



Department of State Lands

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State Land Board

Kate Brown
Governor

Tobias Read
State Treasurer

ORS 196.795 (Administration of State Removal or Fill Permits; General Permits);
 ORS 196.800 (Definitions);
 ORS 196.805 (Policy);
 ORS 196.810 (Removal from Bed or Banks of Waters; Permits; Exceptions);
 ORS 196.812 (Removal of Large Woody Debris);
 ORS 196.815 (Permit Applications; Fees);
 ORS 196.816 (Removal of Materials for Purpose of Maintaining Drainage and Protecting
 Agricultural Land);
 ORS 196.817 (Removal or Fill General Permits);
 ORS 196.818 (Wetland Delineation Reports; Fees);
 ORS 196.820 (Smith Lake, Bybee Lake Prohibition);
 ORS 196.825 (Permit Criteria; Consultation with Other Agencies);
 ORS 196.830 (Estuarine Resource Replacement; Other Permit Conditions);
 ORS 196.835 (Issuance of Permits; Procedure);
 ORS 196.845 (Investigations and Surveys of Location); and
 ORS 196.850 (Waiver of Permit Requirement; Notice; Review).

The full text of these statutes may be viewed online at:
https://www.oregonlegislature.gov/bills_laws/ors/ors196.html.

The full text of these statutes may also be inspected in person during normal business hours at:
Oregon Department of State Lands
775 Summer St NE STE 100
Salem, OR 97301.

- c. OAR Chapter 141, Division 85 implement the above statutory scheme and govern removal-fill permits in Oregon. The rules that govern removal-fill permits in Oregon, including the permit application at issue in this case, generally include the following:

Div. 85 Removal-Fill Authorizations:

OAR 141-085-0500 (General);
OAR 141-085-0506 (Policy);
OAR 141-085-0510 (Definitions);
OAR 141-085-0515 (Removal-Fill Jurisdiction by Type of Water);
OAR 141-085-0520 (Removal-Fill Jurisdiction by Volume of Material);
OAR 141-085-0525 (Measuring and Calculating Volume of Removal and Fill);
OAR 141-085-0530 (Exemptions for Certain Activities and Structures);
OAR 141-085-0534 (Exemptions for Certain Voluntary Habitat Restoration Activities);
OAR 141-085-0535 (Exemptions Specific to Agricultural Activities);
OAR 141-085-0540 (Types of Authorizations);
OAR 141-085-0545 (Fees; Amounts and Disposition);
OAR 141-085-0550 (Application Requirements for Individual Permits);
OAR 141-085-0555 (Individual Removal-Fill Permit Application Review Process);
OAR 141-085-0560 (Public Review Process for Individual Removal - Fill Permit Applications);
OAR 141-085-0565 (Department Determinations and Considerations in Evaluating Individual Permit Applications);
OAR 141-085-0575 (Permit Appeals);
OAR 141-085-0580 (Discovery in Contested Cases);
OAR 141-085-0585 (Permit Conditions, Permit Expiration Dates and Permit Transfer);
OAR 141-085-0590 (Renewal and Extension of Individual Removal-Fill Permits);
OAR 141-085-0595 (Permit Requirements and Interagency Coordination for Department of Environmental Quality Approved Remedial Action, Corrections Facilities, Solid Waste Land Fills and Energy Facilities);
OAR 141-085-0665 (Expedited Process for Industrial or Traded Sector Sites);
OAR 141-085-0676 (Emergency Authorizations);
OAR 141-085-0680 (Compensatory Mitigation (CM); Applicability and Principal Objectives);
OAR 141-085-0685 (Functions and Values Assessment);
OAR 141-085-0690 (Eligibility Requirements for CM);
OAR 141-085-0692 (Mitigation Accounting);
OAR 141-085-0694 (Special Requirement for CM);
OAR 141-085-0695 (Administrative Protection of CM Sites);
OAR 141-085-0700 (Financial Security for CM Sites);
OAR 141-085-0705 (Requirements for CM Plans);
OAR 141-085-0710 (Monitoring Requirements for CWM);
OAR 141-085-0715 (Mitigation for Temporary Impacts);
OAR 141-085-0720 (Mitigation Banking Purpose, Applicability and Policies);

OAR 141-085-0725 (Process for Establishing Mitigation Banks);
OAR 141-085-0730 (Establishment of Mitigation Credits);
OAR 141-085-0735 (Release, Use and Sale of Mitigation Credits);
OAR 141-085-0740 (Authorization for Mitigation Banks);
OAR 141-085-0745 (In-Lieu Fee Mitigation);
OAR 141-085-0750 (Payments to and Expenditures from the Oregon Removal-Fill Mitigation Fund);
OAR 141-085-0755 (Advance Mitigation); and
OAR 141-085-0768 (Advance Aquatic Resource Plans).

The full text of these rules may be viewed online at:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=15700>.

The full text of these rules may also be inspected in person during normal business hours at:
Oregon Department of State Lands
775 Summer St NE STE 100
Salem, OR 97301.

