BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

1000 FRIENDS OF OREGON, COLUMBIA RIVERKEEPER, and MIKE SEELY,
Petitioners,

vs.

COLUMBIA COUNTY,
Respondent,

and

NEXT RENEWABLE FUELS OREGON, LLC,
Intervenor-Respondent.

LUBA No. 2022-039

FINAL OPINION
AND ORDER

Appeal from Columbia County.

Maura Fahey filed the petition for review and reply brief and argued on behalf of petitioner. Also on the brief was Crag Law Center.

No appearance by Columbia County.

Garret H. Stephenson filed the intervenor-respondent's brief and argued on behalf of intervenor-respondent. Also on the brief were D. Adam Smith and Schwabe, Williamson & Wyatt, P.C.

ZAMUDIO, Board Member; RYAN, Board Chair, participated in the decision.

RUDD, Board Member, did not participate in the decision.

REVERSED 10/27/2022

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Zamudio.

NATURE OF THE DECISION

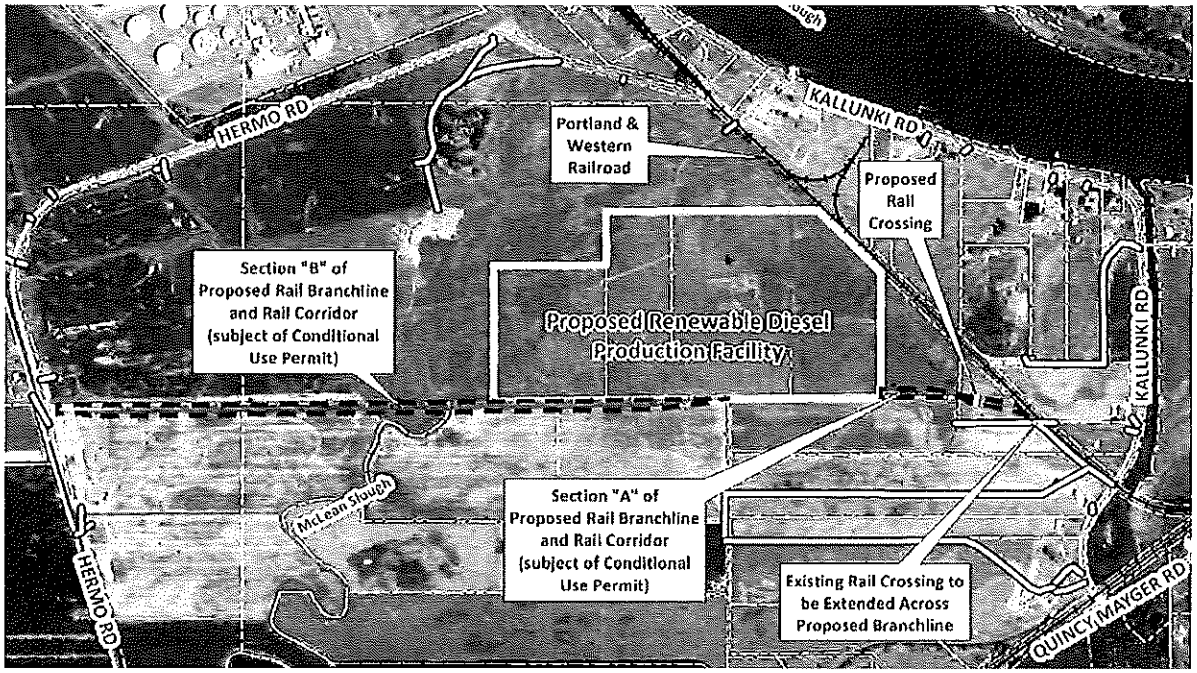
Petitioners appeal a board of county commissioners decision approving a conditional use permit for a rail facility in an agricultural zone.

BACKGROUND

Intervenor-respondent NEXT Renewable Fuels Oregon, LLC (intervenor), sought and obtained county approval to construct a renewable diesel production facility (diesel facility) at the Port Westward Industrial Park on land zoned Resource Industrial Planned Development (RIPD). The diesel facility will connect to the Columbia River dock at Port Westward and an existing Portland & Western Railroad (PNWR) rail line, which runs from southeast to northwest along a portion of the boundary of the diesel facility site. Intervenor submitted the application for approval of the diesel facility under a separate application that the county approved concurrently with the decision on appeal. Petitioners do not challenge the county's decision approving the diesel facility.

