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U.S. Army Corps of Engineers, Portland District
ATTN: James Davidson
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Portland, OR 97208-2946

Sent via Email to: nexteis@usace.army.mil

RE: Draft Environmental Impact Statement for NEXT Renewable Fuels Oregon, LLC (Corps Permit No. NWP-2020-383).

Dear Mr. Davidson,

Columbia Riverkeeper submits these comments to the U.S. Army Corps of Engineers (Corps) regarding the Draft Environmental Impact Statement (DEIS) being prepared under the National Environmental Policy Act (NEPA) for NEXT Renewable Fuels Oregon, LLC's (NEXT) proposed unconventional diesel refinery at Port Westward, Oregon. We incorporate by reference all previous comments and communication submitted by Columbia Riverkeeper to the Corps regarding NEXT, its Section 404 application, and this NEPA process.

Columbia Riverkeeper represents roughly 20,000 members and supporters working to protect and restore the Columbia River ecosystem, native species, and our climate. Many Columbia Riverkeeper members and supporters work, live, farm, and recreate in and near Port Westward and NEXT's proposed project site along the Columbia River. Our members are deeply concerned by the impacts to their lives and livelihoods from NEXT's plan to construct a 100-acre refinery, pipeline system, rail yard, and associated facilities. In the words of Columbia Riverkeeper member Wendy Schmidt—who lives on and farms property in Port Westward near the proposed refinery and directly adjacent to the wetland mitigation site—"the proposed NEXT Refinery is an existential threat to my livelihood."[1] NEXT's refinery project would undermine local and regional efforts to protect water quality, recover endangered and threatened species, support local sustainable agriculture, and combat climate change.

As explained below, the DEIS fails to take a hard look at how NEXT's project threatens Port Westward and the Columbia River estuary, and arbitrarily refuses to analyze the impacts of dock construction and levee alterations that would be related to NEXT's project. The Corps should undertake a supplemental DEIS to address the current flaws and give the public an opportunity to meaningfully engage with any new analysis. A thorough final EIS will establish that the Corps must deny the Clean Water Act § 404 permit because the proposal is contrary to the public interest, NEXT's

[1] Exhibit 1, *Declaration of Wendy Schmidt in Case No. 25CV32544*, p. 2 (2025).

proposed wetland mitigation is incompatible with the Corps' regulations, and NEXT has failed to demonstrate that its proposal is the least environmentally damaging practicable alternative.

I. The Columbia River Estuary and Port Westward

The community at Port Westward sits at a critical bend in the Columbia River estuary. Eagles soar above fragrant, world-class mint crops. Blueberry farms provide plump, juicy berries destined for the tables of folks in Oregon and Washington. The landscape is rich in cultural and religious importance, for both Tribes[2] and newcomers.[3] Born of a complex and fragile ecosystem, Port Westward's diked lands have peat-rich agricultural soils thousands of years in the making. Nearby, the Columbia River sustains threatened and endangered salmon runs that are central to the cultures and economies of communities across the region.

The Columbia River estuary is at the center of a regional and national effort to restore endangered and threatened salmon. The Columbia River estuary is a federally designated Estuary of National Significance under the Clean Water Act's National Estuary Program.[4] The National Marine Fisheries Service (NMFS) has described the ecological value of the Columbia River estuary, stating:

> "The lower Columbia River estuary provides vital habitat for anadromous salmonids throughout the Columbia River basin, and is of particular importance from a threatened and endangered species recovery perspective. The estuary is designated as critical habitat for 17 species of ESA-listed fish and EFH [Essential Fish Habitat] for Pacific salmon."

In 2006, the U.S. Environmental Protection Agency (EPA) designated the Columbia River as one of seven Priority Large Aquatic Ecosystems.[5] The Columbia River estuary is an "ecologically critical area," 40 C.F.R. § 1508.27(b)(3), that is essential to the survival of juvenile salmon and steelhead, Columbia white-tailed deer, migratory waterfowl, and many other species.[6] Public and private entities have invested billions of dollars to restore endangered and threatened salmonids in the Columbia River Basin.[7] This includes significant investment in riparian and wetland restoration projects in the estuary.

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[2] *See, e.g.,* The Confederated Tribes of the Grand Ronde Community of Oregon, *Comments on the NEXT DEIS*, p. 1 (2026) ("Tribal people have lived, fished, gathered wapato, traveled, and traded in and along the Columbia River from time immemorial, and they continue to do so today. All native fish, wildlife, water, air, soil and sediment, plants, sacred places, and archaeology are considered cultural resources of the Tribe, and Grand Ronde seeks their maximum protection and restoration . . .").

[3] *See* Exhibit 2, *Declaration of Haley Voekel in Case No. 25CV32544*, p. 2 (2025) ("I live and work at the Great Vow Zen Monastery in Clatskanie, Oregon. The Great Vow Zen Monastery is a residential community of lay and ordained people engaged in around-the-clock Buddhist practice. The monastery is located less than a mile from the proposed NEXT Refinery.").

[4] EPA, National Estuary Program (online at:https://www.epa.gov/nep).

[5] EPA, *Columbia River Basin: State of the River Report for Toxics* (Jan. 2009) (online at: https://bit.ly/3IhWyeD).

[6] NMFS, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (2011); Fresh *et al*., *NOAA Technical Memorandum NMFS-NWFSC-69: Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead* (2005); 78 Fed. Reg. 2,726 (Jan. 14, 2013) (*Proposed Critical Habitat Designation for Lower Columbia Coho Salmon*).

[7] Thom, R. *et al.*, *Columbia River Estuary Ecosystem Restoration Program, 2012 Synthesis Memorandum* (Jan. 2013).

Despite the regional and national importance of the Columbia River estuary, and the potential for a large refinery and associated activities to harm this critical ecosystem, the DEIS does not take a hard look at the consequences of siting NEXT's refinery along the lower Columbia River.

II. The DEIS does not constitute a "hard look" at the impacts of NEXT's proposal and violates the applicable regulations for implementing NEPA.

NEPA is the nation's basic charter for protection of the environment. NEPA serves two purposes: it (1) ensures that agencies will carefully consider detailed information concerning significant environmental impacts of proposed projects, and (2) "guarantees that the relevant information will be made available" so that the public may play a role in the decision-making process.[8] To fulfill these dual purposes, NEPA requires federal agencies to prepare a "detailed" study of the "environmental effects" of proposed actions.[9] **This requires agencies to take a "hard look" at "every significant aspect of the environmental impact of a proposed action."**[10] Agencies must also "ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document" and "make use of reliable data and resources."[11] By focusing attention on the environmental consequences of proposed actions, NEPA "ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."[12]

The Corps' broad regulatory authority over NEXT's proposal distinguishes this situation from the Supreme Court's recent decision in *Seven County Infrastructure Coalition* (*Seven County*).[13] In *Seven County*, the Court held that "agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority"[14] and approved a narrow NEPA review by the Surface Transportation Board (STB), reasoning that the STB only had statutory authority to approve railroad lines.[15] Here, by contrast, Section 404 of the Clean Water Act and Section 408 of the Rivers and Harbors Act grant the Corps broad and complex authority over NEXT's proposed project. The Corps' regulations under Section 404 state that, "[t]he decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on *the public interest*."[16] This public interest review is broad. A permit decision under this analysis is meant to "reflect the national concern for both protection and utilization of important resources."[17] Thus, the Corps' regulatory authority under the public-interest review of Section 404 can

[8] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).
[9] 42 U.S.C. § 4332(2)(C)(i).
[10] *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 553 (1978).
[11] 42 U.S.C. § 4332(2)(D), (E).
[12] *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 553 (1978).
[13] *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168 (2025).
[14] *Id.*
[15] *Id.* at 188.
[16] 33 C.F.R. § 320.4(a)(1) (emphasis added).
[17] *Id.*

be differentiated from the STB's narrow authority in *Seven County*, and the Corps should not use that case to inappropriately constrain the scope of its NEPA analysis here.

a. NEXT's project would not meet the DEIS' stated purpose and need.

NEXT would be substantially unable to meet the Corps' articulation of the purpose and need for this project—and the purpose and need statement's assumption that NEXT is an important part of meeting renewable fuel standards creates an unwarranted bias in favor of the project. An EIS "shall include a statement that briefly summarizes the underlying purpose and need for the proposed agency action."[18] An accurate statement of purpose and need is foundational to other elements of the EIS; the purpose and need statement informs the range of reasonable alternatives that the agency analyzes and considers. For purposes of both NEPA and Clean Water Act Section 404 Guidelines, the Corps determined that the overall project purpose of NEXT's refinery is:

> "To produce renewable fuels for markets on the west coast of the United States and west coast of Canada to meet the demand for fuels that are mandated by the Renewable Fuel Standard Program or other mandates that require low CI fuels."[19]

For the following reasons, including those presented in the "Feedstock Report" submitted as an exhibit to these comments,[20] NEXT's proposal will not meet the Corps' stated project purpose because NEXT would be unable to secure large volumes of low-carbon, waste-derived feedstocks. The EIS must explain, not presume, that NEXT could produce meaningful quantities of fuel that meet renewable fuel standards—and that demand for such fuel would be unmet without NEXT's production.

i. Low-carbon, waste-derived feedstocks for renewable fuels are in short supply and high demand.

Because of the incentives created by renewable fuel standards, low-carbon feedstocks derived from waste materials are in high demand—but there is a relatively finite supply of these feedstocks, most of which is currently contracted for by existing refineries. Major renewable fuel markets, like California's Low Carbon Fuel Standard (LCFS) have credit prices that incentivise the production and use of low carbon intensity (CI) fuels. Producing low-CI fuel depends, in large part, on access to low-CI feedstock, as different feedstocks have different carbon intensities.[21] Purpose-grown vegetable oil feedstocks are typically more carbon intensive than waste-derived feedstocks such as animal fats or used cooking oil. Purpose-grown feedstocks like soy and canola oil require more carbon inputs through farming and processing than waste products, resulting in higher CI scores that are used to

[18] 40 C.F.R. § 1502.13.
[19] DEIS at 1-3.
[20] Exhibit 3, Xiaoli Etienne, *Renewable Diesel Production in the United States and Feedstock Availability: Implications for NXT Port Westward Facility*, at 1 (2025) (hereinafter "Feedstock Report").
[21] Feedstock Report at 19–20 (showing CI values of specific feedstocks).

calculate credits under renewable fuel standards.[22] Low-CI feedstocks are a more finite resource than purpose-grown feedstocks because they are byproducts of existing consumption patterns and collection methods that are expected to remain relatively constant. Additionally, "established producers have secured long-term contracts with major suppliers, locking in access to premium feedstocks."[23] Accordingly, low-CI feedstocks are both more expensive and difficult for new fuel producers to obtain.[24] NEXT, as a new player in the market, would have to compete with existing fuel producers to secure valuable low-CI feedstocks, and NEXT has not shown it can do so.

ii. NEXT has failed to demonstrate that significant amounts of its fuel will meet renewable fuel standards.

NEXT's assertion—implicitly adopted in the Corps' purpose and need statement—that the refinery would make significant amounts of fuels that meet renewable fuel standards is arbitrary and capricious, and unsupported by substantial evidence. In order to meet the project purpose, NEXT would have to procure significant quantities of low-carbon feedstocks to support the production of fuels that qualify for credits under various renewable fuel programs. NEXT's extremely large proposed throughput means that NEXT would have to obtain vast amounts of low-carbon feedstocks to meet its purpose and need. NEXT has failed to demonstrate its ability to procure these types or amounts of feedstocks—and market analysis strongly suggests it will be unable to do so.

According to a 2025 report analyzing the availability of feedstock, NEXT "will likely face challenges in securing sufficient volumes of low-[CI] materials due to the limited availability of these feedstocks and the prevalence of long-term supply agreements already in place across the industry."[25] The report details the market constraints on various renewable diesel feedstocks, as well as the nuances of demand for renewable fuel in west coast markets. The report explains that, **for renewable diesel facilities (including NEXT) that begin operating in 2025 or later, purpose-grown "vegetable oils are projected to account for 92% of the feedstock mix for new RD facilities, with UCO and animal fats making up just 6% and 2%, respectively."**[26] "Even by 2030, vegetable oils are still expected to represent 80% of the feedstock mix for these facilities."[27] Because NEXT has not secured any binding agreements to purchase meaningful amounts of scarce, low-CI feedstocks, the most reasonable assumption is that NEXT will have access to these feedstocks at the average rates for new renewable diesel facilities. The report substantiates concerns that Columbia Riverkeeper has long raised about NEXT's inability to source meaningful volumes of low-carbon, waste-derived feedstocks and thereby produce low-CI fuels compliant with renewable fuel standards.

[22] Feedstock Report at 20.
[23] Feedstock Report at 30.
[24] Feedstock Report at 29.
[25] Feedstock Report at 1.
[26] Feedstock Report at 70.
[27] Feedstock Report at 70.

Another reason to believe that NEXT will use large quantities of higher-CI, purpose-grown seed oils (rather than low-CI, waste-derived feedstocks) comes from a detailed table filed with the Securities & Exchange Commission (SEC) in October 2023.[28] **The SEC filing projects that soybean oil**[29] **would initially comprise 60 percent of the feedstock used by NEXT's refinery.**[30] The same SEC filing confirmed that NEXT did not have any binding feedstock supply agreements as of October 2023 and contains statements that raise significant concerns about NEXT's ability to secure adequate feedstock:

- "NXTCLEAN may be unable to successfully negotiate final, binding terms for the feedstock and distribution agreements for RD and SAF for its proposed Port Westward Refinery. . ."[31]

- "NXT has no experience in either the construction of a renewal fuel refinery or facility or in the operation of a renewable fuel business, which may impair its ability to construct the NXT Projects or produce and sell renewable fuel and to negotiate contracts for the purchase or feedstock and the sale of fuel."[32]

- "NXT cannot assure you that it will be able to negotiate one or more feedstock supply agreements or offtake agreements or that, if agreements are completed, the terms would enable NXTCLEAN to market its fuel at a reasonable margin. . . . The failure of NXT to have feedstock supply agreements and offtake agreements in place may affect the willingness of an investor to make an investment in NXT, which could impair NXT's ability to continue to operate."[33]

- "The price and availability of feedstocks may be influenced by general economic, market and regulatory factors. These factors include weather conditions, including the effects of climate change, farming decisions, government policies and subsidies with respect to agriculture and international trade, and global demand and supply. The significance and relative impact of these factors on the price of feedstocks is difficult to predict, especially without knowing what types of feedstock materials that NXT may need to use."[34]

- "Our feedstocks may be grown on land that could be used for food production, which subjects our feedstock sources to various ethical, legal, and social "food versus fuel" concerns. If we are

[28] Exhibit 4. Industrial Tech Acquisitions II, Inc., *Amendment No. 1 to Form S-4 Registration Statement Under the Securities Act of 1933, as filed with the U.S. Securities and Exchange Commission* at 106 (Oct. 17, 2023) (hereinafter "SEC Filing").
[29] *See* Feedstock Report at 65 (discussing soybean oil percentages and resulting CI values).
[30] SEC Filing at 106.
[31] SEC Filing at 34.
[32] SEC Filing at 58.
[33] SEC Filing at 60.
[34] SEC Filing at 61.

not able to overcome the ethical, legal and social concerns relating to this, our products and processes may not be accepted."[35]

The SEC filing further warned that if NEXT is unable to secure feedstock supply contracts, the company may be forced to scale back production, delay plant construction, increase storage capacity, or rely more heavily on volatile spot markets.[36] Perhaps unsurprisingly, the proposed merger that this SEC filing described was unsuccessful.[37] This SEC filing, similar to the Feedstock Report, shows that most of NEXT's feedstock is likely to come from purpose-grown, higher-CI feedstocks like soybean oil.

The DEIS' assertions about NEXT's likely feedstocks are not supported by any evidence, let alone substantial evidence. In Section 2.2.3 of the DEIS, Table 2-6: "Feedstock Type and Percentage" lists the "estimated percent (%) by volume" of NEXT's feedstocks, but provides no rationale or citations to support those percentages.[38] Table 2-6 is identical to a table in NEXT's May 2021 Project Design Basis, but that table also provides no rational or supporting information.[39] An even more optimistic projection about NEXT's use of low-CI feedstock appears in DEIS Appendix 3E (Greenhouse Gas Emission Calculations); that document explains that its projections were supplied by NEXT, based on its "anticipated average feedstock percentages."[40] In other words, the DEIS contains no evidence or rationale for parroting NEXT's self-serving claims about likely feedstock sources and percentages. Given the lack of any factual support or explanation for the feedstock types and percentages asserted in Table 2-6 of the DEIS, and the strong evidence to the contrary presented in the Feedstock Report and SEC filing, the DEIS' assertions about NEXT's feedstock sources do not pass NEPA's "hard look" test.