II. Findings of Fact and Findings of Ultimate Fact:

1. The Department received a complete, written application from applicant on July 28, 2021 for the proposed removal-fill activity consisting of construction of a renewable fuels refinery and associated pipelines and rail spur with permanent impact on 117.64 acres of palustrine emergent flats wetland and 1.2058 miles of waterways with 791,702 cubic yards of fill and 195,284 cubic yards of removal and temporary impacts to 32.03 acres of palustrine emergent flats wetland with 46,303 cubic yards of removal and 177,880 cubic yards of fill.
2. The Department circulated the complete application received July 28, 2021, for a 37-day public comment period August 26, 2021 to October 1, 2021 to parties including affected local, state and federal agencies, affected tribal governments, adjacent landowners, and other parties requesting notification.
3. Public comments were received from 128 commenters and were forwarded to applicant on October 28, 2021. Applicant was invited to respond to 45 comments identified as relevant to the Removal-Fill Law. The nature of those comments included:
 - a. Beaver Drainage District management concerns related to altering the drainage ditch system in the mitigation area.
 - b. Neighboring farm concerns about damage to adjacent farms and flooding due to the mitigation area design.
 - c. Toxic spill concerns.
 - d. Mitigation design long term effects.
4. Applicant provided satisfactory response to comments on December 3, 2021.

5. Based on all the information in the agency file in this matter, including the complete application, comments received, applicant response to comments, and the agency's own investigations, the Department concludes as to the determinations in ORS 196.825(1) and (4), OAR 141-085-0565(3), and OAR 141-093-0115:
 - a. The project described in the permit application and as conditioned in the proposed permit, is consistent with the protection, conservation, and best use of the water resources of this state as specified in ORS 196.600 to 196.905;
 - b. The project described in the permit application and as conditioned in the proposed permit would not interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation. No impacts to state-owned submerged lands are proposed. Existing docks and pipe terminals in the Columbia River, a state-owned waterway, will be used for the purposes for which they are currently authorized. No public navigation, fishing or recreation is currently available on the impact site or will be available after construction.
6. Based on all the information in the agency file in this matter, including the complete application, comments received, applicant response to comments, and the agency's own investigations, the Department concludes, as to the considerations in ORS 196.825(3), OAR 141-085-0565(4), OAR 141-093-0115:
 - a. There is not an identified public need for the proposed fill or removal; however, there are social, economic, and other public benefits likely to result from the proposed fill or removal. These benefits include:

The proposed project would provide a reliable source of renewable fuels produced in the United States to West Coast markets. Use of this fuel as a replacement for non-renewable fuels will reduce greenhouse gas emissions and moves the State of Oregon toward meeting the Low Carbon Fuel Standards.

Direct economic benefits from the construction of the facility include spending \$800 million over the two-year construction phase, as well as paying \$287 million in wages. The long-term operation of the plant is anticipated to have an increase of 233 permanent jobs, with a labor income of nearly \$19 million, and nearly \$1.3 billion in facility product output annually. The construction of the facility will inject an additional \$1.13 billion into the regional economy over the two-year period. Construction of the facility will add 5,023 jobs, of which 3,513 jobs are direct employment, 513 jobs are indirect, and 997 jobs are induced. The labor income over the construction period will be \$729 million, of which \$592 million is the direct labor income. The total local and state tax liability for the project over the construction period will be \$65.8 million, and \$2.8 million will be paid in option fees and lease payments to the Port of Columbia County.

The long-term operations benefits of the project are those related to the operations of the facility once construction is complete. In addition to the direct benefits described above, indirect benefits will increase employment by 466 jobs, bringing in \$16 million in labor income and producing \$357 million in output annually. Further, induced benefits will increase employment by 133 jobs and bring in \$4 million in labor income, while producing \$68 million in output annually. In addition, the local and state tax revenue will

be \$45.5 million annually, and between \$4.33 million and \$8.35 million will be paid to the Port of Columbia County for option fees and lease payments annually.

In addition to the economic benefits, NEXT is partnering with the Clatskanie School District to provide support for science education. NEXT is providing equipment for in-class science investigations, and funding to support curriculum development and teacher professional development. The first large-scale project being undertaken in spring 2022 is refurbishing the garden at the elementary school.

- b. The economic costs to the public if the proposed fill or removal is not accomplished include loss of the local and state taxes, lease payments, and Clatskanie School District benefits described above.
- c. The application describes four alternatives to the project for which the fill or removal is proposed. There are no practicable alternatives with lesser impact to waters of this state. All but one site were either not large enough or not configured appropriately to construct an efficient plant or were currently zoned agricultural and it was uncertain when or if they would be rezoned industrial. Only one site (the selected site - the Port of Columbia County/ Teevin property) met all the project criteria.

Project criteria included being able to supply renewable diesel to West Coast markets, being able to offload feedstock transported by vessel, and potential to construct and operate a renewable fuels facility of size to achieve economies of scale. An economically viable renewable diesel facility needs to have a throughput capacity of 50,000 barrels/day of renewable diesel. The size and configuration of the facility and ancillary components were designed to minimize impacts to wetlands by reducing the overall footprint, maximizing the use of uplands within the footprint, and locating necessary components in low-functioning, highly disturbed wetlands.

