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9 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
10 FOR COWLITZ COUNTY

11 MILLENNIUM BULK TERMINALS-  
12 LONGVIEW, LLC.,

13 Plaintiff,

14 v.

15 WASHINGTON STATE DEPARTMENT  
16 OF ECOLOGY, and MAIA BELLON,  
Ecology Director,

17 Defendants.

Case No.

**PLAINTIFF'S ORIGINAL COMPLAINT  
AND PETITION FOR JUDICIAL REVIEW  
AND DECLARATORY AND INJUNCTIVE  
RELIEF**

18 **I. INTRODUCTION**

19 1. Millennium Bulk Terminals Longview ("Millennium" or "the Company") hereby  
20 petitions this Court to declare the Washington State Department of Ecology's and Director  
21 Bellon's (collectively "Ecology" or "Defendants") Denial "*with prejudice*" of the Company's  
22 application for certification under section 401 of the Federal Clean Water Act ("CWA"), 33  
23 U.S.C. §1341, as *ultra vires*, inconsistent with applicable federal and state law, and in violation  
24 of the U.S. and Washington State Constitutions. *In the Matter of Denying Section 401 Water*  
25  
26

1 *Quality Certification*, Order # 15417- Corps Reference #NWS-2010-1225 (September 26, 2017)  
2 (attached hereto, as Exhibit A).<sup>1</sup>

3         2. Congress authorized states under CWA section 401 to determine whether  
4 proposed projects requiring federal permits to discharge to navigable waters of the United States  
5 will meet applicable state water quality standards. To make this determination, states are  
6 directed to determine whether they have “reasonable assurance”—not absolute certainty—that  
7 water quality standards will be met. To ensure that a state does not abuse its certification  
8 authority to veto any project a state disfavors, Congress provided states with circumscribed  
9 authority to deny these certifications on explicit water quality-related grounds set forth under  
10 CWA section 401(a)(1) related exclusively to the on-site discharge.

11         3. Here, Defendants turned section 401 on its head by denying the certification  
12 based on purported impacts of every kind *other* than water quality.

13         4. Millennium proposes to construct and operate a coal export terminal (“CET” or  
14 “Project”) at a former aluminum smelter site on the lower Columbia River near Longview,  
15 Washington. To obtain 1 of the 23 separate permits and authorizations required to build and  
16 operate the CET, the Company was required to obtain a federal CWA section 404 (33 U.S.C.  
17 §1344) permit from the U.S. Army Corps of Engineers (“Corps”) to do in-water work and to fill  
18 24 acres of degraded wetlands on the subject property. Certification under section 401 is a key  
19 step to Corps’ issuance of the CWA section 404 permit.

20         5. Millennium has been subjected to an unprecedented scope of environmental  
21 review under the State Environmental Policy Act (“SEPA”), RCW 43.21C, that unequivocally

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23 <sup>1</sup> Millennium discloses its Commerce Clause, and preemption claims under the Ports and  
24 Waterways Safety Act ( 33 U.S.C. §§ 1221-1236), and the Interstate Commerce Clause Termination Act ,  
25 (49 U.S.C. §10906) to permit the Court to resolve Millennium’s other claims. Millennium, however,  
26 reserves these claims, and its right to have its federal claims adjudicated in the Federal District Court. To  
that end, an action in Federal District Court concerning these three reserved claims will soon be filed after  
this Complaint. By reserving these 3 claims, Millennium does not intend to reserve any other claims  
including its preemption claim under the CWA. 33 U.S.C. §1341.

1 concluded in a Final Environmental Impact Statement (“EIS”) that the proposed CET would  
2 have no significant environmental effect on water quality or aquatic resources, and that any  
3 potential impacts could be fully mitigated.

4 6. Despite these conclusions—at its first opportunity following publication of the  
5 multi-volume, 13,600 page Final EIS—Ecology ignored its own EIS’s conclusions and denied  
6 Millennium’s request for certification *with prejudice* based on concerns that would be applicable  
7 to any marine cargo transportation infrastructure project serving a global market. Ecology’s  
8 stated concerns include the capacity of the interstate rail system, the impact of trains operating  
9 anywhere in that system, and impacts of the Project on the overall capacity of the Federal  
10 Columbia River Navigation Channel to accommodate additional vessels calling on our state  
11 ports.

12 7. Despite clear limitations expressed by Congress under CWA section 401 that  
13 states base their certification decisions on specifically enumerated water quality grounds,  
14 Ecology’s purported bases for Denial *with prejudice* were, in fact, unrelated to water quality.

15 8. Ecology created from whole cloth a uniquely onerous and unfair environmental  
16 review process for this Project that it justified based on its animus towards the commodity that  
17 would be handled at the CET. For the first time in its history, it issued a certification denial *with*  
18 *prejudice* without first providing the applicant with a written statement of deficiencies and  
19 without giving the applicant any opportunity to cure through additional information,  
20 submissions, and/or additional mitigation measures. After apparently concluding that “we know  
21 it when we see it,” Ecology ignored its customary certification process and summarily denied  
22 Millennium’s certification application.

## 23 II. PARTIES

24 9. Defendant Maia D. Bellon is the Director of Ecology and, as such, signed and  
25 adopted the Denial. Her Office is located at Ecology headquarters, 300 Desmond Drive SE,  
26

1 Lacey, WA 98503. This action is brought against Director Bellon in her official capacity. Her  
2 verified twitter account is @maiabellon.

3 10. Defendant Ecology is an administrative agency of the State of Washington that is  
4 charged, among other things, with 401 certification decisions under the federal and state CWA.  
5 Ecology was the agency responsible for drafting and issuing the Denial. Ecology's mailing  
6 address is: P.O. Box 47600, Olympia, Washington, 98504-7600, and its headquarters are located  
7 at 300 Desmond Drive SE, Lacey, Washington 98503. Ecology's verified twitter account is  
8 @EcologyWA.

### 9 **III. JURISDICTION**

10 11. This Court has jurisdiction under RCW 34.05.570(4) and 42 U.S.C. §1983.

### 11 **IV. VENUE**

12 12. Venue is proper in this court under RCW 4.12.020(b) because the causes of action  
13 identified below, or some part thereof, arose in Cowlitz County. Venue is also appropriate in  
14 this court under RCW 34.05.514(1)(b) and (c). Millennium's principal place of business is  
15 Longview, Washington, and the property affected by the Denial and leased by Millennium is  
16 located in Cowlitz County.

### 17 **V. BACKGROUND**

#### 18 **The CET Project Is Situated Near Existing Interstate Transportation Corridors**

19 13. Millennium proposes to construct a CET at river mile 63 on the lower Columbia  
20 River in Longview, Washington.

21 14. The CET will be developed on 190 acres (the project area) on a 540 acre site that  
22 is already leased by Millennium from Northwest Alloys ("NWA")—a wholly owned subsidiary  
23 of ALCOA, Inc. The lease was purchased in January 2011 because of its location on the river,  
24 and its access to the Federal Navigation Channel, which has just been deepened by three (3) feet  
25 to accommodate the type of deeper-draft vessels that the Company hopes to attract. The CET  
26 would receive coal arriving over existing interstate rail lines, primarily from the Powder River



1 and the Uinta Basins. The CET would transfer the coal to Panamax-sized vessels which would,  
2 in turn, navigate down-river and across the Columbia River Bar and the Pacific Ocean to  
3 customers primarily in Japan and South Korea as well as other countries in the Far East.

4 15. Congress appropriated hundreds of millions of dollars under the Water Resource  
5 Development Act of 1999 to improve navigation on the lower Columbia. The deepening project  
6 was explicitly aimed at attracting the type of operation that Millennium proposes to construct.

7 16. The States of Washington and Oregon strongly supported the navigation  
8 improvement project, as did a group of local sponsor ports in both states including the Ports of  
9 Longview, Kalama, Woodland, Vancouver, St. Helens and Portland. The sponsor ports  
10 committed millions of dollars in local funds and professional resources to see the deepening  
11 project through—understanding that a deeper channel would attract to their ports and  
12 communities the type of job-creating operation that Millennium proposes to build.

13 17. The navigation deepening project has led to an infusion of capital on the lower  
14 Columbia River at the Ports of Longview, Kalama and Vancouver. In Cowlitz County alone,  
15 those capital projects include the \$230 million Export Grain Terminal at the Port of Longview,  
16 the \$100 million expansion of Temco Grain Terminal, and the \$7 million investment in rail  
17 infrastructure upgrades at the Port of Kalama. Channel deepening has allowed these public and  
18 private ports to respond to growing demand from the Pacific Rim and to effectively compete for  
19 Asian trade.

#### 20 **The CET Is A Typical Port Project**

21 18. Millennium is one of the entities that plans to utilize the deepened Columbia  
22 River channel by building two new docks with ship loaders, and dredging in associated berthing  
23 areas on the river. As is typical for port projects, the Company proposes to also include rail car  
24 unloading facilities, and operating rail track, rail storage tracks, stockpile areas and conveyors—  
25 standard infrastructure for bulk product terminals on the lower Columbia.

1           19.     The proposed CET site was specifically selected not only because it provided  
2     direct access to a deepened federal navigation channel, but because it is also proximate to  
3     existing interstate rail lines with existing capacity. Both Burlington Northern and Union Pacific  
4     rail companies operate rail cargo service from the Powder River Basin across multiple states,  
5     including Washington, to the Pacific Ocean. Access to the Port of Longview and the proposed  
6     CET occurs through operation of a short line run by the Longview Switching Company.

7           20.     Millennium proposes to create suitable berthing areas by using standard dredging  
8     techniques, and to dispose of dredged materials in a pre-approved open-water disposal area  
9     suitable for beneficial re-use purposes. It also proposes to use standard pile driving and pile  
10    removal techniques commonly used on the lower Columbia and expressly approved by the  
11    National Marines Fisheries Service to protect water quality, listed species under the Endangered  
12    Species Act, and biota.

### 13                   **The CET Will Create Jobs And Tax Revenues For Cowlitz County**

14           21.     Longview has an unemployment rate of 8.5% that is significantly higher than the  
15    nation's and the state's. Longview is located within Cowlitz County. Cowlitz County's  
16    unemployment rate has stubbornly remained several points above Puget Sound unemployment  
17    rates, long after the Great Recession recovery most west coast communities have experienced.

18           During construction, the CET will result in the direct creation of 1,350 jobs and the  
19    indirect creation of 1,300 jobs in Cowlitz County and the surrounding region. Following  
20    construction, the CET will result in the creation of 135 direct and 165 indirect jobs, resulting in  
21    about \$16,000,000 in wages in Cowlitz County and the surrounding region.

22           22.     The CET will also result in tax revenues to the Cowlitz County and the state. The  
23    County will receive a one-time construction sales tax benefit of \$5.87 million, representing a 5%  
24    increase of the 2012 Cowlitz County revenue of \$107.8 million. It will also receive an annual  
25    average of \$1.65 million in tax revenues from the on-going operation of the CET, which equates  
26    to a 30-year present value of over \$32 million. The state is estimated to receive over \$37 million

1 in state tax revenue from the construction of the CET and an average annual amount of \$2.18  
2 million from site operations, which equates to a 30-year present value of \$41.77 million.

### 3 **A Protracted Permitting Process**

4 23. Millennium submitted a Joint Aquatic Resources Permit Application (“JARPA”)  
5 to the U.S. Army Corps of Engineers (“Corps”) and Ecology on February 23, 2012. The JARPA  
6 requested that the Corps issue Millennium a joint CWA section 404 permit to dredge and fill  
7 wetlands, and section 10 authorization to construct docks under the Rivers and Harbors Act of  
8 1899, 33 U.S.C. §403. It also requested that Ecology issue a CWA section 401 water quality  
9 certification for construction.

### 10 **Ecology’s 401 Certification Process**

11 24. On January 28, 2013, the Company withdrew its JARPA; it withdrew its §401  
12 certification application on February 23, 2013. These withdrawals were made at the Corps’  
13 request to allow the federal agency more time to complete its regulatory process. The Company  
14 waited until the EISs prepared by both the Corps and Ecology under the National Environmental  
15 Policy Act (“NEPA”), 42 U.S.C. §4321 *et seq.*, and SEPA, were sufficiently complete to re-file  
16 its applications. It also did this to trigger the one year statutory clock required for states to  
17 complete their certification process under section 401(a)(1). Accordingly, Millennium submitted  
18 a new permit application and water quality certification request to both the Corps and Ecology  
19 on July 18, 2016.

20 25. Knowing full well that its certification decision had to be completed before July  
21 18, 2017 (one year after receipt of the certification request), and except for a brief  
22 communication and information exchange with Millennium in November-December 2016,  
23 Ecology had little to no contact with Millennium again on its certification request until on or  
24 about mid-May, 2017. Ecology remained uncommunicative during this period. At no time  
25 between July 18, 2016—the date Millennium filed its certification application—and May, 2017,  
26 did Ecology communicate to the Company that its application was inadequate.

1           26.     After convening several conference calls and meetings in May and June, Ecology  
2 requested the Company in June 2017 to once again withdraw its certification request to provide  
3 the agency with “more time to complete its review.” Although the Corps has asserted that the  
4 one year statute of limitations period for completing a CWA section 401 certification process  
5 was triggered on September 30, 2016—the date the Corps issued its public notice and request for  
6 comments on its Draft NEPA EIS—Ecology was concerned that the limitations period under  
7 section 401(a)(1) could be construed to end one year from the date Ecology received the request  
8 for certification, which was July 18, 2016, attached hereto at Exhibit B.

9           27.     Millennium was promised a certification decision by September 30, 2017.  
10 Accordingly, at Ecology’s specific request, and to facilitate a decision by September 30, 2017 (as  
11 promised), the Company withdrew and resubmitted its request for CWA section 401 certification  
12 on June 22, 2017, attached hereto as Exhibit C. The Company was led to believe that Ecology  
13 was busy processing its application and seriously reviewing its water quality information to meet  
14 its September 30, 2017 deadline.

15           **Although Ecology Had Reasonable Assurance To Issue A Certification, It Applied A First**  
16           **Of Its Kind “I know It When I See It” Approach To Deny Certification**

17           28.     In support of its application, Millennium provided Ecology a “Reasonable  
18 Assurance Plan” on August 7, 2017. That RAP included complete information on discharges  
19 associated with construction and operation of the future CET. First, it contained an evaluation of  
20 the existing on-site treatment facility’s capabilities to meet water quality standards. Second, the  
21 RAP included information and data on the pollutants likely to be discharged from on-site coal  
22 management activities, as well as stormwater and wastewater management activities that  
23 Millennium proposed to implement to meet water quality standards.

24           29.     The RAP demonstrated in detail that the information submitted by the Company  
25 was sufficient to provide Ecology with the “reasonable assurance” it needed to certify the project  
26 under section 401. It further explained that the agency did not need the functional equivalent of

1 an engineering report otherwise required for an NPDES permit because state law allows Ecology  
2 to rely on its *future* ability to use its separate NPDES permitting process for that purpose. The  
3 information submitted by the Company was exactly the type of information and level of detail  
4 that Ecology customarily requires for certification purposes.

5 30. On August 31, 2017, Ecology's 401 certification lead visited the site and  
6 acknowledged that she had not reviewed the RAP. She nonetheless orally suggested that  
7 additional information would likely be necessary for Ecology to be able to certify the Project.

8 31. Accordingly, on or about September 8, 2017, Ecology convened a call with  
9 Millennium representatives to orally request additional information about the quantity and  
10 quality of its future wastewater discharges. At that time, Ecology's 401 lead demanded the type  
11 of information otherwise necessary to obtain an NPDES permit, including a complete NPDES  
12 permit application and engineering report. Had the Company been aware that Ecology would  
13 demand this unprecedented level of information to complete the certification process, it would  
14 have begun that process a year prior.

15 32. Attempting to satisfy Ecology's constantly moving target, Millennium submitted  
16 a subsequent information package that Ecology requested be received on September 20, 2017  
17 which included an updated RAP. That package also included an expanded discussion of the  
18 pollutants that would be discharged, additional details on the known and available treatment  
19 systems that would be employed on-site, best management practices associated with construction  
20 and on-going operations, and a discussion of the Tier II anti-degradation evaluation otherwise  
21 necessary for issuance of an NPDES permit.

22 33. The Company also included robust information on the constituents of the coal that  
23 would be handled at the facility. It provided Ecology an evaluation of other analogous NPDES  
24 permits around the country and in Washington State involving coal handling/export terminals—  
25 including specific information on the technology and water quality - based treatment those  
26

1 facilities have been required to employ—and the quality and quantity of coal related wastewater  
2 and stormwater discharged at those similarly-constituted facilities.

3 34. In fact, the Company provided Ecology with information that Ecology already  
4 had on coal related surface water discharges from the operation of the Centralia, Washington  
5 Trans Alta coal fired power plant. Less than one year before the Denial was issued (in October  
6 2016) Ecology re-issued that coal-fired power plant—located immediately adjacent to a coal  
7 mine—an NPDES permit. That permit addressed runoff from a coal stockpile that is comparable  
8 in size and composition to what is proposed by Millennium. That facility was implementing a  
9 treatment system approved by Ecology, *which was the same treatment system* that Millennium  
10 was proposing to install at the CET.

11 35. Ecology therefore knew *exactly* what it takes to ensure that runoff from a coal  
12 stockpile of the magnitude Millennium proposed would meet water quality standards. Indeed,  
13 there was nothing materially different, complicating, or mysterious about the Company’s  
14 proposal. Given that Ecology had just re-issued an NPDES permit for a coal fired power plant  
15 with a stockpile adjacent to a previously active coal mine, Ecology had no basis at all to  
16 conclude that Millennium could not—under any circumstances—meet water quality standards.

17 36. To the contrary, the Company provided Ecology with far more than the  
18 “reasonable assurance” it needed to certify the proposed CET under CWA section 401. In other  
19 words, the information Ecology had as of September 20, 2017—and thus prior to its Denial—  
20 was more than adequate for it to have concluded that the proposed CET would comply with  
21 water quality standards.

22 37. Nonetheless, on September 26, 2017, Ecology denied Millennium’s CWA section  
23 401 certification *with prejudice*. The Denial was issued *just four business days* after receiving  
24 the mountain of enhanced and expanded water quality data, engineering submittals and related  
25 information that Ecology had orally requested and that Millennium had previously submitted on  
26 September 20, 2017. At no time prior to that date did Ecology ever provide the Company with a

1 written letter articulating precisely what it needed and what Ecology alleged to be missing for it  
2 to complete the certification review process.

3 38. Upon information and belief, Ecology's September 26, 2017 Denial *with*  
4 *prejudice* was the first of its kind. Ecology has never before issued a CWA section 401 applicant  
5 with an order denying a certification *with prejudice*. Nor has Ecology ever issued this sort of  
6 summary Denial without first providing an applicant with a written and detailed articulation of  
7 the information required for certification, and a detailed written explanation of what information  
8 it still needed from the applicant.

9 39. Ecology has never published regulations, guidance or advisory opinions on when  
10 it is appropriate for the agency to deny a 401 certification application *with prejudice*. Ecology  
11 applied a "*I know it when I see it*" approach to concluding that Millennium could never—under  
12 any circumstances—provide the agency with information sufficient for it to have "reasonable  
13 assurance" that future Project discharges would comply with water quality standards.

14 **The Purpose Of The Certification Process Is Not To Duplicate**  
15 **The NPDES Permitting Process**

16 40. The CWA section 401 certification is a key step for the issuance of the Corps'  
17 permit. Under CWA section 401, Congress authorized states to certify whether proposed  
18 projects generating a discharge into navigable waters of the United States—and requiring a  
19 federal permit or license—will comply with state water quality standards and other applicable  
20 effluent limitations (if any).

21 41. To certify a project, a state need not have absolute certainty to guarantee that the  
22 future discharge will meet water quality standards. Rather, applicable regulations and Supreme  
23 Court case law require states to use their predictive powers to obtain "reasonable assurance" that  
24 its water quality standards will be met. 40 C.F.R. §121.2(a).

25 42. Here, Ecology can and should have relied on its ability to issue future NPDES  
26 permits under CWA section 402, 33 U.S.C. §1342, to ensure compliance with water quality

standards. The Washington Supreme Court has specifically held that in certifying a project under CWA section 401, Ecology need not and must not duplicate the NPDES permitting process. *Port of Seattle v. Pollution Control Hearings Bd*, 151 Wash.2d 568, 600 (2004). Ecology can and should rely on adaptive management, future regulatory, permitting, and other processes that Ecology itself directs and controls, including future submissions of monitoring data and engineering reports, and mitigation evaluations. *Id.* Because Ecology controls these other regulatory processes, it can legally rely on its ability to utilize those future processes, including development of NPDES effluent permit limits and other limits to ensure that all discharges from the CET comply with state water quality standards.

#### **Ecology's SEPA Process And Binding Water Quality Conclusions**

43. Because it has authority to review and either approve or disapprove any shoreline conditional use permit issued by Cowlitz County for dredging, Ecology conducted a six year SEPA EIS process that culminated in a Draft EIS on April 29, 2016, and a Final EIS that exceeded 13,600 pages on April 28, 2017. That in-depth EIS contains numerous scientific and technical evaluations of potential environmental effects, including in-depth water quality analyses.

44. Perhaps owing to its thoroughness and comprehensive nature, the appeal period for the Final EIS passed without challenge by any project opponent; the FEIS is now both final and binding on Ecology.

45. The EIS expressly and unambiguously found that the CET *will not result in significant adverse effects on water quality, aquatic life and designated uses*, and that any effects it would generate in these areas can be fully mitigated. ( <http://millenniumbulkeiswa.gov/sepa-eishtml>. (Vol III.B. (SEPA Water Quality Technical report). With respect to water quality, the EIS concluded that:

- the project would result in no unavoidable and significant adverse impacts on fish (SEPA FEIS at 4.7-41); that



- 1 • “the construction activities associated with the proposed activity would not be
- 2 expected to cause a measurable effect on water clarity, water quality, or biological
- 3 indicators or affect designated uses.” (SEPA FEIS at 4.5-19); that
- 4 • as to the impacts on water quality from in-and-over water work, Ecology concluded
- 5 that “no long-term changes in the baseline conditions in the study area would be
- 6 expected to occur.” (SEPA FEIS at 4.5-23); and that
- 7 • effects associated with coal dust and contamination from coal runoff “would not be
- 8 measurable” and that any change in water quality resulting from those activities are
- 9 “not anticipated to increase turbidity or water temperature or affect marine organism
- 10 functions.” SEPA FEIS at 4.5-25.

11 The FEIS therefore concluded that:

- 12 • “coal dust from operation of the Proposed Action is not expected to have a
- 13 demonstrable effect on water quality.” (*Id.*).

14 46. With respect to stormwater runoff, the FEIS concluded that “continued discharges

15 at existing levels would not cause a measurable increase in chemical indicators in the Columbia

16 River and would not cause a measurable impact on water quality or biological indicators or

17 affect designated beneficial uses.”

18 47. The conclusions ultimately reached by the SEPA FEIS on water quality issues

19 were that:

20 “Compliance with laws and implementation of the measures and

21 design features described above would reduce impacts on water

22 quality. *There would be no unavoidable and significant adverse*

23 *environmental impacts on water quality.*” (SEPA FEIS at 4.5-34)

24 (emphasis added).

25 “Compliance with laws and implementation of the mitigation and

26 design features would reduce impacts on surface waters and

27 floodplains. *There would be no unavoidable and significant*

28 *adverse environmental impacts on surface waters and*

29 *floodplains.*”(SEPA FEIS at 4.2-21)(emphasis added).

1           48.     These findings and conclusions are binding on Ecology and preclude it from  
2 denying Millennium certification under CWA section 401.

3                           **Ecology's Certification Denial And Order**

4           49.     Nonetheless, less than six months after publishing the Final EIS it invested five  
5 years in preparing—Ecology ignored its EIS water quality findings and instead invoked its SEPA  
6 substantive authority to deny the certification *with prejudice* based on non-water quality impacts  
7 identified in the EIS. Ignoring its SEPA water quality findings, Ecology based its CWA  
8 certification Denial on speculative findings otherwise reached in the EIS on effects resulting  
9 from trains and vessels operating in interstate commerce.

10          50.     These interstate and foreign commerce transportation effects have nothing to do  
11 with water quality and are outside the scope of what can be considered in a 401 certification  
12 process. Moreover, the effects identified by Defendants for the Denial relate to activities from  
13 rail and vessel transport typical for any marine transportation infrastructure project on the lower  
14 Columbia serving global markets. Ecology's reliance on non-water quality SEPA findings, (and  
15 its SEPA-substantive authority under RCW 43.21.C.060 and WAC 173-802-110), to deny a  
16 CWA section 401 water quality certification, is *ultra vires* on its face, and also violates the  
17 Supremacy Clause of the U.S. Constitution. By basing its Denial decision on factors other than  
18 water quality, Ecology has waived its certification authority under CWA section 401.

19          51.     Denial of a section 401 certification is only appropriate if a state finds that an  
20 applicant proposes to engage in an activity that results in a discharge that will violate effluent  
21 limitations and other limitations under CWA sections 301, 302, 306 and 307, or water quality  
22 standards under CWA section 303. Congress did not authorize states to deny a section 401  
23 certification on grounds outside of 33 U.S.C. §1341(a)(1).

24          52.     Moreover, this is the first time in Ecology's history, that it decided to deny a 401  
25 certification *with prejudice* based on SEPA findings it made concerning interstate rail capacity,  
26 train traffic (and its attendant effect on vehicular traffic), train emissions, vibrations and noise,

1 and train safety. All of these putative effects are an inevitable result of every cargo  
2 transportation infrastructure project on the lower Columbia or anywhere else and are a misuse of  
3 Ecology's substantive (or supplemental) SEPA authority under RCW 43.21C.060. For this  
4 reason too, Ecology waived its certification rights under CWA section 401.

5 53. Due to its animus towards the particular commodity that Millennium proposes to  
6 handle on site, and trans-ship to Asia, Ecology invented special rules and a unique and  
7 unprecedented process for the evaluation of Millennium's section 401 certification application.  
8 The U.S. and Washington State Constitutions prohibit this "class of one" approach that  
9 discriminates against the movement of a particular product in interstate and international  
10 commerce. Millennium is constitutionally guaranteed a fair process, which Ecology did not  
11 provide.

#### 12 **Ecology's Misuse of Its Supplemental SEPA Authority**

13 54. Using its "supplemental SEPA authority" under RCW 43.21C.060 to deny the  
14 certification, Ecology based its Denial on, among other things, the significant adverse air quality  
15 effects from train-related diesel emissions and the alleged increased cancer risk associated  
16 therewith.<sup>2</sup> Acknowledging that use of cleaner burning Tier 4 locomotives could mitigate  
17 increases in cancer risks associated with diesel emissions, Ecology concluded that a Denial was  
18 nonetheless necessitated because "use of such locomotives is outside the control of Millennium."  
19  
20

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21 <sup>2</sup> Ecology's EIS cancer risk findings are premised on a number of questionable assumptions,  
22 including the assumption that each train going through Longview would employ four operating  
23 locomotives. This would not be necessary to move trains through Longview. Further, due to idle  
24 controls on modern locomotives, even if four locomotives were attached to a train, one or more would be  
25 shut down when transiting through a relatively flat area such as Longview. Ecology did not give  
26 Millennium the chance to, for instance, propose as a mitigation measure that contracts with shippers  
require that trains accessing Millennium's terminal not employ four operating locomotives when moving  
from the main line tracks through Longview to the CET, or that those trains operate only using Tier 4  
locomotives in Longview. Mitigation measures of that type would have addressed Ecology's diesel train  
emissions concerns.

1           55. Ecology reached similar conclusions about Millennium’s inability to mitigate  
2 other train-and vessel-related impacts and rested its certification Denial on the uncertainty of  
3 when and if potential rail, road and other improvements might someday be implemented by third  
4 parties outside of Millennium’s control. Ecology likewise based its certification Denial on the  
5 increase in vessel traffic generated by the CET, and Millennium’s inability to totally prevent  
6 “vessel-related emergencies, such as fire or vessel allision” let alone refueling-related spills.  
7 Ecology speculated that the train and vessel activity described above could result in unavoidable  
8 indirect impacts on tribal resources (fish and access thereto) and further concluded that  
9 additional train traffic in the Columbia River Gorge would restrict access to tribal fishing sites.

