



NEXT Rail Yard and Refinery

Peter Froschinsky
20361 Ilmari Rd.
Clatskanie OR

I own property on Ilmari rd about one mile from this proposed disaster.

Please deny this and any or all requests for a rail yard in connection to a refinery in this pristine space.

NEXT withdrew the last application along these lines in July 2023 after strong community opposition against the rail yard continued for the third attempt over two years. Now here we are again.

They have lied about everything from not needing rail in the first place never mind the entire enterprise is a lie to keep big oil burning.

THIS IS NOT ABOUT GREEN ENERGY! It will take far more fossil fuel to build and run and supply the plant with fracked gas under pressure delivered through our community to a refinery proposed in a wetland!!!!

The hazards are endless under perfect conditions, and we are headed for more freak storms and earthquakes.

The lists of infractions and lies or piecemeal plans are outrageous and so numerous. Im not going to pontificate on that but will copy them at the end of this for the record.

The real issue is: **WE HAVE ONE MAJOR RESOURCE IN THE NORTH WEST. ONE!**

Clean potable water.

Nowhere else does the lower 48 have this resource as well. (never mind Hanford and the like).

This entire project is antithetical to how we must respond to how the world is changing.

These are not the jobs we need.

Everything, including the economics needs to be **SUSTAINABLE**.

1) The Commission should deny NXT's conditional use application for the portion of the rail yard that goes through agricultural land.

- ○ The rail yard is not a branchline. NXT attempts to piecemeal the rail facility into different parts and argue that part of it is a "branchline." However, it's all one facility, a complex series of parallel tracks for loading, unloading, maintaining, and storing rail cars. The rail yard facility straddles two land use designations, but it all serves a single function and purpose— to enable NXT to move a 100-car train off of the PNW rail line for loading and unloading at the diesel facility. Oregon's Land Use Board of Appeals (LUBA) concluded in 2022 that "the rail facility that the county approved is not a branchline under OAR 660-012-0065(3) (j)." NXT has not solved this problem.
- ○ NXT has not meaningfully changed the design of the facility, which still impacts over 3.4 miles of land. NXT has not meaningfully changed the function or purpose of the facility, which is to receive, store, sort, and unload trains carrying supplies, feedstock, and finished product.
- ○ The portion of the rail yard going through agricultural land will negatively impact farmers and cause delays at the crossing of Kallunki Road. This includes people who live in Johns District, access for whom is on the north side of Kallunki Road. NXT has failed to assess these impacts. It fails to meet the farm impact test.
- ○ **If you are a farmer in the area that relies on water or drainage from local drainage districts, tell the Commissioners your story about how clean water sustains your farm.** The introduction of a large rail yard includes the potential for spills, and a portion of the rail yard on agricultural land will impact infrastructure owned and maintained by the Beaver Drainage Improvement Company (BDIC), which has not come to any agreement with NXT to allow the development.

- ○ NXT has not provided a detailed analysis of impacts to the BDIC and those who use the BDIC system for drainage and access to irrigation.
- ○ The area of the rail yard sits behind dikes that are at risk of overtopping in a flood and are not certified by the Army Corps of Engineers. “Provisional” certification is an acknowledgment that the dikes are inadequate. The BDIC has informed the Port, repeatedly, that the dikes are not certified.

2) The Commission should deny NXT’s proposed modification of the prior approval for the refinery.

- ○ The proposed modification would allow NXT to establish miles of rail tracks at Port Westward. NXT initially promoted its refinery with a commitment not to use frequent, long trains to bring in feedstock for the refinery. The rail yard is a major bait-and-switch.
- ○ NXT’s proposal would impact both the local community and people who live in communities near the rail line along Highway 30 by increasing long train traffic.
- ○ The rail yard will have a major, negative impact on the community and area farms. This includes water pollution, air pollution, noise pollution, and light pollution. NXT continues to ignore and downplay community concerns, including those raised by nearby residents, farmers, and people at the Great Vow Zen Buddhist Monastery, which is close to the rail yard.
- ○ The proposed modification conflicts with the County’s land use rules, and the application fails to consider relevant local impacts. Instead, NXT is dodging issues related to the rail yard and trying to rely on prior decisions.
- ○ NXT asserts, “...there is no basis for the County to conclude that scope and intensity of the use is any greater than that already

approved. As the use is not proposed to change with this application, no further analysis is provided here.” This is incorrect. The proposed use has changed to include a rail yard.

- ○ The County’s prior review and approval of the refinery facility did not consider the rail yard as proposed. A previous rail yard proposal was reviewed under a separate application and different criteria, and ultimately rejected by LUBA. NXT’s procedural response—trying to jam the rail yard into the previously approved land use determination for the refinery—significantly increases the scope and intensity of NXT's proposal.
- ○ The prior rail yard approval was a separate application, not part of the refinery application that NXT now proposes to modify. And that prior approval was reversed by LUBA, so there is no basis to rely on that decision to establish the potential impacts of the rail yard.
- ○ The Commission should find that NEXT fails to meet the requirements of CCZO 1562 criteria governing buffers, screens, and fencing. The BDIC raised several concerns regarding sediment, proposed tree buffers, fencing, and potential impacts to BDIC’s irrigation and drainage system. For instance, CCZO 1562.A.1 provides that “existing plant materials on a site shall be protected to prevent erosion.” Proposed tree buffers along waterways create the potential for those

buffers to contribute debris and create blockages in drainage and irrigation systems. In the absence of an agreement with BDIC, CCZO 1562 cannot be met.

