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To the Columbia County Planning Commission:

NXT's application fails to adequately address criteria from Columbia County Zoning Ordinance (CCZO) 683.1.B. The code requires NXT to show that the "potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated." NXT has not specifically analyzed the impact of the rail yard, a particular land use and improvement that will impact the Beaver Drainage Improvement Company (BDIC). NXT must address physiological characteristics of the site, including drainage and the suitability of the site for the particular land use and improvements. NXT must also show that it has considered impacts to existing land uses and both private and public facilities and services in the area, and mitigated these impacts.

These are specific ways in which NXT fails to meet the standard for addressing and mitigating impacts upon the area.

Effective drainage is vitally important to farms and farmers at Port Westward. Disrupted drainage could impact people in the area, not just the site itself. NXT states that its culverts "will be sized during final design when more information about the wetland drainage conditions becomes available." At the same time, NXT proposes culvert sizes that will be insufficient.

- The 36" diameter culvert in waterway D is insufficient. Minimum 48" required.
- The 36" diameter culvert in waterway F is insufficient. Minimum 48" required.
- The BDIC reserves the right to require field fit modification to ensure all culverts are placed at correct depth to prevent flow restriction.

NXT fails to address impacts to the BDIC from interference with access to the drainage systems caused by the proposed modification, the rail yard, gravel road, fencing, and buffers. The BDIC operates a public drainage system, attached to private improvements. The drainage and irrigation provided are highly important to people in the BDIC. Specifically,

- Sediment fencing along waterways is to be removed following construction to ensure access to waterways for maintenance.
- Proposed tree buffers along waterways are on ditch banks and will contribute debris, creating blockages. Additionally, they will restrict maintenance capabilities of the BDIC and thus will not be approved by the BDIC.

- Proposed fencing along waterways could impact BDIC ability to maintain waterways. Additional information needed for review.

NXT will have additional impacts to the BDIC and people within the BDIC that are not adequately addressed in the application for the modification.

- The soils at the proposed rail yard and facility sites are at high risk of liquefaction in an earthquake. Spill containment plans for the facility and rail yard must be approved by the BDIC prior to any County approval of this proposal.
- No ditch or waterway alterations have been approved by the BDIC Board. Without specific agreements with the BDIC, NXT cannot claim to have addressed impacts to the BDIC, its resources, or its operations. Further, the BDIC's activities are a recognized land use in the area that is vital to the overall function of the Port Westward area, including the industrial areas. NXT fails to adequately address conflicts with BDIC's use of the area, its control of the land, and the public services it provides.
- The application provides no provisions for existing irrigation points on waterway G. Interference with irrigation from this waterway and potential pollution of the water resources will impact and harm local farming. My operation utilizes both of these points and loss of them would cost me in excess of \$250,000.
- The application provides no provisions for existing power to be relocated at the Hermo Rd intersection. The power supply in this specific location supports my agriculture operation including power for harvest and irrigation. Loss of this power hookup will cost me approximately \$150,000 per year.
- No engineering analysis of drainage and irrigation impacts has been presented to the BDIC Board for approval. The BDIC cannot agree to major alterations of BDIC infrastructure without a more in-depth description of the proposed impacts. NXT cannot claim to have mitigated the impacts without an agreement with the BDIC. The application is premature.
- No engineering impact analysis or compatibility analysis has been performed for the current proposal. Prior submissions for county and BDIC approval are inadequate as location of rail yard has changed, thus impacts have changed. NXT cannot rely on previous analyses to make conclusions about the impacts in the area. The previous proposals and the current amendment are not the same in scope or intensity with respect to impacts on farmers within the BDIC.
- Finding 97 Stormwater Report NXT claims that they do not understand the groundwater impacts and states "groundwater elevations will be further studied". However they have

already submitted their application to the USACE so it is too late for further study. NXT should be required to produce groundwater studies prior to County Commissioner review as it will have pertinent information to assist with decision making.