10           56. In making these determinations, Ecology ignored its prior 2014 Marine and Rail  
11 Oil Transportation Study<sup>3</sup> which concluded that

12                   *“there has been a great degree of success with vessel spill and*  
13                   *accident prevention measures in Washington waters. Existing*  
14                   *training and management practices in the state represent high*  
                      standards of care.”

15 That report also concluded that “[t]here have been no spills from deep draft vessels in transit . . .  
16 in the past 20 years.” *Id.* In sum, it found that “Washington’s spill prevention programs at  
17 facilities are some of the most effective in the nation.” *Id.* at 104 (emphasis added).

18           57. Rather than relying on its 2014 Marine and Rail Oil Transportation Study, or  
19 working with Millennium to ensure that available mitigation options are implemented through  
20 third party agreements with the railroads, highway, and other transportation authorities, the Coast  
21 Guard and river pilots, Ecology denied the water quality certification *with prejudice*. Ecology  
22 misapplied and misinterpreted the law, abused its discretion, and based its findings on a lack of  
23 substantial evidence. And, although Millennium proposes to engage in activity *every other*  
24 commercial port engages in on the lower Columbia River, Ecology singled it out based on the

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25           <sup>3</sup> Washington State 2014 Marine and Rail Oil Transportation Study, at 97. See  
26 <https://fortress.wa.gov/ecy/publications/documents/1508010.pdf> (emphasis added).

1 commodity it proposes to trans-load and concluded that construction activities associated with  
2 new docks, dredging, and pile driving could harm fish, as could the movement of coal on  
3 interstate mainline rail. By misapplying and misinterpreting the law and abusing its discretion,  
4 Ecology waived its certification rights under CWA section 401.

5 58. Ecology also failed to ground its exercise of SEPA substantive authority in  
6 specific articulated policies previously adopted by rule or guidance as required by RCW  
7 43.21C.060. Instead, Ecology relied solely on general statements of SEPA statutory purpose and  
8 goals that do not limit in any way Ecology's discretionary use of this extraordinary tool.

9 59. While conceding that all of these potential impacts could be mitigated, Ecology  
10 denied the certification because they might not be entirely eliminated. Upon information and  
11 belief, this is the first time that Ecology has ever denied a 401 certification *with prejudice*  
12 insisting on absolute certainty that 100% of all potential adverse environmental effects would be  
13 eliminated. By requiring absolute certainty that Millennium will mitigate 100% of all potential  
14 effects from its onsite activities, as well as from vessels and trains hauling freight to and from the  
15 CET, the Denial is unlawful, and arbitrary and capricious. For these reasons too, Ecology has  
16 waived its certification authority under CWA section 401.

#### 17 **Millennium Has Been Severely Injured by Ecology's Action**

18 60. If the state's Denial were to stand, Millennium's total financial losses would  
19 exceed \$100 million. This includes the \$15 million spent on completing the SEPA EIS; similar  
20 amounts invested in the MTCA site cleanup (an obligation Millennium undertook in entering  
21 into a long-term lease with NWA for rights to operate on the site) and the 7 years of operating at  
22 a loss while awaiting Ecology's ponderous and unprecedented environmental review  
23 machinations. Ecology's failure to provide Millennium a fair process also harms Millennium's  
24 owners, who invested many millions of dollars in this facility in anticipation of being afforded  
25 the permitting opportunity provided by applicable statutes and regulations.

1 **VI. CLAIMS FOR RELIEF**

2 **CLAIM I**

3 **DEFENDANTS' DENIAL ORDER IS PREEMPTED BY THE CWA**

4 61. Millennium re-alleges and incorporates all prior allegations.

5 62. "It is a familiar and well established principle that the Supremacy Clause, U.S.  
6 Const., Art. VI, cl. 2, invalidates state laws that 'interfere with, or are contrary to,' federal law."  
7 *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712–13 (1985)  
8 (quoting *Gibbons v. Ogden*, 9 Wheat. 1, 211, 6 L.Ed. 23 (1824) (Marshall, \*713 C.J.)).

9 63. A state action is void to the extent it conflicts with federal law when it conflicts  
10 with or undermines congressional objectives. *Id.* "[E]ven state regulation designed to protect  
11 vital state interests must give way to paramount federal legislation." *De Canas v. Bica*, 424 U.S.  
12 351, 357 (1976).

13 64. The CWA is a "comprehensive water quality statute" that Congress designed to  
14 "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."  
15 *PUD No. 1 Jefferson Cnty. v. Washington Dep't of Ecology*, 511 U.S. 700, 704 (1994) (quoting  
16 33 U.S.C. § 1251(a)).

17 65. Congress's intent in enacting the CWA "was to clearly establish an all-  
18 encompassing program of water pollution regulation." *City of Milwaukee v. Illinois*, 451 U.S.  
19 304, 318 (1981).

20 66. Within the CWA's comprehensive statutory scheme, Congress delineated a  
21 specific role for states. Section 401 of the CWA, 33 U.S.C. § 1341 (a), provides that states have  
22 authority to grant or deny a water quality certification based solely on factors enumerated by the  
23 statute. The sole question for a State to consider is whether it has reasonable assurances that the  
24 potential discharge "will comply with the applicable provisions of 1311, 1312, 1313, 1316, and  
25 1317." 33 U.S.C. § 1341.



1           74.     Under the Washington Administrative Procedure Act, RCW 34.05.570(3)(b),  
2     Washington Courts are obligated to grant relief when an agency has acted *ultra vires*, or outside  
3     of its statutory authority or jurisdiction.

4           75.     CWA section 401 requires an applicant seeking a federal permit for an activity  
5     that may result in a discharge into navigable waters to first obtain a water quality certification  
6     from the source state certifying its reasonable assurances that the activity will comply with CWA  
7     sections 301, 302, 303, 306, and 307. The enumerated CWA sections listed in section 401(a)(1)  
8     are exclusive and do not endow states with plenary power to deny water quality certifications on  
9     other grounds. Any requirements or analysis based on “other appropriate requirements of State  
10    law,” must be “related to water quality.” *State Dep’t of Ecology v. Pub. Util. Dist. No. 1 of*  
11   *Jefferson Cty.*, 121 Wash. 2d 179, 192, 849 P.2d 646, 653 (1993). CWA section 401(d) does not  
12    allow limitations which are not related to water quality.

13          76.     Congress has carefully delineated the terms for state certification, prescribing  
14    permissible considerations. Ecology has no authority to rewrite these terms, whether expressly  
15    or implicitly when issuing or denying certification.

16          77.     Ecology expressly and unambiguously relied on SEPA EIS findings which are  
17    unrelated to the specified sections in the CWA section 401(a)(1) to deny Millennium’s water  
18    quality certification application.

19          78.     Ecology’s Denial *with prejudice* hinges completely upon Defendants’  
20    consideration of portions of the SEPA EIS unrelated to water quality. The Denial asserts that the  
21    impacts cannot be reasonably mitigated (Denial at 3), and alleges that each of the nine non-water  
22    quality SEPA criteria examined conflict with either Ecology SEPA policies or substantive SEPA  
23    policies.

24          79.     The section of the Denial that purports to address water quality considerations,  
25    actually reads like any standard Denial *without prejudice*, concluding as it did that Ecology  
26    needed more information to make its determination. Those findings are, on their face,



1 insufficient to support a Denial *with prejudice*. Defendants' conclusion that they need more  
2 information establishes that the Denial *with prejudice* was made without sufficient information.

3 80. For all these reasons, Ecology's Denial is therefore *ultra vires*.

### 4 CLAIM III

#### 5 THE DENIAL ORDER IS A MISAPPLICATION AND 6 MISINTERPRETATION OF THE LAW

7 81. Millennium re-alleges and incorporates all prior allegations.

8 82. Under RCW 43.21C.060 a permit can only be denied if "[t]he proposal would  
9 result in significant adverse impacts identified in a final or supplemental environmental impact  
10 statement prepared under this chapter" and "reasonable mitigation measures are insufficient to  
11 mitigate the identified impact."

12 83. RCW 43.21C.060 provides Ecology with supplemental authority to deny or  
13 condition permits or approvals provided "that such conditions or denials shall be based upon  
14 policies identified by the appropriate governmental authority and incorporated into regulations,  
15 plans, or codes" which have been formally adopted by the agency.

16 84. Ecology misinterpreted and misapplied SEPA by invoking it as a basis for its  
17 Denial. The Denial wrongfully concludes that SEPA authorizes a permit denial in any instance  
18 where a significant adverse impact, or any impact, is not entirely neutralized.

19 85. "The law does not require that all adverse impacts be eliminated; if it did, no  
20 change . . . would ever be possible." *Maranatha Min., Inc. v. Pierce Cnty.*, 59 Wash. App. 795,  
21 803-04, 801 P.2d 985, 991 (1990).

22 86. Ecology's Denial would allow denial of any permit application so long as it has  
23 any environmental effect. Under these criteria Ecology could deny any permit that might cause  
24 any increase in traffic or noise, anywhere.

25 87. In its attempt to employ this authority, Ecology relied on WAC 173-802-110  
26 which provides that Ecology shall use practicable means to . . . "improve and coordinate plans,  
functions, programs, and resources. . ." so that state citizens may enjoy a healthy and safe

1 environment, among other goals. This authority, by its own terms, does not allow for the  
2 exercise of SEPA supplemental authority in an adjudicatory, site-specific setting.

3 88. Given its breadth and vagueness, interpreting WAC 173-802-110 to allow  
4 Ecology to exercise certification denial authority in this manner would turn the regulation into an  
5 unlawful delegation of authority prohibited by the state Constitution.

6 89. The Denial is unlawful under the Washington Administrative Procedure Act  
7 because it is a misapplication and misinterpretation of the law and is arbitrary and capricious.  
8 By misapplying its SEPA substantive authority to deny the certification *with prejudice*, Ecology  
9 waived its right to certification authority under CWA section 401.

#### 10 CLAIM IV

#### 11 DEPARTURE FROM PAST PRACTICE

12 90. Millennium re-alleges and incorporates all prior allegations.

13 91. Ecology applied a certification standard and process that it singularly developed  
14 for Millennium's CET. It demanded a level of information that no other project has been  
15 required to submit, moved the "goal posts" that Millennium was required to reach, and ultimately  
16 based its Denial on factors other than water quality considerations.

17 92. Ecology's customary practice, shared by every other state, has been to deny water  
18 quality certifications *without* prejudice in situations where the agency has not first issued the  
19 applicant a written letter indicating what was required, and what was missing, for the agency to  
20 make a certification decision. Because certification denials function in effect as project *veto*es,  
21 state environmental agencies—including Ecology—typically afford applicants for this necessary  
22 state authorization a reasonable opportunity to provide additional information or make necessary  
23 changes before denying a water quality certification *with prejudice*.

24 93. Upon information and belief, Ecology has *not*, in the past 40 years, issued a  
25 Denial *with prejudice* for a water quality certification application.

94. Ecology has not issued any regulatory guidance, policy, or rule explaining the standards for denying a water quality certification application *with prejudice*.

95. Unexplained agency action inconsistent with well-established practice is arbitrary. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012).

96. The Denial does not explain how this water quality certification differs from every other water quality certification that it has denied without prejudice.

97. Ecology's unexplained departure from prior practice violates the Washington Administrative Procedure Act and the due process guaranteed to Millennium.

### CLAIM V

**THE DENIAL ORDER IS ARBITRARY AND CAPRICIOUS BECAUSE IT IS THE PRODUCT OF AN UNLAWFUL DECISION-MAKING PROCESS**

98. Millennium re-alleges and incorporates all prior allegations.

99. The Denial is the product of an unlawful decision-making process in which partiality precluded fair consideration of the water quality certification application.

100. The CET is a project that has garnered both intense political opposition and significant public support.

101. Ecology—as an administrative state agency—must review a certification request using its established practice, procedure and standards, and thus free from political considerations. It is required by law to provide Millennium the process it is due under RCW34.05.570, and to treat Millennium as it would any other project certification applicant under CWA section 401. Because the “potential for abuse” of SEPA’s substantive authority “is even stronger where the decision must be made in a climate of intense political pressures” its exercise “requires a higher degree of judicial scrutiny than is normally appropriate for administrative action.” *Polygon Corp. v. City of Seattle*, 90 Wash.2d 59, 578 P.2d 1309, 1315 (1978).

102. SEPA may not be used “to block the construction of projects, merely because they are unpopular.” *Parkridge v. City of Seattle*, 89 Wash.2d 454, 573 P.2d 359, 366 (1978).

103. In the past six months Defendants have processed 42 new or amended water quality certifications, and a number of certification denials *without prejudice*.

104. Although she tweeted extensively about Millennium’s Project and its certification request, Ecology’s Director, Maia Bellon, did not tweet about any other certification decisions.

105. Although the Denial does not mention greenhouse gas (“GHG”) emissions (not even once) Director Bellon and Ecology took to twitter to speculate about the new GHG emissions the EIS predicted would be emitted as a result of train and vessel transportation of the coal that Millennium proposes to trans-ship:



106. Although Defendants have not discussed other water quality certification applications on twitter, they have tweeted frequently about the Millennium project:





107. In addition, Director Bellon has “liked” responses to her tweet regarding Millennium’s Denial, even those which profess that they oppose the commodity that Millennium seeks to export:



108. In contrast, Director Bellon did not “like” any tweets opposing or questioning the Denial.

109. The Attorney General of Washington has emphasized that “comments by President Trump and his advisers make clear the intent [of governmental actors] . . .” and that twitter comments from officials often demonstrate bias. Mot. For Temp. Restraining Order at 7, *Washington v. Trump*, Case No. 2:16-cv-00141-JLR, Dkt. No. 3, (W. Dist. Wash. Jan. 30, 2017) (citing <https://twitter.com/realDonaldTrump/status/825721153142521858>; <http://www.cnn.com/2017/01/27/politics/trump-christian-refugees/index.html>).

110. Upon information and belief, in the 40 year history of Ecology’s use of CWA section 401, it has never before denied a water quality certification *with prejudice*, let alone

1 before affording an applicant an opportunity to first address written articulated needs and  
2 concerns from the agency.

3 111. Defendants’ social media postings demonstrate their bias against Millennium’s  
4 CET.

5 112. Defendants’ unprecedented abandonment of institutional and governmental norms  
6 is a violation of the unbiased process guaranteed to Millennium under the Washington  
7 Administrative Procedure Act and a violation of due process and equal protection guarantees.

8 113. Millennium cannot receive a fair and unbiased permit application review from  
9 Defendants.

## 10 CLAIM VI

### 11 THE DENIAL ORDER IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE

12 114. Millennium re-alleges and incorporates all prior allegations.

13 115. Millennium demonstrated the requisite “reasonable assurance” that its CET would  
14 meet water quality standards. 40 C.F.R. §121.2(a).

15 116. Nonetheless, at Ecology’s request, Millennium submitted additional documents  
16 which further demonstrate “reasonable assurance” on September 20, 2017. Ecology imposed the  
17 September 20, 2017 deadline on Millennium, and after receiving the information requested,  
18 issued the nineteen- page Denial *four* business days later.

19 117. The Denial does not—and Ecology simply could not—fully evaluate all of the  
20 technical information Millennium submitted on September 20, 2017.

21 118. A finding of “vehement opposition . . . does not provide a substantial basis for  
22 denying the permit” under Washington law. *Seattle SMSA Ltd. P’ship v. San Juan County*, 88 F.  
23 Supp. 2d 1128, 1131 (W.D. Wash. 1997).

24 119. The Denial also states that Ecology lacked information sufficient for it to  
25 determine whether the CET could meet water quality standards. Section III of the Denial lays out  
26 a number of areas where Ecology indicates a desire and/or a purported need for more

1 information to make a certification decision. But by issuing its Denial *with prejudice*, Ecology  
2 effectively concluded that the information allegedly missing was not necessary for Ecology to  
3 conclude with certainty and finality that Millennium could *never* meet state water quality  
4 standards. The inconsistent reasoning displayed in the Denial evidences its arbitrary nature and  
5 lack of substantial evidence. Moreover, nowhere in the Denial does Ecology actually find that  
6 there is no technology available for the Company to employ to meet water quality standards.  
7 Absent that finding, the Denial *with prejudice* is based on no evidence, let alone the substantial  
8 evidence required.

9 120. Moreover, Ecology lacks special expertise over “vehicle transportation,” (Denial  
10 at 5-7), “adverse vehicle traffic impact,” (*id.* at 8-9), “rail transportation,” (*id.* at 9), “rail safety,”  
11 (*id.*), “vessel transportation,” (*id.* at 9-10), “cultural resources” such as “the “Reynolds Metal  
12 Reduction Plant Historic District,”<sup>4</sup>” (*id.* at 11-12), and “tribal resources.” (*Id.* at 12-13). WAC  
13 197-11-920.

14 121. The record before Ecology at the time of its decision does not support the  
15 conclusions of the Denial. Among other reasons given, the Denial was based on concerns  
16 associated with whether Millennium’s on-site and Ecology-directed cleanup activities under the  
17 Model Toxics Control Act (“MTCA”) would affect surface water discharges and whether the  
18 Company possesses water rights sufficient to carry out industrial dust control. With respect to  
19 both of these issues, Ecology’s Denial is premised on concerns with the outcome of future  
20 decisions that *Ecology itself* has the exclusive right to make. For the on-site MTCA cleanup  
21 associated with contamination from the former aluminum smelter, Ecology is the entity that  
22

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23 <sup>4</sup> Ecology also based its Denial on asserted concerns related to the elimination of the “Historic  
24 District” associated with the former Reynolds Metals Aluminum plant, while acknowledging that those  
25 effects are being and will be fully mitigated through a process conducted by the U.S. Army Corps of  
26 Engineers as supervised by the Advisory Council on Historic Preservation under the National Historic  
Preservation Act. Ecology’s “concerns” related to the status of former aluminum plant structures are a far  
cry from what Congress authorized states to review in a CWA section 401 certification.



1 decides what cleanup measures will be required, and it is Ecology—not some other entity—that  
2 must assure that a MTCA cleanup meets water quality standards and accounts for reasonably  
3 anticipated future land uses. Ecology is nearing the end of an 11-year MTCA decision-making  
4 process for this site, and as with all brownfields projects, has evaluated how the cleanup will  
5 mesh with future uses of the property, including use of part of the site for the CET. Similarly,  
6 Ecology is the entity that makes water rights determinations. Significant elements of Ecology’s  
7 Denial are, in effect, premised on a concern that Ecology cannot trust itself to do its job correctly  
8 in the MTCA and water rights contexts.

9 122. With respect to issues associated with stormwater and wastewater, Ecology  
10 effectively concluded that Millennium failed to provide information sufficient for issuance of an  
11 NPDES permit, rather than what would be necessary for Ecology to conclude with a reasonable  
12 degree of certainty that future discharges would comply with water quality standards. By  
13 insisting on a “full wastewater characterization,” a complete All Known And Reasonable  
14 Technology (“AKART”) analysis complete with suitable engineering reports, as well as a mixing  
15 zone and an anti-degradation analysis, Ecology ignored well established precedent, as well as its  
16 own custom and practice.

17 123. The Denial therefore violates RCW 34.05.570 because the decision is not  
18 supported by substantial evidence.

### 19 CLAIM VIII

#### 20 **THE DENIAL ORDER IS PREEMPTED BY BOTH THE INTERSTATE COMMERCE** 21 **CLAUSE TERMINATION ACT, AND THE PORT AND WATERWAYS SAFETY ACT,** 22 **AND VIOLATES THE INTERSTATE AND FOREIGN COMMERCE CLAUSE OF THE** **U.S. CONSTITUTION**

23 124. Millennium re-alleges and incorporates all prior allegations.

24 125. This claim is reserved for Federal District Court.

25 126. State and local laws that interfere with, or are contrary to, federal law, are  
26 preempted. United States Constitution, Art. VI, cl. 2.





2. Defendants acted unlawfully and violated Millennium's due process and equal protection rights;
  3. Defendants unlawfully applied SEPA to a CWA section 401 certification application;
  4. Defendants violated the Washington Administrative Procedures Act;
  5. Defendants exceeded their authority under the CWA;
  6. Defendants issued an order preempted by the CWA;
  7. Defendants' conclusions in the Denial are not supported by evidence;
  8. Defendants have waived the CWA Certification authority;
  9. Defendants' Denial is a product of biased and prejudiced decision-making;
- B. Enjoining:
1. Defendants from denying Millennium's certification request *with prejudice*;
  2. Defendants from continuing to delay issuance of the certification if the Denial is remanded for continued considerations;
- C. Awarding damages and attorneys fees proper under Washington law and 42 U.S.C. § 1988(b).
- D. Awarding such other and further relief as this Court deems just and proper.

1 DATED: October 24, 2017.

2 STOEL RIVES LLP

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4

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*Millennium Bulk Terminals-Longview, LLC.*

# EXHIBIT A



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

September 26, 2017

Millennium Bulk Terminals-Longview, LLC  
ATTN: Ms. Kristin Gaines  
4029 Industrial Way  
Longview, WA 98632

RE: Section 401 Water Quality Certification Denial (Order No. 15417) for Corps Public Notice No. **2010-1225** Millennium Bulk Terminals-Longview, LLC Coal Export Terminal – Columbia River at River Mile 63, near Longview, Cowlitz County, Washington

Dear Ms. Gaines:

The Washington State Department of Ecology (Ecology) has reached a decision on the Millennium Bulk Terminals-Longview request for a Section 401 Water Quality Certification for the proposed coal export terminal near Longview. After careful evaluation of the application and the final State Environmental Policy Act environmental impact statement, Ecology is denying the Section 401 Water Quality Certification with prejudice.

The attached Order describes the specific considerations and determinations made by Ecology in support of this decision to deny the Certification with prejudice. Your right to appeal this decision is described in the enclosed denial Order.

Sincerely,

A handwritten signature in blue ink, reading "Maia D. Bellon", with a long horizontal flourish extending to the right.

Maia D. Bellon  
Director

Enclosure

By certified mail [91 7199 9991 7034 8935 6995]

cc: Muffy Walker, U.S. Army Corps of Engineers  
Danette Guy, U.S. Army Corps of Engineers  
Glenn Grette, Grette Associates, LLC



**IN THE MATTER OF DENYING  
SECTION 401 WATER QUALITY  
CERTIFICATION TO**  
Millennium Bulk Terminals-Longview, LLC  
in accordance with 33 U.S.C. §1341  
(FWPCA § 401), RCW 90.48.260, RCW  
43.21C.060, WAC 197-11-660, WAC 173-  
802-110, and Chapter 173-201A WAC

) **ORDER # 15417**  
) **Corps Reference #NWS-2010-1225**  
) Millennium Bulk Terminals-Longview, LLC  
) Coal Export Terminal – Columbia River at River  
) Mile 63, near Longview, Cowlitz County,  
) Washington  
)

TO: Millennium Bulk Terminals-Longview, LLC  
Attention: Ms. Kristin Gaines  
4029 Industrial Way  
Longview, Washington 98632

On February 23, 2012, Millennium Bulk Terminals-Longview, LLC (Millennium) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification to construct a coal export terminal in Longview, Washington. Then on January 28, 2013, Millennium sent a letter to the U.S. Army Corps of Engineers (Corps) and Ecology in which Millennium withdrew the request for the Section 401 Certification. Millennium stated that it would submit a new request when the Environmental Impact Statement (EIS) process concluded. In addition, on February 6, 2013, Millennium submitted an Ecology Water Quality Certification Processing Request form stating that it wished to withdraw its request and would resubmit near the end of the EIS process.

On July 18, 2016, Millennium submitted a new JARPA and request for Section 401 Water Quality Certification. A notice regarding this request was distributed as part of a Corps joint public notice on September 30, 2016. On June 22, 2017, Ecology received a withdrawal/reapply form from Millennium, which triggered another public notice that was issued on June 27, 2017.

Millennium proposes to construct and operate a coal export terminal (Project) in and adjacent to the Columbia River (at approximately river mile 63) that would transfer up to a nominal 44 million metric tons per year (MMTPY) of coal from trains to ocean-going vessels. The completed coal export terminal would cover approximately 190 acres of the approximately 540-acre property. The Project would consist of two docks, ship loading systems, stockpiles and equipment, rail car unloading facilities, an operating rail track, rail storage tracks to park up to eight trains, associated facilities, conveyors, and necessary dredging. The Project would be constructed in two stages over several years.

- Stage 1 of the Project would consist of facilities to unload coal from trains, stockpile the coal on site, and load coal into ocean-going vessels at one of the two new docks. During Stage 1, Millennium would construct two docks (Dock 2 and 3), one ship loader and related conveyors on Dock 2, berthing facilities on Dock 3, a stockpile area including two stockpile pads, railcar unloading facilities, one operating rail track, up to eight rail storage tracks for train parking, Project site



ground improvements, and associated facilities and infrastructure. Once Stage 1 is completed, the Project would be capable of a throughput capacity of a nominal 25 MMTPY.

- During Stage 2, MBTL would construct an additional ship loader on Dock 3, two additional stockpile pads, conveyors, and equipment necessary to increase throughput by approximately 19 MMTPY, to a total nominal throughput of 44 MMTPY.

The main elements of Stage 1 development would include:

- Rail bed.
- Rail loop with arrival and departure tracks to include one operating track (turn around track) and eight rail storage tracks.
- One tandem rotary unloader (capable of unloading two rail cars) for operations, and one tandem rapid discharge unloader to be used during startup and maintenance.
- Two coal stockpile pads, Pads A and B.
- Two rail-mounted luffing/slewing stackers and associated facilities for Pads A and B.
- Two rail-mounted bucket-wheel reclaimers and associated facilities for Pads A and B.
- Two shipping docks (Dock 2 and Dock 3), with one ship loader and associated facilities on Dock 2.
- Conveyors, transfer stations, and surge bin from the stockpile pads to the ship loading facilities.
- In-bound and out-bound coal sampling stations.
- Support structures, electrical transformers, switchgear and equipment buildings, and process control systems.
- Upland facilities, including roadways, service buildings, water management facilities, utility infrastructure, and other ancillary facilities.

The main elements of Stage 2 development would include:

- Associated conveyors and transfer stations to the stockpile Pads C and D from the rail receiving station.
- Two additional coal stockpile pads, Pads C and D.
- Two additional rail-mounted luffing/slewing stackers and associated facilities.
- Two additional rail-mounted bucket-wheel reclaimers and associated facilities.
- One additional ship loader and associated facilities on Dock 3.
- Conveyors, transfer stations, and surge bins from stockpile Pads C and D to the ship loading facilities.

The Project proposes impacting over 32 acres of wetlands (24 acres of which will be new impacts) and almost 6 acres of ditches. To offset these impacts Millennium has proposed to

construct a wetland mitigation site that encompasses approximately 100 acres. The Project will also have 4.83 acres of new overwater coverage, and includes constructing an off-channel slough mitigation site to address those impacts.

## **I. AUTHORITIES**

In exercising its authority under 33 U.S.C. § 1341, RCW 43.21C.060, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pre-treatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306, and 307).
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws.
3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.
4. Conformance with applicable State Environmental Policy Act (SEPA) policies under RCW 43.21C.060 and WAC 173-802-110.

Pursuant to the foregoing authorities and in accordance with 33 U.S.C. § 1341, RCW 90.48.260, RCW 43.21C.060, Chapter 173-200 WAC, Chapter 173-201A WAC, WAC 197-11-660, WAC 173-802-110, and Chapter 173-201A WAC, as more fully explained below, Ecology is denying the Millennium Bulk Terminals-Longview request for Section 401 Water Quality Certification with prejudice.

## **II. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The Final Environmental Impact Statement (FEIS) issued by Cowlitz County and Ecology on April 28, 2017, identified nine areas of unavoidable and significant adverse impacts that would result from the construction and operations of the Project. As analyzed in the FEIS, the detrimental environmental consequences related to these impacts cannot be reasonably mitigated. Further, the adverse impacts to the built and natural environments conflict with Ecology's SEPA policies found in WAC 173-802-110. These policies state:

(1)(a) The overriding policy of the department of ecology is to avoid or mitigate adverse environmental impacts which may result from the department's decisions.

