

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 ) FINAL ORDER NO. 24-2024  
Agriculture (PA-80) Zone Near Port Westward )  
(CU 23-11) )

WHEREAS, NEXT Renewable Fuels Oregon, LLC (“Applicant”), previously submitted a Site Design Review application for a Use Permitted under Prescribed Conditions for a proposed renewable diesel production facility in the Resource Industrial – Planned Development (RIPD) zone, together with a Variance to buffering and screening requirements for the development (DR 21-03/V 21-05); and

WHEREAS, the Applicant also applied for Conditional Use approval for a rail line to be located within the Primary Agriculture (PA-80) zone (CU 21-04); and

WHEREAS, the application for the renewable diesel facility to be sited in the RIPD zone (DR 21-03/V 21-05) was approved by the Board of Commissioners (“Board”) by Final Order No. 12-2022, was not appealed and became final; and

WHEREAS, the application for the rail line in the PA-80 zone (CU 21-04) was approved by the Board by Final Order No. 13-2022 but was appealed to the Oregon Land Use Board of Appeals and, on review, the Board’s decision was reversed by LUBA; and

WHEREAS, in response to LUBA’s decision, on September 19, 2023, the Applicant submitted a new application for a Site Design Review Modification for the renewable diesel facility approved via Final Order No. 12-2022 (DR 21-03 MOD) to relocate rail tracks, a tree buffer and storm facilities outside of the PA-80 zone and into the RIPD zone; and

WHEREAS, in response to LUBA’s decision, on September 19, 2023, the Applicant also submitted an application for a Conditional Use Permit (CU 23-11) for a reconfigured rail line within the PA-80 zone, proposing changes to the configuration and a reduction of the size and scope of the rail line in order to provide for a rail connection between the Applicant’s renewable diesel facility and the existing Portland & Western Railroad rail facilities (DR 21-03 MOD and CU 23-11 jointly referred to herein as the “Applications”); and

WHEREAS, because of its own familiarity with the previously approved applications, and in order to comply with statutory review timeframes given the substantive and procedural complexities involved, the Board took original jurisdiction over the Applications on November 1, 2023 pursuant to Section 11 of the Columbia County Planning Commission Ordinance (Ordinance No. 91-2, as amended); and

WHEREAS, after duly providing proper notice by newspaper publication on November 29, 2023, and by mailing to those entitled on mailed notice on December 27, 2023, the Board held a hearing on the

Applications on January 10, 2024, at which time the Board heard public testimony, and received written evidence and testimony; and

WHEREAS, on January 10, 2024, the Board closed the hearing to further oral testimony but left the record open for additional written submissions until January 24, 2024, until February 7, 2024 for responses to new evidence and testimony received, and until February 21, 2024 for the Applicant's final written argument, continuing the hearing to March 6, 2024 for Board deliberations; and

WHEREAS, on March 6, 2024, the Board received all written evidence and testimony submitted into the record, including Applicant's final written argument that suggested two (2) additional conditions of approval in response to the other evidence and testimony received; and

WHEREAS, following deliberations, the Board voted unanimously to tentatively approve the Applications, subject to the conditions of approval presented in the staff report, and including the two additional conditions requested by the Applicant;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. Based on the foregoing and the whole record on this matter, the Board of County Commissioners APPROVES CU 23-11 for a Rail Branchline at Port Westward, on property identified as Tax Lot numbers 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, as modified by Final Order No. 23-2024. 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 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 fourteen (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 Land Development Services.
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; 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; 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. 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.
16. 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.
17. 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.
18. 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.
19. The Applicant shall implement the following rail mitigation measures as recommended in paragraph 10 of the memorandum prepared by Brian Heikkila of Crosstown Consulting, dated Jan. 23, 2024 (the "Crosstown Memo"), which proposes mitigation measures that shall be effective between June 1 and October 31 of each year:
  - a. Provide Portland & Western Railroad ("P&W") crews and NEXT employees conducting rail operations with a standard operating procedure (SOP) for the



proper handling of inbound and outbound trains with an emphasis on safety and the importance of keeping crossing occupancy times to a minimum.

- b. Establish and maintain consistent communications between P&W and NEXT that include timely (24 hour) advance notice concerning inbound and outbound train movements, with estimated times of arrival and departure at the facility and train details via email or fax (i.e. number and types of cars, commodities and load/empty status).
- c. In advance of a train's arrival, NEXT should ensure all necessary tracks are clear to receive inbound traffic and all associated track switches within the facility are properly lined to allow continuous inbound movement during the delivery.
- d. To expedite outbound train departures, NEXT employees should ensure outbound cars are assembled and ready for pickup with loading and unloading mechanisms disconnected and all NEXT employees safely in the clear with the P&W crew ensuring all affected switches and derails are properly aligned to facilitate a continuous outbound departure from the facility without stopping on the crossings.
- e. Provide NEXT employees involved in the rail operations with a portable radio to allow communication with P&W crews servicing the facility.
- f. Provide a utility vehicle or crew taxi to expedite the P&W conductor's ground duties when delivering and securing inbound trains and while preparing, inspecting, and testing outbound train prior to departure.
- g. Identify a contact person(s) and/or position(s) at the P&W and NEXT for area law enforcement, emergency responders and area farmers and or other interested parties to reach with concerns, complaints or requests involving rail operations and include such information for community access through a posting on a NEXT website for the Port Westward facility.
- h. P&W shall post a crew member at the Kallunki Rd. crossing while servicing the NEXT facility to flag motor vehicle traffic, and communicate with the engineer should it become necessary to separate the train to clear the crossing in the event of an unforeseen delay (typically for blockages in excess of 10 minutes or in case of emergency).
- i. During critical times while the mint harvest is underway, the Applicant shall request that P&W issue a "Form B Track Bulletin" as provided for in the Railroad General Code of Operating Rules ("GCOR") at the farmer's request, that would place a railroad foreman in charge at the Kallunki Road crossing

during the dates and times of said bulletin to stop and hold trains approaching the crossing from either direction as necessary to allow harvest vehicles traveling between the field and nearby distillery to do so without delay (See GCOR Rule 15.2).

20. During construction, the Applicant shall maintain an inadvertent discovery plan (“IDP”) to address any archaeological discovery consistent with the Oregon State Parks and Recreation Department Historic Preservation Office’s IDP template.

21. 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. These improvements shall include two 12-foot travel lanes, rock shoulders, safety slopes, and roadside ditches. The improvements shall also include the 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.

22. A minimum of three (3) 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.

23. Planning Staff shall review all proposed improvements and conduct a site visit to ensure that all requirements have been constructed as approved. This site visit is required prior to final planning approval.

B. 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 document titled “Conditional Use Permit for a Railroad Branchline” dated June 16, 2023, 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 Written Argument, dated February 21, 2024, 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.
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;
5. The findings and conclusions in the Staff Report to the Board of County Commissioners dated January 3, 2024, which is attached hereto as **Exhibit E** 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;
6. The above recitals.

DATED this 26 day of June, 2024.

BOARD OF COUNTY COMMISSIONERS FOR  
COLUMBIA COUNTY, OREGON

By:   
Casey Garrett, Chair

By: Not Present  
Kellie Jo Smith, Commissioner

By:   
Margaret Magruder, Commissioner

Approved as to form  
By:   
Office of County Counsel

BEFORE THE BOARD OF COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application by NEXT  
Renewable Fuels, LLC for Conditional Use  
Permit (CU 23-11).

SUPPLEMENTAL FINAL FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

**I. INTRODUCTION**

NEXT Renewable Fuels, LLC (the “**Applicant**”) proposes to develop a renewable diesel production facility at Port Westward (the “**Facility**”)<sup>1</sup>, with related Columbia River dock access and rail connections, including a proposed rail branchline located in a PA-80 zone (the “**Branchline**”). Collectively, these elements comprise the Applicant’s “**Project**.” The Project is proposed to be located on approximately 120 acres located south of the existing PGE Beaver generating plant and its associated tank farm.<sup>2</sup>

The County originally authorized the Project by approving two separate but related land use decisions, both issued on March 23, 2022. The Facility was initially approved by the County Board of Commissioners (the “**Board**”) under Site Design Review DR 21-03 and Variance 21-05 as a “Use Permitted under Prescribed Conditions” in the Resource Industrial – Planned Development (RIPD) zone (the “**DR**”). The DR was not appealed and remains valid. The Board also approved a Conditional Use Permit (CU 21-04) for a rail branchline within the Primary Agriculture (PA-80). CU 21-04 was ultimately reversed by LUBA.

In light of LUBA’s decision reversing the CU 21-04, in September 2023 the Applicant submitted a revised rail layout, which required approval of two land use applications: a modification of the approved Site Design Review (DR 21-03 MOD) and a new Conditional Use Permit for a much smaller Branchline (CU 23-11). Between Jan. 10 and Feb. 21, the Board held a hearing on both land use applications and tentatively approved them on March 6, 2024.

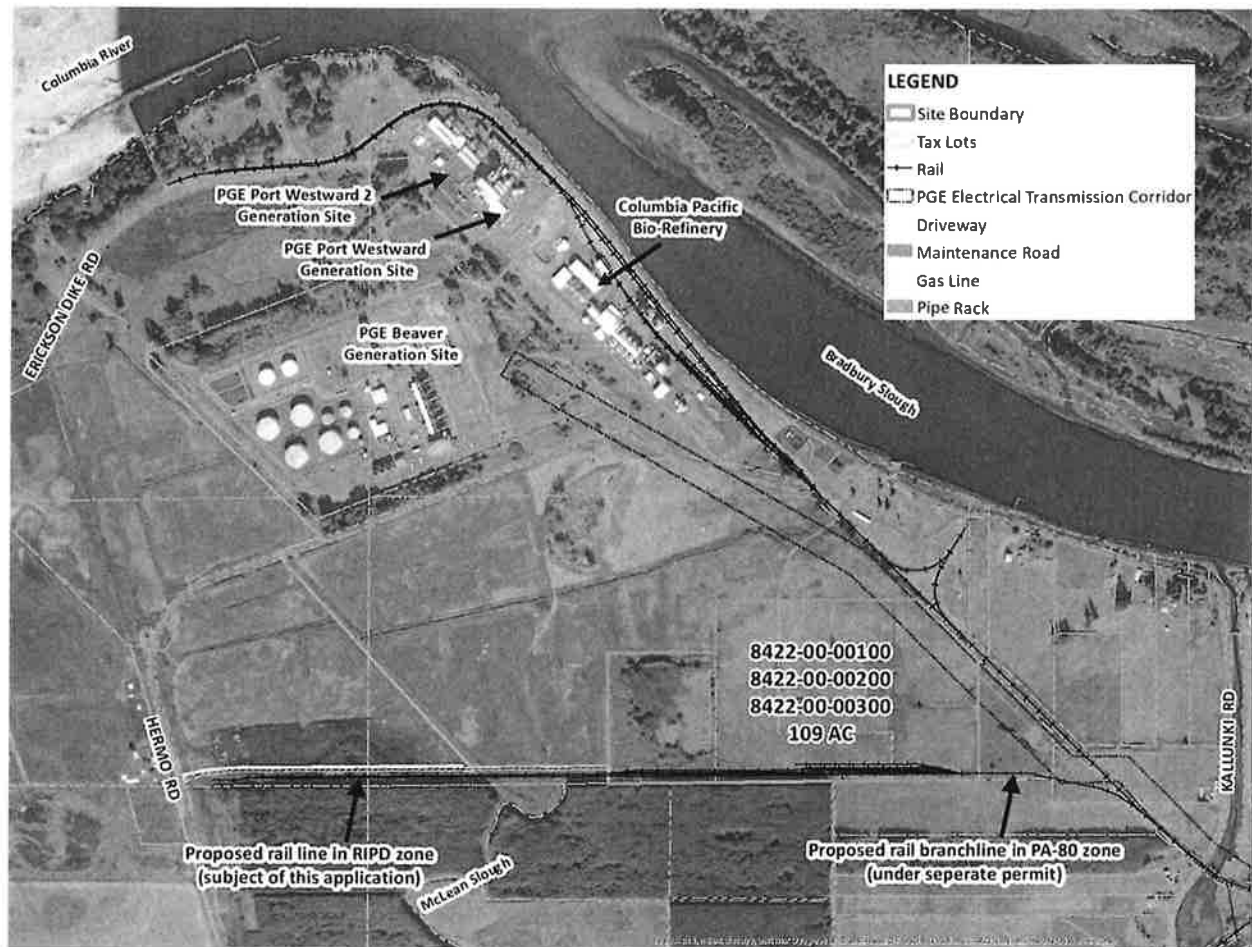
This Decision concerns a new conditional use permit (DR 24-11) (the “**Application**”), which modifies the existing Site Design Review permit for the Facility.<sup>3</sup> The Decision approves the extensions of an approximately 1,250 foot track between the existing Portland and Western Railroad (“PWRR”) line and the Facility. The proposed Branchline will cross property zoned PA-

<sup>1</sup> As referred to below, the “Facility” includes the relocated rail tracks within the Port of Columbia County parcel,

<sup>2</sup> The Project area is referred to herein as the “subject property,” “site,” “Project area” or “property.” Where smaller portions of the site are referred to specifically, they may be noted as “Facility site” or “Branchline area,” etc.

<sup>3</sup> The Decision uses the word “Applications” when referring to the DR 21-3 MOD and CU 23-11 collectively.

80, which is an exclusive farm use for purposed of Statewide Planning Goal 3. An overview map of the proposed improvements is set out below:



## II. PROCEDURAL HISTORY

The Application was submitted on September 19, 2023. On November 1, 2023, the Board voted unanimously to take original jurisdiction of the Application pursuant to Columbia County Ord. 91-2 (the "Planning Commission Ordinance") § 11, which provides as follows:

"A party aggrieved by the action of the Planning Commission may appeal the action to the Board of County Commissioners. The Board on its own motion may review the action. The Board may also assert original jurisdiction over any land use application and bypass prior Planning Commission review. The procedure and type of hearing for such an appeal or review shall be the same as prescribed by this ordinance for Planning Commission decisions, or as provided by the Columbia County Zoning Ordinance, Subdivision and Partitioning ordinance or other applicable statutes, ordinances, orders, rules or regulations."

No party argued that the Board could not exercise original jurisdiction over the Application. No party argued that their substantial rights were prejudiced by the County having held a single evidentiary hearing. Finally, no party has claimed that the Board's consideration of the Application violated any applicable requirement of ORS 197.797 or its predecessor, ORS 197.763.

An initial evidentiary hearing before the Board was scheduled for January 10, 2024. On Nov. 29, 2023, County staff mailed a public notice to all property owners as required by ORS 197.763(2)(a) (now numbered ORS 197.797(2)(a)) and a similar notice was published in the newspaper and posted on the County's website. No party argued during the Hearing that the public notice failed to meet the public notice requirements in the Columbia County Zoning Ordinance ("CCZO").

Written testimony on the Application was received prior to the Hearing. On January 3, 2024, the County planning director issued a staff report (the "**Staff Report**") addressing both DR 21-03 and CU 23-11, which was posted to the County's website and otherwise made available to the public on that date. The Staff Report recommended 12 conditions of approval that would apply to the Applications. The Board held an initial evidentiary hearing on January 10, 2024, during which all members of the Board were present. At the conclusion of that hearing, the Board closed the record to further oral testimony but allowed the written record to remain open for the following purposes and on the following schedule:

1. Until 5:00 PM on January 24, 2024, for any party to submit new evidence or testimony.
2. Until 5:00 PM on February 7, 2024, for any party to submit evidence or testimony in response to testimony submitted during the first open record period.
3. Until February 21, 2024, for Applicant's final written argument.

Written testimony was received during all three open record periods. The Applicant's final written argument recommended two additional conditions of approval for the Applications, as follows:

- The Applicant shall implement the rail mitigation measures recommended in paragraph 10 of the memorandum prepared by Brian Heikkila of Crosstown Consulting, dated Jan. 23, 2024 (the "Crosstown Memo"), which proposes mitigation measures that shall be effective between June 1 and October 31 of each year.
- During construction, the Applicant shall maintain an inadvertent discovery plan ("IDP") to address any archaeological discovery consistent with the Oregon State Parks and Recreation Department Historic Preservation Office's IDP template.

The Board reconvened to deliberate on the Application on March 6, 2024. Assistant County Counsel Spencer Parsons provided a report to the Commission summarizing the procedural history of the Application and explaining the additional conditions recommended by the Applicant. The Board then discussed the Application. Commissioner Magruder made a motion to tentatively approve the Application, with direction to County staff to prepare a final order including the two additional conditions requested by the Applicant, and Commissioner Smith seconded. The Board then voted unanimously to approve the Application.

### **III. DECISION**

The Board APPROVES the Application (CU 32-11) subject to twenty-three (23) conditions of approval, included in the text of Final Order No. 24-2024.

### **IV. SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In support of its Decision, the Board adopts the following Supplemental Findings of Fact and Conclusions of Law.

#### **A. Applicable Criteria**

The applicable criteria for the Application are set forth in CCZO 1503.5, as follows:

- "A. The use is listed as a Conditional Use in the zone which is currently applied to the site;
- B. The use meets the specific criteria established in the underlying zone;
- C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;
- 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;
- 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;
- F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;
- G. The proposal will not create any hazardous conditions."

Additionally, the criteria for the underlying PA-80 zone include the following, set forth in CCZO 307:

“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:

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

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

.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.”

The Board concludes that CCZO 307.1 incorporates the farm impacts test in ORS 215.296(1) and interprets CCZO 307.1 consistent with governing interpretations of that statute. In addition to the reasons stated below, the Board finds that the above criteria are satisfied as explained in the Application Narrative (**Exhibit B** to the Board's final order) and Staff Report (**Exhibit D** to the Board's final order).

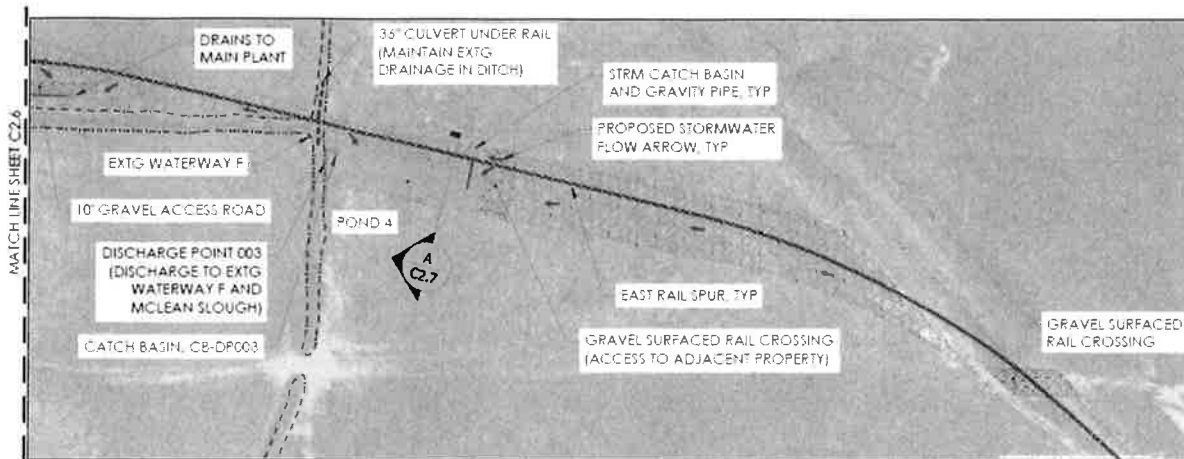
**B. Response to Issues Raised in the Hearing**

The following discussion addresses issues raised by individuals and organizations who submitted written or oral testimony during the Hearing, and which testimony was properly submitted either prior to or during the hearing, or during the first or second open record periods.

**1. The proposed rail improvement qualifies as a “branchline” for purposes of OAR 660-012-0065(3)(j).**

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. Port Westward is also served by rail lines owned and operated by PWRR. The Application proposed construction of a railroad branchline connecting to PWRR's existing rail line to the east, which new connection would be located approximately 800 feet north of an existing railroad crossing at Kallunki Road. The size of the proposed railroad Branchline (within the PA-80 zone) consists of approximately 1,250 linear feet with a total permanent disturbance area of approximately 1.7 acres.





The Branchline will accommodate shipment of raw materials (e.g., bleaching clay) and potentially a small amount of finished products to and from the Facility. Finished product and raw materials for Facility operations will largely be transported by vessels utilizing the Port of Columbia County (“Port”)-owned dock on the Columbia River. As explained in the Application and Staff Report, the Branchline section within the PA-80 zone is permissible under OAR 660-012-0065 “Transportation Improvements on Rural Lands” and CCZO 306.9 without a Statewide Planning Goal Exception (“goal exception”), because it falls within the category of “railroad mainlines and branchlines” that are permitted without a goal exception.

In 2022, in Final Order No. 13-2022 (CUP 21-04) the Board approved a different and much larger branchline proposal, which consisted of a single line connecting to the existing PWRP railroad, as well as a system of five siding tracks located within the PA-80 zone and extending into that zone approximately 1.5 miles. The County concluded that the term “rail branchline,” is “nothing more nor less than an offshoot from the mainline or stem.”<sup>4</sup> The County’s decision was appealed to LUBA. LUBA construed the “plain meaning” of “branchline” as “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.”<sup>5</sup> LUBA also concluded that the definitions in a 2001 ODOT rail plan govern the interpretation of the term “branchline” in OAR 660-012-0065(3)(j). In this vein, LUBA concluded ODOT’s meaning of the term “branchline” to be “a section of track running between a main line and another destination.”<sup>6</sup> *Id.* 23. Given its reliance on various judicial precedent, dictionary definitions, and ODOT publications, LUBA did not appear to adopt a single, unambiguous definition of “branchline,” but concluded that the Applicant’s prior branchline design was not a “rail branchline” because it included “multiple parallel tracks and includes siding tracks for train car storage and

<sup>4</sup> *Union P. R. Co. v. Anderson*, 167 Or 687,712, 120 P2d 578, 588 (1941).

<sup>5</sup> *1000 Friends of Oregon v. Columbia County*, \_\_\_Or LUBA \_\_\_(LUBA No. 2022-039, slip op at 13), Oct.27, 2022.

<sup>6</sup> *Id.* at 23.

maintenance.”<sup>7</sup> In reversing the Board’s decision, LUBA opined that “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.”

The Board concludes that the Applicant “altered the design and function of the rail facility,” and the resulting design in the Application clearly satisfies LUBA’s definition of what constitutes a “branchline.” The Board finds that a reduction in length from 1.5 miles to 1,250 linear feet, and a reduction in width from five parallel tracks to a single track, is a significantly reduced rail improvement from what the County approved in 2022. Unlike the prior design, the Branchline in this Application plainly has no switching function, no storage function, and no loading function. It is solely intended to convey a single train at a time between PWRR’s existing rail services at Port Westward to the Facility. All train switching, unloading/loading, parking, storage, assembly and disassembly is proposed to occur within the RIPD zone. In that zone, rail services are allowed as accessory to permitted or approved uses and are not subject to the restrictions of Goal 3, Goal 14, or required to meet the requirements of OAR 660-012-0065.

First, the Board concludes that Application satisfies the definition of “branchline” as construed by the Oregon Supreme Court. The Oregon Supreme Court has embraced a “commonly understood” meaning that a rail branchline is “nothing more nor less than an offshoot from the mainline or stem.” *Union P. R. Co.*, 167 Or at 588. 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 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 Board concludes that this single, 1,250-foot track is among the various offshoots of PWRR’s main line(s), and is designed to have a business of its own (i.e. rail service to the Facility), and the Facility is not reached by the principle route. The Board relies on the Application Narrative and the Applicant’s CUP Exhibit 3, “NEXT Plans for PA-80 Rail Branchline,” in reaching these conclusions.

Second, the Board concludes that the Application satisfies LUBA’s “plain meaning” construction of the term “branchline” as “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.” There is no question that the proposed 1250 sq. ft. track is distinct. It is also elongated and narrow, because the width of its gravel base, at 24 feet, is only 1.92 percent of its length. The Board also finds that it is uniform in width. The Board relies on the Application

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<sup>7</sup> *Id.* 21.

Narrative and the Applicant's CUP Exhibit 3, "NEXT Plans for PA-80 Rail Branchline," in reaching these conclusions.

Third, to the extent that LUBA adopted ODOT's definition of "branchline," the Board concludes that the Application is for "a section of track running between a main line and another destination." Based on the evidence in the record, there is no question that the Application is for a section of track and that track is located between the PWWR mainline and another destination (in this instance, the Facility). The Board relies on the Application Narrative, the Applicant's CUP Exhibit 3, "NEXT Plans for PA-80 Rail Branchline," and the letter from PWRR appended as Exhibit 20 to the Application, in reaching this conclusion.

Columbia Riverkeeper ("Riverkeeper") raised two contrary arguments, both of which the Board rejects. First, Riverkeeper argued that the proposed rail line is not a "branchline" (as determined by LUBA) because "[n]othing significant has changed about the scope and design" of the rail improvements proposed in the RIPD zone.<sup>8</sup> Riverkeeper's position is directly contradicted by the application materials in the record, including the Applicant's site plans for the Branchline, which depict a significantly reduced rail improvement (compared to that previously approved by CU 21-04).<sup>9</sup> The evidence in the record is unambiguous – the portion of the tracks that remain on the PA-80 zoned parcels are not designed to receive, store, sort, and unload trains.<sup>10</sup> As explained in the Application Narrative and depicted on the Applicant's CUP Exhibit 3, "NEXT Plans for PA-80 Rail Branchline," the rail infrastructure crossing PA-80 zoned land is a branchline, consistent with OAR 660-012-0065 and LUBA's decision in *1000 Friends of Oregon v. Columbia County*, \_\_ Or LUBA \_\_ (LUBA No. 2022-039). Riverkeeper's argument that nothing has changed in NEXT's design of the Branchline (where it crosses a PA-80 zone) is incorrect.

Second, Riverkeeper argued that the Project has already been rejected by LUBA, arguing that if a transportation improvement listed at OAR 660-012-0065(3) (here, a branchline) is incidental to another land use, then that related land use must be allowed or conditionally allowed in an EFU zone by ORS 215.283. As the Board understands it, Riverkeeper argued that the proposed Branchline cannot be permitted because it terminates at the rail yard proposed on the RIPD- zoned parcels. The Board finds, however, that LUBA has already rejected this argument in *1000 Friends*:

"As we understand [Riverkeeper's] 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

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<sup>8</sup> Riverkeeper Comment, at 11-12 (Jan. 9, 2024).

<sup>9</sup> CU 23-11 Application Materials, Exhibit 3.

<sup>10</sup> *Id.*

agricultural zone that may be related to or serve uses that are not allowed or conditionally allowed by ORS 215.283."<sup>11</sup>

Thus, the Board finds that the question of what constitutes a "branchline" is restricted to the rail improvements actually proposed to be constructed in a resource zone that would be subject to OAR 660-012-0065(3)—in this case, the PA-80 zone. The fact that a train may use a "branchline" within a resource zone to eventually (or even directly) access a rail yard that is located in an industrial zone does not serve to make that "branchline" a "railyard." To extend Riverkeeper's reasoning to its logical conclusion, such an interpretation would make it impossible to cross a resource zones in Oregon to reach a railyard absent a statewide planning goal exception, even if the railyard itself is constructed within an industrial zone where the limits of Goal 3 do not apply. For these reasons, the Board rejects Riverkeeper's argument that the Application is not for a "rail branchline."

**2. The Application satisfies ORS 215.296 and CCZO 307.1.A-B, the "farm impacts test."**

CCZO 307.1 and ORS 215.296 require the Applicant to demonstrate that the Branchline "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-B; ORS 215.296. 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."

However, 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).

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<sup>11</sup> *1000 Friends of Oregon*, \_\_ Or LUBA \_\_, at 15 (emphasis added).

Consistent with the Oregon Supreme Court's ruling in *Stop the Dump Coalition v. Yamhill County*, the Application included a farm-by-farm analysis for the farm impacts test according to the Supreme Court's principle that "[a] 'significant' change or increase in cost is one that will have an important influence or effect on the farm." This examination identified the impact area associated with the Branchline (which extends from the Portland & Western Railroad mainline to the Facility). The analysis then characterized existing agricultural practices in the impact area and demonstrated that the proposed railroad Branchline does not violate either of the approval criteria within ORS 215.296/CCZO 307.1.<sup>12</sup>

Specifically, the Application identified approximately 14 acres of "impact area" for the 1,250-foot Branchline (the Applicant's proposed "surrounding lands" for purposes of ORS 215.296(1)) and characterized the crops being grown within those areas. The Application explained that the central portion of the De La Cruz parcel (within and north of the proposed railroad branchline corridor) is used for hay/grassland; similarly, the single Port parcel west of the De La Cruz parcel contains wetlands and is used for hay/grassland as well. The Application Narrative explained that "Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, irrigation, spraying fertilizer, managing weeds, mowing, and harvesting." Riverkeeper argued in its January 9, 2024 letter that the Application did not include a sufficiently large impact area in its consideration of the "surrounding lands." Riverkeeper did not identify any additional farms which the Applicant should have considered.

The Board considered concerns raised by nearby farmers and considered the crops being farmed in those areas. Specifically, the Board considered impacts to two farms whose owners raised concerns about the Branchline, Mike Seely (regarding mint farming) and James Hoffman (blueberries), and considered the concerns of the the Beaver Drainage Improvement Company (the "BDIC") with respect to its drainage and irrigation system. The Board concludes that, based on the testimony by the Applicant, Mr. Seely, and Mr. Hoffman, the surrounding lands for purposes of the farm impacts test include the impact area identified in the Application, which includes farm activities for growing hay and other row crops that are adjacent to or abutting the Branchline, as well as portions of Seely Mint's operations. Based on evidence offered by Mr. Seely and Brian Heikkila, the Board finds that, as relevant here, mint harvesting by Seely Mint is characterized by the following aspects:

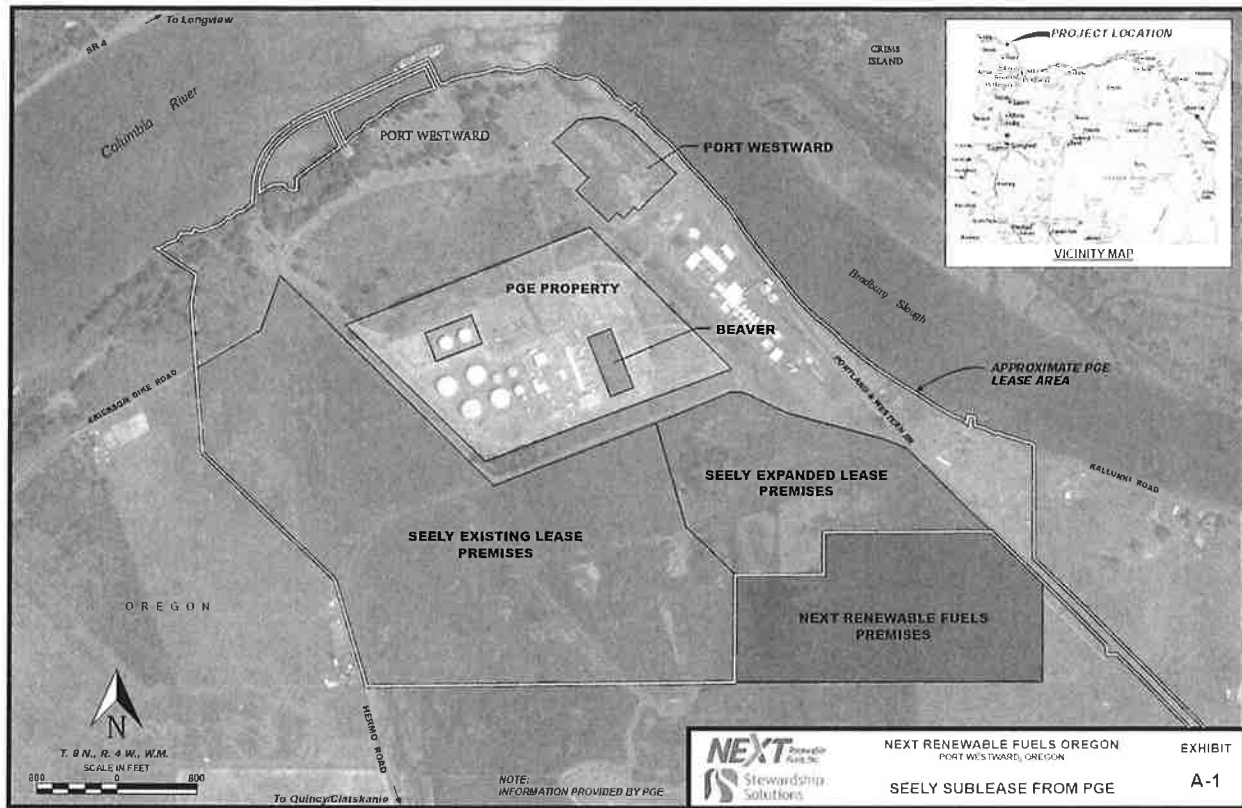
- The timing for harvest is variable but generally takes place in June through October.
- Harvested mint must be delivered to the Seely Mint processing facility quickly after harvest, and that significant delays<sup>13</sup> could impact the quality of the mint product.
- Mint is sensitive to soil moisture.