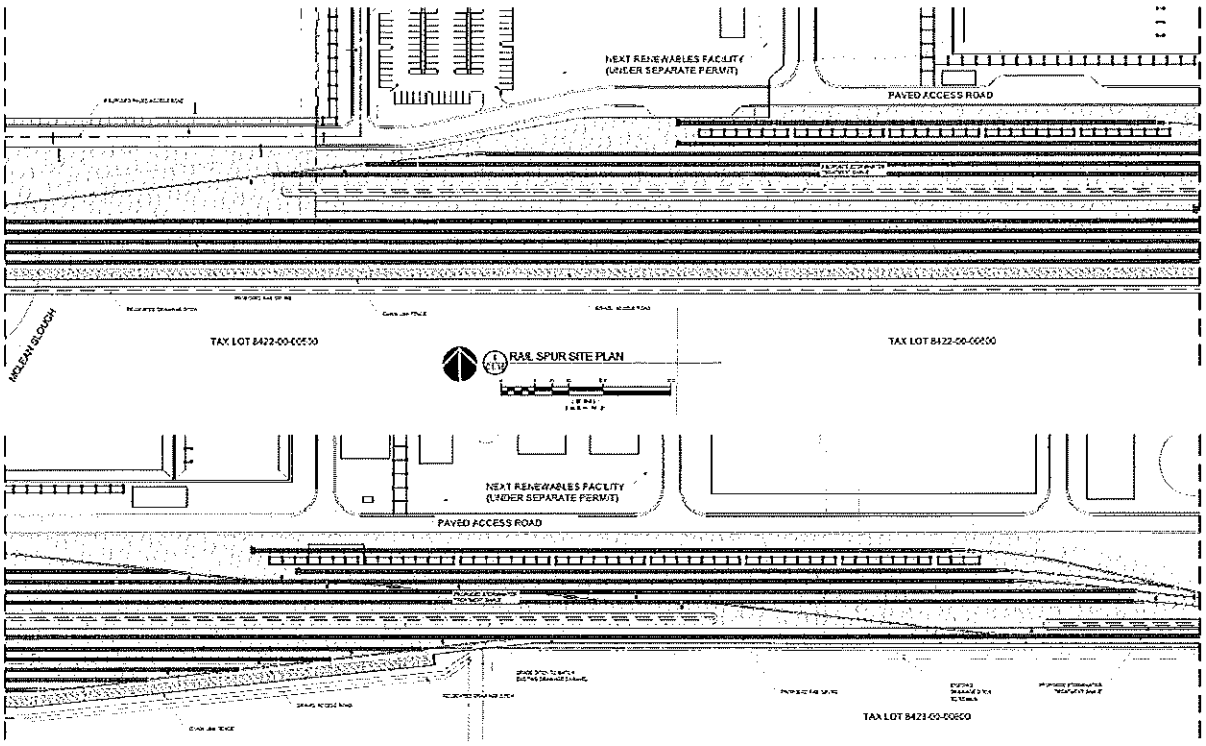
Intervenor also sought separate conditional use approval to develop a rail facility to connect the diesel facility site to the PNWR rail line. The rail facility is intended to transport material to and from the diesel facility and would include import/export capacity as a "contingency" for times when river transportation is disrupted or otherwise unavailable. Record 51. A portion of the proposed rail facility would be located within the RIPD-zoned diesel facility site, and there is no dispute that that portion of the rail facility is an allowed land use in the RIPD

zone. However, most of the rail facility is proposed on approximately 12.3 acres of land that is zoned Primary Agriculture (PA-80) and located immediately south of the Port Westward Industrial Park.



Record 2676.

The rail facility will handle both import of feedstocks and export of diesel fuel. Record 2682. The rail facility will extend approximately 7,000 feet from east to west. The central section of the rail facility will consist of up to 10 separate parallel tracks. Record 6249. Five of the parallel tracks will be located in the RIPD zone and five will be located in the PA-80 zone. *Id.* These parallel tracks will entail approximately 25,000 linear feet altogether. Record 2682.



Record 6249.

