

# MACKENZIE.

## **CONDITIONAL USE PERMIT FOR A RAIL BRANCHLINE**

**To**  
Columbia County

**For**  
Next Renewable Fuels Inc.

**Dated**  
January 19, 2021  
*(Revised July 12, 2021)*  
*(Revised December 14, 2021)*

**Project Number**  
2200315.00



MACKENZIE  
Since 1960

RiverEast Center | 1515 SE Water Ave, Suite 100, Portland, OR 97214  
PO Box 14310, Portland, OR 97293 | T 503.224.9560 | [www.mcknze.com](http://www.mcknze.com)

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## EXHIBITS

1. Conditional Use Permit Application Form and Owner Authorization Letters
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5. Clatskanie-Quincy CPAC Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map, Beak Consultants Inc., June 1995 (annotated)
6. Clatskanie-Quincy CPAC Wildlife Game Habitat map, Beak Consultants Inc., June 1995 (annotated)
7. Clatskanie-Quincy CPAC Wetland and Hydric Soils map, Beak Consultants Inc., June 1995 (annotated)
8. Stream Data Map
9. Excerpt from Lakes of Oregon, Volume 1, Clatsop, Columbia, and Tillamook Counties, U.S. Geological Survey, 1973
10. Statewide Wetland Inventory (annotated)
11. Wetland Delineation Report
12. Oregon State Register of Natural Heritage Resources
13. Preliminary Stormwater Report
14. Memorandum from Anderson Perry & Associates, Inc., December 8, 2021
15. Pipeline and Water Intake Map
16. Letter from Portland & Western Railroad, November 19, 2021



## I. PROJECT SUMMARY

|                                  |  |
|----------------------------------|--|
| <b>Applicant:</b>                | NEXT Renewable Fuels, Inc., Attn: Christopher Efir<br>11767 Katy Freeway, Suite 705<br>Houston, TX 77079<br>chris@nextrenewables.com<br>(661) 201-2653   |
| <b>Owners:</b>                   | Port of Columbia County (tax lots 8421-00-00600, 8422-00-00400,<br>8422-00-00500, 8422-00-00600, 8423-B0-00700)<br>PO Box 190<br>Columbia City, OR 97018<br>(503) 397-2888<br><br>Felipe and Bobby De La Cruz (tax lot 8423-B0-00800)<br>80393 Kallunki Rd<br>Clatskanie, OR 97016 |
| <b>Contact Person:</b>           | Mackenzie, Attn: Brian Varricchione<br>1515 SE Water Avenue, Suite 100<br>Portland, OR 97214<br>(503) 224-9560<br>bvarricchione@mcknze.com   |
| <b>Site Address:</b>             | 81009 Kallunki Rd<br>Clatskanie, Oregon  |
| <b>Columbia County Tax Lots:</b> | Map 8-4-21, Tax Lot 600; Map 8-4-22, Tax Lots 400, 500, and 600;<br>and Map 8-4-23-B0, Tax Lots 700 and 800  |
| <b>Site Area:</b>                | The proposed rail branchline corridor is approximately 12.3 acres<br>(1.6 acres in branchline Section A and 10.7 acres in branchline<br>Section B)   |
| <b>Comprehensive Plan:</b>       | Agriculture  |
| <b>Zoning:</b>                   | Primary Agriculture Use Zone - 80 (PA-80)  |
| <b>Adjacent Zoning:</b>          | PA-80 to the north, east, south, and west<br>Resource Industrial - Planned Development (RIPD) to the north and<br>west   |
| <b>Request:</b>                  | Conditional Use Permit for rail branchline   |

## **II. INTRODUCTION**

### **Description of Request**

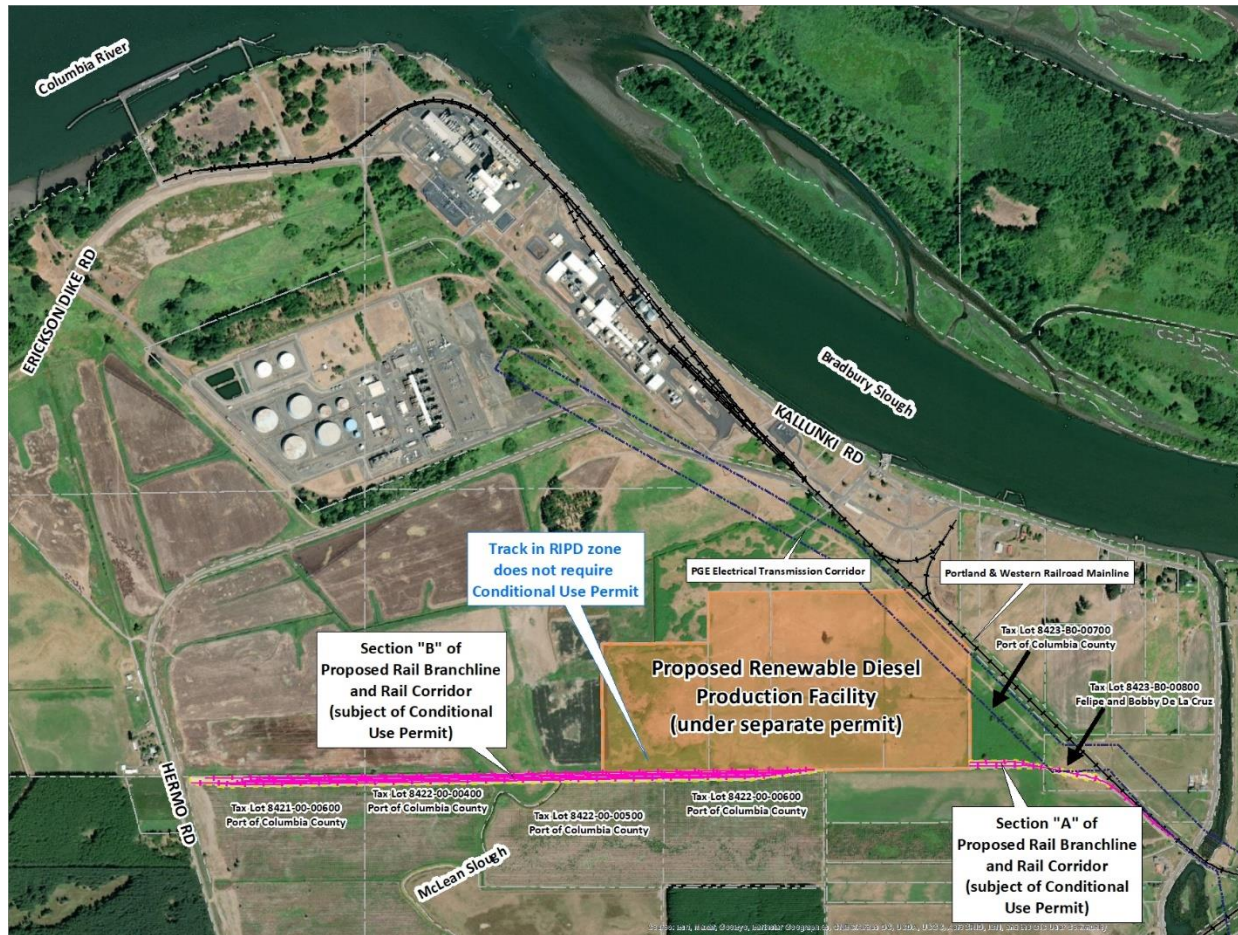
This application package includes narrative, plans, drawings, and additional documentation in support of a proposed rail branchline intended to serve a renewable diesel production facility at the Port Westward Industrial Park (Port Westward) north of Clatskanie. A separate land use application has been submitted for the fuel facility.

A pre-application meeting for this project was held on February 6, 2020. Information and recommendations from that meeting have been incorporated into the proposal.

### **Existing Site and Surrounding Land Use**

For the purposes of this application, the 'site' is defined as the portion of a proposed rail branchline corridor in the Primary Agriculture Use Zone - 80 (PA-80) extending westward from an existing rail line to the east, designed to serve a proposed renewable diesel production facility. The site, located immediately east and south of the Port Westward Industrial Park (Port Westward), consists of portions of six (6) parcels: five owned by the Port of Columbia County (the Port) and one owned by Felipe and Bobby De La Cruz. The combined area of these six (6) parcels is approximately 203 acres, though the proposed rail corridor is much smaller, at approximately 12.3 acres.

Figure 1 is an aerial photograph illustrating the project area.



**Figure 1: Aerial Photo**

For ease of reference, the branchline site has been further broken down into two sections, as labeled in Figure 1:

- Branchline Section A extends from the Portland & Western Railroad mainline to the proposed renewable diesel production facility. This section has an area of approximately 1.6 acres.
- Branchline Section B begins at the southern boundary of the proposed renewable diesel production facility and extends westward toward Hermo Road. This section has an area of approximately 10.7 acres.

The site and both of these branchline sections exclude all track within the boundaries of the proposed renewable diesel production facility, because that property is zoned RIPD Resource Industrial – Planned Development and does not require a conditional use permit for rail.

The site is designated Agriculture in the Columbia County Comprehensive Plan and has been zoned PA-80 by the Columbia County Board of Commissioners. The site is not currently developed with structures, though a portion of it is in agricultural use (cropland/tree farms). Wetlands are present over most or all of the site. The Port-owned parcels (tax lots 8421-00-00600, 8422-00-00400, 8422-00-00500, 8422-00-00600, 8423-B0-00700) are currently the subject of a separate zone change application from PA-80 to Resource Industrial - Planned Development (RIPD); however, this conditional use permit application is being submitted based on the current PA-80 zoning.

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

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

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

## **Proposed Development**

The project proposed in this application includes the construction of a rail branchline connecting to Portland & Western's rail line to the east. The size of the proposed rail branchline (within the PA-80 zone) consists of approximately 7,000 linear feet for a total area of approximately 12.3 acres. The applicant is leasing the property, though in the future that may change to either an outright purchase or conversion to an easement.

