



November 15, 2013

Via Hand Delivery and Website Comment Form
<http://millenniumbulkeiswa.gov/submit-comments.html>

Millennium Bulk Terminals EIS
c/o ICF International
710 Second Avenue, Suite 550
Seattle, WA 98104

Re: Scoping Comments on Proposed Millennium Bulk Terminals—Longview
Shipping Facility Project

To Whom It May Concern:

On September 6, 2013, the U.S. Army Corps of Engineers (“Corps”), the Washington State Department of Ecology (“Ecology”), and Cowlitz County announced their intent to prepare Environmental Impact Statements on the proposed Millennium Bulk Terminals—Longview Shipping Facility Project pursuant to both the National Environmental Policy Act (“NEPA”) and State Environmental Policy Act (“SEPA”), 78 Fed. Reg. 54871 (Sept. 6, 2013). The agencies amended an earlier notice that they would prepare a joint environmental impact statement (“EIS”) for the project by announcing their intent to pursue a “separate but synchronized environmental review and public scoping process.” *Id.*

The following scoping comments are submitted on behalf of Climate Solutions, Columbia Riverkeeper, RE Sources, National Wildlife Federation, Greenpeace, Sierra Club, Friends of the Columbia Gorge, Center for Biological Diversity, Washington Environmental Council, and Oregon Physicians for Social Responsibility to help the local, state, and federal agencies identify issues that must be addressed during the environmental review process. They are intended to inform both the NEPA and SEPA processes. The commenters are all non-profit organizations dedicated to (1) protecting the environment and natural resources of Washington state and the Pacific Northwest region; (2) ensuring that all citizens of Washington and the Pacific Northwest have clean and healthy air, water, and communities; (3) seeking positive solutions to the challenge of global climate instability caused by combustion of fossil fuels; and/or (4) working across the region to stop the mining, transport, shipping, and burning of coal. These joint scoping comments supplement any individual comment letters submitted by each signatory group. We appreciate the opportunity to provide these comments and supporting materials, included on CD accompanying this letter. Additionally, we have provided several other sources via weblink in this comment letter; our expectation is that the relevant documents will also be included in the administrative record for this decision. If not, please let us know and we will provide electronic copies of documents provided in the weblinks.

As you no doubt are aware, the Army Corps of Engineers, Department of Ecology, and Whatcom County have initiated an environmental review for a very similar coal export terminal in Whatcom County. As a threshold matter, we applaud the decision by the Washington Department of Ecology and Whatcom County to review many of the environmental impacts of the Gateway Pacific Terminals project, including indirect effects of projects that are of major concern to the public, like increase in rail traffic, vessel traffic, human health, additional mining, and greenhouse gas emissions of downstream combustion of exported coal. Similarly, we believe that the Army Corps has greatly misinterpreted its legal duties under NEPA and its governing regulations by refusing to look at such impacts. Additional correspondence is forthcoming specific to that issue.

Like many citizens in the Northwest and nationally, we are deeply concerned about a decision that will authorize the construction of a new coal export terminal at the Longview site, and allow MBL to export approximately 44 million metric tons of coal annually. Either alone or combined with other announced or pending proposals to build major coal export facilities in Washington and Oregon, the decision to authorize construction at Longview will undercut Washington state's considerable efforts to combat climate instability and promote sustainable alternatives. It will harm human health and degrade the environment in multiple ways.

Once burned in a coal-fired power plant or other industrial boiler, 44 million tons of coal will generate approximately 126 million tons of CO₂ annually.¹ Put another way, the amount of coal to be shipped from Longview is the equivalent of 18 power plants the size of TransAlta, Washington's only coal-fired power plant or about 28 power plants the size of Boardman, Oregon's only coal-fired power plant. Both plants are slated to be shut down in coming years. This one export facility at Longview will cause Washington state to dramatically increase its carbon footprint, in plain contravention of the state's repeated commitment to reduce its total greenhouse gas emissions.

As the lead agencies are well aware, citizen attendance at the scoping meetings throughout the state, both for the Gateway Pacific Terminal project as well as the Millennium Bulk Logistics project ("MBL"), was unprecedented. Thousands of people from all walks of life testified regarding their concerns about the harmful impacts from the project—concerns stemming from global climate change to regional aquatic impacts to local traffic congestion. Many focused on the health concerns associated with increased diesel emissions, coal dust, and noise. Many who attended these meetings came from outside Washington, as this project will impact people living in our entire region. Heightened concern came from many tribal governments, who have ties to the lands and water at issue since time immemorial, and whose sovereign status gives them a powerful voice opposing this project.

¹ According to the EIA, one ton of PRB coal generates 2.86 tons of CO₂. http://www.eia.gov/coal/production/quarterly/co2_article/co2.html.

On a separate CD, we have updated our previously supplied letters and resolutions from federal, state, local, and tribal government officials calling for full environmental review of this and all proposed coal export terminals in Washington and Oregon. Collectively, these exhibits (LR-1 to LR-108) demonstrate widespread concern and controversy over the proposed coal export terminals and highlight the importance of a full, rather than truncated, review. Additionally, many local and national newspapers have written editorials asking for full environmental review of these coal export projects.

In these scoping comments, we raise specific issues and impacts that we feel the agencies must consider. At the outset, however, we want to stress our concern about the geographic scope of the environmental review. While this project might be physically located in Cowlitz County, Washington, the area of impact is much greater. On the terrestrial side, the rail impacts, including rail traffic and emissions, stem from mine mouth in the Powder River Basin through communities in Montana, Idaho, and Washington. In the Powder River Basin, impacts include increased mining, coal supply, and pricing. On the marine side, impacts from coal shipping, including ocean-going vessel traffic and emissions, risks of collisions, and impacts to near-shore environments, extend from the dock at Longview through the Columbia estuary to the final destination in Asia. And from an atmospheric perspective, the agencies must evaluate the input of millions of additional tons of CO₂ annually into our air, bringing increased air-borne mercury deposition in the Northwest and increased global greenhouse gas (“GHG”) emissions associated with combustion of coal.

This project, individually and in combination with other proposed coal export facilities, will cause significant, harmful impacts to the air, water, marine environment, fish and wildlife, economics, public health, culture, and communities across our region. Its added harm to global climate change and Washington state’s leadership role in addressing causes of climate change. In our view, full evaluation of all direct, indirect, and cumulative impacts of the MBL is the first step toward a reasoned decision to ultimately reject this project proposal.

I. BACKGROUND ON THE MILLENNIUM BULK LOGISTICS PROJECT.

Proponents of the MBL project are seeking permits for one of the most controversial projects in the history of the Pacific Northwest. Citizens from every corner of the region, and indeed the nation as a whole, have spoken out to object to the idea of mining dirty coal (usually from public lands), shipping it via rail through scores of communities, and loading it onto massive cargo vessels for shipment to Asia, where it will be used to fuel the industries of our primary economic competitors—who export back to us not just finished products, but also the pollution that results from it. Hundreds of thousands of citizens have signed petitions, offered comments, attended hearings, and contacted federal, state and local elected officials to object to authorizing new coal export infrastructure in the Northwest. One key refrain from this chorus of

opposition is that the agencies must fully evaluate all of the impacts of permitting these projects, even those distant in space and time from the terminal site.

The history of this particular project is infused with its own unique brand of toxicity. As every prospective neighbor of this project knows well, this is not Millennium's first effort to obtain permits for a coal export terminal on this site. In 2010, Cowlitz County issued a Shorelines Substantive Development Permit and other authorizations for Millennium to construct a facility with an export capacity of roughly five million tons per year. Surprisingly, the County granted the permit without requiring an EIS, finding that the terminal would not have a significant environmental impact. Several of the groups signing this letter appealed that permit to the state Shorelines Hearings Board, asking for a full environmental review. During the course of discovery, appellants uncovered internal documents that revealed a confidential plan to dramatically increase the size of the project as soon as the initial permits were granted. The deception made national news, and infuriated decisionmakers who had been intentionally misled. *See William Yardley, In Northwest, a Clash Over a Coal Operation*, New York Times (Feb. 15, 2011) at A16. In response, the permit application was quickly withdrawn and, after a short waiting period, refiled as a 44 million ton/year project. MBL has proved itself an untrustworthy, unreliable, and unworthy partner for Cowlitz County and the region and should not have a second chance to deceive the public. Corporate misbehavior should have consequences. At a minimum, this history should be fully disclosed to the public in the EIS and measures taken to ensure that MBL cannot deceive the community again.

MBL proposes a major infrastructure development covering 100 acres of a 416-acre site, one that is heavily contaminated and filled with decaying industrial infrastructure. Two new docks would be constructed requiring 647 steel piles and significant dredging (close to 400,000 cubic yards) to ensure access to bulk cargo ships. Huge open storage piles of coal on multiple stockpads will supply partially covered conveyors for the loading of coal onto Panamax-sized cargo vessels at the berths. Two vessels a day would be loaded at maximum capacity, meaning 1,460 vessel transits through the lower Columbia River annually. The facility would be operated 24 hours a day, seven days a week.

Of particular concern are the impacts to wetlands subject to Army Corps' jurisdiction. According to MBL's own application documents, the project will destroy dozens of acres of wetlands. But during the litigation with MBL over its previous application, appellants' (who took a wetlands ecologist onsite to verify wetlands impacts) found that much more of the site qualified as wetlands than MBL had disclosed. *See Exhibit 198*. The undersigned requests that an independent review of the entire site for wetlands be performed; the permitting agencies cannot simply take MBL's preferred contractor's word for the amount of wetlands harm.

II. THE THREAT OF CLIMATE CHANGE HAS SPURRED WASHINGTON'S COMMITMENT TO GREENHOUSE GAS REDUCTION.

Very recently, United Nations' Intergovernmental Panel on Climate Change ("IPCC") released the fifth version of its frequently cited report reflecting the scientific consensus that unrestrained greenhouse gas emissions cause global warming. The fifth IPCC report confirms yet again that climate change is being caused by unrestrained carbon pollution from industrial activities. As summarized by the IPCC in an accompanying press release:

Warming in the climate system is unequivocal and since 1950 many changes have been observed throughout the climate system that are unprecedented over decades to millennia. Each of the last three decades has been successively warmer at the Earth's surface than any preceding decade since 1850... Thomas Stocker, the other Co-Chair of Working Group I said: "Continued emissions of greenhouse gases will cause further warming and changes in all components of the climate system. Limiting climate change will require **substantial and sustained reductions** of greenhouse gas emissions."²

Numerous studies predict severe impact from climate change in Washington state, including dramatic reductions in snowpack, declining river flows, increased deaths from temperatures and air pollution, increased risk of wildfires, loss of salmon and shellfish habitat, lost hydropower generation, and flooding. In 2006, Washington commissioned a study "Impacts of Climate Change on Washington's Economy," which found that the cost of climate impacts would reach \$3.8 billion annually by 2020.³ The state Department of Ecology in 2009 summarized recent scientific studies specific to the Pacific Northwest as follows: "Each [of the studies] shows that without additional action to reduce carbon emissions, the severity and duration of the impacts due to climate change will be profound and will negatively affect nearly every part of Washington's economy."⁴

In February 2012, Washington Governor Christine Gregoire convened the Washington State Blue Ribbon Panel on Ocean Acidification to chart a course for addressing the causes and consequences of acidification. The Governor charged the Panel to:

² Available at http://www.ipcc.ch/news_and_events/docs/ar5/press_release_ar5_wgi_en.pdf (emphasis in original).

³ Available at <http://www.ecy.wa.gov/pubs/0701010.pdf>.

⁴ Available at <http://www.ecy.wa.gov/pubs/0901006.pdf>.

- Review and summarize the current state of scientific knowledge of ocean acidification,
- Identify the research and monitoring needed to increase scientific understanding and improve resource management,
- Develop recommendations to respond to ocean acidification and reduce its harmful causes and effects, and
- Identify opportunities to improve coordination and partnerships and to enhance public awareness and understanding of ocean acidification and how to address it.

The Panel released its report and recommendations in the document Washington State Blue Ribbon Panel on Ocean Acidification (2012): *Ocean Acidification: From Knowledge to Action*, Washington State's Strategic Response, H. Adelsman and L. Whitely Binder (eds). Washington Department of Ecology, Olympia, Washington.⁵

In November 2012, Governor Christine Gregoire issued an Executive Order⁶ acknowledging the particular harm that ocean acidification, caused by increased emissions of greenhouse gases into the atmosphere, inflicts on Washington. “[I]t is critical to our economic and environmental future that effective and immediate actions be implemented in a well-coordinated way and that we work collaboratively with federal, tribal, state, and local governments, universities, the shellfish industry, businesses, the agricultural sector, and the conservation/environmental community to address this emerging threat. The Executive Order specifically directs “[t]he Office of the Governor and the cabinet agencies that report to the Governor to advocate for reductions in emissions of carbon dioxide at a global, national, and regional level.”

Climate change also threatens major environmental impacts in Washington, the Pacific Northwest, and worldwide. According to the U.S. Global Change Research Program (“GCRP”), climate change could affect the Pacific Northwest, including western Washington, by causing “declining springtime snowpack lead[ing] to reduced summer streamflows, straining water supplies, [and] ... increased insect outbreaks, wildfires, and changing species composition in forests [that] will pose challenges for ecosystems and the forest products industry.” Exhibit 165, U.S. Global Change Research Program, *Global Climate Change Impacts in the United States*, at 135-38 (Thomas R. Karl et al., eds., 2009). In the northwestern United States, “salmon and other coldwater species will experience additional stresses as a result of rising water temperatures and declining summer streamflows.” *Id.* at 136. Global warming also could profoundly affect the

⁵ Available at <https://fortress.wa.gov/ecy/publications/SummaryPages/1201015.html>. The technical summary (Feely, R.A., T. Klinger, J.A. Newton, and M. Chadsey (2012): *Scientific Summary of Ocean Acidification in Washington State Marine Waters*. NOAA OAR Special Report) is available at <https://fortress.wa.gov/ecy/publications/SummaryPages/1201016.html>.

⁶ Available at http://www.governor.wa.gov/execorders/eo_12-07.pdf.

health of western fisheries, by “hamper[ing] efforts to restore depleted salmon populations,” *id.* at 137.

Concentrations of CO₂ in the atmosphere “are projected to continue increasing unless the major emitters take action to reduce emissions.” Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,539 (Dec. 15, 2009). The U.S. Environmental Protection Agency (“EPA”) recognized the cumulative nature of both the climate change problem and the strategies needed to combat it:

[N]o single greenhouse gas source category dominates on the global scale, and many (if not all) individual greenhouse gas source categories could appear small in comparison to the total, when, in fact, they could be very important contributors in terms of both absolute emissions or in comparison to other source categories, globally or within the United States. If the United States and the rest of the world are to combat the risks associated with global climate change, contributors must do their part even if their contributions to the global problem, measured in terms of percentage, are smaller than typically encountered when tackling solely regional or local environmental issues.

