BEFORE THE COWLITZ COUNTY HEARINGS EXAMINER

IN RE THE MATTER OF MILLENNIUM BULK TERMINALS - LONGVIEW, LLC COAL EXPORT FACILITY)  File No. 12-04-0375
APPLICANT:  SHORELINE PERMIT APPLICATION NO. 17-0992
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION DENYING PERMITS

APPLICANT:  Millennium Bulk Terminals - Longview, LLC ("Applicant")

REPRESENTATIVE:  Jon K. Sitkin
Chmelik Sitkin & Davis, P.S.
1500 Railroad Avenue
Bellevue, Washington 98225
Craig S. Trueblood
K&L Gates, LLP
925 4th Avenue, Suite 2900
Seattle, Washington 98104

COUNTY STAFF:  Elaine Placido, Director of Community Development
Ron Melin, Senior Environmental Planner
207 4th Avenue N.
Kelso, Washington 98626

REPRESENTATIVE:  Douglas Jensen
Cowlitz County Prosecutor's Office
First Floor, 312 S.W. 1st Avenue
Kelso, Washington 98626

INTERESTED PARTIES:  Columbia Riverkeeper, Friends of the Columbia Gorge,
Climate Solutions, Sierra Club, Washington Environmental Council, Greenpeace USA, Association of Northwest Steelheaders,
Northern Plains Resource Council, Oregon Physicians for Social Responsibility, Washington Physicians for Social Responsibility,
and Western Organization of Resource and Councils (collectively "Riverkeeper")

Findings of Fact, Conclusions of Law and Decision Denying Permits - 1

COWLITZ COUNTY HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386
REPRESENTATIVE: Kristen Boyles  
Earthjustice  
705 Second Avenue, Suite 203  
Seattle, Washington 98104  

SUMMARY OF REQUEST: The Applicant seeks a Shoreline Substantial Development Permit and a Shoreline Conditional Use Permit to construct Stage 1 improvements for a coal export facility near Longview and along the Columbia River, an urban shoreline of statewide significance.

LOCATION OF PROPOSAL: The Project is located at 4029 Industrial Way, Longview, Washington, within the Northwest and Northeast Quarters of Sections 35 and 36, Township 8 North, Range 3 West, W.M., and the Southwest and Southeast Quarters of Sections 25 and 26, Township 8 North, Range 3 West, W.M., at approximately Columbia River Mile 63, within Parcel Nos. 619530400, 61950, 61953, WDNR Aquatic Lands Lease No. 20-B09222, and BPA Parcels 61954 and 6195303.

PROJECT DESCRIPTION: See below

SUMMARY OF DECISION:

1. In advance of this hearing Cowlitz County (the "County") and the Department of Ecology ("Ecology"), as co-lead agencies, issued a Final Environmental Impact Statement (the "FEIS") to inform this decision making process. The FEIS concludes that the Project has nine unavoidable, significant adverse impacts. Importantly, neither the Applicant or any other party has appealed the FEIS. For the purpose of this hearing its findings and conclusions are unchallenged.

   By Decision dated September 26, 2017, Ecology denied the Applicant a Section 401 Water Quality Certification, in part, under its substantive SEPA authority, concluding that the Project had nine unavoidable significant environmental impacts as identified in the FEIS, and that these impacts could not be reasonably mitigated. I concur with Ecology that the Project has unavoidable, significant environmental impacts that cannot be reasonably mitigated, and therefore deny the Applicant's requested Shoreline Substantial Development Permit and Shoreline Conditional Use Permit under Cowlitz County's substantive SEPA authority.

Findings of Fact, Conclusions of Law and Decision Denying Permits - 2

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299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386
Although I reach the same conclusion as Ecology I do so through a different analysis. Ecology reached its Decision by examining the FEIS and concluding that the listed unavoidable and significant adverse impacts could not be mitigated. I question whether this approach provided the Applicant with an opportunity to offer evidence of possible, reasonable mitigation. Therefore, in this hearing the County and the Applicant have been given the opportunity to propose reasonable mitigation. Nonetheless, by the conclusion of the hearing the parties had failed to do so. As the unchallenged FEIS concludes that the Project has many unavoidable, significant adverse impacts, and as the parties have failed to provide reasonable mitigation, the Shoreline Permits must be denied.

In its Decision Ecology did not address the impacts from Greenhouse Gas (GHG) emissions. This was due to the belief that the Applicant was proposing to mitigate 100% of net GHG emissions. During the hearing the Applicant clarified that it is not proposing to mitigate the Project's net GHG impacts as calculated in the FEIS. The FEIS concludes that if the net GHG emissions are not fully mitigated they become a tenth unavoidable, significant adverse impact.

In summary, I conclude that the Applicant has failed to reasonably mitigate the ten unavoidable, significant adverse impacts identified in the FEIS, and the Shoreline Permits must be denied under substantive SEPA authority.

2. The Applicant has the burden of proving that all of the requirements of the State Shoreline Management Act (SMA) and the County’s Shoreline Master Program (SMP) have been satisfied. As a result of the unavoidable, significant adverse impacts identified in the FEIS, the Applicant has failed to meet this burden.

3. There remain a number of unresolved issues which further prevent the Applicant from meeting its burden of proving that the requirements of SMA and SMP have been met.
• The right of the Applicant to construct docks and engage in dredging.
• Proof that the Applicant will have sufficient water for Project operations.
• Establishment of necessary anti-idling policies for vessels and locomotives.
• Further analysis of the Project's impact to fish from wake stranding, and possible mitigation.
• Further analysis of the Project's impacts on the State's urban centers.
• A determination by the Bonneville Power Administration (BPA) on whether to lease necessary properties to the Applicant.
• Further analysis of coal dust impacts, including their impact on aquatic and tribal resources.
• Further analysis as to the impact of the recent repeal of the Clean Power Plan.
• Resolution of issues identified in Ecology's denial of the 401 Clean Water Certification.

**BACKGROUND**

The Applicant, Millennium Bulk Terminals - Longview, LLC, (the "Applicant") seeks a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to construct Stage 1 improvements for a coal export facility along the shoreline of the Columbia River north and west of the City of Longview at River Mile 63. The facility would be constructed on approximately 190 acres within a 540-acre site leased by the Applicant.

The principal features of the Project include two docks, ship loading systems, coal stockpiles and related equipment, railcar unloading facilities, an operating rail track, rail storage tracks for up to 8 unit trains, and associated facilities, conveyors, and other necessary equipment.
The Project requires dredging to accommodate berthing of fully loaded Panamax-class ships, resulting in dredging and disposal of up to 350,000 cubic yards of material from State-owned aquatic lands.

The Project would be constructed in two stages over several years:

Stage 1 of the Project would consist of facilities necessary to unload coal from trains, stockpile the coal onsite, and load coal into oceangoing vessels at Dock 2. Two docks (Dock 2 and Dock 3) would be constructed along with one ship loader and related conveyors on Dock 2, with berthing facilities only at Dock 3. Onshore a stockpile area including two stockpile pads, railcar unloading facilities, one operating rail track, up to eight rail storage tracks for train parking, miscellaneous ground improvements, and associated facilities and infrastructure would be built. Upon completion of Stage 1 the Project would have capacity for handling 25 Million Metric Tons Per Year (MMTPY) of coal.

Stage 2 of the Project would consist of installation of ship loading and associated equipment on Dock 3, two additional coal stockpile pads and necessary conveyors and facilities for conveyance of coal from the collective coal pads to the two docks. Construction of Stage 2 would be expected to commence once Stage 1 had been completed, within approximately 3 to 5 years. Stage 2 would increase export capacity to 44 MMTPY.

The Applicant is leasing 540 acres from the landowner, Northwest Alloys. Northwest Alloys also has an existing Aquatics Lands Lease No. 20-B09222 from the Washington Department of Natural Resources (DNR) through January 2038 for the adjacent tidelands where the Project’s docks are to be located. The 190-acre Project site has been separated from the Applicant’s remaining leased area through boundary line adjustment. The remaining land within the Applicant’s leased area is intended for other uses, including the continued operation of a bulk product terminal at the existing Dock 1.

A more complete description of the Project can be found in the County Staff Report (the "Staff Report") at pages 4-13, incorporated herein by reference.
Coal would be delivered to the Project site by rail. The Project anticipates receipt of coal from two separate sources:

1. The primary source of coal would be the Powder River Basin in Montana and Wyoming. Coal coming from this source would be delivered by dedicated "unit trains" operating on BNSF lines. The coal trains would move west to Huntley, Montana then across northern Idaho to Sandpoint, Idaho. From Sandpoint, trains would cross into Washington State and travel through Spokane. Trains would then travel south to Pasco and then west along the Washington side of the Columbia Gorge in close proximity to the Columbia River. The trains would then travel through Vancouver and turn north, following the Interstate 5 corridor and the Columbia River until reaching the Longview/Kelso area. Once unloaded at the Project site the empty trains would continue north on the main BNSF line paralleling Interstate 5 and through Olympia, Lacey, Tacoma and Auburn before turning east and travelling over the Cascade Mountains at Stampede Pass. Return trains would then turn south through Yakima and return to Pasco. From Pasco empty trains would follow the same route as loaded trains and travel through Spokane and back to the Powder River Basin.

2. The secondary source of coal would come from the Uinta Basin in Utah and Colorado as well as from the Powder River Basin. Coal from this area would be delivered on Union Pacific (UP) unit trains. These trains would travel through Pocatello and Boise, Idaho and then along the Oregon side of the Columbia Gorge to Portland. North of Portland UP trains would operate on BNSF tracks, crossing the Columbia River into Vancouver and continuing on the same main BNSF track used by the BNSF coal trains. Empty UP trains would return on the same route as they came.
Coal from either source would be delivered by dedicated trains or "unit" trains consisting of 4 locomotives and 125 coal cars with an approximate length of 1 1/3 miles. The Project would result in 8 loaded unit trains and 8 empty unit trains per day, or 16 total unit trains per day. Coal would be delivered 365 days per year resulting in over 23,000 locomotive trips annually (4 locomotives x 16 trains x 365 = 23,360 annual locomotive trips).

All coal trains would arrive at Longview/Kelso at the "Longview Junction Yard". Trains would be diverted off of the BNSF main line and onto the "BNSF Spur". The BNSF Spur travels across the Cowlitz River and into the Longview industrial area. Coal trains would then continue on a second spur known as the "Reynolds Lead" through Longview until reaching the Project site.

