

From: Dan Lawler <dan@friends.org>

Sent: Thursday, January 13, 2022 2:44 PM

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

Cc: Robert Wheeldon <Robert.Wheeldon@columbiacountyor.gov>; Deborah Jacob <Deborah.Jacob@columbiacountyor.gov>

Subject: Public Comment and Procedural Objection for NEXT Renewable Energy at Port Westward



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Hi,

I'm hoping to submit the attached comment letter into the record for the January 19th hearing on CU 21-04/DR 21-03/V 21-05 (Next Renewable Energy Biodiesel Plant at Port Westward). The letter points out that skipping the Planning Commission hearing violates the CCZO and could result in a remand from LUBA. Please let me know if you'd like to discuss this issue before next week's hearing.

Thanks and have a great day.

Cheers,

And

Best,

Dan Lawler
Rural Lands Attorney
503.497.1000 x139



January 13, 2022

Columbia County Board of Commissioners
230 Strand St. Room 238
St. Helens, OR 97051

(submitted via email to planning@columbiacountyor.gov)

Re: Procedural Objection and 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 comment 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"). 1000 Friends of Oregon is a nonprofit membership organization that works with Oregonians to support livable urban and rural communities; protect family farms, forests and natural areas; and provide transportation and housing choices. Columbia Riverkeeper works to protect and restore the water quality of the Columbia River and all life connected to it. Both organizations have members in all parts of Oregon, including Columbia County. Commenters request that the County include this letter in the record for the January 19th hearing on the Applications.

1000 Friends of Oregon and Columbia Riverkeeper object to the County's decision to skip the Planning Commission hearing on the Applications. As a practical matter, skipping the Planning Commission hearing deprives a body that specializes in land use planning of the opportunity to exercise its expertise and to provide valuable input on the Applications. Skipping the Planning Commission hearing could also deprive the public of an opportunity to participate and exhaust administrative remedies at the local level. Section 1703 of the Columbia County Zoning Ordinance ("CCZO") requires the Board of Commissioners ("Board") to hold a de novo hearing for any appeals of Planning Commission decisions. By holding a hearing in front of the Board, rather than the Planning Commission, interested parties lack the opportunity to appeal the decision at the local level and to provide additional testimony for a potential appeal. Instead, any appeal would have to go straight to LUBA, requiring significantly greater time and cost investments. Thus, Commenters request that the County hold a hearing in front of the Planning Commission.

In addition to the reasons detailed above, Commenters urge the County not to skip the Planning Commission hearing because doing so would violate clear procedural requirements in the CCZO. CCZO 1558 states that "the Planning Commission shall hold a public hearing for all Type 2 Design Review applications." Similarly, CCZO 1503(5) states that "the Commission



may grant a Conditional Use Permit after conducting a public hearing.” CCZO 1503(3) also authorizes the Commission “or Board on appeal” to amend conditional use permits. Thus, the CCZO unambiguously charges the Planning Commission with the duty to hold a hearing on site design reviews and conditional use permits and, per CCZO 1703, the only role the Board of Commissioners plays with such applications is to consider issues on appeal. Without any provisions in the CCZO authorizing the Board to call up the Applications from the Planning Commission, skipping the Planning Commission hearing violates CCZO 1558 and 1503(5).

Further, Commenters believe any decision on the Applications that fails to follow the hearing requirements of CCZO 1558 and 1503(5) would constitute a procedural violation subject to remand by LUBA. Under OAR 661-0010-0071(2)(c), LUBA shall remand a land use decision when “the decision is flawed by procedural errors that prejudice the substantial rights of the petitioners.” To demonstrate prejudice, “a petitioner must explain with some specificity what would have been different or more complete had the local government followed the correct procedures.” *Buffalo-Bend Associates, LLC v. Clackamas County*, 2020 WL 615686 (LUBA Nos 2019-090 and 2019-91, Opinion, January 31, 2020) (slip op at 12) (quoting *Concerned Citizens of the Upper Rogue v. Jackson County*, 33 Or LUBA 70, 83 (1997)).

With regard to the Applications, CCZO 1558 and 1503(5) confer the right to a hearing in front of the Planning Commission, while CCZO 1703 confers the right to an appeal of the Planning Commission decision to the Board. Skipping the Planning Commission hearing would prejudice Commenters’ substantial rights because the Planning Commission specializes in reviewing technical land use matters and could provide a more complete review of the Applications than the Board. Instead, placing the Applications in front of a body with less land use expertise than the Planning Commission not only violates codified review procedures, but could also affect the outcome of the hearing.

Similarly, replacing the Planning Commission hearing with a Board of Commissioners hearing eliminates Commenters’ potential appeal rights under CCZO 1703. Eliminating the possibility of appeal to the Board prejudices Commenters’ substantial rights because the two-step review and appeal process from the Planning Commission to the Board of Commissioners would allow the County to take a more complete look at the Applications. Instead, the County’s desired process violates the CCZO and paves the way for a less thorough review of the Applications. Thus, skipping the Planning Commission hearing could result in a remand from LUBA on grounds that the procedural violation prejudices Commenters’ substantial rights.

To summarize the paragraphs above, Commenters urge the County to hold a hearing on the Applications in front of the Planning Commission because failing to do so: 1) violates the



CCZO; 2) deprives a body specializing in land use of the opportunity to review the Applications; 3) eliminates interested parties' right to appeal to the Board; and 4) could result in a remand from LUBA based on procedural error.

Thank you for your time and consideration.

Sincerely,

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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.