

**BEAVER DRAINAGE IMPROVEMENT COMPANY, INC.**  
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To the Columbia County Commission:

Nxt has made several comments in response to previous submissions, which I shall address below. However, I would also like to point out that Nxt's responses were not posted for viewing on the county website until several days after the deadline. This appears to be a violation of County land use submission procedures. The County holds the burden of proof for the posting timeline of the applicant's most recent submissions into testimony. Failure to provide proof of posting timestamps with ample evidence is consent and acknowledgement of intentional postponement of submission of the applicant's testimony.

1. Nxt has provided a new DSL permit, encompassing different lands, including new requirements, substantially ahead of the original permit renewal date. This was provided without opportunity for public comment and appears to be a violation of land use procedures. The renewal of the DSL permit shall be considered invalid given the applicant's alterations contain presentations heretofore unevaluated. The applicant's renewal permit proposal shall be considered an entirely new permit application requiring the rigors of original analysis by the DSL.
2. The specific uses allowed of lands within the BDIC do not allow for mitigation or a rail yard. The rail site and attached mitigation site are therefore not allowed as they are a violation of the Articles of Creation, Articles of Incorporation and Bylaws governing the lands within the BDIC.
3. The BDIC retains full authority over all waterways and its approval must be obtained prior to any alterations(including filling, removal or installation of structures) to any of the BDIC infrastructure. ORS 547.405 states "The boards of supervisors of all drainage districts lying west of the Cascade Mountains, whether or not organized under the Drainage District Act, shall have supervision and control of all drainage ditches, laterals, drains, canals, sloughs, waterways or conduits within the boundaries of their districts and may prescribe the width and grade thereof. They may construct and maintain ditches, laterals, drains, canals, sloughs, waterways or conduits within the boundaries of their districts." Attached is a document signed by Nxt acknowledging the authority of the BDIC, referenced in previous comments submitted to the County. Nxt is legally required to obtain approval from the BDIC prior to construction and the BDIC reserves the right to require any and all modifications to the proposed designs. Thus approval from the County prior to approval by the BDIC is premature as the designs could change. The County's failure to acknowledge ORS statutes granting the BDIC authority of approval is a direct violation of Oregon law. Proceeding without this acknowledgement is consent and acknowledgement of failure to uphold the law. The County shall deem the

applicant's recent rail yard proposal as insufficient, and consult with the BDIC directly to address significant issues that remain unaddressed by the applicant, the state, and the County.

4. The new DSL permit includes specific language restricting the BDIC from operating in the proposed mitigation site. ORS 547.305 grants broad authority to the BDIC for locating, accessing and maintaining infrastructure and specifically states that "The right of way is hereby given, dedicated and set apart to locate, construct and maintain such drainage or irrigation works over and through any of the lands that are now or may be the property of this state". Additionally, ORS 554.110 states "The board of directors shall have full power and authority to: (1) Build, construct and complete any works and improvements needed to carry out the plan of improvement of the lands described in the articles of incorporation. (2) In the name of the corporation, make all necessary water filings and appropriations of water for every purpose of the articles of incorporation. (3) Operate and maintain such works as are necessary, convenient or beneficial for said purposes" and therefore DSL has no authority to impose restrictions upon the BDIC.
5. Lived experience from the BDIC shows that the storage pond designs will not function as expected due to the current groundwater levels. Maul Foster has acknowledged in their stormwater report that "the pilings will increase groundwater level". They also acknowledge that further studies likely will show that the containment pond plans will not perform as expected. 10,000 hours of experience constitutes expert experience. The skill and task in question is the management of the Beaver Drainage System. Maul Foster has failed to achieve expert status regarding the management of the BDIC and should therefore be considered insufficient in providing guidance on this issue. On the contrary, the Beaver Drainage Improvement Company, whose Board of Directors engages with the BDIC on a regular basis and has amassed the appropriate experience for expert consideration, shall be considered by the County as the ultimate authority regarding the management and proposed alteration of the BDIC.
6. By failing to address a rebuttal to specific comments previously submitted, Nxt has publicly acknowledged the lack of required levee certifications, the authority of the BDIC, the illegal nature of the intended land use and the requirements necessary to obtain approvals via the legally required  $\frac{2}{3}$  shareholder majority vote. Failing to address pertinent issues such as the uncertified status of the levy system is implied consent and acknowledgment by the County that the Beaver Drainage District is unsuitable for further development. The County shall prioritize the recertification of the levy system before proceeding with the permitting of any further development. Failure to do so is implied acknowledgement of the County's failure to uphold Oregon law.

7. Nxt is attempting to split the rail yard into multiple applications to avoid having to address the impacts to surrounding agriculture. However, the portion crossing PA80 zoned land is inseparable from the rest of the proposed rail and the only access for the remainder of the proposed rail yard. Thus the entirety of the proposed rail yard must be considered as one submission and must pass the Farm Impacts Test for PA80 development. The Port of Columbia County has had a substantial list of impacts from this project to agriculture for several months and Nxt has made no move to address these impacts. This project fails the Farm Impacts Test by introducing substantially increased costs, damage to crops and massive changes to farm operations.
  
8. It is mentioned in the latest response from Nxt that a letter was sent to myself and no response was received, requesting sensitive information about my farm operation. It is unfair to lump the failure upon myself when it was clearly their errors which led to their lack of information. It is also extremely hypocritical for them to refuse to give out details to numerous requesters about their business operations and yet demand I provide them with my own. I have attached my letter of response that was sent to them despite the laughable mistakes contained in their request.

Sincerely,

Warren Seely