- Stormwater ponds will impact adjacent levels as they are unlined and will alter how fast and where water enters the BDIC system. The Preliminary Stormwater Report is inadequate for determining whether these facilities will impact water relied upon for irrigation and drainage systems because the groundwater level is not fully evaluated. Additionally, the application relies on a 2001 Geotechnical Study that is outdated and suggests problems with the Stormwater Plan. Page 1 of the Preliminary Stormwater Report states, "A geotechnical report was prepared in 2001 for a prior development opportunity at the site. The subsurface investigation located the groundwater between 2 feet to 4 feet below ground surface. Based on this finding, infiltration is not expected to be a feasible discharge option for the site runoff. The geotechnical report is provided in Appendix B of this SWMP." This highly outdated study would not recognize changes in soil elevation as the land settles, which have been noted by numerous agencies and individuals including the BDIC and the USACE. The establishment of large ponds could cause changes in water conditions vital to areas just to the North of the proposed Project. Finally, the 2001 study seems to suggest that infiltration of stormwater, which is proposed with the unlined ponds, will be ineffective. This could lead to significant negative impacts if water levels are altered as a result of the development for nearby agriculture. BDIC's experience strongly suggests that the water levels will be impacted. At best, the application is premature without more study of the site conditions and opportunity for BDIC to review final plans. The BDIC reserves the right to alter any designs and require changes to minimize impacts to the BDIC system. Changes will require BDIC signoff and possibly  $\frac{2}{3}$  majority landowner vote to ratify.
- Increased rail and heavy truck traffic could have impacts on the levee crossing including increased subsidence. This could require a USACE section 408 review. No Engineering analysis has been provided to the BDIC for review. Additionally, the BDIC reserves the right to restrict any and all levee traffic during periods of high water. Kallunki Road and the rail access sit atop a levee that protects the entire area, including the proposed modification, from flooding.
- The BDIC has broad authority for maintenance of ditches/waterways within its boundaries. Restrictions in this authority, including ability to access for maintenance and alterations to maintenance activities must be approved by a  $\frac{2}{3}$  majority shareholder vote.
- The BDIC retains broad authority over the lands within its boundaries and approval from the BDIC is required for alterations or impacts to the systems. The BDIC has not approved the offsite wetlands mitigation plans required under state and federal law(1536(B)). Restrictions in the ability of the BDIC to perform maintenance must be approved by a  $\frac{2}{3}$  majority shareholder vote. Failure to obtain these approvals will result in violation of 1536(B).

- The levee system protecting the Port Westward Development site has not been certified for well over a decade. USACE defines the BDIC levee system as being “Previously certified, but not currently certified”. FEMA inspections in 2014 determined that the BDIC Levee system was 3ft height deficient and required so much work to protect from a 100 year flood that “further analysis for certification at this time is pointless”. Additional significant subsidence has since been noted on both the Erickson Dike Road and Kallunki Road levees. Subsequent construction of a wetlands mitigation site near the Port Westward docks in 2016(completed without BDIC approval) introduced “over 800 ft of clear, active seepage” and has been noted as active several times in recent USACE Periodic Inspections, resulting in Unacceptable ratings on the levee system. It is unknown at this point when the levee system will be certified. The Port Westward Development Exception heavily relies on a certified levee system as a condition of approval(1536(A) Standards for approval, CCZO 1100). NXT is using outdated information to justify a FEMA flood zone X and has not met the standards required by CCZO 1100. The Port Westward Development Site, including the proposed driveway, pipe rack, railyard and associated plant site has been, is currently, and will for the foreseeable future, remain at risk of a greater than 1% annual chance of flooding and therefore falls within the Special Flood Hazard Area.
- NXT fails to adequately address criteria from Columbia County Zoning Ordinance (CCZO) 683.1.B. NXT attempts to argue that the previous Site Design Review encompassed the entirety of the newly proposed rail yard and other modifications. This is not the case. First, the County’s order and findings in the DR 21-03 decision repeatedly confirmed that the rail facility was part of a separate land use approval, was not subject to the application at issue in DR 21-03, and that certain findings were “not part of [the] Decision” in DR 21-03.1 The County’s prior decision approving the Facility did not consider the entire rail facility as part of the use and did not fully analyze the potential impacts under CCZO 683.1.B. Second, the County’s prior land use decision approving NXT’s refinery did not address the rail yard in its present configuration and location.
- NXT has obtained the land for the railyard under false pretenses. I have attached a folder containing all the documentation supplied during the termination of my lease-holdings which were revoked to make way for NXT. As can be seen in the documents, the land was to be utilized only for road accesses, pipeline access and temporary power. Documentation was provided assuring that no rail would be placed on that land, contrary to what is before the county for review. I question whether the terms of the lease agreement between PGE and the Port allow for the Port to develop rail on that land, hence the intentional omittance. Additionally, the temporary power connection for the facility is a new segment that has not been considered for impacts previously. The final power design should be performed and submitted prior to county review as an unpowered plant is ridiculous. Finally, the pipeline route shown in the attached documentation does not conform to the same path as previous designs. The County

