



COLUMBIA RIVERKEEPER
111 Third Street
Hood River, OR 97031
phone 541.387.3030
www.columbiariverkeeper.org

October 31, 2014

U.S. Department of Commerce
Economic Development Administration
Regional Director A. Leonard Smith
915 Second Avenue, Room 1890
Seattle, WA 98174

U.S. Department of Commerce
Economic Development Administration
Regional Environmental Officer
915 Second Avenue, Room 1890
Seattle, WA 98174

Submitted via email to: asmith@eda.gov; sfitzgerald@eda.gov

RE: EIS for Columbia City Industrial Park Maritime Feasibility Study; Project No. 07-06-07038.

Dear Regional Director Smith,

Columbia Riverkeeper (“Riverkeeper”) requests that the U.S. Economic Development Administration (EDA) prepare a comprehensive Environmental Impact Statement (EIS) assessing the direct, indirect, and cumulative impacts of industrial development at the Port of St. Helens’ (Port) 93-acre property in Columbia City, Oregon. As a federal agency with authority over the “Columbia City Industrial Park Maritime Feasibility Study,” EDA has the responsibility to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) before deciding whether to fund this project.

Riverkeeper is a nonprofit public interest group with approximately 8,000 members and supporters working to protect and restore the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper operates scientific, educational, and advocacy programs aimed at protecting water quality and habitat in the Columbia River Basin. Riverkeeper’s members and supporters have diverse interests in the Columbia River and the landscape near Columbia City, Oregon, including fishing, boating, swimming, farming, working, and living.

The Columbia River Estuary¹ is a federally-designated Estuary of National Significance under the Clean Water Act’s National Estuary Program, and the Columbia River was designated in 2006 as one of the U.S. Environmental Protection Agency’s seven Priority Large Aquatic Ecosystems. Multiple studies and publications have identified the Columbia River Estuary as vitally important for juvenile salmonid rearing and endangered species recovery.² Development in riparian areas and shallow-water habitats, dredging, and in- and over-water structures like piers and docks have significantly degraded the Columbia River Estuary’s ability to support juvenile salmonids.³

Riverkeeper is deeply concerned by several controversial proposals to increase high-impact industrial activity in Columbia County and the Columbia River Estuary. These proposals involve shipping or exporting coal, crude oil, and natural gas through rural communities and some of the most important salmon habitat in the continental United States. The Port of St. Helens has been deeply involved in promoting many of the most risky fossil fuel ventures. The Port has courted dirty, dangerous, and highly controversial industries including the first crude-oil-by-rail terminal on the Columbia River, two different coal export facilities, and a methanol manufacturing and export terminal. The Port also tried to re-zone nearly a thousand acres of agricultural land and high-quality riparian habitat for heavy industrial use, and supported efforts to limit public participation in future land use decisions affecting Port properties. The Port should not receive federal dollars to brainstorm or vet the next step in its plan to turn the Columbia River Estuary into a “single industrial corridor.”⁴

A series of decisions that would turn the Columbia River Estuary into an industrial fossil fuel shipping corridor deserve the most searching and transparent environmental review possible: an EIS. While the Port’s current proposal, standing alone, would require an EIS, EDA must also account for the cumulative effects of other proposed industrial projects in the Columbia River Estuary—especially fossil fuels shipping projects—as well as existing development in the Estuary. As no other federal agency has issued a NEPA document for any of the fossil fuel shipping and export proposals on the Columbia, the important work of analyzing the cumulative effects of all of these proposals and activities will fall to EDA.

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¹ For the purposes of this comment, “Columbia River Estuary” means the portion of the Columbia River that is tidally influenced.

² Exhibit 1, NMFS, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (2011); Exhibit 2, Fresh *et al.*, *NOAA Technical Memorandum NMFS-NWFSC-69: Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead* (2005); *see also Proposed Critical Habitat Designation for Lower Columbia Coho Salmon*, 78 Fed. Reg. 2,726 (January 14, 2013).

³ *Id.*

⁴ *See* Exhibit 9, *infra*.