Coal would be unloaded and sent by conveyor to large storage pads. Additional conveyance systems would convey the coal to the docks for loading onto ocean-going vessels for shipment to Pacific markets. Coal would be loaded onto vessels in the "Handymax" and "Panamax" sizes. These are deep draft vessels having capacities of up to 100,000 tons. The Project anticipates loading 70 vessels per month, or 840 vessels per year. This equates to 1,680 vessel "transits" of the Columbia River annually.

Construction of the Project would result in the permanent loss of 24.10 acres of wetlands. In addition, construction and operations would have shoreline, overwater, underwater, and dredging impacts affecting aquatic resources. To mitigate these impacts, the Applicant submitted a Conceptual Mitigation Plan (the "Mitigation Plan") which evaluates fish and wildlife habitat impacts, discusses onsite construction impacts and minimization measures, and proposes fish and wildlife habitat mitigation. The Mitigation Plan proposes to create an off-channel
slough feature as aquatic mitigation and also proposes off-site wetlands mitigation. The FEIS concludes that as a result of the Mitigation Plan, there will be no adverse impacts to wetlands. On July 19, 2017, the County approved a Critical Areas Permit No. 17-06-3166 requiring compliance with the Mitigation Plan. The Critical Areas Permit was not appealed.

Acting as co-lead agencies, on April 29, 2016, the County and Ecology published a Draft Environmental Impact Statement (DEIS) for review and comment. Several hundred thousand comments were received. On April 28, 2017, the co-lead agencies issued their Final Environmental Impact Statement (FEIS). The FEIS has not been appealed by any party and its findings and conclusions come to the Hearing Examiner unchallenged. The FEIS concludes that the Project will have ten unavoidable, significant adverse impacts: to noise; increased risk of cancer; traffic; community resources; cultural resources; rail capacity; rail safety; vessel transportation; tribal resources; and Greenhouse Gas emissions.

There are several ongoing, related matters occurring with respect to the Project:

- On January 5, 2017, the Washington Department of Natural Resources (DNR) denied the Applicant's request to sublease the aquatic lands under lease to Northwest Alloys. This denial was appealed by the Applicant to the Cowlitz County Superior Court. On October 27, 2017, the Cowlitz County Superior Court orally ruled that DNR's denial was arbitrary and capricious, but the court did not find that the Applicant was entitled to a sublease. Rather, the court directed the parties to engage in further negotiations to determine if a sublease could be agreed upon.

- On July 19, 2017, the County issued its Critical Areas Permit approving the Mitigation Plan. The permit was not appealed.
- On September 26, 2017, Ecology denied the Applicant's Section 401 Water Quality Certification with prejudice. Denial of this certification precludes federal agencies from acting on pending permit applications for required federal permits. The Applicant has appealed Ecology's denial to the Pollution Control Hearings Board as well as to the Cowlitz County Superior Court.
- On October 7, 2017, the Environmental Protection Agency announced the repeal of the Clean Power Plan.
- On October 24, 2017, DNR issued its Memorandum of Decision which: (1) denies any improvements to the aquatic lands under Aquatics Lands Lease No. 20-B09222; (2) notifies the Applicant that it does not have the State's permission to remove dredged materials from the Columbia River; and (3) notifies the Applicant that it has not been granted permission to engage in dredging on State-owned aquatic lands outside of the leased area. These notices effectively preclude the Applicant from constructing Docks 2 and 3 and from necessary dredging.
- The U.S. Corps of Engineers is acting as lead agency on a separate environmental review conducted under NEPA to inform the federal permit decision making process. The NEPA DEIS was issued September 30, 2016, but the NEPA FEIS has not yet been issued.

**PUBLIC HEARING**

Prior to the public hearing several parties asked for and received recognition as interested parties including Columbia Riverkeeper, Friends of the Columbia Gorge, Climate Solutions, Sierra Club, Washington Environmental Council, Greenpeace USA, Association of Northwest Steelheaders, Northern Plains Resource Council, Oregon Physicians for Social Responsibility,
Washington Physicians for Social Responsibility and Western Organization of Resource and Councils (collectively "Riverkeeper"). These interested parties were represented by legal counsel, allowed to make opening and closing presentations and given the opportunity to cross-examine other parties' expert witnesses.

Also prior to the public hearing I undertook an independent site examination. This included an examination of the site, the surrounding properties and the surrounding area.

The public hearing commenced at 9:00 a.m. on November 2, 2017 at the Cowlitz County Expo Center in Longview. The public hearing continued for three days with testimony ending at noon on Monday, November 6. The hearing was held open to the end of Monday, November 6, to allow for additional written public comment. The hearing formally concluded at 5:00 p.m. on Monday, November 6.

In advance of the public hearing a Pretrial Order was entered to assist in hearing procedures. The Order established an identification system for exhibits including an exhibit prefix to identify the presenting party. County exhibits bear the prefix "C" and begin with exhibit C-1. The Applicant's exhibits bear the prefix "A" and begin with exhibit A-26. Riverkeeper exhibits bear the prefix "I" and begin with exhibit I-101. Exhibits presented by the public bear the prefix "P" and begin with exhibit P-126. A complete list of all exhibits is attached to this decision.

Some of the core documents include:

- C-1 County Staff Report to the Hearing Examiner.
- C-7 Final EIS.
- A-64 Applicant's Revised Comments to Proposed Permit Conditions.
I-102 Ecology Decision denying Section 401 Clean Water Certification.
I-104 DNR Memorandum of Decision.

These core documents may be referred to by their title rather than their exhibit number (for example, the "Staff Report", the "FEIS", the "Applicant's Response", the "Ecology Decision" and the "Memorandum of Decision").

Cowlitz County appears through its Director of Community Development, Elaine Placido, and its Senior Environmental Planner, Ron Melin. The County is represented by Douglas Jensen of the Cowlitz County Prosecuting Attorney's Office. The Applicant is represented by Craig Trueblood and Jon Sitkin. Riverkeeper is represented by Kristen Boyles.

Several hundred interested individuals were present at various times during the three-day hearing.

The public hearing commenced with the testimony of Elaine Placido from County Staff. Ms. Placido explained that the purpose of the hearing was to consider shoreline permits for Stage 1 of the Project, and she provided an overview of the Project's planned improvements. Ms. Placido noted that the Project site has a zoning designation of MH (Heavy Industrial), and that the Project is an allowed use in this zoning district. She added that the Project is vested under the County's 1976 Comprehensive Plan (a new Plan has recently been approved) and that the County finds the Project to be consistent with the applicable Comprehensive Plan. Ms. Placido also confirmed that the Project is vested under the County's 1977 Shoreline Master Program (SMP). County Staff finds the Project to be consistent with the SMP and that it satisfies all of the requirements of the SMP and the Shoreline Management Act (SMA). County Staff recommends approval of the Project subject to the 36 conditions found at the conclusion of the Staff Report.
Following Ms. Placido's testimony the Applicant's counsel, Craig Trueblood, made a brief opening presentation. Mr. Trueblood then presented the testimony of the Applicant's representatives, Kristen Gaines and Trevor Simmons; the Applicant's Environmental Consultant, Glenn Grette; a representative from BNSF, Dava Kaitala; the Director of the Cowlitz County Economic Development Council, Ted Sprague; and Mike Bridge, representative for the Longview/Kelso Building Trades Associations. Most of these witnesses testified both orally and by written testimony presented in advance of the public hearing.

At the conclusion of the Applicant's presentation the public testimony commenced. Kristen Boyles, counsel for Riverkeeper, was allowed to make an opening presentation.

Pursuant to the Pretrial Order tribal representatives were given the first opportunity to testify, followed by public officials and then members of the general public. Representatives of the Cowlitz Tribe were not available on Thursday and were instead allowed to give testimony on Friday and again on Monday. A few public officials testified followed by testimony from members of the general public during the remainder of Wednesday. Those giving testimony from prepared written statements were encouraged to have their written statements identified as exhibits. During the course of the day written comments, both from those giving testimony and others, were submitted and identified as public exhibits.

The hearing resumed at 9:00 a.m. on Friday, November 3, with continued public testimony. Three representatives from the Cowlitz Tribe were allowed to testify. Public testimony continued until mid-afternoon by which time all members of the public asking to testify had been given the opportunity.
The hearing resumed on Monday, November 6 at 9:00 a.m. to hear from the Applicant's responsive witnesses. Chip Halpert and Robert Scofield testified on air quality issues; David Hauri testified on coal dust related issues; Peter Bennett, the Applicant's Vice President of Business Development for Bulk Products, testified on business operations; Julie Carey and Mary Hess testified on issues relating to air quality and Greenhouse Gas emissions; and the Applicant's Representative, Kristen Gaines, responded to various questions asked by the Hearing Examiner during the course of the hearing. These responses were reduced to writing and submitted as Exhibit A-65. Ms. Gaines also testified regarding the Applicant's revised position on proposed conditions of Project approval. This testimony was also reduced to writing and submitted as Exhibit A-64. The Applicant also submitted the supplemental testimony of Dava Kaitala, representative for BNSF (Exhibit A-66). The County had no additional witnesses and all testimony was completed by noon on Monday, November 6 but members of the public were given until 5:00 p.m. to present additional written comment.

At the conclusion of testimony, the County was asked if it had any changes or additions to its proposed conditions for Project approval. The County replied that it is standing on the conditions contained in the Staff Report. The Applicant's revised response to these proposed conditions is found in Exhibit A-64, with additional comment found in Exhibit A-65.

None of the parties requested an opportunity to submit written post-hearing comments or briefing. The hearing was therefore deemed closed as of 5:00 p.m. on Monday, November 6.

During the course of the hearing, there were no proposed changes to the Project. The Applicant did, however, submit new information on the issue of "wake stranding" of fish, including a proposed Mitigation Plan which has recently been presented to the National Marine
Fisheries Services (NMFS) (Exhibit A-60). These and other materials relating to wake stranding will be discussed more fully in the Findings of Fact.

Based upon the Staff Report, the FEIS and related materials, the testimony and exhibits presented by the Applicant and all other testimony, the Hearing Examiner makes the following:

**FINDINGS OF FACT**

1. **General Findings of Fact.**

   1.1 Any Findings of Fact contained in the foregoing Background Section are hereby incorporated as the Hearing Examiner's Findings of Fact.

