

January 17, 2022

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**VIA E-MAIL**

Columbia County Board of Commissioners  
230 Strand St.  
County Courthouse Room 338  
St. Helens, OR 97051

RE: Applicant's Response to Public Comments; Columbia County Board of Commissioners, App DR 21-03; V 21-05 and CU 21-04 (NEXT Renewables Fuels Oregon, LLC)

Dear Chair Heimuller, Commissioner Magruder, and Commissioner Garrett:

This office represents NEXT Renewable Fuels Oregon, LLC ("NEXT"). This letter constitutes its pre-hearing testimony and responds to the public comments submitted in the above-referenced matter.

**1. INTRODUCTION AND OVERVIEW**

NEXT is proposing to develop a renewable diesel production facility at Port Westward with related Columbia River dock and rail connections (together, the "Project"). Renewable diesel does not rely on petroleum and instead utilizes plant and animal-based byproducts. According to the Oregon DEQ, using renewable diesel can cut lifecycle greenhouse gas emissions up to 85% depending on what materials it is made from. Renewable diesel also runs cleaner, blends with petroleum diesel at any fraction, and provides identical efficiency to petroleum diesel. **Exhibit 1.**

The Project is anticipated to create more than 3500 construction jobs and 240 permanent jobs, and is planned to operate for 80 years or more. The Project represents a roughly \$2 billion investment by NEXT will result in a substantial expansion of the County's tax base (estimated at \$16 million/year) and a new income stream to the Port of Columbia County, which can be used for future Port expansion and improvement.

NEXT's facility is centered on a renewable diesel production facility consisting of multiple buildings (office, laboratory, warehouse, maintenance, process, controls, etc.), parking, private roads, storage tanks, processing equipment, a gas flare, wastewater treatment facilities, outdoor laydown yards, electrical equipment, landscaping, and security fencing. Primary access to the site is proposed from a driveway to Hermo Road (which NEXT proposes to improve) and secondary emergency access from Kallunki Road.

A substantial portion of product and feed stocks (raw materials) will be transported by vessels utilizing the Port of Columbia County-owned dock on the Columbia River. NEXT also proposes

a rail branchline to connect to Portland & Western's rail line that is on the east side of the proposed facility site. The branchline will facilitate shipment of raw materials and finished product to and from the proposed renewable diesel production facility. A portion of the rail branchline is outside the RIPD zone and within the Primary Agriculture (PA-80) zone. The branchline includes side tracks located both in RIPD and PA-80 zoning to allow for the circular movement of train cars without causing train traffic to back up onto the Portland and Western Railroad line already serving Port Westward.

In order to construct its facility and the rail branchline, NEXT submitted applications for: (1) a Site Design Review (which includes findings for a "Use Permitted Under Prescribed Conditions in the RIPD Zone") and Variance for the renewable diesel production facility (DR 21-03); and (2) a Conditional Use application for portions of the rail branchline located the PPA-80 Zone (CU 21-04) (collectively, "Applications").

**a. The Project is consistent with applicable zoning.**

The Applications are quasi-judicial, not legislative, and subject to the current zoning of the subject parcels—RIPD and PA-80. NEXT understands that the Board and has recently considered an expansion of Port Westward through a complex legislative Statewide Planning Goal Exception. Please note that the Applications are not subject to the same goal exception criteria, which require a far more detailed analysis of need, comparative sites, and compatibility.

With the exception of a section of proposed rail branchline, the Project is located entirely within the RIPD zone. The particular use category proposed in the Site Design Review application is the "production, processing, assembling, packaging, or treatment of materials; research and development laboratories; and storage and distribution of services and facilities," which is allowed under CCZO 683.1.

The RIPD zone was adopted with the County's 1984 Comprehensive Plan as an "exception area," which specifically allows development that would not otherwise be permitted on resource lands. The Port Westward exception area grew around a U.S. Army ammunition depot that was constructed during World War II and later developed with the PGE diesel tank farm and the Beaver generating plant, and further developed with PGE's natural gas Port Westward Generating Plan and Global Partners' Columbia Pacific Bio-Refinery ethanol plant.

Port Westward is one of only five deep water ports in Oregon<sup>1</sup> and presents a unique industrial and transportation resource for Columbia County. For this reason, the Port Westward Exception Area was specifically intended to facilitate development of heavy industry that relies on marine transportation:

"Because of its location on the Columbia River, Port Westward is a unique site specific resource that is important to the economy of Columbia County. This fact was recognized by the Port of St. Helens in 1966 when it entered into a long-term

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<sup>1</sup> The only others are the Ports of Coos Bay, Astoria, Newport, and Portland.

lease for the property, on the condition that it be put to industrial uses to provide jobs.