I. The Port’s project will lead to industrial development in the Columbia River Estuary, possibly a new fossil fuel shipping or export project.

The Port’s project will lead directly to new industrial development and—given the Port’s recent history—potentially to more fossil fuel shipping or export on the Columbia. The Port refers to its proposal as the “Columbia City Industrial Park Maritime Feasibility Study,” but EDA staff correctly observed that it is “much more than a feasibility study,”⁵ and “leads to direct development.”⁶ The Port intends to use this project to justify additional federal grant funding for engineering work on the development “scenario that makes the most sense.”⁷ Moreover, planning documents demonstrate that the Port intends to upgrade and expand the existing docks in the near future to facilitate industrial development.⁸ While the Port has not told the public or EDA⁹ what it intends to build, the Port is interested in dredging the river and enlarging its docks to accommodate Panamax-class vessels,¹⁰ and hopes to attract a “billion dollar project.”¹¹ Given the Port’s history, a billion-dollar project involving Panamax-class vessels and rail reconstruction is very likely to entail fossil fuel shipping or export. The Port’s ‘feasibility study’ is calculated to lead directly to the development of such a project.

Riverkeeper agrees with EDA staff’s frank assessment that this project “should be terminated.”¹² Riverkeeper opposes spending federal dollars to vet the Port’s next dirty and dangerous coal export or crude oil project. However, EDA could easily avoid this result—and the need to analyze the environmental impacts of fossil fuel export at Columbia City—by conditioning the grant on the Port’s agreement never to lease or use this property to store or transfer fossil fuels.

II. EDA must prepare an EIS to inform EDA’s decision about whether to fund the Port’s project.

a. An EIS should be prepared before the Port or federal agencies make important decisions about development in Columbia City.

Now is the time to prepare an EIS analyzing and describing potential industrial development in Columbia City. EDA, like all federal agencies, must “integrate the NEPA process with other planning **at the earliest possible time.**” *League of Wilderness Defenders-*

⁵ Email from Shannon FitzGerald to Michelle Branigan (March 6, 2014).

⁶ *Id.*

⁷ Email from Scott Jensen to Frances Sakaguchi (May 2, 2014).

⁸ *Port of St. Helens Strategic Business Plan*, 6 (August, 2012) (online at: <http://www.portsh.org/plans/PSH%20SBP%20final%20final%20w%20append.pdf>).

⁹ Email from Shannon FitzGerald to Michelle Branigan (March 6, 2014).

¹⁰ *Id.*

¹¹ *Id.*

¹² Email from Frances Sakaguchi to Richard Manwaring (May 23, 2014).

Blue Mts. Biodiversity Project v. U.S. Forest Serv., 689 F.3d 1060, 1070 (9th Cir. 2012) (emphasis added) (citing 40 C.F.R. § 1501.2). NEPA’s goal of infusing environmental consciousness into federal decision-making “depends entirely on involving environmental considerations in the initial decisionmaking process.” *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) (citing 40 C.F.R. §§ 1501.2, 1502.5). This preliminary assessment of site capabilities and potential industrial tenants is the ideal juncture at which to prepare a comprehensive EIS—before either the Port or a prospective tenant become attached to any particular plan. As the first federal agency to approve a part of the project, EDA’s EIS will ensure that environmental and community concerns are “interwoven into the fabric of agency planning” processes. *Andrus v. Sierra Club*, 442 U.S. 347, 351 (1979).

b. NEPA’s alternatives analysis is well-suited to exploring potential uses of the Port’s property.