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<sup>12</sup> CU 23-11, Application Narrative, at 11-14.

<sup>13</sup> Consistent with *Stop the Dump*, the Board considered potential transportation delays that would have an *important* adverse impact on the harvested mint.

Mr. Seely did not provide a map of the Seely Mint leasehold interests. However, a map of Seely Mint’s leasehold interests was submitted in a February 7, 2024 memorandum prepared by Maul Foster & Alongi (“MFA”). This map of Seely’s leasehold areas is excerpted below:



As is evident from the above map, the vast majority of Seely’s leasehold area is located off of Hermo Road and west of the PWRR line tracks. All of these fields are within the Port Westward Exception Area and zoned RIPD.

Mr. Seely asserted that Kallunki Road provides Seely Mint’s only reliable access. The Board finds, however, that such testimony is contradicted by the location of Seely’s leasehold fields as well as the farm access map provided by the Applicant, both of which show existing farm access points to Seely’s leasehold fields accessible from Hermo Road. And, based on the public notice list and the farm access map provided by the Applicant, there is evidence that Seely Mint’s processing facility is located on or near Hermo Road. In light of this evidence, the Board reasonably questions Mr. Seely’s assertions that *all* harvest trips to and from Seely Mint’s fields effectively “take the long way” around Port Westward to use Kallunki Road to access these fields. Based on the evidence in the whole record, the Board concludes that Seely Mint’s leasehold fields are partially or wholly accessible from both Kallunki and Hermo Roads, that Seely Mint’s leasehold fields are not *only* accessible via Kallunki Road, but that Mr. Seely does use Kallunki Road to access these fields at least some of the time.

Mr. Hoffman’s testimony demonstrates that his farm is located to the west and south of Hermo Road, which is not proposed to be crossed by the Branchline; its only connection to the

subject property is arguably hydrologic in that Mr. Hoffman's property is within the BDIC's service area. Mr. Hoffman's concerns related to the "NEXT/Port facilities" and the "125 acres" proposed for the entire Facility, the vast majority of which is zoned RIPD. Mr. Hoffman also did not raise concerns that the Branchline itself would adversely impact his farming operations. The Board does not find that Mr. Hoffman's farm constitutes "surrounding lands" for purposes of the farm impacts test, as applicable to the Branchline.

The various concerns regarding farm impacts that various individuals raised are summarized as follows:

- Farm access and potential train-related delays in truck trips between farm fields and the Seeley's mint processing facility.
- Impacts to surface water drainage.
- Impacts to groundwater.
- Diesel particulate matter.

For the reasons stated below, the Board finds that the Project will not force a significant change in, or significantly increase the costs of, any accepted farm practices on land surrounding the proposed Branchline.

**a. With the imposition of appropriate conditions, the Board finds that the Branchline will not significantly impact mint farm access or mint harvest activities, and will not significantly increase the costs of those activities.**

The Application included a farm access map (Exhibit 21 to the Application) showing the existing farm access points identifiable from aerial photography. The Board notes that with the exception of the fields owned by Bobby and Felipe De La Cruz, there are no farm field access points that will be disrupted. As the Del La Cruzes authorized submittal of the Application, the Board does not understand them to object to the Application and notes that the Application includes a new crossing to allow them to access either side of their property.

Mike Seely submitted comments prior to and during the hearing, in which he argued that the existing railroad crossing at Kallunki will suffer increased delays due to increased rail traffic, and in particular "delays of hours or even minutes" would have a negative impact on his farming. Mr. Seely also argued that the proposed Branchline would "interfere with road access to farm land north of the proposed rail development." As discussed above, Mr. Seely did not identify which particular fields or access point would be impacted. With respect to conflicts between rail improvements and mint farming, Mr. Seely appeared to focus on the relocation of the rail improvement onto RIPD-zoned land, which improvement is the subject of a different application (DR 21-03 MOD).

As an initial matter, the Board finds that farming activities on industrially-zoned lands subject to a Statewide Planning Goal 3 exception, including lands zoned RIPD, are not required to be considered by the farm impact test, which is intended to protect accepted farm practices on resource lands protected by Statewide Planning Goal 3. But even if the farm impact test necessarily must include these fields as “surrounding lands,” the Board finds that the correct analysis is whether access to these fields will become more difficult due to interruptions caused by the Branchline located within the PA-80 zone, not the rail improvements proposed within the RIPD zone, because those latter improvements are not subject to the farm impacts test.

Substantial evidence in the record indicates that access to fields directly north of the Facility will not be significantly changed as a result of the Branchline, because the Branchline does not prohibit access to any Seely fields via Kallunki Road or Hermo Road. During the first open record period, the Applicant’s land use planning consultant provided a memorandum responding to concerns about the potential for interference in access, which reemphasized the access map originally submitted with the Application and demonstrated that the approved Facility (which is not the subject of this Decision) does not cut off any existing farm accesses. The Board also notes that Condition 14 of Final Order 12-2022 (DR 21-03 and V 21-05)<sup>14</sup> requires the Applicant to pave Hermo Road and the entrance to the Port Westward industrial site:

“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.”

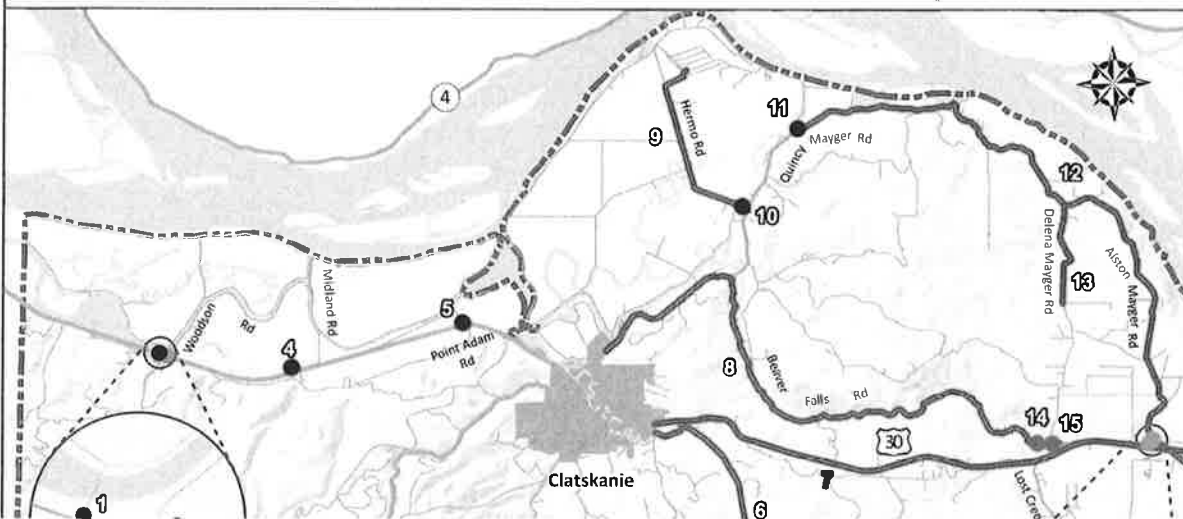
According to the findings for Final Order 12-2022 at PDF pg. 106, the purpose of this requirement is to implement Transportation System Plan (“TSP”) Project 9, which is shown in the TSP (2017) as excerpted below:

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<sup>14</sup> The Applicant submitted the final order and findings for Final Order 12-2022 into the record during the first open record period.



Figure 7 - Planned Investments in NW Columbia County



According to Figure 7, the required improvement of Hermo Road nearly extends to the PGE tank farm, north of the proposed Facility. Therefore, the Board rejects Mr. Seely's argument that the Application will force a significant change or significantly increase his costs for farming fields north of the Facility as it regards field access. Rather, substantial evidence in the record indicates that access to these fields may be *improved* with the paving of Hermo Road, which will occur north as well as south of the Facility's entrance.

In response to Mr. Seely's arguments concerning potential delay due to additional train trips through the Kallunki Road crossing, the Applicant submitted a memorandum from Brian P. Heikkila, principal of Crosstown Consulting Assoc., LLC, who evaluated railroad operations proposed for the Project and offered recommendations to minimize the potential impact on farming practices within the impact area. The Board finds this memorandum persuasive and adopts the following key factual findings from the Crosstown Memo:

"The longest P&W trains entering and leaving the NEXT facility will have approximately 100 cars with a maximum length of 7000', which means continuous movement of these trains over the Kallunki Road crossing and the two private farm crossings on the branchline will require less than 10 minutes to clear on the 10 mph track as follows: (10 mph = 14.67 feet per second (fps) and  $7000' / 14.67 \text{ fps} = 477 \text{ seconds} = 7.95 \text{ minutes}$ ).

"Since most if not all of the transfer movements over the subject crossing handled by existing manifest trains will involve groups of 20-30 cars with an overall length of less than 2000' including locomotives, these movements in and out of the facility will result in crossing occupancies of less than 3 minutes each

as follows:  $(2000' / 14.67 \text{ fps} = 136.3 \text{ seconds} = 2.27 \text{ minutes}$ , which is similar to the cycle time of some motor vehicle traffic signals.

“To reduce crossing occupancy times during the mint harvest, the 100 car trains can be split in half to accomplish delivery in 2 installments of 50 cars each, with a resulting crossing occupancy of just under 4 minutes for each movement as follows:  $3500' / 14.67 \text{ fps} = 238.5 \text{ seconds} = 3.97 \text{ minutes}$ .”

Based on the above, the Board finds that for trains serving the Facility, the typical maximum crossing time at Kallunki Road will be less than 10 minutes. The Board also finds that smaller trains will have shorter crossing times.

The Board notes that Mr. Heikkila evaluated readily available information on mint harvesting, the Seely Mint website, and Mr. Seely’s Jan. 10, 2024 comments. Mr. Heikkila also explained that the Applicant’s attorney attempted to contact Seely Mint to obtain more information on its farming activities, but Seely Mint did not respond.<sup>15</sup> Based on the information available, Mr. Heikkila characterized the generally-understood harvest needs for various mint varieties and provided an analysis of the potential impacts to farming within the impact area resulting from train movements and crossing occupancy.<sup>16</sup> His memorandum proposed nine mitigation measures (that have been incorporated into the conditions of approval) to minimize any potential impacts caused by rail crossing delays, and tailored those mitigation measures to specifically address any potential impact to Seely Mint’s farming operation.<sup>17</sup> These mitigation measures are as follows:

- “Provide P&W crews and NEXT employees conducting rail operations with a standard operating procedure (SOP) for the proper handling of inbound and outbound trains with an emphasis on safety and the importance of keeping crossing occupancy times to a minimum.”
- “Establish and maintain consistent communications between P&W and NEXT that include timely (24 hour) advance notice concerning inbound and outbound train movements, with estimated times of arrival and departure at the facility and train consist details via email or fax (i.e. number and types of cars, commodities and load/empty status).”
- “In advance of a train’s arrival, NEXT should ensure all necessary tracks are clear to receive inbound traffic and all associated track switches within the facility are properly lined to allow continuous inbound movement during the delivery.”

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<sup>15</sup> Mr. Seely did not contest this in his testimony, but instead implied that such attempts to obtain more information about his harvest practices were inappropriate.

<sup>16</sup> Crosstown Memo, at 3-7 (Jan. 23, 2024).

<sup>17</sup> *Id.*, at 5-6.

- “To expedite outbound train departures, NEXT employees should ensure outbound cars are assembled and ready for pickup with loading and unloading mechanisms disconnected and all NEXT employees safely in the clear with the P&W crew ensuring all affected switches and derails are properly aligned to facilitate a continuous outbound departure from the facility without stopping on the crossings.”
- “Provide NEXT employees involved in the rail operations with a portable radio to allow communication with P&W crews servicing the facility.”
- “Provide a utility vehicle or crew taxi to expedite the P&W conductor’s ground duties when delivering and securing inbound trains and while preparing, inspecting, and testing outbound train prior to departure.”
- “Identify a contact person(s) and/or position(s) at the P&W and NEXT for area law enforcement, emergency responders and area farmers and or other interested parties to reach with concerns, complaints or requests involving rail operations and include such information for community access through a posting on a NEXT website for the Port Westward facility.”
- “P&W could post a crew member at the Kallunki Rd. crossing while servicing the NEXT facility to flag motor vehicle traffic, and communicate with the engineer should it become necessary to separate the train to clear the crossing in the event of an unforeseen delay (typically for blockages in excess of 10 minutes or in case of emergency).”
- “During critical times while the mint harvest is underway, the P&W can issue a “Form B Track Bulletin” as provided for in the General Code of Operating Rules at the farmer’s request, that would place a railroad foreman in charge at the Kallunki Road crossing during the dates and times of said bulletin to stop and hold trains approaching the crossing from either direction as necessary to allow harvest vehicles traveling between the field and nearby distillery to do so without delay (See GCOR Rule 15.2).”

Mr. Heikkila also responded to Mr. Seely’s pre-hearing comments. He explained that outbound rail movements can be timed to substantially reduce crossing delay, and that in-bound trains can be split to reduce in-bound crossing times even further.<sup>18</sup>

In response, Mr. Seely cited a crossing delay of 45 minutes as being problematic (although it is not clear if that delay caused an important impact on mint harvesting operations), and both Mr. Seely and Riverkeeper argued that the recommendations proposed by Mr. Heikkila are unenforceable. Riverkeeper also questioned the total number of railcars that would be servicing the site on a weekly basis, and argued that rail service is prohibited by the Port’s lease with NEXT.

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<sup>18</sup> *Id.*, at 6.

The Board has weighed the evidence on this issue provided to it by County staff, Mr. Seely, the Applicant, the Applicant's land use consultant, and Mr. Heikkila. The Board notes that there is evidence that the Applicant's legal counsel attempted to obtain information from Seely Mint about its harvest operations and Seely Mint apparently did not respond to that request. The Applicant appeared responsive to Mr. Seely's clarification that his harvest operations are conducted between June and September, when it proposed a condition of approval requiring it to implement certain mitigation measures between June 1 and October 31 of each year. The Board notes that Mr. Seely did not identify any particular farm fields that he could not access or which would require crossing the existing rail lines at Kallunki Road. Given Mr. Heikkila's particular expertise in rail operations and the lack of equivalent expertise on the part of project opponents, the Board finds that the evidence with regard to crossing impacts and potential mitigation measures provided by the Applicant is more specific and persuasive on those questions.

The Board does not agree that the rail mitigation measures are unenforceable. The Crosstown Memo's mitigation recommendations are, for the most part, measures that NEXT employees must implement. The memo suggests that the P&W Railroad could post a crew member at the Kallunki Road crossing if necessary, issue a "Form B Track Bulletin," identify a contact person to receive complaints, and communicate via radio with NEXT employees. There is no evidence that these measures are infeasible. As explained below, the recommendations of the Crosstown Memo shall be a condition of approval, therefore, in order to maintain this conditional use permit, NEXT will presumably have to work with P&W to implement these measures. If it fails to do this, any person can initiate a zoning enforcement action to enforce the condition under the County's Enforcement Ordinance, in which Sec. 6.B specifically provides for enforcement of "conditions attached to any permit granted under the Zoning Ordinance."

The Board rejects arguments that rail service violates the terms of the lease between NEXT and the Port because the Port is a signatory to the Application and because it did not object to the Application. Riverkeeper provided no evidence that either it or the County is a party to the lease such that it can enforce one or more provisions of it.

Based on the existence of the Kallunki Road crossing as well as the tracks serving developed areas of Port Westward<sup>19</sup> the Board finds that trains routinely access Port Westward. Mr. Seely indicated that delays of various lengths would have a "negative impact" on mint harvest, including "delays of hours or even minutes—any delay whatsoever" and cited a particular concern of a delay lasting 45 minutes. The Board agrees that significant additional train crossing delays (such as those significantly exceeding the 10 minutes anticipated for full-size trans) could have a negative impact on Seely Mint's harvest operations if harvest trucks are

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<sup>19</sup> This is shown in the Figure 1 of the Application Narrative.

delayed by such a crossing.<sup>20</sup> However, with the conditions of approval 6 and 19, both of which require the Applicant to take specific steps to limit the impact of increased crossing times at the Kallunki Road crossing, the Board finds that the potential for crossing delays specifically caused by rail service to the Facility via the Branchline does not rise to the level of forcing a “significant” change or one that would “significantly” increase the costs of Mr. Seely’s mint farming. This is because there is evidence that the additional train crossings can be managed to reduce the potential crossing times so that they will not have “an important influence or effect” on the Seely farm.<sup>21</sup>

Considering the above, the Board concludes that the Application will not force a significant change in, or significantly increase the costs of, accepted farm practices with respect to farm field access or increased traffic at the Kallunki Rail crossing, provided the Applicant adheres to the following conditions of approval:

“(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.”<sup>22</sup>

“(19) The Applicant shall implement the following rail mitigation measures as recommended in paragraph 10 of the memorandum prepared by Brian Heikkila of Crosstown Consulting, dated Jan. 23, 2024 (the “Crosstown Memo”), which proposes mitigation measures that shall be effective between June 1 and October 31 of each year:

- a. Provide Portland & Western Railroad (“P&W”) crews and NEXT employees conducting rail operations with a standard operating procedure (SOP) for the proper handling of inbound and outbound trains with an emphasis on safety and the importance of keeping crossing occupancy times to a minimum.

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<sup>20</sup> While the Board does agree that significant delays in trips to and from a field during harvest could adversely impact the mint, the Board does not find credible Mr. Seely’s assertion that *any* crossing delay (i.e. of a few seconds or just a few minutes) is likely to “have an important influence or effect on the farm,” because Mr. Seely identified one example of a 45-minute delay as being problematic. Vehicle trips of any length, including harvest trips, can be delayed for a limited time for any number reasons, such as traffic control measures and even the speed of the vehicle used. Given the rail services already present at Port Westward and Mr. Seely’s testimony, the Board finds that it is reasonable to conclude that some existing crossing delays are already present and that Seely Mint is currently capable of operating in and around Port Westward when these crossing delays are minimal.

<sup>21</sup> *Stop the Dump Coalition*, 364 Or at 459.

<sup>22</sup> This condition was imposed as part of DR 21-03 and still applies to construction of the Facility.

- b. Establish and maintain consistent communications between P&W and NEXT that include timely (24 hour) advance notice concerning inbound and outbound train movements, with estimated times of arrival and departure at the facility and train details via email or fax (i.e. number and types of cars, commodities and load/empty status).
- c. In advance of a train's arrival, NEXT should ensure all necessary tracks are clear to receive inbound traffic and all associated track switches within the facility are properly lined to allow continuous inbound movement during the delivery.
- d. To expedite outbound train departures, NEXT employees should ensure outbound cars are assembled and ready for pickup with loading and unloading mechanisms disconnected and all NEXT employees safely in the clear with the P&W crew ensuring all affected switches and derails are properly aligned to facilitate a continuous outbound departure from the facility without stopping on the crossings.
- e. Provide NEXT employees involved in the rail operations with a portable radio to allow communication with P&W crews servicing the facility.
- f. Provide a utility vehicle or crew taxi to expedite the P&W conductor's ground duties when delivering and securing inbound trains and while preparing, inspecting, and testing outbound train prior to departure.
- g. Identify a contact person(s) and/or position(s) at the P&W and NEXT for area law enforcement, emergency responders and area farmers and or other interested parties to reach with concerns, complaints or requests involving rail operations and include such information for community access through a posting on a NEXT website for the Port Westward facility.
- h. P&W shall post a crew member at the Kallunki Rd. crossing while servicing the NEXT facility to flag motor vehicle traffic, and communicate with the engineer should it become necessary to separate the train to clear the crossing in the event of an unforeseen delay (typically for blockages in excess of 10 minutes or in case of emergency).

- i. During critical times while the mint harvest is underway, the Applicant shall request that P&W issue a "Form B Track Bulletin" as provided for in the Railroad General Code of Operating Rules ("GCOR") at the farmer's request, that would place a railroad foreman in charge at the Kallunki Road crossing during the dates and times of said bulletin to stop and hold trains approaching the crossing from either direction as necessary to allow harvest vehicles traveling between the field and nearby distillery to do so without delay (See GCOR Rule 15.2)."

Based on the testimony in record, the Board interprets Condition 19 to require, consistent with Mr. Heikkila's recommendations<sup>23</sup> that the Applicant must specifically manage outbound train traffic consistent with Mr. Heikkila's observation that trains could be split apart, as needed, to reduce crossing times.

**3. There is no evidence that the Application will create adverse impacts to surface water irrigation or drainage that would significantly impact farms near Port Westward.**

Based on written testimony submitted by Warren Seely and an identical letter from the BDIC board of directors, the BDIC operates and maintains drainage and irrigation works. The Application does not propose relocation of any existing BDIC drainage ditch,<sup>24</sup> but does propose one new 36-inch culvert to allow for crossing of a single north-south drainage ditch, which culvert is intended to "maintain existing drainage."<sup>25</sup> According to a Post-Construction Stormwater Management Plan (the "SWMP") prepared by Maul Foster & Alongi ("MFA"), surface drainage from the Branchline would be collected and conveyed to new detention pond proposed within the Branchline project area. The collection area for this system is noted as "Area 3" in the SWMP and consists of approximately 0.8 acres.

Except for the BDIC's testimony that the proper size for the culvert should be 48 inches rather than 36 inches, no person offered clear testimony that the BDIC's irrigation services, if any, would be adversely impacted by the Branchline specifically. Rather, testimony by the

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<sup>23</sup> Specifically, the proposed mitigation measure suggesting that the Applicant "Provide P&W crews and NEXT employees conducting rail operations with a standard operating procedure (SOP) for the proper handling of inbound and outbound trains with an emphasis on safety and the importance of keeping crossing occupancy times to a minimum."

<sup>24</sup> Note that one small waterway, noted as "Waterway E," is located within the RIPD zone and must be filled to accommodate construction of the Facility. This was part of the original Site Design Review approval and is not proposed to be changed. This waterway will not be impacted by the rail branchline and is therefore outside of the reasonable scope of the "farm impacts test."

<sup>25</sup> CUP Application Exhibit 3, sheet 2.7.

BDIC, Riverkeeper, and Mr. James Hoffman centered on the capacity of the BDIC to continue to provide drainage services to the district in view of the much larger development of the Facility and associated rail improvements within the BDIC. In this regard, Riverkeeper argued that the Applicant has failed to “provide a detailed analysis of impacts to the Beaver Drainage District, or those who use the BDIC system for drainage and irrigation.” For the following reasons, the Board finds that the above argument and evidence submitted by the BDIC does not require denial of the Application or the imposition of additional conditions.

As an initial matter, Riverkeeper’s argument misconstrues the farm impacts test required by ORS 215.296 and CCZO 307.1. Drainage districts are not farms, nor do the services provided by drainage districts constitute an “accepted farm practice” as defined in ORS 215.203(c).<sup>26</sup> While it may serve farms, a drainage district or drainage company is not itself a farming activity intended to obtain a profit in money. Therefore, impacts to the BDIC from the Branchline are not directly cognizable under the farm impacts test.

Even assuming that BDIC’s operations constitute an accepted farm practice, the Board finds that the Branchline will neither force a significant change nor significantly increase the costs of BDIC’s operations or those of the farms that it serves. As noted above, testimony concerning BDIC’s operations largely concerned the renewable diesel Facility and no party asserted that the Branchline itself *would* have an adverse impact on BDIC’s operations.<sup>27</sup> Evidence submitted by opponents primarily consisted of speculation that the project as a whole would adversely impact drainage patterns within BDIC’s service area, that the Applicant should install larger culverts, and that BDIC has regulatory authority over any changes to the drainage ditches over which BDIC holds an easement.

As noted above, the Application does not propose relocation of an existing BDIC drainage ditch within the site area and the sizing of the single culvert associated with the Branchline is intended to “maintain existing drainage.” The SWMP explains that the proposed stormwater system is designed to meet the “Slopes V” regulations of the US National Marine Fisheries Service, which among other things requires the Applicant to design a water pre-treatment system designed “to accept and fully treat the volume of water equal to 50% of the cumulative rainfall from the 2-year, 24-hour storm event.” Slopes V also requires the SWMP to:

“– Maintain natural drainage patterns.

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<sup>26</sup> ORS 215.203(c) defines an “accepted farm practice” as “a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.” Emphasis added.

<sup>27</sup> Riverkeeper’s argument in its Jan. 10 letter was that the Applicant failed to adequately analyze the impact of the branchline on BDIC’s operations. BDIC’s arguments concerned the Site Design Review Modification, and particularly the “rail yard, gravel road, fencing, and buffers.”



- To the maximum extent feasible, ensure that water quality treatment for contributing impervious area runoff is completed before commingling with off-site runoff for conveyance.
- Prevent erosion of the flow path from the project to the receiving water and, if necessary, provide a discharge facility made entirely of manufactured elements (e.g., pipes, ditches, discharge facility protection) that extends at least to ordinary high water (OHW)."

The SWMP is based on a hydrologic model that explains the design requirements necessary to meet the SLOPES V standards. The SWMP explains that the runoff from the Branchline "will sheet flow to a catch basin and will then be conveyed via gravity flow to Pond 4 located in the southwest portion of Drainage Area 3 adjacent to the existing Waterway F."<sup>28</sup> The SWMP includes detailed information on the location, sizing, and function of Pond 4. All proposed detention ponds "will treat flows that include and significantly exceed the SLOPES water quality design flow."

While not couched in terms of a farm impact, the BDIC took issue with the Applicant's stormwater management design, arguing that "lived experience" shows that the Applicant's design will not be sufficient to manage stormwater.<sup>29</sup> The BDIC also raised concerns about the stormwater pond design and infiltration rates, proposed sediment fencing, the proposed tree buffer in the RIPD zone, proposed fencing, and the "gravel road."<sup>30</sup> With regard to culvert size, the BDIC argued that proposed 36-inch culverts should be enlarged to 48 inches, and that "the BDIC reserves the right to require field fit modification to ensure all culverts are placed at correct depth to prevent flow restriction."<sup>31</sup>

In response to arguments raised by BDIC concerning its drainage system, the Applicant provided a January 24, 2024 technical memorandum from MFA responding to each of BDIC's arguments. Among other things, MFA explained as follows:

"[T]he conveyance structures were sized using an accepted hydrologic model and available survey data. Based on the results of this modeling, the 36"

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<sup>28</sup> SWMP at 10.

<sup>29</sup> A number of project opponents argued that Warren Seely (who presumably drafted both the BDIC Board testimony and his own, as the testimony is identical) should be considered as an expert as to the particular activities undertaken by the BDIC. The Board has considered each issue raised by the BDIC and Mr. Seely, as well as the derivative arguments of Riverkeeper based on the evidentiary weight in the record. The Board appreciates Mr. Seely's long history of working with the BDIC and farming land that the BDIC services, and weighs such testimony in that light. On issues of engineering, the Board accords more weight to engineering analyses that were performed by credentialed professionals.

<sup>30</sup> These latter three features are not proposed within the PA-80 zone, and therefore need not be considered as part of the farm impacts test.<sup>30</sup>

<sup>31</sup> BIDC pre-hearing letter (undated).

diameter culverts were determined to be adequate to convey the design storm, consistent with the relevant design guidance. If, during final design, additional information indicates that these conveyance structures are insufficient, larger culverts may be proposed.”

“Following substantial completion of construction and termination of the Construction Stormwater Discharge Permit No. 1200-C, NEXT Renewables will remove the sediment fencing, ensuring access to the waterways for maintenance.”

“Installation of the proposed tree buffer is a County requirement for development of the project site. Routine maintenance of the tree buffer will reduce the likelihood of debris and blockages in the adjacent waterways. The waterways will remain accessible for maintenance from the south. NEXT Renewables will coordinate with the BDIC to ensure ongoing access to the waterways from the north, as needed.”

“No development is proposed south of the tree buffer along the boundaries of waterways G and F. These waterways will remain accessible for maintenance from the south. NEXT Renewables will coordinate with the BDIC to ensure ongoing access to the waterways from the north, as needed.”

“The proposed ponds were designed with a shallow depth to avoid the need for a liner and minimize groundwater intrusion into the ponds. If additional groundwater evaluations determine that groundwater intrusion will negatively impact the ponds or that the ponds will significantly alter the existing drainage conditions, including groundwater levels and surface water availability, modifications to the design may be made during the final design phase.”

The Board finds the SWMP and MFA’s testimony on this issue more credible because it was based on an engineering analyses by one or more registered professional engineers, addressing the existing drainage conditions and explaining how the stormwater system serving the Branchline—and indeed, the entire project—will be designed to control water quality and quantity without harming surrounding lands. This evidence also shows that the plan exceeds applicable water quality standards.

Although not required, in the alternative the Board considered whether the Branchline will so impact BDIC’s drainage system that it will “force a significant change” or “significantly increase the costs” of accepted farm practices on surrounding lands, by significantly impeding flows of BDIC’s system, by cutting off access to drainage facilities on PA-80 zoned lands, or by preventing maintenance of BDIC’s system. The Board finds that the Application does not eliminate any existing drainage ditches within the Branchline project area and that the proposed detention and treatment system serving the Branchline will adequately treat and control stormwater runoff to BDIC’s system. These findings are supported by the SWMP and MFA’s Jan. 24, 2024 memorandum. The

Board also finds that the Application's sole proposed modification to the existing drainage system, a new culvert and overflow discharge from Pond 4, does not prevent surrounding lands from draining to that system.

The Board also finds that BDIC's assertions that it has easement and regulatory authority over the drainage ditches affected by the Application is substantial evidence that it can obtain access to those ditches after construction, and the MFA memo is evidence that the Applicant will continue to allow access.

Finally, the Board considered BDIC's arguments that the Applicant will need to obtain BDIC's approval to install the proposed new culverts or connections to existing drainage ditches, according to the BDIC's easement rights and its bylaws and articles of incorporation. The Board need not adjudicate this issue. To the extent that BDIC has independent authority to grant or withhold permission for the Applicant to use ditches under its control, such authority is not relevant to the authority of the County to approve the Project as a land use matter. Just as the County need not decide issues governed in other regulatory programs or by other jurisdictions, the County is not required to evaluate BDIC's authority to allow or not allow modification of its drainage system. And, as that is governed by BDIC's easement rights, it is fundamentally a real estate matter that the County is not empowered to decide.<sup>32</sup>

In conclusion, and under the alternative assumption that impacts to BDIC's system are cognizable under the farm impacts test, the Board finds that the Branchline will not force a significant change or significantly increase the costs of any "accepted farm practices" carried on by BDIC, or surrounding farm practices due to impacts to BDIC's operations.

#### **4. The Board finds that the Application will not significantly impact surface or subsurface water irrigation capacity or quality.**

Riverkeeper, the BDIC, Warren Seely, Mike Seely, and James Hoffman raised concerns that the Facility will have adverse impacts on surface and/or subsurface irrigation water quality. Mr. Hoffman argued in particular that groundwater was not an available source of irrigation water. Riverkeeper, Mike and Warren Seely, and the BIDC speculated that the Facility (but not specifically the Branchline) could impact surface or groundwater conditions in the area, and BDIC and Warren Seely particularly raised speculative concerns about impacts to ground water

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<sup>32</sup> "Generally, a final and authoritative determination regarding the intent and scope of deeds, easements and similar real estate documents can be obtained only in circuit court, based on application of real estate law. *See Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 328, 334-35 (2017) (interpreting deeds under real estate law is a function within the particular competence of the circuit court, and is a function that local governments and LUBA, in the exercise of land use approval and review, should avoid if possible)." *McNichols v. City of Canby*, 80 Or LUBA 139, 146, *aff'd w/o op*, 297 Or App 582 (2019).

