



August 31, 2016

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

*Sent via U.S. mail and e-mail*

**RE: Comments on the Port of Kalama's Application No. SL 16-0975 for Shoreline Substantial Development and Shoreline Conditional Use Permits and Critical Areas and Floodplain Management Permits, and Request for Notification.**

Dear Mr. Melin,

Columbia Riverkeeper, Center for Biological Diversity, Save our Wild Salmon, and Oregon Physicians for Social Responsibility (collectively, "Commenters") submit these comments to the Cowlitz County Department of Building and Planning ("County") regarding Port of Kalama's ("Port") Application No. SL 16-0975 for Shoreline Substantial Development and Shoreline Conditional Use Permits, and the Port's applications for Critical Areas and Floodplain Management Permits, for the Kalama Methanol Refinery and Marine Export Terminal.

Commenters represent tens of thousands of members and supporters working to protect and restore Washington's environment and the Columbia River. Commenters' members and supporters work, live, and recreate in and along the Columbia River and the surrounding landscape near Kalama, the location of Northwest Innovation Works LLC's ("NWIW") proposed methanol refinery and export terminal. Commenters and their members are deeply concerned by plans to construct a 100-acre methanol refinery, export terminal, pipeline, and associated facilities in and along the lower Columbia River. The Port requires County land use and shoreline permits for the activities described in the Port's application materials in order to construct and operate its project. The project would undermine local and regional efforts to protect water quality, recover endangered and threatened species, and support vibrant fishing communities. NWIW's proposed methanol refinery is the latest in a disturbing trend of fossil fuel export terminals that would industrialize and pollute the lower Columbia River. For the

reasons explained below, the County should deny the Port's requested land use and shoreline permit applications.

Commenters hereby requests notice of all meetings and hearings to be held regarding any of these land use or shoreline applications. Commenters also hereby requests copies of all decisions made by the County with respect to these applications. Such notices and documents should be sent to by email to [miles@columbiariverkeeper.org](mailto:miles@columbiariverkeeper.org) and by U.S. mail to Columbia Riverkeeper, Attn: Miles Johnson; 111 Third Street; Hood River, OR 97031.

## **I. The County lacks jurisdiction to issue the requested permits.**

The County may not issue the requested shoreline and land use permits for the Kalama methanol refinery and export terminal because the refinery is an energy facility within the meaning of the Energy Facility Site Location Act, RCW 80.50 *et seq.*, and rightfully subject to the jurisdiction of the Washington Energy Facilities Site Evaluation Council. Specifically, the proposed Kalama methanol refinery and export terminal is an "energy plant[ . . . ]" RCW 80.50.020(12). NWIW's proposed methanol refinery is an energy plant because it is "capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products . . ." RCW 80.50.020(12)(f). Natural gas is a form of petroleum that, under NWIW's proposal, would be refined into methanol.<sup>1</sup> The methanol refinery would receive more than 100,000 barrels per day of methane, the primary component in natural gas.<sup>2</sup> Because the methanol refinery is an energy facility, the County may not issue shorelines and land use permits for it. *See* WAC 463-14-050 (preempting "all matters relating to energy facility sites" by non-EFSEC agencies and bodies).

## **II. The Port's project does not meet the review criteria applicable to all shoreline developments.**

The County may not authorize the Port undertake the use or development described in the Port's shorelines permits applications and narrative because the proposed development would not be consistent with the policy and provisions of the Shorelines Management Act ("SMA") or Cowlitz County's Shorelines Master Program ("SMP"). *See* WAC 173-27-140(1).

### **a. The Port's project is not consistent with the policies of the Shorelines Management Act.**

As explained below, the Port's project would not be consistent with the policies of the Shorelines Management Act expressed in RCW 90.58.020.

- i. The Port's project would not protect the statewide interest over local interest.*

The Port's project would elevate local business interests over the statewide interest in preserving Washington's shorelines and waterways for public use. *See* RCW 90.58.020(1).

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<sup>1</sup> Exhibit 1, *Email from EFSEC Chair Bill Lynch to Keith Philips* (November 5, 2013).

<sup>2</sup> Exhibit 2, *Columbia Riverkeeper, Petition to EFSEC for Declaratory Order*, p.7 (June 23, 2016).

Instead of explaining how the project would satisfy this—first and most important—SMA policy, the Port circularly asserts that “Statewide and local interests are recognized and protected through compliance with the local SMP and the statewide SMA.”<sup>3</sup> First, the Port has not met its burden to show that its project is consistent with the SMA’s first enunciated policy because the Port’s answer puts statewide and local interests on the same footing, ignoring the legislature’s directive that statewide interests take precedence “over” local interests. RCW 90.58.020(1). Second, the Port has not met its burden to show that its project is consistent with the SMA’s first enunciated policy because the Port inappropriately attempts to substitute compliance with the other SMA policies and the SMP for compliance with the SMP’s first enunciated policy. The Port’s treatment of RCW 90.58.020(1) robs the SMA’s first, and most important, enunciated policy of any independent significance, a result the legislature almost certainly did not intend.

The Port’s application materials do not recognize, and the project would not protect, “the statewide interest over local interest.” RCW 90.58.020(1). The project would actually contravene the first enumerated policy by elevating local interest over the statewide interest in healthy shorelines and ecosystems.

The project would degrade critical migration and rearing habitat for juvenile salmonids,<sup>4</sup> which provide commercial, subsistence, and recreational fishing opportunities throughout the length of the Columbia River in Washington and in Washington’s costal ocean and Puget Sound. NWIW’s proposal jeopardizes the lower Columbia River and estuary, an area at the center of a regional and national effort to restore both vibrant fisheries and endangered and threatened species. The Columbia River estuary is a federally-designated Estuary of National Significance under the Clean Water Act’s National Estuary Program.<sup>5</sup> The U.S. Environmental Protection Agency has designated the Columbia River as one of seven Priority Large Aquatic Ecosystems.<sup>6</sup> The federal government, and public and private entities, have invested billions of dollars to restore endangered and threatened salmon in the Columbia River Basin.<sup>7</sup>

NWIW’s project will degrade an ecosystem that is a local and regional treasure, a national priority for watershed health and salmon recovery. NMFS has described the ecological value of the Columbia River estuary, stating:

“The lower Columbia River estuary provides vital habitat for anadromous salmonids throughout the Columbia River basin, and is of particular importance from a threatened and endangered species recovery perspective. The estuary is

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<sup>3</sup> Port of Kalama, *Shoreline Compliance Narrative*, p.14 (February, 2016).

<sup>4</sup> See Exhibit 3, Columbia Riverkeeper, *et al.*, *Comments on the Draft Environmental Impact Statement for the Kalama Methanol Refinery and Export Terminal*, p.12.

<sup>5</sup> U.S. Environmental Protection Agency (“EPA”), *National Estuary Program in Region 10* (online at: <http://yosemite.epa.gov/R10/ECOCOMM.NSF/6da048b9966d22518825662d00729a35/c7a2ab5e252f309688256fb600779ea6!OpenDocument>).

<sup>6</sup> EPA, *Columbia River Basin: State of the River Report for Toxics* (Jan. 2009) (online at: [http://www2.epa.gov/sites/production/files/documents/columbia\\_state\\_of\\_the\\_river\\_report\\_jan2009.pdf](http://www2.epa.gov/sites/production/files/documents/columbia_state_of_the_river_report_jan2009.pdf).)