EDA should develop an in-depth alternatives analysis to frame and discuss different industrial development scenarios that could occur in Columbia City. The alternatives analysis is “the heart of the environmental impact statement,” 40 C.F.R. § 1502.14, and each EIS must include “a detailed statement [on] alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The alternatives analysis describes the environmental impacts of different courses of action in comparative form, presenting decision makers and the public with clear and well-defined choices. *League of Wilderness Defenders-Blue Mts. Biodiversity Project v. United States Forest Serv.*, 689 F.3d 1060, 1068–69 (9th Cir. 2012) (citing 40 C.F.R. § 1502.14). Here, analyzing the environmental impact of several potential development scenarios will give EDA and the public a clear picture of how industrial development would impact the Columbia River and Columbia City. *See id.*

Analyzing a reasonable range of alternatives in the EIS is not only required, it would directly complement the Port’s goal of assessing the viability and impacts of different development scenarios. *See Pacific Coast Fed’n of Fishermen’s Ass’ns v. Blank*, 693 F.3d 1084, 1099 (9th Cir. 2012) (citing 42 U.S.C. § 4332(2)(C)). The Port has stated that it wants to identify “four to eight suitable market segments based on the Site constraints” and “create two or three development scenarios.”¹³ Based on the Port’s recent history and its search for a “billion dollar project,” one or more of the alternatives that EDA analyses should be a fossil fuel shipping terminal. The EIS’s alternatives analysis and the Port’s project have essentially the same goal: understanding the potential for different types of development at the site along with the environmental and social impacts of such development. EDA should use the alternatives analysis as an opportunity to examine the impacts of likely development scenarios.

¹³ Exhibit 3, Port of St. Helens, *Draft Scope of Work for Columbia City Industrial Park Maritime Feasibility Study*, 3 (2014).

Finally, even if EDA authorizes funding for the Port’s project using an EA/FONSI—which EDA should not do—EDA must still analyze alternatives to the Port’s proposed project. “NEPA requires that alternatives be given full and meaningful consideration, whether the agency prepares an EA or an EIS.” *Center for Biological Diversity v. National Highway Traffic Safety Admin.*, 538 F.3d 1172, 1218 (9th Cir. 2008) (internal quotations omitted). Accordingly, EAs must analyze “all reasonable alternatives” or provide “an appropriate explanation . . . as to why an alternative was eliminated” *Native Ecosystems Council*, 428 F.3d at 1246. Despite this clear direction from the Ninth Circuit, EDA’s draft EA/FONSI on the Port’s proposal states bluntly that: “No alternatives were considered.”¹⁴ Regardless of whether EDA prepares an EA or an EIS, EDA must assess alternatives to the Port’s proposed project—including a “no action” alternative.¹⁵

c. EDA’s EIS must describe and address the direct and indirect environmental impacts that could result from the Port’s industrial development.

EDA’s analysis should begin by addressing the direct impacts of prospective industrial development at Columbia City. 40 C.F.R. § 1508.25(c)(1). Direct impacts are those “which are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). The direct effects of turning the Port’s property into a marine industrial park could include, at least:

- in- and over-water construction of docks and piers;¹⁶
- dredging in the Columbia River;¹⁷
- rail and/or road construction work on-site and in Columbia City;¹⁸
- demolition of existing structures, including those of existing Port tenants;¹⁹
- excavation and building-site preparation in advance of new construction;
- construction and operation of an industrial facility or facilities in riparian habitat and close proximity to residential areas in Columbia City.²⁰

¹⁴ Exhibit 4. EDA, *Draft EA/FONSI for the Columbia City Industrial Park Maritime Feasibility Study*, 3 (2014).

¹⁵ See *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026, 18027 (March 23, 1981).

¹⁶ See Exhibit 3 at 3.

¹⁷ *Id.*

¹⁸ *Id.* at 2–4.

¹⁹ Email from Shannon FitzGerald to Michelle Branigan (October 2, 2014).

²⁰ See Exhibit 3.

Analyzing the environmental effects of these direct impacts should be the first step in EDA's EIS. 40 C.F.R. § 1508.25(c)(1).