should find that none of the proposals by NXT can be considered as “previously approved” since they are neither in the same location nor of the same design as previously submitted.

- NXT failed to show that the “potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated,” as required by County rules. NXT must specifically consider the particular land use and improvements with respect to the rail yard and road infrastructure, taking into account: physiological characteristics of the site (i.e., topography, drainage, etc.); the suitability of the site for the particular land use and improvement; existing land uses; and both private and public facilities and services in the area.
- NXT has already impacted agricultural operations in the area by removing access to power, irrigation, drainage and forcing the removal of highly valuable crops. Further activities including construction traffic and train traffic will also impact local agriculture due to dust(reduces yield and quality of mint), noise, pollution(jet fuel contains components of substances banned on food crops), buffers(loss of ability to actively manage), ect. This fails the agricultural compatibility test.
- The proposed road access and rail system has no provisions for fire control from sparks from traffic. Previous problems have been encountered at adjacent rail sites close to the Port Westward guard shack with sparks catching neighboring fields on fire and severely damaging pastureland, and threatening Drainage Company infrastructure.
- The submitted application expressly states that NEXT will provide proposed waivers to adjacent agriculture operators, whereby NEXT would waive any rights it may have to pursue compensation for complaints related to normal, lawful agricultural practices. No waivers for normal farm activities have been provided to any adjacent landowners or operators for the plant site, the road and rail access sites or the pipeline route. Additionally, no waivers or easements for normal or emergency Drainage Company maintenance activities on the adjacent waterways have been provided. These waivers must be in place prior to any consideration of approval of this project.
- The submitted application states the primary road access to the plant site is private; however, that road is adjacent to and crosses Drainage Company owned infrastructure. Access easements for the Drainage Company must be in place prior to any consideration of approval of this project by the Drainage Company.
- The timing of surrounding agricultural crop harvest(mint oil, mint leaf, roots, hay, ect) is historically throughout the summer months but exact timing is dictated by weather events and crop maturity. These in combination require constant monitoring and the ability to mobilize and operate without restriction to prevent complete crop loss. It is common for harvest operations to take place around the clock and last for months. In addition, advances in markets and techniques have allowed me to expand my harvest to close to

year around. Delays in crop harvest of even minutes can result in low quality(maturity, heating, sprout), increased harvest costs(from underutilizing personnel or equipment) or even total crop failure. Agricultural crop maintenance and harvest traffic must be able to traverse to both sides of the proposed project with minimal delays. During harvest, every piece of equipment is on a schedule to promote optimum efficiency and deviating from this schedule costs me thousands of dollars per hour.

- I have also attached a sheet listing immediate, direct impacts to my operation that have already taken place. See accompanying file "Comments NEXT County 1/24"