<sup>7</sup> See Exhibit 4, Thom, R. *et al.*, *Columbia River Estuary Ecosystem Restoration Program, 2012 Synthesis Memorandum* (2013).

designated as critical habitat for 17 species of ESA-listed fish and EFH [Essential Fish Habitat] for Pacific salmon.”

The federal government has funded—and will continue to fund for the foreseeable future—a significant portion of the salmon restoration efforts in the Columbia River estuary. NWIW’s project would compromise this investment in order to ship fracked North American natural gas overseas as methanol.

The lower Columbia River and estuary provides vital habitat for salmon originating throughout the Columbia River Basin, and is particularly important for threatened and endangered species recovery. There are numerous species in the area that would be affected by this Project.<sup>8</sup> Species protected under the Endangered Species Act include populations of salmon, bull trout, lamprey, eulachon, and green sturgeon.

The estuary is designated as critical habitat for 17 species of ESA-listed fish and Essential Fish Habitat for Pacific salmon. A growing body of evidence, much of it quite recent, explains the important role that shallow water estuarine habitats in the lower Columbia River estuary play in stabilizing production of Columbia River salmon and steelhead.<sup>9</sup> Estuarine habitats provide high growth opportunities for out-migrating juvenile salmon and also provide protection from predators.

The lower Columbia River and estuary supports vibrant traditions of subsistence, commercial, and sport fishing for salmon, sturgeon, and other fish.<sup>10</sup> The Buoy 10 fishery, spanning the mouth of the Columbia River, is one of the Pacific Northwest’s most renowned fisheries. Throughout the lower Columbia, an estimated 507,080 sport fishing trips for salmon and steelhead trips take place each year.<sup>11</sup> Despite significant declines in the salmon fishery, commercial fishing in the Columbia River estuary remains an important local cultural and economic practice.

The project would increase Washington’s gas consumption by roughly one third, and result in a significant increase in greenhouse gas emissions in Washington State, which would likely be additive to (rather than in replacement of, as asserted by NWIW) greenhouse gas

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<sup>8</sup> See Port of Kalama, *Draft Environmental Impact Statement for the Kalama Methanol Manufacturing and Marine Export Facility* (hereinafter, “Kalama Methanol DEIS”), p.6-21.

<sup>9</sup> Exhibit 5, Bottom *et al.*, *Estuarine habitat and juvenile salmon: current and historical linkages in the lower Columbia River and estuary* (2011); Exhibit 6, Roegner *et al.*, *Distribution, size, and origin of juvenile chinook salmon in shallow-water habitats of the lower Columbia River and estuary, 2002–2007*, 4 *Marine and Coastal Fisheries: Dynamics, Management, and Ecosystem Science* 450–472 (2012); Exhibit 7, Weitkamp *et al.*, *Seasonal and interannual variation in juvenile salmonids and associated fish assemblage in open waters of the lower Columbia River estuary*, 10 *Fishery Bulletin* 4 (2012).

<sup>10</sup> Oregon Department of Fish and Wildlife and Washington Department of Fish and Wildlife, *2014 Joint Staff Report: Stock Status and Fisheries for Spring Chinook, Summer Chinook, Sockeye, Steelhead, and Other Species, and Miscellaneous Regulations* (Jan. 22, 2014).

<sup>11</sup> Washington Energy Facility Site Evaluation Council, *Draft Environmental Impact Statement for the Vancouver Energy Distribution Terminal*, pp.3-12–17 (2015).

emissions from foreign methanol production.<sup>12</sup> Climate change and increased carbon pollution impact Washington's shorelines through ocean acidification and changes in water level, abundance, and temperature.

The project would also ultimately require or precipitate the construction of a new natural gas pipeline or pipelines along the I-5 corridor in Washington, which would cross and impact many Washington shorelines.<sup>13</sup>

The Port's application does not "recognize" any of these impacts to the statewide interest, much less explain how the project elevates those concerns "over" local economic concerns. RCW 90.58.020(1).

ii. *The Port's project would not protect the resources and ecology of the shoreline.*

The Port's project would not protect the resources and ecology of the shoreline. *See* RCW 90.58.020(4). The project vicinity is designated critical habitat for several species of federally threatened or endangered species and used by many other species of conservation concern.<sup>14</sup> The Port's application does not meaningfully address the impacts to these species and how the project would impact their use of habitat at the project site. Instead, the Port's application explains at length the mitigation measures<sup>15</sup> the Port proposes to employ to lessen the impacts on these species and their habitats. Nevertheless, the Port's project would have a significant negative impact on aquatic and near-shore habitat and aquatic life at and downstream from the project site,<sup>16</sup> and the project cannot meaningfully be said to protect the resources and ecology of the shoreline as contemplated in RCW 90.58.020(4).

iii. *The Port's project may not result in long term over short term benefit.*

The Port's project may not result in long term over short term benefits. *See* RCW 90.58.020(3). The Port's application with regard to this MSA policy is, again, insufficient because the Port circularly relies on compliance with *other* SMA and SMP sections to justify the project's compliance with the policy embodied in RCW 90.58.020(3). The Port never distinguishes the short and long term benefits of this project, much less compares the two in order to give precedence to the long term benefits.

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<sup>12</sup> Exhibit 8, Sightline Institute, *Examining Methanol's Green Claims in the Northwest* (June 23, 2016).

<sup>13</sup> Exhibit 9, Columbia Riverkeeper, *New documents show that proposed Kalama methanol refinery could drive pipeline expansion in the Pacific Northwest* (August, 2016).

<sup>14</sup> *Shoreline Compliance Narrative*, p.15.

<sup>15</sup> As explained in Section V, below, the proposed mitigation measures are insufficient because they do not avoid impacts to the maximum extent practicable.

<sup>16</sup> *See* Exhibit 3, pp.23–27; *see also* Exhibit 10, Columbia Riverkeeper, *Comments on U.S. Army Corps of Engineers Permits for the Methanol Refinery, Export Terminal, and Pipeline*, pp.12–17.

Regarding the substance of this policy, it is quite possible that there will be no long term benefits<sup>17</sup> from the proposed development. The Port's application does not acknowledge that Northwest Innovation Work's ("NWIW") project may not be economically feasible under current or future economic conditions. The project was first proposed in December 2013, when methanol prices were twice current levels.<sup>18</sup> Additionally, the price of crude oil—a competing feed-stock for olefin production—is cheaper than NWIW anticipated when it first proposed the project.<sup>19</sup> Accordingly, there is substantial uncertainty about this project's profitability. As with past coal, oil, and ethanol export terminals on the Columbia, this could result in the construction of a very substantial industrial facility that sits idle in a Washington shoreline of statewide significance. Without a meaningful explanation about the economic viability of the project, upon which any purported long term benefit necessarily depends, the Port's application does not demonstrate compliance with RCW 90.58.020(3).

iv. *The Port's project will not increase public access or recreational opportunities.*

The Port's project will not increase public access to publicly owned shorelines or recreational opportunities for the public. *See* RCW 90.58.020(5), (6). Paving the end of Tradewinds Road and adding a paved parking area will not meaningfully "increase" public access to project-area shorelines or "increase" the existing public recreation opportunities on those shorelines. *Id.* The Port's application does not indicate that the current road and parking area, though unpaved, present barriers to shoreline access or that removing them would change in any way the recreational opportunities available at or near the project site.<sup>20</sup> The public is currently able to access, park, and recreate at this location. On the balance, installing a paved two-lane road, a paved parking area, and a 100-acre petrochemical refinery complex would probably do more harm than good for recreation at this site. As Cowlitz County's SMP explains, "[o]nce shorelines become occupied with permanent urban development, the number and quality of recreational experiences available to the public often become severely limited."<sup>21</sup>

v. *The Port's project is inconsistent with the SMA's policy of pollution control.*

Although the Port's application does not address this SMA policy, RCW 90.58.020 clearly states that "uses shall be preferred which are consistent with control of pollution . . . ."

