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January 22, 2014

Cowlitz County Department of Building and Planning
Attn: Ron Melin
207 Fourth Avenue North
Kelso, WA 98626

Via US Mail

RE: SEPA Review Number 13-06-0570 — Columbia River Carbonates' Woodland Marine Terminal Mitigated Determination of Non-Significance

Dear Mr. Melin,

Columbia Riverkeeper (Riverkeeper) submits these comments on Cowlitz County's Mitigated Determination of Non-Significance (MDNS) for Columbia River Carbonates' (CRC) proposed Woodland Marine Terminal.

Riverkeeper's mission is to protect and restore the Columbia River and all life associated with it, from its headwaters to the Pacific Ocean. Riverkeeper represents over 7,000 members and supporters in Oregon and Washington and regularly comments on decisions impacting water quality and salmon habitat in the Columbia River. Riverkeeper's members boat, fish, and swim in the Columbia River near and downstream of the proposed project location.

CRC's proposed marine terminal would constitute a significant new in- and over-water structure, require massive amounts of fill in the floodplain and below the ordinary high water mark, and involve extensive bank armoring. All of these impacts would further degrade the lower Columbia River's shallow-water habitat for juvenile salmon, steelhead, and other endangered species. Furthermore, the mitigation proposed by CRC is not sufficient to offset the negative impacts of the proposed development. Please consider the following comments when preparing the final State Environmental Policy Act (SEPA) document for this project.

I. CRC's proposed Woodland Marine Terminal would have significant environmental impacts.

CRC's Woodland Marine Terminal is a proposal subject to the requirements of SEPA. At a minimum, Cowlitz County is required to make a threshold determination as to whether the Woodland Marine Terminal would have a probable significant adverse environmental impact. WAC 197-11-300(2); WAC 197-11-310(1) ("A threshold determination is required for any

proposal which meets the definition of action and is not categorically exempt."). Cowlitz County is required to document its threshold determination in a determination of non-significance (DNS)[1] or a determination of significance (DS). WAC 197-11-310(5). A DNS or MDNS must be documented in a "written decision by . . . the lead agency that a proposal is not likely to have a significant adverse environmental impact." WAC 197-11-734. Cowlitz County has made a threshold determination, documented in a MDNS, that CRC's Woodland Marine Terminal is not likely to have a significant adverse environmental impact.

The MDNS for the Woodland Marine Terminal is invalid because Cowlitz County did not consider, or did not document its consideration of, factors that would cause the project to have a significant environmental impact. WAC 197-11-330 includes criteria for determining whether a proposal is likely to have a significant adverse environmental impact. WAC 197-11-794(3). A project may have a significant impact if it: adversely affects environmentally sensitive areas including wetlands; adversely affects endangered or threatened species or their habitat; or conflicts with laws protecting the environment. WAC 197-11-330(3)(e). Cowlitz County was required to account for these factors and document, in writing, why these factors do not cause the proposal to have a probable significant impact. WAC 197-11-330(3); WAC 197-11-734. CRC's proposal implicates each of these factors.

First, the project meets the significance threshold under WAC 197-11-330(3)(e)(i) because it adversely impacts sensitive areas such as shallow-water habitat, riparian and floodplain habitat, wetland habitat, and shoreline and floodplain within the meaning of Cowlitz County Code § 19.11.050(B)(1), (2) (designating "environmentally sensitive areas" for SEPA purposes).[2]

Second, the project meets the significance threshold within the meaning of WAC 197-11-330(3)(e)(ii) because proposed dock, fill, and bank armoring will adversely impact threatened and endangered salmonids, as well as other Endangered Species Act-listed species. The proposed project is likely to significantly impact the environment by further degrading shallow-water migration and rearing habitat for juvenile salmon and steelhead. The lower Columbia River is critically important migration and rearing habitat for juvenile salmon and steelhead from all across the Columbia basin.[3] The Federal Columbia River Power System Biological Opinions and multiple other studies and publications have identified shallow-water and off-channel

[1] For the purposes of the threshold determination, DNSs and MDNSs are functionally equivalent; the issue is whether a project, as proposed, would have probable significant adverse environmental impacts. *C.f.* WAC 197-11-350.
[2] CRC's SEPA Checklist at 16.
[3] NMFS, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (2011); Fresh *et al*., *NOAA Technical Memorandum NMFS-NWFSC-69: Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead* (2005); 78 Fed. Reg. 2,726 (January 14, 2013) (*Proposed Critical Habitat Designation for Lower Columbia Coho Salmon*).

