

February 2, 2022

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VIA EMAIL

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

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

Dear Chair Heimuller, Commissioner Magruder, and Commissioner Garrett:

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

I. EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Staff Report at 12.

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

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

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

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

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

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

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

III. THE PROJECT SATISFIES ALL APPLICABLE CRITERIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"None of the four ecological functions, wildlife habitat, fish habitat, water quality, or hydrologic control scored high enough to be considered significant. There are no rare wetland plant communities, there are no critical habitats present, and the wetland is isolated by the levee and heavily impacted by the drainage district.

"The wetlands located behind the levee (within the drainage district) in the Resource Industrial Planned Development area at Port Westward and the wetlands that were converted for farming and are zoned Primary Agriculture are NOT significant under OFWAM."

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

IV. NEXT’S RESPONSES TO SPECIFIC PUBLIC COMMENTS

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

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

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

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

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

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

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

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

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

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

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

NEXT supports this condition as well.

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

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

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

1. The proposed rail branchline is not a “railyard.”

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

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

2. The Application satisfies the farm impacts test.

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

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

To varying degrees, DLCD and 1000 Friends mischaracterize the significant change/significant cost analysis. In *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 459 (2019), the Oregon Supreme Court explained the significant change/significant cost test in ORS 215.296(1–2) as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The record demonstrates that with the maximum train size, Mr. Seely would experience a delay of approximately 7.5 minutes crossing Kallunki Road, and no delay crossing Hermo Road. This potential delay would only pertain to Mr. Seely's smaller parcels east of Kallunki Road. However, the Board can find that this impact is not significant because there is no evidence or argument that such a short delay⁴ could cause a significant change in or significantly increase the costs of Mr. Seely's mint farming. Even so, the chances of such a delay occurring with any frequency are minimal because they would occur only if a train of maximum length happened to be crossing Kallunki road at the same time Mr. Seely's equipment was waiting to cross the tracks.

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

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

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

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

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

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

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

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

Staff Report at 18–19.

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

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

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

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

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

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

V. THE BOARD SHOULD REJECT OTHER OPPOSITION COMMENTS.

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

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

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

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

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

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

2. These types of large-scale industrial users do not create pressure for housing or other uses on adjacent farmland.
3. The requirements of the Department of Environmental Quality will assure that new industry does not pollute the adjacent air, water, or land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. CONCLUSION

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

Best regards,



Garrett H. Stephenson

GST/jmhi
Enclosures

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State of Oregon Department of Environmental Quality

Renewable Diesel 101

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

What is renewable diesel?

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

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

Is renewable diesel the same as biodiesel?

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

What are the emissions benefits from using renewable diesel?

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

What are the other benefits from using renewable diesel?

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

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

Is renewable diesel available in Oregon?

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

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

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

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

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

Alternative formats

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



January 25, 2022
Project No. 1724.01.03

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

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

Dear Garrett:

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

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

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

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

The carbon intensity for conventional diesel is 100.74 grams of carbon dioxide equivalents per megajoule of fuel (g-CO₂e/MJ). NEXT will produce renewable diesel with a weighted average carbon intensity of 48.4 g-CO₂e/MJ, accounting for each raw oil feedstock, as derived from the approved fuel pathways established under the Oregon Clean Fuels Program. In other words, NEXT will produce fuels that emit less than half (48.4%) as much GHG over their lifecycle as compared to conventional diesel. Because the renewable diesel produced by NEXT will displace conventional diesel, it will actually reduce the amount of GHG emissions by 51.6% from the existing condition. As demonstrated in the table below, NEXT's renewable diesel will result in a net reduction of approximately 5,409,379 metric tons of CO₂e per year (MTCO₂e/yr) in the LCFS transportation fuels market.

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

Fuel Type	Default High Heat Value ⁽¹⁾ (MMBtu/gal)	Annual Production Rate ⁽²⁾ (bbl/yr)	Carbon Intensity (g-CO ₂ e/MJ)	Annual GHG Emissions Estimate (MTCO ₂ e/yr)
Renewable Diesel	0.123	17,709,902	48.4 ⁽³⁾	4,667,499 ^(a)
Conventional Diesel	0.127	17,709,902	100.74 ⁽⁴⁾	10,076,877 ^(a)
Total Net Reduction in Annual GHG Emissions Estimate =				-5,409,379 ^(b)
<p>NOTES:</p> <p>^(a) Annual emissions estimate (MTCO₂e/yr) = (carbon intensity [g-CO₂e/MJ]) x (1,055.06 MJ/MMBtu) x (42 gal/bbl) x (default high heat value [MMBtu/gal]) x (annual production rate [bbl/yr]) x (lb/453.592 g) x (ton/2,000 lb) x (MT/1.102 US tons)</p> <p>^(b) Total net reduction in annual GHG emissions estimate (MTCO₂e/yr) = (renewable diesel annual emissions estimate [MTCO₂e/yr]) - (conventional diesel annual emissions estimate [MTCO₂e/yr])</p> <p>REFERENCES:</p> <p>⁽¹⁾ Value derived from Oregon Administrative Rule (OAR) 340-253-8010, Table 6 "Oregon Energy Densities of Fuels."</p> <p>⁽²⁾ Represents proposed facility maximum renewable diesel operating mode.</p> <p>⁽³⁾ Carbon intensity derived from Oregon Clean Fuels Program regulatory default carbon intensity per OAR 340-253-8010, Table 9. New legislation to establish a Clean Fuels Program in the state of Washington is currently in rulemaking that may establish carbon intensity standards for transportation fuels used in Washington. The carbon intensity value for renewable diesel specific to the Washington Clean Fuels Program is expected to be similar to the California and Oregon-specific carbon intensity values.</p> <p>⁽⁴⁾ See OAR 340-253-8010, Table 4 "Oregon Carbon Intensity Lookup Table."</p>				

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

Garrett Stephenson
January 25, 2022
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Hence, there will be a net positive impact to public health and safety by constructing and operating the proposed facility.

Sincerely,

Maul Foster & Alongi, Inc.



Brian Snuffer Zukas, PE
Project Air Quality Consultant

Attachments: References

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

REFERENCES

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

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

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



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

Robin;

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

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

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

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

Thank you for the opportunity to provide input.

susan

Susan Barnes
Regional Wildlife Conservation Biologist
West Region – Northwest

Oregon Department of Fish and Wildlife
17330 SE Evelyn Street

Clackamas, OR 97015

Email: susan.p.barnes@odfw.oregon.gov

Phone: 971-673-6010



a Genesee & Wyoming Company

November 19, 2021

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

Gene,

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

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

Sincerely,

Matthew Artz

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