“north of the proposed project.”<sup>33</sup> No person argued that the Branchline would impact surface or groundwater quality or quantity to the extent that those impacts would force a significant change to or significantly increased the costs of accepted farm practices; such arguments related to the Facility itself and were apparently directed to CCZO 683.1.B.1, which is not among the criteria for this Application. Further, no person appeared to argue that the Branchline would actually cause a reduction in available irrigation water.

Assuming such arguments *were* directed at the farm impacts test, the Board does not find that they require denial of the Application or imposition of additional conditions. Rather, the Board concludes there is ample evidence in the record to demonstrate that neither the Branchline (as relevant to this Decision), nor the Facility, is likely to have significant adverse impacts on surrounding accepted farm practices as a result of stormwater runoff. The Board relies on the following evidence to support its conclusion:

- As explained in the findings above, the drainage capacity of BDIC’s system is not proposed to be altered by the Branchline. The SWMP explains that with regard to “drainage area 3” (the drainage area associated with the Branchline), the peak flow rates are anticipated to actually be less than pre-development conditions.<sup>34</sup>
- Stormwater runoff from the Branchline will be captured and conveyed to a detention pond before being discharged to a BDIC drainage ditch. In particular, the SWMP explains that drainage from the Branchline will be treated as follows:

“The catch basin will be equipped with an oil trapping outlet and sump to trap oil sheen and sediment in the sump. The vegetated pond will provide sedimentation and biofiltration. The catch basin will include a sump and oil trapping outlet to trap oil sheen and sediment in the sump. The pond outlet will be equipped with a downturned elbow to trap oil sheen and other floatables in the pond. Absorbent socks or booms will be used to remove sheen, if any, from the water surface in the pond.”<sup>35</sup>

As noted above, stormwater will be treated to remove any oils contamination before any stormwater discharges to the existing drainage ditches.

- Adequate spill control is proposed around all tanks containing oil and equipment pads.<sup>36</sup>
- The proposed stormwater ponds have been sized to adequately detain and treat all stormwater generated on the site and in so doing, will prevent groundwater

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<sup>33</sup> The Board notes that areas “north of the proposed project” are zoned RIPD, not PA-80.

<sup>34</sup> SWMP at 12.

<sup>35</sup> SWMP at 10.

<sup>36</sup> See Jan. 24 MFA memo at 3.

contamination.<sup>37</sup> In particular, MFA observed in its Jan. 24, 2024 Technical Memorandum as follows:

“The presence of high groundwater, as identified in the groundwater evaluation, is expected to limit the infiltration capacity of the site and the proposed stormwater facilities were designed with the assumption that infiltration is negligible. The proposed ponds were designed with a shallow depth to avoid the need for a liner and minimize groundwater intrusion into the ponds. If additional groundwater evaluations determine that groundwater intrusion will negatively impact the ponds or that the ponds will significantly alter the existing drainage conditions, including groundwater levels and surface water availability, modifications to the design may be made during the final design phase.”<sup>38</sup>

- GSI Water Solutions prepared a memorandum prepared by a Registered Geologist, dated Jan. 25, 2022, which describes the groundwater protective measures NEXT must take to comply with applicable state and federal water quality standards.

Finally, the Board notes that arguments raised by the Seelys and the BDIC (and the derivative arguments raised by Riverkeeper) were unspecific with regard to impacts on water levels, but strongly imply a concern that the water quality and quantity treatment proposed in the Application would provide inadequate flow control into ditches managed by the BDIC, due to fluctuations in ground water levels.<sup>39</sup> The Board finds that the SWMP takes low infiltration rates into account and the stormwater ponds serving the Facility and Branchline are designed in recognition of the concerns raised by opponents.<sup>40</sup> The Board finds that no evidence on the issue of surface water or groundwater quality or quantity was submitted that outweighs the analyses provided in the SWMP or MFA’s Jan. 24 Memorandum.<sup>41</sup>

**5. The Board finds that diesel emissions from the Applicant’s locomotives using the Branchline will not force a significant change or significantly increase the costs of accepted farm practices on surrounding lands.**

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<sup>37</sup> See Jan. 24 MFA Technical Memorandum at 4, MFA Post-Construction Stormwater Plan at 9.

<sup>38</sup> Jan. 24 MFA Technical Memorandum at 4.

<sup>39</sup> See, e.g., Warrant Seely’s Jan. 10, 2024 letter at 3 (and an identical letter submitted by the BDIC), which raises concerns that infiltration will be inadequate to treat or control stormwater. Arguments raised by Mike Seely and Riverkeeper are similar.

<sup>40</sup> See, e.g., SWMP at 1 (noting that infiltration is not a feasible discharge option for runoff).

<sup>41</sup> The Board does not weigh Riverkeeper’s arguments on this issue as having equal weight to the detailed engineering analyses submitted by the Applicant, because there is no evidence that Riverkeeper’s comments were informed by a qualified engineering professional. The Board finds that Riverkeepers’ arguments regarding the likelihood of spills from rail service to the Facility concern a railyard, not the proposed branchline, but in any case are not supported with evidence.

Mike Seely and Riverkeeper raised arguments that airborne particulate pollution from the Facility could harm mint crops, and particularly those grown organically. In response, the Applicant submitted a technical memorandum prepared by MFA dated Feb. 7, 2024, which analyzed the effect of rail emissions on nearby organic farms. This technical memorandum concludes that “the particulate emissions estimate from the trains servicing the Facility indicates that potential impacts from deposition to surrounding farmlands will be very low relative to the deposition standards set by the State of Oregon,” and that there will be no observable impact from train emissions on surrounding farmland.<sup>42</sup> This memorandum also pointed out that diesel particulate emissions are not a consideration for organic certification of crops. The Board concludes that the Feb. 7 MFA memorandum constitutes sufficient evidence that the potential fugitive emissions from rail traffic will not force a significant change or significantly increase the costs of accepted farm practices on surrounding lands.

**6. The Board finds that a reduction in the farmed PGE leasehold do not violate the farm impacts requirements of ORS 215.296 and CCZO 307.1.**

Evidence in the record demonstrates that Portland General Electric (“PGE”) holds a leasehold on property owned by the Port within the Port Westward Exception Zone, which property is zoned RIPD and which it has subleased to Seely Mint. Based on correspondence provided by the Applicant, PGE has exercised its rights to terminate a portion of the Seely Mint sublease within the RIPD zone. At least one person raised general arguments regarding PGE’s leasehold rights on a portion of the property. The Board finds that these arguments concern Port property that is leased to PGE located in the RIPD zone, and Board finds that evidence in the record demonstrates that the Port intends to allow the Applicant to use this portion of its property. No person argued that the Applicant did not have the authority of the De La Cruzes to construct the Branchline, which is located entirely on the De La Cruz property.

Finally, some opponents raised general arguments that the project as a whole (including the Facility) would displace farmland. As noted above, the only PA-80 zoned land proposed to be removed from production is owned by the De La Cruzes, which provided their consent to the Application. The Board finds that this argument was not specifically directed to the farm impacts test, but assuming it was, the Board rejects it because the displacement of the specific farmland proposed for a nonfarm use in EFU zones does not, in and of itself, require consideration under the farm impacts test.<sup>43</sup>

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<sup>42</sup> MFA Emissions Memo, at 4 (Feb. 7, 2024).

<sup>43</sup> *York v. Clackamas County*, 79 Or LUBA 278, 296-97 (2019) (rejecting an argument that non-farm or non-timber use of resource zones constitutes a significant change or significant cost increase for resources uses otherwise occurring on the land upon which the non-resource use is proposed to occur).

**7. The Board finds that speculative impacts of the project on levy certification do not force a significant change or significantly increase the costs of accepted farm practices on surroundings lands.**

The BDIC and a number of other project opponents raised concerns about the project on flood storage or the levy system on Port Westward. These arguments appeared to be directed at the project as a whole, including the Facility. BDIC argued that “increased rail and heavy truck traffic could have impacts on the levee crossing including increased subsidence,” and that “this could require a USACE section 408 review.” No person appeared to argue that the Branchline would itself have a significant impact on flood storage.

In response, the Applicant provided the following testimony in its final written argument:

“The issue of flood risk – as it relates to the Project – has been addressed in NEXT’s prior record submittals. To reiterate, CCZO 1104.2.A states that “[t]he special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled The Flood Insurance Study (FIS) for Columbia County, Oregon and Incorporated Areas, dated November 26, 2010, with accompanying Flood Insurance Rate Maps (FIRMs) hereby adopted by reference and declared to be a part of this ordinance.” NEXT submitted an updated FIRM during the second open record period, which shows this area as “Zone X” (Area with Reduced Flood Risk due to Levee).<sup>44</sup> This is in addition the same map scaled as a “FIRMette” already in the record. As this is the map adopted by the County as the basis for its Flood Hazard Overlay (the Flood Insurance Rate Study dated Nov. 26, 2010), the Property is not located within a Special Flood Hazard Area. CCZO 1104.2.A.”

The Board concurs with the Applicant. The County’s Flood Hazard Overlay (CCZO 1100, et. sec) applies to only those properties noted as “flood hazards” on FEMA’s Nov. 26, 2010 map. For this reason, the Applicant was not required as an initial matter to evaluate flood hazards as they might relate to accepted farm practices surrounding the Branchline. And, given that the Project is in an area that is protected from flood hazards by an existing levy system, the Board concludes that speculative impacts of the project on flood hazards within that protected area do not require further analysis of whether potential flood impacts will force a significant change or significantly increase the costs of accepted farm practices.

Arguments that increased rail traffic at the Kallunki Road crossing could adversely impact the levy upon which Kallunki Road is constructed are speculative, but regardless pertain to an existing public facility (Kallunki Road). Such arguments do not relate to ORS 215.296(1) or

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<sup>44</sup> Applicant’s Second Open Record Submittal (Feb. 7, 2024).

CCZO 307.1, and no person identified a criterion requiring the County to evaluate potential impacts to the levy system.

**C. 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.” CCZO 1503.5.E. With respect to the phrases “substantially limits” and “impairs,” the Board interprets this criterion to evaluate whether potential impacts of a project on surrounding uses will be adversely impacted such that carrying on those uses will be difficult, and finds that this criterion evaluates impacts that are more significant or dire than the farm impacts test in ORS 215.296 and CCZO 307.1. With respect to the character of the “surrounding area,” the Board compares the existing uses in the vicinity (not just those abutting or adjacent to the subject property) to those proposed in the Application.

Based on the evidence in the record the Board finds the “surrounding area” for purposes of the above criterion 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-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 PWRR.

In addition to farm uses, 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 Branchline. The Board adopts the Applicant’s statement of how the Application satisfies the above criterion:

“The new railroad 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, 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 railroad branchline will complement the RIPD zone by serving a proposed renewable diesel production facility immediately to the west.

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 private rail crossing will be installed to allow passage of farm equipment, see Exhibit 3, Sheets C2.7). The response to Section 307.1 provides further evidence that the proposed railroad 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 zoned for farm or forest use.

Train traffic on the railroad branchline will not lead to any appreciably higher level of dust than is currently present from the Portland & Western Railroad mainline which already traverses the area. Consequently, construction of the railroad branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The railroad tracks are constructed on a gravel bed that minimizes fire potential from any sparks that may be generated. The proposed branchline is also in the vicinity of PGE's existing transmission lines and associated maintenance road, which are subject to vegetation control to minimize conflict with electrical facilities. The rail line will also be next to stormwater ditches and a pond, which will further reduce fire potential. Construction of the railroad branchline will be near existing irrigation and drainage ditches, which will remain in place. As depicted on Sheet C2.7 of Exhibit 3, a culvert is proposed where the existing ditch will be crossed by the rail infrastructure. The proposed culvert will be designed and sized as part of final engineering drawings during the permitting phase of the project. Utilizing standard engineering practice, the design engineer will ensure that the cross-section and slope of the culvert provides adequate hydraulic capacity to convey water flows from their upstream contributing areas to their existing downstream channels. Accordingly, NEXT's proposed branchline will not negatively impact drainage and irrigation."

As already addressed in Section B.2, above (concerning CCZO 307.1.A and ORS 215.296), the Branchline will not force a significant change in farming practices. 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 Board finds that the 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 for the same reasons the Application satisfies ORS 215.296 and CCZO 307.1. The Board finds that the following conditions of approval will ensure compliance with CCZO 1503.5.E.

“(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. The plan shall be subject to County review and approval.”

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“(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.”

\* \* \*

“(11)(E) 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.”

“(12) The Applicant shall implement the rail mitigation measures recommended in paragraph 10 of the memorandum prepared by Brian Heikkila of Crosstown Consulting, dated Jan. 23, 2024 (the “Crosstown Memo”), which proposes mitigation measures that shall be effective between June 1 and October 31 of each year.”

Third, the area is already traversed by the PWRR mainline serving Port Westward Industrial Park. Therefore, the agricultural uses in the PA-80 area near the Branchline already co-exist with a railroad in close proximity.

Finally, the Board concludes that evidence in the record, including the SWMP, demonstrate that stormwater generated from the Branchline will be adequately detained and treated so as to prevent significant adverse impacts to BDIC’s drainage system. To ensure this, the Board imposes the following conditions of approval ensuring appropriate stormwater management, which assures that the Branchline will not substantially impair continued agricultural uses in the surrounding area:

“(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.

\* \* \*

“(8) 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.

“(9) 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 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. The Board also notes that no person argued otherwise prior to or during the public hearing.

**D. Response to other arguments raised by project opponents.**

The following are responses to arguments that were not directed to approval criteria. As noted above, the Board responds to each argument but in so doing does not concede that such arguments are relevant.

**1. Wetland fills and drainage ditch fills.**

The Applicant has obtained a removal/fill permit from the Oregon Department of State Land (DSL) (Removal/Fill Permit No. 63077-RF), which was submitted into the record. The entire project will involve the filling of approximately 104 acres of wetlands, and involve the creation and enhancement of 466 acres of wetlands. The proposed wetland mitigation area is shown in the DSL permit, as excerpted below:



Comments arguing that the Application will require relocation or fill of any existing drainage ditches appear to address the prior version of the Branchline, which was rejected by LUBA. The Application does not propose any fill or relocation of any existing ditches managed by the BDIC.

## **2. Railcar spill hazards.**

Opponents argued that railcars could leak and or spill and in so doing, cause an impact on water quality with the BDIC's boundaries. Riverkeeper, in particular, argued that the U.S. Environmental Protection Agency ("EPA") raised particular concerns in a 2021 EPA comment letter during the public comment on the Applicant's Clean Water Act Sec. 404 permit, under review by the USACE. This permit is sought by the Applicant to allow wetland fills already approved by DSL. In its letter, the EPA's concerns were targeted to wetland fills and the analysis necessary to demonstrate that the project represents the least environmentally damaging practicable alternative ("LEDPA"). Citing a blog post by the National Wildlife Federation concerning "oil train disasters," EPA's comment suggested that "the NEPA analysis include a robust analysis of rail accident risk."

The County's approval criteria do not specifically require waste and spill prevention measures because those are subject to extensive state and federal regulation. As explained in the Application Narrative and Staff Report, the proposal will be required to comply with all state and federal laws concerning Facility safety, including applicable rail transportation regulations.<sup>46</sup> Evidence in the record, including that discussed in the prior rail branchline findings, indicates that the Applicant will be required to 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. Further, Condition 16 of the unmodified and valid Facility approval (DR 21-03 and V 21-05) will require these plans as a condition of approval. To the extent that leaks occur at the Facility, the SWMP demonstrates that the Applicant considered the possibility of "leaks or spills of biodiesel, motor oil, gasoline, diesel, antifreeze, and hydraulic fluids from equipment and vehicles" and its proposed water quality facilities are designed to trap contaminants. There is neither evidence nor argument in the record that the application cannot satisfy CCZO 1503.G concerning hazardous conditions.

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<sup>46</sup> The Board imposes the following condition, as recommended by staff, which requires the Applicant to obtain all necessary permits:

"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."

Although the Board recognizes the EPA's concerns, as related by Riverkeeper, the Board does not find those concerns to be substantial evidence that the rail service is likely to cause a significant spill within the project area. EPA's sole evidence to support its comment was a blog post concerning "oil train disasters." The Application, however, does not propose the rail transport of petroleum-based oils. Further, EPA's concerns were not directed at the Branchline, but at the project as a whole, and concern an entirely different regulatory program (NEPA) from the County's conditional use process and criteria. The Board finds, as noted above, that in order to operate the Facility, EPA will be required to approve the Applicant's Spill Prevention Control and Countermeasure Plan.

No person clearly argued that the potential for spills within the Branchline would "force a significant change or significantly increase the costs" of surrounding farms uses, but even if someone had raised such an argument, the mere possibility of catastrophe is not a consideration of the farm impacts test. Rather, that test looks to see if the proposed use (and not the possibility casualty thereof) would significantly impact accepted farm or forest practices. The Board notes that Port Westward is already home to rail service and includes natural gas and diesel power plants, a petroleum tank farm and associated pipelines, and an ethanol plant. No person has argued that the existing potential for spills from trains servicing these facilities, if any, has forced any changes accepted farm practices.

### **3. Composition of feedstocks and volume of rail service.**

Riverkeeper argued that the Applicant's filings with the Securities and Exchange Commission demonstrate that initial feedstocks will be soybean oil and corn oil, and concludes that such feedstocks must be transported by rail. The Board reviewed page 106 of the SEC filing, as directed by Riverkeeper, and found no evidence that feedstocks will solely be provided via rail. Regardless of whether or not this is the case, DR 21-03 imposed a service limit for the Facility of 318 rail cars per week, which condition is still applicable and which is included in this Decision. The Board concludes that this condition is enforceable because, as explained above, the Board's Enforcement Ordinance applies to conditions of approval and enforcement can be initiated by citizen complaint. The Board does not find a plan of how a particular condition can be enforced is required in order to conclude that the condition is feasible to be enforced and feasible to be satisfied. Moreover, the Applicant has stated repeatedly that it does not require rail service in excess of 318 cars per week, and believes its maximum service will be 311 rail cars per week. The Board finds these representations credible because the Applicant has the incentive, in light of its limitation to 318 rail cars per week, to ask for a modification to that condition as part of DR 21-03 (MOD) if it believe more frequent rail service would be required, but it has not done so.

#### **4. Regulatory Compliance of NEXT in unrelated settings.**

A number of opponents argued that NEXT and specifically its CEO, Chris Efird, have a poor environmental track record in other projects. Such testimony does not relate to the approval criteria for the Application or the project as whole.

#### **5. Earthquake hazards and soil liquefaction.**

A number of opponents argued that the Application does not include sufficient evidence concerning groundwater and geotechnical conditions (including earthquakes) because the Geotechnical Report upon which the SWMP and GSI's groundwater protection measures was based upon (in part), was completed in 2001. The Board rejects such arguments, for two reasons. First, there is no approval criterion which specifically requires the Applicant to provide a new geotechnical report. Second, the Board concludes that the 2001 report, as well as other information enclosed in the SWMP, provides an adequate amount of information concerning the soils on the site, including infiltration rates and potential for liquefaction during an earthquake. There is no evidence that the geological or soils conditions have significantly changed since 2001. The GSI memorandum explains the measures the Applicant is to use to account for potential seismic hazards:

“To protect the facility against the potential of seismic activity, NEXT is required to install piles beneath the building foundations and large above ground storage tanks. NEXT contractors will use the Soilcrete method to install concrete piles, which is common in the Pacific Northwest and involves mechanically mixing wet soils with a dry cement binder using a drill that is equipped with a mixing tool. Neat cement will be used as the binder (Pers. Comm., 2021).”

The Board also finds that the Project will be subject to applicable structural codes adopted by the State of Oregon, which include seismic design requirements.<sup>47</sup>

Other opponents raised general concerns about liquefaction, earthquake risks, and risk from a high soil subsidence rate at the proposed Facility site. These arguments were not directed at an approval criterion. The Board concludes that the Application includes adequate information for a reasonable decision maker to conclude that the Project can be constructed safely.

#### **6. CCZO 220.01 neither requires, nor provides a basis for, denial of the Application.**

In its Jan. 24 letter, Columbia Riverkeeper states that “cultural artifacts were discovered” within Seely Farms’ leasehold area on October 2, 2023. The Applicant does not dispute this. Riverkeeper alleged that the Oregon State Historic Preservation Office (“SHPO”)

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<sup>47</sup> See County Ord. No. 84-6, requiring the County to apply “various uniform and specialty codes adopted by the State of Oregon.”

had “documented the discovery” of the cultural objects that were discovered on October 2, 2023, and further that SHPO had “recently noted that there will be an adverse effect to historic properties” (implying that SHPO has taken a position on the October 2 discovery).

The Applicant submitted a letter dated Feb. 7, 2024, which disputed the claim that SHPO had taken any position on the recently-discovered artifacts. The Applicant’s February 7 letter demonstrated that SHPO’s letter that Riverkeeper referenced in its Jan. 24 letter is part of the routine consultation process under Section 106 of the National Historic Preservation Act (“NHPA”) associated with NEXT’s application—to the US Army Corps of Engineers for federal Clean Water Act Section 404 permit— to determine the project’s impacts on historic and potentially eligible historic properties. This consultation process began before the discovery of artifacts within the Seely leasehold area. As explained in the Applicant’s Feb. 7 letter, the only potentially-historic property that NEXT’s project has been determined likely to impact, and the only historic or potentially historic property discussed in the SHPO letter, is the Beaver Drainage District Ditches.

For the above reasons, the Board rejects Riverkeeper’s arguments that the artifacts discovered on Oct. 2, 2023, have been reviewed for significance by SHPO.

Riverkeeper also argued that CCZO 220.1 requires the Application to be denied or otherwise delayed. CCZO 220.1 provides that all “archaeological sites known or discovered” shall be “inventoried for their archaeological significance in accordance with standards set by the State Archaeologist.” CCZO 220.1. An “archaeological site” must include multiple archaeological objects that are contextually associated with other objects or other remains. ORS 358.905(1)(c)(A). If a “conflicting use is proposed for an area containing an archaeological sit[e],” the Planning Commission is to hold a public hearing to review testimony regarding the site and to “establish measures to mitigate potential conflicts as necessary.” CCZO 220.1. CCZO 220.1 does not require or even authorize the Board to deny the Applications, for several reasons.

First, as a matter of plain language, CCZO 220.1 in no way suggests that a pending land use decision cannot be approved until after a conflicting use determination is made. Notably, that section omits any requirement that an authorization for a “conflicting use” be delayed or prohibited until mitigation measures have been identified. *See* ORS 174.010.2 It also omits any specific timing requirement for holding the public hearing to consider any archaeological site in relation to the timing of a proposed conflicting use.

Under Statewide Planning Goal 5, the County may (but is not required to) inventory and protect historic resources not yet listed on the National Register of Historic Places. OAR 660-023-0200(2)(a). The County has a list of protected historic and cultural sites but County staff found that none were located within the Project site. As the Applicant pointed out, historic resources that may warrant protection but are not yet inventoried in local government plans do



not enjoy the protections afforded inventoried resources and do not require denial of a potentially-conflicting use. ORS 215.416(8); ORS 215.427(3)(a). Given that the phrase “conflicting use” is largely a term of art concerning Goal 5 resources (see OAR 660-023-0010(1) (defining the same), the Board agrees with the Applicant that the proper interpretation of CCZO 220.1 is that it is a mechanism for updating the County’s inventory of historic and cultural resources when those resources are discovered. Similarly, NEXT’s proposed rail improvements does not constitute a “conflicting use” in regards to the discovered cultural objects because a “conflicting use” pertains specifically to a proposed activity that could adversely affect a Statewide Planning Goal 5 resource identified on a comprehensive plan.

Second and as discussed in more detail below, the discovery of one or more archaeological objects does not alone constitute an “archaeological site” under Oregon law (ORS 358.905(1)(c)(A)). There is no indication that the project area contains an archaeological site that has been inventoried for its archaeological significance by SHPO. Accordingly, the artifacts discovered on October 2 have not been deemed to be part of an “archaeological site” for purposes of CCZO 220.1. Thus, there is no evidence in the record that the NEXT’s proposed activities would constitute a “conflicting use” requiring a public hearing to establish mitigation measures.

For the above reasons, the Board finds that CCZO 220.1 does not require denial of the Application. In order to ensure that any inadvertent discoveries are reported and protected, the Board imposes the following condition of approval:

(20) During construction, the Applicant shall maintain an inadvertent discovery plan (“IDP”) to address any archaeological discovery consistent with the Oregon State Parks and Recreation Department Historic Preservation Office’s IDP template.

**7. The Applications were correctly processed concurrently but may be decided separately.**

At least one opponent argued that “the various rail proposals SHOULD NOT be considered separately, but rather together.” The Board interprets this argument as an objection to the processing of the Applications concurrently, rather than as a single application. The Board rejects this argument because the application required to modify the rail location within the RIPD zone (a site design review modification) is fundamentally different, and affects different property than a conditional use application for rail with a PA-80 zone. There is no provision of the CCZO that requires all land use permits for a single project to be merged into a single application. Nevertheless, these two applications were processed concurrently as allowed by ORS 215.416.

**V. CONCLUSION**

Based upon the evidence in the whole record and the documents incorporated herein, the Commissioners finds that the Application meets all applicable criteria and should be APPROVED on that basis.

**MACKENZIE.**

**CONDITIONAL USE  
PERMIT FOR A  
RAILROAD  
BRANCHLINE**

**To**  
Columbia County

**For**  
NEXT Renewable Fuels, Inc.

**Dated**  
June 16, 2023

**Project Number**  
2200315.00



MACKENZIE  
Since 1960

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1. Conditional Use Permit Application Form and Owner Authorization Letters
2. Vicinity Map and Zoning Map
3. Plans
4. Flood Insurance Rate Map 41009C0050D, November 26, 2010 (annotated)
5. Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
6. Clatskanie-Quincy CPAC Wildlife Game Habitat map, Beak Consultants Inc., June 1995 (annotated)
7. Clatskanie-Quincy CPAC Wetland and Hydric Soils map, Beak Consultants Inc., June 1995 (annotated)
8. Stream Data Map
9. Excerpt from Lakes of Oregon, Volume 1, Clatsop, Columbia, and Tillamook Counties, U.S. Geological Survey, 1973
10. Statewide Wetland Inventory (annotated)
11. Wetland Delineation Report
12. Oregon Department of State Lands Approval of Wetland Delineation
13. Wetland Memorandum from Anderson Perry & Associates, Inc., December 8, 2021
14. Oregon Department of State Lands Correspondence, December 15, 2021
15. Columbia Soil and Water Conservation Correspondence, January 5, 2022
16. Oregon Department of Fish and Wildlife Correspondence, January 18, 2022
17. Oregon State Register of Natural Heritage Resources
18. Preliminary Stormwater Report
19. Pipeline and Water Intake Map
20. Letter from Portland & Western Railroad, November 19, 2021
21. Field Access Map

**I. PROJECT SUMMARY**

**Applicant:** NEXT Renewable Fuels, Inc.  
Attn: Gene Cotten  
11767 Katy Freeway, Suite 705  
Houston, TX 77079  
gene@nextrenewables.com  
(661) 201-2653

**Owners:** Port of Columbia County (tax lot 8423-B0-00700)  
PO Box 190  
Columbia City, OR 97018  
(503) 397-2888

Felipe and Bobby De La Cruz (tax lot 8423-B0-00800)  
80393 Kallunki Road  
Clatskanie, OR 97016

**Contact Person:** Mackenzie  
Attn: Brian Varricchione  
1515 SE Water Avenue, Suite 100  
Portland, OR 97214  
(503) 224-9560  
bvaricchione@mcknze.com

**Site Address:** 81009 Kallunki Road  
Clatskanie, Oregon

**Columbia County Tax Lots:** Map 8-4-23-B0, Tax Lots 700 and 800

**Site Area:** The proposed railroad branchline corridor is approximately 1.7 acres

**Comprehensive Plan:** Agriculture

**Zoning:** Primary Agriculture Use Zone - 80 (PA-80)

**Adjacent Zoning:** PA-80 to the north, east, and south  
Resource Industrial – Planned Development (RIPD) to the west

**Request:** Conditional Use Permit for railroad branchline between Portland & Western Railroad and the renewable diesel production facility approved by DR 21-03

## II. INTRODUCTION

### Description of Request

The applicant, NEXT Renewable Fuels, Inc., requests a Conditional Use Permit for a proposed railroad branchline intended to serve a renewable diesel production facility at the Port Westward Industrial Park (Port Westward) north of Clatskanie. The renewable diesel production facility was approved by the County Board of Commissioners as a “Use Permitted under Prescribed Conditions” in the Resource Industrial – Planned Development (RIPD) zone as part of Site Design Review DR 21-03 and Variance 21-05.

In March 2022, the County Board of Commissioners also approved a Conditional Use Permit (CU 21-04) for a railroad branchline within the Primary Agriculture (PA-80) zone. That approval was reversed by the Oregon Land Use Board of Appeals (LUBA). The applicant is therefore proposing a new application, which includes changes in the size and location of the proposed railroad branchline to comport with LUBA’s ruling. To that end, the application proposes a limited rail connection between the renewable diesel production facility and the existing Portland & Western Railroad Tracks.

This application package includes plans, drawings, and additional documentation in support of the proposed Conditional Use Permit, together with this narrative, which provides responses based on the remaining railroad branchline segment within the PA-80 zone (a single track east of the renewable diesel production facility).

### Existing Site and Surrounding Land Use

For the purposes of this application, the “site” is defined as the portion of a proposed railroad branchline corridor in the Primary Agriculture Use Zone - 80 (PA-80) extending from an existing rail line to the east, designed to serve the approved renewable diesel production facility. The site, located immediately east of the Port Westward Industrial Park (Port Westward), consists of portions of two (2) parcels: one owned by the Port of Columbia County (the Port) and one owned by Felipe and Bobby De La Cruz. The combined area of these two (2) parcels is approximately 16 acres, though the proposed rail corridor is much smaller, at approximately 1.7 acres.

Figure 1 is an aerial photograph illustrating the project area.