The evidence, above, about NEXT's heavy reliance on soybean and other purpose-grown oils strongly suggests that much of NEXT's fuel will be ineligible for credits under California's LCFS. Since November 2024, the revised California LCFS limits credit eligibility from diesel made from soy, canola, and sunflower oils to 20% of a company's annual production.[41] Based on the Feedstock Report and the SEC Filing (which put NEXT's seed oil feedstock use at between 60 and 90 percent), this would mean that **between 40 and 70 percent of NEXT's product would be ineligible for the LCFS**. California's LCFS requirements are important because California represents the vast majority of demand for low-carbon fuels; in 2023, California accounted for 91% of renewable diesel consumed

[35] SEC Filing at 64.
[36] SEC Filing at 60.
[37] Sander Gusinow, *Tech Acquisition Company Cancels Merger with NXTClean Fuels, Formerly NEXT Renewable Fuels*, Oregon Business (Nov. 8, 2023) https://oregonbusiness.com/tech-acquisition-company-cancels-merger-with-nxtclean-fuels-formerly-next-renewable-fuels/.
[38] DEIS at 2-9 to 2-10.
[39] DEIS, Volume 2, Project Design Basis at 13 (May 2021).
[40] DEIS, Appendix 3E, Table B-1, Footnote 3.
[41] Feedstock Report at 65; CARB votes to adopt LCFS updates, Biodiesel Magazine (Nov. 11, 2024) https://biodieselmagazine.com/articles/carb-votes-to-adopt-lcfs-updates.

nationwide.[42] Washington and Oregon have modeled their programs off of California's LCFS, and may move to implement similar statewide limits in the future to reduce reliance on virgin vegetable oils.[43] NEXT's apparent inability to sell the majority of its fuel into the major renewable fuel credit market on the West Coast substantially undermines NEXT's ability to meet the Corps' stated purpose and need.

NEXT's seed oil-heavy feedstock mix will also severely limit NEXT's access to the Portland, Oregon, renewable fuels market. Portland's renewable fuels standard has an even stricter policy discouraging fuels made from seed oil than the LCFS, requiring *all* renewable diesel sold in the city to have a CI low enough to preclude soybean oil feedstock.[44] Notably, NEXT's CEO Chris Efird participated on the Technical Advisory Committee that recommended weakening Portland's CI standard in October 2025.[45] The advisory committee explained that "[t]here is a major concern regarding the future availability of 40 (or below) CI feedstock" and noted changes in federal programs that "would likely reduce the economic supply of used cooking oil and tallow, and therefore low CI renewable diesel and biodiesel."[46] Despite this recommendation, the City of Portland did not weaken its CI standard, noting that "the CI requirement is critical."[47] NEXT's apparent inability to sell the majority of its fuel under Portland's renewable fuel standard also undermines NEXT's ability to meet the Corps' stated purpose and need.

iii. NEXT has failed to demonstrate that "demand" exists or that NEXT will sell fuel only in renewable fuel markets.

The purpose and need statement improperly assumes that NEXT's potential customers will be subject to renewable fuel standards requiring low-CI fuels. The unsubstantiated assertion that NEXT will exclusively sell fuel to entities subject to carbon regulations creates an unwarranted bias in favor of NEXT by implying that NEXT will play a role in regional carbon-reduction efforts. No such guarantee exists. NEXT does not propose to limit end users of its fuel to entities that are mandated by state or federal regulations to use low-carbon fuels.

Because the DEIS' purpose and need statement references "demand" from end users subject to certain regulatory requirements to purchase low-carbon diesel or jet fuel, the DEIS should have analyzed the projected "need" for NEXT's product at the time the refinery would commence operations. In other words, the DEIS should substantiate—not just assume—that demand for NEXT's fuel in markets subject to renewable fuel standards is likely to exist by the time NEXT could begin

[42] Feedstock Report at 10.
[43] Feedstock Report at 65.
[44] City of Portland, *About the RFS Technical Advisory Committee (RFS TAC)* https://www.portland.gov/bps/climate-action/renewable-fuel-standard/rfs-tac/about-rfs-tac
[45] 2025 RFS TAC Members, *Memo Re: Title 16.60 Renewable Fuel Standard Implementation Recommendation* (Oct. 8, 2025), available at https://efiles.portlandoregon.gov/record/17511760.
[46] *Id.* at 5–6.
[47] Bureau of Planning & Sustainability, *Memo Re: Renewable Fuel Standard Implementation Recommendations* (Oct. 14, 2025), available at https://efiles.portlandoregon.gov/record/17524944/.

production several years from now. This is a legitimate concern, as there are a finite number of entities subject to clean fuels requirements on the West Coast and dozens of other refineries currently producing, or proposing to produce,[48] fuels compliant with renewable fuels standards. Industry analyses "suggest that the U.S. will have considerable RD overcapacity even without any additional facilities beyond 2027."[49] The EIS must explain, not presume, the existence of demand for NEXT's fuel *in markets subject to renewable fuel standards* based on, among other things:

- The timing for NEXT's product to reach the market;
- The likely future supply and price of "renewable" diesel available on the market from sources other than NEXT; and
- Limitations on the availability of lipid feedstocks.

b. The DEIS Fails to Address Connected Actions.

The DEIS fails to evaluate the environmental consequences of connected actions. Pursuant to NEPA, agencies are required to review, in a single EIS, "proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action."[50] Such related proposals are referred to as "connected actions."[51] Specifically, actions are "connected" if they:

> (i) Automatically trigger other actions that may require environmental impact statements;
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> (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; or
>
> (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.[52]

The Ninth Circuit applies an "independent utility" test to determine whether multiple actions are connected as to mandate consideration in a single EIS. "The crux of the test is whether 'each of two projects would have taken place with or without the other and thus had independent utility.'"[53] The DEIS fails to evaluate the Port of Columbia County's dock rebuild project that is connected to the NEXT project. In *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985), the Ninth Circuit found that a timber sale and road construction were "inextricably intertwined" because the timber sale created the

[48] Feedstock Report at 55.
[49] Feedstock Report at 61; *see also* Reuters, *Renewable diesel glut hits US refiner profits, threatens nascent industry* (May 14, 2024), https://www.reuters.com/markets/commodities/renewable-diesel-glut-hits-us-refiner-profits-threatens-nascent-industry-2024-05-13/.
[50] 40 C.F.R. § 1502.4(a).
[51] 40 C.F.R. § 1501.9(e).
[52] *Id.*
[53] *Cal. ex rel. Imperial Cnty. Air Pollution Control Dist. v. U.S. Dept. of the Interior*, 767 F.3d 781, 795 (9th Cir. 2014); *see also Pac. Coast Fed. of Fishermen's Ass'ns v. Blank*, 693 F.3d 1084, 1098 (9th Cir. 2012).

need for a transportation route. Here, the NEXT project creates a need for the Port of Columbia County to undertake a major dock rebuild project to facilitate NEXT's fuel offloading.

NEXT plans to move its fuel through the Port of Columbia County's existing shipping terminal, the Beaver Dock, situated at Columbia River Mile 53. At the same time, Port of Columbia County is planning a major project to "modernize a 1600-foot, 2 berth, WWII-era marine dock, to address shipper needs and bring the dock up to current seismic resilience standards."[54] According to the Port, "the bulk of the dock requires updating to meet future needs"—i.e. in order to serve NEXT.[55] This major dock construction project is a connected action to the NEXT project because both projects rely on each other to be successful.

i. The NEXT project and dock rebuild cannot occur without each other.

The NEXT project is reliant on a functioning and legally compliant dock. According to the Port, dock reconstruction is necessary to meet major transportation challenges: "(1) lack of berthing capacity at Port Westward to meet expected shipper requirements; (2) lack of a seismically resilient port in the Portland metropolitan area for transportation of liquid bulk energy products; and (3) exposure of ship-to-shore cargo product pipelines to hazards such as earthquakes and vessel strikes."[56] The Port claims that the current dock "will not be useable to serve long-term shipping needs" because the dock does not meet current seismic resilience standards.[57] The dock rebuild and NEXT construction are proceeding simultaneously, with overlapping construction timelines.[58]

In November 2023, a barge strike severely damaged the Beaver dock, including the product pipeline to the main berth. According to the Port, "[t]his event underscored the need to realign the product pipeline from its current configuration, resulting in the construction of a separate pipe bridge."[59] This current configuration exposes the cargo pipelines and related infrastructure to vessel strikes and structural damage, and realignment is needed to protect the infrastructure from accidents, earthquake, or other events.[60] The barge accident and resulting infrastructure damage caused NEXT to stop paying full rent to the Port of Columbia County because without a functioning dock, the future of the project is uncertain: "Damage inflicted on the Port Westward Dock by the tow boat collision on the morning of November 12, 2023, calls into question NEXT's ability to ever operate a refinery at the site

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[54] Exhibit 5, Port of Columbia County, *Port Westward Energy Security, Seismic Resilience and Modernization – Phase 1* (Sept. 10, 2025) (grant application to USDOT Maritime Administration FY 2025 Port Infrastructure Development Program) (hereinafter "PIDP Application").
[55] *Id.* at 4.
[56] *Id.* at 8.
[57] *Id.* at 8.
[58] *Id.* at 26; *see also* Christopher Efird, CEO, NXTClean Fuels, ALBC Conference (Nov. 2025), https://vimeo.com/1137953020?fl=pl&fe=sh.
[59] *Id.*
[60] *Id.* at 9.

as stipulated under its [lease]."[61] NEXT specifically targeted this project site "for the physical attributes of the port."[62] Without a functioning and seismically compliant dock, NEXT cannot operate.

Likewise, the dock rebuild cannot proceed without NEXT. The Port does not have the finances to complete the dock rebuild without receiving funding from NEXT and outside sources. Currently, a significant majority of the Port's total revenue comes from rent from its tenants.[63] And, the Port's grant applications for dock reconstruction funding all rely on NEXT's existence and financial contribution for justification. The Port is actively seeking funding through various federal grant programs for its dock rebuild. In its application for a $14,810,000[64] grant from the U.S. Department of Transportation, the Port relies on NEXT as justification for the project, noting that the current sole tenant using the dock has a "throughput of three million barrels of liquid bulk energy products annually," with plans to increase to "more than 40 million barrels per year" once NEXT is online.[65] Because of this mutually beneficial relationship, NEXT is committed to contributing $3,650,000 to the dock rebuild, calling it a "key project" to bring the dock "up to current seismic structural standards."[66] Without NEXT, the Port would have a much weaker application for funds to support the dock rebuild and likely will not secure the necessary financial agreements.

The NEXT project and the Port's dock rebuild project are inextricably intertwined such as to require consideration as connected actions in the EIS.

ii. The DEIS should analyze impacts that will occur before, during, after the dock rebuild.

The DEIS is inadequate because it fails to analyze impacts that will occur before, during, and after the Port's dock rebuild project, and how those impacts interact with impacts from the NEXT project. This leads to a flawed alternatives analysis and conclusions that the project will not entail in-water work and associated impacts.

The DEIS should analyze impacts of NEXT operating at the Port until the dock rebuild is complete. The dock's current configuration exposes the ship-to-shore cargo product pipelines to hazards such as earthquakes and vessel strikes. The Port's grant application documents the current earthquake risk at the dock, including an engineering analysis that concludes "the timber portions that comprise the majority of its structure [are] in overall poor condition."[67] Additionally, the dock is

[61] Oregon Business, *NEXT Refinery Project Formally Asks For Lower Rent — Which Records Show It's Already Paying*, (Mar. 1, 2024) https://oregonbusiness.com/next-refinery-project-formally-asks-for-lower-rent-which-records-show-its-already-paying/.
[62] PIDP Application at 24.
[63] *Id.* (explaining that $6 million of the Port's $7.3 million in revenue came from rent in 2023).
[64] The total cost of the Phase 1 of the project is nearly $25 million.
[65] PIDP Application at 1.
[66] PIDP Application, Attachment A (a letter dated Sept. 4, 2025, from Chris Efird of NEXT to Sean Clark of the Port of Columbia County regarding "Funding Commitment for Port of Columbia County, Oregon, FY2025 USDOT PIDP grant application").
[67] PIDP Application at 15 and Attachment D.

vulnerable to post-earthquake effects such as fires and spills from pipelines and product handling equipment.[68] The Corps' analysis should include impacts resulting from the dock's currently vulnerable location that exposes it to vessel strikes, like the one that occurred in 2023. By ignoring the Port's need to undergo extensive construction for safety and seismic compliance, the DEIS also ignores the risks associated with NEXT operating until upgrades are complete.

The DEIS improperly ignores impacts from the construction of the new dock, which leads to a flawed conclusion regarding water quality impacts and distorts the alternatives analysis and proposed mitigation. The DEIS concludes: "Potential reasonably foreseeable impacts to water quality in the Alternative 1 study area would be minor because no in-water construction, dredging, or dock installation is proposed under this alternative."[69] Similar assumptions permeate the DEIS:

- "No dredging or other in-water construction is required under Alternative 1."[70]

- "the NMFS 2025 Biological Opinion (NMFS 2025) evaluated Alternative 1 only, the Reasonable and Prudent Measures and associated conservation measures identified in the opinion address impact mechanisms that are common to all build alternatives, including in-water work, vessel activity, and construction-related disturbance."[71]

- "No designated USFWS critical habitat occurs within the construction footprint (USFWS 2011, USFWS 2013b, USFWS 2021a, USFWS 2021b). Alternative 1 does not include in-water construction within the Columbia River."[72]

This conclusion and related statements improperly disregard the Port's clear plans for, and NEXT's reliance on, a major dock rebuild. Additionally, this is likely lead to an arbitrary assessment, under the Clean Water Act 404 Guidelines, of whether NEXT's project is the least environmentally damaging of the three practicable alternatives that NEXT identified—because the DEIS states that the other two alternatives involve in-water work while NEXT's (incorrectly) does not.

EPA also acknowledges the need for some analysis of dock construction and maintenance: "the Port infrastructure would require maintenance and potentially upgrades during operation. The current dock at Port Westward undergoes construction regularly as demonstrated by Port Westward's existing permit that has been updated and modified multiple times since it was originally approved. The applicant's current proposal does not reflect these expected connected actions."[73] Without discussing

[68] PIDP Application at 16.
[69] DEIS at 3-53.
[70] DEIS at 3-60.
[71] DEIS at 3-86.
[72] DEIS at 3-87.
[73] Exhibit 6. EPA, *Comments submitted by EPA in response to the U.S. Army Corps of Engineers Public Notice NWP-2020-383*, at 7 (2021).

regular construction impacts—let alone impacts from a major dock construction project—the DEIS analysis is incomplete.

Finally, the DEIS should consider future impacts of dock reconstruction that increase the Port's ability to handle more vessels and transfer more liquid fuel and other products. There is currently no analysis of how dock reconstruction will affect the quantity of vessels the Port is able to serve, and the resulting impacts of increasing vessel traffic on the Columbia River. Similarly, there is no discussion of impacts from increasing the Port's ability to handle more liquid fuels once the dock reconstruction is complete. These details are critical for the agency and public's understanding of project impacts, potential alternatives, and mitigation measures. Without them, the Corps misses a critical element of the project, resulting in a cascadingly flawed DEIS.

iii. The DEIS fails to consider levee alterations as a connected action.

The Corps has yet to make a determination regarding permission under Section 408 of the Rivers and Harbors Act.[74] As such, the DEIS is missing crucial analysis of any levee alterations necessary to facilitate NEXT's construction and operation. In the case that levee alterations or reinforcement are necessary, those impacts must be considered as connected actions. Because of the current state of the Port Westward levee, it is very likely that any use of the levee will require mitigation to ensure the levee's stability and resilience over time. Just as Hermo Road construction warrants connected action analysis, so will any levee alterations.[75] The Corps' rush to issue the DEIS prematurely, before undertaking Section 408 review and without the benefit of that analysis,[76] results in a failure to fully analyze the project's impacts.

c. The DEIS Fails to Analyze a Reasonable Range of Alternatives.

The DEIS contains an unreasonably narrow range of alternatives that do not give the public or decisionmakers a realistic basis to compare the impacts of NEXT's proposal with other options. NEPA requires that an EIS analyze a reasonable range of alternatives that meet the project's purpose and need, as well as a "No Action" alternative.[77] Where, as here, a project requires both a Clean Water Act § 404 permit and a NEPA analysis, the alternatives analyses required under both laws are often prepared and presented as a single analysis.[78] For the reasons explained in Section III(b), below, the DEIS' alternatives analysis arbitrarily and unreasonably narrowed the range of alternatives to NEXT's proposal. It was patently unreasonable for the DEIS to take a project of this magnitude and complexity, capable of being built anywhere in the nation (or at least the West Coast), and reduce the range of alternatives to three very similar sites within several miles of each other along the Lower Columbia River. As explained in Section III(b), below, the alternatives analysis in the final EIS and

[74] *See* Section V, infra.
[75] *See* DEIS at 3-70.
[76] *See* Section V.c., infra.
[77] DEIS at xix.
[78] 40 C.F.R. § 230.10(a)(4).