Additionally, EDA must look beyond the immediate impacts of construction at Columbia City; the EIS must also analyze the indirect effects of prospective industrial development. 40 C.F.R. § 1508.25(c)(2). Indirect effects, for NEPA purposes, are those effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Indirect effects include the ways in which human use of an area changes because of an action, and the consequential effects of those changed uses on air, water, and ecosystems. *Id.* Industrial development at Columbia City would foreseeably induce, among other things:

- increased Panamax or other large vessel traffic in the Columbia River Estuary;²¹
- growth and development elsewhere in Columbia County and Columbia City;
- impacts to water quality in the Columbia River and nearby drinking water supplies from industrial stormwater runoff and/or process wastewater discharge and/or groundwater contamination caused by industrial pollution.
- increased traffic and/or rail congestion in Columbia County and Columbia City, with impacts to human safety and air quality;
- depending on the development alternative, increased extraction of natural resources and associated environmental impacts;
- for development alternatives involving fossil fuels, contributions to global climate change and ocean acidification.
- for development alternatives involving the transshipment of crude oil or other dangerous liquids, risks to human life and health, and the environment.

EDA's EIS must therefore look beyond the direct effects of construction work and address the indirect impact's on the Columbia River's air, water, communities, and ecosystems.

²¹ As EDA staff correctly identified, “the impacts of what POSH intends to do is going to affect [vessel] passage starting from [the] upper Columbia through Portland to Columbia City and then downstream.” Email from Frances Sakaguchi to Richard Manwaring (May 23, 3014).

d. EDA must prepare an EIS because industrial development at Columbia City “may significantly impact” the environment.

The direct, indirect, and cumulative effects of industrial development at Columbia City “may significantly impact” the environment. Therefore, EDA must prepare an EIS to analyze and disclose these impacts. An agency must prepare an EIS when substantial questions exist about whether a proposed project “may” significantly degrade the environment. *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1239 (9th Cir. 2005); *see also* 42 U.S.C. § 4332(2)(C). The Ninth Circuit has explained that EISs are frequently necessary because the ‘may significantly impact’ threshold “is a low standard.” *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006); *California Wilderness Coalition v. U.S.*, 631 F.3d 1072, 1097 (9th Cir. 2011). An EIS is the proper tool to assess the environmental risks posed by industrialization and fossil fuel shipping because such projects may significantly impact the Columbia River Estuary.

NEPA’s regulations contain ten ‘intensity’ factors that agencies like EDA must consider when evaluating whether a project may have a significant impact, requiring an EIS. 40 C.F.R. § 1508.27(b); *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 361 F.3d 1108, 1124 (9th Cir. 2004). As discussed below, most of these ‘intensity’ factors apply to industrial development and fossil fuel shipping in the Columbia River Estuary. The Ninth Circuit has noted that the presence of even one of these factors can be enough to compel the preparation of an EIS. *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 865 (9th Cir. 2005).

i. The potential industrial development will be highly controversial and may involve unique or unknown risks.

Industrial development in direct proximity to residential areas in Columbia City and the Columbia River Estuary—especially if it involves fossil fuel shipping or export—will be controversial and may entail poorly-understood risks. NEPA’s fourth and fifth ‘intensity’ factors counsel in favor of preparing an EIS where, as here, the impacts of the proposed project are highly controversial or uncertain, or the project involves unique risks. 40 C.F.R. § 1508.27(b)(4), (5).

Industrial development within a few hundred feet of residential neighborhoods is likely to be quite controversial, and could pose environmental risks to people living nearby. Indeed, the large number of comments that EDA has received from Riverkeeper’s members and other concerned citizens reflects the high level of community concern surrounding this project. The Port’s failure to identify a specific industry or tenant—along with the history of controversial Port-sponsored projects in Columbia County—increases public uncertainty and concern.

To the extent the proposal paves the way for a fossil fuel terminal, it would pose serious health and environmental risks and pull EDA into the center of the most controversial environmental issues facing the Pacific Northwest. Shipping Bakken or tar sands crude oil in bulk by rail is a relatively new enterprise, and disastrous accidents have occurred.²² Coal export would not only subject communities along rail lines to dangerous coal and diesel emissions, but has also drawn an unprecedented level of opposition from residents of Oregon and Washington. Add to these concerns the exacerbation of global warming and ocean acidification, and it is clear that the risks and controversy associated with shipping fossil fuels justifies the thorough review provided by the EIS process. 40 C.F.R. § 1508.27(b)(4), (5).

ii. Industrial development may adversely affect the Columbia River Estuary's unique ecological, cultural, and historic resources.