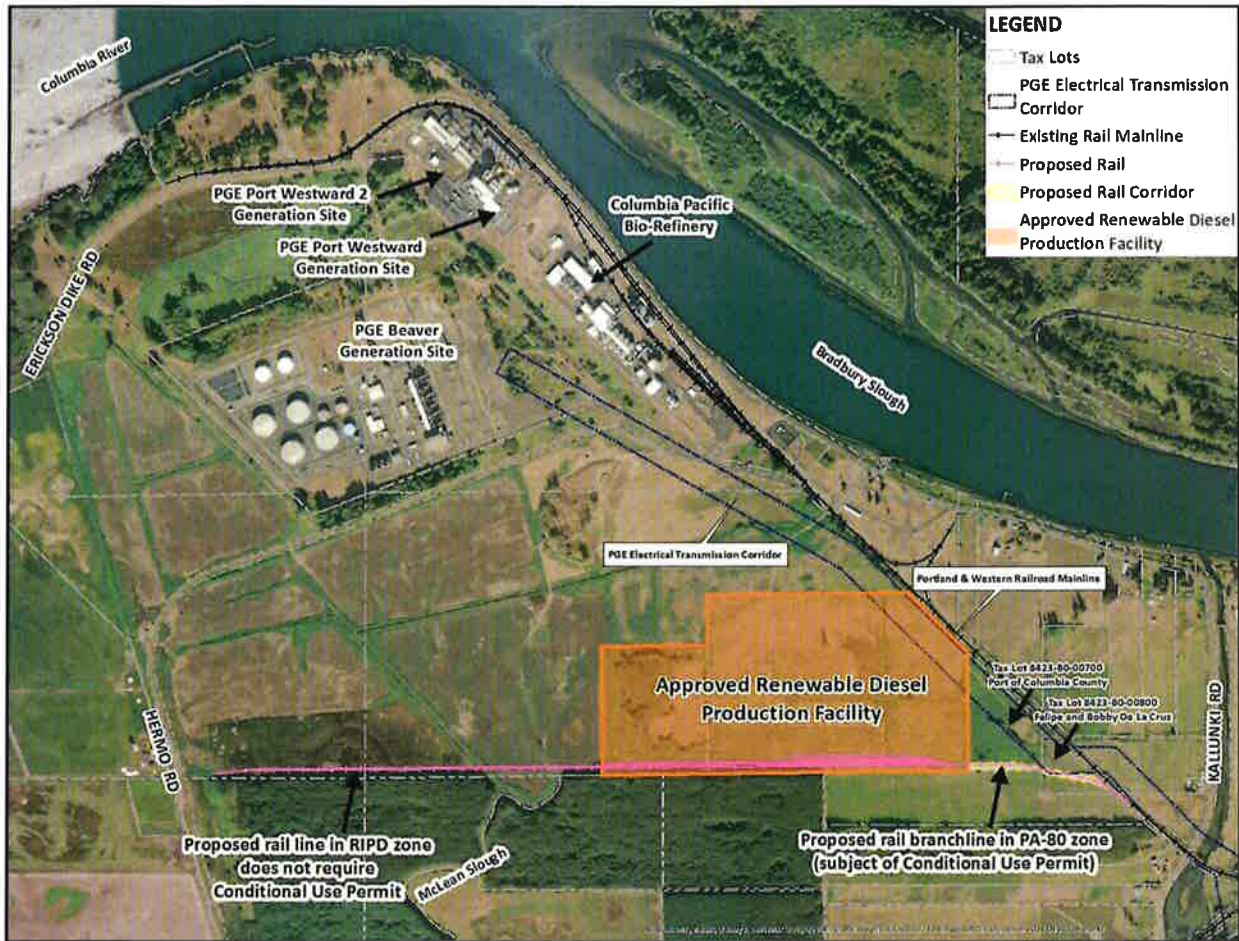


Figure 1: Aerial Photo

The site is designated “Agriculture” in the Columbia County Comprehensive Plan and is zoned PA-80. The site is not currently developed with structures, though a portion of it is in agricultural use (hay/grassland). Non-significant wetlands are present over the whole site.<sup>1</sup> The Port-owned parcel (tax lot 8423-BO-00700) is currently the subject of a separate zone change application from PA-80 to Resource Industrial - Planned Development (RIPD); however, this conditional use permit application is being submitted based on the current PA-80 zoning.

The surrounding area is zoned PA-80 to the north, east, and south, and RIPD to the west. Existing abutting land uses are agricultural in all directions, with the exception of the Portland & Western Railroad mainline immediately to the east. Existing industrial uses are located to the northwest within the Port Westward Industrial Park.

Nearby portions of Port Westward have been developed with Portland General Electric (PGE) power generation facilities, the Columbia Pacific Bio-Refinery, the Clatskanie People’s Utility District electrical

<sup>1</sup> As explained in more detail in the responses to Sections 1170 and 1180, the County Board of Commissioners concluded that these wetlands were non-significant and therefore not protected by the County’s Goal 5 program. This determination was not appealed to LUBA. See County Final Order 12-2022.



substation, roadways, rail lines, utilities, drainage facilities, levees, pipelines, a water tower, and electrical transmission lines. The entirety of Port Westward is within the Clatskanie Rural Fire Protection District.

The site is protected from flooding by dikes and associated stormwater conveyance and pumps within the Beaver Drainage Improvement Company district. According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map 41009C0050D, dated November 26, 2010, as the dike system has been provisionally accredited by FEMA, the site is in shaded Zone X, which is defined as being outside the Special Flood Hazard Area regulated by Columbia County. See Exhibit 4.

## Proposed Development

The project proposed in this application includes the construction of a railroad branchline connecting to Portland & Western's rail line to the east. The size of the proposed railroad branchline (within the PA-80 zone) consists of approximately 1,250 linear feet with an area of approximately 1.7 acres. The applicant is leasing the property, though in the future that may change to either an outright purchase or conversion to an easement.

This branchline will be accessory to and serve a renewable diesel production facility on the abutting property to the west, as approved by Site Design Review application DR 21-03. The railroad branchline will accommodate shipment of raw materials (e.g., clay) and potentially a small amount of finished product to and from the proposed renewable diesel production facility. Rail transport may amount to approximately 315 rail cars per week, on average. 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, so the facility is dependent on access to the dock and the river.<sup>2</sup>

Prior to construction, the applicant will seek any necessary approvals from Portland & Western Railroad (the provider of rail services and rail Owner, which provided the specifications for the branchline layout).

Consistent with the character of other rail lines, the proposed railroad branchline does not create a demand for new water, sanitary sewer, storm drainage, gas, or telecommunications facilities. The branchline may make use of new electrical utilities for switches and signals.

The proposed construction and use of the rail will result in temporary and permanent impacts to wetlands (Exhibit 3, Sheets C3.3 and C3.4 and Exhibit 11). When previously evaluating the site wetlands, the County Board of Commissioners concluded that the wetlands for the proposed renewable diesel production facility (which are addressed in the same wetland delineation and analysis as the wetlands within the proposed railroad branchline) do not meet the County's adopted definition of "significant" wetlands. This was confirmed by the County Board of Commissioners in Final Order 12-2022 for DR 21-03 and V 21-05:

*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).*

---

<sup>2</sup> Port Westward is home to a 1,500-foot dock on the Columbia River and is one of only five (5) public deepwater ports in the state of Oregon.

*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.*

The applicant is seeking approval from the U.S. Army Corps of Engineers for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. The applicant will perform approximately 488 acres of off-site wetland mitigation south of the site in accordance with Federal and State law.

### **Requested Land Use Approval**

The applicant is seeking approval from Columbia County Planning Commission for a Conditional Use Permit for the portion of the railroad branchline in the PA-80 zone. This application excludes all track within the RIPD Resource Industrial – Planned Development zone, which does not require a conditional use permit for rail.

### **Railroad Branchline**

While the majority of feedstock and finished product will be transported by ship, to provide redundancy, the applicant anticipates using rail to transport a portion of the feedstock to the renewable diesel production facility, as well as to transport clay and a portion of the finished product. The facility needs to provide sufficient track length to accommodate rail cars when the cars are being unloaded, loaded, or stored for the next shipment—without blocking the existing track to Port Westward Industrial Park. In coordination with Portland & Westward (“P&W”) Railroad, the proposed rail design will provide rail car transportation and storage capacity for 18,000 linear feet of track (most of which is not subject to this application as it is in the RIPD zone). As discussed above, the portion of the track on land zoned PA-80 (the subject of this Conditional Use permit application) is defined as the “site” for this application. Additional track is proposed on land zoned RIPD and that land is excluded from this application as a portion of that was approved by the separate application for Site Design Review (DR 21-03) and a portion is addressed by the pending application for a site design review modification application (DR 23-01 MOD).

As explained below, the proposed rail connection between the production facility and the Portland & Western Railroad is a “branchline” for purposes of OAR 660-012-0065.

The Application includes a branchline rail connection to the P&W line running through Port Westward. This branchline includes a single track. The connection between the Project and the existing P&W track runs across a small amount of PA-80-zoned land, then enters Port of Columbia County property zoned RIPD. See Figure 1 above and Figure 2 below.

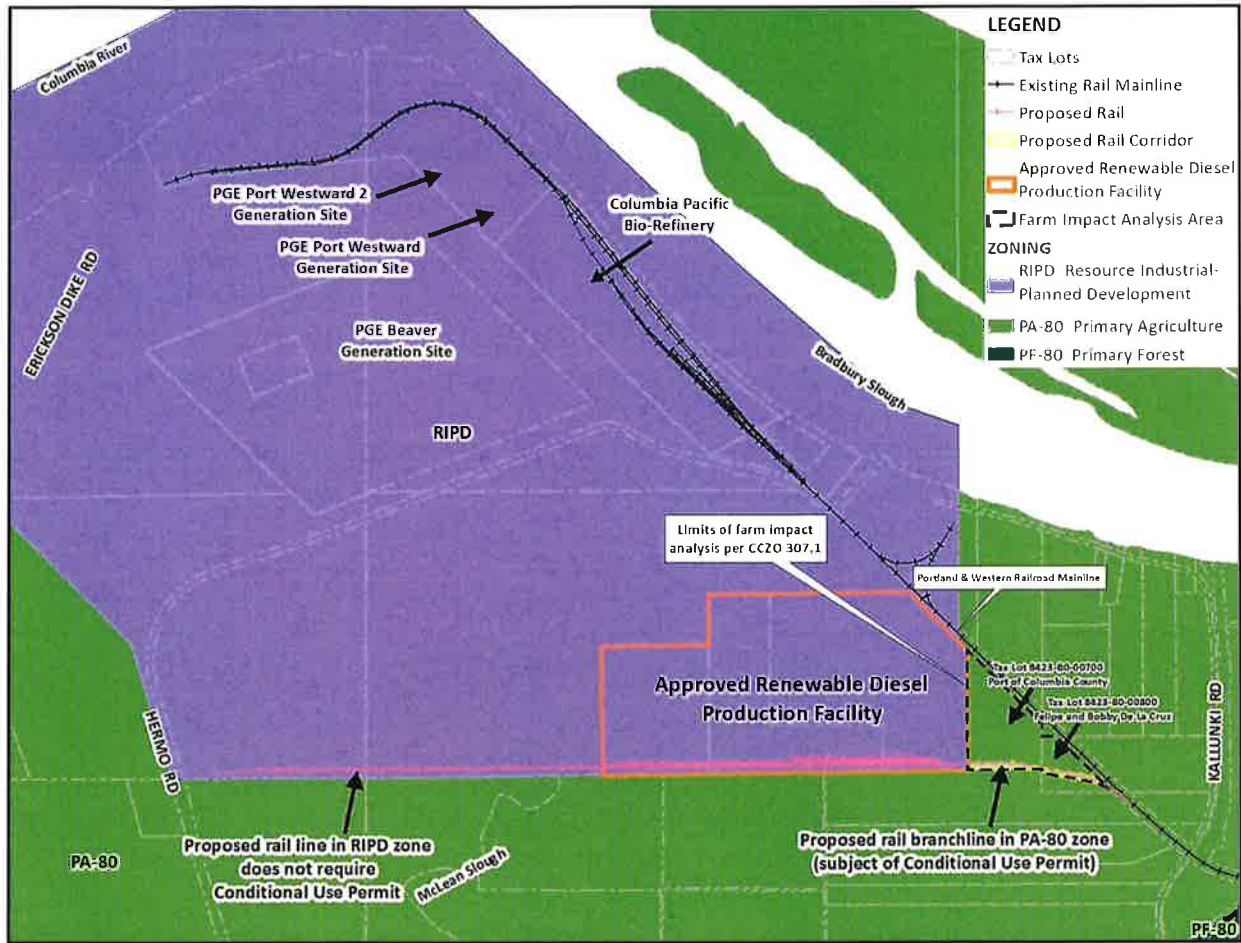


Figure 2: Area Zoning and Limits of Farm Impacts Analysis

Where this rail infrastructure crosses PA-80 zoned land, it is permissible under OAR 660-012-0065 “Transportation Improvement on Rural Lands,” which allows “(j) Railroad mainlines and branchlines” subject to the conditional use criteria in ORS 215.296.

According to P&W, the proposed rail improvements are, collectively, a “branch line”: “NEXT’s rail tracks will be considered industry track, which is another term for branch line or spur” (Exhibit 20). P&W goes on to explain:

*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.*

There are no definitions of “railroad mainlines” or “branchlines” in OAR chapter 660, and no definitions of these terms appear in the Oregon Revised Statutes. Most of the Oregon cases interpreting rail terminology are from the pre-war period but given the importance of rail transportation at that time, they are worth considering for guidance. The only case that appears to interpret these terms is *Union Pacific Railroad Company v. Anderson*, which described them as follows:

The 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. The court so stated in the O., C. & E. case, quoting dictionary definitions to that effect. It also quoted from 22 R.C.L. 744 the following:

*A 'trunk railway' is a commercial railway connecting towns, cities, counties or other points within the state or in different states, which has the legal capacity, under its charter or the general law, of constructing, purchasing and operating branch lines or feeders connecting with its main stem or trunk, the main or trunk line bearing the same relation to its branches that the trunk of a tree bears to its branches, or the main stream of a river to its tributaries.*

To the same effect is *Baltimore & Ohio R. Co. v. Waters*, 105 Md. 396, 66 Atl. 685, 12 L.R.A. (N.S.) 326, where the court said that a "lateral road" (which was treated as synonymous with a "branch line") was "nothing more nor less than an offshoot from the main line or stem", and approved the following definition from *State v. United New Jersey R. and Canal Co.*, 43 N.J.L. 110:

*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 Pacific Railroad Company v. Anderson*, 167 Or 687 (1941) at 711–712.

What is apparent in the above analysis is that a "main line" or "trunk line" can be analogized to a river or tree trunk while a "branchline" can be analogized to a tributary or branch. Further case law research did not reveal any definition of a "spur" line that suggests that a "spur" line is not within the broader category of "branchlines."

There is Oregon legal precedent demonstrating that the terms "spur" and "branchline" are synonymous. For example, the factual recitation by the Oregon Supreme Court in *Corvallis & A. A. R. Co. v. Portland, E. & E. Ry. Co.*, 84 Or 524 (1917) uses the two terms interchangeably:

*Plaintiff alleges in effect that on April 17, 1911, and for some time prior thereto, it owned and operated a railroad line from Corvallis to Monroe, and also owned certain railway equipment, rolling stock, real and personal property, rights of way, contracts, and franchises; that among the contracts was one made during the year 1909 between the plaintiff and the Corvallis Lumber Manufacturing Company, hereafter to be designated as the Lumber Company, by the terms of which plaintiff agreed to construct a branch line from its main track on or before May 15, 1910, extending into section 16, and also to extend that spur to a point within the boundary lines of the northwest quarter of section 20 on or before June 1, 1911, the Lumber Company to furnish logs from said timber for transportation to Corvallis over the branch line when constructed [...]. (Emphasis added.)*

The above passage illustrates two (2) concepts: first, there is no principled difference as far as the Court was concerned between the term "spur" and "branchline", and second, it demonstrates that a rail connection requested by a single company (in this case, the Corvallis Lumber Manufacturing Company) is still a "branchline" even though it serves a single use.

More recently, the Oregon Land Use Board of Appeals relied on a non-legislative 2001 ODOT Oregon Rail Plan to interpret the meaning of "branchline," as that term was enacted as part of OAR 660-012-0065 in 1995. In so doing, LUBA approved of ODOT's definitions of branchline as "a secondary line of a railway, typically stub-ended." *1000 Friends of Oregon v. Columbia County*, \_\_ OR LUBA \_\_ (LUBA No. 2022-039, slip op at 21–22, October 22, 2022). This definition does not differ in material respects from the definition

“branchline” in Union Pacific, quoted above. As the branchline in this instance consists of a single line between the track and facility and ends in stub, the proposed railroad branchline fits ODOT’s definition as well.

Based on the above, the County can find that the applicant’s proposed rail infrastructure is a branchline. Consequently, the County can find that NEXT’s proposed railroad connection is permissible on PA-80 land pursuant to OAR 660-012-0065. There is no express or implied basis in that rule to conclude that a railroad “branchline” serving a single proposed use is not allowable under that rule.

**III. NARRATIVE AND COMPLIANCE**

The following narrative addresses how the proposed application complies with the Columbia County Zoning Ordinance (CCZO) criteria. In the sections below, applicable approval standards from the CCZO are shown in *italics*, while responses are shown in a standard typeface.

The approval criteria for a Conditional Use Permit are set forth in CCZO 1503.5. Aside from responses to this section, responses to the remaining standards and criteria do not serve as a concession that they are applicable to the application; and in some cases, responses to non-applicable standards are provided for informational purposes.

**Article II – General Provisions**

**202 Districts**

*Columbia County is hereby divided into the following zones, in each of which the uses, height, and area regulations are uniform:*

<u>District Type</u>	<u>Short Title</u>	<u>Description</u>
<u>Resource Zones</u>		
<i>Primary Agriculture</i>	<i>PA-80</i>	<i>Agriculture district with a minimum lot or parcel size of 80 acres.</i>

[...]

Special Districts, Overlay Zones and Special Provisions

[...]

<i>Flood Hazard Overlay</i>	<i>FH</i>	<i>Flood Hazard</i>
<i>Sensitive Bird Habitat</i>	<i>SBH</i>	<i>Sensitive Bird Habitat</i>
<i>Historic Overlay</i>	<i>H</i>	<i>Historic Overlay</i>
<i>Riparian Corridors, Wetlands, Water Quality, Fish and Wildlife</i>	<i>RP</i>	<i>Riparian Areas, Wetlands, Water Quality, Fish and Wildlife</i>
<i>Wetland Area</i>	<i>WA</i>	<i>Wetlands</i>
<i>Natural Area</i>	<i>NA</i>	<i>Natural Habitats</i>
<i>Big Game Range</i>	<i>BGR</i>	<i>Big Game Habitat</i>

**Response:** The site is zoned PA-80. Portions of the site are also subject to the Wetland Area (WA) Overlay pursuant to Section 1180 (as discussed in the response to CCZO 1180, the wetlands at this site do not meet the County’s definition of significant wetlands so development is permitted within the WA Overlay). The site is not subject to other overlay zones (as discussed in the responses to Sections 1100, 1120, 1130, 1170, 1185, and 1190). This narrative and the accompanying materials demonstrate compliance with the applicable zoning and overlay zoning development regulations and approval criteria. This standard is met.

**Article III – Resource Districts**

**Section 300 Primary Agriculture Use Zone - 80 PA-80**

*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:*

**Key**

- HV *High-Value Farm Land*
- NHV *Other lands, not defined as High-Value Farm Land*
- P *Permitted*
- AR *Subject to administrative review and approval process described in Section 1601*
- CUP/PC *Subject to Planning Commission review and approval for Conditional Use described in Section 1503*
- NP *Use not permitted*

*Note: The CCZO Section Column below lists only subsections of authorization and specific criteria of this PA Zone. Other criteria of this ordinance may apply to a proposed use, including but not limited to site design review, conditional use permit review, special use standards, and overlay zoning.*

<b>TABLE OF AUTHORIZED USES &amp; DEVELOPMENT (EXCERPT)</b>			
<b>TRANSPORTATION</b>	<b>HV</b>	<b>NHV</b>	<b>PA-80 SECTION</b>
<i>Roads, highways and other transportation facilities, requiring an exception</i>	<i>CUP/PC</i>	<i>CUP/PC</i>	<i>306.9, 307, 308</i>

**Response:** The proposed railroad branchline (see further discussion in the “Railroad Branchline” section of the Introduction) 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.

**306 Conditional Uses**

*The following uses may be approved, subject to compliance with the procedures and criteria under Sections 307, 308, and 1503 Conditional Use Permit Hearing, the prescriptive standards specified herein, and other applicable state, federal and local regulations and permits:*

- .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.*

**Response:** As noted in the response to Section 303, the proposed railroad branchline is a transportation facility subject to Conditional Use Permit approval; however, this use does not require an Exception to Statewide Planning Goal 3 as the use is authorized by State statute under ORS 215.283, uses permitted in exclusive farm use zones in nonmarginal lands counties. 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 explain how the railroad branchline may be authorized by the County. The analysis required by ORS 215.296 is included in the response to Section 307.1, below. This standard is met.

### *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:*

**Response:** 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 utilizing the Supreme Court's definition that "A 'significant' change or increase in cost is one that will have an important influence or effect on the farm." This examination identifies the impact area associated with the branchline (which extends from the Portland & Western Railroad mainline to the proposed renewable diesel production facility). The analysis then characterizes existing agricultural practices in the impact area and demonstrates that the proposed railroad 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*

**Response:** As illustrated in Figure 3, the proposed railroad branchline crosses two (2) parcels: one owned by Felipe and Bobby De La Cruz (tax lot 8423-B0-00800) and one owned by the Port of Columbia County (tax lot 8423-B0-00700). As illustrated in Figure 3 and the zoning map in Exhibit 2, both parcels are zoned PA-80. Adjacent resource lands include property zoned PA-80 to the north, east, and south.

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. Since the proposed railroad branchline will isolate a triangle bounded by the rail mainline to the northeast, the proposed railroad branchline to the south, and the proposed renewable diesel production facility to the west (on land zoned RIPD), the impact area analyzed for this standard is limited to portions of the two (2) parcels that will be crossed by the railroad branchline.

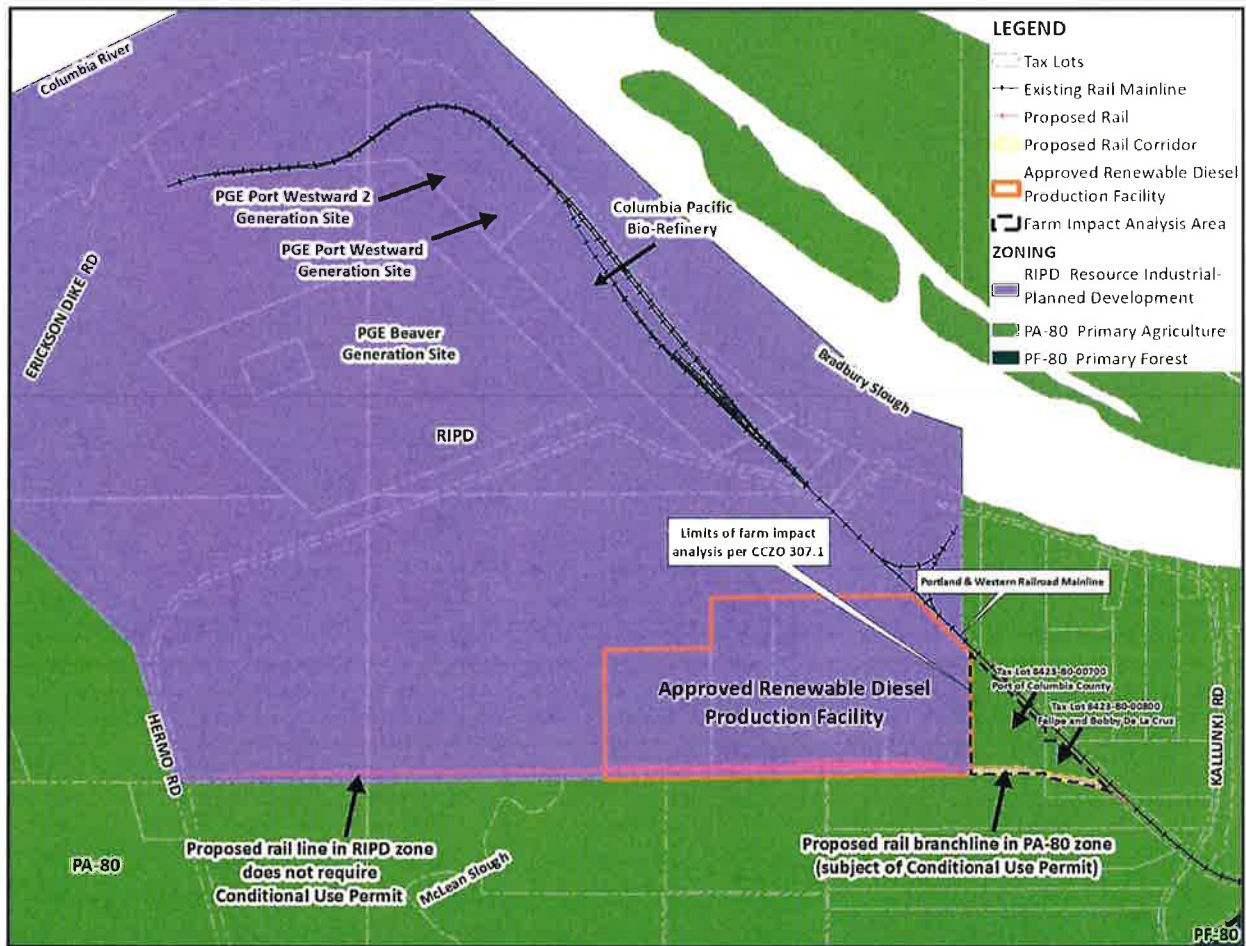


Figure 3: Area Zoning and Limits of Farm Impacts Analysis

The analysis area for the branchline totals 14.1 acres. There are no nearby lands devoted to forest use, but there are agricultural lands. Aerial photography and the Cropland Data Layer<sup>3</sup> indicates that the northern tip of the De La Cruz parcel is wetland. The wetland delineation report (Exhibit 11) depicts the railroad branchline as a wetland, but the report did not analyze the remainder of the impact area.<sup>4</sup> The central portion of the De La Cruz parcel (within and north of the proposed railroad branchline corridor) is used for hay/grassland; similarly, the single Port parcel west of the De La Cruz parcel contains wetlands and is used for hay/grassland 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 railroad branchline could cause minor changes in access routes to fields (for instance, the branchline will cross an existing access route for the De La Cruz parcel) and changes in patterns of cultivation, seeding, fertilizing, and harvesting near the facility. The farming activities north of the proposed rail line could continue even with the construction of the railroad branchline since the applicant (as the Owner of the railroad branchline) proposes to provide a private rail crossing to allow passage of farm equipment (see Exhibit 3, Sheet C2.7). The risk of conflict between farm equipment and trains on the branchline is low because the trains will be infrequent and moving slowly as they accelerate and decelerate due to proximity to the end of the line.

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, the cumulative effect of these changes does not require farm operators to significantly change their practices. As depicted on the Field Access Map (Exhibit 21), no existing field access points are eliminated by the proposed branchline. There are sufficient rail crossings available to access the fields and the railroad branchline will not significantly change farming practices or cause substantial delays.

The railroad tracks are constructed on a gravel bed that minimizes fire potential from any sparks that may be generated. The proposed branchline is also in the vicinity of PGE's existing transmission lines and associated maintenance road, which are subject to vegetation control to minimize conflict with electrical facilities. The rail line will also be next to stormwater ditches and a pond, which will further reduce fire potential.

Construction of the railroad branchline will be near existing irrigation and drainage ditches, which will remain in place. As depicted on Sheet C2.7 of Exhibit 3, a culvert is proposed where the existing ditch will be crossed by the rail infrastructure. The proposed culvert will be designed and sized as part of final engineering drawings during the permitting phase of the project. Utilizing standard engineering practice, the design engineer will ensure that the cross-section and slope of the culvert provides adequate hydr

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<sup>3</sup> US Department of Agriculture, National Agricultural Statistics Service, Cropland Data Layer Program, available at <https://nassgeodata.gmu.edu/CropScape/>

<sup>4</sup> As explained in more detail in the responses to Sections 1170 and 1180, the County Board of Commissioners concluded that these wetlands were non-significant and therefore not protected by the County's Goal 5 program. This determination was not appealed to LUBA. See County Final Order 12-2022.

aulic capacity to convey water flows from their upstream contributing areas to their existing downstream channels. Accordingly, NEXT's proposed branchline will not negatively impact drainage and irrigation.

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.

Based on this information, the Commission can conclude that the proposed railroad branchline will not force a significant change in farm or forest practices within the 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.*

**Response:** As discussed in the response to criterion A, only two (2) parcels are within the impact areas that have the potential to be affected by the proposed railroad branchline. Again, as noted above, parcels within the impact areas contain wetlands, though portions have been used for grass/hay and mint in recent years. The 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.

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 railroad 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 railroad 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 railroad branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The railroad 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 railroad branchline (see Exhibit 3, Sheet C2.7).

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

- .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.*

**Response:** The applicant has provided evidence demonstrating that the proposed railroad branchline satisfies the criteria in Section 307.1 without requiring the imposition of additional conditions of approval. This standard does not apply.

- .3 *For all residential development approved under 305.1 through 305.13, the owner shall sign and record in the deed records a document binding on the landowner and any successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices normally allowed under law.*

**Response:** No residential development is proposed. This standard does not apply.

- .4 *Permit Expiration:*

- A. *For any discretionary decision under Sections 305 and 306, except as provided for in Subsection 307.5 below, if not within an urban growth area, the approval period for development is void two (2) years from the date of final decision if a development permit is not issued by Land Development Services;*
- B. *The Director may grant extensions of up to one year if the applicant requests an extension in writing prior to the approval period expiration and it is determined that the applicant was not able to begin or continue development during the approval period for reasons which the applicant was not responsible;*
- C. *Approval of an extension granted under this subsection is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision; and*
- D. *Additional one year extensions may be authorized where applicable criteria for the decision have not changed.*

**Response:** The applicant intends to construct the proposed railroad branchline within the permit expiration periods outlined above. This standard is met.

- .5 *For a proposed residential development decision under Subsections 305.1 through 305.13, if not within an urban growth boundary, the approval period shall be valid for four (4) years and an extension granted under B. above shall be valid for two (2) years.*

**Response:** No residential development is proposed. This standard does not apply.

### 308 Development Standards

- .1 *The minimum average lot width shall be 100 feet for all activities except farming and forestry.*

**Response:** The proposed railroad branchline will consist of a small leasehold or easement corridor through other parcels and will not be a standalone parcel that would need to be suitable for development. Excluding the area that would be devoted to rail use, the balance of each of the underlying parcels is much wider than 100 feet. This standard is met.

- .2 *The minimum average lot depth shall be 100 feet for all activities except farming and forestry.*

**Response:** The proposed railroad branchline will consist of a small leasehold or easement corridor through other parcels and will not be a standalone parcel that would need to be suitable for

development. Excluding the area that would be devoted to rail use, the balance of each of the underlying parcels is much deeper than 100 feet. This standard is met.

- .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.*

**Response:** No new lots or parcels are proposed. The railroad branchline is a transportation facility that does not merit public or private right-of-way access as it will instead accommodate movement of railcars from the Portland & Western Railroad mainline to the separately authorized renewable diesel production facility. This standard does not apply.

- .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.*
- B. *Setbacks in wetland areas shall be required in accordance with Sections 1170 and 1180 of the Columbia County Zoning Ordinance.*

**Response:** No new buildings or structures subject to setbacks are proposed. As discussed in the response to Sections 1170 and 1180, as the wetlands on site are not associated with streams, rivers, sloughs, or lakes, there is no protective riparian corridor boundary around the wetlands. As further discussed in the response to Section 1180, the wetlands on site are not deemed significant and are thus permitted by that section. The applicant is seeking approval from the U.S. Army Corps of Engineers for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. The applicant will perform approximately 488 acres of off-site wetland mitigation south of the site in accordance with Federal and State law. This standard is met.

- .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.*

**Response:** No new buildings or structures are proposed. This standard does not apply.

- .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.*

**Response:** No advertising signs are proposed. Signs pertaining to rail safety are not regulated by Section 1300. This standard does not apply.

- .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.*

**Response:** Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three (3) types of big game habitat. As depicted in Exhibit 6, 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 the County may choose to provide an opportunity for Oregon Department of Fish & Wildlife to comment on the application.

.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.*

**Response:** Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three (3) types of big game habitat. As depicted in Exhibit 6, 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 Section 1190, Big Game Habitat Overlay Zone.

## Article VI – Special Districts, Overlay Districts and Special Provisions

### ***Section 1100 Flood Hazard Overlay (FH)***

**Response:** The railroad branchline site is protected from flooding by dikes and associated stormwater conveyance and pumps within the Beaver Drainage Improvement Company 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 Exhibit 4. This map indicates that the site is in FEMA's shaded Zone X, corresponding to areas protected by levees from 1% annual chance flood. Therefore, the site is not in the Special Flood Hazard Area and is not subject to the standards of this Section.

