

Public Comment on NEXT Energy Port Westward CUP Application

Dan Lawler <dan@friends.org>

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To: Jacyn Normine <Jacyn.Normine@columbiacountyor.gov>; ePermits - Planning <planning@columbiacountyor.gov>



📎 1 attachments (495 KB)

20220126 Supplemental Comment Letter Next Energy.pdf;

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Hi,

1000 Friends of Oregon and Columbia Riverkeeper would like to submit the attached comment letter into the record for the NEXT Renewable Energy at Port Westward land use applications. We also request that the county send the applicant's rebuttal submittals to this email address when those materials are entered into the record.

Thanks and have a nice evening.

Cheers,

Dan

Best,

Dan Lawler
Rural Lands Attorney
503.497.1000 x139

[he/him/his](#)



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January 26, 2022

Columbia County Board of Commissioners

230 Strand St. Room 238
St. Helens, OR 97051

(submitted via email to jacyn.normine@columbiacountyor.gov and planning@columbiacountyor.gov)

Re: Supplemental Public Comment on CU 21-04/DR 21-03/V 21-05 (NEXT Renewable Fuels Oregon at Port Westward)

Thank you for the opportunity to participate in the open record period following the January 19th hearing on CU 21-04/DR 21-03/V 21-05 (the “Applications”). The following comments are submitted by 1000 Friends of Oregon and Columbia Riverkeeper (“Commenters”). Commenters submit this testimony to supplement their previous letter regarding the Applications, dated January 19, 2022, and request that the County include this letter in the record for the Applications.

In addition to reasons detailed in their January 19th letter, Commenters urge the Board of Commissioners to deny the Applications because the farm impacts analysis in the staff report and CUP application narrative fail to demonstrate compliance with ORS 215.296 and CCZO 307(1)(a). The following paragraphs provide more detail on why the Applications fail to satisfy the farm impacts analysis and flag issues related to potential changes to the Applicant’s lease and proposed operations.

Farm Impacts Test Under CCZO 307(1)(a) and ORS 215.296

CCZO 307(1)(a) implements the farm impacts test under ORS 215.296 by prohibiting the proposed use from forcing a significant change in or significantly increasing the cost of accepted farm or forest practices on surrounding lands. To conduct the farm impacts test under MCC 17.136.060(A) and ORS 215.296, the county must: 1) identify accepted farming and forest practices on surrounding farm and forest land; 2) determine whether the proposed use would force a significant change in such practices; and 3) determine whether the proposed use would significantly increase the cost of such practices. *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991).



Per the *Schellenberg* case, findings for the farm impacts test must describe potential impacts of the proposed use and relate those impacts to specific farming practices used in the surrounding area. *Schellenberg*, 21 Or LUBA 425, 442. Further, under *Schellenberg*, the county must “consider all issues relevant to whether the proposed use will force a significant change in accepted farm or forest practices.” *Id.* at 437. However, the County’s findings on pages 48 and 49 of the staff report list general farm practices that could apply to almost any farming operation (i.e. tilling, planting, irrigation, harvesting) and conclude, without any analysis, that neither alterations to access routes, nor increased time to access farm fields that the rail line causes would significantly change farm practices or increase the cost associated with them. These findings fail to identify specific farm practices utilized on fields that the rail line impacts, fail to adequately assess the impact that the rail line will have on such practices, and fail to address all issues relevant to farm impacts that interested parties have identified.

Mint operations adjacent to the proposed rail line demonstrate that the county’s farm impacts analysis is inadequate and fails to consider all relevant issues. Mike and Warren Seely farm mint fields east and west of the proposed biodiesel fuel facility that will be directly impacted by the rail line, identified in the map attached as Exhibit A with green outlines. The proposed rail line will cut off access to the fields east of the facility when long, slow-moving trains arrive and depart from the proposed fuels facility. In the statement attached hereto as Exhibit B, Mike and Warren Seely describe the intricate practices required to farm mint on these fields and the potential impacts that trains on NEXT’s proposed rail line could cause to their farming practices. With such delicate timelines for cutting, drying, and distilling mint, delays of just a couple hours resulting from long trains could prevent mint farmers from transporting dried, cut mint before rains ruin the product. Taking measures to avoid delays caused by NEXT’s trains would force a significant change in and significantly increase the cost of the Seely mint farming practices. Without an explanation of how train delays—which NEXT admits will occur (See Staff Report Page 48)—would not force significant changes or cost increases to nearby mint farming practices, the county’s findings do not demonstrate compliance with CCZO 307(1)(a) or ORS 215.296.

