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Via Email and U.S. Mail

**RE: Public Comments on Removal-Fill Permit Application No. APP0049123,
Coyote Island Terminals, LLC Coal Export Terminal, Columbia River,
Morrow County.**

Department of State Lands:

The following comments are submitted on behalf of Columbia Riverkeeper, Sierra Club, the Oregon Environmental Council, National Wildlife Federation, Climate Solutions, the Center for Biological Diversity, Greenpeace, Friends of the Columbia Gorge, and the Washington Environmental Council on the proposed Ambre Energy /dba/ Coyote Island Terminals, LLC (hereafter “Ambre”) Removal-Fill Permit Application No. APP0049123 (hereafter “the permit”). The commenters are all non-profit organizations, representing tens of thousands of members, dedicated to protecting the environment and natural resources, and to seeking positive solutions to the challenge of global climate instability caused by combustion of fossil fuels. We appreciate the opportunity to provide comment, and thank the Department of State Lands (DSL) for its cooperation in responding to our public records requests and questions regarding the proposed Morrow Pacific coal export project.

The onslaught of coal export terminals proposed within designated critical habitat along the Columbia River poses one of the greatest threats in recent history to the river and endangered species recovery. These terminals also threaten public health and the public’s ability to use and enjoy the Columbia River. For these reasons and others described below, we request that DSL deny Ambre’s removal-fill permit to construct an **8.8 million ton per year coal export project**. The science is overwhelming that coal is harmful to human health, our environment, and our climate. In a state committed to combatting the serious threats posed by climate change and recovering endangered salmon, there is no “public need” for an 8.8 million ton per year coal export terminal, including the in- and over-water work required to operate Ambre’s Morrow Pacific project.

Ambre’s project is one of three proposals that would transform the Columbia River into a major export route for U.S. coal bound for China and other countries. The decision to authorize such projects will undercut Oregon’s considerable efforts to combat climate instability and promote sustainable alternatives.

The Morrow Pacific project would export nearly twice the amount of coal burned at Oregon’s only coal-fired power plant, PGE Boardman, which burns up to 5 million tons of coal per year. Once burned in a coal-fired power plant or other industrial boiler, 8.8 million metric tons of coal will generate approximately **15.9 million metric tons of CO₂ annually**—roughly equivalent to the emissions of **3.6 million U.S. cars** driving around for a year, or about **24% of Oregon’s annual carbon emissions**.

DSL has discretion to obtain information about the impacts of coal export, including all “information that the director deems pertinent and necessary to make an informed decision.” ORS 196.825(12)(b). Unfortunately, DSL deemed Ambre’s application “complete” before learning fundamental information about the project’s design and environmental impacts. The Department’s decision is particularly disconcerting given the fact that Ambre has a business reputation of misleading local, state, and federal officials in coal export terminal applications. If anything, this fact combined with the Ambre’s promise to build and operate a coal export terminal unlike any other in the nation or quite possibly the world, should lead to heightened government scrutiny.

First, Ambre’s project requires open-air coal trains traveling from Wyoming and Montana to Oregon. These trains will be staged, uncovered, at the Port of Morrow. The project is not, therefore, fully enclosed.

It is entirely unclear if Ambre can deliver on its promise of operating an enclosed coal storage facility, enclosed conveyor belts, and enclosed barges. Commenters are not aware of any other coal handling terminal in the U.S. or abroad that handles coal in a “nearly enclosed” environment at a quantity even approaching the amount of coal Ambre intends to handle through the Morrow Pacific Project. In Australasia (*i.e.*, Australia, New Zealand, and neighboring islands), the largest coal export region in the world, the Port of Tauranga in New Zealand operates a 1 million ton per year coal import terminal using indoor storage.¹ According to the Port of Tauranga, this is the only coal handling facility of its type in Australasia.² On the east coast of Australia, the coal industry is proposing a “first of its type” coal export terminal—the Fitzroy Terminal Project—using a covered barge to ocean-going vessel model. The Fitzroy Terminal Project, which is in the initial environmental review stages, has not been permitted and does not propose storing coal indoors.³ In general, the vast majority of coal export terminals, as well as barges used to ship coal, are not enclosed. It is also worth noting that every other coal proposal in the Pacific Northwest, including Ambre’s Longview proposal, is not enclosed.

Coal—particularly Powder River Basin coal—presents unique management challenges in an enclosed environment due to its friability (*i.e.*, dustiness) and self-heating characteristics. This is likely one reason why Ambre’s proposed Morrow Pacific Project has no counterparts. In turn, DSL must scrutinize the applicant’s novel coal export plans to determine if, in fact, the project as promised is even feasible.

Specifically, given Oregon’s inexperience permitting coal terminals, Ambre’s promises to operate a first-of-its-type coal export project, and the inherent challenges in managing coal in an enclosed environment, DSL should carefully assess the technical feasibility of Ambre’s proposal. The Department will ultimately rely on Ambre’s project proposal (*i.e.*, a nearly fully enclosed coal export terminal) as the basis for reaching its statutory determinations under the Removal-Fill Law and its implementing rules. If DSL issues a permit for the first coal dock in Oregon and Ambre later determines that its indoor storage and enclosed barge plans are in fact not technologically or financially feasible, DSL would have no mechanism to turn back the clock and analyze the actual project’s impacts. The in- and over-water infrastructure would be permitted and built.

At the very least, DSL should review all pertinent environmental, economic, and human health impacts, including a thorough Environmental Impact Statement, before issuing or denying

¹ Port of Tauranga, <http://www.port-tauranga.co.nz/images.php?oid=1185>.

² Port of Tauranga, <http://www.port-tauranga.co.nz/images.php?oid=1187>.

³ Fitzroy Terminal, <http://www.mitchellgroup.net/main-menu/ports/fitzroy-terminal->.

the removal-fill permit.⁴ We believe that it would be irresponsible for Oregon to make a decision on any permits for the state's first operational coal terminal without carefully evaluating impacts to our communities and the Columbia River in a full EIS. In addition, DSL should not act on the permit application until the Oregon Department of Environmental Quality completes a 401 water quality certification for the dock.⁵ The 401 process will help inform DSL on the project's impacts to water quality and aquatic organisms.

I. Ambre's Morrow Pacific Coal Export Project.

Ambre proposes to build Oregon's first coal export operation using two Columbia River port sites. The U.S. Army Corps of Engineers' (Corps) Public Notice for the project explains Ambre's proposal:

The proposed project involves construction of a new transloading facility for bringing coal in from Montana and Wyoming by rail and transferring it to barges on the Columbia River at the Port of Morrow. The transloading facility would include nine dolphins, walkways, a fixed dock, and a conveyor system for loading coal along with enclosed warehouses in the uplands for storing coal prior to loading onto the barges.

Approximately 140 permanent piles ranging from 14 to 24 inches in diameter and 110 temporary 16-inch diameter piles would be installed to complete the project. Over 15,000 square feet of new overwater structure would be constructed.

Corps No. NWP-2012-56 Public Notice (Mar. 6, 2012) (hereafter "Corps Public Notice"). Ambre proposes to ship coal over 200 miles down the Columbia to the Port of St. Helens' Port Westward property. At Port Westward, Ambre will load coal onto ocean-going "Panamax" vessels to be shipped to Asia. According to the Corps' Public Notice, Ambre proposes to ship 3.85 million tons of coal per year "initially." The Corps notice states:

At maximum capacity, the facility would be able to handle 8.8 million tons. That would translate to approximately 5 trains to Port of Morrow, 5.5 loaded barge tows from Port of Morrow to Port Westward, and 1 Panamax ship to Asia per week initially, increasing to 11 trains, 12 loaded barge tows, and 3 Panamax ships per week at full build out.

⁴ An EIS would be completed pursuant the National Environmental Policy Act as part of the U.S. Army Corps of Engineers' permitting process. To date, the Corps has not prepared an Environmental Assessment (EA) or EIS.

⁵ The Corps is currently seeking public comment on a Rivers and Harbors Act § 10 permit for the project. In turn, DEQ must issue a Clean Water Act § 401 water quality certification before Ambre can undertake the proposed in- and over-water work. *See e.g.*, EPA Factsheet on 401 Certification, <http://www.epa.gov/owow/wetlands/facts/fact24.html> ("The major Federal licenses and permits subject to Section 401 are Section 402 and 404 permits (in nondelegated States), Federal Energy Regulatory Commission (FERC) hydropower licenses, and **Rivers and Harbors Act Section 9 and 10 permits.**") (emphasis added).

Notably, Ambre’s Joint Permit Application (JPA) to the Corps and DSL fails to disclose any information related to the volume of coal handled or the number of trains, barge, and Panamax ships required to export coal. While the Corps’ public notice is instructive, DSL lacks critical information *from the applicant* about the scope of the project and its impacts to state water resources.

Under Oregon’s Removal-Fill Law, ORS 196.800 *et seq.* and its implementing rules, OAR 141-085-0500 *et seq.*, DSL cannot issue a removal-fill permit unless it determines that “the project” meets the requirements of ORS 196.825 and OAR 141-085-0565. While the statute does not define “project,” DSL’s implementing rules define “project” as “the primary development or use, having independent utility, proposed by one person. A project may include more than one removal-fill activity.” OAR 141-085-0510(69); *see also* OAR 141-085-0510(70) (defining “project site” as “the geographic area upon which the project is being proposed.”). The rules further state: “ ‘Independent utility’ as used in the definition of ‘project,’ means that the project accomplishes its intended purpose without the need for additional phases or other projects requiring further removal-fill activities.” OAR 141-085-0510(41).