The rail facility will include five "track siding lines" for feedstock storage, three track siding lines for diesel and clay storage, three separate load and unload locations, an engine turnaround track, and a maintenance track. Record 2682-83, 5942. In addition to five of the parallel tracks, the portion of the rail facility in the PA-80 zone will include rail switches and an access road. Record 5926, 6249. The county found that the rail facility track design

> "is a requirement of Burlington Northern Santa Fe [Railway] and [PNWR] because the rail system is a secondary logistic mode that could receive deliveries of trains that are approximately 80-100 cars, and [PNWR] seeks to ensure that the rail [facility] is large enough to move the entire 100-car train off its tracks." Record 47-48.

The rail facility will cross six separate parcels zoned PA-80.[1] Record 5941. The rail facility will cross PA-80-zoned land in two sections—one to the east of the diesel facility, connecting with the existing PNWR rail line, and another to the south and west of the diesel facility, connecting with the diesel facility and terminating in a stub to the west at Hermo Road. The section to the east of the diesel facility will cross over land that has been recently farmed with hay and row crops, such as mint. Record 5947. The section to the south and west of the diesel facility will cross through an area that is largely in tree farm use, except for a small portion which is farmed for mint by petitioner Seely. Record 3003, 3006, 5947. This section will also cross over a portion of McLean Slough within a riparian corridor. Record 5953.

The board of county commissioners approved the rail facility with conditions that authorize up to 318 rail cars to serve the facility per week, in trains up to 100 cars in length. Rail cars may be stored at the rail facility for up to 14 days. Record 41. This appeal followed.

FIRST ASSIGNMENT OF ERROR

Statewide Planning Goal 3 (Agricultural Lands) is "[t]o preserve and maintain agricultural lands." State law restricts the uses that are allowed on

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[1] Petitioner explains that five of those parcels are owned by the Port of Columbia County and have been the subject of the Port's long-running effort to rezone a large area of land zoned PA-80 to RIPD to expand Port Westward. *Columbia Riverkeeper v. Columbia County*, ___ Or LUBA ___, ___ (LUBA No 2021-097, May 9, 2022) (slip op at 3-6).

agricultural land to farm uses and specified nonfarm uses. ORS 215.203(1), (2)(a). ORS 215.283 sets out uses that may be established on agricultural land. As pertinent here, ORS 215.283(3) provides that a local government may approve transportation facilities and improvements on land in agricultural zones, subject to either adoption of an exception to Goal 3 or, for those uses identified by rule of the Land Conservation and Development Commission (LCDC), application of the farm impacts test at ORS 215.296. The LCDC rule identifying those uses is OAR 660-012-0065.[2]

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[2] ORS 215.283(3) provides:

> "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 *for those uses identified by rule of [LCDC] as provided in section 3, chapter 529, Oregon Laws 1993.*" (Emphases added.)

Oregon Laws 1993, chapter 529, section 3, in turn provides, "The Department of Transportation shall, by March 30, 1994, submit to [LCDC] proposed rules identifying the other roads, highways and transportation facilities that may be allowed pursuant to ORS 215.213(10)(b) and 215.283[(3)](b). [LCDC] shall adopt rules implementing ORS 215.213(10)(b) and 215.283[(3)](b) by June 30, 1994."

In 1995, LCDC amended OAR 660-012-0065 in its entirety and adopted OAR 660-012-0065(3) and (5). OAR 660-012-0065(3) lists 15 "transportation improvements [that] are consistent with Goals 3, 4 [(Forest Lands)], 11 [(Public Facilities and Services)], and 14 [(Urbanization)]." OAR 660-012-0065(5) provides:

> "For transportation uses or improvements listed in *subsections (3)(d) to (g) and (o)* of this rule within an exclusive farm use (EFU) or forest zone, a jurisdiction shall, *in addition to demonstrating compliance with the requirements of ORS 215.296*:
>
> "(a) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;
>
> "(b) Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands; and
>
> "(c) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use." (Emphases added.)

While the issue is not presented in this appeal, we note that we have previously observed that OAR 660-012-0065(5) appears to be LCDC's implementation of ORS 215.283(3)(b) and Oregon Laws 1993, chapter 529, section 3, which subjects the transportation facilities that LCDC has identified by rule to compliance with ORS 215.296. *See Van Dyke v. Yamhill County*, 78 Or LUBA 530, 544 n 12 (2018) (noting ambiguity in OAR 660-012-0065).

