

February 2, 2022

Garrett H. Stephenson

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VIA E-MAIL

Chair Henry Heimuller
Columbia County Board of Commissioners
230 Strand Street
St. Helens, OR 97051

RE: NEXT Renewables Fuels Testimony for the Second Open Record Period
(App DR 21-03; V 21-05 and CU 21-04)

Dear Chair Heimuller:

As you know, this office represents NEXT Advanced Renewable Fuels, Inc. ("NEXT"). At the conclusion of the first evidentiary hearing on January 19, 2022, the Board closed the record to oral testimony and left the written record open until January 26 for any person to submit evidence and argument (the "first open record period"). The record is to be left open between January 27 and February 2 (the "second open record period") for any person to submit evidence and argument responding to written testimony submitted during the first open record period. NEXT has until the end of day on February 7, 2022 to submit its final written argument. This constitutes NEXT's testimony and evidence for the second open record period and is timely submitted via email prior to 5:00 PM on February 2, 2022.

During the second open record period there were two comments related to farming practices to which NEXT seeks to respond.

First, comments submitted by 1000 Friends of Oregon and Columbia Riverkeeper raised a concern that rail operations would cut off access to Mike and Warren Seely's mint fields, particularly those east of NEXT's proposed facility. As demonstrated in the attachments from Mackenzie and NEXT president Gene Cotton, the impacts of the proposed rail branchline and train operations will not significantly change existing farming practices or increase their costs. NEXT's project planner at Mackenzie evaluated impacts of the proposed rail branchline and train operations on area farm fields. Mackenzie prepared the attached Field Access Map illustrating: (1) existing access locations to fields, as determined from aerial photography, (2) the location of the proposed rail branchline, and (3) the branchline's proposed new rail crossing and extension of an existing rail crossing. The diagram illustrates that no existing field access points (including those used by the Seelys) are eliminated by the proposed branchline.

The 1000 Friends of Oregon's Exhibit A depicts the Seelys as having fields south of NEXT's proposed rail branchline. That is inaccurate. Enclosed is a copy of the 2020 Third Amendment of Lease between Portland General Electric Company ("PGE") and Michael P. Seely and Warren

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C. Seely. The land the Seelys lease to farm is depicted in Exhibit A-1 to the Third Amendment of Lease, which clearly shows that the Seely's lease with PGE does not include any land south of NEXT's proposed rail branchline. Again, the impacts of the proposed rail branchline and train operations will not significantly change farming practices.

The memorandum prepared by Gene Cotten addresses concerns raised that rail operations will block farm equipment for too long. Based on the assumed 100-rail car trains that may serve the proposed facility, the overall train length would be approximately 6,630 feet. As depicted in the attached Train Length Exhibit, the proposed rail branchline is sufficiently long to accommodate these trains. The length of the branchline and the proposed parallel tracks have been designed to ensure that when the trains are broken into smaller units, there will be no backing movements on the existing rail lines.

The applicant acknowledges that traffic on Kallunki Road (and other field accesses that cross that tracks) will be halted while trains are arriving at and departing the facility; however, at a speed of approximately 10 miles per hour, this delay equates to less than eight (8) minutes per train. To minimize the potential for additional train delay, the applicant would be willing to accept a condition that no trains longer than 7,000 feet can access the facility.

In response to a concern that rail operations may generate sparks, the railroad tracks are constructed on a gravel bed that minimizes fire potential from any sparks that may be generated. As illustrated in the plan (Sheet 2) and cross-section (Sheet 6) in the attached Waterway Exhibit, the proposed branchline will also be buffered from adjoining agricultural operations by the driveway to Hermo Road, by a landscape strip, and by the relocated ditch.

These exhibits demonstrate that there are sufficient rail crossings available to access the fields and the rail branchline will not significantly change or increase costs to farming practices. Accordingly, the Board of Commissioners can properly find that NEXT's proposed development will not cause substantial delays or force a significant change in farming practices.

Second, a comment submitted by the Beaver Drainage Improvement Company, raised a concern about the southward relocation of the existing ditch and whether existing irrigation and drainage connections will be replaced. NEXT intends for the relocated ditch to serve the same function as the existing ditch. As depicted on NEXT's 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

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Approval #8 proposed in the January 11, 2022 staff report¹ provides a mechanism to verify compliance by ensuring that final stormwater design will be reviewed by County staff prior to construction.

The attached Waterway Exhibit (and the site plans previously submitted with the applications) shows the location of the proposed relocated ditch and culverts, and any other needed culverts will be added as needed to accommodate the continued operation of irrigation and drainage infrastructure. Accordingly, NEXT's proposed development will not impact drainage and irrigation.

As referenced above, this letter encloses the following documents prepared by NEXT's consultant team:

1. Field Access Map from NEXT's project planners at Mackenzie, depicting the existing access points to fields that are crossed by the branchline.
2. 2020 Third Amendment to Lease between PGE and Warren and Mike Seely.
3. A Memorandum from NEXT President, Gene Cotton, describing NEXT's rail design basis.
4. A Train Length Exhibit prepared by NEXT's project planners at Mackenzie depicting the length of trains relative to the length of the proposed rail branchline.
5. Waterway Exhibits depicting the location of the proposed relocated ditch and culverts.

Please place this letter and its attachments in the official record on the above-referenced applications, and please place them before the County Commissioners.

Best regards,



Garrett H. Stephenson

GST:jmhi

Enclosures

cc: Mr. Chris Efird (via email) (w/enclosures)
Mr. Gene Cotton (via email) (w/enclosures)
Mr. Brian Varricchione (via email) (w/enclosures)