Id. at 66,543 (emphasis added). Consistent with this finding, the Ninth Circuit has rejected the argument that individual actions represent too minor of a contribution to the global problem to merit consideration under NEPA: “The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct. Any given rule setting a [vehicle fuel-efficiency] standard might have an ‘individually minor’ effect on the environment, but these rules are ‘collectively significant actions taking place over a period of time.’” *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (internal citations omitted).

Both the United States and Washington have sought to meet the challenge of climate change with a variety of statutory and regulatory actions to reduce our reliance on fossil fuels and promote conservation and alternatives. At the federal level, EPA has responded with a formal finding that greenhouse gases endanger the public health and welfare, 74 Fed. Reg. 66,496 (Dec. 15, 2009), the first step in comprehensively regulating greenhouse gases under the federal Clean Air Act. EPA has already issued some regulations relating to reducing emissions from both mobile and stationary sources, including the June 2010 “tailoring rule” governing federal Clean Air Act requirements for greenhouse gas emissions from stationary sources, 75 Fed. Reg. 31,514 (June 3, 2010), passenger vehicle rules, *see, e.g.*, 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Full Economy

Standards, 77 Fed. Reg. 62,624 (Oct. 15, 2012), and proposed rules for power plants, *see* Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources.⁷

Washington adopted greenhouse gas reduction standards via legislation adopted in 2008. *See* RCW 70.235.070(1)(a). The statute establishes that by 2020, emissions shall be reduced to 1990 levels. By 2035, greenhouse gas emissions are to be 25 percent below 1990 levels and by 2050, they are to be 50 percent below 1990 levels. The state legislature has consistently reinforced its concern for greenhouse gas impacts on Washington's climate and economy, for example: a) by taking measures to triple the number of green jobs by 2020; b) adopting a clean car standard that will reduce greenhouse gas emissions from mobile sources; c) dramatically increasing efficiency requirements for buildings; d) helping communities reduce greenhouse gas emissions by saving energy; e) requiring all state agencies to inventory and reduce emissions; f) funding planning for climate change mitigation and adaptation; g) creating tax and other financial incentives to support low-carbon alternative energy sources; h) requiring new power plants to meet an "emissions performance standard" for greenhouse gases; and i) requiring new power plants mitigate 20 percent of life-time greenhouse gas emissions from the power plant. These legislative actions have been supplemented by a number of Executive Orders promoting reduction of greenhouse gas emissions and increasing the availability of energy alternatives.⁸ In addition, the citizens of Washington passed I-937, mandating 15 percent of all electricity energy to come from renewable energy and energy efficient sources by 2020.

In short, both the United States and Washington have made firm and clear commitments to address the causes of climate change and have committed to promote alternatives to projects that generate greenhouse gas emissions and mitigate those that cannot be avoided. The proposal to construct a coal export terminal with massive direct and indirect greenhouse gas emissions needs to be evaluated in light of those statutory and regulatory commitments.

III. FEDERAL AND STATE LAW REQUIRES AGENCIES TO FULLY DISCLOSE AND CONSIDER ALL ENVIRONMENTAL IMPACTS FROM PROPOSED PROJECTS, INCLUDING CLIMATE IMPACTS FROM GHG EMISSIONS.

A. The National Environmental Policy Act

Section 102(2)(C) of the National Environmental Policy Act establishes an "action-forcing" mechanism to ensure "that environmental concerns will be integrated into the very process of agency decisionmaking." *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979). Pursuant to that statutory provision, "all agencies of the Federal Government shall ... include in every

⁷ 77 Fed. Reg. 22,392 (Apr. 13, 2012); *see also* updated version at <http://www2.epa.gov/sites/production/files/2013-09/documents/20130920proposal.pdf>.

⁸ The laws and executive orders are *available at* www.ecy.wa.gov/climatechange/laws.htm.

recommendation or report on ... major Federal actions significantly affecting the quality of the human environment, a detailed statement” known as an environmental impact statement (“EIS”) addressing “the environmental impact of the proposed action, any adverse environmental impacts which cannot be avoided ..., alternatives to the proposed action,” and other environmental issues. 42 U.S.C. § 4332.

NEPA has two fundamental purposes: (1) to guarantee that agencies take a “hard look” at the consequences of their actions before the actions occur by ensuring that “the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impact,” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); and (2) to ensure that “the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision,” *id.* at 349. NEPA “emphasize[s] the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that ‘the agency will not act on incomplete information, only to regret its decision after it is too late to correct.’” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998).

Under NEPA, an EIS must consider direct effects, indirect effects, and cumulative effects. “Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8. The direct effects of an action are those effects “which are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). The indirect effects of an action are those effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). For example, “[i]ndirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” *Id.* These types of growth-inducing impacts must be analyzed, even when they are characterized as “secondary.” *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975) (requiring EIS to address growth-inducing impacts of freeway interchange planned in agricultural area on the edge of urban development). In fact, “[f]or many projects, these secondary or induced effects may be more significant than the project’s primary effects... . While the analysis of secondary effects is often more difficult than defining the first-order physical effects, it is also indispensable.” Fifth Annual Report of the Council on Environmental Quality, 410-11 (Dec. 1974).⁹

The Council for Environmental Quality (“CEQ”), which implements NEPA at the federal level, has also issued draft federal guidance on how to evaluate the effects of GHG under

⁹ Available at <http://www.slideshare.net/whitehouse/august-1974-the-fifth-annual-report-of-the-council-on-environmental-quality>.

NEPA.¹⁰ The Federal Guidance confirms that both direct and indirect greenhouse gas emissions should be evaluated in the context of “cumulative effects” in an EIS if significant. *Id.* at 5 (“Analysis of emissions sources should take account of all phases and elements of the proposed action over its expected life, subject to reasonable limits on feasibility and practicality.”). Under the Federal Guidance, NEPA documents should put direct and indirect greenhouse gas emissions associated with a project in the context of the “aggregate effects of past, present, and reasonably foreseeable future actions” related to climate. *Id.* at 9-10. As the guidance confirms, the duty to evaluate all climate related impacts is not “new.” Rather, climate is an important factor to be considered within NEPA’s existing framework. *Id.* at 11.

B. Washington’s State Environmental Policy Act

In adopting the State Environmental Policy Act, the Washington legislature declared the protection of the environment to be a core state priority. RCW 43.21C.010. SEPA declares that “[t]he legislature 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.” RCW 43.21C.020(3). This policy statement, which is stronger than a similar statement in the federal counterpart of NEPA, “indicates in the strongest possible terms the basic importance of environmental concerns to the people of the state.” *Leschi v. Highway Comm’n*, 84 Wn.2d 271, 279-80 (1974).

At the heart of SEPA is a requirement to fully analyze the environmental impact of projects that have a significant impact on the environment. RCW 43.21C.031(1). An EIS is required for any action that has a significant effect on the quality of the environment. WAC 197-11-330. Significance means a “reasonable likelihood of more than a moderate adverse impact on environmental quality.” WAC 197-11-794. The purpose of this analysis is not to generate paperwork. Rather, the EIS allows decision-makers to make judgments based on a fully informed appreciation for the environmental impacts of decisions, the available alternatives, and any mitigation that may be appropriate.

SEPA and its implementing regulations explicitly require consideration of direct and indirect climate impacts. *See* RCW 43.21C.030(f) (directing agencies to “recognize the world-wide and long-range character of environmental problem); WAC 197-11-444 (listing “climate” among elements of the environment that must be considered in SEPA review); *Rech v. San Juan Cnty.*, 2008 WL 5510438 (Wash. Shorelines Hearings Board June 12, 2008) at *12 n.8 (“We further note an emerging trend in the case law under the National Environmental Policy Act (“NEPA”) and state NEPA analogues in which courts are increasingly requiring agencies to analyze climate change impacts during environmental assessments.”). The Washington Supreme Court has ruled that the state should look to NEPA for guidance. “Since much of the language

¹⁰ Available at http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf.

from SEPA is taken verbatim from NEPA (signed into law January 1, 1970), we look when necessary to the federal cases construing and applying provisions of NEPA for guidance.” *Eastlake Cmty. Council v. Roanoke Assocs., Inc.*, 82 Wn.2d 475, 488 n.5 (Wash. 1973).

SEPA regulations also explicitly direct that environmental impacts outside the jurisdiction of the deciding agency should be considered. WAC 197-11-060(c). Crucially, agencies are required to assess both the direct impacts of the proposal as well as the indirect impacts. WAC 197-11-060(4)(d). For example, when considering a government action, a SEPA document must also consider the effects of private growth that may be encouraged by this government action. *Id.*; *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344 (1976) (SEPA requires that decision makers consider more than the “narrow, limited environmental impact” of the current proposal...agency “cannot close its eyes to the ultimate probable environmental consequences” of its current action).

In recent years, state and federal agencies have made efforts to better define how climate analysis should be performed, and to provide tools to enable agencies to meaningfully assess and mitigate the greenhouse gas contribution of proposed projects. For example, in late 2008, Ecology and the State’s Department of Community, Trade and Economic Development (“CTED”) issued a “comprehensive plan to address the challenges and opportunities of climate change.” (“2008 Climate Plan”).¹¹ That plan recognized the increasing pressure on local governments to better identify climate impacts in their SEPA analyses, and noted that SEPA analysis provided an opportunity to evaluate climate impacts of government decisions and to identify changes to proposals to reduce or mitigate those impacts. *Id.* at 50.

Also in 2008, a governor-appointed working group provided a list of recommendations on how to ensure that climate change is considered in meeting SEPA’s directives.¹² Notably, those recommendations identified the following categories of greenhouse gas emissions to be considered pursuant to SEPA: a) off-site mining of materials purchased for the project; b) transportation of raw materials to the project, and transport of the final product offsite; c) use of products sold by proponent to consumers or industry, including “emissions generated from combustion of fuels manufactured or distributed by the facility.” *Id.* at App. D.

Ecology recently issued draft SEPA guidance for considering greenhouse gas emissions.¹³ That Draft Guidance confirms that SEPA is a crucial tool in helping the state and political subdivisions “address the threats that greenhouse gas emissions and climate changes pose to our health, our economy, and our environment.” *Id.* at 2. In fact, the Draft Guidance

¹¹ Available at <http://www.ecy.wa.gov/pubs/0801025.pdf>.

¹² Available at http://www.ecy.wa.gov/climatechange/2008CATdocs/IWG/sepa/103008_sepaiwg_report.pdf.

¹³ Available at <http://www.ecy.wa.gov/climatechange/sepa.htm>.

specifically observes that the failure to evaluate the climate impacts of a proposal “could result in a successful legal challenge regarding the adequacy of an agency’s review.” *Id.*

Accordingly, the Draft Guidance makes clear that SEPA requires climate to be considered in its environmental analysis. Specifically, agencies should consider “if and how” greenhouse gases will contribute to environmental impacts and “how those impacts could be mitigated.” *Id.* at 7-8. The Draft Guidance notes that SEPA’s substantive authority “may be used to deny a proposal if the proposal will result in significant environmental impacts identified in a final or supplemental EIS and reasonable mitigation measures are insufficient to mitigate the identified impacts.” *Id.* at 10.

Ecology’s Draft Guidance makes clear that climate impacts cannot be ignored simply because they are a step removed from the decision under review. It defines “Scope Three” emissions as those that are produced as a consequence of the activities in the proposal, albeit from sources not owned by the proponent or that are not part of the proposal itself. *Id.* at 12. While noting that “Scope Three” emissions may be harder to calculate, the Draft Guidance acknowledged that these emissions “can be critically important to consider when reviewing the overall long-term greenhouse gas emissions associated” with a proposal. *Id.*

The Draft Guidance proposes that the documents consider whether the proposal will “significantly contribute” to greenhouse gas concentrations, “either directly, indirectly, or cumulatively.” While it does not propose a particular numerical threshold at which greenhouse gas emissions become “significant,” it references the federal NEPA climate guidance, which proposes a significant threshold of 25,000 tons/year of CO₂ equivalent. Projects with emissions above this threshold should be considered in a full EIS if not mitigated. It should be noted that states like California have proposed far lower thresholds under their own state NEPA provisions, and that many national and regional conservation organizations have opposed the proposed CEQ threshold as too high.

Most recently, Ecology re-issued the Draft Guidance in the form of a “working paper.”¹⁴ That working paper provides a “table of tools” that can be used to calculate emissions from projects. That Table, in turn, lists various sources of emissions from projects, methods to calculate those emissions, and options to mitigate them. Included on that list is the “extraction, processing and transportation” of raw materials and feedstocks, and “emissions from the future combustion of fossil fuels,” which is defined to include “emissions that will result from the combustion of fossil fuels transported, distributed or imported as a result of the project (*e.g.*, natural gas pipeline).” *Id.* at 2; *see also id.* at 3 (including emissions from “combustion of fuels distributed by a proposed facility” as an emission that should be quantified and mitigated in SEPA documents).

¹⁴ Available at <http://www.ecy.wa.gov/climatechange/sepa.htm>.

C. The Agencies Are Legally Obligated to Evaluate Direct, Indirect, and Cumulative Climate Impacts.

While the Washington Courts have not yet had an opportunity to evaluate the obligation to consider indirect climate impacts under SEPA, such questions arise regularly under NEPA and parallel laws in other states. Washington courts regularly turn to federal NEPA interpretations for guidance on interpreting SEPA. See, e.g., *Gebbers v. Okanogan PUD No. 1*, 144 Wn. App. 371 (2008).

In a landmark 2008 case, the Ninth Circuit Court of Appeals—which has jurisdiction over Washington state—found that a federal agency violated NEPA when it failed to prepare a full EIS on proposed corporate average fuel economy (“CAFÉ”) standards for light trucks. *Ctr. for Biological Diversity*, 538 F.3d 1172. There, the Ninth Circuit rejected the argument that individual actions represent too minor of a contribution to the global problem to merit consideration. Even more recently, the Ninth Circuit again emphasized that “‘reasonably foreseeable future actions need to be considered [under NEPA] even if they are not specific proposals.’” *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting EPA guidance document).