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<sup>17</sup> The Port's take-or-pay wharfage agreement with NWIW does not change this calculus; one public agency's bottom line is not an appropriate measure of a long term benefit to Washington.

<sup>18</sup> Methanex, *Monthly Average Regional Posted Contract Price History from January 2001 to September 2016* ([https://www.methanex.com/sites/default/files/methanol-price/MxAvgPrice\\_Aug%2030%2C%202016.pdf](https://www.methanex.com/sites/default/files/methanol-price/MxAvgPrice_Aug%2030%2C%202016.pdf)).

<sup>19</sup> Exhibit 11, Pan-Pacific Energy Corp, *Port of Kalama Methanol Project Business Plan*, p.16 (December 2013); *see also* Exhibit 12, Shanghai Bi Ke Clean Energy Technology Company, Ltd. (d.b.a. "Clean Energy Commercialization Company"), *[Methanol-to-olefins] industry shall face challenge under low-oil price environment* (November 8, 2015) (citing China Chemical Reporter, Vol. 1276 (September 3, 2015)).

<sup>20</sup> *See Shoreline Compliance Narrative*, p.17 ("Public recreation in the project area consists of low-intensity uses of the unofficial trail system and the sandy beaches, fishing, and visual access, all of which will continue with the project.")

<sup>21</sup> *Cowlitz County Shoreline Master Program*, p.12.

The proposed methanol refinery and associated uses are not “consistent with control of pollution” within the meaning of RCW 90.58.020. If the facility were constructed and put into operation, levels of small particulate matter air pollution in the terminal area would be over four times above the level that EPA determined increases health risks under long-term exposure.<sup>22</sup> And levels of small particulate matter air pollution near the terminal would be more than twice the World Health Organization’s guideline for human exposure on an annual average basis, and nearly exceed the World Health Organization’s guideline for human exposure on a daily basis.<sup>23</sup> Accordingly, the use proposed by the Port and NWIW is not “preferred” by the policies of the SMA.

- vi. *Parts of the Port’s project are inconsistent with the SMA’s policy of only allowing developments in the shoreline areas that are actually dependent on locating in the shoreline.*

The legislature clearly expressed its preference for only allowing developments in shorelines that actually need to be located in the shoreline area. RCW 90.58.020 (“uses shall be preferred which are . . . are unique to or dependent upon use of the state’s shoreline”) (“Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for . . . industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state . . .”). As explained in Sections III(a) and IV(a), below, aspects of the Port’s proposal referred to as “water-related” uses<sup>24</sup> are in no way dependent on being located in the shorelines of the state. Accordingly, the Port’s proposal violates the SMA’s policy of limiting development in the shorelines to uses that truly need to be within 200 feet of the ordinary high-water mark.

**b. The Port’s project is not consistent with the objectives, policies, and goals of Cowlitz County’s Shoreline Master Program.**

- i. *SMP Overall Goals*

The Port’s proposal does not comply with most of the SMP’s Overall Goals, which “reflect[] the aspirations of the citizens of Cowlitz County.”<sup>25</sup>

The Port’s proposal does not comply with the SMP’s Overall Goal 1, because the Port’s project will not assure “orderly, economic growth in the shorelines of the county.” As explained in subsection (a)(iii), above, the Port and NWIW are gambling on the highly unpredictable future price of not just one, but at least two, fossil fuels: crude oil and natural gas. Other Columbia River ports have seen market forces idle infrastructure and projects built to handle or export

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<sup>22</sup> See DEIS, p.4-8 (explaining that EPA considers 5 ug/m<sup>3</sup> to be the long-term risk concentration for PM 2.5 diesel particulate matter); see also DEIS, Appendix D, Table 11 (predicting that project operations under the ULE alternative would result in PM 2.5 levels of 23 ug/m<sup>3</sup> near the project site).

<sup>23</sup> World Health Organization, *Ambient (outdoor) air quality and health fact sheet* (March 2014) (online at: <http://www.who.int/mediacentre/factsheets/fs313/en/#>).

<sup>24</sup> See *Shorelines Compliance Narrative*, p.5.

<sup>25</sup> *Cowlitz County Shoreline Master Program*, p.1.

fossil fuels.<sup>26</sup> NWIW already badly missed its prediction on crude oil price, casting into doubt the profitability and usefulness of this entire project. Accordingly, the Port’s proposal does not “[a]ssure” economic growth, and NWIW’s risky bid to arbitrage the international petrochemical market is hardly the kind of “orderly” economic growth envisioned by SMP Overall Goal 1.

The Port’s proposal does not comply with the SMP’s Overall Goals 2 and 4 because the Port’s project would not “[m]aintain a high quality environment” or “[p]reserve and protect those fragile and natural resources, and culturally significant features along the shorelines of Cowlitz County.”<sup>27</sup> As explained in subsections (a)(i) and (a)(ii), above, construction and operating of a 100-acre methanol refinery and export terminal in the lower Columbia River incompatible with maintaining a high quality environment or protecting and preserving Columbia River salmon runs, which are among the most important—and most fragile—of the natural and culturally significant resources along the County’s shorelines.

Finally, the Port’s proposal does not comply with the SMP’s Overall Goal 5 because the Port’s project would not provide “safe . . . access for the public in the shorelines of Cowlitz County.” As explained in subsection (a)(v), above, if the Port’s project commences operation, small particulate matter air pollution levels at the refinery and the adjacent recreation area would reach potentially hazardous levels. Accordingly, the project would jeopardize “safe” recreational access along the public shoreline adjacent to the project area.

*ii. SMP Goals, Policies, and Objectives*

The Port’s proposed project would not comply with several of the SMP’s enumerated goals, policies, and objectives.

The Port’s proposed project would not comply with the SMP’s first conservation objective: “Preserve the scenic and aesthetic qualities of shorelines and vistas.”<sup>28</sup> Contrary to this objective, the refinery and terminal would dominate views of the North Port site, substantially changing the visual character of this area. For instance, the 245-foot flare stack required to dispose of flammable gases would be one of the tallest structures in the entire county, looming 100 feet taller than Kalama’s iconic totem pole. In addition to buildings and smokestacks, vapor plumes from the refinery’s cooling towers could extend thousands of meters into the air.<sup>29</sup> Vapor plumes are an eyesore, and they can cause fogging and icing in nearby areas.<sup>30</sup> Depending on the technology that NWIW ultimately selects, the vapor plume could at times be over 13,000 feet high and up to 2,600 feet wide. The refinery, export dock, flare stack, and vapor plume would

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<sup>26</sup> See, e.g., Oregonian, *Oregon oil train terminal owner’s stock crashes amid major layoffs* (January 28, 2016) (online at: [http://www.oregonlive.com/environment/index.ssf/2016/01/oregon\\_oil\\_train\\_terminal\\_owne.html](http://www.oregonlive.com/environment/index.ssf/2016/01/oregon_oil_train_terminal_owne.html)).

