



Columbia County
Land Development Services
Attn: Planning
230 Strand Street
St. Helens, OR 97051

Submitted via email to: planning@columbiacountyor.gov

January 9, 2024

Columbia County Board of Commissioners:

Columbia Riverkeeper is a non-profit organization with a mission to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Columbia Riverkeeper has over 16,000 members and supporters who live, work, and recreate throughout the Columbia River Basin, including members and supporters who live at Port Westward and whose livelihoods depend on the resources at Port Westward.

1000 Friends of Oregon is a 501(c)(3) non-profit organization founded by Governor Tom McCall shortly after the Legislature passed Senate Bill 100, which created the land use planning program that shapes Oregon's communities. Since its founding in 1974, 1000 Friends has served Oregon by defending Oregon's land use system—a system of rules that creates livable communities, protects family farms and forestlands, and conserves the natural resources and scenic areas that make Oregon such an extraordinary place to live. 1000 Friends accomplishes this mission by monitoring local and statewide land use issues, enforcing state land use laws, and working with state agencies and the Legislature to uphold the integrity of the land use system.

Columbia Riverkeeper and 1000 Friends of Oregon (collectively, "we") urge the Board of Commissioners to deny Houston-based NEXT Renewable Fuels Inc.'s (NEXT) requests for a Modification of Prior Approval for a previously approved Site Design Review (SDR) and Variance (DR 21-03/V 21-05) and Conditional Use Permit for a proposed rail yard (CU 23-11). We further request that the Board of Commissioners keep the record open for no less than 7 days following the January 10, 2024, hearing.

1. The Board of Commissioners should deny NEXT's application for Modification of Prior SDR Approval for the refinery.

NEXT's requested SDR modification application proposes to relocate the rail yard facility, tree buffer, and stormwater infrastructure into the RIPD-zoned land to the north of the prior proposed location. NEXT also proposes to add stormwater ponds to the area between the rail facility and the access road, which was never part of the prior SDR approval or proposed facility. The proposed modifications will impact farming activities in the area, drainage infrastructure, roads, and public services important to the community at Port Westward. The rail facility will have major, negative impacts on the community and nearby farms. Impacts include water, air, noise, and light pollution. NEXT has failed to provide adequate analysis to address the impacts of the proposed modification or potential mitigation for the impacts and thus, has failed to demonstrate compliance with the applicable criteria.

a. NEXT cannot rely on previous land use decisions that did not address the full scale of the use proposed in this application.

NEXT's application and the Staff Report fail to adequately address the applicable criteria for the SDR Modification and instead rely on the County's prior land use approvals to demonstrate compliance, including the approval in CU 21-04 that was reversed by LUBA. Columbia County Zoning Ordinance (CCZO) 683.1.B requires NEXT to demonstrate that "the potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to mitigated" Instead of meeting this standard, NEXT claims, "... there is no basis for the County to conclude that the scope and intensity of the use is any greater than that already approved. As the use is not proposed to change with this application, no further analysis is provided here." SDR Modification Application at 8. Similarly, in its finding for CCZO 683.1, the Staff Report refers to the initial decision for DR 21-03 and concludes,

"The result of this application will be a reduced capacity rail improvement (compared to that previously approved by Conditional Use Permi 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."

Staff Report, Finding 1, p.11.

NEXT's approach and the Staff Report are flawed for several reasons. First, the County's prior land use decision approving the refinery facility (DR 21-03) did not address the rail yard, accompanying stormwater infrastructure (including ponds in new areas), gravel road, and tree

buffer that are now being proposed as part of the modification. Those aspects of the use were reviewed and approved under a separate land use application. Hence, it is incorrect to assert that the SDR amendment application for the refinery facility will result in a project of the “same scope and intensity.” Adding miles of rail track into the area that was considered in the previous site design review process is an intensification of the use of the site, and a change in the use and its impacts. NEXT must provide further analysis specific to the particular land uses proposed in the modification, but it has failed to do so.

Additionally, the prior rail approval was reversed by LUBA.¹ LUBA unequivocally reversed the County’s conditional approval of the rail yard in the previous location. Accordingly, there is no basis to rely on that decision to draw any conclusions regarding the potential impacts associated with the rail yard and other aspects of the modification. Furthermore, the rail yard component of the proposal and other aspects of the modification were never evaluated under the criteria that apply to the SDR process, much less in the specific locations now proposed. The County cannot just import its prior conclusions to this amendment without additional analysis and findings that are specific to the new rail facility and other modifications. NEXT must specifically consider the *particular land use and improvements* with respect to the rail yard, road infrastructure, stormwater facilities, and other modifications.

b. The application fails to demonstrate compliance with CCZO 683.1.B.

Despite NEXT’s claims, the Board should find that CCZO 683 *does* apply in this case, and NEXT has failed to meet this criteria. The County’s decision in DR 21-03 did not include the entire rail facility and thus did not analyze the impacts associated with rail use and the rail yard under the CCZO 683 criteria. The result of the application is therefore not a “reduced capacity rail improvement,” it is an expansion of the proposed industrial use that was evaluated and approved in DR 21-03: the permanent placement of multiple miles of rail tracks. The revised rail facility does not fit within the scope of what was approved in the prior decision and must be reviewed for consistency with the criteria in CCZO 683.

NEXT does not adequately address criteria from CCZO 683.1.B. NEXT attempts to argue that the previous Site Design Review encompassed the entirety of the newly proposed rail yard and other modifications. This is not the case. First, the County’s order and findings in the DR 21-03 decision repeatedly confirmed that the rail facility was part of a separate land use approval, was not subject to the application at issue in DR 21-03, and that certain findings were “not part of [the] Decision.”² The County’s prior decision approving the facility did not consider the entire rail facility as part of the use and did not fully analyze the potential impacts under

¹ *1000 Friends of Oregon v. Columbia County*, __ Or LUBA __ (LUBA No. 2022-039, slip op, October 22, 2022).

² Final Order No. 12-2022, Exhibit A at 1, 18, 21, 42.

CCZO 683.1.B. Second, the County's prior land use decision approving NEXT's refinery did not address the rail yard and stormwater facilities in their present configuration and location. The differences matter. For example, establishing new unlined ponds, new culverts, and alterations to drainage areas could have a significant impact on the quality and quantity of water in the area. Additionally, areas that were not originally proposed for construction will now be occupied by rail yard, road, and stormwater facilities that create noise, air, water, light, and other forms of pollution.

i. NEXT fails to demonstrate that the physiological characteristics of the site are suitable for a rail yard.

The Board should reject NEXT's application because it fails to explain why the newly proposed area is suitable for a rail yard or how the potential unsuitability would be mitigated. CCZO 683.1.B.1 requires NEXT to address and mitigate the "physiological characteristics of the site (ie., topography, drainage, etc.) and the suitability of the site for the particular land use and improvements." However, because NEXT incorrectly asserts that its previous applications contained this analysis, the current application is incomplete.