Port Westward is unique for several other reasons as well. Most importantly, it offers prospective users a large existing dock facility. Existence of the dock facility reduces the lead-time for commencement of operation, allowing prospective users to achieve a head start on the competition. It also eliminates uncertainty and delay which might otherwise exist, due to the process requirements to obtain permits for building docks on navigable waters. Another important characteristic of Port Westward is that the basic infrastructure of urban services already exists on the property, although upgrading such services would likely be required when significant development occurs. Neither government nor the developer would be called upon to bear the large cost necessary to create a completely new infrastructure.

The Port Westward site is also large enough to accommodate loop rail systems that could handle 100-car unit trains. In this case, the site size for the exception is recommended based on the ownership pattern and the legal lease requirements to develop the land for industrial development. Past history and commitment support the 900-acre site size.”

Comp. Plan, Pt. XII § VII.1.b (pg. 124) (1984). The Comprehensive Plan also speculated that uses appropriate for Port Westward would include “a 200-acre oil refinery, a 150-to-200-acre coal port, an 80-acre petrochemical tank farm, and a 230-acre coal gasification plant.” Comp. Plan. Pt. XII § V (pg. 122-23) (1984).

As the implementing mechanism for the Port Westward Exception Area, the RIPD zone is intended for uses which:

- “.1 Are not generally labor intensive;
- .2 Are land extensive;
- .3 Require a rural location in order to take advantage of adequate rail and/or vehicle and/or deep water port and/or airstrip access;
- .4 Complement the character and development of the surrounding rural area;
- .5 Are consistent with the rural facilities and services existing and/or planned for the area; and,
- .6 Will not require facility and/or service improvements at significant public expense.

The uses contemplated for this district are not appropriate for location within Urban Growth Boundaries due to their relationship with the site specific resources noted in the Plan and/or due to their hazardous nature.”

CCZO 681. As demonstrated in the Application and Staff Report, the Project specifically relies on the Port Westward dock for access to marine transportation and the river itself for process water. Thus, the Project is entirely consistent with the legislative purposes underpinning Port Westward.

The rail branchline can be best viewed in three segments. The first is a segment of bi-directional track that connects the Project through a small portion of PA-80 zoned land to the Portland and Western Railroad already serving Port Westward. The second is a series of side tracks located in the RIPD-zoned portion of the site, which are allowed as part of the Site Design Review/Use Permitted under Prescribed Conditions Application. The third is a second series of side tracks located on PA-80 zoned land owned by the Port of Columbia County, which land is proposed for eventual inclusion within the RIPD expansion area. Rail improvements on PA-80 zoned land are specifically permitted under OAR 660-12-0065 (“Transportation Improvements on Rural Lands”) as “(j) Railroad mainlines and branchlines.” Together, these rail facilities provide a “looped” branchline that allows safe and efficient flow into and out of the renewable diesel facility.

**b. NEXT supports staff’s recommendation for approval and accepts staff’s proposed conditions of approval.**

Since submitting its applications in early 2021, NEXT has met with the County planning, engineering, and legal staff on a number of occasions and, based on staff’s feedback, refined its applications several times to ensure that they comprehensively address all applicable criteria and development issues. County planning staff has extensively reviewed the applications and issued its Staff Report on January 12, 2022, recommending that the County Board of Commissioners approve the Applications with conditions.

The Applicant wishes to make a few clarifications on some of the facts/analysis presented in the Staff Report:

- First, findings 37 and 75 (pages 18 and 29) incorrectly assert that the fuel production facility impacts riparian areas associated with McLean Slough. In fact, the facility itself is not proposed within the riparian buffer; rather, the only proposed impact to the riparian buffer is from a portion of the proposed rail branchline.
- Second, finding 65 (page 26) discusses a proposed construction laydown area, but this laydown area is no longer proposed and tree plantings are proposed in its place.
- Finally, it should be noted that the question of whether the facility is “water related” or “water dependent” is relevant only to the proposed rail branchline crossing of McLean Slough. The Board can find that the Project is water dependent for the reasons stated in

the Application; namely, because the Project depends on marine transportation and a direct water intake from the Columbia River for its industrial processes.