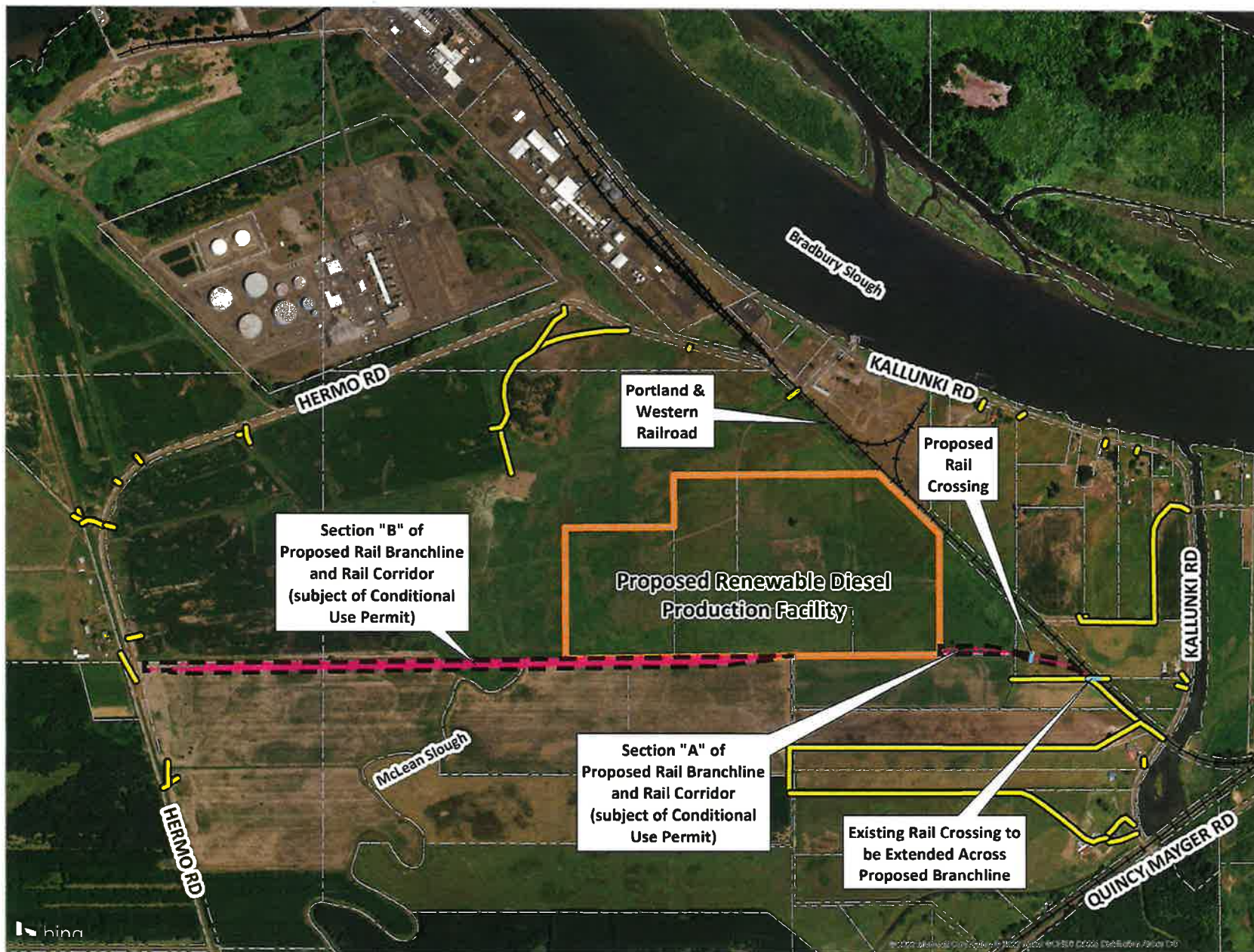
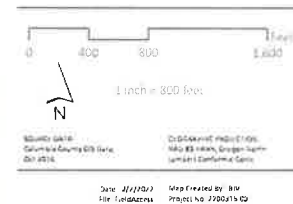
¹ Staff's recommended Condition of Approval #8: *The applicant shall prepare a Final Stormwater Plan including specific swale design plan and profile details; a Building Permit will not be issued until the plan is approved by the county.*

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Ms. Laurie Parry (*via email*) (*w/enclosures*)
PDX\133639\242725\LTH\32882494.1

NEXT RENEWABLE FUELS INC.
Columbia County, Oregon
Nearby Field Access

- LEGEND**
- ▬ Tax Lots
 - ▭ Proposed Renewable Diesel Production Facility
 - ▬ Proposed Rail Corridor
 - - - Proposed Rail Branchline
 - + Existing Rail Mainline
 - ▭ Existing Field Access
 - ▭ Rail Crossing Alteration



THIRD AMENDMENT OF LEASE

THIS THIRD AMENDMENT OF LEASE is entered into by and between PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation (Landlord referred to herein as "PGE" or "Lessor") and MICHAEL P. SEELY and WARREN C. SEELY (jointly and severally "Tenant" or "Lessee").

RECITALS

A. PGE and Tenant are parties to that certain Lease dated September 1, 2003, as amended by that certain Amendment of Lease dated effective August 31, 2007; as further amended by that certain Second Amendment of Lease dated effective September 1, 2010 (cumulatively the "Lease"), whereby PGE subleased to Tenant that certain real property (the "Premises") situated in the County of Columbia, in the State of Oregon, consisting of approximately Three Hundred (300) acres, more or less, as described in the Lease. The Premises are a portion of the property PGE leases from the Port of Columbia County (formerly known as the Port of St. Helens ("POCC") as part of their leasehold in the area commonly known as Port Westward pursuant to a Lease dated August 1, 1967, as amended.

B. PGE and Tenant have agreed to amend and modify certain specific terms of the Lease on the Premises upon the terms and conditions set forth herein.

C. Capitalized terms not defined herein shall have the same meaning as set forth in the Lease.

NOW, THEREFORE, for valuable consideration, the current receipt, reasonable equivalence, and sufficiency of which are hereby acknowledged by each of the parties, the parties each agree as follows:

1. Extension of Term. The Term of the Lease is extended from and after October 31, 2020, for an additional ten (10) years, upon all of the terms, covenants and conditions contained in the Lease, except as otherwise set forth in this Third Amendment, and shall expire on October 31, 2030. Notwithstanding anything to the contrary contained in the Lease, Tenant acknowledges and agrees that Tenant has no right or option to further extend the Term of the Lease.

1.1 This Third Amendment is subject to and conditioned upon the approval of this Amendment by POCC upon terms and conditions acceptable to PGE in its sole discretion.

2. Premises. Tenant acknowledges and approves the modifications and upgrades to Hermo Road made to date. The Lease is subject to the operation and effect of any and all instruments and matters of record or in fact, including those shown on any recorded plat or survey, and matters that a complete survey and inspection of the Premises would reveal.

2.1 The Premises are expanded to include the additional property described and depicted in Exhibit "A-1" attached hereto.