This branchline will be accessory to and serve a proposed renewable diesel production facility on the abutting property to the west and north, which is the subject of a separate Site Design Review application (DR 21-03). The rail branchline will accommodate shipment of raw materials and potentially a small amount of finished product to and from the proposed renewable diesel production facility. Rail transport may amount to approximately 313 rail cars per week, on average. Finished product and raw materials for facility operations will largely be transported by vessels utilizing the Port of Columbia County-owned dock on the Columbia River, so the facility is dependent on access to the dock and the river.<sup>1</sup> The proposed rail branchline is thus water-dependent or water-related since it will be constructed solely to serve a water-dependent or water-related use (see additional discussion below in the "Water-Dependent/Water-Related Use" section of this Introduction).

Prior to construction, the applicant will seek any necessary approvals from Portland & Western Railroad (the provider of rail services and rail owner, which provided the specifications for the branchline layout) and the Rail Division of the Oregon Department of Transportation (ODOT).

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

The proposed construction and use of the rail will result in temporary and permanent impacts to wetlands (Exhibit 11). The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon

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

Department of State Lands for wetland alterations and will perform over 480 acres of off-site wetland mitigation south of the site in accordance with Federal and State law.

**Requested Land Use Approval**

The applicant is seeking approval from Columbia County Planning Commission for a Conditional Use Permit for the portion of the rail branchline in the PA-80 zone. A site design review and variance application (Columbia County file numbers DR 21-03 and V 21-05) has been submitted separately for the proposed renewable fuel production facility located in the RIPD zone west and north of the PA-80 zone.

**Water-Dependent/Water-Related Use**

The renewable diesel production facility (under separate application) is proposed to be located at Port Westward because of the presence of the dock and proximity to the Columbia River. As noted above, Port Westward is one of only five public deepwater ports in the state of Oregon. This invaluable resource, which was largely the basis of the County’s 1986 and 2007 Goal Exceptions for Port Westward Industrial Park, is necessary for the efficient operation of the production facility.

The 1986 Exception statement codified in the Comprehensive Plan relied in part upon Port Westward’s “unique site-specific resource” in the deep draft river port and further noted the following:

*I. Proposal*

*The proposed use designation is Rural Industrial, and it is intended to take advantage of the location on the Columbia River, the existing dock facilities, railroad, and urban services, as well as potential linkages to the electric generating facilities.*

*V. Proposed Use Of The Property*

*Probable uses would likely be related to the existing services, including the railroad, the dock, and the tank farm.*

*[\*\*\*]*

*Uses likely to be located here are best illustrated by four proposals submitted to the current leaseholder since 1980. Proposals have included a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant. [...].*

Similarly, the 2007 Exception statement codified in the Comprehensive Plan noted that:

*The property is located adjacent to the Port Westward rural industrial area and can take advantage of the location with access to the Columbia River, and the existing dock facilities, railroad and urban services, including PGE’s Beaver Power Plant. Allowing future rural industrial development on the Property would benefit the County’s economy by bringing jobs to the area for construction of a project and then a lesser level of employment for the operation and management of any facility*



Taken together, these Exception statements indicate that the intent of zoning land RIPD at Port Westward was to both accommodate and encourage industrial uses that take advantage of the dock, rail, and energy generating sources.

As explained below, the Renewable Diesel Production Facility, including its rail component, is a “water-dependent” and/or “water-related” use.

Columbia County Zoning Ordinance (CCZO) Sections 1170 and 1180 allow development within riparian areas and wetland riparian areas for projects that are either “water dependent” or “water related.”<sup>2</sup> The only identified riparian corridor within or near the site is McLean Slough, which will be crossed by the portion of the proposed rail branchline on PA-80 land.

Neither the CCZO nor the Columbia County Comprehensive Plan define the terms “water-related” or “water-dependent,” except as relevant to the Willamette River Greenway, which is not applicable at this location.<sup>3</sup> The County’s riparian area and wetland regulations are a component of the County’s Statewide Planning Goal 5 program, which purports to adopt a “safe harbor” approach as discussed in Article X of the Comprehensive Plan. However, the Comprehensive Plan’s Goals and Policies do not categorically intend to prohibit uses conflicting with riparian areas or wetlands; rather, the Plan’s stated intent is to protect such areas from “nonwater-dependent uses.” See, e.g. Article X.E, Policy 9.<sup>4</sup>

The Goal 5 safe harbor process essentially requires local governments to directly implement certain Goal 5 rules in Oregon Administrative Rules (OAR) 660 Division 23. Consequently, the County’s riparian and wetland regulations roughly resemble the riparian rules in OAR 660-023-0090 and -0100, except that they notably do not include the variance provisions required under OAR 660-023-0100(4)(b)(B). These sections allow development of “water-dependent or water-related uses” within riparian areas and wetlands and allow removal of riparian vegetation “as necessary for development of water-related or water-dependent uses.” The OARs require less strict riparian protections in farm and forest zones: OAR 660-023-0090(8)(c) provides that “(c) Notwithstanding subsection (b) [regulating removal of riparian vegetation] of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4.”

The definition of “water-dependent” and “water-related” in the Statewide Planning Goals is helpful in interpreting those terms in the CCZO. In the current version of the Statewide Planning Goals, those terms are defined as follows:

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<sup>2</sup> Note that allowance of wetland and riparian area impacts for “water-related” and “water-dependent” uses does not turn on whether the project depends upon the specific wetland or riparian area to be impacted. This is because the exception for such uses concerns the use itself, not specific development impacts, and there is no provisions of the CCZO or other governing law that provide otherwise. Even if the opposite were true, the County could conclude that the Project depends on the wetlands and riparian areas proposed to be impacted in order to fulfill its water-dependent and water-related function.

<sup>3</sup> CCZO Section 1142 provides that the definitions of water-dependent use and water-related use are “for use in this section of the Zoning Ordinance only.”

<sup>4</sup> The Comprehensive Plan is not directly applicable to the applications with respect to wetland or riparian impacts, but provides some historical context.

*WATER-DEPENDENT. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.*

*WATER-RELATED. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.*

The County can find that the proposed renewable diesel production facility within the existing RIPD zone is “water-dependent” because the facility *requires* access to the water body (namely, the Columbia River) for riverine transportation. Renewable diesel product and renewable diesel feedstocks are proposed to be imported and exported by water-borne vessels on the Columbia River, including ships and barges. This connection is reflected in Exhibit 15, which shows the piping directly connecting the facility to the Port Westward docks. Also, the facility relies on Columbia River water as part of the renewable diesel production process – namely for steam production, cooling tower process water, and fire water reserve. This is also reflected on Exhibit 15.

In summary, the facility is proposed at Port Westward entirely due to its location at one of Oregon’s few deepwater ports capable of being served by cargo ships.<sup>5</sup> Therefore, the County can find that the renewable diesel facility within the existing RIPD zone “can be carried out only [...] adjacent to water areas because the use requires access to the water body for water-borne transportation” and as a “source of water.”

For the same reasons, the County can find that the proposed rail branchline located on PA-80 lands is also “water-dependent.” The purpose of the proposed rail branchline is to deliver renewable diesel feedstocks to the renewable diesel production plant for conversion into renewable diesel, to export such renewable diesel,<sup>6</sup> and to remove waste products from the facility. As the branchline exists only to serve the renewable diesel production plant and is part of the overall project, it is just as river-dependent as the production plant itself. Put another way, the branchline is water-dependent because, like the renewable diesel production plant, it relies on river transportation as the other end of the renewable diesel supply/production chain. The export of waste products also makes the rail line a necessary component of the overall water-dependent use.

Although the PA-80 portion of the branchline is requested in a separate application from the renewable diesel production facility, it is exclusively associated with, part of, and entirely dependent on the renewable diesel plant. It was proposed in a separate application because a portion of the rail branchline is to be located just outside of the existing Port Westward Exception Area and within an exclusive farm use zone, and is therefore subject to the criteria of ORS 215.296; rail not located within that zone is not subject to those criteria.

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<sup>5</sup> The only other deepwater ports are the Ports of Coos Bay, Astoria, Newport, and Portland.

<sup>6</sup> The rail connection will also be capable of exporting finished product.

If the County does not find that the renewable diesel production plant or rail branchline is “water-dependent,” the County can nonetheless find that they are “water-related.” This is because the facility as a whole is intended to provide “goods [...] that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered.” There is no dispute that the Project is intended to import and export “goods” (in this case, feedstocks and renewable diesel) to and from the Port Westward Dock via pipeline, shown in Exhibit 15. As explained above, the renewable diesel facility must be located near the water because the use *itself* depends on river water and transportation, and would not be viable without a water-adjacent location. Put in terms of the above definition, without a water-adjacent location, the facility would “result in a public loss of quality in the goods or services offered” because it could not economically provide the proposed goods or services without a river-adjacent location. Likewise, if the PA-80 portion of the proposed branchline is not located adjacent to the renewable diesel production plant, the efficiency of the renewable diesel use would suffer substantially because a large portion of the necessary feedstocks could not be economically imported to the Project, which would make the Project itself infeasible.