- d. The application describes thirty-two alternative sites for the proposed removal or fill from Mexico to Canada. There are no practicable alternative sites with lesser impact to waters of this state.

Although nearly every gallon of renewable diesel produced in the United States is sent to supply California, demand is still not being met by the United States production. The construction of a renewable diesel facility in the Pacific Northwest will establish an environmentally responsible means of providing and supplying a reliable source of renewable fuels to emerging West Coast markets that have mandated carbon fuels reductions.

The transport of domestic feedstocks from regions east of the Rocky Mountains was determined to be infeasible from a cost and logistics standpoint. Therefore, the applicant secured feedstock supply agreements that necessitate shipment of the product by international vessel (primarily from Asia), thus making a waterborne West Coast location necessary. The project must be located on the West Coast, to serve the market demand and access secured international feedstocks. Only West Coast sites with access to navigable waterways were evaluated.

Such sites were further evaluated for availability of land for industrial development (as described above). Potentially viable sites must have a configuration with access to, or available space to build two berths for both off-loading and onloading of products to logistically achieve the project purpose and deliver product as contracted. Sites must also be in proximity of access to rail service for delivery of bleaching clays used in the production of renewable fuels.

The applicant's evaluation first eliminated potential sites located in Canada and Mexico for failure to meet project criteria.

A two-tier framework was used to screen potential sites in the United States. First-tier screening helped to narrow and identify the general location for the facility. Second-tier screening was developed and used the more specific project criteria described and defined under Project Criteria to evaluate sites meeting the first-tier criteria. Project criteria were used to evaluate a range of options to identify the most practicable alternative for meeting the project's purpose with the least reasonably expected adverse impacts to waters of the state. "Practicable" means capable of being accomplished taking into consideration cost, existing technology, and logistics with respect to the overall project purposes.

First Tier Screening included the need for sites to have: the availability of suitable acreage (105 Contiguous Acres), access to a navigable waterway (cost and logistics), access to or ability to construct two berths (cost and logistics), and access to manifest rail service (cost and logistics).

All sites located in California were eliminated as inconsistent with the overall project purpose due to practicable costs, logistics of access, and availability of land. All Southern California sites were determined to not have the necessary acreage available to meet the project purpose. Northern California sites did not have access to the necessary navigable waterways for international shipping of feedstocks. The remaining twenty-four sites were in Oregon and Washington. Of the remaining twenty-four sites in Oregon and Washington all but seven sites in the Port Westward location did not meet the first tier screening criteria.

Second tier criteria included project criteria, landowner approval, and land accessibility. Seven parcels were evaluated within the Port Westward location under second tier criteria. Three parcels were eliminated as unavailable for purchase and four parcels within the Port Westward Industrial Park then were evaluated against the project criteria of cost, existing technology and logistics. All but one site were either not large enough or not configured appropriately to construct an efficient plant or were currently zoned agricultural and it was uncertain when or if they would be rezoned industrial. Only one site (the selected site - the Port of Columbia County/Teevin property) met all the project criteria.

- e. The proposed project conforms to sound policies of conservation because adverse effects to the aquatic resources have been reduced to the extent practicable and the proposed permit contains construction and operating conditions for best management practices to further minimize adverse effects. Interference with public health and safety was identified in the application evaluation and public review processes. Comments

received had concerns about toxic liquid spills and air quality. These concerns will be addressed by conformance to water quality and air quality requirements of other state and federal agencies. As required by other agencies, the tanks on the plant site will have berms around them, and in the event of a spill the enclosures would contain all the volume of the tanks.

- f. There is a potential conflict with existing public uses of the affected waters or adjacent land uses identified in the application evaluation and public review processes. Public comments identified a concern that by modifying the ditches across the mitigation site the adjacent properties would be flooded. The mitigation design verifies that no additional water will be added to the mitigation area than currently exists and the perimeter ditches around the mitigation site and connected to adjacent farms will be modified where needed to maintain the volume of water and water levels currently managed by the drainage district and passing through the mitigation area.
- g. The proposed permit is conditioned on future local approval as described in the application's Land Use Compatibility Statement.
- h. The proposed fill and removal is not for streambank protection.
- i. The application describes compensatory mitigation in the form of 483.10 acres of permittee responsible wetland mitigation. The mitigation is sufficient to offset anticipated spatial and function attribute losses resulting from the proposed fill or removal.

III. Conclusions of Law:

Based on the factors laid out in ORS Chapter 196 and OAR Chapter 141, Division 85, including ORS 196.825, OAR 141-085-0565, and OAR 141-093-0115, DSL should approve the permit application as conditioned in the proposed permit.

IV. Proposed Order:

The Department proposes approving the permit application with conditions and based on the factors laid out in ORS Chapter 196 and OAR Chapter 141, Division 85, including ORS 196.825, OAR 141-085-0565 and OAR 141-093-0130.