To determine if Ambre’s project meets the requirements of Oregon’s Removal-Fill Law, DSL first must determine what constitutes “the project.” The authority to issue or deny a permit rests with DSL and, in turn, it is the Department’s duty—regardless of the applicant’s opinion—to determine what constitutes “the project.”

Under DSL’s rules, the “primary development or use” for Ambre’s Morrow Pacific Project encompasses, at a minimum, the development of two coal transloading facilities on the Columbia River, and the movement of vessels on the Columbia River to achieve the project’s objective: export coal. First, the Morrow Pacific Project, which includes development at the Port of Morrow and Port Westward, is “proposed by one person”: Ambre Energy. Second, Ambre’s development activities at the Port of Morrow do not have “independent utility” in relation to Ambre’s project at Port Westward.

To demonstrate “independent utility,” Ambre must show that the “project accomplishes its intended purpose without the need for additional phases or other projects requiring further removal-fill activities.” As Ambre’s application makes clear, the Port of Morrow coal export development cannot “accomplish its intended purpose” *but for* the additional phase of development at Port Westward. Specifically, without Ambre’s Port Westward development, coal would be stranded on barges in the Columbia River. The Corps’ public notice acknowledges that Ambre’s developments at the Port of Morrow and Port Westward constitute one “project.” *See* Corps Public Notice at 1 (identifying the project location and stating “The Section 10 regulated activity is located in the Columbia River at the Port of Morrow, Morrow County, Oregon (Section 2, Township 4 North, Range 25 East). Related project activities take place from Port of Morrow to Port Westward near Clatskanie, Columbia County, Oregon (Section 16, Township 8 North, Range 4 West).”).

Ambre’s Port Westward operations will negatively impact the Columbia River Estuary’s fragile aquatic environment, including impacts from barge traffic, barge staging, Panamax vessel

traffic and associated wake stranding and ballast water discharges, coal spillage, and coal dust. DSL must consider these impacts in reaching its determination on Ambre's permit application.

Ambre's development activities at the Port of Morrow and Port Westward also lack "independent utility" because the Port Westward transloading operation will likely require additional "removal-fill activities." *See e.g.*, OAR 141-085-0510(41) (stating "'Independent utility' as used in the definition of 'project,' means that the project accomplishes its intended purpose without the need for additional phases or other projects requiring further removal-fill activities.") (emphasis added).

A week before submitting its Joint Permit Application to the Corps and DSL, Ambre executed a lease with the Port of St. Helens. The lease expressly contemplates in- and over-water activities at Port Westward, including barge mooring and dock improvements. Yet Ambre filed its application with DSL a week later and stated that "[n]o in- or over-water work is required at Port Westward." *See* JPA (received by DSL Feb. 1, 2012). These inconsistent actions, combined with Ambre's lack of material disclosure to state and federal officials during the Millennium coal export permitting process in Washington State, should be a red flag: DSL must carefully scrutinize Ambre's representations on its project plans and impacts.

Specifically, according to Ambre's January 25, 2012 lease with the Port of St. Helens, the company plans to install "additional barge tie-off pilings, mooring buoys or dolphins." Section 4.3 of the lease states:

4.3 Barge Mooring Improvements. With Port's input and written consent, which consent shall not be unreasonably withheld, and subject to obtaining any required permit for any such installations, Operator may install barge tie-off pilings, mooring buoys or dolphins ("**Barge Mooring Improvements**") (which shall not be included in Capital Improvements under Section 7) within the designated areas to be provided pursuant to Section 4.1. Barge Mooring Improvements shall not be included in Capital Improvements as defined in Section 7.

The barge mooring improvements described above would require additional "removal-fill activities." Moreover, given the amount of coal Ambre proposes to barge (8.8 million tons per year), which requires moving and staging twelve (12) loaded and twelve (12) unloaded barge, it is reasonable to believe that Ambre will require additional removal-fill activities for barge mooring at Port Westward.⁶ Assuming Ambre uses a four (4) barge tow, this equals a total of 48 individual loaded barges and 48 individual empty barges.

The lease also calls for investigating capital improvements at the existing Port Westward dock, stating:

⁶ OAR 141-085-0510(41) refers to "removal fill activities." In turn, DSL must analyze whether Ambre requires additional removal-fill activities, not whether the Port Westward development requires additional removal-fill permits. For example, a project may involve removal-fill activities, such as pile driving or dredging, but not require a removal-fill permit based on the 50 cubic yard permit threshold in non-ESH waters.

Section 7. Capital Improvements

7.1 Investigation of Capital Improvements. Modifications or repairs to the Marine Terminal (“Capital Improvements”) may be necessary to permit Operator to commence operations under the Terminal Services Agreement. Operator will conduct surveys, studies and development analysis to determine the extent of modifications or repairs needed to the dock or other components of the Marine Terminal. Operator’s investigation will be at Operator’s expense, including development of any modification or repair design and engineering. Operator will consult with Port in developing modification or repair designs. Port retains the right to consent to the performance of any modifications or repairs, which consent shall not be unreasonably delayed or withheld.

See generally Port of St. Helens-Pacific Transloading, LLC Lease (Jan. 25, 2012), § 7.

In short, a mere week after executing a lease with the Port of St. Helens—a lease that contains extensive discussion of in- and over-water capital improvements—Ambre represents to DSL that “[n]o in- or over-water activities is needed at Port Westward.” Ambre’s representations, and potential lack of material disclosure, have direct bearing on DSL’s determination of what constitutes “the project” and, in turn, whether Ambre can obtain a removal-fill permit.

In addition, state law requires that Ambre provide “complete and accurate information in the [removal-fill permit] application.” Specifically, OAR 141-085-0550(2) states that “[f]ailure to provide complete and accurate information in the application may be grounds for administrative closure of the application file or denial, suspension or revocation of the authorization.” Before proceeding any further with the permitting process, DSL must determine if Ambre provided “complete and accurate information.” In Ambre’s first failed attempt to build a coal export terminal on the Columbia, Ambre failed to disclose complete and accurate information to local, state, and federal regulators in Washington State. *See* Exhibit (Exh.) 1. Ambre’s lack of material disclosure and misrepresentations to government officials in Washington State ultimately prompted the company to withdraw its permit applications in 2011. Exh. 2.

Ambre’s zeal for operating a coal export terminal on the Columbia River is no excuse for failing to submit a complete, accurate application that discloses fundamental project details. This is particularly true when the failure to provide complete and accurate information informs DSL’s legal determination of what constitutes “the project.” Before proceeding further with processing the application, the Department should: (1) determine if Ambre failed to provide “complete and accurate information” in its application, and (2) deny the application if DSL determines that Ambre failed to do so.

II. DSL Prematurely Deemed the Application “Complete” and Lacks Critical Information on the Project’s Impacts.

DSL cannot initiate the agency and public input process until the application is deemed “complete.” ORS 196.825(12)(b); OAR 141-085-0555. The purpose of the completeness determination is to ensure that DSL has the minimum information necessary to determine if the application complies with the requirements of the Removal-Fill Law and its implementing rules. *See* OAR 141-085-0550(4) (“The applicant is responsible for providing sufficient detail in the application to enable the Department to render the necessary determinations and decisions. The level of documentation may vary depending on the degree of adverse impacts, the level of public interest and other factors that increase the complexity of the project.”). After DSL makes the completeness determination, it must issue or deny the permit within ninety (90) days or obtain an extension from the applicant.

DSL deemed Ambre’s application “complete” on March 1, 2012 and began the thirty (30) day public comment period. DSL’s decision leaves state agencies, which DSL relies on for expertise,⁷ tribes, and members of the public without basic information about how Ambre plans to operate a first-of-its-type coal export terminal. This includes the impacts of in-water work and above-water structures on endangered and threatened salmon and steelhead, as well as the project’s impacts on water quality and tribal and recreational fishing, among other things.

As an initial matter, Ambre’s application lacks basic information about the project’s size, design, and scope. For example, Ambre failed to disclose the quantity of coal it intends to handle in the JPA. It is entirely unclear how DSL can reach any statutory determinations, including conducting an alternatives analysis, public need analysis, and determinations on impacts to state waters without this fundamental information.

Ambre also failed to disclose the number of barges and ocean-going vessels that the project will require. How can DSL determine whether the project will “unreasonably interfere with the paramount policy of the state to preserve the use of its waters for navigation, fishing and public recreation” without basic information on the project’s use of barges and Panamax vessels? *See e.g.*, ORS 196.825(1)(b) (requiring DSL to determine that the project will not “unreasonably interfere with the paramount policy of the state to preserve the use of its waters for navigation, fishing and public recreation.”). Based on public records requests to DSL, there is no record of the applicant filing any supplemental application materials to address these basic project components.

⁷ DSL’s Removal-Fill Guide (Nov. 2011) notes: “DSL relies on comments from other state agencies for certain expertise. For example, DSL will rely on comments from ODFW regarding project effects to fish habitat, DEQ regarding effects to water quality, and OSMB regarding effects to recreational boating.” Removal-Fill Guide at 6-9. It is unclear how state agencies such as ODFW and DEQ can provide meaningful comments on the removal-fill permit criteria without the benefit of Ambre’s frequently referenced, but undisclosed, Environmental Review Document and Biological Assessment.