### **Rail Branchline**

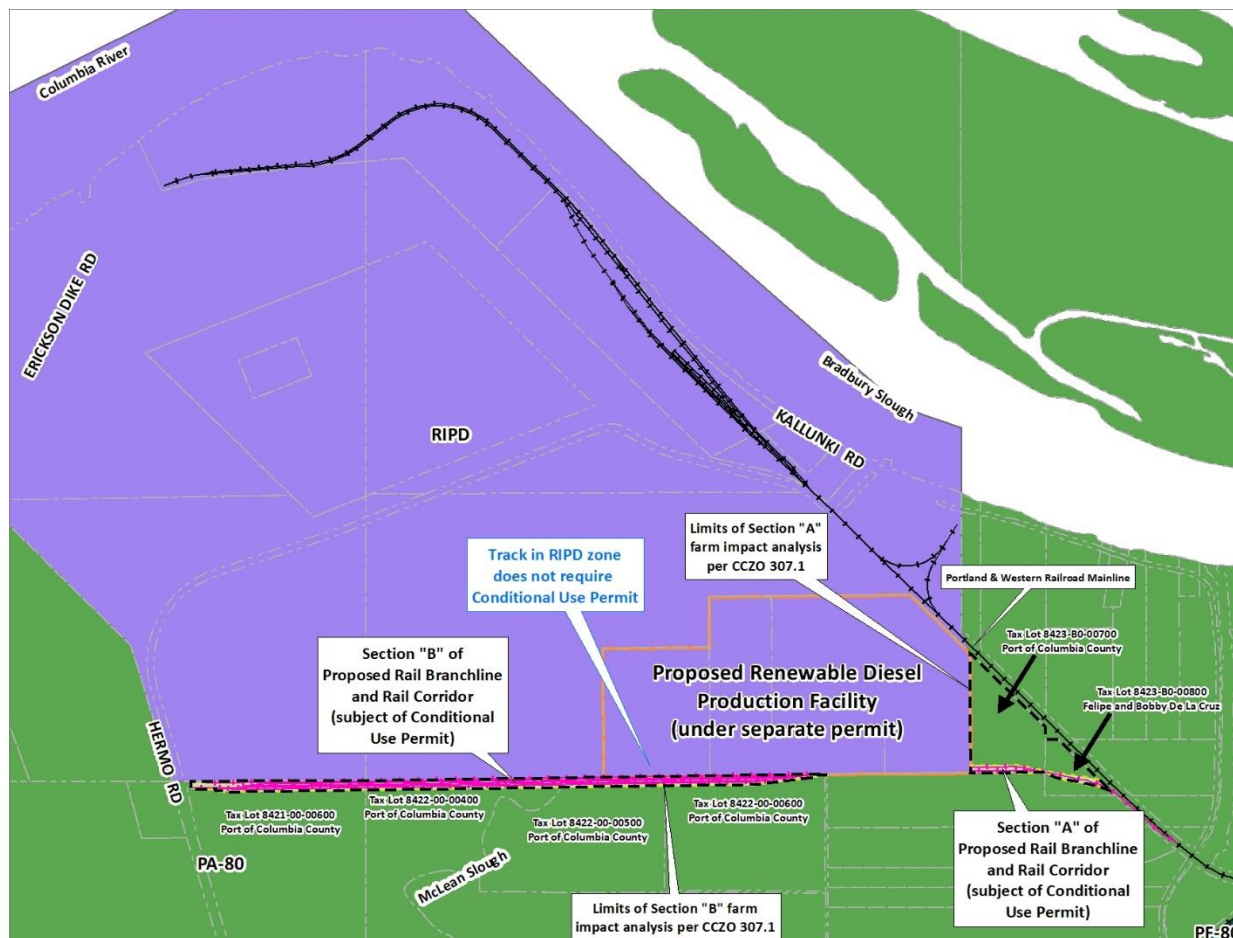
The applicant anticipates using rail to transport a portion of the feedstock to the renewable diesel production facility, as well as to transport clay and a portion of the finished product. The facility needs to provide sufficient track length to accommodate rail cars when the cars are being unloaded, loaded, or stored for the next shipment—without blocking the existing track to Port Westward Industrial Park. In coordination with Portland & Westward (“P&W”) Railroad, the proposed rail design will provide rail car transportation and storage capacity for two unit trains (one for offloading materials and one for empty cars) plus a runaround track for rail engines to move from one end of the train to the other. Parallel tracks will be utilized to accommodate the required track length without having tracks cross Hermo Road. As discussed above, the portion of the tracks on land zoned PA-80 (the subject of this Conditional Use permit application) is defined as the ‘site’ for this application. Additional track is proposed on land zoned RIPD and that land is excluded from this application as that is addressed by the separate application for Site Design Review (DR 21-03).<sup>7</sup>

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

The Application includes a branchline rail connection to the P&W line running through Port Westward. This branchline includes two primary tracks for two-way rail traffic, and side-storage tracks to ensure adequate and efficient unloading and loading of unit trains. The primary two-way connection between the Project and the existing P&W track runs westward across a small amount of PA-80 zoned land then enters Port of Columbia County property zoned RIPD. It then proceeds across the south line of the project site and side tracks located to the north, to a set of side tracks located south of the RIPD zone line, on a small portion of PA-80 zoned land owned by the Port. See Figure 1, above and Figure 2, below.

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<sup>7</sup> The ability to utilize an alignment with a smaller footprint in the PA-80 zone is constrained by the location of property lines and by the location of Portland General Electric’s transmission towers and guy wires in the vicinity of the existing Portland & Western rail line.



**Figure 2: Area Zoning and Limits of Farm Impacts Analysis**

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

According to P&W, the proposed rail improvements are, collectively, a “branch line”: “NEXT’s rail tracks will be considered industry track, which is another term for branch line or spur” (Exhibit 16). P&W goes on to explain:

*As a general matter, “branch line” is a broad term that encompasses any track that branches off from mainline track.*

*Portland & Western Railroad, Inc. also does not consider the tracks at NEXT’s facility a “switch or rail yard.” All cars entering and exiting NEXT’s facility will be for NEXT’s sole use at the site itself. A switch/rail yard’s goal is to block cars for furtherance to other destination points.*

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

*The commonly understood meaning of the words "main line" of a railroad is the principal line, and the branches are the feeder lines like the tributaries of a river. The court so stated in the O., C. & E. case, quoting dictionary definitions to that effect. It also quoted from 22 R.C.L. 744 the following:*

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

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

*It denotes a road connected, indeed, with the main line, but not a mere incident of it, not constructed simply to facilitate the business of the chief railway, but designed to have a business of its own, for the transportation of persons or property to and from places not reached by the principal route.*

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

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

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

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

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

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



identified standard that prohibits the applicant from using the branchline for rail car storage while awaiting shipments.

### III. NARRATIVE & COMPLIANCE

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

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

#### Article II – General Provisions

##### 202 Districts

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

| <u>District Type</u>       | <u>Short Title</u> | <u>Description</u>   |
|----------------------------|--------------------|--|
| <u>Resource Zones</u>      |                    |  |
| <i>Primary Agriculture</i> | <i>PA-38</i>       | <i>Agriculture district with a minimum lot or parcel size of 38 acres.</i> |

[...]

##### Special Districts, Overlay Zones and Special Provisions

[...]

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

**Response:** The site is zoned PA-80 (formerly known as PA-38). Portions of the site are also subject to the Wetland Area (WA) Overlay pursuant to Section 1180 and the Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection (RP) Overlay Zone pursuant to Section 1170. The site is not subject to other overlay zones (as discussed in the responses to Sections 1100, 1120, 1130, 1185, and 1190). This narrative and the accompanying materials demonstrate compliance with the applicable zoning and overlay zoning development regulations and approval criteria. This standard is met.

#### Article III – Resource Districts

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

##### 303 Table of Authorized Uses and Development

*The following uses, activities and development are authorized in the Primary Agriculture Zone, subject to review and approval under applicable regulatory standards:*

**Key**

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

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

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

**Response:** The proposed rail branchline (see further discussion in the “Rail Branchline” section of the Introduction) is a transportation facility subject to Conditional Use Permit approval. This narrative provides responses to the cited Sections 306.9, 307, and 308. However, it should be noted that contrary to the language in the table regarding such facilities “requiring an exception,” no goal exception is required for this use pursuant to ORS 215.283(3), ORS 215.296, and OAR 660-012-0065. Those statutes and rules are discussed below, in the response to subsection 306.9.

**306 Conditional Uses**

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

- .9 *Roads, Highways and other Transportation Facilities and Improvements as set forth in OAR 660-012-0065 related to Transportation Improvements on Rural Lands and not otherwise provided for in this Section, subject to adoption of an Exception to Statewide Planning Goal 3 and to any other applicable goal with which the facility or improvement does not comply, subject to compliance with Section 307, General Review Standards and Section 1503.*

**Response:** As noted in the response to Section 303, the proposed rail branchline is a transportation facility subject to Conditional Use Permit approval. However, this use does not require an Exception to Statewide Planning Goal 3 as the use is authorized by state statute under ORS 215.283, uses permitted in exclusive farm use zones in nonmarginal lands counties. Specifically, ORS 215.283(3) states that:

*Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:*

- (a) *Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or*



- (b) *ORS 215.296 (Standards for approval of certain uses in exclusive farm use zones) for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.*

Criterion (b) refers both to ORS 215.296 and to the “...rules of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.” These rules are codified at OAR 660-012-0065, Transportation Improvements on Rural Lands, which states in part that:

- (1) *This rule identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with Goals 3, 4, 11, and 14 without a goal exception.*
- (3) *The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:*
  - (b) *Transportation improvements that are allowed or conditionally allowed by ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993), 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) or OAR chapter 660, division 6 (Forest Lands);*
  - (j) *Railroad mainlines and branchlines;*

ORS 215.296, Standards for approval of certain uses in exclusive farm use zones, states that:

- (1) *A use allowed under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (2) or (11) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:*
  - (a) *Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or*
  - (b) *Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*
- (2) *An applicant for a use allowed under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (2) or (11) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.*

The provisions above outline the rationale through which the rail branchline should be authorized by the County. The analysis required by ORS 215.296 is included in the response to Section 307.1, below. This standard is met.