404 permit Record of Decision should eliminate many of the arbitrary and overly restrictive project siting criteria and present a range of alternatives that allow an honest comparison between NEXT's proposal versus the many alternative ways and locations for producing "renewable" diesel.

The "no action" alternative should be revised to describe how other existing or proposed renewable diesel refineries in the U.S. would address regional fuel demand if NEXT did not begin operating (or operated at a reduced throughput). The DEIS' description of the no action alternative appears to be mostly lacking and, in fact, cuts off mid-sentence.[79] Because NEXT justifies its proposal on the grounds that supplies of renewable diesel and similar fuels are (or will be) insufficient to meet demand in West Coast states, the "no action" alternative should describe the amount of renewable diesel that would be available without NEXT's project. To achieve this, the final EIS should analyze the amount of idle renewable diesel refining capacity in the U.S. and explain if that refining capacity could be put into service if NEXT was not approved—industry analyses "suggest that the U.S. will have considerable RD overcapacity even without any additional facilities beyond 2027."[80] The final EIS should also look at the number and capacity of other, currently proposed renewable diesel refineries in the U.S.[81] when predicting how the "no action" would influence the likelihood of renewable diesel supply not meeting demand. This is especially important if the Corps' public interest under Clean Water Act § 404 intends to rely on NEXT's production of so-called renewable fuel as a benefit to the public. Because the U.S. appears to have significant un-used renewable diesel refining capacity and many proposed refineries about to come online, it would be arbitrary for the Corps to conclude that the "no action" alternative will result in unmet demand for renewable diesel of similar fuels.

d. The DEIS arbitrarily ignored the effects of NEXT's climate pollution and indirect GHG emissions.

The DEIS lists the significant amounts of greenhouse gas emissions that NEXT would generate by constructing and operating the refinery.[82] However—in addition to failing to discuss the *effects* of these emissions—the DEIS arbitrarily ignores many other indirect sources of GHG emissions associated with NEXT's proposal. These include:

- Upstream greenhouse gas emissions and other impacts associated with extracting, transporting, and delivering the fracked gas that the facility would use for heating and raw material, calculated using both the 20-year and 100-year global warming potential for methane and using realistic methane leakage rates;

[79] DEIS at 2-39.
[80] Feedstock Report at 61; *see also* Reuters, *Renewable diesel glut hits US refiner profits, threatens nascent industry* (May 14, 2024), https://www.reuters.com/markets/commodities/renewable-diesel-glut-hits-us-refiner-profits-threatens-nascent-industry-2024-05-13/ .
[81] Feedstock Report at 55.
[82] DEIS at Table 3-6.

- Upstream greenhouse gas emissions required to produce NEXT's likely feedstock mix (Contrary to the DEIS' assertion that "There are no upstream emissions because the facility uses waste products that would already be produced,"[83] NEXT is likely to use significant amounts of non-waste feedstock as explained in subsection (a), above, and even the collection and delivery of waste feedstock generates some greenhouse gas emissions).;

- Downstream greenhouse gas emissions released during the end-use combustion of NEXT's fuel products.

These sources of greenhouse gas emissions are reasonably foreseeable, and the DEIS arbitrarily left them out of its enumeration of NEXT's climate pollution.

The DEIS expressly ignores the effects of NEXT's greenhouse gas pollution.[84] Refusing to analyze this important category of effects constitutes a failure by the Corps to take a hard look at an important aspect of a problem, as required by NEPA. The climate effects of NEXT's proposal deserve a hard look in this DEIS because:

- The project would be among the largest greenhouse gas emitters in Oregon;

- The project's stated purpose is to supply fuel to markets created by laws aimed at curbing the effects climate change;

- NEXT has long made unsubstantiated claims to decisionmakers and the public about reducing overall greenhouse gas emissions;

- The Corps, in its "public interest determination" required by Clean Water Act § 404,[85] may intend to rely on NEXT's claims about greenhouse gas reductions, offsets, or replacement of petroleum-based fuels (and therefore NEXT's climate effects are not beyond USACE's jurisdiction or control);

- Climate change is an existential environmental and social challenge that is already significantly impacting the Pacific Northwest and the Columbia River, and NEXT's proposal could intensify those effects.

[83] DEIS, Appendix 3F at 2.
[84] DEIS at 3-23 ("The analysis does not quantify or attribute global climate effects—which occur on geographic and temporal scales outside the jurisdiction and control of the USACE—to project emissions.").
[85] *See* 40 C.F.R. § 320.4.

Against this backdrop, refusing to discuss the effects of NEXT's direct greenhouse gas emissions, or the project's broader impact on regional or U.S. greenhouse gas emissions, is both legally and morally inexcusable.

The direct and indirect greenhouse gas emissions from NEXT's project would impose over $20 billion dollars of economic and social harm each year,[86] based on a social cost of carbon analysis contained in Appendix 3F of the DEIS. These represent unmitigated costs that NEXT would externalize onto communities and ecosystems across the region and the globe. Columbia Riverkeeper generally supports the use of social cost of carbon analyses to help describe and contextualize the harm caused by greenhouse gas pollution. However, the inclusion of a social cost of carbon analysis—deep in the appendices of the DEIS—is seemingly arbitrary and irreconcilable with the Corps' stated refusal to examine the effects of NEXT's greenhouse gas pollution[87] and the Corps' incorrect claim that "the social cost of carbon was not calculated[,] consistent with Executive Order 14154."[88] The social cost of NEXT's direct and indirect greenhouse gas emissions *was* calculated; the Corps should explain why this social cost of carbon analysis was included in the supporting documents but never discussed (and expressly disavowed) in the DEIS' narrative section.

Adding to this confusion, the social cost of carbon analysis produced by LJA Environmental Services (LJA) contains critical incorrect assumptions.[89] Most consequential to the analysis' overall conclusion is JPA's overly simplistic, completely unsubstantiated, and incorrect assumption that any fuel that NEXT produces would displace conventional petroleum-based fuel use on a one-to-one basis.[90] This assumption is arbitrary, capricious, and not supported by any facts in the record. The only hint of a justification for this incorrect assumption is a vague reference (in a document that is cited in, but not attached to, the DEIS) to the "inelasticity of the marketplace and Oregon Clean Fuel Program requirements."[91] The DEIS does not explain why the Oregon Clean Fuel Program or similar renewable fuel standards—which incentivise increased use of lower-carbon fuels *but do not constrain the overall amount of fuel used* in the market or beyond it—would cause one-to-one replacement of petroleum based fuels (even if all of NEXT's fuel were eligible for these programs, which it would not be). The assertion about the "inelasticity" of demand is untethered from the economic principle that increasing

[86] DEIS, Appendix 3F at 5 ("When both direct and indirect emissions are considered, the total net social cost is $20,129 million.").
[87] DEIS at 3-23 ("The analysis does not quantify or attribute global climate effects—which occur on geographic and temporal scales outside the jurisdiction and control of the USACE—to project emissions.").
[88] DEIS at 3-25.
[89] Similar to other sections of the DEIS, LJA's analysis undercounts NEXT's direct and indirect emissions by uncritically using NEXT's "anticipated" feedstock types and amounts, as well as incorrectly assuming that "[t]here are no upstream emissions because the facility uses waste products that would already be produced."
[90] *See* DEIS, Appendix 3F at 5 ("The gross social cost is negative (-$59,851 .29 million), primarily due to the offset of low carbon fuel produced during the operation of the facility, which reduces the overall emissions cost.").
[91] Maul Foster & Alongi, Inc., *Technical Memorandum - Data Gap Request for Additional Information—Air Quality, Greenhouse Gas, and Climate Change Responses Table C-2 - Facility Operation—Vehicle Input Assumptions and Parameters*, Table B-1 (Aug. 4, 2023).

the supply of a good usually results in cheapening of, and increased demand for, that good.[92] Fuel is a market with relatively elastic demand; for example, when crude oil production spikes and gasoline prices at the pump fall,[93] drivers respond, in part, by buying more gasoline.[94] NEXT plans to sell its fuel into this market. It would be arbitrary to accept NEXT's self-serving and unsubstantiated premise that NEXT's fuel will be exclusively used *instead of* petroleum-based fuel. More likely, it would be used *in addition* to that fuel, at least in part. As such, relying on NEXT's ability to "offset"[95] greenhouse gas emissions from petroleum based fuels on a one-to-one basis would be arbitrary and illegal, whether in the context of the NEPA analysis or the Section 404 public interest determination.

e. The DEIS fails to take a hard look at impacts to water resources, salmon, and other aquatic species.

Columbia Riverkeeper provides, as an exhibit to these comments, an expert report on how NEXT's proposed facility would likely degrade water quality and fisheries resources at Port Westward and in the Lower Columbia.[96] This report, prepared by a fisheries expert with over 20 years of experience working for NMFS on salmon recovery issues in the Columbia River, explains why this DEIS does not constitute the hard look that NEPA requires. Overall, the report expresses a high level of concern about NEXT's impacts on Endangered Species Act-listed fish: "This is a large industrial project in a part of the lower Columbia where listed fish already face heavy stress from habitat alteration, vessel traffic, degraded water quality, and cumulative industrial development, and the project adds to several of those same pressures at once."[97] The report identifies many specific deficiencies with the DEIS' analytical approach, but its overall conclusion is that the DEIS identifies the main pathways through which NEXT's proposal will harm salmon and water quality, "but it does not yet analyze them with enough specificity, transparency, or internal consistency" to justify several of its conclusions about the severity of those harms.[98] This does not satisfy NEPA's hard look standard.

f. The DEIS fails to take a hard look at NEXT's impacts on air quality.

The air quality analysis in the DEIS fails to satisfy NEPA's "hard look" requirement. The air quality analysis—both within the DEIS' narrative and the appendices—is legally deficient because it ignores major project changes, relies on artificially truncated and constrained assumptions, improperly uses regulatory compliance as substitute for NEPA compliance, and fails to meaningfully evaluate the

[92] *See* The Balance, *Elastic Demand with Its Formula, Curve, and Examples* (Aug. 13, 2018), https://www.thebalance.com/elastic-demand-definition-formula-curve-examples-3305836.
[93] *See* The Balance, *How Crude Oil Prices Affect Gas Prices* (Oct. 29, 2018), https://www.thebalance.com/how-crude-oil-prices-affect-gas-prices-3306230 .
[94] *See* New York Times, *When Gas Becomes Cheaper, Americans Buy More Expensive Gas* (Oct. 19, 2015), https://www.nytimes.com/2015/10/20/upshot/when-gas-becomes-cheaper-americans-buy-more-expensive-gas.html.
[95] DEIS, Appendix 3F at 5.
[96] Exhibit 7, Gary Rule, *Comments on the NEXT Renewable Fuels Draft Environmental Impact Statement: Alternative 1* (Apr. 8, 2026).
[97] *Id.* at 1.
[98] *Id.* at 1, 2.

real-world exposure, cumulative impacts, and community-level harms that are reasonably likely to result from the project. Taken together, these discrepancies prevent informed decision-making and public participation. The DEIS must be revised and or supplemented to cure these failures.

i. The DEIS fails to account for air quality impacts from major changes to the project plan.

NEXT received its air quality permit from the Oregon Department of Environmental Quality four years ago, in 2022. Since then, NEXT's plans have shifted in ways that will significantly affect the project's air emissions, but have not been addressed through changes to the air permit or Section 404 application. These changes include the refining equipment and technology that NEXT plans to use and the amount of jet fuel NEXT intends to produce. Both of these changes result in a different emissions outlook for the project. By relying on NEXT's air quality permit—and not considering project updates since then—the DEIS fails to take a hard look at NEXT's air quality impacts.

In November 2025, NEXT announced that it will work with Topsoe, a technology licensor, to provide specific refining technology and equipment for the project.[99] The trademarked technologies[100] listed in the press release are different from the technologies and processes described and analyzed in the DEIS and supporting documentation. The DEIS analyzes equipment associated with NEXT's original plans to use Honeywell UOP refining technology, the Ecofining™ process.[101] Topsoe and Honeywell UOP are competitors. The equipment and technology used at the facility will affect NEXT's emissions, waste management, and risks associated with the hydrogen plant. NEXT's choice to use different technology and process equipment should be disclosed in the DEIS, and the implications of that change analyzed.

NEXT has also changed the ratios of renewable diesel and sustainable aviation fuel (SAF) it intends to produce. In its air permit application, NEXT put forth two possible "production scenarios": (1) a "Maximum Diesel" scenario and (2) a "Maximum Jet Fuel" scenario. In the Maximum Diesel scenario, NEXT would produce 49,469 barrels/day (bbl/day) of renewable diesel fuel, 974 bbl/day of naphtha, and 0 bbl/day of SAF. In the Maximum Jet Fuel scenario, NEXT would produce 38,733 bbl/day of diesel fuel, 2,370 bbl/day of naphtha, and 8,443 bbl/day of SAF. Thus, the Maximum Jet Fuel scenario involved about 17% of the NEXT Refinery's output (by volume) being SAF.

As NEXT explained in its permit application, "[t]he maximum renewable jet fuel and naphtha production scenario represents the highest potential VOC and TAC emissions scenario (primarily due

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[99] Topsoe, *Topsoe chosen as technology partner for largest greenfield sustainable aviation fuel and renewable diesel project in the U.S.* (Nov. 6, 2025), https://www.topsoe.com/news/topsoe-chosen-as-technology-partner-for-largest-greenfield-sustainable-aviation-fuel-and-renewable-diesel-project-in-the-u.s.

[100] "NXTClean Fuels will utilize Topsoe's HydroFlex™, SynCOR™ and H2bridge™ technologies and catalyst to produce up to 50,000 barrels per day of renewable diesel and SAF." *Id.*

[101] DEIS at 2-12 to 2-14.

to use of the jet fractionator)."[102] Accordingly, NEXT based its potential-to-emit calculations on the Maximum Jet Fuel scenario.[103] The DEIS relies on these calculations and NEXT's compliance with its air permit to make conclusions about the project's air impacts.

In fall 2025, NEXT CEO Chris Efird gave a talk at the Advanced Biochemistry Leadership Conference during which he stated that the NEXT Refinery would produce 45,000 bbl/day of fuel, with a mix of "65% SAF [and] 35% renewable diesel."[104] A slide shown by Efird during the presentation similarly stated that the NEXT Refinery would produce 360 million gallons of SAF annually as compared to 180 million gallons of renewable diesel.[105] This represents a dramatic change from the Maximum Jet Fuel scenario underlying the NEXT air permit, would likely result in a substantial increase in VOC emissions, and is not accounted for in the DEIS.

The DEIS improperly relies[106] on the air permit and omits information about NEXT's intent to operate differently than it planned in 2021. In doing so, the DEIS concludes that NEXT "would result in minor long-term impacts to air quality."[107] This conclusion is undermined by a failure to take a hard look at NEXT's air impacts, given the known changes to the project.

ii. The DEIS impermissibly limits the geographic scope of the analysis.

The DEIS defines the air quality study area as extending only 1,500 meters from the facility boundary based on near-field dispersion modeling conventions. This artificially narrow boundary excludes reasonably foreseeable impacts from mobile sources associated with NEXT, including truck, rail, and marine vessel emissions. At the same time, the DEIS acknowledges that operational emissions will occur along transportation corridors and will contribute—in some undefined way—to regional pollutant burdens.[108] Those corridor-based impacts are not meaningfully analyzed or quantified.

NEXT will generate substantial emissions from trucks, rail, and marine vessels—sources that are often dominant contributors to localized air pollution and diesel particulate matter exposure. Despite this, the DEIS treats mobile source emissions as diffuse and somehow less significant. The DEIS also fails to conduct any meaningful corridor-level or hotspot analysis that could impart analysis on where diesel pollution is likely to be concentrated throughout the overall production and supply chain, and it does not even attempt to quantify the diesel particulate matter exposure borne on affected communities. Similarly, treatment of mobile sources in Appendix 3D is oversimplified. The data relies

[102] NEXT Standard ACDP Application (Revision 2) at 5.
[103] *Id.*
[104] Chris Efird, CEO, NXTClean Fuels, ABLC NEXT 2025, at 2:00–2:13, *available at* https://vimeo.com/1137953020?fl=pl&fe=sh.
[105] The Digest, *The Digest's 2025 Multi-Slide Guide to NXTClean Fuels* https://www.biofuelsdigest.com/bdigest/the-digests-2025-multi-slide-guide-to-nxtclean-fuels/2/.
[106] "The permit details the throughput levels, maintenance, control equipment, inspections, and recordkeeping the facility would undertake to maintain compliance with applicable air quality standards." DEIS at 3-26.
[107] *Id.*
[108] DEIS at 4-11.

on aggregate emissions factors and trip-based calculations to estimate emissions from on-road vehicles. This approach does not account for various route-specific conditions; it ignores the likelihood for idling, congestion and queuing effects along the transit path, and it fails to model localized concentrations along transit corridors. This approach systematically underestimates impacts and ignores well-established evidence that transportation-related emissions create localized pollution burdens, particularly in frontline communities subject to existing industrial activity.