Several cases confirm that NEPA requires evaluation of indirect impacts of projects that facilitate movement of fossil fuels, including GHG emissions. For example, in *Mid-States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520 (8th Cir. 2003), the Eighth Circuit Court of Appeals invalidated an EIS for a rail construction project intended to supply coal from the Powder River Basin to power plants because it failed to analyze the emissions of burning the coal that would be transported by the rail line. The Court found that the project was likely to affect the country’s long-term demand for coal and hence the impacts of coal burning should have been considered in the EIS. Similarly, in *Border Plant Working Grp. v. Dep’t of Energy*, 260 F. Supp. 2d 997 (S.D. Cal. 2003), a federal district court invalidated a decision to approve transmission lines that would connect proposed power plants in Mexico to the U.S. power grid because indirect effects were not considered. The Court found that the decision violated NEPA because decision-makers failed to consider the impacts of the operation of the Mexican power plants—including impacts on air quality and climate—that were closely linked to the transmission lines. The Court found that the operation of the power plants were an “indirect effect” of the transmission line project because the two were causally linked. The Court specifically struck down the agency’s decision that the project’s impacts were too minimal to require preparation of an EIS. *Id.*

The impacts of exporting coal are not limited to the climate impacts of its use in overseas power plants. A valid SEPA/NEPA analysis must also consider the climate and other air emissions of transporting these huge volumes of coal. For example, by one estimate, each trip of a fully loaded Panamax container ship to China, for example, burns over 1100 tons of bunker fuel per trip. Bunker fuel generates significant CO₂ emissions and other much more potent

greenhouse gases like nitrous oxides (N₂O), methane, and black carbon. It also causes a variety of other toxic and harmful air emissions, including diesel particulates that are highly damaging to human health. With over 733 trips per expected for 44 million tons of coal, the CO₂ emissions just from vessel traffic would be approximately 2.6 million tons—a huge volume in its own right. These kinds of impacts are “indirect effects” of the decision to authorize the coal export facility and should be evaluated in an EIS, along with any appropriate mitigation.

The EIS must also include discussion of the impacts of mercury deposition that will be caused by the burning of this increased volume of coal. Coal burned in Asia is a major source of mercury contamination in the Columbia River Basin.¹⁵ Mercury is a highly toxic pollutant that bioaccumulates and poses severe health hazards, especially to pregnant mothers and small children. In particular, mercury contamination in salmon is a critical issue for Indian tribes in the Columbia Basin.

Transportation of coal over long distances via rail also has significant environmental impacts, including the fossil fuel consumption of moving large volumes of material hundreds or thousands of miles. For example, Ecology staff calculated the GHG emissions of trains serving MBL’s previous proposal—which was about a tenth the size of this one—as equivalent to putting over 13,000 new cars on the road. *See* Exhibit 177. Data also shows that open coal trains lose huge volumes of coal dust during transportation. Such discharges would add to air quality problems along the rail route. According to BNSF studies, 500 to 2,000 lbs. of coal can be lost in the form of dust for each rail car; coal trains are typically composed of at least 120 cars per train. In other studies, again according to BNSF, as much as three percent of the coal in each car (around 3,600 lbs. per car) can be lost in the form of dust. Exhibit 112, Hearing Transcript,

¹⁵ *See* Jaffe, D. et al., “Atmospheric mercury from China,” *Atmos. Env’t.*, Vol. 39, 3029-38 (2005). The U.S. EPA’s 2009 Columbia River State of the River Report for Toxics explains: “Based on available data, atmospheric deposition appears to be the major pathway for mercury loading in the Columbia River Basin. Mercury air deposition includes both emissions from industrial facilities within and near the Basin and fallout from the pool of global mercury that has been transported from sources as far away as Asia and Europe. EPA estimates that the total mercury air deposition in the Columbia River Basin is 11,500 pounds per year. Approximately 84 percent of that load comes from global sources.” Report at Sec. 5, p. 16 (*available at* <http://yosemite.epa.gov/r10/ECOCOMM.NSF/Columbia/SORR-STATUS>). Similarly, the Willamette River Total Maximum Daily Load (“TMDL”) is an in-depth study on what sources contribute mercury to the Willamette River. Under the Clean Water Act, the Willamette is considered “water quality impaired” for mercury, which is why Oregon prepared a TMDL. *See* Willamette River Mercury TMDL at 3-21 (“The load associated with erosion of native mercury-containing soils (47.8%) and the runoff of atmospherically-deposited mercury from local and global sources (47.7%) represent the two largest mercury inputs to the mainstem Willamette River system.”). Oregon Dep’t of Env’tl. Quality, Willamette River Mercury TMDL, *available at* <http://www.deq.state.or.us/WQ/TMDLs/docs/willamettebasin/willamette/chpt3mercury.pdf>.

July 29, 2010, *Ar. Elec. Coop. Ass'n – Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, at 42:5-13. This is a huge volume of coal that could escape into the air and water. Moreover, as with the greenhouse gas impacts, this analysis must be viewed in the context of all existing and reasonably foreseeable similar impacts, including pending proposals to build other coal export terminals in Washington and Oregon.

IV. ALL IMPACTS CAUSED BY CONSTRUCTION AND OPERATION OF THE MBL PROJECT MUST BE CONSIDERED IN THE ENVIRONMENTAL IMPACT STATEMENT.

Coal export at the proposed MBL project will affect people and places far beyond the immediate construction zone. Every community located along the rail line between the coal mines and Longview will be harmed, and people outside Washington will be affected by the climate impacts of mining, transporting, and ultimately burning this coal. The EIS must, of course, analyze the impacts of construction and operations at and near the terminal, but it also must analyze the impacts of coal trains and coal use on a much broader scale. This includes the direct, indirect, and cumulative impacts of coal export on public health, public safety, economics, marine health, public investment, and climate change.

To be clear, we believe the EIS must examine the full direct, indirect, and cumulative impacts of the proposed MBL project from the mining of the coal in the Powder River Basin, the transport of coal by rail through several states and hundreds of communities, the loading and shipping of coal via large ocean vessels, to the burning of the coal in Asia and the disposal of coal combustion waste after it is burned.

Below we briefly describe the impacts in each category and reference specific documents, reports, and studies that the agencies should consider as they conduct their analysis. A non-exhaustive collection of documents and reports are included in a CD of materials accompanying this scoping letter for inclusion in the administrative record (Exhibits 1-220).¹⁶

A. The Public Health Issues Raised by This Project Are Significant and Harmful.

The public health issues raised by a project of this size and extent include increased air pollution from coal dust (mercury, arsenic, lead, uranium), diesel pollution over different operational lifetime projections for the terminal, soil contamination by coal dust, and increased noise. The EIS should include a specific focus on children, the elderly, and other vulnerable members of the community. It should also consider cumulative and disproportionate impacts on

¹⁶ The exhibits include detailed comments submitted to the Oregon Department of State Lands (Exhibits 1, 108, 116) for the Port of Morrow proposed coal export terminal in Oregon. Many of the issues raised are similar and further support the call for an area-wide environmental review of all proposed coal export projects.

communities already exposed to high levels of air and water pollution, particularly low income communities and communities of color. A group of health care professionals, Concerned Oregon Physicians, summarized many of the public health impacts in a letter to Oregon Governor Kitzhaber, Exhibits 151-58. These groups have also asked for a health impact assessment.¹⁷ Any health impact analysis should take into account both the needs of communities potentially affected by the en-route trains and the site, as well as workers onsite who will be exposed at much higher levels. *See also* Exhibit 205 (Wisconsin Letter) (“Epidemiological studies from Britain and the U.S. conducted over several decades found increased incidence of progressive massive fibrosis and chronic obstructive pulmonary disease in workers exposed at levels near the prevailing occupational exposure limit of 2 mg/m³ (expressed as respirable dust).”).

1. *The MBL project, alone or in combination with other proposed coal export facilities, will cause harmful air impacts.*

Cowlitz County already has some of the unhealthiest air in the state of Washington.¹⁸ Air quality impacts and pollution from nitrogen dioxide (“NO₂”), particulate matter, sulfur dioxide, sulfuric acid mist, heavy metals and coal dust must be analyzed. Expert reports on air quality impacts at a similar proposed project nearby at the Port of Morrow, a project about one fourth the size of Longview, found that the proposed project “will cause very adverse air quality impacts in both Oregon and Washington.” Exhibit 13, AMI Environmental, AERMOD Modeling of Air Quality Impacts of the Proposed Morrow Pacific Project—Final Report (Oct. 2012). NO₂ exposure can have a wide range of health impacts depending on the length of exposure and various other factors. Epidemiologic research establishes a plausible relationship between NO₂ exposures and adverse health effects ranging from the onset of respiratory symptoms to hospital admission. Exhibit 14, 76 Fed. Reg. 57105 at 57304; Environmental Protection Agency, Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (EPA/600/R-08/071), 5-15; *see also* Exhibit 186 (CARB Study).

Particulate matter (“PM”) refers to a broad class of diverse substances that exist as discrete particles of varying size. Exhibit 15, Environmental Protection Agency, Integrated Science Assessment for Particulate Matter, 4-2. EPA/600/R-08/139F, December 2009, 76 Fed. Reg. 57105 at 57302; Exhibit 147, Health Effects and Economic Impacts of Fine Particle Pollution in Washington, Washington Dep’t of Ecology (Dec. 15, 2009). Recent studies have found an increase in such particles that is higher from coal trains than other types of rail.¹⁹ Such

¹⁷ Health Impact Assessment Information Sheet, *available at* http://coaltrainfacts.org/docs/Health_Impact_Assessment_factsheet_Final.pdf.

¹⁸ http://tdn.com/news/local/report-ranks-cowlitz-county-as-among-least-healthy-in-state/article_68f59c5c-1c4c-11df-a7be-001cc4c03286.html.

¹⁹ <http://www.atmos.washington.edu/jaffegroup/modules/APOLLO/>.

particles are produced by a variety of anthropogenic and natural sources, though most fine particles are produced by anthropogenic combustion and transformations of gas emissions, like NO_x, in the atmosphere. The composition of the particles can vary greatly and can remain in the atmosphere for weeks and disperse over thousands of miles. Depending on the size, these particles can be inhaled and penetrate the respiratory tract to cause significant adverse health effects. Coal dust contains many harmful components and causes health problems as people are exposed to fugitive coal dust from coal trains, coal storage piles, loading and unloading practices, emissions from dust control systems, and risk of explosion and fire from coal dust. Exhibit 100, Leyda Consulting, Inc., Ecological Impacts of Proposed Coal Shipping on the Columbia River Port of Morrow and Port Westward, Oregon Oct. 2012; Exhibit 138, The Fire Below: Spontaneous Combustion in Coal, U.S. Dep't of Energy (May 1993). Coal is a volatile and easily combustible material—other coal terminals have faced huge fires that pollute the air and put emergency responders and terminal staff at risk. Exhibit 188 (coal picture). Exhibit 188 is a picture from a coal fire at the ill-fated coal terminal in Los Angeles. A recent study concluded that the spontaneous combustion of coal stocks, in addition to the “obvious safety hazard and the potential loss of valuable assets” constituted substantial sources of GHGs. Although difficult to quantify, the study estimated that GHG emissions from spontaneous combustion of coal were likely below 3%.²⁰

Neighborhoods living near existing coal export and barging terminals on the East coast and Alaska document significant localized pollution, nuisance, and economic loss from coal dust.²¹ There is a considerable body of literature surrounding the risks of coal dust from facilities like this one that should be scrutinized carefully in the EIS. See Exhibit 187. Ironically much of this evidence was developed by BNSF itself in an effort to prevail in litigation against its efforts to require coal shippers to take additional measures to reduce dust losses. See Exhibit 184; Exhibit 185 (BNSF PowerPoint on coal).

²⁰ http://www.worldcoal.com/news/coal/articles/Quantifying_emissions_from_spontaneous_combustion_227.aspx#.UoFxFWXTnct.

²¹ See <http://earthjustice.org/features/ourwork/the-costs-of-coal-exports-personal-stories>; <http://daily.sightline.org/2013/08/27/coal-dust-in-communities/>. Mayors, businesses, and residents located in communities where coal barging, handling and export facilities currently exist such as Seward, Alaska (<http://www.alaskacoal.org/seward-coal-dust/>; <http://www.groundtruthtrekking.org/Issues/AlaskaCoal/SewardCoalPort.html>; <http://daily.sightline.org/2012/01/25/what-coal-dust-looks-like-in-alaska/>); Newport News and Roda, Virginia (*Pollution Board take action on coal dust complaints*, Tricitis.com, http://www2.tricitis.com/news/2010/mar/31/pollution_board_takes_action_on_coal_dust_complain-ar-235582/); *Newport News looking into wind fence*, Daily Press, August 1, 2011, http://articles.dailypress.com/2011-08-01/news/dp-nws-coal-dust-folo-20110801_1_weathersolve-coal-dust-wind-fence); and Mobile, Alabama (http://www.conservationalabama.org/index.asp?Type=B_PR&SEC={B8BDE2CD-75C7-49F3-B613-2ABEBFB938E1}&DE={7DE5A4C3-40E5-4C26-B650-E03586EFE1D0}) are all negatively impacted by coal dust.

Besides analyzing the potential detrimental effects on air quality that will arise from the export terminal itself, a valid NEPA analysis must also consider the negative impacts that will arise from the mining of the coal, the required transport of coal from its source in the Powder River Basin to the export terminal, the burning of the coal and the disposal of coal combustion waste. This process will affect air quality through a variety of manners. Mining of the coal and loading it onto trains creates significant particulate matter and NO_x emissions from the explosives. The NO_x emissions from the blasting is so significant that it creates visible clouds of pollution and forces warning signs to be placed near the mines. Transportation creates both the emissions from the diesel locomotives required to carry the coal, as well as the fugitive coal dust that will escape the freight cars along the way, as well as during loading and unloading on both ends of transport. These effects will have a significant impact on the ability of air quality control regions through which the trains will pass to meet the National Ambient Air Quality Standards, which are set in order to protect public health. In fact, no matter which route the trains take from the Powder River Basin to the export facility, they will pass through numerous non-attainment and maintenance areas for the criteria pollutants they will be emitting. For example, if the coal is transported via the Union Pacific rail line, it would pass through the Fort Hall PM-10 Nonattainment Area, the Portneuf Valley (Pocatello) PM-10 Maintenance Area, the N Ada County (Boise) PM-10 Maintenance Area, the Klamath Falls PM-10 Maintenance Area, the Tacoma PM2.5 Nonattainment area, the Lewis and Clark Co and Yellowstone County, and the MT SO2 Nonattainment areas, to name just a few. If the coal is transported via the BNSF rail line, it would pass through at least the Sheridan County PM-10 Nonattainment Area, the Missoula County PM-10 Nonattainment Area, the Sanders County PM-10 Nonattainment Area, the Sandpoint PM-10 Maintenance Plan, and the Spokane PM-10 Maintenance Plan. Therefore, the NEPA analysis should analyze the effect the transportation of coal will have on the air quality of communities through which the trains will pass.

Further, a valid NEPA analysis must consider air pollution impacts that specifically accompany transporting and burning coal overseas. Each trip of a fully loaded container ship to China, for example, uses around 500 tons of bunker fuel per trip, generating both significant CO₂ emissions in its own right as well as a N₂O, NO_x, SO₂, sulfuric acid mist and a variety of other toxic and harmful air emissions, including diesel particulates that are highly damaging to human health, as well as black carbon, one of the most potent greenhouse pollutants in existence. Exhibit 170, T.C. Bond *et al.*, *Bounding the role of black carbon in the climate system: A scientific assessment*, Journal of Geophysical Research: Atmospheres (on-line version Jan. 15, 2013). The climate impact of the coal dust must also be analyzed in depth in the EIS, including the potential local and regional albedo change and warming impacts. Relatedly, the EIS must consider idling ship emissions of cargo vessels at the dock and in transit through the lower Columbia River; such emissions have been a significant source of toxic air pollution in other ports and, given the scale of this project, are of concern here. Exhibits 190, 200, and 193.