Ambre’s application also lacks basic information on the project’s design. The application states: “At the transfer/transloading facility, coal is nearly fully enclosed as it moves from train to storage facility to covered barge” JPA at 3. The application further states: “The coal will be offloaded into enclosed buildings and transferred into covered barges by enclosed conveyors.” JPA at 3. The application contains no information, beyond general statements and promises of an “environmentally responsible” facility, which explain how Ambre can operate a “nearly fully enclosed” 8.8 million ton per year coal export terminal. For example, the application lacks basic information on project design and engineering that address the following questions—questions that speak directly to DSL’s statutory and regulatory determinations on removal-fill permits.

- *How will Ambre handle 8.8 million tons of coal per year in a “nearly fully enclosed” terminal?* The application fails to disclose any narrative or engineering drawings that explain how this “nearly fully enclosed” facility will operate. In turn, DSL has no way of independently evaluating or verifying if Ambre can deliver on its promise of handling nearly 9 million tons of coal per year in a “nearly fully enclosed” environment, including an “enclosed” over-water coal conveyor system. In 2010, Ambre proposed an uncovered, 5 million ton per year coal export terminal in Longview, Washington. It is unclear why the project applicant now believes that a covered terminal, handling nearly double the quantity of coal each year, can operate in a fully enclosed environment.⁸
- *How long will Ambre stage uncovered trains at its Port of Morrow coal export facility?* Trains delivering coal from the Power River Basin are typically 1.5 miles long. Exh. 3. To date, Ambre has made no claim that its coal trains will be covered, which is consistent with the industry practice of saving money by transporting coal in uncovered trains. Exh. 4. In attempting to control coal dust from trains, the coal industry has used surfactants and coal loading techniques to varying degrees of success. *Id.* It is unclear if coal trains delivering coal to the Ambre terminal will use *any* techniques to reduce coal dust emissions and, in turn, coal-laden process wastewater and stormwater. Moreover, even if such techniques are employed, fugitive coal dust remains an ongoing problem for the coal industry. *Id.*; Exhs. 5; 24; 25.
- *How will Ambre dispose of wastewater contaminated with coal dust?* Coal handling facilities generate large amounts of coal dust. Exh. 4. This is true for both coal storage facilities that are located outdoors, as well as enclosed facilities. Exh. 6. One of the most common industry practices for attempting to suppress coal dust is spraying coal piles with water and/or chemicals. *Id.*; Exh. 7. In turn, coal handling facilities typically generate large amounts of coal-contaminated wastewater. Ambre’s application contains no discussion of how it intends to handle coal-contaminated wastewater generated during the storage of 8.8 million tons of coal or on the dock. This issue is directly relevant to DSL’s determinations under the Removal-Fill Law.

⁸ Ambre recently resubmitted its Shoreline Management Act application for the Longview coal export terminal. Ambre now proposes to export 44 million tons of coal per year at the Longview “Millennium” terminal. Exh. 30.

- *How will Ambre discharge coal-contaminated stormwater?* Ambre’s application fails to acknowledge, let alone address, handling and treatment of contaminated stormwater. Like process wastewater generated from coal dust suppression, coal terminals are also notorious for generating large quantities of contaminated stormwater. Exhs. 4; 8; 9. Even if Ambre can operate a “nearly fully enclosed” coal export terminal, the facility will generate coal contaminated stormwater: (1) coal is delivered to the facility in uncovered trains; (2) empty coal trains containing coal residue leave the facility (and will presumably spend some amount of time exposed to the elements at the facility); and (3) fugitive coal dust from the terminal’s operations will contaminate stormwater.
- *How will Ambre ensure that coal does not enter the Columbia River when it loads coal barges?* Other coal export facilities in the U.S. and abroad face serious challenges controlling coal spillage and coal dust during the conveyor-to-ship and/or conveyor-to-barge loading process. Ambre’s application states that “[t]he completed conveyor will be enclosed and will have a retractable chute to eliminate potential fugitive dust.” JPA at 4. At other coal terminals, operators continue to discharge coal via spillage and dust even with the use of “enclosed” conveyors and retractable chutes. For example, at the AES coal export terminal in Seward, Alaska, which handles roughly 1 million tons of coal per year, the company continues to face serious challenges controlling coal spillage and dust even after enclosing the conveyor system and employing retractable chutes.

In addition to lacking basic project design information, DSL deemed the application complete in the absence of the repeatedly referenced “forthcoming” “Environmental Review Document” (ERD) and “Biological Assessment” (BA). Neither document was available for agency, tribal, or public review during the comment period. Overall, DSL’s completeness determination leaves state agencies, which are expected to weigh-in as experts on water quality and other aquatic impacts, tribes, and the public without fundamental information on the project’s impacts to state waters, public health, and fish and wildlife. Based on commenters request that DSL extend the public comment period, commenters understand that DSL will reopen the public comment period after Ambre submits basic information on the project’s design and environmental impacts.

III. Ambre’s Project Fails to Meet the Requirements of State Law.

ORS 196.825 and its implementing rules, OAR 141-085-0565, govern DSL’s decision on Ambre’s removal-fill permit application. Under ORS 196.825(1), DSL must determine that “the project” (a) “[i]s consistent with the protection, conservation, and best use” of the state’s water resources, ORS 196.825(1)(a), and (b) “[w]ould not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.” ORS 196.825(1)(b).⁹

⁹ ORS 196.825(1) states:

The Director of the Department of State Lands shall issue a permit applied for under ORS 196.815 if the director determines that the project described in the application:

- (a) Is consistent with the protection, conservation and best use of the water

In 2007 the legislature amended ORS 196.825(1) to require that DSL determine whether “the project” meets the criteria in ORS 196.825(1)(a) and (b). *See* Or Laws 2007, ch 849, §§19, 21; *see e.g.*, *Examilotis v. Dept. of State Lands*, 239 Or App 522, 528, 244 P3d 880 (2010) (discussing amendments to ORS chapter 196 and interpreting prior version of ORS 196.825 in challenge to DSL’s issuance of a removal-fill permit). Prior to the 2007 amendments, and discussed at length in *Examilotis v. Dept. of State Lands*, ORS 196.825(1) called for a more narrow analysis of “the removal,” as opposed to a broader consideration of “the project.” *Id.* at 534 – 41.

Consistent with ORS 196.825(1), OAR 141-085-0565(3) requires that DSL determine whether “the project” meet specific criteria. OAR 141-085-0565(3) states:

The Department will issue a permit if it determines *the project* described in the application:

- (a) Has independent utility;
- (b) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.990; and
- (c) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation, when the project is on state-owned lands.

(emphasis added). For the reasons explained below, DSL should deny Ambre’s removal-fill permit because it fails to comply with the criteria in ORS 196.825(1) and OAR 141-085-0565(3).

A. Ambre’s Industrial Dock and Upland Coal Facility at the Port of Morrow Lack Independent Utility (OAR 141-085-0565(3)(a)).

OAR 141-085-0565(3)(a) states that “[t]he Department will issue a permit if it determines the project described in the application . . . [h]as independent utility.” Ambre’s application narrowly defines “the project” as in- and over-water work to construct an industrial coal export dock. JPA at 2, § 3 (“Proposed Project Information.”). The applicant acknowledges that “Work in and over the water is needed at the site to facilitate the operation of an enclosed close transfer facility at the Port of Morrow.” *Id.*

DSL must determine whether “the project” as described by the applicant (*i.e.*, a coal dock and related in-water structures) has independent utility. OAR 141-085-0510(41) defines

resources of this state as specified in ORS 196.600 to 196.905; and

- (b) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(emphasis added).

“independent utility,” stating: ‘Independent utility’ as used in the definition of ‘project,’ means that the project *accomplishes its intended purpose without the need for additional phases* or other projects requiring further removal-fill activities.’”) (emphasis added). In this case, DSL cannot determine that the in- and over-water structures accomplish their intended purposes “without the need for additional phases.” Specifically, Ambre’s in- and over-water structures cannot transload coal without the delivery of coal to the dock via the upland coal terminal. In turn, Ambre must submit a new application that contains a complete description of “the project,” including the upland coal export terminal at the Port of Morrow.

Ambre’s application supports a finding that the upland terminal lacks independent utility from the in- and over-water work. In the JPA under “*Proposed Action Description*,” Ambre states: “The proposed action for this permit application includes the construction of a commercial loading dock facility (see Figure 1A) at the Port of Morrow, near Boardman, to facilitate the Morrow Pacific project.” JPA at 3, § 4.” Ambre goes on to explain the “Major Components of Work” without addressing any components related to the upland coal terminal.

DSL must reject Ambre’s attempts to narrowly describe “the project” as the in- and over-water structures because the applicant’s own description of the connection between coal dock and upland facility demonstrates that “additional phases” are required to accomplish the project’s intended purpose: coal export. *See* JPA at 2, § 4 (stating “the in-water work associated with this project, including installing dolphins as well as a dock, walkway, and conveyor pilings, *is needed to transfer coal from enclosed buildings to covered barges* at the Port of Morrow, near Boardman, Oregon.”) (emphasis added).

B. Ambre’s Port of Morrow Coal Operations, including the Industrial Dock and Upland Coal Facility, and Port Westward Coal Operations Lack Independent Utility (OAR 141-085-0565(3)(a)).

For the reasons explained in Section I, Ambre’s Port of Morrow dock and upland coal storage facility lack independent utility from the project’s Port Westward barge-to-ship development. Under OAR 141-085-0565(3)(a), DSL cannot issue the permit because it lacks independent utility. *See* OAR 141-085-0565(3)(a) (“The Department will issue a permit if it determines the project described in the application . . . (a) Has independent utility.”).

