhead and personnel doors of all buildings and facilities its agents and employees have opened.

2.05 Use and Control of Employees. Cascade may not, under any circumstances, enlist the service of any employee of the Port in its performance under this Agreement. Cascade shall have absolute control of and responsibility for the actions of its employees.

2.06 Facility Damage. If Cascade or any Cascade Vessel shall damage the Dock Area in any fashion, Cascade shall repair or replace the damaged portion of the Dock Area. Cascade shall commence such repair or replacement within ten (10) days after the damage occurs and shall thereafter diligently and continuously pursue completion of such repair or replacement. Without limiting the circumstances under which commencement of repair or replacement shall be deemed to have occurred, "commencement of repair or replacement" shall be deemed to have occurred upon the occurrence of any of the following: (a) ordering of materials for such repair or replacement, (b) preparation of data and documentation for any required governmental approvals, (c) requesting repair quotations, or (d) the taking of other reasonable steps that are a pre-condition to commencing the physical repair work. If Cascade does not commence repair or replacement within ten (10) days after the damage occurs or, following commencement, does not diligently and continuously pursue completion of repair or replacement, the Port shall be entitled to undertake such repair or replacement, by providing written notice to Cascade of such election, and charge Cascade for the reasonable costs it incurs in connection with such repair or replacement. Cascade shall pay the Port for cost of repair or replacement, including an administrative charge equal to five percent (5%) of the reasonable construction costs, within fifteen (15) days after presentation of a bill by the Port. Cascade shall give immediate oral notice to the Port if Cascade becomes aware of any material damage or destruction to any part of the facility in the Dock Area. Cascade shall also submit written notice of such an event to the Port within twenty-four (24) hours after it becomes aware of such event.

2.07 Mechanics' Liens. Any work performed by Cascade at or on the Dock Area shall be promptly completed in a good and workmanlike manner and shall be lien-free except for liens which Cascade is protesting and diligently acting upon to remove or resolve.

2.08 Maintenance by the Port. Except for the express obligations of Cascade hereunder, the Port shall be responsible for keeping the Dock Area in good condition and

repair during the Term, which obligation shall include, without limitation, routine maintenance, repair, and replacement of the Dock Area (excluding any Cascade Improvements) or any portion thereof should the Dock Area or any portion thereof reach the end of its useful life. Cascade's share of routine repair and maintenance costs for the Dock Area is included within Dockage and Wharfage paid by Cascade. With respect to replacement of the Dock Area, or any portion thereof, and repairs that under generally accepted accounting principles consistently applied would be considered capital improvements or replacements (collectively, "Capital Improvements" and, individually, a "Capital Improvement"), the Port shall be entitled to draw amounts from the Capital Reserve Account (as defined below) to perform such Capital Improvements. If, however, there are insufficient funds in the Capital Reserve Account to pay for any particular Capital Improvement, the Port shall equitably apportion the remaining cost of such Capital Improvement among the parties then using the Dock Area according to the structural requirements for the Dock Area necessary for each such party's use. Notwithstanding the foregoing, in no event shall Cascade be responsible, or the Capital Reserve Account be used, for any repairs or replacements necessitated solely by the use of the Dock Area by any user thereof other than Cascade. The Port shall be responsible for ensuring that all utilities reasonably necessary for the Permitted Uses are available at the Dock Area, specifically including without limitation, water for fire suppression and electricity. The Port may charge Cascade its cost for all utilities consumed by Cascade in connection with its use of the Dock Area. If the Port does not perform any necessary repair or maintenance within ten (10) days after written notice from Cascade or, if such repair or maintenance cannot reasonably be performed within ten (10) days then if the Port does not commence such repair or maintenance within ten (10) days and thereafter diligently and continuously pursue such repair or maintenance to completion, Cascade shall be entitled to undertake such repair or maintenance, by providing written notice to the Port of such election, and charge the Port for the reasonable costs it incurs in connection with such repair or replacement. The Port shall pay such amount within thirty (30) days after presentation of a bill by Cascade. Notwithstanding anything to the contrary in the foregoing, Cascade shall not be responsible for any cost incurred as a result of repair or maintenance necessitated by any damage to the Dock Area caused by the Port or any third party other than the operators of Cascade Vessels. The Port shall be responsible for maintenance of the berth, navigation and approach channel from the Columbia River Channel up to the Dock Area to depths sufficient for navigation of Cascade Vessels.

2.09 Replacement of Dock Facilities. If all, or any portion, of the Dock Area shall ever reach the end of its useful life, and the Port shall elect not to replace the Dock Area or portion thereof, Cascade shall be entitled to replace, in whole or in part, the Dock Area or such portion thereof, at its sole cost and expense, provided, however, that Cascade shall reasonably cooperate with PGE and the Port's needs with respect to such replacement. In the event of any such replacement, all Dockage and Wharfage payable hereunder on account of Cascade's use of the Dock Area shall be abated until the amount of the abatement is equal to the reasonable costs incurred by Cascade in connection with replacement of the Dock Area.

2.10 Environmental Matters. Cascade shall cooperate with the Port and PGE in the Port's efforts to ensure that dock operations are in compliance with applicable environmental laws and regulations. This cooperation shall include providing such

information to the Port about Cascade materials, shipments, wastes, pollutants and emissions as is necessary for dock operations compliance. Cascade and Cascade Vessel's will specifically not cause materials that are regulated in any way or designated as hazardous to be present on the Dock Area without prior authorization of the Port. The Port shall have fifteen (15) days from the date of the submission of all required information concerning the request to approve, disapprove or approve subject to conditions, the proposed products, which authorization shall not be unreasonably conditioned, withheld or delayed, and the failure of the Port to respond with such time period shall be deemed approval. The Port hereby specifically approves the presence of ethanol. Cascade may, at the Port's invitation, but shall not be obligated to, participate in initiatives that are not required by law or regulation to reduce adverse environmental impacts of the Dock Area and dock operations or make positive environmental improvements to the Dock Area or dock operations not required by law or regulation.

2.11 Taxes; Payments in Lieu of Taxes. Cascade shall be responsible for the payment of its Proportionate Share of all taxes, assessments and/or governmental charges of any kind and nature assessed against the Dock Area during the Term, including all general real property taxes, all general and special assessments payable in installments, or any tax in lieu of the foregoing, whether or not any such tax is now in effect (collectively, "Taxes"). Cascade shall be liable for all taxes levied or assessed against any personal property placed in the Dock Area by Cascade. As used in this Agreement, Cascade's "Proportionate Share" shall mean the percentage of the total number of vessels using the Dock Area in any given calendar year represented by Cascade Vessels. If the Dock Area is not now, or is not in the future, its own separate tax lot, the Port shall equitably determine the portion of Taxes assessed against the tax lot containing the Dock Area that is attributable to the Dock Area. If any user of the Dock Area (other than Cascade) or the Port makes improvements to the Dock Area that (a) increase the Taxes assessed against the Dock Area and (b) do not reasonably benefit Cascade and its use of the Dock Area, Cascade shall not be responsible for payment of any portion of any increase in Taxes occasioned thereby.

ARTICLE 3
BERTHING AND DOCKAGE

3.01 Berthing. Cascade Vessels berthing or departing the Dock Area must use tugs reasonably capable of berthing or removing the applicable vessel in a safe manner.

3.02 Dockage. Each Cascade Vessel berthing at the Dock Area shall pay Dockage. "Dockage" is the charge assessed to a vessel for docking at a wharf, dock, pier or other facility, or for mooring to a vessel so docked.

3.03 Dockage Period—How Calculated. Dockage shall commence when a vessel is made fast to a wharf, pier or other facility, or when a vessel is moored to another vessel so berthed and shall continue until such vessel is completely freed from and has vacated the berth. No deductions will be made for Sundays or holidays.

3.04 Basis for Computing Charges. Dockage charges will be assessed on the length-over-all of the vessel. Length-over-all shall be construed to mean the linear

distance, expressed in feet, from the most forward point of the stem of the vessel to the aftermost part of the stern of the vessel, measured parallel to the baseline of the vessel. For Dockage billing purposes, length-over-all of the vessel as published in "Lloyds Register of Shipping" will be used. If no such figure appears in "Lloyds Register", the Port reserves the right to: (1) obtain the length-over-all from the vessels register, or (2) measure the vessel.

3.05 Vessels Required to Obtain Assignments/Berthing Reservation.

(1) As long as Cascade is the only entity actively using the Dock Area for the berthing of vessels, any Cascade Vessel shall be entitled to berth at the Dock Area subject to the rights of PGE and provided it first pays the estimated Dockage for its stay.

(2) If at any time during the Term any other entity (including without limitation PGE) is actively using the Dock Area for berthing of vessels, berthing of Cascade Vessels shall be subject to the following restrictions:

(i) No Cascade Vessel will be permitted to berth at the Dock Area without having first notified the Port and PGE of its intention to use the Dock Area. Applications for assignments must be made not less than seven (7) days in advance and must specify arrival and departure dates.

(ii) Dockage shall be paid in full to the Port at the time of application for berthing reservation.

(iii) Dockage will be non-refundable unless a written cancellation is received by the Port a minimum of seven (7) days prior to the scheduled Cascade Vessel arrival date.

(iv) If the applicable Cascade Vessel has complied with the foregoing requirements and, considering only reservations made prior to such Cascade Vessel's reservation, there is a berth available, the Cascade Vessel shall have the right to berth in the Dock Area for the scheduled call/stay and to remain berthed in the Dock Area for 24-hours on either side of scheduled call/stay.

(v) The Port shall make reasonable efforts to accommodate the berth requirements of all Cascade Vessels.

3.06 Vessels Required to Vacate Berths. Cascade Vessels may occupy a berth, subject to charges, after the departure date specified in the application, provided such vessel shall vacate the berth upon demand by the Port or its authorized representatives. Vessels refusing to vacate berth on demand may be moved by tug or otherwise, and any expenses or damages to vessel, other vessels or wharf structures during such removal shall be charged to the vessel so moved.

3.07 Dockage Rates. Dockage payable on account of use of the Dock Area shall be as set forth in the Port of Vancouver Terminal Tariff No. 5 effective January 1, 2006, a copy of which is attached hereto as Schedule A, as such Tariff may be revised or replaced from time to time by the Port of Vancouver (the "Tariff"). If the Dockage rate ever ceases to be published or assessed in the Tariff, Dockage rates payable under this Agreement shall be the then fair market Dockage rate payable for use of the Dock Area. The Port and Cascade shall meet as soon as practicable after the Dockage rate ceases to be published or assessed to determine the new Dockage rate. If after thirty (30) days of good faith negotiation the parties cannot agree on an appropriate Dockage rate, the matter shall be submitted to arbitration pursuant to the methodology established in Section 4.04 below.

3.08 Capital Reserve Account. Cascade agrees to pay to a capital reserve account (the "Capital Reserve Account") the amount of $0.04 (four cents) per barrel of ethanol loaded (the "Capital Reserve Fee"). The maximum to be contributed to the account by Cascade shall be one million dollars ($1,000,000.00). The Capital Reserve Account will be held by the Port with an accounting to all participants on an annual basis and shall only be used to pay for the costs of Capital Improvements (as defined in Section 2.09). All funds in the Capital Reserve Account, including any interest thereon, shall be the property of the Port and the Port shall be responsible for payment of all tax imposed thereon. If the Port permits any vessels other than Cascade Vessels and PGE vessels to berth at the Dock Area, it shall collect from such vessels a fee reasonably comparable to the Capital Reserve Fee and deposit such amount into the Capital Reserve Account. The Port shall cause all parties then using the Dock Area to meet during the first three calendar months of each year (at a time and place reasonably selected by the Port), to identify needed Capital Improvements for the upcoming year, to review the amount in the Capital Reserve Account, and to reasonably determine whether any increase in the amount held in the Capital Reserve Account is necessary to pay for the anticipated Capital Improvements.

ARTICLE 4
WHARFAGE

4.01 Wharfage Rates. Cascade shall pay Wharfage to the Port for all Approved Products loaded in the Dock Area. "Wharfage" shall be the rate charged for oil, petroleum; crude; diesel; gasoline and miscellaneous petroleum oils, conveyed through pipeline to or from vessels or barges pursuant to the Tariff.

4.02 Wharfage Payments. Cascade shall submit to the Port, by the tenth business day of each month, a report with a log entry of all Cascade Vessels departing the Dock Area during the preceding calendar month that includes the name, identification, registered owner, length of vessel, arrival and departure time and date, and volume and type of product associated with each such Cascade Vessel (the "Cascade Volume"). Wharfage shall be based on the Cascade Volume. Wharfage shall be payable to the Port on the twentieth day of the calendar month following the calendar month in which the Cascade Vessel departed the Dock Area.

4.03 Wharfage Adjustment. If the Wharfage rate ever ceases to be published or assessed in the Tariff, Wharfage rates payable under this Agreement shall be the then fair market Wharfage rate payable for use of the Dock Area. The Port and Cascade shall meet as soon as practicable after the Wharfage rate ceases to be published or assessed to determine the new Wharfage rate. If after thirty (30) days of good faith negotiation the parties cannot agree on an appropriate Wharfage rate, the matter shall be submitted to arbitration pursuant to the methodology established in Section 4.04 below.

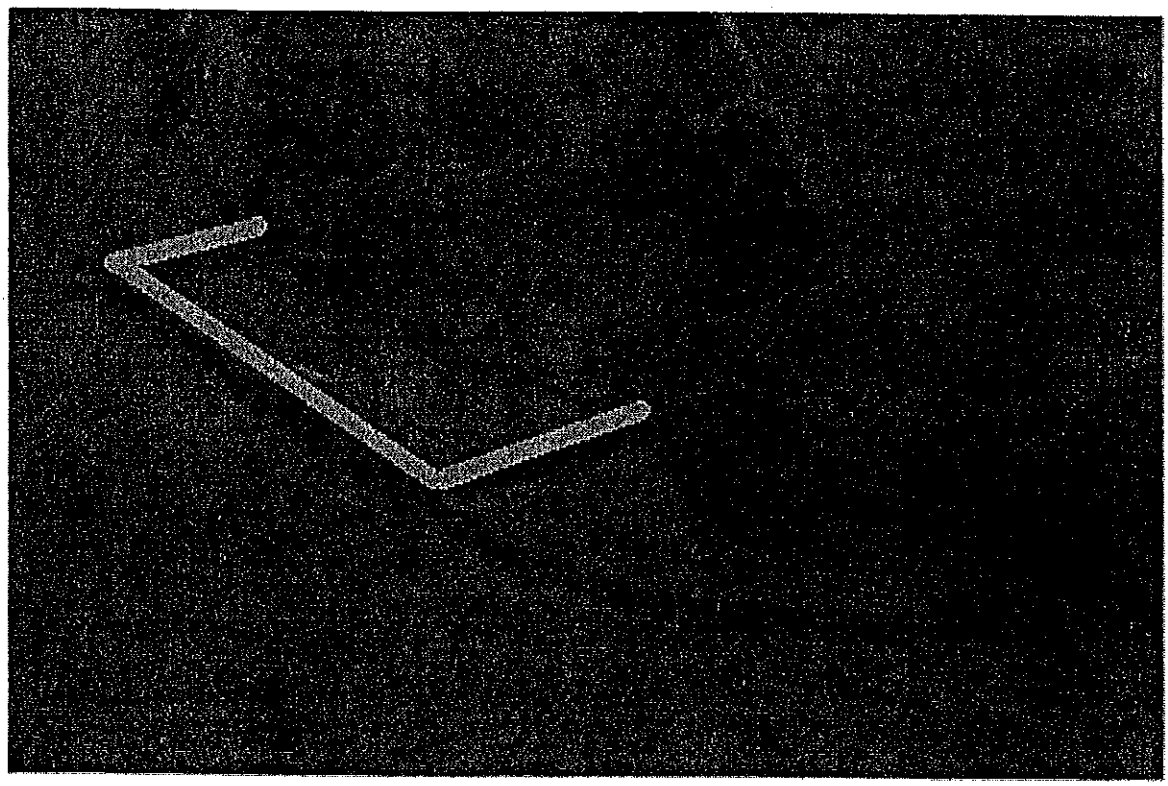
4.04 Rate Arbitration. If the parties cannot agree on the appropriate Dockage or Wharfage rate, then within ten (10) days after expiration of the required negotiation period, each party shall deliver to the other in writing such party's reasonable determination of the fair market Dockage or Wharfage rate and (ii) appoint an independent arbitrator who shall be a licensed MAI appraiser, real estate broker, or professional engineer with at least 10 years experience determining market rates for use of maritime facilities. If only one party appoints an arbitrator within the ten (10) day period, the arbitrator shall determine which of the two determinations is closest to the true market rate. In that case, the determination of the sole arbitrator shall be binding on the parties as to the market rate. If two arbitrators are appointed, the two arbitrators shall meet and determine which of the two determinations is closest to the true market rate. The arbitrators shall have no power to compromise or to propose any other market rate, but must accept one of the two determinations. If the two arbitrators cannot agree upon one or the other of such determinations within thirty (30) days, such arbitrators shall appoint a third arbitrator who shall select one of the two determinations, and only one of the two determinations, which shall be deemed market rate for purposes of this Agreement. If such two arbitrators cannot agree upon the third arbitrator, such third arbitrator shall be appointed by the then presiding judge of the Circuit Court of Columbia County, Oregon who shall, upon application by either party, select an arbitrator having the above qualifications. The costs of the arbitrator appointed by each party shall be paid by such party, and the cost of any arbitrator appointed by the two other arbitrators or by the then presiding judge of the Circuit Court of Columbia County, Oregon shall be paid by the party whose determination is not selected.

ARTICLE 5
RISK OF LOSS

5.01 Risk of Loss. Cascade agrees that any equipment, cargo, vehicle, or other material of any kind which is stored or placed at the Dock Area by Cascade is so stored and placed at the sole risk of the Cascade, except to the extent of the gross negligence or willful misconduct of the Port. In the event that any such equipment, cargo, vehicles, or other material is damaged or destroyed by any cause other than the gross negligence or willful misconduct of the Port, Cascade shall not seek compensation or restitution of any kind from the Port.

Exhibit D

Depiction
of the
Dock Access Area



EXECUTION COPY

Portland General Electric Company
To
Cascade Grain Products, LLC

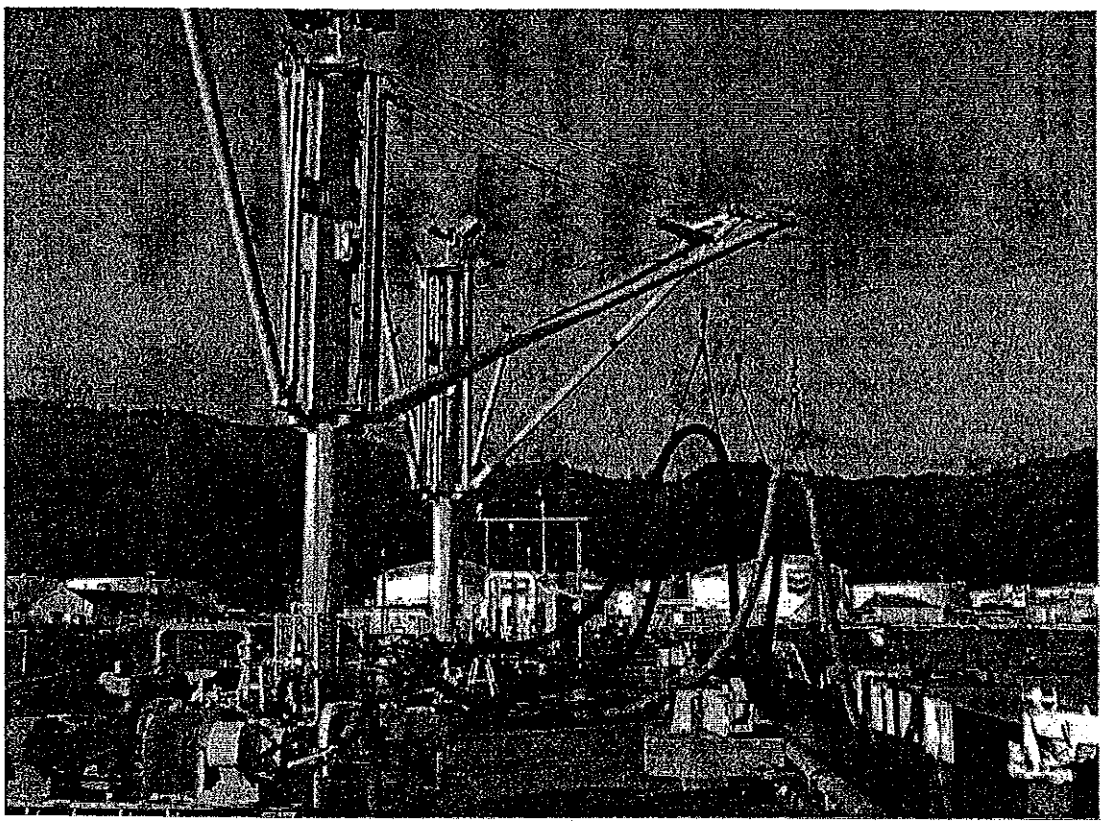
Over and across a dock of variable widths, in Section 15, Township 8 North, Range *4* West, Willamette Meridian, Columbia County, Oregon, the centerline of which is described as follows:

Beginning at Point 1 as shown on Portland General Electric Company drawing E-10020, from which a 5/8" iron rod marking the most westerly corner of a 120.47 acre parcel of land described in deed dated May 9, 1974, recorded in Book 196, Page 122, Columbia County, Oregon deed records, bears S 23°34' 10"W, 2686.16 feet; thence N 22°53'01"W, 293.3 feet; thence S 67°12'29" W, 1179.5 feet: thence S 22°40'30"E, 414.3 feet to Point 2 as shown on said drawing B-10020, said Point 2 being the termination point of this centerline.

The bearings and distances shown in this description are based on Oregon State Plane Coordinates, (North Zone), NAD 83(91) and therefore are "Grid" bearings and distances.

EXECUTION COPY

Exhibit E
Cascade Improvements



Cascade will have a single lift with at least two hose lift arms, storage rack for the hoses and tie off ropes, and appropriate emergency and safety equipment

EXECUTION COPY

ARTICLE 6
INDEMNIFICATION

6.01 Indemnification.

(1) Cascade will indemnify, defend and save the Port harmless from and against any and all suits, demands, liabilities, costs and other expenses, including reasonable attorney fees, incurred by the Port in connection with or arising out of (1) Cascade's breach of this Agreement and (2) use of the Dock Area by Cascade or its agents; except that Cascade shall have no obligation to so indemnify the Port to the extent that such suits, demands, liabilities, costs and other expenses occur as a result of the Port's negligence, recklessness or intentional misconduct.