LCDC is empowered to refine the legislature's policy regarding uses on agricultural land "so long as [LCDC's rules] are not *less* restrictive than [ORS 215.283]." *Lane County v. LCDC*, 325 Or 569, 583, 942 P2d 278 (1997) (emphasis in original). LCDC adopted OAR 660-012-0065 to "identif[y] transportation facilities, services and improvements which may be permitted on rural lands consistent with Goals 3, 4 [(Forest Lands)], 11 [(Public Facilities and Services)], and 14 [(Urbanization)] without a goal exception." OAR 660-012-0065(1). OAR 660-012-0065(3)(j) provides that "[r]ailroad mainlines and branchlines" are transportation improvements that are "consistent with" Goal 3.

The county approved the rail facility as a "railroad branchline" under OAR 660-012-0065(3)(j). The county found:

> "Neither the [Columbia County Zoning Ordinance], 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). 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, <u>but designed to have a business of its own, for the transportation of persons or properly to and from places not reached by the principal route</u>.'
>
> "*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) ([*underscoring*] *added*). The County hereby adopts the Oregon Supreme Court's

'commonly understood' definition, above." Record 44-45 (footnote omitted).

The county relied on a letter that intervenor submitted from PNWR's director of sales and marketing that concludes that the proposed rail facility is a branchline and not some other distinct type of rail improvement such as a railyard or switchyard. Record 145. The letter states that PNWR considers intervenor's proposed tracks "industry track, which is another term for branch line or spur," and that, "[a]s a general matter, 'branch line' is a broad term that encompasses any track that branches off from mainline track." *Id.* The board found that the PNWR letter

> "is the most persuasive evidence on the question of whether [intervenor'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.'" Record 46.

The board further opined:

> "While not essential to reach the legal conclusion that [intervenor'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 [intervenor] and the rail facilities do not offer transfers of multicustomer 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 [PNWR's] opinion that a switch or rail yard is intended to 'to block cars for furtherance to other destination points.'" Record

45 n 2.

The board acknowledged that the Department of Land Conservation and Development (DLCD) commented that the county did not have the necessary information to determine whether the proposed rail improvements qualify as a branchline. However, the board noted that no party "identified any definition in the application 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)." Record 46. The board observed that the dictionary definitions that petitioners offered did not define the term "branchline" but defined only the terms "line" and "spur." The board found:

> "[PNWR's] letter, and the information provided by [intervenor's representative] 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.'" Record 48.

The board concluded that the rail facility is a branchline and, thus, is a transportation improvement allowed on agricultural land consistent with Goal 3 under OAR 660-012-0065(3)(j).

Petitioners argue that the county misconstrued the term "branchline." "When interpreting an administrative rule, we seek to divine the intent of the rule's drafters, employing essentially the same framework that we employ when interpreting a statute." *Noble v. Dept. of Fish and Wildlife*, 355 Or 435, 448, 326 P3d 589 (2014). In interpreting OAR 660-012-0065(3)(j), we examine the rule

text, context, and legislative history with the goal of discerning LCDC's intent. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993). "In construing statutes and administrative rules, we are obliged to determine the correct interpretation, regardless of the nature of the parties' arguments or the quality of the information that they supply * * *." *Gunderson, LLC v. City of Portland*, 352 Or 648, 662, 290 P3d 803 (2012).

A. Text

We start with the text. Petitioners do not dispute the county's adopted definition of "branchline" as "an offshoot from the mainline or stem." Instead, petitioners challenge the county's application of that interpretation to the proposed rail facility and argue that it is not simply an offshoot from the mainline. Petitioners argue that the proposed rail facility is more than and different from a branchline because it is a complex series of parallel tracks that will be used for loading, unloading, maintaining, and storing rail cars.