C. The Project is Not Consistent with the Protection, Conservation, and Best Use of Water Resources (ORS 196.825(1)(a); OAR 141-085-0565(3)(b)).

Under the ORS 196.825(1)(a) and OAR 141-085-0565(3)(b), DSL must determine if the project “[i]s consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.990.” ORS 196.825(1)(a).¹⁰ Based on the direct

¹⁰ Neither the Removal-Fill Law nor its implementing rules define “protection” or “conservation.” When a word of common usage is not defined in the statute, courts give the word its “plain, natural, and ordinary meaning.” *See PGE v. Bureau of Labor and Industries*, 317 Or 606, 610 – 12, 859 P2d 1143 (1993). The dictionary defines “protection” as “[t]he act of

impacts of Ambre’s Morrow Pacific Project to the Columbia River, DSL cannot reach a finding that the project is “consistent with the protection, conservation and best use of water resources” and, therefore, must deny Ambre’s permit application.

Coal handling terminals are notoriously dirty operations, resulting in direct spillage of coal into waterways, the direct discharge of coal via fugitive coal dust, as well the discharge of coal-contaminated process wastewater and stormwater. Exhs. 4; 8; 9; 11. Powder River Basin (PRB) coal is particularly dusty and therefore presents a greater challenge when handling near open water. Exh. 12. A study on PRB coal explains:

PRB coal is extremely friable and will break down into smaller particles virtually independent of how the coal is transported or handled. PRB represents the extremes of handling problems: **dust is an issue when the coal is fine and dry; plugging in bunkers and chutes is an issue when the same fine coal is wet.** Once PRB coal is exposed by mining, the degradation process begins – the majority of the damage can occur in a very short time, even as short as a few days. The extent of the degradation that occurs depends in large part on the distance to the plant from the mine, i.e., how long the coal is exposed to the atmosphere during transportation. Additional factors such as crushed run of mine (CROM) size, and specific handling procedures also impact the degradation process. Additional decomposition occurs during handling and storage in a pile and bunker, bin or silo. We believe the root cause of the degradation is loss of moisture that impacts the coal both mechanically and chemically, through the generation of additional surface reaction area. **The combination of the two is what makes PRB coal so difficult to handle.**

Exh. 12 at 1 (emphasis added).

Apparently acknowledging the dirty business of handling coal, Ambre promises a “nearly fully enclosed” project at the Port of Morrow and Port Westward. As an initial matter, it is entirely unclear if Ambre can even deliver on its promise of operating a 3.85 million ton per year, let alone an 8.8 million ton per year, coal export terminal in a “nearly fully enclosed” environment. PRB coal’s characteristics, including its affinity to self-heat and dusty properties, makes containment particularly challenging. As one study explains:

protecting or the condition of being protected,” and “protect” as “[t]o keep from damage, attack, theft, or injury.” *American Heritage Dictionary* 665 (3rd ed 1992). The dictionary defines “conservation” as “[t]he act or process of conserving,” and “conserve” as “[t]o protect from loss or depletion; preserve.” *Id.* at 186. Oregon’s Statewide Planning Goals & Guidelines, which define both “protect,” “conservation,” and “conserve,” are also instructive. The Goals define “protect” as “[s]ave or shield from loss, destruction, or injury or for future intended use.” Oregon Statewide Planning Goals (2010). Goals also define “conservation” as “[t]he act of conserving the environment,” and “conserve” as “[t]o manage in a manner which avoids wasteful or destructive uses and provides for future availability.” *Id.*

Spontaneous combustion of coal is a well-known phenomenon, especially with PRB coal. This high-moisture, highly volatile sub-bituminous coal will not only smolder and catch fire while in storage piles at power plants and coal terminals, but has been known to be delivered to a power plant with the rail car or barge partially on fire.

Exh. 12 at 3. Another study states:

Self-heating, or spontaneous heating, is a process which results in increase in temperature of a thermally-isolated mass of coal or other combustible material. The phenomenon is caused by the heat-generating chemical reactions between the oxidant (oxygen) and the fuel (coal). If the generated heat is removed or absorbed by the surrounding environment, then only temperature oxidation will occur. However, if nothing is done to change the condition of the coal undergoing a self-heating process, spontaneous combustion will eventually occur.

Exh. 13.

Ambre's application fails to: (1) address the technical and engineering challenges of handling PRB coal in enclosed environments; (2) explain how the company will overcome these challenges, as promised in the application; and (3) provide any examples of other coal handling facilities in the U.S. or abroad that handle the volume of coal Ambre proposes to handle using enclosed storage, an enclosed conveyor belt, enclosed barges, and barge-to-Panamax vessel transfer. These issues are all directly relevant to DSL's statutory determination on whether the project is consistent with the protection and conservation of state water resources. Namely, if DSL issues the project permit, can Ambre achieve the promised level of environmental protection? For the reasons explained herein and described in exhibits to this comment, DSL does not have a reasonable basis to make the required statutory finding under ORS 196.825(1)(a) given the high level of uncertainty surrounding Ambre's ability to protect and conserve the Columbia River while operating a multi-million ton per year coal export project.

For example, Ambre's application fails to acknowledge the serious challenges faced by other coal handling terminals in the U.S. and abroad in controlling coal dust, let alone at the volume of coal Ambre proposes to handle. Exhs. 4; 7; 8; 9; 12; 24; 25. Ambre also fails to explain how it will operate a fully enclosed conveyor belt that is capable of handling 3.85 to 8.8 million tons of coal per year.

Similarly, Ambre's proposed use of a retractable chute to transfer coal into barges is not a silver bullet for dealing with coal discharges to the Columbia River. Even with the use of retractable chutes, other coal handling facilities continue to discharge coal into waterways via the dust generated during the loading process.

If Ambre can engineer and operate a fully enclosed conveyor belt and storage facility, Ambre's Port of Morrow operations will nonetheless impact the Columbia River through the discharge of coal and coal dust. Coal may be exposed to the Columbia River through process wastewater and stormwater discharges resulting from coal spillage and fugitive coal dust resulting from the movement and storage of open coal trains and the coal storage facility. Exh. 4; 7 (describing water resource impacts from coal terminals). Studies demonstrate that coal directly harms salmon. Exh. 14. DSL must account for these impacts when determining whether the project is inconsistent with the protection and conservation of state water resources and, in turn, deny the permit.

DSL also lacks a reasonable basis to determine that Ambre's proposed industrial dock is consistent with the protection and conservation of water resources. Ambre's project at the Port of Morrow calls for 572 cubic yards of permanent fill above the high water mark and 153 cubic yards of temporary fill below the high water mark. Ambre's elevated fixed dock will be six (6) feet wide and 275.5 feet long and supported by five (5) bents. Each bent consists of two (2) 16-inch diameter steel pile. The elevated conveyor will be thirty (30) feet wide and 270 feet long, supported by three (3) reinforced concrete capped support bents. Ambre also plans to construct a 1,160 foot long walkway, supported by thirty (30) bents, two mooring dolphins, and seven breasting dolphins. The total above-surface water area of impact is 15,151 square feet.

The proposed dock and associated structures will result in a significant addition of industrial infrastructure within designated critical habitat in this section of the Columbia River. Ambre's dock will result in the direct loss of critical habitat. The dock will also increase shading along the Columbia's shoreline, which in turn causes more favorable conditions for salmon and steelhead predators. ODFW's Residential Dock Guidelines explain:

Docks and ramps leading to docks create very dark shadows which in turn create conditions more favorable to predation. Over-water structures create a light/dark interface which allows ambush predators to hold in the darkened areas and watch for prey against a bright background. Prey cannot see into the dark shadow and therefore are less successful at avoiding predators. Shadows caused by docks also have a negative effect on aquatic macrophytes, epibenthic algae and pelagic phytoplankton. Aquatic plants are the foundation for most aquatic food webs. Reducing plant diversity and productivity can have adverse effects to higher organisms (invertebrates, fishes, amphibians, birds and various terrestrial animals).

Exh. 27 at 2. Although ODFW has not published industrial dock guidelines, the dock shading impacts described in the Residential Dock Guidelines should inform DSL's decisions on industrial docks. Ambre's application briefly states that the proposed height of the dock will address predation impacts by reducing shading. DSL must assess independently whether this is in fact the case, and whether the other in- and over-water structures will lead to increased shading and predation within designated critical habitat. In the end, DSL cannot conclude that the project's in- and over-water industrial infrastructure are consistent with the "protection,

conservation and best use” of water resources given the direct and indirect impacts of the infrastructure on aquatic habitat.

Likewise, DSL cannot determine that the Morrow Pacific project is “consistent with the protection, conservation and best use” of the Columbia River given the impacts of the Morrow Pacific project’s barge operations. According to the Corps’ public notice, but not disclosed in Ambre’s removal-fill permit application, Ambre’s project will handle 8.8 million tons of coal per year, which translates to twelve (12) loaded and twelve (12) unloaded barge tows per week for a total of 24 river trips. Assuming Ambre uses four (4) barges per tow, this equals a total of 48 individual loaded barges and 48 individual empty barges. DSL must consider how this significant increase in river barge traffic, in conjunction with existing barge traffic, “protect[s]” and “conserv[es]” the Columbia River and is “the best use” of the Columbia as a trade corridor and recreational river. The impact of barge traffic on the Columbia River is discussed in greater detail below. *See infra* at 19. Ambre’s proposal to significantly increase barge traffic on the Columbia for coal export is not consistent with the protection, conservation, and best use of state water resources.