As described below, you have the right to request a hearing within 21 days. Prior to the expiration of the 21-day period, this proposed permit decision is not the final agency order on the matter, and the permittee should be aware that the decision could be changed prior to the expiration of the 21-day appeal period—either because the permittee requests a contested case hearing, or as otherwise allowed under the removal fill law. A permittee who begins work under a permit prior to issuance of a final order does so with acceptance of this risk.

V. Hearing:

You are entitled to request a hearing based on this Proposed Order as provided by the Oregon Administrative Procedures Act (ORS chapter 183) and the administrative rules implementing the Administrative Procedures Act, OAR Chapter 137, Division 3. See ORS 196.825(7); OAR 141-001-0005; OAR 141-001-0010; OAR 141-085-0575; OAR 141-093-0130.

If you want a hearing, you must file a written request for a hearing with the Department no later than 21 calendar days from the date of the permit decision. See ORS 196.825(7); OAR 141-085-0575; OAR 141-093-0130. If you are a corporation, partnership, limited liability company, unincorporated association, trust, or government body, you must either have an attorney licensed to practice law in Oregon submit a request for a contested case hearing on your behalf or ratify your hearing request within 28 days. See OAR 137-003-0550.

The Department has determined that due to the complexity of removal-fill permitting, a general denial of the matters or a general objection to all permit conditions in the request for a contested case proceeding does not provide sufficient information for a fair and efficient contested case and a more specific request is warranted. OAR 141-085-0575. All requests for a contested case proceeding under this section shall include a specific list of issues for the contested case proceeding. OAR 141-085-0575. The requester may amend their request to include additional issues or clarify existing issues within 15 days of the date that the case is referred to the Office of Administrative Hearings. OAR 141-085-0575.

You may mail a request for a hearing to:
Department of State Lands
Aquatic Resource Management Program
775 Summer Street NE STE 100
Salem, OR 97301.

If you request a hearing, you will be notified of the time and the place of the hearing. See OAR 137-003-0525. You may be represented by legal counsel at the hearing. ORS 183.417; OAR 137-003-0550. Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law. OAR 137-003-0550. Legal aid organizations may be able to represent you if you have limited financial resources. You will be given information on the procedures, right of representation, and other rights of parties relating to the substance and conduct of the hearing before commencement of the hearing. See ORS 183.413.

VI. Jurisdiction and Authority to Hold a Hearing:

The Department has jurisdiction over the issuance of removal-fill permits pursuant to ORS Chapter 196, and specifically, ORS 196.810. A permit decision constitutes an order in a contested case. See ORS 183.310(2)(a); ORS 196.825(7). If timely requested, a hearing is held as laid out in ORS 183.411 to ORS 183.471, OAR Chapter 137, Division 3, ORS Chapter 196, and OAR Chapter 141, Division 85. ORS 196.825(7).

VII. Final Order and Defaults:

If a request for a hearing is not received by the Department within this 21-day period, your right to a hearing shall be waived and this Proposed Order shall become the Final Order by default. See ORS 196.825(7); OAR 141-085-0575; OAR 141-093-0130.

If you request a hearing and then either withdraw your hearing request, notify the Department or administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Department may issue a final order by default. See ORS 183.417.

If the Department issues a final order by default, it designates its file on this matter, including any materials submitted by you that relate to this matter, as the record for purposes of supporting its decision.

If you proceed to a contested case hearing, a Final Order will not be issued until after the hearing concludes. See ORS 183.464; OAR 141-085-0575; OAR 141-093-0130.

VIII. Federal Servicemembers Civil Relief Act:

Active duty servicemembers have a right to stay contested case proceedings under the federal Servicemembers Civil Relief Act. See *generally* 50 USC 3901 *et seq.* For more information, contact the Oregon State Bar (800-452-8260), the Oregon Military Department (503-584-3571), or the nearest United States Armed Forces Legal Assistance Office (<http://legalassistance.law.af.mil>). The Oregon Military Department does not have a toll-free telephone number.

Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

Permit No.:	63077-RF
Permit Type:	Removal/Fill
Waters:	Wetland/McLean Slough/Dobbins Slough/drainage ditches
County:	Columbia
Expiration Date:	March 22, 2023

NEXT RENEWABLE FUELS OREGON, LLC

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE REFERENCED APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder must obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands (DSL) and all duly authorized representatives of the Director must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, DSL makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee must defend and hold harmless the State of Oregon, and its officers, agents and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the permittee must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940 if you want a transfer of title; public rights to such filled lands are not extinguished by issuance of this permit. This permit does not relieve the permittee of an obligation to secure appropriate leases from DSL, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact Department of State Lands, 503-986-5200.

Christopher Castelli, Northern Operations Manager
Aquatic Resource Management
Oregon Department of State Lands

Authorized Signature

ATTACHMENT A

Permit Holder: NEXT Renewable Fuels Oregon, LLC

Project Name: NEXT Renewable Fuels Oregon

Special Conditions for Removal/Fill Permit No. 63077-RF

READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. A copy of this permit must be available at the work site whenever authorized operations are being conducted.

