

Amy Herzog

7/12/23

From: Linda Horst <lindahorst45@gmail.com>
Sent: Wednesday, July 12, 2023 4:08 PM
To: Planning Department.UserGroup
Subject: Testimony for NEXT Renewable Fuels, Inc. Public Hearing

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July 12, 2023

Columbia County
Land Development Services
230 Strand Street
St. Helens, OR 97051

To The Columbia County Planning Commission:

I am submitting the following testimony in addition to my letter of June 25, 2023.

After your careful analysis of the myriad negative impacts and ramifications to water resources, drainage and irrigation systems, and Port Westward farms and the Port Westward community, I urge this Planning Commission to deny NEXT's request for a Modification of Prior Approval for a previously approved Site Design Review (SDR) and Variance (DR 21-03/V 21-05).

On June 26, I remotely attended the Public Hearing regarding NEXT's modification to its previous land use application. Unanimous testimony provided by the Port Westward community and the general public (from both sides of the Columbia River) addressed vital issues pertinent for the denial of NEXT's application. NEXT's dismissive response to these community concerns...."Not a single person testified to the criteria" was a diversionary attempt to narrow the discussion of important criteria for this Commission to evaluate.

* COMMUNITY CONCERNS ADDRESSED
RELEVANT CRITERIA.

NEXT's dismissal of community concerns as irrelevant to the criteria is wrong. Verbal and written comments submitted by the public to the Planning Commission offered numerous issues which are relevant to CCZO 1562 criteria regulating buffering, screening and fencing together with the related staff report findings. The BDIC raised multiple concerns regarding sediment, proposed tree buffers, fencing and potential impacts to BDIC's irrigation and drainage system.

The County should require NEXT to fully address the following issues raised by BDIC as relevant to the criteria in CCZO 1562:

- 1) Buffers, culverts and other drainage modifications may impact soil and water resources.
- 2) The proposed modifications could disrupt BDIC infrastructure and cause erosion and other problems.

- 3) FEMA and other agencies have well established the connection between drainage and potential erosion.
- 4) High water levels from storms or heavy rains may exceed the capacity of ditches or culverts.
- 5) Roadway flooding may cause new road or rail infrastructure or BDIC property to be damaged.
- 6) Turbulence at the culvert inlet or outlet can cause scour and erosion.
- 7) Floodwaters also can scour roadway ditches and drainage structures and flooding water often carries debris which can become caught or wedged in ditches and culverts.
- 8) Sediment and debris in culverts and drainage structures will reduce flow. Sediment carried into drainage ditches may carry industrial pollutants that later become problematic for irrigators relying on quality of water in the BDIC system.
- 9) Lodged debris can interfere with flow of water and floating debris can also cause damage to infrastructure.
- 10) The draft Stormwater Report is inadequate to address the preceding issues. The BDIC has provided comments that directly point out lack of consultation with BDIC and flaws in the plans.

Alarming, Staff Report Finding 18 states...."the majority of existing vegetation will be removed from the site." This vegetation removal would be a blatant disregard for the protective criteria of CCZO 1562.A.1...."existing plant materials on a site shall be protected to prevent erosion." BDIC raised concerns with proposed tree buffers along waterways and the potential for those buffers to contribute debris and create blockages in the waterways. Obviously, NEXT has failed to meet the criteria of this zoning ordinance.

Comments made at the public hearing June 26 and in the record addressed the impacts of NEXT's proposal modifications on adjacent uses, especially adjacent agricultural lands! CCZO 1562.B.1 specifies "buffering and/or screening are required to reduce the impacts on adjacent use which are of a different type." While Staff acknowledges agricultural uses surround the proposed modification, their report finds that no buffering or screening is required to the north or west because the properties are zoned RIPD (Staff Report Finding 20), but that is not what the criteria require. CCZO 1562.B.1 criteria is not tied to the zoning of a site, but instead is concerned with uses "of a different type." Farming that occurs to the north and west of the proposed rail facility is of a different type than the industrial use proposed by NEXT and may be impacted by the proposed use without an adequate buffer.

