

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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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 bvarricchione@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.

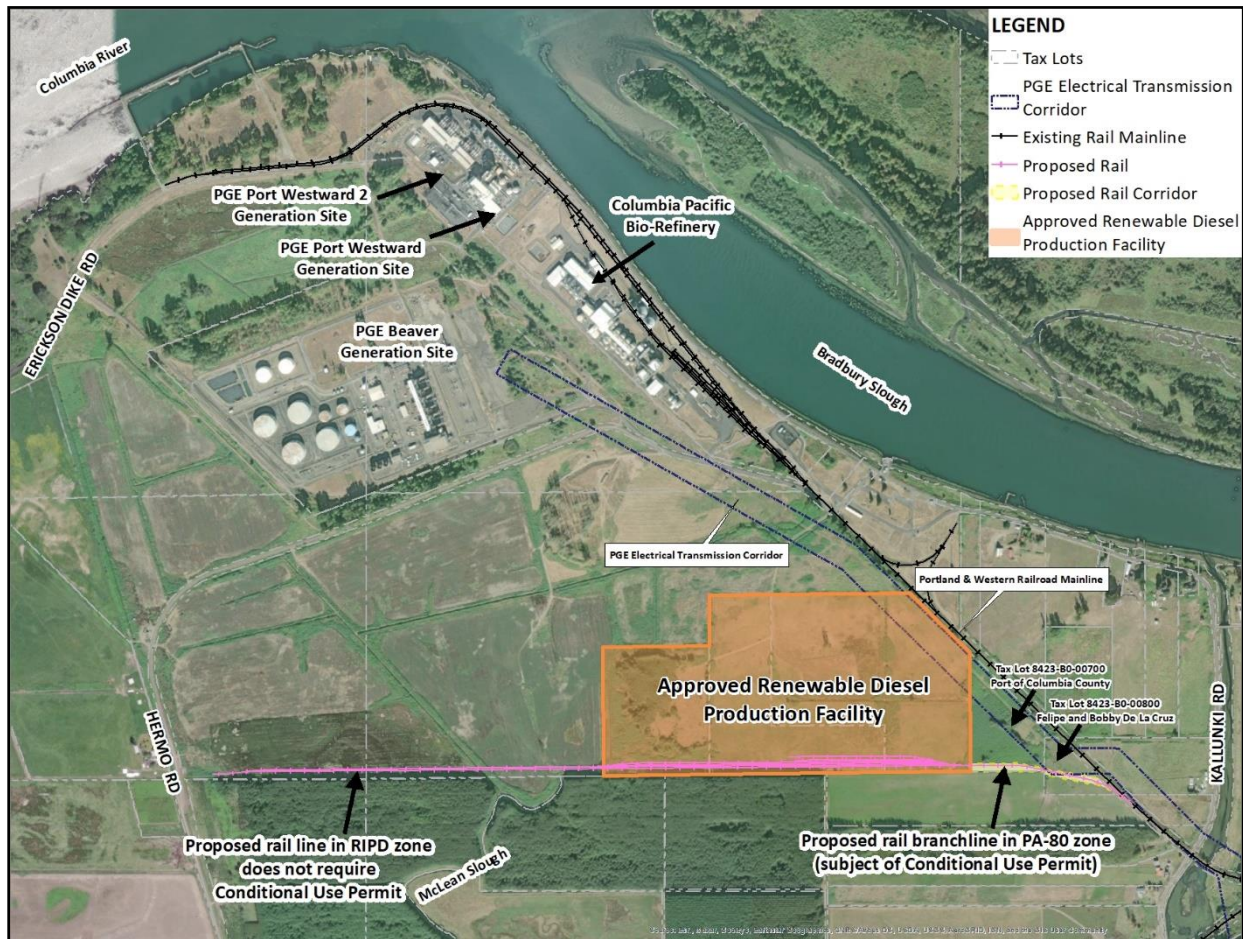


Figure 1: Aerial Photo

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.¹ The Port-owned parcel (tax lot 8423-B0-00700) 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

¹ 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.²

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).

² 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.