### 307 General Review Standards

- .1 *All uses in the Primary Agriculture Zone shall meet the review standards found in the above enabling Sections 304, 305 or 306. To also ensure compatibility with farming and forestry activities, the Planning Director, hearings body or Planning Commission shall determine that a use authorized by Sections 304, 305, or 306, except as specifically noted, shall meet the following requirements:*

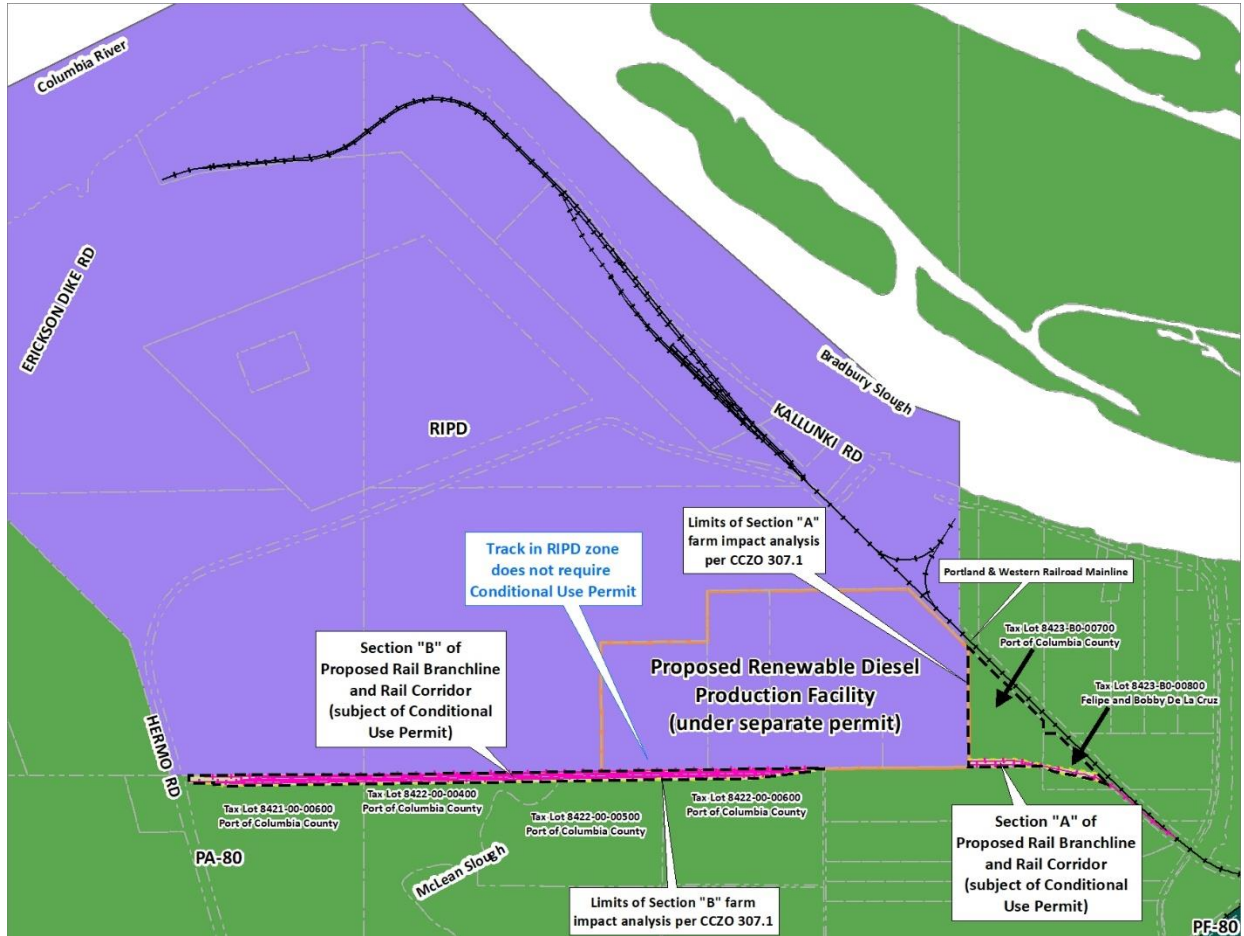
**Response:** Consistent with the Oregon Supreme Court’s ruling in *Stop the Dump Coalition v. Yamhill County*, this narrative provides a farm-by-farm analysis for the farm impacts test. Two separate impact areas are examined: the first is the impact area associated with Branchline

Section A (which extends from the Portland & Western Railroad mainline to the proposed renewable diesel production facility and the second is the impact area associated with Branchline Section B (which begins at the southern boundary of the proposed renewable diesel production facility and extends westward toward Hermo Road). The analysis then characterizes existing agricultural practices in the two impact areas and demonstrates that the proposed rail branchline does not violate either of the approval criteria in this subsection. Responses to each criterion are outlined below.

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

**Response:** As illustrated in Figure 3, Section A of the proposed rail branchline crosses two (2) parcels: one (1) owned by Felipe and Bobby De La Cruz (tax lot 8423-B0-00800) and one (1) owned by the Port of Columbia County (tax lot 8423-B0-00700). Section B of the proposed rail branchline crosses four (4) parcels owned by the Port of Columbia County (tax lots 8421-00-00600, 8422-00-00400, 8422-00-00500, and 8422-00-00600). As illustrated in Figure 3 and the zoning map in Exhibit 2, all six parcels are zoned PA-80. Adjacent resource lands include property zoned PA-80 in all directions.

Based on the location of the Portland & Western Railroad mainline, which bifurcates a small amount of resource land, the only area affected by the proposed branchline will be land north of the branchline and south and west of the existing Portland & Western mainline. Furthermore, since the proposed rail branchline will isolate a triangle bounded by the rail mainline to the northeast, the proposed rail branchline to the south, and the proposed renewable diesel production facility to the west and north (on land zoned RIPD), the impact area analyzed for this standard is limited to portions of the six parcels that will be crossed by the rail branchline. For ease of reference, the branchline site has been further broken down into two sections as depicted in Figure 1 and Figure 3.



**Figure 3: Area Zoning and Limits of Farm Impacts Analysis**

Turning first to the analysis area for branchline Section A, totaling 14.1 acres, aerial photography and the Cropland Data Layer<sup>8</sup> indicates that the northern tip of the De La Cruz parcel is wetland. The wetland delineation report (Exhibit 11) depicts rail branchline Section A as a wetland, but the report did not analyze the remainder of the Section A impact area. The central portion of the De La Cruz parcel (within and north of the proposed rail branchline corridor), has been farmed in recent years with hay/grassland and row crops such as mint. Similarly, the single Port parcel west of the De La Cruz parcel contains wetlands, though it appears that in recent years portions have been vegetated with grassland and mint as well. Hay and row crops are fairly resilient and are not sensitive to the sound or vibration associated with rail traffic, as evidenced by the proximity of these crops to the existing rail mainline.

Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, irrigation, spraying fertilizer, managing weeds, mowing, and harvesting. Construction and operation of the branchline could cause minor changes in access routes to fields (for instance, the branchline will cross an existing access route) and changes in patterns of cultivation, seeding, fertilizing, and harvesting near the facility.

<sup>8</sup> US Department of Agriculture, National Agricultural Statistics Service, Cropland Data Layer Program, available at <https://nassgeodata.gmu.edu/CropScape/>

Train traffic could also lead to increased time to access farm fields north of the branchline and east of the proposed renewable diesel production facility, though these delays would be brief and infrequent on the proposed branchline. The farming activities north of the proposed rail line could continue even with the construction of the rail branchline since the applicant (as the owner of the rail branchline) proposes to provide a private rail crossing to allow passage of farm equipment (see Exhibit 3, Sheets C1.17 and C1.18). The risk of conflict between farm equipment and trains on the branchline would be relatively low since the trains will be infrequent and moving slowly due to their proximity to their origin and destination.

Taken individually, neither alterations to access routes nor increased time to access fields is by itself a condition that would cause farm operators to significantly change their farm practices. Furthermore, in the aggregate, the cumulative effect of these changes does not require farm operators to significantly change their practices. Based on this information, the Commission can conclude that the proposed rail branchline will not force a significant change in farm or forest practices within the Section A impact area.

Turning next to the analysis area for branchline Section B, totaling 10.7 acres, the four Port parcels south of the renewable diesel production facility are largely in tree farm use. A nominal amount of grassland is present north of McLean Slough, but this grassland would be removed to accommodate the rail branchline. The wetland delineation report (Exhibit 11) depicts the Section B impact area is classified as a wetland.

Management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. Elimination of the existing tree farm and grassland acreage would not cause farm operators within the impact area to significantly change their farm practices, as the owner (the Port) is willingly taking the impact area out of agricultural production within those specific boundaries to accommodate the rail branchline. As the rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, it will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for all required tree farm management activities. The proposed rail corridor will not isolate or split tree farm areas into smaller areas.

Based on this information, the Commission can conclude that the proposed rail branchline will not individually or cumulatively force a significant change in farm or forest practices within the Section B impact area.

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

**Response:** As discussed in the response to criterion A, only six (6) parcels are within the impact areas that have the potential to be affected by the proposed rail branchline. Again, as noted above, parcels within the impact areas contain wetlands, though portions have been used for grass/hay and mint and tree farms in recent years. The Section A impact area contains one (1) parcel owned by Felipe and Bobby De La Cruz and one (1) parcel owned by the Port of Columbia County. See Figure 3.

Farm practices for hay production and row crops include activities such as tilling/soil preparation, planting, spraying fertilizer, managing weeds, mowing, and harvesting.

Construction and operation of the branchline does not interfere with these activities by increasing land values (e.g., by converting agricultural land to non-farm/residential use) or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. Trains are designed to stay on their tracks, so unlike a roadway or path, the rail branchline would not introduce automobiles, pedestrians, or cyclists into agricultural lands where they were not previously present. As a result, no additional measures need to be taken by farmers to prevent trespassers.

Train traffic on the rail branchline will not lead to any appreciably higher level of dust than is currently present from the Portland & Western Railroad mainline which already borders the impact area (all portions of the impact area are already within 800 feet of the rail mainline). Consequently, construction of the rail branchline will not cause farmers to incur significant costs to utilize additional water or pumping equipment to suppress dust or wash their products.

The rail branchline will not increase the cost of farming inputs (seed, fertilizer, pesticides, etc.) and will not increase farmers' liability or financial exposure. The impact area is not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks. The applicant proposes to construct a private rail crossing at its own expense to allow passage of farm equipment to the PA-80 property that would be isolated by the rail branchline (see Exhibit 3, Sheets C1.17 and C1.18).

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

The Section B impact area contains four (4) parcels owned by the Port of Columbia County, and the analysis area is largely in tree farm use. Management practices for tree farms may include site preparation and planting, weed control, pruning, harvesting, loading, transport. Construction and operation of the branchline does not interfere with these activities by increasing land values or by altering the landscape in a manner that would trigger the need for farm operators to incur significant additional expenses. As the rail branchline is proposed to replace the northern portion of the existing tree farm on Port property, it will not affect the remaining acreage to the south, which can continue to be accessed from the west and south for all required tree farm management activities.

Tree farms are not sensitive to dust from nearby rail lines. Consequently, construction of the rail branchline will not cause adjoining tree farm operators to incur costs to utilize additional water or pumping equipment to suppress dust. The rail branchline will not increase the cost of farming inputs (saplings, fertilizer, pesticides, etc.) and will not increase farmers' liability or financial exposure. The impact area is in tree farm use and not used for grazing so there would be no need to expend funds to install fencing to prevent livestock from crossing the tracks.