Exporting coal may also increase the air-quality impacts associated with its combustion. When coal is burned domestically, we can be reasonably certain of the pollution-control regulations to which it will be subject. However, there is no guarantee that equivalent regulations will be in place in the Asian countries where the exported coal will be sold and burned. As a result, the air pollution impacts of exporting Powder River Basin coal may be greater than if the coal were to be burned domestically. Yet these impacts will not stay in Asia. Airborne transport of soot, sulfur compounds, mercury, ozone, and other byproducts of coal combustion can travel across the Pacific Ocean and affect the health of western states' ecosystems and residents. *See* Eric de Place, *Northwest Coal Exports: Some common questions about economics, health, and pollution* (Nov. 2011) at 7.²² These kinds of impacts are “indirect effects” of the shipment of coal and should be evaluated in an EIS along with any appropriate mitigation. To complete the lifecycle analysis, the impacts from fugitive particular matter and heavy metals from the transport and disposal of coal combustion waste must also be considered.

In doing an analysis of air pollution impacts, it is not relevant to say an area is currently designated attainment. First, attainment designations do not tell us anything about air impacts that will happen in the future when a new source of pollution is added. In addition, at present it appears that no part of this project's lifecycle will be subject to New Source Review permitting. While we may not agree with this, if that is the case, it makes it all the more important to analyze the air impacts in the NEPA/SEPA process.

Tools such as AERMOD are available and should be used to perform objective, qualitative analysis of air impacts. *See*, for example, Exhibit 13. However, comparing the modeled impacts to the national ambient air quality standards (NAAQS) is not appropriate in the context of NEPA/SEPA. This is because the NAAQS is not a level of pollution below which people are not harmed. Rather, NAAQS represent policy judgments made in the context of the effective implementation of the Clean Air Act. However, in the context of NEPA/SEPA, the relevant question is environmental and public health impacts.

For example, the 2010 SO₂ NAAQS has a level of 75 parts per billion (ppb). This level was selected based on the overwhelming scientific conclusion that certain people, like asthmatics, will be hurt if they are exposed to SO₂ at 75 ppb, even for periods as short as five minutes. However, the 2010 SO₂ NAAQS also has a form. The form is the 3-year average of the 99% of the one-hour daily maximum SO₂ value. This form was not chosen because people do not experience adverse impacts until they are in their third year of exposure to SO₂, for example. Rather, the form of the 2010 SO₂ NAAQS represents policy judgments about how to effectively implement the Clean Air Act. A three-year average is used because using a standard based on only one year of data would result in areas “bouncing” back and forth between nonattainment and attainment designations under the Clean Air Act's implementation provisions.

²² Available at <http://www.sightline.org/wp-content/uploads/downloads/2012/11/coal-FAQ-November-12.pdf>.

It was the EPA Administrator's policy judgment at the time of creating this NAAQS that that would result in ineffective implementation of the Clean Air Act. We are not questioning this policy judgment or suggesting that the EIS somehow question the EPA's Clean Air Act policy judgment. However, the science of environmental impacts, which is distinct from the policy of good Clean Air Act implementation, should be the basis for an EIS. The science says that short term exposures of 75 ppb or above, cause injury to people. Policy judgments about proper implementation of the Clean Air Act should not skew the scientific analysis of an EIS. Thus, the EIS should evaluate whether there will be short-term impacts, that is 5 minutes or greater, of 75 ppb or above SO₂.

Similarly, the current ozone NAAQS is 75 ppb. However, EPA has completed a subsequent scientific analysis and the scientists of EPA's Clean Air Scientific Advisory Council have found that there are significant adverse impacts at the 60 to 70 ppb ozone level. Thus, the EIS should rely on the latest science rather than a Clean Air Act regulatory standard. Much of Washington, Oregon, Idaho, and Montana are already experiencing ozone levels near or above the 60 to 70 ppb range.²³ Thus, the addition of the ozone precursor NO_x from the mining, transportation (train and ship), and combustion of the coal proposed to be exporting from this facility is a significant issue that mandates detailed analysis.

It is also critical in conducting modeling analysis to use reasonably conservative but realistic inputs into the model. For example, it would be easy, but inaccurate, to assume the coal train travels at an average speed for its entire journey from the Powder River Basin to the coal-export terminal. However, the reality, which should be reflected in the analysis, is that coal trains travel very slowly at certain points of their journey because of elevation increases or safety restrictions. In addition, additional locomotive engines are needed at certain points of the journey to make it over hills and the engines have to work harder, and thus produce more emissions, at those points. In addition, trains idle along the way for various reasons like crew changes and train re-configurations. Similarly, it would be easy, but inaccurate to assume that by the time the coal terminal is operating, only ultra-low sulfur diesel will be used in the trains and ships. However, there are exceptions to the diesel regulations such as the provisions for using transmix diesel that has much higher sulfur content.²⁴ Realistic assumptions of these factors need to be included in the analysis. Modeling must take these inputs into account to be realistic.

²³ Ambient monitoring data is available here: http://www.epa.gov/airdata/ad_rep_mon.html. However, again, in the context of an EIS, it is the 1st high 8th average rather than the 4th high that is relevant for the current state of the environment.

²⁴ See, e.g., <http://www.epa.gov/otaq/fuels/dieselfuels/documents/420f12081.pdf>.

2. *The MBL project will harm water resources.*

The EIS must consider effects to all surface and ground water resources within the project area. The EIS must consider all potential water quality impacts (*e.g.*, increased sediment loads, possible spills, coal dust impacts, mercury deposition, changes to alluvial groundwater quality, degradation of drinking well water), and water quantity impacts (*e.g.*, drawdown of aquifers, diversions or diminutions of surface flow, hydrologic changes affecting seeps and springs, drinking water impacts) of the terminal's construction and operation. The agencies should ensure that the EIS describes, in detail, the possible sources of all water needed for the railroad and associated mining activities, including water originating in any over-allocated water source. It should also look closely at the experience of water pollution at other coal terminals, the reality of which is generally far from the promises made by its proponents. Exhibit 202 (photos from Seward) is a series of photographs from a coal terminal in Seward, Alaska, a coal export facility that is only a fraction of the size of the terminal being proposed at Longview, showing dust and chunks of coal in multiple places. For reference, the Seward facility exports only 1 MTPA, as opposed to the 44 MTPA proposed at Longview. Similarly, BNSF is currently a defendant in a Clean Water Act citizen suit for repeated discharges of coal dust into navigable waterways from coal transport by rail in Washington. Exhibit 210 (coal dust complaint and notice letter); Exhibit 196 (photos of coal trains).

The analysis must consider acid deposition into waterways from the trains' and ships' diesel engines. An analysis of the Port of Morrow proposed coal export terminal, which is much smaller, showed nitrogen deposition into the Columbia River many times above the ecological screening level of 5 kg/ha/yr. *See* Exhibit 13 at 25. These impacts crossed state boundaries. These local impacts should be considered in the context of global acidification.

The analysis must assess not just the impacts of dredging in the Columbia River to construct the project, but also the cumulative effects of maintenance dredging every few years for the foreseeable future, as well as the cumulative effects of other dredging activities in the lower Columbia. *See* Exhibit 211 (Longview Fibre comments).

The agency also must consider cumulative water resource impacts flowing from reasonably foreseeable coal mines in the Powder River Basin (*e.g.*, disruption of hydrologic systems, pollution impacts), as well as impacts to water resources that would be expected from burning the coal and disposal of coal combustion waste, whether domestically or overseas. In addition to water availability considerations, the EIS must examine the project's potential impacts to water quality. Contamination of river and drinking water supplies can occur with diesel emissions and diesel spills both during project construction and during the ongoing operation of the project, which relies on continuous activity of trains. The TVA Kinston coal ash spill disaster is just one of many examples of coal combustion waste contaminating water. There are dozens and dozens of less dramatic water contamination examples from coal combustion waste pollution. In addition, the drinking water supplies can become contaminated from coal

dust and coal spills. Coal will be delivered in open top rail cars to the site. Regular movement of uncovered rail cars and the loading and unloading of these cars cause the release of fugitive coal dust, which can further contaminate the water supplies. Construction and operation of the railroad may also result in water quality impacts in the way of increased sedimentation and other changes. The EIS must assess these impacts and detail how federal, state, and local water quality standards will be met, monitored, and maintained.

B. Public Safety Will Be Jeopardized by Construction and Operation of the MBL Project.

The impacts to public safety run the gamut from increased train traffic and vehicle accidents, increased derailments and concomitant emergency response, travel time delays at specific intersections (including the economic impacts of those delays, and impacts to/delay of emergency services (fire, police, EMT).

Threats from frequent long trains at rail crossings all along the route from the Powder River Basin and near the project area will mean delayed emergency medical service response times; and increased accidents, traumatic injury and death. Each fully loaded train is over a mile long, and this proposal would significantly increase the daily number of trains along the rail route. These trains will bisect multiple communities along the route, leading to significant traffic delays and potential safety issues at grade-crossings. The delay of only a few minutes for an emergency response vehicle can mean the difference between life and death for citizens in these rural communities. In addition, increased rail traffic will lead to increased collisions between passenger vehicles, pedestrians, and trains; there are approximately 3,000 vehicle collisions with coal trains each year already, and 900 pedestrian accidents. Exhibit 20, Daniel A. Lashof, et al., Natural Resources Defense Council, Coal in a Changing Climate (Feb. 2007).

Preliminary traffic impact studies have been done for several communities along the proposed rail transportation route for either the GPT or MBL projects, including:

- Exhibit 132, Coal Train Traffic Impact Study, Parametrix (Nov. 2012).
- Exhibit 139, Cherry Point Commodity Export Facility Rail Operations-City of Bellingham, Gibson Traffic Consultants (June 21, 2012).
- Exhibit 140, Cherry Point Coal Export Facility Rail Operations-Burlington, Gibson Traffic Consultants (Aug. 15, 2011).
- Exhibits 141, 142, Cherry Point Coal Export Facility Rail Operations-City of Edmonds, Gibson Traffic Consultants (May 22, 2012).
- Exhibit 143, Cherry Point Coal Export Facility Rail Operations-Marysville, Gibson Traffic Consultants (June 15, 2011).
- Exhibit 144, Cherry Point Coal Export Facility Rail Operations-Mount Vernon, Gibson Traffic Consultants (Sept. 1, 2011).

- Exhibit 145, Cherry Point Coal Export Facility Rail Operations-City of Seattle—Preliminary Report, Gibson Traffic Consultants (Feb. 13, 2012).
- Exhibit 146, Cherry Point Coal Export Facility Rail Operations-Stanwood, Gibson Traffic Consultants (Aug. 8, 2011).
- Exhibit 148, Heavy Traffic Ahead, Western Organization of Resource Councils (July 2012).

In addition to the threat of delay, the EIS must review the threats associated with coal train derailments. There were over 18 derailments of coal trains in the United States in the summer of 2012, including one at Mesa, Washington, near the Columbia River and others across the country that caused fatalities and major coal spills. In 2013 alone, there have been over 90 coal train-related incidents in the U.S. that include derailments, spills and other dumping, 36 of which were derailments.²⁵ There is a serious risk to human health from a huge increase in coal train traffic along the route to and from the Powder River Basin and near the project area.

Coal dust has also been shown to be a cause of rail bed instability and derailments, which can pose a significant public safety hazard. As the Surface Transportation Board (“STB”), which found coal dust to be “a pernicious ballast foulant,” *see* Exhibit 111, Surface Transportation Board Decision, *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (Mar. 3, 2011),²⁶ acknowledged in its coal dust proceeding, the quantity of coal emitted by a train into the air, water and onto tracks is not insignificant.²⁷ An average of 500 pounds of coal dust per rail car is lost during each trip. BNSF Railway, *Coal Dust Frequently Asked Questions* (2011).²⁸ Each train is composed of 120 cars or more. *See* Hearing, July 29, 2010, *Arkansas Electric Cooperative Association—Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305 at 42:5-13. The risk of train derailments is heightened on lines with heavy coal-train traffic. “Coal dust, even in small amounts, poses a real threat to the integrity of the ballast section and track stability.” *Id.* at 46:18-20. *See* Exhibit 112, Surface Transportation Board Hearing Transcript (STB Hearing Transcript), *Re: Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (July 29, 2010).

²⁵ As of November 4, 2013. *See* National Response Center Database, http://www.nrc.uscg.mil/pls/apex/f?p=109:2:9481443649338:pg_R_1810817102655439:NO&pg_min_row=81&pg_max_rows=20&pg_rows_fetched=20.

²⁶ Also available at <http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/40436?OpenDocument>).

²⁷ The STB has conducted two proceedings related to coal dust, referenced at Docket numbers 35557 and 35305. The latter is ongoing. *See* <http://www.stb.dot.gov/newsrels.nsf/219d1aee5889780b85256e59005edefe/72355569b86fcf0485257950006d6966?OpenDocument>.

²⁸ Copy on file with Earthjustice.

The EIS's analysis of coal dust should include a discussion of the efficacy of surfactants to control coal dust, potential impacts of the use of surfactants to control dust emissions, as well as consequences from not using surfactants. First, although use of surfactants in some contexts is common, their efficacy and safety for use on coal-carrying trains is unproven. The claimed 85% control efficiency has been called "junk science" by coal shippers. Topping agents wear off along the route, are themselves pollutants, and can even possibly increase the amount of coal lost due to saltation. *See Exhibit 209 (ex. 4), Phyllis Fox, Fugitive Particulate Matter Emissions from Coal Train Staging at the Proposed Coyote Island Terminal, July 19, 2013.* Second, surfactants contain myriad undisclosed chemicals, many of whose biological and ecological effects have not yet been adequately studied. Surfactants could cause a number of potential harms, including: danger to human health during and after application; surface, groundwater, and soil contamination; air pollution; changes in hydrologic characteristics of the soils; and impacts on native flora and fauna populations. *See Environmental Protection Agency, Potential Environmental Impacts of Dust Suppressants: Avoiding Another Times Beach § 3 (May 30-31, 2002).* Third, while BNSF has a voluntary tariff encouraging the use of surfactants, STB proceedings evaluating that practice are ongoing. In the absence of binding regulation, many coal companies are electing not to apply any sort of topping agent. *Exhibit 12, Some shippers not complying with BNSF coal dust tariff, Platts Energy Week, Nov. 3, 2011.* As a result, the use of surfactants is not certain, and so the analysis of the impact of coal dust must consider scenarios both without and with any sort of surfactant use.