The presence of a high water table and important drainage and irrigation infrastructure raise significant questions about whether the new site is suitable for a rail yard and accompanying infrastructure. During many times of the year, groundwater is at or near the surface of the ground; everyone who lives and works at Port Westward knows this. Nevertheless, NEXT fails to adequately address if and how the rail yard and accompanying infrastructure could be impacted when groundwater levels remain close to the surface for long periods of time. Tellingly, NEXT even admits that it does not fully understand groundwater and surface water levels at the proposed site.³ Without this type of information, NEXT's application is incomplete for failing to show that the site is compatible with the proposed use. This lack of information raises serious concerns with NEXT's proposal to add unlined stormwater ponds in areas where groundwater levels fluctuate significantly. The infiltration from these ponds will both impact and be impacted by groundwater that remains close to the surface. Information provided by NEXT suggests that the effectiveness of infiltration is uncertain." See p.1 of 2001 Geotechnical Report.⁴

NEXT's application and stormwater plan also fail to show that NEXT could mitigate the impacts of the proposed modification. NEXT does not explain how its proposal will avoid causing water level problems on the site and adjacent lands, and it fails to provide sizing for

³ (See, e.g. Stormwater report [p. 7](#) which states, "Groundwater elevations will be further studied, and the pond design may be refined during the final design phase to minimize groundwater intrusion, if needed." See also [Stormwater report p. 3](#) which states, "The culvert will be sized during final design when more information about the wetland drainage conditions becomes available. Wetland water levels will be monitored over the next year to evaluate seasonal fluctuations.")

⁴ Staff Report Exhibit 19, Stormwater report, Appendix B, p. 1.

necessary culverts. Instead, NEXT's stormwater report proposes to monitor water levels "over the next year to evaluate seasonal fluctuations" and define mitigation activities like culvert sizing "when more information about the wetland drainage conditions becomes available."⁵ NEXT should complete its monitoring and study prior to reaching conclusions about the impacts and the likelihood that they can be addressed through mitigation. The application is incomplete.

By altering the topography and drainage of the new rail yard area, NEXT could affect resources on or near the site, including resources connected to the drainage system. Any assessment of impacts to surface or groundwater, or mitigation, must be coordinated with the Beaver Drainage Improvement Company (BDIC). The lack of any such coordinated assessment or agreement with BDIC makes NEXT's application, at least, premature.

ii. NEXT fails to address or mitigate effects to existing land uses and public facilities and services.

NEXT's application fails to address how a new rail yard and other modifications would affect farming and PGE's use of its leasehold. CCZO 683.1.B.2 requires NEXT to address and mitigate the impact of the proposed use on "[e]xisting land uses." NEXT's new rail yard location and other modifications will impact adjacent farming uses, including an active mint farming operation directly to the north of the proposed rail facility. Nothing in the application (or previous SDR decision) explains how building miles of rail track and unlined stormwater ponds immediately adjacent to a mint farm would impact that existing land use—let alone how NEXT might mitigate that impact. NEXT's proposed development would likely interfere with soil health, groundwater levels, irrigation, and access for the farmer. NEXT's application also provides no information on how the development of a rail yard and other modifications on this new site might affect PGE's use of the land for an industrial buffer. Because NEXT incorrectly asserts that its previous applications contained information about the effects of the modification's construction and operation on these existing land uses, the current application is incomplete.

NEXT's application is also incomplete because it fails to address how a new rail yard would affect public facilities and services including the publicly owned drainage and irrigation system at Port Westward. CCZO 683.1.B.2 requires NEXT to address and mitigate the impact of the proposed use on "public facilities and services in the area."⁶ BDIC is a public body that provides drainage and irrigation services to Port Westward farmers and maintains facilities and infrastructure necessary to provide such services. The rail yard, road, vegetation and stormwater facilities proposed in the modification may interfere with the BDIC's ability to access its facilities for maintenance and to maintain the function of the BDIC drainage system without

⁵ *Id.* p.3

⁶ Additionally, individual farmers have private irrigation and drainage infrastructure linked to BDIC's system. That infrastructure is a "private" facility within the meaning of CCZO 683.1.B.2, and NEXT's application is also incomplete for failing to address and mitigate impacts to such private facilities.

interruption or changes. Additionally, the creation of new culverts, ponds, and other stormwater facilities within the BDIC has not been approved by or coordinated with the BDIC. Proposed changes may impact water levels in the area, and farmers rely on specific water levels to maintain necessary soil moisture for area crops.

NEXT's application does not address impacts to these resources or relationships, or provide any reasonable assurance that the impacts can be mitigated. For years, farmers in the area have identified significant conflicts between NEXT's proposal and the ability of the BDIC to manage its drainage system. We urge the Board to listen to the farmers who know the area and operate the drainage system: their testimony should carry more weight than NEXT's vague assertions in its application.

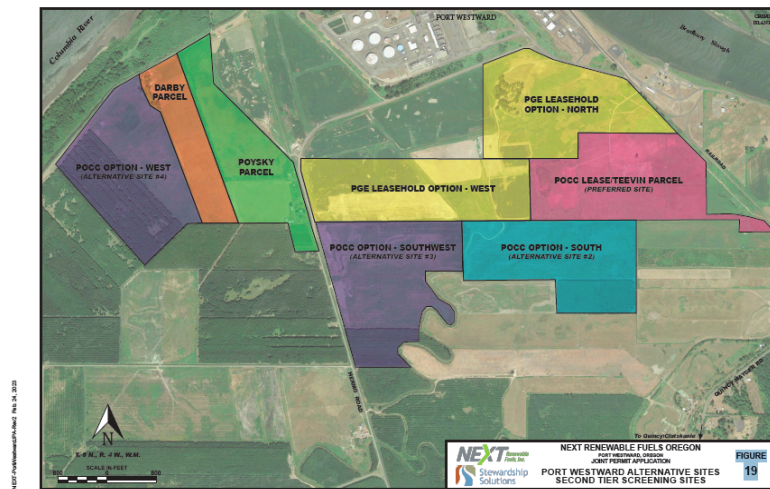
NEXT's application is also incomplete because it fails to address how a new rail yard would affect public facilities and services such as public roads and traffic patterns. The proposed modification will impair the ability of nearby farmers to make use of public roads. Blockage of Kallunki Road will delay access to farming operations, disrupt the time-sensitive movements of crops, and harm farmers in the area, including farmers outside the proposed modification area. The record does not include any evidence addressing this issue. For example, the application does not address the speed of trains coming into or out of the proposed rail facility and the potential for lengthy delays as a result of the proposed modification. A January 2022 letter from Mackenzie submitted on behalf of NEXT indicated that trains will block the section of the rail facility on PA-80 land, including the Kallunki Road crossing, for one hour per train.⁷ Importantly, the letter explained that "if Section B of the branchline were smaller than proposed, the total time utilizing Section A would likely increase." Section A represents the section of the rail facility on PA-80 land, and Section B is the portion of the facility located on RIPD land. This makes clear that the smaller rail facility now proposed by NEXT could increase delay times at Kallunki Road. NEXT has reduced the overall length of the track in order to squeeze it into the RIPD land, so the delays at Kallunki Road and on the PA-80 section may increase to over an hour. The application and staff report fail to address these new potential impacts, as required under CCZO 683.1.B.2.

iii. NEXT fails to show that the need for the proposed use is best met at the requested site.

