

**Amended Communication Protocol Agreement (CPA)  
Between**

**Cowlitz County Department of Building and Planning (County),  
Washington State Department of Ecology (Ecology),  
U.S. Army Corps of Engineers, Seattle District (Corps),  
and  
ICF Jones & Stokes, Inc.**

**for the development of NEPA and SEPA  
Environmental Impact Statements (EISs) for the  
Millennium Bulk Terminals–Longview, LLC (MBTL) Shipping Facility Proposal**

**1. PURPOSE:** The purpose of this CPA is to identify communications requirements and protocols between ICF Jones & Stokes, Inc. and the County, Ecology, and the Corps (collectively, the Co-leads<sup>1</sup>) during the development of two separate NEPA and SEPA environmental impact statements (EISs) for the MBTL proposal. The purpose of this CPA is also to ensure there is no conflict of interest regarding the development of these EISs for MBTL's proposal to construct a shipping facility to export coal so as to maintain the public's confidence in the integrity of the EIS process.

**2. RESPONSIBILITIES:** The separate federal NEPA and state and county SEPA EISs are being prepared under a third-party contractor arrangement, pursuant to National Environmental Policy Act (NEPA) requirements at 40 CFR 1506.5(c), Washington State Environmental Policy Act (SEPA) requirements at RCW 43.21C and WAC 197-11, and Cowlitz County Code 19.11. Contractor and associated subcontractors (Project Team) have been selected from a field of candidates solicited by Cowlitz County and is subject to the sole supervision and control of the Co-leads in the development of the EIS. While MBTL is funding the Project Team, they have no supervisory authority or control over the Project Team in preparation of the two EISs.

The Co-leads will ensure the separate NEPA and SEPA documents are prepared in a synchronized and professional manner and with appropriate methodologies. The Co-leads will direct the Contractor as to all aspects of the EIS process, including but not limited to, scoping, preparation of a draft NEPA EIS and a draft SEPA EIS, analysis of alternatives, and finalization of the EISs. The Co-leads will provide guidance on the level of detail, organization, and scope of products of the EISs to Contractor.

Communication strategies and protocols formulated in this CPA are intended to ensure and maintain the integrity of the NEPA/SEPA process by precluding any source of bias in the formulation of the EISs as well as by preventing any potential appearance of improper influence. However, these are not intended to be so restrictive as to eliminate all efficiency from the information exchange process. The following is not an all-inclusive list of communication limitations and documentation procedures, they set forth general policies and practices necessary to preserve the independence and integrity of the county, state, and federal evaluation and decision-making processes. If circumstances change during the development of the two EISs, revisions to this CPA may be made with the approval of all signatory parties.

The Corps will independently evaluate the NEPA EIS and the County and Ecology will independently evaluate the SEPA EIS prepared by Contractor's Project Team upon their completion. The Corps will assume responsibility for the scope and content of the NEPA EIS and the County and Ecology will assume responsibility for the scope and content

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<sup>1</sup> For this project, "co-lead agencies" refers to the collaborative effort by the County, Ecology, and the Corps to produced two separate standalone documents to meet each agency's respective SEPA or NEPA responsibilities. Pursuant to WAC 197-11-944, the County and Ecology agree to share the responsibilities of being SEPA co-lead agencies for this SEPA document. The Corps is the sole lead agency for the NEPA document.

of the SEPA EIS. The County and Ecology will approve the SEPA EIS for publication only when they are satisfied it complies with RCW 43.21C, WAC 197-11, and Cowlitz County Code 19.11.

