

FW: NEXT Permit

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Wed 1/26/2022 3:41 PM

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From: TOM GORDON <tndgardens@comcast.net>

Sent: Wednesday, January 26, 2022 3:18 PM

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

Subject: NEXT Permit

Commissioners

The wetlands where the proposed NEXT plant is planned to be built is in the Beaver Drainage Improvement Company which has not given permission for it to be built there. Their letter of January 18, 2022 clearly states this:

"The system underwent several upgrades over the decades, with the last being in the late 1970s. In 1994, under authority of ORS 554.375, District landowners voted to dissolve the District and to reorganize as the Beaver Drainage Improvement Company, a public corporation under Oregon law, with authority to carry on the District's flood control, drainage, and irrigation functions in the same manner as permitted drainage districts under ORS Chapter 547. Article IV of the Drainage Company's Articles of Incorporation, filed May 13, 1994, states, "The particular lands to be improved by the works of the corporation are the same lands formerly included within the boundaries of the Beaver Drainage District."

Additionally, the Drainage Company delivers water to landowners for the irrigation of more than 2,700 acres within its service area. Under Certificate 83174 issued to its District predecessor, water is directed southward to Drainage Company lands for use on specified lands lying within Township 8 N., Range 4 W., W.M. Certificate 83174 is an irrigation-only water right; it does not expressly allow "wetland enhancement" or specialized purposes of use for which water rights may be authorized under Oregon law. The below-discussed Mitigation Site lies entirely within Certificate 83174's authorized place of use ."

NEXT proposes a mitigation plan for these wetlands that is not legal, inadequate and would probably harm the wetland and surrounding wetlands.

"The proposed Next Fuels Facility is located within the Drainage Company and entirely inside the dike. As acknowledged in the Application, most of the project site is used by Drainage Company landowners for agriculture and pastureland purposes, with mint fields to the north and west and a tree farm to the south. The Mitigation Plan is tied to the permit applications submitted to the county commissioners as it is intended to mitigate for Facility and Rail impacts on agricultural lands, including the permanent removal of 17.64 acres of wetlands, in the form of

claimed "enhancements" to non-jurisdictional "wetlands" and waterways at a mitigation site located approximately one-quarter mile south of the Facility.

The proposed mitigation site comprises approximately 590 acres of Drainage Company lands acquired by an affiliate of NEXT Fuels, within specified portions of Sections 27, 28, 33, and 34, Township 8 N., Range 4 W., MW (the "Mitigation Site"). Under the Application, Next Fuels proposes to offset permanent wetlands impacts by fundamentally changing Mitigation Site hydrology and function by, among other measures:

Filling approximately 26,800 linear ft. of the existing Mitigation Site drainage ditches operated by the Drainage Company.

Creating "dendritic" channels throughout the Mitigation Site, intended to mimic naturally occurring channels found elsewhere in Lower Columbia sloughs.

Digging shallow pools for potential reproductive habitat for amphibians and other aquatic wildlife.

Roughening Mitigation Site surfaces for diversification of surface hydrology and resultant vegetation.

Creating upland buffer zones along public access paths between mitigation site wetlands.

In order to accomplish the above measures, the Mitigation Plan envisions the overall lowering of Mitigation Site surface levels, together with construction of an extensive network of onsite dendritic channels. Excavation will be as deep as six feet at some locations, with net elevation reduction averaging one and one-half feet across the Mitigation Site. In connection therewith, approximately six to 12 inches of topsoil will be removed site-wide.

Comments

The Mitigation Plan is not an agricultural usage per ORS 215.203. The Drainage Company can only provide drainage and irrigation for agricultural and sanitary purposes per its bylaws, articles of incorporation and the specific tenants upon which it was formed. Since the Drainage Company cannot service the land under the Mitigation Plan, the Drainage Company may be unable to assess the per-acre rates necessary for the operation of the drainage, irrigation and levee system. This would severely curtail the ability of the Drainage Company to perform its duties and maintain the system and will force other landowners to bear an unreasonable financial burden to offset the potential 10% loss in assessments. "

Their letter goes on, but the main point is that proposed plant does not have permission to build on wetlands.

This permit should be denied.

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