NEXT has failed to show that 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" as required in CCZO 683.1.B.3. In fact, NEXT informed the Army Corps of just the opposite in its alternatives analysis for its Joint Permit Application (JPA). In its revised Joint Permit Application, NEXT states,

⁷ Mackenzie letter to Columbia County. January 26, 2022. P.3. Attached as Exhibit 1.

The Applicant identified seven potential sites at Port Westward to be evaluated in the second-tier analysis (See Figure 19, All Port Westward Alternative Sites). Second-tier criteria were developed utilizing the guideline of cost, existing technology, and logistics as outlined in the US Army Corp of Engineers Alternative Analysis Framework...Through initial screening and evaluation of the seven sites located at Port Westward, the Applicant eliminated sites 5, 6 and 7 due to the landowner approval and land accessibility criteria. The Applicant was not able to gain landowner approval and/or the estimated timeline for rezoning the property deemed them infeasible, thus leaving four sites to be evaluated under the second-tier criteria...Of the four sites evaluated in the second-tier screening utilizing the developed project criteria, only one met the overall project criteria used to determine if a site had the ability to achieve the defined project purpose and was therefore a practicable alternative. Only the POCC parcel/Teevin property met all project criteria and was deemed a practicable alternative.⁸



PGE’s leasehold is depicted in Figure 19 of the Joint Permit Application (above) as one of the excluded alternatives. PGE’s leasehold is depicted in yellow, and NEXT expressly told the Corps that the area now proposed for the rail yard is not feasible for them to use as part of the facility. *See also* Exhibit 1 (Mackenzie letter), p. 5 (“The applicant examined alternative designs for Section B of the proposed rail branchline, but no viable alignment was found when coordinating with Portland & Western Railroad to meet the railroad operator’s standards.”).

Finally, the County has repeatedly found that none of the existing RIPD land at Port Westward is available for industrial development as a basis for justifying a new goal exception for 837 acres of PA-80 land at Port Westward. In 2018, LUBA upheld the County’s

⁸ Joint Permit Application, 2023, p. 26. Attached as Exhibit 2. See also Figure 19 from Joint Permit Application, Exhibit 3.

determination that “the vacant PGE lands are not available because PGE is unwilling to sublease any portion of its leasehold.” *Columbia Riverkeeper v. Columbia County*, 78 Or LUBA 547, 576 (2018).⁹ NEXT and the Port have apparently found a way around this alleged limitation on the availability of land at Port Westward.

c. The application fails to demonstrate compliance with CCZO 1562.

NEXT fails to meet the requirements of CCZO 1562 criteria governing buffers, screens, and fencing. The BDIC has raised several concerns regarding sediment, proposed tree buffers, fencing, and potential impacts to BDIC’s irrigation and drainage system. CCZO 1562.A.1 provides that “existing plant materials on a site shall be protected to prevent erosion.” Proposed tree buffers along the waterways create potential for those buffers to contribute debris and create blockages in drainage and irrigation systems. In the absence of an agreement with BDIC, CCZO 1562 cannot be met.

NEXT fails to assess and mitigate impacts of the proposed modification on adjacent uses, including agricultural lands as required by CCZO 1562.B.1. This criteria provides that “buffering and/or screening are required to reduce the impacts on adjacent uses which are of a different type.” CCZO 1562.B.1 is concerned with uses “of a different type.” Farming that occurs to the north and west of the proposed rail facility is of a different type than the industrial use proposed by NEXT and will be impacted by the proposed use. NEXT’s proposed buffers are inadequate, and the proposed development directly impacts and interferes with farming operations to the north.

NEXT fails to meet CCZO 1562.B.3 which says that no roads shall be allowed in a buffer area. The application does not provide for a 10-foot buffer between the access road and the land to the north. Furthermore, location of the buffers conflict with the BDIC’s ability to manage drainage infrastructure. NEXT cannot locate the buffers as proposed, and the proposed buffers are inadequate.

d. A new Goal 2 exception is required for the proposed modification.

A new Goal 2 exception is required for the proposed modification. The present application represents an expansion of use exceeding the scope of the two prior goal exceptions taken on the subject properties at Port Westward. The county must follow the exceptions process for the newly proposed rail lines and other modifications required by ORS 197.732 and LCDC’s implementing rules. *See* OAR 660-004; *see also e.g.* OAR 660-012-0070. The county and the

⁹ See attached 2016 letter from PGE, Exhibit 4. LUBA relied on the PGE letter for its conclusions. If Columbia County approves the rail yard on the RIPD land, it directly undermines any future argument by the Port that the additional rezone at Port Westward is justified.

applicant must determine how the exceptions process required by law applies to the applicant's proposal and which provisions apply. ORS 197.797. LCDC's rules contain specific requirements depending on the type of exception required. OAR 660-004-0018, -0020, -0022, -0025, and -0028.

A new reasons exception is required “[w]hen a local government changes the types or intensities of uses or public facilities and services within an area approved as a ‘Reasons’ exception.” OAR 660-004-0018(4)(b); *see also* OAR 660-004-0018(1) (“Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception.”); *See Hood River Valley Residents Committee v. Hood River County* (Opinion, LUBA No. 2017-014, June 29, 2017). Similarly, for an “irrevocably committed” exception, the County must ensure that the proposed use is consistent with other applicable goal requirements and “will not commit adjacent or nearby resource land to uses not allowed by the applicable goal[.]” OAR 660-004-0018(2)(b); *see also* OAR 660-004-0018(2), (3) (listing additional requirements, including requirements for industrial uses).

The subject property is subject to two goal exceptions: the Port Westward Exception Statement and Ordinance 2007-010 (applicable to TLs 8422-00-0200 and 8422-00-0300). These exceptions were both related to different uses than applicable here and were based on justifications that the proposed use would be contained to the subject property and would not impact adjacent land.

For example, the Port Westward Exception Statement includes findings that:

1. The 900-acre site is large enough to allow [an] adequate buffer area to protect adjacent agricultural users.
2. These types of large-scale industrial users do not create pressure for housing or other uses on adjacent farmland.

CCCP, Part XII at 134. The proposed modification clearly has impacts that will conflict with the Port Westward Exception Statement. The proposed location of the rail facility on the Port Westward exception lands necessarily creates pressure for a non-farm use on the adjacent PA-80 parcel that NEXT must rely on to connect to the main rail branchline. The County must analyze whether and how the proposed rail facility is consistent with the scope and limitations of the Port Westward Exception.