(2) The Port will indemnify, defend and save Cascade harmless from and against any and all suits, demands, liabilities, costs and other expenses, including reasonable attorneys fees, incurred by Cascade in connection with or arising out of (1) the Port's breach of this Agreement and (2) arising out of the Port's gross negligence, recklessness or intentional misconduct; except that the Port shall have no obligation to so indemnify Cascade to the extent that such suits, demands, liabilities, costs and other expenses occur as a result of Cascade's negligence, recklessness or intentional misconduct.

ARTICLE 7
INSURANCE

7.01 Maintenance of Insurance. Upon commencement of its use of the Dock Area for loading and unloading of cargo and for the remainder of the Term thereafter, Cascade shall continually and without interruption maintain in good standing insurance described in Section 7.02. Prior to its performance pursuant to this Agreement, Cascade shall furnish the Port and PGE a certificate of insurance.

7.02 Cascade Coverage. Cascade will maintain Wharfinger and Stevedores Legal Liability Insurance in the amount of $5 million with a $100,000 deductible and United States Longshore and Harbor Workers Insurance as per State and Federal requirements. The Port and PGE will be named as an additional insured under both such policies.

7.03 Port Coverage. The Port shall maintain at all times during the Term a Special Form policy of casualty insurance for the full replacement value of the Dock Area, not including any equipment installed thereon by Cascade, with a reasonable deductible. Upon the occurrence of any casualty event, the Port shall promptly and diligently cause the Dock Area to rebuilt to the extent of any available insurance proceeds. If there are not sufficient proceeds available to rebuild the Dock Area to a condition satisfactory for Cascade's use, Cascade may pay for any shortfall in available funds. Cascade shall pay each year its Proportionate Share of the cost of the insurance policy required to be carried

by the Port hereunder. Cascade shall pay such amount within thirty (30) days following receipt from the Port of an invoice therefor.

7.04 Notification of Termination. The insurance obtained pursuant to Sections 7.02 or 7.03 shall provide for written notice of any termination, cancellation, or expiration of the insurance to be delivered to the Port or Cascade, as applicable, no less than one hundred and twenty (120) days before the effective date thereof.

7.05 Waiver of Subrogation. Anything in this Agreement to the contrary notwithstanding, the Port and Cascade each agree that neither (or any party claiming by, through or under such party) will have any claim against the other for any loss, damage or injury that is or would be covered by insurance carried by either party or required to be carried hereunder, whether or not actually carried, notwithstanding the negligence of either party in causing the loss. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

ARTICLE 8
FORCE MAJEURE

8.01 Force Majeure. Subject to the other provisions of this Article, if either party is unable by reason of Force Majeure, as hereinafter defined, to perform in whole or in part any obligation or covenant set forth hereunder, the obligations of both parties under this Agreement will be suspended or curtailed to the extent necessary for the period that such Force Majeure condition continues.

8.02 Definition. For the purposes of this Agreement, Force Majeure will include any event or circumstance arising or occurring beyond the reasonable control of Cascade or the Port, including without limiting the generality of the foregoing:

(1) Any acts of God, including, but without restricting the generality thereof, lightning, earthquakes, storms, epidemics, landslides, floods, fires, explosions or washouts;

(2) Any strikes, lockouts or other industrial disturbances;

(3) Any acts of the enemies of the state, sabotage, wars, blockades, insurrections, riots, civil disturbances, arrests or restraints;

(4) Any freezing, explosions, craterings, breakage of equipment, forced maintenance shutdown or inability to obtain materials or equipment which by the exercise of due diligence, such party would not have prevented or is unable to overcome;

(5) Any orders of any court or government authority, which physically limit the use of the Dock Area; or

(6) Any other reasonable causes, whether of the kind herein enumerated or otherwise not within the reasonable control of the party claiming suspension and which, by the exercise of due diligence, such party could not have prevented or is unable to overcome.

8.03 Labor Disputes. Notwithstanding anything to the contrary in this Article expressed or implied, the settlement of strikes, lockouts and other industrial disturbances will be entirely within the discretion of the party involved therein and such party may make settlement thereof at such time and on such terms and conditions as it may deem advisable and no delay in making such settlement will deprive such party of the benefit of Section 8.01.

8.04 Claiming Relief. A party claiming relief under this Article will not be entitled to the benefit of the provisions of Section 8.01 unless, as soon as reasonably possible relied upon after determining that the occurrence was in the nature of Force Majeure and would affect the claiming party's ability to observe or perform any of its covenants or obligations hereunder, the party claiming suspension gives to the other party notice to the effect that such party is unable, by reason of Force Majeure, to perform the particular covenants or obligations.

8.05 Notice. The party claiming suspension will give notice as soon as reasonably possible when the Force Majeure condition has been or will be remedied to the effect that the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of the suspended covenants or obligations.

ARTICLE 9
PGE RIGHTS; MORTGAGEE RIGHTS

9.01 PGE Rights. PGE is retaining an nonexclusive, irrevocable easement for access and use of the Dock Area for the purposes of transferring fuel and petroleum products, construction, installation, encumbrances, access to and improvement or repair of the PGE Property, or any portion thereof, including without limitation, the Beaver Generating Plant and/or the Port Westward Generating Plant, and/or such portion of the PGE Property later subleased to any PGE Affiliate (for the purposes of this Agreement defined as any person or entity controlling PGE, under the control of PGE, under common control with PGE, or otherwise affiliated with PGE) and transfer of material and equipment, and ingress and egress to the Dock and Dock Access Area for the purposes of the Master Lease as amended (cumulatively "PGE Dock Easement Rights"). Such PGE Dock Easement Rights shall continue throughout the term of the Master Lease as amended, or any portion thereof, and for so long thereafter as PGE or any PGE Affiliate is leasing any portion of the PGE Property. PGE shall be responsible for its own expenses associated with the use of the Dock and to the proportionate extent of any property damage actually incurred and directly caused by PGE's use, but neither PGE nor any PGE Affiliate shall be subject to or responsible for any capital improvement obligations or any Dockage, Wharfage, or Tariff related charges with respect to the use of the Dock Area by PGE

and/or any PGE Affiliate. Notwithstanding the foregoing, to the proportionate extent that any use of the Dock Area by PGE or any PGE Affiliate is in excess of PGE's Dock Easement Rights PGE or the PGE Affiliate (as the case may be) shall be subject to such Dockage, Wharfage, and/or Tariffs as reasonably established by the Port and then in effect.

(1) **PGE Retained Equipment.** Notwithstanding anything to the contrary contained herein, PGE retains all right, title and interest in and to (a) the fire suppression equipment (but shall allow the Port and Cascade to use and maintain such fire suppression equipment; provided that the Port and Cascade each acknowledge and agree that PGE makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Dock or the fire suppression equipment, and that PGE shall not be responsible for any loss, damage or costs which may be incurred by the Port or Cascade Grain or any third party by reason of any such physical condition or with respect to any use and/or maintenance thereof), and (b) the existing fuel pipe and all associated loading and offloading equipment, electrical lines, facilities, and lighting.

(2) **PGE Exclusive Area.** PGE's Dock Easement Rights shall include, without limitation, the exclusive right of use by or on behalf of PGE and PGE's Affiliates of that portion of the Dock designated by PGE for such purposes (but subject to the reasonable approval of the Port which shall not be unreasonably withheld, conditioned or delayed), which area shall be at least One Thousand (1,000) square feet (the "PGE Exclusive Area") and the right to exclude others from the PGE Exclusive Area.

9.02 Mortgagee Rights. Each holder of a mortgage and beneficiary under a deed of trust encumbering Cascade's interest in the Sublease (the "Mortgagee") shall have the following rights under this Agreement:

(1) The Port shall deliver written notice of any default by Cascade to the Mortgagee.

(2) If Cascade defaults in the observance or performance of any covenant of this Agreement beyond any applicable cure or grace period referred to herein, the Port shall send written notice of such default to the Mortgagee at such address as the Mortgagee has designated by notice to the Port. Thereupon, a Mortgagee shall have an additional sixty (60) days within which to cure or remove such default, except that if such default cannot with diligence be cured within such sixty (60) day period, the Mortgagee shall have a reasonable time thereafter to effect a cure, provided that the Mortgagee proceeds promptly to cure the same and thereafter prosecute the curing of such default with diligence.

(3) The Port shall accept performance by a Mortgagee of any covenant, agreement or obligation of Cascade contained in this Agreement with the same effect as though performed by Cascade.

(4) The Port shall not accept a termination of this Agreement by Cascade unless such termination is consented to in writing by the Mortgagee.

(5) If this Agreement is terminated for any reason and such termination is not consented to in writing by the Mortgagee, or in the event of the rejection or disaffirmance of this Agreement pursuant to bankruptcy law or other law affecting creditor's rights, the Port shall enter into a new dock use agreement with the Mortgagee or any party designated by a Mortgagee, not less than ten (10) nor more than thirty (30) days after the request of a Mortgagee referred to below, for the remainder of the Term, upon all the terms and provisions contained in this Agreement, provided, that such Mortgagee: (i) makes a written request to the Port for such new dock use agreement within ninety (90) days after the effective date of such termination, rejection or disaffirmance, as the case may be, and such written request is accompanied by a copy of the new dock use agreement, prepared at Mortgagee's expense, duly executed and acknowledged by the Mortgagee, or the party designated by the Mortgagee to be a party thereunder; (ii) cures all defaults that can legally, physically, and reasonably be cured by the Mortgagee or its agents; and (iii) pays to the Port all sums due and payable hereunder which would at the time of such execution and delivery be due and payable by Cascade under this Agreement but for such rejection, disaffirmance or termination, less net amounts received by the Port in the enforcement of this Agreement, if any. If the Mortgagee, or the party so designated by the Mortgagee, shall have entered into a new dock use agreement with the Port after the Mortgagee has cured defaults pursuant to this Section, then such new user shall not be responsible for any default of Cascade existing prior to the execution of such new dock use agreement as those defaults shall be deemed cured. The provisions of this Section shall survive the termination, rejection or disaffirmance of this Agreement, and shall continue in full effect thereafter to the same extent as if this Section were a separate and independent contract made by the Port, Cascade and the Mortgagee, and from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new dock use agreement, a Mortgagee may use and enjoy the Cascade's rights under this Agreement without hindrance by the Port.

(6) This Agreement shall not be modified without the prior written consent of the Mortgagee and any modification without such consent shall be void and of no effect.

(7) Neither a Mortgagee, nor any other holder or owner of the indebtedness secured by a mortgage or deed of trust shall be liable upon the covenants, agreements or obligations of Cascade contained in this Agreement, unless and until a Mortgagee or such holder or owner becomes a party to this Agreement or any successor agreement hereto.

(8) The Port and Cascade agree to cooperate in including in this Agreement by suitable amendment from time to time any provision that may reasonably be requested by a Mortgagee for the purpose of implementing any Mortgagee protection provisions contained in the Sublease and allowing such Mortgagee reasonable means to protect or preserve the lien of a Mortgage on the occurrence of a default under the terms of this Agreement; provided, however, that any such amendments shall not, in any way, (i) affect the term or the payments due hereunder or (ii) adversely affect the Port's rights hereunder in any material respect. The Port and Cascade each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment.

9.03 Collateral Assignment. Cascade shall be entitled to pledge, mortgage, and collaterally assign its interest under this Agreement to any Mortgagee.

9.04 Estoppel Certificate. The Port agrees to execute and deliver to Cascade, at any time and within twenty (20) days after written request, a statement certifying, among other things: (i) that this Agreement is unmodified and is in full force and effect (or if there have been modifications, stating the modifications); (ii) the dates to which Wharfage has been paid; (iii) whether or not Cascade is in violation of any of its obligations under this Agreement and, if so, specifying the nature of each such violation; and (iv) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a violation by Cascade and, if so, specifying the nature of each such event. The Port shall also include in any such statement such other information concerning this Agreement as Cascade reasonably requests. The parties agree that any statement delivered pursuant to this section shall be deemed a representation and warranty by the Port which may be relied upon by Cascade and by potential or actual investors and lenders with whom Cascade may be dealing, regardless of independent investigation. If the Port fails to provide such statement within twenty (20) days after Cascade's written request therefor, the Port shall be deemed to have given such statement and shall be deemed to have admitted the accuracy of any information contained in the request for such statement.

ARTICLE 10
DEFAULT

10.01 Cascade Events of Default. It shall be a "Cascade Event of Default" hereunder if (a) Cascade fails to pay to any amount owed by it to the Port under this Agreement within 10 days following receipt of written notice from the Port specifying that such amount is past due, or (b) Cascade fails to comply with any other Cascade obligation in this Agreement within 30 days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the 30-day period, it shall not be a Cascade Event of Default if Cascade commences correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

10.02 Port Events of Default. It shall be a "Port Event of Default" if the Port fails to comply with any obligation of the Port in this Agreement within thirty (30) days after written notice by Cascade specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the 30-day period, it shall not be a Port Event of Default if the Port commences correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

10.03 Port Remedies. Upon any Cascade Event of Default, the Port shall be entitled to make a claim against Cascade for its damages resulting therefrom. If Cascade fails to timely pay any amount due to the Port hereunder, in addition to any other remedies the Port may have hereunder, such amount shall accrue interest at the rate of twelve percent (12%) per annum from the date due until paid.

10.04 Cascade Remedies. Upon any Port Event of Default, Cascade shall be entitled to all remedies available to it under the law and equity, including making a claim for damages, injunctive relief, or specific performance.

ARTICLE 11
MISCELLANEOUS

11.01 Agreement Administration. The Port shall designate, in writing to Cascade, a representative to administer this Agreement on behalf of the Port.

11.02 Jurisdiction; Choice of Law. The laws of the State of Oregon shall govern the rights and obligations of the parties under this Agreement and the venue for any legal proceedings brought under this Agreement shall be in Columbia County, Oregon.

11.03 Severability. Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Agreement.

11.04 Time is of the Essence. Time is of the essence in the performance of and adherence to each and every covenant of this Agreement.

11.05 Nonwaiver. Waiver of strict performance of any provision of this Agreement by one or more parties shall not be deemed a waiver of any party's right to require strict performance of the same provision, or of any other provision, in the future.

11.06 Amendment. This Agreement shall not be amended or modified except by written agreement of the parties hereto.

11.07 Attorneys Fees. In any litigation arising out of this Agreement, the prevailing party will be entitled to recover all reasonable expenses of litigation, including such attorney fees as the court may judge reasonable at trial and on any appeal or petition for review, including attorney fees and costs incurred in Bankruptcy Court.

11.08 Entire Agreement. This Agreement represents the entire agreement between the Port and Cascade relating to the subject matter hereof and shall supersede all

previous communications, representations or agreements, whether oral or written, between the parties hereto with respect to such matters. It is understood and agreed by the parties that neither party nor their respective agents or employees have made any representations or promises with respect to this Agreement or the making or entry into this Agreement, except as expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other for, and such other party shall not be liable by reason of, the claimed breach of any representations or promises not expressly stated in this Agreement, any other oral agreement being expressly waived by both parties.

11.09 Notices. All notices required or desired to be given under this Agreement shall be in writing and may be delivered by personal delivery, by overnight courier (such as Federal Express or UPS), or by placement in the United States mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

If to the Port, at:

Port of St. Helens
P.O. Box 598
St. Helens, OR 97051
Attn: Peter Williamson
Fax No. (503) 397-6924

With a copy to:

Harold L. Olsen
Olsen, Horn L.L.C.
P.O. Box 973
1510 St. Helens Street
St. Helens, OR 97051
Fax No. (503) 397-4224

and to Cascade at:

Cascade Grain Products, LLC
Attn: Chuck Carlson
414 NW 214th Circle
Ridgefield, Washington 98642
Fax No. 360-887-1152

With a copy to:

Greenberg Traurig, LLP
Attn: George Lee
200 Park Avenue
New York, NY 10166
Fax No. (212) 801-6400

and to PGE at:

Portland General Electric Company
Property Services Department
Attn: Mike Livingston
1WTC0401, 121 SW Salmon Street
Portland, OR 97204
Fax No. (503) 464-2863

With a copy to: **Portland General Electric Company**
Legal Department
Attn: General Counsel
1WTC1301, 121 SW Salmon Street
Portland, OR 97204
Fax No. (503) 464-2200

Any notice delivered by personal delivery or by overnight courier shall be conclusively deemed received by the addressee upon actual delivery; any notice delivered by mail as set forth in this Agreement shall be conclusively deemed received by the addressee on the third business day after deposit. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision.

11.10 Limitation of Remedies. No party (including without limitation PGE) shall have any liability to any other party hereto with respect to any special, incidental, consequential, or punitive damages with respect to this Agreement, regardless of the nature of the claim or cause of action.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first hereinabove written.

PORT OF ST. HELENS, an Oregon municipal corporation

By: _____
Name: President
Its: Paul A. Pettham

CASCADE GRAIN PRODUCTS, LLC, an Oregon limited liability company

By: _____
Name: Charles Carlson
Its: CEO

For the limited purposes set forth in Section 1.06

PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation

By: _____
Name: STEPHEN M. QUENNOZ
Its: VICE PRESIDENT

SCHEDULE A

1.0 APPLICATION OF RATES

1.1 Basis. Except as otherwise provided, rates apply per barrel (42 gallons) of bulk ethanol corrected to 60 degrees Fahrenheit net.

1.2 Rates Are Specific. Rates provided for commodities in this Agreement are specific and may not be applied by analogy.

1.3 Insurance. Rates named in this tariff do not include insurance of any kind.

2.0 DOCKAGE RATES

2.1 Dockage rates will be assessed as follows except as otherwise provided.

Length- Overall in Meters		Rate Per Dockage Period
Over	Not Over	
0	107	1,304.00
107	114	1,618.00
114	122	1,780.00
122	130	1,970.00
130	137	2,188.00
137	145	2,359.00
145	152	2,591.00
152	160	2,941.00
160	168	3,161.00
168	175	3,430.00

2.2 Vessels Over 175 meters. For vessels with length overall greater than 175 meters, will be charged in accordance with the Port of Vancouver Tariff No. 5 or its successor tariff

2.3 Half Day Dockage. In computing dockage, halves of day only shall be considered, and dockage shall be assessed as follows:

(1) 12 hours or less shall be charged one-half (1/2) of the full Dockage Period rate.

(2) Over 12 hours, and not more than 24 hours, shall be charged the full Dockage Period rate.

3.0 WHARFAGE

3.1 Ethanol Products Wharfage. This Wharfage for Cascade shall be:

(1) Cascade shall pay a per-barrel wharfage rate on ethanol shipments as follows:

Rates in Cents per Gallon. U.S. (158.97 Liters)

Volume - Barrels per Year		Rate
From	Including	
1 -	250,000 barrels	.081 cents per barrel
250,001 -	500,000 barrels	.071 cents per barrel
500,001 -	750,000 barrels	.061 cents per barrel
Over 750,000 Barrels		.051 cents per barrel

(2) Cascade agrees to pay a minimum wharfage of $75,000 each Agreement year except that for the initial Agreement year, which begins with the loading of the first liquid product barge, that is less than a calendar year in duration, the minimum annual guarantee shall be prorated in proportion to the duration of the Agreement year. At the end of each Agreement year, if Cascade has not met the minimum annual guarantee requirements for that Agreement year, Cascade shall pay the difference, within thirty (30) days after the end of that Agreement year.

Exhibit A

Legal Description
of the
Port Owned and PGE Leased Property

A parcel of land in Sections 15, 16, 21, 22 and 23, Township 8 North, Range 4 West, Willamette Meridian, Columbia County, Oregon, described as follows:

Beginning at the East quarter corner of said Section 21; thence South 89°37' West, 1780.20 feet to the centerline of a County Road; thence North 16°36' West, 1188.39 feet along the said centerline; thence North 45°39' West, 1928.31 feet; thence North 5°23' West, 1472.77 feet; thence North 6°09' East, 385.00 feet; thence North 55°05' West, 128.00 feet; thence Northwesterly to the low water line of the Columbia River; thence Northeasterly and Southeasterly in the low water line, 11,300 feet, more or less, to the East line of said Section 22, which is 2,400 feet North of the East quarter corner of said Section 22; thence South along the said East line, 1109.60 feet to the Northeasterly right of way line of a railroad spur to the ammunition storage area; thence South 45°39' East, 2141.95 feet along said right of way; thence along a 5679.65 foot radius curve to the left, through a central angle of 5°00' for a distance of 495.64 feet; thence South 50°39' East 300.00 feet; thence along a 769.02 foot radius curve to the left, through a central angle of 66°42'10" for a distance of 895.28 feet; thence North 62°38'50" East 95.00 feet, to the Northwesterly right of way of the Spokane Portland and Seattle Railway; thence Southwesterly 367.60 feet along said Northwesterly right of way; thence from a tangent of South 81°13'10" West along a 869.02 foot radius curve to the right, through a central angle of 48°07'50" for a distance of 730.00 feet; thence North 50°39' West 300.00 feet; thence along a 5779.65 foot radius curve to the right, through a central angle of 5°00' for a distance of 504.37 feet; thence North 45°39' West 865.95 feet; thence West 86.95 feet to a point 300.00 feet North and 760.00 feet East of the West quarter corner of said Section 23; thence North 85.16 feet; thence North 45°39' West, 1707.40 feet; thence South 89°37' West, 1795.60 feet; thence South 0°04' East 454.00 feet; thence South 89°37' West 960.00 feet; thence South 0°04' East, 1148.00 feet; thence South 89°37' West, 2113.80 feet to the point of beginning.

EXECUTION COPY

Exhibit B

Legal Description
of the
Benefited Property

A parcel of land in the southwest quarter (SW 1/4) of Section 15, T.8 N., R.4W., Willamette Meridian, Columbia County, Oregon, being more particularly described as follows:

COMMENCING AT a 1/2 inch, inside diameter iron pipe, 2 feet above ground level, which marks the most easterly corner of an 120.47 acre, more or less, parcel of land recorded in book 196, page 122, deed records, said County; THENCE, South 64 degrees 01 minutes 20 seconds East for a distance of 1139.29 feet to a 5/8 inch rebar monument and THE POINT OF BEGINNING of the parcel to be described; THENCE, North 43 degrees 47 minutes 31 seconds West for a distance of 2703.11 feet to a 5/8 inch rebar monument; THENCE, North 46 degrees 12 minutes 29 seconds East for a distance of 794.99 feet to a 5/8 inch rebar monument; THENCE, South 40 degrees 28 minutes 00 seconds East for a distance of 404.17 feet to a 5/8 inch rebar monument; THENCE, South 35 degrees 48 minutes 19 seconds East for a distance of 1226.73 feet to a 5/8 inch rebar monument; THENCE, South 44 degrees 57 minutes 31 seconds East for a distance of 621.68 feet to a 5/8 inch rebar monument; THENCE, South 50 degrees 17 minutes 46 seconds East for a distance of 696.83 feet to a 5/8 inch rebar monument; THENCE, South 64 degrees 30 minutes 35 seconds West for a distance of 729.59 feet to a 5/8 inch rebar monument and the point of beginning.