3. Use. Tenant will not operate or allow the use of any drones or robotic, autonomous, radio-controlled equipment, or the like over PGE property or within two hundred (200) feet of any PGE structure or facility at any time.

4. Rent. The current Rent (Rent payment due November 15, 2019) is Ten Thousand Five Hundred Dollars (\$10,500.00) per year (November 1st through October 31st), payable in arrears on or before the 15th day of November each year. Commencing November 1, 2019, the Rent shall increase to Twelve Thousand Five Hundred Dollars (\$12,500.00) per year (November 1st through October 31st), payable in arrears on or before the 15th day of November each year. Tenant covenants and agrees to continue to pay the Rent to PGE, promptly when due, without notice or demand and without deduction or setoff of any amount whatsoever. Thereafter the annual Rent shall be subject to increase by PGE upon not less than thirty (30) days prior written notice, not to exceed Five Percent (5%) of the then existing base annual Rent, at any time after October 31, 2020.

PGE initials: [initials] Tenant initials: [initials]

5. Assignment & Assumption. As of the Effective Date of this Third Amendment ("Effective Date") Michael Seely hereby conveys and warrants and assigns, sets over and transfers to Warren C. Seely, and Warren C. Seely hereby takes and accepts from Michael P. Seely, all of Michael P. Seely's rights and interest as the Tenant under the Lease. As of the Effective Date, Warren C. Seely hereby assumes all the obligations and liabilities of the Tenant under the Lease. Notwithstanding the assignment and assumption of the Tenant's rights and obligations under the Lease, and without waiver of any of the obligations of the Tenant pursuant to the Lease (including Section 15.2), both Michael P. Seely and Warren C. Seely shall be and remain jointly and severally liable for the breach of any representation or warranty herein as well as any liability or obligation to the extent incurred or accruing prior to the Effective Date as well as for any obligations to any third party(s), and shall forever indemnify, defend and hold PGE and POCC harmless therefrom.

6. Representations. Tenant unconditionally represents, covenants, and warrants to PGE and POCC the following: that as amended by this Third Amendment of Lease, the Lease remains unmodified and in full force and effect, and that PGE has not breached any duty or obligation to Tenant to date; that Tenant does not dispute any sum owed or paid to PGE, and Tenant further acknowledges and agrees that said sums are and were justly due PGE without defense or setoff in accordance with the terms of this Lease, and that Tenant is unconditionally liable therefore; that no portion of the Lease has been assigned, transferred, or encumbered in any manner; that no portion of the Premises has been sublet in any manner; that no portion of the Premises is being occupied by any person or entity other than Tenant; and that Tenant has not received any CRP Payments as defined in Section 3.1 of the Lease. As part consideration for this Third Amendment of Lease, Tenant hereby releases PGE and POCC, and each of them, from any claim or liability associated with the Lease or this Third Amendment of Lease and Tenant shall, to the fullest extent allowed by law, irrevocably and unconditionally indemnify, defend, and hold PGE and POCC harmless from and against any claims, damages, and liability (including without limitation attorney fees) arising therefrom or in any way related to the foregoing or any breach of any representation and/or obligation of Tenant to PGE pursuant to the Lease or this Third Amendment of Lease.

7. No Modification or Waiver. Except as otherwise set forth in this Third Amendment, nothing in this Third Amendment shall be deemed to waive or modify any of the provisions of the Lease.

8. No Offer. PGE's submission of this Third Amendment to Tenant shall not constitute an offer to amend the Lease. This Third Amendment shall be effective only, and is expressly conditioned, upon the execution of this Third Amendment by PGE, Tenant, and POCC.

9. Captions. The captions and section numbers appearing in this Third Amendment are for convenience only and are not a part of this Third Amendment and do not in any way limit, amplify, define, construe or describe the scope or intent of the terms or provisions of this Third Amendment.

10. Brokers. Tenant represents and warrants to PGE that neither Tenant nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in connection with this Third Amendment of Lease as a result of the actions of Tenant.

11. Controlling Agreement. In the event of any conflict between any other part of the Lease and this Third Amendment of Lease, the terms and conditions of this Third Amendment of Lease shall control. To the extent that this Third Amendment of Lease may have been executed following any effective dates set forth herein, said effective dates are hereby ratified, confirmed, and approved. This Third Amendment of Lease may be executed in counterparts, and such counterparts together shall constitute but one original of the Third Amendment of Lease. Each counterpart shall be equally admissible in evidence, and each original shall fully bind each party who has executed it.

12. Entire Agreement. The Recitals are true and correct and incorporated herein by this reference. This instrument, along with any exhibits and attachments or other documents affixed hereto or referred to herein, constitute the entire and exclusive agreement between PGE and

5. **Assignment & Assumption.** As of the Effective Date of this Third Amendment ("Effective Date") Michael Seely hereby conveys and warrants and assigns, sets over and transfers to Warren C. Seely, and Warren C. Seely hereby takes and accepts from Michael P. Seely, all of Michael P. Seely's rights and interest as the Tenant under the Lease. As of the Effective Date, Warren C. Seely hereby assumes all the obligations and liabilities of the Tenant under the Lease. Notwithstanding the assignment and assumption of the Tenant's rights and obligations under the Lease, and without waiver of any of the obligations of the Tenant pursuant to the Lease (including Section 15.2), both Michael P. Seely and Warren C. Seely shall be and remain jointly and severally liable for the breach of any representation or warranty herein as well as any liability or obligation to the extent incurred or accruing prior to the Effective Date as well as for any obligations to any third party(s), and shall forever indemnify, defend and hold PGE and POCC harmless therefrom.

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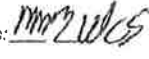
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PGE initials:  Tenant initials: 

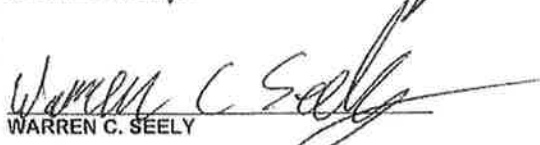
Tenant relative to the Premises and the Lease, and the Lease may be altered and/or revoked only by an instrument in writing signed by both PGE and Tenant. PGE and Tenant hereby agree that all prior written and oral agreements, understandings and/or practices relative to the leasing of the Premises are superseded by this instrument. As amended by this Third Amendment of Lease, the terms and conditions of the Lease shall remain unmodified and in full force and effect.

