

NEXT Energy Ground Lease
Resolution 2019-37 Comments for the Record by
Chip Bubl, Port of Columbia County Commissioner
Presented at September 4, 2019 Commission Meeting

To start, through the work of our legal counsel Robert Salisbury and concerns about risk and bonding from Commissioner Iverson, this ground lease is stronger than the one originally presented. However, I cannot vote for this lease for the following reasons:

1. As Port Commissioners, we know little about the ultimate financial backing of this project. There apparently are some documents re the purchase of the end product and the supply of raw materials but we don't have copies of them to see if they are firm, contingent in any way except getting the facility built, etc. Oregon Business Development fund requires and we should also have required, at a minimum for a project this large, the following of which I don't think we have much:
 - a. Historical financials (10 years) for businesses directly associated with the principal, Mr. Soumas and anyone else connected to NEXT.
 - b. Personal financials (10 years) for each principal.
 - c. Profit and loss and balance sheet for all affiliates. First, we don't know who they are. The term "Affiliates" needs to be clearly defined in the Ground Lease. Affiliates are very important because, by the terms of this lease, they can determine future directions for the site if/when ownership is transferred. Can this lead to a "chain" of affiliates that move the Lease far away from the original actors? Can this be done completely without Commission approval as it seems to be currently written? For example, is Shell Oil or any other energy company an affiliate by their agreement to take and/or supply products to this entity? If so, could Port staff sign over this Lease to the affiliate without Commission approval? This is a slippery slope, fraught with challenges of adequate review and maintenance of public trust.
 - d. Litigation summaries - there is a lot of debate over Mr. Soumas' role in the Transmessis project in Odessa, WA. Is there more? Did his hedge fund actually get investors?
 - e. Documentation of commitments from private lenders!! Letters of credit!! This vetting process we have undertaken almost seems backwards.
 - f. Collateral, if any.
2. Related to the above, the Lease has not clearly identified the parties and their financial responsibilities and resources if things go wrong. Capturing of some of the monthly payments into a fund to deconstruct if things fall apart is a good first step but it is not protection enough.
3. Is there a drop-dead time for all the financial support to be in place and construction to start or the Lease is voided? There should be.
4. As Port Commissioners, we have not seen or much less carefully reviewed, a history of projects that the current or future principals have financed, operated, engineered, or

otherwise had a substantial role in their development and ultimate success or failure. We would require much more if Mr. Soumas were applying for a position with the Port.

5. An 80-year lease is too long. There need to be some options for the Port to back out of the lease down the line.
6. It would seem prudent to have the ground lease contingent use agreements in place before a Ground Lease is voted on. It isn't at all clear how close those are with PGE and Global or even the Port. There are parcels that may or may not have been optioned that are included in the site map but their current status is unclear.
7. Mr. Soumas could not or would not provide enough process production details to help assess any manufacturing OSHA and/or environmental risks and compatibility with PGE's facilities and/or surrounding land uses. The permitting process will have to clarify those risks.
8. This lease seems to explicitly prohibit NEXT or any subsequent entity that could acquire the rights to this property from receiving, storing, refining, or transloading oil or oil products from Port owned property without renegotiating the Lease. But it does not appear to bind the use of the adjacent so-called "Teevin" and "De La Cruz" properties optioned by NEXT. Are those properties also tied up for 80 years?
9. The De La Cruz property appears to be zoned agricultural. That might allow its use for rail but nothing industrial. In addition, the county zoning ordinance appears to show that tax lot 8N4W 23 BO 700 or tax account number 28107 is one of the parcels being rezoned to RIPD (exhibit A appears to show 28107 as Parcel B in purple). Is that same parcel included in the ground lease for NEXT Energy? The rezone isn't settled. What do these issues mean to the project and the Lease?
10. Construction traffic on Alston-Mayger road will not be easily managed by the Port or County and will likely result in huge road problems for local residents. When the ethanol plant was being constructed, the road effectively disintegrated.
11. The Port Westward site is geotechnically fragile with severe liquefaction characteristics in an earthquake, high land subsidence already, and an uncertifiable dike system without potentially \$30 million plus in major upgrades to bring it into 100-year flood compliance, which, itself, is a very low safety bar. Putting a refinery next to the Columbia, even one using only biofuels, is questionable. On a positive note, the Lease (Section 5.3) does spell out that Mr. Soumas has read the Corps of Engineer's last report (2014) relating to the status of the Beaver dike, which is quite harsh on its condition.
12. There is no bonding to cover damages in the event of a major spill into the Columbia River or behind the dike.

If this lease is approved, I hope my concerns are wrong. The overall concept is decent. But I don't have a good feeling about this project for the specific reasons I have noted above in my comments. Thank you, fellow Commissioners, for hearing me out.