As the county found, "railroad branchline" is undefined for purpose of OAR 660-012-0065(3)(j). We therefore look first to the plain meaning. *PGE*, 317 Or at 611. The term "branchline" is formed by combining the words "branch" and "line." "Branchline" and "branch line" are not defined in *Webster's Third New International Dictionary*. "Branch," when used as a noun, means "**2 :** something that extends from, enters into, or is an offshoot of a main body or source * * * **b :** a side road or way <a logging railroad whose [branches] spread

through thousands of square miles * * *>." *Webster's Third New Int'l Dictionary* 267 (unabridged ed 2002) (boldface in original). "Line," when also used as a noun, means "**3 a :** something (as a ridge, seam, furrow, band of color) that is distinct, elongated, narrow, and rather uniform in width * * * **c :** the course or direction of something in motion or treated as if in motion * * * **:** ROUTE * * * **f** (1) **:** the track and roadbed of a railway." *Id.* at 1314 (boldface in original). Under the plain meaning of those combined terms, a branchline is a line of railroad—a section of the track and roadbed of a railway that is distinct, elongated, narrow, and rather uniform in width that is used for trains to travel a certain route. Petitioners' argument is supported by the plain meanings of "branch" and "line." The county's interpretation of the term "branchline" is inconsistent with the plain meaning of that term.

That conclusion is not contrary to the court's interpretation of "branch line" in *Union*. There, the court distinguished "branch line" from "main line" to determine whether a statute that specified crew requirements for certain main line train trips applied. The court observed that "[n]umerous legislative enactments, both federal and state, use the terms 'main line' and 'branch line' without defining them." *Union*, 167 Or at 712. The court explained that "[t]he commonly understood meaning of the words 'main line' of a railroad is the principal line, and the branches are the feeder lines like the tributaries of a river." *Id.* at 711. The court described the main line as running from Portland to Ontario. The two lines at issue were an 83.8-mile line departing from the main line in La Grande

and running to Joseph and a 156.8-mile line running from the main line in Ontario to Burns. The court concluded that the rail offshoots to Joseph and Burns were branchlines.

As far as we can tell, the branchlines at issue in *Union* were distinct sections of rail track and roadbed used for trains to travel certain routes. We assume that those routes involved stopping, loading, and unloading persons or property to and from Joseph and Burns. Nothing in the court's decision indicates that the branchlines to Joseph and Burns included a complex series of parallel tracks for loading, unloading, maintaining, and storing rail cars at those locations.

We understand that the rail facility track design is intended to enable rail transporters to move a 100-car train off of the PNWR rail line for loading and unloading at the diesel facility. The county found that the rail facility layout is designed "to allow cars to be brought in, unloaded, and turned around." Record 45. As we understand it, the multiple-parallel-track design allows rail transporters to take apart and side-stack trains that are approximately 80 to 100 cars in length. The parallel tracks could potentially be considered a stacked or folded rail line. We proceed to analyze the context.

B. Context

"Context includes other provisions of the same rule, other related rules, the statute pursuant to which the rule was created, and other related statutes." *Abu-Adas v. Employment Dept.*, 325 Or 480, 485, 940 P2d 1219 (1997). Petitioners

argue that the county's interpretation ignores and is inconsistent with the regulatory context of OAR 660-012-0065(3)(j).

1. OAR 660-012-0065(3)(a) and Goal 3

OAR 660-012-0065(3)(a) allows on agricultural land "consistent with" Goal 3 "[a]ccessory transportation improvements for a use that is allowed or conditionally allowed by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands)." "'Accessory Transportation Improvements' means transportation improvements that are incidental to a land use to provide safe and efficient access to the use." OAR 660-012-0065(2)(d). The diesel facility is not allowed or conditionally allowed on agricultural land. Thus, petitioners argue, the rail facility is an accessory transportation improvement that may not be approved without an exception to Goal 3.

We understand petitioners to argue that OAR 660-012-0065(3)(a) provides context for interpreting OAR 660-012-0065(3)(j). As we understand petitioners' view, the limitation in OAR 660-012-0065(3)(a) means that, if a transportation improvement listed at OAR 660-012-0065(3) is incidental to another land use, then that related land use must be allowed or conditionally allowed by ORS 215.283, or the transportation improvement requires a Goal 3 exception.

We do not agree with that reading. OAR 660-012-0065(3) allows a variety of transportation improvements within an agricultural zone that may be related to or serve uses that are not allowed or conditionally allowed by ORS 215.283. For example, OAR 660-012-0065(3)(m) allows replacement of docks and OAR

660-012-0065(3)(n) allows expansions or alterations of public use airports. Ports and public use airports are not uses that are allowed or conditionally allowed by ORS 215.283.