(b) The department of ecology 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:



- (i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
  - (ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
  - (iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
  - (iv) Preserve important historic, cultural, and natural aspects of our national heritage;
  - (v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
  - (vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
  - (vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
- (c) The department 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.
- (d) The department shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

**A. Significant Unavoidable Adverse Impacts**

1. **Air Quality.** The FEIS found a significant increase in cancer risk for areas along rail lines and around the Project site in Cowlitz County where diesel emissions primarily from trains would increase. The study found that residents in some areas in Cowlitz County, including those living in portions of the Highlands neighborhood, would experience an increase in cancer risk rate up to 30 cancers per million. These levels of increased risk exceed the approvability criteria in WAC 173-460-090 for new sources that emit toxic air pollutants. Although WAC 173-460 only applies to stationary sources, the health risks from mobile sources in this case, primarily locomotives, would be considered significant using the same approvability criteria. Thus, the FEIS concluded the emission of diesel particulate primarily from train locomotives would be a significant unavoidable adverse impact. As the FEIS explained, this impact could be mitigated, but not eliminated, by use of cleaner burning Tier 4 locomotives. However, use of such locomotives is outside the control of Millennium and may not

occur for decades because use of older locomotives is currently allowed under federal law. Other mitigation measures identified in the FEIS related to air quality, such as use of best management practices and compliance with permits, would not reduce diesel emissions from Project related locomotives.

The increased cancer risk associated with the Project is a significant adverse unmitigated impact that is inconsistent with the following substantive SEPA policies in WAC 173-82-110:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

**2. Vehicle Transportation.** The FEIS found that there would be significant unavoidable adverse impacts to vehicle traffic from the proposed action when the Project reaches full operation in 2028 due to vehicle delays caused by increased train traffic that would block rail crossings in Cowlitz County. With current track infrastructure on the Reynolds Lead and BNSF Railway (BNSF) spur, Project-related trains in 2028 would increase the total gate downtime by over 130 minutes during an average day at the six crossings listed below. Project-related trains would cause these crossings to operate at Level of Service E or F<sup>1</sup> if one Project-related train traveled during peak traffic hours through the following crossings:

- Project area access opposite 38th Avenue
- Weyerhaeuser access opposite Washington Way
- Industrial Way
- Oregon Way
- California Way
- 3rd Avenue

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<sup>1</sup> "Level of Service" is a report card rating based on the delay experienced by vehicles at an intersection or railroad crossing. Level of Service A, B, and C indicate conditions where traffic moves without substantial delays. Level of Service D and E represent progressively worse operating conditions. Level of Service F represents conditions where average vehicle delay has become excessive and demand has exceeded capacity.



Millennium and BNSF may make track improvements to the Reynolds Lead and BNSF spur that would allow trains to travel faster through these intersections and thereby reduce gate downtimes. However, even with these planned track improvements to the Reynolds Lead and BNSF Spur, the Project at full build out in 2028 would still adversely impact and add delays at four crossings, and cause the following crossings to operate at Level of Service E or F if two proposed Project-related trains traveled through them during peak traffic hours:

- Project area access opposite 38th Ave
- Weyerhaeuser access opposite Washington Way
- 3rd Avenue
- Dike Road

On the BNSF main line in Cowlitz County, the increased Project-related trains at full build out in 2028 could adversely impact vehicle transportation at two crossings during peak traffic hours. The following crossings would operate Level of Service E if two Project-related trains travel during the peak hours:

- Mill Street
- South River Road

Delay of emergency vehicles at rail crossing would also increase because of additional Project-related trains.

As described in the FEIS, Millennium has agreed or may be required to implement several mitigation measures to address these impacts. These measures include funding crossing gates at the intersection of Industrial Way, holding safety review meetings, and notifying agencies about increases in operations on the Reynolds Lead. However, these measures will not reduce or eliminate the vehicle delays identified in the FEIS. Vehicle delays could be reduced by further improvements to rail and road infrastructure, however, it is currently unknown when or if such improvements would occur. Therefore, when the Millennium Project is at full operation in 2028, unavoidable and significant adverse impacts would occur on vehicle transportation at certain crossings in Cowlitz County including delays of emergency vehicles. This impact is inconsistent with the following substantive SEPA policies:

- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.
- Maintain, wherever possible, an environment which supports diversity and variety of individual choice.

- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.

**3. Noise and Vibration.** The FEIS found that there would be significant unavoidable adverse impacts to residences near four public at-grade crossings along the Reynolds Lead and BNSF spur from train-related noise. Train-related noise levels would increase from train operations and locomotive horn sounding intended for public safety.

Residences near the at-grade crossings at 3rd Avenue, California Way, Oregon Way, and Industrial Way would experience increased daily noise levels that would exceed applicable noise criteria per Federal Transportation Administration/Federal Rail Administration guidance.

Approximately 229 residences would be exposed to moderate noise impacts, and approximately 60 residences would be exposed to severe noise impacts. Although these impacts would be reduced near the Industrial Way and Oregon Way crossings if a grade-separated intersection is constructed there as currently proposed, the proposal has not yet received permits and its completion date is unknown.

As described in the FEIS, Millennium has agreed or may be required to implement several mitigation measures to address these train-related noise impacts. These measures include funding two "quiet crossings" at Oregon Way and Industrial Way grade crossings by installing crossing gates, barricades, and additional electronics. This proposed "quiet crossing" is not the same as a Quiet Zone, which requires the approval of the Federal Railroad Administration. The reduction of noise pollution from the proposed "quiet crossing" is unknown because Millennium trains may still be required to sound their horns at the intersections. Other measures include requiring Millennium to work with the City of Longview, Cowlitz County, Longview Switching Company, the affected community, and other applicable parties to apply for and implement a Quiet Zone that would include the 3<sup>rd</sup> Avenue and California Avenue crossings. However, as a Quiet Zone requires the approval of the Federal Railroad Administration, it is beyond the control of Millennium and it is unknown if it will ever be implemented. Consequently, Quiet Zones are not considered an applicable mitigation measure.

The FEIS states that, if the Quiet Zone is not implemented, Millennium would fund a sound-reduction study to identify ways to mitigate the moderate and severe impacts from train noise. However, it is unknown who would fund, implement, and maintain recommendations to mitigate moderate and severe noise impacts identified in the sound noise reduction study. The study itself does not mitigate the impacts. The Project's significant adverse impacts from noise are inconsistent with the following substantive SEPA policies:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.



- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Maintain, wherever possible, an environment which supports diversity and variety of individual choice.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

**4. Social and Community Resources.** The FEIS found that social and community resources would be significantly and adversely impacted by increased noise, vehicle delays, and air pollution. Impacts from the construction and operation of the Project would impact minority and low-income populations by causing disproportionately high and adverse effects. Impacts from noise, vehicle delay, and diesel particulate matter inhalation risk would affect the Highlands neighborhood, a minority and low-income neighborhood adjacent to the Reynolds Lead in Longview, Washington.

a. **Adverse Health Impact from Increased Cancer Risk Rate:** Project-related trains and other operations would increase diesel particulate pollution along the Reynolds Lead, BNSF Spur, and BNSF mainline in Cowlitz County at levels that would result in increased cancer risk rates. The modeled cancer risk rate in the FEIS found a majority of the Highlands neighborhood would experience an increased cancer risk rate, varying from 3% to 10%. Use of Tier 4 locomotives, which produce less diesel pollution, by BNSF would reduce but not eliminate diesel particulate matter emissions and the associated potential cancer risk in the Highlands neighborhood. However, requiring Tier 4 locomotives is outside the control of Millennium and may not occur for decades. Therefore, the Project's disproportionately high adverse effects related to increased cancer risk rates from diesel particulate matter inhalation on minority and low-income populations would be unavoidable.

b. **Adverse Noise Impact:** The Project would add 16 trains per day on the Reynolds Lead and increase average daily noise levels, which would exceed applicable criteria for noise impacts and cause moderate to severe impact to 289 residences in the Highlands neighborhood. Approval, funding, and construction of Quiet Zones for four highway and rail intersections would reduce noise levels. However, there is no sponsor(s) identified to apply for, fund, and maintain Quiet Zones that would reduce noise levels at the four rail crossings. Quiet Zones are outside the control of Millennium and require approval from the Federal Railroad Administration. Therefore, Project-related trains would cause significant adverse unavoidable impacts to portions of the Highlands neighborhood and cause a disproportionately high adverse effect on minority and low-income populations.

c. **Adverse Vehicle Traffic Impact:** Project-related trains would increase vehicle delays at highway and rail intersections within the Highlands

neighborhood. With the current track infrastructure on the Reynolds Lead, a Millennium-related train traveling during the peak traffic hours would result in a vehicle-delay impact at four public at-grade crossings in or near the Highlands neighborhood by 2028. This would constitute a disproportionately high adverse effect on minority and low-income populations. If planned improvements to the Reynolds Lead are made, the adverse impacts related to vehicle delay could be reduced but not eliminated. However, rail improvements have not received permits and their completion is unknown. Therefore, Millennium's disproportionately high adverse effects to vehicle traffic on minority and low-income populations would be unavoidable.

**5. Rail Transportation.** The FEIS found that the Project would cause significant adverse effects on rail transportation that cannot be mitigated. At full build out of the Project, 16 trains a day (8 loaded and 8 empty) would be added to existing rail traffic. Three segments on the BNSF main line routes in Washington (Idaho/Washington State Line–Spokane, Spokane–Pasco, and Pasco–Vancouver) are projected to exceed capacity with the current projected baseline rail traffic in 2028. Adding the 16 additional Millennium-related trains would contribute to these three segments exceeding capacity by 2028, based on the analysis in the FEIS and assuming existing infrastructure. As described in the FEIS, Millennium would mitigate some of the impacts by notifying BNSF and Union Pacific (UP) about upcoming increases in operations at the Millennium site. This proposed mitigation measure is informational and does not commit BNSF or UP to take action to increase capacity.

BNSF and UP could make necessary investments or operating changes to accommodate the rail traffic growth, but it is unknown when these actions would be taken or permitted. Improving rail infrastructure is outside the control of Millennium and cannot be guaranteed. Under current conditions Millennium-related trains would contribute to these capacity exceedances at three rail segments on the main line and could result in an unavoidable and significant adverse impact on rail transportation, including delays and congestion.

This impact is inconsistent with the following substantive SEPA policies:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.



**6. Rail Safety.** The FEIS found that Millennium-related trains would increase the train accident rate by 22 percent along the rail routes in Cowlitz County and Washington. As described in the FEIS, Millennium would notify BNSF and UP about upcoming increases in operations at the Millennium site. However, this notification measure does not commit BNSF or UP to take action or make changes that would reduce accident rates.

To reduce some of the impacts to rail safety, the Longview Switching Yard, BNSF, and UP could improve rail safety through investments or operational changes, but it is unknown when or whether those actions would be taken or permitted. Improving rail infrastructure to increase rail safety is outside the control of Millennium and cannot be guaranteed. Therefore, the 22 percent increase to the rail accident rate over baseline conditions attributable to Millennium would result in unavoidable and significant adverse impacts on rail safety.

This impact is inconsistent with the following substantive SEPA policies:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

**7. Vessel Transportation.** The FEIS found that the Project would have significant adverse effects on vessel transportation that cannot be mitigated. Millennium would add 1,680 ship transits to the current 4,440 ship transits on the Columbia River per year, for a total of 6,120 at full build out. Thus, the Project would be responsible for over one quarter of the traffic in the Columbia River.

Based on marine accident transportation modeling, the FEIS found the increased vessel traffic would increase the frequency of incidents such as collisions, groundings, and fires by approximately 2.8 incidents per year. While the chance that an incident would result in serious damage or spill is low, if a spill were to happen, the impacts to the environment and people would be significant and unavoidable.

An increase in vessels calling at the proposed new docks increases the risk of vessel-related emergencies, such as fire or vessel collision. An increase in vessels calling at the new docks also increases risk of spills from refueling ships at berth, although Millennium has stated there would be no refueling at the new docks. The FEIS proposes a mitigation measure that if refueling at the docks were to start, the company would notify Cowlitz County and Ecology. Another mitigation measure in the FEIS involves Millennium's attending at least one Lower Columbia Harbor Safety Committee meeting per year.

Although these proposed mitigation measures would support communication and awareness, they would not reduce environmental harm or the impact of an incident.

If a Millennium-related vessel incident such as a collision or allision were to occur, impacts could be adverse and significant, depending on the nature and location of the incident, the weather conditions at the time, and whether any oil were discharged. Although the likelihood of a serious Millennium-related vessel incident is low, the consequences would be severe and there are no mitigation measures that can completely eliminate the possibility of an incident or the resulting impacts. *See* WAC 197-11-794(2) (an impact may be significant if its chance of occurrence is not great but the resulting environmental impact would be severe if it occurred).

This adverse impact is inconsistent with the following Ecology SEPA policies:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

**8. Cultural Resources.** The FEIS found that construction of the coal export terminal would demolish the Reynolds Metals Reduction Plant Historic District, which would be an unavoidable and significant adverse environmental impact. Construction of the Project would demolish 30 of the 39 identified resources that contribute to the historical significance of the Historic District. The anticipated adverse impacts on these resources would diminish the integrity of design, setting, materials, workmanship, feeling, and association that make the Historic District eligible for listing in the National Register of Historic Places.

A Memorandum of Agreement is currently being negotiated among the Corps, Cowlitz County, the Washington Department of Archaeologic and Historic Preservation, the City of Longview, the Bonneville Power Administration, the National Park Service, potentially affected Native American tribes, and Millennium in a separate federal process. The Memorandum may resolve this impact in compliance with Section 106 of the National Historic Preservation Act of 1966. However, there is no indication when or if this Memorandum will be signed by all parties. Without the Memorandum, the impacts to the Reynolds Metal Reduction Plant Historic District are considered adverse, significant, and unavoidable.

Demolition of historic properties without mitigation is inconsistent with the following Ecology SEPA policies:



- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Preserve important historic, cultural, and natural aspects of our national heritage.

**9. Tribal Resources.** The FEIS found that construction and operation of the Millennium coal export terminal could result in unavoidable indirect impacts on tribal resources. Tribal resources refer to tribal fishing and gathering practices and treaty rights. These resources may include plants or fish used for commercial, subsistence, and ceremonial purposes.

Construction activities such as building new docks, river bottom dredging, and pile driving would cause physical and behavioral responses in fish that could result in injury, and would affect aquatic habitat. Fish stranding associated with wakes from the additional 1,680 vessel trips per year would also cause injury. Eulachon would potentially be impacted by the initial and maintenance sediment dredging.

Fugitive coal dust particles generated by the Millennium operations and additional trains would enter the aquatic environment through movement of coal into and around the Project area and during rail transport. Fugitive coal dust and potential spills would increase suspended solids in the Columbia River.

These impacts could reduce the number of fish surviving to adulthood and returning to Zone 6 of the Columbia River, and could affect the number of fish available for harvest by Native American Tribes.

The increase in 16 additional Millennium-related trains per day travelling through areas adjacent to and within the usual and accustomed fishing areas of Native American Tribes would restrict access to 20 tribal fishing sites set aside by the U.S. Congress above Bonneville Dam in the Columbia River. There are additional access sites that are not mapped that would also be impacted.

To reduce impacts to tribal resources from construction, Millennium could be required to minimize underwater noise during pile driving, conduct advance underwater surveys for eulachon prior to in-water work, and conduct fish monitoring prior and during dredging.

These mitigation steps are inadequate because although noise impacts from construction would be reduced, they would not be eliminated, and fish behavior could be altered and affect the number of fish available for harvest by Native American Tribes.

Improving rail infrastructure for access to tribal fishing sites along the Columbia River above Bonneville Dam is outside the control of Millennium. The additional Project-related trains travelling through areas adjacent to and within the usual and accustomed fishing areas of Native American Tribes could restrict access to tribal fishing areas in the

Columbia River. Because other factors besides rail operations affect fishing opportunities, such as number of fishers, fish distribution, and the timing and duration of fish migration periods, the extent to which Project-related rail operations would affect tribal fishing is difficult to quantify. However, SEPA policies state that “presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.” Consistent with this policy, Ecology concludes that Millennium at full operations would result in unavoidable significant adverse impacts to tribal resources.

Impacts to tribal resources are inconsistent with the following Ecology SEPA policies:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Preserve important historic, cultural, and natural aspects of our national heritage.
- The department shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

### III. SECTION 401 WATER QUALITY CERTIFICATION

Pursuant to Section 401 of the Clean Water Act, in order for Ecology to issue a water quality certification it must have reasonable assurance that the Project as proposed will meet applicable water quality standards and other appropriate requirements of state law. Consequently, an applicant must submit adequate information regarding a project for agency review before Ecology can determine compliance with the state water quality standards and other applicable regulations. Millennium’s current application and supplemental documents fails to demonstrate reasonable assurance in the following areas:

#### A. Wetlands Impacts and Mitigation

The Project would impact (fill) 32.31 acres of wetlands, 8.1 acres of which occurred prior to Millennium’s tenancy of the site, and 0.11 of which would be impacted at the mitigation site. The impacts include 28.32 acres of Category III wetlands and 3.99 acres of Category IV wetlands. For the reasons stated below, Millennium failed to demonstrate that the impacts and mitigation associated with the wetlands within the Project area will comply with Washington State water quality standards. Thus, Millennium failed to demonstrate reasonable assurance that the Project will meet water quality standards.

1. **Mitigation Plan.** The draft wetland mitigation plan is inadequate and does not demonstrate that the proposed mitigation will offset the Project’s wetland impacts. Millennium submitted a conceptual mitigation plan to Ecology on June 8, 2017 (*Millennium Coal Export Terminal, Longview, Washington Coal Export Terminal including Docks 2 and 3 and Associated Trestle Conceptual Mitigation Plan—Wetlands and Aquatic Habitat*, dated May 25, 2017). In response to Ecology’s questions,



Millennium submitted additional information on September 20, 2017. However, the submitted information continues to be deficient because it lacks an adequate credit/debit analysis, a boundary verification, and adequate hydrologic information regarding the mitigation site.

**2. Wetland Boundaries at the Impact Site.** Millennium has not demonstrated that the boundaries of the wetlands to be impacted have been verified by the Corps. There is no jurisdictional determination (JD) from the Corps stating whether the wetlands are waters of the United States or whether the Corps agrees with the boundaries as shown in the delineation report (Millennium Coal Export Terminal, Longview, Washington, Coal Export Terminal Wetland and Stormwater Ditch Delineation Report – Parcel 619530400, dated September 1, 2014). Millennium's application therefore does not adequately quantify the extent of the wetland impacts and does not adequately demonstrate that the proposed mitigation will offset those impacts.

**3. Credit-Debit Analysis.** This analysis is needed to determine whether proposed mitigation would adequately offset the Project's wetland impacts. It is especially important for a project of this scale, and where the impacted wetlands were rated using what is now an outdated version of the wetland rating system. The credit-debit analysis Millennium submitted to Ecology on September 20, 2017, did not include scoring forms for any of the wetlands to be impacted. Without these forms, Ecology cannot evaluate the credit-debit analysis. Millennium has not provided a complete analysis to Ecology, thereby failing to demonstrate that the proposed mitigation would be adequate.

**4. Hydrologic and Soil Investigations.** The conceptual mitigation plan states that: "The nature of this surface water will be further investigated as part of planned hydrologic investigations to support final Site design." The plan further states that "hydrologic data are being collected." The plan also states that: "Additional, site-specific soil investigations are planned at the Mitigation Site to inform final mitigation design." Millennium has not provided the results of these hydrologic and soil analyses to Ecology. In its September 20, 2017, responses to Ecology's questions about the proposed mitigation site, Millennium stated that it is still in the process of collecting hydrologic and soil data and that it will submit a technical report once compilation of the data has been completed. Because Millennium has not submitted detailed information supported by data about the hydrologic and soil conditions at the proposed mitigation site, Millennium has not demonstrated that the site is suitable and can provide adequate mitigation.

## **B. Stormwater and Wastewater**

Sufficiently detailed information and analyses necessary to understand, evaluate, and condition wastewater and stormwater discharges are needed to assure compliance with Washington State water quality. Without complete information such as that noted below, Ecology does not have reasonable assurance that the Project will meet water quality standards.

**1. Wastewater Characterization.** Wastewater characterization information is necessary for Ecology to evaluate the impact of discharges from the Project on the receiving water (surface water, ground water, and sediments) and to determine the need for effluent limits, monitoring requirements, and other special conditions to ensure that the Project will meet state water quality standards. This information is typically required in an application for a National Pollutant Discharge Elimination System (NPDES) permit (WAC 173-220-040 and 40 C.F.R. § 122.21).

In response to Ecology's requests, Millennium submitted additional information on September 20, 2017. However, the submittals still do not provide detailed information to adequately characterize process wastewater and stormwater that will be generated at the site, including:

- Sources of wastewater (points of generation).
- Estimated wastewater volumes.
- Estimated pollutant concentrations.

**2. All Known, Available and Reasonable Methods of Prevention, Control and Treatment (AKART) and Engineering Reports.** AKART is required by three state statutes dealing with water pollution and water resources (Chapter 90.48 RCW, Chapter 90.52 RCW, and Chapter 90.54 RCW) and the state NPDES regulations that implement these laws (WAC 173-220). These laws and regulations state that in order to ensure the purity of all waters of the state and regardless of the quality of the waters of the state, discharges must be treated with all known, available, and reasonable methods of prevention, control, and treatment.

Chapter 173-240 WAC requires submittal of engineering reports and plans for new and modified industrial wastewater conveyance, discharge, and treatment facilities. Industrial wastewater includes contaminated stormwater. Ecology uses the information in the engineering report to determine whether AKART is being met and to ensure that effluent from the Project will meet applicable effluent limitations to protect aquatic life.

Millennium's submittals, including the submittal of September 20, 2017, did not provide sufficient information to determine whether AKART will be met for both process wastewater and stormwater generated from the Project. The following is a list of information deficiencies:

- The current AKART analysis does not address the wastewater generated during construction and operation of the Project (i.e., the current AKART analysis addresses only existing Millennium operations).
- Specific best management practices (BMPs) for stormwater management on site, at and near rail lines, and for rail car unloading were not provided.
- Engineering reports were not submitted for the following:



- Stormwater collection and treatment facilities (including dock and trestle).
- The new wastewater treatment system.
- Any proposed modifications to the existing wastewater treatment system.
- Changes to hydraulic loading through the existing wastewater treatment system and through the conveyance and outfall structures.

**3. Mixing Zone.** Ecology may authorize a mixing zone to meet water quality criteria once it has been determined that AKART has been met (WAC 173-201A-400). Water quality criteria must be met at the edge of a mixing zone boundary. Ecology uses the dilution factors determined for each mixing zone in analyzing the potential for violation of water quality standards and to derive effluent limitations as necessary.

Millennium's submittals did not provide updated mixing zone information, which Ecology would need in order to determine potential to violate water quality standards. Missing information includes a new mixing zone analysis to evaluate changes in dilution factors due to changes in the final effluent at Outfall 002A and updated receiving water information.

**4. Construction.** Contaminated stormwater and ground water will be generated during construction of the Project. Ecology needs sufficient information to evaluate the impact of construction activities and the discharges from these activities on waters of the state. This is information that is necessary for reasonable assurance and to demonstrate AKART as discussed above.

Millennium's submittals provided very little information concerning the unique construction of the Project. Missing information includes the following:

- How compaction of soils will potentially impact groundwater and surface water.
- Specific construction BMPs.
- Construction stormwater and groundwater characterization information, including estimated volumes and pollutant concentrations.
- Whether construction wastewater will be adequately treated.

**5. Antidegradation.** The Clean Water Act requires that state water quality standards protect existing uses by establishing the maximum levels of pollutants allowed in state waters. The antidegradation process helps prevent unnecessary lowering of water quality. Washington State's antidegradation policy follows the federal regulation guidance and has three tiers of protection. Tier II (WAC 173-201A-320) is used to ensure that waters of a higher quality than water quality criteria are not degraded unless such lowering of water quality is necessary and in the overriding public interest. A Tier

II analysis must be conducted for new or expanded actions when the resulting action has the potential to cause a measurable change in the physical, chemical, or biological quality of a water body.

Millennium's submittals did not include a detailed Tier II analysis for process wastewater and stormwater to determine whether the Project has the potential to cause measurable degradation at the edge of the chronic mixing zone.

Ecology notified Millennium during various meetings, conference calls, and site visits during 2017 (June 8, June 19, June 28, August 16, August 29, and September 8, 2017) that detailed information regarding the stormwater and process wastewater would need to be submitted to Ecology in order to provide reasonable assurance that the discharges from the Project would meet state water quality standards.

### **C. Water Rights**

The Millennium proposal includes operational descriptions for ongoing reuse of stormwater for industrial dust control. If stormwater is collected and reused for a beneficial use, a water right permit would be required in accordance with Chapter 90.03 RCW.

The Millennium property formerly supported the Reynolds aluminum smelter. During the operations as an aluminum smelter, Reynolds had three water right claims and six water right certificates with a combined total annual quantity (Qa) of 31,367 acre-feet per year at a withdrawal rate of 23,150 gallons per minute (Qi). The Reynolds smelter closed in 2000.

These claims and certificates are now owned by Northwest Alloys, who purchased the property from Reynolds in the early 2000s. No information has been provided to Ecology that documents continued beneficial use of water since about the early 2000s.

In December 2016, Ecology met with Millennium and requested records and other relevant information to document what the current and recent water uses have been on the Millennium property. To date, Millennium has not provided this information. If these water rights have been partially or fully relinquished, Millennium would need to apply for and obtain the necessary water rights to legally put water to beneficial use at the Project site for its proposed operations.

As of September 26, 2017, no information has been provided by Millennium to Ecology in order to quantify the extent and validity (or continued beneficial use) of the existing water rights that are appurtenant to the property, and no water right application(s) have been received by Ecology requesting any new use of water or change in beneficial use(s) of water.

Without a water right, Ecology does not have reasonable assurance that Millennium will be able to legally carry out its proposal.



#### **D. Toxics Cleanup**

The proposed location for the Project is the former Reynolds Metals aluminum smelter site. This is a Model Toxics Control Act cleanup site. The principal contaminants are fluoride, polycyclic aromatic hydrocarbons (PAHs), cyanide, and total petroleum hydrocarbons (TPHs). Millennium and Northwest Alloys (a subsidiary of Alcoa) are potentially liable persons (PLPs) for the site. Alcoa owns the property. Millennium leases the property from Alcoa. The PLPs have been working to define the extent of the contamination at the site and evaluate the potential cleanup alternatives. Public notice of a draft cleanup action plan outlining the proposed cleanup was issued in March 2016. Ecology has been working with the PLPs to provide additional sampling along the Columbia River to address comments received on the draft cleanup action plan. To date, the cleanup action plan and consent decree have not been finalized.

Portions of the Project's infrastructure are located on contaminated soil and a historic landfill at the site. The majority of the site contains contaminated ground water. Proposed construction and operation of the Project would likely alter the migration of contaminated ground water at the site. The ballast that will be used during construction could force ground water to the surface with potential for discharge to the Columbia River.

Millennium's submittals do not provide sufficient information to evaluate the impact of the potential discharge of contaminated stormwater and ground water during the construction and operation of the Project. As a result, Millennium failed to demonstrate reasonable assurance that the Project will meet water quality standards.

#### **YOUR RIGHT TO APPEAL**

You have a right to appeal this Denial Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Denial Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Denial Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Denial Order on Ecology in paper form—by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

**ADDRESS AND LOCATION INFORMATION**

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW, Suite 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903



Maia D Bellon, Director  
Department of Ecology

  
Date

# EXHIBIT B



# WASHINGTON STATE

## Joint Aquatic Resources Permit Application (JARPA) Form<sup>1,2</sup> [\[help\]](#)

USE BLACK OR BLUE INK TO ENTER ANSWERS IN THE WHITE SPACES BELOW.



US Army Corps  
of Engineers®  
Seattle District

AGENCY USE ONLY

Date received: \_\_\_\_\_

Agency reference #: \_\_\_\_\_

Tax Parcel #(s): \_\_\_\_\_

### Part 1–Project Identification

1. Project Name (A name for your project that you create. Examples: Smith's Dock or Seabrook Lane Development) [\[help\]](#)

Millennium Bulk Terminals Longview, LLC (MBT-Longview) Coal Export Terminal

### Part 2–Applicant

The person and/or organization responsible for the project. [\[help\]](#)

2a. Name (Last, First, Middle)

Gaines, Kristin K.