EDA should prepare an EIS because the direct and indirect impacts of industrial development could degrade the Columbia River Estuary and its unique ecological and cultural resources. CEQ's third and eighth 'intensity' factors counsel in favor of preparing an EIS when the proposed project would negatively impact unique ecological, cultural, or historic resources. 40 C.F.R. § 1508.27(b)(3), (8). Specifically, intensity factor three contemplates an EIS when a project is proposed in an area close "to historic or cultural resources, park lands, prime farmlands, wetlands, . . . or ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). Similarly, intensity factor eight considers the degree to which the proposed project "may cause loss or destruction of significant scientific, cultural, or historical resources." 40 C.F.R. § 1508.27(b)(8). Increased industrialization—especially in the form of a fossil fuel shipping terminal—in the midst of the Columbia River Estuary's unique ecological, social, and cultural resources deserves analysis in an EIS.

In terms of direct cultural and social impacts at the local level, part of the Port's Columbia City property is a popular public swimming area. This area, called "Trestle Beach," is located at the northern tip of the industrial park and has long been a favorite public beach for residents of Columbia City and surrounding areas. Turning this area into an industrial park would cut people off from a traditional river access point, degrading the rural character and culture that many Columbia County residents appreciate.

The Columbia River also supports a vibrant tradition of subsistence, commercial, and sport salmon fishing. Salmon fishing in the Columbia River Estuary is a cultural and economic practice with a rich history reaching back many generations. A marine industrial park dependent on increasing Panamax vessel or barge traffic through the middle of the Columbia River's salmon fisheries has the potential to cause the loss, destruction, or disruption of these significant

²² Exhibit 5, Columbia Riverkeeper, *Comment Letter to the U.S. Army Corps of Engineers Regarding Crude Oil Shipping at Port Westward*, 6, 13–14 (August 13, 2013).

cultural and historical resources. A vessel or barge accident resulting in a large spill of crude oil or another hazardous substance would seriously impair salmon fishing, not to mention salmon survival. EDA should therefore use an EIS to analyze the impacts of Panamax ship traffic and potential spills and pollution from industrial activities on salmon fishing in the Columbia River Estuary. 40 C.F.R. §§ 1508.27(b)(3) & (8).

The Columbia River Estuary is an “ecologically critical area,” 40 C.F.R. § 1508.27(b)(3), that is essential to the survival juvenile salmon and steelhead, waterfowl, and many other species.²³ The Estuary is lined with wetlands, riparian areas, and park lands²⁴ which could all be impacted by increased vessel traffic. Further, a fuel or crude oil spill at the marine industrial park, or from a Panamax vessel in the river, could devastate the ecologically critical areas downstream from Columbia City. Before subjecting the unique and irreplaceable Columbia River Estuary to these extreme threats, the Corps should analyze the potential impacts in an EIS. 40 C.F.R. §§ 1508.27(b)(3) & (8).

iii. Industrial development may impact public health and safety.

EDA should prepare an EIS because industrial development in Columbia City could seriously affect public health and safety. CEQ’s second ‘intensity’ factor is “[t]he degree to which the proposed action affects public health or safety.” 40 C.F.R. § 1508.27(b)(2). An EIS is the required and responsible way to address the following health and safety concerns about industrial development.

First, the impacts of a fossil fuel shipping project or projects should be considered in the EIS because such projects are reasonably-foreseeable development alternatives and would have serious health and safety implications. Riverkeeper has provided extensive comments on the health and safety impacts of coal and crude oil shipping to other federal agencies, and Riverkeeper incorporates those comments by reference here.²⁵

Second, the project implicates serious safety concerns because industrial development at the Port’s property would likely entail increased train traffic in and around Columbia City. At present, there are three at-grade rail crossings connecting Highway 30 (the main artery through Columbia City) with the Port’s property and residential areas. An increase in frequency or duration of train traffic—even if those trains were not carrying hazardous fossil fuels—on the rail line in Columbia City could result in increased accident danger.