**Communication protocols to be followed include:**

- a. The Co-leads intend that the separate NEPA and SEPA EISs will be consistent with each other to the maximum extent possible. To that end, the Co-leads will provide a single direction to Contractor's Project Team for the areas where the NEPA and SEPA documents overlap. In areas where the documents do not overlap, the Corps has final authority to provide technical instructions and guidance to Contractor's Project Team relative to preparation of the NEPA EIS, compliance with federal policies and procedures, impact assessments, data interpretation, and conclusions. The County and Ecology jointly have final authority to provide instructions and guidance to the Contractor's Project Team relative to the preparation of the SEPA EIS, compliance with state and local policies and procedures, impact assessments, data interpretation, and conclusions.
- b. Direction to the Contractor's Project Team is the exclusive responsibility of the Co-leads. The Contractor's Project Team, Corps, County, or Ecology will meet to discuss how to collaboratively develop the data to be utilized in the separate SEPA and NEPA EISs. The Project Team may neither take nor request direction or guidance from MBTL, including company representatives, consultants, agents, and attorneys, on any aspect of the EIS preparation.
- c. Unless otherwise agreed to, the Co-leads will be responsible for directly communicating the status of this project to MBTL. Any direct communication, contact, coordination, meetings, document review or consultation between Contractor's Project Team and MBTL must be approved by the Co-leads in advance. Any type of contact or communication between Contractor's Project Team and MBTL must be documented by the Contractor Project Team through e-mail, memoranda, conversation records, or other notes as appropriate. This documentation is the responsibility of Contractor's Project Team and a copy of these records shall be made available to the Corps, County and Ecology.
- d. Direct communication between Contractor's Project Team and MBTL is expected to occur but only with full advance knowledge of the Co-leads, and documented as noted through the process described above. This will normally include MBTL providing Contractor's Project Team with technical reports and data held or prepared by MBTL. If Contractor's Project Team requires site access to gather data, the Co-leads will be notified first and upon their approval, the Project Team and MBTL will coordinate for site access purposes only. Additionally, at the request of the Co-leads, MBTL may be required to supply various work products and data for the preparation of the NEPA EIS and/or SEPA EIS directly to Contractor's Project Team. If materials are requested from MBTL by the Co-leads for use by the Project Team for both EISs, MBTL will send the information to the Co-leads and may courtesy copy the Project Team. If either the Corps or the County or Ecology expressly request information from MBTL to address an area that does not overlap between the NEPA and SEPA EISs, MBTL will send the information only to the requesting party and not to all of the Co-leads jointly; MBTL may also courtesy copy the Project Team in such an instance.
- e. Work products prepared solely for the SEPA EIS by Contractor's Project Team will be submitted directly to the County and Ecology. Work products prepared solely for the NEPA EIS by the Contractor's Project Team will be submitted directly to the Corps. Work products prepared by the Contractor's Project Team in areas where the SEPA and NEPA EISs overlap shall be submitted to both the Corps and the County and Ecology. These work products will be provided to MBTL only with the approval of the Co-leads.
- f. Preliminary drafts of the SEPA EIS or sections of the SEPA EIS prepared by the Contractor's Project Team will be submitted directly to the County and Ecology for review and not to MBTL or MBTL's representatives for preliminary review. Preliminary drafts of the NEPA EIS or sections of the NEPA EIS prepared by the

Contractor's Project Team will be submitted directly to the Corps and not to MBTL or MBTL's representatives for preliminary review. Where the SEPA and NEPA EISs overlap, the Contractor's Project Team shall submit preliminary drafts to both the Corps and the County and Ecology. Concurrent submission of these documents to MBTL representatives may occur only after approval of the appropriate Co-leads.

- g. Contractor's Project Team will provide the Co-leads with monthly status and updates as to the project's status for both the NEPA and SEPA EISs, or as frequently as requested by the Co-leads. The Co-leads, and not Contractor, will be responsible for sharing this information with the MBTL.
- h. Inquiries or contacts from members of the public received by the Project Team concerning the NEPA review and/or SEPA EIS review or the projects will be directed to the respective agency.
- i. Should Contractor receive a request for the disclosure of public records, or other information, related to this project, these requests shall be passed on to the Co-leads for resolution. Unless otherwise agreed upon by the Co-leads, Contractor shall not release any documentation or records related to this project to a third party. The Co-leads are responsible for determining what is or is not releasable in response to a request for public records, or other information related to this project based on their respective regulations.
- j. Contractor's Project Team will avoid conflicts of interest, remain objective and neutral, and under no circumstance act as an advocate for the project proponent during the EIS process.
- k. The Project Team will deal solely with the County regarding budget and contracting issues (contracts, billings, etc.). The Project Team will submit their monthly billing after the close of every month to: Cowlitz County, Attn: Director of Building and Planning, 207 4<sup>th</sup> Avenue North, Kelso, WA 98626. The County will be the sole point of communication with MBTL on matters concerning funding of the EIS and associated activities. Monthly billings shall follow the protocol specified in the Contract for Services Agreement for Cowlitz County.