<sup>27</sup> *Cowlitz County Shoreline Master Program*, p.1.

<sup>28</sup> *Id.* at 4; see also SMP Economic Development Policy for Ports and Water-Related Industry 5(f) (acknowledging careful planning must be undertaken to reduce the adverse impact of industrial docks on “aesthetics, and shoreline resources”); see also SMP General Shoreline Use Objective 3 (directing that shoreline uses should be designed to “retain or improve the physical and aesthetic quality of the natural environment”).

<sup>29</sup> DEIS, Appendix D, pp.52–53.

<sup>30</sup> DEIS, p.4-14.



not seriously degrade, rather than preserve, “the scenic and aesthetic qualities of shorelines and vistas”<sup>31</sup> near the project.

The Port’s proposed project would not comply with the SMP’s economic development goal: “to encourage the establishment and development of industrial . . . activities in Cowlitz County **on shorelines** that require the land-water interface . . . .”<sup>32</sup> As explained in more detail in in Sections III(a) and IV(a), below, much of the construction that the Port is proposing “on shorelines”—such as product storage tanks, stormwater infiltration facilities, and refinery components—does not actually require the land-water water interface. While a certain aspects of the project—such as a dock and piping to convey finished product to the dock—can reasonable be said to require the land-water interface, the methanol refinery facility does not need to be, and largely is not, located “on shorelines.”<sup>33</sup>

The Port’s proposed project would not comply with the SMP’s first economic development objective, and several similar policies and objectives, directing that: “Those economic developments proposed on the shorelines must effectively operate without reducing the environmental quality of the surrounding and adjacent shoreline area, or the quality of life of county residents.”<sup>34</sup> As explained in subsections (a)(i) and (a)(ii), above, the Port’s proposed development would “reduc[e] the environmental quality of the surrounding and adjacent shoreline area”<sup>35</sup> by negatively impacting habitat for Columbia River salmon, steelhead, and other fish species. And as explained in subsection (a)(v) and elsewhere in this subsection, above, the Port’s proposed development would reduce “the quality of life of county residents”<sup>36</sup> by, among other things, increasing harmful air pollution and degrading the scenic and aesthetic values of the County’s shorelines near the project site.

The Port’s proposed project would not comply with the SMP’s economic development policy 5(e), requiring that: “Prior to allocating shorelines for port uses, local government shall consider statewide needs and coordinate planning with other jurisdictions to avoid wasteful duplication of port services within port-service regions.”<sup>37</sup> NWIW has proposed or considered several similar methanol refineries in the Pacific Northwest, including at Kalama, Tacoma, Longview, Vancouver, Camas, and Port Westward, Oregon.<sup>38</sup> Neither the Port of Kalama nor the County has apparently coordinated with other Ports of port-servicing regions in the Northwest in order to avoid the wasteful duplication of port services, ranging from the physical obligation of valuable port property to the costly duplication of permitting and review services for essentially the same proposals.

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<sup>31</sup> *Cowlitz County Shoreline Master Program*, p.4.

<sup>32</sup> *Cowlitz County Shoreline Master Program*, p.6 (emphasis added).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 8.

<sup>38</sup> See <http://nwinnovationworks.com/>; see also Sightline Institute, *Tacoma’s Methanol Refinery by the Numbers* (April 14, 2016) (<http://www.sightline.org/2016/04/14/tacomas-methanol-refinery-by-the-numbers/>).

The Port's proposed project would not comply with the SMP's public access and general goals of assuring "safe and reasonable access" to public shorelines,<sup>39</sup> and bettering "the life style of the citizens of Cowlitz County."<sup>40</sup> As explained elsewhere in this subsection, and in subsection (a)(v), above, the resulting air pollution levels and degradation of scenic and aesthetic values at the project site are not compatible with "safe and reasonable" access to the public shoreline near the project site and would not better the lifestyle of Cowlitz County residents.

Finally, the Port's proposed project would not comply with the SMP's general shoreline use objectives and policies, which encourage combining uses of developments whenever possible to avoid unnecessary or duplicative development in the project area. Specifically, general shoreline use objective 3 encourages "multiplicities of use" for shoreline developments.<sup>41</sup> A general shoreline use policy 4(c) encourages the "cooperative use of piers and docks."<sup>42</sup> A fully-operational deep-draft dock (hereinafter, "the Steelscape dock") exists a few hundred feet directly upstream from the Port's proposed new methanol export dock. Nevertheless, the Port's application materials provide no assertion, let alone evidence, that the Steelscape dock lacks the functionality or capacity to handle NWIW's proposed 3 to 6 deep-draft vessels calls per month, or that retrofitting the Steelscape dock to accommodate NWIW's uses would be less environmentally harmful than constructing and dredging a new dock in the Columbia River.<sup>43</sup> NWIW's desire for a superior right to berth and load at the proposed dock, and the Port's desire to construct a dock in the hope of attracting as-yet-unidentified new business in addition to NWIW's project, are not sufficient justifications to override the SMP's strong preference for consolidating uses and sharing developments in the shoreline to minimize the need for new construction. The County must deny the Port's applications because the Port's project ignores the SMP's emphasis on combining uses to limit new development in shorelines, and the Port has not met its burden to show that the existing Steelscape dock could not, with reasonable modifications, support NWIW's proposed project.

### **III. The County may not grant a Shoreline Substantial Development Permit for the Port's requested uses.**

The County may not approve the Port's requested Shoreline Substantial Development Permit ("SSDP") because, as explained in Section II, above, the proposed development would not be consistent with the policy and provisions of the SMA, its implementing regulations, or Cowlitz County's SMP. *See* WAC 173-27-150(1). Additionally, a SSDP may not be issued for the Port's project for the following reasons:

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<sup>39</sup> *Cowlitz County Shoreline Master Program*, p.17.

<sup>40</sup> *Id.* at 18.

<sup>41</sup> *Id.* at 18.

<sup>42</sup> *Id.* at 20.

<sup>43</sup> *See also* Exhibit 10, pp.10-11.

