

7/3

Amy Herzog

From: Brian Brust <bbrust2022@gmail.com>
Sent: Monday, July 3, 2023 9:43 AM
To: Amy Herzog
Subject: Questions for NEXT

1. Why is the spur next to agriculture land when it can go to the interior of the industrial property? Then it would not cross any agricultural land.
2. With this spur comes more train traffic and hazards. I understand that the spur is the question, but what risks come with it and will you go above and beyond what is just required by the state and federal governments to protect against any spills or accidents on your spur?
3. The hydrology of the ground is a question many people want answered. How are you going to keep the tracks from sinking with the weight of the cars and movement on them?
4. The spur is more than just a spur to the county, it means more train traffic dividing our cities. We as a community are concerned about train lengths and times it will run. I think these questions being answered would be helpful. for the board to make well informed decisions.
5. The rout you have decided for your spur goes through agriculture land, but it also goes through leased property of PGE. Do you have PGE's approval to use there leased land?

7/3

Amy Herzog

From: Janet Ault <janetlynnault@gmail.com>
Sent: Monday, July 3, 2023 3:17 PM
To: Planning Department.UserGroup
Subject: Testimony for NEXT application

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Thank you, chair and commissioners. As a long-term member of the Zen community of Oregon and Great Vow monastery next to Port Westward, I strongly urge the Commission to deny NEXT's railyard application. NEXT has continually demonstrated a lack of planning, inability to work with the community to determine what's best for the area, and now this attempt to slip major changes into their proposals without full analysis.

It is hard to fathom how NEXT can assert that adding such a railroad would not change the terms of their previous application, which never reviewed the railyard, when it clearly significantly increases the scope and intensity of impact. In fact, the state agency that *did* review the railyard under a separate application, LUBA, denied it. And – it's important to remember – all this comes after *years* of reassuring the community that NEXT **would not use** long trains to bring in feedstocks. They have also said the *previously* proposed location for the railyard, the one that LUBA denied, was necessary to keep trains from blocking other crossings, so they may have in fact made it worse with this new location.

NEXT has not been able to demonstrate that they have permission to use PGE-leased property where they propose this railyard, which has been recently actively farmed, or alter drainage systems controlled by the BDIC. It feels against the interests of the port to approve this proposal with such glaring holes in the middle of it, and it feels very out of order for NEXT to just assume they will be able to procure these permissions from PGE and the BDIC. Especially considering **their own statement** in their 2022 application to the Army Corps where they clearly admit that PGE is **not** willing to release their lease.

NEXT also openly admits that they do not fully understand how groundwater moves in the area, claiming that further study over a single year will be sufficient. This fails to demonstrate an ability to mitigate impacts, which could be downright dangerous to the land and community of people who depend upon it.

The area surrounding Port Westward is a place where hundreds of people flock every year for spiritual practice, and we depend on clean air and the natural environment. Three miles of rail tracks with mile-long trains will have major harmful impacts to our community and ability to offer refuge to so many people. This is a truly rare and precious place that includes one of very few Buddhist training monasteries in the country. Port Westward deserves to work with organizations who are actually committed to finding solutions that are sustainable for the land and people who live here. Thank you very much for your time.

Sincerely,
Janet Ault
Zen Community of Oregon

Amy Herzog

From: Maureen Milton <milton.maureen@gmail.com>
Sent: Monday, July 3, 2023 2:32 PM
To: Planning Department.UserGroup
Subject: Deny NEXT's refinery rejiggering

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

Dear Hardworking Columbia County Planning Commission,

I write to request that you deny NEXT's Chemical Refinery's proposed modification of their prior approval to allow the Texans to establish miles of rail tracks at Port Westward. This bait-and-switch strategy is not only disingenuous. By increasing long train traffic, NEXT Chemical Refinery's proposal would impact both the Quincy locals and area farms.

From Texas, NEXT continues to ignore and downplay Clatskanie community concerns, and conflicts with the County's land use rules, and the application fails to consider significant local impacts. Instead, the Texans are dodging issues related to the rail yard and trying to rely on prior decisions. They seem to believe that we can be railroaded into conforming to their schemes, bypassing the actual folks who live here.