2. **Findings of Fact Relating to Noise Impacts.**

   2.1 The Project's noise impacts are discussed in Section 5.5 of the FEIS. As noted in the Background Section, loaded coal trains arriving at the Longview Junction Yard in Kelso would transfer onto the BNSF spur, taking them across the Cowlitz River and into the Longview industrial area. Coal trains would then transfer onto the Reynolds Lead which runs through the Longview industrial area until reaching the Project site. Empty trains would reverse this route back along the Reynolds Lead and BNSF spur to the BNSF mainline at the Longview Junction Yard.

   2.2 A map depicting the location of the BNSF spur and the Reynolds Lead is found at Figure 2-2 of the FEIS.

   2.3 The Reynolds Lead has four public at-grade crossings. These are located at Third Avenue, California Way, Oregon Way and Industrial Way in Longview and identified in Figure 2-2 in the FEIS.
2.4 The Project would result in 16 unit trains (8 loaded, 8 empty) traveling through the public at-grade crossings along the Reynolds Lead.

2.5 Per Federal Railroad Administration (FRA) regulations, Project-related trains would be required to sound their horns for public safety at the public at-grade crossings along the Reynolds Lead.

2.6 The FEIS finds that the required use of train horns at public at-grade crossings along the Reynolds Lead will expose 60 residences to a severe noise impact and an additional 229 residences to a moderate noise impact.

2.7 Proposed transportation improvements would eliminate the public at-grade crossings at Oregon Way and Industrial Way. If constructed, these improvements will eliminate the noise impacts at these locations but similar improvements are not currently planned at the public at-grade crossings at Third Avenue or California Way.

2.8 If the public at-grade crossings at Industrial Way and Oregon Way are eliminated the number of residences suffering severe or moderate noise impacts will be reduced but 10 residences will continue to be exposed to severe noise impact and 42 residences will continue to be exposed to moderate noise impact due to the use of train horns at the Third Avenue and California Way crossings.

2.9 The FEIS finds that the implementation of Quiet Zones at these at-grade crossings would eliminate the Project's noise impacts. But without the implementation of Quiet Zones the resulting train noise would be an unavoidable and significant adverse environmental impact.
2.10 A Quiet Zone is a public at-grade crossing where additional safety precautions have been constructed, reducing the federal requirements for trains to sound their horns when approaching the crossing. Quiet Zones are subject to Federal Railroad Administration approval.

2.11 The County does not propose the installation of necessary Quiet Zones as a condition of Project approval. The County proposes the following two conditions instead:

"Condition 25. To address moderate and severe noise impacts along the Reynolds Lead due to rail traffic, (e.g. horn blowing) before beginning full operations, the Applicant shall coordinate with the Director of Cowlitz County Building and Planning, the City of Longview, Longview Switching Company, and the affected community to inform interested parties on the Federal Railroad Administration process to implement a Quiet Zone that will include the Third Avenue and California Avenue crossings. Public outreach on the Quiet Zone process must include low income and minority populations. The Applicant shall assist interested parties in the preparation and submission of a Quiet Zone application to the Federal Railroad Administration. If the Quiet Zone is approved, the Applicant shall fund the Quiet Zone improvements, which could include electronics, barricades and crossing gates.

Condition 26. If a Quiet Zone for the Reynolds Lead is not implemented, the Applicant shall fund the Sound Reduction Study to identify ways to mitigate the moderate and severe impacts from train noise from proposed action-related trains along the Reynolds Lead. The study methods shall be discussed with the Director of Cowlitz County Building and Planning and the Washington State Department of Health for approval."

2.12 With minor adjustment the Applicant concurs with the County's proposed conditions to address train noise impacts. (Exhibit A-64) Further explanation of the Applicant's position is found in Exhibit A-65.

3. Findings Relating to Air Quality Impacts Including Increased Risk of Cancer.

3.1 The FEIS analyzes the Project's air quality impacts in Section 5.6.
3.2 The FEIS finds that the Project will result in increased inhalation cancer risk related to diesel particulate matter emissions from all operation sources (terminal, rail and vessel) in the Project area, the Kelso/Longview area, and County-wide. The FEIS finds:

- Near the Project site there is an increased risk of ten cancers per million extending across the Columbia River approximately 1.3 miles southwest of the Project area and approximately .1 miles northeast of the Project area, and across Industrial Way near the northwest boundary of the Project area.

- In the Kelso/Longview area there is an increased risk of ten cancers per million for most of Longview south of Ocean Beach Highway, as well as a portion of Kelso along the I-5 corridor. There is an increased risk of thirty cancers per million along the Reynolds Lead a width of 3,000 feet and extending to the Highlands neighborhood. There is an increased risk of fifty cancers per million along the Reynolds Lead a width of 1,000 feet bordering the Highlands neighborhood.

- In Cowlitz County there is an increased risk of ten cancers per million along the BNSF mainline a width of 2 miles throughout all of the County. There is an increased risk of thirty cancers per million along the BNSF mainline a width of 1/2 mile through the entire County.

3.3 The FEIS concludes that these increased risks of cancer are an unavoidable and significant adverse impact.

3.4 The FEIS finds that the increased risk of cancer could be mitigated by use of the newest generation of low-emission train locomotives, referred to as "Tier 4" locomotives, first introduced in 2015. Unless Tier 4 locomotives are utilized the increased risk of cancer cannot be mitigated.
3.5 The County does not propose any condition to mitigate the increased risk of cancer.

3.6 The BNSF representative, Dava Kaitala, testified that 40% of its current locomotive fleet has been purchased within the last ten years.

3.7 Ms. Kaitala also testified that perhaps 8% of BNSF's current locomotive fleet consists of Tier 4 locomotives, or older locomotives retrofitted to Tier 4 emission standards.

3.8 By supplemental written testimony Dava Kaitala testifies that of BNSF's current fleet of 8,640 locomotives, 275, or 3.1%, are Tier 4 compliant and an additional 275, or an additional 3.1%, are "Tier 4 credit" locomotives. In other words, the current BNSF locomotive fleet includes 550 Tier 4 or Tier 4 credit locomotives, or 6.2% of the fleet. (Exhibit A-66)

3.9 BNSF declares that "a condition requiring a use of a particular type of locomotive (Tier 4) to serve this Project would be an impermissible local regulation of freight rail transportation, and would be preempted by federal law." (Exhibit A-66)

3.10 BNSF anticipates that the replacement or retrofitting of its locomotive fleet to Tier 4 status will be achieved by the year 2040. (Testimony of Kaitala)

4. **Findings Relating to Vehicle Transportation.**

4.1 The FEIS discusses the Project's traffic impacts in Section 5.3.

4.2 Under current track conditions along the Reynolds Lead, a Project-related train will take between 8 and 10 minutes to pass through each of the four public at-grade crossings. Collectively, the 16 daily trains would increase the total gate down time along the Reynolds Lead by over 130 minutes at each crossing during an average day.
4.3 At current train speeds, and assuming one Project train traveling along the Reynolds Lead during the peak traffic hour, the Project would result in the Level of Service (LOS) at the four public at-grade crossings along the Reynolds Lead, as well as at two private at-grade crossings, to fall to unacceptable levels of either "E" or "F".

4.4 Similarly, and assuming one Project train traveling along the Reynolds Lead during the peak traffic hour, blocked traffic would result in unacceptable queuing lengths at several of these at-grade crossings.

4.5 Because vehicle delays will increase, emergency vehicle delays will also increase. During a 24-hour period, Project-related trains would increase the probability of emergency response vehicles being delayed by up to 10% at crossings along the Reynolds Lead.

4.6 Proposed improvements at the Industrial Way and Oregon Way crossings, previously referred to in Finding of Fact 2.7, would eliminate LOS deficiencies, queuing problems and emergency vehicle delays at these intersections but would not mitigate traffic impacts at the California Avenue and Third Avenue rail crossings.

4.7 The FEIS concludes that these traffic impacts are an unavoidable and significant adverse impact.

4.8 The FEIS further concludes that these significant traffic impacts can be mitigated if all necessary track improvements to the Reynolds Lead are implemented, allowing an increase in train speed from 10 to 25 miles per hour. Increased train speed would significantly decrease the length of gate down time at each crossing. The only rail crossing to still have an unacceptable LOS would be a private crossing at 38th Avenue. All of the public at-grade crossings along the Reynolds Lead would have LOS of "D" or better and all queuing lengths would be acceptable.
4.9 The FEIS concludes that the Project's traffic impacts cannot be reasonably mitigated unless all necessary track improvements to the Reynolds Lead are made prior to Project operations.

4.10 The Staff Report does not require all track improvements to be made as a condition of Project approval. Instead, County Staff proposes the following condition:

"Condition 19. To address vehicle delay impacts at grade crossings at the Reynolds Lead and BNSF spur, the Applicant shall notify the Director of Cowlitz County Building and Planning, City of Longview, Cowlitz Fire District, City of Rainier (Oregon), Port of Longview, and Cowlitz-Wahkiakum Counsel of Governments before each identified operational stage (Stage 1A, Stage 1B, and Stage 2) that will change average daily rail traffic on the Reynolds Lead and BNSF spur. The Applicant shall prepare a memorandum to document the changes to average daily rail traffic. The memorandum must be submitted to these agencies at least six months before the change in average daily rail traffic."

4.11 The Applicant supports the County's proposed condition with minor revision. (Exhibit A-64)

4.12 In its additional response (Exhibit A-65), the Applicant adds that it would not object to a requirement that all rail improvements be made prior to construction of Stage 2.

5. Findings Relating to Social and Community Resources.

5.1 The FEIS, in Section 3.2, finds that there is a disproportionate percentage of minority and low income populations living near the Reynolds Lead.

5.2 The FEIS concludes that the Project's noise impacts (Findings 2.1 through 2.12) will have a disproportionately high and adverse effect on minority and low income populations. Implementation of Quiet Zones would eliminate this disproportionate impact. Without implementation of Quiet Zones, the Project's disproportionate adverse effect on minority and low income populations will be unavoidable and significant.
5.3 The FEIS concludes that the Project's traffic impacts (Findings 4.1 through 4.12) will have a disproportionally adverse effect on minority and low income populations. Without necessary track improvements to the Reynolds Lead, the Project's disproportionate traffic impacts on minority and low income populations will be unavoidable and significant.

5.3 The increased risk of cancer resulting from the Project (Findings 3.1 through 3.10) will have a disproportionally adverse effect on minority and low income populations. Use of Tier 4 locomotives would reduce but not eliminate this disproportionate adverse effect, but otherwise this impact is unavoidable and significant.