This Third Amendment of Lease shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. Tenant shall not record the Lease or this Third Amendment.

The Effective Date of this Amendment shall be the 1st day of November, 2020.


TENANT:


MICHAEL P. SEELY


WARREN C. SEELY

PGE: *PGE*

PORTLAND GENERAL ELECTRIC COMPANY,
an Oregon corporation

By: 
Printed Name: Jennifer Santhouse
Title: Manager, Property Services

READ AND APPROVED:

PORT OF COLUMBIA COUNTY:

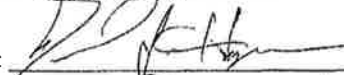
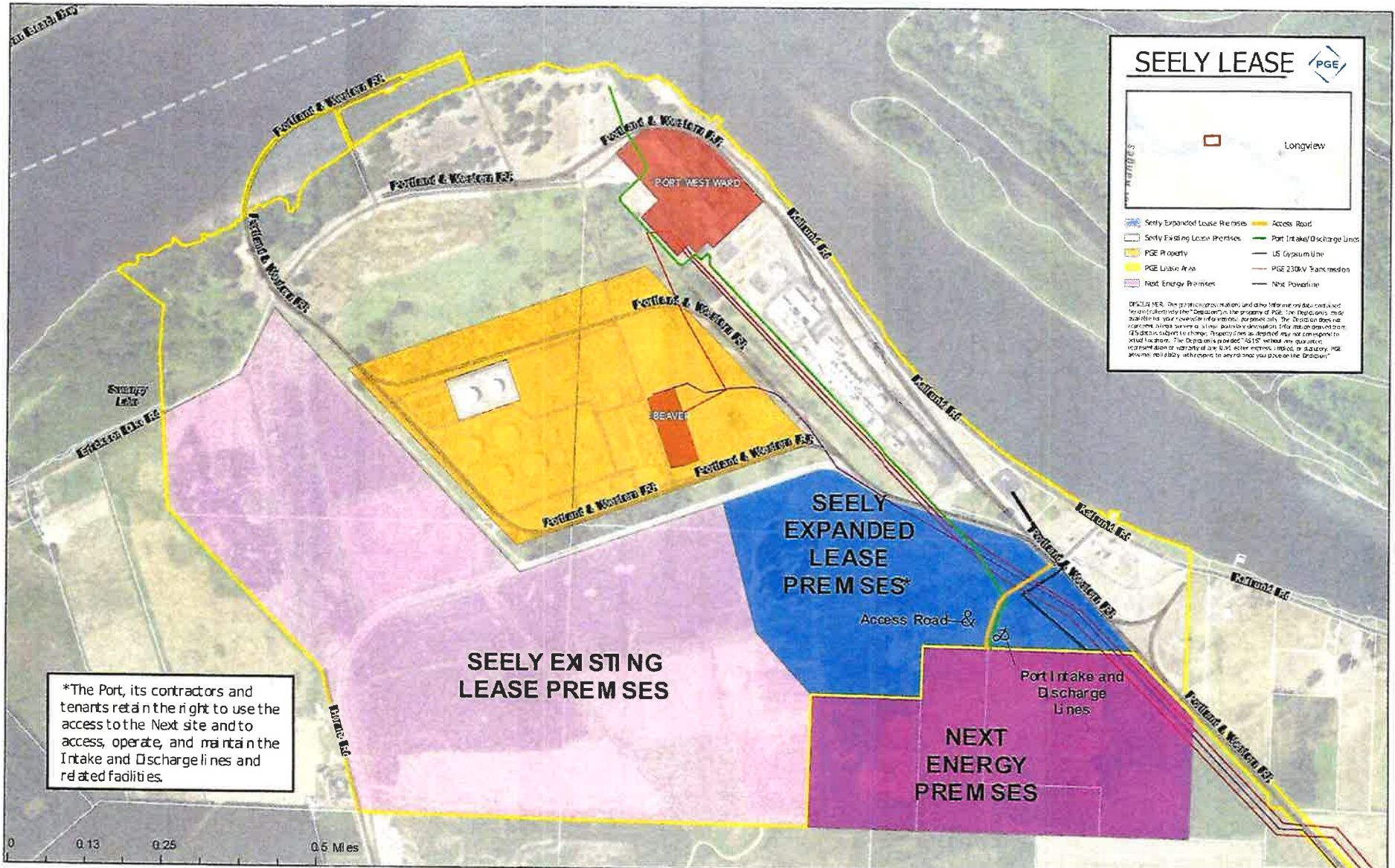
By: 
Printed Name: Douglas J. Hayes
Title: Executive Director

EXHIBIT A-1



*The Port, its contractors and tenants retain the right to use the access to the Next site and to access, operate, and maintain the Intake and Discharge lines and related facilities.

**NEXT Renewable Fuels, Oregon
Rail Loading/Unloading
Design Basis**

Overview

The NEXT Renewable Fuels rail facility has evolved as the design engineering has progressed. The project will be installing rail infrastructure to import feedstocks and bleaching earth clay, as well as export renewable diesel from the Renewable Diesel facility. A comparison of the original vs current facility design is highlighted in Table 1:

Table 1. NEXT Railcar Facility Design Basis						
Design Basis	Feedstock (Import)		Renewable Diesel (Export)		BE Clay (Import)	
	Original	Current	Original	Current	Original	Current
Cars / Mth	40	900-950	240	240	80	80
Cars/Wk	10	231	60	60	20	20
Trains / Wk		2.3		0.75*		0.25*
BPD (MMlb/mth)	839	19,374	5,032	5,032	(14.4)	(14.4)