Also, the NEXT chemical refinery has no agreement with PGE to use the land that PGE leases, which overlaps with the rail yard. PGE considers the area a "buffer" for its future industrial use. According to NEXT's 2022 Application to the Army Corps, "PGE has informed the Applicant that it is unwilling to release its long-term lease at either property for further industrial development. PGE indicated that the property would be utilized as a buffer for their facility and for any future PGE expansion."

Essentially, the rail yard component of the proposal was never evaluated under the criteria that apply. Please do not approve the proposed modification without additional analysis and findings that are specific to the changed location and configuration of the proposed rail facility.

Local farmers, residents, loggers, and ordinary folks, cattle, and wildlife will be profoundly affected by this scheme.

So, please, dear Planning Commission, deny NEXT chemical refinery's proposed modification of the prior approval for the refinery. Don't mess with Westward!

With gratitude,
Maureen Milton

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"And it is essential of the happy life that a man would have almost no mail...." C.S. Lewis

Amy Herzog

From: TOM GORDON <tndgardens@comcast.net>
Sent: Monday, July 3, 2023 2:53 PM
To: Planning Department.UserGroup
Subject: Port of Columbia County/NEXT Renewable Fuels, Inc.

Some people who received this message don't often get email from tndgardens@comcast.net. [Learn why this is important](#)

Dear Commissioners,

I must disagree with the attorney who spoke for NEXT at the hearing last Monday evening, June 26, 2023. He said that the folks who commented on the proposed changes to NEXT's rail yard plan were pretty much off topic and did not address the issue at hand. However, we all spoke of the problems associated with a rail yard going through a sensitive wetland and how it can go wrong yielding unintended consequences.

Also, I don't think that a rail yard was proposed in the original proposal. A rail yard was proposed, but it was in a separate application, not the one that got approved. I do not think that NEXT should be allowed to add this one in and claim it was part of the original proposal. That prior rail yard application was ruled out by the Land Use Board of Appeals. This modification opens a whole new can of worms and I feel that NEXT should show beyond a shadow of a doubt that this 'modification' will not harm the wetlands, the groundwater, farming practices used in this area, and a host of other concerns.

I do not think that NEXT has done an adequate analysis of the many, many factors at play here. Apparently, the Beaver Drainage Improvement Company and Portland General Electric don't either because neither has given its consent to allow modifications of its drainage systems or land use.

NEXT must do a better job of analyzing the problems here. The associated company, TransMessis, left a terrible mess up in Odessa, Washington. The mess was, however, confined to a smaller area. A mishap here could have far-reaching consequences that might never be thoroughly mitigated. This is a wetlands - one of the most important ecosystems on earth, and it is next to the Columbia River Estuary. NEXT does not have the experience and/or the vested interest in the continued welfare of this area to ensure the safety of this project.

Please deny this dubious proposal.

Diana Gordon	tndgardens@comcast.net
642 I Street	360-835-7748
Washougal, WA 98671	July 3, 2023

Amy Herzog

From: Dan Serres <dan@columbiariverkeeper.org>
Sent: Monday, July 3, 2023 12:46 PM
To: Planning Department.UserGroup
Subject: Additional Comments of Columbia Riverkeeper
Attachments: July 3 Columbia County Planning Commission Rail Comment submitted.pdf

Some people who received this message don't often get email from dan@columbiariverkeeper.org. [Learn why this is important](#)

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Dear Columbia County Planning Commission and Staff:

Please see the attached public comments by Columbia Riverkeeper regarding NEXT Renewable Fuels Inc.'s Modification of Prior Approval for a previously approved Site Design Review and Variance (DR 21-03/V 21-05).

Thank you,

Dan Serres
503.890.2441
dan@columbiariverkeeper.org
1125 SE Madison Suite 103A Portland 97214

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

Currents: The Hanford Issue—Read it Now ([PDF](#) & [Interactive](#))
Get inspired to fight for cleanup at the most polluted place in America.