In enacting ORS 215.283(3)(b), the legislature empowered LCDC to allow certain transportation improvements on agricultural land subject to the farm impacts test at ORS 215.296. *See Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 435 P3d 698 (2019) (explaining ORS 215.296). As the Court of Appeals has explained, the uses allowed under OAR 660-012-0065(3) "necessarily represent LCDC's balancing of goal 12 transportation needs against goals 3, 4, 11, and 14." *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 341, 495 P3d 1267, *adh'd to as modified on recons*, 313 Or App 725, 492 P3d 782, *rev den*, 369 Or 69 (2021). OAR 660-012-0065(3)(a) does not aid petitioners' position or our interpretation of OAR 660-012-0065(3)(j).

Petitioners further argue that the county's interpretation is inconsistent with the purpose of Goal 3, which is to minimize nonfarm uses of agricultural land. Intervenor responds, and we agree, that the purpose and policy of Goal 3 does not confine the interpretation of OAR 660-012-0065(3)(j). As we explain above, in enacting ORS 215.283(3)(b), the legislature empowered LCDC to allow certain transportation improvements on agricultural land, subject to the farm impacts test. The uses allowed under OAR 660-012-0065(3) represent LCDC's balancing of Goal 12 transportation needs against Goal 3 conservation.

We reject petitioners' contextual arguments that rely on Goal 3 and OAR 660-012-0065(3)(a).

2. ODOT Definitions

Petitioners argue that the county interpreted the term "branchline" too broadly to include the entire rail facility instead of applying Oregon Department of Transportation (ODOT) definitions of "branch line" and "rail yard." While petitioners frame that as a substantial evidence issue, we view it as an interpretive issue. The issue for us on review is whether ODOT's definitions have any bearing on LCDC's intended meaning of the term "branchline." To answer that question, we start by explaining the legislative and rulemaking history of OAR 660-012-0065(3)(j).

OAR 660-012-0065 is part of the Transportation Planning Rule (TPR). The TPR implements Goal 12 and was first adopted in 1991. During the initial TPR rulemaking process, DLCD held roundtables with various stakeholders to discuss transportation improvements that would be permitted, conditionally permitted, and not permitted on rural lands consistent with Goals 11 and 14. During those roundtables, DLCD provided the participants with a preliminary draft of the TPR that DLCD and ODOT staff had prepared together. The preliminary draft of OAR 660-12-070(8) provided a list of transportation facilities and improvements that were consistent with Goals 11 and 14 on rural lands, including "[r]ailroad mainlines and branchlines." LCDC adopted that list. Nothing in the 1991

rulemaking history indicates what DLCD, ODOT, or LCDC intended the term "branchline" to mean.

In 1993, through Senate Bill 1057, the legislature directed LCDC to adopt rules identifying transportation improvements that may be established on agricultural land, thereby implementing what is now ORS 215.283(3)(b). Or Laws 1993, ch 529, § 3. In support of that rulemaking, the legislature directed ODOT to submit to LCDC "proposed rules identifying the other roads, highways and transportation facilities that may be allowed" on agricultural land. *Id.* On August 2, 1994, ODOT provided DLCD its recommendations, which included the "branchline" language as it exists today. On November 1, 1994, DLCD submitted its initial recommendations to LCDC. On February 28, 1995, DLCD submitted revised recommendations, which included the "branchline" language as it exists today. In 1995, LCDC amended OAR 660-012-0065 and included "[r]ailroad mainlines and branchlines" in the list of transportation improvements allowed on rural lands "consistent with" Goals 3 and 4 in addition to Goals 11 and 14. *See* n 2. Nothing in the 1995 rulemaking history indicates what DLCD, ODOT, or LCDC intended the term "branchline" to mean or include.

The 1991 preliminary draft of the TPR, in which the term "branchline" first appeared, was prepared by DLCD and ODOT staff together. The term "branchline" also appeared in ODOT's recommendations leading to the 1995 LCDC rulemaking, after the legislature directed ODOT to propose to LCDC transportation facilities that may be allowed on agricultural land. That legislative

and rulemaking history suggests that LCDC adopted ODOT's meaning of the term "branchline."

The parties do not provide us anything that illustrates ODOT's understanding of the term "branchline" in 1991 or 1995. Petitioners cite a staff report in the record that quotes ODOT definitions of "branch line" and "rail yard." Petition for Review 10, 12, 14 (citing Record 5926). The staff report and petitioners' petition for review do not cite the source of those ODOT definitions. Those definitions appear to come from an ODOT Planning Glossary published on February 29, 2008, as part of an ODOT Planning Resources Handbook.