C. The Overall Economic Impacts of the MBL Project Are Likely Negative.

The economic impacts of this project must also be reviewed. Issues here include the impact of dramatic increases in coal train traffic on real estate values and damage to property from coal dust, diesel emissions, vibration, and noise. There are also serious concerns relating to the impact of such a massive increase in coal rail traffic on other non-coal shippers of freight by rail, including ports and shippers of agricultural products. These same issues may dramatically affect passenger rail interests. These significant rail traffic increases are likely to create major impacts on communities affected by vehicle traffic problems related to delays at non-grade separated railway crossings, which will affect non-rail freight mobility, access to ports, retailers, tourist centers, and employers. On the marine side, there are likely to be significant economic impacts on marine dependent industries such as commercial and tribal fisheries and shellfish growers, tourism, and other businesses.

Hundreds of community and business leaders have expressed their concerns about the economic impacts of the MBL project and similar projects like the GPT in Whatcom County. Washington State Senator Ranker and a dozen other state senators wrote to Washington Department of Ecology Director Ted Sturdevant on November 3, 2011, stating that "[w]e must be fully aware of the potential economic tradeoffs associated with this increased level of transportation. Small and large businesses along rail lines in communities from Spokane to

central Washington, to Bellingham could be negatively impacted by significantly increased numbers of rail runs transecting their community.” Exhibit LR-10.

1. *The project, individually and in combination with other proposed coal export projects, will create massive increases in rail traffic for a single commodity, with major impacts on other rail users and affected communities.*

The increased rail traffic associated with shipping at least 44 million metric tons of coal per year at full build-out to the MBL project would represent a huge increase in freight rail usage and would likely present significant conflicts with other users of the rail line, including freight and passenger shippers. According to the Washington State Department of Transportation (WSDOT), inbound freight rail traffic totaled 58 million tons in 2010.²⁹ Based on WSDOT’s figures, rail tonnage associated with just the MBL project at full build-out would represent a 75% increase in the inbound rail tonnage on Washington rails. These impacts are even more significant if you take into account the cumulative impacts on a regional perspective. The authors of the *Heavy Traffic Ahead* study, Exhibit 148, have estimated that combined rail traffic from the Powder River Basin to the proposed northwest coal terminals (including projected growth in British Columbia, Canada) would equal as much as 157 million metric tons per year. This would result in a nearly 200% increase of inbound regional freight rail traffic for just this one commodity. It is critical that the EIS include a full analysis of the cumulative impacts from these proposals, including the capacity of the rail system to handle these increases without significant adverse impacts on other shippers, passenger rail users, and communities.

The most recent analysis of Washington’s freight capacity, conducted in 2009 (Exhibit 164, Washington State Department of Transportation Freight Rail Plan 2010-2030), indicated that a number of critical sections of track, including the Columbia Gorge, were at or near capacity in 2008 and predicted further congestion by 2028. Other key chokepoints are identified in the Plan, the Washington State Transportation Commission’s Statewide Rail Capacity and System Needs Study, December 2006 (Exhibit 162), and the *Heavy Traffic Ahead* study (Exhibit 148).³⁰ Additional critical bottlenecks include the Columbia Gorge and the Spokane-Sandpoint Corridor (known in railroad parlance as “the Funnel,” due to the fact that most major east-west rail corridors converge there). This cumulative effects analysis should take into account a

²⁹ WSDOT, Washington State Rail Plan Public Workshop Presentation (Slide 21), November 2012, available at <http://www.wsdot.wa.gov/NR/rdonlyres/9FDB1C42-B024-4554-A4E7-D2328BEB9C92/0/SRPWorkshop112912.pdf>.

³⁰ An update to this study with additional specifics will be available shortly after the comment deadline and we ask that it be included in the review. See <http://heavytrafficahead.org/>.

number of currently pending proposals that will increase rail traffic for oil terminals and other users. *See* Exhibit 208 (oil and gas fact sheets).³¹

Unless mitigated with significant capacity additions, the addition of the proposed massive increases of coal train traffic is likely to present significant adverse impacts on other users of the rail line, including grain and fruit shippers, intermodal users, ports, industries, aircraft manufacturers and passenger rail—all of who are critically dependent on timely and affordable access to the rail system. *Heavy Traffic Ahead*, Exhibit 148. Existing state studies indicate that coal rail traffic is already having a significant negative impact on the ability of Washington shippers to access markets where coal traffic from the Powder River Basin is dominating the rail lines; experts working for the state have concluded that “the high volume of coal trains moving east out of the Powder River Basin has made it virtually impossible to route time-sensitive intermodal trains moving from Pacific Northwest ports to central and southeast gateways such as Kansas City and Memphis through the near continuous flow of slow-moving coal trains. Adjusting to this, BNSF has shifted most intermodal traffic destined to locations south of Chicago to the Ports of Los Angeles and Long Beach.”³² These reports also confirm that the railroad prioritizes unit trains, such as coal trains, over other shippers. The EIS should fully analyze the impacts on northwest shippers if inbound and outbound freight traffic is diverted or eliminated due to the competition with coal trains. Further, the EIS should look at impacts related to diversion of this freight rail traffic to other modes, including trucks and barges.

The EIS must also analyze impacts, mitigation measures and potential funding relating to the use of passenger rail on these same lines. As Exhibit 173 discusses, the Amtrak Cascades Mid-Range Plan (2008), Washington and passenger rail advocates have significant plans for increases of passenger rail capacity, including adding additional high-speed passenger trains on the I-5 corridor. The EIS must analyze how existing and expanded passenger rail uses will be impacted if freight traffic increases.³³ The EIS should also consider existing and prospective public funding for rail capacity to purchase passenger rail service. The public has spent billions of dollars in rail improvements to ensure that passenger rail fits with existing capacity, and it is

³¹ In fact these fact sheets drastically underestimate the total amount of trains associated with pending proposals because they erroneously only count full inbound trains, not empty outbound ones.

³² Communitywise Bellingham, Annotated Bibliography with Key Extracted Pages Studies Relevant to Rail Related Public Policy Concerns Community Impacts, Local Business Impacts, Lack of BNSF Cost Sharing, *available at* <http://www.communitywisebellingham.org/wp-content/uploads/2012/05/CWB-WSDOT-Public-Policy-Concerns-Report.pdf>.

³³ Passenger service that may be affected would include, among others, Sound Transit Sounder commuter services as well as Amtrak intercity service and Empire Builder service between Seattle and Chicago. The Empire Builder service also utilizes “The Funnel” in Spokane, which is expected to see the greatest increase in freight rail traffic because of the coal shipments.

imperative that the EIS fully analyze the past and prospective investments to ensure that public funds are not spent for private purposes.

It will also be necessary to review the need for public investment spurred by this project. Rail infrastructure improvements are anticipated, although it is far from clear how those improvements will be funded. Rail lines and infrastructure will also need to be regularly maintained, and there will be significant mitigation costs for structures such as overpasses, tunnels, and railroad crossings. The EIS must also address whether the public will be expected to bear any costs for infrastructure constructed for private benefits. Federal and State Governments commonly bear a significant share of the costs of freight rail capacity improvement projects.³⁴ The EIS should include all needed capacity improvements that will be required to address at least those areas where the planned coal train traffic will exceed the capacity of the existing system.

The scope of the Millennium EIS should include impacts from the proposed SR 432 Rail Realignment and Highway Improvement Project. The MBL project would add 18 unit trains each day—9 full, 9 empty—a volume of train traffic that far exceeds the capability of the current system, according to a 2008 study by the Cowlitz-Wahkiakum Council of Governments.³⁵ The study states that increased unit train traffic “will result in dramatic degradation of highway traffic operations in the SR 432 Corridor.” With an increase of just three unit trains per day, “grade separation would be needed to prevent lengthy delays on the highway system.” The report states, “as unit train traffic grows, delay on Oregon Way will become intolerable.” Because Millennium’s proposed 18 trains per day is the only major unit train-related development on the horizon, coal exports are a primary driver for improvements to the SR 432 corridor. In other words, without the MBL project, there is currently no justification for this expensive improvement. Accordingly, they are connected actions within the meaning of NEPA and should be included in a single EIS. Several of the undersigned organizations have already asked that the EIS for the MBL project include needed rail work in the SR 432 corridor. Exhibit 176. At a minimum, the MBL EIS must disclose that taxpayers are being asked to fund expensive rail improvements solely for the purpose of facilitating the export of coal out of Longview.

2. *The project is likely to create very significant impacts relating to rail traffic in dozens of impacted communities.*

Numerous studies have confirmed that the massive increases in freight rail traffic for coal export will result in significant adverse impacts on other traffic and freight mobility within

³⁴ See Sightline, January 2013, *Who Pays for Freight Rail Upgrades?* available at <http://daily.sightline.org/2013/01/18/who-pays-for-freight-railway-upgrades/>.

³⁵ The study is available at http://www.cwcog.org/documents/WDOT0000-37703-10-08FeasibilityStudy-ReadyForPubli_000.pdf.

affected communities. *See* Exhibits 132, 139-46, 148. Each of these studies concludes that the level and type of coal train traffic associated with this project is likely to cause a number of affected intersections to reach unacceptable levels of service, including many intersections that are projected to reach level of service “D” or “F.” These traffic impacts will cause direct economic losses to affected communities and businesses through interruptions of freight mobility, challenges for customers reaching businesses, and lost employee time. Air pollution impacts related to increased idling and congestion may also directly impact growth in affected communities. The fact that some of these communities will not be directly affected by the MBL project (because of their location in Puget Sound) does not mean that Columbia River and other Washington communities will not be affected—rather, these studies demonstrate the kind of impacts that become evident when the issues are studied closely.

Although these studies show the likelihood of significant adverse impacts in a number of communities, it is imperative that the EIS fully analyze these issues in all other communities that are likely to be similarly affected along the entire corridor from the Powder River Basin to the proposed MBL project site. These concerns relating to the economic and community impacts from increased traffic are at the heart of many of the dozens of resolutions and letters that have been received from cities, counties, local elected officials, businesses and community leaders along the proposed route.

The EIS must also look at necessary mitigation for these traffic and mobility concerns and the question of who will bear the costs of this mitigation. Under federal law, railroads are generally limited to paying no more than 5% of the costs of grade separated crossings. Typically, the railroad pays far less than that amount. Given that the costs of grade separated crossings to address these traffic issues are in the tens and hundreds of million dollars, the EIS must analyze any mitigation that is needed in response to the huge increases in coal train traffic associated with this project to ensure that the public does not pay for private benefits.

Right of way fires on the land of property owners along rail lines with coal trains are also a known safety and economic risk that must be analyzed.³⁶ Last year, several coal-related fires occurred along a railway in North Dakota.³⁷ Coal dust lodged in the ballast, and from constantly passing coal trains, kept the track fires smoldering for several days. As South Heart Fire Chief said, “When there is that much coal dust, there is not a lot we can do...you think you have it out...and then half-a-day later, it flares up once again.”³⁸

³⁶ *See* Hearing Transcript, July 29, 2010, *Arkansas Electric Cooperative Association – Petition for Declaratory Order*, Surface Transportation Board, Docket No. FD 35305, at Tr. 69: 7-10.

³⁷ *Coal Dust Keeps South Heart Fire Crews Busy*, The Dickinson Press, September 1, 2012, <http://www.thedickinsonpress.com/event/article/id/61008/>.

³⁸ *Id.*

Finally, it is particularly critical that the evaluation of rail impacts be placed in the context of cumulative effects from multiple projects, currently under consideration, that will dramatically raise the amount of train traffic in Washington state. In addition to the other coal export terminals that will in part use the same lines as the MBL project, there are numerous proposals to increase the amount of crude oil travelling by rail. For example, the Port of Vancouver recently approved a lease with Tesoro-Savage for the first crude-by-rail terminal on the Columbia River in Washington state. This terminal alone will generate eight, mile-and-a-half long trains per day (4 full, 4 empty). This is one of approximately ten pending or approved projects that will add toxic and dangerous crude oil shipments to the already overcrowded rail lines. Three projects are proposed at Grays Harbor where the rail traffic is expected to be 9-12 new trains. Together, these two projects alone would have in the neighborhood of 20 additional trains. The EIS should evaluate the direct, indirect, and cumulative impacts of reasonably foreseeable projects, including crude oil, coal export, and liquefied natural gas terminals on the Columbia River. This includes the cumulative impacts associated with rail traffic, vessel traffic, and associated pollution and public health impacts.³⁹

3. *Other economic impacts and risks associated with the project will be significant.*

a. Property valuation

Recent studies have indicated that the massive increases in coal train traffic induced by the proposed terminal may directly result in significant reductions in property values, affecting owners, other taxpayers, and affected communities. See Exhibit 133, Increased Coal Train Traffic and Real Estate Values, The Eastman Company (Oct. 30, 2012); Exhibit 134, The effect of freight railroad tracks and train activity on residential property values, Robert A. Simons, A. El Jaouhari (Summer 2004); Exhibit 136, Examining the Spatial Distribution of Externalities: Freight Rail Traffic and Home Values in Los Angeles, Futch, M. (Nov. 11, 2011). A study conducted by the Eastman Company (property valuation experts and consultants) relevant to the GPT in Whatcom County concludes that property valuation losses are likely to be significant for properties located within 500 feet of the mainline tracks in Whatcom, Skagit, Snohomish, King, and Pierce Counties, due to the impacts related to traffic, safety, vibration, noise, pollution, and stigma and perception issues. For example, the study found that single family residential properties north of Everett could lose values in the range of 5-20%. Other estimates included multi-family properties (5-15%); commercial properties (5-10%); and industrial properties (5-8%). Using a database of assessed property values in the study area, the Eastman report

³⁹ Coal dust is known to cause ballast instability and can contribute to train derailments as previously discussed in these comments. When considering the cumulative impacts of large increases in coal rail traffic and oil rail traffic, the increased potential for accidents and fires—especially those of an especially catastrophic nature like the Lac-Mégantic, Quebec disaster that killed at least 42 people and leveled 30 buildings—come to mind.

concluded that even a 1% diminution in property value would result in a loss of approximately \$265 million. A similar study for the City of Seattle showed potential property value losses of up to half a billion dollars. Exhibit 207 (CAI OED Report). While we are not yet aware of any comparable study for Longview, it is clear that a substantial increase in rail traffic has important impacts that need to be assessed. The EIS should look at these issues along the entire corridor, using specific estimates of rail traffic associated with the project, as well as the cumulative impacts of other coal export facilities and proposed crude-by-rail.

b. Impacts on economies dependent on the marine environment

There are likely to be significant adverse impacts and major risks posed to the Columbia River and aquatic ecosystems from this project. In addition to the impacts on ecosystems, these issues must be evaluated for the impacts and risks that they pose for marine related businesses and economies, such as commercial, tribal and sports fisheries, shellfish growers, tourism, and other related businesses. These businesses cumulatively provide billions of dollars in positive economic impacts to the state and region. Exhibit 7, National Wildlife Federation, *The True Cost of Coal: The Coal Industry's Threat to Fish and Communities in the Pacific Northwest* (2012) at 9 (recreational fishing accounts for \$2.7 billion a year to the Washington and Oregon economies; commercial fishing in Washington contributed \$3.9 billion to economy). Impacts to other forms of recreation, e.g., boating, fishing, hiking, birding, should be closely analyzed.

c. Economic uncertainty and market volatility surrounding coal export

Several studies and reports in the accompanying materials address the speculative and uncertain nature of coal export terminals as a foundation for economic prosperity. *See, e.g.*, Exhibit 129, Coal Export: A History of Failure for Western Ports, VandenHeuvel, B. & E. de Place (Aug. 2011). Coal export terminals in Portland and Los Angeles were both shut down at significant taxpayer expense. One of the few terminals shipping thermal coal from the West Coast of the United States—located in Seward, Alaska—recently cutback operations and laid off workers citing adverse international market conditions.⁴⁰

Moreover, the EIS should examine the market uncertainty and volatility surrounding coal. Domestic demand for coal has fallen substantially since 2008, as U.S. electricity generators have turned to cleaner burning natural gas, renewable energy, and increased energy efficiency.⁴¹

⁴⁰ *Lack of Demand Slows Coal Shipping*, The Seward Phoenix Log, Nov. 29, 2012, available at <http://www.thesewardphoenixlog.com/story/2012/11/29/local/lack-of-demand-slows-coal-shipping/895.html>.