July 3, 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:

Columbia Riverkeeper is a non-profit organization with a mission to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Please accept these comments, which build on our previous letter submitted on June 23, 2023 and testimony provided by Dan Serres on June 26, 2026.

The Columbia County Planning Commission should reject Houston-based NEXT Renewable Fuels Inc.'s (NEXT) assertion that the company and the County can ignore impacts from the proposed modification. NEXT's dismissal of community concerns as irrelevant to the criteria is incorrect. Comments, including those offered by two dozen people on June 26, identified concerns regarding the natural resources in the area, the differences between the newly proposed modifications and the original site design review, the suitability and availability of the property in question, and the impacts on and off the site. We renew our request that the Planning Commission 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).

1. Previous comments addressed relevant criteria

Written and verbal comments to the Planning Commission offered information relevant to several criteria, even the very narrow set of criteria NEXT acknowledges apply. For example, several issues raised by commenters are relevant to the CCZO 1562 criteria governing buffering, screening, and fencing, as well as the related staff report findings. 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 plan

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.

BDIC highlighted 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 connection between drainage and potential erosion is well established by FEMA and other agencies, and the BDIC has specifically identified inadequate design specificity and capacity for culverts and other aspects of the modification.¹ High water levels from storms or heavy rains may exceed the capacity of ditches or culverts. Roadway flooding may cause new road or rail infrastructure, or BDIC property, to be damaged. Turbulence at the culvert inlet and outlet can cause scour and erosion. Floodwaters also can scour roadway ditches and drainage structures, and floodwater often carries debris, which can become caught or wedged in ditches and culverts. 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 the quality of water in the BDIC system. Lodged debris can interfere with the flow of water, and floating debris also can cause damage to infrastructure. The County should require the applicant to fully address these and other issues raised by BDIC as relevant to the criteria in CCZO 1562. As noted in previous comments, the draft stormwater report is inadequate to address these issues, and the BDIC has provided comments that directly point out lack of consultation with BDIC and flaws in the plans.

Additionally, multiple comments addressed the impacts of the proposed modification on adjacent uses, including agricultural lands. CCZO 1562.B.1 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. However, the staff report finds that no buffering or screening is required to the north or west because the properties are zoned RIPD;² but that is not what the criteria require. The criteria at CCZO 1562.B.1 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. Comments provided on Monday June 26 and in the record address how pollution entering drainage systems can impact farming, and how soil health could be impacted.³ Erosion-caused pollution from proposed modifications may cause impacts that are not addressed adequately in the proposed application.

¹ FEMA. Fact Sheet 1.3. Drainage and Culverts. March 2022.

https://www.fema.gov/sites/default/files/documents/fema_p-2181-fact-sheet-1-3-drainage-culverts.pdf

² Staff Report, Finding 20.

³ See e.g. comments from Mike Seely; comments from BDIC.

Further, CCZO 1562.B.3 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 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.

Additionally, criteria in CCZO 683 *do* apply in this case, contrary to assertions made by NEXT and Staff. As discussed further below, 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 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 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, as explained in previous comments.

2. NEXT cannot solely rely on previous decisions.

NEXT's application fails to adequately address criteria from Columbia County Zoning Ordinance (CCZO) 683.1.B. Contrary to NEXT's contention that community testimony was irrelevant, the criteria do apply and findings must address the impacts of the proposed modification. 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 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 21-03.⁴ 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. Hence, 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 more than three miles of rail track 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. NEXT

⁴ See Final Order No. 12-2022, Exhibit A at 1, 18, 21, 42.

must provide further analysis specific to the particular land uses proposed in the modification, and it has failed to do so.