2b. Organization (If applicable)

MBT-Longview<sup>3</sup> is the lessee of the subject property (Property) and leases those lands from Northwest Alloys, Inc. (NWA). NWA is the owner of the Property and leases certain aquatic lands contiguous to NWA's Property from the Washington Department of Natural Resources (WDNR) subject to aquatic lands lease No. 20-B09222 (leasehold). MBT-Longview also owns the Property's assets and facilities and has a long term ground lease with NWA to occupy, develop and operate the Property. MBT-Longview is also the operator for NWA in the aquatic leasehold area under contract from NWA. MBT-Longview is a local employer with its assets located in and registered to do business in Washington State; it is registered as a Delaware limited liability company.<sup>4</sup>

2c. Mailing Address (Street or PO Box)

MBT-Longview  
P.O. Box 2098 / 4029 Industrial Way

<sup>1</sup> Additional forms may be required for the following permits:

- If your project may qualify for Department of the Army authorization through a Regional General Permit (RGP), contact the U.S. Army Corps of Engineers for application information (206) 764-3495.
- If your project might affect species listed under the Endangered Species Act, you will need to fill out a Specific Project Information Form (SPIF) or prepare a Biological Evaluation. Forms can be found at <http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory/PermitGuidebook/EndangeredSpecies.aspx>.
- Not all cities and counties accept the JARPA for their local Shoreline permits. If you need a Shoreline permit, contact the appropriate city or county government to make sure they accept the JARPA.

<sup>2</sup> To access an online JARPA form with [\[help\]](#) screens, go to [http://www.epermitting.wa.gov/site/alias\\_resourcecenter/jarpa\\_jarpa\\_form/9984/jarpa\\_form.aspx](http://www.epermitting.wa.gov/site/alias_resourcecenter/jarpa_jarpa_form/9984/jarpa_form.aspx).

For other help, contact the Governor's Office for Regulatory Innovation and Assistance at (800) 917-0043 or [help@oria.wa.gov](mailto:help@oria.wa.gov).

<sup>3</sup> In 2014, Resource Capital Funds became the majority owner of Ambre Energy North America, Inc., and Ambre Energy North America, Inc. separated from its Australian parent company, Ambre Energy Limited. In April 2015, Ambre Energy North America, Inc. changed its name to Lighthouse Resources, Inc. In June of 2016, former owner Arch Coal sold its membership interest in the MBT-Longview, LLC to Lighthouse; MBT-Longview, LLC is a wholly owned subsidiary of Lighthouse Resources, Inc.

<sup>4</sup> See attached Washington Secretary of State Certificate of Existence/Authorization of Millennium Bulk Terminals-Longview, LLC.

<b>2d. City, State, Zip</b>			
Longview, WA 98632			
<b>2e. Phone (1)</b>	<b>2f. Phone (2)</b>	<b>2g. Fax</b>	<b>2h. E-mail</b>
(360) 425-2800	(      )	(360) 636-8340	<a href="mailto:k.gaines@millenniumbulk.com">k.gaines@millenniumbulk.com</a>

### Part 3—Authorized Agent or Contact

Person authorized to represent the applicant about the project. (Note: Authorized agent(s) must sign 11b of this application.) [\[help\]](#)

<b>3a. Name (Last, First, Middle)</b>			
Grette, Glenn B.			
<b>3b. Organization (If applicable)</b>			
Grette Associates LLC			
<b>3c. Mailing Address (Street or PO Box)</b>			
151 South Worthen, Suite 101			
<b>3d. City, State, Zip</b>			
Wenatchee, WA 98801			
<b>3e. Phone (1)</b>	<b>3f. Phone (2)</b>	<b>3g. Fax</b>	<b>3h. E-mail</b>
(509) 663-6300	(      )	(509) 664-1882	<a href="mailto:glenng@gretteassociates.com">glenng@gretteassociates.com</a>

### Part 4—Property Owner(s)

Contact information for people or organizations owning the property(ies) where the project will occur. Consider both **upland and aquatic** ownership because the upland owners may not own the adjacent aquatic land. [\[help\]](#)

- ☐ Same as applicant. (Skip to Part 5.)
- ☐ Repair or maintenance activities on existing rights-of-way or easements. (Skip to Part 5.)
- ☒ There are multiple upland property owners. Complete the section below and fill out [JARPA Attachment A](#) for each additional property owner. *The Washington State Department of Natural Resources owns certain aquatic lands leased to NWA. See response to Part 2(b). A small portion of the Project Site is currently owned by the Bonneville Power Administration (BPA).*
- ☒ Your project is on Department of Natural Resources (DNR)-managed aquatic lands. If you don't know, contact the DNR at (360) 902-1100 to determine aquatic land ownership. If yes, complete [JARPA Attachment E](#) to apply for the Aquatic Use Authorization **\*Not applying for Aquatic Use Authorization at this time and will be applied for at a later date as required.**

<b>4a. Name (Last, First, Middle)</b>
Upland Parcel: Stiffler, Mark A.
<b>4b. Organization (If applicable)</b>
Northwest Alloys (NWA)
<b>4c. Mailing Address (Street or PO Box)</b>

201 Isabella St.			
<b>4d. City, State, Zip</b>			
Pittsburgh, PA 15212			
<b>4e. Phone (1)</b>	<b>4f. Phone (2)</b>	<b>4g. Fax</b>	<b>4h. E-mail</b>
(415) 553-1658	(      )	(      )	mark.stiffler@alcoa.com

## Part 5–Project Location(s)

Identifying information about the property or properties where the project will occur. [\[help\]](#)

- ☐ There are multiple project locations (e.g. linear projects). Complete the section below and use [JARPA Attachment B](#) for each additional project location.

<b>5a. Indicate the type of ownership of the property. (Check all that apply.)</b> <a href="#">[help]</a>			
<input checked="" type="checkbox"/> Private <input checked="" type="checkbox"/> Federal <input checked="" type="checkbox"/> Publicly owned (state, county, city, special districts like schools, ports, etc.) Consolidated Diking Improvement District (CDID) #1 has an easement across the dike <input type="checkbox"/> Tribal <input checked="" type="checkbox"/> Department of Natural Resources (DNR) – managed aquatic lands (Complete <a href="#">JARPA Attachment E</a> ) JARPA Attachment E will <b>*Not applying for Aquatic Use Authorization at this time and will be applied for at a later date as required.</b>			
<b>5b. Street Address</b> (Cannot be a PO Box. If there is no address, provide other location information in 5p.) <a href="#">[help]</a>			
4029 Industrial Way			
<b>5c. City, State, Zip</b> (If the project is not in a city or town, provide the name of the nearest city or town.) <a href="#">[help]</a>			
Longview, WA 98632			
<b>5d. County</b> <a href="#">[help]</a>			
Cowlitz			
<b>5e. Provide the section, township, and range for the project location.</b> <a href="#">[help]</a>			
<b>¼ Section</b>	<b>Section</b>	<b>Township</b>	<b>Range</b>
Project Site: NW, NE SW, SE	35, 36 25, 26	8N 8N	3W 3W
<b>5f. Provide the latitude and longitude of the project location.</b> <a href="#">[help]</a>			
<ul style="list-style-type: none"> <li>Example: 47.03922 N lat. / -122.89142 W long. (Use decimal degrees - NAD 83)</li> </ul>			
Project Site 46.1364 N lat. / -123.0047 W long.			
<b>5g. List the tax parcel number(s) for the project location.</b> <a href="#">[help]</a>			
<ul style="list-style-type: none"> <li>The local county assessor's office can provide this information.</li> </ul>			
619530400, 61950, 61953, WDNR Aquatic Lands Lease #20-B09222, and BPA parcels 61954 and 6195303			
<b>5h. Contact information for all adjoining property owners.</b> (If you need more space, use <a href="#">JARPA Attachment C.</a> ) <a href="#">[help]</a>			
<b>Name</b>	<b>Mailing Address</b>		<b>Tax Parcel # (if known)</b>



Port of Longview	PO Box 1258	107190100, 107180100, 107170100, 106970100,
	Longview, WA 98632-7739	106980100, 106990100
Barlow Point Land Company, LLC	PO Box 2098	107140100
	Longview, WA 98362	
Consolidated Diking Improvement District (CDID) #1	5350 Pacific Way	619530201
	Longview, WA 98362	
BNSF Railway Company	PO Box 961089	61951, 61948, WI3100003
	Fort Worth, TX 76161-0089	
USA, administered by Bonneville Power Administration (BPA)	PO Box 3621	61954, 6195303
	Portland, OR 97229	
Weyerhaeuser Company	Local: PO Box 188, Longview, WA 98632	WI3110001, 61947
	Corporate: PO Box 9777, Federal Way, WA 98063-9777	
Additional non-adjacent property owners within 300 feet		
Consolidated Diking Improvement District (CDID) #1	5350 Pacific Way	107080100, 107090100,
	Longview, WA 98632	10219, 10211, 10212, 10220, 10191
Randal/Lisa Bradford	114 Bradford Pl.	106880100
	Longview, WA 98632	
Earl Sullivan	7233 NW Newberry Hill Rd	106870100
	Silverdale, WA 98383-9355	
Louis Alder	PO Box 68	106860100
	Creswell, OR 97426	
BS Land/Gravel LLC	201 W Main	106850100
	Grangeville, ID 83530	
Northwest Alloys, Inc.	PO Box 2098	1021501
	Longview, WA 98632	
USA, administered by Bonneville Power Administration (BPA)	PO Box 3621	1021401
	Portland, OR 97229	
Moeller Land/Cattle Co. INC	187 Route 36, Ste 101	053603500
	West Long Branch, NJ 07764	
Solvay Interlox Inc	3500 Industrial Way	101930100, 053603525
	Longview, WA 98632	
City of Longview	PO Box 128	053603524
	Longview, WA 98632	

**5i.** List all wetlands on or adjacent to the project location. [\[help\]](#)

Wetlands and ditches are present in the Project footprint (see Sheet 14). Review of on-site wetlands is occurring in conjunction with the USACE and Washington Department of Ecology (Ecology).

Wetlands within the proposed coal export terminal footprint (Project Site) (Parcel 619530400) are described in the *Coal Export Terminal Wetland and Stormwater Ditch Delineation Report-Parcel 619530400* (Grette Associates 2014), and summarized below. A prior operator conducted unpermitted land clearing and/or filling on a portion of the Project Site. Three areas have been identified that were wetlands prior to 2010, but are no longer present as a result of those actions: P1 (4.80 acre), P3 (1.23 acres), and an area that was previously part of Wetland A (2.07 acres). These are characterized as “pre-impact wetlands” in the delineation report. There are five existing wetlands part or all of which are within the Project footprint: Wetland A (6.28 acres), Wetland C (3.38 acres), Wetland Z (11.22 acres), Wetland Y (3.40 acres), and Wetland P2 (2.65 acres).

Wetlands within adjacent MBT-Longview parcels are described in two additional delineation reports. The *Bulk Product Terminal Wetland and Stormwater Ditch Delineation Report-Parcel 61953* (Grette Associates 2014) describes five wetlands in Parcel 61953: Wetland D (5.43 acres), Wetland E (9.46 acres), Wetland F (0.45 acres), Wetland G (2.60 acres) and Wetland H (0.24 acres). The *Bulk Product Terminal Shoreline Wetland Delineation Report-Parcel 61950* (Grette Associates 2014) describes one additional wetland, Wetland X (0.44 acres), located in Parcel 61950. These wetlands all are located outside of the Project footprint.

See the *Coal Export Terminal Wetland and Stormwater Ditch Delineation Report-Parcel 619530400* (Grette Associates 2014) for an overview of the Project Site survey areas.

**5j.** List all waterbodies (other than wetlands) on or adjacent to the project location. [\[help\]](#)

Columbia River and CDID non-jurisdictional ditches

**5k.** Is any part of the project area within a 100-year floodplain? [\[help\]](#)

☒ Yes    ☐ No    ☐ Don't know

*Upland areas are not – they are Zone B; aquatic areas waterward of the dike are Zone A4.*

**5l.** Briefly describe the vegetation and habitat conditions on the property. [\[help\]](#)

**Upland Areas**

The upland portions of the Project Site footprint have been altered from their natural condition; consisting of developed industrial infrastructure and facilities, constructed contaminant disposal facilities, or undeveloped areas of vegetation with historical hydrology altered by diking, ditching or fill.

Vegetated areas include a capped contaminant disposal facility, which consists of grasses and vetches. Other vegetated portions of the Project Site are predominantly unpaved areas surrounded by industrial infrastructure. Plant species are mostly weedy, and often invasive, including reed canarygrass (*Phalaris arundinacea*), Scot's broom (*Cytisus scoparius*), Canada thistle (*Cirsium arvense*), and bull thistle (*Cirsium vulgare*)

**Wetland Areas**

See response 5i.

**Shoreline Areas**

Shoreline vegetation is limited due to extensive diking and riprap along the Columbia River. In some areas at the Project Site, vegetation exists in a narrow strip between the dike and the river. This is primarily composed of willow (*Salix* spp.), red elderberry (*Sambucus racemosa*), cottonwood (*Populus* spp.), rushes (*Juncus* spp.), sedges (*Carex* spp.), and various non-native shrubs and grasses including Himalayan blackberry (*Rubus armeniacus*). In others it is limited to grasses growing on the dike. Submerged areas are almost entirely unvegetated.



### **Aquatic Habitats**

Shallow water habitat exists primarily below elevation +4 feet (ft) Columbia River Datum (CRD) due to the presence of the dike above that elevation. A shallow water flat extends from about +4 ft to -10 ft CRD parallel to the shoreline and varies from approximately 300 to 550 ft in width.

Beyond approximately -10 ft CRD the substrate slope increases, down to between -30 and -40 ft CRD. Because of the steepness of the slope, nearly all of this area is below -20 ft CRD. Deep water substrate is unvegetated silty sand.

### **5m.** Describe how the property is currently used. [\[help\]](#)

The approximately 540-acre Property has been used for industrial and manufacturing activities, including as a Bulk Product Terminal and aluminum processing facility. A high tension power transmission line corridor crosses the Property. The 540-acre Property is bisected by Industrial Way (SR 432). Property on the north side of Industrial way is vacant and vegetated. A portion of the Property south of Industrial Way continues to be used by MBT-Longview for a number of industrial and related activities.

MBT-Longview currently operates a separate terminal for bulk products including: the receipt, storage and transport of alumina from ship to rail or truck; the receipt, storage, and transportation of coal for Weyerhaeuser Company from rail to truck; and could handle other bulk products. The Bulk Product Terminal use will remain as a separate use and will operate independently from the coal export terminal on a separate portion of the Property. MBT-Longview is in the process of further developing the Bulk Product Terminal and is actively seeking potential tenants. If a JARPA for Bulk Product Terminal development is needed, MBT-Longview will file a separate JARPA for those independent activities consistent with 33 C.F.R. §325.1(d).

### **5n.** Describe how the adjacent properties are currently used. [\[help\]](#)

The Port of Longview property (parcels 107109100, 107180100, 107170100, 106970100, 106980100, 106990100) immediately downstream of the Project Site is currently undeveloped but includes electrical line conveyance towers. The CDID property (parcel 619530201) includes structures related to the diking improvement infrastructure. The Barlow Point Land Company property (107140100) is essentially undeveloped. BNSF Railway Company property (parcels 61951, 61948, and W11300003) are used for a railroad. The BPA properties (parcels 61954 and 6195303) are surrounded by the NWA Property adjacent to Industrial Way and are primarily used as an electrical substation. The Weyerhaeuser Company property (parcels 61947, W131101) is located upstream from the Project Site. The Weyerhaeuser property has a number of large buildings used in pulp and paper production, and includes a sawmill and a chemical plant.

### **5o.** Describe the structures (above and below ground) on the property, including their purpose(s) and current condition. [\[help\]](#)

There are a number of existing upland structures on the Project Site. These structures house a variety of industrial related activities, including the storage of bulk materials, laboratories, maintenance buildings, and administrative offices. Some of these buildings may be either demolished or repaired as needed.

Within the adjacent Bulk Product Terminal area, Dock 1 is a vessel off-loading facility with an approach trestle that serves only the existing Bulk Product Terminal. The aquatic portion of the proposed coal export terminal Project Site is immediately downstream from Dock 1. There are two pile dikes composed of creosote-treated wooden piles, which are owned and maintained by the USACE that extend from the shoreline towards the navigation channel.

### **5p.** Provide driving directions from the closest highway to the project location, and attach a map. [\[help\]](#)

From Interstate 5, take Exit 36 westbound and take 3rd Avenue industrial exit. Turn left at the end of the off-ramp onto 3rd Avenue (3rd Avenue becomes Industrial Way). Continue approximately 2 miles to the stop light at 38th Avenue and turn left into the NWA/ MBT-Longview facility. The main office is the first building on the right. Please refer to Sheet 1 for a vicinity map.

## Part 6–Project Description

**6a.** Briefly summarize the overall project. You can provide more detail in 6b. [\[help\]](#)

MBT-Longview proposes to build a coal export terminal (Project) on a portion of an existing industrial site in Cowlitz County, Washington (Sheets 1-14). The Project would be located near Longview, WA, adjacent to the Columbia River on land suitably zoned for heavy industrial use (Sheets 1 and 2). The Project Site would cover approximately 190 acres of the approximately 540-acre Property and would consist of rail unloading, storage, reclaiming and loading ships with coal (Sheet 2).

The coal export terminal would be capable of receiving, stockpiling, blending, and loading coal by conveyor onto ships for export<sup>5</sup>. MBT-Longview proposes to develop the Project in two separate stages. In Stage 1, MBT-Longview would construct two docks (Docks 2 and 3), one shiploader and related conveyors on Dock 2, berthing facilities on Dock 3, a stockpile area including two stockpile pads, railcar unloading facilities, one operating rail track, up to eight rail storage tracks for train parking, Project Site area ground improvements, associated facilities and infrastructure, and conduct necessary dredging for the two docks. Stage 1 would be capable of a throughput capacity of nominally 25 million metric tonnes<sup>6</sup> per year (MMTPY). During construction of Stage 1, a startup facility would unload coal from railcars to ships via conveyors. This startup configuration would have a nominal throughput capacity of approximately 7 - 10 MMTPY. Stage 2 facilities would consist of one additional shiploader on Dock 3, two additional stockpile pads, conveyors, and equipment necessary to increase throughput by approximately 19 MMTPY, to a total nominal throughput of 44 MMTPY. The completed coal export terminal would consist of two docks, ship loading systems, stockpiles and equipment, rail car unloading facilities, an operating rail track, rail storage tracks to park up to eight trains, associated facilities, conveyors, and necessary dredging. The planned total throughput capacity of the full build out facility would be a nominal 44 MMTPY of coal.

Two new docks (Dock 2 and Dock 3) would be constructed specifically for the coal export terminal<sup>7</sup> (Sheets 2-11). Dredging is required to provide access to and from the Columbia River navigation channel, berthing at Docks 2 and 3, and to provide an adequate turning basin in the vicinity of Docks 2 and 3 (Sheets 12 and 13).

NWA and/or MBT-Longview will seek any additional authorizations necessary from the WDNR prior to the installation of the facilities. In addition, MBT-Longview will continue to work with Ecology to develop the coal export terminal consistent with the Model Toxics Control Act and Ecology's Brownfields Policy which calls for coordinated cleanup and redevelopment of industrial sites.

Stages 1 and 2 will be permitted under a single USACE authorization. Ship loading facilities for Stages 1 and 2 will be permitted under separate shoreline substantial development permits. Application has been made to Cowlitz County for a Shoreline Substantial Development Permit to construct Docks 2 and 3, and to install shiploading facilities on Dock 2. Application has also been made to the County for a Shoreline Conditional Use Permit for dredging within the shoreline portion of the river. This dredging would allow ship access from the Columbia River navigation channel and berthing at Docks 2 and 3. Stage 2 ship loading facilities, to be located on Dock 3, are not included in the current Shoreline Substantial Development Permit application to Cowlitz County.

### Project Overview – Stage 1

All coal would be delivered to the terminal by rail on the existing Reynolds Lead spur track which extends along Industrial Way to the Project Site. At the terminal, the rail line would branch into a rail loop system where coal trains would be directed to the coal unloading station.

<sup>5</sup> The docks are not designed for transloading coal from barges to ocean-going vessels.

<sup>6</sup> A metric tonne weighs 2,204.62 pounds. A "short ton" weighs 2,000 pounds. A metric tonne equals 1.1023 short tons. Aside from incoming rail shipments which are designated and referred to as "short tons", all other tonnages are in metric tonnes.

<sup>7</sup> The existing Bulk Product Terminal facility (Dock 1) is a separate and independent operation from the coal export terminal. MBT-Longview intends to further develop the Bulk Product Terminal and is actively seeking additional tenants. This continued and expanded use of the Bulk Product Terminal is unrelated to the current proposal. If needed, MBT-Longview will file a separate JARPA for these independent activities consistent with 33 C.F.R. §325.1(d).

At the unloading station, two railcars at a time would be positioned inside the fully enclosed metal clad unloading building where they would be rotated to discharge the material from the cars into a large hopper. The hopper would feed coal onto a conveyor at a nominal rate of 7,500 tonnes per hour.

During startup, the unloading would occur using a rapid discharge (bottom) unloader (see Sheet 2 for location). The rapid discharge unloader would be retained after startup and may be used in addition to or in lieu of the rotary unloader.

In addition to the main operating track for unloading, an additional eight storage tracks would be provided to store arriving and departing trains. The eight storage tracks would allow trains to travel directly onto the Project Site from the Reynolds Lead.

At the stockpile pads, rail mounted luffing/slewing “stackers” would place coal in pre-designated pad areas. Different types of coal would be stacked into separate stockpiles. Coal would be retrieved from the stockpile pads by rail mounted “bucket-wheel reclaimers” and then conveyed directly to the ship loading facility. Different coal types could be blended together after reclaiming by loading two different coal types onto the shipping conveyor.

Coal would be loaded onto ships at the docks by shiploaders. The Stage 1 facility would have one shiploader. The shiploader and its associated system of conveyors, surge bin and transfer stations would collectively be referred to as a shiploading stream. Surge bins may facilitate continuous coal reclaiming and transfer during the changing of ship hatches by the shiploader. The average time to load and dispatch a ship would be less than 24 hours.

During Stage 1 operations, the shiploader would be constructed and operated on Dock 2. During Stage 1, Dock 3 would operate only as a berthing dock (Sheets 2 and 3).

### **Physical Components –Stage 1**

The main elements of Stage 1 development would include:

- Rail bed;
- Rail loop with arrival and departure tracks to include one operating track (turn around track) and eight rail storage tracks;
- One tandem rotary unloader (capable of unloading two rail cars) for operations, and one tandem rapid discharge unloader to be used during startup and maintenance;
- Two coal stockpile pads, Pads A and B;
- Two rail-mounted luffing/slewing “stackers” and associated facilities for Pads A and B;
- Two rail mounted “bucket-wheel reclaimers” and associated facilities for Pads A and B;
- Two shipping Docks (Dock 2 and Dock 3), one shiploader and associated facilities on Dock 2;
- Conveyors, transfer stations and surge bin from the stockpile pads to the shiploading facilities;
- In-bound and out-bound coal sampling stations;
- Support structures, electrical transformers, switchgear and equipment buildings, process control systems; and
- Upland facilities including roadways, service buildings, water management facilities, utility infrastructure, and other ancillary facilities.

### **Project Overview – Stage 2**

The completed Stage 2 construction would expand the coal export terminal with the addition of a shiploader on Dock 3 and the construction of stockpile pads C and D, with the associated coal handling equipment. The planned total throughput capacity of the facility would be 44 MMTPY of coal.

## Physical Components – Stage 2

The main elements of Stage 2 development would include:

- Associated conveyors and transfer stations to the stockpile Pads C and D from the rail receiving station;
- Two additional coal stockpile pads, Pads C and D;
- Two additional rail-mounted luffing/slewing “stackers” and associated facilities;
- Two additional rail mounted “bucket-wheel reclaimers” and associated facilities;
- One additional shiploader and associated facilities on Dock 3; and
- Conveyors, transfer stations and surge bins from stockpile Pads C and D to the shiploading facilities.

Please see Response 6d below for listing of major elements.

**6b.** Describe the purpose of the project and why you want or need to perform it. [\[help\]](#)

The proposal’s objectives are to (1) make use of existing rail infrastructure (freight corridors) and an efficient, direct shipping route to Asia; and (2) reuse and redevelop an existing industrial terminal into an American Pacific Coast export terminal in Cowlitz County capable of exporting up to 44 MMTPY of coal to meet international demand.

**6c.** Indicate the project category. (Check all that apply) [\[help\]](#)

- |                                                |                                                    |                                        |                                                    |                                       |
|------------------------------------------------|----------------------------------------------------|----------------------------------------|----------------------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> Commercial | <input type="checkbox"/> Residential               | <input type="checkbox"/> Institutional | <input checked="" type="checkbox"/> Transportation | <input type="checkbox"/> Recreational |
| <input type="checkbox"/> Maintenance           | <input type="checkbox"/> Environmental Enhancement |                                        |                                                    |                                       |

**6d.** Indicate the major elements of your project. (Check all that apply) [\[help\]](#)

<input type="checkbox"/> Aquaculture	<input type="checkbox"/> Culvert	<input type="checkbox"/> Float	<input type="checkbox"/> Retaining Wall (upland)
<input type="checkbox"/> Bank Stabilization	<input type="checkbox"/> Dam / Weir	<input type="checkbox"/> Floating Home	<input checked="" type="checkbox"/> Road
<input type="checkbox"/> Boat House	<input checked="" type="checkbox"/> Dike / Levee / Jetty	<input type="checkbox"/> Geotechnical Survey	<input type="checkbox"/> Scientific Measurement Device
<input type="checkbox"/> Boat Launch	<input type="checkbox"/> Ditch	<input checked="" type="checkbox"/> Land Clearing	<input type="checkbox"/> Stairs
<input type="checkbox"/> Boat Lift	<input checked="" type="checkbox"/> Dock / Pier	<input type="checkbox"/> Marina / Moorage	<input checked="" type="checkbox"/> Stormwater facility
<input type="checkbox"/> Bridge	<input checked="" type="checkbox"/> Dredging	<input type="checkbox"/> Mining	<input type="checkbox"/> Swimming Pool
<input type="checkbox"/> Bulkhead	<input type="checkbox"/> Fence	<input type="checkbox"/> Outfall Structure	<input type="checkbox"/> Utility Line
<input type="checkbox"/> Buoy	<input type="checkbox"/> Ferry Terminal	<input checked="" type="checkbox"/> Piling/Dolphin	
<input type="checkbox"/> Channel Modification	<input type="checkbox"/> Fishway	<input type="checkbox"/> Raft	

☒ Other: Construct coal stockpiling, handling, and conveyor facilities

**6e.** Describe how you plan to construct each project element checked in 6d. Include specific construction methods and equipment to be used. [\[help\]](#)

- Identify where each element will occur in relation to the nearest waterbody.
- Indicate which activities are within the 100-year floodplain.

## DREDGING AND FLOW LANE DISPOSAL

Dredging is required to accommodate berthing of fully-loaded Panamax class ships at Docks 2 and 3. Existing depths in the berth areas range from -28 to -42 ft CRD and the side slope areas are typically deeper than -20 ft CRD (Sheets 12 and 13).

MBT-Longview proposes to dredge to a berthing depth of -43 ft CRD with an additional two-foot overdredge allowance (Sheets 12 and 13). All areas of proposed dredging are located over 500 ft from ordinary high water (OHW). The side slopes would be dredged at 3H:1V to transition to the existing mudline. This would allow a depth of at least -43 ft CRD to be achieved up to the dock face for the entire length of the berth. In order to account for deposition that may occur between permit submittal and construction, MBT-Longview is requesting authorization for dredging and disposal of up to 500,000 cubic yards from within the project footprint to allow for

a volume of deposition equal to 10 percent of the volume of the dredge prism shown on Sheets 12 and 13. Actual dredging would be limited to that volume necessary to accomplish the depth, overdredge, and area requirements shown on Sheets 12 and 13.

In addition to this initial dredging approval, MBT-Longview also seeks authorization to the extent required to perform routine maintenance dredging consistent with the proposed dredge prism dimensions. Based on sediment accretion rates measured in the berth at Dock 1, it is expected that accretion in the Docks 2 and 3 berthing/navigation basin could represent an annual volume of between approximately 5,000 and 24,000 cubic yards. Maintenance dredging is therefore anticipated to occur on a multi-year basis, or as-needed following extreme-flow events. The Project as proposed would include a 10-year maintenance dredge program for Docks 2 and 3 to dredge up to 100,000 cubic yards of infill as frequently as annually in order to maintain the depths authorized during deepening.