⁴¹ US Energy Information Administration: *Annual Energy Review*, Sept. 2012, Table 2.1f: Electric Power Sector Energy Consumption, 1949-2011, available at <http://www.eia.gov/totalenergy/data/annual/showtext.cfm?t=ptb0201f>; and December 20, 2012, Quarterly Coal

The reasons for this change undoubtedly include the increasing environmental control costs for burning coal, as well as a growing recognition among companies and financial analysts that mining and burning coal to produce electricity is no longer a viable strategy to produce an acceptable return on investment. The EIS should analyze the extent to which these trends are being followed in the proposed export markets, including the trends to replace coal with renewables, efficiency, and natural gas for energy generation and the impacts on the long-term prospects for this project. Potential domestic electricity pricing impacts to U.S. consumers from exporting coal should also be examined.

Simply put, since the time that MBL first applied for permits in 2010, the global price for coal has collapsed and the putative justification for exporting to U.S. coal—a presumed insatiable demand for coal in China—has fallen apart. In fact, a June 2013 independent analysis, entitled *Asian Coal & Power: Less, Less, Less...The Beginning of the End of Coal* (Bernstein Research, 2013), flatly declared that China will cease importing coal in 2015 and may indeed become a net exporter once again. Exhibit 183 (“2015 is going to be the peak year for Chinese coal consumption *ever*.”) (emphasis in original). China’s installation of clean, renewable energy, such as wind and solar, is booming.⁴²

The EIS should evaluate the risk that the proposed terminal may join the other projects that have experienced economic failure, sometimes leaving significant clean-up liabilities, public expenditures, and unfulfilled expectations for local communities. The EIS should consider potential mitigation measures relating to these risks, including the need for the project proponents to post a bond or provide other security to ensure that communities and local governments are not left with the responsibility for site clean-up and other costs in the event of project failure.

Given the substantial market uncertainty related to coal finances and coal export, it appears very likely that project economics may depend on direct subsidies and avoidance of taxes owed to federal and state governments. The authors of Exhibit 169, *The Great Giveaway*, concluded that anti-competitive leasing practices had allowed coal mining companies to avoid \$29 billion in lease payments to the federal government over the past several decades. Coal companies were able to avoid competitive bids for leases due to a loophole excluding the Powder River Basin (the largest coal reserves in the United States) from provisions applying to areas designated as “coal producing regions.” In statements, federal officials admitted that these

Report (3d Quarter 2012), Table 32: U.S. Coal Consumption by End-Use Sector, 2006-2012, <http://www.eia.gov/coal/production/quarterly/pdf/t32p01p1.pdf>.

⁴² See, e.g., http://www.pv-tech.org/news/china_will_top_pv_deployment_in_2013_npd_solarbuzz; <http://www.gwec.net/wp-content/uploads/2013/07/The-Global-Status-of-Wind-Power-in-2012.pdf>.

practices reduced payments from coal companies, but justified it based on the desire to maintain low electricity rates in the United States. Obviously, these concerns do not apply to coal export.

Additionally, new concerns have been raised that federal, state, and tribal governments may be losing millions of dollars in royalties as coal companies base their calculations on low domestic prices, as opposed to much higher prices coal commands overseas. As the rules that govern Powder River Basin sales to Asia come under more rigorous review, projected profits from coal export may significantly decline. *See Exhibit 171, Letter from Senators Wyden and Murkowski to Interior Secretary Salazar re: Federal coal royalty management (Jan. 3, 2013).* If these loopholes are fixed, U.S. exported coal prices may not be competitive with other thermal coal exports to the same customers from Australia, Indonesia, and other countries. Pouring private and public investments of money, time, and community good-will into coal export terminals will likely prove a losing decision.

All of these economic impacts beg the question whether the overall economic impacts of the project are positive. As Exhibit 163 shows, *The Impact of the Development of the Gateway Pacific Terminal on the Whatcom County Economy*, the answer to this question is very likely no. This study, by one of the nation's leading economic consulting firms, evaluated the positive economic impacts from the project in Whatcom County, and then compared them to a wide range of negative economic tradeoffs and impacts. It concluded that the overall economic impact would very likely be negative, *even in the county with most of the positive economic benefits*. A similar review should be prepared specific to the locally impacted area of Longview and Cowlitz County as part of this EIS. Additionally, the EIS should look at the overall economic impacts of the MBL project on a region-wide basis, particularly in light of the cumulative effects with multiple overlapping impacts.

4. *The EIS should analyze MBL's long-term economic prospects and past deliberate deception.*

As discussed above, MBL has a history of direct dishonesty and evading regulatory requirements. *See Exhibit 174.* In our view, this history prevents MBL from having a second chance to put forth a project in Cowlitz County. At a minimum, this history requires that the agencies take extra precautions to ensure that MBL is not hiding other critical facts or future expansion plans. For example, MBL's internal memoranda repeatedly discussed a project of 60 million tons per year, a third larger than the one under review. *See Exhibit 203.*

Equally significant is the question of the company's shaky finances and complete inexperience in handling a project of this magnitude. Ambre Energy, the parent company of MBL, has never operated a facility like this. It is a small privately-held Australian entity that, until it purchased some money-losing mines a few years ago, never owned anything of value, never made anything, or never traded anything. It has consistently lost tens of millions of dollars per year and is now so financially distressed that it is paying interest rates of 16% per year to its

South Korean Partners. *See* Exhibit 179 (Ambre Financial Report). Ambre’s balance sheets show that it has lost \$124 million dollars and earned less than \$7 million, and has hundreds of millions of dollars in potential liabilities that it has no capacity to pay. Exhibit 180. It has been embroiled in litigation with its partners, caused by its mismanagement and inability to meet its commitments. An Australian newspaper, referring to Ambre as a “small-time Queensland resources company” declared in 2012 that the company was “at risk of financial collapse.”⁴³ Ambre’s plans for Longview (as well as Morrow) constitute last-gasp efforts to save the company from bankruptcy, with little reason to believe that they will be suitable long-term partners for the community and careful stewards of the Columbia River and surrounding areas.

The last tenant of the MBL site—Chinook Ventures—was another fly-by-night operation that took advantage of community goodwill with an illusory promise of jobs, and ultimately left the site contaminated and in violation of multiple environmental laws. The experience highlights the importance of a stable and reliable partner for long-term infrastructure investments. Ambre Energy is neither.

D. The MBL Project Will Increase Harm to Wildlife, Marine, and Aquatic Health and Historic Properties.

The EIS must include an analysis of impacts to biological, marine, and aquatic resources on both public and private lands and waters in the affected area, that is, in the area from the mining of the coal in the Powder River Basin, through the rail corridor to the MBL project, through the loading and shipping of the coal through the Columbia estuary, to its final destination and burning in Asia. Such resources include marine and terrestrial mammals, game and non-game resident and migratory bird species, raptors, songbirds, amphibians, reptiles, fisheries, aquatic invertebrates, wetlands, and vegetative communities. The agencies must ensure that up-to-date information on all potentially impacted flora and fauna is made available, so that adequate impact analyses can be completed. Habitat degradation, fragmentation, and loss must all be assessed, along with any resulting impacts to wildlife and marine species.

1. *Construction and operation of the MBL project will harm the ecology of the lower Columbia River.*

Risks to aquatic health in the important Columbia estuary—including potential harm to important Columbia River salmon populations, threatened salmon species, and endangered killer whales—stem from oil spills from bulk carriers, impacts during construction (seafloor disturbance, increased turbidity, noise, lighting), impacts during operation (coal dust, shading

⁴³ Anthony Klan, *Miner Ambre Energy in financial trouble as Queensland rejects its coalmine project*, the Australian (Apr. 2, 2012), available at <http://www.theaustralian.com.au/archive/business/miner-ambre-energy-in-financial-trouble-as-queensland-rejects-its-coalmine-project/story-e6frg9e6-1226315904534>.

from pier and wharf, toxics from terminal's outfall pipes, night lighting, noise, nitrogen and sulfur deposition), chosen shipping routes and shipping traffic along those routes, and climate change itself.

Construction and existence of the dock and pier will impact salmon, lamprey, and other marine life. *See* Exhibit 117, *Minimizing Effects of Over-Water Docks on Federally Listed Fish Stocks in McNary Reservoir: A Literature Review for Criteria*, prepared by the U.S. Geological Survey for the U.S. Army Corps of Engineers (2010) (prepared in support of criteria for siting new docks in the McNary Pool of the Columbia River, this report recommends, among other things: (1) pilings shall not exceed 5 inches in diameter, (2) each over-water structure shall utilize no more than 6 piles for the entire project, and (3) nothing shall be placed on the over-water structure that will reduce natural light penetration through the structure); Exhibit 118, *Overwater Structures and Non-structural Piling White Paper*, prepared by Jones & Stokes Associates for the Washington Department of Fish and Wildlife (2006) (summarizes scientific literature documenting the direct, indirect, and cumulative impacts of overwater structures, including industrial docks, to ESA-listed salmonids and other aquatic life); Exhibit 119, *Over-water Structures: Freshwater Issues*, prepared by Herrera Environmental Consultants for the Washington Departments of Fish and Wildlife, Ecology, and Transportation (2001) (comprehensive overview of scientific literature, current through late-2000, describing the impact of pilings and docks on aquatic life, including increased predation, decreased habitat quality, and degraded water quality).

The design, construction, and existence of the wharf and trestle will have shading impacts, which in turn affects estuary ecology. For example, juvenile salmon, which use the lower river for migration and rearing, will also be disrupted by the dock system. During terminal operations, noise and artificial light will harm all the fish that use the estuary environment, and vessel berthing will disrupt and harm salmon rearing and migration behavior. In a letter to the Army Corps, the National Marine Fisheries Service expressed significant concern about the impacts of the much smaller Morrow project on ESA-listed species. Exhibit 175. Notably, it rejected the Corps' efforts to look narrowly at the environmental impacts of the project, demanding additional information before consultation could proceed.

Stormwater is another critical concern, given the toxicity of the material being shipped, and the historic contamination of this brownfields site. The surrounding water bodies are already listed as impaired under the state's § 303(d) list, and under Ninth Circuit precedent, any additional discharge to such impaired streams is prohibited. As we have previously explained, the provisions in the construction and industrial stormwater general permit are not adequate to the task of controlling toxic runoff from this facility into sensitive and impaired water bodies, which should be regulated under an individual permit if not prohibited outright. *See* Exhibit 189 (Construction Stormwater Comment 11-30).

Increased wildlife mortality from railroad and mining related activity (including, but not limited to, increased human conflicts, habitat loss, and increased hunting pressure) must also be discussed. Impacts to wildlife migration corridors must be evaluated.

As noted above, an evaluation of the proposed Morrow coal export facility showed nitrogen deposition from the diesel engines for the trains and ships significantly above the ecological screening level. *See* Exhibit 13 at 24-26. The EIS should include a similar analysis for MBL but should look at both nitrogen and sulfur compound deposition.

2. *Increased shipping traffic caused by the MBL project will harm the lower Columbia River and its already at-risk aquatic species.*

Granting the requested permit would dramatically increase the amount of large-vessel traffic in the Columbia River estuary, a sensitive and critically important ecosystem. A study performed for MBL's last proposal—one claiming to be designed only for 5.7 million tons per year—found that the proposed project would itself cause an increase of around 7% in vessel traffic on the lower Columbia River. Exhibit 178 (BST Associates). The proposed action is a coal port that is nearly eight times that size. Each of these ships must navigate the Columbia bar, known to captains as “the graveyard of the Pacific” for its dangers.

The dramatically increased shipping traffic brings with it an increased risk of collisions, groundings, spills, discharges, and accidents during vessel fueling. Similarly, the potential for introduction of invasive species, including through ballast water, must be assessed, as tens of thousands of cubic meters of ballast water per visit will be discharged by the shipping vessels. Exhibit 7, *The True Cost of Coal: The Coal Industry's Threat to Fish and Communities in the Pacific Northwest* at 10. Hull fouling presents a similar danger of invasive species introduction. All of these risks and impacts must be carefully scrutinized, particularly in light of cumulative effects like Ambre's other proposed coal terminals on the Columbia River.

This increased quantity of shipping, and the operations of the terminal site, will have effects on threatened, endangered, and candidate species that must be analyzed in the EIS. This includes multiple ESA-listed salmon species, endangered southern resident killer whales (which rely on Columbia salmon as a food source), and other species. For species protected under the Endangered Species Act, the agencies must consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (“NMFS”) under § 7 of the Endangered Species Act to determine whether the terminal, the proposed shipping activity and marine shipping routes, any of the proposed railroad routes, and the associated coal mining and combustion activities will adversely affect these species or their designated critical habitat. To date, NMFS has not accepted the Corps' unduly narrow scope of review.

Federal and state agencies, along with Columbia River Treaty Tribes, have spent decades trying to protect and recover salmon in the Columbia River that are threatened with extinction

due to hydropower operations and habitat loss. Indeed, the federal government's chief response to mortality to salmon caused by dams is to improve habitat, and especially in the Columbia River estuary. Agreements with the states call for spending tens of millions of dollars on estuary habitat restoration to mitigate hydropower impacts. *See* Exhibit 194. These efforts will be undermined by the extensive pollution, habitat loss, and risk of accident that are associated with this project.