Additionally, Ordinance 2007-010, which was specifically applying the reasons

exception criteria to a proposed (but never built) power generating facility, states:

Including the Property in the Port Westward Goal 3 exception area allows for access to the existing services, dock structure and rail system. Further, given the existing transportation system, the need to construct new roads over resource land is small to nonexistent.

Columbia County Ord. 2007-10. The current proposal is a change in type and intensity of both of these prior exceptions used to justify converting agricultural land to industrial land. It proposes to establish a rail yard and expand road infrastructure, including onto adjacent land, and will require expanding rail line and road infrastructure onto resource land rather than relying on the existing services and rail system. Neither the application nor the staff report address how the proposal is consistent with these prior exceptions or attempt to justify a new exception. Pursuant to the standards in OAR 660-004-0018 and standards referenced therein, the proposal requires the county to comply with the exceptions process for the additional infrastructure. ORS 197.732.

2. The Commission should deny NEXT’s Conditional Use application for the segment of the rail yard sited on agricultural land.

The County previously approved a Conditional Use Permit (CU 21-04) for the rail facility associated with NEXT’s proposed refinery. The County approved the rail facility as a “branchline” under OAR 660–012-0065. LUBA reversed the County’s approval in *1000 Friends of Oregon v. Columbia County*, __ Or LUBA __ (LUBA No. 2022-039, slip op, October 22, 2022), on the grounds that the proposed rail facility was not a “branchline” as contemplated in the rule and therefore was not an allowed use on EFU land. NEXT’s revised application should be denied for the same reason. Nothing significant has changed about the scope and design of NEXT’s proposed rail facility such that it could now be considered a “branchline” consistent with LUBA’s decision.

NEXT also fails to adequately demonstrate compliance with the farm impacts criteria in ORS 215.296. The County cannot approve the application unless and until NEXT demonstrates that the proposed rail facility will not force a significant change in or increase the cost of accepted farm or forest practices on surrounding lands. NEXT’s application does not satisfy these standards.

a. The proposed rail facility is not a “branchline” and thus is not an allowed use on agricultural land.

In its new applications, NEXT is proposing to relocate the majority of the rail yard facility onto RIPD-zoned land, with a small segment of the rail remaining on PA-80 land where the rail will connect from the facility to the Portland & Western mainline rail. NEXT again seeks a Conditional Use permit for the portion of the rail that is located on PA-80 land and asserts that the rail constitutes a “branchline” under OAR 660-012-0065. However, changing the location of the majority of the rail facility does not change the designation of the use; the portion of the rail facility that is located on PA-80 parcels is one-and-the-same with the remainder of the facility that is proposed for the RIPD parcels. A use does not change its designation from parcel to parcel based solely on the zoning. The Conditional Use application must be denied because the rail facility is still not a “branchline” under OAR 660-012-0065.

NEXT attempts to piecemeal the rail facility into different parts, calling one piece of the whole a “branchline.” In actuality, the rail is a single facility: a complex series of parallel tracks for loading, unloading, maintaining, and storing rail cars. NEXT’s application describes the proposed rail facility as follows:

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 [sic] (“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).

CU 23-11 Application, p.5. The rail facility straddles two different zoning designations, but it serves a single function and purpose of allowing NEXT to move 100-car trains off of the PNW rail line for loading and unloading at the diesel facility. The portion of the rail on PA-80 land is no more a “branchline” than it was in the prior application. NEXT has not meaningfully changed the design, function or purpose of the rail facility, which consists of multiple parallel tracks designed to receive, store, sort, and unload trains carrying supplies, feedstock, and finished product. The sole purpose and function of the section of the rail on PA-80 land is to provide a connection from the P&W line to the facility’s system of parallel tracks. The rail facility as a whole, including the section on PA-80 land, is more appropriately designated as a “rail yard” or “terminal.”

LUBA’s reasoning in reversing the County’s prior Conditional Use approval applies equally to this application. The proposed rail facility “is not a branchline because it includes multiple parallel tracks and includes siding tracks for train car storage and maintenance.” *1000 Friends*, slip op. 23. As LUBA discussed, the proposed rail facility includes features that more

closely resemble a “rail yard” or “terminal” as those terms are defined in the 2001 Oregon Rail Plan. *Id.* at 22–23.

In contrast, a “branch line” is defined in the 2001 Oregon Rail Plan as “a secondary line of a railway, typically stub ended.” *Id.* at 21. NEXT’s proposed “branchline” extends a total of 1,250 linear feet. CU 23-11 Application, p.4. This is less than the length of a single train that will serve NEXT’s facility. Thus, it can hardly be asserted that the portion of the rail facility on PA-80 land is “a secondary line;” it is merely a connection segment from the main rail line to NEXT’s facility rail yard or terminal. NEXT attempts to address LUBA’s opinion by asserting that its proposed branchline “ends in a stub” and is therefore a “branchline.” CU 23-11 Application, p.8. However, the “branchline” ends in a system of parallel tracks that will be used for loading, unloaded, and sorting rail cars. Any “stub end” to the rail facility is at the end of the system of parallel tracks. NEXT cannot have it both ways; the “branchline” on PA-80 land cannot both be distinct from and a part of the larger rail facility proposed for NEXT’s diesel facility.

The facility as a whole consists of multiple parallel tracks that serve the sole purpose of loading, unloading, storing and sorting rail cars for the proposed diesel facility. The rail facility is not a “branchline” and is thus not an allowed use on EFU land under ORS 215.283 and OAR 660-012-0065(3)(j). The application must be denied.

b. NEXT has not demonstrated compliance with the farm impacts standard in ORS 215.296 and CCZO 307.1.

Even if the portion of the rail facility proposed on PA-80 land could be properly classified as a “branchline,” NEXT has failed to adequately demonstrate compliance with the farm impacts test under ORS 215.296 and CCZO 307.1. A use allowed under ORS 215.283, “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 costs of accepted farm or forest practices on surrounding lands devoted to farm or forest use.”

ORS 215.296(1). “A ‘significant’ change or increase in cost is one that will have an important influence of effect on the farm.” *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 458 (2019). The County’s code section CCZO 307.1 effectively mirrors the statutory provision.

NEXT’s application and Staff Report limit the impact analysis to only the two parcels that the rail facility will cross. NEXT identifies the farm practices on those two parcels as “hay/grassland” and including activities such as “tilling/soil preparation, planting, irrigation,

spraying fertilizer, managing weeds, mowing, and harvesting.” CU 23-11 Application, p.13. The application is inadequate to satisfy the farm impacts test for several reasons.