²³ See Note 2, *supra*.

²⁴ E.g. Julia Butler Hansen Refuge for the Columbian White-Tailed Deer, Lewis and Clark National Wildlife Refuge.

²⁵ See Exhibit 5; see also Exhibit 6, Columbia Riverkeeper, *Comment Letter to the U.S. Army Corps of Engineers Regarding Ambre Energy’s Morrow Pacific Coal Export Project* (May 3, 2012); see also Exhibit 7, Columbia Riverkeeper, *Letter to the U.S. Army Corps of Engineers Regarding Cumulative Impacts of Fossil Fuel Shipping Projects at Port Westward* (April 25, 2014).

Third, the potential for industrial air, drinking water, and soil pollution in close proximity to homes and residential areas poses safety risks that should be thoroughly evaluated in an EIS. Importantly, it appears that Columbia City and the nearby City of St. Helens both draw drinking water from two wells located essentially under the Port's proposed marine industrial park.²⁶ Industrial development in residential areas can lead to severe health impacts, and such concerns should be thoroughly addressed in an EIS.

iv. Industrial development is likely to adversely affect threatened and endangered species.

EDA should prepare an EIS because the project may seriously impact threatened or endangered species. CEQ's ninth 'intensity' factor favors the preparation of an EIS when a proposed project would substantially adversely affect an endangered or threatened species or its designated critical habitat. 40 C.F.R. § 1508.27(b)(9). The project has the potential to harm listed species of salmon and steelhead that rely on a healthy estuary environment for rearing and migration.

Multiple studies and publications have identified shallow-water and off-channel habitats in the Columbia River Estuary as vitally important for salmonid rearing and species recovery.²⁷ Development or destruction of riparian wetlands, dredging of shallow-water habitat, and the construction of over-water structures like piers and docks, has significantly degraded the Columbia River Estuary's ability to support juvenile salmonids.²⁸ Increased vessel traffic could lead to the wake-stranding, and death, of endangered juvenile salmonids, which frequent shallow, near-shore habitats in the estuary. Additionally, an oil spill or similar industrial accident in Columbia City or elsewhere in the estuary could devastate salmon habitat for years or decades. EIS is the proper analytical tool to discuss the risks to threatened salmon and steelhead posed industrial development in the estuary.

v. Industrial development may violate federal, state, or local environmental laws.

EDA should thoroughly analyze the proposed alternatives, and exercise close oversight of any on-site work, to ensure adherence to federal, state, and local environmental laws. CEQ's tenth 'intensity' factor favors the preparation of an EIS when there is a potential for the "violation of federal, state, or local law or requirements imposed for the protection of the environment." 40 C.F.R. § 1508.27(b)(10). In 2008, soil and other debris removed from the

²⁶ *Columbia City Source Water Protection Plan*, 12 (February 2014) (online at: <http://www.columbia-city.org/pdffiles/miscellaneous/02-05-14SWPPdraft.doc.pdf>).

²⁷ See Note 2, *supra*.

²⁸ *Id.*

former mill site on the Port's industrial property in Columbia City was disposed of illegally.²⁹ Local residents were concerned that the material might contain industrial pollution from the mill, and also that the dirt and wood waste from the Port's property might contaminate a stream near where it was dumped.³⁰ Now, prospective development at the site might entail the removal and disposal of creosote-soaked pilings and, foreseeably, the removal and disposal of more soil or even the industrial facilities used by of the existing tenant.³¹ The strong potential for this site to contain hazardous or industrial waste, and the necessity for strict adherence to hazardous waste handling and disposal laws, favors the preparation of an EIS.

vi. The impact of this project and related projects is cumulatively significant.