Our review is generally limited to the record. ORS 197.835(2)(a). We may take official notice of documents not in the record that (1) constitute officially cognizable law under ORS 40.090 and (2) have some relevance to the issues on appeal. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 688, 692 (2007). ORS 40.090(2) provides that items subject to judicial notice include the public official acts of the executive department of the state. We have previously taken official notice of state agency publications under ORS 40.090(2). *See Foland v. Jackson County*, 18 Or LUBA 731, 739-40, *aff'd*, 101 Or App 632, 792 P2d 1228 (1990), *aff'd*, 311 Or 167, 807 P2d 801 (1991) (taking notice of a DLCD destination resort handbook under ORS 40.090(2)); *Shaff v. City of Medford*, 79 Or LUBA 317, 321 (2019) (noting that LUBA may take official notice of an ODOT manual). We take official notice of relevant ODOT publications under ORS 40.090(2).

The 2008 ODOT Planning Glossary indicates that its definitions come from glossaries appended to various ODOT plans, including the Oregon Rail Plan. Oregon has had a statewide rail plan since 1978. That plan has been updated over time, including in 1986, 1992, and 1994. Those plans were consolidated and updated in 2001, 2014, and 2020. The only one of those plans to have a glossary is the 2001 Oregon Rail Plan. The rail-related definitions in the 2008 ODOT Planning Glossary come from the 2001 Oregon Rail Plan.

We have historically understood context to include relevant information that existed at the time of enactment. *See Holcomb v. Sunderland*, 321 Or 99, 105, 894 P2d 457 (1995) ("The proper inquiry focuses on what the legislature intended at the time of enactment and discounts later events."). Under that limited inquiry, any ODOT publications that were published after 1995 would not be fair game in determining what LCDC intended by the term "branchline" in OAR 660-012-0065(3)(j). However, recent Court of Appeals decisions interpreting the phrase "[e]xpansions or alterations of public use airports that do not permit service to a larger class of airplanes" in OAR 660-012-0065(3)(n), which also appeared for the first time in 1991 and was adopted in its current form in 1995, refer to later-enacted rules and regulatory guidance. In *Schaefer v. Oregon Aviation Board*, the court referred to a 2017 Federal Aviation Administration Advisory Circular to inform the court's interpretation of the phrase "permit service to a larger class of airplanes." 312 Or App at 339. In *Schaefer v. Marion County*, the court referred to current statutes and rules to determine what acts or

processes increase the size of a public use airport and thereby constitute "[e]xpansions * * * of public use airports." 318 Or App 617, 624, 509 P3d 718 (2022). Accordingly, we will consider ODOT publications that postdate LCDC's 1995 adoption of the provision at issue in this appeal.

The 1993 legislature instructed ODOT to provide input and LCDC amended OAR 660-012-0065 in 1995 based on ODOT's understanding of what constitutes a branchline. Based on that legislative and rulemaking history, we conclude that LCDC intended to adopt ODOT's meaning of the term "branchline," and, thus, ODOT's usage of that term and other, related terms is important context for interpreting that term as it is used in OAR 660-012-0065(3)(j).

The statewide rail plans uniformly refer to "branch" and "line" as a line of track running between two destinations, most frequently two city train stations.

The 2001 Oregon Rail Plan defines the following terms:

> "**Branch Line** - A secondary line of a railway, typically stub-ended.
>
> "**Main Line** - Two definitions apply. First is a designation made by each railroad of its own track, generally signifying a line over which through trains pass with relatively high frequency. A main line generally has heavier weight rail, more sophisticated signaling systems and better maintenance than branch lines. Second is a designation of the through track between any two points, even on a branch line, as distinguished from side tracks, pass tracks or spurs.
>
> "**Rail** - A rolled steel shape, commonly a Tee-section designed to be laid end-to-end in two parallel lines on cross ties or other suitable supports to form a track for railway rolling stock.

"**Rail Yard** - A system of tracks within limits provided for switching cars, making up trains, storing cars, and other purposes.

"**Terminal** - An assemblage of facilities provided by a railway at a terminus or at an intermediate point for the handling of passengers or freight and the receiving, classifying, assembling and dispatching of trains.