6. **Findings Relating to Cultural Resources.**

6.1 The Project's impacts on cultural resources is discussed in Section 3.4 of the FEIS.

6.2 The Project site was formerly used by the Reynolds Metal Company as an aluminum plant. The former Reynolds facility was evaluated as a Historic District and documented on a National Register of Historic Places (NRHP) nomination form as part of the review undertaken by the Corps of Engineers. The former facility is officially referred to as the "Reynolds Metals Reduction Plant Historic District" (the "Reynolds Historic District") and was determined eligible for listing in the NRHP as a Historic District.

6.3 The Reynolds Historic District consists of 53 separate resources including 33 buildings, 12 structures and 8 landscape features. Of these 53 identified resources, 39 were determined to contribute to the Reynolds Historic District's significance.
6.4 Construction of the Project would demolish 30 of the 39 identified resources contributing to its historical significance. The destruction of these resources would diminish the importance of the remaining resources and the Reynolds Historic District would no longer be eligible for listing in the NRHP.

6.5 The FEIS notes that impacts to the Reynolds Historic District are attempting to be resolved through a "Memorandum of Agreement" currently being negotiated among the Corps of Engineers, Cowlitz County, the Department of Archeology and Historical Preservation (DAHP), the City of Longview, BPA, the National Park Service, potentially affected Native American Tribes, and the Applicant.

6.6 The FEIS concludes that demolition of the Reynolds Historic District is an unavoidable and significant adverse environmental impact, but that an approved Memorandum of Agreement may resolve this impact.

6.7 The Staff Report does not propose any conditions of approval relating to the Reynolds Historic District.

6.8 The Applicant's response (Exhibit A-65) states:

"The Memorandum of Agreement process has been ongoing since 2014. Multiple drafts have been circulated to the parties and stipulations have been agreed to. The document is in its final draft and is awaiting finalization and signatures by the parties."

6.9 The Applicant objects to the imposition of a condition that would require formal approval of a Memorandum of Agreement as a condition of permit approval. The Applicant adds that approval of a Memorandum of Agreement will be required for federal permit approval and it is therefore unnecessary to impose it as a condition for this permit. (Testimony of Gaines)
7. **Findings Relating to Statewide Rail Transportation.**

7.1 The FEIS analyzes the Project's impact on projected BNSF rail capacity in the State of Washington in Section 5.1.

7.2 In Table 5.1-5 the FEIS examines the various segments of BNSF mainline; their length; their available number of tracks (1 or 2); their projected capacity in 2028; and the impact of the Project on their projected capacity.

7.3 The FEIS finds that the BNSF segment from the Idaho border to Spokane, having a length of 18.6 miles and 2 current tracks, has a projected capacity of 106 trains per day in 2028. With inclusion of the Project's trains, this segment of the BNSF mainline is projected to be 46 trains over its daily capacity by 2028.

7.4 The FEIS finds that the BNSF segment between Spokane and Pasco, having a length of 145.5 miles and 1 current track, has a projected capacity of 56 trains per day in 2028. With inclusion of the Project's trains, this segment of the BNSF mainline is projected to be 34 trains over its daily capacity by 2028.

7.5 The FEIS finds that the BNSF segment from Pasco to Vancouver, having a length of 221.4 miles and 1 current track, has a projected capacity of 48 trains per day in 2028. With inclusion of the Project's trains, this segment of the BNSF mainline is projected to be 15 trains over its daily capacity by 2028.

7.6 The FEIS finds that the BNSF segments from Vancouver to Longview, and from Longview to Auburn, are projected to be at capacity with the inclusion of the Project's trains.
7.7 The FEIS anticipates that BNSF will make necessary investments or operating changes to accommodate rail traffic growth, but it is unclear when these necessary improvements can be taken or permitted. If all necessary improvements to increase capacity are not made the Project will contribute to these capacity exceedances and will result in an unavoidable and significant adverse impact on rail transportation.

7.8 The Staff Report does not include any condition that would require Project trains to operate only on segments of BNSF line having adequate capacity. Instead, the Staff Report proposes the following condition:

"Condition 18. To allow for adequate planning to address proposed action-related trains contributing to segments exceeding capacity on mainline routes in Washington State, the Applicant shall notify BNSF and UP before each identified operational stage (Stage 1A, Stage 1B, and Stage 2) begins that will change average daily rail traffic on mainline routes in Washington State. The Applicant shall prepare a report that documents the notification of BNSF and UP and tracks changes to average daily rail traffic. The report must be submitted to BNSF, UP, Washington State Department of Transportation, Utilities Transportation Commission, and the Director of Cowlitz County Building and Planning at least 6 months before the change in average daily rail traffic."

7.9 The Applicant concurs with the County's proposed condition with minor revisions. (Exhibit A-64)

7.10 The Applicant's Response (A-65) adds:

"Millennium does not control the railroad and how they manage capacity. . . . Neither the County nor the Applicant would be able to determine whether the rail lines were at capacity. Dava Kaitala testified that the railroad continuously makes improvements to maintain or expand capacity."

7.11 In her supplemental written testimony the BNSF representative, Dava Kaitala, adds:
"Recent investments in infrastructure in the Pacific Northwest and system wide . . . demonstrate BNSF’s continuing commitment to making needed capacity upgrades. As a result, it is not necessary to condition coal deliveries to the Project or lines being upgraded to a capacity set by the State of Washington and Cowlitz County." (Exhibit A-66 at Page 9)

8. **Findings Related to Rail Safety.**

8.1 The FEIS discusses the Project’s impacts on rail safety in Section 5.2.

8.2 Assuming that track improvements are made to the BNSF spur and Reynolds Lead (Finding 4.8), the Project is likely to result in an accident on this rail segment involving a fully loaded unit train once every 4 years, and an accident involving an empty train once every 4 years. Collectively, with all track improvements having been made there is a 50% chance of a Project-related train accident on the BNSF spur or Reynolds Lead each year.

8.3 If track improvements are not made the FEIS predicts that the number of Project-related train accidents on the BNSF spur or Reynolds Lead would be approximately 1.5 to 3 times higher, or up to 1.5 accidents per year.

8.4 The FEIS predicts that the addition of Project trains would increase statewide rail accidents by 11.38 accidents per year. This is a 22% increase in rail accidents.

8.5 The FEIS finds that the increase in rail line accidents is, at least in part, the product of insufficient rail line capacity as discussed in the previous section of Findings.

8.6 The FEIS concludes that the Project would increase the potential for train accidents in both Cowlitz County and across the State of Washington. The rail line operators could improve rail safety through investments or operational changes but it is unknown when or if these actions will be taken or permitted. Therefore, the FEIS concludes that Project-related trains could result in an unavoidable and significant adverse impact on rail safety.
8.7 The responses of the County, the Applicant and BNSF are the same as their responses to the rail capacity issue discussed above.


9.1 The FEIS discusses the Project's impacts on vessel transportation in Section 5.4.

9.2 At completion the Project is expected to load 70 oceangoing vessels per month, or 840 vessels per year. Each vessel makes 2 "transits" of the Columbia River, resulting in 1,680 total transits annually.

9.3 80% of the Project vessels are expected to be in the "Panamax" class, having a capacity of up to 100,000 tons and with a draft of 43 feet. The remaining 20% are expected to be of the "Handymax" class having smaller capacities and somewhat shallower drafts.

9.4 Currently there are approximately 3,800 annual transits of the Lower Columbia by commercial vessels unrelated to the Project. These are commercial vessels going to and coming from upriver ports in Portland, Vancouver and elsewhere.

9.5 By 2028 the number of transits by unrelated commercial vessels is expected to increase to 4,440. Addition of the Project's vessels would increase the total number of annual transits of the Lower Columbia to 6,120.

9.6 The Project would therefore result in a 38% increase in 2028 vessel traffic.

9.7 An increase in vessel traffic increases the risk of vessel incidents including collisions, groundings, fire, explosions and other emergencies.
9.8 The FEIS anticipates that the Project will result in an increase of 2.8 vessel incidents per year along the Lower Columbia.

9.9 The severity of a vessel incident can vary greatly from no damage to total loss, and not all incidences are likely to result in notable damage.

9.10 The FEIS finds that if a Project-related vessel incident occurs the impacts could be significant depending on the nature and location of the incident, the weather conditions at the time and the discharge of oil.

9.11 The FEIS concludes that although the likelihood of a serious Project-related vessel incident is low, there are no mitigation measures that could completely eliminate the possibility of an incident or the resulting impacts.

9.12 The Staff Report does not propose any conditions to mitigate the impacts of a significant vessel incident.

9.13 The Hearing Examiner proposed a condition of Project approval similar to one imposed recently in In re NWIW, Cowlitz County Hearing No. SL 16-0975. That project is located a few miles upriver near Kalama and involves the production and shipping of methanol by vessel. Its shoreline permit contains the following condition:

"20. **Methanol Spill Mitigation.** In the event of a spill of methanol from the Project site or from a methanol cargo vessel, resulting in demonstrable impact to the natural shoreline and the resources and ecology of the shoreline, as a condition of continued permit approval the Permittees shall promptly prepare and undertake full mitigation of all impacts to the natural shoreline and resources and ecology of the shoreline as required by the Department of Ecology, the Environmental Protection Agency or any other agency with jurisdiction pursuant to applicable state or federal law. In the event of any uncertainty as to the sufficiency of mitigation or its implementation the issue shall be returned to the Hearing Examiner."
The Applicant objects to the imposition of a similar condition on this Project. The Applicant argues that the vessels used for transporting coal will not belong to the Applicant and it will not have control over them. The Applicant therefore objects to being held responsible for the actions of third parties. (Testimony of Gaines) Additional objections to this proposed condition are found in the Applicant's Responses, Exhibit A-65 in Section 4.

10. **Findings Relating to Tribal Resources.**

10.1 The FEIS discusses impacts on tribal resources in Section 3.5.

10.2 A section of the Columbia River located upstream from the Project site, commonly referred to as "Zone 6", is a critical tribal commercial, subsistence and ceremonial fishing area for a number of American Indian Tribes. Zone 6 consists of that portion of the Columbia River approximately bounded by Bonneville Dam to the west and by McNary Dam to the east, a distance of 147 miles. The location of Zone 6 is identified on Figure 3.5-1 in the FEIS.