The above described parcel contains 43.62, more or less, acres and is shown on Portland General Electric Company drawing E-10007, attached hereto, which by reference thereto is made a part hereof.

Exhibit C

Legal Description of the Dock Access Area

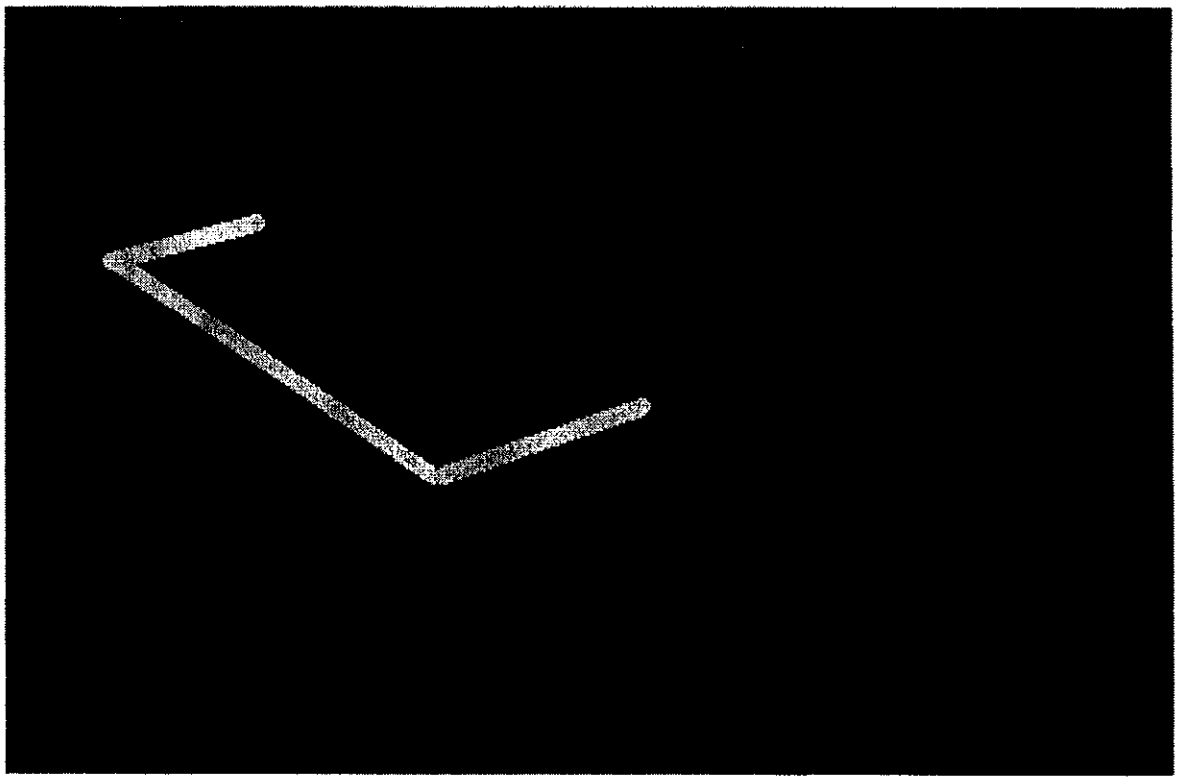
The coordinate controls (N-Northing, E-Easting) used for the descriptions in this project are as follows:
NAD 83(91) Oregon North Zone (Intl. Ft.)
NGVD 29(47)

The dock access shall be from Exhibit H7 (Point 1) with coordinates N 928137.606, E 7523230.628 onto the dock running N 23d6'5.04" W a distance of 309.17', the dock turns and runs in a S 66d50'4.81" W a total length of 1200.50' and runs S 22d42'4.72" E a distance of 447.49' back to shore to Exhibit H7 (Point 2) with coordinates N 927568.627, E 7522188.875.

EXECUTION COPY

Exhibit D

Depiction
of the
Dock Access Area



EXECUTION COPY

Portland General Electric Company
To
Cascade Grain Products, LLC

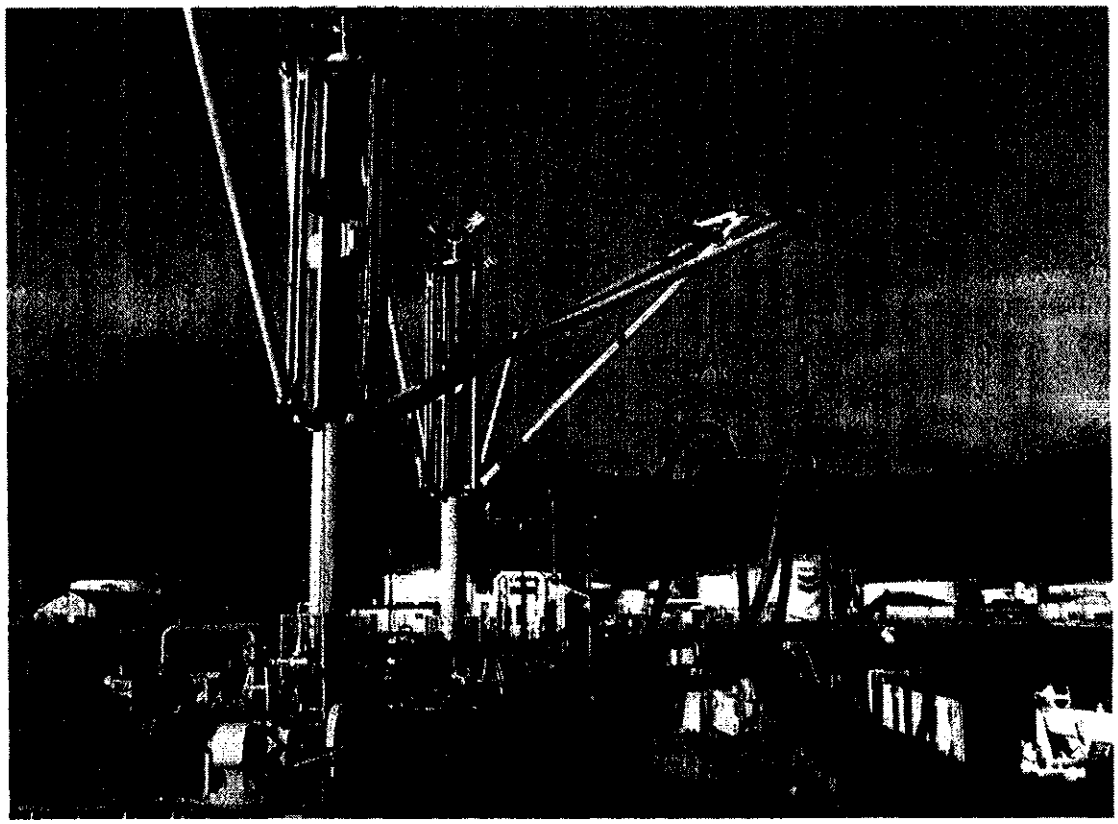
Over and across a dock of variable widths, in Section 15, Township 8 North, Range *4* West, Willamette Meridian, Columbia County, Oregon, the centerline of which is described as follows:

Beginning at Point 1 as shown on Portland General Electric Company drawing E-10020, from which a 5/8" iron rod marking the most westerly corner of a 120.47 acre parcel of land described in deed dated May 9, 1974, recorded in Book 196, Page 122, Columbia County, Oregon deed records, bears S 23°34' 10"W, 2686.16 feet; thence N 22°53'01"W, 293.3 feet; thence S 67°12'29" W, 1179.5 feet: thence S 22°40'30"E, 414.3 feet to Point 2 as shown on said drawing B-10020, said Point 2 being the termination point of this centerline.

The bearings and distances shown in this description are based on Oregon State Plane Coordinates, (North Zone), NAD 83(91) and therefore are "Grid" bearings and distances.

EXECUTION COPY

Exhibit E
Cascade Improvements



Cascade will have a single lift with at least two hose lift arms, storage rack for the hoses and tie off ropes, and appropriate emergency and safety equipment

EXECUTION COPY

AMENDMENT TO DOCK USE AGREEMENT

This Amendment is made, executed and effective as of this 7th day of September 2012 by and among the Port of St. Helens, a municipal corporation of the State of Oregon ("Port"), Cascade Kelly Holdings LLC, an Oregon limited liability company doing business as Columbia Pacific Bio-Refinery ("CPBR") and Portland General Electric Company, an Oregon corporation ("PGE").

RECITALS

A. PGE, the Port and Cascade Grain Products LLC ("Cascade") were parties to that certain Dock Use Agreement dated and effective as of May 31, 2006 (the "Dock Agreement").

B. CBPR assumed and was assigned the rights and obligations of Cascade under the Dock Agreement pursuant to that certain Asset Purchase Agreement (and all addenda thereto) dated December 23, 2009 between CBPR and Peter C. McKittrick in his capacity as the Trustee for Cascade under the United States Bankruptcy Code Chapter 7.

C. CPBR, the Port and PGE now wish to amend Sections 1.03, 1.04, 2.10 and 3.08 of the Dock Agreement to clarify CPBR's rights thereunder.

D. CPBR, the Port and PGE all understand, acknowledge and agree that this Amendment does not amend or in any way alter the respective rights and obligations as outlined in the Amended and Restated Sublease Agreement dated May 31, 2006 (the "Cascade Grain Sublease.").

AMENDMENT

For good and valuable consideration, inclusive of the mutual benefit all parties derive from CBPR's use of the Port Westward site and their retention of full time employees thereon, the parties hereby agree that the term "Approved Products" as defined in section 1.03 of the Dock Agreement includes fuel and petroleum products produced or processed by CBPR's production facility with API gravity ranges of 30-44 degrees. The parties specifically acknowledge and agree that sections 1.04 ("Ethanol Transfer") , 2.10 ("Environmental Matters") and 3.08 ("Capital Reserve Account") are hereby amended to include any such proposed fuel and petroleum products produced or processed by CBPR's production facility, and that these sections specifically apply to any such proposed fuel and petroleum products as outlined herein. The parties further acknowledge that (A) CPBR is currently evaluating significant additional capital investment in and improvements to their facility to provide the optionality necessary to process fuel and petroleum products with API gravity ranges above 20 degrees through the Dock Area; and (B) if so requested by CPBR in the future, the parties will assess and review in good faith amending the Dock Agreement to include the materials referenced in clause (A) (with particular weight given to CPBR's safety, performance, and spill management history).

No other amendment or modification is made or intended to be made to the Dock Agreement, and the Dock Agreement, as modified hereby, is hereby affirmed and reaffirmed by the undersigned parties and shall remain in full force and effect.

Executed in multiple counterparts effective as of the 7th day of September 2012.

PGE: PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation

By: _____
Name: _____
Title: _____

PORT: THE PORT OF ST. HELENS, a municipal corporation of the State of Oregon

By: Robert Keyser
Name: Robert Keyser
Title: President

CPBR: CASCADE KELLY HOLDINGS LLC, an Oregon limited liability company doing business as Columbia Pacific Bio-Refinery

By: Mark Fleischmann
Name: Mark Fleischmann
Title: Co-Manager

SECOND AMENDMENT TO DOCK USE AGREEMENT

This Amendment is made effective as of the 1ST day of October 2013 by and among the Port of St. Helens, a municipal corporation of the State of Oregon ("Port"), Cascade Kelly Holdings LLC, an Oregon limited liability company doing business as Columbia Pacific Bio-Refinery ("CPBR") and Portland General Electric Company, an Oregon Corporation ("PGE").

RECITALS

A. PGE, the Port and Cascade Grain Products LLC ("Cascade") were parties to that certain Dock Use Agreement dated and effective as of May 31, 2006, and as amended on September 7th, 2012 (the" Dock Agreement").
B. CPBR assumed and was assigned the rights and obligations of Cascade under the Dock Agreement pursuant to that Asset Purchase Agreement (and all addenda thereto) dated December 23, 2009 between CPBR and Peter C. McKittrick in his capacity as the Trustee for Cascade under the United States bankruptcy Code Chapter 7. On February 15, 2013, Global Partners, LP acquired CPBR.
C. CPBR, the Port and PGE now wish to amend Section 3.07 of the Dock Agreement and replace Schedule A of the Dock Agreement to reflect the Port of St. Helens Tariff No. 1 in lieu of Port of Vancouver Terminal Tariff No. 5; Section 3.08 of the Dock Agreement to reflect CPBR responsibility associated with Capital Improvements.
D. CPBR, the Port and PGE all understand, acknowledge and agree that this Amendment does not amend or in any way alter the respective rights and obligations as outlined in the Amended and Restated Sublease Agreement dated May 31, 2006 (the "Cascade Grain Sublease").

AMENDMENT

Section 3.07 DOCKAGE RATES. Dockage payable on account of the use of the Dock Area shall be set forth in the Port of St. Helens Tariff No. 1 effective October 1, 2013, a copy of which is attached hetero as Schedule A, as such tariff may be revised or replaced from time to time by the Port. If the dockage rate ever ceases to be published or assessed in the Tariff, Dockage rates payable under this Agreement shall be the fair market Dockage rate payable for the use of the Dock Area. The Port and CPBR shall meet as soon as practicable after the Dockage rate ceases to be published or assessed to determine the new Dockage rate. If after thirty (30) days of good faith negotiations the parties cannot agree on an appropriate Dockage rate, the matter shall be submitted to arbitration pursuant to the methodology established in Section 4.04 below.

Section 3.08 CAPITAL RESERVE ACCOUNT. A Capital Reserve account will be held by the Port with an accounting to all participants on an annual basis and shall only be used to pay for the costs of Capital Improvements (as defined in Section 2.09). All funds in the Capital Reserve Account, including any interest thereon, shall be the property of the Port and the Port shall be responsible for payment of all tax imposed thereon. If the Port permits any vessels other than Cascade Vessels and PGE vessels to berth at the Dock Area, it shall collect from such vessels a fee and promptly deposit such amount into the Capital Reserve Account. The Port shall cause all parties then using the Dock Area to meet during the first three calendar months of each year (at a time and place reasonably selected by the Port), to identify needed Capital Improvements for the upcoming year, to review the amount in the Capital Reserve Account, and to reasonably

determine whether any increase in the amount held in the Capital Reserve Account is necessary to pay for the anticipated Capital Improvements.

No other amendment or modification is made or intended to be made to the Dock Agreement, and the Dock Agreement, as modified hereby, is hereby affirmed and reaffirmed by the undersigned parties and shall remain in full force and effect.

Executed in multiple counterparts effective as of the 1st day of October 2013.

PGE

PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation

DFW

By: _____

Name: Maria M. Pope
SRVP Power Supply & Operations & Resource Strategy

Its: _____

CASCADE

CASCADE KELLY HOLDINGS LLC, an Oregon limited liability company doing business as Columbia Pacific Bio-Refinery

By: William G. Davidson

Name: William G. Davidson

Its: Sr. Vice President

THE PORT

THE PORT OF ST. HELENS, a municipal corporation of the State of Oregon

By: _____

Name: PATRICIA B. TRAPP

Its: EXECUTIVE DIRECTOR

Port of St. Helens Tariff No. 1

Effective: October 1, 2013

Rates, Charges, Rules and Regulation for Services Performed by and at the Port of St. Helens

ISSUING AGENT:
Patrick B. Trapp
Telephone 503-397-2888
FAX 503-397-6924
e-mail trapp@portsh.org

Issued By:
Port of St. Helens Commission
PO Box 190
Columbia City, OR 97018
www.portsh.org

PORT OF ST. HELENS
The Columbia River's Deep Water Port with a Future.

NOTICE: This electronic form of the tariff will govern in the event of any conflict with any paper form of the tariff.

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SECTION 1 - ABBREVIATIONS AND DEFINITIONS

ITEM 100 – Abbreviations Explained

BM	Board Measure
Bbl	Barrel
C/M or CBM	Cubic Meters
Cu Ft	Cubic Feet
Dia	Diameter
Hdlg	Handling
Kilos	Kilograms
MT or mt	Metric ton (1000 kg)
Min	Minimum
Misc	Miscellaneous
NOS	Not Otherwise Specified
Pkg	Package
RR	Railroad
S&F	Services and Facilities Charge
SU	Set Up
T	Ton (2,000 lbs)
Whfg	Wharfage
W/M	Weight or Measure

ITEM 105 - Metric Conversions

Metric conversion factors to be employed in determination of charges assessed under this tariff are as follows:

Measure	Metric Equivalent
1 Lb.	.4536 Kilograms
1 Ton of 2,000 lbs.	907.2 Kilograms
1 Inch	2.54 Centimeters
1 Foot	.3048 Meters
1 Yard	.9144 Meters
40 Cubic Feet	1.1327 Cubic Meters
1 Gallon	3.7854 Liters
Measure	English Equivalent
1000 Kilograms	2204.6 lbs.
1 Centimeter	.3937 Inches
1 Meter	39.37 Inches

Conversion:

Kilograms to lbs.	Multiply Kilograms X 2.2046 lbs.
Lbs. To Kilograms	Lbs. Divided by 2.2046
Cu. Meters to Cu. Feet	Multiply Cu. Meters X 35.314
Cu. Feet to Cu. Meters	Multiply Cu. Feet X 0.0283
Feet To Meters	Multiply Feet X .3048
Meters to Feet	Multiply Meters X 3.281
MBF to CBM	Divide by 2.36

Metric Equivalents:

1 Metric Ton =	2,204.6 Pounds
1 Pound =	0.4536 Kilos
1 Cubic Meter =	35.314 Cubic Feet
1 Cubic Foot =	0.0283 Cubic Meters
1,000 ft. B.M. =	83.333 Cubic Feet
1 Cubic Meter =	423.768 Ft. B.M.

ITEM 110 – Definitions

Bulk Cargo Defined: Cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirements of this part.

Cargo Defined: All articles, goods, materials, merchandise or wares carried onboard a ship, railcar, truck, barge or other conveyance and which is listed on cargo documentation.

Checking Defined: The service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same.

Dockage Defined: The charge assessed against a vessel for berthing at a wharf, dock, pier, bulkhead structure, or bank or for mooring to a vessel so berthed. Note: Issued pursuant to 46 Code of Federal Regulations, Part 525, and differs as underlined.

Facility User Defined: All persons or entities performing services at the Port of St. Helens including their respective partners, officers, directors, agents, employees, invitees and/or contractors and subcontractors.

Free Time Defined: The period specified in the terminal schedule during which cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel.

Marine Terminal Operator Defined: A person engaged in the United States or a commonwealth, territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49, United States code. A marine terminal operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators.

NOS (Not Otherwise Specified) Defined: The entry in a tariff that can apply to commodities not covered under a specific item or sub-item in the applicable tariff.

Person Defined: Individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

Terminal Facilities Defined: One or more structures comprising a terminal unit, which include, but are not limited to, wharves, docks, warehouses, covered and/or open storage spaces, cold

storage plants, cranes, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers. Note: Issued pursuant to 46 Code of Federal Regulations, Part 525, and differs as underlined.

Terminal Services Defined: Services including checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined in this section. The definitions of terminal services set forth in this section shall be set forth in terminal schedules, except that other definitions of terminal services may be used if they are correlated by footnote, or other appropriate method, to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefore shall be shown in the terminal schedule.

Wharfage Defined: A charge assessed against all cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf, or when moored in slip adjacent to wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

SECTION 2 - GENERAL RULES AND REGULATIONS

ITEM 200 - Application of Tariff

1. Notice to Public: This tariff is published and filed as required by law and is notice to the public, shippers, consignees and carriers that the rates, charges, rules, terms, regulations, and definitions apply to all traffic and freight without specific notice, quotations to, or arrangement with, the public, shippers, consignees or carriers.

2. Tariff Effective: The rates, charges, terms, rules, regulations, additions and revisions named in this tariff shall apply at all Port of St. Helens facilities on or after effective date of this tariff. Unless otherwise specified, all transit cargo received and undelivered prior to effective dates of tariff, additions and revisions or supplements thereto, shall be charged the rates effective on the date the particular service is performed.

3. Conditions for conducting any business on Port of St. Helens facilities are subject to specific authorization by the executive director and may include provisions to protect public safety, security, environment and health.

4. Use of Terminals, Deemed Acceptance: Use of wharves, facilities or services shall be deemed complete acceptance of this tariff and the terms and conditions named herein. It is incumbent upon any persons, organizations or companies conducting business on Port of St. Helens properties to fully comply with provisions of applicable federal, state, local and Port statues and/or regulations.

5. Specific Rates Prevail: Rates provided for specific commodities shall prevail over any general commodity or NOS rate.

ITEM 205 - Damage to Port Property and the Environment

1. Piling Damage Replacement: Vessels are responsible and will be invoiced for damages to any Port facilities or structures during their occupancy of a Port berth. Damages identified during or after a vessel's departure, will be deemed to have occurred during the vessel's berthing unless the Port is notified in writing by the vessel's agent of any pre-existing damage, prior to or at tie-up.

2. Environmental Costs: Each Facility User will be responsible for all costs associated with response to, or abatement of any spills, releases, or discharges of pollution, invasive species, or hazardous materials into the air, land, groundwater or waterways in the vicinity of Port marine terminal facilities, and/or on Port property that emanate from or are caused by the Facility User's vessel, equipment, or operations. If a Facility User does not immediately commence cleanup, the Port may undertake cleanup operations, and

the Facility User will reimburse the Port for all such costs within thirty (30) days of written demand by the Port. With respect to invasive species, recoverable environmental costs include without limitation costs associated with quarantine, fumigation, pesticide or herbicide application, and actions taken at the request of state or federal authorities with authority over invasive species control.

ITEM 210 - Acceptance, Retention or Delivery of Cargo Conditional

1. Right to Refuse Cargo: Right is reserved by the Port of St. Helens without responsibility for demurrage, loss or damage attaching, to refuse to accept, receive, or unload or to permit vessel to discharge:

   a. Cargo for which previous arrangements for space, receiving, unloading or handling, has not been made by shipper, consignee, or carrier.

   b. Cargo deemed extra offensive, perishable, or hazardous.

   c. Cargo, the value of which may be determined as less than the probable terminal charges.

   d. Cargo not packed in packages or containers suitable for standing the ordinary handling incident to its transportation. Such cargo, however, may be repacked or reconditioned, at discretion of terminal operator and all expense, loss or damage incident thereto shall be for account of shipper, consignee or owner.

2. Right to Remove, Transfer or Warehouse Cargo: Cargo which, by its nature, is liable to damage other cargo is subject to immediate removal, either from the wharf or wharf premises or to other locations within said premises with all expense and risk of loss or damage for the account of the owner, shipper or consignee.