The Morrow Pacific project is also not “consistent with the protection, conservation and best use of the water resources” based on the project’s impacts at Port Westward. On a weekly basis, Ambre will stage between a dozen to over fifty individual barges at Port Westward, located in the Columbia River Estuary. This area of the Columbia River is designated “critical habitat” for every listed species of salmon and steelhead on the Columbia, as well as other ESA-listed species including green sturgeon and eulachon. Exhs. 15; 16.¹¹ DSL cannot reach a statutory determination on whether the project “is consistent with the protection, [and] conservation” of the water resources without understanding how staging dozens of barges in near-shore habitat would impact endangered and threatened species.

To date, Ambre has not submitted a Biological Assessment on the Morrow Pacific Project. In turn, the National Marine Fisheries Service and U.S. Fish and Wildlife Service have not released a Biological Opinion describing the project’s impact on endangered and threatened species and designated critical habitat. Moreover, without a Biological Assessment from the applicant, ODFW lacks basic information to inform comments on the removal-fill permit. As DSL is aware, in the application, Ambre did not disclose any ESA-listed species at Port Westward and, instead, limited its discussion of ESA-listed species to Port of Morrow.

Finally, the Morrow Pacific project is not “consistent with the protection, [and] conservation . . . of the water resources of this state” based on the project’s greenhouse gas (GHG) emissions. As noted above, Ambre’s proposal to export 8.8 million tons of coal is nearly twice the amount of coal burned at Oregon’s only coal-fired power plant, PGE Boardman. Once

¹¹ *See* <http://www.nwr.noaa.gov/Salmon-Habitat/Critical-Habitat/CH-GIS-Data.cfm> (Columbia River salmon and steelhead critical habitat designations).

burned in a coal-fired power plant or other industrial boiler, 8.8 million metric tons of coal will generate approximately 15.9 million metric tons of CO₂ annually, or about 24% of Oregon's total carbon emissions. The impacts of west coast coal exports on increased GHG emissions is addressed at length in Exhibit 21. In addition to exporting coal for consumption overseas, the project will cause increased GHG emissions in Oregon through rail, barging, and storage facilities.

In 2007, the United Nations' Intergovernmental Panel on Climate Change ("IPCC") released its frequently cited report reflecting the new scientific consensus that unrestrained GHG emissions are causing global warming. As summarized by the UN in a press release:

The IPCC, which brings together the world's leading climate scientists and experts, concluded that major advances in climate modeling and the collection and analysis of data now give scientists "very high confidence"—at least a nine out of ten chance of being correct—in their understanding of how human activities are causing the world to warm. This level of confidence is much greater than the IPCC indicated in their last report in 2001. The report confirmed that it is "very likely" that greenhouse gas emissions have caused most of the global temperature rise observed since the mid-twentieth century. Ice cores, going back 10,000 years, show a dramatic rise in greenhouse gases from the onset of the industrial age. The co-chair of the IPCC working group stated, "There can be no question that the increase in these greenhouse gases are dominated by human activity.

The United Nations went on to summarize the key findings of the report:

The report describes an accelerating transition to a warmer world—an increase of three degrees Celsius is expected this century—marked by more extreme temperatures including heat waves, new wind patterns, worsening drought in some regions, heavier precipitation in others, melting glaciers and arctic ice, and rising global average sea levels.

Scientific analysis since then has demonstrated that the urgency to act on climate impacts is even greater than it was in 2007. The recent Copenhagen Climate Science Congress, attended by 2,000 scientists, concluded with this "Key Message 1:"

Recent observations confirm that, given high rates of observed emissions, the worst-case IPCC scenario trajectories (or even worse) are being realized. For many key parameters, the climate system is already moving beyond the patterns of natural variability within which our society and economy have developed and thrived. These parameters include global mean surface temperatures, sea-level rise, ocean and ice sheet dynamics, ocean acidification, and extreme climatic

events. There is a significant risk that many of the trends will accelerate, leading to an increasing risk of abrupt or irreversible climatic shifts.¹²

Numerous studies predict severe impact from climate change in Oregon, 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. The Oregon Department of Energy summarizes these impacts, including impacts specific to “the water resources of the state:

Rain and Snow Patterns

Rainstorms and snowstorms could increase in severity, but less snow would build up in the mountains. Snowpacks might melt faster, increasing flooding. Less water would be available for recreation, irrigation, drinking and fish habitat. The concentration of pollutants in the water could increase during summer and fall.

Sea Level Rise

A rise in sea level could threaten beaches, sandy bluffs and coastal wetlands. Coast towns could experience more flooding, causing increased damage to roads, buildings, bridges and water and sewer systems.

Diminished Water Supplies and Crop Productivity

Oregon’s crops and livestock could be affected by warmer temperatures, less water availability and drier soils. Some crops, such as wheat, might thrive in warmer temperatures, while others, such as potatoes, could be harmed. Less water available for irrigation would harm agriculture.

Ecosystems

Native species adapted to Oregon’s climate could suffer if temperatures rise. Warmer streams and rivers would harm salmon and other native species and non-native species could replace them. The cultural practices of Oregon’s tribes could be affected, as could the businesses and recreation practices of those who rely on the state’s native species.

Exh. 17. Based on the substantial increase in GHG emissions associated with the Morrow Pacific Project, DSL cannot reach the required statutory determination that the project is consistent with the protection and conservation of the water resources of the state.¹³

¹² International Scientific Congress Climate Change: Global Risks, Challenges, and Decisions (Mar. 12, 2009).

¹³ In addition to GHG emissions, the burning coal in Asia also increases mercury deposition in Oregon, including mercury deposition in Oregon’s rivers. Exhs. 29; 31. This further demonstrates the project is not consistent with the protection and conservation of state water resources.

D. DSL should Deny the Permit because the Project would Unreasonably Interfere with Navigation, Fishing and Public Recreation (ORS 196.825(1)(b); OAR 141-085-0565(3)(c)).

ORS 196.825(1)(b) states that the Department “shall issue a permit . . . if the director determines that *the project* described in the application . . . (b) Would not unreasonably interfere with the paramount policy of the state to preserve the use of its waters for navigation, fishing, and public recreation.” (emphasis added). *See also* OAR 141-085-0565(3)(c) (“The Department will issue a permit if it determines *the project* described in the application . . . [w]ould not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation, when the project is on state-owned lands.”) (emphasis added). Based on the requirements of ORS 196.825(1)(b) and OAR 141-085-0565(3)(c), DSL must deny Ambre’s permit application for the Morrow Pacific Project because it would unreasonably interfere with the state’s policy of preserving the Columbia River for navigation, fishing, and public recreation.

As noted above, Ambre’s project calls for building a new, 1,160 foot long dock with an above-surface water area of 15, 151 feet. The project also calls for significantly increasing the amount of barge and ship traffic on the Columbia River. At the Port of Morrow, the proposed coal dock is located within two (2) miles of a recreational dock. User-conflict already exists between current barge traffic and fishing and public recreation. Ambre’s barge and ship traffic will contribute to the existing conflicts. For example, Ambre’s barge route will directly impact sections of the Columbia River, including Arlington, The Dalles, Rowena, Hood River, Cascade Locks, Portland, and Estuary communities downstream of Bonneville dam, which are currently used for fishing and public recreation, including, boating, kayaking, canoeing, windsurfing, and kiteboarding.

The project will also increase Panamax ship traffic in the Columbia River Estuary (*i.e.*, between Port Westward and the mouth of the Columbia River). At coal export terminals on the east coast, delay in coal transport recently resulted in major traffic jams caused by ocean-going vessels awaiting coal transfers. Exh. 23. At Port Westward, Ambre’s coal operations are located within close proximity to private and public fishing and recreational docks. In turn, DSL must carefully assess whether the project’s barge and ship traffic “unreasonably interfere” with the state’s policy of preserving the Columbia River for navigation, fishing, and public recreation. Based on this analysis, DSL should deny the removal-fill permit.

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E. DSL should Deny the Removal-Fill Permit because the Morrow Pacific Project Fails to Comply with the Factors in ORS 196.825(3) and OAR 141-085-0565(4).

In reaching its decision on whether to issue or deny Ambre’s permit, DSL must consider the factors in ORS 196.825(3) and OAR 141-085-0565(4).¹⁴ See ORS 196.825(3) (“In determining whether to issue a permit, the director shall consider all of the following”); OAR 141-085-0565(4) (“Department Considerations. In determining whether to issue a permit, the Department will consider all of the following”). DSL’s analysis of the factors in ORS 196.825(3) and OAR 141-085-0565(4) support and inform the Department’s determinations under ORS 196.825(1)(a) and (b). As noted above, in 2007 the legislature amended ORS 196.825(1) to require that the Department determine if “the project” is consistent with the protection, conservation and best use of water resources, and would not unreasonably interfere with the state’s policy to preserve waters for navigation, fishing, and public recreation. For this reason, DSL must assess the project under the factors in ORS 196.825(3) and OAR 141-085-0565(4).

1. DSL should deny the permit because there is no “public need” for the Morrow Pacific Project (ORS 196.825(3)(a); OAR 141-085-0565(4)(a)).