**a. The County may not issue an SSDP for non-water-related industrial uses in shoreline Urban Districts.**

Most of the proposed developments that the Port’s application calls “water-related industrial” do not actually require siting in shorelands, and are therefore not permitted in the Urban District. Accordingly, the County may not issue an SSDP for these uses. *See* WAC 173-27-150(1)(c). Water-related industrial uses are permitted uses in Urban Districts;<sup>44</sup> non-water-related industrial uses are, by implication, prohibited. This rule effectuates the SMA’s policy that priority for industrial development in shorelands, “in those limited instances when authorized, shall be given” to developments “which are particularly dependent on their location on or use of the shorelines of the state . . . .” RCW 90.58.020. Industrial uses and, importantly, *portions* of industrial uses are only properly considered water-related when their “economic viability is dependent upon a waterfront location” because of a need to ship material by water or withdraw large quantities of water. WAC 173-26-020(43)(a).<sup>45</sup> The Port has proposed siting, in an Urban District of the County’s shorelands, industrial uses including but not limited to the “Pipe rack,” “Methanol pump pad/ship scrubber,” “Site process water pump station/collector well,” “Security guard shack,” “Security guard shack parking,” “Air separation unit,” “Stormwater weir and outfall removal,” “Electrical Substation,” and “Security fencing.”<sup>46</sup> To justify siting these industrial uses in Urban shorelines, the Port claims that “Methanol production is . . . a water-related use since it needs to be located in immediate proximity to the dock export facility . . . .”<sup>47</sup> This is simply not true. There is no logical reason that these uses must be built in the shorelines; they could easily be moved a matter of feet to the east, into the upland portion of the site without compromising the viability of the Port’s project. In fact, several proposals to liquefy and export natural gas—a process conceptually similar the NWIW’s methanol export proposals—have concluded that processing facilities do not need to be located in wetland or shoreline areas, and that the only facilities that require water-based siting are product supply pipelines and shipping terminals. For instance, the Freeport, Texas, LNG project, which is currently under construction, separates its natural gas pretreatment facilities from the export terminal with a five-mile pipeline.<sup>48</sup> The Cove Point, Maryland, LNG project separates marine transfer facilities from gas storage and liquefaction facilities by more a mile, connected by a pipeline that transports natural gas in liquid form.<sup>49</sup> And a Land Use Hearings Officer recently concluded that LNG liquefaction and storage facilities proposed as part of an LNG export terminal in Warrenton, Oregon, did not need to be sited in wetlands along the Columbia River and could instead be sited in uplands and connected to the terminal via pipeline.<sup>50</sup> If those upland LNG facilities can be connected to their

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<sup>44</sup> *Cowlitz County Shoreline Master Program*, p.49.

<sup>45</sup> WAC 173-26-020(43)(b) also cannot be used to justify calling portions of the methanol refinery water-related uses because the refinery and dock are both operated by NWIW and therefore no “customer” exists within the meaning of this rule, and also because moving the industrial facilities described in the Port’s application a few feet east into the uplands would not make transloading methanol significantly “less expensive and/or more convenient.”

<sup>46</sup> *Shoreline Compliance Narrative*, p.5.

<sup>47</sup> *Id.* at 8.

<sup>48</sup> *See* Freeport LNG Development, 148 FERC ¶ 61,076, p.22 (July 30, 2014).

<sup>49</sup> *See* FERC, *Environmental Assessment for the Cove Point Liquefaction Project*, Docket CP13-113, p.2 (May 2014) (available online at: <http://elibrary.ferc.gov/IDMWS/common/OpenNat.asp?fileID=13546236>).

<sup>50</sup> In the matter of Oregon LNG, *Final Order of the Lands Use Hearings Officer for the City of Warrenton*, CUP14-3, VAR 14-1, CUP14-4, & VAR 14-2, at pp.30–31 (Mar. 6, 2016).

terminals by miles of pipeline, there is no logical reason that most of the industrial uses described in the Port’s SSDP application must be located within 200 feet of the ordinary high water mark. Furthermore, WAC 173-26-020(43)’s specific reference to “portion[s] of a use” makes illegal the Port’s attempt to lump all portions of “methanol production” into the “water-related” classification simply because one portion of that use—*i.e.* the methanol pipeline to the dock—is arguably water-related. Most of the Port’s proposed industrial uses, or portions of uses, are not permitted in the Urban District because they are not water-related. Accordingly, the County may not issue an SSDP for these uses. *See* WAC 173-27-150(1)(c).

**b. The SMP expressly prohibits dredging in Conservancy Districts.**

The Port disingenuously asserts that dredging is a permitted use in the Conservancy District.<sup>51</sup> What the SMP *actually* says about dredging in Conservancy Districts is:

“Dredging operations or landfills shall be **prohibited on conservancy shorelines**, except where they do not substantially change the character of that district along navigable waters deemed necessary for adequate navigation as determined by U. S. Army Corps of Engineers, and where they are a necessary accessory to a project which is clearly dependent on a location near or adjacent to a body of water,” and where they meet most of the dredging use regulations for Rural Districts.<sup>52</sup>

Accordingly, dredging in a conservancy district is a prohibited, rather than a permitted, use that cannot be approved by the County in a SSDP without the very specific factual showing contemplated in the SMP. Because the Port attempted to hide the ball with regard to the prohibited nature of dredging in Conservancy Districts, the Port made no showing with respect to the above provision of the SMP and therefore failed to meet its burden to provide information necessary to support its SSDP application. Moreover, WAC 173-27-160(4) expressly bars the County from approving the Port’s proposed prohibited use under a Shoreline Conditional Use Permit.

**IV. The County may not grant a Conditional Use Permit for the Port’s requested uses.**

The County may not approve the Port’s requested Shoreline Conditional Use Permit (“SCUP”) for industrial uses proposed in the Conservancy District and for dredging proposed in the Urban District because, as explained in Section II, above, these proposed uses would not be consistent with the policies of the SMA or Cowlitz County’s SMP. *See* WAC 173-27-160(1)(a). Additionally, a SCUP may not be issued for the Port’s project for the following reasons:

**a. The County may not issue a SCUP for non-water-related industrial uses in a shoreline Conservancy District.**

The industrial uses proposed in the Conservancy District are not actually “water-related,” and are therefore not conditional uses in the Conservancy District. Accordingly, the County may

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<sup>51</sup> *Shoreline Compliance Narrative*, Table 1; pp.5–6.

<sup>52</sup> *Cowlitz County Shoreline Master Program*, p.44 (emphasis added).

not issue a SCUP for those uses. *See* WAC 173-27-160(1). Water-related industrial uses are conditional uses in Conservancy shorelines;<sup>53</sup> non-water-related industrial uses are, by implication, prohibited. This rule effectuates the SMA’s policy that priority for industrial development in shorelands, “in those limited instances when authorized, shall be given” to developments “which are particularly dependent on their location on or use of the shorelines of the state . . . .” RCW 90.58.020. Industrial uses and portions of industrial uses are only properly considered water-related when their “economic viability is dependent upon a waterfront location” because of a need to ship material by water or withdraw large quantities of water. WAC 173-26-020(43)(a).<sup>54</sup> The Port has proposed siting, in Conservancy shorelines, industrial uses including but not limited to: “Bulk product storage tanks” and associated containment berm; “Fire suppression water storage;” “Infiltration pond;” “First flush pond;” “Foam building;” “Security fencing;” and “Site grading and excavation.”<sup>55</sup> To justify siting these industrial uses in Conservancy shoreline, the Port claims that these uses “are integral to the operation and support of a methanol manufacturing facility, are therefore considered to be water-related industrial uses.”<sup>56</sup> This reasoning does not satisfy WAC 173-26-020(43)’s standard for “water-related” uses, because the Port could locate these methanol storage and support facilities entirely on uplands without compromising the project’s viability. Simply put, these portions of the use do not need to be built within 200 feet of the high water mark, in Conservancy shoreline. As explained in Section III(a), above, similar bulk chemical export facilities often locate the processing portions of their operations wholly in upland areas. Furthermore, WAC 173-26-020(43)’s specific reference to “portion[s] of a use” makes illegal the Port’s attempt to lump all support facilities for “methanol manufacturing” into the water-related classification simply because the methanol pipeline to the dock is arguably water-related. Most of the Port’s proposed industrial uses, or portions of uses, are not conditional uses in the Conservancy District because they are not water-related. Accordingly, the County may not issue a SCUP for these uses. *See* WAC 173-27-160(1).