NEXT's assertion that the newly proposed rail yard is of the same scope and intensity as a temporary laydown area for construction offers one tangible example of the error in NEXT's argument. These two uses—a temporary laydown area versus a rail yard—are different in both scope and intensity. One commenter, Wendy Schmidt, who lives very close to the proposed rail yard, highlighted that heavy trains will impact soils much differently than a temporary storage area. Further, the long-term impact on land uses in the area, and the disruption of PGE's use of the area as a buffer, have not been considered in the application. As noted in our previous comments, NEXT's own application to the Department of State Lands highlighted that PGE was unwilling to release its leased area because PGE intends to rely on the area as a buffer for its own uses in the RIPD zone. The Planning Commission should dismiss NEXT's argument that the rail yard's impacts are the same as the previous Site Design Review application. NEXT must specifically consider the *particular land use and improvements* with respect to the rail yard, road infrastructure, stormwater facilities, and other modifications.

3. The proposed modification conflicts with PGE's use of the area as a buffer and BDIC's use of drainage systems.

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. NEXT's new rail yard location and other modifications will directly displace farming, specifically an active mint farming operation on land currently leased from the Port by PGE. 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.

In reality, NEXT's proposed development would occupy actively farmed acreage and likely interfere with soil health, irrigation, and access for the farmer as well as PGE's use of its leasehold. The proposed modification does not provide adequate buffers 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, as NEXT has acknowledged and as we describe further below. Because NEXT incorrectly asserts that its previous applications contained information about the effects of the modification's construction and operation on these existing land uses, the current application is incomplete.

NEXT's only response to the PGE leasehold issue is that PGE has not provided new comments. It is not necessary for PGE to specifically address these issues in its own comments; rather, it is NEXT's burden to come forward with adequate information to support its application.

As described in our previous June 23 comment letter, evidence in the record already 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 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. The 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.

4. A new Goal 2 exception is required for the proposed modification.

NEXT fails to address the issue of a new Goal 2 exception being required for the proposed modification. Instead, 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.⁵

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. The County must follow the exceptions process for the newly proposed rail lines and other modifications required by ORS 197.732 and LCDC's implementing rules. *See* OAR 660-004; *see also e.g.* OAR 660-012-0070. The county and the applicant must determine how the exceptions process required by law applies to the applicant's specific proposal for the modifications and which provisions apply. ORS

⁵ *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.").

197.797. LCDC's rules contain specific requirements depending on the type of exception required. OAR 660-004-0018, -0020, -0022, -0025, and -0028.

A new reasons exception is required "[w]hen a local government changes the types or intensities of uses or public facilities and services within an area approved as a 'Reasons' exception." OAR 660-004-0018(4)(b); *see Hood River Valley Residents Committee v. Hood River County* (Opinion, LUBA No. 2017-014, June 29, 2017). Similarly, for an "irrevocably committed" exception, the County must ensure that the proposed use is consistent with other applicable goal requirements and "will not commit adjacent or nearby resource land to uses not allowed by the applicable goal[.]" OAR 660-004-0018(2)(b); *see also* OAR 660-004-0018(2), (3) (listing additional requirements, including requirements for industrial uses). As described above and in previous sections, NEXT's application will dramatically expand uses exceeding the scope of the two prior goal exceptions taken on the subject properties at Port Westward. The modification is a change of use and an intensification of use, and it requires a new Goal 2 exception.

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. Please note that every public commenter at the June 26, 2023 hearing opposed NEXT's proposed modification. Some people waited for more than two hours to speak. The voices of people in and near Port Westward should cause the Planning Commission to be skeptical of the approach taken by Houston-based NEXT.

Sincerely,



Dan Serres
Columbia Riverkeeper
Conservation Director
503.890.2441
dan@columbiariverkeeper.org

Amy Herzog

From: Bruce Podobnik <bruce.podobnik@gmail.com>
Sent: Friday, June 30, 2023 10:52 PM
To: Planning Department.UserGroup
Subject: Please deny the NEXT/Port Westward application to modify its refinery project

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

Dear members of the planning commission,

I'd like to request that you deny the NEXT/Port Westward application to modify its refinery project. NEXT/Port Westward should not be allowed to expand its railroad connections or rail car movements. This would adversely impact the local environment, the lives of nearby residents and farmers, and undermine broader sustainability goals.

Thanks for denying the application!

Bruce Podobnik
Associate Professor of Sociology and Environmental Studies
Lewis & Clark College
Portland, OR 97202