Additionally, by arbitrarily limiting the study area to 1,500 meters, the DEIS turns a blind eye to the proposed activity's interaction with existing sources of pollution within the airshed. This airshed—while in compliance with National Ambient Air Quality Standards—has other sources of air pollution that must be properly identified and then accounted for when analyzing how the construction and operation of the facility will contribute to and interact with existing sources of air pollution. By truncating the study area, the DEIS fails to account for these existing sources and thus, fails to provide a proper baseline and cumulative impacts analysis. In order to comply with NEPA, the facility must critically analyze how the NEXT's anticipated air pollutants will interact with existing sources and reasonably foreseeable future sources within the airshed.

iii. The DEIS improperly conflates regulatory compliance and NEPA compliance.

The DEIS repeatedly concludes that air quality impacts will be acceptable because emissions will comply with applicable permits and remain below National Ambient Air Quality Standards. However, NEPA requires an independent evaluation of environmental consequences; compliance with the Clean Air Act is a separate statutory obligation that does not obviate the project's need to comply with NEPA. The Clean Air Act does not require applicants to fully contemplate and analyze the impacts of their projected emissions, as it has a fundamentally different statutory purpose.

In multiple places, DEIS defers to NEXT's air permit rather than conducting its own substantive analysis on the actual impacts associated with those permitted emissions. The DEIS assumes that emissions that are below regulatory thresholds are inherently insignificant and benign, all while failing to provide any meaningful evaluation of localized exposure and cumulative burdens from existing sources in the airshed. Courts have routinely found that NEPA's obligations are separate and distinct from that of other regulatory compliance statutes and therefore projects may not simply rely on compliance with other statutory frameworks to satisfy NEPA obligations.[109] This is especially true in the absence of analysis of any environmental consequences associated with these projected emissions,

[109] *San Luis & Delta-Mondota Water Authority v. Jewell,* 747 F.3d 581 (2014) (NEPA's procedural requirements are independent of and supplement an agency's other statutory obligations); *see also, Prutehi Litekyan: Save Ritidian v. United States Department of Airforce,* 128 F.4th 1089, 1115–1119 (noting that NEPA and the Resource Conservation and Recovery Act (RCRA) are "entirely distinct" and compliance with RCRA does not obviate the need for NEPA compliance because NEPA requires a fundamentally different procedural mechanism that takes a hard look at environmental consequences, while RCRA contains no such in-depth analysis of alternatives or impacts).

regardless of permissibility under the Clean Air Act.[110] The DEIS must assess actual impacts borne by the airshed—not merely assert that other regulatory obligations will address them.

1. Cumulative Impacts

Although the DEIS labels cumulative air impacts as "moderate," it provides little quantitative or analytical support for that conclusion, nor conceptualizes what "moderate" air quality impacts actually mean for people and environmental receptors at Port Westward or the surrounding region. The DEIS vaguely gestures to contributions from existing industrial sources, acknowledges that there will be exposure to criteria pollutants and hazardous air pollutants (HAPs), and these impacts could result in short-term and long-term health effects. However, the DEIS fails to conduct robust cumulative modeling that combines project emissions with background levels and reasonably foreseeable future actions. For example, the DEIS does not provide:

- Combined emissions inventories for co-located facilities, including the Columbia-Pacific Bio Refinery and Portland General Electric.

- Meaningful evaluation of health risks associated with HAPs, including: quantified cancer risk, assessment of impacts from chronic exposure, evaluation of cumulative toxic burdens.

- Cumulative regional impacts from smog-forming contaminants, especially near population and industrial centers.

- Cumulative health impacts from particulate matter and VOCs, especially near already overburdened communities and transportation corridors.

- Site emissions, including VOCs, which contribute to regional ozone formation and can affect crop health and agricultural productivity.

The DEIS fails to explain the methodology and reasoning behind the designation of "moderate" impacts, and fails to evaluate the additive effects of this project to the existing conditions within the airshed. A conclusory significance label without a transparent, meaningful, analytical foundation does not satisfy NEPA's hard look requirement, which requires reasoned explanations.

[110] *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.,* 538 F.2d 1172, 1216 (9th Cir. 2008) (determining that a NEPA Environmental Assessment was inadequate: while it quantified expected carbon emissions that may result from a rulemaking, it "did not discuss *actual* environmental effects resulting from those emissions."); *See also, Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.,* 387 F.3d 989, 995 (9th Cir. 2004) (determining that BLM's cumulative impacts analysis was inadequate because a mere calculation of acres to be harvested may be a necessary component to a cumulative effects analysis, but is not a sufficient account of the actual environmental effects to be expected from logging those sources).

2. Impacts to Sensitive Populations and Frontline Communities

Absent a cumulative impacts analysis and an appropriately broad geographic study area, the DEIS fails to consider whether the alternatives will exacerbate respiratory conditions and affect sensitive populations in affected areas. The DEIS does not attempt to identify specific sensitive receptors like schools, residences, community buildings, or the presence of vulnerable populations. In turn, the DEIS fails to evaluate disproportionate impacts that would be borne by these communities and how those impacts would be compounded by existing industrial activity. For example, there is no analysis of air quality impacts to residents and visitors at the Great Vow Zen Monastery, located within the study area, but not analyzed in the DEIS. NEPA requires that projects assess what and who is affected—not merely conclude that there will be negligible impacts because other, separate regulatory thresholds are not expected to be exceeded. The total absence of receptor-based analysis is a critical deficiency that must be remedied.

3. Impacts from Hazardous Air Pollutants

The U.S. biofuels industry has expanded rapidly in recent decades. Growth in the sector includes renewable diesel, biodiesel, and a newer generation of fuels like SAF and renewable naphtha. While emissions profiles of biofuel facilities tend to focus on greenhouse gases, these facilities also emit substantial amounts of HAPs, along with smog-forming VOCs. The Environmental Integrity Project's analysis of permit documents for recent and proposed biofuel facilities shows an increase in HAP emissions by up to 139 tons per year.[111] VOC emissions from the sector could grow up to 1,421 tons per year, along with millions of tons per year of greenhouse gases.[112] These emission estimates are conservative—including only 27 projects for which permit documents are available. In 2022, 226 biofuels plants in the United States reported emitting 12.9 million pounds of HAPs.[113]

Biofuels plants reported significantly greater rates of HAP emissions—including acetaldehyde, acrolein, formaldehyde, and hexane—than their petroleum refinery counterparts.[114] Acetaldehyde is considered a probable human carcinogen.[115] Short-term exposure to acetaldehyde can result in irritation of the eyes, skin, and respiratory tract.[116] Higher-level exposure can cause erythema, coughing, pulmonary edema, and necrosis. Acrolein can cause weakness, nausea, vomiting, diarrhea, severe respiratory and eye irritation, shortness of breath, bronchitis, pulmonary oedema, unconsciousness, and death have been documented upon accidental exposure.[117] Long-term exposure

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[111] Exhibit 19, Environmental Integrity Project, *Farm to Fumes: Hazardous Air Pollution from Biofuel Production* at 12 (June 12, 2024).
[112] *Id.*
[113] *Id.* at 14.
[114] *Id.*
[115] EPA, *Acetaldehyde,* January 2000, available at https://www.epa.gov/sites/default/files/2016-09/documents/acetaldehyde.pdf
[116] *Id.*
[117] EPA, *Acrolein,* September 2009, available at https://www.epa.gov/sites/default/files/2016-08/documents/acrolein.pdf

effects include general respiratory congestion, as well as irritation of the eyes, nose, and throat.[118] Formaldehyde has been found to pose an unreasonable risk to human health, can cause sensory irritation, lung damage, can increase asthma and allergy-related conditions, and cause cancer.[119] And hexane—which is heavily involved in the production of most biofuels—can cause mild central nervous system effects like dizziness, headache, and nausea; chronic exposure can cause polyneuropathy, numbness in extremities, muscular weakness, blurred vision, headache and fatigue.[120]

These pollutants are mentioned in DEIS' the odor studies,[121] but are not addressed in any of the narrative discussions in the DEIS, nor are they contemplated outside of the odor indexes of the appendices. While emissions of these pollutants can vary according to feedstock inputs and refining processes, they are often present in production of renewable diesel, renewable naphtha, and SAF. For example, biodiesel plants reported emitting over 2,000 percent more hexane than petroleum refineries on a per plant basis, and reported emitting nearly 4,000 pounds of acrolein on average in 2022.[122] Biofuels manufacturing plants released more than 10.4 million pounds of HAPs in 2022 alone, all while releasing comparable amounts of other pollutants, such as benzene, to their petroleum producing counterparts.[123] Yet none of the DEIS documents address these potential emissions, much less analyze how they will impact the surrounding environment and communities.

iv. Appendix 3D is not an adequate air quality impacts analysis.

Appendix 3D offers an emissions inventory report that compiles estimated emissions and modeling inputs. While such an inventory is a good start, it is not itself an evaluation of environmental impacts. Appendix 3D quantifies emissions but fails to translate those profiles into pollutant concentrations, exposures, or health risks. The technical data included in the emissions profiles is not accompanied by any meaningful narrative analysis that explains impacts associated with NEXT's emissions.

As a practical matter, the data in Appendix 3D appears to be heavily reliant on selected, unsubstantiated assumptions regarding operating scenarios, various emissions factors, and construction and operational parameters. However, there is no justification for these assumptions, and the assumptions are notably missing a number of environmental and operational scenarios that could result in different emissions profiles.[124] Reliance on unsupported and unsubstantiated assumptions ultimately

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[118] *Id.*
[119] EPA, *Risk Evaluation for Formaldehyde,* available at https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-formaldehyde
[120] EPA, *Hexane,* September 2009, available at https://www.epa.gov/sites/default/files/2016-09/documents/hexane.pdf
[121] *See e.g.,* DEIS, Appendix 3G, *MFA Odor Study of NEXT Renewable Fuels Oregon, LLC*, Table 1 (Conducting Odor Detection studies for a number of "toxic air contaminants (compound quantified in DEQ-approved emissions inventory)" for acetaldehyde and toluene, for example).
[122] Exhibit 19 at 14.
[123] *Id.* at 15.
[124] For example, the emissions inventory appears to rely on selected "representative" operating scenarios but does not articulate if those scenarios capture peak emissions, startup and shutdown events, or reasonably foreseeable upset conditions (i.e. equipment failure). This omission is significant given that peak emissions or upset events could result in short duration releases that result in acute exposure risks. Given the likelihood of such events, it is imperative that the DEIS

undermines the reliability of the data itself. Appendix 3D presents a series of conclusory charts—with no narrative or contextual analysis. The NEPA analysis must account for operational and environmental conditions and uncertainties, and provide integrated, intelligible analysis that links emissions to environmental and public health consequences.

Similarly, Appendix 3D does not support its significance determinations. The DEIS concludes that construction air quality impacts will be "minor" and that operational impacts will be "moderate." However, the DEIS contains no clear framework or methodology to substantiate those determinations. The DEIS contains no explanation of how the intensity, duration, or exposure of the purported emissions translates into these "minor" and "moderate" classifications. There is no explanation regarding what thresholds or criteria were even applied to reach these designations, nor is there any supporting discussion to explain how these conclusions relate to health-based benchmarks of exposure. These unsupported, conclusory significance determinations do not satisfy NEPA's obligation to provide reasoned analysis.

v. The DEIS' treatment of air quality impacts lacks transparency.

The DEIS' presentation of NEXT's air emissions in Appendix 3D is technical, includes no narrative basis to substantiate the modeling methodology, and appears to embed critical modeling assumptions within tables and supporting materials. This treatment, coupled with the lack of overall analysis, makes the project's air quality impacts completely inaccessible to the public. NEPA's core purpose is to allow decision makers and the public to understand the environmental impacts of a proposal. By relegating key information to highly technical appendices that lack clear explanation and analysis, the DEIS essentially prevents public scrutiny, or even understanding, of the proposals' air quality impacts.

The DEIS' air quality analysis does not comply with NEPA. It fails to incorporate major project changes, relies on an artificially constrained geographic scope, substitutes regulatory compliance for analysis, and fails to translate emissions into meaningful evaluations of associated exposure, risk, and cumulative impacts. Appendix 3D underscores these deficiencies, providing a conclusory emissions inventory that lacks a corresponding assessment or explanation of real-world impacts. Because these shortcomings prevent a full and fair understanding of NEXT's environmental and public health impacts, the DEIS does not satisfy NEPA's "hard look" requirement. The Corps must revise the analysis and provide a comprehensive, transparent, and scientifically substantiated evaluation of air quality impacts. This must include a robust cumulative impacts analysis, modeling that explores foreseeable impacts along all process and transportation corridors, and an assessment of impacts to affected communities.

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explains the "representative" operating scenarios and explores other reasonably foreseeable scenarios that may result in different emissions profiles.

g. The DEIS fails to take a hard look at the impacts of the massive amount of solid waste that NEXT will generate

According to the DEIS, NEXT will generate nearly *100,000 tons* of solid waste each year.[125] This is a massive amount. By comparison, Columbia County *as a whole* generated just under 33,000 tons of post-consumer waste in 2022.[126] Where will this waste go? Can local landfills handle this much waste? Will this be a burden? The DEIS does not say. Because of the Corps' broad "public interest" test for 404 permits, the environmental impacts of this solid waste are relevant to the Corps' decision and must be considered under NEPA.

III. NEXT's project violates the Clean Water Act Section 404 Guidelines.

The EIS' description and analysis of NEXT's project will inform the Corps' decision about whether to issue NEXT a permit under Section 404 of the Clean Water Act. Section 404 requires a permit from the Corps before dredged or fill material may be discharged into waters of the United States, including the wetlands where NEXT has proposed to build a refinery. The Section 404 Guidelines that govern the Corps' permitting decision recognize that "the degradation or destruction of special aquatic sites, *such as filling operations in wetlands*, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources."[127] Under the Section 404 Guidelines, the Corps may not issue a Section 404 permit for a project if a practicable alternative exists that is less damaging to the aquatic environment.[128] In addition, the Corps may not issue a permit if the proposed project "will cause or contribute to significant degradation of the waters of the United States."[129] The Corps also may not issue a permit "unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem."[130] As explained below, information contained in the DEIS and elsewhere shows that NEXT's proposal does not meet these criteria. Therefore, the Corps should deny NEXT's Section 404 permit application.

a. NEXT's proposed project is not water dependent within the meaning of the Section 404 Guidelines.

Columbia Riverkeeper strongly supports the Corps' conclusion that NEXT's project is not water dependent.[131] As the DEIS correctly notes, nothing about NEXT's proposal to construct a rail

[125] DEIS at 2-16.
[126] 2022 Oregon Material Recovery and Waste Generation Rates Report at Table 3, *available at*, https://www.oregon.gov/deq/recycling/Documents/2022MRWGRatesReport.pdf
[127] 40 C.F.R. § 230.1(d) (emphasis added).
[128] 40 C.F.R. § 230.10(a).
[129] *Id.* § 230.10(c).
[130] *Id.* § 230.10(d).
[131] *See* DEIS at 1-4.

yard and fuel refinery requires siting in or near wetlands.[132] NEXT's assertion that other companies will move some portion of NEXT's raw materials and finished product in vessels does not alter this conclusion. NEXT's feedstocks and finished products could just as easily be piped (or moved by rail) to and from vessel berths (or directly to customers) if the refinery were built in uplands rather than wetlands. For example, several renewable diesel refineries in the United States are located or proposed in landlocked places such as North Dakota, Kansas, Wyoming, Nevada, and New Mexico.[133] Columbia Riverkeeper supports the Corps' determination on water dependence, as well as the presumption that it creates when addressing compliance with the Section 404 Guidelines: That "practicable alternatives that do not involve special aquatic sites are available and such alternatives are less damaging to the aquatic ecosystem, unless clearly demonstrated otherwise."[134]

b. The alternatives analysis relies on arbitrary screening criteria and fails to demonstrate that NEXT's proposal is the least environmentally damaging practicable alternative.