CCZO 1562.B.3 states no roads shall be allowed in a buffer area. NEXT's application does not provide for a 10' buffer between the access road and the land to the north. In addition, as stated by the BDIC, the location of the buffers that are included to the south conflict with the BDIC's ability to manage drainage infrastructure. Consequently, NEXT cannot locate the buffers as proposed.

Contrary to assertions made by NEXT and Staff, criteria in CCZO 683 do apply in this case. The entire rail facility was not included in the Counties decision in DR 21-03 and thus the impacts associated with rail use under the CCZO 683 criteria were not analyzed. The result of the proposed application is therefore not a "reduced capacity rail improvement," it is an expansion of the proposed industrial use that was evaluated and approved in DR 21-03. The revised rail facility does not fit within the scope of what was approved in the prior decision and must be reviewed for consistency with the criteria in CCZO 683. Because the location and scope of the development are different, NEXT and Staff must address the impacts of the proposed modification.

* NEXT'S MODIFICATION APPLICATION CONFLICTS WITH ESTABLISHED PGE AND BDIC LAND USES.

NEXT's application should be rejected by this Commission because it fails to explain why the newly proposed area is suitable for a rail yard or how potential unsuitability would be mitigated.

Nothing in NEXT's application (or previous applications) explains how building almost four miles of rail road tracks over what is currently a mint farm, on land controlled by PGE, would impact that land use—let alone how NEXT might mitigate that impact.

Adequate buffers are not provided in the proposed modification for the new location of the proposed rail yard. NEXT's application also provides no information on how the development of a rail yard and other modifications on this new site might affect PGE's use of the land for an industrial buffer or for any future PGE expansion.

Astoundingly, NEXT's only response to the PGE leasehold issue is that PGE has not provided new comments. There is no obligation for PGE to specifically address these issues in its own comments, rather, it is NEXT's responsibility to come forward with adequate information to support its application.

There is ample evidence in record which provides proof of PGE's refusal to allow the NEXT rail yard proposal and it comes from NEXT's own application to other agencies as well as PGE's own statements. NEXT's application to the Department of State Lands and the Army Corps of Engineers specifically highlight that PGE has refused to release its leasehold, additionally, NEXT described the land as unavailable and unsuitable for their project. This Planning Commission cannot reasonably approve NEXT's proposed modification, its impacts and potential mitigation when there is clear evidence showing that the land is unavailable and being used for conflicting land uses.

With respect to drainage systems, the same issue applies. The BDIC has exclusive authority over modifications to drainage systems as a public service and land use vital to the entire Port Westward area. In response, BDIC wrote:

"No ditch or waterway alterations have been approved by the BDIC Board. Without specific agreements with the BDIC, NEXT cannot claim to have addressed impacts to the BDIC, its resources, or its operations. Further, the BDIC's activities are a recognized land use in the area that is vital to the overall function of the Port Westward area, including the industrial areas. NEXT fails to adequately address conflicts with BDIC's use of the area, its control of the land, and the public services it provides."

Without resolving these basic land use conflicts, NEXT's application cannot be approved.

* NEXT'S FAILURE TO SUFFICIENTLY ADDRESS CCZO 683.1.B CRITERIA.

The County's code requires NEXT to demonstrate that "the potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated....". Instead of meeting this standard, NEXT's application and the Staff Report attempt to avoid the standard entirely by citing NEXT's previous application for a rail yard in a different location and configuration—which was ultimately invalidated by LUBA.

NEXT's attempts to argue that the previous SDR encompassed the entirety of the newly proposed rail yard and other modifications. This is not the case! The County's prior decision approving the Facility did not consider the entire rail facility as part of the use and did not fully analyze the potential impacts under CCZO 683.1.B.

The County's prior land use decision approving NEXT's refinery did not address the rail yard in its present configuration and location. Therefore, it is incorrect to argue that the SDR amendment application for the refinery will result in a project of the "same scope and intensity". Adding almost four miles of railroad tracks into the area considered in the previous site design review is an intensification of the use of the area and a change in the use and its impacts. Further analysis specific to the particular land uses proposed in the modification must be provided by NEXT....it has fails to do so.