   Cargo remaining on wharf or wharf premises after expiration of free time and cargo shut out at clearance of vessel may be piled or re-piled to make space, transferred to other locations or receptacle within the wharf premises, or removed to public or private warehouses with all expense and risk of loss or damage for account of the owner, shipper, consignee or carrier as responsibility may appear.

3. Right to Withhold Delivery of Cargo: Right is reserved by the Port of St. Helens to withhold delivery of cargo until all accrued terminal charges and/or advances against said cargo have been paid in full.

4. Right to Sell for Unpaid Charges: Cargo on which unpaid terminal charges have accrued may be sold to satisfy such charges and costs. Cargo of a perishable nature or of a nature liable to damage other cargo may be sold at public or private sale without

advertising, providing owner has been given proper notice to pay charges and to remove said cargo and has neglected or failed to comply.

5. Explosives: The acceptance, handling or storage of explosive or excessively inflammable material shall be subject to special arrangements with the Port of St. Helens and governed by rules and regulations of federal, state and local authorities. Hazardous cargos must have been prepared for shipment in accordance with the applicable Department of Transportation regulations contained in 49 Code of Federal Regulations. Shippers, vessels and inland carriers are hereby warned that the party or parties responsible for infractions will be subject to such penalties that may result as a violation of the rules.

6. Owner's Risk:

   a. Cargo which, because of its inherent nature, is subject to deterioration, shrinkage, oxidation, wastage, decay and glass, liquids and fragile articles will be accepted only at the owner's risk for rust, tarnish, discoloration, breakage, leaking, chafing and similar loss or damage that may occur despite accepted practices for the care of cargo.

   b. Cargo on open ground or dock is at owner's risk for loss or damage.

   c. Timber and log or lumber rafts, and all watercraft when and if permitted by the Port of St. Helens to be moored at moorage dolphins, at wharves or alongside vessels, are at owner's risk for loss or damage.

   d. Cleanup of refuse, breakage, wastage or other debris associated with cargo shall be for the account, as applicable.

ITEM 215 - Collection and Guarantee of Charges and Terms

1. Terms:

   a. Terms are cash. All fixed charges named herein and charges made for services not specified herein shall become due and payable as they accrue. Any pending or alleged claims against the Port of St. Helens will not be allowed as an offset against outstanding invoices or accrued charges until such claims have been allowed or legally established. Regular and usual procedure must be followed in respect to such claims against the Port of St. Helens and, prior to their allowance, they shall constitute no valid reason for non-payment of charges or for modification of the provisions of this item.

b. Delinquency Charges on Delinquent Invoices: Invoices covering charges in this tariff as issued by the Port are due and payable upon presentation. Any invoice issued for any charge or charges prescribed by this tariff remaining unpaid 30 calendar days after date of invoice is delinquent and shall be subject to a delinquency charge. The delinquency charge is one and one half percent (1.5%) per month on the total unpaid balance thereof; provided, however, that in no event shall the delinquency charge be less than $100 per month nor higher than the maximum rate permitted by law.

c. Collection Costs: Delinquent accounts on which collection efforts require use of legal counsel and/or litigation including trial or any appeal thereafter shall be assessed all costs including accrued interest and any extra expense, including legal expense and attorney fees, even though no litigation is brought. If any arbitration or litigation is instituted to collect sums due under this, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

d. Any federal, state, or local taxes applicable will be assessed in addition to the charges as set forth in this tariff.

2. Charges Collected, from Whom:

a. Port Charges: All charges are due from the vessel, its owner or operator or shipper or consignee unless otherwise specified on the berth application (absorbed by the ocean or inland carriers). In transit cargo in connection with ocean carriers, however, these charges (unless absorbed by inland carriers) and any wharf demurrage or miscellaneous charges accrued against said cargo and of which the vessel, its owners or operators have been apprised, will be collected from and payment of same must be guaranteed by the vessel, its owners or operators. The use of a wharf by vessel, its owners or operators, shall be deemed an acceptance and acknowledgment of this guaranty. Owners or operators of vessels, if and when permitted to make own deliveries of cargo from wharf, will be held responsible for payment of any wharf demurrage accrued against cargo delivered to them.

b. Service and Facility Charge: If charged, the full amount of such charges shall be billed to and paid by the vessel, its owners or operators, to the Port.

c. Prepay Cargo: Right is reserved by the terminal operators to demand prepayment of all charges on perishable cargo or cargo of doubtful value and on household goods

or goods, the charges upon which are due from parties whose credit has not been established or is impaired.

ITEM 220 - Demurrage

1. Demurrage of Railroad Cars and Vessels

   a. Railroad Cars: The Port shall assume no responsibility for railroad car demurrage except for physical damage to such railcars caused solely by the Port's own willful negligence. Demurrage caused by delays arising from strikes, slowdowns, labor actions or riots of any persons in the employ of the Port or service of others shall not be assumed by the Port.

   b. Vessels: The Port shall assume no responsibility whatsoever for any vessel demurrage, except for physical damage to such vessel caused solely by the Port's own willful negligence. Any such liability will be computed on the actual down time during regular terminal working hours only and such down time constitutes the extent and limit of Port liability. In no case shall the Port be responsible for other damages, including without limitation, loss of profits, loss of markets, special or consequential damages.

2. No Waiver of Charges for Delays: Delays or losses in loading, unloading, receiving, delivering or handling of cargo arising from strikes, slowdowns or riots by any persons in the service of others or arising from any other cause shall not entitle owners, shippers, consignees, or carriers to waive any terminal charges or expenses. Delays in loading, unloading, receiving, delivering or handling cargo arising from any cause not reasonably within the control of the Port will not entitle the owners, shippers, consignees, or carriers of the cargo a waiver of wharf demurrage or any other terminal charges, or expenses that may be incurred.

ITEM 225 - Insurance, Indemnification, Limitations on Liability

1. Insurance

   Rates named in this tariff do not include insurance of any kind. Every facility user or any other party using Port terminal facilities shall obtain and maintain the following insurance coverage:

   Workers Compensation Insurance (including Longshoremen and Harbor Workers Act and/or Jones Act coverage, if applicable). This coverage is required under federal and state statutes for all the party's employees performing its work.

   Commercial General Liability Insurance must be secured, with coverage of at least $5,000,000 for each occurrence. This coverage includes automobile liability, broad form

contractual liability and broad form property damage covering property in the insured's care, custody and control. This insurance shall cover claims against the insured for bodily injury, personal injury, death or property damage occurring on, in or about any vessels being loaded by a party on Port premises and adjoining areas. Every party shall submit to the terminal certificate(s) of insurance as evidence of the required coverage upon request. Such insurance shall name the Port as an additional insured as respects use of facilities and shall provide that the terminal is to be given 30 days prior written notice of cancellation.

In addition, Employer's Liability insurance is required in an amount not less than $1,000,000.

2. Indemnity: Facility user shall defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port, including its elected or appointed officials, commissioners, officers, agents and employees, from and against, and reimburse the Port for, any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against or incurred by the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following:

    a. any act, omission or negligence of the facility user;

    b. any use, occupation, management or control of the marine terminal facility by the facility user, whether or not due to the facility user's own act or omission and whether or not occurring on the marine terminal facility;

    c. any breach, violation or nonperformance of the regulations, rules and terms of this tariff; or

    d. any damage caused by the facility user on or to the marine terminal facility. For purposes of this provision, "facility user" shall be deemed to include facility user and facility user's respective partners, officers, directors, agents, employees, invitees and/or contractors and subcontractors.

3. Himalaya Clause: The protections and limitations of liability provided by the Himalaya Clause, Item 245, shall apply to all cargo and merchandise that has been loaded from, discharged to or located on the Port's marine terminal facilities.

4. Excess Cargo Value: Carrier will indemnify the Port, including its elected or appointed officials, commissioners, officers, agents and employees, from and against, and reimburse the Port for, any liability, damage and claim (and all expenses connected therewith, including attorneys' fees and costs) arising out of cargo loss or damage occurring on the Port's marine terminal facilities or as a consequence of services provided by the Port at such facilities in excess of $500 per package lawful money of the

United States, or in case of goods not shipped in packages per customary freight unit, if the shipper has declared a value in excess of $500 per package or customary freight unit and paid to carrier a higher freight rate by reason of such excess value declaration.

5. Other Cargo or Merchandise: The Port will have no liability for and each facility user will indemnify the Port, including its elected or appointed officials, commissioners, officers, agents and employees, from and against, and reimburse the Port for, any liability, damage and claim (and all expenses connected therewith, including attorneys' fees and costs) arising out of loss or damage to cargo or merchandise that is not moving as cargo by ocean or inland marine carrier (such as specialty crane service or truck to truck or truck to rail movements) occurring on the Port's marine terminal facilities or as a consequence of services provided by the Port at such facilities, in excess of $500 per package lawful money of the United States, or in case of goods not shipped in packages per customary freight unit.

6. Limits of Liability: Except as to specific exclusions from and limitations of liability stated in this tariff, the Port shall have liability for its own willful negligence but only to the extent of the direct damages caused by such willful negligence. In all cases the Port's liability shall be limited as stated in this tariff. Further, the Port shall not be responsible or liable for any indirect, consequential or special damages, including, without limitation, claims for loss of profit, loss of markets, loss of use of property, delay and damages consequential upon loss of use, whether the same results from willful negligence, breach of this Agreement or otherwise, and even if the possibility of such may have been foreseeable.

ITEM 230 - Conditions of Services or Conduct of Operations

Facility users providing services, labor, material, supplies or equipment on Port marine terminal facilities or who are using or receiving the services of the Port and/or its marine terminal facilities (excluding only employees of the Port) do so subject to the following conditions:

1. Independent Contractors: In any service relationship with the Port facility users shall be independent contractors, each to the other, and they shall not be agents or employees, one for the other or for the Port, for any purpose.

2. Use of Facilities Deemed Acceptance of Tariff and Conditions: Uses of the terminal facilities shall be deemed an acceptance of this tariff along with all the specified terms and conditions contained herein. The Port reserves the right to set work and safety rules, conditions for use and operations procedures applicable to specific locations or operations within the Port's facilities in addition to commercial rules stated in this tariff. All parties using Port facilities and equipment agree to do so entirely at their own risk, regardless of conditions, and are obligated to notify the Port immediately upon discovery of any conditions, equipment or facilities deemed to be unsafe. It is the

responsibility of the user to be aware of the physical characteristics of the facilities, the terms of this tariff and all rules or conditions applicable for activities at the facilities of the Port.

3. Compliance with Law; Workmanlike Performance: As a condition to the right to conduct business or operate on Port property, facility users warrant that all operations by the facility user and its employees, agents, contractors or subcontractors, will be conducted at all times in compliance with applicable federal and state law or regulation and with necessary labor and equipment under competent supervision, with all proper dispatch and in good and workmanlike manner. The conduct of such business or operations on Port property shall be deemed to be an offer of such warranty, and its acceptance by the Port. If any breach of these warranties causes or subjects the Port to any losses, suits, claims, damages, expenses or liabilities, such facility user shall defend, indemnify and save harmless, and reimburse the Port for and against any such losses, suits, claims, damages, liabilities, or liabilities (including attorneys' fees incurred by the Port.)

4. Indemnity: Each facility user shall indemnify and hold harmless the Port, including its elected or appointed officials, commissioners, officers, and agents, its employees themselves or persons in their employ and expenses (including attorneys' fees) for injury to or death of any person, (including employees of the Port), arising from or related to the operations of the facility user, its employees, agents, contractors or subcontractors, provided, however, this paragraph shall not be construed to relieve the Port from liability for its willful negligence, or from the willful negligence of its employees or agents, except as otherwise stated in Item 225 of this tariff.

ITEM 235 - Responsibility for Loss, Damage and Delay of Merchandise

1. Port's Responsibility Limited: The Port shall not be responsible for any loss or damage to merchandise which may arise from any cause beyond its direct authority and control, nor for any cause except for want of due diligence and subject always to the limitations of and exemptions from liability stated in this tariff and otherwise provided by applicable law.

   The Port shall not be responsible for any damage to cargo loaded at the facilities covered by this tariff after cargo is transferred to the beyond carriers (whether inland or ocean going) and is removed from the Port facilities.

   Further, except for want of due diligence, the Port shall not be liable for any personal injury, damage or loss (including without limitation to empty containers) which results from (1) animals, insects, rodents or vermin; (2) decay, deterioration, evaporation, shrinkage or loss of quality or value for inherent vice of product cargo; (3) interruptions in electrical power, fire, frost, leakage or discharge from fire protective systems, oxidation or rusting, collapse of buildings or structures, breakdown of plant or machinery or equipment, or by floats, logs or piling required in breasting vessels away from wharf; nor will the terminals be

responsible for any loss, damage or delay arising as a result of insufficient notification; (4) civil disorder, insurrection, riot, strike, slowdown or labor stoppage of persons in the service of others, nor from delay caused by shortage of qualified labor; (5) wind, flood, earthquake, governmental action, war, acts of God, or other causes of similar nature.

2. Responsibility During Free Time Period: Except as limited by specific provisions in this tariff, liability for loss, damage or delay to merchandise during free time periods as specified in the tariff shall be limited as set forth in the ocean carrier's receipt or bill of lading.

3. Responsibility as Warehousemen: Except as limited by specific provisions, liability for loss, damage or delay to merchandise while in the care or control of the Port at any time other than the free time periods specified in this tariff shall be that of a warehouseman only.

4. Valuation of Cargo or Merchandise for Claims Purpose: Any claims against the Port shall be based upon the actual cost of the merchandise plus freight, if paid. Claims for partial loss or damage of merchandise shall be prorated based upon the weight of the lost or damaged portion versus the entire shipment

ITEM 240 - Claims

1. Loss or Damage Claims: Unless notice of loss of or damage to cargo or merchandise is given in writing to the Port at the time of removal of the goods from the Port (or within three (3) days of removal if the loss or damage was not apparent) such removal shall be prima facie evidence of delivery of the goods in the same condition as received by or in the Port facilities. The Port shall be discharged from all liability in respect of cargo or merchandise unless suit is brought within one (1) year of the occurrence of the alleged loss or damage to cargo or merchandise.

2. Recovery of Overcharge Claims: Claims for recovery of overcharges must be filed in writing with the Port within twelve (12) months following the date of the invoice against which the overcharge is claimed.

ITEM 245 - Himalaya Clause

It is hereby expressly agreed between the Port and each ocean carrier, inland water carrier and inland land carriers (including rail and truck) (collectively "carriers) using the Port's facilities that as a condition and in consideration of using those facilities, the Port, as well as any and all of its employees, servants, agents and/or independent contractors (hereinafter as used in this paragraph, "port parties") used or employed in connection with the performance of any of the carriers' obligations under their various bills of lading shall be treated as and shall be express beneficiaries of those bills of lading. As such, the Port and port parties shall have the benefit of all rights, defenses, exemptions from or limitations on liability and immunities of whatsoever

nature to which the carrier(s) are or may be entitled under the provision of any bill of lading or by law so that the Port and port parties shall not, under any circumstance, be under any liability in either contract or tort greater than that of the carrier(s) themselves.

Each carrier shall indemnify the Port, including its elected or appointed officials, commissioners, officers, agents and employees, from and against, and reimburse the Port and port parties for, any liability, damage and claim (and all expenses connected therewith, including reasonable attorneys' fees and costs) arising out of loss or damage of cargo if such carrier fails to incorporate in its bill of lading, or through contract or otherwise fails to apply to the cargo, such rights, defenses, exemptions and immunities and as a result the Port or any port parties are unable to take advantage of any such rights, defenses, exemptions and immunities that would otherwise be available to the Port or port parties. In the event of conflict between the protections afforded by bills of lading issued by ocean and inland carriers, the Port may elect to rely upon the bill of lading affording the lower limit of liability.

ITEM 250 - Specified Rates Prevail

Rates provided for specific commodities shall prevail over any general commodity or N.O.S. rate.

ITEM 255 - Reservation of Agreement Rights

1. The Port reserves the right to enter into agreements with common carriers, shippers and/or their agents concerning rates and services, provided such agreements are consistent with existing local, state and national law governing the civil and business relations of all parties concerned.

2. The Port reserves the right to enter into agreement for the use of specific storage space, tracks, or other terminal facilities at rates commensurate with their service rendered.

ITEM 260 - Transshipped Cargo

When transshipment is substituted by the vessel operator in lieu of direct call of vessel at the Port, the charge or charges on cargo so handled shall be the same as that applicable to cargo handled on direct call vessels.

ITEM 265 - Berth Assignments

1. No vessel will be permitted to berth at a wharf or terminal facility of the Port of St. Helens without having first made application for a berth assignment and without such an assignment having been granted by the Port.

2. To download a printable/writable version of the Vessel Berth Application, please visit www.portsh.org/tariff/vessel-berth-application

   NOTE: In all instances where the "Party Responsible for Payment" listed on the Supplement to Application for Vessel Berth Application has not established credit worthiness with the Port and where responsibility for Port charges has not been accepted by another credit worthy entity, the Port shall require payment of cash in advance of posting or acceptable security prior to vessel berthing.

3. Berth assignments are non-transferable, conditional permits, revocable without notice, which may be issued at the sole discretion of the Port to the owners, agents or operators of vessels for the use of a specific berth by a specific vessel.

4. Berth assignments made by the Port are subject to alteration and revocation in the following conditions:

   a. Any vessel assigned a berth for any other purpose than to load or discharge cargo may be ordered to vacate such berth when the Port, at its sole discretion, determines the berth is required for the use of a vessel desiring to load or discharge cargo.

   b. Any vessel on berth to load or discharge cargo which, for any reason, experiences a delay in such operations may be ordered to vacate the berth when the Port, at its sole discretion, determines congestion or excessive operational cost is threatened by reason of the delay and may be reduced or avoided by use of the berth by another vessel which is capable of cargo loading or discharge at the berth.

   c. Whenever the Port deems a danger of congestion exists, any vessel on berth may be required to work cargo around-the-clock or at overtime expense. Should any vessel refuse to comply, the Port may order the vessel to vacate the berth.

   d. Whenever any vessel occupies a berth provided with special purpose equipment or facilities, which are not required to facilitate the cargo operations of such vessel, the Port may, when faced with an urgent need to employ such equipment or facilities in connection with a cargo movement fitted to their use, requires the vessel on berth

to work around-the-clock or at overtime expense to clear the berth as soon as possible or order the vessel to vacate the berth.

e. Any vessel ordered to vacate a berth in such circumstances will be assigned another berth if a satisfactory alternate is available or shall be permitted to return to the original berth immediately after the other vessel has completed cargo operations or has vacated the berth for any other reason, provided the conditions which caused the original issuance of the order to vacate are deemed by the Port to exist no longer.

f. All costs of extra or overtime labor, pilotage, shifting, tug-hire, linesmen or those of any description rising from the requirement of the Port under these rules shall be for the vessel's account.

5. Vessels required to Vacate Berths: Orders to vacate a berth shall provide the vessel with a reasonable period in which to comply. In no case shall such order require a vessel to vacate in less than two (2) hours from the time the order is issued and tendered to the vessel.

6. Penalty for Refusal to Vacate Berth: Whenever an order to vacate a berth is made by the Port under these rules and said order is refused or not complied with in the time specified, the Port may assess a **penalty dockage rate of twice the published dockage rate if the vessel remains on berth after such order has been issued** or tendered to the vessel. Penalty dockage will commence at the time the vacation was specified.

   At its option the Port may affect the removal of a vessel from berth at the time period specified in the order to vacate with all risks, liability and expense for the vessel's account. The alternatives permitted the Port under these rules shall be a choice solely to the discretion of the Port.

7. All persons to whom berths have been assigned shall be responsible and liable to the Port for any damage occurring to such assigned property while a vessel is berthing or departing, or any damage occurring during their tenancy and occupancy. Upon the refusal, failure or neglect of any such person to accept responsibility and liability in the manner and under the circumstances aforesaid, the executive director may immediately revoke the assignment to any such person without notice, and may refuse the use of any wharf, berth or other facility to any such person until the Port has been fully reimbursed for any such damage.

8. Liability of the Port on Berth Assignments:

   a. Issuance of berth assignments by the Port does not warrant the depth of water alongside the assigned or substitute berth.

b. Granting of berth assignments to assignees is not an implication or a guarantee of labor to be provided to work vessels, nor allocation of sufficient labor for a maximum desired operation. Such assignment or allocation of the labor force is beyond the control of the Port.

9. Conditions of Berth Assignment: In accordance with Federal Maritime Commission Docket 83-48, Alaska Maritime Agencies, Inc., et al. v. Port of Anacortes, et al., and Port of St. Helens Tariff No. 1, Item 265, all applications for vessel berth reservation shall be made in the form specified by the Port, and will require the timely filing of the financial responsibility information shown on the Supplement To Application for Vessel Berth Reservation, completed in accordance with, and otherwise governed by, the terms and conditions set forth below:

   a. Except where and to the extent waived pursuant to paragraph b below, terms of payment for all acceptable Port charges shall be cash in advance. A cash deposit or acceptable security in an amount equal to 125 percent (125%) of the estimated applicable charges will be required to be posted with the Port, six (6) days prior to the vessel's scheduled arrival, or at such other time as may be authorized or directed by the Port, but in all cases in advance of actual services rendered. In any case in which a cash deposit has been posted, any excess thereof, after satisfaction of all applicable Port charges, shall be promptly refunded by the Port to the party posting same.

   b. The Port may waive the requirement of cash in advance as to all or any category or categories of its anticipated Port charges when the party responsible for such charges has been identified by the berthing agent to the satisfaction of the Port, and:
      1. That party responsible has established credit worthiness acceptable to the Port; or
      2. Adequate security, acceptable to the Port , in an amount equal to 125% of the applicable estimated port charges, has been posted; or
      3. The agent requesting the berth, or another entity, in each case acceptable to the Port as credit worthy, has personally accepted financial responsibility for the applicable charges.

   c. The vessel agent or other person requesting reservation of a berth ("berthing agent") shall, as a part of the berth reservation process, provide to the extent of their knowledge all information called for herein on this form respecting the vessel, its estimated arrival and departure, amount(s) and type(s) of cargo to be loaded/discharged, and estimate of amount of each category of Port charges, as enumerated, and the party responsible thereof. The submission of this form, signed by the berthing agent, shall constitute the berthing agent's attestation as to the accuracy of information therein supplied, based upon and to the extent of information made available to the berthing agent at the time of submission; and the

berthing agent shall be held personally liable to the Port for any financial loss suffered by the Port as a result of the agent's failure so to report accurately.

d. Should the berthing agent, subsequent to submission of this form, receive information which materially differs from the information previously provided, and which information the agent reasonably believes is not equally known the Port, it shall immediately notify the Port, and if requested by the Port, promptly file an amended Supplement to Application for Vessel Berth Application with the Port.

e. All estimates of Port charges are subject to approval and/or adjustments by the Port.

f. The Port shall, promptly after receipt of this form, advise the berthing agent as to (1) its approval or adjusted estimate of Port charges, and (2) whether posting of cash or security is required for any one or more categories of such charges and the amount thereof.

g. In addition to the terms for berth reservation and establishment of financial responsibility set forth herein, requests for berth reservations and assignments of berths shall otherwise be in accordance with all local rules and regulations established by the Port.