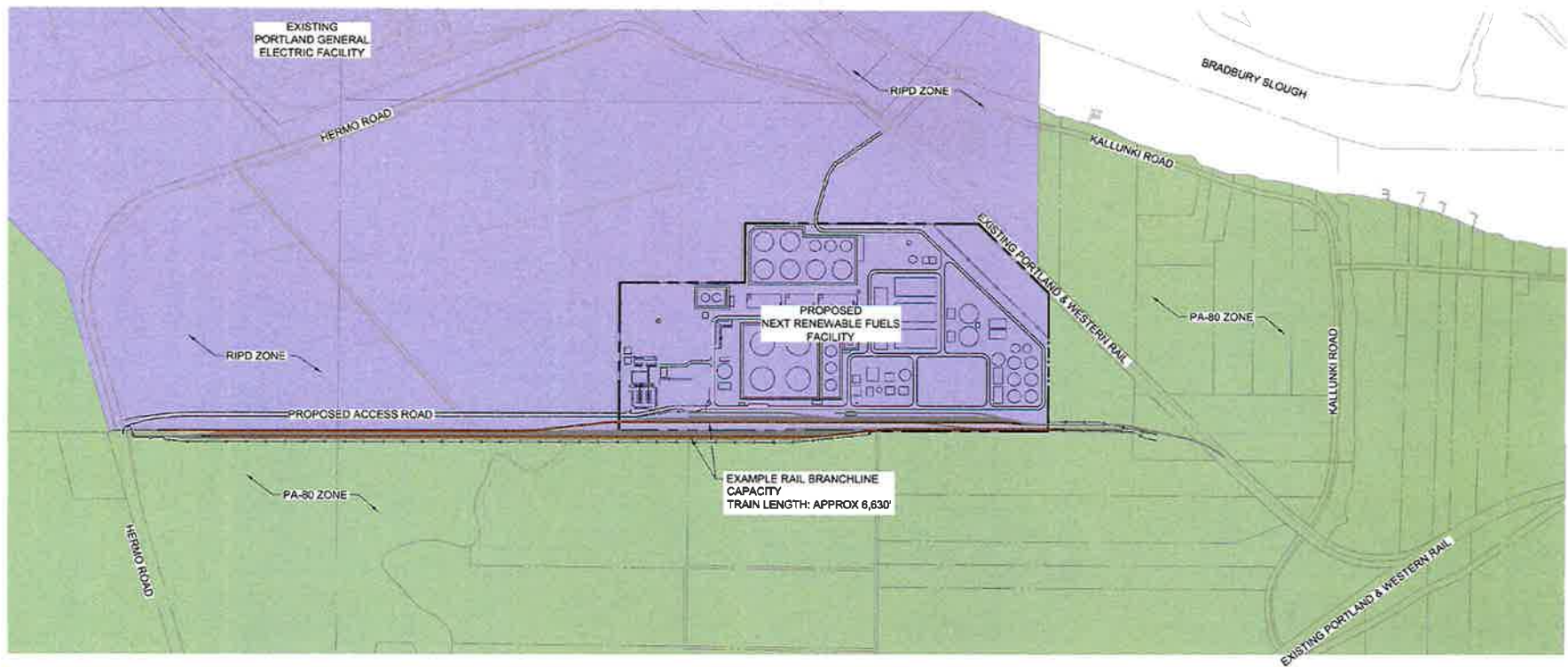
*Diesel and Clay would be a combined into 1 one train per week.

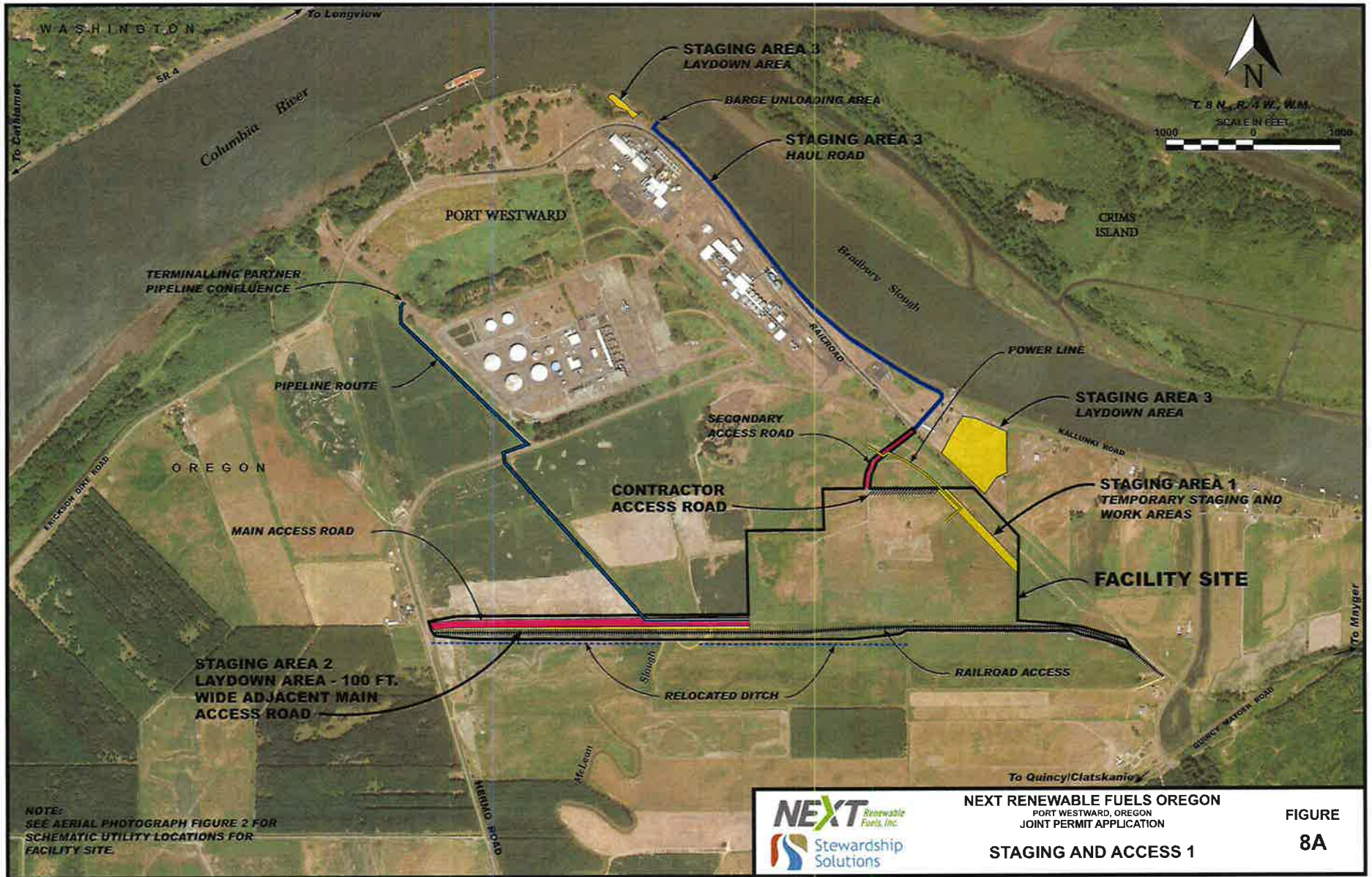
The major change in rail requirements is feedstock. Renewable diesel and bleaching earth clay have not changed from the original design. The current design for the NEXT rail facilities comprises of five (5) feedstock storage track siding lines, three (3) diesel and clay storage track siding lines and three (3) separate load and unload locations. The rail configuration will have the following capabilities:

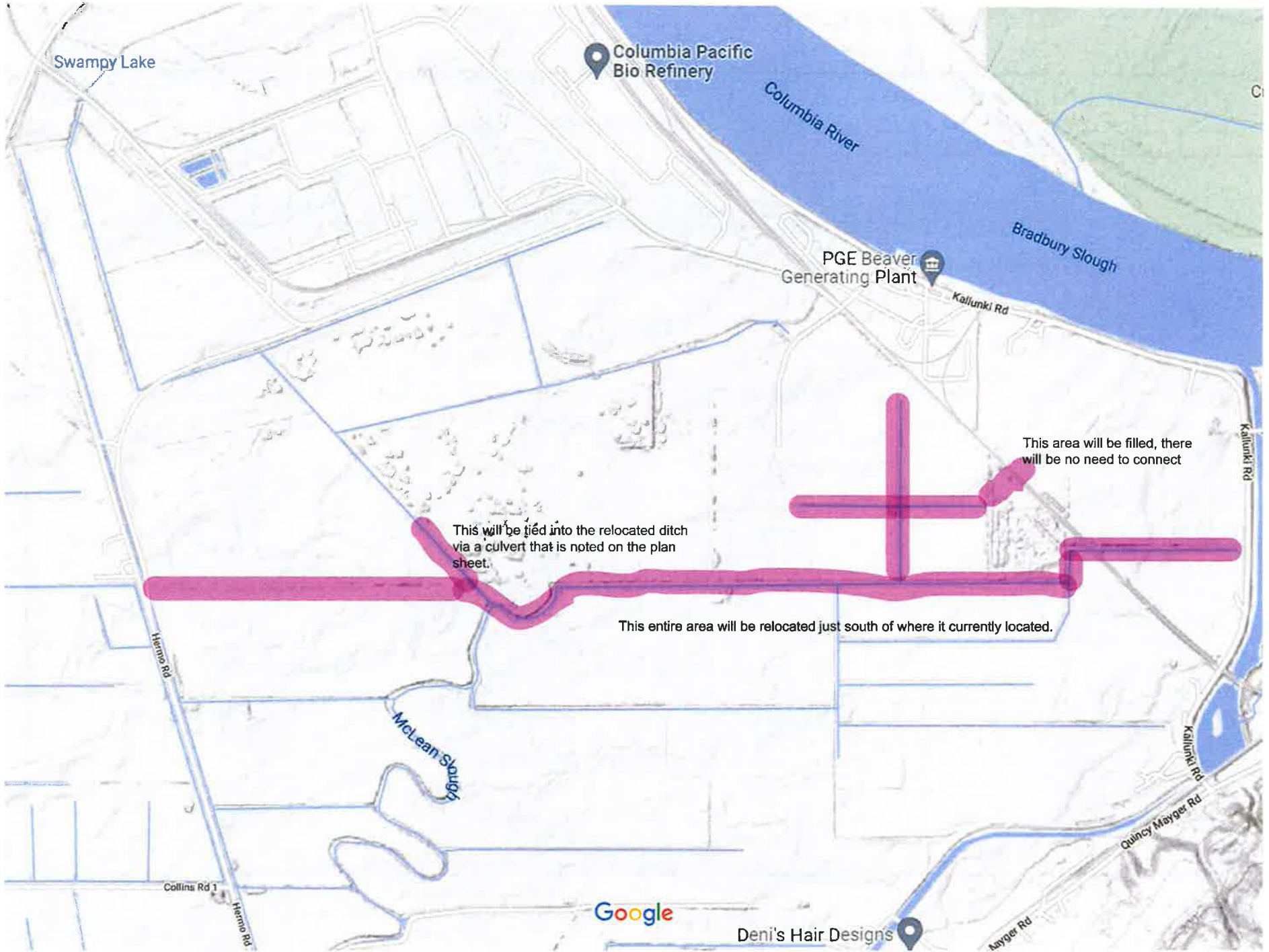
- 2 - 15 bay side-by-side feedstock unloading stations
- 1 - 10 bay renewable diesel loading station
- 1 - 10 bay pneumatic bleaching earth unloading station
- ~25,000 linear feet (LF) of rail siding track

The proposed increase in rail capacity is for the following reasons:

- The NEXT Renewable Diesel project design depends on direct river access for the bulk of import and export movements. Feedstock import via river is logistically more dependable because it can be controlled by NEXT to a large degree. NEXT's original feedstock import design was based almost solely on marine transportation, a single logistic input. As the project developed, NEXT determined that there was too much risk having only one feedstock delivery mode (i.e. river) for a renewable diesel project of this scale. Consequently, the design was modified and feedstock rail unloading capacity was increased to provide a backup if river traffic was temporarily impeded for any reason.
- The feedstock offloading capacity was increased from a 10-spot unloading to parallel 15 spots. This increased the potential feedstock unloading capability to ~19,374 BPD or ~40% of plant capacity. The feedstock volume would allow the plant to operate at minimum turndown versus shutting down.
- Burlington Northern Santa Fe (BNSF) and Portland & Western Railroads (P&W) requested a rail track design which has 2-3 times the linear foot of siding track as the number of cars being delivered per week. This would require the facility to have at least 40,000 lf of siding track. However, because the rail system is a secondary logistic mode, NEXT has limited the rail siding to ~25,000 lf. The design provides for deliveries of jumbo manifest trains (~80-100 cars) and removal of a jumbo manifest train in one trip to the facility without impacting the main line. Additionally, an engine runaround track and maintenance track were added to the design as requested by P&W.







Swampy Lake

Columbia Pacific Bio Refinery

Columbia River

Bradbury Slough

PGE Beaver Generating Plant

Kalunki Rd

This area will be filled, there will be no need to connect

This will be tied into the relocated ditch via a culvert that is noted on the plan sheet.