The area indicated on the attached drawings is proposed for Dock 2 and Dock 3. The sediment to be dredged for the coal export terminal will be characterized and evaluated by the regional Dredged Material Management Program (DMMP) for suitability for flow lane disposal. Material to be dredged is anticipated to be comprised of silty sand, which is typical of the Project area and general facility. Material has been dredged for the Bulk Product Terminal at Dock 1, located immediately upstream of the Project Site location for the coal export terminal's two docks. Based on the acceptability of the sediment from the Dock 1 site for flow lane disposal, it is anticipated that all of the material to be dredged for Docks 2 and 3 would be suitable for flow lane disposal.

Dredging would be conducted using a barge-mounted mechanical clamshell dredge with material loaded into a bottom-dump barge for transport to the flow lane disposal site once the barge is full. This method does not require dewatering. The location of the flow lane disposal site will be determined by the Portland District of the USACE. Once in place over the disposal area, the operator would open the barge and release the material. Due to the draft of the barge, material would be released below the water surface. Dredging also may be conducted using a hydraulic dredge with flow lane disposal as described for mechanical clamshell dredging.

Overall, dredging and disposal may occur over one or two construction seasons. Because the Project Site will continue to be subject to river sediment deposition, future maintenance dredging is anticipated on a one to two year basis to maintain adequate berthing and navigation depths for this facility (-43 ft CRD). The area and volume of maintenance dredging would be determined as-needed.

To avoid and minimize potential impacts, the Project includes flow lane disposal of dredged material to keep the dredged material in aquatic areas and maintain sediment transport processes within the Columbia River system. Use of dredged materials would be used otherwise only as part of agency-approved mitigation.

## **DOCK AND TRESTLE CONSTRUCTION**

### *In-Water Work*

Most of the approach trestle and the entire dock structure would be located waterward of OHW and require in-water and above-water construction. In-water dock and trestle construction would primarily involve pile driving.

A 125-foot section of the downstream pile dike would be removed to accommodate the dredge prism (Sheet 2). A 100-foot section of the upstream pile dike would be removed to accommodate Docks 2 and 3 (Sheet 2).

### *Pile Driving*

Construction of the approach trestle and Docks 2 and 3 would require both impact and vibratory pile driving. Based on the current design, this analysis assumes the installation of up to 630 36-inch steel pile. Of this total, up to 610 would be installed below ordinary high water and up to 20 would be installed above ordinary high water (Sheets 3 through 7). Each pile would require use of both vibratory and impact pile drivers.

Pile driving may require more than one in-water work window.

## Above-water Work

Above-water work would include finishing the dock structures and installation of the materials handling infrastructure.

Concrete dock components including pile caps, stringers, and decking would consist of both cast-in-place and pre-cast components. Placement of pre-cast components, such as trestle girder “tees”, would be accomplished using barge-based construction equipment. Many concrete components (such as the Docks 2 and 3 decking, crane rails, and pile caps) would need to be cast in place. Appropriate techniques and best management practices (BMPs) would limit potential for uncured concrete coming in contact with surface water. Remaining above-water work including finishing fender systems, railings, etc. would be completed using a combination of barge- and dock-based equipment, as needed.

Materials handling infrastructure including shiploaders and conveyors would be delivered by barge and off-loaded by crane directly to the docks and trestle. Barges would not offload materials, equipment, or anything else on the beach. As much as practicable, infrastructure would be pre-fabricated so that above-water work would largely consist of installation.

Utilities including sanitary sewer, potable water, fire water, process water, electrical, compressed air, telecommunications, and other wiring utilities would be attached to the trestle and dock structure. A water collection system would also be attached to the trestle and dock structure. A small comfort station would be constructed where the trestle meets the dock to provide restroom and meal room facilities on the dock. A pump system would be included to convey sewage from the dock to a conveyance system on the upland portion of the Project Site which will connect to the City of Longview’s sewage collection system.

It is anticipated that completion of the above-water portion of the dock structures and installation of the marine terminal infrastructure would take place both during and outside of authorized in-water work periods.

## PERMANENT ALTERATIONS

The dredge prism is located below -20 ft CRD. While dredging would remove material and temporarily disturb the area (Table 1), there would be no significant habitat conversion (e.g., shallow water habitat converted to deep water habitat) resulting from that action. Maintenance dredging would result in future periodic disturbance in this area.

Construction of the approach trestle and docks would result in a permanent structure in aquatic areas (Table 1). Less than 5 percent of pile and less than 10 percent of overwater cover would be in areas shallower than -20 ft CRD.

**Table 1. Permanent alterations from project activities (aquatic).**

Element	above -20 ft CRD	below -20 ft CRD	total
Dredge Prism (volume/area)	0/0	500,000 <sup>1</sup> cubic yards / 48 acres	500,000 <sup>1</sup> cubic yards/ 48 acres
Pile (36-inch), count	Approximately 30	Approximately 580	up to 610 <sup>2</sup>
Pile, area	211 ft <sup>2</sup>	4,100 ft <sup>2</sup>	4,311 ft <sup>2</sup>
Overwater cover, total	0.30 acres	4.83 acres	5.13 acres

<sup>1</sup>Includes 10% additional volume to account for deposition prior to dredging.

<sup>2</sup>Up to 630 total piles; up to 610 would be below ordinary high water and up to 20 would be in the upland.

## SHORELINE ELEMENTS

Of the actions described above, only a subset would occur in Cowlitz County jurisdictional shoreline areas (200 ft landward of OHW, all areas waterward of OHW). These include:

### Stage 1

- 220 linear ft of land-based conveyor delivering material to the approach trestle;
- Two conveyor belt pile-supported foundations;
- The entire approach trestle, including abutment and areas above OHW;
- The entire Dock 2 and 3 structures;
- One shiploader;
- The entire dredge prism; and
- 230 linear ft of new asphalt road to provide access to the trestle. This includes improvements to existing roads accessing the levee and a small vehicular turnaround. This area is entirely above OHW. The road would require approximately 1,200 cubic yards of fill.

### Stage 2

- A second conveyor; and
- A second shiploader.

### OPERATIONS

The facility would be designed for 24-hour operation, seven days per week. During Stage 1 operations, approximately one vessel per day would be loaded. At maximum throughput (Stage 2), approximately two vessels per day would be loaded. The docks are not designed for transloading coal from barges onto ocean-going vessels.

Prior to or during loading, vessels would discharge ballast water. It is expected that vessels calling at the Project Site would have exchanged or treated ballast water prior to discharge in accordance with state and federal regulations. Vessels would not typically withdraw ballast water from the Columbia River.

The approach trestle and Docks 2 and 3 would be adequately lighted to meet worker safety requirements to allow 24-hour operation.

**6f.** What are the anticipated start and end dates for project construction? (Month/Year) [\[help\]](#)

- If the project will be constructed in phases or stages, use [JARPA Attachment D](#) to list the start and end dates of each phase or stage.

Start date: immediately upon receipt of permits

End date: Approximately 5 to 8 years after the start date to allow for the construction of both Stage 1 and Stage 2

☐ See JARPA Attachment D

**6g.** Fair market value of the project, including materials, labor, machine rentals, etc. [\[help\]](#)

\$680 million total project; approximately \$200 million for elements within the shoreline zone.

**6h.** Will any portion of the project receive federal funding? [\[help\]](#)

- If yes, list each agency providing funds.

☐ Yes ☒ No ☐ Don't know

## Part 7–Wetlands: Impacts and Mitigation

☒ Check here if there are wetlands or wetland buffers on or adjacent to the project area.  
(If there are none, skip to Part 8.) [\[help\]](#)

**7a.** Describe how the project has been designed to avoid and minimize adverse impacts to wetlands. [\[help\]](#)

☐ Not applicable



The project is proposed on a brownfields site with existing rail service. Therefore, wetland impacts are occurring at an existing degraded site and are avoided at greenfield sites consistent with wetlands mitigation policy, Shorelines Management Policies, local zoning and growth management direction to focus industrial development on properly zoned, designated and, where possible, previously developed shorelines. This Project Site has all those favorable attributes for industrial development.

**7b.** Will the project impact wetlands? [\[help\]](#)

☒ Yes ☐ No ☐ Don't know

**7c.** Will the project impact wetland buffers? [\[help\]](#)

☒ Yes ☐ No ☐ Don't know

**7d.** Has a wetland delineation report been prepared? [\[help\]](#)

- If Yes, submit the report, including data sheets, with the JARPA package.

☒ Yes ☐ No

A wetland delineation report has been prepared for this Project and submitted to the USACE, Ecology, and Cowlitz County. See the *Coal Export Terminal Wetland and Stormwater Ditch Delineation Report-Parcel 619530400* (Grette Associates 2014).

**7e.** Have the wetlands been rated using the Western Washington or Eastern Washington Wetland Rating System? [\[help\]](#)

- If Yes, submit the wetland rating forms and figures with the JARPA package.

☒ Yes ☐ No ☐ Don't know

The wetland delineation report includes ratings forms and figures.

**7f.** Have you prepared a mitigation plan to compensate for any adverse impacts to wetlands? [\[help\]](#)

- If Yes, submit the plan with the JARPA package and answer 7g.
- If No, or Not applicable, explain below why a mitigation plan should not be required.

☒ Yes (*in prep*) ☐ No ☐ Not applicable

A comprehensive Mitigation Plan is being prepared in coordination with USACE and Ecology to address the impacts to wetlands and aquatic habitats resulting from the Project. The Mitigation Plan will address the general requirements for mitigation planning outlined in the USACE's 2008 mitigation guidance. Mitigation actions may be implemented at one or multiple locations to ensure that a wide range of ecological functions are provided to offset identified Project impacts. The mitigation actions may include use of credits from existing or proposed mitigation banks in addition to applicant-sponsored mitigation actions. Historical habitat types in the Project vicinity will be used as templates for designing mitigation actions. This will include careful consideration of the influence of physical processes on habitat succession and function.

**7g.** Summarize what the mitigation plan is meant to accomplish, and describe how a watershed approach was used to design the plan. [\[help\]](#)

Mitigation will compensate for the unavoidable, permanent loss of wetlands on the Project Site and address the watershed approach used in developing the plan.

**7h.** Use the table below to list the type and rating of each wetland impacted, the extent and duration of the impact, and the type and amount of mitigation proposed. Or if you are submitting a mitigation plan with a similar table, you can state (below) where we can find this information in the plan. [\[help\]](#)

Activity (fill, drain, excavate, flood, etc.)	Wetland Name <sup>1</sup>	Wetland type and rating category <sup>2</sup>	Impact area (sq. ft. or Acres)	Duration of impact <sup>3</sup>	Proposed mitigation type <sup>4</sup>	Wetland mitigation area (sq. ft. or acres)
<b>Pre-Impact Wetlands</b>						
Fill, partial (prior to 2010)	Wetland A	III	2.07 (of 8.35)	permanent	in prep	in prep



Fill, complete (prior to 2010)	Wetland P1	III	4.80	permanent	in prep	in prep
Fill, complete (prior to 2010)	Wetland P3	IV	1.23	permanent	in prep	in prep
<b>Existing Wetlands</b>						
Fill, complete	Wetland A	III	6.28	permanent	in prep	in prep
Fill, complete	Wetland C	III	3.38	permanent	in prep	in prep
Fill, complete	Wetland Z	III	11.22	permanent	in prep	in prep
Fill, partial	Wetland Y	III	0.57 (of 3.40)	permanent	in prep	in prep
Fill, complete	Wetland P2	IV	2.65	permanent	in prep	in prep
<b>Jurisdictional Areas that are not Wetlands</b>						
Fill, partial	conveyance ditches	n/a	5.17 (of 7.15)	permanent	in prep	in prep

<sup>1</sup> If no official name for the wetland exists, create a unique name (such as "Wetland 1"). The name should be consistent with other project documents, such as a wetland delineation report.

<sup>2</sup> Ecology wetland category based on current Western Washington or Eastern Washington Wetland Rating System. Provide the wetland rating forms with the JARPA package.

<sup>3</sup> Indicate the days, months or years the wetland will be measurably impacted by the activity. Enter "permanent" if applicable.

<sup>4</sup> Creation (C), Re-establishment/Rehabilitation (R), Enhancement (E), Preservation (P), Mitigation Bank/In-lieu fee (B)

Page number(s) for similar information in the mitigation plan, if available:

The mitigation plan is in preparation, impact summaries are on page 10 of the *Coal Export Terminal Wetland Impact Report (Grette Associates 2014)*, submitted to USACE

**7i.** For all filling activities identified in 7h, describe the source and nature of the fill material, the amount in cubic yards that will be used, and how and where it will be placed into the wetland. [\[help\]](#)

Prior to 2010, fill was placed in 8.10 acres of wetlands by a previous operator (pre-impact wetlands). For the Project, fill would be placed in 24.10 acres of wetlands and 5.17 acres of conveyance ditches. The total area of jurisdictional fill including all three categories is 37.37 acres. The volume of fill will be up to approximately 200,000 cubic yards within existing wetlands, up to approximately 70,000 cubic yards within stormwater conveyance features, and up to approximately 20,000 cubic yards within pre-impact wetlands. This assumes one foot excavation within existing wetlands (C, Y, Z, P2, and a portion of A) and stormwater conveyance features (discussed below), then fill to approximate design elevation. However, all wetlands and stormwater conveyance features listed above will be completely filled.

**7j.** For all excavating activities identified in 7h, describe the excavation method, type and amount of material in cubic yards you will remove, and where the material will be disposed. [\[help\]](#)

Up to approximately 40,000 cubic yards of material may be excavated from existing wetlands and up to approximately 10,000 cubic yards from existing stormwater conveyance features for structural reasons. This assumes one foot of excavation. No excavation is assumed in pre-impact wetlands (P1, P3, and a portion of A).

## Part 8–Waterbodies (other than wetlands): Impacts and Mitigation

In Part 8, "waterbodies" refers to non-wetland waterbodies. (See Part 7 for information related to wetlands.) [\[help\]](#)

☒ Check here if there are waterbodies on or adjacent to the project area. (If there are none, skip to Part 9.)

<b>8a.</b> Describe how the project is designed to avoid and minimize adverse impacts to the aquatic environment. <a href="#">[help]</a>
<input type="checkbox"/> Not applicable

## SITE PLANNING

Avoidance and minimization of adverse aquatic impacts has been central to Project Site and terminal design and operations planning, and would be a primary consideration during construction in aquatic areas. Unavoidable impacts would be mitigated consistent with USACE 2008 guidance (see subsequent responses in this section).

Upland construction would be almost entirely set back landward of the shoreline zone (200 ft landward OHW), except for portions of the conveyor and trestle, and also a small segment of access road. This would minimize disturbance adjacent to aquatic areas.

Stormwater, sediment and erosion control BMPs would be installed in accordance with the Stormwater Management Manual for Western Washington and Cowlitz County. Construction would be performed in accordance with the requirements of the Construction Stormwater General Permit. Drainage systems would be designed such that runoff within the construction area would be collected, and treated as necessary, before reuse or discharge. The treatment facility could treat surface runoff and process/construction waters with capacity to store the water for reuse. Treatment may be as required to meet reuse quality or Ecology requirements for offsite discharge.

Drainage systems would be designed such that runoff within the Project Site would be collected for treatment before reuse or discharge. BMPs that would be part of the facility design to maximize the availability of water for reuse include:

- Enclosed conveyor galleries;
- Enclosed rotary unloader building and transfer towers;
- Washdown collection sumps for settlement of sediment;
- Regular cleanout and maintenance of washdown collection sumps;
- Containment around refueling, fuel storage, chemicals and hazardous materials;
- Oil / water separators on drainage systems and vehicle washdown pad;
- Requirement that all employees and contractors receive training, appropriate to their work activities, in the Project Site BMPs;
- Design of docks to contain spillage, with rainfall runoff and washdown water contained and pumped to the upland water treatment facilities; and
- Design of system to collect and treat all runoff and washdown water for either reuse for onsite (dust suppression, washdown water or fire system needs) or discharged offsite.

The water treatment facility would be designed to treat all surface runoff and process water with capacity to store the water for reuse. Treatment would be as required to meet reuse quality or Washington State Department of Ecology (Ecology) requirements for offsite discharge.

Additional water storage would be provided within the coal storage area in the event of a larger storm event. Water volumes exceeding the demands for reuse would be discharged offsite via the existing Outfall 002A into the Columbia River. Water released offsite would be treated and would meet the requirements of Ecology and required discharge permits.

MBT-Longview proposes to tie the water management system into existing facilities, monitored through a separate NPDES Permit:

- **Facility 73.** Facility 73 is MBT-Longview's stormwater treatment system used for achieving the Property's water quality standards required by MBT-Longview's NPDES permit. Facility 73 is located in the southwest portion of the Property (Basins 6 and 1 in Figure 1) and consists of a 1.98 million gallon settling pond, oil and grease removal, multi-media filters, and a discharge pump station (Pump Station C). The settling pond is sized to handle flows up to 6,000 gpm (8.64 MGD). The settling pond is equipped with an oil and grease removal system before the pond's discharge weir. Flows exiting the settling pond are discharged through a 20-inch line to Pump Station C. Pump Station C includes three alternating pumps with a combined discharge capacity of 6,000 gpm under peak flow conditions. Pump Station C pumps the water through an 18-inch line where an in-line turbidity monitor located down-stream measures the outgoing water's turbidity.

If the turbidity reading is below the turbidity set point, the water in the 18-inch line discharges into the 30-inch Outfall 002A line. If the turbidity reading is above the turbidity set point, a solenoid valve routes the water through multi-media filters before tying back into the 18-inch line for discharge to the Outfall 002A line.

- **Columbia River Outfall 002A.** Outfall 002A is a 30-inch outfall to the Columbia River that discharges the water it receives from Facility 73 (the Property's stormwater treatment system). The average amount of stormwater runoff generated by the basins discharging to Outfall 002A is 166.3 MGY.

The coal export terminal Project would obtain a separate NPDES permit, and would develop a separate system of stormwater collection and discharge, as part of the coal export terminal Water Management System. The footprint of Project would absorb some of MBT-Longview's existing drainage basins, effectively eliminating a portion of the runoff volume that is presently handled under MBT-Longview's existing NPDES permit. Excess from the Project area would be collected and treated within the coal export terminal area, then routed to a new internal outfall (monitored under a separate NPDES Permit). The outfall would tie into the existing Facility 77 sump, and all waters from MBT-Longview would go through Facility 73. MBT-Longview's existing discharge line from Facility 73 will continue to discharge to the Columbia River through the existing Outfall 002A.

No portion of the Project Site, with the exception of a portion of the access overpass and frontage improvements, would drain to the CDID ditches. The ditches would remain as they exist today.

The coal export terminal Water Management System is described as follows:

- Stormwater and surface water (wash down water) would be collected from the stockpile areas, rail loop, office areas, the dock and other paved surfaces within the coal export terminal Project Site and directed to a series of vegetated ditches and ponds, then to a collection basin or sump.
- The collected water would be pumped to an onsite treatment facility consisting of settling pond(s) with flocculant addition to promote settling as required.
- The water would then be pumped to a surface storage pond. The surface storage pond would have an approximate capacity of 3.6 million gallons (MG) and would be used to store the water for reuse. The capacity of the pond would include a reserve of 0.36 MG for fire suppression.

The stored water would be reused for dust suppression, wash down and cleanup, and fire suppression. Water for dust suppression would be applied on the main stockpiles, within unloading and conveying systems, and at the dock. Excess water from dust suppression and wash down would be collected for reuse.

It is anticipated that approximately 1,200 gallons per minute (gpm) during wet seasons and approximately 2,000 gpm during the dry season, or 663 million gallons per year (MGY), would be needed on average for dust suppression. Water from the existing onsite wells would provide approximately 635 gpm (334 MGY) to maintain minimum water levels in the storage pond. Water from the storage pond would also be used for the fire hydrant, sprinklers and deluge systems, watering of landscaping and other non-recyclable uses.

The collected excess water would be conveyed to an onsite treatment and storage facility. The water being reused would be brought to Washington State Class A Reclaimed Water standards. Excess treated water from the storage pond would be directed to a collection basin, treated and tested prior to being discharged through the Project's internal NPDES permitted outfall to MBT-Longview's storm and waste water collection and treatment system, then finally discharged through Outfall 002A to the Columbia River. Discharge of water from the Project would be most likely to occur during the rainy season months of October through April.

The aquatic portions of the facility have been designed to minimize disturbance and permanent structure in nearshore/shallow water areas: it is as narrow as possible given structural and conveyor requirements, elevated well above OHW which minimizes shading in shoreline and shallow areas. Docks 2 and 3 would be located over 600 ft offshore in water that is all currently below -20 ft CRD. No dredging would occur in areas landward of -20 ft CRD.

## CONSTRUCTION

Minimization measures as well as design considerations and activity-specific work windows for this project are described in *Docks 2 and 3 and Associated Trestle: Proposed Mitigation Measures to Minimize Construction and Long-Term Effects (Grette Associates 2014)*, which has been submitted to the USACE as well as Ecology during the EIS process. These measures have been incorporated into the design of this Project to avoid or minimize effects to listed species, and are provided generally below. The final list of minimization measures will include any measures incorporated during the SEPA and NEPA EIS processes as well as permit conditions.

### *Construction Water Quality*

Standard BMPs for working in aquatic areas would be followed to maintain acceptable construction water quality conditions, including but not limited to maintaining appropriate standards for construction-related turbidity and minimizing the risks of unintended discharges of materials such as fuel or hydraulic fluid.

### *Pile Driving*

To minimize the potential for injury or disturbance to fish related to pile driving, the contractor would drive pile to the greatest extent possible using a vibratory hammer. Final driving and/or proofing will require an impact hammer to achieve bearing strength, depending upon the level of embedment achieved during vibratory installation. To reduce sound pressure levels from impact hammer operations, MBT-Longview's contractor would use a confined bubble curtain system or similar system during impact hammering.

### *Flow Lane Disposal*

MBT-Longview is specifying flow lane disposal in order to support downstream sediment transport processes. The USACE will designate an appropriate flow lane disposal site for this Project, ensuring coordination with any other flow lane disposal actions occurring in this region of the lower Columbia River.

### *Project Timing*

MBT-Longview has developed a series of activity-specific work windows that are designed to minimize specific impact mechanisms as they affect individual species (or populations within those species) of concern. These proposed work windows are protective of the species of concern while providing feasible construction periods for the in-water portion of the Project over a two-year schedule.

## OPERATIONS

Lighting would be directed to the work surfaces to minimize light on aquatic habitat.

Project Site stormwater would be managed according to Cowlitz County requirements. Dust suppression systems and use of enclosed conveyors and transfer points would minimize potential for fugitive dust to reach surface water. MBT-Longview would be responsible for creating and following an operational Spill Prevention, Control, and Countermeasures Plan.

The above-water operations would involve conveying coal from land to the docks where it would be loaded onto waiting vessels. A surface water drainage system would be installed to provide water quality treatment for frequent storm events in accordance with Ecology BMPs. Impacts to surface water from dust and coal spills in overwater areas would be controlled through the adherence to the applicable regulations for the reduction or control of dust emissions. The trestle conveyor is anticipated to be fully enclosed, which would eliminate the risk of coal spills, and minimize the impact from dust and untreated stormwater runoff. The dock and trestle coal handling infrastructure design also include methods to collect and treat spills if they were to occur.

Cleanup of any spills would be carried out in compliance with applicable regulations.

## MAINTENANCE DREDGING

Maintenance dredging would be conducted at the lowest frequency practicable in order to minimize substrate disturbance. Maintenance dredging is not anticipated to disturb areas shallower than -20 ft CRD.

**8b.** Will your project impact a waterbody or the area around a waterbody? [\[help\]](#)

☒ Yes ☐ No

**8c.** Have you prepared a mitigation plan to compensate for the project's adverse impacts to non-wetland waterbodies? [\[help\]](#)

- If **Yes**, submit the plan with the JARPA package and answer 8d.
- If **No**, or **Not applicable**, explain below why a mitigation plan should not be required.

☒ Yes (*in prep*) ☐ No ☐ Not applicable

A comprehensive Mitigation Plan is being prepared in coordination with USACE and Ecology to address the impacts to wetlands and aquatic habitats resulting from the Project.

**8d.** Summarize what the mitigation plan is meant to accomplish. Describe how a watershed approach was used to design the plan.

- If you already completed 7g you do not need to restate your answer here. [\[help\]](#)

Mitigation will compensate for the unavoidable, permanent impacts to aquatic areas including shading and habitat displaced by the footprint of the piles in shallow areas.

**8e.** Summarize impact(s) to each waterbody in the table below. [\[help\]](#)

Activity (clear, dredge, fill, pile drive, etc.)	Waterbody name <sup>1</sup>	Impact location <sup>2</sup>	Duration of impact <sup>3</sup>	Amount of material (cubic yards) to be placed in or removed from waterbody	Area (sq. ft. or linear ft.) of waterbody directly affected
Pile Installation (sound)	Columbia River	in	during construction	n/a	Sound is anticipated to propagate in-water to where it intersects with a landmass.
Pile (permanent footprint)	Columbia River	in	permanent	Up to 610 piles	Up to 4,311 ft <sup>2</sup>
Overwater cover	Columbia River	over	permanent	n/a	5.13 acres total
Dredging and flow lane disposal	Columbia River	in	during construction	500,000 cy – does not include future maintenance dredging volumes	48 acres
Flow lane disposal	Columbia River	in	during construction	500,000 cy – does not include future maintenance dredging volumes	Estimated disposal area 80 to 110 acres
Above-water work	Columbia River	over	during construction	n/a	n/a
Maintenance dredging	Columbia River	in	post-construction, periodic	dependent on deposition rates	48 acres (to maintain dredged prism)

<sup>1</sup> If no official name for the waterbody exists, create a unique name (such as "Stream 1") The name should be consistent with other documents provided.

<sup>2</sup> Indicate whether the impact will occur in or adjacent to the waterbody. If adjacent, provide the distance between the impact and the waterbody and indicate whether the impact will occur within the 100-year flood plain.

<sup>3</sup> Indicate the days, months or years the waterbody will be measurably impacted by the work. Enter "permanent" if applicable.

**8f.** For all activities identified in 8e, describe the source and nature of the fill material, amount (in cubic yards) you will use, and how and where it will be placed into the waterbody. [\[help\]](#)

Dredged material (500,000 cy) would be disposed of in the Columbia River flow lane at location to be designated by the USACE. USACE recently designated a 6.9-acre area for disposing 31,300 cy of dredged material from the Dock 1 berth; therefore it is estimated the flow lane disposal area designated would be between 80 and 110 acres based on a similar ratio of volume to acreage.

**8g.** For all excavating or dredging activities identified in 8e, describe the method for excavating or dredging, type and amount of material you will remove, and where the material will be disposed. [\[help\]](#)

Approximately 500,000 cy of river sand material would be removed by mechanical clamshell methods. This dredged material would be disposed of via flow lane disposal in the Columbia River, at the location selected by the USACE. Material would be disposed using a bottom-dump barge. The planned dredged volume based on the prism shown in Sheet 12 is 450,000 CY. The applicant is conservatively adding approximately 10 percent to that to account for river deposition that may occur prior to construction.

## Part 9—Additional Information

Any additional information you can provide helps the reviewer(s) understand your project. Complete as much of this section as you can. It is ok if you cannot answer a question.