Otherwise, NEXT supports the Staff Report and accepts the Staff Report's recommended conditions. NEXT urges the County Board of Commissioners to accept staff's recommendation and approve the Applications.

## **2. RESPONSE TO COMMENTS REGARDING NEXT'S APPLICATIONS**

NEXT recognizes that while many people support NEXT's renewable diesel production facility, others have questions and concerns about the facility. The following addresses opponent comments made available by staff by January 14, 2022.

The Applications are quasi-judicial, which means that relevant issues are constrained to the applicable approval criteria, as identified in the Application and Staff Report. ORS 215.427(3). Therefore, the Board can and should reject comments that do not address the approval criteria.

The vast majority of written materials submitted by project opponents thus far were included in a large package of documents submitted by Save Port Westward. The majority of these address NEXT's Joint Permit Application to the Oregon Department of State Lands ("DSL") and U.S. Army Corps of Engineers ("USACE") for a removal/fill permit (the "Joint Permit"). As part of this process, NEXT is working with the Army Corps and DSL on plans for a roughly 480-acre wetland mitigation site. The mitigation area is located on PA-80 zoned land, in which "creation, restoration or enhancement of wetlands" is an outright permitted use and requires no County approval. ORS 215.283(1)(m). The Joint Permit is not before the Board; therefore the vast majority of these comments do not address the approval criteria.

Rather, the County must find that wetlands and riparian areas shall be in compliance with State and Federal laws. CCZO Section 1563.B. As explained above, the adequacy of that proposed mitigation site is evaluated by DSL and the USACE under their respective laws to determine whether the mitigation is sufficient, based on the condition and extent of wetlands the Project will impact. The County can find that the Applications can satisfy State and Federal laws concerning wetland impacts through the ongoing Joint Permit process. The Staff Report's proposed Condition 2 – which NEXT accepts – requires that all state and federal permits will be obtained prior to commencing site clearing or development activities.

Opposition comments can typically be categorized in two manners: (1) comments that are inapplicable or irrelevant to the County's approval criteria; and (2) comments pertaining to issues addressed by NEXT's Applications and/or evaluated in the County Staff Report. Based on our review, few if any opposition comments submitted thus far clearly address an approval criterion. As explained below, the Board can reject the opposition comments submitted thus far and approve the Applications.

### **a. Response to Beaver Drainage Improvement Company, Inc. Comments**

The Beaver Drainage Improvement Company, Inc.'s ("Drainage Company") comments address NEXT's wetland mitigation plan, which is not before the Board. As explained above, NEXT's wetland mitigation proposal is part of its DSL/USACE Joint Permit application. The Drainage Company did not appear to submit any written comments regarding the Applications; rather, they were included in Save Port Westward's large packet of comments addressing the Joint Permit. Accordingly, the Drainage Company's comments do not address the applicable criteria.

**b. Response to Columbia Riverkeeper's Comments**

Like the Drainage District's comments, Columbia Riverkeeper's ("Riverkeeper") comments are directed at the Joint Permit, not the Applications. Riverkeeper did not appear to submit any written comments on its own; rather, they were included in Save Port Westward's large packet of comments addressing the Joint Permit. As with Drainage District Comments, the County can reject Riverkeeper's comments because they address the Joint Permit, not the Applications.

**c. Response to Comments submitted by "Community opposed to the NEXT proposal"**

The Save Port Westward document package includes a list of people and entities opposed to the Project, but the comments that appear to have been written by Save Port Westward; it is not clear whether these comments were actually written on behalf of the named individuals and entities. Many of these comments are duplicative of comments raised by the Drainage Company or Riverkeeper.

- i. "NEXT and PCC have yet to acknowledge potentially highly contaminated soils such as the historical tree farm dumpsite containing pesticides and other toxic chemicals, the PGE sand pile, and other soils on the recently purchased Teevin Bros. land which have been removed and filled without proper permitting."**

RESPONSE: Management of hazardous waste and contaminated property falls within the purview of the Oregon Department of Environmental Quality ("DEQ"). The applicable criteria do not evaluate the presence or management of hazardous waste. NEXT will comply with all state and federal laws related to the management and disposal of hazardous waste.

For the above reasons, the Board can reject the above-quoted comment.

- ii. NEXT's has not disclosed its "full waste treatment protocol and the specific toxicity and ingredients that would travel via the highway 30 railway."**

RESPONSE: As stated in the response above, NEXT will comply with all state and federal laws related to the management and disposal of solid and hazardous waste. The Board can reject the above-quoted comment.

