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SHORELINES HEARINGS BOARD
FOR THE STATE OF WASHINGTON

CLIMATE SOLUTIONS; COLUMBIA)	
RIVERKEEPER; SIERRA CLUB; and)	SHB NO.
WASHINGTON ENVIRONMENTAL COUNCIL,)	
)	
Petitioners,)	PETITION FOR REVIEW
)	
vs.)	
)	
COWLITZ COUNTY and MILLENNIUM BULK)	
LOGISTICS, INC.,)	
)	
Respondents.)	
)	

1. Identity of Appealing Parties and Representative:

The appealing parties are:

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(206) 443-9570 | Phone

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(541) 387-3029 | Fax

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85 Second Street, Second Floor
2 San Francisco, CA 94105
(415) 977-5772 | Phone
3 (415) 977-5793 | Fax

4 Washington Environmental Council
1402 Third Avenue, Suite 1400
5 Seattle, WA 98101
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6 (206) 622-8113 | Fax

7 The representatives of the appealing parties are:

8
9 Jan Hasselman
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14 2. Identification of Other Parties.

15 The respondents in this appeal are Cowlitz County and Millennium Bulk Logistics, Inc.
16 (“Millennium”), a subsidiary of Ambre Energy, Inc.

17 3. The Decision Under Appeal.

18 This is a petition for review of Shoreline Management Substantial Development Permit
19 No. SL10-0916, issued by Cowlitz County to Millennium on November 23, 2010. A copy of the
20 Permit and Millennium’s application are attached as Exhibits A and B to this Petition for
21 Review, respectively.

22 4. Short and Plain Statement Showing Grounds for Appeal.

23 The Shoreline Substantial Development Permit (“Permit”) was issued by Cowlitz County
24 in violation of the State Environmental Policy Act (“SEPA”), its governing regulations and
25 implementing ordinances, because the responsible official erroneously concluded that the Permit
26 would not have a significant adverse environmental impact. Issuance of the Permit to

1 Millennium will, as discussed further below, have a variety of significant adverse environmental
2 impacts. As such, the Permit should not have been issued before the County completed a valid
3 environmental impact statement (“EIS”) evaluating all of the impacts of, alternatives to, and
4 potential mitigation for the project. Moreover, the County unlawfully segmented out a portion of
5 the Permit and processed it as a separate action with separate SEPA documentation, even though
6 it was plainly part of, or related to, the Millennium project.

7 5. Statement of Facts.

8 On September 2, 2010, Millennium filed an application with Cowlitz County for a permit
9 to build and operate infrastructure in Longview, Washington to support the import and export of
10 bulk commodities, including 5.7 million tons per year of coal that will likely come from the
11 Powder River Basin. The coal will travel via rail through the Columbia River Gorge to
12 Longview, where it will be offloaded, stored, and loaded onto ocean-going vessels. The
13 Millennium facility is one of several similar proposals to build infrastructure for the export of
14 coal to Asia currently under consideration in the Pacific Northwest.

15 The Longview site is owned by Alcoa and was previously used in the manufacture of
16 aluminium. Millennium is seeking to obtain a long-term lease to use the site, which is currently
17 leased to another entity called Chinook Ventures, Inc. for use primarily as a storage and loading
18 site for alumina and other materials. Chinook has a long history of legal and regulatory
19 problems in operating the site. The lease between Chinook and Alcoa has not yet been
20 transferred to Millennium.

21 Millennium’s Shoreline Perimt application sought authorization to conduct several
22 activities associated with its “multi-modal bulk materials handling facility,” to be known as the
23 Longview Terminal Facility. Specifically, Millennium requested approval to extensively repair
24 and rebuild an existing dock, which would entail the placement of nearly 100 new steel piles and
25 construction of new loading infrastructure. Millennium also sought approval for construction of
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1 new infrastructure on the upland portion of the site for storage and loading of large volumes of
2 coal. Finally, Millennium also sought approval to conduct dredging in the Columbia River on
3 the site in order to facilitate ship access.