### ***Section 1120 Sensitive Bird Habitat Overlay (SBH)***

**Response:** 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. The Port Westward area is not a listed area for Bald Eagle nests, Blue Heron rookeries, or Northern Spotted Owl nests. As illustrated in Exhibit 5, 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 (3) mineral spring areas identified as habitats for band-tailed pigeons, none of which include Port Westward. As illustrated in Exhibit 6, 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)***

**Response:** 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-of-bank, 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.*

**Response:** Based on the interpretation established by the County Board of Commissioners in Final Order 12-2022 for DR 21-03 and V 21-05, the site is not subject to CCZO Section 1170:

*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 Applicant has 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).*

The railroad branchline site does not contain or abut any lakes, rivers, or streams or traverse McLean Slough. Oregon Department of Forestry Stream Classification data do not identify any fish-bearing streams, lakes, or sloughs at the site (see Exhibit 8). Similarly, the "Lakes of Columbia County" map (attached as Exhibit 9) illustrates that there are no identified lakes in the vicinity of Port Westward.<sup>5</sup>

The proposed railroad branchline will be in the vicinity of existing ditches that are not streams, sloughs, or wetlands; the site-specific Wetland Delineation Report (Exhibit 11) identifies numerous non-wetland irrigation ditches which "...drain south to the Columbia River via McLean Slough, Beaver Slough, and the Clatskanie River." None of these sloughs or the Clatskanie River flows through the site or have buffers within the railroad branchline site.

The wetland delineation report (Exhibit 11), which has now been approved by the Oregon Department of State Lands (Exhibit 12), 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.

The site does not contain an identified fish-bearing stream or lake and no site alterations are proposed within the 25-foot riparian buffer around McLean Slough. Therefore, this application does not trigger application of the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone.

### **Section 1180 Wetland Area Overlay (WA)**

#### *1181 Purpose*

*The purpose of this zone is to protect significant wetlands within the identified Wetland Areas as shown on the State Wetland Inventory and Local Wetland Inventories, from filling, drainage, or other alteration which would destroy or reduce their biological value. The Wetland Area Overlay does not apply to land legally used for commercial forestry operations or standard farm practices, both of which are exempt from these wetland area corridor standards. 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 by ORS 568.210 to ORS 568.805.*

#### *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*

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<sup>5</sup> Columbia County Comprehensive Plan, Part XVI, Article X, Water Resources, specifies that the "Lakes of Columbia County" was prepared by the U.S. Department of the Interior, Geological Survey, in 1973. An excerpt from this report is attached as Exhibit 9.



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.

**Response:** Potential wetlands exist within the vicinity of the railroad 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. The wetland delineation report, which reveals considerable differences in wetland size and location compared to the Statewide Wetlands Inventory, has been approved by the Oregon Department of State Lands (DSL) (Exhibit 12). As discussed in Exhibit 13, 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 13 notes that the wetland delineation report analyzed 17 functions, of which only four (4) received higher ratings, while five (5) received moderate ratings and seven (7) received lower ratings. Since the wetland delineation report has been approved by DSL, there does not appear to be any dispute by subject matter experts on whether these wetlands have little biological value. DSL issued a written statement explaining the non-significance of affected wetlands in December 2021 (Exhibit 14). The Columbia Soil and Water Conservation District and the Oregon Department of Fish and Wildlife also provided comments, attached as Exhibits 15 and 16 respectively. This further supports the contention that the wetlands do not meet the County's adopted definition of "significant" wetlands.

Based on this evidence, the County Board of Commissioners concluded that the wetlands for the proposed renewable diesel production facility (which are addressed in the same wetland delineation and analysis as the wetlands within the proposed railroad branchline) do not meet the County's adopted definition of "significant" wetlands. This was confirmed by the County Board of Commissioners in Final Order 12-2022 for DR 21-03 and V 21-05:

*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).*

*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.*

The applicant is seeking approval from the U.S. Army Corps of Engineers for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. The applicant will perform approximately 488 acres of off-site wetland mitigation south of the site in accordance with Federal and State law.

The railroad branchline proposed with the current application falls within areas previously delineated as non-significant wetlands and is therefore permitted under Section 1180.

**Section 1185 Natural Area Overlay (NA)**

**Response:** The Oregon State Register of Natural Heritage Resources, attached as Exhibit 12, 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)**

**Response:** Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat identifies three (3) types of big game habitat. As depicted in Exhibit 6, 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.

**Article VII – Discretionary Permits****Section 1500 Discretionary Permits***1501 General Provisions*

*All applications for zone changes, conditional uses, temporary permits, variances, and restoration, replacement or alteration of nonconforming uses shall be evaluated under the specific criteria listed within this ordinance. Unless otherwise specified in the district, all applications shall be subject to the procedures under Section 1600.*

- .1 The granting of a discretionary permit may be subject to such conditions as are reasonably necessary to protect the public health, safety, or general welfare from potentially deleterious effects resultant from approval of the permit, or to fulfill the public need for public service demands created by approval of the request.*

**Response:** The proposed railroad branchline is a transportation facility consistent with the PA-80 zone and applicable statutes and administrative rules and compatible with the nearby agricultural uses as detailed in the response to Section 300. For these reasons, no imposition of additional conditions is necessary or warranted to protect the public health, safety, or general welfare, and the railroad branchline does not generate public service demands. This criterion is met without additional conditions.

- .2 Findings justifying decisions made with regard to a discretionary permit shall be made in writing and shall be provided to the applicant. The Commission may make a tentative decision and instruct the Director to draft findings to support the decision. In such an action, the final decision and the adoption of written findings shall occur at the next regularly scheduled Commission meeting.*

**Response:** This provision provides direction to the Planning Commission and Director and requires no evidence from the applicant.

*1503 Conditional Uses*

- .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;*

**Response:** The proposed railroad branchline is a conditional use in the PA-80 zone as discussed in the response to Section 306.

B. *The use meets the specific criteria established in the underlying zone;*

**Response:** The proposed railroad branchline meets the applicable criteria in the PA-80 zone as discussed in the responses to Sections 306, 307, and 308.

C. *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;*

**Response:** The most persuasive evidence of the site's suitability for a railroad branchline is that it will branch off the 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 1.7 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 railroad branchline site is nearly flat. The site is protected from flooding by the Beaver Drainage Improvement Company's dikes and associated stormwater conveyance and pumps, and is therefore adequately drained. A culvert is proposed where the existing ditch will be crossed by the rail infrastructure (Exhibit 3, Sheet C2.7), and existing ditches will remain in place. As detailed in the preliminary stormwater report (Exhibit 18), 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 for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. The applicant will perform approximately 488 acres of off-site wetland mitigation south of the site in accordance with Federal and State law.

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;*

**Response:** The proposed railroad branchline is intended to serve a renewable diesel production facility approved 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. As depicted on the Field Access Map (Exhibit 21), no existing field access points are eliminated by the proposed branchline. There are sufficient rail crossings available to access the fields and the railroad branchline will not significantly change farming practices or cause substantial delays. 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 iden

tified for the area surrounding the Port Westward Industrial Park. The Commission can conclude that the proposed railroad branchline is timely.

- 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;*

**Response:** The new railroad 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, 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 railroad branchline will complement the RIPD zone by serving a proposed renewable diesel production facility immediately to the west.

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 private rail crossing will be installed to allow passage of farm equipment, see Exhibit 3, Sheets C2.7). The response to Section 307.1 provides further evidence that the proposed railroad 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 zoned for farm or forest use.

Train traffic on the railroad branchline will not lead to any appreciably higher level of dust than is currently present from the Portland & Western Railroad mainline which already traverses the area. Consequently, construction of the railroad branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The railroad tracks are constructed on a gravel bed that minimizes fire potential from any sparks that may be generated. The proposed branchline is also in the vicinity of PGE’s existing transmission lines and associated maintenance road, which are subject to vegetation control to minimize conflict with electrical facilities. The rail line will also be next to stormwater ditches and a pond, which will further reduce fire potential.

Construction of the railroad branchline will be near existing irrigation and drainage ditches, which will remain in place. As depicted on Sheet C2.7 of Exhibit 3, a culvert is proposed where the existing ditch will be crossed by the rail infrastructure. The proposed culvert will be designed and sized as part of final engineering drawings during the permitting phase of the project. Utilizing standard engineering practice, the design engineer will ensure that the cross-section and slope of the culvert provides adequate hydraulic capacity to convey water flows from their upstream contributing areas to their existing downstream channels. Accordingly, NEXT’s proposed branchline will not negatively impact drainage and irrigation.

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.

F. *The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;*

**Response:** The following information demonstrates how the proposed transportation facility conforms to applicable Comprehensive Plan goals and policies.

Comprehensive Plan Goals and Policies

*PART V – AGRICULTURE*

*Goal: To preserve agricultural land for agricultural uses.*

**Response:** The proposed corridor for the railroad branchline is relatively small in size, totaling approximately 1.7 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 railroad 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 zoned for farm or forest use. Further, the railroad branchline will be located in an area already heavily impacted by the existing Portland & 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.

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

4. *Protect agricultural lands from non-farm encroachments.*

**Response:** The proposed railroad branchline will be located in an area already heavily impacted by the existing Portland & Western Railroad mainline and electrical transmission lines, corridors, and easements. Farm use can continue in the vicinity of these existing impediments, so the proposed railroad branchline 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.*

**Response:** Due to its relatively small area (approximately 1.7 acres), the proposed railroad branchline does not conflict 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 railroad 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. Existing agricultural uses will not face constraints not already imposed by the adjoining existing rail mainline 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.*

**Response:** The applicant has no objections to the continued use of nearby property for farm practices, and is willing to sign a mutually-acceptable waiver of the right to remonstrate against accepted farm practices to the extent that the farm practice is allowed by County and State laws.

17. *Allow non-farm uses in accordance with ORS 215.283 and ORS 215.284.*

**Response:** As noted in the responses to Sections 303 and 306, the proposed railroad branchline is 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.*

**Response:** The proposed railroad branchline will improve the efficiency and augment an adjoining renewable diesel fuel production facility, approved 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.*

**Response:** The proposed railroad branchline will facilitate efficient transportation to and from an approved 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 (5) public deepwater ports in the state of Oregon, with a 43-foot navigation channel to accommodate vessels needing deep water port access. The production facility itself will make use of this natural resource and strategic advantage, and the railroad branchline 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.*

**Response:** As noted above, following construction of the renewable diesel fuel production facility approved under a separate application, the use will provide direct employment opportunities for office, management, and operations staff. The proposed railroad branchline will support this employment opportunity.

2. *Encourage a stable and diversified economy.*

**Response:** The renewable diesel fuel production facility approved 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 railroad branchline 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.*

**Response:** Under separate application approved by the County, the applicant will 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 railroad branchline will support the production facility by providing additional efficient transportation options for materials and product.

8. *Reserve valuable industrial sites for industrial uses.*

**Response:** The renewable diesel production facility approved under a separate application makes use of land zoned Resource Industrial - Planned Development and identified as appropriate for industrial development by the County Board of Commissioners. The proposed railroad branchline, 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*

**Response:** 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 approved renewable diesel production facility on property west of and adjacent to the proposed railroad branchline. The County can help realize some of this policy direction by granting the applicant’s requested conditional use permit for the railroad branchline 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.*

**Response:** The proposed railroad branchline capitalizes on the proximity of the existing rail mainline and will allow movement of materials that would otherwise

be shipped by truck to and from the approved manufacturing use adjoining to the west.

*Objectives:*

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

**Response:** The proposed railroad branchline capitalizes on the proximity of the existing rail mainline and will allow movement of materials that would otherwise be shipped by truck. The County can find that the railroad branchline will reduce traffic on area roadways, reserving roadway capacity for all users and modes.

*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.*

**Response:** The proposed railroad branchline is consistent with this policy because it will allow an approved rural industrial use at Port Westward Industrial Park to take advantage of existing rail transportation facilities, namely Portland & Western Railroad’s mainline. 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.*

**Response:** The project does not require a new public road crossing of any rail mainlines.

- 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.*

**Response:** 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.

- G. *The proposal will not create any hazardous conditions.*

**Response:** The applicant will be required to follow all applicable safety laws and regulations in constructing and operating the railroad branchline, 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.*



**Response:** As the proposed railroad branchline does not result in the construction of a building or associated site improvements, site design review is not merited in this instance.

**IV. CONCLUSION**

Based on the information presented and discussed in this narrative and the attached supporting plans and documentation, this application meets applicable standards necessary for approval of a conditional use permit for the proposed railroad branchline. The development complies with all applicable standards of the Zoning Ordinance and applicable statutes and administrative rules. The applicant respectfully requests approval by the County.



February 21, 2024

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VIA E-MAIL

Columbia County Board of Commissioners  
230 Strand St.  
County Courthouse Room 338  
St. Helens, OR 97501

RE: Applicant's Final Written Argument; Columbia County Board of Commissioners, DR 21-03 MOD, CU 23-11 (NEXT Renewables Fuels Inc.)

Dear Chair Garrett, Commissioner Magruder, and Commissioner Smith:

This office represents NEXT Renewable Fuels Oregon, LLC ("NEXT" or the "**Applicant**"). On January 10, 2024, Columbia County held a hearing on the above-referenced Applications. NEXT testified orally during the hearing. At the conclusion of that hearing, the Board closed the record to further oral testimony but allowed the written record to remain open for the following purposes and on the following schedule:

1. Until 5:00 PM on January 24th for any party to submit any evidence or testimony.
2. Until 5:00 PM on February 7th for any party to submit evidence or testimony in response to testimony submitted during the first open record period.
3. Until February 21st for Applicant's final written argument.

This letter constitutes NEXT's final written argument in this matter, and is intended to respond to written comments submitted shortly before and the day of the hearing, and written comments submitted during the first and second open record periods. The letter is respectfully submitted prior to the end of the final written argument period at 5:00 p.m. on Wednesday, February 21, 2024.

## I. INTRODUCTION AND OVERVIEW

NEXT proposes to develop a renewable diesel production facility at Port Westward (the "**Facility**"), with related Columbia River dock and rail connections (collectively, the "**Project**").

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The Project consists of two land use applications (the “**Applications**”) that are separate but related – a Site Design Review Modification<sup>1</sup> and a Conditional Use Permit.<sup>2</sup>

The Site Design Review Modification would amend the existing Site Design Review permit for the Facility, which was approved by the Columbia County Board of County Commissioners (the “**Board**”) in March 2022 under Site Design Review DR 21-03 and Variance 21-05, as a “Use Permitted under Prescribed Conditions” in the Resource Industrial – Planned Development (RIPD) zone.<sup>3</sup> A Conditional Use Permit (CU 21-04) for a rail branchline within the Primary Agriculture (PA-80) zone was also initially granted<sup>4</sup> but later overturned by the Oregon Land Use Board of Appeals (“**LUBA**”).<sup>5</sup>

The Applications solely address the location of the rail facilities approved by the Board in 2022. As noted above, the Facility was approved as a “Use Permitted under Prescribed Conditions,” which evaluated the impacts of the proposed Project, including its rail component, on surrounding lands. This is reflected in the following excerpts from the unchallenged Facility findings adopted as part of Final Order No. 12-2022:

“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.” [...] 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

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<sup>1</sup> DR 21-03 MOD.

<sup>2</sup> CU 23-11.

<sup>3</sup> *Final Order No. 12-2022*, COLUMBIA COUNTY (Mar. 23, 2022).

<sup>4</sup> *Final Order No. 13-2022*, COLUMBIA COUNTY (Mar. 23, 2022).

<sup>5</sup> *1000 Friends v. Columbia County*, \_\_\_ OR LUBA \_\_\_ (LUBA No. 2022-039, slip op, Oct. 27, 2022).

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7,500 feet, more than enough storage to accommodate the largest train without requiring backing movements or crossing delays.

“[...] 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 (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.

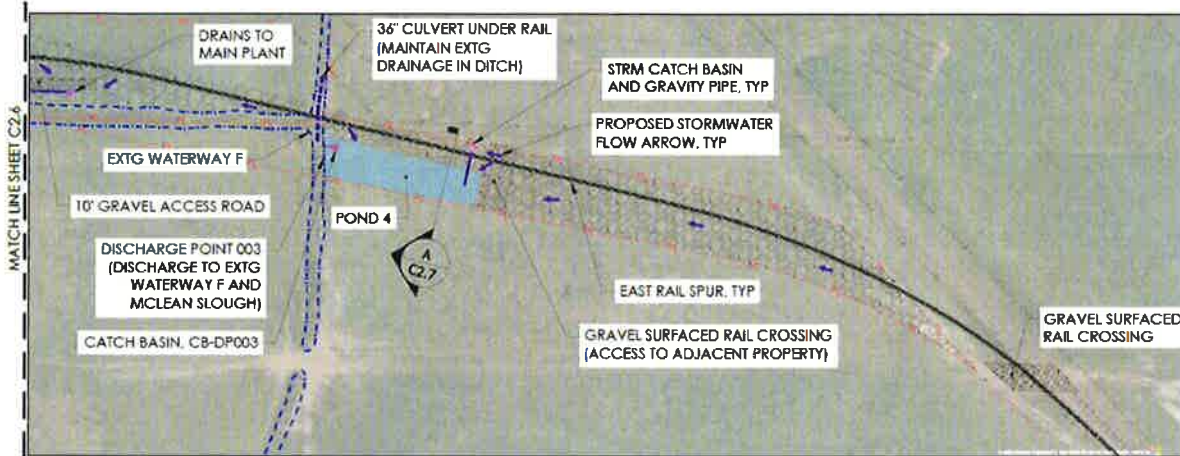
“The Board finds that the use of rail to serve the Facility is consistent with the goals in CCZO section 680 and the Comprehensive Plan, as discussed extensively in Section IV.A., because the Facility takes advantage of existing rail and is similar in nature and will complement existing industrial development at Port Westward that is serviced by rail.”<sup>6</sup>

The Applications propose the same scope and frequency of rail service already approved for the Facility, but eliminate all siding (storage) tracks originally approved in the PA-80 zone by relocating virtually all rail facilities to the RIPD zone, where they are allowed by right as an accessory to the approved Facility. The original approvals allowed five siding tracks within the RIPD zone and five siding tracks south of the Facility, in the PA-80 zone. In response to LUBA's ruling, the current Conditional Use application proposes a single, approximately 1,250-foot track between the Facility and the existing Portland & Western (“P&W”) Railroad line, as shown on Sheet C 2.7 of NEXT's design submittal:

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<sup>6</sup> *Final Order No. 12-2022*, Ex. A, at 42-44.

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This single track is the sole rail improvement proposed within the PA-80 zone. When compared with the original approvals,<sup>7</sup> the proposed rail configuration has a substantially smaller footprint in the PA-80 zone.

The Site Design Review Modification proposes to relocate rail tracks, a tree buffer, and storm facilities northward to the RIPD zone. Within the fence line of the Facility, the approved siding tracks remain essentially the same as in the original approved site plan. Critically, these modifications do not significantly alter any other component of the Facility as it was approved in DR 21-03, and the rail unloading stations are not proposed to be altered.

As it was when the County approved it in 2022, the Project is entirely consistent with the intended uses of Port Westward. The Project is dependent on its Columbia River location to take advantage of efficiencies made possible by Port Westward's 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 RIPD zone, which is intended to accommodate both rural and natural resource related industries like NEXT's Project. Only a small portion of the proposed rail branchline will touch land zoned differently, but in a manner well within established approval criteria.

<sup>7</sup> The County's findings for Site Design Review DR 21-03, Variance 21-05, CU 21-04, were submitted into the record in this case by NEXT during the first open record period.

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As before, the Applications enjoy a broad base of community support. Port of Columbia County Executive Director Sean Clark summarized the benefits of the Project as follows:

“The benefits the NEXT project will have on Columbia County’s economy cannot be understated. The project will create more than 3,500 construction jobs and more than 240 permanent, family-wage jobs in an industry anticipated to operate in Columbia County for the next 80 years or more. With an over \$2 billion investment, NEXT will be one of the highest taxpayers in the County, increasing much-needed funding to our local schools, roads, and public services. In addition, by bringing this new, green energy to our region, Columbia County will be a leader in the clean fuels industry, and this new industry will lead to job training in clean fuels to attract related industries to our region.”

Parties who testified in support of the project include, but are not limited to:

- The Columbia Economic Team
- The Oregon Coastal Caucus (including state Rep. David Goldberg, Sen. Dick Anderson, Sen. David Brock Smith, Sen. Suzanne Weber, Rep. Boomer Wright, Rep. Cyrus Javadi, and Rep. Court Boice)
- Clatskanie Chamber of Commerce
- Clatskanie School Board Members and Superintendent Dr. Danille Hudson
- Clatskanie City Manager Greg Hinkleman
- Mayor Jerry Cole of the City of Rainier
- Rainier Chamber of Commerce
- Longview/Kelso Building Trades Council

In addition, a number of residents and representatives of local labor organizations testified in favor of the Project.

Most importantly, though, and as described in the Staff Report, the Applications satisfy the approval criteria and should be approved on that basis.



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## **II. THE APPLICATIONS ARE CONSISTENT WITH THE APPLICABLE ZONING, APPROVAL CRITERIA, AND COMPREHENSIVE PLAN POLICIES FOR PORT WESTWARD**

During the 2022 application process, the Board found that the Project is consistent with the uses intended for its location – this has not changed. As in the original application, the particular use category proposed in the Site Design Review Modification remains “production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities,” which are allowed in the RIPD zone under CCZO 683.1. Because Port Westward is 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.<sup>8</sup> The Board’s prior findings on this issue, adopted as Final Order No. 12-2022, are instructive:

“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 150-200-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

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<sup>8</sup> See Comp. Plan, Pt. XII (Port Westward Exception Statement) § VII.1.b (pg. 124) (describing Port Westward as a unique economic asset to encourage Columbia County industrial development).



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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.”<sup>9</sup>

Indeed, the Comprehensive Plan has always considered rail service and the expansion thereof as part of the uses intended for Port Westward, as noted in the Port Westward Exception Statement: “Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm.”<sup>10</sup> When justifying the current size of the Port Westward Exception Area, the Comprehensive Plan observed that “[t]he Port Westward site is also large enough to accommodate loop rail systems that could handle 100-car unit trains.”<sup>11</sup>

The Port Westward Exception Area is implemented by the standards of the RIPD zone, which were examined in detail when the Facility was approved in 2022. Now, except for a small portion of the proposed rail branchline, the Project is located entirely within the RIPD zone. The Project 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, and with its RIPD zoning.

As explained in the Applications and Staff Report, the rail branchline section within the PA-80 zone is permissible under OAR 660-012-0065 “Transportation Improvements on Rural Lands” without a Statewide Planning Goal Exception, because it falls within the category of “railroad mainlines and branchlines.” In 2022, LUBA concluded that the prior branchline design, which had several siding tracks railcar storage in the PA-80 zone, was a “rail yard,” because it included “multiple parallel tracks and includes siding tracks for train car storage and maintenance.” The single, 1,250-foot track now proposed to connect the Facility with P&W’s existing line would meet LUBA’s definition of a “rail branchline” as “a secondary line of a railway, typically stub-ended” or, as defined in *Union P. R. Co. v. Anderson*, 167 Or 687, 712, 120 P2d 578, 588 18 (1941), “nothing more or less than an offshoot from the mainline or stem.”<sup>12</sup>

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<sup>9</sup> *Final Order No. 12-20222*, at 4.

<sup>10</sup> Comp. Plan, Pt. XII (Port Westward Exception Statement) § V.

<sup>11</sup> *Id.* at § VII.A.1.b.

<sup>12</sup> *1000 Friends of Oregon v. Columbia County*, \_\_\_ OR LUBA, at 21–22.

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### **III. THE APPLICATION SATISFIES ALL APPLICABLE APPROVAL CRITERIA AND SHOULD BE APPROVED WITH CONDITIONS**

The Applications included two detailed narrative explanations of how they meet the approval criteria, both for the Site Design Review Modification in the RIPD zone and for the rail branchline within the PA-80 zone. County planning staff prepared a detailed staff report that evaluated all applicable criteria and concluded that the Applications meet the criteria. NEXT accepts those conclusions and the Board can find that they demonstrate how and why the Applications have carried their burden of proof. Critically, the Facility was approved in 2022, *was not appealed*, and is final.<sup>13</sup> This approval included code interpretations by the Board within Final Order No. 13-2022. As such, NEXT's arguments below are, where possible, discussed in relation to the County Board's legal interpretations made in approving DR 21-03.

NEXT also concurs with Staff's recommended conditions of approval, which are largely a carry-over from the conditions imposed as part of the prior approvals. *See* Staff Report at 46–47. In addition to these conditions, NEXT proposes the following additional conditions:

- The Applicant shall implement the rail mitigation measures recommended in paragraph 10 of the memorandum prepared by Brian Heikkila of Crosstown Consulting, dated Jan. 23, 2024 (the “**Crosstown Memo**”), which proposes mitigation measures that shall be effective between June 1 and October 31 of each year.
- During construction, the Applicant shall maintain an inadvertent discovery plan (“**IDP**”) to address any archaeological discovery consistent with the Oregon State Parks and Recreation Department Historic Preservation Office's IDP template.

While NEXT does not believe the above conditions are necessary to satisfy the approval criteria, these conditions are offered should the Board wish to impose conditions addressing mint harvesting and the recent inadvertent archaeological discovery by Warren Seely, discussed during the first and second open record periods.

### **IV. RESPONSE TO OPPONENT ARGUMENTS REGARDING THE APPLICATIONS**

In reviewing the Applications before the Board, it is important to keep in mind that despite the sincere and genuine emotions surrounding NEXT's project, the Applications are quasi-judicial in nature. As such, they should be approved or denied based on evidence in the record that

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<sup>13</sup> *See* DR-21-03.

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addresses applicable approval criteria,<sup>14</sup> and evidence should be weighed reasonably. This is important when considering much of the opponent testimony in the record, which in many cases does not address the approval criteria for *these* applications.

Specifically, many opponent comments address aspects of the County's unchallenged 2022 approval of the renewable diesel Facility, or address other approvals that NEXT has received from other regulators, including the Oregon Department of State Lands ("DSL"), United States Army Corps of Engineers ("USACE") and Oregon Department of Environmental Quality ("DEQ"). Regardless of the urgency with which they are made, such comments should be rejected because they do not address the applicable criteria.

#### **a. Response to Columbia Riverkeeper's Comments**

Many of Columbia Riverkeeper's ("**Riverkeeper**") comments are directed at hypothetical impacts to the Beaver Drainage District, or raise issues that are not subject to the County's land use review authority. Riverkeeper's comments regarding NEXT's DSL permit are outside the scope of review for the subject Applications, as are Riverkeeper's comments pertaining to FEMA floodway inspections, levy certification within the Beaver Drainage District, the national price of feedstocks, and NEXT's corporate governance and finances. The following sections respond to various arguments that Riverkeeper has raised during the application process and open record period for this Project.

##### **i. The rail facility is a branchline allowed within the PA-80 Zone.**

The proposed rail connection between the Facility and the P&W Railroad is classified as a "branchline" per OAR 660-012-0065. 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.<sup>15</sup> In the LUBA proceeding that precipitated the Applications, LUBA adopted ODOT's definition of branchline as "a secondary line of a railway, typically stub-ended."<sup>16</sup> NEXT's proposed branchline features a single, 1,250-foot track that connects the Project to the existing P&W track, traversing a small section of PA-80 zoned land before entering Port of Columbia County property zoned RIPD.

Riverkeeper raises two contrary arguments, both of which should be rejected. First, Riverkeeper argues that NEXT's branchline is actually a "rail facility" because "[n]othing significant has

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<sup>14</sup> ORS 215.427(3).

<sup>15</sup> *1000 Friends of Oregon v. Columbia County*, \_\_ Or LUBA, at 15.

<sup>16</sup> *Id.*, at 21–22.

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changed about the scope and design” of the railroad on the parcels zoned PA-80.<sup>17</sup> Riverkeeper’s position is directly contradicted by the application materials in the record, including Applicant’s site plans for the PA-80 rail branchline, which depict a significantly reduced branchline (compared to that previously approved by Conditional Use Permit CU 21-04).<sup>18</sup> The evidence in the record is unambiguous – the portion of the tracks that remain on the PA-80 zoned parcels are not designed to receive, store, sort, and unload trains.<sup>19</sup> As detailed at length within the project narrative, and depicted within the application materials, the rail infrastructure crossing PA-80 zoned land is a branchline, consistent with OAR 660-012-0065 and LUBA’s decision in *1000 Friends of Oregon v. Columbia County*, \_\_ Or LUBA \_\_ (LUBA No. 2022-039). Riverkeeper’s argument that nothing has changed in NEXT’s design of the railroad branchline crossing PA-80 zoned is simply wrong and must be disregarded.

Second, Riverkeeper argues that the Project has already been rejected by LUBA, arguing that if a transportation improvement listed at OAR 660-012-0065(3) (here, a branchline) is incidental to another land use, then that related land use must be allowed or conditionally allowed by ORS 215.283. Put simply, Riverkeeper is arguing that the proposed branchline cannot be permitted because it terminates at the rail yard proposed on the RIPD zoned parcels. But LUBA concluded precisely the opposite:

“As we understand [Riverkeeper’s] 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.”<sup>20</sup>

Thus, even if the Board or LUBA concluded that the rail facility within the RIPD constitutes a “railyard,” it does not follow that the proposed branchline is a “railyard” for purposes of OAR 660-012-0065(3). Riverkeeper’s contrary argument plainly ignores LUBA’s rejection of the same argument in 2022.

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<sup>17</sup> Riverkeeper Comment, at 6-8 (Jan. 9, 2024).

<sup>18</sup> CU 23-11 Application Materials, Exhibit 3.

<sup>19</sup> *Id.*

<sup>20</sup> *1000 Friends of Oregon*, \_\_ Or LUBA, at 15 (emphasis added).

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- ii. CCZO 683 is not applicable to NEXT's application for a modification of a prior approval.

CCZO 683 permits facilities within the RIPD zone, contingent on the facility's compliance with certain standards. These standards primarily evaluate the particular suitability of site for a given use based on its impacts to surrounding uses and development, not the particular layout of the facility itself, which is specifically governed by the Site Design Review standards in CCZO 1150. The Board concluded that the Facility complies with the standards within CCZO 683, and the Board's findings concerned the scope and potential impacts of the use itself, including rail service.<sup>21</sup>

Riverkeeper argues that the County must undertake a *second* detailed analysis under CCZO 683 because NEXT is seeking to modify DR 21-03 to relocate certain portions of its rail infrastructure onto the RIPD zoned portion of the subject property.<sup>22</sup> This argument is simply wrong because the findings and record in DR 21-03 demonstrate that the scope and frequency of NEXT's rail service, including its crossing points and impacts on surrounding uses, was evaluated for compliance with CCZO 683, even though many of the tracks themselves were not located in the RIPD zone.

Specifically, "the Board evaluated any effects that may be caused by trains arriving to and departing from Applicant's Facility" and imposed conditions of approval to address rail transport associated with the Facility.<sup>23</sup> The Board's analysis is excerpted in Section I above, and included a review of the import and export capacity of the project, conditioned the number of rail cars allowed at the Facility, and analyzed the potential impact of train crossings in the area surrounding the Project. Notably, DR 21-03 placed an outside limit on the number of rail cars that could service the Facility per week (318). NEXT's proposed design review modification does not propose to change the overall use of the Facility or the approved scope of the rail service originally approved in DR 21-03.<sup>24</sup> Rather, the sole change to the Facility is moving all rail loading and unloading areas into the RIPD zone. As the Applications do not propose a change in the scope of the rail use contemplated in the "use approved under prescribed

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<sup>21</sup> *Final Order No. 12-2022*, Ex. A, at 42-44.

<sup>22</sup> Note that standards within CCZO 683 did not directly apply to NEXT's original proposed branchline on the PA-80 zoned portion of the subject property, as CCZO 683 only applies to uses permitted under prescribed conditions within the RIPD zone. However, as discussed above, the Board evaluated the impacts of the rail as part of its approval of the use as a whole in DR 21-03.

<sup>23</sup> *Final Order No. 12-2022*, Ex. A, 43-44.

<sup>24</sup> *Id.*



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conditions” approved by the Board in 2022, Staff correctly advised NEXT that the unappealed decision did not need to be revisited. Riverkeeper’s argument to the contrary is nothing more than an attempt to re-litigate the County’s approval of the Project.

iii. CCZO 1562 is met.