**3. PROJECT MANAGERS:** Project managers for each signatory to the CPA are:

For the County:

Dr. Elaine Placido  
Cowlitz County Department of Building and Planning  
207 4<sup>th</sup> Avenue North  
Kelso, WA 98626  
(360) 577-3052 ext. 6662  
PlacidoE@co.cowlitz.wa.us

James Tupper, Special Deputy Prosecutor  
Tupper Mack Wells, PLLC  
2025 First Avenue, Suite 1100  
Seattle, WA 98121  
tupper@tmw-law.com

And

For the Corps:

Danette L. Guy  
U.S. Army Corps of Engineers, Seattle District  
Regulatory Branch  
Southwest Washington Field Office  
2108 Grand Boulevard  
Vancouver, WA 98661  
(206) 316-3048  
Danette.L.Guy@usace.army.mil

And

For Ecology:

Diane Butorac  
Department of Ecology, Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504-7775  
(360) 407-6594  
diane.butorac@ecy.wa.gov

And

For Contractor:

Alan Summerville  
ICF Jones & Stokes, Inc.  
710 Second Avenue, Suite 550  
Seattle, WA 98104  
(206) 801-2800  
alan.summerville@icfi.com

or to such other project manager and address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile or electronic transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

**4. NON-FUND OBLIGATING DOCUMENT:** This CPA is neither a fiscal nor a funding obligation document, and does not reflect or constitute an obligation of funds of the United States, Washington State, or Cowlitz County. This CPA does not establish a contracting or funding relationship between the Corps or Ecology and Contractor. Any endeavor involving reimbursement, contribution of funds, or a transfer of anything of value between parties to this instrument must be addressed in separate documentation, in accordance with applicable laws, regulations and procedures. Specifically, this CPA does not establish authority for noncompetitive award to the contractor of any future contract or other agreement.

**5. EXPIRATION:** This CPA shall be in effect for the duration of the contract with the County and shall terminate at the end of that period unless otherwise modified, terminated, or renewed in writing by all parties.

**6. MODIFICATION AND AMENDMENT:** This CPA may be modified or amended in writing, by mutual agreement of all parties.

**7. TERMINATION:** The Corps, County, or Ecology, in writing, may terminate this CPA at any time before the date of expiration with 30 days written notice.

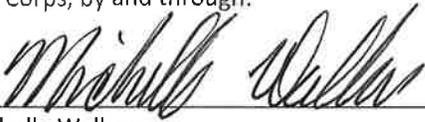
**8. PARTICIPATION IN SIMILAR ACTIVITIES:** This instrument in no way restricts the Corps, County, or Ecology from participating in similar activities with other public or private agencies, organizations, and individuals.

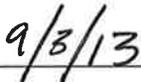
**9. EFFECT OF AGREEMENT:** This CPA does not in any manner affect statutory authorities and responsibilities of the signatory parties. This CPA is not intended, nor may it be relied upon, to create rights in extrinsic persons or entities, enforceable in litigation with the United States, Washington State, Cowlitz County, or any party hereto.

**10. EFFECTIVE DATE:** This Agreement shall be effective as of the date of the last signature affixed to this document

**11. ACCEPTANCE:** The following signatures indicate the respective acceptance of the provisions of this document:

The Corps, by and through:

  
\_\_\_\_\_  
Michelle Walker  
Chief, Regulatory Branch  
U. S. Army Corps of Engineers, Seattle District

  
\_\_\_\_\_  
DATE



The County, by and through:



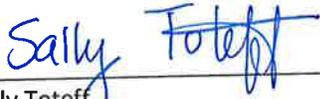
\_\_\_\_\_  
Elaine Placido  
Director  
Cowlitz County Department of Building and Planning

9-23-13

\_\_\_\_\_  
DATE



Ecology, by and through:



Sally Toteff  
Southwest Regional Office Director  
Washington State Department of Ecology



DATE



Contractor by and through:

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Harlan Glines  
Senior Vice President  
ICF Jones & Stokes, Inc.

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DATE