Under ORS 196.825(1)(a) and OAR 141-085-0565(4)(a), DSL must assess “[t]he public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal.” DSL’s determination on the “public need for the proposed fill or removal” is a separate, distinct determination from DSL’s determination on “the social, economic or other public benefits likely to result from the proposed fill or removal.” OAR 141-085-0565(4)(a); see e.g., *1000 Friends of Oregon v. v. Div’n of State Lands*, 46 Or App 425, 429, 611 P2d 1177 (1980) (describing DSL’s duty to make independent finding on public need).

For Ambre’s proposed in-water coal handling facilities (*i.e.*, the dock, dolphins, walkway etc.), there is no “public need” for the project. For example, the proposed removal-fill will not support coal facilities to meet a public need for coal in Oregon, Washington, or any other state. In addition, DSL cannot determine that there is a public need given the existence of two (2) industrial docks within close proximity to the Ambre’s proposed dock. An existing Cemex loader exists approximately 1700 feet upstream from the site Ambre’s proposed dock. A mere 700 feet upstream from the proposed dock, Tidewater owns an existing dock constructed in 2007 for loading ethanol onto barges. Any alleged “public need” for Ambre’s project is significantly undermined by the existing industrial docks within close proximity to Ambre’s leasehold, as well as dozens of other industrial docks along the Columbia River. See *infra* at 23 (discussing Ambre’s inadequate alternatives analysis).

¹⁴ The factors in OAR 141-085-0565(4) parrot the permit issuance factors in ORS 196.825(3).

In describing the “need” for the project, Ambre argues that foreign countries “need” to import coal constitutes a “public need” for the project. *See* JPA at 2 – 3, § 4 (stating that “[p]rojections by the Federal Government consistently show global energy use growing by 50 percent over the next 25 years . . . Demand for coal is increasing, particularly among our Asian trade allies such as Taiwan, South Korea, and Japan.”).¹⁵ DSL should reject Ambre’s argument: the demand in foreign countries for a U.S. bulk commodity or product does not demonstrate a “public need” under ORS 196.825(1)(a) and OAR 141-085-0565(4)(a). In particular, if a mere representation of demand for U.S. exports satisfied the “public need” analysis under ORS 196.825(1)(a) and OAR 141-085-0565(4)(a), the criteria would be all but eviscerated.

Furthermore, whether the statutory language supports other countries’ projected needs for coal is not the relevant inquiry. ORS 196.825(3) notes that when the applicant “is a public body” that “body’s finding as to *local* public need and *local* public benefit” can be relied upon. ORS 196.825(3) (emphasis added). Thus, the statutory language indicates that the public need inquiry is locally focused. While Ambre is not a “public body,” the references to a “local” public need and “local” public benefit in ORS 196.825(3) undercut any argument that DSL’s assessment of the “public need” includes a “public need” for commodities in foreign countries.

In addition, Ambre’s assertions that energy use is increasing worldwide does not create a need to ship dirty coal through Columbia River ports. There are numerous cleaner sources of energy to meet increasing use, and Oregon is a worldwide leader in promoting renewable energy.

Oregon has direct experience with wasting public resources to meet the alleged demand for U.S. coal in Asia. Exh. 18. The Port of Portland constructed a coal export terminal in the 1980s, based on promises of a demand for U.S. coal in Asia. The early 1980s saw a rush of coal companies proposing export terminals in Washington and Oregon to satisfy a hungry Asian market. Longview, Kalama, Vancouver, and Astoria all entertained proposals, but the Port of Portland bought in. Portland committed to a 25 year lease with Pacific Coal for 90 acres and 900 feet of prime riverfront for a coal export terminal. Governor Atiyeh even broke ground at the site with a giant gold-painted power shovel in 1982. *Id.*

The Port and investors spent \$25 million building a coal export terminal. *Id.* Two years later, the project imploded after Asian markets proved unstable, unreliable, and not-so-hungry. After a five-month investigation, the *Oregonian* reported, “Port and Pacific Coal officials heedlessly plunged ahead despite clear warnings that they might never move a solitary lump of coal.”

¹⁵ Under the plain language of OAR 141-085-0565(4)(a) the Department’s duty to determine the “public need” is independent of the duty to assess the alleged economic benefits. *See* OAR 141-085-0565(4)(a) (requiring the Department to assess “[t]he public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal.”).

Contractors didn't get paid, borrowers defaulted, and lawsuits flourished. By betting on coal, the Port wasted prime industrial land, money, and jobs. The *Oregonian* noted:

Analysts later determined that coal export failed because the Asian demand was based on promises rather than actual long-term contracts. And international banks studying the issue found that the demand for coal had been 'vastly overstated.'

Soon after the Port of Portland collapse, nearly all other West Coast coal plans were scrapped. *Id.*

Furthermore, Ambre's arguments on the "public need" for coal export are severely undercut by Oregon's commitment to combat climate change. Beginning in 1997, Oregon made a decision to regulate carbon emissions within the state. That year the legislature passed a first in the nation law establishing carbon dioxide limits for new power plants sited in the state. All new baseload gas plants must have net emissions 17 percent below the most efficient gas plant in the United States. In 2009, this law was expanded by SB 101, implementing an emissions performance standard for utilities in Oregon. It prohibited any new long-term (defined as 5 year or more) commitment to gas or coal plants with emissions equal to or less than 1,100 pounds of CO₂ per megawatt hour.

ORS 469A.205 lays out Oregon's climate change goals. They include targets to be met in 2020 and 2050. In 2010, PGE announced that it would close Oregon's only coal-fired power plant, PGE Boardman, by 2020. This coal plant, which burns up to 5 million tons of coal per year, is the largest single source of greenhouse gas emissions in the state. From a regulatory standpoint, our investor-owned utilities are required to include a proxy cost for CO₂ as part of their resource planning process (known as Integrated Resource Planning).

Oregon also has a wide array of policies the state has implemented that demonstrate the state's commitment to reducing CO₂ emissions. For example, Public Purpose Charges on utility ratepayers are administered by the Energy Trust of Oregon (ETO), invested in energy efficiency and small scale renewable resources. Since 2002 the ETO has saved 274aMW of energy efficiency, enough to power 300,000 homes and enough to avoid 6 million tons of carbon. Oregon also has a strong renewable energy standard calling for 25% of our energy demand to be met with clean, renewable resources by 2025.

In short, Oregon's strong commitment to reducing CO₂ emissions and acting now to combat the serious threats posed by global climate change undercut any claim of a "public need" for a removal-fill permit for the project.

In addition to assessing the "public need," DSL must consider "the social, economic or other public benefits likely to result from the proposed fill or removal." OAR 141-085-0565(4)(a). To address this element, Ambre advances three arguments: (1) the in-water work will facilitate the larger Morrow Pacific Project and benefit foreign countries with a high demand

for coal, (2) the Morrow Pacific Project supports mining-related jobs nationally, and (3) the Morrow Pacific Project creates local, family-wage jobs in Oregon. *See* JPA at 2 – 3 (“At the Port of Morrow through to Port Westward, the Morrow Pacific project creates local, family-wage jobs in Oregon, supports mining-related jobs nationally, and provides low-sulfur coal to Asian countries to generate electricity.”). Neither Ambre’s application nor any other submittals to the Department identify the number of jobs created or quantify the amount of economic benefit from the Morrow Pacific Project. In Whatcom County, Washington, where a coal export terminal is proposed in Bellingham at Cherry Point, a recent economic study severely undercuts the alleged net benefit of coal export terminals. Exh. 26. The findings of this study illustrate the tenuous nature of Ambre’s promised social and economic benefits. Furthermore, due to the volatility of the international coal market, DSL must temper Ambre’s promise of jobs with the reality of market conditions and the likelihood that such jobs would in fact materialize and be sustained. Exh. 18.

2. Considering the availability of alternatives to the project, DSL should deny the permit (ORS 196.825(3)(c); OAR 141-085-0565(4)(c); OAR 141-085-0565(5)).

Under OAR 141-085-0565(4)(c), DSL must consider the “[t]he availability of alternatives to the project for which the fill or removal is proposed[.]” OAR 141-085-0565(4)(c) (emphasis added); *see also* OAR 141-085-0565(5) (“Alternatives Analysis. The Department will issue a permit only upon the Department’s determination that a fill or removal project is consistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the preservation of the use of the waters of this state for navigation, fishing and public recreation. The Department will analyze a proposed project using the criteria set forth in the determinations and considerations in sections (3) and (4) above (OAR 141-085-0565). *The applicant bears the burden of providing the Department with all information necessary to make this determination.*”) (emphasis added).

Ambre’s alternatives analysis narrowly considers alternative project sites and dock designs, as opposed to “alternatives to the project.” *See* JPA at 9 – 11; compare OAR 141-085-0565(4)(d) (requiring DSL to consider “[t]he availability of alternative sites for the proposed fill or removal” (emphasis added) to OAR 141-085-0565(4)(c) (requiring DSL to consider “[t]he availability of alternatives to the project for which the fill or removal is proposed[.]”) (emphasis added) . For example, Ambre describes two alternative project sites (Alternative 1 and 2) and two alternative project designs (Alternative 3 and 4) at the proposed project site. *Id.*

Ambre’s failure to provide DSL with alternatives to the coal export project does not relieve the Department of its duty to conduct an alternatives analysis under OAR 141-085-0565(4)(c). For example, the Department can consider alternatives to the coal export via rail-to-barge-to-ship project model, such as: (1) transloading grain, cement, or another bulk commodity; (2) transporting coal via rail directly to ports capable of handling ocean-going vessels; (3) exporting Powder River Basin coal at an established coal export terminal; and (4) not exporting coal (*i.e.*, no action alternative).