Riverkeeper alleges that the Design Review Modification does not comply with landscaping, buffering, and screening requirements detailed in CCZO 1562.A.1, B.1, and B.3. Riverkeeper’s argument ignores the application materials, which Riverkeeper did not appear to review. Additionally, the Applicant’s consultant, Mackenzie, addressed Riverkeeper’s concerns within its January 24 technical memorandum, finding that the Project’s site design complies with CCZO 1562.<sup>25</sup>

CCZO 1562.A.1 requires “existing plant materials on a site shall be protected to prevent erosion.” Riverkeeper does not specify why it believes the Project does not comply with CCZO 1562.A.1, other than alleging that the Applicant must enter an agreement with the Beaver Drainage Improvement Company, Inc. (“**BDIC**”). The Applications are not subject to any such approval criteria, and Riverkeeper’s argument should be dismissed.

Regarding erosion control, the County has already approved the erosion control measures for the entire Facility within DR 21-03, and the approved erosion control measures for the entire Facility will be implemented as depicted in Site Design Review Exhibit 3, Sheets EC1.10-EC5.10, while the erosion control plans associated with the proposed modifications are included as Exhibit 4, Sheets C3.0-C3.7.

Second, the proposed Site Design Review Modification does not affect the majority of the buffering approved within DR 21-03, including the buffering plan for the north and western portion of the subject property. The buffering for this portion of the subject property will remain the same, as it was approved within DR 21-03. The modification will alter the location of the buffering to the south, as depicted on Site Design Review Exhibit 4, Sheets C2.0-C2.2 and C2.5-C2.6. The alteration in buffering to the south is necessary to accommodate the modified site design, but will still ensure that impacts are reduced on adjacent uses to the south of the subject property, thus demonstrating compliance with criterion CCZO 1562.B.1.

Third, the site plans contained within the application materials demonstrate that the Project complies with the buffering standard in CCZO 1562.B.3 that prevents roads from being located in buffer areas. Riverkeeper’s argument that “[t]he application does not provide for a 10-foot

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<sup>25</sup> Mackenzie Supplemental Evidence Submittal (Jan. 24, 2024).

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buffer between the access road and the land to the north” presumably relates to the area where NEXT has relocated its rail infrastructure onto the RIPD land. However, Site Design Review Exhibit 4, Sheets C2.0-C2.2 and C2.5-C2.6 clearly depict a 10-foot buffer between the access road and “land to the north.” Riverkeeper’s ambiguous argument on this point is simply wrong.

iv. An exception to the Oregon Statewide Planning Goals is not required.

Riverkeeper also advances an argument that a new Goal 2 exception is required for the proposed modification to the Facility.<sup>26</sup> But, the County has already taken a Goal 2 exception for the Port Westward Exception Area (as adopted in the County’s Comprehensive Plan), the Facility is located within the Port Westward Exception Area, and does not propose to expand that area. Once again, the Board’s prior findings on this issue are instructive:

“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 150-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant.”<sup>27</sup>

Furthermore, rail service and the expansion thereof were always contemplated as part of the uses intended for Port Westward. “Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm.”<sup>28</sup> When justifying the current size of the Port Westward Exception Area, the Comprehensive Plan observed that “[t]he Port Westward site is also large enough to accommodate loop rail systems that could handle 100-car unit trains.”<sup>29</sup>

Therefore, the fact that NEXT proposes to relocate its rail infrastructure is irrelevant to whether a new Goal 2 exception is required, because the Facility is *already located* in the Port Westward Exception Area and the County’s exception statement (incorporated in the Comprehensive Plan) anticipated future rail-dependent development within the exception area. Moreover, DR 21-03 and the Site Design Review Modification application now before you demonstrate that the

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<sup>26</sup> Riverkeeper Comment, at 8-10 (Jan. 9, 2024).

<sup>27</sup> Final Order No. 12-20222, at 4 (Mar. 23, 2022).

<sup>28</sup> Port Westward Exception Statement § V.

<sup>29</sup> Id. at § VII.A.1.b.

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Project as a whole is consistent with the RIPD-zone standards, which implement the Port Westward exception.

Riverkeeper would have the Board neuter the RIPD zone because its argument stands for the proposition that virtually any new use that would change the landscape of Port Westward would require an amendment to the adopted exception. However, any of the large-scale industrial uses specifically allowed in the RIPD zone will have that effect to some degree, if for no other reason that there would be more industrial activity than there was before. However, there is no evidence that the mere increase in industrial activity within in an industrial zone will catalyze the further conversion of resource-zoned land to industrial uses. Presumably, a proposal for a new industrial facility on PA-80 zoned land would require such an amendment. But that is not what is before the Board: the Applications do not propose to modify the RIPD zone language or its extent, the Port Westward exception, or any other component of the Comprehensive Plan. Thus, Goal 2 does not directly apply to this decision at all. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 429, *aff'd* 137 Or App 554 (1995).

For these reasons, the Board should find that a new Goal 2 Exception is not required to approve the Applications.

v. The proposed rail branchline satisfies the “farm impacts test” criteria of ORS 215.296 and CCZO 307.1.A-B

Finally, Riverkeeper argues that NEXT has not demonstrated compliance with the farm impacts test under ORS 215.296 and CCZO 307.1. 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-B; ORS 215.296.

It is important to remember that when NEXT sought conditional use permit approval for its original rail branchline on PA-80 land, the Board previously found compliance with the farm impacts test.<sup>30</sup> Although NEXT’s original conditional use permit approval was overturned by LUBA on other grounds, the fact remains that the Board has already approved a farm impacts test for a far larger impact within the PA-80 zone than what NEXT is currently proposing. Notwithstanding the reduced scope and impact of the currently proposed rail branchline, NEXT has developed a new and more detailed farm-by-farm analysis that identifies potential rail

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<sup>30</sup> *Supplemental Findings of Fact and Conclusions of Law for Final Order No. 13-2022*, at 6.



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crossings, analyzes the potential for rail impacts on crops, and have engaged a rail expert to develop a rail mitigation plan.<sup>31</sup>

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.”

However, 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).

Consistent with the Oregon Supreme Court’s ruling in *Stop the Dump Coalition v. Yamhill County*, NEXT’s application provides a farm-by-farm analysis for the farm impacts test utilizing the Supreme Court’s definition that “A ‘significant’ change or increase in cost is one that will have an important influence or effect on the farm.” This examination identifies the impact area associated with the branchline (which extends from the Portland & Western Railroad mainline to the proposed renewable diesel production facility). The analysis then characterizes existing agricultural practices in the impact area and demonstrates that the proposed railroad branchline does not violate either of the approval criteria within CCZO 307.1.<sup>32</sup>

On this basis, Staff correctly concluded that the Project will have minimal impact on farm practices for hay production and row crops because 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

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<sup>31</sup> See CU 23-11, Application Narrative; Crosstown Memo.

<sup>32</sup> CU 23-11, Application Narrative, at 11-14.

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of these crops to the existing rail mainline.<sup>33</sup> The proposed rail branchline also will not result in the removal or impact to any existing irrigation and drainage ditches.<sup>34</sup> NEXT has also submitted a technical memorandum from Maul Foster & Alongi, Inc. (“MFA”) that analyzes the effect of rail emissions on nearby organic farms (the “MFA Emissions Memo”). The MFA Emissions Memo concludes that “particulate emissions estimate from the trains servicing the facility indicates that potential impacts from deposition to surrounding farmlands will be very low relative to the deposition standards set by the State of Oregon” and that there will be no observable impact from train emissions on surrounding farmland.<sup>35</sup>

Furthermore, the risk of conflict between farm equipment and trains on the branchline is low because the trains will be infrequent and moving slowly as they accelerate and decelerate due to proximity to the end of the line.<sup>36</sup> Regardless, NEXT submitted further analysis from Crosstown evaluating railroad operations proposed for the Project and offering mitigation recommendations to minimize the potential impact on farming practices within the impact area. Crosstown provided a detailed analysis of potential impacts to farming within the impact area resulting from train movements and crossing occupancy.<sup>37</sup> The Crosstown Memo proposes *nine* mitigation measures to minimize any potential impacts caused by crossing occupancy, and has tailored those mitigation measures to specifically address any potential impact to Seely Mint’s farming operation.<sup>38</sup> The Crosstown Memo also responds to specific concerns raised by Mr. Mike Seely’s January 10, 2024 written comments, and offers further solutions to minimize any impact to Seely’s harvest vehicles.<sup>39</sup>

Importantly, 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)(i), the rail branch line is a use allowed under ORS 215.283 because railroad branch lines are transportation facilities that may be permitted on rural lands and DLCDC’s rules have found branch lines are consistent with Statewide Goals 3, 4, 11, and 14.<sup>40</sup> To the extent the County believes that NEXT has not provided sufficient evidence demonstrating that the proposed railroad branchline satisfies the criteria in Section 307.1 without

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> MFA Emissions Memo, at 4 (Feb. 7, 2024).

<sup>36</sup> CU 23-11, Application Narrative, at 13.

<sup>37</sup> Crosstown Memo, at 3-7 (Jan. 23, 2024).

<sup>38</sup> *Id.*, at 5-6.

<sup>39</sup> *Id.*, at 6.

<sup>40</sup> *See 1000 Friends*, \_\_\_ Or LUBA, at 9.

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requiring additional conditions of approval, NEXT proposes to incorporate the mitigation recommendations within the Crosstown Memo as conditions of approval. Incorporating the clear and objective mitigation measures detailed in the Crosstown Memo as conditions of approval will ensure the Project's conformance to applicable standards of the proposed PA-80 use. CCZO 307.2.

Lastly, Riverkeeper's argument that NEXT has not provided a detailed analysis of the impacts to the Beaver Drainage District, or those who use the BDIC system for drainage and irrigation misconstrues the applicability of the farm impacts test under ORS 215.296 and CCZO 307.1.<sup>41</sup> Drainage districts are not farms, nor do the services provided by drainage districts constitute an "accepted farm practice" as defined in ORS 215.203(c). ORS 215.203(c) defines an "accepted farm practice" as "a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use." The purpose and intent of the Beaver Drainage District is to provide flood control, and although the District may provide a benefit to farms within the District's boundaries, the Beaver Drainage District is not itself a farming activity intended to obtain a profit in money. *See* ORS 215.203(c). As such, any impact the Project *may* have on the Beaver Drainage District is not subject to the farm impacts test under ORS 215.296 and CCZO 307.1. The Board should decline to entertain Riverkeeper's attempt unduly expand the farm impacts test.

Even assuming that impacts to the BDIC's system are relevant to the farm impacts test, the Board can find that there is substantial evidence in the record that the Applications will not impact BDIC's system in such a way as to "force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use" or "significantly increase the cost of accepted farm or forest practices on land devoted to farm or forest use." As explained during the hearing, the Application does not propose relocation of an existing BDIC drainage ditch within the site area,<sup>42</sup> but does propose the addition of new culverts to allow for crossings of

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<sup>41</sup> *See* Riverkeeper Comment, at 14 (Jan. 9, 2024).

<sup>42</sup> Note that one small waterway, noted as "Waterway E," is located within the RIPD zone and must be filled to accommodate construction of the Facility. This was part of the original Site Design Review approval and is not proposed to be changed. This waterway will not be impacted by the rail branchline and is therefore outside of the reasonable scope of the "farm impacts analysis."

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those ditches. The BDIC raised four principle concerns with respect to the physical impacts of the facility: culvert sizing, tree buffering, and potential groundwater contamination.<sup>43</sup>

With respect to culvert sizing, the BDIC argued that 48” culverts should be installed rather than 36” culverts. A memorandum from MFA was submitted on January 24, 2024, which explained the following:

“As stated in the Post-Construction Stormwater Management Plan 1, the conveyance structures were sized using an accepted hydrologic model and available survey data. Based on the results of this modeling, the 36” diameter culverts were determined to be adequate to convey the design storm, consistent with the relevant design guidance. If, during final design, additional information indicates that these conveyance structures are insufficient, larger culverts may be proposed. NEXT Renewables will coordinate with the BDIC as needed to ensure the culverts are sized appropriately to convey expected flows; however, it is not anticipated that additional field fit modifications by the BDIC will be necessary after final design.”

This is substantial evidence that the proposed culverts will be sufficient to accommodate the BDIC’s current flow levels.

In response to the BDIC’s concerns regarding the proposed vegetated buffer along the south side of the Facility, MFA explained as follows:

“Following substantial completion of construction and termination of the Construction Stormwater Discharge Permit No. 1200-C, NEXT Renewables will remove the sediment fencing, ensuring access to the waterways for maintenance.

“Installation of the proposed tree buffer is a County requirement for development of the project site. Routine maintenance of the tree buffer will reduce the likelihood of debris and blockages in the adjacent waterways. The waterways will remain accessible for maintenance from the south. NEXT Renewables will coordinate with the BDIC to ensure ongoing access to the waterways from the north, as needed.

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<sup>43</sup> It is worth noting the conflict between Riverkeeper’s argument that the proposed buffers are insufficient and BDIC’s argument that the buffers should not be allowed.

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“No development is proposed south of the tree buffer along the boundaries of waterways G and F. These waterways will remain accessible for maintenance from the south. NEXT Renewables will coordinate with the BDIC to ensure ongoing access to the waterways from the north, as needed.”

Based on this expert analysis, the County can find that the proposed vegetated buffer will not significantly impact the BDIC’s ditch system and that such a buffer is required by the County, in any event.

With regard to groundwater impacts and spill response, there is ample evidence in the record to demonstrate the following:

- Adequate spill control is proposed around all tanks containing oil and equipment pads.<sup>44</sup>
- The proposed stormwater ponds have been sized to adequately detain and treat all stormwater generated on the site and in so doing, will prevent groundwater contamination.<sup>45</sup> In particular, MFA observed as follows:

“The presence of high groundwater, as identified in the groundwater evaluation, is expected to limit the infiltration capacity of the site and the proposed stormwater facilities were designed with the assumption that infiltration is negligible. The proposed ponds were designed with a shallow depth to avoid the need for a liner and minimize groundwater intrusion into the ponds. If additional groundwater evaluations determine that groundwater intrusion will negatively impact the ponds or that the ponds will significantly alter the existing drainage conditions, including groundwater levels and surface water availability, modifications to the design may be made during the final design phase.”<sup>46</sup>

- GSI Water Solutions prepared a memorandum prepared by a Registered Geologist, dated Jan. 25, 2022, which describes the groundwater protective measures NEXT must take to comply with applicable state and federal water quality standards. These include the following:

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<sup>44</sup> See Jan. 24 MFA memo at 3.

<sup>45</sup> See Jan. 24 MFA Memo at 4, MFA Post-Construction Stormwater Plan at 9.

<sup>46</sup> Jan. 24 MFA Memo at 4.

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- Compliance with DEQ's Oil and Hazardous Materials Emergency Response Requirements;
- Satisfaction of Oregon DEQ 1200-C (construction) and 1200-Z (industrial operations) permit requirements;
- Avoidance of stormwater infiltration and instead using pollution elimination and reduction control measures to protect groundwater quality; and
- Treatment of all stormwater that may accumulate oils due to contact with oil-handling equipment.

In closing, the overwhelming weight of the substantial evidence in the record supports the conclusion of both NEXT and County Staff that the proposed rail development will not force a significant change in farm or forest practices within the impact area, or significantly increase the cost of accepted farm and forest practices.

**b. Response to Beaver Drainage Improvement Company, Inc. comments.**

BDIC's comments primarily address aspects of 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. Moreover, the vast majority of BDIC's February 6<sup>th</sup>, 2024 public comment does not appear to be responsive to any argument or evidence submitted during the first open record period because BDIC's comment focuses on NEXT's Joint Permit and BDIC's own purported authority to regulate land use actions within the Beaver Drainage District. Only BDIC comment #5 within its February 6 submittal is responsive to evidence submitted during the second open record period. As such, all but comment #5 within BDIC's February 6 testimony should be excluded from the record for this application.

BDIC's February 6 public comment also does not address any approval criteria. Instead, BDIC's comment focuses on NEXT's DSL permit renewal, as well as other themes that are not within the ambit of Columbia County's land use review for the Project. As stated above, NEXT is not seeking a DSL permit from the County, and the County does not administer Oregon's removal-fill program. To the extent that BDIC has independent authority to approve or not approve aspects of the Project – which NEXT strongly disputes – BDIC's authority is not relevant to the authority of the County to approve the Project as a zoning matter. Just as the County need not decide issues governed in other regulatory programs or by other jurisdictions, the County is not required to evaluate BDIC's authority to allow or not allow modification of its drainage system, as that is governed by BDIC's easement rights and is fundamentally a real estate matter that the



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County is not empowered to decide.<sup>47</sup> Regardless, BDIC's arguments in this vein do not explain how their right to approve or deny improvements to the ditches prevents the Applications from meeting the criteria.

BDIC comment #5 within its February 6 testimony addresses the MFA and GSI's groundwater reports, submitted during the first open record period. Specifically, BDIC takes issue with the Applicant's stormwater management design, arguing that "lived experience" shows that the Applicant's design will not be sufficient to manage stormwater. In response, the Applicant reminds the Board that NEXT was required under the National Marine Fisheries Service ("NMFS") SLOPES V regulations to develop its stormwater management plan<sup>48</sup> and stormwater management facilities to ensure that discharge rates match pre-development discharge rates (i.e., the discharge rate of the site based on its natural groundcover and grade before any development occurred).<sup>49</sup> This fact is especially relevant to, and addresses, BDIC's unsupported concerns regarding the Project's flood risks and stormwater management. MFA's stormwater management plan was designed consistent with the SLOPES V regulations and represents substantial evidence that the Project's stormwater management controls meet all relevant approval criteria and will not result in adverse impacts to the Beaver Drainage District or existing wetlands.

Regarding BDIC's concerns about the rail transport aspect of the Project, NEXT has also developed plans for its proposed railroad branchline to achieve a limited rail connection between the Facility and the existing Portland & Western Railroad Tracks. NEXT has analyzed the potential impacts of rail transport along the branchline within its application materials, and has submitted the Crosstown Memo that evaluates railroad operations proposed for the Project and offers mitigation recommendations to minimize the potential impact on farming practices within the impact area of the branchline.<sup>50</sup>

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<sup>47</sup> "Generally, a final and authoritative determination regarding the intent and scope of deeds, easements and similar real estate documents can be obtained only in circuit court, based on application of real estate law. *See Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 328, 334-35 (2017) (interpreting deeds under real estate law is a function within the particular competence of the circuit court, and is a function that local governments and LUBA, in the exercise of land use approval and review, should avoid if possible)." *McNichols v. City of Canby*, 80 Or LUBA 139, 146, *aff'd w/o op*, 297 Or App 582 (2019).

<sup>48</sup> CUP 23-11, Exhibit 18.

<sup>49</sup> SLOPES V Regulations, at 26 (Mar. 14, 2014) (submitted prior to close of January 24, 2024 open record period).

<sup>50</sup> Crosstown Memo.

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The issue of flood risk – as it relates to the Project – has been addressed in NEXT’s prior record submittals. To reiterate, CCZO 1104.2.A states that “[t]he special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled The Flood Insurance Study (FIS) for Columbia County, Oregon and Incorporated Areas, dated November 26, 2010, with accompanying Flood Insurance Rate Maps (FIRMs) hereby adopted by reference and declared to be a part of this ordinance.” NEXT submitted an updated FIRM during the second open record period, which shows this area as “Zone X” (Area with Reduced Flood Risk due to Levee).<sup>51</sup> This is in addition the same map scaled as a “FIRMette” already in the record. As this is the map adopted by the County as the basis for its Flood Hazard Overlay (the Flood Insurance Rate Study dated Nov. 26.2010), the Property is not located within a Special Flood Hazard Area. CCZO 1104.2.A.

Within the Staff Report, County Staff also states that “[a]ccording 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 Site Design Review Exhibit 5) Therefore, Staff finds that this criteria does not apply.”<sup>52</sup>

For the reasons above, the Property is not a Flood Hazard Area regulated by the County and the standards in that section do not apply. While BDIC may be understandably focused on recertification of the levy system near Port Westward, their efforts in that regard do not related to the approval criteria, nor do they allow the County to rely on something other than the Nov. 26, 2010 FEMA Flood Insurance Rate map.

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

### **c. Response to Mike Seely Comments**

Mike Seely’s comments submitted February 7, 2024 can be reduced to two themes – concerns regarding rail impacts to Seely Mint’s summer harvest season, and potential stormwater impacts. NEXT has addressed both of these concerns detail through its application materials and open record submittals. NEXT has thoughtfully designed the limited branchline connection across the PA-80 zoned land within the Project area, and has developed a comprehensive rail mitigation plan that addresses potential conflicts between harvest vehicles and trains at the Kallunki Road crossing.<sup>53</sup> As represented previously, NEXT is willing to incorporate the mitigation measures proposed in the Crosstown Memo as conditions of approval to address any potential crossing

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<sup>51</sup> Applicant’s Second Open Record Submittal (Feb. 7, 2024).

<sup>52</sup> Staff Report, at 19.

<sup>53</sup> See Crosstown Memo (Jan. 23, 2024).



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impacts on Seely Mint’s harvest vehicles. However, although NEXT has addressed the Kallunki Road crossing Mr. Seely has not offered any evidence that the Kallunki Crossing is necessarily critical to his farming operation; rather, his comments appear to raise general concerns with delays at rail crossings without explaining whether a particular crossing is essential to his operations. NEXT has also submitted a detailed stormwater management plan that address Mr. Seely’s concerns regarding the Project’s proposed stormwater management system.<sup>54</sup>

Critically, Mr. Seely has not identified any relevant approval criteria that the Applications fail to meet, nor has Mr. Seely submitted any evidence challenging the conclusions of the Applicant’s evidence and experts. As such, Mr. Seely’s comments should not be considered relevant to whether the Board can approve the subject Applications.

For the above reasons, the Board can reject Mr. Seely’s arguments.

**d. Response to Warren Seely Comments**

Warren Seely has submitted a variety of comments, both in his capacity as an individual<sup>55</sup> and on behalf of the BDIC. NEXT has responded to Mr. Seely’s comments within its response to the BDIC, above. *See* Section IV(b).

**e. The Application satisfies the farm impacts test.**

NEXT has comprehensively addressed the Applications alleged noncompliance with the farm impact test under ORS 215.296 and CCZO 307.1. *See* Section IV(a)(v). As stated above, NEXT’s Application contains a detailed farm-by-farm analysis for the farm impacts test, which has been incorporated in the Staff Report for this matter.<sup>56</sup> NEXT has also submitted several technical reports from its consulting team addressing various potential farm impacts that may result from the Project, as well as offering mitigation measures.<sup>57</sup>

Conversely, opposition commenters – including Mike and Warren Seely – have offered no substantial evidence that the Project will result in adverse impacts to farming. The opposition testimony relies on conjecture and hypotheticals, rather than science and engineering. Because there is no substantial evidence in the record that the Project will force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use” or “will not

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<sup>54</sup> *See* Jan. 24 MFA Memo.

<sup>55</sup> Warren Seely Comment (Jan. 10, 2024).

<sup>56</sup> Staff Report, at 28-31; CU 23-11, Application Narrative, at 11-14.

<sup>57</sup> *See* MFA Emissions Memo; GSI Water Solutions; Crosstown Memo.

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significantly increase the cost of accepted farm or forest practices on land devoted to farm or forest use,”<sup>58</sup> the Board should find that the Applications comply with the farm impacts test. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

**f. Response to other themes raised throughout the public comment process**

**i. Suitability**

As described above, the Project includes two applications, one Site Design Review Modification for the Facility and one for the rail branch line. These applications are separate but related. Few project opponents have argued that 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, the Board’s previous approval of DR 21-03 determined that the renewable diesel production facility falls within the category noted above and authorized the use based on demonstration of compliance with the Prescribed Conditions. In the previous approval, the Board found that the proposed use was consistent with all applicable Goals and Policies of the Comprehensive Plan in Part X Economy, Part XII Industrial Siting, Industrial Lands Exceptions, Port Westward Exception Statement, and Part XIV Public Facilities and Services.<sup>59</sup> The result of the current Applications is a rail facility that fits within the parameters of the rail service approved as part of DR 21-03. The scope of the use approved in DR 21-03 is not changing as a result of this modified design application, and the fact that more of this operation is being relocated to the RIPD zone from a PA-80 zone only serves to reduce its impacts on surrounding farmlands. Regardless, these standards do not apply to this application for a modification of a prior approval.<sup>60</sup>

Additionally, even if CCZO 681 were applicable to the subject Applications, 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

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<sup>58</sup> ORS 215.296; CCZO 307.1.

<sup>59</sup> Final Order No. 12-2022, at 2-4.

<sup>60</sup> *See also*, Staff Report, at 11.

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surrounding area and surrounding rural area because it is consistent with the stated purpose of the Port Westward Exception Area and RIPD zone.

The Project is intended to provide both an industrial activity and energy facility with its comparative advantage due to its access to the Columbia River, existing dock facilities, rail and urban services, and PGE's Beaver Power 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 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. Finally, the use of multimodal transportation, including river and rail transportation, will prevent adverse impacts on the surrounding area.

To the extent that the suitability purpose statement of CCZO 681 – or any other suitability criteria – are applicable to the Project, the Applications fully satisfy these criteria.

ii. 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 response to Riverkeeper's comments. *See* Section IV(a)(v). Moreover, NEXT has submitted voluminous technical analysis that addresses stormwater management and potential groundwater impacts.<sup>61</sup> 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.

iii. 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(a)(v). Importantly, NEXT intends to incorporate and adopt waste and spill

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<sup>61</sup> *See* Jan. 24 MFA Memo.

February 21, 2024

measures that meet or exceed state and federal standards.<sup>62</sup> Although commenters concerned with this aspect of the Project have not cited to any relevant approval criteria, the record reflects that NEXT has appropriately addressed all waste and spill concerns.

iv. Acoustical impacts have been fully addressed.

Some opponents raised concerns about potential acoustical impacts from the approved Facility. The CCZO does not impose a specific numerical limit on noise sources in terms of decibels. Rather, a Site Design Review application is required to identify “[n]oise sources, with estimated hours of operation and decibel levels at the property boundaries.”<sup>63</sup> NEXT did so, and Staff found as follows: “Noise sources for the approved facility will utilize applicable mechanisms to limit volumes to no more than 85 decibels at the property line.”<sup>64</sup> The Applicant has therefore satisfied its burden to identify the likely levels of noise generated at the Property Line, and no opponent has argued or submitted any evidence that the Application will violate any applicable noise standard.

v. Wildlife

The Staff Report found that the Project is not located in any adopted wildlife overlay zone, including the County’s Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone, Big Game Habitat Area, Wildlife Game Habitat Mapping.<sup>65</sup> NEXT concurs with Staff’s finding on this point and has submitted multiple maps confirming that the Project is not located in any identified wildlife overlay zone.<sup>66</sup>

The Applications are not subject to any wildlife or habitat zone regulations, and therefore has met any applicable criteria.

vi. Air pollution

In the second open record period, NEXT submitted a technical memorandum from MFA responding to air quality concerns, specifically related to emissions from the rail branchline.<sup>67</sup> The MFA air quality memo explains that the railcars themselves will not generate emissions

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<sup>62</sup> *Id.*, at 3.

<sup>63</sup> CCZO 1561.A.15.

<sup>64</sup> Staff Report at 16.

<sup>65</sup> *See generally*, Staff Report.

<sup>66</sup> Applicant Site Design Review Submission Package September 18, 2023, Ex. 6-7.

<sup>67</sup> Applicant’s Second Open Record Submittal, Exhibit 1.

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because their cargos will be covered, and that brake and locomotive emissions will be far below levels considered unsafe.

NEXT's second open record submittal also encloses excerpts potentially relevant sections of 7 CFR Part 205 (National Organic Program) concerning organic crop certification to demonstrate that incidental diesel air pollutants are not among the substances prohibited.<sup>68</sup> That is, environmental diesel pollutants do not constitute, either individually or collectively "a substance the use of which in any aspect of organic production or handling is prohibited or not provided for in the Act or the regulations of this part," because they are not "used" as an input in organic crop production.

The MFA Emissions Memo concludes that "particulate emissions estimate from the trains servicing the facility indicates that potential impacts from deposition to surrounding farmlands will be very low relative to the deposition standards set by the State of Oregon" and that there will be no observable impact from train emissions on surrounding farmland.<sup>69</sup> Moreover, the memo also concludes that "emissions from rail operations at the facility will also not result in any prohibited substances that affect organic certification."<sup>70</sup>

Although opponent comments do not point to any relevant approval criteria regarding air emissions, NEXT has diligently analyzed and responded to all concerns raised.

vii. Traffic

NEXT's traffic engineer, Mackenzie, has provided a project TIA that addresses those items identified in the scoping letter approved by County and ODOT staff to ensure compliance with approval standards.<sup>71</sup> Mackenzie has also provided a supplemental letter regarding the continuing applicability of the TIA.<sup>72</sup> No commenter has submitted evidence into the record rebutting the conclusions made in the Mackenzie TIA. Therefore, the Board can consider the TIA substantial evidence demonstrating the Project's compliance with all traffic-related approval criteria. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

Moreover, the proposed railroad 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

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<sup>68</sup> *Id.*, Exhibit 2.

<sup>69</sup> *Id.*, at 4.

<sup>70</sup> *Id.*

<sup>71</sup> Site Design Review Exhibit 20.

<sup>72</sup> Site Design Review Exhibit 21.

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renewable diesel production facility. The Board can find that the railroad branchline will reduce traffic on area roadways, reserving roadway capacity for all users and modes.<sup>73</sup> NEXT has analyzed the potential impact of train crossings on roadway traffic within the application materials and supplemental Crosstown Memo.

Finally, DR 21-03 approved a driveway to Hermo Road, with secondary access to Kallunki Road for emergency vehicles and for equipment to access barges. No changes to site access are proposed as part of this application.<sup>74</sup>

The evidence in the record demonstrates that the subject Applications meet all applicable transportation-related approval criteria.

## V. 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. NEXT concurs with County staff's recommendation of approval. As such, NEXT respectfully requests that the Board County staff recommends approving the Applications.

Sincerely,



Garrett H. Stephenson

GST:kob

CC: Mr. Chris Efir  
Mr. Gene Cotton  
Ms. Laurie Parry  
Mr. Michael Hinrichs  
Mr. Brian Varricchione  
Mr. Brien Flanagan  
Mr. Kennan Ordon-Bakalian

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<sup>73</sup> Staff Report, at 38.

<sup>74</sup> See Site Design Review, Exhibit 4.