10.3 Four tribes or confederation of tribes: the Confederated Tribes and Bands of the Yakima Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs and the Nez Perce Tribe, have reserved rights to fish in the Columbia River and its tributaries. Collectively these tribes and confederations form the "Columbia River Inter-Tribal Fish Commission" (CRITFC). Member tribes of CRITFC rely on Zone 6 for fishing and are referred to as "Treaty Tribal Fishers".

10.4 Chinook Salmon is the most abundant species caught by Treaty Tribal Fishers.
10.5 The Department of Interior, through the Bureau of Indian Affairs, has established 31 fishing access sites on the Columbia River within Zone 6 for the exclusive use of Treaty Tribal Fishers. The sites are managed by CRITFC for the benefit of member tribes. The sites were set aside by the U.S. Congress to provide fishing access to tribal fishers whose traditional fishing grounds were inundated by the Columbia River dams. These sites are deemed to be culturally significant in that they are at or near traditional villages or fishing locations. Of these 31 sites, 20 are located on the Washington side of the Columbia River.

10.6 Treaty Tribal Fishers gain access to these sites either by boat or from the highway. Highway access often requires crossing the BNSF tracks at-grade. Treaty Tribal Fishers may set up residence at the access sites in May and remain until October. At times during this period there may be as many as 80 tribal members camping at any one of the many access sites.

10.7 In addition to these managed access sites, Treaty Tribal Fishers also access the river at many other unimproved points along Zone 6.

10.8 Project-related BNSF trains would travel through Zone 6, generally between the highway and the tribal fishing access areas.

10.9 The FEIS finds that Project-related trains could result in delays to tribal fisher's access to traditional fishing sites as well as delays to delivery of fish to buyers.

10.10 In addition, as Treaty Tribal Fishers access the Columbia River at multiple unmapped locations using unimproved, at-grade crossings, Project-related trains could impair Treaty Tribal Fishers' ability to access these traditional fishing locations, especially during summer months.
10.11 The FEIS finds that Project's new docks, dredging, etc., would cause physical and behavioral responses in fish that would result in injury, and would affect aquatic habitat. Affected fish could include those heading upstream to Zone 6.

10.12 The FEIS finds that Project vessels could result in wake stranding and other impacts affecting fish, including those heading upstream to Zone 6, and could have the greatest impact on Chinook Salmon.

10.13 The FEIS finds that these construction and operational impacts could reduce the number of fish surviving to adulthood and returning to Zone 6, and could affect the number of fish available for harvest by Native American Tribes.

10.14 The FEIS also finds that the Project would result in fugitive coal dust particles being generated by rail transport. Maximum coal dust concentrations would occur within approximately 100 feet from the rail line.

10.15 Coal dust particles generated by Project operations as well as Project-related trains would enter into the aquatic environment. This impact is unavoidable but would not be expected to affect fish behavior or fish survival.

10.16 To mitigate these various impacts a number of proposed mitigation measures are imposed on the Project and are included in the County's conditions of Project approval.

10.17 Despite the imposition of these mitigating measures, the FEIS concludes that construction and operation of the Project could result in indirect impacts on tribal resources, causing physical or behavioral responses to fish and affecting aquatic habitat. These impacts could reduce the number of fish surviving to adulthood and returning to Zone 6, which could affect the number of fish available for harvest by Treaty Tribal Fishers.
10.18 The FEIS also concludes that Project-related trains would travel through areas adjacent to and within the usual and accustomed fishing areas of Treaty Tribal Fishers, and could restrict access to tribal fishing areas, although various factors make the scope of this impact difficult to quantify.

10.19 Additional tribal impacts unrelated to the FEIS are addressed in Section 20.

11. **Findings Relating to Net Greenhouse Gas (GHG) Emissions.**

11.1 The FEIS analyzes the Project's Greenhouse Net Gas (GHG) emissions in Section 5.8.

11.2 The FEIS analyzes the Project's net GHG emissions under four scenarios: (1) the 2015 U.S. and International Energy Policy Scenario; (2) the No Clean Power Plan Scenario; (3) the Lower Bound Scenario; and (4) the Upper Bound Scenario. These four scenarios and their key concepts are explained on page 5.8-8 of the FEIS. The four scenarios were compared against a baseline representing conditions if the Project was not built.

11.3 The FEIS concludes that the 2015 U.S. and International Energy Policy Scenario best represented existing conditions under which the Project would operate.

11.4 Relying on the 2015 U.S. and International Energy Policy Scenario, the FEIS concludes that the average net emissions during full Project operations is 1.99 Million Metric Tons of carbon dioxide equivalent (CO₂e).

11.5 The FEIS concludes that unless the net GHG emissions (1.99 Million Metric Tons) is fully mitigated, these emissions will have an unavoidable, significant adverse environmental impact.
11.6 The FEIS, at page 5.8-24, states that the Applicant proposed to mitigate
100% of the GHG identified in the 2015 U.S. and International Energy Policy Scenario. That is,
at operations at maximum capacity, the Applicant proposed to mitigate 1.99 Million Metric Tons
per year from 2028 to 2038.

11.7 During the hearing the Applicant announced that this statement in the
FEIS is incorrect. The Applicant does not propose to mitigate 100% of the GHG emissions

11.8 It does not appear that this correction was made known to any parties prior
to this hearing. In particular, Ecology was not notified of this correction during its consideration
of the Applicant's request for a Section 401 Clean Water Certification.

11.9 Despite the FEIS conclusions, County Staff does not propose any
condition of Project approval that would require mitigating for net GHG emissions.

11.10 The Applicant instead proposes to mitigate 100% of the Project's "Scope
1" emissions. The Applicant calculates that this would amount to approximately 10,000 tons per
year, or 1/2 of 1% of the mitigation required in the FEIS.

11.11 The term "Scope 1" refers to a GHG emissions measuring system
involving three tiers of emissions: Scope 1 emissions are also referred to as "direct GHG" and
are defined as "emissions from sources that are owned or controlled by the organization"; Scope
2 emissions are also referred to as "energy indirect GHG" and are defined as "emissions from the
consumption of purchased electricity, steam, or other sources of energy generated upstream from
the organization"; and Scope 3 emissions are also referred to as "other indirect GHG" and are
defined as "emissions that are a consequence of the operations of an organization, but are not
directly owned or controlled by the organization".
11.12 The FEIS does not use the terminology Scope 1, Scope 2 and Scope 3, but its analysis of net emissions appears to include Scope 1, Scope 2 and Scope 3 emissions.

12. FINDINGS RELATING TO THE PROJECT'S COMPLIANCE WITH THE SHORELINES MANAGEMENT ACT (SMA) AND THE COUNTY SHORELINE MASTER PROGRAM (SMP).

12.1 The Columbia River is a shoreline of statewide significance.

12.2 For shorelines of statewide significance the SMA and the SMP declare that preference is given in the following order to uses which: (1) recognize and protect the statewide interest over local interests; (2) preserve the natural character of a shoreline; (3) result in long term over short term benefit; (4) protect the resources and ecology of the shoreline; (5) increase public access to publicly owned areas of the shoreline; and (6) increase recreational opportunities for the public in the shoreline;

12.3 The Applicant has the burden of proving that all of the requirements of the SMA and the Cowlitz County SMP have been met.

12.4 The noise impacts of the Project, as set forth in Section 2 of the Findings, preclude any conclusion that the use results in long term over short term benefit.

12.5 The increased risk of cancer related to the Project, as set forth in Section 3 of the Findings, precludes any conclusion that the Project results in a long term over short term benefit.

12.6 The traffic impacts of the Project, as set forth in Section 4 of the Findings, preclude any conclusion that the Project results in a long term over short term benefit.
12.7 The disproportionate impacts of the Project on minority and low income populations as a result of noise impacts, as set forth in Section 5 of the Findings, preclude any conclusion that the Project results in a long term over short term benefit.

12.8 The impacts of the Project on the Reynolds Historic District, as set forth in Section 6 of the Findings, preclude any conclusion that the Project results in a long term over short term benefit.

12.9 The impacts of the Project on statewide rail capacity, as set forth in Section 7 of the Findings, preclude any conclusion that the Project recognizes and protects statewide interest over local interests.

12.10 The impacts of the Project on rail safety, as set forth in Section 8 of the Findings, preclude any conclusion that the Project recognizes and protects statewide interest over local interests.

12.11 The impacts of the Project on vessel transportation, as set forth in Section 9 of the Findings, preclude any conclusion that the Project recognizes and protects statewide interest over local interest. These Findings further preclude any conclusion that the Project protects the resources and ecology of the shorelines.

12.12 The impacts of the Project on tribal resources, as set forth in Section 10 of the Findings, preclude any conclusion that the Project recognizes and protects statewide interest over local interest, and further precludes any conclusion that the Project protects the resources and ecology of the shorelines.

12.13 The impacts of the Project on net Greenhouse Gas emissions, as set forth in Section 11 of the Findings, preclude any conclusion that the Project recognizes and protects
statewide interest over local interest, and further preclude any conclusion that the Project protects the resources and ecology of the shorelines.

FINDINGS RELATING TO UNRESOLVED ISSUES.


13.1 As noted in the Background Section, the aquatic lands adjacent to the Project site are owned by the State of Washington. These aquatic lands are leased to Northwest Alloys under Aquatic Lands Lease No. 20-B09222 through January 2038 (the "Aquatics Lease").

13.2 Docks 2 and 3 would be constructed within the area of the Aquatics Lease.

13.3 On October 24, 2017, DNR issued its written "Memorandum of Decision" (the "Memorandum of Decision") notifying Northwest Alloys, as Lessee, that DNR is denying permission to construct Docks 2 and 3 and other necessary improvements within the Aquatics Lease area. (Exhibit A-104)

13.4 The Memorandum of Decision notes that Northwest Alloys cannot build improvements on the leased property without DNR's prior written consent. The Aquatics Lease gives DNR the right to deny requests to build improvements if it determines that denial is in the best interest of the State. The Memorandum of Decision analyzes the proposed improvements and concludes that it is not in the State's best interest for these improvements to be constructed on State-owned aquatic lands.

13.5 Although the Memorandum of Decision is addressed to Northwest Alloys it would apply equally to the Applicant, either as the operator for Northwest Alloys or as its sublessee.
14. **Findings Relating to the Ability of the Applicant to Conduct Dredging on Non-Leased State-owned Aquatic Lands.**

14.1 To accommodate berthing of Panamax-size vessels the Project requires substantial dredging adjacent to proposed Docks 2 and 3.