- iii. **“NEXT continues to change their proposal for water and land traffic, leaving the impact on local infrastructure and impacts to local school traffic throughout the county unclear.”**

RESPONSE: The Applications include a complete Transportation Impact Analysis (“TIA”), with which County staff concurs. River and rail transportation capacity varies substantially over time, and the Project is sized to account for the maximum extent of NEXT’s potential transportation needs. As such, there is no approval criterion or submittal requirement for a specific mix of “water and land traffic.” NEXT will be required by Condition 3 to “prepare a management plan for the rail crossings providing clear timeframes for unobstructed use of the rail crossing consistent with farm activity requirements and means to resolve conflicts.” The Applicant also will be required to fully improve Hermo Road between Quincy-Mayger Road and the Port Westward entrance (Condition 11). NEXT accepts these conditions.

For the above reasons, the Board can reject the above-quoted comment.

- iv. **“NEXT and the Port of Columbia County have yet to produce a clear docking schedule between Global’s transloading operations and NEXT’s fully water dependent operations.”**

RESPONSE: Neither the applicable criteria nor the application submittal requirements require a docking schedule. Further, the County Board of Commissioners’ decision regarding NEXT’s Applications does not evaluate the business logistics decisions of private companies using the Port of Columbia County dock.

For the above reasons, the Board can reject the above-quoted comment.

**d. Response to Save Port Westward Comments**

Save Port Westward raised many of comments noted above, the responses to which are not duplicated below. Other than those, Save Port Westward made the following comments:

- i. **Comments regarding Christopher Efir’s other business activities.**

RESPONSE: The land use approval criteria in the CCZO and Comprehensive Plan do not involve the type of highly subjective character evaluations these comments seeks to elicit. These comments are inappropriately ad hominem, do not address the approval criteria, and are not relevant to NEXT’s Applications. The Board should reject such comments accordingly.

- ii. **NEXT’s process requires virgin oil crops and animal fat derived from the same crops that has agricultural practices that destroy soil and promote greenhouse gas emissions.**

RESPONSE: The above comment is simply incorrect. As the Oregon DEQ opines in **Exhibit 1**, renewable diesel has the potential to substantially reduce greenhouse gas impacts when compared with petroleum based diesel.

Regardless, the above comment does not address the approval criteria and should be rejected on that basis alone.

**e. Response to Protect Farms' Comments**

**iii. The NEXT project will “shut down one of Oregon’s last remaining mint farmers, two of Oregon’s beloved local blueberry farmers, and one woman-owned grass-fed cattle ranch.”**

RESPONSE: As an initial matter, the renewable diesel facility itself only impacts land owned by NEXT, the Port, and a small portion of the De La Cruz parcel. None of this land is used for mint or blueberry farming, nor are they part of a woman-owned grass-fed cattle ranch.

The vast majority of the Project site is zoned RIPD, not exclusively for farm use. However, the proposed rail branchline does impact some PA-80 zoned land. The branchline will cross a portion of the De La Cruz parcel, which has been farmed recently with hay/grassland and row crops, such as mint. De La Cruz is a willing participant in the Project. Other than the portion of the property that the train will cross, hay and row crops are resilient and not sensitive to the vibration associated with rail traffic. And while the construction and operation of the branchline could cause minor changes in access routes to fields and patterns of cultivation, the changes will be minor. The Port of Columbia County-owned land is used for similar activities and is similarly insensitive to the presence of rail traffic.

County staff evaluated this proposal under its Comprehensive Plan Goals and Policies found that the rail branchline complies with the County’s policy to protect agricultural lands and permit non-farm uses when not in conflict with agricultural activities. County staff also evaluated the PA-80 zone impacts under ORS 215.296, and found the rail branchline will not cause a change in accepted farm practice or significantly increase the cost to farm on nearby lands. The Staff Report concluded that there is no evidence the proposed rail branchline – the portion of the proposed facility that is on agricultural zoned lands – will cause significant impacts to farm activities.

To the extent that Protect Farms’ comments relate to the wetland mitigation area, this is not before the Board. As explained above, creation, restoration or enhancement of wetlands” is an outright permitted use and requires no County approval. ORS 215.283(1)(m).



**f. Response to Elaine Sharp's Comments**

RESPONSE: There are state and federal permits/authorizations that protect against each of the concerns raised by this comment and NEXT will comply with the laws applicable to each of those concerns. As stated above, NEXT is agreeable to staff's proposed Condition 2, which requires NEXT to obtain all applicable permits from state and federal agencies prior to commencing site clearing or development activities.