1. **Responsible Party:** By signature on the application, Christopher Efird is acting as the representative of NEXT Renewable Fuels Oregon, LLC. By proceeding under this permit, NEXT Renewable Fuels Oregon, LLC agrees to comply with and fulfill all terms and conditions of this permit, unless the permit is officially transferred to another party as approved by DSL. In the event information in the application conflicts with these permit conditions, the permit conditions prevail.
2. **Authorization to Conduct Removal and/or Fill:** This permit authorizes 117.64 acres of wetland and 6,366.6 linear feet (1.2058 miles) of waterway impacts with associated removal and fill of material in T8N R4W Section 16DD,DC/ 21AC/, 22AA, AC, AD/ 23BD, CA, Tax Lots 200/ 600, 700/ 100, 200, 300, 400, 500, 600, 700, 1100/ 700, 800, in Columbia County, as referenced in the final application, map and drawings (See Attachment B for project locations), dated February 22, 2022. The center-point of the impact site is approximately 46.166605 degrees Latitude, -123.161324 degrees Longitude. This permit also authorizes removal and fill activities necessary to complete required compensatory mitigation off-site at T8N R4W Sections 27/ 28/ 33/ 34, Tax Lots 100, 200, 300, 400, 1600/ 300, 1400/ 100/ 300. The center-point of the mitigation site is approximately 46.152259 degrees Latitude, -123.172541 degrees Longitude.
3. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permittee's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation, or operating conditions to comply with conditions imposed by other permits resulting in removal-fill activity must be approved by DSL prior to implementation.
4. **DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project or require rectification in case of unforeseen adverse effects to aquatic resources or permit non-compliance.
5. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

Pre-Construction

6. **Local Government Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a conditional use permit under Columbia County Zone

Ordinance 683.1 and site design review under Columbia County Zone Ordinance 1550 from Columbia County.

7. **Stormwater Management Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality (DEQ), if one is required by DEQ.
8. **Pre-construction Resource Area Fencing or Flagging:** Prior to any site grading, the boundaries of the avoided wetlands, waterways, and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

General Construction Conditions

9. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.
10. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) must be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
 - a. All exposed soils must be stabilized during and after construction to prevent erosion and sedimentation.
 - b. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands.
 - c. To prevent erosion, use of compost berms, impervious materials, or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
 - d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.

- e. Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch must be used so the seed does not wash away before germination and rooting.
- f. Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands.
- g. Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.
- h. All erosion control structures must be removed when the project is complete, and soils are stabilized and vegetated.

- 11. Fuels, Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, material treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery and equipment staging, cleaning, maintenance, refueling, and fuel storage must be at least 150 feet from OHW and wetlands to prevent contaminants from entering waters of the state. Refueling is to be confined to a designated area to prevent spillage into waters of this state. Barges must have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
- 12. Archaeological Resources:** If any archaeological resources, artifacts, or human remains are encountered during construction, all construction activity must immediately cease. The State Historic Preservation Office must be contacted at 503-986-0674. You may be contacted by a Tribal representative if it is determined by an affected Tribe that the project could affect Tribal cultural or archeological resources.
- 13. Construction Corridor:** There must be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint (Figures: Existing Wetlands, Wetland Impact Areas, Wetland Impact Areas Staging Area 4).
- 14. Hazards to Recreation, Navigation or Fishing:** The activity must be timed so as not to unreasonably interfere with or create a hazard to recreational or commercial navigation or fishing.
- 15. Operation of Equipment in the Water:** Heavy equipment may be positioned below ordinary high water (OHW) of drainageways if the area is isolated from aquatic organisms, as described in the mitigation plan. All machinery operated below ordinary high water elevation must use vegetable-based hydraulic fluids, be steam cleaned and inspected for leaks prior to each use, and be diapered to prevent leakage of fuels, oils, or other fluids below OHW elevation. Any equipment found to be leaking fluids must be immediately removed from and kept out of OHW until repaired.
- 16. Fish Isolation Required:** Fish must be isolated from the work area by use of a sein net positioned across the entire drainageway ahead of work in the drainageway as described in the mitigation plan. Small drainageways to be filled must be seined moving from one end of the

drainageway to the other end in the direction of filling. Large drainageways to be modified by deepening or widening must be seined with two nets positioned in both directions from the work area.

17. **Raising or Redirecting Water:** The project must not cause water to rise or be redirected and result in damage to structures or property on the project site as well as adjacent, nearby, upstream, and downstream of the project site.
18. **Temporary Ground Disturbances:** All temporarily disturbed areas must be returned to original ground contours at project completion.
19. **Channel Relocation:** The new channel must be constructed under these conditions:
- a. There must be no operation of equipment in the active flowing waterway except to connect the newly dug channel into the existing waterway.
 - b. The new channel must be completely constructed and stabilized before diverting the waterway flow.