The alternatives analysis for this refinery, which was initiated by NEXT and carried forward in the DEIS, is illegally skewed to justify NEXT's preconceived proposal. The heart of the 404 Guidelines is an alternatives analysis designed to identify the least environmentally damaging practicable alternative.[135] "The Guidelines have been written to provide an added degree of discouragement for non-water dependent activities proposed to be located in a special aquatic site,"[136] such as NEXT's proposal to build a refinery in a wetland. The evaluation of alternatives must be "thorough and objective" and not be contrived "to support a pre-determined outcome" or "designed to justify an applicant's preconceived proposal."[137] While the complexity of alternatives analyses required by the 404 Guidelines vary depending on the size, nature, and impact of the proposal,[138] NEXT's plan to build the second largest renewable diesel refinery in America, and fill an "enormous"[139] amount of wetlands in the process, deserves a searching, thorough, and well-resourced review of alternatives to ensure that NEXT's Port Westward proposal is, in fact, the least environmentally damaging practicable way to build a refinery of this kind. Instead, the DEIS parrots NEXT's illogical list of project screening criteria and presents three nearly identical "alternative" sites designed to support NEXT's pre-conceived project. Because (as explained below) the alternatives

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[132] *See also* Exhibit 6, *Comments submitted by EPA in response to the U.S. Army Corps of Engineers Public Notice NWP-2020-383*, p. 4 (2021) ("the project purpose does not appear to be water-dependent; therefore, alternative sites (i.e., uplands) are presumed to be available, unless clearly demonstrated otherwise by the applicant.").
[133] *See* Tom Byron, Biodiesel Magazine, *Renewable Diesel's Rising Tide* (Jan. 12, 2021), https://biodieselmagazine.com/articles/renewable-diesels-rising-tide-2517318.
[134] DEIS at 1-4.
[135] *See* 40 C.F.R. § 230.10(a)(1)–(4).
[136] Corps Portland District, *Alternatives Analysis Framework* at 1 (2020).
[137] Corps Portland District, Alternatives Analysis Framework at 2 (2020).
[138] EPA, *Memorandum: Appropriate Level of Analysis Required for Evaluating Compliance with the CWA Section 404(b)(1) Guidelines Alternatives Requirements* (Mar. 10, 2026), https://www.epa.gov/cwa-404/memorandum-appropriate-level-analysis-required-evaluating-compliance-cwa-section-404b1#:~:text=The%20purpose%20of%20this%20memorandum,waters%20of%20the%20United%20States.
[139] *See* Footnote 178, infra (referencing Exhibit 9, Wetland Report at 1.)

analysis is arbitrary and illegally eliminates practicable alternatives, NEXT has not met its burden[140] to overcome the presumption that (1) practicable alternatives that do not involve special aquatic sites are available, and therefore (2) they have less adverse impact on the aquatic ecosystem.

Adding to the substantive problems with the DEIS' alternatives analysis is a lack of supporting documentation from NEXT. Typically, an applicant for a 404 permit submits an "Alternatives Analysis" that informs and serves as the basis for Corps' determination on whether the proposed alternative is the least environmentally damaging practicable alternative (as well as the NEPA alternatives analysis). Various versions of NEXT's 404 permit application to the Corps did contain an alternative analysis,[141] but the version of NEXT's application that the Corps provided to the public in the DEIS did not include the alternatives analysis created by NEXT. **Even though redacting this document was a tacit admission that NEXT's alternative analysis violates the 404 Guidelines, the Corps' DEIS carried forward many of the flawed and illegal assumptions in NEXT's alternatives analysis—and the public is at a loss to understand or respond because the Corps withheld NEXT's rationale.** Columbia Riverkeeper has included, as Exhibit 8 to these comments, an alternatives analysis that NEXT submitted with an earlier version of NEXT's 404 permit application.[142] But it is not clear if this alternatives analysis was updated when NEXT submitted the version of the 404 application that is included in the DEIS, or even if the version of the 404 application included in DEIS is the most current version of NEXT's 404 application. The Corps did not respond to Columbia Riverkeeper's attempts to clarify these issues during the comment period.

i. Limiting the search for suitable refinery sites to the West Coast is arbitrary and capricious.

Neither the DEIS nor the 2022 Alternatives Analysis submitted by NEXT contains a rational, factually supported explanation for limiting the search for alternate refinery sites to the West Coast. An important part of identifying a reasonable range of practicable alternatives, as required by Section 404 and NEPA, is "determin[ing] the geographic area to be considered."[143] The existence of renewable diesel and similar refineries throughout North America (and beyond) that currently serve California and other West Coast renewable fuels markets—coupled with a complete lack of transparency or commitment about where NEXT's feedstock may come from—demonstrate that a renewable diesel facility of the size NEXT proposes does not need to be located on the West Coast. Limiting the

[140] EPA, *Memorandum: Appropriate Level of Analysis Required for Evaluating Compliance with the CWA Section 404(b)(1) Guidelines Alternatives Requirements* (Mar. 10, 2026) ("The burden of proof to demonstrate compliance with the Guidelines rests with the applicant; where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued. 40 CFR 230.12(a)(3)(iv).").
[141] DEIS, Vol 2, Appendix 1A at 25–27 (NEXT's 404 application summarizes the alternatives analyzed and the screening criteria used, and references "The complete analysis … in Appendix G, "Alternatives Analysis for the NEXT Renewable Fuels Oregon Project.'").
[142] Exhibit 8, NEXT, *Alternatives Analysis for NEXT Renewable Fuels Oregon* (2022) (hereinafter "NEXT Alternatives Analysis").
[143] Corps Portland District, *Alternatives Analysis Framework* at 2–3 (2020) (also explaining that "[th]e geographic area should be specifically stated in the overall project purpose.").

geographic area under review to the West Coast was arbitrary and capricious, and had the effect of illegally narrowing the search for practicable alternatives.

The concentration of demand for renewable diesel in California does not mean that NEXT's refinery is only practicable if located close(ish) to California customers. Part of the DEIS' (largely implicit) rationale for defining the geographic area as the West Coast is that NEXT's most likely customer base is also on the West Coast.[144] NEXT correctly notes that "Almost every gallon of renewable diesel produced in the U.S. is sent to California"[145] (and, to a far lesser extent, other West Coast states and provinces). However, **most of the renewable diesel consumed in California is not refined on the West Coast**, or even in North America.[146] As explained in detail in the Feedstock Report, as of January 2024, 3,070 of America's 4,320 million gallons per year of renewable diesel refining capacity (roughly 71%) was located outside the West Coast—primarily in the Gulf, but also in the Rocky Mountains and Midwest.[147] Two of the three largest renewable diesel refineries in North America (of a similar scale to NEXT's proposal) are also located outside the West Coast in Norco, Louisiana, and Port Arthur, Texas.[148] All of those refineries are successfully selling almost all of their product to California, which clearly demonstrates that NEXT's prospective customer base in California does not limit its choice of refinery sites to the West Coast. Accordingly, limiting the geographic area under review to the West Coast was arbitrary and capricious.

Recent and foreseeable changes in key West Coast renewable fuels standards further undermine NEXT's purported need to locate on the West Coast. Even assuming that a renewable diesel refinery needs to be located in the same geographic region as its customers (which it does not), the recent tightening of California and Portland's renewable fuel standards would likely limit NEXT's access to, and profitability in, these markets. This further undermines the DEIS' conclusion that NEXT's refinery needs to be located close to these customer bases. As detailed in Section II.a.ii, above, and the Feedstock Report, more than half of NEXT's feedstock is likely to come initially from purpose-grown seed oils, with CI values of 52–65 gCO2e/MJ.[149] However, Portland (which represents a significant portion of Oregon's market) recently imposed a policy requiring all renewable diesel sold in the city to have a CI below 40 gCO2e/MJ—effectively excluding a large portion of NEXT's product from this market. Similarly, California recently limited its LCFS credit eligibility to 20% of a company's annual production of renewable diesel made from soybean, canola, and sunflower oil feedstocks—this could mean that perhaps 40% of NEXT's fuel would be ineligible for California's

[144] DEIS at 2-1 ("The geographic area considered for this project was along the west coast of North America, from British Columbia to Mexico, including the states of Washington, Oregon, and California. Access to navigable waters for waterborne transportation is essential for the project since the primary sources of feedstock supplies are located in South America and East Asia and recognizable renewable US fuel markets are currently located in California, Oregon, and Washington. West coast locations in North America with suitable access to water transportation were determined to be reasonable.")
[145] NEXT Alternatives Analysis at 8.
[146] NEXT Alternatives Analysis at 8 ("California also imports renewable diesel from Singapore.").
[147] Feedstock Report at 9–10.
[148] Feedstock Report at 9.
[149] Feedstock Report at 65.

lucrative LCFS credit (which would significantly reduce or eliminate the economic viability of producing and selling this fuel in California). Similar restrictions could be enacted across the West Coast, as these states and provinces tend to follow California's regulatory lead. Accordingly, it is arbitrary and capricious to conclude that NEXT must be located on the West Coast when regional fuel standards appear to preclude the sale of significant amounts of NEXT's product in this region.

NEXT's speculative, shifting, and unsubstantiated claims about the geographic locations of its major feedstock supplies also do not provide a rational basis for limiting the project's geographic area to the West Coast. To the extent that the DEIS attempts to explain the choice to focus exclusively on West Coast sites, it asserts that NEXT's "primary sources of feedstock supplies are located in South America and East Asia."[150] Taken at face value, this unsubstantiated claim about feedstock supplies on two distant continents—with customers on a third continent—merely suggests that this facility could be located in many places across the globe. The reference to South American feedstocks actually counsels against a West Coast refinery location because the major sources and ports of departure for biofuels feedstocks are on the Atlantic coast of South America,[151] giving them better access to refinery sites in the Gulf of Mexico. Ultimately, however, NEXT's complete lack of clarity, purchase agreements, or firm commitments to any feedstock sources[152] makes it arbitrary for the DEIS to limit the project geography to the West Coast simply because NEXT hopes to someday purchase some of its feedstock from Asia. Actual research on biofuels feedstock availability shows that NEXT would struggle to find and purchase low-CI feedstocks, and therefore NEXT would almost certainly be forced to source its feedstocks from a wide variety of domestic and global sellers, depending on price, availability, and other factors that vary over time.[153] Because there is no evidence, beyond NEXT's bare assertions, that any significant or reliable portion of NEXT's feedstock will actually come from Asia (or South America), the Corps' reliance on these feedstock sources to justify a West Coast project location was arbitrary and capricious.

NEXT's proposal to build the second-largest renewable diesel refinery in the nation deserves a nationwide search for practicable, less harmful alternative sites. By arbitrarily constraining the choice of sites to the West Coast, the alternatives analysis ignored many potentially practicable refinery sites throughout the country. Coupled with the presumption that (because of the non-water dependent nature of NEXT's proposal and its location in a special aquatic site) practicable alternatives exist that have less impact to the waterers of the United States, arbitrarily limiting of the geographic area under consideration means that NEXT has failed to demonstrate that its proposed location is the least

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[150] DEIS at 2-1.
[151] *See* Americas Market Intelligence, *The Winning Feedstocks for Renewable Fuels in Latin America: A Race Against Time* (Sept. 7, 2023), https://americasmi.com/insights/the-winning-feedstocks-for-renewable-fuels-in-latin-america-a-race-against-time/.
[152] SEC Filing at 60.
[153] Feedstock Report at 1 ("Tariffs on imported feedstocks may add further complexity by affecting both availability and cost. In the absence of binding, long-term feedstock contracts, NXT may need to rely more heavily on spot market purchases, scale back production, or invest in additional feedstock storage—each of which could introduce financial and operational uncertainty.").

environmentally damaging alternative. The Corps must therefore either deny the Section 404 permit or require NEXT to perform a geographically broader search for practicable alternative sites.[154]

ii. Limiting the search for practicable alternatives to sites in direct proximity to two deep-water berths was arbitrary and capricious.

NEXT's proposed refinery could use rail and/or pipelines to bring in feedstock and send out product; it would not require direct proximity to a deepwater port (let alone two Panamax-class vessel berths). The DEIS' decision to use these parameters as screening criteria[155] was arbitrary and capricious, and illegally excluded practicable alternatives from consideration. Currently, at least half a dozen renewable diesel refineries exist in the Midwest and Rocky Mountain regions that are not associated with deepwater ports, and therefore necessarily served by rail and pipelines.[156] These refineries are obviously capable of delivering their product to West Coast customers by rail, so it would be practicable for NEXT to do the same. Indeed, Global Partners' facility at Port Westward—which exclusively receives and transloads ethanol made in the Midwest from rail to ships—is a prime example of the practicability of refining biofuels in places that are not in direct proximity to deepwater ports. A renewable diesel refinery does not inherently require proximity to a deepwater berth, let alone two.

NEXT's large proposed refining capacity does not make it impracticable for the facility to be served exclusively by rail and/or pipeline. The various land-locked renewable diesel refineries in North America have production capacities significantly lower than NEXT's proposal; but so do nearly *all* the renewable diesel refineries in the United States, regardless of whether they are associated with a deep-water port.[157] Even at NEXT's proposed 50,000 barrel per day capacity (which, as explained below, is arbitrarily high), the entire volume of feedstock and product required to serve the facility on a daily basis would amount to less than one unit train entering and leaving the facility per day.[158] This is not an insignificant amount of rail traffic, but neither is it prohibitively or uniquely large in the context of bulk fuel handling and refining facilities.

NEXT's vague, unsubstantiated intentions to source feedstocks from overseas do not entitle NEXT to eliminate from consideration all alternative sites that are not directly adjacent to deepwater ports. NEXT's own submissions and the Feedstock Report both suggest that the majority of NEXT's feedstock will actually come from domestic sources such as soybean oil and distillers corn oil. Further, NEXT does not appear to have identified specific overseas feedstock vendors, let alone secured binding supply agreements with those vendors. The scarcity of low-CI feedstocks both domestically and internationally—compounded by the U.S. Treasury Department's 2025 guidance excluding

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[154] EPA, *Memorandum: Appropriate Level of Analysis Required for Evaluating Compliance with the CWA Section 404(b)(1) Guidelines Alternatives Requirements* (Mar. 10, 2026) ("where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued. 40 CFR 230.12(a)(3)(iv).").
[155] DEIS at 2-4.
[156] Feedstock Report at 9.
[157] Feedstock Report at 9.
[158] NEXT Alternatives Analysis at 81.

renewable diesel made from imported used cooking oil from eligibility for the Section 45Z Clean Fuel Production Tax Credit, as well as potential additional tariffs on imported feedstocks—makes it uncertain that NEXT will actually be able to economically procure or use significant amounts of foreign, low-CI feedstock.[159] Against this uncertainty, it was arbitrary to use a project screening criteria that assumed all or most of NEXT's feedstock would arrive from overseas by deepwater vessel. Even if NEXT ultimately secured some overseas low-CI feedstock, it has not demonstrated that it would be impracticable to bring that quantity of feedstock to a refinery by rail or pipeline.

NEXT's modification of its proposed project to include a significant rail shipping component should at least eliminate the need for *two* panamax-class vessel berths as a screening criteria. After first claiming that it would not,[160] could not[161] move substantial amounts of feedstock and refined product by rail, NEXT has now added a significant rail component to the refinery facility. However, the DEIS still appears to rely on calculations, supplied in NEXT's Alternatives Analysis,[162] to substantiate the need for two berths—even though these calculations were made when NEXT was asserting that it would not move feedstock or product by rail. At the very least, NEXT's admission that it now intends to move a significant amount of product and feedstock by rail requires the Corps to re-assess the reasonableness of *two* deepwater berths as a screening criterion for practicable alternatives.

From NEXT's point of view, it may be advantageous for a renewable diesel refinery to contain a rail yard and proximity to two deepwater berths. But, as demonstrated by other renewable diesel refineries located in uplands at considerable distances from deepwater ports, it is practicable to site renewable diesel refineries in places that are served exclusively by rail or pipeline and not directly associated with deepwater ports.

iii. Limiting the search for practicable alternatives to sites with the capacity to produce and distribute 50,000 barrels per day of refined product was arbitrary and capricious.

NEXT could practicably operate a refinery with less than 50,000 barrels per day of capacity, and NEXT appears unlikely to be able to make anywhere near that amount of renewable fuel—especially fuel that would fulfill the project's stated purpose of meeting West Coast jurisdictions' renewable fuel standards. The DEIS's *entire* justification for using this screening criterion is that one larger refinery exists in the United States, as well as many smaller facilities.[163]

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[159] Feedstock Report at 72.
[160] Oregon Business, *The NEXT Big Thing?* (June 10, 2022), https://oregonbusiness.com/19579-the-next-big-thing/ ("When NEXT came to town a few years ago, company officials originally said that its operations would be concentrated almost entirely along the river, with 95% of the feedstock shipped in, and refined renewable diesel shipped out, on ship or barge. But at a hearing held by the Columbia County commissioners in January 2022, NEXT officials admitted that their rail infrastructure could bring in the equivalent of 35% of the facility's feedstock needs.").
[161] NEXT Alternatives Analysis at 81 ("Rail use in lieu of ships and water movements of commodities makes the project non-financeable and not viable.").
[162] *See* NEXT Alternatives Analysis at 14–15.
[163] DEIS at 2-3.