"**Track** - An assembly of rails, ties, and fastenings over which cars, locomotives, and trains are moved.

"**Storage** - One of the body tracks in storage yards or one of the tracks used for storing equipment.

"**Team** - A track on which cars are placed for transfer of freight between cars and highway vehicles.

"**Turnout** - A device made of two movable rails with connections and a crossing frog that permit the movement of an engine, car or train from one track to another. Also called a switch, although the switch is one component of a turnout." (Boldface in original.)

ODOT's definitions support petitioners' argument that the rail facility is not a branchline. From the above definitions, we understand ODOT's meaning of the term "branchline" to be a section of track running between a main line and another destination. A branchline track may terminate in a stub. The term "stub" is not defined in the 2001 Oregon Rail Plan. However, the 2001 Oregon Rail Plan defines other terms that encompass aspects of the rail facility and uses that the county approved.

The proposed rail facility includes a "system of tracks within limits provided for * * * storing cars[] and other purposes," which the 2001 Oregon Rail Plan defines as a "rail yard." The proposed rail facility includes an

"assemblage of facilities * * * at a terminus * * * for the handling of * * * freight," which the 2001 Oregon Rail Plan defines as a "terminal." The proposed rail facility includes a "device made of two movable rails with connections and a crossing frog that permit the movement of an engine, car or train from one track to another," which the 2001 Oregon Rail Plan defines as a "turnout." The proposed rail facility includes "tracks used for storing equipment," which the 2001 Oregon Rail Plan defines as "storage." It is unclear whether the access road along the rail facility is intended to allow transfer to from rail to truck. If it is, then the rail facility also includes "a track on which cars are placed for transfer of freight between cars and highway vehicles," which the 2001 Oregon Rail Plan defines as a "team."

While we need not and do not determine whether the proposed rail facility is properly characterized by any of those terms, we conclude that it is not a branchline because it includes multiple parallel tracks and includes siding tracks for train car storage and maintenance. We conclude that the county misinterpreted OAR 660-012-0065(3)(j) in approving the rail facility as a branchline.

The first assignment of error is sustained.

DISPOSITION

We will reverse a decision that violates a provision of applicable law and is prohibited as a matter of law. ORS 197.835(1); OAR 661-010-0073(1)(c). As explained above, ORS 215.283 sets out uses that may be established on agricultural land. As pertinent here, ORS 215.283(3) provides that a local

government may approve on land in agricultural zones transportation facilities and improvements identified by LCDC as "consistent with" Goal 3 under OAR 660-012-0065 without a goal exception. Conversely, if a use is not one that is identified by LCDC, then that use cannot be established without an exception to Goal 3.

We have concluded that the rail facility that the county approved is not a branchline under OAR 660-012-0065(3)(j). Intervenor may be able to obtain approval if it alters the design and function of the rail facility or seeks an exception to Goal 3. Either approach would require more than insignificant changes to the application, if not a new application.

"When compliance with an applicable approval criterion would require more than insignificant changes to the application, if not a new application, reversal is the appropriate remedy." *Rogue Advocates v. City of Ashland*, ___ Or LUBA ___, ___ (LUBA No 2021-009, May 12, 2021) (citing *Richmond Neighbors v. City of Portland*, 67 Or LUBA 115, 129 (2013)) (slip op at 20). As we explained in *Richmond Neighbors*,

> "OAR 661-010-0071 provides that LUBA shall reverse a decision when '[t]he decision violates a provision of applicable law and is prohibited as a matter of law,' while LUBA shall remand a decision when '[t]he decision improperly construes the applicable law, but is not prohibited as a matter of law.' * * * [W]hether reversal or remand is appropriate depends on whether it is the decision or the proposed development that must be corrected. If the identified errors can be corrected by adopting new findings or accepting new evidence, * * * then remand is appropriate. If the identified errors require a new or amended development application, then reversal is

appropriate." 67 Or LUBA at 129 (citing *Angius v. Washington County*, 35 Or LUBA 462, 465-66 (1999); *Seitz v. City of Ashland*, 24 Or LUBA 311, 314 (1992)).

We agree with petitioners that reversal is the proper disposition under the first assignment of error. Thus, we do not reach or decide the second or third assignments of error.

The county's decision is reversed.