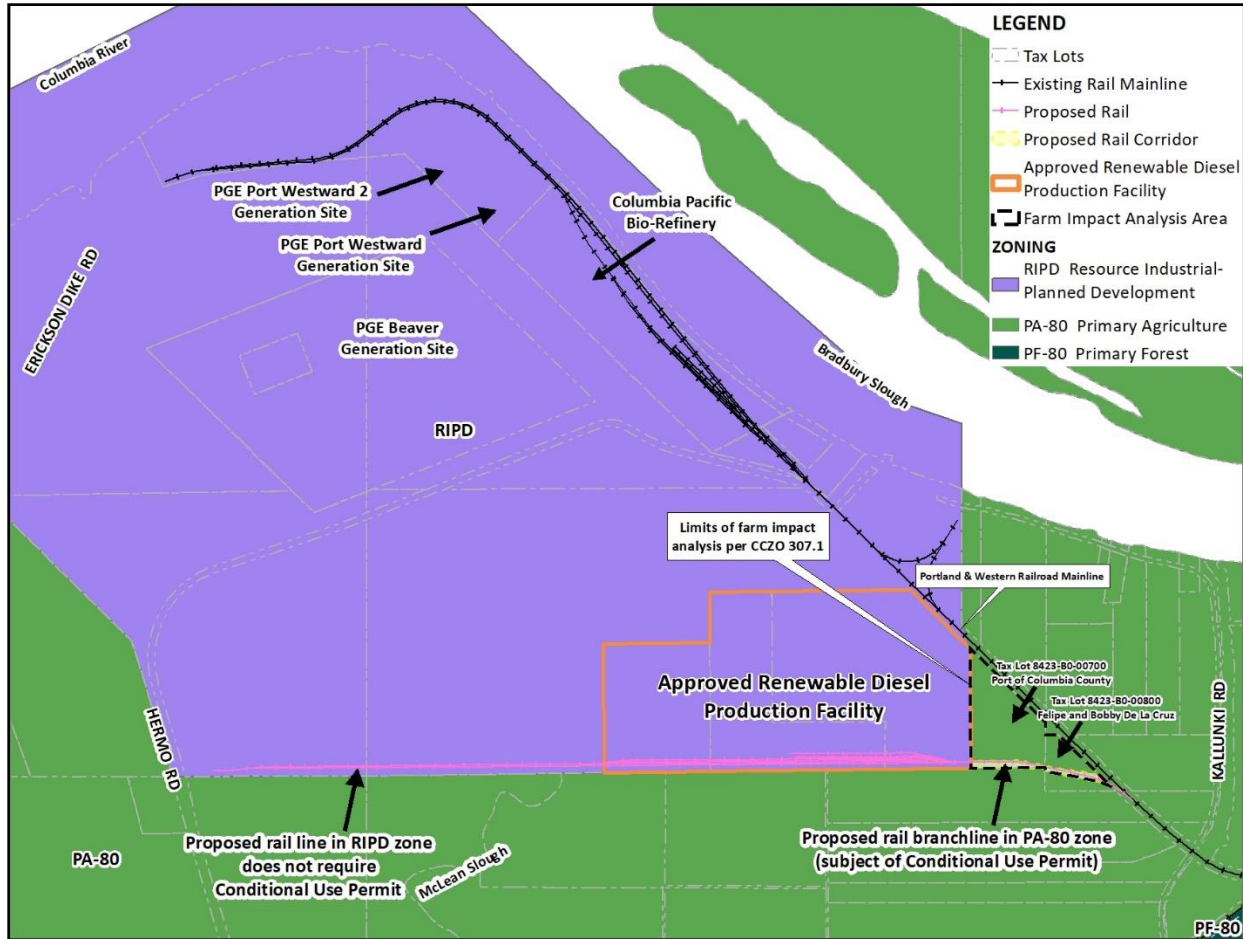


Figure 2: Area Zoning and Limits of Farm Impacts Analysis

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>		
Primary Agriculture	PA-80	Agriculture district with a minimum lot or parcel size of 80 acres.

[...]

Special Districts, Overlay Zones and Special Provisions

[...]

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

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.

