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**Applications for Permits CU-21-04/DR 21-03 &
V-21-05 by NEXT Renewable Fuels Oregon, LLC**

To Whom it may Concern,

We, the Beaver Drainage Improvement Company (Drainage Company), are writing to you in regard to the request for public comment in the matter of the Applications by NEXT Renewable Fuels Oregon, LLC(NEXT). After extensive review of the proposed Uses, we have the following comments to submit.

Comments

- The proposed road access and rail system will remove a Drainage Company-owned ditch and relocate it further south by a couple hundred feet. No provision is included in the submitted plans for replacing the 2 irrigation access points and the 8 drainage points. This violates CZO 300, 681(B)(2) and 1170 as it will greatly impact drainage and irrigation on adjacent agricultural operations. The Drainage Company will not allow alteration to its works without adequate replacement for affected uses.
- The proposed road access and rail system has no provisions for fire control from sparks from traffic. Previous problems have been encountered at adjacent rail

sites close to the Port Westward guard shack with sparks catching neighboring fields on fire and severely damaging pastureland, and threatening Drainage Company infrastructure. This is a direct violation of CZO 300 and 681(B)(2).

- Agriculture dominates land uses adjacent and nearby the proposed Plant Site and rail spur. In the future, livestock grazing will likely represent part of overall agricultural operations on adjacent lands. The submitted application erroneously states that fencing for livestock is not required. In fact, adequate fencing must be provided to protect livestock from traffic on the proposed access road and rail. Failure to provide this is a violation of CZO 300 and 681(B)(2).
- The submitted application expressly states that NEXT will provide proposed waivers to adjacent agriculture operators, whereby NEXT would waive any rights it may have to pursue compensation for complaints related to normal, lawful agricultural practices. No waivers for normal farm activities have been provided to any adjacent landowners or operators for the plant site, the road and rail access sites or the pipeline route. Additionally, no waivers for normal or emergency Drainage Company maintenance activities on the adjacent waterways have been provided. These waivers must be in place prior to any consideration of approval of this project by the Drainage Company. This is a violation of CZO 300, 681(B)(2) and 1170 as inability to perform maintenance activities will destabilize Drainage Company and therefore agricultural operations.
- The submitted application states the primary road access to the plant site is private; however, that road is adjacent to and crosses Drainage Company owned infrastructure. Access easements for the Drainage Company must be in place prior to any consideration of approval of this project by the Drainage Company. Failure to provide these is a violation of CZO 300, 681(B)(2) and 1170 and ORS 547, 554, 190 and 195, among others, as inability to perform maintenance activities will destabilize Drainage Company and therefore agricultural operations.
- Per the lease between NEXT and the Port: “[NEXT’s] use of the Premises must comply with all applicable laws, ordinances, rules and regulations of the State of Oregon and the United States, and all city, county or other public government authorities or agencies, including, but not limited to, building permit requirements, local fire code, and zoning and occupancy codes.” Additionally, NEXT is required to abide by any environmental laws including “any and all federal, State of

Oregon, regional and local laws, regulations, rules, permit terms, codes, ordinances and guidance documents now or hereafter in effect, as the same may be amended or recodified from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, pollutants, water, storm water, ground water, wellfield and wellhead protection, animals or plants, noise, or products and relate to the protection of health, natural resources, or the environment.” No written agreements or solutions to the concerns raised repeatedly by the Drainage Company, many of which pertain to significant risks to levee integrity and are associated with health, water, natural resources and the environment, have been provided to the Drainage Company for review and approval. Failure to provide these is a violation of CZO 300, 681(B)(2) and 1170, and ORS 547, 554, 190 and 195, among others, as the inability to perform maintenance activities will destabilize Drainage Company and therefore agricultural operations.

- During the County Commissioners Hearing regarding these Applications on January 18, 2022, NEXT representatives stated that there would be one million barrels of renewable diesel storage on the plant site. No discussion of this has taken place with the Drainage Company, and no worst case spill response plan(as required by regulations for other industrial operators in the area) has been provided for review to the Drainage Company. This is a violation of CZO 300, 681(B)(2) and 1170 as any spill could have disastrous impacts to surrounding lands in the absence of an approved spill response plan.
- Both Applications CU-21-04 and DR 21-03 are required to offset wetland impacts through mitigation. Per established DLCD case law (Lisa Phipps, DLCD, 2022, Pers Comm) impacts related to any required mitigation needed to undertake the actions described in CU-21-04 and DR 21-03 shall be considered and reviewed as part of the applications for those. The proposed designs for mitigation include drastically altering Drainage Company Infrastructure to the extent that boil points could undermine the protective levee structure which will result in loss of FEMA and USACE accreditation.¹ Loss of accreditation would mean these lands would

¹ Active seepage leading to an unacceptable levee condition was documented by the Periodic Inspection and tied by the USACE to a previous mitigation project undertaken by the County Roads Department in 2016 which is being used as a model for the proposed mitigation under these applications. If the proposed mitigation measures are undertaken without sufficient review within the BDIC they may lead to additional levee safety issues and therefore need to be properly designed, reviewed, and documented prior to approval of the project.

suddenly be part of the regulated floodplain and thus any development, whether agricultural or industrial, would also be much more difficult, have a dramatically longer timeline, and be subject to a greater number of appeals due to the additional complex regulatory framework that would apply. Additionally, the Columbia County Comprehensive Plan Port Westward Exemption is dependent on the continued Provisionally Accredited Levee for flood protection. The loss of the accreditation will cost hundreds of jobs, including the very jobs created by this development proposal, and threatens the livelihood and economic viability of the entire region if that accreditation is lost, in violation of CZO 300, 683.1(B) and 1170 due to stagnation of mitigation water introducing bacterial and disease growth into the irrigation water supply for surrounding uses, creation of source populations for agricultural pests, and additional regulatory and financial burdens that would be incurred by the rest of the landowners within the Drainage Company to address levee safety concerns.