First, there is no basis for limiting the impact area to only the two parcels that will be crossed by the rail facility. The standard in ORS 215.296(1) is concerned with impacts from a proposed use on farm practices “on surrounding lands,” not only the specific parcels where the use is proposed. *See Hood River Valley Parks and Recreation District v. Hood River County*, 67 Or LUBA 314 (LUBA No. 2021-073, May 14, 2013) (slip op 11) (“‘surrounding lands’ for purposes of ORS 215.296(1) are those lands in such proximity to the proposed ORS 215.213(2) and ORS 215.283(2) conditional use that the externalities or sensitivities of the proposed use could potentially cause significant changes in or significantly increase the cost of accepted farm practices on nearby lands.”). The application fails to acknowledge or address farming practices that take place on surrounding lands outside of the specific parcels where the rail facility is proposed. It is the applicant’s burden to identify and analyze the potential impacts from the use.

Second, as a result of the inadequate impact area, NEXT has failed to identify all of the accepted farming practices on surrounding lands that may be impacted by the proposed use. Several local farmers have submitted testimony on these applications detailing their farm practices and identifying the potential impacts from the proposed rail facility to those farming practices. *See e.g.* Testimony of Mike Seely, Warren Seely, James Hoffman. NEXT and the County must fully evaluate those farm practices and the potential impacts from the rail facility in order to demonstrate compliance with the farm impacts test.

Third, NEXT fails to adequately identify and analyze the potential impacts from the rail facility to accepted farming practices. The application does not adequately explain the likely delays and road blockages that will be associated with trains entering and exiting the rail facility. As discussed above, NEXT’s consultant previously indicated that trains would sit on the track for up to an hour and that any reduction in the size of the rail facility—as is being proposed in these applications—would result in longer periods of delay. The application only states that “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.” CU 23-11 Application at 13. The Application does not address delays at other crossings outside the two subject parcels and does not specify how long and how often trains will be blocking crossings of the “branchline” or “mainline” track. Nor does the application evaluate how train crossing delays will overlap with the movement of farm equipment associated with the accepted farm practices. The portion of the rail yard sited on agricultural land will negatively impact farmers and cause delays at the Kallunki Road crossing. The proposal will impact people who live in Johns District, which is accessed on the north side of Kallunki Road. NEXT has not addressed these impacts.

Additionally, NEXT has not provided a detailed analysis of impacts to the Beaver Drainage District, or those who use the BDIC system for drainage and irrigation. BDIC has not come to any agreement with NEXT for development of its proposed facility. The Application fails to include sufficient information and analysis to demonstrate compliance with the farm impacts test. The County must require NEXT to provide a more detailed analysis of the likely impacts on accepted farm practices and demonstrate that the proposed rail facility will not cause a significant change in or increase the costs of those farming practices.

The Staff Report recommends a condition of approval that NEXT “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.” Staff Report at 46. However, a condition of approval requiring future analysis and determination of mitigation is inadequate to demonstrate compliance with ORS 215.296(1). “For each accepted farm practice, if the applicant cannot prove both of these elements [of the farm impacts test] without conditions of approval, the local government must consider whether, with conditions of approval, the applicant will meet the farm impacts test.” *Stop the Dump Coal.*, 364 Or at 458. The County cannot simply adopt a condition of approval without a complete identification of the accepted farm practices on surrounding lands and without a full analysis of the potential impacts.

3. Conclusion

In conclusion, we urge the Board of Commissioners to reject the proposed SDR Modification and Conditional Use permit applications because both applications fail to demonstrate compliance with the applicable criteria. We further urge the Board to listen to the local community and the farmers with in-depth knowledge of the proposal and its likely impacts on the surrounding area.

Sincerely,



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s/ Mary Kyle McCurdy
Mary Kyle McCurdy
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mkm@friends.org

List of Exhibits:

Exhibit 1: Mackenzie letter to Columbia County. January 26, 2022.

Exhibit 2: Revised Joint Permit Application. 2023. p. 26.

Exhibit 3: Figure 19 from NEXT Revised Joint Permit Application. 2023.

Exhibit 4: PGE letter. 2016.

MACKENZIE.

January 26, 2022

Columbia County Board of Commissioners
County Courthouse, Room 338
230 Strand Street
St. Helens, OR 97051

Re: **NEXT Renewable Fuels Design Review, Variance, and Conditional Use Permit (DR 21-03, V 21-05, & CU 21-04)**
Response to January 18, 2022 DLCD Comments Regarding Farm Impacts Test
Project Number 2200315.00

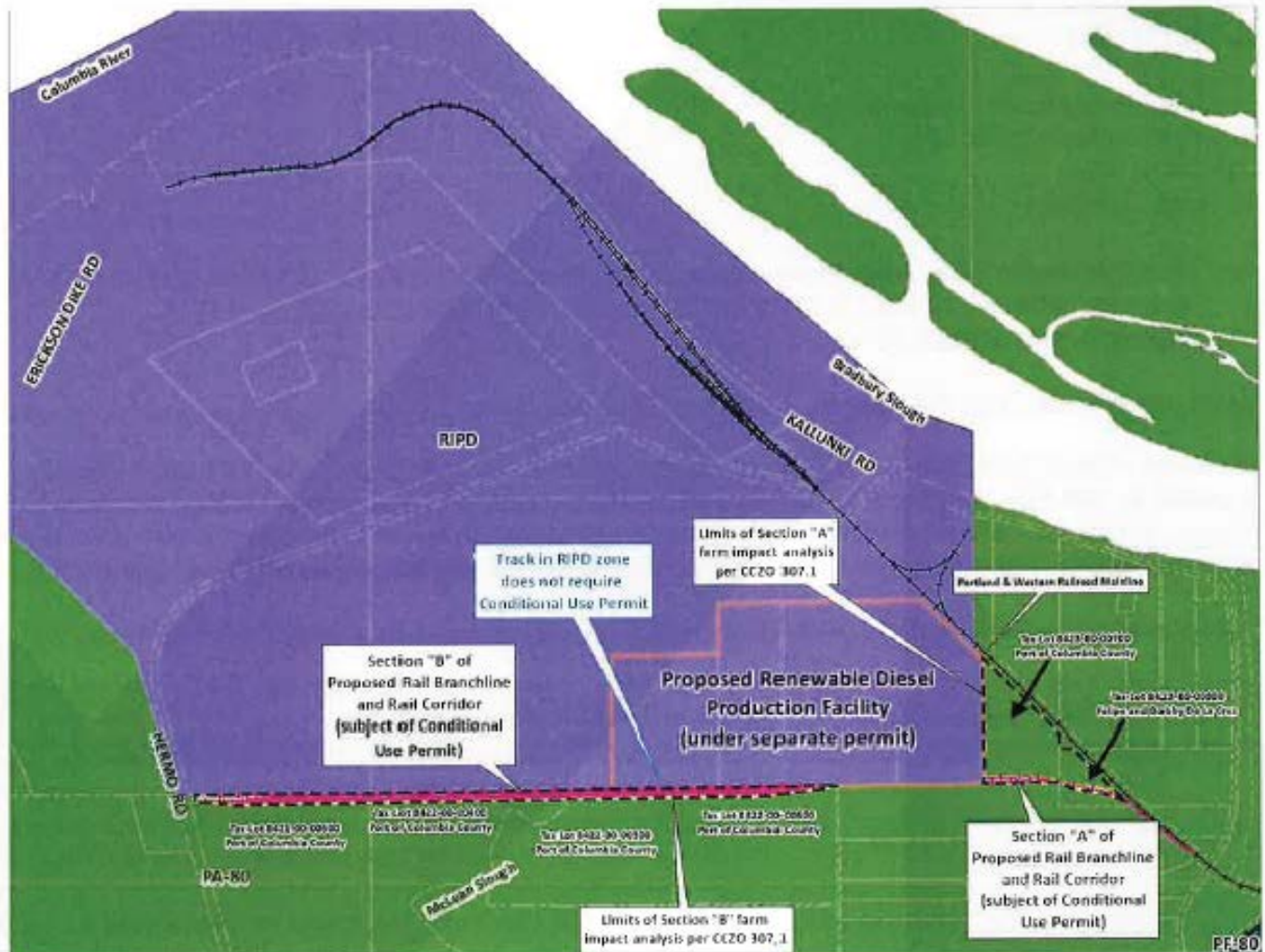
Dear Chair Heimuller, Vice Chair Garrett, and Commissioner Magruder:

On behalf of NEXT Renewable Fuels, please accept this letter in response to the January 18, 2022 written comments provided by staff from the Oregon Department of Land Conservation and Development (DLCD) pertaining to the farm impacts test. As some of the topic areas overlap with concerns raised by others at the County level and during the public notice period associated with wetland fill-removal permits, we are also enclosing copies of related supplemental materials.

Issues raised by DLCD are identified below in italicized text, while responses are provided in standard text.

1. *DLCD's statement that the discussion of agricultural impacts required under ORS 215.296 for the proposed rail branchline is inadequate and does not address the cumulative impacts test.*
Response: The applicant submitted an updated Conditional Use Permit narrative to Columbia County on December 14, 2021. In response to Columbia County Zoning Ordinance CCZO Section 307.1, the revised narrative included additional evidence regarding the farm impacts analysis to assess whether construction of the proposed rail branchline would force a significant change in accepted farm practices or significantly increase the cost of farm practices. The findings provided a farm-by-farm analysis of the area directly affected by the branchline itself, which is relatively small since the affected area is limited to two areas: the impact area associated with Branchline Section A (which extends from the Portland and Western Railroad mainline to the proposed renewable diesel production facility) and 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), as illustrated in the following graphic from the Conditional Use Permit narrative.





Section A of the proposed rail branchline, at 1.6 acres, equates to 10.1% of the area of the affected tax lots (15.9 acres), while Section B of the proposed rail branchline, at 10.7 acres, equates to 5.7% of the area of the affected tax lots (186.7 acres).

The applicant's proposal to transport raw materials and finished product by rail and by water will minimize truck traffic on area roadways. Furthermore, the applicant has made provisions to construct an agricultural crossing at Section A and no farm crossing is needed at Section B (see Conditional Use Permit Exhibit 3, Sheets C1.17 and C1.18); Condition of Approval #3 proposed in the January 11, 2022 staff report¹ requires the applicant to develop a rail management plan in cooperation with the County.

During a typical week, the applicant estimates rail usage consisting of approximately 310-315 rail cars to the facility, anticipated to be in three (3) trains. The proposed rail branchline has been designed to accommodate the

¹ Staff's recommended Condition of Approval #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.

proposed rail traffic without blocking the existing Portland and Western rail line. While a train is being delivered or departing, it will temporarily occupy Section A of the proposed branchline for an estimated one hour per train.²

As discussed in the Conditional Use Permit narrative, the anticipated changes to farm practices in the two (2) impact areas are minor (e.g., alterations to access routes and increased time to access those fields owned and operated by the same owners who have granted easements to the applicant), so the cumulative effect does not require farm operators to significantly change their practices and does not significantly increase the cost of farm practices in the impact areas.

2. *Questions about potential impacts of the proposed relocation of drainage ditches.*

Response: As depicted on the site plans and discussed in the Conditional Use Permit narrative, culverts are proposed where existing ditches will be crossed by the rail infrastructure, and ditches will be relocated around the branchline as needed to accommodate flows. The proposed culverts will be designed and sized as part of final engineering drawings during the permitting phase of the project, as will the proposed ditch relocation. Utilizing standard engineering practice, the design engineer will ensure that the cross-section and slope of the culverts and the relocated ditches provide adequate hydraulic capacity to convey water flows from their upstream contributing areas to their existing downstream channels. Condition of Approval #8 proposed in the January 11, 2022 staff report³ provides a mechanism to verify compliance by ensuring that final stormwater design will be reviewed by County staff prior to construction.

Existing ditches within the footprint of the proposed renewable diesel production facility⁴ do not convey flow through the site but rather collect runoff from the site, so these ditches are proposed to be filled since site runoff will be managed by the proposed stormwater collection system described in Site Development Review Exhibit 13, Conditional Use Permit Exhibit 13, and Attachment A to the enclosed November 15, 2021 letter to the Oregon Department of Environmental Quality.

In summary, the drainage alterations associated with the proposed renewable diesel production facility (e.g., filling ditches) and with the proposed rail branchline (e.g., relocating ditches and installing culverts) are not proposed to limit flow capacity. Furthermore, County staff would not authorize reduced hydraulic capacity during the permit review phase.

3. *Questions about potential impacts to the water table associated with crossing and relocating existing drainage infrastructure ditches and filling wetlands.*

Response: Crossing existing drainage infrastructure with the rail branchline will be achieved via construction of culverts where needed to accommodate flows. The existing east-west ditch along the southern edge of the industrially zoned property is proposed to be relocated south of the proposed rail branchline (approximately 100 feet south of its present location), as illustrated on Sheets C1.15 and C1.16 in Conditional Use Permit Exhibit 3. As the culverts and ditches will continue to convey water in nearly the same locations as today, then the impact on the water table will presumably be negligible.

Construction of the proposed rail branchline would result in filling approximately 12 acres of wetlands. As discussed in the Conditional Use Permit narrative, since the wetlands do not meet the County's regulatory

² By contrast, if Section B of the branchline were smaller than proposed, the total time utilizing Section A would likely increase.

³ Staff's recommended Condition of Approval #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.*

⁴ Construction within the RIPD zone is subject to Site Design Review and not Conditional Use Permit approval standards.

definition of "significant wetland," the proposed wetland impacts are allowed by County zoning at this location. However, the proposed wetland alterations are still subject to permitting requirements of the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers, which only issue permits after a thorough review of the proposed wetland activities and their anticipated impacts. Accordingly, water table impacts will be assessed before any construction begins.