This entire area will be relocated just south of where it currently located.

Hamond Rd

McLean Slough

Collins Rd 1

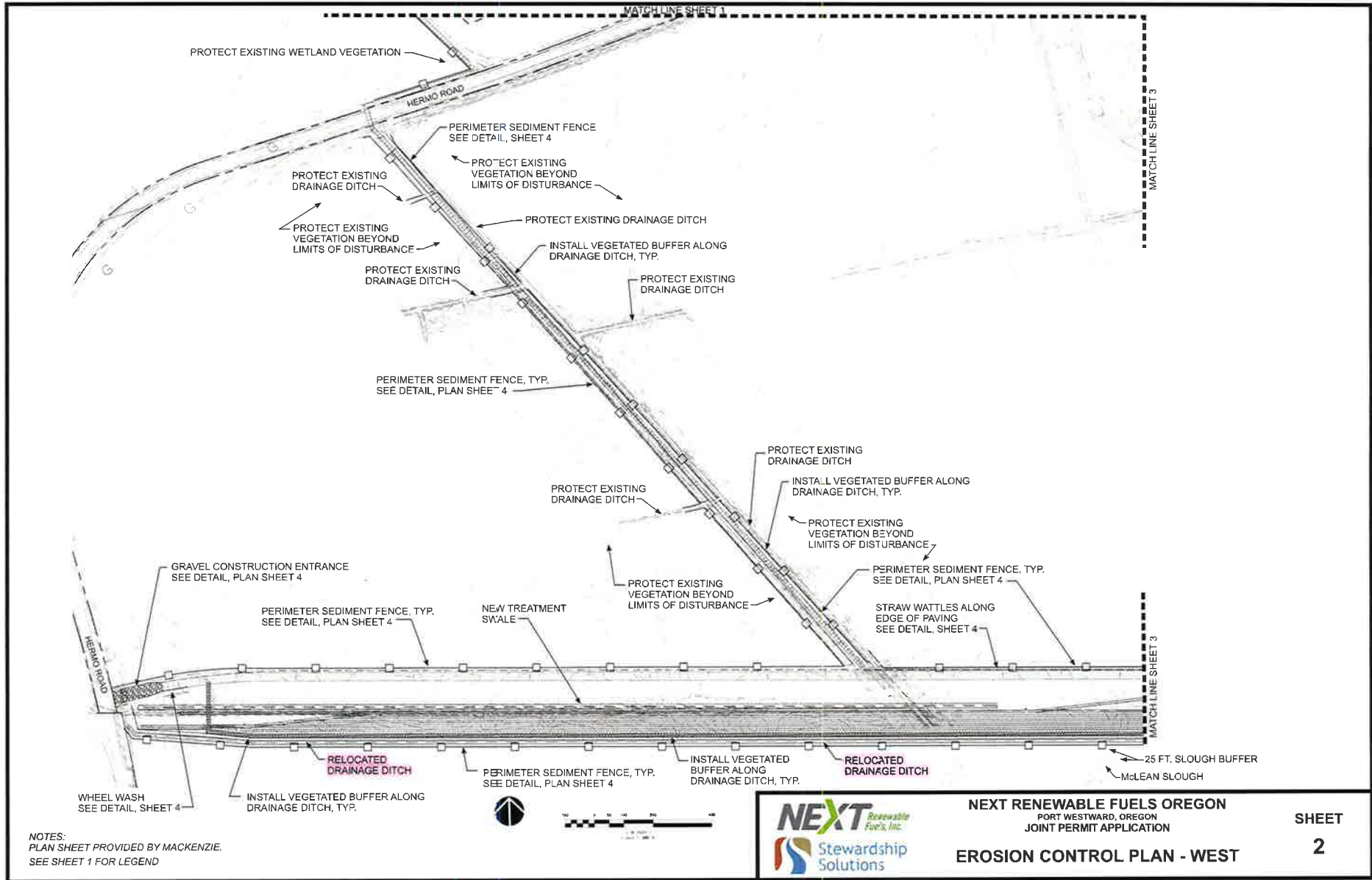
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Deni's Hair Designs

Quincy Mayger Rd

Mayger Rd

NEXT-PortWestwardJPA-Rev Jul. 22, 2021



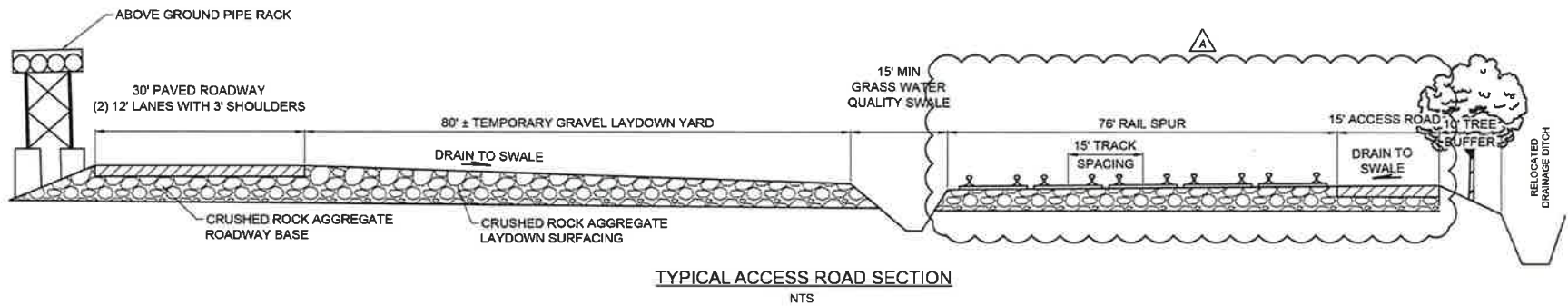
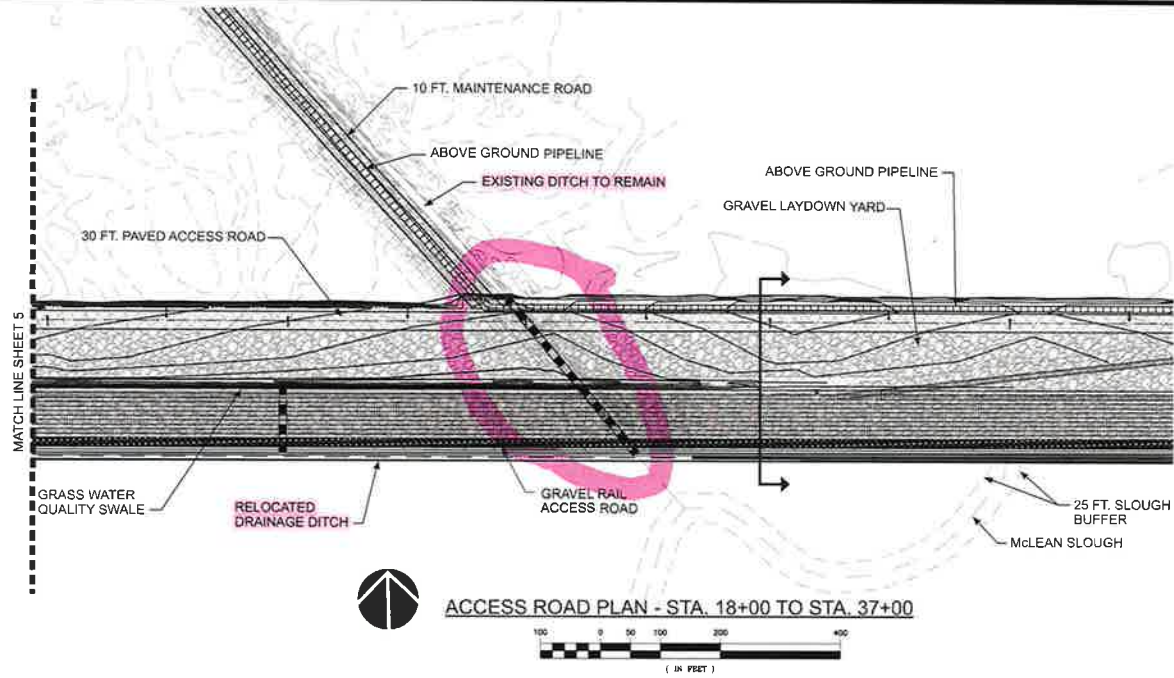
NOTES:
 PLAN SHEET PROVIDED BY MACKENZIE.
 SEE SHEET 1 FOR LEGEND