The county’s failure to analyze the impacts of the proposed wetland mitigation plan on surrounding farmland also demonstrates noncompliance with CCZO 307(1)(a) and ORS 215.296. Because the rail line proposed under the CUP will impact wetlands, triggering the need for mitigation, the wetlands mitigation plan is a direct impact of the Applicant’s proposed use. At the hearing on January 19th, local farmers and community members provided extensive oral testimony expressing concerns about impacts that the wetlands mitigation plan would have on the water supply to local farms. The record is also filled with written comments flagging the



need to analyze the impacts of the mitigation plan on surrounding farmland. However, the staff report contains no mention of the potential impacts that removing dikes, filling ditches, and altering surface and subsurface flows under the mitigation plan could have on farms that rely on this area for water supply. If the mitigation plan causes too much or too little water to enter surrounding farm fields, farmers would have to change their farming practices to either obtain alternative water sources or to pump excess water out of their fields. Either of these changes in farming practices would also likely cause farmers to incur significant costs. Thus, to avoid violations of CCZO 307(1)(a) and ORS 215.296, the county must specifically describe: 1) accepted farming practices near the mitigation sites; 2) the impacts of the mitigation plan on these farming practices; and 3) how such impacts would not force farmers to significantly change their farming practices or incur significant costs.

Changes to the Applicant's Lease and Proposed Operations

On January 26th, the Commissioners for the Port of Columbia County will meet to discuss lease amendments for the property that the Applicant will use for its proposed biodiesel fuel facility and rail lines. The proposed lease amendments would modify the types of trains and number of train cars that the Applicant can use to serve its proposed facility. If the Port and the Applicant amend the lease to modify provisions governing the Applicant's use of trains, the Applicant must present the County Board of Commissioners with these potential substantive changes. *Conte v. City of Eugene*, 66 Or LUBA 334, 340 (2012). In that event, failure to re-open the record and allow interested parties to respond to substantive changes to the Applications could prejudice these parties' substantial rights and result in potential remand from LUBA. *Id.* Therefore, Commenters request that the Board re-open the record for continued public comment if the Applicant proposes any changes to its potential use of rail lines and trains under the lease with the Port.

Sincerely,

Dan Lawler
Rural Lands Staff Attorney
1000 Friends of Oregon
(503) 497-1000x138
dan@friends.org



Erin Saylor
Staff Attorney
Columbia Riverkeeper
(541) 399-4775
erin@columbiariverkeeper.org

1000 Friends of Oregon is a 501(c)(3) non-profit organization founded by Governor Tom McCall shortly after the Legislature passed Senate Bill 100, which created the land use planning rules that shape Oregon's communities. Since its founding in 1974, 1000 Friends has served Oregon by defending Oregon's land use system—a system of rules that creates livable communities, protects family farms and forestlands, and conserves the natural resources and scenic areas that make Oregon such an extraordinary place to live. 1000 Friends accomplishes this mission by monitoring local and statewide land use issues, enforcing state land use laws, and working with state agencies and the Legislature to uphold the integrity of the land use system.

Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Columbia Riverkeeper is a non-profit organization with over 16,000 members who live, work, and recreate throughout the Columbia River Basin.



EXHIBIT A





EXHIBIT B

Mint harvest is contingent upon the quality of the oil and leaves and timing is crucial, as a very narrow harvest window is typically available depending on plant maturity. Additionally, weather can also play a role in the timing of harvest and the maturity of the plant. Once the optimum maturity is reached, there is a narrow window to cut the mint. Once cut, the mint is allowed to dry for 2-3 days to remove excess moisture. Too much moisture will result in poor quality oil and a more costly extraction process. Additionally, too dry and the plant leaves will shatter when lifted off the ground, with the end result being loss of crop.

When the crop is determined to be the optimum dryness, the harvest process necessitates that continuous and consistently timed loads of mint are distilled. Any interruption in the timing of these trailers either getting to the field or back to the distillery can drastically impact the quality, yields, and the harvest costs for running the distillery. Significant impacts to our farm practices will result from greater vehicle and train traffic. Delays due to vehicle or train crossings increase the costs associated with idling the distillery, chopper, trucks exponentially. Weather impacts from being unable to perform a timely harvest can also render the mint unsaleable as in the case of spearmint that has been rained on (will turn oil red and be unmarketable), or peppermint that develops a musty odor after rain. If trains serving NEXT's operation prevent access to our mint fields at a time when rain threatens our mint products, we would suffer severe cost increases and would have to completely change our mint farming practices to make up for it.

-Mike and Warren Seely