14.2 Much of the proposed dredging area lies outside of the Aquatics Lease area. Exhibit A-27 identifies both the Aquatics Lease area (surrounding Docks 1, 2 and 3) as well as the proposed dredging area, referred to as the "Dredging Prism", which lies mostly south and west of the Aquatics Lease area.

14.3 The Memorandum of Decision reminds Northwest Alloys that the Aquatics Lease:

"Applies only to the leased property. The lease does not authorize activities on lands outside the leased area. Accordingly, a separate authorization from DNR would be required for dredging areas outside the leasehold. DNR has not received an application to conduct dredging outside the leased area associated with the plan submitted by Northwest Alloys."

14.4 To date Northwest Alloys (and by extension, the Applicant) has not applied for or been given permission to conduct dredging on State-owned aquatic lands lying outside the Aquatics Lease area.

14.5 Without the proposed dredging of the "Dredging Prism" as shown on Exhibit A-27, Project vessels will be unable to berth at proposed Docks 2 and 3.

14.6 Although DNR has not expressly denied permission to dredge outside of the Aquatics Lease area, its refusal to allow construction of Docks 2 and 3 suggests that a request to undertake dredging on nearby aquatic lands, once made, will likely be denied as well.
15. Findings Relating to the Applicant's Ability to Dispose of State-owned Dredge Materials.

15.1 If dredging on State-owned aquatic lands is eventually approved, the resulting dredging will produce 350,000 yards of dredge material requiring disposal.

15.2 The Memorandum of Decision reminds Northwest Alloys (and by extension the Applicant) that the disposal of these State-owned dredge materials must be approved by DNR. The Memorandum states:

"The plan submitted for DNR's approval by Northwest Alloys also failed to identify how Millennium would dispose of the significant amount of dredge material generated by the proposal. . . . .

From the information Northwest Alloys submitted, it appears Millennium may be contemplating removal of dredge materials from the Columbia River. DNR has an interest in ensuring that the State receives compensation for valuable material removed from the Columbia River and that removal is in the State's best interest. Removal of rock, gravel, sand, silt, and any other valuable material from the River requires a contract of lease from DNR that authorizes the removal of the valuable material and fixes the compensation owed the State. Northwest Alloys lease with DNR does not provide the required authorization. . . . .

Because the plans and specifications submitted by Northwest Alloys are inconsistent with the lease and fail to provide essential information necessary to review the proposal, DNR has determined that it is in the best interest of the State to deny Northwest Alloys request at this time." (Exhibit I-104, pages 5 and 6 of Memorandum)

15.3 The Staff Report, at page 6, notes that the Applicant had been working with the Corps of Engineers and other agencies for permission to place the dredge material at the Ross Island Sand & Gravel site in Oregon. The Corps' approval of this request is currently pending.
15.4 Even if the Corps of Engineers approves the Applicant's request to dispose of the dredge material at the Ross Island Sand & Gravel site, this proposed disposal lacks the necessary permission from DNR.

15.5 The Project's dredge material could be placed elsewhere in the Columbia River but this alternative has been found to be problematic. As noted in both the Staff Report and the testimony of the Applicant's consultant, Glenn Grette, the physical composition of the dredge material has prevented finding a suitable location in the river to deposit it.

15.6 As the Applicant does not have DNR's permission to place the State-owned dredge material in Oregon, and as its placement in other areas of the river has proven problematic, there is no approved plan for the disposal of the Project's dredge materials.


16.1 As set forth at page 2-15 of the FEIS, the Applicant's intended primary source of industrial water for Project operations is treated stormwater. Onsite wells are intended as a backup source during dry weather and as otherwise needed.

16.2 Water will be needed for both Project operations and fire protection. Operations include dust control, stockpile spraying, and equipment wash down. The Project is reliant upon water to properly manage coal dust.

16.3 It is anticipated that peak process water demand would be approximately 5,000 gallons per minute, and peak emergency fire water demand would be approximately 1,500 gallons per minute. The Applicant's existing activities on the leased property have a current demand of approximately 1,063 gallons per minute (FEIS at 4.4-15).
16.4 The Applicant's lease with Northwest Alloys includes an assignment of historical water rights to withdraw groundwater from onsite wells. These historical groundwater rights allow withdrawal of 23,150 gallons per minute.

16.5 The FEIS finds that the Project's anticipated industrial water need, coupled with its current needs, is within the volume of water rights held by Northwest Alloys. It adds, however, that it is unknown whether these water rights were relinquished back to the State of Washington for nonuse. The FEIS concludes that if these historical water rights have been relinquished new water rights will need to be applied for under the normal regulatory process.

16.6 Ecology, in its Decision denying the Applicant's request for a Section 401 Water Quality Certification, reminds the Applicant that its plan to collect and use stormwater requires that the Applicant obtain a water right permit in accordance with Chapter 90.03 RCW.

16.7 To date the Applicant has not applied for a water right permit to collect and reuse stormwater as its primary source of water.

16.8 Ecology also notes that the historical groundwater rights held by Northwest Alloys may no longer be valid as Ecology has not been provided with any information documenting their continued beneficial use since the early 2000's.

16.9 In December 2016, Ecology requested information from the Applicant documenting the current and recent water uses at the Project site. As of September 26, 2017, the Applicant had not provided this information.

16.10 Ecology concludes that without proof of water rights the Applicant will not be able to legally carry out the Project.
16.11 As the Applicant has not received, or even applied for, a water right to collect and use stormwater and as the Applicant has so far failed to produce any evidence proving the continued validity of historic groundwater rights, there is currently no evidence that the Project has sufficient water to properly manage coal dust, provide for other operational needs or assure adequate fire suppression.

17. **Findings Relating to Anti-Idling Policies.**

17.1 The shipping of coal will result in the arrival of 840 oceangoing vessels at the Project's docks annually and the arrival of over 23,000 locomotives at the Project's railyard annually. These vessels and locomotives will rely on diesel motors.

17.2 The use of these diesel motors will result in Diesel Particulate Matter (DPM). The FEIS finds that DPM is harmful and is the cause of the increased risk of cancer from the Project. The FEIS therefore recommends that "anti-idling" policies be imposed upon both vessels and locomotives to eliminate or at least minimize DPM caused by unnecessary idling.

17.3 The County Staff Report recognizes the benefit of anti-idling policies but proposes that the Applicant implement its own anti-idling policies. (Condition 32)

17.4 The County's proposed Condition 32 would allow the Applicant to decide what anti-idling policies to impose on its operations, or whether to impose any at all.

17.5 The Hearing Examiner proposed a condition of Project approval similar to one imposed recently in *In re NWIW*, Cowlitz County Hearing No. SL 16-0975. As previously noted in Finding 9.13, that project involves a nearby methanol production and shipping facility. That project anticipates a maximum of 72 vessels annually, or less than 10% of this Project's
vessels. Despite the Project's fewer number of vessels, it was determined that an anti-idling policy was nonetheless important. In order to minimize vessel-related DPM the following condition was imposed on that project's shoreline permit:

"(A) All methanol cargo vessels shall be equipped with the necessary technology to rely on shore power for all onboard activity while berthed at the marine terminal. No berthed methanol vessel shall operate its engines to provide electrical power except in the event of an emergency outage to shore power."

17.6 In the industry, the use of shore power for all shipboard activity while docked is known as "cold ironing".

17.7 The Applicant objects to the imposition of a cold ironing policy on this Project. The Applicant argues that such a policy would be expensive, impractical and unprecedented in the bulk products shipping business. (Testimony of Bennett)

17.8 The Applicant adds that in the Kalama Methanol Project, the developer owned the fleet of vessels being used and could construct the vessels to a common electrical system. In contrast, this Project will rely on independent bulk carriers and the Applicant will not have the same control over the electrical systems they use. (Testimony of Bennett)

17.9 The Applicant has not prepared a formal anti-idling policy for vessels. When asked what its anti-idling policy would be the Applicant replied that it would "be the same as is done elsewhere." (Testimony of Bennett)

17.10 In regard to an anti-idling policy for locomotives, the Applicant testified that it would rely on the policies of BNSF. (Testimony of Bennett)
18. **Findings Relating to Possible Impacts from Wake Stranding.**

18.1 When the wake from a vessel meets the shoreline it can carry fish and deposit them on the beach, potentially stranding them where they would be susceptible to stress, suffocation, and predation before they could return to the water. This phenomenon is referred to as "wake stranding".

18.2 Wake stranding depends on various factors such as the slope and breadth of a beach; the river's stage; tide stage; depth of water; vessel size; direction of travel and speed and wakes from other passing vessels.

18.3 Wake stranding has been documented at various locations along the Lower Columbia River. Those portions of the Lower Columbia shoreline having gentle shoreline slopes, sandy beaches, a confined river channel and close proximity to the navigation channel, along with various other factors, tend to have a higher incident of wake stranding. Studies have also suggested that wake stranding is particularly troublesome along "Barlow Point", located a short distance downriver from the Project site. Studies to date have concluded that sub-yearling Chinook Salmon are particularly susceptible to wake stranding due to their small size and preference for swimming near the shore. Lower Columbia Chinook Salmon are a threatened species.

18.4 The FEIS, at page 4.7-33, notes that while the scientific literature generally acknowledges the problem of wake stranding in the Lower Columbia River, the literature has not yet identified methods to quantify its impact to Chinook Salmon or other fish. Nonetheless, the FEIS concludes that this Project's 1,680 transits will have an adverse effect on Chinook Salmon and other fish as a result of wake stranding.
18.5 During the environmental review process several federal and State agencies, including U.S. Fish and Wildlife, Washington Department of Fish and Wildlife (WDFW) and Washington Department of Natural Resources (DNR) expressed concerns that the DEIS understated the Project's additional impact to the wake stranding problem, and encouraged additional study of the phenomenon to determine the Project's impact and necessary mitigation.

18.6 The County Staff Report does not discuss wake stranding or propose any mitigation. The County explains that this is an issue best addressed through the federal permitting process. (Testimony of Placido)

18.7 In response to questioning from the Hearing Examiner, the Applicant revealed that it has recently proposed a mitigation plan for wake stranding. This proposed mitigation plan is contained in a Memorandum from Mr. Grette to National Marine Fishery Services (NMFS) dated May 30, 2017. (Exhibit A-60)

18.8 According to the Applicant's proposed mitigation plan, the Applicant believes that its Project activities will cause the 3,800 unrelated commercial vessels going to and from upriver ports to slow for several miles. The Applicant asserts that this will reduce vessel speeds past Barlow Point, thereby reducing wake stranding at this critical location and mitigating for any wake stranding the Project's vessels might cause further downriver.