NEXT's assertion that the newly proposed rail yard is of the same scope and intensity as a temporary lay down area during construction is absurd! It is ludicrous to compare a permanent, 400 rail car yard operating 24/7 to a temporary, construction 'sorting yard'. The Planning Commission should dismiss NEXT's argument that the rail yard's impacts are the same as the previous SDR application. NEXT must specifically consider the particular land use and improvements with respect to the rail yard, road infrastructure, stormwater facilities, and other modifications.

State boundaries provide no protection for Washington residents, such as myself, from pollution created in Oregon. Our shared air shed insures we as Washingtonians are just as vulnerable as our Oregonian neighbors! We depend upon your agencies diligence for our safety and well-being.

Thank you for the opportunity to provide testimony for this public hearing process.

Sincerely,

Linda Horst
1020 Kool Road
Kelso, WA 98626

lindahorst45@gmail.com
360-442-3059

Sent from my iPhone

Amy Herzog

7/12/23

From: Save Port Westward <saveportwestward@gmail.com>
Sent: Tuesday, July 11, 2023 9:21 PM
To: Primus Prostremus
Cc: Amy Herzog; Dan Serres
Subject: Re: Problem with comments submitted pre-hearing for NEXT app mod

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you are expecting this email and/or know the content is safe.

Hey Amy,

Just want to reiterate the concern from Sally that others might not have checked to see if their comments made it. How do we know your submissions have been thoroughly reviewed and how can we assure our constituents they don't need to go back and check? Thanks in advance for your support!

On Mon, Jul 3, 2023 at 3:32 PM Primus Prostremus <skeely.2023@gmail.com> wrote:

Hello Amy,

It's concerning to me that Mark and I submitted comments 10 days ago, they did not bounce back. So maybe others emailed in comments to the planning email address but they also were not received?

Yes I just resubmitted both, but I would not have known I needed to do that if I hadn't been reading all the posted comments and noticed ours were missing. I'm worried others might not have "checked" that their comments were received in your system.

Sally

On Jul 3, 2023, at 3:25 PM, Amy Herzog <Amy.Herzog@columbiacountyor.gov> wrote:

Hello Sally,

I looked back through our comments received and didn't see these either. I do see the two emails you just sent in from yourself and Mark. These will be posted to the website today. Thank you

Amy Herzog

Permit Technician

Columbia County Land Development

230 Strand St.

St Helens OR 97051

503-397-1501 ext 8483

Amy.Herzog@columbiacountyor.gov

www.columbiacountyor.gov

Please note:

Land Development Services has moved to a temporary location at 445 Port Avenue, St. Helens.

We're available to assist you in person, by phone 503-397-1501 and email:

building@columbiacountyor.gov or planning@columbiacountyor.gov.

From: Primus Prostemus <skeely.2023@gmail.com>
Sent: Monday, July 3, 2023 3:19 PM
To: Planning Department.UserGroup <planning@columbiacountyor.gov>
Cc: Dan Serres <dan@columbiariverkeeper.org>; Save Port Westward <saveportwestward@gmail.com>
Subject: Problem with comments submitted pre-hearing for NEXT app mod

Some people who received this message don't often get email from skeely.2023@gmail.com. [Learn why this is important](#)

Hello,

Both my husband and I submitted email comments to Planning@columbiacountyor.gov around 2pm Friday June 23rd prior to the June 26th hearing on the NEXT app modification, but neither is included in the [Comments Received on and prior to 6.26.23.pdf](#) document posted at <https://www.columbiacountyor.gov/June26,2023PlanningCommissionComments> . Why are our comments not included? How many other comments were not included? This is quite frustrating and concerning.

Sally & Mark Keely
Kalama, WA

Amy Herzog

From: Dan Serres <dan@columbiariverkeeper.org>
Sent: Tuesday, July 11, 2023 5:26 PM
To: Planning Department.UserGroup
Subject: Columbia Riverkeeper comment
Attachments: July 11 Columbia County Planning Commission Rail Comment submitted.pdf

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Dear Columbia County Planning Commission and Staff:

Please see the attached comment letter regarding Houston-based NEXT Renewable Fuels Inc.'s (NEXT) request for a Modification of Prior Approval for a previously approved Site Design Review (SDR) and Variance (DR 21-03/V 21-05).