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

- .2 *In addition to the requirements in 307.1A. and B., the applicant may demonstrate that the standards for approval will be satisfied by imposing clear and objective conditions to ensure conformance to applicable standards of the proposed PA-80 use.*

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

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

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

- .4 *Permit Expiration:*

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

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

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

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

### 308 Development Standards

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

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

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

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

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

- .3 *All newly created lots or parcels and those with permitted, reviewed or conditional uses, shall have a minimum of 50 foot frontage on a public or private right-of-way and an approved access in accordance with this ordinance, the Columbia County Road Standards and the Rural Transportation System Plan.*

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

- .4 *Setbacks. The following are minimum setbacks for all buildings and structures. In addition, all structures are subject to any special setback lines, where specified on designated arterial or collectors.*
- A. *No structure shall be constructed closer than 30 feet to a property line. In the event the subject property is bordered by a zone with more restrictive setbacks, the more restrictive setback of the adjoining zone shall control on the side of the subject property adjoining the more restrictive setback.*
- B. *Setbacks in wetland areas shall be required in accordance with Sections 1170 and 1180 of the Columbia County Zoning Ordinance.*

**Response:** No new buildings or structures subject to setbacks are proposed. As discussed in the response to Sections 1170 and 1180, as the wetlands on site are not associated with streams, rivers, sloughs, or lakes, there is no protective riparian corridor boundary around the wetlands, and the use is permitted by Subsections 1175(B)(5) and 1184(E)(2)(e) as it is a water-dependent use reliant upon the dock. The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland and waterway alterations and will perform off-site wetland mitigation in accordance with Federal and State law, as permitted by Subsections 1177 and 1184(G). This standard is met.

- .5 *Height. There shall be a height limitation of 100 feet in the PA-80 Zone for farm use structures, except for on those lands containing abandoned mill sites that were rezoned to industrial uses pursuant to ORS 197.719 or are subject to Airport Overlay Zone, or any structure which has received a conditional use or variance approval which allows a greater height of said structure. Unless otherwise prohibited, the maximum building height for all non-farm, non-forest structures shall be 50 feet or 2½ stories, whichever is less.*

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

- .6 *Signs. The standards and requirements described in Section 1300 of the Columbia County Zoning Ordinance shall apply to all signs and name plates in the Exclusive Farm Use Zone.*

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

- .7 *The Oregon Department of Fish & Wildlife shall be notified and provided with the opportunity to comment on any development within a Goal 5 protected wildlife habitat area.*

**Response:** Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three (3) types of big game habitat. As depicted in Exhibit 6, the site is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County's Wildlife Game Habitat map. The map does identify the area as major waterfowl habitat and the County may choose to provide an opportunity for Oregon Department of Fish & Wildlife to comment on the application.

.8 *Dwellings and other structures to be located on a parcel within designated big game habitat areas pursuant to the provisions of Section 1190 are also subject to the additional siting criteria contained in Section 1190.*

**Response:** Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three (3) types of big game habitat. As depicted in Exhibit 6, the site is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County's Wildlife Game Habitat map. Therefore, development at the site is not subject to Section 1190, Big Game Habitat Overlay Zone.

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

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

**Response:** The rail branchline site is protected from flooding by dikes and associated stormwater conveyance and pumps within the Beaver Drainage District. According to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map 41009C0050D, dated November 26, 2010, the dike system has been provisionally accredited by FEMA. See Exhibit 4. This map indicates that the site is in FEMA's shaded Zone X, corresponding to areas protected by levees from 1% annual chance flood. Therefore, the site is not in the Special Flood Hazard Area and is not subject to the standards of this Section.

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

**Response:** Columbia County Comprehensive Plan, Part XVI, Article VIII(F), Non-Game Wildlife Habitat, lists areas identified as significant nesting sites by the Oregon Department of Fish and Wildlife. The Port Westward area is not a listed area for Bald Eagle nests, Blue Heron rookeries, or Northern Spotted Owl nests. As illustrated in Exhibit 5, the site is not within any areas identified as Natural Areas, Non-Game Areas, or Sensitive Areas on the County's Threatened, Endangered and Sensitive Wildlife and Plant and Natural Areas map.

Columbia County Comprehensive Plan, Part XVI, Article VIII(G), Upland Game Habitat, lists three (3) mineral spring areas identified as habitat for band-tailed pigeons, none of which include Port Westward. As illustrated in Exhibit 6, the site is not within an identified Upland Game Habitat area in the County's Wildlife Game Habitat map.

Since the site is not within the identified habitat areas, development at the site is not subject to the Sensitive Bird Habitat Overlay Zone.

### ***Section 1130 Historic Overlay (HO)***

**Response:** Historic and culturally significant sites and structures are identified in Article XI of the Comprehensive Plan. None of the listed sites and structures are on or adjacent to the site. Development at the site is not subject to the Historic Overlay.



**Section 1170 Riparian Corridors, Wetlands, Water Quality, and Fish and Wildlife Habitat Protection Overlay Zone (RP)**

*1172 Riparian Corridor Standards*

- A. *The inventory of Columbia County streams contained in the Oregon Department of Forestry Stream Classification Maps specifies which streams and lakes are fish-bearing. Fish-bearing lakes are identified on the map entitled, "Lakes of Columbia County." A copy of the most current Stream Classification Maps is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B) for reference. The map, "Lakes of Columbia County" is attached to the Comprehensive Plan, Technical Appendix Part XVI, Article X(B), and is incorporated therein. Based upon the stream and lake inventories, the following riparian corridor boundaries shall be established:*
1. *Lakes. Along all fish-bearing lakes, the riparian corridor boundary shall be 50-feet from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below.*
  2. *Fish-Bearing Streams, Rivers and Sloughs (Less than 1,000 cfs). Along all fish-bearing streams, rivers, and sloughs with an average annual stream flow of less than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 50-feet from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*
  3. *Fish-Bearing and Non-Fish-Bearing Streams, Rivers and Sloughs (Greater than 1,000 cfs). Along all streams, rivers, and sloughs with an average annual stream flow greater than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 75-feet upland from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*
  4. *Other rivers, lakes, streams, and sloughs. Along all other rivers, streams, and sloughs, the riparian corridor boundary shall be 25 feet upland from the top-of-bank, except as provided in CCZO Section 1172(A)(5), below.*
  5. *Wetlands. Where the riparian corridor includes all or portions of a significant wetland, as identified in the State Wetlands Inventory and Local Wetlands Inventories, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland. Significant wetlands are also regulated under provisions in the Wetland Overlay Zone, Columbia County Zoning Ordinance, Section 1180.*

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

The proposed rail branchline will be in the vicinity of existing ditches that are not streams, sloughs, or wetlands; the site-specific Wetland Delineation Report (Exhibit 11) identifies numerous non-wetland irrigation ditches which "...drain south to the Columbia River via McLean Slough, Beaver Slough, and the Clatskanie River." The Clatskanie River does not flow through the site but the northern tip of the McLean Slough and its 25-foot riparian buffer are within the rail branchline site.

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

The wetland delineation report (Exhibit 11), which has now been approved by the Oregon department of State Lands, indicates that the wetlands in the study area are supported by precipitation, irrigation water, surface runoff, and groundwater rather than rivers, streams, or sloughs (the wetlands fall into the “flats” rather than “riverine” hydrogeomorphic class). Therefore, the distance to the riparian corridor boundary need not be measured from the edge of the wetlands since the wetlands are not riparian in nature.

Based on this information, construction of the proposed rail branchline is subject to the riparian overlay as a portion falls within McLean Slough’s 25-foot riparian buffer established by criterion (A)(4).

**B. Distance Measurement.**

1. *Except as provided in Subsection 1172(5) above, the measurement of distance to the riparian corridor boundary shall be from the top-of-bank. In areas where the top-of-bank is not clearly delineated, the riparian corridor boundary shall be measured from the ordinary high water level, or the line of non-aquatic vegetation, whichever is most landward.*
2. *The measurement shall be a slope distance. In areas where the predominant terrain consists of steep cliffs, the distances to the corridor boundary shall be measured as a horizontal distance until the top of the cliff is reached, and as a slope distance on from that point.*

**Response:** The 25-foot buffer (per CCZO Section 1172(A)(4)) for McLean slough is illustrated on the plans in Exhibit 3.

*1173 Activities Prohibited within the Riparian Corridor Boundary*

*In addition to the prohibitions in the underlying zone, the following activities are prohibited within a riparian corridor boundary, except as provided for in Sub-sections 1175 and 1176 of this Section:*

- A. *The alteration of a riparian corridor by grading, placement of fill material, and/or impervious surfaces, including paved or gravel parking areas, or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Building Code, as amended.*
- B. *The removal of riparian trees or vegetation.*

**Response:** The proposed branchline will cross McLean Slough, the only identified riparian area. Riparian impacts are limited to the crossing and not a wholesale displacement of the riparian corridor. No prohibited activities are proposed within the McLean Slough riparian corridor, as the proposed activities are permitted per CCZO 1175 since the rail branchline is a component of a water-related and water-dependent use (as further discussed in the “Water-Dependent/Water-Related Use” section of the Introduction). This standard does not apply.

*1174 Exempted Activities*

*This Overlay Zone does not apply to land legally used and allowed for commercial forestry operations or standard farm practices, both of which are exempt from the riparian corridor protection standards of this Section. The use of land for commercial forestry is regulated by the Oregon Department of Forestry. The use of land for standard farm practices are regulated by the Oregon Department of Agriculture, with riparian area and water quality issues governed specifically by ORS 568.210 to ORS 568.805.*

**Response:** The applicant is not proposing commercial forestry operations or standard farm practices or seeking use of this exemption.