In fact, Ambre is already pursuing an alternative to the project on the lower Columbia River: the “Millennium Bulk Terminals, LLC” coal export project. Unlike the Morrow Pacific Project, Ambre’s Millennium project calls for shipping coal (44 million tons per year) via rail to docks below the Columbia River dams capable of handling ocean-going vessels. Other coal companies are also pursuing alternatives to a rail-to-barge-to-ship coal export terminal. Kinder Morgan recently leased property at Port Westward to operate a 30 million ton per year coal export terminal using the rail-to-ship model. SSA Marine is seeking local, state, and federal permits to operate a 50 million ton per year coal export terminal at Cherry Point on Puget Sound. The Port of Coos Bay has also entered confidentiality agreements with coal export companies exploring rail-to-ship coal export terminals on the Oregon coast. Finally, the Port of Grays Harbor is considering rail-to-ship coal export terminal proposals on the Washington coast. Although coal companies, including Ambre, are considering and proposing rail-to-ship coal export terminals across the Northwest, Ambre fails to consider this alternative in its application. While we certainly do not support any of these projects, their existence demonstrates that Ambre has failed to consider alternatives.

Given the level of public health and environmental impacts posed by the Morrow Pacific Project, DSL must conduct a rigorous alternatives analysis on the project to determine if a removal-fill permit is warranted. To date, the applicant has not prepared such an analysis and, in turn, DSL should not issue the removal-fill permit.

3. DSL should deny the permit because there is no evidence of an “economic cost to the public if the proposed removal or fill is not accomplished” (ORS 196.825(3)(b); OAR 141-085-0565(4)(b)).

Under ORS 196.825(3)(b) and OAR 141-085-0565(4)(b), DSL must consider “[t]he economic cost to the public if the proposed fill or removal is not accomplished[.]” Ambre’s application lacks any qualitative or quantitative description of the economic cost “to the public” if the proposed removal-fill for the project is not accomplished. DSL therefore lacks any grounds to determine the economic cost to the public if DSL denies the removal-fill permit.

Moreover, even if Ambre were to submit information related to the economic cost to the *corporation*, this information would be irrelevant under ORS 196.825(3)(b) and OAR 141-085-0565(4)(b): DSL’s analysis must consider the economic cost “to the public,” not a private corporation. Furthermore, to the extent Ambre argues an economic cost to the public based on the loss of future jobs, DSL should temper its reliance on such representations based on the volatility of the coal market and, in turn, uncertainty surrounding the whether the project would prosper and create jobs.

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4. Ambre’s alternative sites analysis is inadequate (ORS 196.825(3)(d); OAR 141-085-0565(4)(d); OAR 141-085-0565(5)).

In addition to considering alternatives to Ambre’s coal export project, DSL must assess “[t]he availability of *alternative sites* for the proposed fill or removal[.]” ORS 196.825(3)(d) (emphasis added); OAR 141-085-0565(4)(d) (emphasis added).

As an initial matter, DSL must reject the applicant’s incorrect characterization of the selected alternative site. Specifically, Ambre insists on referring to the site as “lower quality fish habitat.” JPA at 9 (stating that “the dock must be located in lower quality fish habitat”). This characterization does not square with the facts. The Columbia River at the Port of Morrow is designated critical habitat for eight (8) ESA-listed species.

Based on profit motives, Ambre wishes to site multiple coal export terminals on the Columbia River. This motive, however, does not change the fact that federal expert agencies designated the proposed project area as *critical habitat*. JPA at 8 (referring to the project site at Port of Morrow and stating “[t]his reach of the Columbia River is designated critical habitat for all eight of these [ESUs/DPSs] and contains Essential Fish Habitat (ESH) for Chinook salmon and Coho salmon (*Oncorhynchus kisutch*).”). The Columbia River is home to thirteen (13) ESUs of salmon and steelhead, as well as a number of other ESA-listed species. In recent decades, the government and private parties have invested billions of dollars in recovering salmon and steelhead. To the extent the applicant’s project design requires “lower quality fish habitat”—and commenters agree this is the case based on the significant environmental impacts—the applicant should consider siting its coal export terminal on a different waterbody. Simply put: designated critical habitat is not “low quality fish habitat.”

Ambre bears the burden of providing DSL with information on alternative sites. As noted above, Ambre identifies two alternative sites: (1) an existing dock and loader, which are approximately 1700 feet upstream of the selected site (Alternative 1), and (2) the existing Tidewater dock and loader, which are approximately 700 feet upstream of the existing site (Alternative 2). Beyond adjacent sites located within 2,000 feet of Ambre’s proposed coal dock, Ambre fails to address any alternative sites on the Columbia River or other waterbodies capable of transloading bulk commodities. Based on the narrow scope of Ambre’s alternatives analysis, DSL should deny the removal-fill permit.

5. The Morrow Pacific project fails to conform to the sound policies of conservation and would interfere with public health and safety (ORS 196.825(3)(e); OAR 141-085-0565(4)(e)).

Under ORS 196.825(3)(e) and OAR 141-085-0565(4)(e), DSL must consider “[w]hether the proposed fill or removal conforms to sound policies of conservation and would not interfere

with public health and safety.” As an initial matter, DSL cannot determine that the project “conforms to sound policies of conservation” given the complete lack of public need for the project. *See supra* at Section III.E.1.

Ambre’s project also fails to “conform to the sound policies of conservation” because it increases the amount of permanent fill and over-water within designated critical habitat in the Columbia River when other, less wasteful alternatives exist to the proposed removal-fill. Ambre’s fill and removal calls for 572 cubic yards of permanent fill above the high water mark and 153 cubic yards of temporary fill below the high water mark. *See supra* at Section III.C.

Ambre’s project also fails to conform to the sound principles of conservation based on the direct impacts on the aquatic environment. While Ambre’s proposal to build a coal dock at the Port of Morrow may be ideal for its business model, it is nothing short of “wasteful” given alternatives to the removal-fill.

In addition, Ambre’s project would interfere with public health and safety. Each fully-loaded coal 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 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 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. Exh. 20. Coal dust has also been shown to be a cause of rail bed instability and derailments, which can pose a significant public safety hazard. Exh. 19. This is particularly true with coal trains, as coal from the Powder River Basin is high flammable. *See Ex. 12*. Finally, the storage of this highly flammable coal at the proposed facility poses a public safety hazard, as coal stored in piles has been known to spontaneously combust. *Id.*

For the reasons explained above, the project’s Port Westward components also fail to conform to the sound principles of conservation. *See supra* (describing why project is inconsistent with preservation and conservation of Columbia River).

6. Ambre’s project fails to conform with existing public uses of the waters (ORS 196.825(3)(f); OAR 141-085-0565(4)(f)).

ORS 196.825(3)(f) and OAR 141-085-0565(4)(f) require that the Department consider “[w]hether the proposed fill or removal is in conformance with existing public uses of the waters” Building a new coal dock in the Columbia River and the larger Morrow Pacific Project fail to “conform[] with existing public uses of the water,” namely tribal and recreational uses of the waters. The project’s failure to conform with existing public uses (*i.e.*, fishing and public recreation) is addressed *supra* at Section III.D.

7. DSL should deny the application because Ambre failed to propose any mitigation aside from small-scale plantings near the Port of Morrow coal dock.

ORS 196.825(3)(i) and OAR 141-085-0565(i) require DSL to consider “[w]hether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.800.” Ambre’s application identifies on-site mitigation in the form of reseeded sections of the shoreline impacted by construction. Although Ambre’s application states that mitigation is proposed offsite, *see* JPA at 15, the applicant fails to provide any details on the location, amount, or type of mitigation proposed. In addition, Ambre’s proposed reseeded sections of the shoreline does not begin to mitigate for other project impacts. For example, Ambre’s mitigation fails to mitigate for the effect of shipping large volumes of coal to Asia. Ambre’s proposal also fails to mitigate for impacts to water resources caused by interference with recreational activities, wake-stranding, ballast water discharges and impacts to, including the loss of, near-shore habitat at the Port of Morrow and Port Westward. Based on Ambre’s failure to provide “all practicable mitigation,” DSL cannot reach the required statutory determination under ORS 196.825(3)(i) and OAR 141-085-0565(i).

F. Even if DSL Considers Solely the Impact of the “Fill or Removal” at the Port of Morrow Coal Dock, as Opposed to Assessing the Project’s Compliance with the Removal-Fill Law, DSL should Deny the Removal-Fill Permit under ORS 196.825(3) and OAR 141-085-0565(4).

DSL’s narrow interpretation of the Removal-Fill Law and its implementing regulations, discussed at length in *Examilotis v. Dept. of State Lands*, does not govern the Department’s decision on Ambre’s removal-fill permit. *See supra* at Section III.E. (explaining why DSL must consider the project’s compliance with ORS 196.825(3) and OAR 141-085-0565(4)). In *Examilotis*, DSL narrowly interpreted the removal-fill permit issuance factors and the Oregon Court of Appeals upheld the agency’s interpretation. 239 Or App at 541. The case, however, interpreted a prior version of ORS chapter 196 that is no longer the controlling law.