**9a.** If you have already worked with any government agencies on this project, list them below. [\[help\]](#)

Agency Name	Contact Name	Phone	Most Recent Date of Contact
USACE	Danette Guy	(360) 906-7274	6/27/2016
	Michelle Walker	(206) 764-6915	6/27/2016
	Dave Martin	(206) 764-6848	6/27/2016
	Tristan Brown	(206) 764-3733	6/27/2016
WDNR	Megan Duffy	(360) 902-1000	3/17/2016
	Kristin Swenddal	(360) 902-1786	3/17/2016
	Matt Niles	(360) 740-6812	3/17/2016
WDFW	Steve West	(360) 906-6720	7/12/2016
WA Dept. of Ecology	Sally Toteff	(360) 407-6307	6/2/2016
	Paula Ehlers	(360) 407-0271	6/2/2016
	Diane Butorac	(360) 407-6594	6/16/2016
	Loree Randall	(360) 407-6068	7/12/2016
	Garin Schrieve-	(360) 407-6868	6/9/2016
Southwest Clean Air Agency	Wess Safford	(360) 574-3058	5/4/2016
Cowlitz County Building and Planning	Elaine Placido	(360) 577-3052 x6662	6/9/2016
Consolidated Diking Improvement District (CDID)	Ken Cachelin	(360) 423-2493	5/19/2016

**9b.** Are any of the wetlands or waterbodies identified in Part 7 or Part 8 of this JARPA on the Washington Department of Ecology's 303(d) List? [\[help\]](#)

- If **Yes**, list the parameter(s) below.
- If you don't know, use Washington Department of Ecology's Water Quality Assessment tools at: <http://www.ecy.wa.gov/programs/wq/303d/>.

☒ Yes ☐ No

Segments of the Columbia River are on Ecology's 303(d) list and are located approximately 2.9 miles upstream (bacteria) and 4.9 miles downstream (temperature) of the dock location.



<b>9c.</b> What U.S. Geological Survey Hydrological Unit Code (HUC) is the project in? <a href="#">[help]</a> <ul style="list-style-type: none"> <li>Go to <a href="http://cfpub.epa.gov/surf/locate/index.cfm">http://cfpub.epa.gov/surf/locate/index.cfm</a> to help identify the HUC.</li> </ul>
Lower Columbia-Clatskanie Watershed HUC 17080003
<b>9d.</b> What Water Resource Inventory Area Number (WRIA #) is the project in? <a href="#">[help]</a> <ul style="list-style-type: none"> <li>Go to <a href="http://www.ecy.wa.gov/services/gis/maps/wria/wria.htm">http://www.ecy.wa.gov/services/gis/maps/wria/wria.htm</a> to find the WRIA #.</li> </ul>
WRIA #25
<b>9e.</b> Will the in-water construction work comply with the State of Washington water quality standards for turbidity? <a href="#">[help]</a> <ul style="list-style-type: none"> <li>Go to <a href="http://www.ecy.wa.gov/programs/wq/swqs/criteria.html">http://www.ecy.wa.gov/programs/wq/swqs/criteria.html</a> for the standards.</li> </ul>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable
<b>9f.</b> If the project is within the jurisdiction of the Shoreline Management Act, what is the local shoreline environment designation? <a href="#">[help]</a> <ul style="list-style-type: none"> <li>If you don't know, contact the local planning department.</li> <li>For more information, go to: <a href="http://www.ecy.wa.gov/programs/sea/sma/laws_rules/173-26/211_designations.html">http://www.ecy.wa.gov/programs/sea/sma/laws_rules/173-26/211_designations.html</a>.</li> </ul>
<input type="checkbox"/> Rural <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Natural <input type="checkbox"/> Aquatic <input type="checkbox"/> Conservancy <input type="checkbox"/> Other _____
<b>9g.</b> What is the Washington Department of Natural Resources Water Type? <a href="#">[help]</a> <ul style="list-style-type: none"> <li>Go to <a href="http://www.dnr.wa.gov/forest-practices-water-typing">http://www.dnr.wa.gov/forest-practices-water-typing</a> for the Forest Practices Water Typing System.</li> </ul>
<input checked="" type="checkbox"/> Shoreline <input type="checkbox"/> Fish <input type="checkbox"/> Non-Fish Perennial <input type="checkbox"/> Non-Fish Seasonal
<b>9h.</b> Will this project be designed to meet the Washington Department of Ecology's most current stormwater manual? <a href="#">[help]</a> <ul style="list-style-type: none"> <li><b>If No</b>, provide the name of the manual your project is designed to meet.</li> </ul>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Name of manual: Cowlitz County Stormwater Drainage Manual 2011
<b>9i.</b> Does the project site have known contaminated sediment? <a href="#">[help]</a> <b>If Yes</b> , please describe below.
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>There is an isolated area of contaminated sediment on the Property but outside of the proposed dredge area that is described below.</p> <p>Sediment sampling was conducted prior to 2011 maintenance dredging at Dock 1, immediately upstream of the proposed dredge area. Results of sediment analysis concluded that all of the material to be dredged was suitable for in-water disposal at flow lane locations within the Columbia River. All material dredged under that authorization was disposed of at the authorized flow lane disposal site, which was located between river mile (RM) 60 and 61.</p> <p>Additional sampling was conducted in nearshore and offshore areas of the Property (all landward of the berth face and outside of the dredge program area) in 2012 in support of the Remedial Investigation/Feasibility Study (RI/FS) process for the former Reynolds Metals Reduction Plant. The investigation discovered no exceedance of sediment-management standards at any nearshore or offshore location, except for in a localized area immediately adjacent to Outfall 002A at test station SS-09 (just downstream from the Dock 1 trestle). Concentrations of chemicals (PCBs and cPAH compounds) in sediment at station SS-09 exceeded testing criteria but did not exceed criteria for human health protection. The distribution of contamination was limited in area and depth to an isolated layer six inches in thickness, and the contamination source was identified as a historical discharge and not the result of an ongoing release. Trend analysis further indicated that sediment</p>

quality in this area has been recovering over time. Consistent with direction provided by Ecology, the RI/FS process has evaluated the need to remediate this localized area of contamination, and has determined that removal and upland on-site or off-site placement of the contaminated sediments was the most appropriate remedy for this area. That action is currently being planned in coordination with Ecology.

**9j.** If you know what the property was used for in the past, describe below. [\[help\]](#)

The Applicant's leased area has been in industrial use since 1941. Reynolds Metals Company constructed and operated an aluminum smelter and aluminum casting facility within the project area from 1941 until 2000. Northwest Alloys purchased the Property in May 2000 and remains the owner, and the Applicant now operates the existing facility on a ground lease with NWA. The Reynolds Metals Company facility was an intensive industrial use and, at the time of its closure in 2001, it employed approximately 800 workers and operated 24 hours per day, seven days per week. In December 2004, Chinook Ventures purchased the facility assets, obtained a ground lease, and operated a bulk product terminal to store and transport fly ash, petroleum coke, alumina, and cement from 2004 to 2010. The Applicant purchased the facility assets from Chinook Ventures in January 2011, and now operates on a ground lease with NWA. Today, portions of the project area are used for industrial purposes, but overall the project area is underused, with industrial activities occurring at a much lower intensity than historical levels. The Property continues to support industrial operations and a portion of the Property is currently used as a Bulk Product Terminal that includes both marine and upland facilities. Current import and export activities are conducted by ship, railroad, and truck. The coal export terminal would be located on approximately 190 acres (Project Site) of the Property in a geographically distinct area, separate and apart from the Bulk Product Terminal.

**9k.** Has a cultural resource (archaeological) survey been performed on the project area? [\[help\]](#)

- If Yes, attach it to your JARPA package.

☒ Yes   ☐ No

A cultural resources analysis for this Property has been prepared and was submitted to the USACE on October 29, 2015. (*Millennium Coal Export Terminal, Longview, Washington, Historical and Cultural Resources Assessment*, October 1, 2015, AECOM).



**9I.** Name each species listed under the federal Endangered Species Act that occurs in the vicinity of the project area or might be affected by the proposed work. [\[help\]](#)

**Table 2. The following species and critical habitats occur in vicinity of the project area or might be affected by the proposed work.**

Species, ESU/DPS if applicable	Federal Status	Critical Habitat Designated	Critical Habitat in Vicinity of the Project
<b>Chinook salmon (<i>Oncorhynchus tshawytscha</i>)</b>			
Snake River fall ESU	threatened	yes	yes
Snake River spring/summer ESU	threatened	yes	yes
Upper Columbia River spring ESU	endangered	yes	yes
Lower Columbia River ESU	threatened	yes	yes
Upper Willamette River ESU	threatened	yes	yes
<b>Coho salmon (<i>O. kisutch</i>)</b>			
Lower Columbia River ESU	threatened	yes	yes
<b>Chum salmon (<i>O. keta</i>)</b>			
Columbia River ESU	threatened	yes	yes
<b>Sockeye salmon (<i>O. nerka</i>)</b>			
Snake River ESU	endangered	yes	yes
<b>Steelhead trout (<i>O. mykiss</i>)</b>			
Snake River DPS	threatened	yes	yes
Upper Columbia River DPS	endangered	yes	yes
Middle Columbia River DPS	threatened	yes	yes
Lower Columbia River DPS	threatened	yes	yes
Upper Willamette River DPS	threatened	yes	yes
<b>Bull trout (<i>Salvelinus confluentus</i>)</b>			
Columbia River DPS	threatened	yes	yes
<b>Other species</b>			
Eulachon ( <i>Thaelichthys pacificus</i> ), southern DPS	threatened	yes	yes
Green sturgeon ( <i>Acipenser medirostris</i> ), southern DPS	threatened	yes	no
Streaked horned lark ( <i>Eremophila alpestris strigata</i> )	threatened	yes	no
Yellow-billed cuckoo ( <i>Coccyzus americanus</i> ), western DPS	threatened	proposed	no
Columbian white-tailed deer ( <i>Odocoileus virginianus leucurus</i> ), Columbia DPS	endangered*	no	n/a

\*proposed for downlisting to threatened

Please note that species and critical habitat listings for the streaked horned lark were finalized in October 2013, and the western DPS of the yellow-billed cuckoo was listed in October 2014. Despite the developed nature of the Project Site and surrounding areas and lack of suitable habitat, streaked horned larks and yellow-billed cuckoo are included in this table because of the recentness of these listings.

The US Fish and Wildlife Service (USFWS) has jurisdiction over a number of other listed species and critical habitats in Cowlitz County which are not included in Table 2 based on the developed nature of the Project Site and surrounding areas, and lack of suitable habitat. These include marbled murrelet, Northern spotted owl, and Nelson's checker-mallow.

**9m.** Name each species or habitat on the Washington Department of Fish and Wildlife's Priority Habitats and Species List that might be affected by the proposed work. [\[help\]](#)

In addition to the above-mentioned threatened/endangered species, WDFW spatial information indicates that the following Priority Habitats and Species may be present within the main stem of Columbia River in the general vicinity of the dredge program area and potential flow lane disposal areas:

- Coastal resident/sea run cutthroat trout (*Oncorhynchus clarki clarki*)
- Pink salmon (*Oncorhynchus gorbuscha*)
- White sturgeon (*Acipenser transmontanus*)

Not mapped, but included based on potential distribution

- Pacific lamprey (*Entosphenus tridentata*)
- River lamprey (*Lampetra ayresi*)
- In Stream Habitat

## Part 10–SEPA Compliance and Permits

Use the resources and checklist below to identify the permits you are applying for.

- Online Project Questionnaire at <http://apps.oria.wa.gov/opas/>.
- Governor's Office for Regulatory Innovation and Assistance at (800) 917-0043 or [help@oria.wa.gov](mailto:help@oria.wa.gov).
- For a list of addresses to send your JARPA to, click on [agency addresses for completed JARPA](#).

**10a.** Compliance with the State Environmental Policy Act (SEPA). (Check all that apply.) [\[help\]](#)

- For more information about SEPA, go to [www.ecy.wa.gov/programs/sea/sepa/e-review.html](http://www.ecy.wa.gov/programs/sea/sepa/e-review.html).

☒ A copy of the SEPA determination or letter of exemption is included with this application. .

On April 16, 2013, Cowlitz County issued a Revised SEPA Determination of Significance and Request for Comments on Scope of EIS for Millennium Bulk Terminals Longview LLC Coal Export Terminal. Cowlitz County Department of Building and Planning and Ecology are co-lead agencies with Cowlitz County designated the nominal lead for environmental review under SEPA. A SEPA Draft EIS was published on April 29, 2016 followed by a 45-day comment period. The comment period closed on June 13, 2016. It is anticipated that a SEPA Final EIS will be issued in late 2016.

☐ A SEPA determination is pending with \_\_\_\_\_ (lead agency). The expected decision date is \_\_\_\_\_.

☐ I am applying for a Fish Habitat Enhancement Exemption. (Check the box below in 10b.) [\[help\]](#)

☐ This project is exempt (choose type of exemption below).

☐ Categorical Exemption. Under what section of the SEPA administrative code (WAC) is it exempt?

☐ Other: \_\_\_\_\_

☐ SEPA is pre-empted by federal law.

**10b.** Indicate the permits you are applying for. (Check all that apply.) [\[help\]](#)

**LOCAL GOVERNMENT**

**Local Government Shoreline permits:**

☒ Substantial Development\*    ☒ Conditional Use\*    ☐ Variance

**\*Applications were submitted in February 2012 to Cowlitz County.**

☐ Shoreline Exemption Type (explain):

**Other City/County permits:**

☐ Floodplain Development Permit (if required)\*    ☒ Critical Areas Ordinance (if required)\*

**\*Not applying at this time and will be applied for at a later date as required.**

**STATE GOVERNMENT**

**Washington Department of Fish and Wildlife:**

☐ Hydraulic Project Approval (HPA)\*    ☐ Fish Habitat Enhancement Exemption – [Attach Exemption Form](#)

**\*Not applying for HPA permit at this time and will be applied for at a later date as required.**

You must submit a check for \$150 to Washington Department of Fish and Wildlife, unless your project qualifies for an exemption or alternative payment method below. **Do not send cash.**

Check the appropriate boxes:

☐ \$150 check enclosed. Check # \_\_\_\_\_  
Attach check made payable to Washington Department of Fish and Wildlife.

☐ My project is exempt from the application fee. (Check appropriate exemption) \_\_\_\_\_

☐ HPA processing is conducted by applicant-funded WDFW staff.  
Agreement # \_\_\_\_\_

☐ Mineral prospecting and mining.

☐ Project occurs on farm and agricultural land.

(Attach a copy of current land use classification recorded with the county auditor, or other proof of current land use.)

☐ Project is a modification of an existing HPA originally applied for, prior to July 10, 2012.  
HPA # \_\_\_\_\_

**Washington Department of Natural Resources:**

☐ Aquatic Use Authorization\*

Complete [JARPA Attachment E](#) and submit a check for \$25 payable to the Washington Department of Natural Resources.

**Do not send cash. \*Not applying for Aquatic Use Authorization at this time and will be applied for at a later date as required.**

**Washington Department of Ecology:**

☒ Section 401 Water Quality Certification

**FEDERAL GOVERNMENT**

**United States Department of the Army permits (U.S. Army Corps of Engineers):**

☒ Section 404 (discharges into waters of the U.S.)    ☒ Section 10 (work in navigable waters)

**United States Coast Guard permits:**

☐ Private Aids to Navigation (for non-bridge projects)

## Part 11—Authorizing Signatures

Signatures are required before submitting the JARPA package. The JARPA package includes the JARPA form, project plans, photos, etc. [\[help\]](#)

### 11a. Applicant Signature (required) [\[help\]](#)

I certify that to the best of my knowledge and belief, the information provided in this application is true, complete, and accurate. I also certify that I have the authority to carry out the proposed activities, and I agree to start work only after I have received all necessary permits.

I hereby authorize the agent named in Part 3 of this application to act on my behalf in matters related to this application. KJ (initial)

By initialing here, I state that I have the authority to grant access to the property. I also give my consent to the permitting agencies entering the property where the project is located to inspect the project site or any work related to the project. KJ (initial)

Kristin K. Gaines [Signature] 7/13/2016  
Applicant Printed Name Applicant Signature Date

### 11b. Authorized Agent Signature [\[help\]](#)

I certify that to the best of my knowledge and belief, the information provided in this application is true, complete, and accurate. I also certify that I have the authority to carry out the proposed activities and I agree to start work only after all necessary permits have been issued.

Glenn B. Grette [Signature] 7/13/2016  
Authorized Agent Printed Name Authorized Agent Signature Date

### 11c. Property Owner Signature (if not applicant) [\[help\]](#)

Not required if project is on existing rights-of-way or easements.

I consent to the permitting agencies entering the property where the project is located to inspect the project site or any work. These inspections shall occur at reasonable times and, if practical, with prior notice to the landowner.

Mark A. Stiffler [Signature] 7/13/2016  
Property Owner Printed Name Property Owner Signature Date

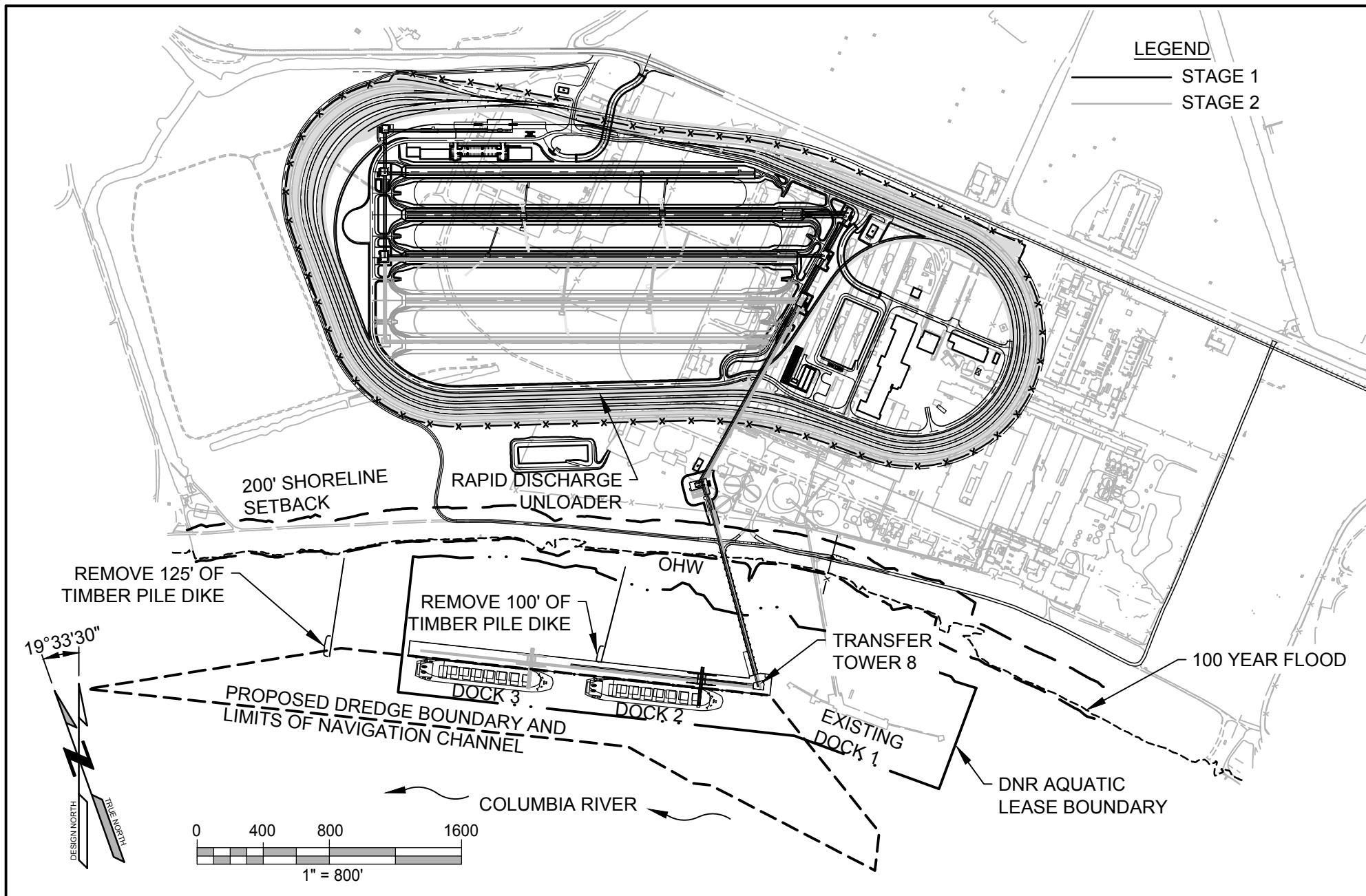
18 U.S.C §1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

If you require this document in another format, contact the Governor's Office for Regulatory Innovation and Assistance (ORIA) at (800) 917-0043. People with hearing loss can call 711 for Washington Relay Service. People with a speech disability can call (877) 833-6341. ORIA publication number: ENV-019-09 rev. 09/2015









PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S

CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL SITE PLAN VIEW



Exhibit B - Page 28 of 44

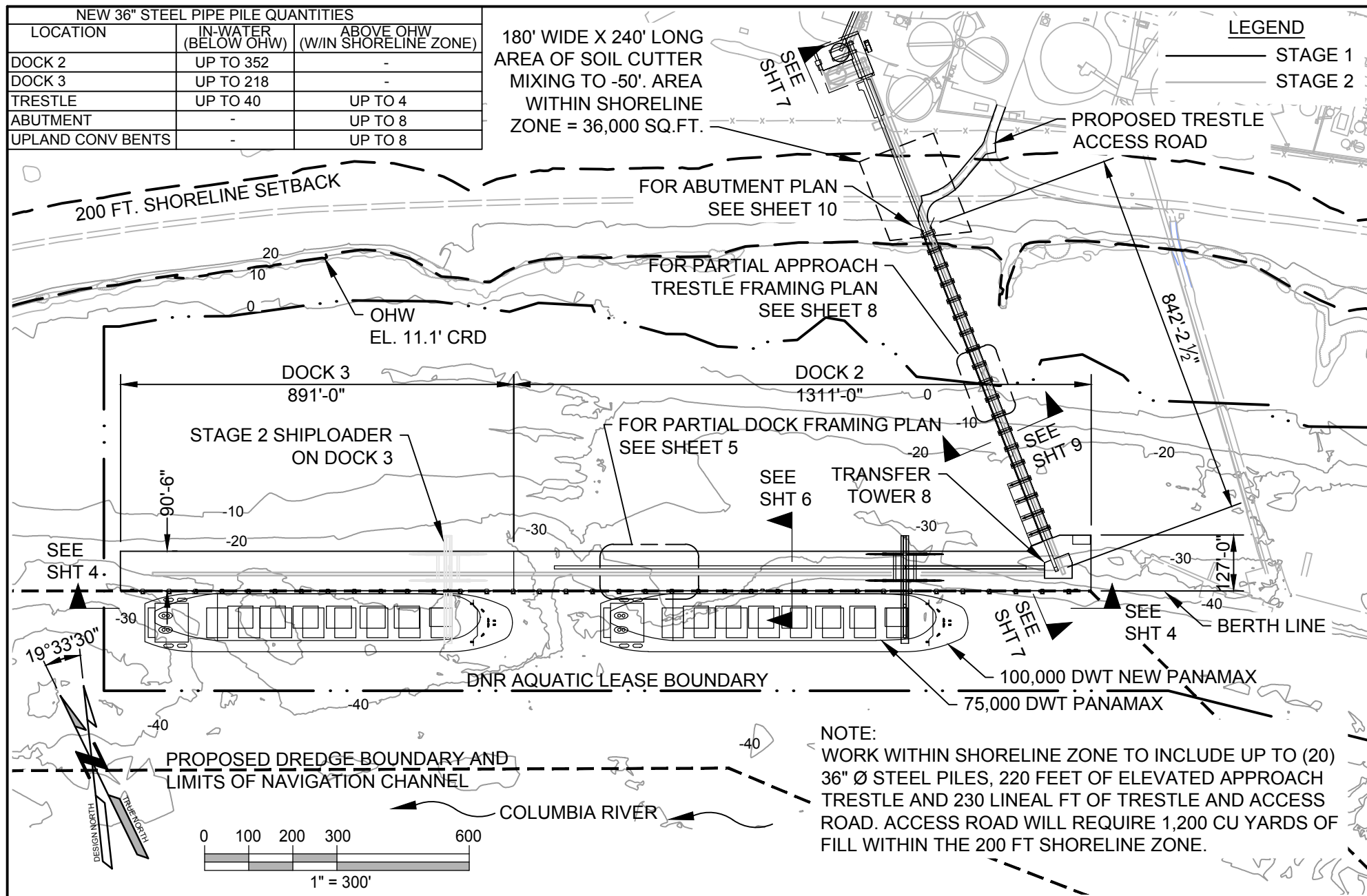
## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL

LATITUDE: 46.1364 N  
LONGITUDE: -123.0047 W  
COUNTY OF: COWLITZ  
STATE: WA  
APPLICANT: MBT-LONGVIEW

SHEET NO: 2 OF 14

S-T-R: S25,26,35,36 T8N R3W  
IN: COLUMBIA RIVER  
AT: NWA/MBT-LONGVIEW FACILITY  
4029 INDUSTRIAL WAY  
LONGVIEW, WA 98632

DATE: 07/13/2016



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

#### ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S

CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL DOCK PLAN VIEW



Exhibit B - Page 29 of 44

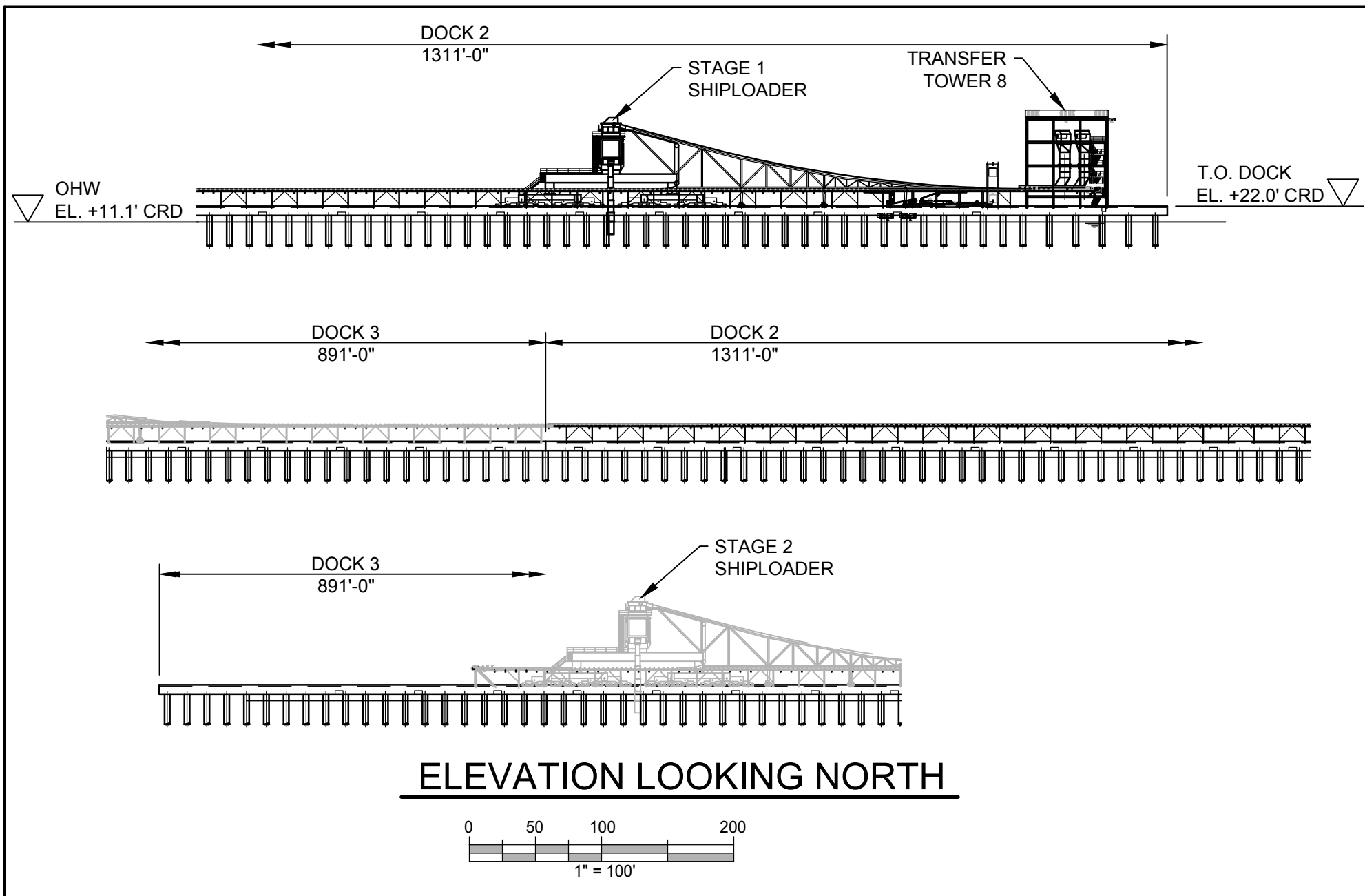
#### MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL

LATITUDE: 46.1364 N  
LONGITUDE: -123.0047 W  
COUNTY OF: COWLITZ  
STATE: WA  
APPLICANT: MBT-LONGVIEW

SHEET NO: 3 OF 14

S-T-R: S25,26,35,36 T8N R3W  
IN: COLUMBIA RIVER  
AT: NWA/MBT-LONGVIEW FACILITY  
4029 INDUSTRIAL WAY  
LONGVIEW, WA 98632

DATE: 07/13/2016



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

#### ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S

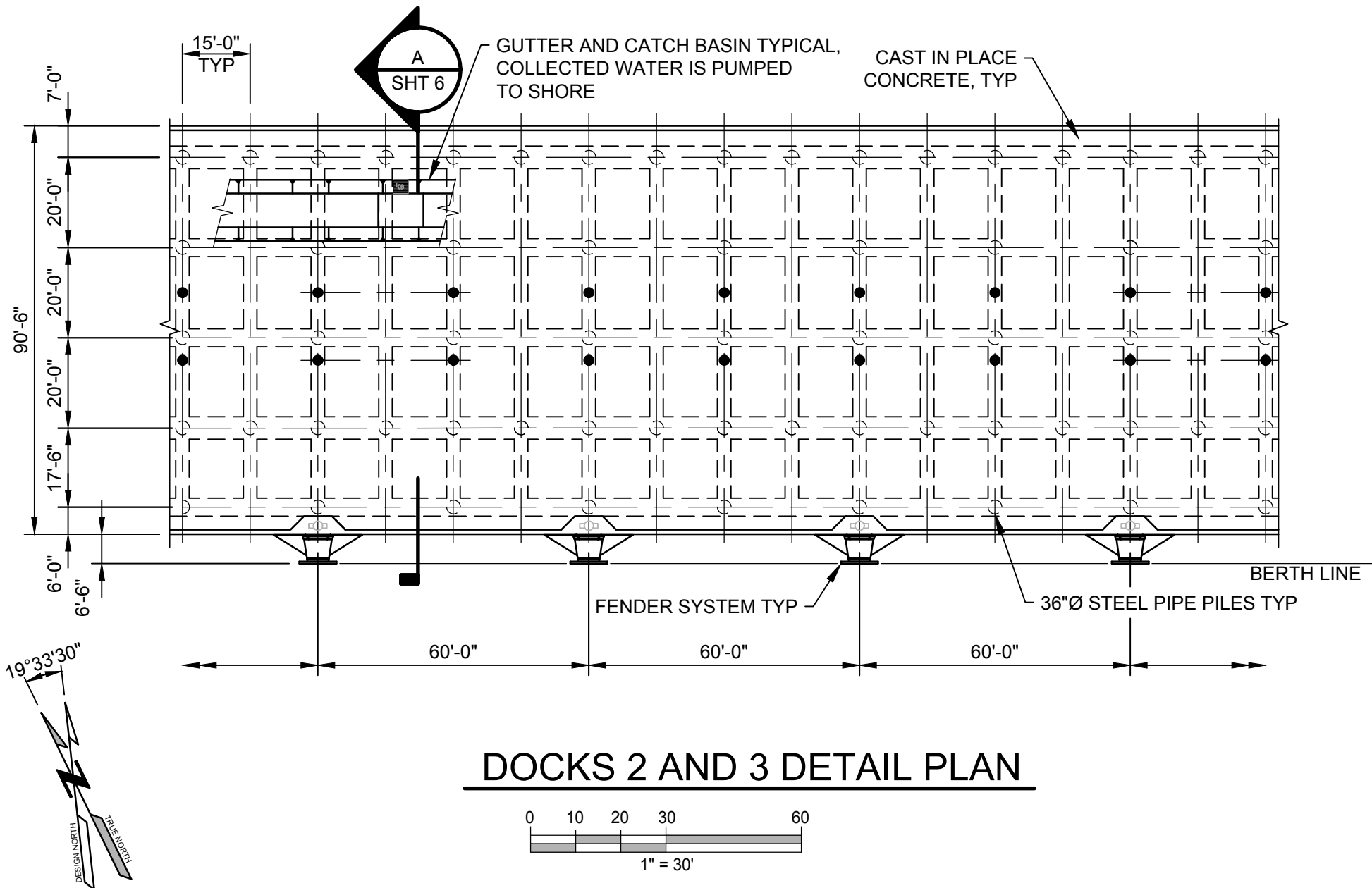
CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL DOCKS 2 AND 3 ELEVATION VIEW

**HR**  
Exhibit B - Page 30 of 44

#### MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL

LATITUDE: 46.1364 N	S-T-R: S25,26,35,36 T8N R3W
LONGITUDE: -123.0047 W	IN: COLUMBIA RIVER
COUNTY OF: COWLITZ	AT: NWA/MBT-LONGVIEW FACILITY
STATE: WA	4029 INDUSTRIAL WAY
APPLICANT: MBT-LONGVIEW	LONGVIEW, WA 98632
SHEET NO: <u>4</u> OF <u>14</u>	DATE: <u>07/13/2016</u>



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

### ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S

CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL DOCKS 2 AND 3 PLAN VIEW DETAIL

**HR**  
Exhibit B - Page 31 of 44

### MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL

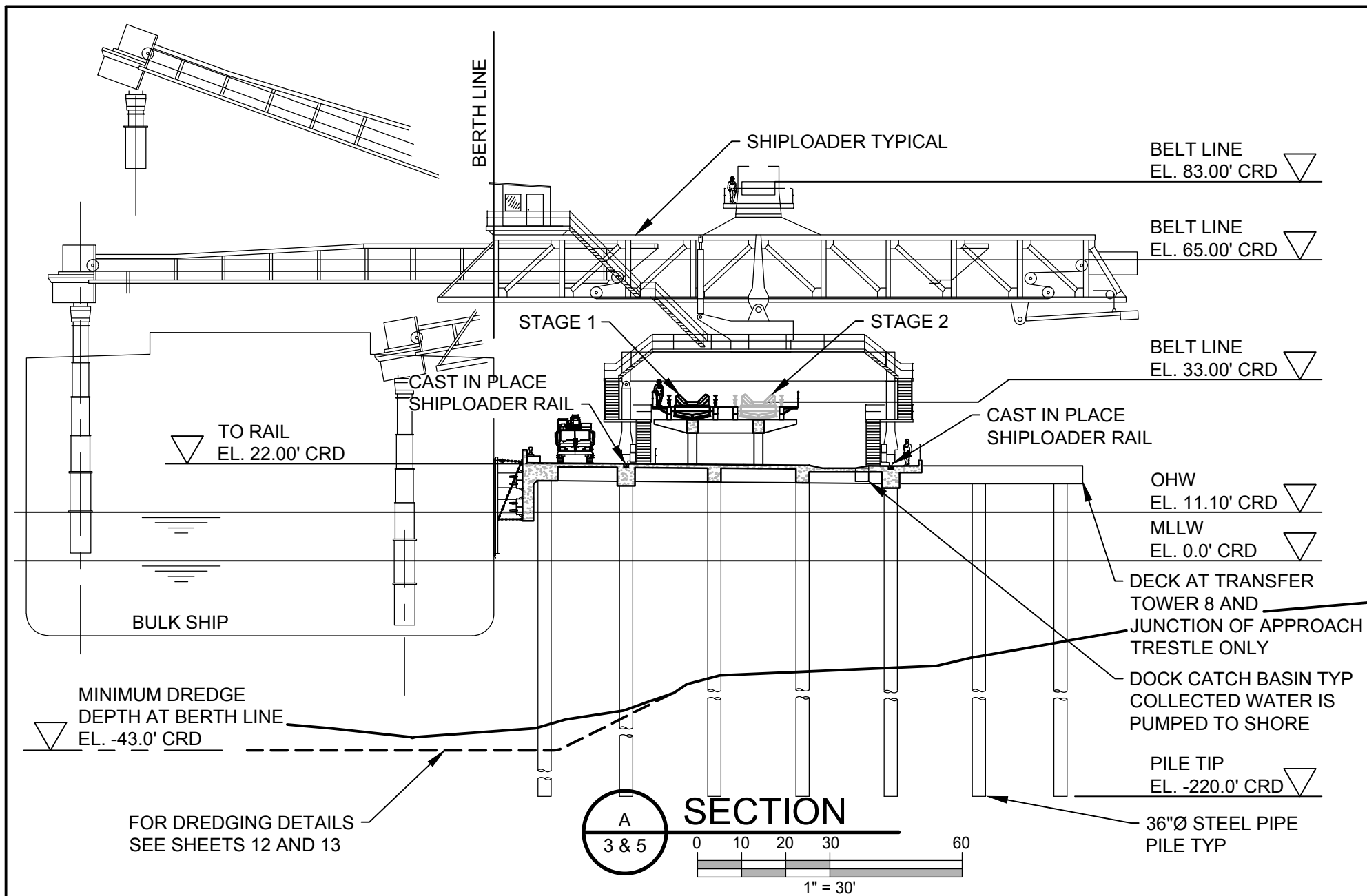
LATITUDE: 46.1364 N  
LONGITUDE: -123.0047 W  
COUNTY OF: COWLITZ  
STATE: WA  
APPLICANT: MBT-LONGVIEW

S-T-R: S25,26,35,36 T8N R3W  
IN: COLUMBIA RIVER  
AT: NWA/MBT-LONGVIEW FACILITY  
4029 INDUSTRIAL WAY  
LONGVIEW, WA 98632

SHEET NO: 5 OF 14

DATE: 07/13/2016





PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL DOCKS 2 AND 3 WITH SHIP LOADER



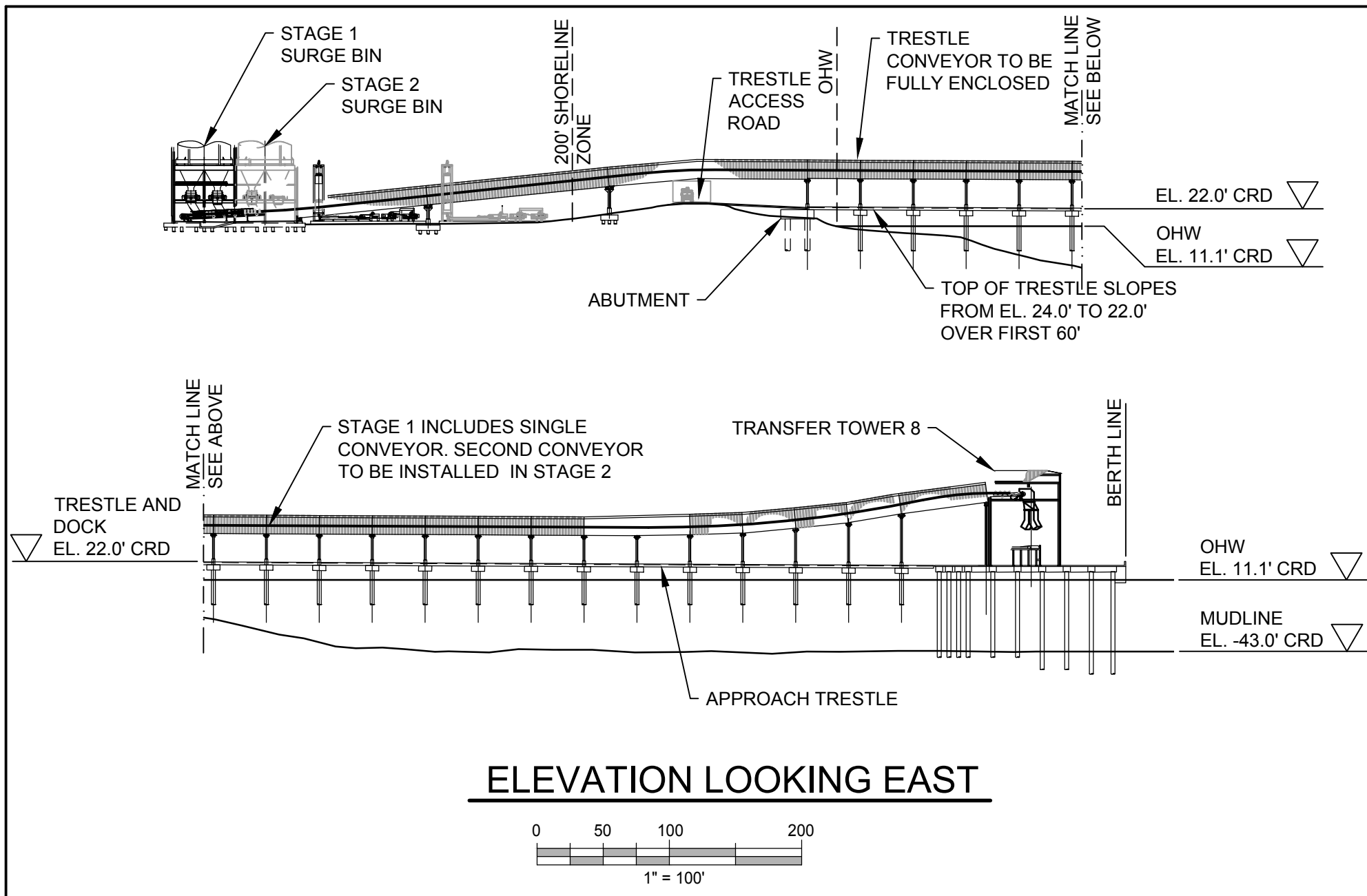
Exhibit B - Page 32 of 44

MILLENNIUM BULK TERMINALS-LONGVIEW  
COAL EXPORT TERMINAL

LATITUDE: 46.1364 N  
LONGITUDE: -123.0047 W  
COUNTY OF: COWLITZ  
STATE: WA  
APPLICANT: MBT-LONGVIEW

S-T-R: S25,26,35,36 T8N R3W  
IN: COLUMBIA RIVER  
AT: NWA/MBT-LONGVIEW FACILITY  
4029 INDUSTRIAL WAY  
LONGVIEW, WA 98632

SHEET NO: 6 OF 14 DATE: 07/13/2016



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

#### ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S

CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL APPROACH TRESTLE ELEVATION VIEW



Exhibit B - Page 33 of 44

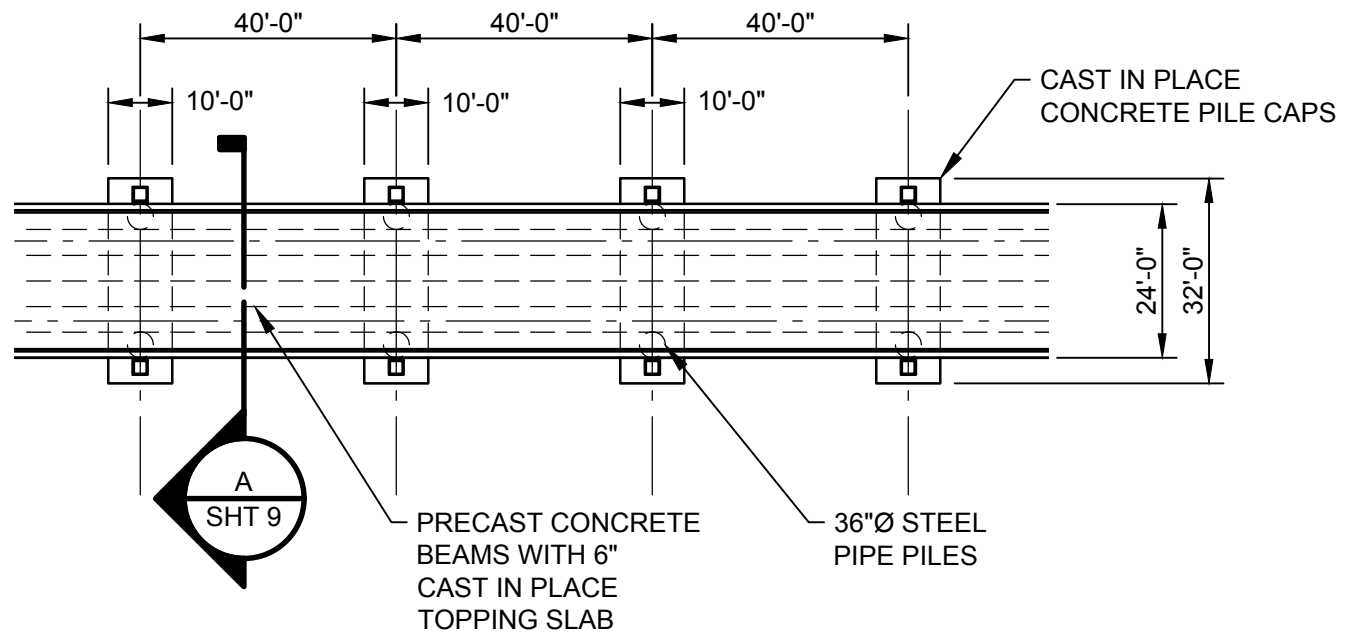
#### MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL

LATITUDE: 46.1364 N  
LONGITUDE: -123.0047 W  
COUNTY OF: COWLITZ  
STATE: WA  
APPLICANT: MBT-LONGVIEW

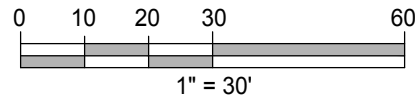
S-T-R: S25,26,35,36 T8N R3W  
IN: COLUMBIA RIVER  
AT: NWA/MBT-LONGVIEW FACILITY  
4029 INDUSTRIAL WAY  
LONGVIEW, WA 98632

SHEET NO: 7 OF 14

DATE: 07/13/2016



## APPROACH TRESTLE DETAIL PLAN



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

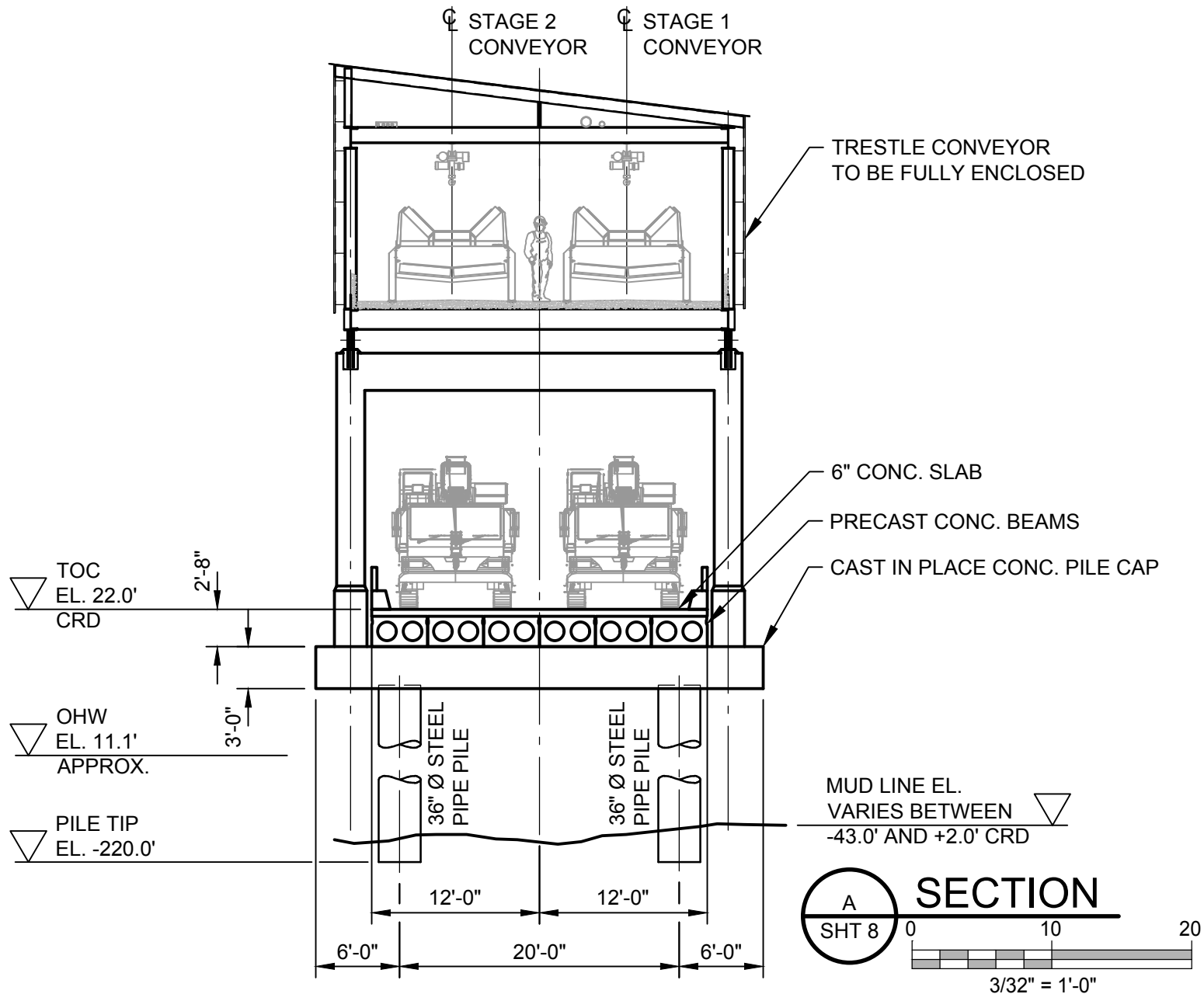
DATUM: CRD, NAD83 WA S CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL APPROACH TRESTLE PLAN VIEW DETAIL

**HR**  
Exhibit B - Page 34 of 44

MILLENNIUM BULK TERMINALS-LONGVIEW  
COAL EXPORT TERMINAL

LATITUDE: 46.1364 N	S-T-R: S25,26,35,36 T8N R3W
LONGITUDE: -123.0047 W	IN: COLUMBIA RIVER
COUNTY OF: COWLITZ	AT: NWA/MBT-LONGVIEW FACILITY
STATE: WA	4029 INDUSTRIAL WAY
APPLICANT: MBT-LONGVIEW	LONGVIEW, WA 98632
SHEET NO: <u>8</u> OF <u>14</u>	DATE: <u>07/13/2016</u>



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S

CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL APPROACH TRESTLE CROSS SECTION

**HR**  
Exhibit B - Page 35 of 44

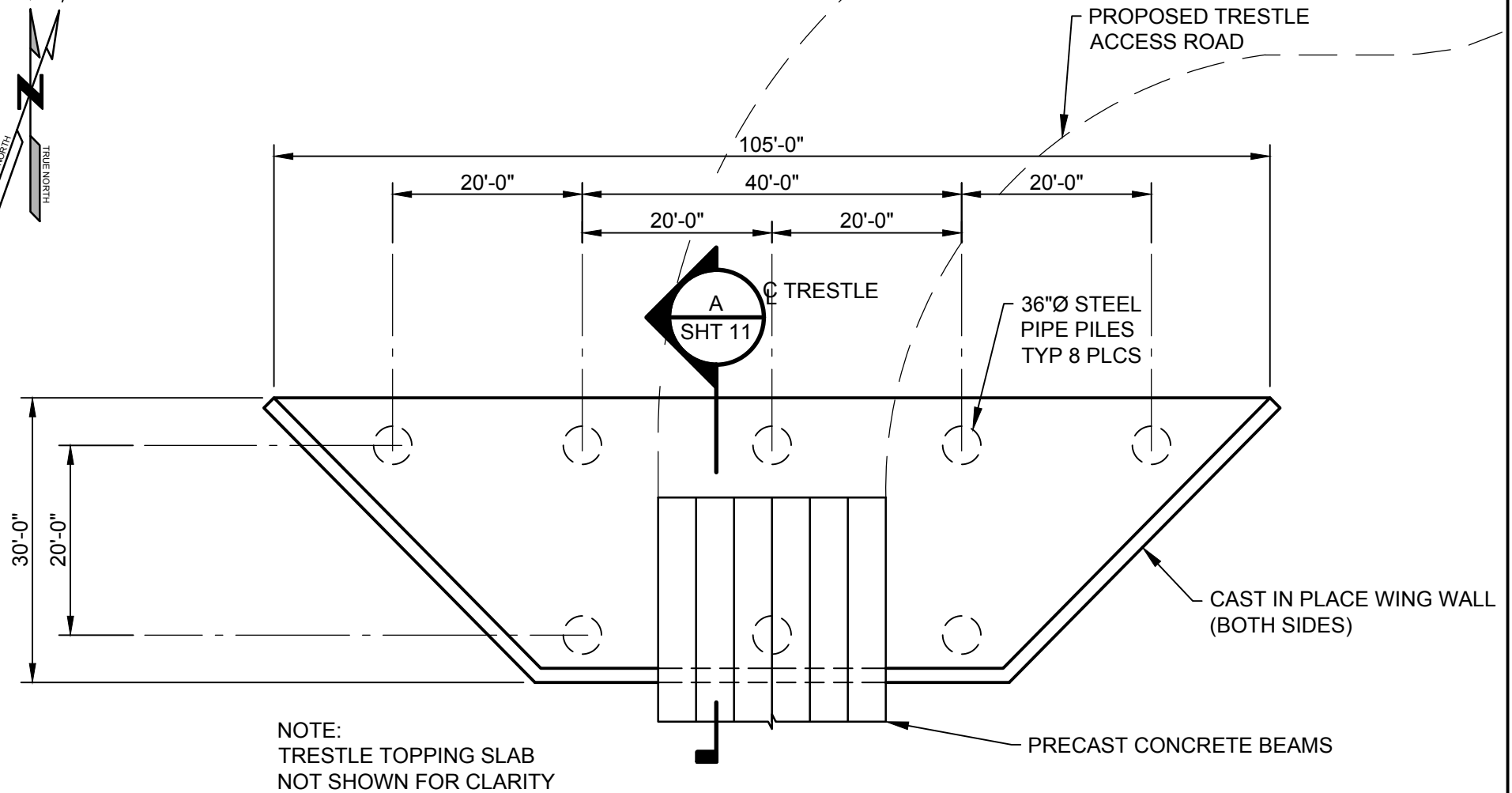
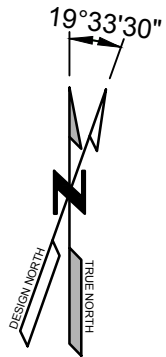
MILLENNIUM BULK TERMINALS-LONGVIEW  
COAL EXPORT TERMINAL

LATITUDE: 46.1364 N  
LONGITUDE: -123.0047 W  
COUNTY OF: COWLITZ  
STATE: WA  
APPLICANT: MBT-LONGVIEW

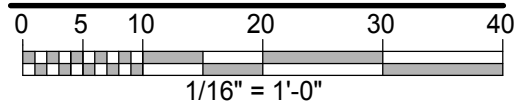
SHEET NO: 9 OF 14

S-T-R: S25,26,35,36 T8N R3W  
IN: COLUMBIA RIVER  
AT: NWA/MBT-LONGVIEW FACILITY  
4029 INDUSTRIAL WAY  
LONGVIEW, WA 98632

DATE: 07/13/2016



## ABUTMENT PLAN



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S      CORPS REF. NO.: \_\_\_\_\_

