SHORELINES HEARINGS BOARD
FOR THE STATE OF WASHINGTON

CLIMATE SOLUTIONS; COLUMBIA RIVERKEEPER; SIERRA CLUB; and WASHINGTON ENVIRONMENTAL COUNCIL, Petitioners,

vs.

COWLITZ COUNTY and MILLENIUM BULK LOGISTICS, INC., Respondents.

PETITION FOR REVIEW

1. Identity of Appealing Parties and Representative:

The appealing parties are:

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2. Identification of Other Parties.

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

3. The Decision Under Appeal.

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

4. Short and Plain Statement Showing Grounds for Appeal.

The Shoreline Substantial Development Permit (“Permit”) was issued by Cowlitz County in violation of the State Environmental Policy Act (“SEPA”), its governing regulations and implementing ordinances, because the responsible official erroneously concluded that the Permit would not have a significant adverse environmental impact. Issuance of the Permit to
Millennium will, as discussed further below, have a variety of significant adverse environmental impacts. As such, the Permit should not have been issued before the County completed a valid environmental impact statement ("EIS") evaluating all of the impacts of, alternatives to, and potential mitigation for the project. Moreover, the County unlawfully segmented out a portion of the Permit and processed it as a separate action with separate SEPA documentation, even though it was plainly part of, or related to, the Millennium project.

5. Statement of Facts.

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

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

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

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

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

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

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

a. the impacts of increased mining of coal, with its attendant air, land and water pollution, disruption of wildlife, and hazardous wastes;

b. the impacts of transporting coal long distances to the facility, and the
impacts of commodity ship traffic in the Columbia River and Pacific Ocean, including
increases in greenhouse gas emissions as well as conventional pollutants that are highly
damaging to human health, such as diesel particulates, as well as impacts to traffic,
safety, recreation and aesthetics;

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

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

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

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

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

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

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

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

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

6. Relief Sought.

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

Respectfully submitted this 13th day of December, 2010.

[Signature]

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