ITEM 270 - Disposal of Waste and Garbage

1. Vessels requiring discharge of oily waste, contaminated garbage, medical waste, hazardous waste and/or regulated waste at the Port shall inquire of the Port's Operations Manager for the name(s) of oily waste, contaminated garbage, medical waste and/or hazardous waste hauler(s) permitted by the Port to receive, properly transport, treat, and dispose of oily waste, contaminated garbage, medical waste and/or hazardous waste. The vessel shall arrange directly with such oily waste, contaminated garbage, medical waste, hazardous and/or regulated waste hauler(s) for such services and equipment. Payment of charges for these services and equipment provided by such oily waste, contaminated garbage, medical waste, hazardous and/or regulated waste hauler(s) shall be made directly to these haulers by the vessel, its agent, owner, charterer, or any party responsible for such payment of charges by the vessel.

2. Under this item, contaminated garbage means all APHIS regulated wastes including all kinds of victual and domestic wastes generated during the normal operation of the vessel. The oily waste, contaminated garbage, medical waste and/or hazardous waste hauler(s) are independent contractor(s) and are not agent(s) or employee(s) of the Port, and as such the Port shall not be liable for any act, omission, or negligence of any such oily waste, contaminated garbage, medical waste and/or hazardous waste hauler. Rates and charges assessed vessels by the Port of St. Helens for use of its facilities or services do not include this service, nor do they include insurance coverage for any potential

liability of any oily waste, contaminated garbage, medical waste and/or hazardous waste hauler permitted by the Port of St. Helens.

3. The discharge by a vessel of oily waste, contaminated garbage, medical waste, and/or hazardous waste at the Port of St. Helens must be performed in accordance with the terms of this tariff and applicable federal, state and local regulations.

ITEM 275 - Manifests Required of Vessels

Masters, owners, agents or operators of vessels are required to furnish the terminal with complete copies of the vessel's manifest, showing names of consignees or consignors and the weights or measurements of all cargo loaded or discharged at the terminals of the Port. Such manifests must also designate the basis, weight or measurement on which the ocean freight was assessed.

ITEM 280 - Shipper Requests and Complaints

Any interested party may initiate requests or complaints on matters relating to rates, charges, rules and regulations contained in this tariff by filing a statement fully documenting the request or complaint with the executive secretary of Northwest Marine Terminal Association, Inc., P. O. Box 1283, Issaquah, WA. 98027.

ITEM 285 - Concealed Damage or Loss

The Port will not accept responsibility for concealed damage or loss, nor for the condition of contents of damaged cargo when received in that condition from vessel or inland carrier.

SECTION 3 - TERMINAL CHARGES ALL TRAFFIC

This section covers terminal operations, conditions and rates.

ITEM 300-Dockage

Berth assignments are issued at the sole discretion of the Port and are revocable without notice.

1. Dockage Periods:

   The period of time upon which dockage will be assessed shall commence when the first line is made fast to the wharf, dock, pier, seawall, or when a vessel is made fast to a vessel so berthed, or when a vessel comes within or moors within a slip, and shall continue until such vessel is completely free from and has vacated such berth or slip.

   Dockage shall be assessed in 12-hour increments or portion thereof. An additional dockage period shall not be assessed when a vessel departs from the Port within sixty (60) minutes of a subsequent dockage period after the first full period.

2. Basis for Computing Charges:

   a. Dockage charges shall be based upon the vessel's length-over-all as published in "Lloyd's Register of Ships." Length-over-all shall be construed to mean the linear distance, expressed in feet or meters, from the most forward point on the stem of the vessel to the aftermost part of the stern of the vessel, measured parallel to the base line of the vessel. If the length-over-all of the vessel does not appear in "Lloyd's Register of Ships" the Port may obtain the length-over-all from the "Vessel's Register" or measure the vessel.

   b. When a vessel is shifted directly from one wharf (berth) to another wharf (berth) operated by the same terminal company, the total time at such berths will be considered together in computing the dockage charge.

   c. Vessels on lay status may be permitted to moor at idle terminal berths when such berths are available. Lay status permission must be requested from the Port of St. Helens in advance. Dockage charges for vessels on lay status shall be assessed on the basis of 25 percent of the applicable dockage rates published in this item or a minimum of $500.00 per 24 hour period or fraction thereof, whichever creates the greater revenue.

   d. Vessels requesting lay status for 10 consecutive days or longer may request a negotiated rate when berths are available.

e. Vessels of the United States government may be berthed at Port terminals without charge at the discretion of the Port.

3. Dockage Rates:

Length-Overall in Meters		Rate Per 12 Hours	Rate Per 24 Hours
Over	Not Over		
0	107	$793	$1,586
107	114	$985	$1,970
114	122	$1,083	$2,165
122	130	$1,199	$2,397
130	137	$1,332	$2,663
137	145	$1,435	$2,870
145	152	$1,577	$3,153
152	160	$1,789	$3,578
160	168	$1,923	$3,846
168	175	$2,087	$4,174
175	183	$2,319	$4,637
183	191	$2,643	$5,285
191	198	$3,073	$6,146
198	206	$3,499	$6,997
206	213	$3,946	$7,891
213	221	$4,572	$9,143
221	229	$5,232	$10,463
229	236	$5,937	$11,873
236	244	$6,663	$13,325
244	259	$7,653	$15,305
259	274	$8,707	$17,414
274	290	$9,809	$19,618
290	or more	$10,923	$21,845

4. Vessels Required to Move, Vacate Dock, etc.:

Permission to dock vessels for other purposes than to load or discharge cargo shall be granted only at the option of the Port and conditional upon vessels shifting their position at wharf, vacating docks or leaving the terminal at the request of the Port.

At its option the Port may affect the removal of a vessel from berth at the time period specified in the order to vacate with all risks, liability and expense for the vessel's account. The alternatives permitted the Port under these rules shall be a choice solely to the discretion of the Port.

ITEM 305 - Maritime Fire and Safety Association www.mfsa.com

The Maritime Fire and Safety Association (MFSA) was formed to provide marine fire response and to supply training and supplies to combat marine fires. Annually, the MFSA adjusts its fees for service. Those fee adjustments are incorporated by reference into this tariff with an effective date as specified by the MFSA. .

ITEM 310 - Rail Fees

The Port of St. Helen's rail fees and policies are addressed through the PWW Rail Agreement codified by Cascade Kelly, LLC, doing business as Columbia Pacific Bio-Refinery (CPBR), Portland General Electric (PGE) and the Port of St. Helens. Any new users of the rail will be subject to negotiations.

ITEM 315 - Security Fees

The Port will assess security fees against vessels, their owners, or operators calling at the Port's facilities. At the Port's sole discretion, charges may be assessed to cargo and/or vessels for additional security costs associated with an increase in MARSEC level mandated by the US Department of Homeland Security.

Minimum Port Security Fee - $500.00 per vessel per day, or any portion thereof.

ITEM 320 - Weighing or Measuring

Unless otherwise specified, all cargo received must be accompanied by certificate, bill of lading, manifest or other written evidence showing the weight or measure as required by the terminal operator.

ITEM 325 - Documentation To Be Provided

The vessel, through its owners, operators, agents and customs brokers, shall give the Port all available information required for the efficient conduct of terminal services five (5) days prior to arrival. At a minimum the vessel is requested to furnish: vessel manifest, stow and hatch plans, packing lists, and crew and visitor lists. The Port will provide vessels working or scheduled to work at the terminal all usual and necessary information required by the vessel for the conduct of its operations.

SECTION 4 - SPECIFIC COMMODITY RATES ALL TRAFFIC

ITEM 400 - General

1. One wharfage and service and facilities (S&F) charge is assessed for each inbound or outbound movement of cargo.

2. Wharfage and S&F charges will not be assessed on cargo (over-stowed) which a vessel discharges and reloads prior to departure, in order to load or discharge cargo transiting the Port.

3. Unless otherwise specified under individual commodity items, all cargo loaded or discharged overside a vessel directly to or from another vessel, barge, lighter, raft to or from water while vessel is berthed at wharf shall be assessed one-half (1/2) the wharfage and S&F rates due according to ship's manifest and the respective traffic and commodity classifications of the cargo.

ITEM 405 - Wharfage

1. Cargo Not Loaded to Vessels:

   When cargo, in transit, is received on wharf from car or dray and it is not delivered to vessel but is loaded out again to car or dray, full wharfage charges will be assessed.

2. Wharfage on Ship's Stores:

   Ship's stores, fuel handled overside vessel and repair materials and supplies, all when intended for vessel's own use, consumption or repairs, will be exempt from assessment of wharfage unless wharf employees are required to receipt for same.

   Fuel handled over wharf, ballast, dunnage for cargo, materials ostensibly not for use in stowage of cargo taken from terminal at which materials are loaded, and lining lumber for use in lining vessels for grain or other bulk commodities will not be considered as ship's stores and shall be subject to wharfage and such other charges as may be incurred.

3. Wharfage Rates are as specified.

ITEM 410 - Minimum Charges

Unless otherwise specified under individual items, the minimum wharfage charge for any single shipment will be $500.00.

ITEM 415 - Commodity Rates

WHARFAGE RATES

Commodity Description	Unit of Measure	Rate ($)
LIQUID BULK		
Ethanol	Rates per Barrel US	$0.098
Light Crude Oil	Rates per Barrel US	$0.105
Petroleum Products	Rates per Barrel US	$0.078
NOS	Per Metric Ton	$1.640
BULK COMMODITIES		
Coal	Rates per Metric Ton	$0.2046

TARIFF DISCLAIMER

In the preparation of this site, every effort has been made to offer the most current, correct and clearly expressed information possible. Nonetheless, inadvertent errors can occur, and applicable rates, rules and regulations often change. Further, the information contained herein is intended to afford general guidelines on matters of interest. The developers and hosts of this site disclaim any responsibility for positions taken by individuals or corporations in their individual cases or for any misunderstanding and losses, directly or indirectly, on the part of the users. By viewing or using the information contained on any of these pages, you accept full responsibility on the use of its contents.

The only lawful copy of the Port of St. Helens Tariff No. 1 is that which is herewith on file electronically as per the final rule of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998. The Port of St. Helens warrants the tariff information is accurate as of the time of its original posting. All tariff materials are provided for information only and the Port of St. Helens does not guarantee the accuracy of this information. The Port of St. Helens should be contacted directly to verify all applicable information. The Port of St. Helens does not warrant or make any representation regarding the use or the results of the use of the tariffs in this site in terms of their correctness accuracy, timeliness, reliability or otherwise. The tariff information and documents provided on this web site are provided "as is" without any warranty. The Port of St. Helens uses reasonable efforts to include accurate and up-to-date information on this site; it does not, however, make representations as to its accuracy or completeness.

The Port of St. Helens may enter into contracts in writing with shippers, receivers, or carriers, providing rates for storage and services other than as provided herein. Further, separate wharfage, and handling rates, terms and conditions may be negotiated on request from other parties for large volume movements through the Port of St. Helens facilities.

IF YOU DO NOT AGREE OR UNDERSTAND ANY OR ALL OF THESE TERMS, PLEASE DO NOT USE THESE WEB PAGES.

THIRD AMENDMENT TO DOCK USE AGREEMENT

This Third Amendment to Dock Use Agreement (this "Amendment") is made effective as of the 17th day of March, 2016 (the "Effective Date") by and among the Port of St. Helens, an Oregon municipal corporation (the "Port"), Cascade Kelly Holdings, LLC, an Oregon limited liability company ("CPBR") and, Portland General Electric Company, an Oregon corporation ("PGE").

RECITALS

A. PGE, the Port and Cascade Grain Products LLC ("Cascade") were parties to that certain Dock Use Agreement dated and effective as of May 31, 2006, and as amended on September 7, 2012 and October 1, 2013 (the "Dock Use Agreement").

B. CPBR assumed and was assigned the rights and obligations of Cascade under the Dock Use Agreement pursuant to the Asset Purchase Agreement (and all addenda thereto) dated December 29, 2009 between CPBR and Peter C. McKittrick in his capacity as the Trustee for Cascade under the United States bankruptcy Code Chapter 7. On February 15, 2013, Global Partners LP acquired CPBR.

C. CPBR has permitted and is funding, in concert with the Port, an expansion of the Beaver Dock (the "Dock") to restore Berth 1 (located at the upstream section of the Beaver Dock). The Port and CPBR have reviewed the proposed plans for upgrades needed to put Berth 1 back into active service and enable CPBR to use Berth 1 for its intended operations, use Berth 1 simultaneously with Berth 2, and to improve the infrastructure at Port Westward.

D. The Port and PGE are parties to that certain lease dated August 1, 1967 ("PGE Master Lease"), as amended, that provides PGE with certain access and use rights with respect to the Dock.

E. Any capitalized terms that are not defined herein have the meaning given in the Dock Use Agreement or the PGE Master Lease.

AGREEMENT

1. For good, fair and valuable consideration, the receipt and sufficiency of which is acknowledged, the Port, PGE and CPBR agree that CPBR shall have first priority for Berth 1 assignments and use (as defined below) for the next fifteen (15) years from the date that Berth 1 is officially completed and able to accommodate and load vessels, as shall be mutually determined in good faith by the Port and CPBR, unless otherwise extended by mutual agreement by the parties. Such first priority grants CPBR the right to fully utilize Berth 1 for 250 days per calendar year, averaging about 20 days per month, while preserving for users other than CPBR six (6) thirty-six (36) hour periods for each month for Berth 1. After 15 years, CPBR will retain a priority use of Berth 1 and the parties will negotiate in good faith the minimum number of berth days taking into account CPBR's use over the prior five (5) years, but in no event will CPBR have less than 180 berth days per year.

Berth 1 is that portion of the Beaver Dock specifically delineated as such on Exhibit

A attached hereto, but specifically excludes any piping, loading equipment or other operational equipment attendant thereto, which shall remain the personal property of CPBR or third parties, as the case may be.

2. To the extent that CPBR does not have vessels scheduled or contracted for Berth 1, the Port may arrange for other entities to utilize Berth 1 in a manner that preserves CPBR's priority use for Berth 1.

(a) CPBR will regularly provide to the Port CPBR's anticipated schedule of vessel calls at Berth 1. CPBR will update the schedule with the Port on a regular basis. The Port, after good faith consultation with CPBR, shall establish a commercially reasonable schedule and deadline for nomination procedures at Berth 1, in accordance with industry standards. In the event CPBR or any other party, in accordance with Port nomination procedures, nominates the same days, CPBR's nomination shall have priority.

(b) The Port will take commercially reasonable efforts to schedule vessels at Berth 2 before scheduling or contracting vessels to call at Berth 1.

(c) The Port will establish a Berth Window for other entities using Berth 1 to set the duration of the permitted use of Berth 1 on the vessel's call and will communicate the Berth Window to the dock user and vessel interests as well as to CPBR. In setting such Berth Window, the Port must ensure that such window commences no less than 12 hours after the scheduled departure of any vessel nominated by CPBR and concludes no less than 12 hours before the arrival of any vessel nominated by CPBR.

(d) In the event the other entity's vessel fails to vacate Berth 1 at or prior to conclusion of the Berth Window, the Port shall order such vessel to vacate Berth 1 within no more than 8 hours following notice. If either the Port or CPBR incurs demurrage due to either CPBR or another entity's failure to vacate Berth 1, the entity causing such demurrage shall pay to the Port or other economically injured party that amount equal to the demurrage directly incurred as a result of such failure to vacate.

(e) The Port will provide notice of CPBR's priority use rights for Berth 1 in the applicable Port of St. Helen's Tariff and in the Port's Berth Application. The Tariff and Berth Application notice must include notice that (i) failure to vacate Berth 1 for any reason following notice to vacate after expiration of the assigned Berth Window is a breach of the berth agreement formed under the Berth Application and Tariff, and (ii) Any ocean-going vessels using or scheduled to use a Port berth shall be in compliance with the United States Coast Guard (USCG), United States Customs and Border Patrol, or other governmental agency's rules and regulations. If at any time, while at berth, a vessel is determined by the USCG to be in noncompliance or substandard, or if the cargo operation is interrupted or ordered-to-stop by the USCG authorities or other government entity (including state or local authorities as well as court or administrative orders), the vessel/owner(s)/operator(s) shall be liable for all consequential delays, damages, and costs, and the Port shall have the right to order the vessel to vacate the berth if the cargo operation has not resumed within 2 hours from the time stopped. If at any time, prior to the vessel's berthing, it is determined by the USCG that the vessel is deficient, the vessel's agent/master/owner(s)/operator(s) shall immediately notify the Port indicating the nature of the

deficiency so determined. Depending on the deficiency's potential impact on the cargo operation, the Port shall have the right to reject or void the vessel's Berth Application notice or reservation until the deficiency is corrected or otherwise acceptable to the USCG/Captain of the Port. Principles of Force Majeure do not excuse or relieve a breach or the failure to vacate. The Port may provide in the Tariff a right to collect from any entity or any vessel for demurrage incurred due to failure of any vessel to vacate a Berth as ordered.

(f) The Port will provide notice of CPBR's priority use rights for Berth 1 in any agreements or licenses granted to other shippers, operators or users ("Dock User") who will nominate or cause vessels to berth at the Dock. This notice must include a provision in the Dock User's contract stating substantially the following: The Port has entered into a Dock Use Agreement providing first priority berth use rights to Cascade Kelly Holdings, LLC (CPBR) for Berth 1. Any vessel assigned to Berth 1 to load or discharge cargo or for any other reason under Dock User's agreement with the Port will be given a berth window (Berth Window) within which to complete cargo or other operations and depart the berth. Dock User must exercise commercially reasonable vetting of the nominated vessel to determine whether it is in acceptable condition to carry out the functions for which it is being nominated to berth at Berth 1. Should any vessel nominated by or on behalf of Dock User fail to complete cargo operations and depart Berth 1 within the Berth Window, the Port may order the vessel to vacate Berth 1. If the vessel then fails to vacate Berth 1 within 8 hours after the Port's order to vacate, Dock User agrees that this constitutes a breach of Port Tariff and this Use Agreement. On such breach, the Dock User may become liable for damages suffered by CPBR in being denied its priority use rights to Berth 1. Such damages may include payment of vessel demurrage CPBR becomes obligated to pay, to include vessels CPBR has nominated to Berth 1 and other damages resulting from interruption or delay in CPBR use of Berth 1, all without prejudice to Dock User's rights to recover any such damages from the vessel it nominated to Berth 1.

(g) Notwithstanding the above Section 2 (f) CPBR may also be liable for demurrage for failure to complete cargo operations and depart Berth 1 within its designated Berth Window.

3. CPBR's wharfage rate for use of Berth 1 shall be reduced to 70% of the then applicable Port of St. Helens' Tariff. These wharfage rates will apply for five years beginning the date the first vessel commences loading at Berth 1 by CPBR.

4. CPBR shall pay the Port a minimum wharfage. CPBR, on a monthly basis, shall accrue a minimum combined wharfage of $25,000 for Berth 1 and Berth 2 for a total of $300,000 ("Annual Minimum Wharfage Payment Requirement"). At the end of each Fiscal Year (July-June), the Port shall true-up all wharfage payments by CPBR to the Port. If CPBR's Annual Minimum Wharfage Payment Requirement has not been achieved, CPBR shall pay to the Port any shortage within 30 days upon demand.

5. In the event PGE transfers or assigns ownership of any of its tanks associated with PGE's Beaver generating facility, any assignment or transfer of the PGE Dock Easement Rights shall be subject to review and approval by the Port, which approval shall not be unreasonably withheld or denied.

6. This Amendment relates to the reconstruction and use of a newly repaired and constructed Berth 1 and does not otherwise modify the Dock Use Agreement. This Amendment does not, and shall not be construed to alter or limit PGE's rights to access and use the Dock and Dock Area under the Dock Use Agreement and the PGE Master Lease. This Amendment does not interfere with the Port's right to access Berth 1 in connection with repairs and maintenance that the Port may conduct in connection with maintaining and operating the Dock, provided that in conducting such activities, the Port shall use reasonable efforts to minimize interference with CPBR's priority use of the Dock and without interfering with CPBR's rights as set forth herein. Except as expressly amended by this Amendment, the Dock Use Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first hereinabove written.

PORT OF ST. HELENS, an Oregon municipal corporation

By: _____
Its: EXECUTIVE DIRECTOR

CASCADE KELLY HOLDINGS, LLC, an Oregon limited liability company

By: _____
Its: EVP & GC

PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation DFW

By: Brad Jenkins for Maria Pope
Maria Pope
Its: Senior Vice President, Power Supply & Operations and Resource Strategy



JHK FS 10-19-15-01

DOCK SATELITE IMAGES WITH STRUCTURE OVERLAY

FOURTH AMENDMENT TO DOCK USE AGREEMENT

THIS FOURTH AMENDMENT TO DOCK USE AGREEMENT (this "Fourth Amendment"), entered into as of December 12, 2018, by and among Port of St. Helens, an Oregon municipal corporation (the "Port"), Cascade Kelly Holdings LLC, an Oregon limited liability company ("CPBR"), and Portland General Electric Company, an Oregon Corporation ("PGE").

RECITALS

A. Port, Cascade Grain Products LLC ("Cascade") and PGE were parties to that certain Dock Use Agreement dated and effective as of May 31, 2006, amended on September 7, 2012, on October 1, 2013, and further amended on March 17, 2016 (the "Dock Agreement").

B. CPBR assumed and was assigned the rights and obligations of Cascade under the Dock Agreement pursuant to that Asset Purchase Agreement (and all addenda thereto) dated December 23, 2009 between CPBR and Peter C. McKittrick in his capacity as the Trustee for Cascade under the United States bankruptcy Code Chapter 7.

C. CPBR requested an API gravity change under "Approved Products" as defined in Section 1.03 of the Dock Agreement and which also affects Sections 1.04, 2.10 and 3.08 of the Dock Agreement.

D. CPBR, the Port and PGE now wish to amend Section 1.03 and Sections 1.04, 2.10 and 3.08 of the Dock Agreement to clarify CPBR's rights thereunder.