## 1175 Permitted Uses and Activities

*Notwithstanding the prohibitions set forth in Subsection 1173 above, the following activities are allowed within the riparian corridor boundary:*

- A. *The following riparian vegetation may be removed within the riparian corridor boundary:*
1. *Non-native vegetation, invasive species, and noxious weeds if replaced with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall provide for maximum soil retention and shade cover. Replacement vegetation shall, upon maturity, maintain 75%-100% canopy and groundcover.*
  2. *Vegetation which is necessarily removed for the development of approved water-related or water dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water-dependent and water-related use.*
  3. *Trees and vegetation in danger of falling and/or posing a hazard to life or property. If no hazard will be created, such trees or other vegetation, once felled, shall be left in place in the riparian area.*

**Response:** The applicant is proposing a rail branchline as a conditional use in the PA-80 zone. The proposed construction will result in temporary and permanent impacts to the McLean Slough riparian corridor. The project as a whole (the renewable diesel production facility and associated infrastructure including the proposed rail branchline)<sup>10</sup> depends upon the dock and falls under the category of water-related and water-dependent uses (as further discussed in the “Water-Dependent/Water-Related Use” section of the Introduction), so vegetation removal is permitted per criterion (2). The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland and waterway alterations and will perform over 480 acres of off-site wetland mitigation in accordance with Federal and State law, as permitted by Subsection 1177.

- B. *The following development is allowed within the riparian corridor boundary.*
1. *Streets, roads, and driveways, if:*
    - a. *If it is not possible to locate the street, road or driveway outside of the riparian corridor boundary; and*
    - b. *The street, road or driveway is designed to minimize intrusion into the riparian corridor boundary.*
  2. *Pedestrian walkways, paths and trails.*
  3. *Fencing and signs, not including billboards.*
  4. *Drainage facilities, utilities and irrigation pumps.*
  5. *Water-related and water-dependent uses.*
  6. *New or expanded shoreline stabilization and flood control grading and structures.*
  7. *Portable furniture, and other portable outdoor equipment for the private use of the property owner/resident. For purposes of this subsection, “portable” shall mean that the item is not affixed to the ground, other than with a chain or other lock which is capable of being removed at any time.*

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<sup>10</sup> While the conditional use permit application for the rail branchline and the site design review application for the renewable diesel production facility have been submitted separately since they fall in different zones, taken together they comprise two components of a consolidated, unified project. ORS 215.416(2) indicates that the state legislature contemplated similar situations when it required that counties establish the option for consolidated proceedings when multiple permits are needed for a project.

**Response:** The applicant is proposing a rail branchline as a conditional use in the PA-80 zone. The proposed branchline will cross McLean Slough, the only identified riparian area. The proposed construction will result in temporary and permanent impacts to the McLean Slough riparian corridor. Riparian impacts are limited to the crossing and not a wholesale displacement of the riparian corridor. The County can find that the encroachments in the riparian corridor are specifically permitted by CCZO Sections 1175(A)(2) and 1175(B)(5) since the project as a whole (the renewable diesel production facility and associated infrastructure including the proposed rail branchline) is water-dependent and water-related. The County can find that the project is water-dependent or at least water-related because it largely relies on riverine transportation provided by the Columbia River for export of renewable diesel and import of renewable diesel feedstock, as further discussed in the “Water-Dependent/Water-Related Use” section of the Introduction. CCZO 1175(B)(5) imposes no restrictions on the allowable locations of riparian corridor impacts for water-related/water-dependent uses. The Applicant will comply with CCZO Section 1177 by obtaining Oregon Department of State Lands and U.S. Army Corps of Engineers permits allowing wetland and water alterations and requiring compensatory wetland mitigation. The applicant is proposing over 480 acres of wetland mitigation south of the site.

*1176 Legal non-conforming uses are allowed to continue within the riparian corridor boundary subject to the requirements in Columbia County Zoning Ordinance, Section 1506, ORS 215.130, and the following additional requirements:*

- A. *For replacement of legal non-conforming structures with new structures, any new structure shall be located in the same location and in the same footprint as the existing structure, and shall not disturb additional riparian surface area within the riparian corridor boundary.*
- B. *For expansion or alteration of legal non-conforming structures existing fully or partially within the riparian corridor, the expansion or alteration shall not occur within the riparian corridor boundary. If the pre-existing structure is completely within the riparian corridor, expansion is allowed only on the side opposite the water resource.*
- C. *Legal non-conforming lawn within the riparian corridor boundary may be maintained. However, such lawn shall not be expanded within the riparian corridor boundary.*
- D. *Legal non-conforming shoreline stabilization and flood control structures may be maintained.*

**Response:** There are no existing non-conforming structures, lawns, or shoreline stabilization and flood control structures on site. This standard does not apply.

*1177 Requirements for new activities and development identified in Sub-section 1175 and 1176, above, shall be allowed in the riparian corridor boundary subject to the following requirements:*

- A. *All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing the use or activity.*
- B. *For activities and development for which land use permits, building permits, grading permits, variances or stormwater/erosion control permits are required, the County shall provide notification to ODFW of the proposed development activity. The County shall consider the recommendations of ODFW, including any mitigation recommendations, prior to issuance of permits and may condition permit approval on recommended measures to mitigate loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415.*

**Response:** The project as a whole is dependent upon the dock and falls under the category of water-related and water-dependent uses (as further discussed in the “Water-Dependent/Water-Related Use” section of the Introduction), which is authorized under Subsections 1175(A)(2) and 1175(B)(5). The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland and waterway alterations and will perform over 480 acres of off-site wetland mitigation

south of the site in accordance with Federal and State law, as permitted by this subsection.<sup>11</sup> The County will provide notice to ODFW as part of its review process, as will the Oregon Department of State Lands. This standard is met.

#### *1178 Variance Provisions*

- A. *In cases where encroachment into the riparian corridor boundary by activities and development not otherwise allowed by Sub-section 1175, or 1176 cannot be avoided, a property owner may request a Variance to the riparian corridor boundary prohibition. In addition to the criteria found in Section 1504, and the requirements in Sub-section 1177, a variance to the riparian corridor boundary prohibitions shall not be granted unless all of the following criteria are met:*  
[...]

**Response:** The project as a whole is dependent upon the dock and falls under the category of water-related and water-dependent uses, which is authorized under Subsections 1175(A)(2) and 1175(B)(5). Furthermore, the applicant proposes to impact wetlands and mitigate those impacts in accordance with Federal and State law, as permitted by Subsection 1177. Therefore, a variance is not required by the above subsection.

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

##### *1181 Purpose*

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

**Response:** The applicant engaged a wetlands biologist to perform a site-specific wetland delineation as documented in Exhibit 11. The wetland delineation report, which reveals considerable differences in wetland size and location compared to the Statewide Wetlands Inventory, has now been approved by the Oregon Department of State Lands (DSL). As discussed in Exhibit 14, the State Wetland Inventory does not identify significant wetlands near the site, and Columbia County has not adopted its own Local Wetland Inventory (LWI). Furthermore, as the rail branchline site is not located within an urban growth boundary, it does not fall within the study area of any nearby LWIs (such as the City of Clatskanie LWI). Therefore, most wetlands on site—which are not depicted in the SWI or any LWI—are not subject to Section 1180. Furthermore, the wetlands on site do not meet the County’s definition of significant wetlands per CCZO Section 1182. Thus, the County can find that the applicant’s proposed wetland alterations are not inconsistent with the stated purpose of protecting significant wetlands.

##### *1182 Definition*

*A significant wetland is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. In case of dispute over whether an area is of biological value and should be considered a significant wetland, the County shall*

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<sup>11</sup> Note, however, that no DSL or Corps permits are required for alterations in the riparian corridor boundary since those agencies regulate wetlands and waterways rather than the adjoining riparian corridors.

*obtain the recommendation of the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands.*

**Response:** Potential wetlands exist within the vicinity of the rail branchline site as illustrated in the Statewide Wetlands Inventory excerpt in Exhibit 10 and in the County’s map in Exhibit 7. The applicant therefore engaged a wetlands consultant to perform a site-specific wetland delineation, with the resulting report attached as Exhibit 11. As discussed in Exhibit 14, based on the wetland delineation report approved by DSL, the presence of plants adapted solely to wetlands is very low, as most of the plants consist of species that grow in wetlands and non-wetlands. Since the vegetation within the delineated wetland does not constitute a prevalence of plants “adapted for life in saturated soil conditions,” the wetlands do not meet the County’s adopted definition of significant wetlands.

In addition to the vegetation profile, the biological value of the delineated wetlands is limited. Exhibit 14 notes that the wetland delineation report analyzed 17 functions, of which only four received higher ratings, while five received moderate ratings, and seven received lower ratings. Since the wetland delineation report has been approved by DSL so there does not appear to be any dispute by subject matter experts on whether these wetlands have little biological value. The Applicant expects DSL to issue a written statement explaining the non-significance of affected wetlands in December, 2021. This further supports the contention that the wetlands do not meet the County’s adopted definition of “significant” wetlands.

The Board of County Commissioners can interpret and apply this definition with (or without) input and consensus from the above-listed agencies and can rely upon the evidence from the applicant’s qualified wetland biologists and environmental consultants with respect to significance. Since the wetlands on site do not meet the regulatory definition of “significant wetland,” CCZO Section 1183 allows any other uses otherwise permitted by the base RIPD zoning at this location.

#### *1183 Permitted Uses*

*Uses and development activities permitted outright or conditionally in the underlying zone shall be permitted in the Wetland Area Overlay Zone if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or degrade a significant wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands under Oregon Department of Agriculture wetland rules shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands. Existing drainage ditches may be cleared to original specifications without County review.*

**Response:** The applicant is proposing a rail branchline (associated with the renewable diesel production facility proposed via separate application) as a conditional use in the PA-80 zone. As explained in the response to Section 1182 and further detailed in Exhibit 14, the on-site wetlands do not meet the threshold of significance under Section 1182. Thus, the remaining restrictions of Section 1180 do not prohibit alterations to the Project’s wetland impact area, as Section 1180 protects only significant wetlands. To prepare the site for development, the proposed construction will result in temporary and permanent impacts to wetlands (Exhibit 11). The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and will perform over 480 acres of off-site wetland mitigation in accordance with Federal and State law.