Thank you,

Dan Serres

-
Dan Serres | He/Him/His | Conservation Director
Columbia Riverkeeper | 1125 SE Madison Suite 103A Portland 97214
Direct: 503.890.2441 | dan@columbiariverkeeper.org

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Get inspired to fight for cleanup at the most polluted place in America.



July 11, 2023

Columbia County
Land Development Services
Attn: Planning
230 Strand Street
St. Helens, OR 97051

Submitted to: Planning@ColumbiaCountyOR.gov

To the Columbia County Planning Commission:

The Columbia County Planning Commission should reject Houston-based NEXT Renewable Fuels Inc.'s (NEXT) request for a Modification of Prior Approval for a previously approved Site Design Review (SDR) and Variance (DR 21-03/V 21-05). The Planning Commission should make findings that explain how the proposal fails to meet key criteria.

1. NEXT falsely claims that the modification is a “limited land use decision.”

NEXT argues that this is a “limited land use decision” and therefore, pursuant to ORS 197.195(1), only the criteria in the Columbia County Zoning Ordinance (CCZO) apply. This is a blatantly incorrect reading of the law. Under ORS 197.195(1), comprehensive plan provisions do not apply directly to a limited land use decision unless they are incorporated into the local government’s land use regulations (the zoning code). NEXT asserts that this is a “limited land use decision” and therefore, only the criteria that are in the CCZO apply, and nothing else. However, “Limited land use decision” is defined by ORS 197.015(12) to include only certain decisions involving “a site within an urban growth boundary.” The proposed site for NEXT’s facility and rail yard is clearly not within any UGB, and ORS 197.195 does not apply to this application. NEXT’s incorrect assertion would improperly narrow the criteria that apply to the application.

Our previous comments raised issues that fall outside the specific criteria of the zoning code, including the issue of the scope of the original Port Westward goal exception, which is part of the county’s comprehensive plan. NEXT is wrong in asserting that the Planning Commission

should not consider issues or criteria outside of the zoning code. The decision is not a “limited land use decision” as that term is defined in ORS 197.015(12).

2. NEXT fails to meet key criteria.

The Planning Commission should find that NEXT fails to meet multiple criteria and deny NEXT’s application.

- **The Planning Commission should find that NEXT fails to meet the requirements of CCZO 1562 criteria governing buffering, screening, and fencing.** The BDIC raised several concerns regarding sediment, proposed tree buffers, fencing, and potential impacts to BDIC’s irrigation and drainage system. For instance, CCZO 1562.A.1 provides that “existing plant materials on a site shall be protected to prevent erosion.” Finding 18 of the staff report states that “the majority of existing vegetation will be removed from the site.” BDIC raised concerns with proposed tree buffers along waterways and the potential for those buffers to contribute debris and create blockages in the waterways. See our previous July 3 letter for more detailed reasoning explaining that buffers, culverts and other drainage modifications may impact soil and water resources. The proposed modifications could disrupt BDIC infrastructure and cause erosion and other problems.
- **The Planning Commission should find that NEXT fails to assess and mitigate the impacts of the proposed modification on adjacent uses, including agricultural lands as required by CCZO 1562.B.1.** This criteria provides that “buffering and/or screening are required to reduce the impacts on adjacent uses which are of a different type.” Staff acknowledge that agricultural uses surround the proposed modification. As explained in previous comments, CCZO 1562.B.1 is concerned with uses “of a different type.” Farming that occurs to the north and west of the proposed rail facility is of a different type than the industrial use proposed by NEXT and may be impacted by the proposed use without an adequate buffer. NEXT’s proposed buffers are inadequate.
- **The Planning Commission should find that NEXT fails to meet CCZO 1562.B.3 which says that no roads shall be allowed in a buffer area.** The application does not provide for a 10-foot buffer between the access road and the land to the north. Furthermore, according to the Beaver Drainage Improvement Company (BDIC), the location of the buffers that are included to the south conflict with the BDIC’s ability to manage drainage infrastructure. NEXT cannot locate the buffers as proposed, and proposed buffers are inadequate.