NEXT RENEWABLE FUELS OREGON
 PORT WESTWARD, OREGON
 JOINT PERMIT APPLICATION
EROSION CONTROL PLAN - WEST

SHEET
2

NEXT-PortWestwardJPA-Rev. Sep. 9, 2021

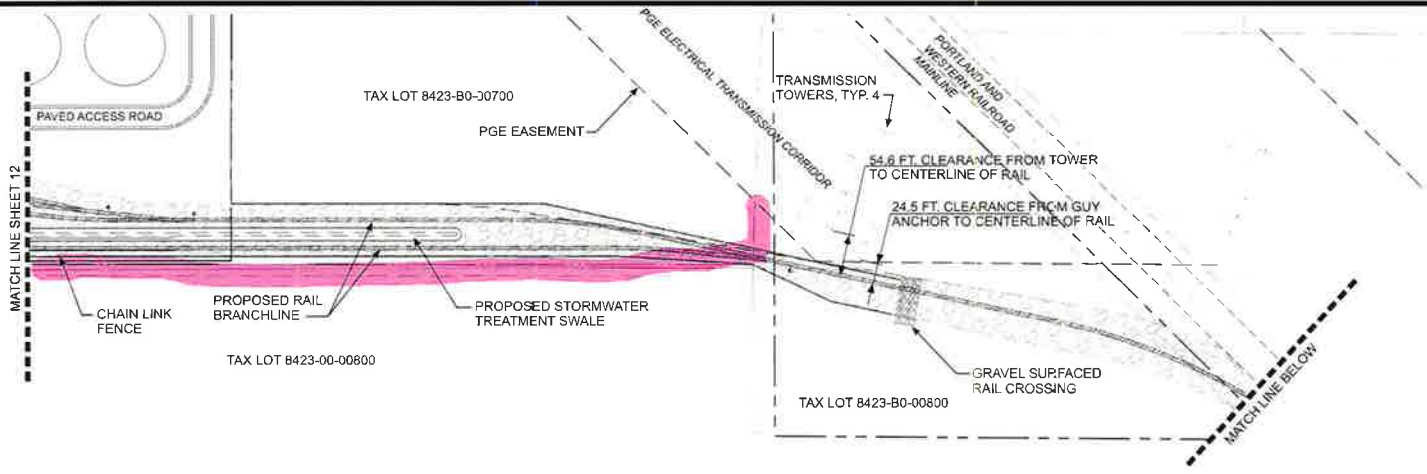


NOTES:
PLAN SHEET PROVIDED BY MACKENZIE.

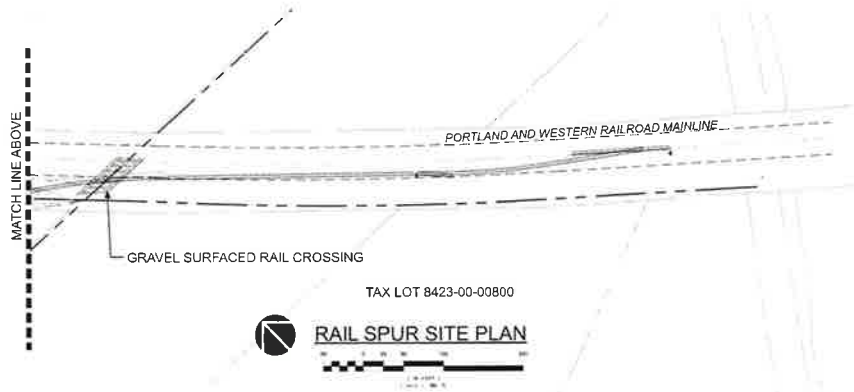


NEXT RENEWABLE FUELS OREGON
 PORT WESTWARD, OREGON
 JOINT PERMIT APPLICATION
**ACCESS ROAD PLAN AND
 CROSS SECTION - CONTINUED**

SHEET
6



 **RAIL SPUR SITE PLAN**

 **RAIL SPUR SITE PLAN**


NOTES:
 PLAN SHEET PROVIDED BY MACKENZIE.



NEXT RENEWABLE FUELS OREGON
 PORT WESTWARD, OREGON
 JOINT PERMIT APPLICATION
RAIL SPUR SITE PLAN 3

SHEET
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