It is particularly important for the agencies to evaluate increases in vessel traffic in the context of the cumulative impacts from multiple current and reasonably foreseeable projects—mostly related to other fossil fuels like LNG and crude oil—in the lower Columbia River. For example, one recent project at Port Westward proposes to dramatically expand vessel traffic downstream in the Columbia for carrying crude oil.⁴⁴ Exhibit 220. Another project under review involves substantial increases in LNG vessel traffic. Exhibit 214.

3. *The EIS or NHPA must consider air pollution impacts to historic properties and tribal resources.*

In addition to considering impacts to historic properties and tribal resources within the footprint of the export terminal, the EIS and National Historic Preservation Act (NHPA) must consider impacts from air pollution. The impacts can come in a variety of ways. Fugitive coal particulate matter from the mining, transportation, loading and unloading of the coal can cause the soiling and darkening of historic properties. In addition, acid deposition from diesel engine emissions and blasting may damage historic properties and tribal resources like fish.

Several studies could inform this analysis. One of the first studies to look comprehensively at the synergistic effects of various air pollutants on culturally-significant structures, the MULIT-ASSESS study, which developed multi-pollutant deterioration and soiling models of wet and dry deposition of gases and particulates on materials.⁴⁵ More recently, the CULTSTRAT study researched threshold levels of pollution for different materials used in historic structures.⁴⁶ One of the goals of the CULTSTRAT project was to contribute towards

⁴⁴ <http://www.clatskaniechiefnews.com/2013/10/>.

⁴⁵ Dr. Vladimir Kucera, Swedish Corrosion Institute (SCI), *Deliverable 0.2, Publishable Final report, Model for multi-pollutant impact and assessment of threshold levels for cultural heritage*, Project period 1 January 2002 to 30 April 2005. Available at <http://www.corr-institute.se/MULTI-ASSESS/web/page.aspx?pageid=59189>.

⁴⁶ Dr. Vladimir Kucera, Swedish Corrosion Institute (SCI), *CULT-STRAT Assessment of Air Pollution Effects on Cultural Heritage—Management Strategies Specific Targeted Research Project (STREP) Priority 8.1 Policy-oriented Research Publishable Final Activity Report*, and *Deliverable 17 CULTSTRAT Verified indicators and threshold levels for cultural heritage*,

public policy that protected historic structures. The book *The Effects of Air Pollution on Cultural Heritage* may also serve as a useful resource in this evaluation.

E. Permitting Coal Export Terminals Will Increase the Amount of Mining in the Powder River Basin.

There are also extraordinary environmental impacts from mining coal. Mining, of course, causes a broad array of environmental harms through contamination of air, surface and groundwater, and publicly owned lands. *See* Exhibit 128, A Hidden Cost of Coal, Northern Plains Resource Council; Exhibit 137, Exporting Powder River Basin Coal: Risks and Costs, Western Organization of Resource Councils (Sept. 2011). Additional coal mining in the Powder River Basin will be proximately caused by the permitting decision—the 44 million tons of coal per year that would be shipped from this facility will not simply reduce the stockpile of coal available domestically, but will be an additional volume of coal mined from often sensitive habitats in Wyoming and Montana.

While proponents of the coal export terminals have repeatedly told the public that the amount of mining bears no relationship to the availability of exports, they are telling their investors exactly the opposite—because of declining U.S. consumption, the only hope for getting new mines active is by opening up the West Coast coal terminals.⁴⁷ The only new mine in Wyoming recently halted construction because, its chief executive told newspapers, there is no export capacity to serve.⁴⁸ The last coal lease in the PRB had no bidders.⁴⁹ Nor is the location and extent of such additional mining speculative. Cloud Peak coal, for example, has explicitly told investors that a series of mines it hopes to develop in Montana will not go forward until Washington export terminals are permitted.⁵⁰ Ambre Energy owns or has an interest in two operating mines in the Basin, and two existing deposits, and has explicitly told its investors that it hopes to integrate its two proposed coal export terminals with its mines.⁵¹ (“Our target is low-ash, low-moisture coal deposits that are close to rail infrastructure so they can supply our thermal

Project Results *available online at* <http://www.corr-institute.se/cultstrat/web/page.aspx?pageid=59101>.

⁴⁷ <http://climatesolutions.org/cs-journal/cloud-peak-energy-201call-in201d-for-coal-exports-from-the-west-coast>.

⁴⁸ <http://climatesolutions.org/cs-journal/memo-to-the-very-serious-people-resistance-isn2019t-futile-and-irony-can-be-delicious>.

⁴⁹ <http://wyofile.com/dustin/24669/>.

⁵⁰ <http://seekingalpha.com/article/1182631-cloud-peak-energys-ceo-discusses-q4-2012-results-earnings-call-transcript>.

⁵¹ <http://www.ambreenergy.com/us-thermal>.

coal export business.”) The impacts from additional mining that will be caused by the MBL project, and other coal terminals, should be included in the EIS.

F. Exporting Coal From the MBL Project Will Cause More Coal to Be Burned, Adding to Global Climate Change.

As discussed above, the impacts on global climate change from the mining, transportation, and ultimate burning of coal must be analyzed and reviewed in the EIS. This includes greenhouse gas emissions, including CO₂, N₂O and methane, from mining, transportation by train and by boat, coal burning in power plants, and the impacts of those emissions on ocean acidification, reduced snowpack, flooding, summer droughts, increased forest fires, and the quality of coastal and near-coast habitat. As detailed in Exhibit 8, *The Greenhouse Gas Impact of Exporting Coal from the West Coast: An Economic Analysis*, Dr. Thomas M. Power, “the proposed coal export facilities in the Northwest will result in more coal consumption in Asia and undermine China’s progress towards more efficient power generation and usage. Decisions the Northwest makes now will impact Chinese energy habits for the next half-century; the lower coal prices afforded by Northwest coal exports encourage burning coal and discourage the investments in energy efficiency and renewable energy that China has already undertaken. Approving proposed coal export facilities would also undermine Washington’s commitment to reducing its own share of greenhouse gas emissions.”

Climate change is already bringing harmful changes to Washington. Ocean acidification, sea level rise, warming stream temperatures, decreases in snow pack, changes in precipitation patterns, and increases in extreme weather events will increase as harmful impacts to Washington state unless the rate of emission of greenhouse gases into the atmosphere is significantly slowed. *See* Climate Impacts Group, *Washington Climate Change Impacts Assessment* (2009).⁵² It is well understood that global climate change will bring serious economic harms to the state of Washington. *See* Exhibit 191. Construction and operation of a coal export terminal (or several coal export terminals throughout the region) is a large step in the wrong direction. The EIS must analyze the direct, indirect, and cumulative climate change impacts of this project and all other proposed coal export terminals in this region.

V. AN AREA-WIDE ENVIRONMENTAL IMPACT STATEMENT REMAINS THE BEST APPROACH TO ADDRESSING CUMULATIVE EFFECTS OF THE THREE COAL EXPORT TERMINALS IN OREGON AND WASHINGTON.

We remain deeply concerned that the MBL project and each of the other regional projects will go through environmental review without an opportunity to consider the bigger picture of what it means for the region if all three currently-pending proposed terminals are built and

⁵² Executive summary and supporting papers *available at* <http://cses.washington.edu/cig/res/ia/waccia.shtml>.

operated. For example, while the Corps and other agencies will be required to consider the impacts of rail traffic on human health, rail and automobile traffic, and other rail system users in the context of individual projects, we think there needs to be a more robust public conversation around the cumulative and collective impacts of all of these projects. Specifically, we believe that the cumulative impacts of the various coal terminals should be evaluated in a single comprehensive area-wide environmental impact statement under the National Environmental Policy Act. Such a process will allow explicit consideration of the collective impacts of multiple, distinct decisions. It will also streamline individual environmental review by allowing site-specific EISs to tier to the area-wide EIS rather than conduct a cumulative impacts analysis anew for each project. As the Environmental Protection Agency noted, “[a]ll of these projects—and others like them—would have several similar impacts. Consider, for example, the cumulative impacts to human health and the environment from increases in greenhouse gas emissions, rail traffic, mining activity on public lands, and the transport of ozone, particulate matter, and mercury from Asia to the United States.” Exhibit LR-1 (EPA Comment on Port of Morrow project (Apr. 5, 2012) recommending a “thorough and broadly-scoped” cumulative impacts analysis of all proposed coal export facilities). In fact, the Corps recently initiated an area-wide EIS for mining activities within the state of Texas. 78 Fed. Reg. 63,463 (Oct. 24, 2013). The Corps’ willingness to conduct an area-wide in this instance—at the request of the permit proponents—cannot be squared with its refusal to do one here.

NEPA expressly contemplates the preparation of an area-wide EIS for situations just like this one, where an agency is facing multiple independent permitting decisions that have overlapping, shared, or cumulative impacts. See *Native Ecosystems Council v. Dombeck*, 304 F.3d 886 (9th Cir. 2002) (“A single NEPA review document is required for distinct projects when ... the projects are ‘connected,’ ‘cumulative,’ or ‘similar’ actions ...”); 40 C.F.R. § 1508.25 (mandating single EIS for separate independent actions under some circumstances); 40 C.F.R. § 1502.4(a), (c) (requiring a single EIS where proposals are “related to each other closely”). Federal guidance and courts sometimes refer to these reviews as “programmatic,” while in other cases, they are called “area-wide” or “overview” EISs. The label is not important—it is the content of such an assessment that matters.

Courts have agreed that a single EIS is required for multiple discreet actions under some circumstances, for example, when the projects have common timing, geography, and/or impacts. See, e.g., *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1215 (9th Cir. 1998) (multiple timber sales must be evaluated in a single EIS where the sales were reasonably foreseeable, in a single general area, disclosed at the same time, and developed as part of a comprehensive strategy); *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291 (9th Cir. 2003) (confirming that “similar actions”—i.e., actions which have similarities, such as common timing or geography, that warrant comprehensive review—must be considered in a single EIS if it is the “best way” to consider their impacts). Such circumstances exist here.

In letters dated April 12, 2012 (Exhibit 113) and June 7, 2012 (Exhibit 114), we previously asked the Corps for an area-wide environmental impact statement. Since that time, our request has been joined by many other governmental and non-governmental organizations, including state governors, U.S. Senators, Native American Tribes, city and county officials, and federal agencies, including the U.S. Environmental Protection Agency and the National Marine Fisheries Service.⁵³ We have also formally petitioned the Corps to undertake an area-wide EIS. To date the Corps has provided no official response, and indeed, has refused several requests from us for a meeting.

Most recently, Governors John A. Kitzhaber and Jay Inslee, the current governors of Oregon and Washington, wrote to Nancy Sutley, Chair of the President's Council of Environmental Quality, urging CEQ "in the strongest possible terms to undertake and complete a thorough examination of the greenhouse gas and other air quality effects of continued coal leasing and export *before* the U.S. and its partners make irretrievable long-term investments in expanding this trade." Exhibit 217, Letter from Govs. Kitzhaber and Inslee to The Honorable Nancy Sutley (Mar. 25, 2013) at 2 (emphasis in original). Separately, Governor Kitzhaber wrote four federal administrative bodies requesting the preparation of a "programmatic and comprehensive environmental impact statement . . . to look at the unprecedented number of coal export proposals pending in the Pacific Northwest, as well as the potential effects in this country of the use of this coal in Asia." Exhibit 19, Letter from Gov. Kitzhaber to The Secretary of the Army, The Secretary of the Interior, U.S. Army Corps of Engineers, and Bureau of Land Management (Apr. 25, 2012) at 1. Similarly, U.S. Senator John Tester recently wrote to the Surface Transportation Board urging an expanded scope of environmental review to account for rail transportation and cumulative environmental impacts from the proposed Tongue River railroad project. Exhibit 216, Letter from Sen. Tester to The Honorable Daniel R. Elliott, III *et al.* (Mar. 14, 2013).

The Washington State Department of Ecology, commenting on the Port of Morrow proposal, stressed the need to review cumulative impacts from all similar proposals, including, at a minimum:

- Increased vessel traffic on the Columbia River, including navigational and maritime safety concerns;
- Protection of water quality, including increased risk of spills in the Columbia River;
- Coal dust emissions at the facility and during product transit;
- Emissions of other air pollutants, including diesel particulate and greenhouse gases; and

⁵³ Exhibit A is a non-exhaustive list of governmental and non-governmental officials and organizations that have called for an area-wide cumulative impacts review for coal export terminals in the Pacific Northwest.

- Increased rail traffic, including railroad capacity, increased noise, and delay times for emergency vehicles at rail crossings.⁵⁴

Ecology stated that the agency was “especially concerned about cumulative impacts because the present proposal is one of several proposed projects aimed at expanding coal export capacity within a defined geographic region (i.e., the states of Washington and Oregon).” Even in the context of a rail line construction in Montana that would transport coal from the Powder River Basin, Ecology has asked for review of overall impacts in Washington State, noting that “[n]o federal EIS to date has looked at the impacts of coal exports through Washington State,” and that “[b]ecause of the multi-state impacts, a federal agency is in the best position to conduct the comprehensive review needed for transportation impacts associated with these proposals.”⁵⁵

As the Environmental Protection Agency noted, “[a]ll of these projects—and others like them—would have several similar impacts. Consider, for example, the cumulative impacts to human health and the environment from increases in greenhouse gas emissions, rail traffic, mining activity on public lands, and the transport of ozone, particulate matter, and mercury from Asia to the United States.” EPA Comment on Port of Morrow project (Apr. 5, 2012) (recommending a “thorough and broadly-scoped” cumulative impacts analysis of all proposed coal export facilities).⁵⁶

Further, the proposed coal terminals will be sited within the “usual and accustomed” fishing areas of Pacific Northwest Indian tribes, which have a sovereign government-to-government relationship with the U.S. federal government. Under federal court precedent, the tribes are “co-managers” of these resources along with the state and wield considerable influence over decisions that affect fishing resources.⁵⁷ The Affiliated Tribes of Northwest Indians called

⁵⁴ Ecology’s Comments on Coyote Island Terminals (May 7, 2012) at 3, *available at* <http://www.coaltrainfacts.org/ecology-requests-cumulative-eis>.

⁵⁵ Ecology Tongue River Railroad EIS Scoping Comments (Jan. 4, 2013) at 2-3, *available at* <http://www.coaltrainfacts.org/document-type/governmental-agency/page/3>.

⁵⁶ EPA reiterated this call for a complete cumulative impacts review in its scoping comments for the Gateway Pacific Terminal, stating that “EPA also recommends that environmental impacts from increases in regional rail traffic and combustion of coal in receiving markets be examined in the context of other proposed export facilities in the Pacific Northwest region, so that reasonably foreseeable cumulative environmental impacts from additional facilities can be understood before a decision is made, as NEPA contemplates. . . . The cumulative effects analysis would appropriately include increases in regional train traffic and related air quality effects on human health, and the potential for effects to human health and the environment from increases in the long-range transportation of air pollution, including greenhouse gas emissions.” See <http://www.eisgatewaypacificwa.gov/resources/project-library>.