4 In late September, Millennium revised its paperwork to sever out the portion of permit
5 related to the dredging. Shortly thereafter, Northwest Alloys, Inc. (a subsidiary of Alcoa)
6 submitted applications to the County and other regulatory authorities to conduct the dredging
7 itself as a project purportedly unrelated to the Longview Terminal Facility.

8 On October 8, 2010, as part of the County's effort to comply with the requirements of
9 SEPA, the director of the County's building department issued a Mitigated Determination of
10 Nonsignificance ("MDNS"). The MDNS concludes that the Project "does not have a probably
11 significant adverse impact on the environment," and, as such, did not trigger the requirement to
12 prepare an EIS. The MDNS included several conditions identified as "mitigation" for the
13 Project, most of which simply affirm Millennium's existing duties under other environmental
14 and land use requirements.

15 The MDNS included a condition that Millennium develop a baseline greenhouse gas
16 ("GHG") emissions estimate for the project. The estimate was expressly limited to "Scope 1 and
17 Scope 2 emissions from activities under the organizational and operational control" of
18 Millennium.

19 In concluding that the facility would not have a significant environmental impact, the
20 MDNS limited its review to the construction and operation of the terminal facility itself. It did
21 not consider the environmental impact of building a large coal export facility on a number of
22 other important environmental factors, including at least the following:

- 23 a. the impacts of increased mining of coal, with its attendant air, land and
24 water pollution, disruption of wildlife, and hazardous wastes;
- 25 b. the impacts of transporting coal long distances to the facility, and the
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1 impacts of commodity ship traffic in the Columbia River and Pacific Ocean, including
2 increases in greenhouse gas emissions as well as conventional pollutants that are highly
3 damaging to human health, such as diesel particulates, as well as impacts to traffic,
4 safety, recreation and aesthetics;

5 c. the precedential nature of this decision relative to other expected proposals
6 in Washington state to build and operate large coal export terminals;

7 d. the impacts of transportation and combustion of exported coal in Asia, and
8 the influence of increased exports on supply, demand and price of coal in international
9 markets, which has a strong influence on energy planning decisions by incentivizing
10 coal-fired power production and disincentivizing environmentally preferable alternatives.

11 This last issue is particularly consequential as the 5.7 million tons per year of coal
12 exported by this facility will generate over 11 million tons of carbon dioxide annually—roughly
13 equivalent to the emissions of two million U.S. cars. To put this in perspective, the largest single
14 source of carbon dioxide emissions in Washington State, the Transalta Centralia Generating
15 Facility, emits approximately 8 million tons annually. The Longview Terminal will export more
16 coal than is currently used in Washington state. Because the project has an anticipated lifespan
17 of decades, it is likely to impact international coal markets and energy planning decisions in
18 other countries that have adverse environmental effects by encouraging greater use of coal.
19 Increased combustion of coal in Asian power plants which typically lack modern pollution
20 controls has been linked to increases in mercury, sulfur dioxide, and other pollutants in
21 Washington's atmosphere.

22 Had the responsible official considered these reasonably foreseeable indirect effects of
23 building the coal export terminal, he would have concluded that the project is likely to have a
24 significant adverse environmental impact. This would have, in turn, triggered the duty to prepare
25 a full EIS prior to a decision on granting the permit, as required by SEPA. However, the
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1 responsible official erroneously believed that SEPA only required consideration on the
2 immediate, local impacts in Longview of building and operating this project, and failed to
3 include these effects in his SEPA documentation.