TABLE OF AUTHORIZED USES & DEVELOPMENT (EXCERPT)			
TRANSPORTATION	HV	NHV	PA-80 SECTION
<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.

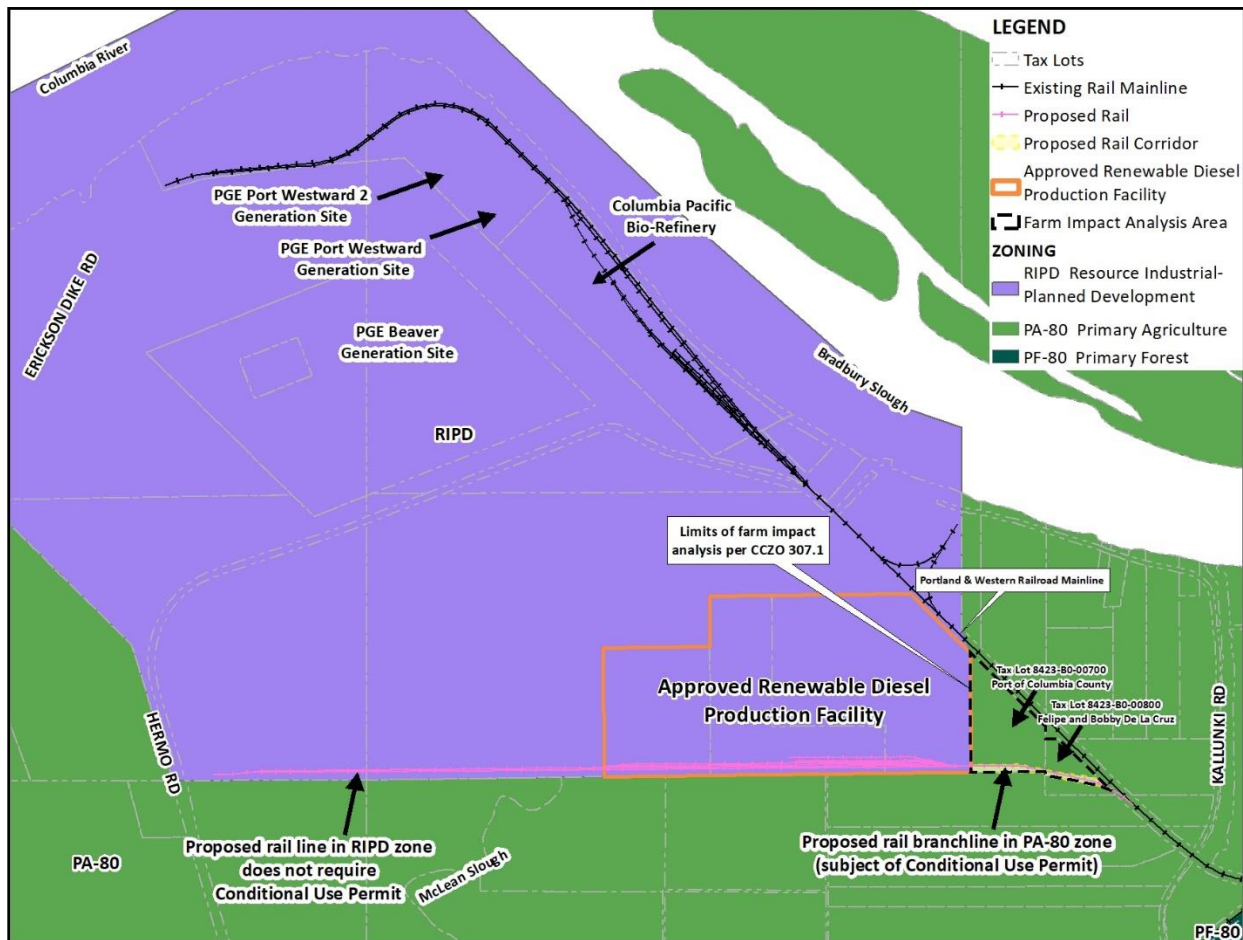


Figure 3: Area Zoning and Limits of Farm Impacts Analysis

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 Layer³ 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.⁴ 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

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

⁴ 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 within 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.⁵

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

⁵ 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.