**b. Port’s proposal does not meet the SMA’s and the SMP’s general criteria for SCUPs.**

Even if all the Port’s proposed “conditional uses” were actually water-related industrial activities that could be authorized under a SCUP—which they are not—the Port has not demonstrated that the project would meet the SMA’s regulatory review criteria, or the SMP’s general regulations, applicable to all conditional use permits. *See* WAC 173-27-160(b)–(e); *see also Cowlitz County SMP*, p.25 (“Conditional use permits shall be granted only after the applicant can demonstrate all of the following.”).

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<sup>53</sup> *Id.* at 49.

<sup>54</sup> WAC 173-26-020(43)(b) also cannot be used to justify calling most portions of the methanol refinery water-related. The refinery and dock are both operated by NWIW and therefore no “customer” exists within the meaning of this rule, and moving the industrial facilities described in the Port’s application a few feet into the uplands would not make transloading methanol significantly more expensive or less convenient.

<sup>55</sup> *Shoreline Compliance Narrative*, Table 1; *see also* Port of Kalama, *Shorelines Graphics Figure 5: Utility Plan* (February 2016).

<sup>56</sup> *Shoreline Compliance Narrative*, p.6.

*i. Interference with public use of shorelines.*

The Port's project would interfere with the normal public uses of the shorelines in and adjacent to the project area. The Washington regulations governing SCUPs explain that conditional uses may only be permitted when "the applicant demonstrates" that "the proposed use will not **interfere** with the normal public use of public shorelines." WAC 173-27-160(1)(b) (emphasis added). Using nearly identical language, the SMP provides that a SCUP can be "granted only after the applicant can demonstrate" that "[t]he use will not **interfere** with the public use of public shorelines."<sup>57</sup> The public uses of the public shorelines in and adjacent to the project area include low-intensity uses such as "walking the unofficial trail systems" and the sandy beaches, fishing, visual access, and "scenic viewing" of the river and shoreline.<sup>58</sup> As explained in Sections II(a)(v) and Section II(b), above, the project would degrade air quality in the vicinity of the refinery and terminal and have a very significant impact on visual and aesthetic resources of the shoreline, especially as perceived from the recreational area directly north of the refinery and terminal.<sup>59</sup> In fact, the SMP acknowledges that, "[o]nce shorelines become occupied with permanent urban development, the . . . quality of recreational experiences available to the public often become severely limited."<sup>60</sup> While the public could still physically access the shoreline near the project, project impacts would substantially "interfere" with the public's use and enjoyment of these shorelines.

The Port has failed to meet its burden to "demonstrate," WAC173-27-160(b), that the project would not "interfere" with the public uses—such as visual access, quiet enjoyment of scenic hiking trails and beaches, and fishing—that occur on the shorelines at or near the project site. Instead, the Port conflates the idea of preserving "access" to the recreational area with the much broader protection against interference with the public's use.<sup>61</sup> The Port's assurances that the public will still be allowed to "access" the shoreline miss the point: the massive new dock, export terminal, and 100-acre petrochemical refinery directly adjacent to, and in direct view of, the shoreline will undeniably "interfere" with the public's scenic viewing and quiet recreation at this location. Accordingly, the Port has not met its burden to show that the proposed use complies with these requirements of the SMP and the SMA's regulations, and the County must deny the requested SCUP.

*ii. Significant adverse effects to the shoreline environment.*

The Port's project would cause significant adverse effects to the shoreline environment in the project area. The Washington regulations governing SCUPs explain that conditional uses may only be permitted when "the applicant demonstrates" that "the proposed use will cause no significant adverse effects to the shoreline environment . . . ." WAC 173-27-160(1)(d). Using nearly identical language, the SMP provides that a SCUP can be "granted only after the applicant

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<sup>57</sup> *Cowlitz County Shoreline Master Program*, p.25 (emphasis added).

<sup>58</sup> *Shoreline Compliance Narrative*, pp.9, 17. The County should also consider any other public uses of the site, and interference therewith, described in other public comments regarding this shoreline area.

<sup>59</sup> Additionally, such interference with public use would constitute a "substantial detrimental effect" to the public interest as prohibited by WAC 173-27-160(1)(e).

<sup>60</sup> *Cowlitz County Shoreline Master Program*, p.12.

<sup>61</sup> *Shoreline Compliance Narrative*, p.9.

can demonstrate” that “[t]he use will cause no unreasonable adverse effects on the environment.”<sup>62</sup> As explained at length in Riverkeeper’s comments on the DEIS,<sup>63</sup> comments on the Port’s application for a Clean Water Act Section 404 permit,<sup>64</sup> and in Section II(a), above, construction and operation of the project is likely to have a significant adverse impact on the shoreline of the Columbia River at and downstream from the project area.

**c. No exceptional circumstances justify siting water-related industry in a Conservancy District.**

Even if the industrial facilities proposed in the conservancy district were “water-related” and met the SMA and SMP general requirements for conditional uses—which they do not—the Port has failed to make the special showing required by the SMP to justify water-related industry in a conservancy district. The SMP’s economic development policy 5(h) provides that—in addition to complying with the regular conditional use and performance standards—water-related industries may only locate in Conservancy Districts in “exceptional cases.”<sup>65</sup> The Port’s response to this policy<sup>66</sup> contains no acknowledgement of this heightened requirement or any explanation of why this project presents an “exceptional case” that justifies citing water-related industry in a Conservancy District. As explained in Section III(a) and subsection (a), above, the Port seems to be trying to locate industrial facilities in a conservancy district because the Port does not have enough available industrial upland real estate for the facility that NWIW wants to build. That circumstance is not an “exceptional case” sufficient to justify siting industrial development in a Conservancy District, so the County must deny the Port’s SCUP.

**V. Critical Areas Permit**

**a. Wetlands**

The County must deny the Port’s application for a Critical Areas permit because the proposed project does not comply with the County’s performance standards for wetland buffers. *See* CCC 19.15.120. The County’s performance standards for wetland buffers require a standard 180-foot buffer between Category II wetlands and high-intensity land uses. *See generally* CCC 19.15.120(C)(4). The wetland delineation for the project vicinity identifies a large wetland (hereinafter, “Wetland A”) on the northern border of the project site.<sup>67</sup> The wetland delineation identifies Wetland A as a “Category II wetland with high habitat function” that requires a “180-foot buffer” when adjacent to high-intensity land uses like the methanol refinery.<sup>68</sup> The Port admits that Wetlands A’s buffer “would extend onto portions of the project site,”<sup>69</sup> but the Port’s application nevertheless proposes building roads and possibly chemical storage and waste

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<sup>62</sup> *Cowlitz County Shoreline Master Program*, p.25.

<sup>63</sup> *See* Exhibit 3.

<sup>64</sup> *See* Exhibit 10.

<sup>65</sup> *Cowlitz County Shoreline Master Program*, p.8.

<sup>66</sup> *See Shoreline Compliance Narrative*, p.21.

<sup>67</sup> *See* Ecological Land Services, *Wetland Delineation Report*, p.5 (2014).

<sup>68</sup> *Id.* citing CCC Table 19.15.120-C.

<sup>69</sup> Port of Kalama, *Critical Areas Assessment*, p.31; *see also* *Wetlands Delineation Report*, Figure 2 (showing, in green dashed line, the extent of Wetland A’s buffer, which extends onto the project site).

treatment facilities in the wetland buffer identified by the 2014 wetlands delineation study.<sup>70</sup> Because the Port's proposed project does not meet the County's performance standards for wetland buffers, the County may not approve the Port's Critical Areas permit.