- The Beaver Drainage Improvement Company board has been meeting periodically with NEXT to discuss our concerns. Extensive discussion has produced a couple potential solutions, some of which have been proposed by the BDIC board and some by NEXT personnel. However, no written proposals have been submitted to the board for review (despite promises from NEXT to have answers to DSL and USACE comments by mid December 2021) no written agreements are in place, and many of the BDIC board's concerns remain un-answered despite being submitted as public comments to various permitting agencies throughout the project review timeline. Written agreements with BDIC *must* be in place before any project approval from the Board of Directors (which is required by ORS statutes 547, 554, 190 and 195, among others, for any project within BDIC) can be given. BDIC is responsible for the safety and wellbeing of its constituents (including industrial residents) and by extension, the integrity of its levee system, and cannot in good faith allow any impacts to the life, safety or environment of its members or the community. The County Commissioners should closely review the entirety of the written comments BDIC has submitted as the proposed project by NEXT (as submitted) *does* have huge ramifications for BDIC, its landowners, and the viability of the entire Port Westward Development Site if our concerns are not adequately addressed.

Whatever the County's decision regarding the Plant and Rail facilities, any approval of a branch line on the land zoned for farming will require the County to make findings required by ORS 215.296.1 This statute is known as the "farm impacts test." The most recent Oregon Supreme Court decision interpreting this

statute, *Stop the Dump Coalition v. Yamhill County*, 364 Or 432 (2019), provides guidance to the County in reviewing this application. Under Applications CU-21-04 and DR 21-03, the applicant in this case has failed to adequately address the cumulative impacts on agriculture posed by Rail branch line (i.e., whether the proposed use will force a significant change in, or significantly increase the cost of, accepted farm practices on surrounding lands), as articulated by the Court in *Stop the Dump Coalition v. Yamhill County*. Under ORS 215.296, a county may approve certain nonfarm uses on land zoned EFU if the use will neither force a significant change in, nor significantly increase the cost of, accepted farm practices on surrounding farmlands. However, conditions of approval or proposed mitigation intended to prevent a nonfarm use from significantly changing or increasing the cost of accepted farm practices on surrounding farmlands may not be sufficient where there is no quantification in the record regarding the actual effectiveness of the condition. The applicant provides conclusory statements without providing any quantifiable evidence to support the contention that the proposed rail yard does not force a significant change in, nor significantly increase the cost of accepted farm practices on surrounding farmlands, despite the myriad of concerns (including increased costs associated with pest and weed control, alteration of water infrastructure, undermining of the levee system integrity) the Drainage Company has expressed regarding the creation of the compensatory mitigation resulting from the construction of the Plant and Rail sites, which would be a violation of CZO 307.1(A) and 307.1(B).

- Per ORS chapters 190 and 195, Columbia County and the Columbia County Commissioners are required to coordinate with the Drainage Company on any activities within the Drainage Company's boundaries. No outreach or communication from the County has taken place.
- Per ORS 215.296, the Drainage Company, as the Local Governing Body over the lands within its boundaries, has the ability to deny any land uses which will significantly impact the financial or operational conditions of agricultural operations within its boundaries. The Drainage Company board will not approve the Mitigation Plan and has concerns about the Plant Site due to the afore-mentioned impacts and therefore the Application for Permits by NEXT is incomplete and should not be approved by the County Commissioners.

Conclusion

In summary, the Beaver Drainage Improvement Company objects to NEXT Fuel's Applications – and particularly to the associated Mitigation Plan – on the grounds that wholesale changes to the Drainage Company's essential drainage, flood control, and irrigation infrastructure within the Mitigation Site will adversely impact water resources under the Drainage Company's operational control and violate both the agricultural nature and structural integrity of the system. Additionally, cumulative impacts to the operations within the Drainage Company's boundaries would force significant and costly burdens upon the other shareholders within the system and result in the loss of thousands of acres of prime, class 2 farmland.

Further, NEXT Fuel's proposed Mitigation Site changes are inconsistent with the Drainage Company's power and authority under ORS Chapters 215, 447 and 554, as well as under its charter documents and recorded easements.

Finally, the Mitigation Plan's proposal to "reconvert" currently farmed lands within the Mitigation Site to jurisdictional wetlands is antithetical to the best interests of the Drainage Company, its agricultural landowners, existing industrial operations, and the integrity of the levee system as a whole.

Despite the above-described risks and uncertainties, we would welcome NEXT Energy as a valued industrial partner within the overall Drainage Company operations area. Many of the concerns stated above have been repeatedly raised throughout the yearslong process that this project has undergone, but as of this date no written solutions or agreements have been provided by NEXT for thorough assessment and remediation of all impacts on the Drainage Company and its agricultural patrons. Unfortunately, unless and until those risks and uncertainties can be alleviated with sufficient certainty, through the appropriate land-use and regulatory review procedures, the Drainage Company cannot support the Applications as presented, and in fact fully intends to deny NEXT-requested alterations to Drainage Company infrastructure proposed by the Facility Site Plan, Rail Plan and associated Mitigation Plan.

We very much appreciate your consideration of the Drainage Company's concerns in this case. Please feel free to contact me or my fellow Directors, if we can provide any additional information concerning the Drainage Company's rights, duties, and operational functions within the proposed Plant Site and Mitigation Site under the Application.

Very truly yours,

Beaver Drainage Improvement Company

Warren Seely, President/Secretary

Encls.

cc: (via email)

Mr. Tim Keranen, Beaver Drainage Improvement Company Director

Mr. Truett Stolzenburg, Beaver Drainage Improvement Company Director