Rectification of Temporary Impacts

20. **Site Rectification Required for Temporary Wetland Impacts:** Site rectification for temporary impacts to 32.03 acres of wetland must be conducted according to the rehabilitation plan in the application, Appendix E. Failure to rectify the site may result in additional compensatory mitigation.
21. **Pre-construction Elevations Must Be Restored Within the Same Construction Season:** Construction activities within areas identified as temporary impact must not exceed two construction seasons and rectification of temporary impacts must be completed within 24 months of the initiation of impacts. However, if the temporary impact only requires one construction season, re-establishment of pre-construction contours must be completed within that same construction season, before the onset of fall rains.
22. **Planting Required:** Seeding of native emergent vegetation must be completed before the next growing season after re-establishment of the pre-construction contours.
23. **Rectification Monitoring Reports Required:** Rectification area restoration must be documented within the as-built report for the compensatory mitigation area and subsequent compensatory wetland mitigation monitoring reports.

Compensatory Mitigation

The following conditions apply to the actions proposed in the final application received February 22, 2022

24. **Personal Guarantee:** On behalf of NEXT Renewable Fuels, Oregon, LLC, Chris Efird has provided a joint and several personal guarantee to ensure compliance with the mitigation obligation associated with this permit.

25. Notice of Business Entity Changes Required: The permittee must make all reasonable efforts to maintain the business entity in active status until all mitigation obligations have been satisfied. The permittee must notify DSL 60 days prior to dissolution, bankruptcy, or changes in the shareholders or stockholders, limited partners, members, trustees, current beneficiaries, or other principals of the business.

26. Acreage and Type: Mitigation must be conducted according to the minimum acreages and methods described in the table below.

Acres	Credits	Cowardin, HGM Class	Method
235.81	60.46	PEM, Flats	enhancement
178.18	45.69	PSS, Flats	enhancement
62.61	16.05	PFO, Flats	enhancement
476.60		Total wetland mitigation area	
Protected Buffer			
6.5		Palustrine emergent wetland and open water	
483.10		Total protected mitigation site	

27. Mitigation Site Location: The mitigation must be conducted off-site. The center-point of the mitigation site is approximately 46.152259 degrees Latitude, -123.172541 degrees Longitude. The current legal description is Township 8N, Range 4W, Section 27, Tax Lots 100, 200, 400 and 1600, Section 28, Tax lots 300 and 1400, Section 33, Tax Lot 100, Section 34, Tax Lot 300 as shown on Figure 3 of the mitigation plan.

28. Timing of Mitigation Site Grading: Mitigation site grading must be completed prior to or within the same construction season as the commencement of the wetland impacts.

29. Timing of Mitigation Site Planting: Mitigation site plantings must be completed by the next growing season as described in the mitigation plan.

30. Mitigation Site Access Control: A contiguous 7'-8' deer-deterrent fence must be installed around the surveyed boundary of the mitigation and buffer areas as shown on Sheets 4, 5, 6, 16, 17 immediately following planting of the mitigation site. Several gates of the same height will be provided to allow access for authorized routine maintenance and monitoring activities.

31. Signs Required: Signs must be posted in the buffer along all roadways (Hermo Road and Collins Road, and undeveloped northern farm road) adjacent or crossing the mitigation site stating that the area behind the sign is a protected site.

32. Habitat Structures: Large woody debris, brush piles, raptor poles and bat boxes must be in the approximate locations as described in the mitigation plan and shown on Sheets 4, 5, 6, 11, 18, 19.

33. Water Control Structures: Log sills must be placed as passive water control structures at the mouths of the smaller dendritic channels in locations indicated in the mitigation plan and a typical

location on Sheet 5 and typical design as shown on Sheet 11 of the mitigation plan. Concrete water-control structures with adjustable boards must be placed in locations indicated on Sheets 3, 4, 5, 6 of the mitigation plan and a typical design on Sheet 20. Log sills and water control structures may be actively adjusted during the monitoring period to fine-tune the hydrology in the mitigation area. Water control structures are not intended to require active management after the monitoring period for the life of the mitigation site but will be kept in place if a problem arises that an adjustment would address.

34. **Shallow groundwater monitoring wells:** Shallow groundwater monitoring wells with electric data loggers installed pre-grading used to assist grading to optimal depths in relation to ground water will remain to be used during the monitoring period to inform the wetland hydrologic enhancement and adjustment of check dams and water control structures to maintain optimal hydrology for the establishment of plant communities and wildlife habitats.
35. **Long-term Protection of the Mitigation Site - Deed Restriction:** The mitigation site must be protected in perpetuity by recording the approved Declaration of Covenants and Restrictions and Access Easement (Protection Instrument) on the deed of the property. The protection instrument must be approved and signed by DSL prior to recording with Columbia County. A copy of the recorded instrument must be sent to DSL with the post-construction report.
36. **GIS Data:** A georeferenced shapefile (.shp) must be submitted to DSL prior to mitigation site release that documents the spatial extent of the mitigation site(s), including buffers. The shapefile must conform to the Oregon Lambert (Intl. Feet) projection.
37. **Long-term Maintenance Required:** Long-term site maintenance is required as described in the Compensatory Mitigation Plan in the application.