According to the best available science, the physical site conditions surrounding parts of Wetland A do not meet the criteria for reduced riparian buffer. The Port understands that NWIW's proposed facilities would encroach the 180-foot wetland buffer mandated by CCC Table 19.15.120-C and the wetland delineation.<sup>71</sup> The Port attempts to evade the buffer requirement by relying on language in CCC 19.15.120(C)(4)(a) which provides:

“buffers based on the standard widths are not required to extend beyond existing natural or manmade barriers, such as rock outcroppings, dikes, levees, or roads, which isolate the area from the wetland resource.”

The Port asserts that, because of the physical characteristics of the site, most of the potential riparian buffer area is separated from Wetland A by manmade barriers, and therefore it need not be protected per CCC 19.15.120(C)(4)(a).<sup>72</sup> The Port's assertion conflicts with the wetland delineation report prepared specifically for this site, which embodies the best available science, as intended by CCC 19.15.030(B)(3), and which was prepared in accordance with Ecology's wetlands delineation manual, as required by RCW 36.70A.175.<sup>73</sup>

The Wetland Delineation Report's Figure 2 clearly defines Wetland A's boundary and recognizes that some—but not all—of Wetland A's buffer area is isolated from the wetland resource within the meaning of CCC 19.15.120(C)(4)(a). Specifically, Figure 2 of the wetland delineation report identifies the eastern edge of the peninsula extending north from the main body of the project area as *not* isolated from Wetland A, and therefore requiring a 180-foot standard riparian buffer. The Port's Critical Areas Assessment does not address this key finding of the Wetland Delineation Report, and instead incorrectly implies (without citation to any authority) that this buffer area is isolated from Wetland A.

The Critical Areas Assessment mentions no other wetland delineation or field sampling having been conducted regarding to the extent of Wetland A or the connectivity of its buffer areas.<sup>74</sup> Accordingly, the 2014 Wetland Delineation Report constitutes the best, and possibly only, available science on the extent of Wetland A and its connected and isolated buffer areas. Therefore the wetland delineation report must be relied upon by the County when assessing the Port's proposal's compliance with the County's Critical Areas performance standards. *See* CCC 19.15.030(B)(3). Any *post hoc* attempts by the Port, in its application materials, to redraw the boundaries of Wetland A or question the isolation of associated buffer areas plainly violate RCW 36.70A.175's requirement that all wetlands delineations made for the purposes of land use

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<sup>70</sup> *See Wetlands Delineation Report*, Figure 2 (showing, in green dashed line, the extent of Wetland A's buffer, which extends onto the project site).

<sup>71</sup> *See Critical Areas Assessment*, p.31 (admitting that Wetlands A's buffer “would extend onto portions of the project site”).

<sup>72</sup> *Id.* at 31 (citing *Critical Areas Assessment*, Figure 6).

<sup>73</sup> *Id.* at 29 (explaining that “[t]he 2014 wetland delineation identified Wetland A as a Category II wetland, according to the Washington State Wetland Rating System”).

<sup>74</sup> *Id.* at 29.



planning comply with the procedures in the manual adopted by Ecology in accordance with RCW 90.58.380

“The scientific literature is unequivocal that **buffers are necessary to protect wetland functions** and values.”<sup>75</sup> If anything, the standard 180-foot buffer is actually *insufficient* to protect wetland function in Wetland A, because this standard buffer “presume[s] the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity”—a condition not met in most of the 180-foot buffer area. CCC 19.15.120(C)(4)(a).

**b. Fish and Wildlife Habitat Conservation Areas**

The County must deny the Port’s application for a Critical Areas permit because the proposed project does not comply with the County’s performance standards for fish and wildlife habitat conservation areas for endangered, threatened, and sensitive species and their habitats. *See generally* CCC 19.15.130(E)(1). Where management recommendations exist to protect a state or federally protected species, development is only allowed within habitat with which the protected species has a primary association when those management recommendations are utilized, *as demonstrated in the critical area assessment*. CCC 19.15.130(E)(1)(a) (emphasis added). The Port’s Critical Areas Assessment does not discuss—and the proposed development would therefore not utilize—*any* existing state and federal recommendations for the protection of listed species with primary associations to habitats in the project area, including for listed Columbia River salmon and steelhead.<sup>76</sup> In order to meet the performance standards in CCC 19.15.130(E)(1)(a), the Port will need to identify a comprehensive list of state and federal recommendations for the management of all the endangered, threatened, and sensitive species that rely on the project area and then demonstrate, in the Critical Areas Assessment, that the project would utilize all of these recommendations. Commenters recognizes that this is a substantial undertaking, but this requirement will ensure that the Port’s project benefits from the combined research and management expertise of federal and state fish and wildlife conservation agencies. Accordingly, until the Port substantially updates its Critical Areas Assessment, the County may not grant the Port’s requested critical areas permit.

The County must also deny the Port’s application for a critical areas permit because the proposed project does not comply with the County’s performance standards for aquatic habitat. *See generally* CCC 19.15.130(E)(4). New public or private docks may be permitted if the critical area assessment demonstrates that the “project will not result in increased beach erosion.” CCC 19.15.130(E)(4)(i). Nothing in the Port’s critical areas assessment discusses whether constructing another massive new dock will have any impact on beach erosion, especially at the recreational beach access area directly downstream from the dock. At the very least, the Port has failed to meet its burden in this respect and the County may not issue the critical areas permit based on the information before it.

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<sup>75</sup> Washington Department of Ecology, *Wetlands Guidance for CAO Updates, Western Washington Version*, p.11 (June 2016) (emphasis in original).

<sup>76</sup> *See, e.g.*, National Marine Fisheries Service, *Lower Columbia River Recovery Plan for Salmon & Steelhead* (July 2013); *see also, e.g.*, WDFW, *Integrated Streambank Protection Guidelines* (2002).

**c. Frequently Flooded Areas**

The proposed project site contains frequently flooded areas, as that term is used in CCC 19.15.140(A). As explained in Section VI, below, the Port's proposed development within those frequently flooded does not comply with Chapter 16.25 CCC, Floodplain Management. Accordingly, the County may not issue the requested Critical Areas permit. *See* CCC 19.15.140(B).

**d. Critical Aquifer Recharge Areas**

Despite the County's February 22, 2012, letter purporting to absolve the Port of its obligations to protect the aquifer beneath the North Port site, the County should not issue the Port a critical areas permit because the Port's proposal would jeopardize this aquifer. The County and the Port's approach to Critical Aquifers Recharge Areas embodied in the letter is bizarre: the Port and County appear to believe that protections for an aquifer should not be instituted until someone applies to use that aquifer for drinking water. At that point it will likely be too late to "protect" the aquifer, if industrial use and pollution of the recharge area has been previously permitted. Especially because the Port proposes activities like infiltrating contaminated industrial stormwater into the ground, the County should not give the Port a critical areas permit to build a methanol refinery. *See* CCC 19.15.160(D)(1) (prohibiting activities in critical aquifer recharge areas unless the applicant shows that the proposed activity will not cause contaminants to enter the aquifer).