#### *1184 Development Standards*

- A. *Riparian Corridor Standards for Wetlands. For the purposes of this Section, “Fish-bearing streams” shall mean all streams identified as being fish-bearing, by the Oregon Department Forestry in the Stream Classification Maps, as amended, and “Fish-bearing lakes” shall mean those streams*

identified in “Lakes of Columbia County”. The current Oregon Department of Forestry Stream Classification Map is attached to the Comprehensive Plan, Technical Appendix, Part XVI, Article X(B), for reference. The Map, “Lakes of Columbia County” is also attached to the Comprehensive Plan, Technical Appendix, Part XVI, Article X(B), and is incorporated therein. Significant Wetlands are identified on the State Wetlands Inventory (SWI), and Local Wetlands Inventories (LWI’s). The SWI is attached to the Comprehensive Plan, Part XVI, Article X(A), for reference.

1. *Fish-Bearing Lakes. Along all wetlands associated with fish-bearing lakes, the riparian corridor boundary shall be 50 feet from the upland edge of the wetland.*

**Response:** As discussed in the response to Section 1172, there are no fish-bearing lakes at the site. This standard does not apply.

2. *Streams, Rivers, and Sloughs (Greater than 1,000 cfs). Along all wetlands associated with all fish-bearing rivers, streams and sloughs, with an average annual stream flow greater than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 75 feet from the upland edge of the wetland. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*

**Response:** As discussed in the response to Section 1172, there are no fish-bearing streams, rivers, or sloughs at the site. This standard does not apply.

3. *Fish-Bearing Streams, Rivers and Sloughs (Less than 1,000 cfs). Along all wetlands associated with fish bearing streams, rivers, and sloughs, with an average annual stream flow less than 1,000 cubic feet per second (cfs), the riparian corridor boundary shall be 50 feet from the upland edge of the wetland. Average annual stream flow information shall be provided by the Oregon Water Resources Department.*

**Response:** As discussed in the response to Section 1172, there are no fish-bearing streams, rivers, or sloughs at the site. This standard does not apply.

4. *Other Rivers and Streams, or Sloughs. For all other wetlands associated with streams, rivers, or sloughs, the riparian corridor boundary shall be 25 feet from the upland edge of the wetland.*

**Response:** Based on the wetland delineation report (Exhibit 11), the wetlands in the study area are supported by precipitation, irrigation water, surface runoff, and groundwater (the wetlands fall into the “flats” rather than “riverine” hydrogeomorphic class). As the wetlands on site are not associated with streams, rivers, or sloughs, this standard does not apply.

5. *Wetlands not associated with Streams, Rivers, Sloughs, or Fish-Bearing Lakes. Along all wetlands not associated with a stream, river, slough, or non-fish-bearing lake, there shall not be a protective riparian corridor boundary. However, development is prohibited from encroaching within a delineated wetland boundary.*

**Response:** Based on the wetland delineation report (Exhibit 11), the wetlands in the study area are supported by precipitation, irrigation water, surface runoff, and groundwater (the wetlands fall into the “flats” rather than “riverine” hydrogeomorphic class). As the wetlands on site are not associated with streams, rivers, sloughs, or lakes, there is no additional protective riparian corridor boundary around the wetlands.

Section 1184(A)(5) should not be construed to prohibit development in all wetlands, as this would conflict with the express provisions of Sections 1181, 1182, and 1183 which limit activities solely

in significant wetlands. As the wetlands on site do not meet the threshold of significant wetlands, the development restrictions on significant wetlands do not apply. Furthermore, the County can find that the encroachments in wetlands are specifically permitted for water-dependent and water-related uses under CCZO 1184(E)(2)(e). The County can find that the project as a whole is water-dependent or at least water-related because it largely relies on riverine transportation provided by the Columbia River for export of renewable diesel and import of renewable diesel feedstock, as further discussed in the “Water-Dependent/Water-Related Use” section of the Introduction. The Applicant will comply with CCZO 1184(G)(1) by obtaining Oregon Department of State Lands and U.S. Army Corps of Engineers permits allowing fill of the impacted wetlands and requiring compensatory wetland mitigation. The applicant is proposing over 480 acres of wetland mitigation south of the site.

- B. *Corridor Boundary Measurement: The riparian corridor boundary begins at the upland edge of the wetland and is measured outward, further upland, the required riparian corridor boundary distance.*

**Response:** As the wetlands on site are not associated with streams, rivers, sloughs, or lakes, there is no protective riparian corridor boundary around the wetlands.

- C. *Activities Prohibited within the Wetland Riparian Corridor Boundary. In addition to the prohibitions of the underlying zone, the following development activities are prohibited in wetland riparian corridor boundaries, except as provided for in Sub-sections 1184(E) and (F) of this Sub-section:*
1. *The alteration of the wetland riparian corridor by grading, the placement of fill material, and/or impervious surfaces, including paved or gravel parking areas or paths, and/or the construction of buildings or other structures which require a building permit under the State of Oregon Uniform Building Code, as amended, or other land use permit.*
  2. *The removal of riparian trees or vegetation.*

**Response:** As the wetlands on site are not associated with streams, rivers, sloughs, or lakes, there is no protective riparian corridor boundary around the wetlands pursuant to Section 1184(A)(5).

- D. *Exempted Activities. This Overlay Zone does not apply to land legally used for commercial forestry operations or standard farm practices, both of which are exempt from the riparian corridor protection standards of this Section. The use of land for commercial forestry is regulated by the Oregon Department of Forestry. The use of land for standard farm practices is regulated by the Oregon Department of Agriculture, with riparian area and water quality issues governed specifically by ORS 568.210 to ORS 568.805.*

**Response:** The applicant is not proposing commercial forestry operations or standard farm practices or seeking use of this exemption.

- E. *Exceptions to prohibited activities. Notwithstanding the prohibitions set forth in sub-section (C), above, the following development activities are allowed within the wetland riparian corridor boundary:*
1. *The following wetland riparian vegetation may be removed:*
    - a. *Non-native vegetation, invasive species, and noxious weeds, if replaced with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall provide for maximum soil retention and shade cover. Replacement vegetation shall, upon maturity, maintain 75%-100% canopy and ground cover.*



- b. *Vegetation which is necessarily removed for the development of water related and water dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water dependent and/or water related use.*
  - c. *Trees and vegetation in danger of falling and/or posing a hazard to life or property. If no hazard will be created, the trees, once felled, shall be left in place in the riparian area.*
2. *The following development is allowed within the riparian corridor boundary:*
- a. *Streets, roads, and driveways, if:*
    - i. *It is not possible to locate the street, road or driveway outside of the riparian corridor boundary; and*
    - ii. *The street, road or driveway is designed to minimize intrusion into the riparian corridor boundary;*
  - b. *Pedestrian walkways, paths and trails;*
  - c. *Fencing and signs, not including billboards;*
  - d. *Drainage facilities, utilities and irrigation pumps;*
  - e. *Water-related and water-dependent uses;*
  - f. *New or expanded shoreline stabilization and flood control grading and structures;*
  - g. *Portable furniture, and other portable outdoor equipment for the private use of the property owner/resident. For purposes of this subsection, "portable" shall mean that the item is not affixed to the ground, other than with a chain or other lock which is capable of being removed at any time.*

**Response:** Notwithstanding the findings in the response to Sections 1182, 1183, and 1184(A)(5) stipulating that the WA Overlay Zone does not prohibit development within non-significant wetlands, the County can find that the encroachments in wetlands are specifically permitted for water-dependent and water-related uses under CCZO 1184(E)(2)(e). The County can find that the project as a whole (the renewable diesel production facility and associated infrastructure including the proposed rail branchline) is water-dependent or at least water-related because it largely relies on riverine transportation provided by the Columbia River (specifically, the deepwater port) for export of renewable diesel and import of renewable diesel feedstock, as further discussed in the "Water-Dependent/Water-Related Use" section of the Introduction. The project is also water-dependent because it relies on water from the Columbia River for steam production, cooling tower process water, and fire water reserve.

- F. *Legal non-conforming uses are allowed to continue within the wetland riparian corridor boundary subject to the requirements in Section 1506, ORS 215.130, applicable state laws, and the following additional requirements:*
- 1. *For replacement of legal non-conforming structures with new structures, any new structure shall be located in the same location and in the same footprint as the existing structure, and shall not disturb additional riparian surface area within the wetland riparian corridor boundary.*
  - 2. *For expansion or alteration of legal non-conforming structures existing fully or partially within the riparian corridor, the expansion or alteration shall not occur within the wetland riparian corridor boundary. If the pre-existing structure is completely within the riparian corridor, expansion is allowed only on the side opposite the water resource.*
  - 3. *Legal non-conforming lawn within the riparian corridor boundary may be maintained. However, such lawn shall not be expanded within the riparian corridor boundary.*
  - 4. *Legal non-conforming shoreline stabilization and flood control structures may be maintained.*

**Response:** There are no existing non-conforming structures, lawns, or shoreline stabilization and flood control structures on site. This standard does not apply.

- G. *New activities and development identified in Sub-section 1184(E) and 1184(F), above, shall be allowed in the wetland riparian corridor boundary subject to the following requirements:*
1. *All applicable permits from state and federal agencies, such as the Oregon Division of State Lands (DSL) and Oregon Department of Fish and Wildlife (ODFW) must be obtained by the land owner prior to commencing the use or activity.*
  2. *For activities and development for which land use permits, building permits, grading permits, variances or stormwater/erosion control permits are required, the County shall provide notification to ODFW of the proposed development activity. The County shall consider the recommendations of ODFW, including any mitigation recommendations, prior to issuance of permits and may condition permit approval on recommended measures to mitigate loss of fish and wildlife habitat pursuant to applicable provisions of OAR Chapter 635, Division 415.*

**Response:** The project as a whole is dependent upon the dock and falls under the category of water-related and water-dependent uses (as further discussed in the “Water-Dependent/Water-Related Use” section of the Introduction), which is authorized under Subsection 1184(E)(2)(e). The applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and will perform over 480 acres of off-site wetland mitigation south of the site in accordance with Federal and State law, as permitted by this subsection. The County will provide notice to ODFW as part of its review process, as will the Oregon Department of State Lands. This standard is met.

H. *Variance Provisions*

1. *In cases where encroachment into the riparian corridor boundary by activities and development not otherwise allowed by Sub-section 1184(E), or 1184(F) cannot be avoided, a property owner may request a Variance to the riparian corridor boundary prohibition. In addition to the criteria found in Section 1504, and the requirements in Sub-section 1184(G), a variance to the riparian corridor boundary prohibitions shall not be granted unless all of the following criteria are met:  
[...]*

**Response:** As the wetlands on site are not associated with streams, rivers, sloughs, or lakes, there is no protective riparian corridor boundary around the wetlands pursuant to Section 1184(A)(5). Therefore, the applicant is not seeking a variance under this subsection.