In 2007, the legislature amended ORS chapter 196, which included amending ORS 196.825(1). In the amendments, the legislature changed the requirement that DSL determine if the “the removal” meets the factors in ORS 196.825(1)(a) and (b) to a requirement that DSL determine if “the project” meets the factors. This change must guide DSL’s interpretation of the permit issuance factors in ORS 196.825(3). In particular, the amendments to ORS 196.825(1) require DSL to assess the impacts of *the project*, as opposed to narrowly considering the removal or fill (*i.e.*, the narrow impact of individual pilings as opposed to the project’s impacts).

It is unclear how DSL can reach the required statutory determinations under ORS 196.825(3) using a narrow analysis of the impact of individual pilings in the Columbia River. For example, how can DSL determine if there is a “public need” for individual pilings without

considering their context within the project? Based on the 2007 amendments to the Removal-Fill Law and considering the absurd result of divorcing the pilings (*i.e.*, the fill) from “the project,” DSL should evaluate the project under the factors in ORS 196.825(3) and OAR 141-085-0565(4).

If DSL nonetheless decides to interpret narrowly the factors in ORS 196.825(3) and OAR 141-085-0565(4), only considering the “fill or removal” as opposed to “the project,” Ambre’s application nevertheless fails to satisfy these requirements for the reasons explained below.

1. DSL should deny the permit because there is no “public need” for the proposed “fill or removal” (ORS 196.825(3)(a); OAR 141-085-0565(4)(a)).

Under ORS 196.825(1)(a) and OAR 141-085-0565(4)(a), DSL must assess “[t]he public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal.” In the case of Ambre’s proposed in-water coal handling facilities (*i.e.*, the dock, dolphins, walkway etc.), there are no grounds for DSL to determine that there is a “public need” for the “fill and removal,” namely the additional placement of pilings into the Columbia River to build an industrial dock at the Port of Morrow. If DSL interprets “fill or removal” narrowly, as explained above, the Department forecloses any assessment of an alleged public need for the Morrow Pacific Project (*i.e.*, a coal export terminal). Under a narrow interpretation of ORS 196.825(1)(a) and OAR 141-085-0565(4)(a), DSL could only consider the public need for the fill: the placements of dozens of additional pilings in the Columbia River.

Under the narrow interpretation, DSL cannot determine that there is a public need for the proposed removal-fill for a new industrial dock given the fact that every other proposed coal export terminal in the Northwest—including Ambre’s proposed terminal at Longview, Washington—calls for transporting coal via rail. Ambre attempts to detract from the viability of rail transport by focused on the lower environmental impacts of transporting coal in covered barges. This argument completely ignores Ambre’s *business decision* not to transport coal in covered trains.

In addition, DSL has no basis to determine that there is a public need for the proposed removal-fill given the existence of two (2) industrial docks within close proximity to the Ambre’s proposed dock. *See infra* at 29 (discussing Ambre’s inadequate alternatives analysis).

As noted above, Ambre addresses exclusively foreign countries “need” to import coal. *See JPA* at 2 – 3, § 4. This argument fails to address the public need for the “*proposed fill or removal*,” but instead addresses the public need for the entire Morrow Pacific Project (*i.e.*, mining coal in the Powder River Basin, transporting via rail to the Port of Morrow, barging the

coal to Port Westward, transferring the coal to Panamax vessels, and transporting the coal to Asia). If DSL adopts a narrow interpretation of ORS 196.825(1)(a) and OAR 141-085-0565(4)(a), the Department must reject Ambre’s argument that demand in foreign countries for a U.S. bulk commodity or product demonstrates a “public need for the proposed fill or removal.”

In addition to assessing the “public need” for the removal-fill, DSL must consider “the social, economic or other public benefits likely to result from the proposed fill or removal.” OAR 141-085-0565(4)(a). If DSL adopts a narrow interpretation of the, Ambre’s arguments on foreign demand for fossil fuels and jobs in the mining industry are irrelevant because the alleged benefits do not result from the “proposed fill or removal,” but instead from “the project.” For the same reason, Ambre’s broad-brush argument that the Morrow Pacific Project “creates . . . jobs in Oregon” is also irrelevant. Again, under the narrow interpretation DSL would determine if the proposed fill or removal, not the Morrow Pacific Project, will result in likely social, economic or other public benefits. In sum, Ambre has not and cannot demonstrate that the proposed removal-fill for the coal dock will result in likely social, economic or other public benefits; the alleged benefits stem from “the project,” not the “fill or removal.”

2. DSL should deny the permit because there is no evidence of an “economic cost to the public if the proposed removal or fill is not accomplished” (ORS 196.825(3)(b); OAR 141-085-0565(4)(b)).

Under ORS 196.825(3)(b) and OAR 141-085-0565(4)(b), DSL must consider “[t]he economic cost to the public if the proposed fill or removal is not accomplished[.]” Ambre’s application lacks any qualitative or quantitative description of the economic cost “to the public” if the proposed removal-fill (*i.e.*, driving pilings into the Columbia River to create dock infrastructure) is not accomplished. DSL therefore lacks any grounds to determine the economic cost to the public if DSL denies the removal-fill permit.

3. Ambre’s alternative sites analysis is inadequate (ORS 196.825(3)(d); OAR 141-085-0565(4)(d); OAR 141-085-0565(5)).

DSL must assess “[t]he availability of *alternative sites* for the proposed fill or removal[.]” ORS 196.825(3)(d) (emphasis added); OAR 141-085-0565(4)(d) (emphasis added). Ambre bears the burden of providing DSL with information on alternative sites to the fill or removal. As noted above, Ambre identifies two alternative site: (1) an existing dock and loader, which are approximately 1700 feet upstream of the selected site (Alternative 1), and (2) the existing Tidewater dock and loader, which are approximately 700 feet upstream of the existing site (Alternative 2). Beyond adjacent sites located within 2,000 feet of Ambre’s proposed coal dock, Ambre fails to address any alternative sites on the Columbia River or other waterbodies capable of transloading bulk commodities. Based on the narrow scope of Ambre’s alternatives analysis, DSL should deny the removal-fill permit.

4. Ambre’s proposed removal-fill fails to conform to the sound policies of conservation and would interfere with public health and safety (ORS 196.825(3)(e); OAR 141-085-0565(4)(e)).

Under ORS 196.825(3)(e) and OAR 141-085-0565(4)(e), DSL must consider “[w]hether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety.” Ambre’s removal-fill fails to “conform to the sound policies of conservation” because it increases the amount of permanent fill and over-water within designated critical habitat in the Columbia River when other, less wasteful alternatives exist to the proposed removal-fill. *See supra* at 15 (describing direct impacts of dock at Port of Morrow). The removal-fill required to construct Ambre’s new industrial dock fails to conform to the sound principles of conservation given the availability of other industrial docks on the Columbia River, particularly docks within close proximity to Ambre’s proposed industrial dock, and the direct impacts on the aquatic environment. While Ambre’s proposal to build a coal dock at the Port of Morrow may be ideal for its business model, it fails to conform to the sound principles of conservation given alternatives to the removal-fill.

5. Ambre’s proposed removal-fill fails to conform with existing public uses of the waters (ORS 196.825(3)(f); OAR 141-085-0565(4)(f)).

ORS 196.825(3)(f) and OAR 141-085-0565(4)(f) require that the Department consider “[w]hether the proposed fill or removal is in conformance with existing public uses of the waters” Building a new coal dock in the Columbia River fails to “conform[] with existing public uses of the water,” namely tribal and recreational uses of the waters. As noted above, the removal-fill will result in a 1,160 foot long dock with an above-surface water area of 15, 151 feet. Ambre’s proposed removal-fill activities are within two and half (2.5) miles of a recreational boat ramp. Ambre fails to demonstrate that the dock will not interfere with existing public uses of the waters.

6. DSL should deny the application because Ambre failed to propose any mitigation aside from small-scale plantings near the dock.

ORS 196.825(3)(i) and OAR 141-085-0565(i) require DSL to consider “[w]hether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.800.” As noted above, Ambre’s application identifies on-site mitigation in the form of reseeding sections of the shoreline impacted by construction. Although Ambre’s application states that mitigation is proposed offsite, *see* JPA at 15, the applicant fails to provide any details on the location, amount, or type of mitigation proposed. DSL therefore cannot determine that Ambre “has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal” at the Port of Morrow dock. Specifically, Ambre does not provide any mitigation for 572 cubic yards of permanent fill above

the high water mark and 153 cubic yards of temporary fill below the high water mark, with a the total above-surface water area of impact is 15,151 square feet. DSL should deny the removal-fill permit because Ambre failed to DSL to “ provide[] all practicable mitigation to reduce the adverse effects of the proposed fill or removal.”

G. CONCLUSION.

DSL is on the cusp of making the historic decision of whether to permit the first operational coal export project in the State of Oregon. The sheer size of Ambre’s proposed export terminal is staggering: Ambre will export nearly double the amount of coal currently burned at Oregon only coal-fired power plant each year. For the Columbia River and its iconic salmon and steelhead runs, Ambre’s coal export project means a significant increase in barge and Panamax vessel traffic and toxic coal dust. Moreover, Ambre is asking DSL to authorize a new industrial dock, adjacent to two existing industrial docks, for a project lacking any “public need” and raising serious conflicts with many existing river users, including tribal and recreational fisherman, boaters, and other recreational river users.

For these reasons and others described above, we urge DSL to: (1) request an extension from the applicant to gather the critical information that DSL failed to gather before making its completeness determination; (2) provide tribes, state agencies, and the public the opportunity to consider and provide comment based on additional information provided by Ambre; and (3) deny Ambre’s removal-fill permit because it fails to comply with the minimum requirements of state law.

Sincerely,

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