habitats in the lower Columbia River as vitally important for salmonid rearing and species recovery.[4] Indeed, diking, filling, and other development activities have destroyed more than half of the tidal wetlands in the lower Columbia River.[5]

The proposed project would entail placing approximately 43,500 cubic yards of fill in the floodplain and burying 3.9 acres of riparian forest that currently provides essential off-channel habitat for endangered salmon and steelhead during moderately high wintertime flows.[6] The project would also involve a large amount of bank armoring in the form of riprap, which would further disconnect the river from existing floodplain and off-channel habitat, and degrade the quality of near-shore shallow-water habitat.[7] Eliminating and disconnecting floodplain and off-channel habitats in the lower Columbia River has severely compromised the Columbia's salmon runs.[8] This proposal would continue that trend, and would significantly impact the environment.

Over- and in-water structures like piers, pilings, moored boats, and docks also significantly degrade the lower Columbia River's ability to support juvenile salmonids.[9] These structures impact juvenile salmonids by disturbing migration routes, decreasing the productivity of shallow-water foraging habitat, and providing habitat for predators of juvenile salmonids such as smallmouth bass, pikeminnow, and cormorants.[10] Additionally, the installation of such structures with vibratory or impact hammers can have significant environmental impacts, and even kill endangered salmon.[11] This is especially concerning here, because CRC has indicated that underwater noise *will* exceed injury thresholds for salmonids and that CRC *will not* use bubble curtains to reduce the acoustic and pressure impacts of hammering in all instances.[12] Additionally, wakes from the large barges that would unload at the proposed dock could increase wake stranding and mortality of endangered juvenile salmon and steelhead.[13] This project is likely to have significant environmental impacts because the installation and existence of the

[4] *See* Note 3, *supra*.
[5] NMFS, *Estuarine Habitat and Juvenile Salmon: Current and Historical Linkages in the Lower Columbia River and Estuary* (2011).
[6] WDFW, *Comments on MDNS for CRC's Woodland Marine Terminal*, 2 (2014)
[7] NMFS, *Nearshore Habitat: How Bank Armoring & Overwater Structures Shape the Health of Pacific Salmon & Steelhead* (2012).
[8] *See* Note 3, *supra*.
[9] NMFS, *Nearshore Habitat: How Bank Armoring & Overwater Structures Shape the Health of Pacific Salmon & Steelhead* (2012); NMFS, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (2011).
[10] NMFS, *Nearshore Habitat: How Bank Armoring & Overwater Structures Shape the Health of Pacific Salmon & Steelhead* (2012); Nightingale and Simenstad, *Overwater Structures: Marine Issues* (2001); U.S. Army Corps of Engineers, *Minimizing Effects of Over-Water Docks on Federally Listed Fish Stocks in McNary Reservoir: A Literature Review for Criteria* (2010).
[11] NMFS, *Biological Opinion on Revisions to Standard Local Operating Procedures for Endangered Species to Administer Actions Authorized or Carried Out by the U.S. Army Corps of Engineers in Oregon (SLOPES IV In-water Over-water Structures)*, 79 (2012).
[12] CRC's SEPA Checklist, at 14.
[13] Pearson *et al., A Study of Stranding of Juvenile Salmon by Ship Wakes Along the Lower Columbia River Using a Before-and-After Design: Before-Phase Results* (2006).

proposed dock structure would alter sensitive shallow water-habitat and adversely impact endangered salmonids. *See* WAC 197-11-330(3)(e)(i), (ii).

Third, the project may have a significant impact within the meaning of WAC 197-11-330(3)(e)(iii) because the project conflicts with laws protecting the environment, including but not limited to:

- the Endangered Species Act's prohibitions on taking listed species and destroying critical habitat, 16 U.S.C. §§ 1536(a)(2),1538(a)(1)(B);
- the Clean Water Act's requirement to select the least environmentally damaging practicable alternative, 40 C.F.R. § 230.10(a), and;
- Washington State's obligation to protect fish life, RCW 77.55.021.