- **The Planning Commission should find that CCZO 683 does apply in this case, and NEXT has failed to meet this criteria.** As discussed in previous comments, the County’s decision in DR 21-03 did not include the entire rail facility and thus did not analyze the impacts associated with rail use and the rail yard under the CCZO 683 criteria. The result of the proposed application is therefore not a “reduced capacity rail improvement;” it is an expansion of the proposed industrial use that was evaluated and approved in DR 21-03, the permanent imposition of multiple miles of rail tracks. The revised rail facility does not fit within the scope of what was approved in the prior decision and must be reviewed for consistency with the criteria in CCZO 683.

The County’s code requires NEXT to demonstrate that “the potential impact upon the area resulting from the proposed use has been addressed and any adverse impact will be able to be mitigated. . . .” NEXT’s application and the Staff Report ignore that standard by citing NEXT’s previous application for a rail yard in a different location and configuration—which was ultimately invalidated by LUBA.

- **The Planning Commission should find that NEXT fails to adequately address criteria from Columbia County Zoning Ordinance (CCZO) 683.1.B.** NEXT attempts to argue that the previous Site Design Review encompassed the entirety of the newly proposed rail yard and other modifications. This is not the case. First, the County’s order and findings in the DR 21-03 decision repeatedly confirmed that the rail facility was part of a separate land use approval, was not subject to the application at issue in DR 21-03, and that certain findings were “not part of [the] Decision” in DR 21-03.¹ The County’s prior decision approving the Facility did not consider the entire rail facility as part of the use and did not fully analyze the potential impacts under CCZO 683.1.B. Second, the County’s prior land use decision approving NEXT’s refinery did not address the rail yard in its present configuration and location.
- **The proposed modification cannot move forward on the PGE leasehold.** The Commission should reject NEXT’s application because it fails to explain why the newly proposed area is suitable for a rail yard or how potential unsuitability would be mitigated. Nothing in NEXT’s application (or previous applications) explains how building miles of rail track over what is currently a mint farm, on land controlled by PGE, would impact that existing land use—let alone how NEXT might mitigate that impact. This conflicts with **CCZO 1562, which requires mitigation of impacts on adjacent uses and buffers.**

More importantly, evidence in the record provides proof of PGE’s refusal to allow the NEXT project, and it comes from NEXT’s own applications to other agencies, as well as PGE’s own statements. NEXT’s application materials to the Department of State Lands

¹ See Final Order No. 12-2022, Exhibit A at 1, 18, 21, 42.

and the Army Corps of Engineers specifically highlight that PGE has refused to release its leasehold, and NEXT described the land as unavailable and unsuitable for their project. Similarly, the Port has argued that the land is unavailable in applications to rezone other land at Port Westward. The Planning Commission cannot reasonably approve NEXT's proposed modification, its impacts, and potential mitigation when there is clear evidence showing that the land is unavailable and being used for conflicting land uses. The same issue applies to drainage systems, where the BDIC has exclusive authority over modifications to drainage systems, a public service and land use vital to Port Westward as a whole.

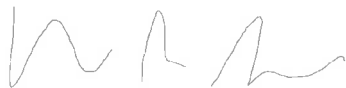
3. NEXT has not applied for a new Goal 2 exception as required.

NEXT fails to address the issue of a new Goal 2 exception being required for the proposed modification. NEXT argues that Goal 2 is not relevant and asserts that any argument otherwise is a collateral attack on the County's zoning. However, a goal exception is limited to the terms on which it was justified and does not necessarily grant the full scope of use authorization to a site as would occur under regular planning and zoning decisions.² As described in previous comments, the present application represents an expansion of use exceeding the scope of the two prior goal exceptions taken on the subject properties at Port Westward. Additionally, because the modification is not a "limited land use application," as described above, NEXT cannot dismiss the Goal 2 exception issue.

Conclusion

In conclusion, we urge the Planning Commission to reject the proposed modification, and to listen to the local community and the farmers with in-depth knowledge of the proposal and its impacts who oppose NEXT's refinery, rail yard, and other plans.

Sincerely,



Dan Serres
Columbia Riverkeeper
Conservation Director

² See OAR 660-004-0018(1) ("Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception.").

503.890.2441
dan@columbiariverkeeper.org

Mary Kyle McCurdy
1000 Friends of Oregon
Deputy Director
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