Given how significantly this screening criterion restricts the choice of alternatives, the Corps has a responsibility to explain why a smaller facility is not practicable. For the following reasons, it was arbitrary to use 50,000 barrels per day as a screening criterion:

- It is unclear whether the project design that NEXT is currently proposing would, as built, even be capable of refining 50,000 barrels per day. NEXT's Alternatives Analysis states that the refinery has a "proposed construction capacity of 37,500 barrels per day of feedstock processing ability. The Applicant is proposing to permit the facility at 50,000 barrels for future expansion . . . ."[164] Oregon DEQ's project page contains conflicting information, but does cite a production capacity of 1.58 million gallons per day,[165] which is roughly equivalent to 37,600 barrels per day. If NEXT's proposed refinery lacks the physical capacity to process, or ability to produce, or the processing capacity for 50,000 barrels, NEXT's aspirations to someday expand the facility should not control the search for practicable alternatives. At the very least, NEXT's past proposal of a refinery with a lower throughput capacity severely undermines the DEIS' assumption that it would be impracticable for NEXT to operate at less than 50,000 barrels per day.

- NEXT has not demonstrated the ability to procure the huge amount of feedstock necessary to run a renewal diesel refinery at less 50,000 barrels per day, and low-CI feedstock is in short supply globally and domestically.

- *If* NEXT actually procured and processed 50,000 barrels per day of feedstock, it is almost certain that a significant portion of NEXT's fuel output would not meet the renewable fuel standards in NEXT's major markets (*see* sections III.b.1 and II.a.ii, above). Therefore, a significant amount of the feedstock that NEXT would produce would not serve the project's stated purpose. It would be arbitrary to base the throughput screening criterion on excess feedstock production that would not serve the project's stated purpose.

The arbitrary decision to use 50,000 barrels per day of throughput as a screening criterion also illegally narrowed the search for practicable alternatives by foreclosing consideration of sites with smaller acreages and access to fewer (or no) deepwater berths.

iv. Limiting the search for practicable alternatives to sites with un-built land was arbitrary and capricious.

Redevelopment of sites containing idle or outdated industrial infrastructure is practicable and should have been considered in the alternatives analysis, in part because re-purposing brownfield infrastructure is likely to be a less environmentally damaging alternative. As explained by EPA's comments on NEXT's Section 404 joint permit application, "the operation of a renewable fuels facility

[164] NEXT Alternatives Analysis at I-3.
[165] Oregon Department of Environmental Quality, Project Page: NEXT Renewable Fuels, Inc, https://www.oregon.gov/deq/programs/pages/next-renewable-fuels.aspx.

to supply West Coast markets is not limited to sites that are new construction only," and NEXT's "Alternatives Analysis failed to consider the potential options of existing vacant or outdated infrastructure, which may have provided practicable alternative locations without additional impacts to WOTUS."[166] While the DEIS' alternative 2 does examine such a site at a former Longview, WA, aluminum smelter, it appears that this was a late addition to the list of alternatives sites provided by NEXT—almost all of which involved greenfield construction. The final EIS should contain a serious and comprehensive exploration of potential alternate sites that includes idle or outdated industrial infrastructure. For instance, a large ethanol refinery was constructed, and has sat idle for decades, at Port Westward directly adjacent to the greenfield location NEXT has proposed—why was redeveloping that facility not considered? Also, the Intalco aluminum smelter near Ferndale, WA, closed in 2020, and that facility was sold at roughly the same time as NEXT was entering the market and submitting its first applications to the Corps (and remains unused today).[167] A cursory look at the Intalco facility suggests that it has many of the attributes that NEXT desires, including over 100 acres of land, rail service, and a dedicated shipping berth. These are just a few examples showing that many potentially practicable alternatives at idle or outdated industrial facilities appear to have been passed over by NEXT in favor of greenfield development when creating a list of project alternatives.

v. Eliminating practicable alternatives based on local land use rules was arbitrary and capricious.

The DEIS inappropriately eliminated the Cherry Point and Columbia Gateway alternatives, which otherwise appeared to meet the screening criteria, because of potential conflicts with local land use laws. The Portland District's own guidance for conducting alternatives analyses unequivocally states that local land use laws like "zoning designations do not preclude an alternative from being practicable or evaluated."[168] This is because "Zoning is a planning tool and is subject to adjustments through local land use and policy changes."[169] Whether a site is zoned or restricted from a certain use by local ordinance does not disqualify that site from being the "least environmentally damaging practicable alternative" within the meaning of the 404 Guidelines. Indeed Oregon's Land Use Board of Appeals found that NEXT's rail yard, as originally proposed, violated local zoning rules. Therefore, the DEIS' elimination of the Cherry Point and Columbia Gateway alternatives from consideration because of conflicts with local ordinances about dock construction and throughput,[170] respectively, was arbitrary and in direct contradiction to the Portland District's own guidance.

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[166] Exhibit 6 at 4–5.
[167] Salish Current, *Demolition of last NW aluminum smelter marks end of era* (Mar. 5, 2026), https://salish-current.org/2026/03/05/demolition-of-last-nw-aluminum-smelter-marks-end-of-era/.
[168] Corps Portland District, *Alternatives Analysis Framework* at 5 (2020).
[169] Corps Portland District, *Alternatives Analysis Framework* at 5 (2020).
[170] DEIS at 2-5.

vi. Failing to take a hard look at potential sites in California was arbitrary and capricious.

The alternatives analysis essentially ignored all potential sites in California, even though the vast majority of NEXT's potential customers are in California and NEXT frequently (though incorrectly) asserts the need to be close to its customers. While the plethora of refining and liquid fuels facilities, both active and proposed, in California shows that this state is a practicable location for facilities such as NEXT's, the alternatives analysis only considers three California locations—as opposed to 19 and 16 individual sites in Washington and Oregon, respectively.[171] Moreover, the few California sites that were "considered" do not appear to include the major refining and bulk fuels hubs in the San Francisco Bay area, such as the ports at Richland and Martinez. While the DEIS should—but does not—provide a rationale for eliminating or ignoring California locations, NEXT's decision to eliminate these sites is perfectly clear: **NEXT's CEO Chris Efird candidly stated that "We decided we didn't want to be in California.** So that left the Pacific Northwest, Columbia River."[172] NEXT's direct statements, and its Alternatives Analysis, make clear that NEXT is not interested in any California locations. However, NEXT's preference does not render California locations impracticable, and the DEIS failed to take the required hard look at potential alternate sites.

c. NEXT will cause or contribute to significant degradation of the waters of the United States.

NEXT will destroy over 100 acres of wetlands hydrologically connected to the Columbia River Estuary. That implicates several of the considerations that underlie the determination of whether NEXT will "cause or contribute to significant degradation of the waters of the United States."[173] Specifically, the destruction of over 100 acres of wetlands necessarily has "[s]ignificantly adverse effects . . . on . . . special aquatic sites," constitutes a "loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients[and] purify water," and has "[s]ignificantly adverse effects . . . on recreational, aesthetic, and economic values."[174] These adverse effects are detailed elsewhere in these comments.[175]

It should be noted that the Corps' burden to make the factual findings required by 40 C.F.R. § 230.11 is commensurate with the massive scale of NEXT. For a project requiring the filling of half an acre, it may be relatively easy for the Corps to (for instance) "[d]etermine the nature and degree of effect that the proposed discharge will have, individually and cumulatively, on the characteristics of the substrate at the proposed disposal site."[176] But with NEXT's proposal, that task is considerably

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[171] DEIS at 2-3.
[172] Exhibit 5 (PIDP Application) at 24.
[173] 40 C.F.R. § 230.10(c).
[174] 40 C.F.R. § 230.10(c)(1), (3)–(4).
[175] *See, generally,* Exhibit 7
[176] 40 C.F.R. § 230.11(a).

harder: What the substrate looks like will vary considerably within the 100+-acre project site, and the Corps' factual findings must reflect that.

d. NEXT's proposed compensatory mitigation for permanently destroying over 100 acres of wetlands violates the Section 404(b)(1) Guidelines.

Section 404 of the Clean Water Act mandates compensatory mitigation for all losses of wetlands and wetland function that occur because of dredging or filling authorized by the Corps. NEXT's proposal will permanently destroy over 100 acres of wetlands—one of the greatest one-time losses of wetlands in Oregon's recent history. NEXT does not propose to create new wetlands as compensation for this large wetland loss. Rather, NEXT proposes to completely destroy, and then attempt to artificially enhance, the function of nearly 500 acres of existing wetlands near the project site. For the reasons explained below, NEXT has not met its responsibility[177] to propose compensatory wetland mitigation that satisfies the requirements of 40 C.F.R. part 230, subpart J, and the Corps therefore may not grant NEXT a 404 permit.[178]

Attached as Exhibit 9 to these comments is an expert review of NEXT's proposed compensatory mitigation, prepared by Brent Haddaway, PWS, and Principal Wetland Ecologist of Cascade Environmental Group (Wetland Mitigation Report).[179] Mr. Haddoway is a wetland scientist with 31 years of professional experience in the wetland mitigation field in the Pacific Northwest, having worked as a mitigation specialist for WSDOT, consultant, and mitigation bank owner. In general, the Wetland Mitigation Report's conclusions are that:

> "The NEXT Renewables Project fails to provide sufficient analysis to demonstrate [the lost wetland] functions can be offset through CWM, the CWM location within an active diking district should disqualify it from consideration, and the CWM location and large size suggests an extremely large performance bond will be necessary to ensure provision of the CWM can be achieved."

Given the difficulty of artificially creating and enhancing wetlands—detailed in the Wetland Mitigation Report—Columbia Riverkeeper expresses significant doubt about NEXT's ability to successfully compensate for the loss of wetland area and function that the refinery proposal would cause. Additionally, NEXT's compensatory wetland mitigation plan ("mitigation plan") does not meet the "standards and criteria"[180] for compensatory mitigation discussed below, so it would be arbitrary

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[177] 40 C.F.R. § 230.93(a)(1) ("Permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts.").
[178] 40 C.F.R. § 230.91(c)(3) ("During the 404(b)(1) Guidelines compliance analysis, the district engineer may determine that a DA permit for the proposed activity cannot be issued because of the lack of appropriate and practicable compensatory mitigation options.").
[179] Exhibit 9, Cascade Environmental Group, *Review of NEXT's compensatory wetland mitigation proposal* (2026) (hereinafter "Wetland Mitigation Report").
[180] 40 C.F.R. § 230.91(a)(1).

and capricious for the Corps to rely on this mitigation plan to issue NEXT a 404 permit to build the refinery.

i. The proposed compensatory wetland mitigation is not self-sustaining.

The long-term maintenance and success of NEXT's compensatory wetland mitigation proposal would rely on the infrastructure and activities of the Beaver Drainage Improvement Company (BDIC). Because BDIC's infrastructure, actions, and future decisions are beyond NEXT's control, the compensatory mitigation is not "self-sustaining" within the meaning of 40 C.F.R. § 230.97(b). In the words of a wetland mitigation expert, "CWM location within an active diking district should disqualify it from consideration."[181]

The proposed compensatory wetland mitigation's reliance on BDIC-maintained water levels and hydrology contradicts 40 C.F.R. § 230.97(b)'s requirement for mitigation "siting to ensure that natural hydrology . . . will support long-term sustainability" to the maximum extent practicable. The groundwater and surface water levels present at the proposed mitigation site are not the product of "natural hydrology" as envisioned by 40 C.F.R. § 230.97(b); they are the result of active, ongoing, and discretionary water management by the BDIC. For NEXT's proposed mitigation site to support the desired vegetation community (and therefore achieve the enhanced wetland functions necessary to offset over 100 acres of wetland loss), NEXT will need to artificially lower the ground surface to bring it closer to the existing summertime groundwater level, while still not inundating the site for too long during the winter and spring.[182] However, the existing summertime groundwater levels within the proposed mitigation site are the result of BDIC withdrawing specific volumes of water from the Columbia River and sub-irrigating the mitigation site and surrounding properties.[183] The purpose and effect of BDIC's summertime sub-irrigation is to artificially increase the amount and level of groundwater, to support agricultural production. Conversely, in the winter and spring, BDIC actively pumps water out of Beaver Slough to prevent or minimize inundation of lands within the district, which includes the proposed mitigation site.[184] The mitigation plan may have been designed to work with the water levels and amounts "already present at the site,"[185] but those water levels are the result of BDIC's ongoing, intentional, and discretionary water management activities—not "natural hydrology" as directed by 40 C.F.R. § 230.97(b).[186]

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[181] Wetland Mitigation Report at 3.
[182] *See* CWM Plan at 4-2.
[183] CWM Plan at 6-2 ("During the summer, the site receives subirrigation from the intake on Kallunki Road, and the dendritic channels distribute the sub-irrigation water more evenly throughout the CWM site.").
[184] *See* CWM Plan at 4-1 (explaining that "a pump station pumps the water out of the BDD into Beaver Dredge Cut, which then flows to the Columbia River. The pump station is operated to maintain a water surface elevation of approximately -6.1 to -7.1 feet during the winter.").
[185] CWM Plan at 6-3 ("The enhancements are designed to work with the volume of water already present at the site.").
[186] Accordingly, the mitigation plan's assertion at page 3-1 that the proposed mitigation site "will be self-sustaining since it will receive the same surface/subsurface water input from . . . natural groundwater and precipitation" is incorrect and misleading. The mitigation site will continue to receive "natural" groundwater and precipitation, but those sources of water do not control the site's hydrology.

The long-term sustainability of NEXT's mitigation proposal would require BDIC to actively bring water into, and pump water out of, the Beaver Drainage District on a seasonal basis. Reliance on BDIC's active water management and pumping directly contradicts 40 C.F.R. § 230.97(b)'s requirement that "projects shall be designed, to the maximum extent practicable, to be self-sustaining" including by "minimization of active engineering features (e.g., pumps)." As explained in the preceding paragraph, the prevailing water levels at the mitigation site are a result of BDIC's water management activities. BDIC implements its water management through a series of actively managed engineering features, including pumps. For instance, BDIC uses a tide box (which is, functionally, a non-motorized pump) to move water from the Columbia River into the series of sloughs and ditches that sub-irrigate the proposed mitigation site. A tide box is an engineering feature that requires periodic maintenance and is adjusted to withdraw more or less water as needed by BDIC. Another engineering feature that BDIC actively operates—and must periodically maintain—to manage water deliveries to the proposed mitigation site (and other properties) is the water control structure on McLean Slough at the intersection of Collins Road.[187] Finally, BDIC uses a pump during the winter and spring to move water out of the district to prevent or minimize inundation of district lands, which includes the proposed mitigation site.[188] Reliance on BDIC's "active engineering features (e.g., pumps)" to maintain the mitigation proposal's required water levels and hydrology violates 40 C.F.R. § 230.97(b)'s requirement that projects be "self-sustaining."

Reliance on BDIC's "long-term management and maintenance" of water control structures prevents the proposed mitigation from being "self-sustaining" within the meaning of Subpart J. 40 C.F.R. § 230.97(b) mandates that, where long-term management such as the maintenance of water control structures is necessary, "the responsible party *must* provide for such management and maintenance." (emphasis added). **The unequivocal requirement that NEXT *must* provide for the management and maintenance of the water control structures that irrigate and drain the mitigation site conflicts with the reality that BDIC has exclusive jurisdiction and control of these structures.**[189] NEXT cannot "provide for" or compel BDIC to operate, manage, or maintain its water control structures in a manner supportive of the compensatory mitigation. NEXT does not own the water control structures at issue, nor has BDIC provided any assurance to NEXT that BDIC will manage water and maintain water control facilities so as to support the mitigation proposal (or even continue BDIC's recent regime of water management on which the mitigation proposal is based). Given that BDIC's statutory mission and bylaws do not contemplate compensatory wetland mitigation as a goal, it is unclear whether BDIC could make such a commitment even if it was so inclined. Furthermore, the elected and temporary nature of BDIC's leadership means that any instrument that purports to "provide for" BDIC's "long-term management and maintenance" of water control

[187] CWM Plan at 6-3 ("Currently, the BDIC utilizes a control structure on McLean Slough at the intersection of Collins Road to control subirrigation during the summer. Improvements may be needed at this control structure. The improvements will be designed to maintain the capacity and operational function of the existing structure.").
[188] *See* CWM Plan at 4-1 (explaining that "a pump station pumps the water out of the BDD into Beaver Dredge Cut, which then flows to the Columbia River. The pump station is operated to maintain a water surface elevation of approximately -6.1 to -7.1 feet during the winter.").
[189] ORS 547.073.

structures in a manner that serves and prioritizes the success of the mitigation proposal would need to be exceptionally durable to withstand potential changes in BDIC priorities (and probably require a financial guarantee from NEXT). BDIC has not committed to "provide for" the water management and maintenance necessary to support the proposed mitigation, and NEXT cannot compel BDIC to do so. The mitigation proposal therefore violates 40 C.F.R. § 230.97(b)'s unequivocal mandate that the NEXT "must" provide for the long-term management and maintenance of water control structures necessary to support the mitigation project.