The Port's proposed project, if funded by EDA, would not occur in a vacuum. It would precipitate further development and federal actions within an ecosystem—the Columbia River Estuary—that is the target of escalating high-impact industrial development. As the Port's application materials clearly state, the Port is “actively looking to recruit industries” to turn the Columbia River Estuary into a “single industrial corridor.”³² Because it is reasonable to anticipate a cumulatively significant impact on the environment from this project and related industrial development projects, both proposed and existing, EDA must prepare an EIS. 40 C.F.R. § 1508.27(b)(7).

Even if EDA only considered the cumulative impacts that will occur at the Port's property in Columbia City, the environmental effects would be significant. “Significance cannot be avoided by . . . breaking [an action] down into small component parts.” 40 C.F.R. § 1508.27(b)(7). This federal grant for a “feasibility study” is merely the first link in a chain of federal actions and industrial development that could transform the 93 acres in question, and with it Columbia City and a significant amount of the Columbia River Estuary. After the completion of this project, the Port intends to use the information to apply for a federal TIGER grant to prepare engineering plans for the Port's preferred development scenario.³³ With those engineering plans, the Port could apply for a Clean Water Act § 404 permit to dredge vessel berths, and a Rivers and Harbors Act § 10 Permit to construct new docks and in-water structures. All of these federal actions will trigger NEPA, and each of them will move the Port incrementally closer to constructing an as-yet-unnamed industrial facility. Because that ultimate development will almost certainly have a cumulatively significant environmental effect, the Port cannot circumvent the need for an EIS by breaking its proposal “down into small component

²⁹ Exhibit 8, *Documents Related to Illegal Dumping of Fill Material Originating at the Columbia City Marine Industrial Park*, 3, 5 (2008).

³⁰ *Id.*

³¹ Email from Shannon FitzGerald to Michelle Branigan (October 2, 2014) (Explaining that the Port would “kick out the current tenants if [the Port] got that \$1 billion project.”).

³² Exhibit 9, Port of St. Helens, *Excerpt from Application to EDA for Technical Assistance Grant* (2013).

³³ Email from Scott Jensen to Frances Sakaguchi (May 2, 2014).

parts.” 40 C.F.R. § 1508.27(b)(7). Piecemealing environmental review of the industrial development in Columbia City into multiple, disjointed EAs will not give the public or EDA a clear picture of the environmental impacts.

Second, EDA must also consider the cumulative environmental impacts of proposed industrial development at Columbia City along with the impacts of industrial development occurring elsewhere in the Columbia River. *See* 40 C.F.R. § 1508.27(b)(7); *see also Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846 (9th Cir. 2005). Especially in light of the Port’s goal of turning the Columbia River Estuary into a “single industrial corridor,”³⁴ the Port’s other proposed and ongoing industrial projects related to fossil fuels shipping and this proposal to develop a Columbia City marine industrial park are “related” within the meaning of 40 C.F.R. § 1508.27(b)(7), and EDA must consider whether their cumulative effects may be significant. As EDA staff correctly identified, “Shipments out of Columbia City would need to be considered in the cumulative effects section which looks at the impacts of similar projects.”³⁵ Specifically, the fossil fuels shipping projects in which the Port is actively involved include Global Partners’ crude oil shipping facility, Ambre Energy’s proposed Morrow Pacific coal export proposal, and NW Innovation Works’ proposed methanol refinery and export terminal.³⁶ Because it is “it is reasonable to anticipate a cumulatively significant impact on the environment” from all of these related Port projects, 40 C.F.R. § 1508.27(b)(7) requires EDA to prepare an EIS.

e. EDA’s EIS must address all cumulative actions currently proposed by the Port and its tenants.