4 The County's conclusion that the immediate and local effects of the Permit were not
5 significant was also erroneous. The in-water work, including substantial construction and
6 placement of pilings, will take place in the migratory habitat of aquatic species, including several
7 runs of salmon and steelhead, sturgeon and smelt, which are currently listed under the federal
8 Endangered Species Act. The proposed construction and ongoing operation of this facility raises
9 serious water quality, habitat, and aquatic life concerns that should have been fully addressed
10 and, if possible, mitigated. Other significant environmental and social impacts of the project
11 include: a substantial increase in the number of trains moving through downtown Longview,
12 delaying traffic and other rail system users (the Longview project would increase rail traffic by
13 up to 464 trains, each over 7,000 feet long, per year); up to 97 dump truck trips from the site
14 each weekday, generating local traffic, hazards, and pollution; and 100 Panamax-class ocean-
15 going ships leaving the site each year, creating pollution and river hazards. Although the MDNS
16 addresses some of these impacts, the responsible official erroneously concluded that the
17 environmental impacts were not significant.

18 To date, Millennium has not obtained requested permits to conduct the in-water work
19 from the U.S. Army Corps of Engineers or the Washington Department of Ecology (both of
20 which have regulatory authority under the federal Clean Water Act and/or Rivers and Harbors
21 Act). Nor has the project been reviewed for compliance with the federal Endangered Species
22 Act, which is triggered by the Army Corps' issuance of a federal permit for in-water work.
23 Additionally, as of the date of this filing, Millennium has not obtained a lease from the state
24 Department of Natural Resources to conduct activities on state-owned submerged lands, and has
25 not executed a final lease agreement with the owner of the site, Alcoa. Given Millennium's
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1 failure to timely obtain these permits and authorizations, it will not be able to commence in-
2 water construction work prior to December of 2011.

3 Appellants in this appeal filed extensive and timely comments on the MDNS and
4 proposed Permit. On November 9, 2010, in response to these comments and a response prepared
5 by Millennium, the responsible official revised the MDNS and issued a “Modified Mitigated
6 Determination of Nonsignificance” (“MMDNS”). The MMDNS affirms the agency’s decision
7 that the project would not have a significant adverse environmental impact, but seeks to “further
8 clarify” some of the mitigating conditions. None of the clarifications addressed the responsible
9 official’s failure to consider indirect impacts arising from the mining, transportation, and
10 increased combustion of coal, or provide any additional mitigation rendering local impacts
11 insignificant.

12 On November 16, 2010 the Cowlitz County Board of Commissioners held a hearing on
13 the proposed Permit. A large number of people attended the hearing, and the overwhelming
14 majority of the public provided testimony in opposition to the granting of the Permit. On
15 November 23, 2010, the Commissioners voted to grant the Permit.

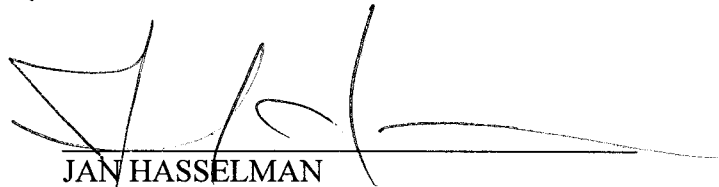
16 The issuance of this Permit, which authorizes Millennium to construct and operate the
17 Longview facility injures appellants and their members in several ways. First, construction and
18 operation of the facility will have adverse impacts on the aquatic environment by harming
19 aquatic species. Second, construction and operation of the facility will result in significant
20 increases in local train, truck, and ship traffic with attendant increases in pollution, traffic delays,
21 and safety hazards. Third, operation of this project will result in increased mining activities in
22 the interior Western United States, which results in significant pollution of the water, land and
23 air, and adverse impacts to wildlife. Fourth, operation of this project will result in significant
24 increases in Washington state’s contributioin to global emissions of greenhouse gases and other
25 pollutants. These increases will occur because operation of the project will result in increased
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1 mining, transportation of coal, and increased burning of coal, which in turn contributes to
2 human-induced climate instability that harms appellants' members' recreational, aesthetic,
3 spiritual, and other interests. Increased combustion of coal in Asia also will also result in
4 increased conventional air and water pollution in Washington state.

5 6. Relief Sought.

6 Petitioners respectfully request that this Board find unlawful and set aside both the Permit
7 and the MMDNS, and prohibit the County from reissuing the permit until it has adequately
8 complied with SEPA.

9 Respectfully submitted this 13th day of December, 2010.

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