18.9 The various upriver ports (Portland, Vancouver, etc.) have not been notified of this mitigation plan or of its claim that the Project will force their vessels to slow. It is unknown whether these ports will disagree or, conversely, whether these ports will argue that, if true, the Project fails to recognize and protect the statewide interest over local interest.
18.10 During the hearing there was conflicting testimony as to whether the
Project would cause all non-project vessel traffic to slow past Barlow Point. The Applicant's
witness, Dan Mills, testified in writing that the Project would force all other traffic to slow to 8
knots past Barlow Point (Exhibit 206). But a member of the public, Rob Rich, who has several
decades of experience with Columbia River transportation, testified that the Project would not
cause other vessels to slow.

18.11 On October 10, 2017, NMFS issued its Biological Opinion for NWIWI (the
Kalama Methanol Project) (Exhibit A-61), previously referred to in Findings 9 and 17. It
includes a Wake Stranding Monitoring Plan for the Kalama facility. (Exhibit A-62) The
monitoring plan requires NWIWI to fund, either individually or with others, a study to examine
the rates of fish stranding at three sites along the Columbia River: Barlow Point, County Line
Park and Sauvie Island. Studies will extend over seven months (March through September) in
years one, three and five of the project, with year zero being the first March after product is
shipped from the Kalama facility. The study can be delayed up to two years to allow other
applicants from other projects to participate in funding. (The Kalama project is not yet
approved, let alone operational, and so "year zero" of the study remains at least a few years
away.)

18. Findings Relating to Statewide Impacts from At-Grade Rail Crossings.

18.1 The Project has been formally opposed by the cities of Vancouver,
Washougal, Camas, Olympia, Tacoma, Seattle, Stevenson, and North Bonneville in the State of
Washington; by the cities of Sandpoint, Dover, Ponderay and Kootenai in the State of Idaho; by
the cities of Livingston, Missoula and White Fish in the State of Montana; and by the cities of
Portland, Milwaukie and Hood River in the State of Oregon.
18.2 These cities have expressed a common concern that the Project's trains will have significant adverse impacts to traffic at at-grade rail crossings and impair the cities' ability to deliver emergency services.

18.3 As examples, Vancouver (population 175,000) notes that it has 27 at-grade crossings, 13 of which have no alternate access. Nearby Washougal notes that it has 5 at-grade crossings including the most heavily used at-grade rail crossing in the State.

18.4 The FEIS, in Section 5.3.4.2, contains a study of selected at-grade rail crossings throughout the State. A list of the selected crossings is found at 5.3-21 and a map showing their location is at 5.3-23 (the "FEIS Study"). The FEIS Study examines 44 at-grade rail crossings throughout the State. The selected crossings are largely in sparsely populated areas of rural counties, and are almost entirely in Eastern Washington.

18.5 The only selected crossings in Western Washington are 6 crossings in mostly-rural Lewis County (population 75,000). These include the crossing in Vader (SR 506) with a population of 600 residents; the crossing in Winlock (SR 505) with a population of 1,200; the crossing at Big Hanaford Road north of Centralia with no nearby population; and 3 crossings on the east side of Centralia (population 15,000).

18.6 The FEIS does not examine any crossings in Vancouver (population 175,000) or the rest of Clark County; Olympia/Lacey (population 100,000) or the rest of Thurston County; Tacoma (population 211,000) or the rest of Pierce County; or Auburn (population 78,000) or the rest of King County.

18.7 The FEIS concludes that, at the selected sites, the Project will not result in unavoidable, significant adverse impacts to traffic. But the FEIS does not reach any conclusion as to the Project's impacts at the at-grade rail crossings not studied.
18.8 As the FEIS Study does not examine impacts to traffic in any of Washington's urban centers, especially those in Western Washington, the Study does not inform the decision making as to whether the Project recognizes and protects the statewide interest over local interest.

19. **Findings Relating to the Lease of BPA Property.**

19.1 Portions of the proposed Project site are located on property owned by the Bonneville Power Administration (BPA). Areas owned by BPA are identified on the map submitted as Exhibit A-27.

19.2 As noted in the Staff Report, a portion of the Project's rail loop would be constructed on 2 parcels currently owned by BPA. BPA has not yet made a determination whether to grant necessary easements to the Applicant. BPA will not make this determination until the Corps of Engineers has issued the NEPA FEIS.

19.3 The Applicant responds that it has 3 alternative site layouts, one of which does not require use of BPA property.

20. **Findings Relating to Further Analysis of Coal Dust Impacts on Aquatic and Tribal Resources.**

20.1 Nearly 30 American Indian Tribes or Nations have formally opposed the Project. ¹, ² These Tribes express a number of common concerns including: an increased risk of rail accidents on tribal property and appropriate mitigation; increased risk of fire; impacts from

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¹ These include the 12 Confederated Tribes or Nations of the Yakima Nation; the 5 tribes comprising the Columbia River Inter-Tribal Fish Commission; the 4 tribes comprising the Upper Columbia United Tribes; the 3 tribes of the Umatilla Reservation; the Northern Cheyenne; the Nez Perce; the Lummi Nation; and the Cowlitz Tribe.

² Another American Indian Tribe, the Crow Tribe, is in support of the Project.
train horn noise, increased risk of train strike, especially to Tribal Treaty Fishers; and effects on
fish populations and the Tribes' treaty rights.

20.2 The FEIS addresses some of the tribal concerns but acknowledges that
many tribal issues fall outside of its scope.

20.3 A commonly expressed tribal concern is that coal and coal dust from
Project-related trains, along with diesel emissions, will have significant adverse impacts upon
tribal property and tribal resources, including fish.

20.4 The FEIS, at page 5.7-6, notes that: "the U.S. Geological Survey (USGS)
is preparing a study that identifies methods for determining potential impacts on aquatic
resources from coal dust exposure."

20.5 The official website for the USGS confirms that such a study is being
undertaken. The USGS website states:

"Federal and state natural resource managers and Northwest Indians are
concerned with potential impacts from unintentional release of coal dust
from train cars during transport through the Northwest... To date, very
little scientific data exists that is suitable to address these concerns. There
exists a strong desire and need for science to better understand and
determine if transporting coal can have any measurable environmental
impacts. Multiple USGS science centers are collaborating on a pilot that
leverages the Survey's chemical, hydrological, and biological expertise to
conduct reconnaissance-level sampling and analysis of mercury (Hg) and
Polycyclic Aromatic Hydrocarbon (PAH) levels in air, water, sediment,
and biota at sites of interest near rail lines..."

This study will evaluate some of the risks to Indian trust resources
associated with coal transport. If coal transport continues to grow in the
region, this study will provide critical baseline data necessary in order to
determine whether the expanded transport results in increased contaminate
distribution and exposure. If this study is not conducted, and coal
transport continues to grow, we will be unable to determine whether and
to what extent coal transport results in environmental contamination and
risk to wildlife, fishes, and any Indian trust resources.
20.6 The USGS website does not indicate the current status of this study and none of the parties are aware of its status.

20.7 The USGS study, if completed, would inform the decision making with respect to protecting the ecology and resources of the shoreline including tribal resources.


22.1 As set forth in Section 11 of the Findings, the FEIS analyzes the Project's net GHG emissions under four scenarios and concludes that the "2015 U.S. and International Energy Policy Scenario" is the most representative of current U.S. policy.

22.2 One of the alternative scenarios examined in the FEIS is the "No Clean Power Plan Scenario". An explanation of this scenarios is found on page 5.8-8 of the FEIS:

"The No Clean Power Plan scenario represents the state of the energy markets as of 2016. It does not include implementation of the Clean Power Plan. The No Clean Power Plan scenario uses the base set of assumptions and assumes that no additional national or international climate policies will be enacted beyond those implemented by mid-2015."

22.3 Under the "No Clean Power Plan Scenario" the Project's net GHG emissions are substantially higher than under the "2015 U.S. and International Energy Policy Scenario". Table 5.8-7 of the FEIS identifies the total GHG emissions under each scenario for the Project from 2021 to 2038. Under the 2015 U.S. and International Energy Policy Scenario the total emissions are 21.58 Million Tons, but under the No Clean Power Plan Scenario total emissions increase to 50.97 Million Tons, or approximately two and a half times more net GHG emissions.
22.4 On October 7, 2017, the Environmental Protection Agency announced the
repeal of the Clean Power Plan.

23. **Findings Relating to the Applicant's Compliance with Ecology's Request for
Additional Information.**

23.1 In Section 3 of its Decision denying the Applicant's Section 401 Water
Quality Certification, Ecology states that the Applicant has failed to submit adequate information
needed before Ecology can determinate compliance with State water quality standards and other
applicable regulations. Ecology requests additional information from the Applicant relating to
wetlands impacts and mitigation, stormwater and wastewater, and water rights.

23.2 It is unknown if any of the requested information has been provided to
Ecology.

23.3 Issues relating to Section 401 Clean Water Certification are germane to
shorelines permitting as the two processes have overlapping goals of protecting the resources and
ecology of the shoreline.

23.4 The Applicant's responses to the information sought by Ecology will
inform the decision making for shoreline permits.

**ANALYSIS**

1. **SEPA.** Again, neither the Applicant or any other party has appealed the FEIS and
its findings and conclusions are unchallenged for the purpose of this hearing. The Applicant has
presented the testimony of several experts whose opinions are in conflict with the FEIS but, in
the absence of any appeal, this testimony is largely irrelevant to the issue of whether the ten
unavoidable, significant adverse environmental impacts identified in the FEIS can be reasonably
mitigated.
The conditions proposed in the Staff Report do not reasonably mitigate these impacts. At
the conclusion of the hearing the County chose not to propose any new conditions, and the
Applicant's position is nearly identical to the County's. As a result, neither the County nor the
Applicant propose reasonable mitigation for any of the unavoidable, significant adverse
environmental impacts identified in the FEIS.