AMENDMENT

For good and valuable consideration, inclusive of the mutual benefit all parties derive from CPBR's use of the Port Westward site, such as the potential to increase dockage and wharfage fees to the Port and full time employment, the parties hereby agree that the term "Approved Products" as defined in section 1.03 of the Dock Agreement includes fuel and petroleum products with API gravity ranges of 18-44 degrees. The parties specifically acknowledge and agree that sections 1.04 ("Ethanol Transfer"), 2.10 ("Environmental Matters") and 3.08 ("Capital Reserve Account") are hereby amended to include any such proposed fuel and petroleum products, and that these sections specifically apply to any such proposed fuel and petroleum products as outlined herein. The Port may from time to time evaluate CPBR's safety, performance, and spill management history to ensure compliance with Section 2.10. The parties further agree as follows:

Section 1.03 the first sentence shall be deleted in its entirety and replaced by the following:

> Cascade is hereby granted the right to use the Dock Area for (i) the transfer of fuel and petroleum products (API gravity ranges of 18-44 degrees), ethanol, grain and by-

products produced and manufactured by the production facility on, or otherwise transferred and stored at, the Cascade Property (collectively, the "Approved Products"), (ii) access to and repair of pipelines and necessary piping and material transfer equipment, and (iii) ingress and egress for all purposes of this Agreement ("Permitted Uses").

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to Dock Use Agreement as of the date set forth above.

THE PORT OF ST. HELENS
an Oregon Municipal Corporation

By: _____

Name: Douglas J. Hayes

Title: Executive Director

CASCADE KELLY HOLDINGS LLC,
an Oregon limited liability company doing business as
Columbia Pacific Bio-Refinery

By: _____

Name: Dylan Remley

Title: SVP Terminal Operations

PORTLAND GENERAL ELECTRIC COMPANY,
an Oregon corporation

By: _____

Name: Brad Jenkins

Title: VP, Utility Operations

PGE Approved By:	
Business Terms	
Credit	
Legal	
Risk Mgt.	

DOCK

FIFTH AMENDMENT TO DOCK USE AGREEMENT

This Fifth Amendment to the Dock Use Agreement ("Fifth Amendment") is made effective as of the 11th day of March, 2020 ("Effective Date") by and among the Port of St. Helens, an Oregon municipal corporation ("Port"), Cascade Kelly Holdings, LLC, an Oregon limited liability company doing business as Columbia Pacific Bio-Refinery ("CPBR"), and Portland General Electric Company, an Oregon corporation ("PGE").

RECITALS

A. **Dock Use Agreement 5/31/2006**. Port, Cascade Grain Products, LLC ("Cascade"), and PGE were parties to the Dock Use Agreement dated May 31, 2006 ("Dock Use Agreement"). The Dock Use Agreement allowed Cascade to use certain dock facilities owned by the Port and located near the Cascade property. On December 23, 2009, CPBR assumed and was assigned the rights and obligations of Cascade under the Dock Use Agreement pursuant to an Asset Purchase Agreement (and all addenda thereto) between CPBR and Peter C. McKittrick in his capacity as the Trustee for Cascade under the United States bankruptcy Code Chapter 7.

B. **First Amendment 9/7/2012**. The parties amended the Dock Use Agreement on September 7, 2012 ("First Amendment"). The First Amendment amended the Approved Products section to include fuel and petroleum products produced or processed by the CPBR production facility with API gravity ranges from 30-44 degrees.

C. **Second Amendment 10/1/2013**. The parties amended the Dock Use Agreement on October 1, 2013 ("Second Amendment"). The Second Amendment updated Dockage and Wharfage requirements and established a Capital Reserve Account used for capital improvements.

D. **Third Amendment 3/17/2016**. The parties amended the Dock Use Agreement on April 6, 2017 ("Third Amendment"). The Third Amendment outlined CPBR's agreement to finance the cost of improvements to Berth One and also outline priority, costs and other stipulations associated with the improvements.

E. **Fourth Amendment 12/12/2018**. The parties amended the Dock Use Agreement on December 12, 2018 ("Fourth Amendment"). The Fourth Amendment amended the Approved Products section to include fuel and petroleum products produced or processed by the CPBR production facility with API gravity ranges from 18-44 degrees.

F. **Purpose of Fifth Amendment 3/11/2020**. This Fifth Amendment authorizes transferring, storing and transloading of renewable diesel. CPBR, the Port and PGE now wish to amend Section 1.03 and Sections 1.04, 2.10 and 3.08 of the Dock Use Agreement to clarify CPBR's rights thereunder.

AMENDMENT

For good and valuable consideration, inclusive of the mutual benefit all parties derive from CPBR's use of the Port Westward site, such as the potential to increase dockage and wharfage fees to the Port and full time employment, the parties hereby agree that the term "Approved Products" as defined in section 1.03 of the Dock Agreement includes renewable diesel meeting standards for

renewable fuel credit programs. The parties specifically acknowledge and agree that sections 1.04 ("Ethanol Transfer"), 2.10 ("Environmental Matters") and 3.08 ("Capital Reserve Account") are hereby amended to include any such proposed renewable diesel products, and that these sections specifically apply to any such proposed renewable diesel as outlined herein. The Port may from time to time evaluate CPBR's safety, performance, and spill management history to ensure compliance with Section 2.10. The parties further agree as follows:

Section 1.03 the first sentence shall be deleted in its entirety and replaced by the following:

> Cascade is hereby granted the right to use the Dock Area for (i) the transfer of fuel and petroleum products (API gravity ranges of 18-44 degrees), renewable diesel (R100 or R100 that has been blended to meet RFS, LCFS or other renewable fuel credit programs), ethanol, grain and by-products produced and manufactured by the production facility on the Cascade Property (collectively, the "Approved Products"), (ii) access to and repair of pipelines and necessary piping and material transfer equipment, and (iii) ingress and egress for all purposes of this Agreement (Permitted Uses").

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment as of the Effective Date listed above. No other amendment or modification is made or intended to be made to the Dock Use Agreement and the Dock Use Agreement, as modified hereby, is hereby affirmed and reaffirmed by the parties and shall remain in full force and effect. Executed in multiple counterparts effective as of the Effective Date listed above.

THE PORT OF COLUMBIA COUNTY an Oregon Municipal Corporation

By: _____

Name: Douglas J Hayes

Title: Executive Director

CASCADE KELLY HOLDINGS LLC,
an Oregon limited liability company doing business as
Columbia Pacific Bio-Refinery

By: _____

Name: Edward J. Fanning

Title: Executive Vice President

PORTLAND GENERAL ELECTRIC COMPANY,
an Oregon corporation

By: Brad Jenkins
Brad Jenkins (Mar 30, 2020)

Name: Brad Jenkins

Title: VP, Utility Operations

PGE Approved By:	
Business Terms	JM JM
Credit	TM TM
Legal	CLL CLL
Risk Mgt.	JB JB

Attachment D

Ship & Berth Day Calculations

Next Renewable Fuels, Oregon, LLC.
EFSC RIA Response
February 2021

ATTACHMENT "D"

NEXT Renewable Fuels, Oregon

Vessels Required

	37,500 BBLs		50,000 BBLs	
	Feedstocks	**Products***	**Feedstocks**	**Products***
Nameplate capacity	37,500	37,200	50,000	49,600
Ship Capacity-				
DWT acreage	30,000	70,000	30,000	70,000
Total Barrels. Average	155,000	310,000	155,000	310,000
Production Volumes-				
Daily BBLs	38,265	37,200	51,020	49,600
Monthly BBLs (29 day average)	1,109,694	1,078,800	1,479,592	1,438,400
Ship Requirements-				
Monthly	7.2	3.5	9.5	4.6
Annual	86.4	42.0	115.2	56.0

EFSC Exemption Request

Revised

Next Renewable Fuels, Oregon, LLC.
EFSC RIA Response
February 2021

BEFORE THE ENERGY FACILITY SITING COUNCIL

FOR THE STATE OF OREGON

OREGON FACILITY SITING COUNCIL EXEMPTION

FOR

NEXT RENEWABLE FUELS OREGON, LLC

PORT WESTWARD RENEWABLE DIESEL PROJECT

February 24, 2021

Prepared for:

NEXT Renewable Fuels Oregon, LLC

1.0 INTRODUCTION

NEXT Renewable Fuels Oregon, LLC (NEXT), a Delaware limited liability company, proposes to construct a renewable diesel facility (the "Facility") at the Port Westward Industrial Park in Columbia County, Oregon.

NEXT plans to build a flexible Renewable Diesel Facility utilizing the UOP Ecofining™ Green Diesel technology. The UOP Ecofining™ process is a versatile solution for producing renewable diesel from a range of sustainable feedstocks such as used cooking oil, animal fats and tallow, and inedible corn oil. Renewable diesel produced in the Ecofining™ process is a drop-in fuel that can directly replace up to 100 percent of petroleum-based diesels.

NEXT has secured a lease with the Port of Columbia County for a total of 83.31 acres within the Port's existing Port Westward Industrial Park along the Columbia River (See Figure 1: Location and Vicinity Map and Figure 2: Aerial Photo). The lease option consists of two complete tax lots and a portion of a third tax lot located in T8N R4W Section 22 of the Willamette Meridian, Tax Lots 100, 200, and 1100 (See Figure 3: Tax Lot and Ownership Map). In addition, NEXT has purchased a 25.5-acre parcel of private land (Tax Lot 300) adjacent to and directly west of the Port parcel. NEXT has negotiated an easement for 1.89 acres of land through a private parcel (T8N R4W Section 23, Tax Lot 800) for use in rail logistics. NEXT will construct an access road and pipelines from the Facility across Port property requiring an additional lease with the Port for 16.71 acres. Together these properties total 127.43 acres and will comprise "the Site."

The Facility will be capable of processing up to 51,500 barrels per day (BPD) of renewable biomass feedstocks. The Facility is being permitted for its maximum design and production capacity. This equates to production of renewable fuels capable of being burned to produce the equivalent of 287.6 billion BTUs per day, thus meeting the definition of "Energy facility" under ORS 469.300 (11)(a)(G).

1.1 Oregon Energy Facility Siting Council (EFSC)

Pursuant to ORS 469.320(1), "no facility shall be constructed or expanded unless a [EFSC] site certificate has been issued for the site …" A "facility" is defined as "an energy facility together with any related or supporting facilities" in ORS 469.300(14).

The definition of "energy facility" includes "[a] plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day." ORS 469.300(11)(a)(G).

There is a statutory exemption (ORS 469.320 (2)(f)) from the EFSC site certification requirement if the facility satisfies the following:

(A) *Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel (see pages 4–5);*

(B) *Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land*

Conservation and Development Commission that are directly applicable to the facility (see page 12);

(C) *Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate (see page 6);*

(D) *Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge (see page 13);* ***and***

(E) *Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy (see page 5).*

The following sections describe the Facility, address how the Facility satisfies the ORS 469.320(2)(f) exemption, and provide the information required by OAR 345-015-0360(7).

2.0 DESCRIPTION OF PROPOSED FACILITY

The Facility will utilize liquid biomass feedstocks. Feedstocks will predominately arrive via vessel and barge at the existing Port of Columbia County–owned dock at Port Westward, Columbia River Mile 53. A terminalling company that is already operating at Port Westward will unload the feedstock and transfer it via pipeline to the new on-site storage tanks. The feedstock will be refined through an Ecofining™ process into renewable diesel. Renewable diesel produced in the process can directly replace petroleum-based diesel. Finished products will be stored on-site before being transferred back to the terminalling provider via pipeline to ship via barge and vessel from the Port Westward dock.

The Facility consists of the following major components (see Figure 4, Site Layout):

- Three new product and feedstock pipelines from the Facility to the confluence with the terminalling provider
- Ten larger product and feedstock tanks (125,000 to 225,000 barrels each) and twelve smaller feedstock and process tanks (10,000 to 50,000 barrels each)
- Rail storage tracks
- Biomass pre-treatment plant
- Hydrogen facility
- Ecofining™ conversion units
- Fresh, storm, and process water treatment system
- Office, warehouse, and other buildings

The new pipelines and transmission lines will run through the Facility and extend along Port property to the existing connection points (entirely within the Resource Industrial Planned Development zone). None of the new pipelines or transmission lines required for the project meet the definition of "energy facility" in ORS 469.300(11), and therefore do not require a site certification.

2.1 Location

NEXT has secured a lease with the Port of Columbia County for a total of 83.31 acres within the Port's existing Port Westward Industrial Park along the Columbia River (See Figure 1: Location and Vicinity Map and Figure 2: Aerial Photo). The lease option consists of two complete tax lots and a portion of a third tax lot located in T8N R4W Section 22 of the Willamette Meridian, Tax Lots 100, 200, and 1100 (See Figure 3: Tax Lot and Ownership Map). In addition, NEXT has purchased a 25.5-acre parcel of private land (T8N R4W Section 22 Tax Lot 300) adjacent to and directly west of the Port parcel. NEXT has negotiated an easement for 1.89 acres of land through a private parcel (T8N R4W Section 23, Tax Lot 800) for use in rail logistics. The project will require the construction of an access road and pipelines from the Facility across Port property, necessitating an additional lease with the Port for 16.71 acres. Together these properties total 127.43 acres and will comprise "the Site."

The Site is located within a levee system and outside the flood zone. The land is currently used for grazing. Low-value wetlands exist on site and will be mitigated as permitted and approved by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers (USACE).

2.2 Biomass Feedstock

The design of the Facility will be based on processing up to 51,500 BPD of biomass[1] to include virgin vegetable oils, animal fats and tallows, used cooking oils, distillers corn oils, and yellow and white greases. Below is an example of the biomass mix that could be refined. No palm or other non-sustainable oils will be sourced or used in the process.

Raw Oil Feedstock	Oil	Wt%
Soybean and canola oils	Veg oil	30
Distillers corn oil	Veg oil	15
Used cooking oil	Veg oil	15
Beef tallow	Animal fat	20
Choice white grease (pork oil)	Animal fat	10
Yellow grease (chicken fats)	Animal fat	10

Feedstock will be received by the terminalling provider via barge and ship at the existing Port Westward dock. NEXT will take custody of the product at the pipeline confluence, and the feedstock will be transported by 18-inch pipeline and stored in six on-site tanks.

The biomass feedstock will be fed to the Raw Oil Pretreatment System. The Facility will include up to four pre-treatment units. Each unit will be comprised of a multi-stage processing system which includes degumming, polyethylene (PE) removal, filtering, and bleaching units. The goal is to remove feed gums, metals, soaps, color, and phospholipids with minimal loss of free fatty acids.

As stated above, the Facility will exclusively use biomass including oilseeds, waste vegetable oil, and waste animal fats as the source of material for conversion to a liquid fuel, thus satisfying the exemption requirement of ORS 469.320(2)(f)(A).

[1] The majority of the biomass products proposed for use by NEXT are specifically identified in ORS 469.320. Additional biomass intended for use in this process, such as animal tallow and white and yellow greases, are subsumed within the definition of "Biomass" in other parts of Oregon Revised Statue, such as ORS 315,141, which includes "Offal and tallow from animal rendering;" in the definition of biomass.

2.3 Production

From pre-treatment, the feedstock will move to one of four Ecofining™ units. These units will process the treated oils from the Raw Oil Pretreat facilities into renewable diesel and other renewable products.

The Ecofining™ process requires hydrogen. Hydrogen will be supplied by an on-site hydrogen unit. The hydrogen unit will primarily operate using recycled renewable off-gases produced in the Ecofining process with supplemental natural gas input to produce the required hydrogen.

The Ecofining™ unit equipment will be designed for a range of feedstocks and operating modes. The finished products generated from the UOP Ecofining™ Process will be

Max Diesel

- Renewable Diesel—47,200 BPD
- Renewable Naphtha—2,027 BPD

Jet

- Renewable Diesel—38,128 BPD
- Renewable Jet Fuel—6,415 BPD
- Renewable Naphtha—4,880 BPD

Finished product will be stored in four large tanks and three small tanks. Product will be transported by a 20-inch and two 12-inch pipeline to the pipeline confluence with the terminalling provider. The terminalling provider will transfer the products to barges and ships, which will transport the products to market.

2.4 Energy Consumption

2.4.1 Natural Gas and Conversion Energy

The Facility, depending on operating mode and hydrogen plant feedstock, will utilize 14.6–24.4 million standard cubic feet per day (15,400-25,600 MMBtu/day) of natural gas for conversion energy to fire boilers, heaters, and other process equipment. The average carbon intensity of the natural gas to be used for conversion energy is 115.9 pounds of carbon dioxide per million Btu consumed. No other fossil fuels will be used for conversion energy at the Facility.

At 115.9 pounds of carbon dioxide per MMBtu of natural gas, the Facility will emit less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy, thus satisfying the exemption requirement of ORS 469.320(2)(f)(E).

Natural gas will be provided via the existing Northwest Natural pipeline, which passes within 3,800 feet of the Facility. An interconnecting eight-inch pipeline will be constructed below grade between the existing pipeline and the Facility. The interconnecting pipeline will be approximately 3,800 feet long and entirely within

the RIPD zone. The new connector line does not meet the definition of "energy facility" under ORS 469.300(11).

2.4.2 Electric Power

The Facility will utilize approximately 40 MW of electrical power per day. Electricity will be supplied by the existing Clatskanie Public Utility District (PUD) transmission lines. The electrical service will require a new 1,450-foot service line connecting an existing power pole to an on-site substation. No new transmission towers or lines are required. The new service line does not meet the definition of "energy facility" under ORS 469.300(11).

As stated in 2.4.1 and 2.4.2 above, the Facility requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of ORS 469.320, thus satisfying the exemption requirement of ORS 469.320(2)(f)(C).

2.5 Raw Water

Water will be supplied from raw river water drawn from an existing Port-owned intake structure under an existing Port water permit. The water intake pipeline from the existing intake structure to the raw water tank at the Facility will be located below grade within the RIPD zone. The Facility will require 1,350 gallons per minute (gpm) of water. The raw water storage tank supplies water for utility water, potable water, fire water, cooling water, and boiler feed water systems.

2.5.1 Water Discharge

Process and stormwater will be treated on-site at the Facility and discharged through the Port's wastewater discharge system. The wastewater discharge pipeline laterally connecting the Facility to the Port's wastewater discharge system will be located below grade within the RIPD zone. Sanitary sewage will be captured in a storage tank and transported off-site to an approved disposal site.

3.0 LAND USE

3.1 Zoning

The Facility, feedstock and product pipelines, water intake pipeline, wastewater discharge pipeline, gas connector pipeline, construction staging area, and access road are located entirely within Columbia County's planning jurisdiction. As a result, these facilities will be subject to the provisions of the Columbia County Zoning Ordinance (CCZO) and Oregon Administrative Rules (OARs).

3.1.1 Resource Industrial Planned Zone (RIPD)

The Port of Columbia County owns the Port Westward Industrial Park (Port Westward), a 905-acre rural industrial exception area with 4,000 feet of deep-water frontage along the Columbia River. In the 1970s, the county adopted an exception to Statewide Planning Goals 3 (Agricultural Lands) for Port Westward and planned and zoned it for rural industrial uses. Port Westward is zoned Rural Industrial Planned Development (RIPD). The entire Site, including the pipelines and utilities, will be located in the RIPD zone.

3.1.2 Use Permitted Under Prescribed Conditions

Within the RIPD zone, the proposed Facility is categorized as "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities." Pursuant to CCZO § 683, NEXT must demonstrate that the proposed use satisfies the following criteria:

"A. The requested use conforms with the goals and policies of the Comprehensive Plan - specifically those policies regarding rural industrial development and exceptions to the rural resource land goals and policies."

RESPONSE: The industrial siting policies of the Comprehensive Plan include the following:

"GOAL: It is a goal of the County to provide for industrial development on rural lands when such development can be shown to support, utilize, or in some manner be dependent upon, the natural resources of the area.
POLICIES: It shall be a policy of the County to:

3. *Restrict industrial development on land zoned Resource Industrial Planned Development to those uses that:*
    - *A. Are not generally labor intensive;*
    - *B. Are land extensive;*
    - *C. Are located with adequate rail and/or vehicle and/or deep water port and/or airstrip access;*

D. Complement the character and development of the surrounding area;

E. Are consistent with the rural facilities and existing and/or planned for the area; and,

F. Will not require facility and/or service improvements at public expense; or,

G. Are not appropriate for location within Urban Growth Boundaries due to their hazardous nature."

The Facility is consistent with the above policy and its sub-elements for the following reasons:

- The proposed facility will require employees to operate. However, those employees will be primarily engaged in managing mechanical equipment, loading fuel inputs and outputs, managing river and rail transportation in and out of the site, and handling internal operational planning, management, and security. For these reasons, the Commission can find that, while the facility will generate new employment, it is a largely mechanized facility and will not be "labor intensive."

- The Facility is relatively land extensive, requiring approximately 127.41 acres.

- The Facility requires direct river and rail connections. The deep-water channel is necessary to accommodate the tankers that will receive the end product.

- The Facility is consistent with existing development in the surrounding area, which chiefly consists of a PGE tank farm, a generating plant, and an existing ethanol plant.

- The Facility is consistent with surrounding rural facilities because it will not add a significant number of new trips on the vicinity's roadways and will not reduce the availability of other rural services.

- The Facility will be served by existing river and rail transportation facilities and will not impose any public infrastructure costs on the County.

- The Facility is not appropriate for location within an urban growth boundary (UGB) because there is no comparable location within a UGB that has the required combination of land and river and rail transportation access.

The Facility is also consistent with the County Plan for the reasons stated in Section 3.2, below.

B. The potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated considering the following factors:

.1 Physiological characteristics of the site (ie., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements;

RESPONSE: The site is completely flat. Drainage will be to an existing underground drainage system which discharges to the Columbia River.

.2 Existing land uses and both private and public facilities and services in the area;

RESPONSE: Non-rural land uses abutting the site are entirely industrial and particularly geared towards fuels storage, fuels production, and energy production. The site is also served by adequate rail and marine port facilities, including the nearly 1/3-mile-long Port Westward dock and new railroad facilities constructed for the Cascade Grain Products ethanol facility.

.3 The demonstrated need for the proposed use is best met at the requested site considering all factors of the rural industrial element of the Comprehensive Plan.

RESPONSE: The goals and policies of the Comprehensive Plan's rural industrial element were addressed above. As explained therein, the Facility is consistent with all the applicable rural industrial goals and policies.

C. The requested use can be shown to comply with the following standards for available services:

.1 Water shall be provided by an on-site source of sufficient capacity to serve the proposed use, or a public or community water system capable of serving the proposed use.

RESPONSE: Water will be supplied from an existing Port intake structure from the Columbia River under an existing Port water right. The water intake pipeline from the existing intake structure to the raw water tank at the facility will be located below grade within the RIPD zone.

.2 Sewage will be treated by a subsurface sewage system, or a community or public sewer system, approved by the County Sanitarian and/or the State DEQ.