Dependence on BDIC's irrigation-specific water right to support wetland function and enhancement prevents NEXT's proposed mitigation from being "self-sustaining" within the meaning of Subpart J. Where the continuous application of water is needed to support the long-term sustainability of compensatory wetland mitigation, "the acquisition and protection of water rights *must* be secured and documented."[190] **Subpart J unequivocally states that NEXT "must" secure a water right to serve the compensatory mitigation project, but the nature of the water right at issue precludes NEXT from doing so.** NEXT apparently intends to rely on a portion of Oregon Water Right Certificate 83174 for legal authorization to supply water to the mitigation site.[191] However, Certificate 83174 is explicitly and exclusively for "irrigation." NEXT's proposed water use to support compensatory wetland mitigation is not "irrigation" within the meaning of Oregon water law, which clearly distinguishes the use of "Irrigation" from "Wetland Enhancement."[192] Because Certificate 83174 does not authorize water use for Wetland Enhancement, the certificate holder (BDIC) would not be permitted (much less required) to withdraw this portion of its water right from the Columbia River or deliver it to NEXT's mitigation site. Furthermore, conversion of the site from agricultural production to wetland mitigation would mean that BDIC was no longer using the portion of Certificate 83174 appurtenant to the mitigation property for "Irrigation," which could result in a forfeiture of this portion of the water right.[193] Potential actions that could cure these problems—such as a request to the Oregon Department of Water Resources to transfer the use or place of this water right—are beyond NEXT's authority because BDIC (not NEXT) is holder of Certificate 83174. NEXT has failed to secure, as 40 C.F.R. § 230.97(b) says it "must," a valid water right necessary to serve the compensatory mitigation project.

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[190] 40 C.F.R. § 230.97(b) (emphasis added); *see also* 40 C.F.R. § 230.93(b)(1) ("In general, the required compensatory mitigation . . . should be located where it is most likely to successfully replace lost functions and services, taking into account such watershed scale features as . . . relationships to hydrologic sources (including the availability of water rights).").

[191] *See* Exhibit 10, Water Right Certificate 83174 (2007); *see also* CWM Plan at 6-2 ("During the summer, the site receives subirrigation from the intake on Kallunki Road . . . .").

[192] *Compare* OAR 690-300-0010(60) ("'Wetland Enhancement Water Use' means the use of water to restore, create, or enhance or maintain wetland resources.") *and* OAR 690-300-0010(26) ("'Irrigation' means the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants. Examples of these uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course, play field or vineyard and alkali abatement.")

[193] *See* ORS 540.610(1) ("Whenever the holder of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years . . . the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.").

ii. The proposed compensatory wetland mitigation does not comply with applicable state laws.

The mitigation plan's proposal to use water withdrawn under Certificate 83174 would violate state water law. Compensatory mitigation projects "*must* comply with all applicable federal, state, and local laws."[194] As explained above, Certificate 83174 does not authorize NEXT's intended water use of "Wetland Enhancement," which Oregon law defines as "the use of water to restore, create, or enhance or maintain wetland resources."[195] In Oregon, "[t]he use of water under a water right is restricted to the terms and conditions described in the water right certificate," including the "type of use."[196] A water right "cannot be used for any other purpose than the type of use indicated in the water right."[197] Because NEXT plans to use water for a type of use not authorized by Certificate 83174, the mitigation plan does not comply with state law.

NEXT's proposal to alter and fill portions of BDIC's drainage and irrigation system, and connected ditches within the proposed mitigation site, would violate several drainage-related provisions of Oregon law. Subpart J requires that compensatory mitigation projects "*must* comply with all applicable federal, state, and local laws."[198] Under Oregon law, the system of drainage and irrigation channels within the Beaver Drainage District is under the control and supervision of BDIC.[199] Oregon law provides that "No person shall . . . place . . . any article or thing in any ditch . . . used as a part of or *in connection with* any . . . drainage system or any waterway under the control of any drainage district . . . ."[200] BDIC's Bylaws, which are "local laws," contain a similar prohibition.[201] Various ditches and waterways within the proposed mitigation site[202] are currently "used as a part of or in connection with"[203] BDIC's drainage system; NEXT's proposal to fill and obstruct these ditches and waterways by placing a "thing" (fill material) in them violates ORS 547.425(1) and (3) and BDIC's Bylaws.

Additionally, the Oregon law provides that, after the initial construction of a drainage district's drainage system, "no ditches, drains or systems of drainage constructed in the district shall be *connected* [to the district's drainage system], unless the consent of the [drainage district's] board of supervisors is first obtained."[204] The mitigation plan envisions creating new waterways ("dendritic channels") throughout the mitigation site and connecting those waterways to BDIC's drainage system

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[194] 40 C.F.R. § 230.93(o) (emphasis added).
[195] OAR 690-300-0010(60).
[196] Oregon Department of Water Resources, Water Transfer Webpage, https://www.oregon.gov/owrd/programs/waterrights/transfers/pages/default.aspx.
[197] *Id.*
[198] 40 C.F.R. § 230.93(o) (emphasis added).
[199] ORS 547.405; ORS 554.110; ORS 554.380(2)(f).
[200] ORS 547.425(1) (emphasis added); *see also* ORS 547.425(3) (providing that no person shall "obstruct" these waterways).
[201] Exhibit 11, BDIC Bylaws at § 13.2.
[202] *See* CWM Plan at 6-3 and Appendix A, Sheet 2 (detailing "interior ditches to be filled in per proposed site plan").
[203] ORS 547.425(1).
[204] ORS 547.315(1) (emphasis added).

to effectuate both water delivery and drainage.[205] Because NEXT has not obtained permission from BDIC's board of supervisors to connect these waterways to BDIC's drainage system, the mitigation proposal violates ORS 547.315(1). NEXT proposed compensatory wetland mitigation will not "comply with all applicable federal, state, and local laws," and therefore cannot be permitted under Subpart J.

iii. The proposed compensatory wetland mitigation plan does not provide adequate long-term protections for the mitigation site.

The Corps should not approve the mitigation plan because NEXT has not proposed[206] adequate long-term protections for the mitigation site. Subpart J requires that the project proponent "must" provide "long-term protection through real estate instruments or other available mechanisms" for the compensatory mitigation project.[207] Long-term protections may include "real estate instruments such as conservation easements," "restrictive covenants," and/or "transfer of title" to resource agencies, non-profit conservation organizations, or private land managers.[208] In an attempt to satisfy this requirement NEXT asserts that it will:

> "record a deed restriction on the property confirming the exclusive and sole use of the property for the approved CWM and require protections for the proposed CWM site, including requirements for maintaining the fences for the duration of the monitoring period, excluding livestock, controlling weeds, and ensuring viable wetland vegetation. Such deed restriction will prohibit activity that would alter hydrology of the site, remove vegetation other than that required for maintenance (e.g., weed treatments or tree thinning for habitat improvements), or remove or place material into the wetland that adversely impacts the mitigation site."[209]

The first and most obvious problem is that NEXT does not own the mitigation property, and therefore cannot record a deed restriction. This might have been understandable when the mitigation plan was written five years ago, but it is not reasonable or acceptable now. Given NEXT's apparent inability to pay rent on portions of the project site owned by the Port of Columbia County,[210] it is unclear how NEXT intends to purchase a multi-million-dollar mitigation property, or if the current owner of that property intends or is obligated to sell it to NEXT. Without title to the property in hand—or *significantly* more information about when, how, and why NEXT is certain to be able to acquire the

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[205] *See* CWM Plan, Appendix A, Sheet 3 (showing a map of the dendritic channels in the mitigation proposal, many of which connect to Mclean Slough, Dobbins Slough, or other ditches in BDIC's drainage system); see also CWM Plan at 6-3 ("Alterations may include minor grading adjacent to the sloughs and minor grading along the bank where . . . *proposed dendritic channels connect to the sloughs*.") (emphasis added).

[206] 40 C.F.R. § 230.93(a)(1) ("Permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts.").

[207] 40 C.F.R. § 230.97(a)(1).

[208] *Id.*

[209] CWM Plan at 8-1.

[210] Sander Guisnow, *NEXT Refinery Project Formally Asks For Lower Rent — Which Records Show It's Already Paying*, Oregon Business (Mar. 1, 2024), https://oregonbusiness.com/next-refinery-project-formally-asks-for-lower-rent-which-records-show-its-already-paying/.

mitigation site—NEXT's mere aspiration to purchase the site and then record a deed restriction falls short of the "long-term protection" that 40 C.F.R. § 230.97(a)(1) requires.

Even if NEXT *could* record a deed restriction, the lack of third-party enforceability for NEXT's proposed deed restriction renders the mitigation plan's long-term site protection inadequate. 40 C.F.R. § 230.97(a)(1) clearly explains that,"[t]o provide sufficient site protection, a conservation easement or restrictive covenant should, where practicable, establish in an appropriate third party (e.g., governmental or non-profit resource management agency) the right to enforce site protections." All of the examples of long-term site protections in 40 C.F.R. § 230.97(a)(1) also involve third-party enforceability of the site protection: "conservation easements held by . . . resource agencies, non-profit conservation organizations, or private land managers; the transfer of title to such entities; or by restrictive covenants."[211] Additionally, "easement enforcement" is a consideration of long-term site sustainability.[212] A deed restriction, by contrast, merely says what a property can be used for; it does not necessarily provide a right of enforcement to a third party who is interested in or knowledgeable about wetland function. Importantly, the mitigation plan also fails to identify an entity who is both willing and competent to provide the requisite third party enforcement of site protections. Accordingly, NEXT's promise of a "deed restriction" that is not certain to create rights of enforcement in some unspecified third party does not provide the long-term site protections that Subpart J requires.

Even if NEXT owned the mitigation site, the authority granted to BDIC by Oregon's Drainage District Act would prevent NEXT from providing effective, enforceable long-term legal protections for the mitigation. Subpart J requires that "The aquatic habitats, riparian areas, buffers, and uplands that comprise the overall compensatory mitigation project *must be provided long-term protection through real estate instruments or other available mechanisms*, as appropriate."[213] However, BDIC's comprehensive statutory authority to control the placement of drainage and irrigation structures within the Beaver Drainage District supersedes, and defeats, NEXT's ability to create real estate instruments that would ensure that the mitigation project exists and functions in perpetuity. Oregon's Drainage District Act gives drainage districts broad power over their flood control[214] and irrigation systems, including the power to:

- Construct, reconstruct, repair, improve, maintain, extend, replace, remove, relocate and upgrade a district's system of flood control and irrigation improvements to as necessary to carry out the purposes of the Drainage District Act or when, in the discretion of the drainage district, it is necessary to protect and preserve the property of the district;[215]

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[211] A "restrictive covenant" is an enforceable promise between two or more parties in a real estate transaction, in the nature of a contract.
[212] 40 C.F.R. § 230.97(b).
[213] 40 C.F.R. § 230.97(a)(1) (emphasis added).
[214] *See* ORS 547.063(1) (defining "flood control project") and ORS 547.320 (extending the powers of drainage districts to irrigation infrastructure, in addition to flood control, when irrigation would be beneficial to lands within the district).
[215] ORS 547.067(1) and ORS 547.063(3) (defining "repair"); *see also* ORS 547.073(1), ORS 547.077, ORS 547.310, ORS 547.405.

- Locate and site drainage or irrigation works, and their necessary branches, on any lands deemed best within the district and, if necessary, to take such land through eminent domain;[216]

- Require property owners to remove, at their own expense, clogs or obstructions to waterways that are part of a district's drainage or irrigation system.[217]

These powers are necessarily and explicitly superior to the rights of landowners within drainage districts. Nothing in the Drainage District Act suggests that deed restrictions, environmental covenants, or other real estate instruments created by landowners can deprive BDIC of its statutory authority to replace, restore, acquire, maintain, or change aspects of its drainage system within the district—including the proposed mitigation site. With respect to the proposed mitigation, the Drainage District Act entitles BDIC to, among other things, unilaterally:

- Reconstruct or repair any of the numerous waterways or drainages that NEXT's mitigation plan proposes to fill or alter, including a major "ditch that runs through the southern portion of the CWM site" that NEXT proposes to "relocate";[218]

- Require NEXT (or a successor in interest) to pay for the removal of fill or other obstructions that NEXT propose to place in these drainages; and

- Locate and construct new drainage or irrigation works, "and their necessary branches," within the mitigation site.

Because the configuration of waterways within the proposed mitigation site is critical to the function of the mitigation project—and squarely within BDIC's statutory authority to alter (or restore to original condition and location following NEXT's alterations)—NEXT cannot create a real estate instrument that provides long-term site protection. A binding agreement between BDIC and NEXT might satisfy these concerts, but no such agreement exists and—given BDIC's mission, statutory authority, bylaws, and recent statements all emphasizing the promotion of agriculture with the district—does not seem likely or feasible. Accordingly, the Corps should deny the 404 permit because NEXT cannot prevent future actions by BDIC that could alter the configuration or function of the compensatory mitigation site.

[216] ORS 547.071; ORS 547.305.
[217] ORS 547.410 to ORS 547.415; *see also Skyport Props. of Or., Ltd. v. Multnomah Cty. Drainage Dist. No. 1*, 844 P.2d 909 (1992) (Oregon Court of Appeals upheld a drainage district's authority to require a landowner to remove an undersized culvert that was obstructing the district's drainage system).
[218] CWM Plan at 6-3.

iv. The mitigation plan lacks sufficient detail to calculate adequate financial assurances.

The mitigation plan lacks sufficient detail for the Corps to calculate the amount of financial assurances necessary to ensure that the compensatory mitigation will be successful. Subpart J directs the Corps to require, in the 404 permit, "sufficient financial assurances to ensure a high level of confidence that the compensatory mitigation project will be successfully completed."[219] The amount of financial assurances that NEXT must provide should include the cost of creating the mitigation project, as well as the cost of:

- Creating and then implementing the long-term maintenance plan for the mitigation site;[220]
- Monitoring and enforcement of the mitigation easement by designated third parties;[221]
- Delineating the extent and function of wetland habitat present in the mitigation site in the fifth growing season following construction,[222] and periodically thereafter;
- "[T]he cost of providing replacement mitigation, including costs for land acquisition, planning and engineering, legal fees, mobilization, construction, and monitoring,"[223] if the mitigation project fails or ceases to provide the wetland area or enhanced function predicted by the mitigation plan;
- The significant long-term management, maintenance, and operations of BDIC's facilities required for the long-term sustainability of the project.[224]

The mitigation plan says that NEXT intends to provide financial assurances via a performance bond from a corporate surety, but such a bond would only provide adequate financial assurance if it were of a sufficient amount to ensure the long-term success of the mitigation. NEXT's near complete failure to provide information about how to (or who would[225]) implement the long term management and maintenance will make it very difficult for the Corps to select a bond amount that is not arbitrary.

The size and complexity of the NEXT's proposed mitigation project, as well as NEXT's past conduct, council strongly in favor of the Corps requiring a very protective bond. The Corps'

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[219] 40 C.F.R. § 230.93(n)(1).
[220] *See* CWM Plan at 8-1("Long-term maintenance will be necessary to ensure that the CWM site continues to function as designed.").
[221] 40 C.F.R § 230.97(a)(1).
[222] *See* CWM Plan at 7-3.
[223] 40 C.F.R. § 230.93(n)(2).
[224] *See* 40 C.F.R. § 230.97(b).
[225] 40 C.F.R. § 230.93(l)(1) requires that 404 permits "clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project." NEXT's mitigation plan at page 8-2 fails to provide the required clarity, saying that NEXT "may ultimately [have] a third-party conservation organization with experience with wetland management take operational responsibility for the proposed CWM site."

determination of the amount of the required financial assurances "must be based on the size and complexity of the compensatory mitigation project, the degree of completion of the project at the time of project approval, the likelihood of success, [and] the past performance of the project sponsor . . . ."[226] As explained in the attached letter from Cascade Environmental Group,[227] this is an "enormous" mitigation proposal of significant complexity, with serious questions about its likelihood of success. At the time of project approval, it would be zero percent complete, despite EPA's recommendation to "construct[] the mitigation area in advance of the project area."[228] And "the past performance of the project sponsor" (in addition to never having attempted a wetland mitigation project of any scale) includes:

- Lying to local leaders and community members about the need for a rail yard as part of the proposal;[229]

- Failing to pay rent on other portions of the project site owned by the Port of Columbia County;[230]

- An episode where NEXT's current and past leaders were involved with a company that abandoned a biofuels facility, leaving in their wake unpaid bills, taxes, and an EPA-led cleanup.[231]

Based on the standards in 40 C.F.R. 230.93(n)(2), the Corps should require a very protective bond to guarantee resources will be available to complete and maintain the mitigation project.

IV. NEXT's refinery is contrary to the public interest.

Even if the Corps finds that NEXT's project meets the 404 Guidelines, it must deny the permit application because NEXT's proposal "would be contrary to the public interest."[232] At the very least, the information and analysis in the DEIS is so flawed that any public-interest determination by the Corps based on that information and analysis would be arbitrary and capricious.