Monitoring and Reporting Requirements

38. **Post-Construction Report Required:** A post-construction report demonstrating as-built conditions and discussing any variation from the approved plan must be provided to DSL within 90 days of revegetation, which shall occur during the fall, winter, or spring immediately following the completion of grading within the required planting areas. The post-construction report must include:
- a. A scaled drawing, accurate to 1-foot elevation, clearly showing the following:
 - i. Finished contours of the site.
 - ii. Installed habitat structures
 - iii. Shallow water monitoring well locations
 - iv. Current tax lot and right-of-way boundaries.
 - v. Photo point locations.
 - vi. Permanently and temporarily impacted wetland and waterway boundaries identified separately, with square foot listed.
 - b. Photos from fixed photo points. This should clearly show the site conditions, and any signage, and fencing required.

- c. A narrative that describes any deviation from the approved plan.
- d. A copy of the recorded deed restriction or conservation easement.

39. Annual Monitoring Reports Required: Monitoring is required until DSL has officially released the site from further monitoring. The permittee must monitor the site to determine whether the site is meeting performance standards for a minimum period of 5 growing seasons after completion of all the initial plantings. Annual monitoring reports are required and are due by November 1. Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/or enforcement action.

40. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of DSL, for failure of the site to meet performance standards for the final two consecutive years without corrective or remedial actions (such as irrigation, significant weed/invasive plants treatment or replanting) or when needed to evaluate corrective or remedial actions.

41. Contents of the Annual Monitoring Report: The annual monitoring report must include the following information:

- a. Completed Monitoring Report Cover Sheet, which includes permit number, permit holder name, monitoring date, report year, performance standards, and a determination of whether the site is meeting performance standards.
- b. Site location map(s) that clearly shows the impact site and mitigation site boundaries.
- c. Site Plan that clearly shows at least the following:
 - i. The area seeded, with the square foot area listed.
 - ii. The area planted with trees and shrubs, with the square foot area listed.
 - iii. Current tax lot and right-of-way boundaries.
 - iv. Permanent monitoring plot locations that correspond to the data collected and fixed photo-points. These points should be overlaid on the as-built map.
 - v. PEM, PSS, PFO, waterways, and buffer clearly identified separately and the area (square foot or acreage) of each noted.
- d. A brief narrative that describes maintenance activities and recommendations to meet success criteria. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.
- e. Data collected to support the conclusions related to the status of the site relative to the performance standards listed in this permit (include summary/analysis in the report and raw data in the appendix). Data should be submitted using the DSL Mitigation Monitoring Vegetation Spreadsheet or presented in a similar format as described in DSL's Routine Monitoring Guidance for Vegetation.
- f. Shallow water monitoring well data.

- g. Photos from fixed photo points (include in the appendix).
- h. Other information necessary or required to document compliance with the performance standards listed in this permit.
- i. A post-construction functional assessment by the end of the monitoring period.

42. Corrective Action May Be Required: DSL retains the authority require corrective action in the event the performance standards are not accomplished at any time within the monitoring period.

Performance Standards

To be deemed successful, the mitigation areas including buffers must meet the following performance standards, as determined by DSL:

- 43. Establishment of Permanent Monitoring Locations Required:** Permanent plot locations must be established during the first annual monitoring in sufficient number and locations to be representative of the site. The permanent plot locations must be clearly marked on the ground.
- 44. Wetland Acreage Required:** The site will have a minimum acreage as shown in the Acreage and Type table above, as determined by a Wetland Delineation Light with data collected during spring of a year when precipitation has been near normal, vegetation has been established, and irrigation has been removed for at least two years. Acreage must be documented on a printed map and in a GIS shapefile (.shp) including attribute information for each unique wetland polygon identifying the size as well as HGM and Cowardin classes. Shallow water monitoring wells will assist in the discussion of wetland hydrologic enhancement.

Herbaceous Wetlands and Buffers

- 45. Native Species Cover:** The cover of native species, as defined in the USDA Plants Database, in the herbaceous stratum is at least 60%.
- 46. Invasive Species Cover:** The cover of invasive species is no more than 10%. A plant species should automatically be labeled as invasive if it appears on the current Oregon Department of Agriculture noxious weed list, plus known problem species including *Phalaris arundinacea*, *Mentha pulegium*, *Holcus lanatus*, *Anthoxanthum odoratum*, and the last crop plant if it is non-native. Non-native plants should be labeled as such if they are listed as non-native on the USDA Plants Database. Beginning in Year 2 of monitoring, DSL will consider a non-native plant species invasive if it comprises more than 15% cover in 10% or more of the sample plots in any habitat class and increases in cover or frequency from the previous monitoring period. Plants that meet this definition will be considered invasive for all successive years of monitoring.
- 47. Bare Substrate Cover:** Bare substrate represents no more than 20% cover.
- 48. Species Diversity:** By Year 3 and thereafter, there are at least 6 different native species. To qualify, a species must have at least 5% average cover in the habitat class and occur in at least 10% of the plots sampled.

49. **Moisture Prevalence Index:** Prevalence Index is <3.0.