More specifically:

- The parties' proposed mitigation for noise impacts is insufficient to ensure that Quiet Zones will be implemented.
- The parties do not propose any mitigation for the increased risk of cancer. Their only suggestion is that eventually the BNSF fleet will upgrade to Tier 4 status, but currently only 6% of the BNSF fleet meets this standard. The remainder of the fleet will not be completely upgraded for more than 20 years.
- The parties' proposed conditions to mitigate traffic impacts do not ensure that the necessary track improvements will be made to the Reynolds Lead.
- The parties do not propose any conditions addressing the impacts to the Reynolds Historic District.
- The parties' proposed conditions fail to ensure rail capacity or rail safety.
- The parties do not propose any conditions to ensure vessel safety and appropriate responsibility for any vessel accident.
- The Mitigation Plan, approved as part of the Critical Areas Permit, will address some tribal concerns but not all of them. The parties do not propose any additional conditions to address additional tribal impacts.
The County proposes no Greenhouse Gas mitigation, while the Applicant proposes less than 1% of that required under the FEIS.

Cowlitz County has adopted SEPA rules promulgated by the Department of Ecology. CCC 19.11.020. Cowlitz County recognizes its right to condition or deny permits if such decision is based upon policies that have been identified and incorporated into regulations, plans, or codes formerly designated as possible bases for the exercise of substantive authority under SEPA. CCC 19.11.110

The County has adopted the following bases for the exercise of substantive authority under SEPA:

Cowlitz County shall use all practicable means, consistent with other essential considerations of State policy, to improve and coordinate plans, functions, programs, and resources to the end that the State and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
(b) Assure for all people of Cowlitz County safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.
(d) Preserve important historic, cultural, and natural aspects of our national heritage.
(e) Maintain, whenever possible, an environment which supports diversity and variety of individual choice.
(f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.
(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

CCC 19.11.110(b)(1)
Cowlitz County also recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. CCC 19.11.110(b)(2)

Again, the parties have not reasonably mitigated the ten unavoidable, significant adverse environmental impacts identified in the FEIS. Failure to reasonably mitigate these impacts conflicts with virtually every one of the County's environmental policies stated above. Accordingly, the requested Shoreline Permits must be denied under the County's substantive SEPA authority.

2. **Compliance with the Requirements of the SMA and the SMP.** In order for the Shoreline Permits to be approved, the Applicant must meet its burden of proving that all of the requirements of the SMA and SMP have been met. As a result of the Applicant's inability to reasonably mitigate the unavoidable, significant environmental impacts identified in the FEIS, it has failed to meet this burden. The Project does not recognize and protect statewide interest over local interest; result in a long term over short term benefit; or protect the resources and ecology of the shorelines, all as set forth more fully in the Findings of Fact.

3. **Unresolved Issues.** A number of unresolved issues further preclude the Applicant from meeting its burden of proving that all requirements of the SMA and SMP have been met:

- The Applicant has been denied permission from the State to build Docks 2 and 3 in the Aquatics Lease area; to engage in dredging outside of the Aquatics Lease area; and to remove dredging materials from the Columbia River. Collectively these three denials preclude constructing Docks 2 and 3 and performing necessary dredging. Unless these barriers are overcome the requested Shoreline Permits cannot be granted.

Findings of Fact, Conclusions of Law and Decision Denying Permits - 52

COWLITZ COUNTY HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386
Although this application has been pending for five years, the Applicant has not yet applied for the necessary water permits. Large quantities of water are essential for this Project, especially for control of coal dust. The current absence of any assurance that necessary water is available prevents further consideration of the needed permits.

- Anti-idling policies for both vessels and locomotives must be established. To date no formal policies have been presented. The Applicant's proposal to "do what is done at other ports" is not an acceptable anti-idling policy. Given the number of vessels and locomotives involved and the harmful impact of diesel particulate matter resulting from needless idling, there must be a more robust effort to avoid this problem. This includes a thorough analysis of whether "cold ironing" is possible. Similarly, given that more than 23,000 locomotives will arrive at the site each year the anti-idling policy for locomotives cannot be left up to BNSF and requires a more thorough analysis.

- Wake stranding has been increasingly recognized as a significant problem along the Lower Columbia River, with its greatest impact on young Chinook Salmon, a threatened species. Federal and State agencies have universally recognized the need to better understand the impacts of this phenomenon and determine proper mitigation. The Applicant's recently revealed Mitigation Plan is noteworthy in that it claims the Project will cause all other commercial vessel traffic on the river to slow past Barlow Point, and that this disruption serves as mitigation for the Project's own wake stranding impacts. The upriver ports affected by this claim have not yet been alerted to this plan, or given a chance to respond. It is possible that the Project will effectively create a "no wake" zone past Barlow Point, but ports and State agencies must be allowed to participate in the discussion. Ultimately the Project's impact on wake stranding needs to be calculated and mitigated.
• The study of statewide rail crossings found in the FEIS provides little, if any, useful information as to the impact of this Project on urban traffic. The rural, sparsely populated crossings selected for the study provide no meaningful information as to whether coal trains will have significant impacts on our cities. The study fails to examine a single urban rail crossing in Western Washington. Again, it is the Applicant's burden to prove that the Project protects statewide interest over local interest. This has not yet been proven. Further analysis needs to be undertaken, preferably with an opportunity for cities to identify those crossings most likely to be impacted.

• It remains to be seen whether BPA will agree to allow its properties to be used by the Applicant. If not, further review of the Applicant's alternative proposed layout must be undertaken.

• If timely completed, the USGS study of coal dust impacts may provide critical information as to whether the transport of coal is having any significant impacts on aquatic or tribal resources.

• The recent repeal of the Clean Power Plan by EPA suggests that the Project's net Greenhouse Gas emissions should be reevaluated under the "No Clean Power Plan Scenario".

• As part of its Decision denying the Applicant's Section 401 Clean Water Certification, Ecology requested additional materials from the Applicant to better address important issues relating to wetlands, water, etc. The information sought is of equal benefit to this decision making.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and the subject matter.
2. Any Conclusions of Law contained in the foregoing Background Section, Findings of Fact or Analysis Section are hereby incorporated by reference and adopted by the Hearing Examiner as his Conclusions of Law.

3. All public notice requirements for this application have been met.

4. The Project is located within 200 feet of the Ordinary High Water Mark of the Columbia River. The Columbia River is a shoreline of statewide significance. This Project is therefore subject to the requirements of the Shoreline Management Act (SMA), Chapter 90.58 RCW.

5. For shorelines of statewide significance, Ecology and local governments shall give preference in the following order to uses which: (1) recognize and protect the statewide interest over local interest; (2) preserve the natural character of a shoreline; (3) result in long term over short term benefit; (4) protect the resources and ecology of the shoreline; (5) increase public access to publicly owned areas of the shorelines; (6) increase recreational opportunities for the public in the shoreline; (7) provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary. (RCW 90.58.020)

6. The Washington Legislature enacted the SMA because Washington's shorelines are fragile and the mounting pressure of development in the shorelines necessitates coordination in their management. The SMA is broadly construed to protect the State's shorelines as fully as possible. All development on the shorelines of the State must conform to the SMA. Beuchel v. Department of Ecology, 125 Wn.2d 196, 203 (1994).

7. The Applicant has the burden of proving that all requirements of the SMA and the Cowlitz County SMP have been met for the issuance of a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit.
8. The Project, as conditioned, fails to reasonably mitigate the ten unavoidable, significant adverse environmental impacts identified in the FEIS.

9. As a result of the Project's failure to reasonably mitigate the unavoidable, significant adverse environmental impacts identified in the FEIS, the Project has not satisfied the environmental standards found in CCC 19.11.110(b)(1), or in CCC 19.11.110(b)(2).

10. The Project, as conditioned, does not recognize and protect the statewide interest over local interest.

11. The Project, as conditioned, does not result in long term over short term benefit.

12. The Project, as conditioned, does not protect the resources and ecology of the shoreline.

13. The Project, as conditioned, is not consistent with the policies of the SMA.

14. The Project, as conditioned, is not consistent with the Cowlitz County SMP.

15. The various unresolved issues identified in the Analysis Section further preclude any conclusion that the policy is consistent with either the SMA or the SMP.

16. The requested Shoreline Substantial Development Permit and Shoreline Conditional Use Permits for Stage 1 of the proposed coal export facility should be denied.

**DECISION**

Based upon the above Findings of Fact and Conclusions of Law, the requested Shoreline Substantial Development Permit and Shoreline Conditional Use Permit for Stage 1 of a proposed coal export facility are hereby **denied**.
DATED this 14th day of November, 2017.

Mark C. Scheibmeir
Cowlitz County Hearing Examiner
INDEX OF AGENCY RECORD
COWLITZ COUNTY FILE NO. 12-04-0375
Millennium Bulk Terminals - Longview, Coal Export Terminal
Shorelines Substantial Development Permit and Conditional Use Permit No. SL 17-0992

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C-2       JARPA (July 13, 2016)
C-3       Critical Areas Permit Issued July 19, 2017
C-4       Shoreline Application Notice September 8, 2017
C-5       Hearing Notice
C-6       SEPA Determination
C-7       Final EIS
C-8       Shoreline Application Response Document
C-9       Coal Export Terminal Wetland Impact Report - Parcel 619530400 (Grette Associates, September 15, 2014)
C-10      Conceptual Mitigation Plan (Grette Associates, May 25, 2017)
C-11      Sediment Characterization Report (Dalton, Olmsted, Fuglevand, July 12, 2017)
C-12      2017 Dredge Material Management Program (DMMP) Dredge Suitability Determination
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Shorelines Substantial Development Permit and Conditional Use Permit No. SL 17-0992

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I-102  DOE 401 Denial
I-103  DNR Sublease Denial
I-104  DNR Construction Denial
I-105  DNR SSDP Comment Letter (October 6, 2017)
P-126  Ed or Harriet Griffith Shoreline Email of October 24, 2017

P-127  Standard Letter from Various Individuals Starting With "I urge Cowlitz County and the Department of Ecology to reject the Shoreline Substantial Development . . . ."

P-128  Steve Harrington Email of October 18, 2017

P-129  Standard Letter from Various Individuals Starting With "I am writing to reaffirm our support of Millennium Bulk Terminal . . . ."

P-130  Charles Pace Email of October 9, 2017


P-132  BNSF Comments on Millennium Dated October 8, 2017

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<td>Mona McNeil</td>
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<td>Diana Leigh</td>
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**Hearing adjourned - all further comments have been received by E-mail**

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<td>Russell Thompson</td>
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<td>Christian Daniels - IBEW Rep</td>
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<td>Michael Bosse' - IUOE Rep</td>
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<td>Josh Swanson - IUOE Rep</td>
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<td>Den Mark Wichar</td>
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<td>Liz Wainwright - Merchants Exchange of Portland</td>
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