In addition to being cumulatively significant, the various proposals for industrialization and fossil fuel shipping on Port’ properties at Port Westward and Columbia City require one comprehensive EIS. Under NEPA’s regulations, when several proposed actions may have cumulatively significant impacts, those actions are termed “cumulative actions” and must all be addressed in the same EIS. 40 C.F.R. § 1508.25(a)(2); *Oregon Natural Resources Council v. Marsh*, 832 F.2d 1489, 1497 (9th Cir. 1987) (“CEQ guidelines require that ‘cumulative actions’ be considered together in a single EIS . . .”). Of the three industrial fossil fuels shipping projects described above, none have received a federal permit or had any NEPA document prepared analyzing their impacts.³⁷ Accordingly, those three projects and the Port’s current Columbia City project, are all ‘proposed actions’ within the meaning of 40 C.F.R. § 1508.25(a)(2). As explained in section (d)(vi) above, these proposals may have cumulatively significant environmental impacts, and they are therefore “cumulative actions” that must be analyzed together in a single, comprehensive EIS. 40 C.F.R. § 1508.25(a)(2); *see also Wetlands*

³⁴ *See* Exhibit 9.

³⁵ Email from Shannon FitzGerald to Frances Sakaguchi (September 16, 2014).

³⁶ For an explanation of the cumulative significance of these projects, *see* Exhibit 7.

³⁷ While Global Partners LP’s oil terminal is currently operating, Global is awaiting federal approval to expand an existing dock, owned by the Port of St. Helens, to accommodate Panamax-class oil tankers. *See* Exhibit 7.

Action Network v. United States Army Corps of Eng'rs, 222 F.3d 1105, 1118 (9th Cir. 2000) overruled on other grounds in *Wilderness Soc'y v. United States Forest Serv.*, 630 F.3d 1173, 1180–81 (9th Cir. 2011).

Conclusion

Riverkeeper is deeply concerned by the Port's vague proposal to initiate industrial development in Columbia City, and by the Port's vision for the Columbia River Estuary as an "industrial corridor." The consequences of dredging, in-water construction, increased vessel traffic, and the risk of spills or accidents involving fossil fuels all deserve a comprehensive and thorough EIS that examines the effects on the Columbia River Estuary and the people living there. Producing a series of disjointed EAs and CXs as the Port carries forward its development agenda in Columbia City will not provide a clear picture of the marine industrial park's impact, or any perspective on how this development and similar projects are affecting the Columbia River Estuary as a whole.

Happy Halloween,



Miles Johnson
Clean Water Attorney
Columbia Riverkeeper
(541) 272 – 0027
miles@columbiariverkeeper.org

cc via email:

Frances Sakaguchi, Economic Development Administration
Richard Manwaring, Economic Development Administration
Michelle Branigan, Economic Development Administration
Julie Carter, Columbia River Inter-Tribal Fish Commission
Audi Huber, Confederated Tribes of the Umatilla Indian Reservation
Elmer Ward, Confederated Tribes of Warm Springs
Brady Kent, Confederated Tribes and Bands of the Yakama Nation
Mike Lopez, Nez Perce Tribe

Enclosures:

- Exhibit 1: NMFS, *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (2011).
- Exhibit 2: Fresh *et al.*, *NOAA Technical Memorandum NMFS-NWFSC-69: Role of the Estuary in the Recovery of Columbia River Basin Salmon and Steelhead* (2005).
- Exhibit 3: Port of St. Helens, *Draft Scope of Work for Columbia City Industrial Park Maritime Feasibility Study* (2014).
- Exhibit 4: EDA, *Draft EA/FONSI for the Columbia City Industrial Park Maritime Feasibility Study* (2014).
- Exhibit 5: Columbia Riverkeeper, *Comment Letter to the U.S. Army Corps of Engineers Regarding Crude Oil Shipping at Port Westward* (2013).
- Exhibit 6: Columbia Riverkeeper, *Comment Letter to the U.S. Army Corps of Engineers Regarding Ambre Energy's Morrow Pacific Coal Export Project* (2012).
- Exhibit 7: Columbia Riverkeeper, *Letter to the U.S. Army Corps of Engineers Regarding Cumulative Impacts of Fossil Fuel Shipping Projects at Port Westward* (2014).
- Exhibit 8, *Documents Related to Illegal Dumping of Soil and Lumber Yard Debris Originating at the Columbia City Marine Industrial Park* (2008).
- Exhibit 9: Port of St. Helens, *Excerpt from Application to EDA for Technical Assistance Grant* (2013).