As described in Attachment E to the enclosed November 15, 2021 Stewardship Solutions, Inc. letter to the Oregon Department of Environmental Quality (namely, the November 12, 2021 memorandum from GSI Water Solutions, Inc., regarding Groundwater Protectiveness Measures at the NEXT Renewable Fuels Facility, Port Westward, Oregon), the proposed renewable diesel production facility will obtain applicable DEQ permits to protect groundwater quality during construction and operation. Furthermore, the facility will implement best management practices to protect groundwater quality in accordance with DEQ standards.

4. *Questions about spill containment or potential hazards of spills of raw material or processed fuel on surrounding agricultural crops.*

Response: There are multiple regulatory programs that require water quality preservation systems such as spill containment plans, erosion control measures, and treatment of process water and stormwater. Therefore, the December 14, 2021 narratives acknowledge that the applicant will need to obtain Federal, State, and Local permits that are not land use approvals. As noted in the enclosed December 3, 2021 Stewardship Solutions, Inc. letter to DSL, "NEXT will develop a Facility Response Plan, a DEQ approved Oil Spill Contingency Plan (OSCP), and an EPA approved Spill Prevention Control and Countermeasure Plan. NEXT will operate the facility utilizing Best Management Practices (BMP) outlined in the above plans to prevent spills and be prepared with onsite equipment for a quick response in the event of a spill." This letter further details specific spill containment measures that will be implemented as required by other agencies.

To graphically illustrate spill containment measures at the proposed facility, Mackenzie engineers have annotated the facility drainage plan (Sheet C1.30, attached) to depict the proposed spill containment berms around tanks, the equipment pads with spill containment areas, and the proposed stormwater swales. The equipment pads will be fully paved and graded to isolate runoff in areas where stormwater could come in contact with fuel products. All runoff from the facility will be conveyed to a centralized treatment facility designed to remove potential contamination from the stormwater before it is discharged from the site.

Railroad operators are further required by Federal and state law to prepare oil spill response plans and to utilize rail cars meeting the latest safety standards to minimize the potential for impacts on nearby lands.

5. *Questions about participation in the drainage district and about maintenance of drainage facilities.*

Response: As noted in the enclosed December 3, 2021 Stewardship Solutions, Inc. letter to DSL, all landowners in the Beaver Drainage District are assessed an annual fee, and NEXT Renewable Fuels will pay the assessment as required. The applicant will maintain its own private stormwater maintenance facilities and will provide access to the Beaver Drainage Improvement Company to maintain their facilities in accordance with their access rights conveyed under existing easements.

The proposed stormwater management system for the facility will convey runoff to a centralized stormwater treatment facility, which will discharge treated water to the Port's outfall within their existing NPDES⁵ permit for

⁵ National Pollutant Discharge Elimination System

discharge to the Columbia River. In this way, the system will divert a substantial portion of the facility's stormwater away from the Drainage District's system.

6. *Questions about relocating the rail branchline onto industrial-zoned property or delaying rail branchline construction until the pending zone change⁶ becomes effective.*

Response: Section A of the proposed rail branchline is not possible to be constructed on RIPD-zoned property since there is intervening PA-80 property between the existing rail mainline and the long east-west dimension of the proposed site; furthermore, PGE's electrical transmission towers and guy wires provide only a narrow corridor in which the branchline can be located. The applicant examined alternative designs for Section B of the proposed rail branchline, but no viable alignment was found when coordinating with Portland & Western Railroad to meet the railroad operator's standards.

Due to the uncertainty associated with the timing of the effective date of the pending zone change, the applicant is requesting approval of the rail branchline based on current zoning.

Thank you for the opportunity to submit this information for the Board's consideration.

Sincerely,



Brian Varricchione
Land Use Planning

Enclosures: Attachment A: Oregon Department of State Lands Wetland Delineation Concurrence Letter WD#2020-0663, September 21, 2021
Attachment B: NEXT Renewable Fuels Oregon Post-Construction Stormwater Management Plan, Mackenzie, Revised October 15, 2021
Attachment C: Groundwater Protectiveness Measures at the NEXT Renewable Fuels Facility, Port Westward, Oregon, GSI Water Solutions, Inc., January 25, 2022
Attachment D: Sheet C1.30 with spill containment annotation, Mackenzie
Attachment E: DSL 63077 – RF Permit Application, Response to Public Review Comments, Stewardship Solutions, Inc., December 3, 2021

c: Christopher Efird, Gene Cotten – NEXT Renewable Fuels
Garrett Stephenson – Schwabe, Williamson & Wyatt

⁶ Columbia County file PA 13-02 and ZC 13-01.

Based on the above criteria the applicant determined that sites with navigable water access in Oregon and Washington were not only practicable but also provide an economic and environmental advantage over other ports on the West Coast.

The Applicant evaluated 24 sites in the Pacific Northwest (See *Figure 18, Vicinity Map Pacific Northwest Sites*). A two-tier framework was developed to screen potential sites. Utilizing a broad criterion for Tier I screening, the applicant was able to eliminate 23 of the 24 sites based on the following criteria:

- Availability of suitable acreage – 105 contiguous ac.
- Access to navigable waters
- Access to or ability to construct a dock with two berths
- Access to manifest rail service