**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 Efir  
 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  
 bvaricchione@mcknze.com

**LOCATION:** 81009 Kallunki Rd. Clatskanie, Oregon

**TAX MAP ID #:** 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, 8423-80-00700  
 De La Cruz: 8423-80-00800

**TAX ACCOUNT #:** Facility  
 Port of Columbia County: 28060, 28063, 28064, 28065, 28107  
 NEXT Renewable Fuels, Inc.: 28062

Branch Line  
 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

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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

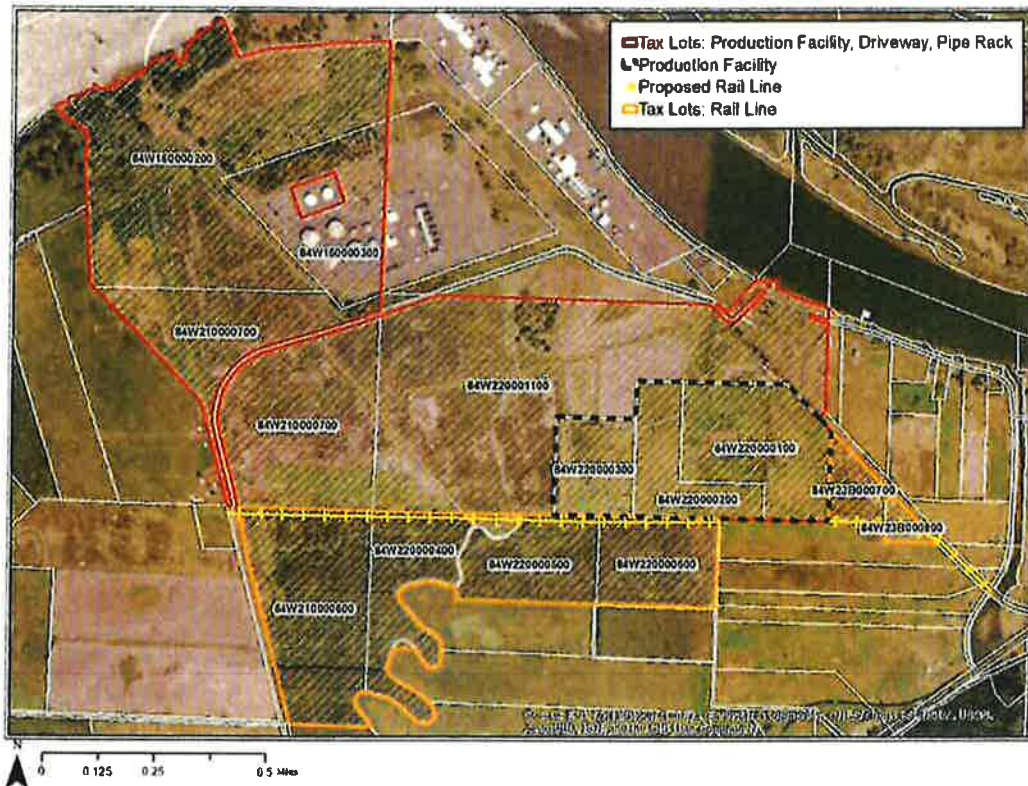
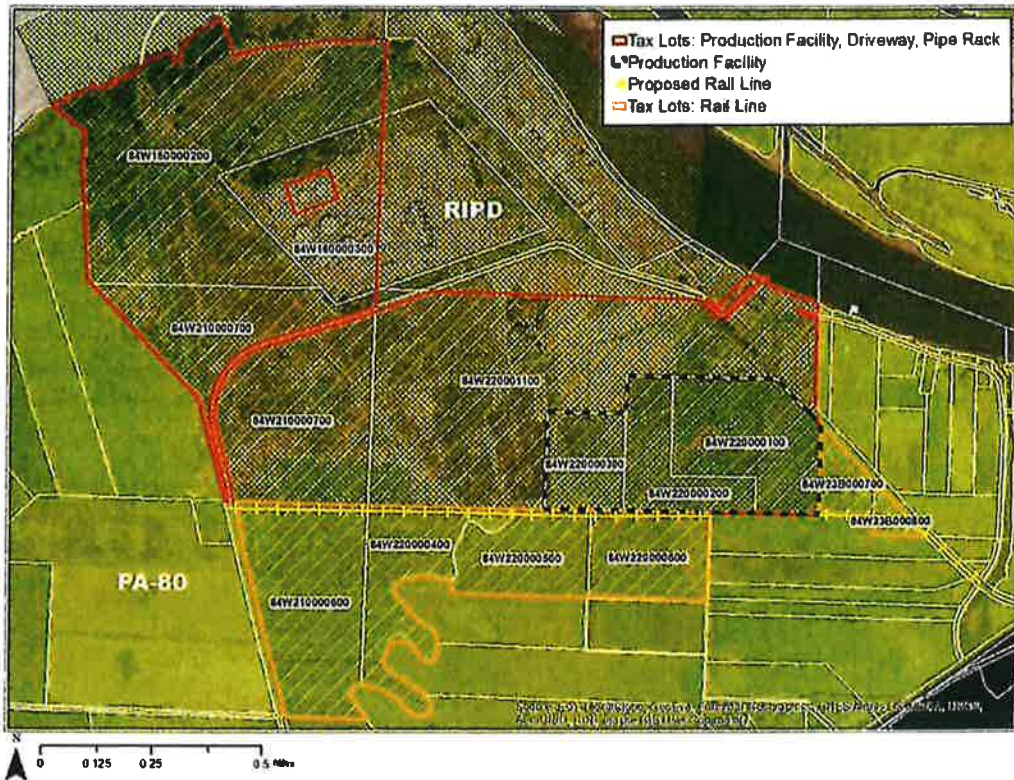




Figure 2 Zoning Map



## 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:

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

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-of-way) 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 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 35 feet 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 and C1.11, 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.

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

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*
  - D. *Proposed new accesses or roadways*
  - E. *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."

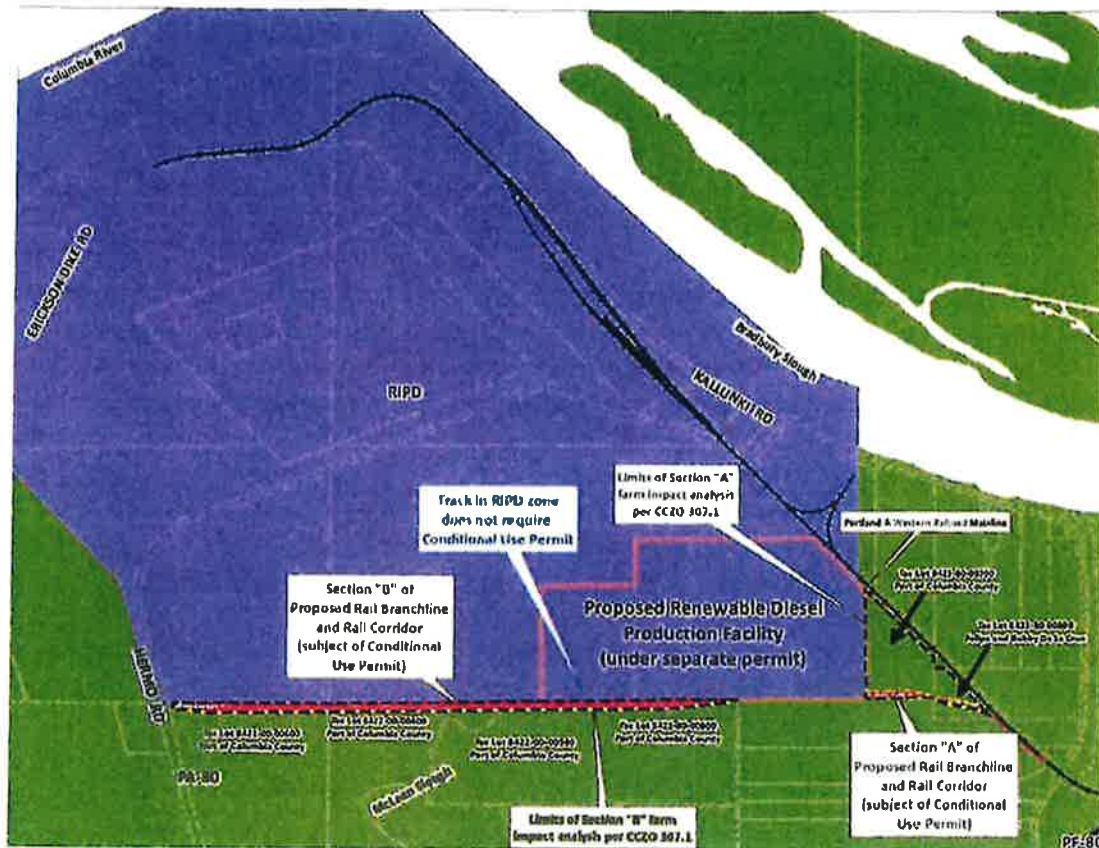
- A. *The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*

**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-of-bank, 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 within 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.<sup>5</sup> 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, 2021 publication: 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 Columbia 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

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**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

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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, 8423-80-00700
- De La Cruz: 8423-80-00800

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

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- 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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  - 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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  - 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)
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  - 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



# COLUMBIA COUNTY BOARD OF COMMISSIONERS STAFF REPORT

January 3, 2024

## Modification of an Approved Site Design Review in the RIPD Zone - Type II Conditional Use Review

**HEARING DATE:** January 10, 2024

**FILE NUMBERS:** DR 21-03 MOD (Modification)  
CU 23-11

**APPLICANT:** NEXT Renewable Fuels, Inc., Attn: Gene Cotten  
11767 Katy Freeway, Suite 705  
Houston, TX 77079  
(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 (8423-B0-00800)  
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 #:** Production Facility  
8422-00-00100, 8422-00-00200, 8422-00-00300  
Driveway and Rail Line  
8422-00-01100, 8421-00-00700  
Pipe Rack  
8422-00-01100, 8421-00-00700, 8416-00-00200, 8416-00-00300  
Railroad Branchline  
8423-B0-00700 and 8423-B0-00800

**ZONING:** Resource Industrial – Planned Development (RIPD)  
Primary Agriculture (PA-80)

**SIZE:**

Site

~109 acres for the production facility  
~16 acres for the branchline

**REQUEST:**

A modification of prior approval of DR 21-03 which authorized a renewable diesel production facility within the Port Westward Industrial Park. The subject modification proposes to relocate the rail tracks, tree buffer, and storm facilities northward from the PA-80 zone to the RIPD zone.

A Conditional Use Permit for a railroad branchline between Portland & Western Railroad and the renewable diesel production facility, previously approved by DR 21-03.

**APPLICATION COMPLETE:**

10/19/2023

**150 DAY DEADLINE:**

03/17/2024

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## SUMMARY

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### DR 21-03 MOD Description of Request

NEXT Renewable Fuels, Inc. is seeking approval for a Site Design Review Modification for the renewable diesel production facility at the Port Westward Industrial Park, previously approved by Columbia County in March 2022. The facility, designed to produce renewable diesel fuel from materials like cooking oil, animal fats and tallow, and corn oil, was initially approved by the County Board of Commissioners under Site Design Review DR 21-03 and Variance 21-05 as a "Use Permitted under Prescribed Conditions" in the Resource Industrial – Planned Development (RIPD) zone. A Conditional Use Permit (CU 21-04) for a rail branchline within the Primary Agriculture (PA-80) zone was also initially granted but later overturned by LUBA. Consequently, the current application includes proposed modifications that involve relocating rail tracks, a tree buffer, and storm facilities northward from the PA-80 zone to the RIPD zone. It is important to note that these modifications do not alter the overall scale or layout of the majority of the facility.

### Approved Facility Development

The project approved by Site Design Review DR 21-03 and Variance V 21-05 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. DR 21-03 also approved a driveway to Hermo Road, with secondary access to Kallunki Road for emergency vehicles and for equipment to access barges. No changes to site access are proposed as part of this application.

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

### Proposed Design Modifications

In this application, NEXT Renewable Fuels is proposing to relocate the rail tracks, tree buffer, and storm facilities northward from the PA-80 zone into the RIPD zone, as detailed in the plans in Site Design Review Exhibit 4. The proposed modifications do not alter the overall scale or layout of the majority of the facility as the proposed improvements will be located within the same area previously approved for the Hermo Road access.

### CU 23-11 Description of Request

In addition to the Modified Site Design Review, NEXT Renewable Fuels, Inc. is seeking a Conditional Use Permit (CU 23-11) for a railroad branchline to support the renewable diesel production facility at the Port Westward Industrial Park, north of Clatskanie. The initial facility approval, granted by the County Board of Commissioners under Site Design Review

DR 21-03 and Variance 21-05, was categorized as a "Use Permitted under Prescribed Conditions" in the Resource Industrial – Planned Development (RIPD) zone. A Conditional Use Permit (CU 21-04) for a railroad branchline within the Primary Agriculture (PA-80) zone was also initially approved but later overturned by the Oregon Land Use Board of Appeals (LUBA). In response to LUBA's ruling, the applicant is submitting a new application, proposing changes in the size and location of the railroad branchline to align with LUBA's decision. The revised application outlines a limited rail connection between the renewable diesel production facility and the existing Portland & Western Railroad Tracks.

The site, located at the Port Westward Industrial Park (Port Westward), consists of portions of multiple parcels owned by the Port of Columbia County (the Port) and one parcel owned by NEXT Renewable Fuels. The combined area of the approved renewable fuels facility is approximately 109 acres (additional off-site acreage encompasses the driveway, pipe rack and rail corridor)The site is designated Rural Industrial in the Columbia County Comprehensive Plan and has been zoned Resource Industrial – Planned Development (RIPD) through two prior zone changes and Goal Exceptions approved by the Columbia County Board of Commissioners.

Nearby portions of Port Westward have been developed with Portland General Electric (PGE) power generation facilities, the Columbia Pacific Bio-Refinery, the Clatskanie People's Utility District electrical substation, roadways, rail lines, utilities, drainage facilities, levees, pipelines, a water tower, and electrical transmission lines. The entirety of Port Westward is within the Clatskanie Rural Fire Protection District.

Port Westward is served by private water systems that utilize wells and draw from the river. The industrial park also has a private industrial wastewater system and a discharge system for tenants' process water. In addition, 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. This reach of the river is part of the U.S. Department of Transportation's M-84 Marine Highway Corridor and connects to the M-5 Marine Highway Corridor along the Pacific coast. The river has a 43-foot navigation channel to accommodate vessels needing deepwater port access.

The site is currently undeveloped wetlands and agricultural cropland. Wetlands are present over most of the property. The site is within the Wetland Area Overlay but outside the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone. The surrounding area is zoned RIPD to the north and west and Primary Agriculture (PA-80) to the south and east. Existing land uses to the north are industrial and agricultural, while existing uses to the east, south, and west are agricultural.

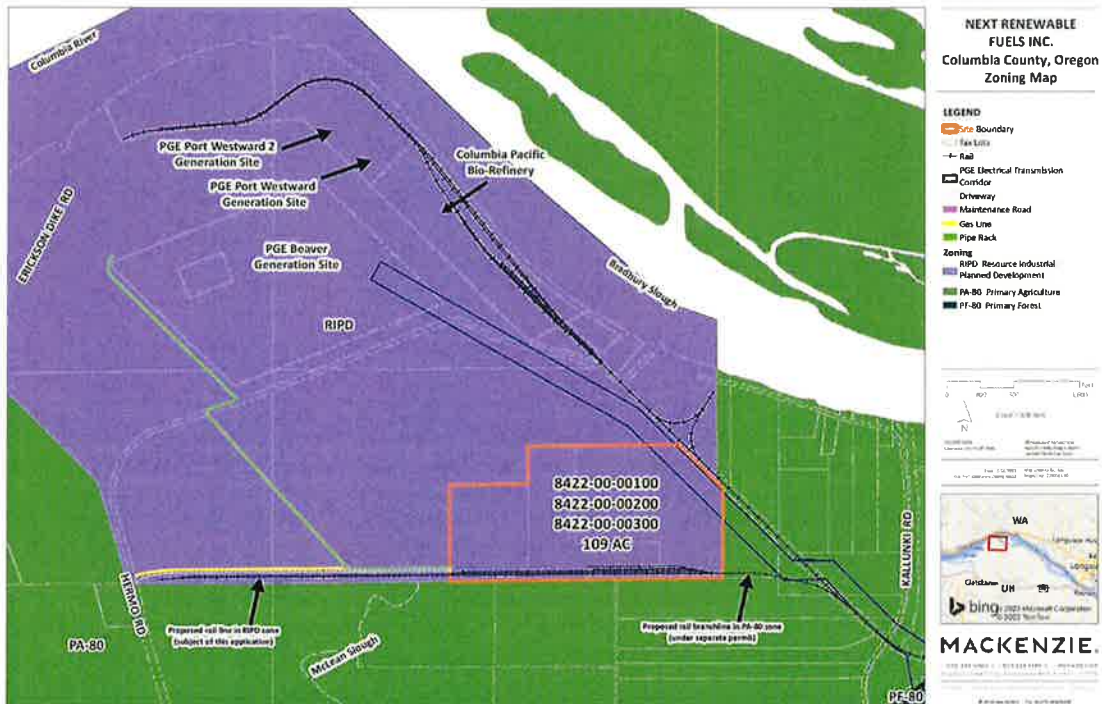
The site is protected from flooding by dikes and associated stormwater conveyance and pumping facilities located within the Beaver Drainage District. According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map 41009C0050D, dated November 26, 2010, as the dike system has been provisionally accredited by FEMA, the site is in shaded Zone X and is therefore outside the Special Flood Hazard Area regulated by Columbia County.



Figure 1 Aerial Map of Subject Property



Figure 2 Zoning Map



## Proposed Railroad Branchline

The proposal for the Conditional Use application (CU 23-11) involves a proposed railroad branchline corridor in the Primary Agriculture Use Zone - 80 (PA-80). This railroad branchline is required in order to connect to Portland & Western Railroad's facilities to accommodate shipment of additional materials and potentially a small amount of finished product. This corridor extends from an existing rail line to the east and is intended to serve the approved renewable diesel production facility. The site, situated immediately east of the Port Westward Industrial Park, encompasses portions of two parcels—one owned by the Port of Columbia County (8423-B0-00700) and another by Felipe and Bobby De La Cruz (8423-B0-00800). While the combined area of these parcels is approximately 16 acres, the actual proposed rail corridor covers a much smaller area, approximately 1.7 acres. The size of the proposed railroad branchline (within the PA-80 zone) consists of approximately 1,250 linear feet with an area of approximately 1.7 acres.

The proposed railroad branchline is intended as an accessory to a renewable diesel production facility on the adjacent property to the west, which has received approval through Site Design Review application DR 21-03. The primary purpose of the branchline is to facilitate the transportation of raw materials, such as clay, and a potential small amount of finished products to and from the renewable diesel production facility. The rail transport is estimated to involve around 315 rail cars per week, on average. However, the facility's main transportation reliance is on vessels using the Port of Columbia County-owned dock on the Columbia River.

Before construction, the applicant will seek necessary approvals from Portland & Western Railroad, the rail services provider and owner, which has provided specifications for the branchline layout. In line with other rail lines, the proposed branchline does not generate a demand for new water, sanitary sewer, storm drainage, gas, or telecommunication facilities. It may, however, utilize new electrical utilities for switches and signals.

While the primary mode for transporting feedstock and finished products will be by ship, the applicant plans to use rail for a portion of the feedstock and specific finished products like clay. To accommodate the unloading, loading, and storage of rail cars without obstructing the existing track to the Port Westward Industrial Park, the facility needs an adequate track length. In collaboration with Portland & Westward Railroad (P&W), the proposed rail design aims to provide transportation and storage capacity for 18,000 linear feet of track. Most of this track falls within the RIPD zone, but the section on PA-80-zoned land, defined as the "site" for the Conditional Use permit application, is the focus of this submission. Additional track on RIPD-zoned land, partly approved through Site Design Review (DR 21-03) and partly under review for modification (DR 23-01 MOD), is not within the scope of the Conditional Use application.

The proposed rail connection between the production facility and the Portland & Western Railroad is classified as a "branchline" per OAR 660-012-0065. This branchline features a single track and connects the project to the existing P&W track, traversing a small section of PA-80 zoned land before entering Port of Columbia County property zoned RIPD.

The subject properties, designated as "Agriculture" in the Columbia County Comprehensive Plan and zoned PA-80, is currently undeveloped with structures, but a portion is used for agricultural purposes, specifically hay/grassland. Throughout the site, non-significant wetlands are present. The Port-owned parcel, currently undergoing a separate zone change application to Resource Industrial - Planned Development (RIPD), is part of this site. Despite the ongoing zone change process, the conditional use permit application is based on the current PA-80 zoning.

The surrounding area has a zoning designation of PA-80 to the north, east, and south, and RIPD to the west. Agricultural land uses characterize the surrounding area in all directions, except for the Portland & Western Railroad mainline to the east. Industrial uses are already established to the northwest within the Port Westward Industrial Park.



The applicant has submitted two separate applications, which the County has consolidated for review: (1) an application for a Modified Site Design Review in the RIPD zone for modifications to the approved facility; and (2) a Conditional Use for the rail branchline in the Primary Agriculture – 80 Acres (PA-80) Zone.

## Application Timeline

The brief timeline below provides an overview of materials received by the County for the NEXT application.

- NEXT Pre-Application Conference: February 6, 2020
- NEXT Application Submissions: January 19, 2021
- The Board of Commissioners approve DR 21-03, V 21-05 & CU 21-04: March 23, 2022
- LUBA reversed the decision on CU 21-04, but did not hear DR 21-03 & V 21-05: October 27, 2022
- NEXT submits a modification of prior approval for DR 21-03 and a new Conditional Use Permit application with changes to the rail branchline (CU 23-11): September 19, 2023
- NEXT ORS 215.427 Completeness for DR 21-03 MOD & CU 23-11: October 19, 2023
- The Board of Commissioners took jurisdiction of DR 21-03 MOD and CU 23-11 via the Columbia County Planning Commission Ordinance Section 11: November 1, 2023
- Initial evidentiary hearing scheduled in front of the Board of County Commissioners for DR 21-03 MOD & CU 23-11: January 10, 2023

## REVIEW CRITERIA & FINDINGS - COLUMBIA COUNTY ZONING ORDINANCE:

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Criteria specific to the modified facility (DR 21-03 MOD). The proposed modified facility elements are entirely located within the RIPD zone. These modified 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

Criteria specific to the Railroad Branchline Conditional Use (CU 23-11).

- Section 300 Primary Agriculture Zone
- Section 1503 Conditional Use
- Comprehensive Plan Goals and Policies

Criteria that are applicable to both the Modified Design Review and the Conditional Use approval.

- 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

## Review Criteria and Findings Specific to DR 21-03 MOD

### 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:*
  - 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 (i.e., 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 fire suppression facilities capable of serving the proposed use. On-site facilities shall be approved by either the State or local Fire Marshall.*

**Finding 1:** In the initial decision for DR 21-03, The Board previously determined that the renewable diesel production facility falls within the category noted above and authorized the use based on demonstration of compliance with the Prescribed Conditions. In the previous approval, The Board found that the proposed use was consistent with all applicable Goals and Policies of the Comprehensive Plan in Part X Economy, Part XII Industrial Siting, Industrial Lands Exceptions, Port Westward Exception Statement, and Part XIV Public Facilities and Services.

The result of this application will be a reduced capacity rail improvement (compared to that previously approved by Conditional Use Permit CU 21-04). Staff finds that the overall use of the facility, as approved in DR 21-03 is not changing as a result of this modified design application. **These standards do not apply to this application for a modification of a prior 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 2:** The proposed site plan approved for DR 21-03 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. There are no changes to any of the structures originally approved in DR 21-03 as proposed in DR 21-03 MOD. Staff finds that the modified design review application does not change the overall all use and remains consistent with the purpose of the RIPD Zone and the provisions for Uses Permitted Under Prescribed Conditions in Section 683.2 with the original conditions as attached. This standard does not apply to this application for a modification of a prior approval.

## 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 3:** 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 4:** 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 and pipe rack). As previously satisfied in the approval for DR 21-03 and V 21-05, the site 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 5:** 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 6:** 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 previously satisfied in Site Design Review DR 21-03 and Variance 21-05, all buildings are set back at least 95 feet from the site boundary, which is appropriate for the approved 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. 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 7:** The applicant has been approved 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 to satisfy condition of approval #15. The TIA demonstrates that the roadway network, following improvements consisting of roadway widening and paving along Hermo Road, will have adequate capacity for the proposed development. The site will have secondary access to Kallunki Road (a public right-of-way) for emergency vehicles and for equipment to access barges, but the secondary access is not proposed for regular use by members of the public since it is within the Port Westward secure area. For the above reasons, the County Board found 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 8:** This provision provides procedural guidance to the Planning Commission or Board of Commissioners and does not require the submission of additional evidence. Elsewhere in the applicant’s narrative and in the accompanying exhibits, the applicant has provided evidence that the proposed use complies with CCZO Sections 681, 683, 684, and 1550. As the use was previously approved by Site Design Review DR 21-03 and Variance 21-05, the Board of Commissioners is not required to revisit the use authorization as part of the application for DR 21-03 MOD.

## 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 9:** The proposed modification to the approved development is classified as a Type 2 project since the rail corridor affects greater than 5,000 square feet (SF). The applicant is seeking Type 2 Design Review approval from the Planning Commission with this application. As stated previously, the Board of Commissioners too jurisdiction of the applications through the Planning Commission Ordinance Section 11. 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 10:** The proposed development is classified as a Type 2 project as noted above, so the applicant is seeking Type 2 Design Review approval from the Board of Commissioners. 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 11:** A pre-application conference for this application was held with County staff on February 6, 2020 for the application that was approved by the County in March 2022 pursuant to Site Design Review DR 21-03 and Variance 21-05. Since the proposed modifications are geographically limited and the majority of the approved site plan will remain as previously approved, **staff has not required a preapplication conference for the current application.**

### 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 12:** In the original DR 21-03 application, the 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. In the submitted application for DR 21-03 MOD, the applicant provided all of the original submittal documents as well as site plans showing the modified elements addressed throughout this staff report.

### **1558 Planning Commission Review:**

*The Planning Commission shall hold a public hearing for all Type 2 Design Review applications according to Sections 1603, 1604 and 1608 of this ordinance. If the Planning Commission determines that the proposed development meets the provisions of this ordinance, it may approve the project. The Planning Commission may attach any reasonable conditions to its approval of a site plan.*

**Finding 13:** The proposed development is classified as a Type 2 project since it affects greater than 5,000 SF and is thus subject to Planning Commission review pursuant to the quasi-judicial hearings and public notice procedures detailed in Sections 1603, 1604, and 1608. As stated, the Board took jurisdiction of these applications through Section 11 of the Planning Commission Ordinance. The proposed renewable diesel production facility was previously determined to comply with applicable criteria as demonstrated by the adopted findings for Site Design Review DR 21-03 and Variance 21-05. If the Board determines that the proposed development meets the provisions of this ordinance, it may approve the project. The Board may attach any reasonable conditions to its approval of a site plan.

### **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 14:** Vicinity maps are included as Site Design Review Exhibit 2, Exhibit 3, Sheet G0.01, and Exhibit 4, Sheet C0.0.

- 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 15:** An existing conditions plan depicting these elements is included as Site Design Review Exhibit 3, Sheets V1.10 and V1.11.

### **1556 Site Plan Submittal and Analysis:**

*The applicant shall submit 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 16:** The application for DR 21-03 MOD was submitted on September 19<sup>th</sup>, 2023 and subsequently deemed complete on October 19<sup>th</sup>, 2023. In the deemed complete letter, the Board hearing of January 10<sup>th</sup>, 2024 was scheduled.

### **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 17:** The approved site plan, grading plan, drainage plan, sign plan, illumination plan, wetland drawings, erosion control plans, and landscaping plans for the facility are included as Site Design Review Exhibit 3. The plans associated with the proposed modifications are included as Site Design Review Exhibit 4. A wetland delineation report is included as Site Design Review Exhibit 12 and a stormwater report is included as Site Design Review Exhibit 19. Noise sources for the approved facility will utilize applicable mechanisms to limit volumes to no more than 85 decibels at the property line. The approved grading plan depicting these elements is included as Site Design Review Exhibit 3, Sheet C1.20, while the plans associated with the proposed modifications are included as Site Design Review Exhibit 4. The approved building footprints are depicted on Site Design Review Exhibit 3, Sheet C1.11, while a rendering of the proposed facility is included as Site Design Review Exhibit 22. No changes to the buildings are proposed with this application.

## **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 18:** The majority of existing vegetation will be removed from the site to accommodate the proposed development. The approved erosion control measures for the entire facility will be implemented as depicted in Site Design Review Exhibit 3, Sheets EC1.10-EC5.10, while the erosion control plans associated with the proposed modifications are included as Exhibit 4, Sheets C3.0-C3.7.

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 19:** 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 20:** Adjacent properties to the north and west are zoned RIPD and are in the Port Westward Industrial Park, so the County did not require buffering or screening to the north and west when Site Design Review DR 21-03 and Variance 21-05 were approved. Adjacent properties to the south and east are agricultural, so the County did require buffering to the south and east, modified by Variance 21-05 to limit the extent of buffering to those areas not precluded by overhead power transmission lines and rail lines. The proposed modifications do not affect buffering to the east but do alter the location of the buffer to the south, as depicted on Site Design Review Exhibit 4, Sheets C2.0-C2.2 and C2.5-C2.6. This standard is met.

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 21:** As previously approved by Site Design Review DR 21-03 and Variance 21-05, 10 feet of perimeter plantings will be provided on the south and east edges where facing other uses and where not precluded by overhead power transmission lines and rail lines (see Site Design Review Exhibit 3, Sheets C1.13, L1.10, and L1.12). The proposed modifications do not affect buffering to the east but do alter the location of the buffer to the south. As depicted on Site Design Review Exhibit 4, Sheets C2.0-C2.2 and C2.5- C2.6, the applicant proposes a 10-foot buffer south of the proposed rail line. This standard is met.

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 22:** As depicted on Site Design Review Exhibit 4, Sheets C2.0-C2.2 and C2.5-C2.6, no buildings, roads, or parking are proposed in the relocated buffer along the south boundary. No changes are proposed to the buffer along the east boundary. 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 23:** As depicted on Site Design Review Exhibit 4, Sheets C2.0-C2.2 and C2.5-C2.6, a 10-foot buffer is proposed along the south boundary. Per the approved buffer detail in Exhibit 3, Sheet L1.1, the buffer will have a row of trees, shrubs, and groundcover. No changes to the design of the approved buffer are proposed with this application. 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 24:** The RIPD zone does not have any zone-specific requirements to provide screening. This standard does not apply.

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 25:** 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 26:** No modifications to parking are proposed with this application. The proposed parking areas approved by Site Design Review DR 21-03 and Variance 21-05 are at least a third of a mile from Hermo Road. Therefore, no screening was required between parking areas and the road. This standard does not apply to this application for a modification of a prior approval.

4. *Landscaped parking areas may include special design features such as landscaped berms, decorative walls, and raised planters.*

**Finding 27:** No modifications to parking are proposed with this application. No berms, walls, or raised planters are proposed in the parking area landscaping. This standard does not apply to this application for a modification of a prior approval.

5. *Loading areas, outside storage, and service facilities must be screened from adjoining properties.*

**Finding 28:** No modifications to loading areas or outdoor storage are proposed with this application. The County previously approved a V 21-05 to authorize a waiver of screening standards due to the need to provide clear sight lines to the facility to maintain security. This standard does not apply to this application for a modification of a prior approval.

### 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 29:** As previously approved by Site Design Review DR 21-03, the applicant intends 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. Due to provisions of the Chemical Facility Anti-Terrorism Standards (CFATS) risk-based performance standard, the County Board of Commissioners granted Variance 21-05 to eliminate the continuous evergreen hedge normally required with chain link fencing. This variance also authorized 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. **The proposed rail realignment will result in a corresponding realignment of security fencing, but the fence design will not change. Staff finds that no further variance approval is required to relocate the fence and construct it in accordance with the Variance V 21-05.**

### **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 30:** 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 Site Design Review Exhibit 5). Therefore, Staff finds that this criteria does not apply.

- B. *Wetlands and Riparian Areas: Alteration of wetlands and riparian areas shall be in compliance with State and Federal laws.*

**Finding 31:** As detailed in the responses to Sections 1170 and 1180, the site is outside the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone but within the Wetland Area Overlay. To prepare the site for development, the proposed construction will result in temporary and permanent impacts to wetlands. The applicant is seeking approval from the U.S. Army Corps of Engineers for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. The applicant will perform approximately 488 acres of off-site wetland mitigation south of the site in accordance with Federal and State law. With this information, this standard will be met with existing conditions of approval.

- C. *Natural Areas and Features: To the greatest practical extent possible, natural areas and features of the site shall be preserved.*

**Finding 32:** The applicant is proposing modifications to an approved renewable diesel production facility as permitted in the RIPD zone under prescribed conditions. The overall development will impact wetlands so the applicant will perform mitigation as provided by Federal and State law. There are no 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, Site Design Review Exhibit 19) 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 33:** 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 to this application for a modification of a prior approval.

*E. Lighting: All outdoor lights shall be shielded so as to not shine directly on adjacent properties and roads.*

**Finding 34:** Lighting is not proposed to change from the approved layout illustrated in Site Design Review Exhibit 3 Sheets C1.50 and C1.51. Light fixtures will 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 35:** No modifications to building orientation is proposed with this application. This standard does not apply to this application for a modification of a prior approval.

*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 36:** The TIA (Site Design Review Exhibit 20) 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. 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 the original condition of approval #14 requiring improvements to Hermo Road.

There is an existing paved roadway from Kallunki Road to the PGE Beaver Generation site and this road has an existing paved rail crossing. Site Design Review DR 21-03 approved the applicant's proposed use of a secondary gravel driveway that connects to this existing paved roadway west of the rail line, with no requirement for rail improvements at that private crossing.

No changes to off-site auto and pedestrian facilities are proposed with the application for DR 21-03 MOD. This standard is met.