To determine whether a project is contrary to the public interest, the Corps balances the "benefits which reasonably may be expected to accrue from the proposal" against the "reasonably

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[226] 40 C.F.R. § 230.93(n)(2).
[227] Exhibit 9, Wetland Mitigation Report at 1.
[228] Exhibit 6 at 9.
[229] Oregon Business, *The NEXT Big Thing?* (June 10, 2022), https://oregonbusiness.com/19579-the-next-big-thing/
[230] Sander Guisnow, *NEXT Refinery Project Formally Asks For Lower Rent — Which Records Show It's Already Paying*, Oregon Business (Mar. 1, 2024) https://oregonbusiness.com/next-refinery-project-formally-asks-for-lower-rent-which-records-show-its-already-paying/.
[231] Tony Schick & Conrad Wilson, *Businessmen Who Abandoned Toxic Mess Now Want To Build Refinery In Washington*, KLCC (Feb. 2, 2016) https://www.klcc.org/2016-02-02/environmental-cleanup-unpaid-bills-in-refinery-backers-last-venture.
[232] 33 C.F.R. § 320.4(a)(1).

foreseeable detriments" "of the proposed activity *and its intended use* . . . ."[233] When assessing whether the impacts of this "proposed activity" (construction of a large-scale fuel production facility), and its "intended use" (renewable diesel production), are contrary to the public interest, the Corps must consider "[a]ll factors which may be relevant . . . ."[234] Thus, the public interest review is broad, capturing all issues that could impact the environment, human health, and natural resources, including but not limited to: "conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people."[235]

In the case of NEXT, the "reasonably foreseeable detriments" clearly outweigh the "benefits which reasonably may be expected to accrue" from the project. The detriments are spelled out elsewhere in these comments (and in the comments of others) and do not need to be repeated here. As for the supposed benefits of the project, it is worth repeating that is little evidence that NEXT will be able to manufacture low-carbon, waste-derived renewable fuel at the proposed scale,[236] and the track record of the company's leadership is riddled with red flags.[237] Any cost-benefit analysis (which is more or less what the public-interest test is) must discount possible costs and benefits by the likelihood of occurrence. Here, most of the costs and detriments—destroyed wetlands, degraded water quality, sacrificed farmland and agriculture, degradation of air quality and local aesthetic value, etc.—will occur whether or not the NEXT project is successful, whereas the benefits—economic revitalization, etc.—will accrue only if the project is successful. Viewed that way, to approve the permit is to guarantee environmental destruction for a *chance*, perhaps a slim one, of economic gain.

At the very least, though, the Corps cannot make a non-arbitrary determination that NEXT is in the public interest based on the DEIS and the other material in the record. As discussed elsewhere in these comments and the comments of others, many of the analyses and assumptions in the DEIS are either incorrect or insufficiently supported by actual evidence (air impacts, noise impacts, odor impacts, effects on water quality/fish, adverse effects of the mitigation site, displacement of conventional fuels, etc.). The result is that the costs of the NEXT project are understated and its benefits inflated, making it impossible to perform the public-interest balancing. The Corps must correct the errors in the DEIS identified in these and other comments before it can make a proper public-interest determination. And, to ensure the public has an opportunity to weigh in on the

[233] 30 C.F.R. § 320.4(a)(1) (emphasis added).
[234] 30 C.F.R. § 320.4(a)(1).
[235] 30 C.F.R. § 320.4(a)(1).
[236] *See* section II.a.
[237] *See* section III.d.iv.

balancing, the Corps should make a draft public-interest determination available for comment, along with a draft of the findings required by the 404 Guidelines.[238]

Special mention must be made of Governor Kotek's letter of January 27, 2026, expressing support for NEXT. The project described in the Governor's letter is materially different from the one that NEXT is actually proposing to build. NEXT will mostly use purpose-grown seed oils to make its fuels, not "recycled organic feedstocks," as the Governor's letter says. And, as the Corps well knows, NEXT has not "demonstrated a strong commitment to transparency and responsiveness," but has instead regularly "delay[ed] in providing necessary information" to the Corps[239] and has on multiple occasions "promis[ed] [the Corps] deliverables, but fail[ed] to follow through."[240] If the Governor were better informed, her letter would be entitled to some weight in the public-interest analysis; as it stands, the letter demonstrates only her ignorance of NEXT and its proposed facility.

V. The DEIS Should Have Analyzed NEXT's Impacts to the Beaver Levee.

The DEIS must consider all impacts of the project, including those to the Beaver levee which surrounds and protects the project area. The Corps is currently considering whether to require a permit under Section 14 of the Rivers and Harbors Act of 1899, codified at 33 U.S.C. § 408 (hereinafter "Section 408"), to evaluate the project's levee impacts. As of April 1, 2026, the Corps is "still awaiting information from NEXT . . . to make a final decision as to whether the proposed project requires Section 408 permission."[241] However, the Corps is meant to "coordinate" any Section 408 review with the NEPA and Section 404 permit processes "and, to the maximum extent practicable, carry out the reviews concurrently[.]"[242] By approaching these processes separately and on disjointed timelines, the DEIS fails to properly consider the project's impacts to the levee.

In April 2022, the Corps determined that Section 408 review was not required.[243] Then, in December 2025, the Corps determined that a Section 408 permit *is* required, based on the proposed alteration of the levee described in version 4 of NEXT's Joint Permit Application.[244] The Corps has since indicated that it is working with NEXT to reevaluate its plans. However, the information identified in version 4 of NEXT's application is still relevant to the DEIS process, and the public

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[238] *See* 40 C.F.R. § 230.11 (requiring the Corps to "determine in writing the potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment"); *id.* § 230.12 (requiring written findings of compliance or noncompliance with the 404 Guidelines).
[239] Exhibit 12, Internal Corps email describing NEXT's delays in supplying necessary information (September 19, 2023).
[240] Exhibit 13, Internal Corps emails describing NEXT's repeated failure to provide promised documents (October 17, 2024).
[241] Exhibit 14, Joint Status Report, *Columbia Riverkeeper v. U.S. Army Corps of Engineers*, Case No. 3-24-cv-00868-AN (Apr. 1, 2026).
[242] 33 U.S.C. § 408(b)(2)(A); *see also* 33 U.S.C. § 408(b)(1)(A).
[243] Corps, *Section 408 Alteration Determination, 408-0109-FY22 NEXT Renewable Fuels Or., LLC Project* (Apr. 7, 2022).
[244] Exhibit 15, Corps, *Letter to Christopher Efird re Section 408 Permission for NEXT Renewable Fuels Oregon Project* (Dec. 2025). To the best of our knowledge, the DEIS relies on Joint Permit Application version 3, dated February 27, 2023. *See* DEIS Vol. 2. Columbia Riverkeeper has requested version 4 via the Freedom of Information Act, but has yet to receive that document.

should be given an opportunity to evaluate and comment on those potential impacts. For the time being, it is unclear whether NEXT intends to haul heavy equipment over or along any portion of the Beaver levee—the question at the core of whether Section 408 review is required.

a. "Using" the levee as a haul road requires Section 408 permission.

The major purpose of Section 408 is to protect flood control and navigation infrastructure built by the United States. Consistent with that purpose, Section 408 prohibits "any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any . . . work built by the United States[.]"[245] Accordingly, the Corps may "grant permission for the temporary occupation or use of any of the aforementioned public works when . . . such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work."[246] The Corps may only give permission if it finds that the proposed use, occupation, or alteration (1) is in the public interest and (2) will not injure or otherwise impair the usefulness of the work. The need for permission does not depend on whether a proposed activity will be injurious to a covered work; instead, *whether* an injury will occur is what the Corps is supposed to determine through the 408 process.

On January 12, 2026, Columbia Riverkeeper sent a detailed letter to the Corps explaining that NEXT's plan to haul heavy equipment over or along any portion of the Beaver Drainage District levee system requires the Corps' permission under Section 408.[247] We attach and incorporate that letter by reference. Section 408 review is especially important in this case because the Corps has already determined that the Beaver levee does not meet the Corps' own safety specifications. The BDIC and landowners within the drainage district have consistently raised and documented concerns over NEXT's impacts on the levee system.

b. The DEIS improperly ignores impacts to the Beaver levee.

The Corps fails to demonstrate that it has taken a hard look at environmental consequences flowing from impacts to the Beaver levee, as required by NEPA.[248] The DEIS does not examine any potential impacts to the Beaver levee, despite concluding that "Heavy haul trucks would transport equipment and materials to the project site via Haul Road,"[249] which sits atop the Beaver levee. Despite multiple requests from Columbia Riverkeeper, BDIC, and local landowners, the Corps continues to ignore potential impacts to the levee from NEXT's activities. The DEIS fails to provide

[245] 33 U.S.C. § 408(a).
[246] *Id.*
[247] Exhibit 16, Columbia Riverkeeper, Letter to Corps re Section 408 Determination for NEXT's Use of Port Westward Levee (Jan. 12, 2026).
[248] *See Earth Island Inst. v. United States*, 351 F.3d 1291, 1300 (9th Cir. 2003).
[249] DEIS at 2-27.

any analysis of the types, weight, or quantity of haul trucks[250] and equipment that NEXT plans to drive over the levee road—or any potential alterations to the levee necessary for NEXT's proposal—and therefore has not considered how NEXT will impact the levee. In failing to do so, the Corps has not met its burden to include the crucial data it relied on and how it analyzed that data—so the public can make an informed comparison of the alternatives.[251]

In 2022, BDIC warned that:

> "[l]evee traffic on the roads servicing both the Plant and the Mitigation Sites [is] of grave concern due to compaction and resulting height deficiencies to protect from flooding . . . . Plant Facility modules will be transported across the top of the Kallunki Road levee and weigh approximately 300 tons each. **Previous industrial projects and related traffic have significantly lowered the height of the levee structure in multiple locations** . . ."[252]

The Corps' analysis of levee impacts should consider subsidence from traffic and other projects as a way to gauge the impacts of NEXT's construction and traffic over the levee.

The Corps itself has acknowledged the Beaver levee's existing inadequacies. In 2014, the Corps underwent the screening phase of the National Flood Insurance Program (NFIP) Levee System Evaluation for the Federal Emergency Management Agency. At that point, inspections determined that the BDIC levee system is height deficient and required so much work to protect from a 100-year flood that further analysis for certification and accreditation was not possible: "USACE cannot complete levee system evaluations for NFIP accreditation on levee systems that have less than 2 feet of freeboard."[253] And, "the Phase 1 evaluation identified additional items of significant concern requiring correction . . . prior to moving to Phase 2, including unwanted vegetation, encroachments, slope stability, depressions, and animal control." Since then, the levee infrastructure has further degraded.

Without analysis of levee impacts from the project, the Corps cannot begin to analyze environmental impacts that would flow from levee damage. Hundreds of acres of actively farmed land, homes, and energy infrastructure rely on the levee system to separate the area from the Columbia River. Levee subsidence, seepage, or failure due to project impacts would put the entire region at risk. This missing analysis also undermines assumptions about spill containment at the site because the absence of a functioning and secure levee means that feedstock or fuel spills within the project area could reach beyond the levee boundaries. By ignoring these impacts, the Corps prevents the public from making informed comparisons between project alternatives, and deprives the public of information about the risks of the project.

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[250] For this analysis, we would expect to see similar information as provided regarding "Vehicular Operational Impact." DEIS at 3-134 to 3-136. However, this section completely neglects to include information on traffic over Kallunki Road.
[251] *See Ecology Center, Inc. v. Austin*, 430 F.3d 1057, 1067 (9th Cir. 2005).
[252] BDIC, *Letter to Columbia County. Board of Commissioners* (Jan. 18, 2022) (emphasis added).
[253] Exhibit 17, Corps, *Phase I Levee System Evaluation for National Flood Insurance Program Accreditation, Beaver Drainage District* at 10 (2014).

c. Section 408 review and NEPA review should proceed simultaneously.

By moving forward with the DEIS without simultaneously initiating Section 408 review (or even determining whether Section 408 review is required), the Corps violates Section 408's clear command that review and approval of an activity under Section 408 "shall, to the maximum extent practicable, occur concurrently with any review" under NEPA.[254] The Engineer Circular (EC) 1165-2-220, regarding the Corps' Section 408 review process, reiterates: Environmental and cultural resources compliance efforts, including NEPA reviews, "should be conducted concurrently with the Section 408 review process to the maximum extent practicable."[255] Recently, a court found that EC 1165-2-220 "constitutes a rule from which plaintiffs can allege a procedural violation."[256] Because the DEIS must include analysis of levee impacts, and Section 408 review consists of evaluating potential injuries to the levee and finalizing ways to prevent infrastructure harm, the Corps should have waited to issue a DEIS concurrently with Section 408 review documents. The Corps' indecision about Section 408 review does not justify disconnecting the 408 review process from the NEPA process.
The Corps is violating the statute and its own rule by proceeding with the DEIS without undertaking Section 408 review.

The Corps admits that if Section 408 is required, it may not issue a Section 404 decision until Section 408 permission is granted.[257] At the same time, the Corps claims it is "still awaiting information from NEXT" to determine whether Section 408 review is required. In this situation, it is entirely proper for the Corps to delay the DEIS and Section 404 processes until the Section 408 question is resolved, which would allow those processes to proceed concurrently, as Congress intended.

VI. CONCLUSION

Pursuant to NEPA and the Corps' NEPA regulations, we urge the Corps to take a hard look at the direct, indirect, and cumulative impacts of NEXT's diesel refinery. The Corps should undertake a supplemental DEIS to cure the flaws identified in this comment and give the public an opportunity to meaningfully engage. A broadly scoped and thorough review of NEXT's impacts will establish that

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[254] 33 U.S.C. § 408(b)(1)(A).
[255] *See* U.S. Army Corps of Engineers, EC 1165-2-220, *Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408* , Appendix D at D-2 (Sept. 10, 2018) ("EC 1165-2-220") (accessible at https://www.mvs.usace.army.mil/Portals/54/EC_1165-2-220.pdf); 83 Fed. Reg. 46486 (Sept. 13, 2018) (adopting EC 1165-2-220 following completion of notice-and-comment process). In November 2023, the Corps reaffirmed and extended EC 1165-2-220 "until such a time [it] is superseded by rulemaking." U.S. Army Corps of Eng'rs, *Memorandum for Commanders, Major Subordinate Command and Districts Re: Extension of EC 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408* (Nov. 14, 2023).
[256] Opinion and Order Denying Defendants' Motion to Dismiss, *Columbia Riverkeeper v. U.S. Army Corps of Engineers*, Case No. 3:24-cv-00868-AN at 9 (Aug. 7, 2025); *see also Greenwich Terminals LLC v. U.S. Army Corps of Eng'rs*, No. 23-04283 et al., 2024 WL 4595590, at *16–17 (E.D. Pa. Oct. 28, 2024).
[257] Exhibit 14 at 2.

NEXT's project threatens Port Westward and the Columbia River estuary, undermines efforts to restore endangered salmon, cannot compensate for the enormous loss of wetlands, is contrary to the public interest, and is not the least environmentally damaging practicable alternative.

Happy Earth Day,

Miles Johnson and Audrey Leonard
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Exhibits:

1. Declaration of Wendy Schmidt in Case No. 25CV32544 (2025).
2. Declaration of Haley Voekel in Case No. 25CV32544 (2025).
3. Renewable Diesel Production in the United States and Feedstock Availability: Implications for NXT Port Westward Facility (2025).
4. Amendment No. 1 to Form S-4 Registration Statement Under the Securities Act of 1933, as filed with the U.S. Securities and Exchange Commission (2023).
5. Port Westward Energy Security, Seismic Resilience and Modernization – Phase 1 (2025).
6. Comments submitted by EPA in response to the U.S. Army Corps of Engineers Public Notice NWP-2020-383 (2021).
7. Comments of Gary Rule on the NEXT Renewable Fuels Draft Environmental Impact Statement: Alternative 1 (2026).
8. Alternatives Analysis for NEXT Renewable Fuels Oregon (2022).
9. Cascade Environmental Group's review of NEXT's compensatory wetland mitigation proposal (2026).
10. Water Right Certificate 83174 (2007).
11. Beaver Drainage Improvement Company Bylaws.
12. Internal Corps email describing NEXT's delays in supplying necessary information (2023).
13. Internal Corps emails describing NEXT's repeated failure to provide promised documents (2024).
14. Joint Status Report in Case No. 3-24-cv-00868-AN (2026).

15. Corps Letter to Christopher Efird re Section 408 Permission for NEXT Renewable Fuels Oregon Project (2025).

16. Columbia Riverkeeper Letter to Corps re Section 408 Determination for NEXT's Use of Port Westward Levee (2026).

17. Phase I Levee System Evaluation for National Flood Insurance Program Accreditation, Beaver Drainage District (2014).

18. A Study of Stranding of Juvenile Salmon by Ship Wakes Along the Lower Columbia River Using a Before-and-After Design: Before-Phase Results (2006).

19. Farms to Fumes: Hazardous Air Pollution from Biofuel Production (2024).