Cowlitz County's MDNS is legally insufficient because it does not account for or discuss any of these factors which bear upon the significance of CRC's proposal. The MDNS merely describes the physical features of the proposed project and the accompanying mitigation, and then summarily claims that the environmental impacts will not be significant.

To the extent that the project provides environmental benefits, those benefits do not undermine a Determination of Significance. WAC 197-11-330(5) states:

> A threshold determination *shall not balance* whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

(emphasis added). For all of the reasons stated above, CRC's project warrants a Determination of Significance and, in turn, full disclosure of the project's impacts in an Environmental Impact Statement.

II. The proposed mitigation would not adequately compensate for the project's significant adverse environmental impacts.

As a practical matter, the proposed mitigation would not offset the habitat loss and potential take of endangered salmon and steelhead that the project would cause. Altogether, the project would destroy more than 25,000 square feet of off-channel fish habitat with a seasonal direct connection to the Columbia River, add 46 pilings in shallow-water habitat, add over 7,800 square feet of over-water structure above shallow-water habitat, cause the loss of mature riparian

cottonwood forest habitat,[14] add over 400 linear feet of riprap revetment to the bank of the Columbia, and probably directly kill or injure juvenile salmonids through acoustic impacts and wake stranding. To mitigate all of these impacts, CRC essentially proposes to anchor large woody debris in shallow-water habitat at an off-site location.

The proposed mitigation is insufficient because it only addresses one kind of impact from the proposed project: over-water structure. The proposed mitigation does nothing to compensate for the installation of pilings, the loss of high-water off-channel habitat, the impacts of bank-armoring on shallow-water habitat, the loss of riparian cottonwood forest, or direct injury or mortality to juvenile salmonids from acoustic impacts or wake stranding. Additionally, even the proposed mitigation for over-water structure is insufficient because CRC only proposes a 2:1 mitigation ratio.[15] To meaningfully and sufficiently mitigate the project's impacts, CRC should submit a mitigation plan that commits to:

- remove derelict pilings and over-water structures from the lower Columbia River;
- remove riprap or other revetments from the banks of the lower Columbia River;
- improve existing shallow-water habitat;
- reconnect, rehabilitate, or create off-channel habitat, floodplain habitat, and wetland habitat with a direct connection to the Columbia River at moderately high flows;
- purchase and permanently restore areas where native cottonwood riparian forest has been removed, and;
- design compensatory mitigation for the direct take of salmonids through acoustic impacts and wake standings.

Because environmental mitigation is imperfect and prone to failure, all such mitigation measures should be proposed at ratios large enough (i.e. greater than 2:1) to ensure that the benefits of the mitigation outweighs the impacts of the proposed project. Unless such adequate mitigation is proposed and implemented, the project will negatively impact endangered salmon and steelhead.

As a legal matter, the proposed mitigation is not sufficient to bring the project under SEPA's 'significance' threshold. While it is proper for Cowlitz County, when making its threshold determination, to consider mitigation measures that are part of the proposal, WAC 197-11-330(1)(c), the MDNS contains no discussion or explanation of why the proposed mitigation will decrease the overall impact of the project to the level of nonsignificance, as required by WAC 197-11-330(3) and WAC 197-11-734. Instead, the MDNS merely recites the mitigation proposed by CRC without explaining the anticipated benefits of that mitigation or comparing those benefits to the project's anticipated adverse environmental impacts. In fact, as described

[14] WDFW, *Comments on MDNS for CRC's Woodland Marine Terminal*, 4 (2014).
[15] *Id.*

above, the proposed mitigation would not compensate for the loss of shallow-water and off-channel habitat and other impacts that would result from this project. Cowlitz County cannot rely on the proposed mitigation to ameliorate the project's significant adverse environmental impacts.

Conclusion

CRC's project would significantly impact the environment by degrading critical habitat for endangered juvenile salmon and steelhead, and the proposed mitigation would not compensate for those impacts. Accordingly, Cowlitz County must withdraw the MDNS and issue a DS followed by a full Environmental Impact Statement.

Thank you in advance for considering Columbia Riverkeeper's input on the MDNS. Please direct any questions or correspondence to the undersigned at miles@columbiariverkeeper.org.

Sincerely,

Miles Johnson
Clean Water Attorney
Columbia Riverkeeper

enclosures

cc via email:

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