⁵⁷ *U.S. v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

for full environmental review and government-to-government consultation with Indian tribes throughout the region.⁵⁸ The Northern Cheyenne Indian Tribe has expressed concern over the years about the impacts the proposed railroad and related coal-mining activities would have on the health, wellbeing, culture, and sacred sites of the tribe. Nine members of the Northern Cheyenne Tribe traveled 1,300 miles roundtrip to a public comment session in Spokane, Washington to voice their opposition to the mine, railroad, and Gateway Pacific Terminal. Seven different tribal organizations—the Lummi Indian Business Council, the Swinomish Indian Tribal Community, the Confederated Tribes and Bands of the Yakama Nation, the Makah Tribal Council, the Tulalip Tribes, the Nisqually Indian Tribe, and the Samish Indian Nation—submitted comments on the Cherry Point Gateway Pacific Terminal calling for full environmental review, government-to-government coordination, and protection for fish, wildlife, air and water quality, human health, and tribal sacred areas.

Other federal agencies have also identified common elements that call for area-wide review. The U.S. Department of Housing and Urban Development, in its scoping comments for the Gateway Pacific Terminal, stated that “HUD suggests the Co-Lead Agencies either include the cumulative impacts from all three proposed ports in this EIS, or conduct an Area-wide EIS that covers all three ports. The train traffic from all three ports could have a significant noise impact on communities on our region and in order to accurately and comprehensively address this impact, it needs to be considered as a whole.”⁵⁹ The National Park Service similarly called for a cumulative effects EIS, succinctly summarizing the common core elements that should be reviewed:

Given the potential for regional export of over 100 million tons of coal per year, NPS is concerned these projects—both individually and cumulatively—could have significant long-term consequences for the residents, visitors, environmental and cultural resources of the north Rocky Mountains and Pacific Northwest. Therefore, we believe the U.S. Army Corps of Engineers, as lead federal agency, is obligated to coordinate with all involved state and local agencies in preparing a programmatic EIS that rigorously addresses the cumulative effects of all five export terminal projects in the region. The EIS should fully evaluate all direct and indirect effects of the coal export process, including railroad shipment from the Powder River Basin, terminal operations, marine vessel shipment and resulting pollutants emitted from Asian power plants.⁶⁰

⁵⁸ Available at http://www.atntribes.org/sites/default/files/res_12_53_with%20attachment.pdf.

⁵⁹ Available at <http://www.eisgatewaypacificwa.gov/resources/project-library>.

⁶⁰ Available at <http://www.eisgatewaypacificwa.gov/resources/project-library>.

VI. THE CUMULATIVE IMPACTS OF ALL PROPOSED COAL EXPORT TERMINALS MUST BE CONSIDERED AND ANALYZED.

If an overarching, area-wide EIS is not undertaken, then each EIS for each proposed project—including this one—must include review of the impacts of all other proposed projects. The courts have found that even where several actions were not “connected” or “similar” enough to warrant consideration in a single environmental impact statement, their impacts must still be addressed as cumulative impacts. *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1306 (9th Cir. 2003) (“Even if a single, comprehensive EIS is not required, the agency must still adequately analyze the cumulative effects of the projects within each individual EIS.”).

Under NEPA, an EIS must analyze and address the cumulative impacts of a proposed project. 40 C.F.R. § 1508.25(c)(3). A cumulative impact is defined as:

[T]he incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. In other words, cumulative impacts are the result of any past, present, or future actions that are reasonably certain to occur within the action area. Such effects “can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* In the coal context, the U.S. Supreme Court has held that, “when several proposals for coal-related actions that will have cumulative or synergistic environmental impacts upon a region are pending concurrently before an agency, their environmental consequences must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.” *Kleppe v. Sierra Club*, 427 U.S. 390, 409-410 (U.S. 1976).

VII. THE EIS MUST ANALYZE A REASONABLE RANGE OF ALTERNATIVES, INCLUDING A MEANINGFUL NO-ACTION ALTERNATIVE.

The range of alternatives “is the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. It is well understood that “NEPA requires that an agency ‘rigorously explore and objectively evaluate all reasonable alternatives.’” *Utahns for Better Transp. v. Dep’t of Transp.*, 305 F.3d 1152, 1168 (10th Cir. 2002) quoting 40 C.F.R. § 1502.14(a), modified on rehearing *Utahns for Better Transp. v. Dep’t of Transp.*, 319 F.3d 1207 (2003). The alternatives discussed should provide different choices from which decisionmakers and the public can make an informed choice after considering the environmental effects of the alternatives. See *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853 (9th Cir. 2004). The range of alternatives should also “include reasonable alternatives not within the jurisdiction of the lead agency,” and

“include appropriate mitigation measures not already included in the proposed action or alternatives.” 40 CFR § 1502.14.

In addition to the need for thorough consideration of the impacts of constructing the MBL project, the EIS must consider the option of not constructing the export facility at all. Among the alternatives that must be considered in an EIS is the “no action” alternative. 40 C.F.R. § 1502.14(d). Indeed, “[i]nformed and meaningful consideration of alternatives—including the no action alternative—is ... an integral part of the statutory scheme.” *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). The evaluation of the no action alternative cannot be a meaningless exercise. To satisfy NEPA, the EIS must consider this alternative without prejudgment of the outcome of its analysis. “[F]ull and meaningful consideration of the no-action alternative can be achieved only if all alternatives available ... are developed and studied on a clean slate.” *Bob Marshall Alliance v. Lujan*, 804 F. Supp. 1292, 1297-98 (D. Mont. 1992). The need to develop project alternatives, including the no action alternative, on a clean slate is especially important given the history of this project, including its first controversial permit in the 1990s and its failure to date to complete the required mitigation for that first, much smaller, non-coal export terminal.

In addition to a careful examination of the no-action alternative, we respectfully request thorough analysis of two additional alternatives as described below. First, applicable CWA guidelines prohibit the issuance of a CWA permit “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.” 40 C.F.R. § 230.10. Because wetlands comprise only a portion of the project site, we ask that you evaluate a terminal option which involves no wetlands fill at all, even if the project is of smaller size or costs more to build. Second, proponents of a separate coal terminal on the Columbia, the Morrow project, have touted what they view to be superior pollution prevention technology that will be used at Morrow—but not at the MBL project. Indeed, the two projects are owned by the same Australian corporation, Ambre Energy. If Ambre believes that fully enclosed coal storage and handling is the best approach to controlling coal dust pollution and other hazards, it is quite unclear why it is not proposing such technology for the MBL terminal. We ask that the agencies evaluate an alternative that uses the same technology at Morrow, even if it requires a smaller project size than the proponents prefer. Such an alternative may in fact be required by the 404(b)(1) guidelines identified above, which require adoption of the alternative with the least adverse impact on the aquatic ecosystem. *Id.*

VIII. TRIBAL GOVERNMENT SOVEREIGNTY MUST BE RESPECTED.

Most proposed coal terminals, including the MBL project, will be sited within the “usual and accustomed” fishing areas of Pacific Northwest Indian tribes, which have a sovereign government-to-government relationship with the U.S. federal government. The MBL project would be built within historic and treaty-protected fishing areas of the Yakama, Warm Springs, Umatilla, and Nez Perce tribes. Under federal court precedent, the tribes are “co-managers” of

these resources along with the state. *See U.S. v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

These tribes have spoken out against permitting of coal terminals on the lower Columbia. *See Exhibits 27, 29-31*. In a comment letter to the Corps regarding the Morrow project in Boardman, the Yakama Nation characterized coal export proposals in the Columbia as a “new front ... in the war on the Yakama way of life,” describing in detail the risks to salmon, the safety of tribal fishermen, human health, water quality, and cultural resources. Exhibit 29. The Nez Perce have also commented on the Morrow project, requesting that the Corps perform an EIS and assess cumulative impacts, citing concerns about “Tribal treaty rights, ESA-listed fish and lamprey and their habitat, Tribal traditional use areas along the coal transportation corridor, tribal cultural resources, and Tribal member health arising from coal dust and diesel pollution.” Exhibit 30. The Columbia River Inter-Tribal Fish Commission (“CRITFC”), which represents four Sovereign Tribal Nations (the Warm Springs, Confederated Tribes of Umatilla Indian Reservation, Yakama Nation, and Nez Perce) with treaty rights to salmon and other fish on the Columbia River, has also expressed opposition to the coal export proposals. In a comment letter on the Morrow Pacific Project, CRITFC stated that it has heard “significant concerns from our member tribes about the project’s potential effects on tribal treaty fisheries.” Exhibit 31. CRITFC noted that “the proposed project area is currently used for fishing by tribal members exercising their treaty fishing rights” and the area “is also within lands designated as Traditional Cultural Property (TCP) and may contain significant cultural resources.” The Affiliated Tribes of Northwest Indians have called for full environmental review and government-to-government consultation with Indian tribes throughout the region. Exhibit 27. The Northern Cheyenne Indian Tribe has expressed concern over the years about the impacts the proposed railroad and related coal-mining activities would have on the health, wellbeing, culture, and sacred sites of the tribe. Nine members of the Northern Cheyenne Tribe recently traveled 1,300 miles roundtrip to a public comment session in Spokane, Washington to voice their opposition to the mine, railroad, and Gateway Pacific Terminal. The concerns of these Indian nations and tribal members must be taken into account, and we request that the Corps initiate formal consultation to speak directly to all the affected tribes.

In 2006, the Corps denied a permit for a new dock and terminal site on the Columbia River because it would affect tribal treaty fishing rights. *See Exhibit 181*. That project was of dramatically smaller scale than the MBL project. A similar outcome is warranted here. We ask that tribal sovereignty and treaties be fully respected.

IX. ENVIRONMENTAL JUSTICE CONCERNS

All federal agencies are encouraged to consider environmental justice in their NEPA analysis, evaluate disproportionate impacts, and identify alternative proposals that may mitigate these impacts. The fundamental policy of NEPA is to “encourage productive and enjoyable harmony between man and his environment.” In considering how to evaluate progress in

reaching these aspirational goals, the Council on Environmental Quality (CEQ) defined effects or impacts to include “ecological...aesthetic, historic, cultural, economic, social or health impacts, whether direct, indirect or cumulative.”⁶¹ Recognizing that these types of impacts might disproportionately affect different communities or groups of people, President Clinton issued Executive Order 12898 in 1994,⁶² directing each federal agency to, among other things:

- “Make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations,”
- “Identify differential patterns of consumption of natural resources among minority populations and low-income populations,”
- Evaluate differential consumption patterns by identifying “populations with differential patterns of subsistence consumption of fish and wildlife,” and
- “Collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence.”

CEQ’s Guidance for Environmental Justice under NEPA⁶³ called for agencies to consider specific elements when considering environmental justice issues:

- Agencies should consider the composition of the affected area, to determine whether minority populations, low-income populations, or Indian tribes are present in the area affected by the proposed action, and if so whether there may be disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, or Indian tribes.
- Agencies should consider the potential for multiple or cumulative exposure to human health or environmental hazards in the affected population and historical patterns of exposure to environmental hazards. Agencies should consider these multiple, or cumulative effects, even if certain effects are not within the control or subject to the discretion of the agency proposing the action.
- Agencies should recognize the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action. These factors should include the physical sensitivity of

⁶¹ CEQ, Environmental Justice: Guidance Under the National Environmental Policy Act, December 10, 1997, available at <http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf>.

⁶² “Federal actions to address environmental justice in minority populations and low-income populations,” 59 Fed. Reg. 7629 (Executive Order 12898; February 11, 1994).

⁶³ CEQ, Environmental Justice: Guidance Under the National Environmental Policy Act, December 10, 1997, available at <http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf>.

- the community or population to particular impacts; the effect of any disruption on the community structure associated with the proposed action; and the nature and degree of impact on the physical and social structure of the community.
- Agencies should be aware of the diverse constituencies within any particular community. Agencies should seek tribal representation in the process in a manner that is consistent with the government-to-government relationship between the United States and tribal governments, the federal government's trust responsibility to federally-recognized tribes, and any treaty rights.

The EIS must examine the environmental justice impacts flowing from this project. Several low-income or minority communities stand to be disproportionately impacted by the coal export terminal, the rail transportation of coal from the Powder River Basin, and the mining of the coal. As discussed above, traditional tribal lands will be affected by the MBL project. Columbia River tribes will be impacted in their treaty-protected fishing. Tribes along the rail route and in the area of increased mining will be impacted by the proposed railroad and the increased mining associated with this project.

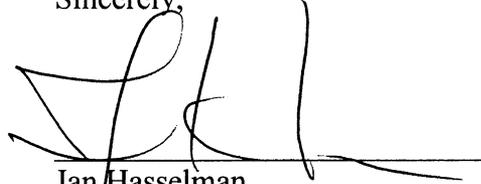
The EIS must include demographic information for all communities at the terminal site and along the rail lines that would ship coal to the port, as well as at the mine sites. Communities closest to the port site, along the rail line, and near the mines—many of which are low income or have high minority populations—will bear a disproportionate impact of the air and water pollution caused by coal transportation and export, as described above. Some of these communities and neighborhoods might include: Spokane, Spokane Valley, Millwood, Cheney, Washington, and Lame Deer, Ashland, Birney, Muddy Cluster, Hardin, Crow Agency, Billings South Side neighborhood, and Busby, Montana, among others. These environmental justice issues further underscore the need to conduct a health impact assessment of the project, as called for by health professionals in Whatcom County with respect to the Gateway project, which raises many similar issues.

* * *

Thank you for your consideration of these scoping comments and the supporting materials in the enclosed CDs. As you are no doubt aware, there is an extraordinary level of public interest in this process; the harmful impacts caused by the proposed coal export terminal will occur at the local, regional, and global scale; and the federal and state laws emphasize a thorough, up-front review of all the environmental effects of proposed actions. We reiterate our request for an area-wide environmental impact statement to fully address the direct, indirect, and cumulative impacts of all proposed coal export projects in the Pacific Northwest. For the MBL

project in particular, we look forward to a Draft EIS that the full direct, indirect, and cumulative impacts of the proposed MBL project from the mining of the coal in the Powder River Basin, the transport of coal by rail through several states and hundreds of communities, the loading and shipping of coal via large ocean vessels, to the burning of the coal in Asia.

Sincerely,

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

Jan Hasselman
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On Behalf of:

Climate Solutions
Columbia Riverkeeper
RE Sources
National Wildlife Federation
Greenpeace
Sierra Club
Friends of the Columbia Gorge
Center for Biological Diversity
Washington Environmental Council, and
Oregon Physicians for Social Responsibility