RESPONSE: Sanitary sewage will be stored on-site and be transported to an appropriate/approved disposal facility.

.3 Access will be provided to a public right-of-way constructed to standards capable of supporting the proposed use considering the existing level of service and the impacts caused by the planned development.

RESPONSE: The Facility will be served by driveway connections with Kallunki Road and Hermo Road. As the product will be transported primarily by river, these two roads will be sufficient to provide for employee transportation, incidental truck traffic, and construction access.

.4 The property is within, and is capable of being served by, a rural fire district; or, the proponents will provide on-site fire suppression facilities capable of serving the proposed use. On-site facilities shall be approved by either the State or local Fire Marshall.

RESPONSE: The facility is within the Clatskanie Rural Fire Protection District. There is also an on- site fire suppression system and 20,000-gallon fire water tank.

For the above reasons, the Council can find that it is feasible for the Facility to satisfy all applicable County approval criteria. As discussed in section 3.2, the proposal satisfies the goals of the Comprehensive Plan and achieves the use intended within the Port Westward Exception area.

3.1.3 Columbia County PA-80 Zone

As explained above, NEXT intends to construct a rail spur to have ancillary service from manifest rail. Two small properties zoned PA-80 (Primary Agriculture, 80-acre minimum) and totaling 1.83 acres will be used for "rail logistics," which will include construction of a new rail connection (spur) from the existing rail line to serve the facility. As the PA-80 zone is an exclusive farm use zone subject to ORS 215.283, a rail branch (spur) line is permitted according to the requirements of OAR 660-012-0065(3)(j), which section provides that "railroad main lines and branch lines" are permitted in exclusive farm use zones if they can satisfy the criteria set forth in ORS 215.296. In turn, ORS 215.296 allows such uses if they will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; ***or***

RESPONSE: The proposed rail spur will not force a significant change in accepted farm or forest practices for several reasons. First, its construction will directly affect a limited number of farm parcels, all of which are owned by

willing sellers to the Applicant. The proposed rail spur will not create an entirely new rail line that will increase the impacts on farm parcels in the area. Second, the input stocks for renewable diesel and the renewable diesel itself, while flammable, are not volatile (unlike shale gas or gasoline) and do not present an increased fire risk to nearby farm uses. Finally, as farm vehicles do not use rail lines, it will not present a risk of increased traffic that might conflict with farm activities.

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

RESPONSE: The proposed rail spur will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use for several reasons. First, construction of the rail branch (spur) line does not represent a catalytic land use change, such as rural residential development, that might increase the value of farmland in the area. Second, as noted above, the rail spur will not create a conflict with farm vehicle traffic. Third, also as noted above, the product being hauled via rail is not as volatile as some types of crude oil, gasoline, or ethanol. Therefore, the proposed spur presents a low risk of fire to farms abutting the existing rail line.

For the above reasons, the Council can find that the facility meets the criteria in ORS 215.296.

3.2 Columbia County Comprehensive Plan

The County's Comprehensive Plan contains policies that address overall planning goals adopted by the County. Although the policy statements do not contain specific substantive criteria, we discuss the relevant polices below for purposes of completeness.

3.2.1 Port Westward Exception

Columbia County Comprehensive Plan pages 116–131 detail the Port Westward exemption to Goal 3, Agriculture. The exemption allows industrial use outside of the Urban Growth Boundary.

3.2.2 Industrial Development Goals and Policies

Columbia County Comprehensive Plan page 185 details the goals and policies of the County related to industrial development.

The section notes that it is a goal of the County to provide for industrial development.

3.3 State Planning Goals

The Facility is located within the Columbia County RIPD zone, which includes the Port Westward Exception Area. The Exception Area was created in 1984 for the existing PGE Beaver generating plant and tank farm. Pursuant to Goal 2 (Land Use Planning), the County took an exception from statewide planning Goals 3 (Agricultural Lands) and 14 (Urbanization) for the following uses: the Beaver generating plant, dock, railroads, tank farm, certain buildings, onsite utilities, and filled areas. It also created the RIPD exception zone which allows, as a conditional use, "production, processing, assembling, packaging or treatment of materials; and storage and distribution of services and facilities."

The County's Plan and Port Westward Goal Exception were acknowledged by the Oregon Land Conservation and Development Commission. ORS 197.175(2)(d) provides that where Comprehensive Plans are acknowledged, land use decisions must be "in compliance with the acknowledged plan and land use regulations."

"If the local government's action is merely an action under its acknowledged comprehensive plan, then that action only need comply with the plan." *Foland v. Jackson County*, 311 Or. 167, 180, 807 P.2d 801 (1991). Therefore, the statewide planning goals do not apply directly to this exemption request.

If the Council believes that the goals nonetheless apply to this exemption request, it can find that this exemption request is consistent with applicable goals and policies as follows:

Goal 1 (Citizen Involvement). Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. As Goal 1 requires specific action of local governments and not permit applicants, it is not directly applicable to industrial development within the RIPD zone. Even if it applied directly, the Council can conclude that development of the proposed Facility will be consistent with Goal 1. This is because the County's current citizen involvement program requires, for any industrial development within the RIPD zone, that a hearing be held on the conditional use application before the County Planning Commission, which provides an opportunity for public participation in the decision and a right of appeal. CCZO 686.

Goal 2 (Land Use Planning). Goal 2 essentially requires local governments to prepare comprehensive plans and implementing regulations, and to make land use decisions in compliance with those provisions. For this reason, it is not directly applicable to the Facility. However, even if it were, the Facility will be consistent with Goal 2. As noted above, the County has an acknowledged plan and implements land use regulations, and a goal exception consistent with Goal 2 has been taken for properties subject to

the RIPD zone. For these reasons, the Council can conclude that development of the proposed Facility will be consistent with Goal 2.

Goal 3 (Agricultural Lands). Except for the properties proposed to be used for the rail branch (spur) line, the Site is not designated as Goal 3 land. This goal does not apply the RIPD-zoned portions of the Facility. As for the PA-80 zoned properties to be used for the rail spur, the Council can find that the rail spur is consistent with Goal 3 for the reasons stated above in Section 3.1.3.

Goal 4 (Forest Lands). The Site is not designated as Goal 4 land. This goal does not apply.

Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources). Goal 5 requires local governments to inventory, map, and adopt regulations to protect its Goal 5 resources. There are no Goal 5 resources mapped on the site. This goal does not apply.

Goal 6 (Air, Water, and Land Resource Quality). This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as air and water pollution. Goal 6 only requires that the local government establish that there is a "reasonable expectation" that the use for which approval is requested will be able to comply with the state and federal environmental quality standards. *Hess v. City of Corvallis*, 70 Or LUBA 283 (2014). The Council can find that the proposed Facility will be consistent with Goal 6 because the Facility shall be designed to meet applicable state and federal clean air and water standards, the Facility will not be operated until required air and water permits are issued, and there is no evidence that the Facility cannot comply with state and federal clean air and water standards.

Goal 7 (Areas Subject to Natural Disasters and Hazards). Goal 7 requires that local governments apply "appropriate safeguards" (floodplain zoning, for example) when planning for development. The Council can find that Goal 7 does not apply to the Site for two reasons. First, the site is essentially flat, meaning that there are no landslide hazards present. Second, the Federal Emergency Management Agency (FEMA) has designated the Site as an "Area with Reduced Flood Risk Due to Levee." It is not listed as having a 1 percent (100-year) or 0.2 percent (500-year) annual flood risk, and therefore not determined to be subject to a flood hazard. See FIRM 41009C0050D, available at https://map1.msc.fema.gov/idms/IntraView.cgi?KEY=10100540&IFIT=1

Goal 8 (Recreation Needs). Goal 8 requires communities to evaluate their recreational facilities and develop plans to meet recreational demand. The Site is not designated for and does not support any recreational facilities. For these reasons, Goal 8 does not apply to the proposed Facility.

Goal 9 (Economy). Goal 9 asks communities to inventory commercial and industrial lands, forecast future needs for such lands, and plan and zone enough land to meet those needs. RIPD zoning implements the County's Goal 9 policies, and is "intended to accommodate rural and natural resource related industries which: (.1) are not generally labor intensive; (.2) are land intensive; (.3) require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access; (.4) complement the character and development of the surrounding rural area; (.5) are consistent with the rural facilities and services existing and/or planned for the area; and (.6) will not require public facility and or/service improvements at significant public expense."

The Council can conclude that the proposed Facility is consistent with above policies for the reasons stated in Section 3.1.2, above.

Goal 10 (Housing). The Site is not designated for housing, and housing is not permitted in the RIPD zone as a stand-alone use.

Goal 11 (Public Facilities). Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. As this is a local government planning requirement, it does not apply directly to the Facility. However, even if it did, the Council can conclude that the Facility is consistent with Goal 11 because the Facility will not require any additional public facilities to be constructed as a public expense.

Goal 12 (Transportation). Goal 12 requires local governments to prepare and adopt transportation system plans. It also applies to post-acknowledgement plan amendments (zone changes) by requiring that such changes not have a significant effect on the transportation system, or that such effects are mitigated. See OAR 660-012-0060. The County has an acknowledged Transportation System Plan; therefore, Goal 12 does not directly apply to the RIDP-zoned portions of the Facility.

The proposed rail spur is subject to OAR 660-012-0065, which allows certain transportation improvements on rural lands without a Statewide Planning Goal Exception. This regulation was addressed above in Section 3.1.3. As the proposed rail spur can satisfy OAR 660-012-0065, the Council can find that it is consistent with Goal 12.

Goal 13 (Energy Conservation). Goal 13 requires comprehensive plans to consider ways to "conserve energy," but does not require that comprehensive plans ensure a net decrease in energy use or prohibit any plan amendment that would result in a net increase in energy use. *Setniker v. ODOT*, 66 Or LUBA 54 (2012). It also does not impose any substantive requirements on land use decisions; therefore, the Council can conclude that Goal 13 does not apply to the Facility. However, in the event that the Council concludes otherwise, it can conclude that the proposed Facility furthers energy conservation by recycling existing waste products into a viable fuel.

Goal 14 (Urbanization). Goal 14 requires local governments to adopt urban growth

boundaries and to prohibit urban development outside of those boundaries. The Site is located within the Port Westward Exception Area, which was established through an acknowledged exception to Goal 14. Therefore, Goal 14 does not apply to the proposed Facility.

An exception to Goal 14 for the rail spur is not required because the proposed rail spur meets the applicable requirements of OAR 660-012-0065.

Goal 15 (Willamette Greenway). The Site is not located along the Willamette River; Goal 15 does not apply.

Goal 16 (Estuarine Resources). The Site is not adjacent to an estuarine resource; Goal 16 does not apply.

Goal 17 (Coastal Shorelands). This goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. The site is not located within the designated Goal 17 area; therefore, Goal 17 does not apply.

Goal 18 (Beaches and Dunes). The Site is not located near beaches or dunes; Goal 18 does not apply.

Goal 19 (Ocean Resources). Goal 19 applies to the nearshore ocean and continental shelf; Goal 19 does not apply.

For the above reasons, the Council can conclude that the Facility can comply with the statewide planning goals to the extent that they apply.

NEXT is in the process of applying for a "Use Permitted Under Prescribed Conditions" and "Site Design Review." As explained above, ODOE can find that NEXT meets the criteria and it is feasible for NEXT to obtain the required approvals. Recognizing that ORS 469.320(2)(f)(B) requires that the facility "has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government," NEXT hereby requests that ODOE find that the proposed facility is conditionally exempt pursuant to ORS 469.320(2), which exemption shall become effective upon Columbia County's issuance of the above-identified land use permits. (See also ORS 469.378, authorizing the conditioning of agency action on subsequent county determination.)

4.0 SYNTHETIC FUEL PRODUCTION AND TRANSPORT

The Facility will produce, depending on the operating mode, up to 47,200 BPD of renewable diesel, up to 6,415 BPD of renewable jet fuel, and up to 4,880 BPD of renewable naphtha derived from biomass. While "synthetic fuel" is not explicitly defined in ORS 469.320, its inclusion under ORS 469.320(2)(f) suggests that biomass-derived fuels are considered synthetic. The state has affirmed this definition by including ethanol and other biomass-derived fuels under this rule.

4.1 Feedstock and Product Transportation

Over 85 percent of the biomass feedstock received, and renewable fuels produced, at the Facility will be transported via ship or barge at the existing Port Westward dock. Approximately fifteen ships per month, or about 180 ships per year, will transport feedstock and finished products. NEXT will utilize an existing third-party logistics provider that has secured priority dock access through a long-term lease and use agreement with the Port.

Approximately 15 percent of the fuel may be transported via rail or truck for local consumption within the Portland/Vancouver market.

4.2 Rail Use

The NEXT rail system is being designed to handle intermittent cargo (possibly up to 11 percent of the liquid barrels transported per month) and certain supplies (See Figure 6, Rail Spur Site Plan). The main use of the rail system is expected to be the import of bleaching earth for the feed pretreat unit. The rail system is being designed to accommodate the following:

- Unloading of feedstock 38 railcars/week
- Loading of renewable diesel 60 railcars/week
- Unloading of bleaching earth material 20 railcars/week

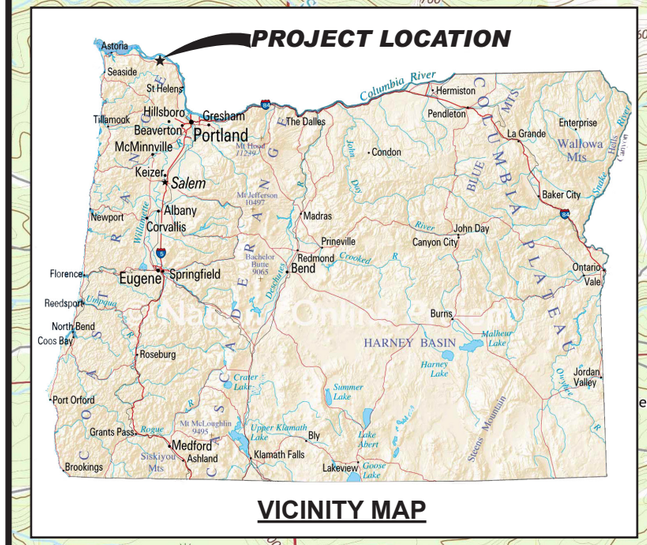
The rail system consists of approximately 15,000 linear feet of track with a 10-bay feed unloading system and a 10-bay diesel loading and bleaching earth unloading system.

The majority of the rail track is for storage to minimize the number of rail movements to and from the site and to allow for moving of cars to the loading/unloading bays.

The Facility will produce only synthetic fuel, at least 85 percent of which will be transported from the Facility by rail or barge, thus satisfying the exemption requirement of ORS 469.320(2)(f)(D).

Figures

EFSC Figures 1 – 6



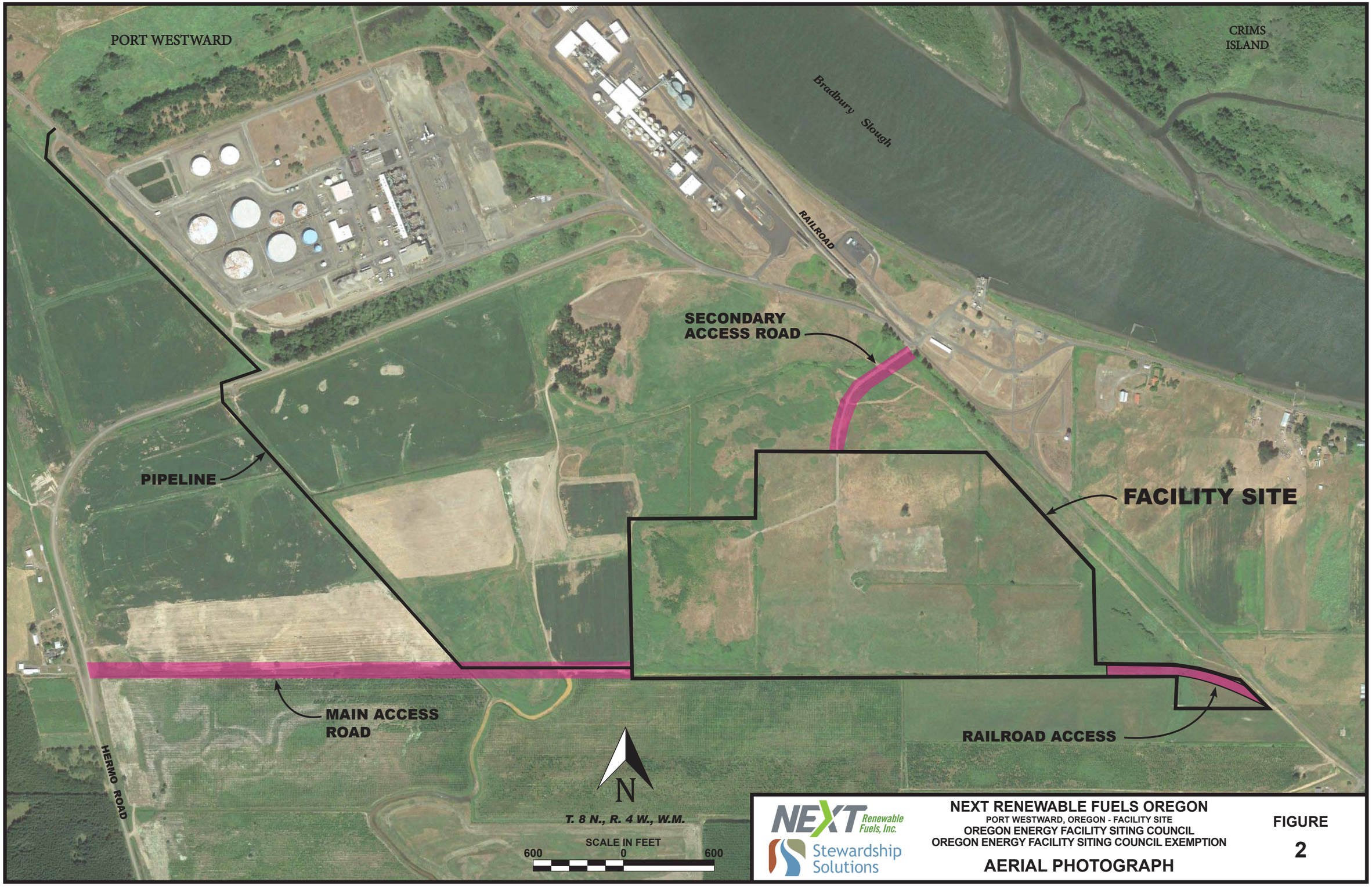
NEXT Renewable Fuels, Inc.
Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON - FACILITY SITE
OREGON ENERGY FACILITY SITING COUNCIL
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

LOCATION AND VICINITY MAPS

FIGURE 1

NEXT-PortWestward Feb. 23, 2021



NEXT Renewable Fuels, Inc.
Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON - FACILITY SITE
OREGON ENERGY FACILITY SITING COUNCIL
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

AERIAL PHOTOGRAPH

FIGURE 2

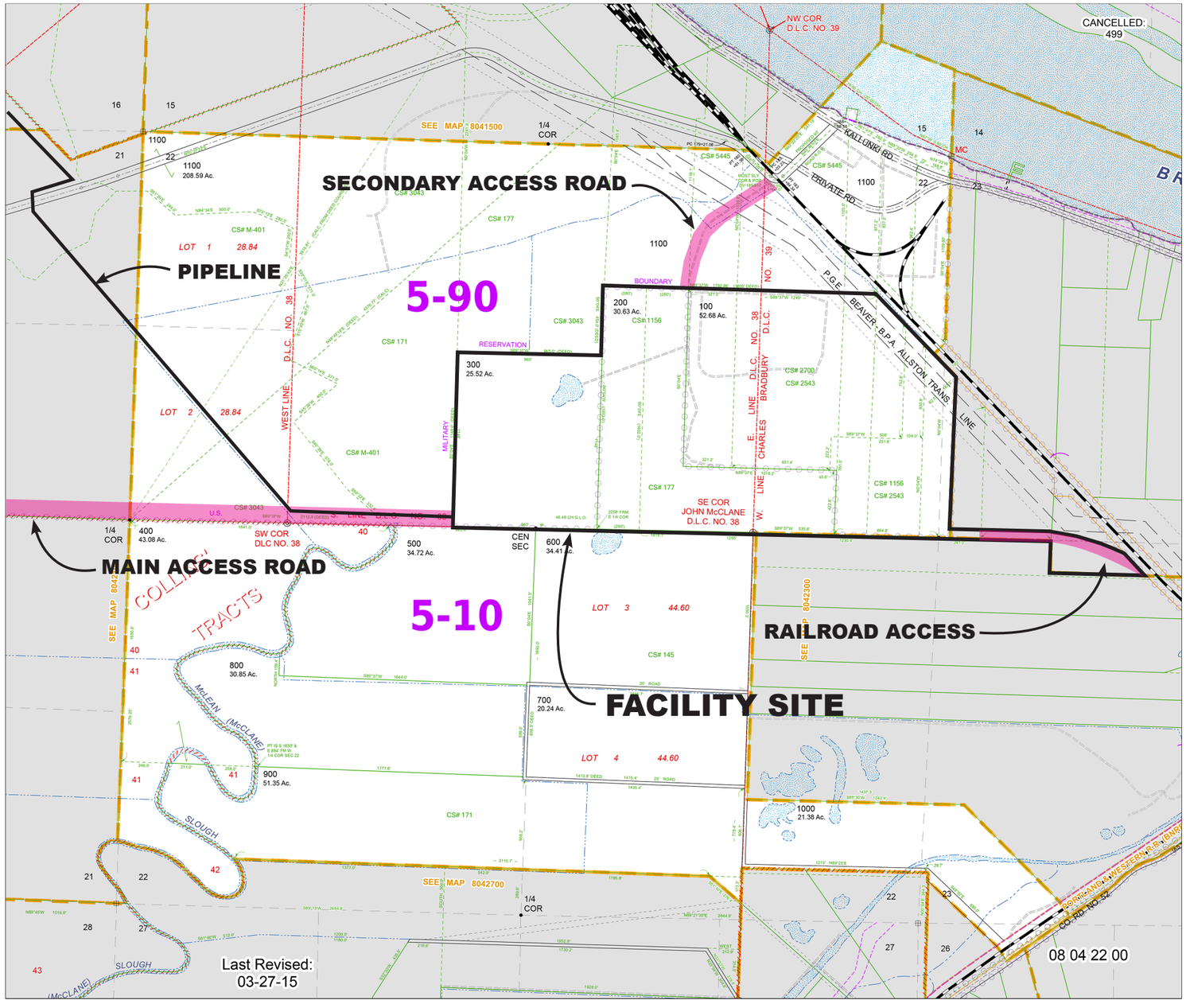
NEXT-PortWestward Feb. 23, 2021

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 100 200 400 Feet

SECTION 22 T.8N. R.4W. W.M.
COLUMBIA COUNTY

08 04 22 00



N

T. 8 N., R. 4 W., W.M.

SCALE IN FEET

800 0 800

NEXT-PortWestward Feb. 23, 2021

NEXT Renewable Fuels, Inc.
Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON - FACILITY SITE
OREGON ENERGY FACILITY SITING COUNCIL
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