Shrub-dominated and Forested Wetlands

50. **Native Species Cover:** The cover of native species, as defined in the USDA Plants Database, in the herbaceous stratum is at least 60%.

51. **Invasive Species Cover:** The cover of invasive species is no more than 10%. A plant species should automatically be labeled as invasive if it appears on the current Oregon Department of Agriculture noxious weed list, plus known problem species including *Phalaris arundinacea*, *Mentha pulegium*, *Holcus lanatus*, *Anthoxanthum odoratum*, and the last crop plant if it is non-native. Non-native plants should be labeled as such if they are listed as non-native on the USDA Plants Database. Beginning in Year 2 of monitoring, DSL will consider a non-native plant species invasive if it comprises more than 15% cover in 10% or more of the sample plots in any habitat class and increases in cover or frequency from the previous monitoring period. Plants that meet this definition will be considered invasive for all successive years of monitoring. After the site has matured to the stage when desirable canopy species reach 50% cover, the cover of invasive understory species may increase but may not exceed 30%.

52. **Bare Substrate Cover:** Bare substrate represents no more than 20% cover.

53. **Woody Vegetation:** The density of woody vegetation is at least 1,600 live native plants (shrubs) and/or stems (trees) per acre OR the cover of native woody vegetation on the site is at least 50%. Native species volunteering on the site may be included, dead plants do not count, and the standard must be achieved for 2 years without irrigation.

54. **Species Diversity:** By Year 3 and thereafter, there are at least 6 different native species. To qualify, a species must have at least 5% average cover in the habitat class and occur in at least 10% of the plots sampled.

55. **Moisture Prevalence Index:** Prevalence Index total for all strata is <3.0.

Financial Security

56. **Financial Security Required:** A “good faith” performance bond (financial security) in the amount of \$3,996,336 which is 20% of the total bonding obligation of \$19,981,680 has been provided to the Department. The “good faith” bond will be released upon NEXT Renewable Fuels Oregon, LLC providing the full \$19,981,680 bond prior to commencement of Removal Fill impacts. The performance bond in the amount of \$19,981,680 will be provided to DSL to ensure completion of compensatory mitigation in accordance with the conditions of this permit. Failure to keep the performance bonds continuously in effect through the date of full performance of all the permit holder’s obligations hereunder will constitute a violation and default of this permit by the permit holder. If at any time DSL is notified that the performance bonds are to be canceled or not renewed, and a replacement financial security is not in place before the termination date, DSL may declare the permit holder to be in breach or default of its performance obligation under this permit. DSL may claim the full unreleased portion of the penal sum of the financial security, which the holder must pay to DSL with 20 days after delivery of written notice to the holder of such financial security of such breach of default by permit holder.

57. Incremental Release of the Financial Security: The permit holder must file a written request with the agency for release of portions of this financial security. Portions of the financial security may be released at the discretion of DSL, based on the following schedule:

- a. 25% release upon approval of the post-construction report, site protection instrument recorded, and first growing season monitoring report showing site constructed as approved by DSL.
- b. 25% release upon demonstration that the required acreages of wetland have been confirmed by delineation of wetland hydrology and hydrophytic vegetation, and the site is meeting all applicable performance standards after two growing seasons.
- c. 50% release upon approval of the final monitoring report and demonstrated success of the mitigation project based on the performance standards listed in this permit. All performance standards must be met for the final two consecutive years without irrigation, substantial weed or invasive species treatment, or replanting.

Monitoring and Reporting Schedule

Report	Requirements	Schedule	Financial Surety Release Schedule
Post-Construction	Post-construction report Recorded Protection Instrument	90 days after completion of revegetation	
First Annual Report	Establishment of permanent monitoring locations Vegetation performance standards Demonstration that wetland hydrology has been accomplished Evidence that water rights are secured, or are not required	After one growing season of all proposed plantings	25% upon approval of the first annual monitoring report and post-construction report. Site protection instrument recorded.
Second Annual Report	Vegetation performance standards	After two growing seasons	
Third and Fourth Annual Reports (Third and Final Rectification portion of the report)	Vegetation performance standards Actual acreage achieved by HGM and Cowardin class ¹ .	After three and four growing seasons, respectively. One "light delineation" should be completed during spring of a year when precipitation has been near normal and no irrigation has been in use during the previous two years	Up to 25% of original amount upon achieving wetland acreage confirmed by delineation of wetland hydrology and wetland vegetation, and meeting all applicable performance standards

Report	Requirements	Schedule	Financial Surety Release Schedule
Fifth Annual Report (or final report if the monitoring period has been extended)	Vegetation performance standards Functional assessment ^{1,2}	After five growing seasons	Final 50% release upon meeting all performance standards. The performance standards must be met for the final two consecutive years without corrective or remedial actions (such as irrigation, significant weed/invasive plants treatment or replanting)

¹These requirements may be fulfilled any time during the monitoring period but must be received by DSL no later than the fifth annual monitoring.

²Functional assessments must meet the standards and requirements in OAR 141-085-0685. The same assessment method used for the pre-mitigation site functional assessment should be used for monitoring purposes, unless otherwise approved by DSL.