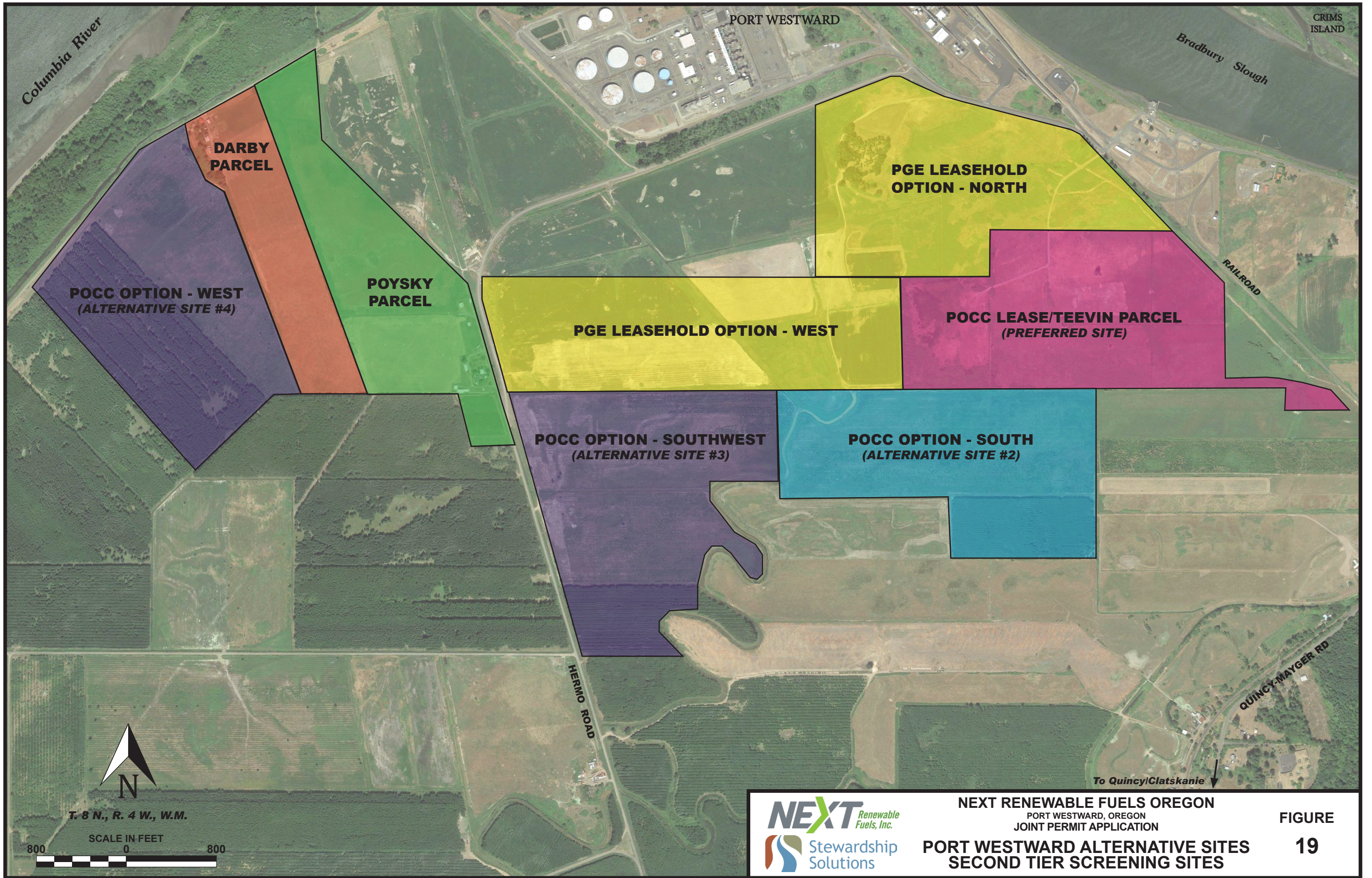
Only Port Westward in Columbia County, Oregon, met the selection criteria listed above. The Applicant identified seven potential sites at Port Westward to be evaluated in the second-tier analysis (See *Figure 19, All Port Westward Alternative Sites*). Second-tier criteria were developed utilizing the guideline of cost, existing technology, and logistics as outlined in the US Army Corp of Engineers Alternative Analysis Framework. Second-tier criteria are listed below:

- cost
 - ability to accommodate operations up to 50,000 bbl/d of renewable diesel
 - access to land that is zone for industrial development
 - ability to accommodate international shipping vessels for import of feedstocks
- existing technology
 - access to existing natural gas pipelines
 - access to existing power line
 - access to existing railways
 - access to existing wastewater disposal
 - access to existing water supply system
- logistics
 - suitable acreage and configuration
 - access to two berths for off-loading and on-loading
 - access to a deep-water port accommodating drafts of 39.5 ft.
 - access to 42 MW of electricity
 - access to 38,00 Mmbtu/day of natural gas
 - access to 1300 gallons/minute of freshwater
 - access to light rail capacity
 - land approval/land accessibility/zoning

Through initial screening and evaluation of the seven sites located at Port Westward, the Applicant eliminated sites 5, 6 and 7 due to the landowner approval and land accessibility criteria. The Applicant was not able to gain landowner approval and/or the estimated timeline for rezoning the property deemed them infeasible, thus leaving four sites to be evaluated under the second-tier criteria.

Of the four sites evaluated in the second-tier screening utilizing the developed project criteria, only one met the overall project criteria used to determine if a site had the ability to achieve the defined project purpose and was therefore a practicable alternative. Only the POCC parcel/Teevin property met all project criteria and was deemed a practicable alternative. As required by the USACE Alternative Analysis, the Applicant has included a no-action alternative in the analysis. The following alternatives were carried through the environmental analysis:

- Alternative 1: POCC parcel/Teevin property (preferred alternative)
- Alternative 2: No action
- Alternative 1 - POCC parcel/Teevin property (preferred alternative) – Under this alternative the NEXT Renewable Fuels Facility would be built in the Pacific Northwest,



NEXT RENEWABLE FUELS OREGON
 PORT WESTWARD, OREGON
 JOINT PERMIT APPLICATION
PORT WESTWARD ALTERNATIVE SITES
SECOND TIER SCREENING SITES

FIGURE
19



Portland General Electric Company
131 SW Salmon Street • Portland, Oregon 97204

June 16, 2016

Port of St. Helens
PO Box 190
Columbia City, OR 97018

Dear Patrick Trapp:

Portland General Electric is writing in support of the Port of St. Helens' pending application to the Columbia County Board of Commissioners to expand the Port Westward Industrial Site by adding additional acres of industrial land to the Port in support of economic development in Columbia County. As a long-standing member of the community, PGE supports the goal of improving the region's economic health.

As you know, PGE has a 99-year lease of 854 acres at Port Westward ending in 2062. Beaver, Port Westward Unit 1 and Port Westward Unit 2 generating plants are PGE's largest concentration of electricity generating resources. With a total installed capacity of 1,141 megawatts, the power generated at the Port Westward site serves 30 percent of PGE customers at peak load and represents hundreds of millions of dollars in investment and maintenance to serve PGE customers with reliable and cost-effective energy. The site plays an important role in PGE's diversified portfolio of resources and also provides critical support for the reliability and stability of the western electric grid.

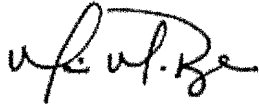
Maintaining and protecting PGE's assets at Port Westward is imperative to the company's current and future operations. Protecting the long-term interests of the electric generation capabilities at the site requires PGE to maintain adequate land buffers around the facilities for security and reliability purposes, thus restricting third-party use on the 854 acre leasehold. In addition, it is important to our future operations there is adequate space in our leasehold for building future generating plants. This limits the physical space, location, and other related dynamics that might otherwise make the area available to third-parties. Given the company's investment at Port Westward and the critical nature of the site to support reliable electric service, third-party compatibility is a high bar which some proposed industrial facilities in the past could not meet. Due to this high bar, PGE supports the Port's effort to bring additional industrial land outside the buffer into Port Westward.

PGE continually evaluates additional investments at the Port Westward site – both new investments and upgrades to existing facilities. Long-term resource planning is a complex

process for the company, and the Port Westward site is critical to support PGE's diverse portfolio due to the access to natural gas pipelines and storage reserves.

PGE is a long-standing member of the community in Columbia County and neighbor to the Port of St. Helens. Beginning with the Trojan Nuclear Plant in the 1960s, PGE and its employees have been proud to live and work in Columbia County. It is our intention to continue our commitment to the county for many years to come.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Pope".

Maria Pope
Senior Vice President of Power Supply and Operations and Resource Strategy

A handwritten signature in black ink, appearing to read "Brad Jenkins".

Brad Jenkins
Vice President of Power Supply Generation