**e. Mitigation**

The County must deny the Port's critical area's application because the Port's proposal would not meet the "no net loss of critical area functions and values" requirement. *See* CCC 19.15.170(A). As explained in subsection (a), above, the Port fails to acknowledge a substantial amount of wetland buffer area that exists in the project area and was identified in the 2014 Wetland Delineation Report for the project site. "The scientific literature is unequivocal that **buffers are necessary to protect wetland functions** and values."<sup>77</sup> Accordingly, the unmitigated destruction of this wetland buffer area—as envisioned in the Port's application materials—will necessarily result in a net loss of wetland function and values. Accordingly, the Port's proposed mitigation is inadequate and the County must deny the Port's critical areas permit.

The County must also deny the Port's critical area's application because the Port's mitigation proposal fails to "avoid" impacts to critical areas. *See* CCC 19.15.170(C). Specifically, CCC 19.15.170(C)(1) gives the Port the burden to demonstrate that—before turning to other mitigation measures like minimization and compensation—the Port made "all reasonable efforts" to "[a]void[] the impact [to critical areas] altogether by not taking a certain action or part of an action." As explained in Section II(b), above, the Port has provided no

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<sup>77</sup> Washington Department of Ecology, *Wetlands Guidance for CAO Updates, Western Washington Version*, p.11 (June 2016) (emphasis in original).

explanation for why the existing Steelscape dock could not be used or modified to meet NWIW's operational requirements. Using or modifying the existing Steelscape dock to meet NWIW's needs would allow the Port to "[a]void[] the impact [to critical areas] altogether by not taking a certain . . . part of an action"—namely, constructing and dredging a massive new deep-water dock in the Columbia River. CCC 19.15.170(C)(1). Failure to consider such avoidance action as a first priority when proposing mitigation for this project renders the Port's application insufficient.

## **VI. Floodplain Management Permit**

The Port's proposed project does not comply with the County's Floodplain Management rules, and the County may not issue the Port its required floodplain management permit. *See* CCC 16.25.050 ("No person shall undertake . . . development in the floodplain without first obtaining a floodplain management permit from the Department"). Specifically, the Port's proposed project would violate the performance standards for construction in "frequently flooded areas." CCC 16.25.040. As indicated in multiple project drawings submitted by the Port, the 100-year floodplain intersects the proposed footprints of the infiltration pond and wastewater treatment facility. *See, e.g.,* Port of Kalama, *Shorelines Graphics, Figure 4: Site Plan* (February, 2016). That 100-year floodplain boundary coincides with the boundary of "areas of special flood hazard identified by the Federal Insurance Administration,"<sup>78</sup> and is therefore a frequently flooded area within the meaning of CCC 16.25.040(A)(1).

The Port's proposal does not comply with the general performance standards for on-site waste disposal systems in frequently flooded areas. CCC 16.25.080(I)(4) requires that "[o]n-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding." The proposed infiltration pond and wastewater treatment facility are "on-site waste disposal facilities" for the purposes of CCC 16.25.080(I)(4) because their intended purpose is to remove waste and contaminants from industrial stormwater and process wastewater and dispose of those contaminants into the soil and substrate at the project site through infiltration. In the event of a 100-year flood, the proposed location of these facilities would expose them to "impairment," damage, and loss of treatment capacity during a flood event. More troubling, the proposed location of these facilities—especially the infiltration pond—could easily result in "contamination from them during flooding" as prohibited by CCC 16.25.080(I)(4). Contamination that would, by design, accumulate in the infiltration pond's substrate could easily re-suspend during a flood, causing a release of years of built-up toxic and other pollutants. Accordingly, CCC 16.25.080(I)(4) requires that the infiltration pond and water treatment plant be located out of frequently flooded area, so as to avoid impairment or contamination in the event of a flood.

Finally, the Port's proposal does not comply with the specific performance standards for critical facilities in frequently flooded areas. *See* CCC 16.25.090(H). Critical facilities are prohibited in frequently flooded areas, in order to prevent damage to such facilities and to avoid

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<sup>78</sup> Exhibit 13, Flood Insurance Administration, *Flood Insurance Rate Map of Project Site*.

costs that will be incurred by the public in the event of flooding. CCC 16.25.090(H).<sup>79</sup> “Critical facilities” include “installations that produce, use, or store hazardous materials . . . .” CCC 19.15.050. The Port’s project is an “installation,” within the meaning of CCC 16.25.090(H), that produces, uses, or stores methanol, natural gas, ammonia, and diesel fuel, all of which are “Highly Hazardous Chemicals.”<sup>80</sup> Accordingly, CCC 16.25.090(H) prohibits any part of this installation from locating in the frequently flooded areas at the proposed project site, and the County must therefore deny the Port’s application for a Floodplain Management Permit.

### Conclusion

For the reasons stated above, the proposed methanol refinery and export terminal do not comply with the applicable shorelines and land use requirements of Washington and Cowlitz County law. The County should therefore deny the Port’s applications. Thank you for your attention to this matter.

Submitted by,



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On behalf of:

**Columbia Riverkeeper**  
**Center for Biological Diversity**  
**Save our Wild Salmon**  
**Oregon Physicians for Social Responsibility**

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<sup>79</sup> None of the special circumstances potentially authorizing critical facilities in frequently flooded areas apply to the Port’s project because it is not “unreasonable” to prohibit this type of development in a frequently flooded area, *see* CCC 16.25.090(H), and “practical alternative” sites are available because the Port could move components of the planned installation out of the frequently flooded area by changing the project design. *See* CCC 16.25.090(H)(1).

<sup>80</sup> DEIS, Appendix G2, p.15.

Exhibits:

- Exhibit 1: *Email from EFSEC Chair Bill Lynch to Keith Philips.*
- Exhibit 2: Columbia Riverkeeper, *Petition to EFSEC for Declaratory Order.*
- Exhibit 3: Columbia Riverkeeper, *et al.*, *Comments on the Draft Environmental Impact Statement for the Kalama Methanol Refinery and Export Terminal.*
- Exhibit 4: Thom, R. *et al.*, *Columbia River Estuary Ecosystem Restoration Program, 2012 Synthesis Memorandum.*
- Exhibit 5: Bottom *et al.*, *Estuarine habitat and juvenile salmon: current and historical linkages in the lower Columbia River and estuary.*
- Exhibit 6: Roegner *et al.*, *Distribution, size, and origin of juvenile chinook salmon in shallow-water habitats of the lower Columbia River and estuary.*
- Exhibit 7: Weitkamp *et al.*, *Seasonal and interannual variation in juvenile salmonids and associated fish assemblage in open waters of the lower Columbia River estuary.*
- Exhibit 8: Sightline Institute, *Examining Methanol's Green Claims in the Northwest.*
- Exhibit 9: Columbia Riverkeeper, *New documents show that proposed Kalama methanol refinery could drive pipeline expansion in the Pacific Northwest.*
- Exhibit 10: Columbia Riverkeeper, *Comments on U.S. Army Corps of Engineers Permits for the Methanol Refinery, Export Terminal, and Pipeline.*
- Exhibit 11: Pan-Pacific Energy Corp, *Port of Kalama Methanol Project Business Plan.*
- Exhibit 12: Shanghai Bi Ke Clean Energy Technology Company, Ltd., *MTO industry shall face challenge under low-oil price environment.*
- Exhibit 13: Flood Insurance Administration, *Flood Insurance Rate Map of Project Site.*