**g. Response to Other Comments**

The Board of Commissioners should reject the other arguments raised in Save Port Westward's document package. These comments relate to: the manner in which NEXT has conducted voluntary public outreach and voluntarily responded to public questions; the source of NEXT's financial backing; recommending putting infrastructure development promises into contracts; arguments that NEXT must disclose its "feedstock agreements" and "that their feedstock sourcing will promote the worldwide destruction of soils, communities, and habitats," and concerns about soil liquefaction. These comments do not address any specifics of the Applications, nor do they address any applicable approval criterion.

With respect to soil liquefaction, the Facility will be required to meet all applicable structural codes, which require an adequate foundation system suitable to onsite conditions. The Applicant will be conducting a complete geotechnical analysis as part of its design engineering to ensure that the appropriate design and construction techniques are used to prevent any potential hazards from unstable soils.

For the above reasons, the Board can reject the comments identified above.

**3. CONCLUSION**

For the above reasons, the Board should reject the opposition comments and approve the Application with the conditions of approval proposed in the Staff Report.

Best regards,



Garrett H. Stephenson

GST:lm  
Enclosure



## State of Oregon Department of Environmental Quality

# Renewable Diesel 101

Contact: [OregonCleanFuels@deq.state.or.us](mailto:OregonCleanFuels@deq.state.or.us)  
700 NE Multnomah Street Suite 600 Portland, OR 97232

## What is renewable diesel?

Renewable diesel is produced by running fats and oils from plants and animals instead of crude through a refinery, resulting in a biofuel that meets the ASTM D975 standard for diesel. Renewable diesel can be made from many waste or renewable materials including: rendered tallow, fish waste, used cooking oil, inedible corn oil, soybean oil, canola oil, and others. A typical facility can switch between or run multiple different materials.

Renewable diesel is a drop-in fuel which means it can be used as a one-for-one replacement for diesel or can be mixed with diesel at any rate to produce a blended product requiring no changes to the vehicles or fueling infrastructure.

## Is renewable diesel the same as biodiesel?

While they can be made from the same materials, biodiesel and renewable diesel have different manufacturing processes that result in products with different molecular structures - biodiesel is a methyl-ester and renewable diesel is a hydrocarbon. The difference in the chemical properties of biodiesel is what limits the amount that can be blended with petroleum diesel, which is also a hydrocarbon. There is no limit for the amount of renewable diesel that can be blended with petroleum diesel because they are chemically identical. Biodiesel, renewable diesel, and petroleum diesel can all be blended together for use in diesel vehicles.

## What are the emissions benefits from using renewable diesel?

Using renewable diesel can cut lifecycle greenhouse gas emissions up to 85% depending on what materials it is made from. Waste products such as tallow and used cooking oil have the greatest reductions while vegetable oils are slightly less. Renewable diesel lowers tailpipe emissions such as particulate matter, carbon monoxide, total hydrocarbons, and nitrogen oxide.

## What are the other benefits from using renewable diesel?

Renewable diesel has gained in popularity largely because its lower carbon footprint, but also because it:

- has a higher cetane value than biodiesel
- has the same fuel economy or power as petroleum diesel
- produces a much cleaner exhaust and dramatically reduces the need for regeneration in vehicles with particulate filters, which in turn reduces maintenance costs for fleet owners
- does not contain oxygen, which avoids problems that biodiesel has with freezing, storage, and algae growth
- is made from products that would otherwise be sent to a landfill

## **Is renewable diesel available in Oregon?**

The production of renewable diesel has grown significantly over the last several years and this trend will continue as billions of gallons of additional capacity have been recently announced. Tens of millions of gallons have already been delivered to Oregon because of the Clean Fuels Program, and that demand will remain strong as DEQ expands its targets beyond 2025. Contact your fuel supplier to find out current prices and availability of renewable diesel.

## **How is renewable diesel treated under the Oregon Renewable Fuel Standard?**

The Oregon Renewable Fuel Standard recognizes renewable diesel as a way to achieve the 5% biofuel blend requirement for diesel.

## **How is renewable diesel treated under the Portland Renewable Fuel Standard?**

The Portland Renewable Fuel Standard does not recognize renewable diesel as a way to achieve their renewable fuel standard.

## **Alternative formats**

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).