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

**Response:** The Oregon State Register of Natural Heritage Resources, attached as Exhibit 12, does not include any sites in the vicinity of Port Westward. Furthermore, the Nature Conservancy does not own any natural areas within Columbia County. Finally, the inventory of natural areas in Columbia County Comprehensive Plan, Part XVI, Article IX, Natural Areas, does not identify any sites in the vicinity of Port Westward. Therefore, development at the site is not subject to the Natural Area Overlay Zone.

**Section 1190 Big Game Habitat Overlay (BGR)**

**Response:** Columbia County Comprehensive Plan, Part XVI, Article VIII(A), Big Game Wildlife Habitat, identifies three (3) types of big game habitat. As depicted in Exhibit 6, the site is not within a Big Game Habitat area, Peripheral Big Game Habitat area, or Columbia white-tailed deer range in the County’s Wildlife Game Habitat map. Therefore, development at the site is not subject to the Big Game Habitat Overlay Zone.

**Article VII – Discretionary Permits**

**Section 1500 Discretionary Permits**

*1501 General Provisions*

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

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

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

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

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

*1503 Conditional Uses*

- .5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:*
  - A. The use is listed as a Conditional Use in the zone which is currently applied to the site;*

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

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

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

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

**Response:** The most persuasive evidence of the site’s suitability for a rail branchline is that it will branch off the nearby existing Portland & Western Railroad mainline. The

branchline alignment is suitable because it is the most direct route to the portion of the site needing rail access (the southern end) and the size of the proposed rail corridor is relatively limited, consisting of a corridor identified as the minimum necessary by Portland & Western Railroad, with a total area of approximately 12.3 acres (1.6 acres in Section A and 10.7 acres in Section B). The branchline will be located close to the existing mainline, which has operated for many years and has not been identified as being incongruous with the adjacent farm uses.

The rail branchline site is nearly flat. The site is protected from flooding by the Beaver Drainage District's dikes and associated stormwater conveyance and pumps, and is therefore adequately drained. Culverts are proposed where existing ditches will be crossed by the rail infrastructure, and ditches will be relocated around the branchline as needed to accommodate flows. As detailed in the preliminary stormwater report (Exhibit 13), sufficient infrastructure is in place or proposed to collect, treat, and discharge runoff. While the site does contain wetlands that will be impacted by the proposed development, the applicant is seeking approval from the U.S. Army Corps of Engineers and the Oregon Department of State Lands for wetland alterations and will perform over 480 acres of off-site wetland mitigation south of the site in accordance with Federal and State law.

*D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;*

**Response:** The proposed rail branchline is intended to serve a renewable diesel production facility being proposed under a separate Site Design Review application. The rail line will not in itself generate more traffic on the area roadway system as it will instead facilitate increased usage of the Portland & Western Railroad mainline to move materials that would otherwise be shipped by truck. The rail line does not create a demand for public facilities as it needs no potable water, sanitary sewer, natural gas, or other utilities. The rail line does not impede existing or planned public facilities identified for the area surrounding the Port Westward Industrial Park. The Commission can conclude that the proposed rail branchline is timely.

*E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;*

**Response:** The new rail branchline will not alter the character of the area as the surroundings are already traversed by the Portland & Western Railroad mainline serving Port Westward Industrial Park. In the RIPD zone to the west and north, the primary permitted uses include farm and forest uses and industrial operations including "Production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities" (CCZO 683.1). The current character of the RIPD property includes both agricultural land and industrial uses. The proposed rail branchline will complement the RIPD zone by serving a proposed renewable diesel production facility immediately to the west and north.

In the abutting PA-80 zone, the primary permitted uses include farm and forest uses and their accessory structures, including farm dwellings. The current character of the PA-80 property includes agricultural land, which can continue to exist in proximity to the proposed branchline (e.g., a rail crossing will be installed to allow passage of farm

equipment, see Exhibit 3, Sheets C1.17 and C1.18). The response to Section 307.1 provides further evidence that the proposed rail branchline will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on lands.

The facility will comply with all applicable Federal, state, and local regulations regarding construction and operations to ensure that off-site impacts comply with governing standards.

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

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

*Comprehensive Plan Goals and Policies*

*PART V – AGRICULTURE*

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

**Response:** The proposed corridor for the rail branchline is relatively small in size, totaling approximately 12.3 acres (1.6 acres in Section A and 10.7 acres in Section B). Allowing this area to be developed with rail infrastructure will not result in a significant reduction in agricultural acreage. The response to Section 307.1 provides further evidence that the proposed rail branchline will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on lands.

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

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

**Response:** The proposed rail branchline will be located in an area already heavily impacted by the existing Portland & Western Railroad mainline and electrical transmission lines, corridors, and easements. Farm use can continue in the vicinity of these existing impediments, so the proposed rail branchline does not represent a significant encroachment onto other adjacent agricultural lands.

*15. Permit non-farm/non-forest uses only when not in conflict with agricultural or forestry activities.*

**Response:** Due to its relatively small area (approximately 12.3 acres), the proposed rail branchline does not conflict with agricultural activities as detailed in the response to Section 300, and there are no nearby forest zones with forestry activities. The response to Section 307.1 provides further evidence that the proposed rail branchline will not force a significant change in accepted farm or forest practices and will not significantly increase the cost of accepted farm or forest practices on lands. Existing agricultural uses will not face constraints not already imposed by the adjoining existing rail mainline and electrical transmission lines.

16. *Require that an applicant for a non-farm use record a waiver of the right to remonstrate against accepted farm or forest practices including spraying.*

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

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

**Response:** As noted in the responses to Sections 303 and 306, the proposed rail branchline is a transportation facility authorized by ORS 215.283.

#### *PART X – ECONOMY*

##### *Goals:*

1. *To strengthen and diversify the economy of Columbia County and insure stable economic growth.*

**Response:** The proposed rail branchline will improve the efficiency and augment an adjoining renewable diesel fuel production facility, proposed under a separate site design review application. That facility will generate both construction jobs and long-term office, management, and operational positions, contributing to economic growth in the immediate area and beyond.

2. *To utilize Columbia County’s natural resources and advantages for expanding and diversifying the economic base.*

**Response:** The proposed rail branchline will facilitate efficient transportation to and from a proposed adjoining renewable diesel production facility that will rely upon on Port Westward’s dock and deepwater port facilities. Port Westward is home to a 1,500-foot dock on the Columbia River and is one of only five public deepwater ports in the state of Oregon, with a 43-foot navigation channel to accommodate vessels needing deepwater port access. The production facility itself will make use of this natural resource and strategic advantage, and the rail branchline will augment the facility by allowing for additional transportation options of limited amounts of material.

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

1. *Encourage the creation of new and continuous employment opportunities.*

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

2. *Encourage a stable and diversified economy.*

**Response:** The renewable diesel fuel production facility proposed under a separate application will increase the size and value of the County’s industrial sector, which is an important part of Columbia County’s overall economic base. The proposed rail branchline will support this employment opportunity and help diversify the County’s economy.

6. *Preserve prime maritime industrial sites from pre-emptive uses until needed for industrial uses.*

**Response:** Under separate application, the applicant proposes to construct and operate a renewable diesel production facility at Port Westward, which is a unique deepwater port resource unavailable elsewhere within Columbia County. Construction of the facility will be consistent with the County’s policy of utilizing the prime maritime site for an industrial use that relies upon the port and dock. The proposed rail branchline will support the production facility by providing additional efficient transportation options for materials and product.

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

**Response:** The renewable diesel production facility proposed under a separate application make use of land zoned Resource Industrial - Planned Development and identified as appropriate for industrial development by the County Board of Commissioners. The proposed rail branchline, though located on agriculturally-zoned land, is limited in size and scope and will promote a significant investment at a site zoned for industrial development.

10. *Support improvements in local conditions in order to make the area attractive to private capital investment. Consideration of such factors as the following shall be undertaken:*

- A. *Tax incentives*
- B. *Land use controls and ordinances*
- C. *Capital improvements programming*

**Response:** This policy calls upon the County to implement strategies that make the site attractive for private development. The applicant is willing to make a sizable investment in site and infrastructure upgrades as needed to accommodate the proposed renewable diesel production facility on property west of and adjacent to the proposed rail branchline. The County can help realize some of this policy direction by granting the applicant’s requested conditional use permit for the rail branchline in accordance with State and County land use regulations.

**PART XIII – TRANSPORTATION**

*Goal: The creation of an efficient, safe, and multi-modal transportation system to serve the needs of Columbia County residents.*

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

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

*Objectives:*

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

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

*Policies:*

5. *The County shall work to enhance freight efficiency, access, capacity and reliability, including access to intermodal facilities such as ports and airports. Industrial uses shall be encouraged to locate in such a manner that they may take advantage of the water and rail transportation systems which are available to the County.*

**Response:** The proposed rail branchline is consistent with this policy because it will allow a proposed rural industrial use at Port Westward Industrial Park to take advantage of existing rail transportation facilities, namely Portland & Western Railroad’s mainline. This will increase freight efficiency and provide added capacity to move product while minimizing impacts on roadways.

6. *The County will support reducing the number of rail crossings and will support measures to enhance safety at rail crossings.*

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

20. *The County will coordinate transportation and land use planning and decision-making with other transportation agencies and public service providers, such as ODOT, cities within the County, and the Port, when their facilities or services may be impacted by a County decision or there may be opportunities to increase the efficiency and benefits of a potential improvement.*

**Response:** As part of its evaluation of land use applications including this one, the County coordinates with affected agencies and partners. The applicant has also coordinated with Port, County, and ODOT staff with respect to site design and transportation analysis.

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

**Response:** The applicant will be required to follow all applicable safety laws and regulations in constructing and operating the rail branchline, as approved by Portland & Western Railroad and required by state and Federal regulations.

- .6 *Design Review: The Commission may require the Conditional Use be subject to a site design review by the Design Review Board or Planning Commission.*



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

#### **IV. CONCLUSION**

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