- ○ The Commission should find that NXT fails to assess and mitigate the impacts of the proposed modification on adjacent uses, including agricultural lands as required by CCZO 1562.B.1. This criteria provides that “buffering and/or screening are required to reduce the impacts on adjacent uses which are of a different type.” CCZO 1562.B.1 is concerned with uses “of a different type.” Farming that occurs to the north and west of the proposed rail

facility is of a different type than the industrial use proposed by NXT and will be impacted by the proposed use. NXT's proposed buffers are inadequate, and the proposed development directly impacts and interferes with farming operations to the north.

- ○ The Commission should find that NXT fails to meet CCZO 1562.B.3 which says that no roads shall be allowed in a buffer area. The application does not provide for a 10-foot buffer between the access road and the land to the north. Furthermore, location of the buffers conflict with the BDIC's ability to manage drainage infrastructure. NXT cannot locate the buffers as proposed, and proposed buffers are inadequate.
- ○ The Planning Commission should find that CCZO 683 *does* apply in this case, and NXT has failed to meet this criteria. As discussed in previous comments, the County's decision in DR 21-03 did not include the entire rail facility and thus did not analyze the impacts associated with rail use and the rail yard under the CCZO 683 criteria. The result of the proposed application is therefore not a "reduced capacity rail improvement;" it is an expansion of the proposed industrial use that was evaluated and approved in DR 21-03, the permanent imposition of multiple miles of rail tracks. The revised rail facility does not fit within the scope of what was approved in the prior decision and must be reviewed for consistency with the criteria in CCZO 683.
- ○ The County's code requires NXT to demonstrate 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's application ignores that standard by citing NXT's previous application for a rail yard in a different location and configuration—which was ultimately invalidated by LUBA.
- ○ The Planning Commission should find that 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.

- ○ A Goal 2 exception is required for the proposed modification. The present application represents an expansion of use exceeding the scope of the two prior goal exceptions taken on the subject properties at Port Westward. Additionally, because the modification is not a "limited land use application," as described above, NXT cannot dismiss the Goal 2 exception issue.
- ○ Columbia County Zoning Ordinance, CCZO 683.1.B, requires NXT to consider impacts to area land uses, water, and the community. NXT fails to fulfill this requirement.
- ○ 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 does not provide adequate information about the new proposal's effects on drainage and groundwater. During many times of the year, groundwater is at or near the surface of the ground. Everyone who lives and works at Port Westward knows this. NXT fails to adequately address the impact of the modification when groundwater levels remain close to the surface

for long periods of time, as is often the case.

- ○ NXT even admits in its stormwater report that NXT does not fully understand groundwater levels. (See Stormwater report p. 7 which states, "Groundwater elevations will be further studied, and the pond design may be refined during the final design phase to minimize groundwater intrusion, if needed.") NXT's application and stormwater plan fail to show that NXT can mitigate the impacts of the proposed modification.
 - ○ NXT does not explain how its proposal will avoid causing water level problems on the site and adjacent lands, and it fails to provide sizing for culverts needed. (See Stormwater report p. 3 which states, "The culvert will be sized during final design when more information about the wetland drainage conditions becomes
- ¹ See Final Order No. 12-2022, Exhibit A at 1, 18, 21, 42.

available. Wetland water levels will be monitored over the next year to evaluate seasonal fluctuations.")

- NXT's proposed modification conflicts with land uses in the area.
 - (1) NXT's new rail yard proposal would fill and impact drainage and ditch systems that are integral for providing manageable water levels, irrigation, and drainage. The BDIC's maintenance and use of the drainage system is a land use that must be considered and addressed. NXT's proposal will interfere with the BDIC's ability to maintain its infrastructure.
 - (2) NXT must address potential impacts to farming. The proposed modification including the rail yard and road infrastructure have and will impact local farming. The area of the proposed modification has been recently, actively farmed.
 - (3) The rail facility is going to cause impacts to farming through potential transportation delays and a blocked crossing at Kallunki

Rd. (NXT hasn't adequately addressed the issue of blocked crossings in other parts of the County, either.)

3) For nearby residents of the area, consider submitting information about your own experience living and working at Port Westward and visiting the area.

- ○ How will long trains carrying feedstock along the Highway 30 corridor, and through the Port Westward area, impact your home, livelihood, and community?
- ○ How do you rely on drainage systems that would be impacted by the rail yard? NXT proposes to fill areas of the drainage ditches maintained by the BDIC. Does your farm depend on water from the BDIC? How could changes in water levels or availability impact you?
- ○ Highlight your residence, business, or farm and how it would be impacted by the proposed rail yard. Pollution and transportation are important factors. Do you travel often on Kallunki Road? How would delays impact your ability to farm and to timely move your product to market? How long do you expect it to take for a mile-long train to pass a particular location as it is rolling to a stop, and how long will a fully loaded mile-long train departing from a stop interfere with local road access? (NXT claims that trains will move 10 mph and only block Kallunki Rd for 7.5 minutes). What has been your own lived experience regarding water levels, soil stability, and road infrastructure in the area that the rail yard and proposed new roads could impact?