### **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 37:** 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. Following preliminary review by the Board, the applicant will submit refined plans to the Planning Director as part of the building permit review process. 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 40:** As depicted on the approved design in Site Design Review Exhibit 3, Sheets G0.01 and C1.13, the development will utilize a driveway to Hermo Road as its primary access point, with secondary egress to Kallunki Road for emergency vehicles and for equipment to access barges. Each of these serves as a defined ingress and egress point. As shown on the proposed plans in Site Design Review Exhibit 4, vehicle access locations are not proposed to change with this application. 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 41:** 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 42:** The applicant is not proposing any changes to the approved signage as authorized via DR 21-03. This standard does not apply to this application for a modification of a prior approval.

### *.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.*



**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 43:** 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 defers to the provisions of Section 1300. The modifications requested in DR 21-03 MOD does not propose any changes to the signs as authorized via DR 21-03. This standard does not apply to this application for a modification of a prior approval.

**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.*

**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 44:** The applicant acknowledges the ongoing responsibility to maintain the parking and loading areas. No changes are proposed to the parking areas approved via DR 21-03 and V 21-05. This standard does not apply to this application for a modification of a prior approval.

**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 45:** No enlargement or change of use is proposed as the site currently has no structures or parking areas. This standard does not apply.

**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 46:** Mackenzie transportation engineers estimate that the proposed development will generate more than 400 weekday trips and more than 25 peak hour trips. Accordingly, the applicant has provided a TIA as required (Site Design Review Exhibit 20) and has provided a supplemental letter regarding the continuing applicability of the TIA (Site Design Review Exhibit 21). 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*
- D. *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 47:** 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 48:** The project TIA (Site Design Review Exhibit 20) 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. 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.

Due to the passage of time since the TIA was issued, Mackenzie transportation engineers revisited the analysis to see whether the results were still valid. As explained in the traffic analysis update letter in Site Design Review Exhibit 21, the ITE has now issued the Trip Generation Manual, 11th edition, which resulted in revised trip generation consisting of 660 weekday trips, 83 of which will occur in the AM peak hour and 80 of which will occur within the PM peak hour. The updated trip generation estimates reflect a nine percent reduction of AM Peak Hour trips (eight fewer trips), a five percent reduction of PM Peak Hour trips (four fewer trips), and a one percent reduction of average daily trips (seven fewer trips). Based on this comparison, the trip generation in the January 14, 2021, TIA is slightly higher and thus is more conservative than if the trip generation were performed using the latest Trip Generation Manual. Consequently, off-site impacts are projected to be less significant than originally presented in the January 14, 2021, TIA.

The traffic analysis update letter also notes that Oregon Department of Transportation (ODOT) traffic volumes have grown one percent in the interim. Therefore, Mackenzie transportation engineers concluded that due to the decreased site trips and slight increase in existing traffic volumes, off-site impacts are projected to be similar to those originally presented in the January 2021 TIA. Furthermore, the proposed site modifications are not anticipated to affect vehicle trips since the modifications do not alter staffing levels. Therefore, the conclusions of the 2021 TIA (Site Design Review Exhibit 20) continue to apply.

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 required. 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 DR 21-03/V 21-05 condition of approval #14 requiring improvements to Hermo Road.

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 49:** The Applicant will satisfy the original DR 21-03/V 21-05 condition of approval #14 requiring improvements to Hermo Road.

**Review Criteria and Findings Specific to CU 23-11**

**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:*

<b>TABLE OF AUTHORIZED USES &amp; DEVELOPMENT</b>			
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 50:** The application narrative provides the following discussion and response to this criterion:

“Where this rail infrastructure crosses PA-80 zoned land, it is permissible under OAR 660-012-0065 “Transportation Improvement on Rural Lands,” which allows “(j) Railroad mainlines and branchlines” subject to the conditional use criteria in ORS 215.296.

According to P&W, the proposed rail improvements are, collectively, a “branch line”: “NEXT’s rail tracks will be considered industry track, which is another term for branch line or spur” (Exhibit 20). P&W goes on to explain:

*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.*

There are no definitions of “railroad mainlines” or “branchlines” in OAR chapter 660, and no definitions of these terms appear in the Oregon Revised Statutes. Most of the Oregon cases interpreting rail terminology are from the pre-war period but given the importance of rail transportation at that time, they are worth considering for guidance. The only case that appears to interpret these terms is Union Pacific Railroad Company v. Anderson, which described them as follows:

*The 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. The court so stated in the O., C. & E. case, quoting dictionary definitions to that effect. It also quoted from 22 R.C.L. 744 the following:*

*A ‘trunk railway’ is a commercial railway connecting towns, cities, counties or other points within the state or in different states, which has the legal capacity, under its charter or the general law, of constructing, purchasing and operating branch lines or feeders connecting with its main stem or trunk, the main or trunk line bearing the same relation to its branches that the trunk of a tree bears to its branches, or the main stream of a river to its tributaries.*

*- Union Pacific Railroad Company v. Anderson, 167 Or 687 (1941) at 711–712.*

What is apparent in the above analysis is that a “main line” or “trunk line” can be analogized to a river or tree trunk while a “branchline” can be analogized to a tributary or branch. Further case law research did not reveal any definition of a “spur” line that suggests that a “spur” line is not within the broader category of “branchlines.”

There is Oregon legal precedent demonstrating that the terms “spur” and “branchline” are synonymous. For example, the factual recitation by the Oregon Supreme Court in Corvallis & A. A. R. Co. v. Portland, E. & E. Ry. Co., 84 Or 524 (1917) uses the two terms interchangeably:

*Plaintiff alleges in effect that on April 17, 1911, and for some time prior thereto, it owned and operated a railroad line from Corvallis to Monroe, and also owned certain railway equipment, rolling stock, real and personal property, rights of way, contracts, and franchises; that among the contracts was one made during the year 1909 between the plaintiff and the Corvallis Lumber Manufacturing Company, hereafter to be designated as the Lumber Company, by the terms of which plaintiff agreed to construct a branch line from its main track on or before May 15, 1910, extending into section 16, and also to extend that spur to a point within the boundary lines of the northwest quarter of section 20 on or before June 1, 1911, the Lumber Company to furnish logs from said timber for transportation to Corvallis over the branch line when constructed [...].*

The above passage illustrates two (2) concepts: first, there is no principled difference as far as the Court was concerned between the term “spur” and “branchline”, and second, it demonstrates that a rail connection requested by a single company (in this case, the Corvallis Lumber Manufacturing Company) is still a “branchline” even though it serves a single use.

More recently, the Oregon Land Use Board of Appeals relied on a non-legislative 2001 ODOT Oregon Rail Plan to interpret the meaning of “branchline,” as that term was enacted as part of OAR 660-012-0065 in 1995. In so doing, LUBA approved of ODOT’s definitions of branchline as “a secondary line of a railway, typically stub-ended.” *1000 Friends of Oregon v. Columbia County*, \_\_ OR LUBA\_\_ (LUBA No. 2022-039, slip op at 21–22, October 22, 2022). This definition does not differ in material respects from the definition “branchline” in *Union Pacific*, quoted above. As the branchline in this instance consists of a single line between the track and facility and ends in stub, the proposed railroad branchline fits ODOT’s definition as well.”

“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 finds that the applicant’s analysis of the definition of a “branchline” is consistent with previous interpretations as well as the Oregon Land Use Board of Appeals’ interpretation via 1000 Friends v. Columbia County, \_\_\_ OR LUBA \_\_\_ (LUBA No. 2022-039). 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 51:** 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.”

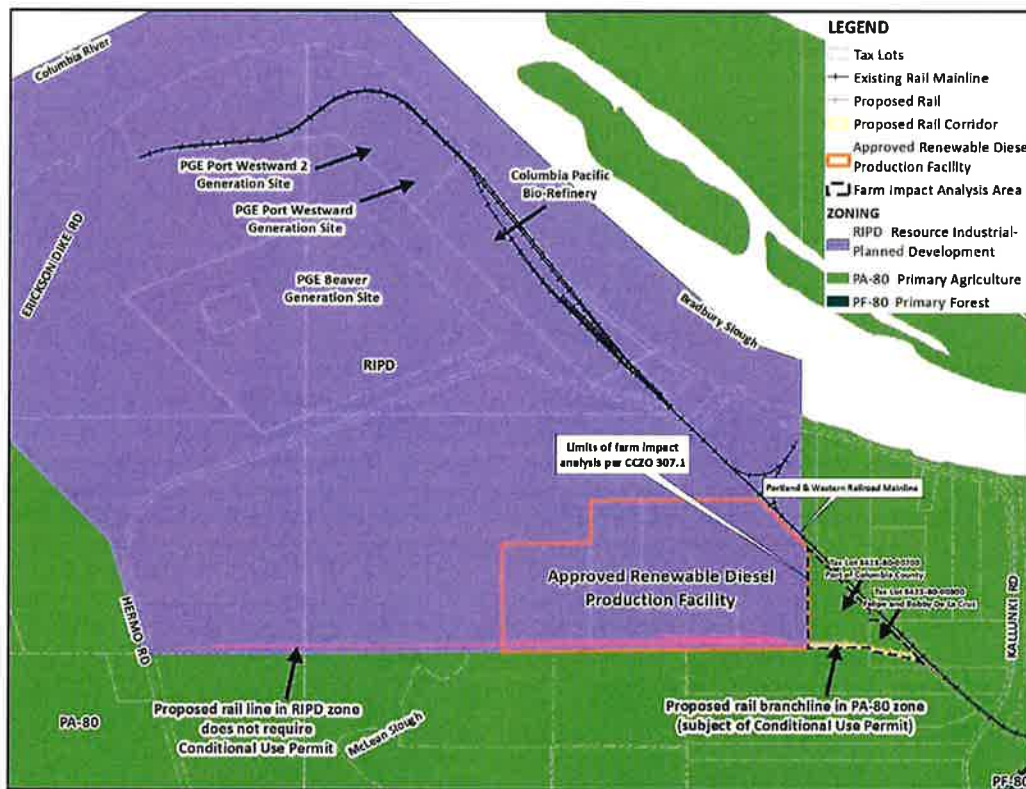
- A. *The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*

**Finding 52:** The application narrative provides the following rationale to address this criterion:

“As illustrated in Figure 3, the proposed railroad branchline crosses two (2) parcels: one owned by Felipe and Bobby De La Cruz (tax lot 8423-B0-00800) and one owned by the Port of Columbia County (tax lot 8423-B0-00700). As illustrated in Figure 3 and the zoning map in Exhibit 2, both parcels are zoned PA-80. Adjacent resource lands include property zoned PA-80 to the north, east, and south.

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. Since the proposed railroad branchline will isolate a triangle bounded by the rail mainline to the northeast, the proposed railroad branchline to the south, and the proposed renewable diesel production facility to the west (on land zoned RIPD), the impact area analyzed for this standard is limited to portions of the two (2) parcels that will be crossed by the railroad branchline.”

**Figure 3 Area Zoning and Limits of Farm Impacts Analysis (Application Submission Figure 3)**



The application continues:

“The analysis area for the branchline totals 14.1 acres. There are no nearby lands devoted to forest use, but there are agricultural lands. Aerial photography and the Cropland Data Layer indicates that the northern tip of the De La Cruz parcel is wetland. The wetland delineation report (Exhibit 11) depicts the railroad branchline as a wetland, but the report did not analyze the remainder of the impact area. The central portion of the De La Cruz parcel (within and north of the proposed railroad branchline corridor) is used for hay/grassland; similarly, the single Port parcel west of the De La Cruz parcel contains wetlands and is used for hay/grassland 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 railroad branchline could cause minor changes in access routes to fields (for instance, the branchline will cross an existing access route for the De La Cruz parcel) and changes in patterns of cultivation, seeding, fertilizing, and harvesting near the facility. The farming activities north of the proposed rail line could continue even with the construction of the railroad branchline since the applicant (as the Owner of the railroad branchline) proposes to provide a private rail crossing to allow passage of farm equipment (see Exhibit 3, Sheet C2.7). The risk of conflict between farm equipment and trains on the branchline is low because the trains will be infrequent and moving slowly as they accelerate and decelerate due to proximity to the end of the line.

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, the cumulative effect of these changes does not require farm operators to significantly change their practices. As depicted on the Field Access Map (Exhibit 21), no existing field access points are eliminated by the proposed branchline. There are sufficient rail crossings available to access the fields and the railroad branchline will not significantly change farming practices or cause substantial delays.

The railroad tracks are constructed on a gravel bed that minimizes fire potential from any sparks that may be generated. The proposed branchline is also in the vicinity of PGE’s existing transmission lines and associated maintenance road, which are subject to vegetation control to minimize conflict with electrical facilities. The rail line will also be next to stormwater ditches and a pond, which will further reduce fire potential.

Construction of the railroad branchline will be near existing irrigation and drainage ditches, which will remain in place. As depicted on Sheet C2.7 of Exhibit 3, a culvert is proposed where the existing ditch will be crossed by the rail infrastructure. The proposed culvert will be designed and sized as part of final engineering drawings during the permitting phase of the project. Utilizing standard engineering practice, the design engineer will ensure that the cross-section and slope of the culvert provides adequate hydraulic capacity to convey water flows from their upstream contributing areas to their existing downstream channels. Accordingly, NEXT’s proposed branchline will not negatively impact drainage and irrigation.

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.”

**With this information and at the time of writing this staff report, staff has seen no evidence that the proposed rail branchline will force a significant change in farm or forest practices within the 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.*

**Finding 53:** The application narrative provides the following rationale to address this criterion:

“As discussed in the response to criterion A, only two (2) parcels are within the impact areas that have the potential to be affected by the proposed railroad branchline. Again, as noted above, parcels within the impact areas contain wetlands, though portions have been used for grass/hay and mint in recent years. The 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 railroad 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 railroad 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 railroad branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The railroad 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 railroad branchline (see Exhibit 3, Sheet C2.7).”

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 54:** Staff finds that the applicant has provided evidence demonstrating that the proposed railroad branchline satisfies the criteria in Section 307.1 without requiring additional conditions of approval. There has been no evidence submitted to show that this proposal does not satisfy Section 307.1. This criterion does not apply.

### **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 55:** 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 56:** 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 57:** As discussed in the response to Sections 1170 and 1180, as the wetlands on site are not associated with streams, rivers, sloughs, or lakes, there is no protective riparian corridor boundary around the wetlands. As further discussed in the response to Section 1180, the wetlands on site are not deemed significant and are thus permitted by that section. The applicant is seeking approval from the U.S. Army Corps of Engineers for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. The applicant will perform approximately 488 acres of off-site wetland mitigation south of the site in accordance with Federal and State law. 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 58:** 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 59:** 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 60:** Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three (3) types of big game habitat. As depicted in Conditional Use Exhibit 6, 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 not provided comments related to the current proposal. 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 61:** Staff finds that the proposed branchline is a transportation facility consistent with the PA-80 zone and applicable statutes and administrative rules. Previous findings found compatibility with the nearby agricultural uses as detailed in Section 300. These criteria also allow the Board to make a tentative decision and instruct the Director to draft findings to support the decision. As stated previously, the hearing for CU 23-11 was properly noticed and published in local newspapers. The Board took jurisdiction of DR 21-03 MOD and CU 23-11 on November 1, 2023 pursuant to Section 11 of the Planning Commission Ordinance. With this information, staff finds that these criteria are met.

- .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 62:** This standard requires a determination of consistency with Section 300. As discussed in findings under Section 306, Staff has considered submitted evidence and has concluded 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 63:** This standard requires a determination of consistency with Sections 306, 307, and 308. As previous findings address, Staff finds that this proposal is consistent with Sections 306, 307, and 308.

*C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;*

**Finding 64** The land use application provides the following rationale:

"The most persuasive evidence of the site's suitability for a railroad branchline is that it will branch off the 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 1.7 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 railroad branchline site is nearly flat. The site is protected from flooding by the Beaver Drainage Improvement Company's dikes and associated stormwater conveyance and pumps, and is therefore adequately drained. A culvert is proposed where the existing ditch will be crossed by the rail infrastructure (Exhibit 3, Sheet C2.7), and existing ditches will remain in place. As detailed in the preliminary stormwater report (Exhibit 18), 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 for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. The applicant will perform approximately 488 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 wetlands that were found to be not significant. The applicant states that they are seeking approval from the U.S. Army Corps of Engineers for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. Staff finds that with not other evidence, 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 65:** The land use application provides the following rationale:

"The proposed railroad branchline is intended to serve a renewable diesel production facility approved 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. As depicted on the Field Access Map (Exhibit 21), no existing field access points are eliminated by the proposed branchline. There are sufficient rail crossings

available to access the fields and the railroad branchline will not significantly change farming practices or cause substantial delays. 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. The Commission can conclude that the proposed railroad branchline is timely.”

Staff finds there is no evidence that the proposed rail development will conflict with provision of transportation, public facilities, or services for the area.

- 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 66:** The land use application provides the following rationale:

“The new railroad 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, 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 railroad branchline will complement the RIPD zone by serving a proposed renewable diesel production facility immediately to the west.

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 private rail crossing will be installed to allow passage of farm equipment, see Exhibit 3, Sheets C2.7). The response to Section 307.1 provides further evidence that the proposed railroad 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 zoned for farm or forest use.

Train traffic on the railroad branchline will not lead to any appreciably higher level of dust than is currently present from the Portland & Western Railroad mainline which already traverses the area. Consequently, construction of the railroad branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The railroad tracks are constructed on a gravel bed that minimizes fire potential from any sparks that may be generated. The proposed branchline is also in the vicinity of PGE’s existing transmission lines and associated maintenance road, which are subject to vegetation control to minimize conflict with electrical facilities. The rail line will also be next to stormwater ditches and a pond, which will further reduce fire potential.

Construction of the railroad branchline will be near existing irrigation and drainage ditches, which will remain in place. As depicted on Sheet C2.7 of Exhibit 3, a culvert is proposed where the existing ditch will be crossed by the rail infrastructure. The proposed culvert will be designed and sized as part of final engineering drawings during the permitting phase of the project. Utilizing standard engineering practice, the design engineer will ensure that the cross-section and slope of the culvert provides adequate hydraulic capacity to convey water flows from their upstream contributing areas to their existing downstream channels. Accordingly, NEXT’s proposed branchline will not negatively impact drainage and irrigation.

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 has seen no evidence in these proposals that 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 67:** 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 68:** The proposed area for rail development is relatively small in size, totaling approximately 1.7 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 69:** 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 70:** Due to its relatively small area (approximately 1.7 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 71:** 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 72:** 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 73:** The proposed rail development will improve the efficiency and augment an adjoining renewable diesel fuel production facility, approved 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 74:** 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 75:** 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 76:** 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 77:** Under separate application approved by the County, the applicant will 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 railroad branchline will support the production facility by providing additional efficient transportation options for materials and product.

*8. Reserve valuable industrial sites for industrial uses.*

**Finding 78:** The renewable diesel production facility approved under a separate application 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 79:** 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 railroad branchline 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 80:** 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.

*Objectives:*

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

**Finding 81:** The proposed railroad 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 Board can find that the railroad branchline will reduce traffic on area roadways, reserving roadway capacity for all users and modes.

*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 82:** The proposed railroad branchline is consistent with this policy because it will allow an approved 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 83:** 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 84:** 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 85:** 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 86:** The proposed railroad branchline contains no structures regulated by design review. Design review findings for the facility are found under Section 1550.

## Review Criteria and Findings Applicable to Both DR 21-03 MOD and CU 23-11

### Section 1100 FLOOD HAZARD OVERLAY (FH)

**Finding 87:** 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. 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, pipe rack, and rail corridor 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 88:** 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 Exhibit 5, 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 habitats for band-tailed pigeons, none of which include Port Westward. As illustrated in Exhibit 6, 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 89:** 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 90:** The proposed development identified in DR 21-03 MOD and CU 23-11 is not subject to CCZO Section 1170, as confirmed by the County Board of Commissioners in Final Order 12-2022 for DR 21-03 and V 21-05:

*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 Applicant has 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).*

The modifications proposed with the application of DR 21-03 MOD fall within the same Facility boundaries as previously analyzed and no modifications are proposed within the 25-foot riparian buffer around McLean Slough.

The railroad branchline site does not contain or abut any lakes, rivers, or streams or traverse McLean Slough. Oregon Department of Forestry Stream Classification data do not identify any fish-bearing streams, lakes, or sloughs at the site (see Conditional Use Exhibit 8). Similarly, the “Lakes of Columbia County” map (attached as Conditional Use Exhibit 9) illustrates that there are no identified lakes in the vicinity of Port Westward.

The proposed railroad branchline will be in the vicinity of existing ditches that are not streams, sloughs, or wetlands; the site-specific Wetland Delineation Report (Conditional Use Exhibit 11) identifies numerous non-wetland irrigation ditches which “...drain south to the Columbia River via McLean Slough, Beaver Slough, and the Clatskanie River.” None of these sloughs or the Clatskanie River flows through the site or have buffers within the railroad branchline site.

The wetland delineation report (Conditional Use Exhibit 11), which has now been approved by the Oregon Department of State Lands (Conditional Use Exhibit 12), 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.

Therefore, the applications for DR 21-03 MOD and CU 23-11 do not trigger application of the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone.

## 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 91:** Multiple potential wetlands exist within the site boundaries as illustrated in the Statewide Wetlands Inventory excerpt in Conditional Use Exhibit 10 and in the County’s map in Conditional Use Exhibit 7. The applicant therefore engaged a wetlands consultant to perform a site-specific wetland delineation, with the resulting report

attached as Exhibit 12. The wetland delineation report, which reveals considerable differences in wetland size and location compared to the Statewide Wetlands Inventory, has been approved by the Oregon Department of State Lands (DSL) (Conditionals Use Exhibit 12). As discussed in Conditional Use 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. Conditional Use Exhibit 13 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, there does not appear to be any dispute by subject matter experts on whether these wetlands have little biological value. DSL issued a written statement explaining the non-significance of affected wetlands in December 2021 (Conditional Use Exhibit 14). The Columbia Soil and Water Conservation District and the Oregon Department of Fish and Wildlife also provided comments, attached as Exhibits 16 and 17 respectively. Based on this evidence, the County Board of Commissioners concluded that the wetlands do not meet the County’s adopted definition of “significant” wetlands, as confirmed by the County Board of Commissioners in Final Order 12-2022 for DR 21-03 and V 21-05:

*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).*

*[...]*

*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.*

The applicant is seeking approval from the U.S. Army Corps of Engineers for wetland alterations and the Oregon Department of State Lands has issued permits for wetland alterations. The applicant will perform approximately 488 acres of off-site wetland mitigation south of the site in accordance with Federal and State law. The modifications of previous approval and the proposed railroad branchline proposed with the current applications fall within areas previously delineated as nonsignificant wetlands and are therefore permitted under Section 1180.

## Section 1185 NATURAL AREA OVERLAY (NA)

**Finding 92:** The Oregon State Register of Natural Heritage Resources, attached as Conditional Use Exhibit 12, 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 93:** Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat identifies three types of big game habitat. As depicted in Conditional Use Exhibit 6, 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 94:** The applications for DR 21-03 MOD and CU 23-11 were received on September 19<sup>th</sup>, 2023. The applications were then deemed complete by the Planning Manager on October 19<sup>th</sup>, 2023. Notice of this public hearing, scheduled for January 10<sup>th</sup>, 2024 were mailed to surrounding property owners within 500' of the subject properties on November 29<sup>th</sup>, 2023. This notice was also sent to all parties that participated in the original approval of DR 21-03 & V 21-05. Additional notices were published in the Chronicle on December 27<sup>th</sup>, 2023. With this process, these standards are met.

## Section 1608 Contents of Notice

- .1 The date, time, and place of the hearing;*
- .2 A description of the subject property, reasonably calculated to give notice as to the actual location, including but not limited to the tax account number assigned to the lot or parcel by the Columbia County Tax Assessor;*
- .3 Nature of the proposed action;*
- .4 Hearing to be held according to the procedures established in the Zoning Ordinance.*

**Finding 95:** The notice sent on November 29<sup>th</sup>, 2023 contained all of the required information as outlined in CCZO 1608. These standards are met.

## Section 1618 Design Review Board

- .1 The Board of Commissioners may appoint a 5 member Design Review Board. The Planning Commission shall sit as the Design Review Board in the absence of a separate Design Review Board. The Board of Commissioners shall strive to find engineers, architects, landscaped architects, surveyors, and other professional persons who are familiar with land development to serve on the Board. No more than one realtor or one builder may serve on the Board at any one time. One Commission member may be appointed to the Board but will not be eligible to act on any appeals made as a result of the Design Review Board's decisions*

- .2 *Duties: The Design Review Board or Planning Commission shall review the site design plans as required by this ordinance. They shall review all actions referred to them by the Board of Commissioners, the Commission, or the Hearings Officer. These reviews shall be conducted in accordance with the provisions of this ordinance.*
- .3 *Approval: The approval of an action by the Design Review Board or Planning Commission shall be by a majority vote of those present. The Design Review Board or Planning Commission must have a quorum to make decisions regarding design review applications.*
- .4 *Conditions: The Design Review Board or Planning Commission may attach reasonable conditions to an approval. These conditions shall become part of the building permit. No final approval of a building maybe given by the Building Official until these conditions have been met or an adequate bond posted to insure the completion has been approved by the Director and filed with the County Clerk's office.*
- .5 *Appeal: An appeal of a Design Review Board decision may be made to the Planning Commission in accordance with the provisions of Section 1700 of this ordinance. Appeals of the Planning Commission decision shall be directly to the Land Use Board of Appeals, according to the process for appeals adopted by it. [effective 7-15-97]*

**Finding 96:** The Board did not appoint a Design Review Board for the request of DR 21-03 and CU 23-11. However, on November 1<sup>st</sup>, 2023, in a Board of Commissioners Work Session, Staff discussed the proposal with the Board and recommended that the Board take jurisdiction of the subject applications. The Board took jurisdiction of the applications under Section 11 of the Planning Commission Ordinance which states, in part:

*“The Board may also assert original jurisdiction over any land use application and bypass prior Planning Commission review. The procedure and type of hearing for such an appeal or review shall be the same as prescribed by this ordinance for Planning Commission decisions, or as provided by the Columbia County Zoning Ordinance, Subdivision and Partitioning Ordinance or other applicable statutes, ordinances, orders, rules or regulations.”*

The Board will review the requests in accordance with the provisions of the Zoning Ordinance. The approvals or actions by the Board shall be by a majority vote of those present and the Board must have a quorum to make decisions regarding this modified design review and Conditional Use application. The Board may attach reasonable conditions to any approval given. These conditions shall become part of the building permit and no final approval may be given by the Building official until the entirety of these conditions have been met or an adequate bond posted. With this information, these standards will be satisfied throughout the review process.

## 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 97:** The submitted proposal for DR 21-03 MOD includes an engineered Preliminary Stormwater Report (Site Design Review Exhibit 19), certified by Brian Anthony Tino, a Registered Professional Engineer with Maul Foster &

Alongi, Inc. This report describes the four identified drainage areas. The Main Plant stormwater conveyance and treatment system were designed to detain and treat the 100-year, 24-hour storm. The stormwater detention system will detain peak flows and provide treatment via sedimentation. The submittal generally meets the intent of the Columbia 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.

In the submitted modified Site Design Review Plans (Site Design Review Exhibit 4), and as addressed in Site Design Review Exhibit 19, 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

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**Columbia County Assessor:** 8422-00-00100 has 52.68 acres under farm deferral, 8422-00-00200 has 30.63 acres under farm deferral, 8423-B0-00800 has 4.41 acres under farm deferral. These accounts are subject to disqualification when improvements are made.

No other comments from affected agencies were received as of the date of this staff report.

## CONCLUSION, RECOMMENDATION & CONDITIONS

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Based on the facts and findings above, Planning Staff recommends the Board of Commissioners **APPROVE** the application for a modification of a Type II Site Design Review (DR 21-03 MOD). The approved site plan will allow the relocation of the originally proposed rail tracks, tree buffer, and storm facilities northward from the PA-80 zone to the RIPD zone. The subject property is identified in Columbia County Assessor records as Tax Lot Numbers 8422-00-00100, 8422-00-00200, 8422-00-00300, 8422-00-01100, 8421-00-00700, 8416-00-00200, and 8416-00-00300.

Also, based on the facts and findings above, Planning Staff separately recommends the Board of Commissioners **APPROVE** the application for a Conditional Use permit in order to establish a railroad branchline through the Primary Agriculture Zone (PA-80). The subject property is identified in Columbia County Assessor records as Tax Lot Numbers 8423-B0-00700 and 8423-B0-00800. Staff recommends the approval subject to the following conditions of approval:

### CONDITIONS OF APPROVAL

- 1) This Design Review 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

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- 1) Applicant Site Design Review Submission Package September 18, 2023
  - a. Columbia County-NEXT Renewable Fuels Site Design Review Modification Narrative
  - b. Correspondence about fee for Site Design Review modification
  - c. Exhibit 1: NEXT Renewable Fuels SDR Modification Application
  - d. Exhibit 2: SDR Vicinity Map and Zoning Map
  - e. Exhibit 3: Approved Site Design Review Plans
  - f. Exhibit 4: NEXT Plans for Revised Rail Corridor
  - g. Exhibit 5: Firmette 41009C0050D with site marked
  - h. Exhibit 6: Clatskanie Area Map – Threatened, Endangered, and Sensitive Wildlife
  - i. Exhibit 7: Clatskanie Area Map – Wildlife
  - j. Exhibit 8: Clatskanie Area Map – Wetland
  - k. Exhibit 9: SDR Stream Map
  - l. Exhibit 10: Excerpt from Lakes of Oregon, Volume 1, Clatskanie
  - m. Exhibit 11: Statewide Wetlands Inventory – Streams and NW
  - n. Exhibit 12: AP Wetland Delineation Report Revised July 2021
  - o. Exhibit 13: DSL Approval of Wetland Delineation
  - p. Exhibit 14: Anderson Perry Wetland Memo
  - q. Exhibit 15: DSL Correspondence
  - r. Exhibit 16: Columbia SWCD Correspondence
  - s. Exhibit 17: ODFW Correspondence
  - t. Exhibit 18: Oregon State Register of Natural Heritage Resources
  - u. Exhibit 19: NEXT Preliminary Stormwater Report
  - v. Exhibit 20: Transportation Impact Analysis
  - w. Exhibit 21: Transportation Impact Analysis Update Letter dated February 28, 2023
  - x. Exhibit 22: Architectural Rendering

- y. Exhibit 23: Pipeline and Water Intake Map
- 2) Applicant Conditional Use Submission Package June 16, 2023
  - a. Columbia County-NEXT Renewable Fuels Conditional Use Review Narrative
  - b. Exhibit 1: Conditional Use Permit Application Form
  - c. Exhibit 2: Vicinity Map and Zoning Map
  - d. Exhibit 3: NEXT Plans for PA-80 Rail Branchline
  - e. Exhibit 4: Firmette 41009C0050D with site marked
  - f. Exhibit 5: Clatskanie area map – Threatened, Endangered
  - g. Exhibit 6: Clatskanie area map – Wildlife
  - h. Exhibit 7: Clatskanie area map – Wetland
  - i. Exhibit 8: CUP Application Stream Map
  - j. Exhibit 9: Excerpt from Lakes of Oregon, Volume 1, Clatsop
  - k. Exhibit 10: Statewide Wetlands Inventory – streams and NWI
  - l. Exhibit 11: AP Wetland Delineation Report Revised July 2021
  - m. Exhibit 12: DSL Approval of Wetland Delineation
  - n. Exhibit 13: Anderson Perry Wetland Memo 211208
  - o. Exhibit 14: DSL Correspondence 211215
  - p. Exhibit 15: Columbia SWCD Correspondence 220105
  - q. Exhibit 16: ODFW Correspondence 220118
  - r. Exhibit 17: Oregon State Register of Natural Heritage Resources
  - s. Exhibit 18: NEXT Preliminary Stormwater Report 230131
  - t. Exhibit 19: Pipeline and Water Intake Map\_NEXT
  - u. Exhibit 20: Letter from Portland & Western Railroad 211119
  - v. Exhibit 21: Field Access Map
- 3) Affidavit of Mailing with Notices
- 4) Published Legal Notices
- 5) Waiver of Remonstrance