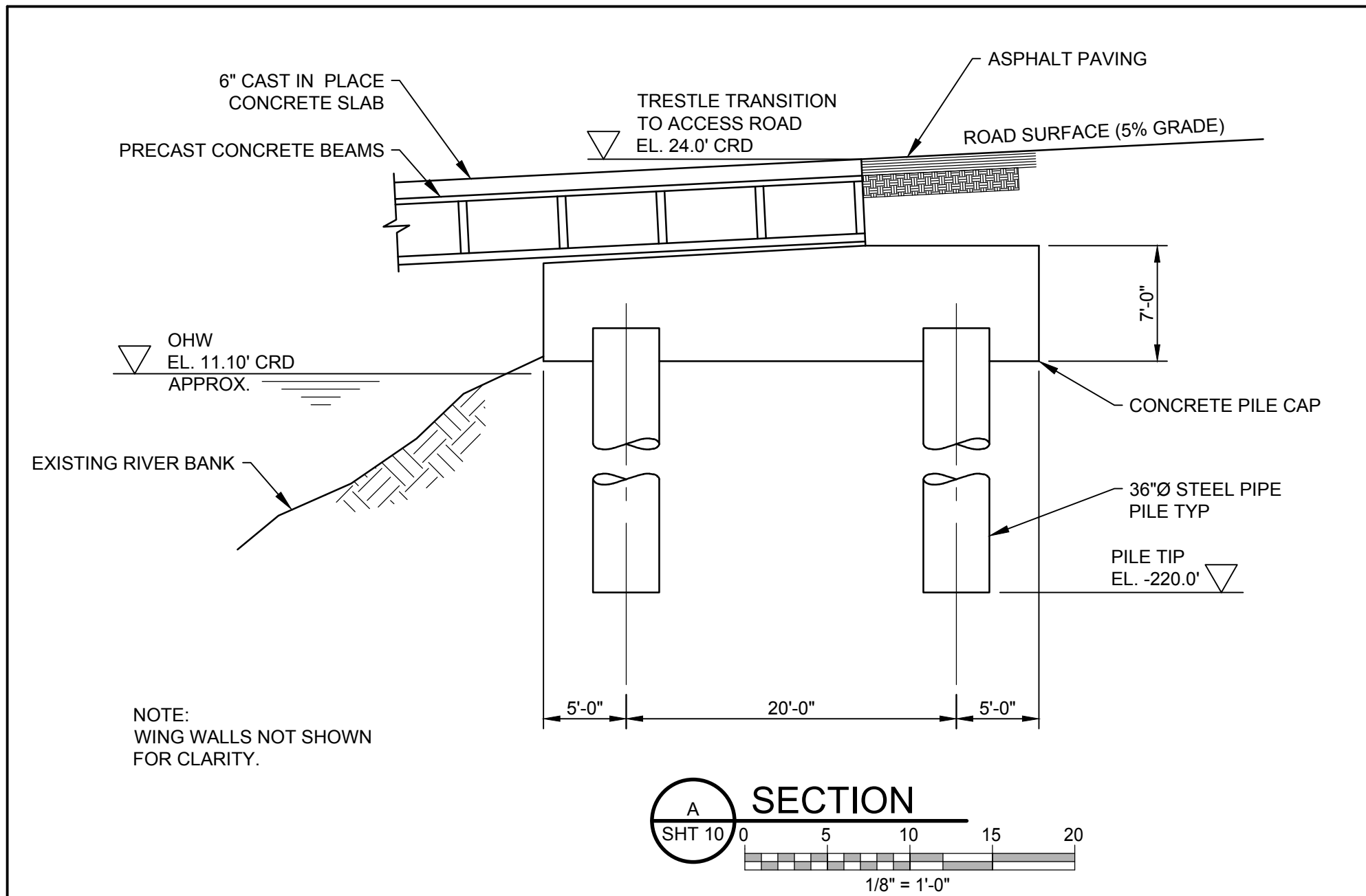
## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL ABUTMENT PLAN VIEW

**HR**  
Exhibit B - Page 36 of 44

MILLENNIUM BULK TERMINALS-LONGVIEW  
COAL EXPORT TERMINAL

LATITUDE: 46.1364 N	S-T-R: S25,26,35,36 T8N R3W
LONGITUDE: -123.0047 W	IN: COLUMBIA RIVER
COUNTY OF: COWLITZ	AT: NWA/MBT-LONGVIEW FACILITY
STATE: WA	4029 INDUSTRIAL WAY
APPLICANT: MBT-LONGVIEW	LONGVIEW, WA 98632
SHEET NO: <u>10</u> OF <u>14</u>	DATE: <u>07/13/2016</u>





PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S      CORPS REF. NO.: \_\_\_\_\_

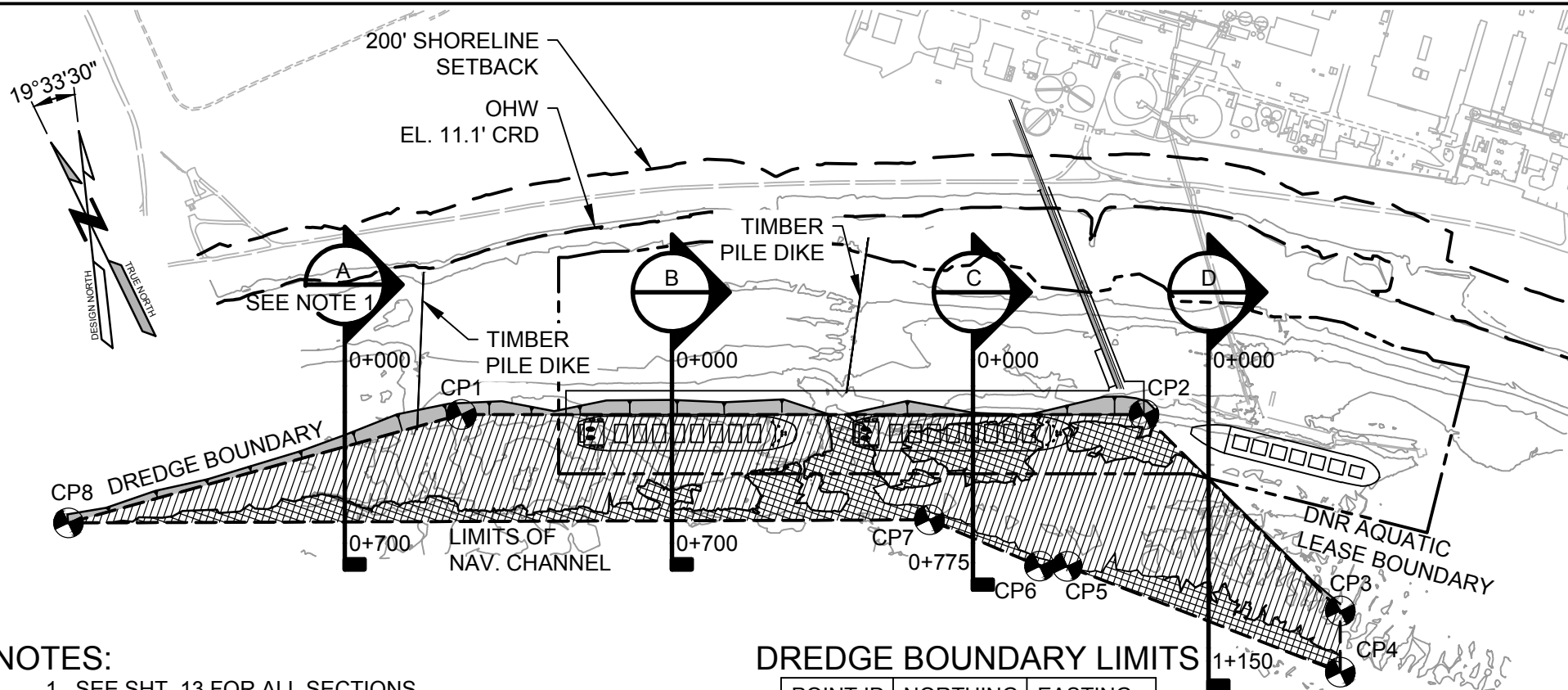
**MILLENNIUM BULK TERMINALS-LONGVIEW  
COAL EXPORT TERMINAL  
ABUTMENT CROSS SECTION**



Exhibit B - Page 37 of 44

**MILLENNIUM BULK TERMINALS-LONGVIEW  
COAL EXPORT TERMINAL**





LATITUDE: 46.1364 N	S-T-R: S25,26,35,36 T8N R3W
LONGITUDE: -123.0047 W	IN: COLUMBIA RIVER
COUNTY OF: COWLITZ	AT: NWA/MBT-LONGVIEW FACILITY
STATE: WA	4029 INDUSTRIAL WAY
APPLICANT: MBT-LONGVIEW	LONGVIEW, WA 98632
SHEET NO: 11 OF 14	DATE: 07/13/2016



## NOTES:

1. SEE SHT. 13 FOR ALL SECTIONS
2. DREDGE DESIGN QTY: UP TO 500,000 CUBIC YARDS
3. DREDGE AREA: 48 ACRES

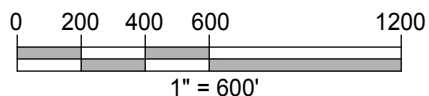
## LEGEND

-  DREDGE TO -45 FT CRD (INCLUDES 2 FT OVERDREDGE)
-  EXIST AREA DEEPER THAN -45 FT CRD
-  DREDGE SLOPE (3H:1V TYP)
-  DREDGE CONTROL POINT

## DREDGE BOUNDARY LIMITS

POINT ID	NORTHING	EASTING
CP1	303886.73	1003465.73
CP2	302753.65	1005814.73
CP3	301752.29	1006164.40
CP4	301541.54	1006062.71
CP5	302358.96	1005298.01
CP6	302405.18	1005203.71
CP7	302747.71	1004901.75
CP8	304166.29	1001934.20

## DREDGE PLAN



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

### ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S

CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL DREDGE OVERVIEW



Exhibit B - Page 38 of 44

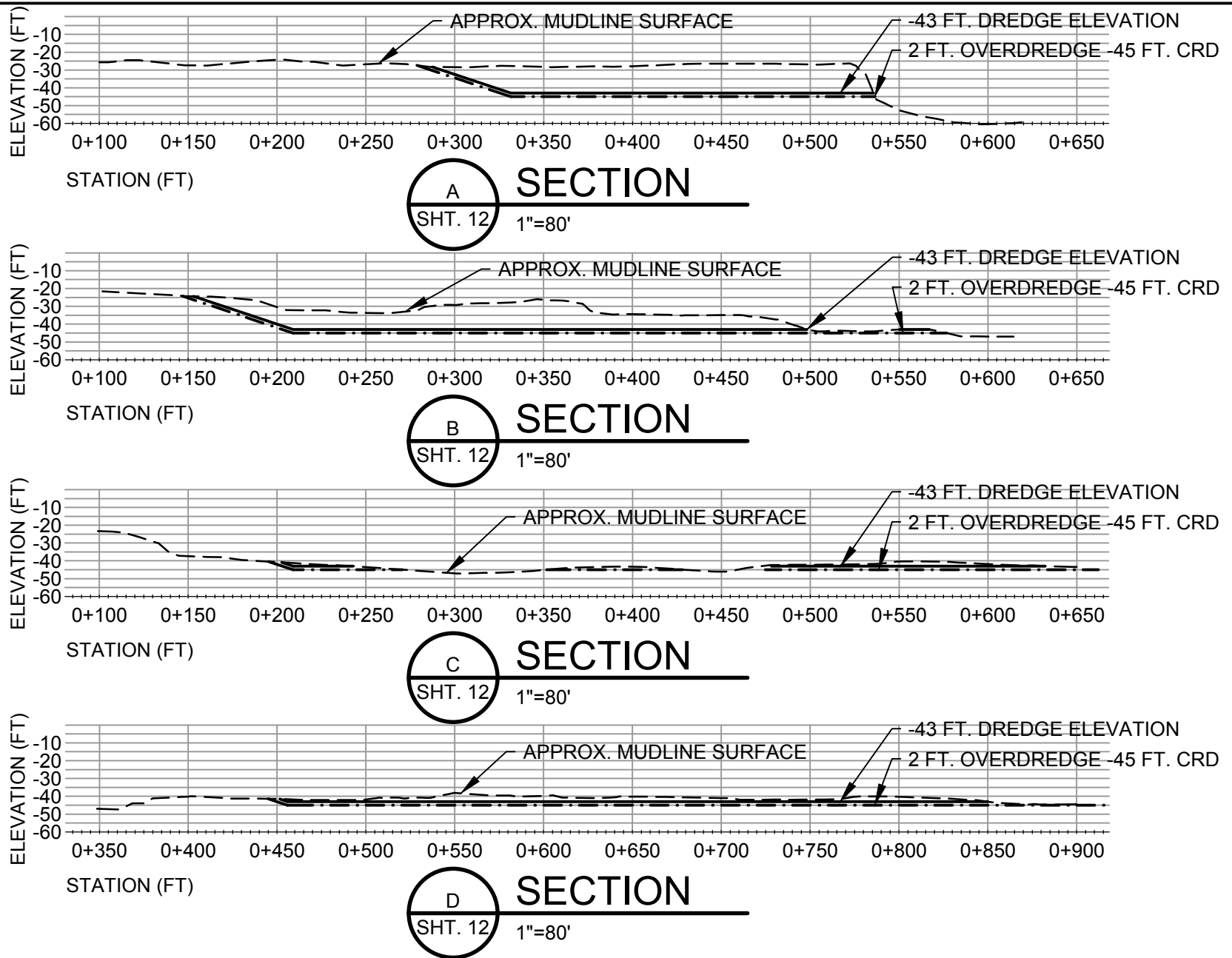
### MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL

LATITUDE: 46.1364 N  
LONGITUDE: -123.0047 W  
COUNTY OF: COWLITZ  
STATE: WA  
APPLICANT: MBT-LONGVIEW

S-T-R: S25,26,35,36 T8N R3W  
IN: COLUMBIA RIVER  
AT: NWA/MBT-LONGVIEW FACILITY  
4029 INDUSTRIAL WAY  
LONGVIEW, WA 98632

SHEET NO: 12 OF 14

DATE: 07/13/2016



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

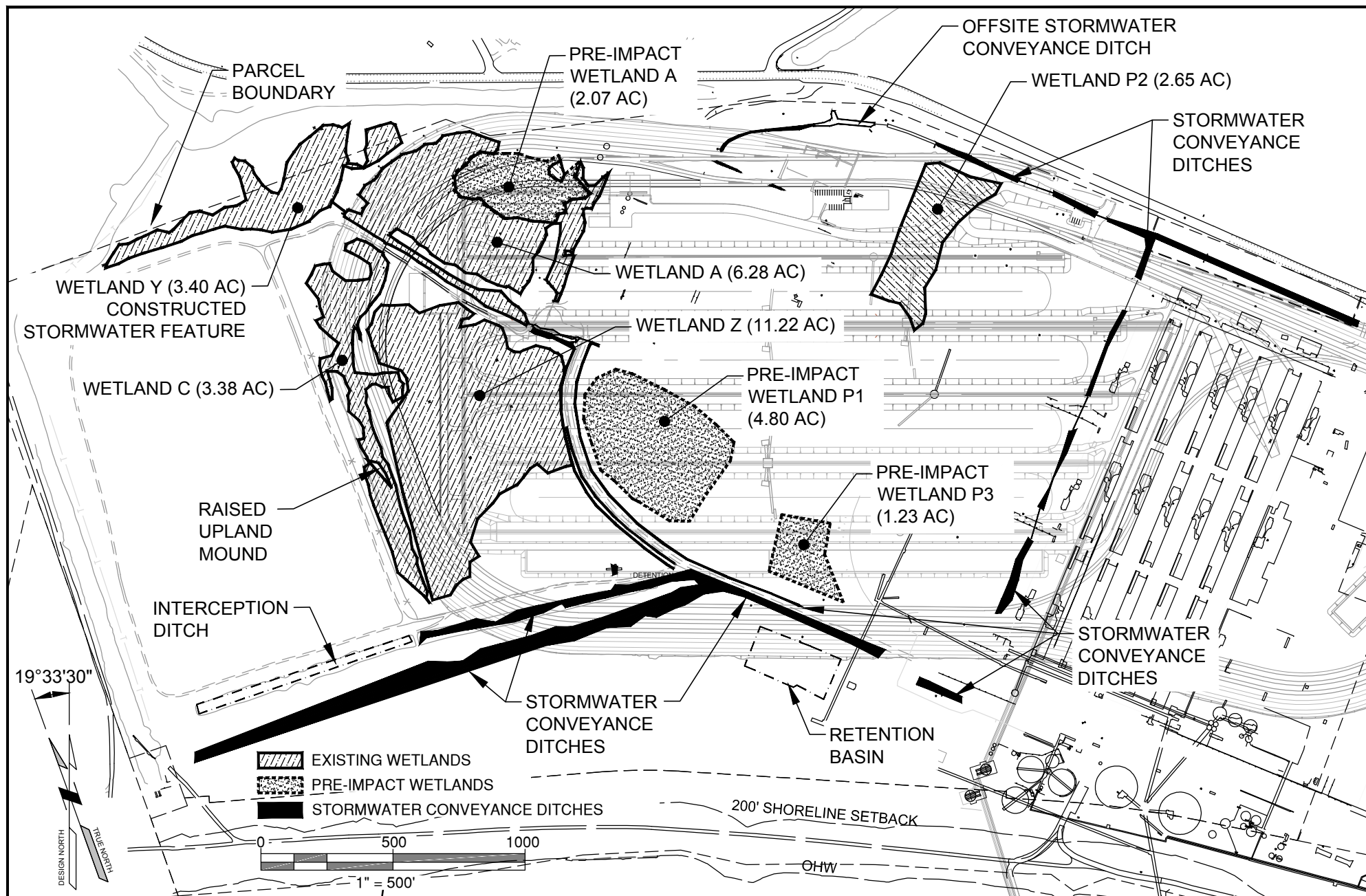
DATUM: CRD, NAD83 WA S      CORPS REF. NO.: \_\_\_\_\_

**MILLENNIUM BULK TERMINALS-LONGVIEW  
COAL EXPORT TERMINAL  
DREDGE CROSS SECTIONS**

**HR**  
Exhibit B - Page 39 of 44

**MILLENNIUM BULK TERMINALS-LONGVIEW  
COAL EXPORT TERMINAL**

LATITUDE: 46.1364 N	S-T-R: S25,26,35,36 T8N R3W
LONGITUDE: -123.0047 W	IN: COLUMBIA RIVER
COUNTY OF: COWLITZ	AT: NWA/MBT-LONGVIEW FACILITY
STATE: WA	4029 INDUSTRIAL WAY
APPLICANT: MBT-LONGVIEW	LONGVIEW, WA 98632
SHEET NO: 13 OF 14	DATE: 07/13/2016



PURPOSE: ESTABLISH A COAL EXPORT TERMINAL

#### ADJACENT PROPERTY OWNERS

- |                             |                    |
|-----------------------------|--------------------|
| ① PORT OF LONGVIEW          | ④ USA (BPA)        |
| ② NORTHWEST ALLOYS (NWA)    | ⑤ BNSF             |
| ③ CONSOL. DIKING IMPV. DIST | ⑥ WEYERHAEUSER CO. |

DATUM: CRD, NAD83 WA S

CORPS REF. NO.: \_\_\_\_\_

## MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL WETLANDS AND DITCHES

**HDR**  
Exhibit B - Page 40 of 44

#### MILLENNIUM BULK TERMINALS-LONGVIEW COAL EXPORT TERMINAL

LATITUDE: 46.1364 N  
LONGITUDE: -123.0047 W  
COUNTY OF: COWLITZ  
STATE: WA  
APPLICANT: MBT-LONGVIEW

SHEET NO: 14 OF 14

S-T-R: S25,26,35,36 T8N R3W  
IN: COLUMBIA RIVER  
AT: NWA/MBT-LONGVIEW FACILITY  
4029 INDUSTRIAL WAY  
LONGVIEW, WA 98632

DATE: 07/13/2016

UNITED STATES OF AMERICA

The State of Washington

Secretary of State

I, SAM REED, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

**CERTIFICATE OF EXISTENCE/AUTHORIZATION**

**OF**

**MILLENNIUM BULK TERMINALS-LONGVIEW, LLC**

I FURTHER CERTIFY that the records on file in this office show that the above named Limited Liability Company was formed under the laws of the State of DE and was issued a Certificate Of Registration in Washington on 8/6/2010.

I FURTHER CERTIFY that as of the date of this certificate, MILLENNIUM BULK TERMINALS-LONGVIEW, LLC remains active and has complied with the filing requirements of this office.

Date: January 14, 2011

UBI: 603-041-787



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Sam Reed, Secretary of State



## DEPARTMENT OF BUILDING AND PLANNING

207 Fourth Avenue North  
Kelso, WA 98626  
TEL (360) 577-3052  
FAX (360) 414-5550

[www.co.cowlitz.wa.us/buildplan](http://www.co.cowlitz.wa.us/buildplan)

**Board of County Commissioners**  
Michael A. Karnofski District 1  
Dennis P. Weber District 2  
James R. Misner District 3

### **Cowlitz County Revised SEPA Determination of Significance & Request for Comments on Scope of EIS for Millennium Bulk Terminals Longview LLC Coal Export Terminal REVISED**

**Description of Proposal:** Millennium Bulk Terminals Longview LLC (MBTL) proposes to build a terminal for the transfer of coal between rail and ocean-going vessels for export on a portion of an existing industrial site which includes an existing operating dock (Dock 1) in Cowlitz County, Washington ("Coal Export Terminal"). The proposed Coal Export Terminal would be located near Longview, WA, adjacent to the Columbia River on an existing brownfield site zoned for heavy industrial use. The proposed Coal Export Terminal would cover approximately 190 acres of the approximately 536-acre site and would consist of rail unloading, storage, reclaiming and loading ships with coal. The proposed Coal Export Terminal would be capable of receiving, stockpiling, blending, and loading coal by conveyor onto ships for export.

MBTL proposes to develop the Coal Export Terminal in two separate phases. MBTL would construct two docks (Docks 2 and 3), one shiploader and related conveyors, a stockpile area including stockpile pads, a rail car unloading facilities, an operating rail turn around loop, up to eight rail lines, site area ground improvements, associated facilities, stockpiles, and infrastructure and conduct necessary dredging in the first stage (Stage 1). Stage 1 would be capable of a nominal throughput capacity of up to 25 million metric tonnes per year (MMTPA). Stage 2 facilities would consist of one additional shiploader on Dock 3 and associated stockpiles, conveyors and equipment necessary to bring the nominal throughput up to 44 MMTPA. The completed Coal Export Terminal would consist of two new docks, shiploading systems stockpiles and pads, rail car unloading facilities, an operating rail turnaround loop, rail lines to park 8 trains, associated facilities, conveyors, stockpiles and equipment, and necessary dredging. The planned total throughput capacity of the full build out facility would be a nominal 44 MMTPA of coal.

Dredging is required to provide berthing access from the navigation channel and to provide an adequate turning basin in the vicinity of Docks 2 and 3.

Stages 1 and 2 will be permitted under a single US Army Corps of Engineers authorization. Shiploading facilities for Stage 1 and 2 will be permitted under separate shoreline substantial development permits. Stage 2 ship loading facilities are not included in the current shoreline substantial development permit application to Cowlitz County.

**Proponent:** Millennium Bulk Terminals Longview LLC.

**Location of Proposal:** The proposed Coal Export Terminal site is located at 4029 Industrial Way Longview, WA 98632. The area is located within NW, NE Section 36, Township 8 North; Range 03 West, SW, SE Section 25, Township 8 North, Range 03 West, Parcel number 61953, and WDNR Aquatic Lands Lease No. 20-B09222.

**Lead Agency:** Cowlitz County Department of Building and Planning and the Washington State Department of Ecology (Ecology) are co-lead agencies with Cowlitz County designated the nominal lead agency for environmental review under the State Environmental Policy Act (SEPA). ) The U.S. Army Corps of



Engineers (Corps) is the lead agency under the National Environmental Policy Act (NEPA) for the project proposal. Pursuant to a Memorandum of Understanding (MOU) between the Cowlitz County, Ecology and the Corps, the agencies intend to synchronize the separate SEPA and NEPA environmental reviews..

**EIS Required:** Cowlitz County has determined that the proposal is likely to result in significant adverse impacts to the environment and, pursuant to RCW 43.21C.080, that an environmental impact statement (EIS) is required. Cowlitz County and Ecology intend to prepare a joint SEPA EIS. The Corps intends to prepare a separate NEPA EIS. A separate Notice of Intent will be published in the Federal Register by the Corps to initiate the NEPA process.

**Alternatives:** Alternatives to the Coal Export Terminal proposal will be determined through the scoping process according to WAC 197-11-440(5)(b). Reasonable alternatives will include actions that could feasibly attain or approximate the proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation. The No Action Alternative will also be evaluated.

**Scoping:** Agencies, affected tribes, and members of the public are invited to comment on the scope of the EIS within a 95-day expanded scoping comment period beginning on August 16, 2013 and closing November 18, 2013. You may comment on alternatives, probable significant adverse impacts, mitigation measures, and licenses or other approvals that may be required.

Public scoping meetings will be held within Washington State in the following cities in order of occurrence:

Longview: Tuesday September 17, 2013, Cowlitz Expo Center, 1900 7<sup>th</sup> Ave. Longview, WA; 98632. The meeting will be conducted as an open house from 12:00 p.m. to 8:00 p.m. Comments on the SEPA scope of review may be made between 5:00 p.m. and 8:00 p.m.

Spokane: Wednesday September 25, 2013 Spokane Convention Center, 334 West Spokane Falls Blvd Spokane, WA 98201. The meeting will be conducted as an open house from 4:00 p.m. to 8:00 p.m. Comments on the SEPA scope of review may be made between 5:00 p.m. and 8:00 p.m.

Pasco: Tuesday October 1, 2013, The Trac Center, 6600 Burden Blvd, Pasco, WA 98301. The meeting will be conducted as an open house from 4:00 p.m. to 8:00 p.m. Comments on the SEPA scope of review may be made between 5:00 p.m. and 8:00 p.m.

Ridgefield: Wednesday October 9, 2013, Clark County Fairgrounds, 17402 NE Delfel Rd Ridgefield, WA 98642. The meeting will be conducted as an open house from 12:00 p.m. to 8:00 p.m. Comments on the SEPA scope of review may be made between 5:00 p.m. and 8:00 p.m.

Tacoma: Thursday October 17, 2013, Tacoma Convention Center, 1600 Broadway Tacoma, WA 98402. The meeting will be conducted as an open house from 4:00 p.m. to 8:00 p.m. Comments on the SEPA scope of review may be made between 5:00 p.m. and 8:00 p.m.

**Written Comments:** Comments on EIS scoping will be accepted through November 18, 2013. Written comments may be submitted via U.S. Mail, e-mail or on through the EIS project web site.

U.S. Mail Address: MBTL Coal Export Terminal EIS  
C/o ICF International  
710 Second Ave., Suite 550  
Seattle, WA 98104

E-mail Address: [comments@millenniumbulkeiswa.gov](mailto:comments@millenniumbulkeiswa.gov)

EIS Project Website: [www.millenniumbulkeiswa.gov](http://www.millenniumbulkeiswa.gov)

Notifications about the Draft EIS publication and public meetings and hearings will be made in accordance with adopted County, State, and Federal procedures. Interested parties who sign up on mailing lists or contact the agencies with a request to receive notices will also receive notices.

**Documents Available:** Environmental background documents and other materials indicating likely environmental impacts can be reviewed at the EIS project website at <http://www.millenniumbulkeis.com> and at our offices and on our website at <http://www.co.cowlitz.wa.us/index.aspx?nid=1559>

**Responsible Official:** Elaine Placido

**Position/Title:** Director, Department of Building and Planning

**Address:** 207 4<sup>th</sup> Avenue North  
Kelso, WA 98626

**Email:** [placido@co.cowlitz.wa.us](mailto:placido@co.cowlitz.wa.us)

**Telephone:** (360) 577-3052

**Date:** September 9, 2013

**Signature:**

A handwritten signature in black ink, appearing to read 'Elaine Placido', written over a horizontal line.

4810-6515-1765, v. 1

# EXHIBIT C

**Water Quality Certification Processing**  
**Request to the Washington Department of Ecology**

**Project Name**            **Millennium Bulk Terminals Longview, LLC (MBT-Longview)**  
**Coal Export Terminal**

**Applicant**                **MBT – Longview**

**Contact Name**         **Kristin Gaines**

**Phone Number**         **360-425-2800**

**Address**                 **4029 Industrial Way, P.O. Box 2098, Longview WA 98632**

**Check those statements below which correspond to your project.**


**1.      Withdrawal of certification request:**

- \_\_\_\_\_ I would like to withdraw my request for certification. I do not intend to pursue certification of this project at this time.
- X   I would like to withdraw my request for certification and re-apply for certification.

**2.      Changes to project:**

- X   There are no changes in my project proposal which would adversely affect water quality.
- \_\_\_\_\_ There are changes in my project proposal that may affect water quality.  
(If this answer is selected, please attach a new JARPA explaining the changes and their impacts on water quality.)

**I am authorized to make this request on behalf of this applicant.**

**Signature**                       **Date** 6/21/2017

- MBT-Longview has submitted to Ecology the Conceptual Mitigation Design on June 8, 2017, design refinements on June 20, 2017, as well as various additional documents to supplement the application.