TAX LOT MAP 1 - 080422

FIGURE
3A

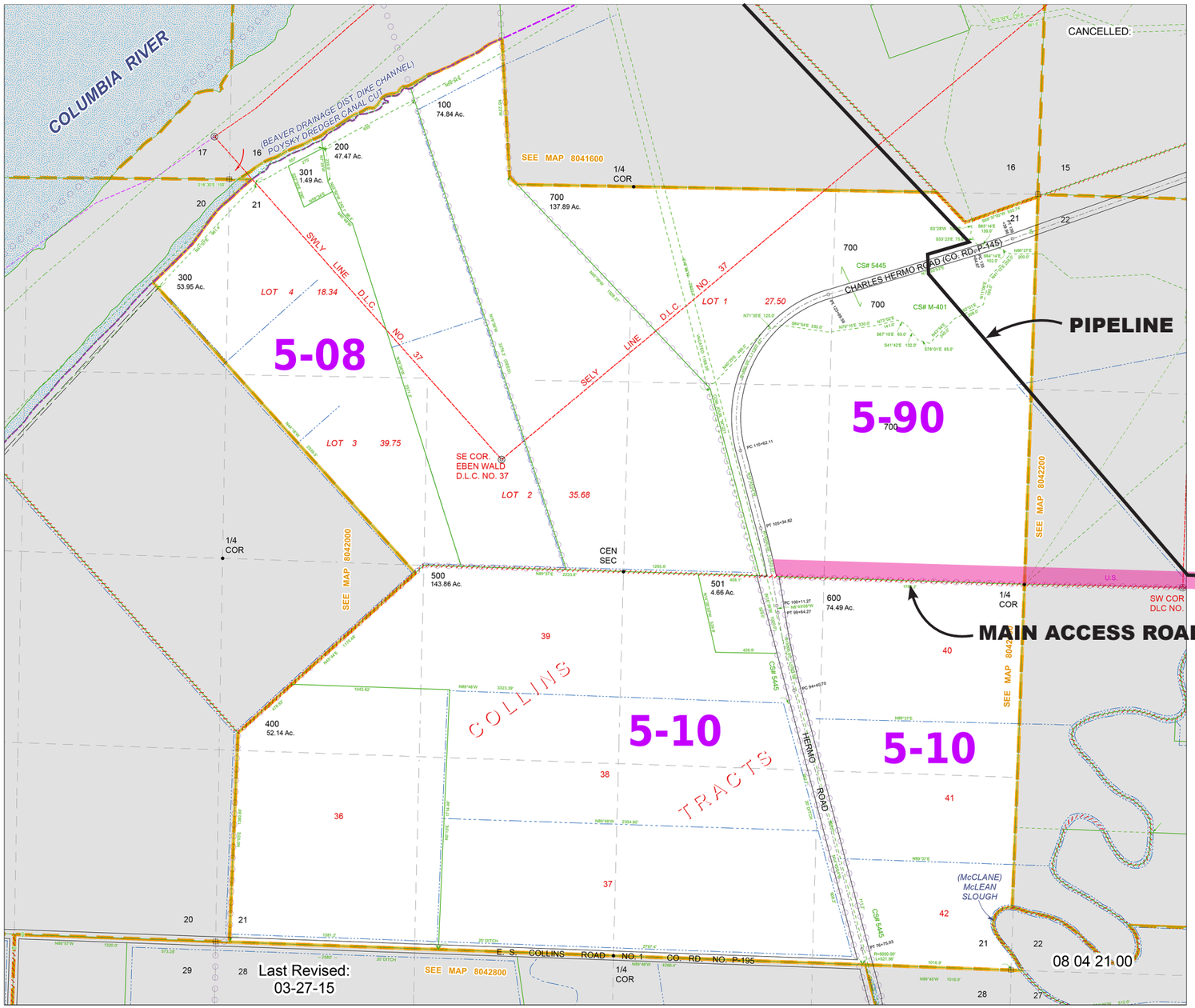
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 100 200 400 Feet

SECTION 21 T.8N. R.4W. W.M.

COLUMBIA COUNTY

08 04 21 00



N

T. 8 N., R. 4 W., W.M.

SCALE IN FEET

800 0 800

NEXT-PortWestward Feb. 23, 2021

NEXT Renewable Fuels, Inc.

Stewardship Solutions

NEXT RENEWABLE FUELS OREGON

PORT WESTWARD, OREGON - FACILITY SITE

OREGON ENERGY FACILITY SITING COUNCIL

OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

TAX LOT MAP 2 - 080421

FIGURE

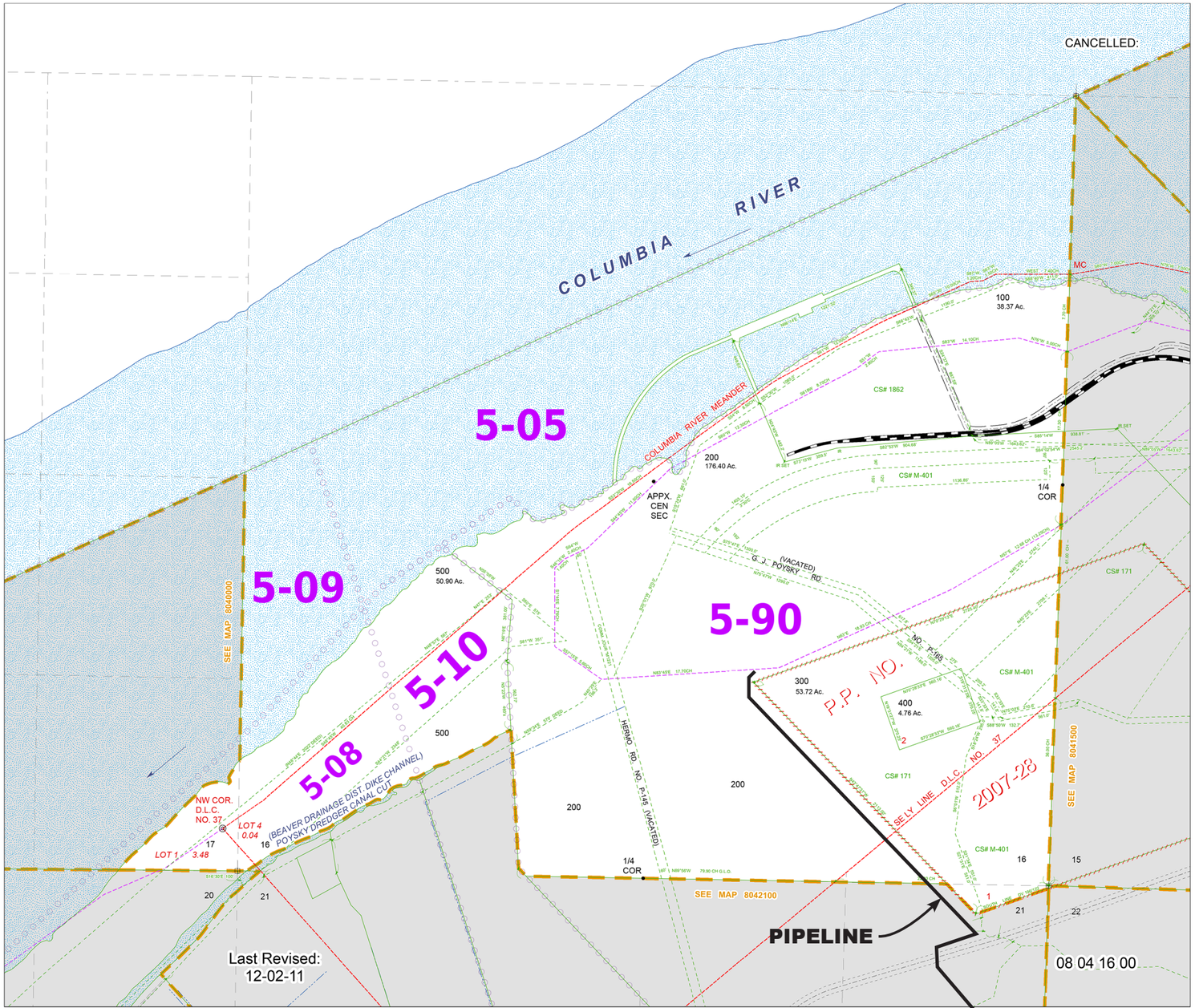
3B

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 100 200 400 Feet

SECTION 16 T.8N. R.4W. W.M.
COLUMBIA COUNTY

08 04 16 00



N

T. 8 N., R. 4 W., W.M.

SCALE IN FEET

800 0 800

NEXT-PortWestward Feb. 23, 2021

NEXT Renewable Fuels, Inc.
Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON - FACILITY SITE
OREGON ENERGY FACILITY SITING COUNCIL
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

TAX LOT MAP 3 - 080416

FIGURE
3C

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 50 100 200 Feet

N.W.1/4 SEC.23 T.8N. R.4W. W.M.

COLUMBIA COUNTY

08 04 23 B0

CANCELLED:

SEE MAP 8040000

BRADBURY SLOUGH

N. LINE BRADBURY D.L.C. NO. 39

ARVID KALLUNKI CO RD NO. P-140

(AS TRAVELLED)

KALLUNKI EXT.

5-05

NE COR DLC 39

NW COR DLC 40

5-10

5-90

FACILITY SITE

PORTLAND & WESTERN R.R. (BNRR/SPSS)

P.G.E. BEAVER - B.P.A. ALLSTON

TRANS.

LINE

JOHN SLOUGH

WEST LINE PIPER D.L.C. NO. 4

SEE MAP 8042300

SEE MAP 8042200

SEE MAP 8042300A0

1/4 COR

CS# 2543

CS# 2772

CS# 1005

CS# 1156

CS# 145

15 14 22 23

600 4.79 Ac.

500 20.01 Ac. 500 A1

400 4.80 Ac.

100 5.70 Ac.

104 13.07 Ac.

700 11.49 Ac.

300 1.82 Ac.

102 10.34 Ac.

101 11.18 Ac.

200 1.22 Ac.

103 10.51 Ac.

800 4.41 Ac.

900 11.94 Ac.

Last Revised: 11-25-11

08 04 23 B0

RAILROAD ACCESS

N

T. 8 N., R. 4 W., W.M.

SCALE IN FEET

400 0 400

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OREGON ENERGY FACILITY SITING COUNCIL

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TAX LOT MAP 4 - 080423B

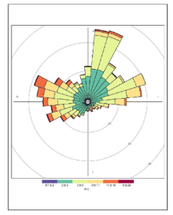
FIGURE

3D

NEXT-PortWestward-EFSC Jan. 14, 2021

LEGEND:

- Asphalt Road
- Main Pipe Rack – 3 level
- Sleeper Pipe Rack
- Electrical Cable Route
- Gravel Road
- Utility Poles



Preliminary Plot Plan

Existing Road

WWT / RW Supply

WW TREATMENT

MCC

Stormwater Basin/Pumps 100'X100'X10'

STW Tk 100'X48

MAIN SUBSTATION

Letdown Transformers

100 ft

Existing Rail

POWER LINES (100 FT MIN. BETWEEN POWERLINES AND BUILDINGS OR EQUIPMENT)

Raw Oil Feed Stock 135'X50'

Naptha 86'X50'

CT

ECOFINING UNIT 475 X 210FT

RW-FW Water Tank 100'X48'

BFW

RO

Trt Wtr 60'X40'

RW Trtr

BOILER

FW Pumps

N2 70x70'

IA/PA 76x70'

HC Slop 52' X 40'

Slop Tank 43' X 40'

Sulfur Treater

Linear

AGE1 101 x 255 ft

ARU 120x63'

SW 50 X 76'

SW 43'x40'

Pretreat Raw Oil 86'X50'

Renewable Diesel 180' X 50'

Raw Oil Off Spec 86'X50'

Flare

Turnaround Layd

PARKING 40 SPACES

MAIN OFFICES 75'x135' (2 - Story)

Maintenance Shop 115'X115'

Warehouse 145'x145'

Outdoor Laydown

CHG Bldg

PARKING 108 SPACES

LAB BLDG. 100'x75'

Truck Area

Scale

GUARD

PRETREATMENT 200X100

Clay

Acid

MCC

Degummed Storage Tanks 40'X45'

CHLORIDE REMOVAL

CHLORIDE/FE REMOVAL

SPENT CLAY STORAGE

Central Control BLDG

PARKING

Day Tank 67'X40'

Feed Stock Rail Unloading / Loading

ECOFINING UNIT 475 X 210FT

Warehouse / Laydown Outdoor Storage

VCU

Trucks

Fractionation Jet 200'X100'

Exchanger Bundle Pad 100'X70'

HYDROGEN UNIT 476 X 312'

Clay/Renewable Diesel

1 PLAN
SCALE: 1/128" = 1'-0"

25' 50' 100' 250' 500'

NEXT Renewable Fuels, Inc.

Main Process Plant

REV. #	DATE DESCRIPTION
5	
4	
3	
2	
1	10/08/2020 REVISED

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Drawn By: C. Soumas

Checked By:

Date: 10/08/2020

Scale: WHEN PRINTED @ 22X34

Project:

Building/Attraction:

Drawing Title: Main Process Plant Overall Plan

Element No:

Job Number: Work Order #:

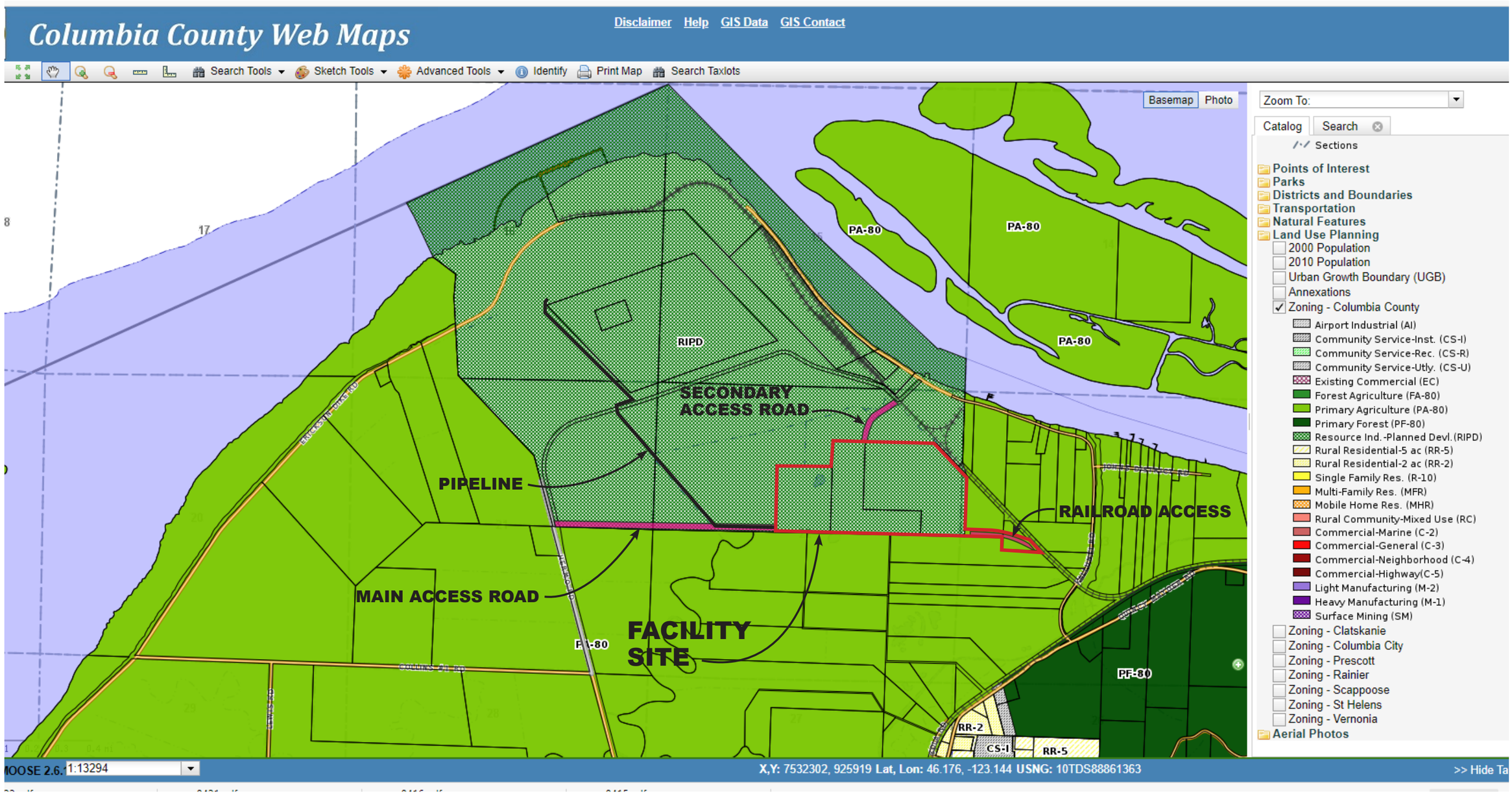
Drawing No: OP-1.1_Rev 1

NEXT Renewable Fuels, Inc. Stewardship Solutions

NEXT RENEWABLE FUELS OREGON
PORT WESTWARD, OREGON - FACILITY SITE
OREGON ENERGY FACILITY SITING COUNCIL
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

SITE LAYOUT

FIGURE 4



N

T. 8 N., R. 4 W., W.M.
N.T.S.

MAP OBTAINED FROM:
https://www.columbiacountyor.gov/gis-mapping

NEXT Renewable Fuels, Inc.
Stewardship Solutions

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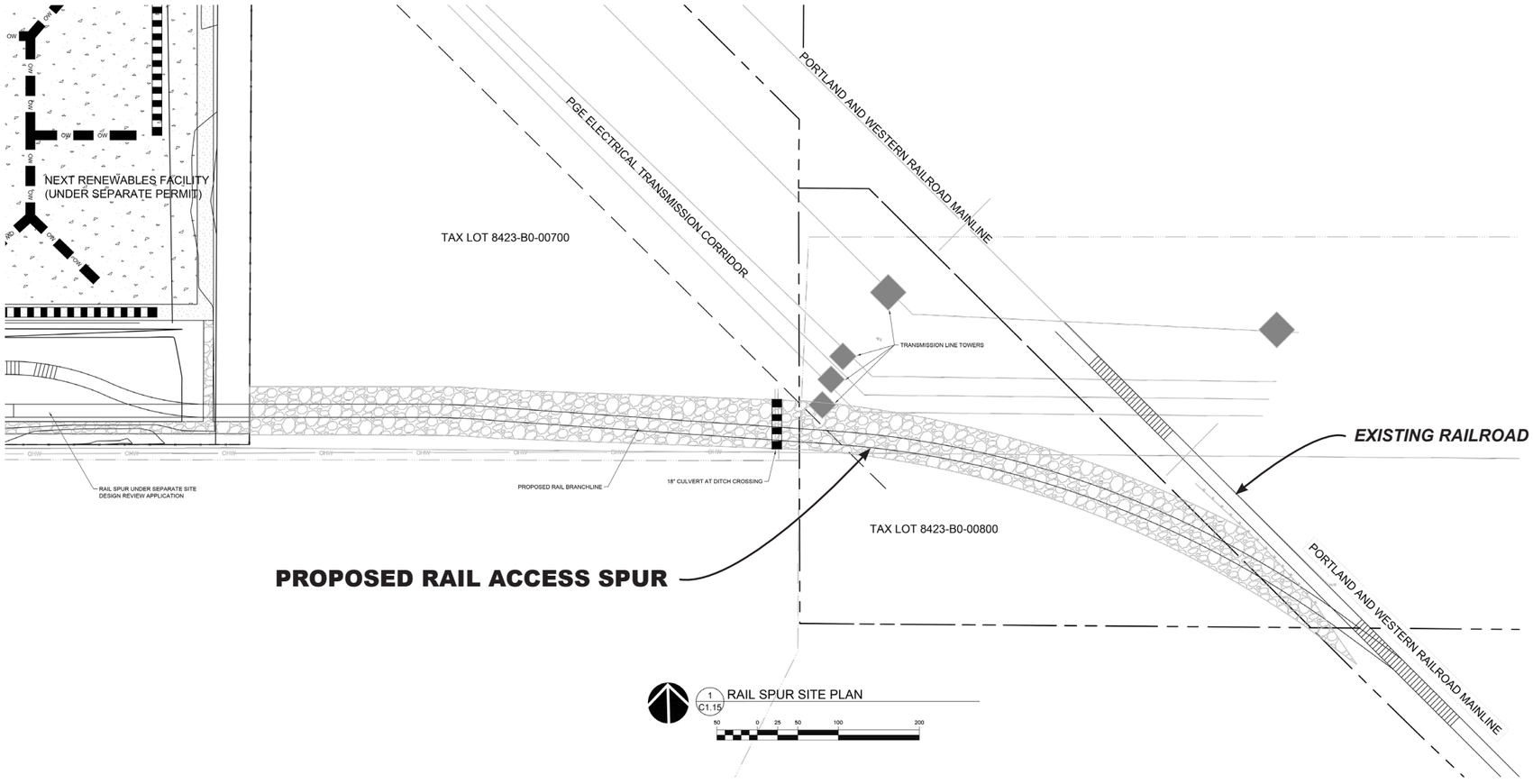
OREGON ENERGY FACILITY SITING COUNCIL EXEMPTION

ZONING MAP

FIGURE
5

NEXT-PortWestward Feb. 23, 2021



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Client
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SUITE 705
HOUSTON, TX 77079

Project
NEXT RENEWABLE FUELS, INC.
PORT WESTWARD
COLUMBIA COUNTY, OR

REGISTERED PROFESSIONAL ENGINEER
OREGON
BRENT DANIEL NIELSEN
EXPIRES: 12/31/22

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REVISION SCHEDULE

Delta	Issued As	Issue Date

SHEET TITLE:
RAIL SPUR SITE PLAN

DRAWN BY: CAM
CHECKED BY: BDN
SHEET
C1.15

JOB NO. 2200315.01

NEXT PERMIT DRAWING SET - 1/8/2021
2200315.00\DRAWINGS\CIVIL\315-C1.15.DWG BDN 01/08/21 11:12 1:50

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RAIL SPUR SITE PLAN

FIGURE
6

NEXT-PortWestward Feb. 26, 2021