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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN RE: MILLENNIUM BULK
TERMINALS - LONGVIEW, LLC
SHORELINE PERMIT APPLICATIONS

No.
MILLENNIUM BULK TERMINALS
- LONGVIEW, LLC'S PETITION
FOR REVIEW

COMES NOW, Millennium Bulk Terminals – Longview, LLC (hereinafter
“Petitioner” or “MBT-Longview”), by and through its counsel of record, Craig Trueblood
and Ankur Tohan of K&L Gates LLP, and Jonathan Sitkin of Chmelik Sitkin & Davis
P.S., and pursuant to the Cowlitz County Shoreline Master Program, RCW 90.58 et. seq.,
WAC 173-27 et seq., and WAC 461-8 et seq., files this Petition for Review.

I. NAME OF PETITIONER

Millennium Bulk Terminals – Longview, LLC
P.O. Box 2098
4029 Industrial Way
Longview, WA 98632
(360) 425-2800

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Counsel for Petitioner:
See undersigned.

II. IDENTIFICATION OF PARTIES

Applicant-Millennium Bulk Terminals-Longview, LLC
Attn: Bill Chapman, Chief Executive Officer
4029 Industrial Way
Longview, WA 98626

Permitting Authority/Agency:
Cowlitz County Hearing Examiner
Attn: Mark C. Scheibmeir, Hearing Examiner
299 N.W. Center Street
P.O. Box 939
Chehalis, WA 98532
(360) 748-3386

III. APPLICATION ON APPEAL

Decision of the Cowlitz County Hearing Examiner dated November 14, 2017 (referred to herein as the “Decision”) denying Shoreline Permit Application No. 17-0992 filed by MBT-Longview in 2012. A copy of the Decision is attached to this Petition as **Exhibit A**. The Decision was received by the Department of Ecology on November 20, 2017. **Exhibit B**.

IV. SHORT STATEMENT IDENTIFYING BASIS FOR APPEAL

After a three-day hearing during which witnesses provided evidence that MBT Longview’s shoreline permit application complied with the Shoreline Management Act (“SMA”) and Cowlitz County Shoreline Master Program (“SMP”), the Hearing Examiner chose to ignore this evidence and denied the application. The Hearing Examiner’s decision thoroughly and fundamentally misreads and, therefore, misapplies the State

1 Environmental Policy Act and the Shoreline Management Act, and does not analyze the
2 Project's consistency with the local SMP as required under RCW 90.58.140. In addition,
3 the Hearing Examiner exceeded his authority by considering issues beyond his statutory
4 purview and by creating an entirely new approval criterion. The Hearing Examiner's
5 Decision was clearly erroneous and contrary to law. The Decision was also arbitrary in
6 requesting further study as a basis for denying approval while rejecting testimony
7 regarding the Project and mitigation of impacts based on the finality of the environmental
8 impact statement.

9
10 **V. GROUNDS FOR APPEAL**

11 1. MBT-Longview submitted its application for a Shoreline Substantial
12 Development Permit to construct and operate a Coal Export Terminal ("Project") and a
13 Shoreline Conditional Use Permit for dredging necessary to operate the Project in 2012.

14 2. The Project will be located at the former Reynolds Metals site at 4029
15 Industrial Way, Longview, WA (the "Site"). The Project Site has been used for industrial
16 activities for many decades. The Project Site is a heavy industrial site, not a vacant or
17 undeveloped site.

18 3. MBT-Longview's existing bulk materials transloading and handling
19 activities would continue on adjacent property and an existing dock.

20 4. The Project Site is designated "urban shoreline environment" in the
21 Cowlitz County Shoreline Master Program ("SMP") because of its location, history and
22 access to the interstate railway system and Columbia River Navigation Channel. The
23 SMP expressly permits industrial uses, such as the Project, as a permitted use in the urban
24 shoreline designation.

1 5. The Project is a water-related, industrial use that is expressly permitted in
2 urban shoreline environments.

3 6. The Project is water-dependent because it cannot function without access
4 to the Columbia River. The Project is granted priority status under both the SMA and
5 SMP, and is in the public interest.

6 7. The Project was purposefully located at a shoreline industrial facility that
7 affords access to the interstate railway system and the recently-deepened Columbia River
8 Navigation Channel.

9 8. No improvements to the interstate railway system are necessary to serve
10 the Project.

11 9. No improvements to the Columbia River Navigation Channel are necessary
12 to serve the Project.

13 10. Dredging of berth areas and an approach channel is necessary for the
14 Project to access the Columbia River Navigation Channel. Dredging will be carried out in
15 an area designated as an urban shoreline. Dredging for the project will not interfere with
16 normal public use of the shoreline, is not detrimental to the public interest and will not
17 adversely affect the shoreline environment.

18 11. The Project requires over 15 permits and approvals from multiple local,
19 state and federal agencies before it can be constructed or operated. A Final EIS was
20 issued on April 28, 2017. The adequacy of the FEIS was not appealed. Cowlitz County
21 issued a Critical Areas Permit for the Project on July 19, 2017. That permit was not
22 appealed.

23 12. The Department of Ecology and the Department of Natural Resources
24 denied certain approvals for the Project and those decisions are under review by the
25 Pollution Control Hearings Board and Cowlitz County Superior Court.

1 **VI. RELIEF SOUGHT**

2 MBT-Longview requests that the Shorelines Hearings Board reverse the decision
3 of the Cowlitz County Hearing Examiner to deny the Permits and enter an order granting
4 the Permits, subject to applicable conditions or such other relief as determined by the
5 Board.

6
7 **VII. SERVICE**

8 Copies of this Petition for Review were sent to the Washington Department of
9 Ecology, the Washington State Office of the Attorney General, and the Cowlitz County
10 Hearing Examiner via FedEx on December 4, 2017.

11
12 DATED this 4th day of December, 2017.


13
14 K&L GATES LLP

CHMELIK SITKIN & DAVID P.S.

15 By  _____

By  _____

16 Craig S. Trueblood, WSBA # 18357
17 Ankur Tohan, WSBA # 36752
18 Attorneys for Petitioner

 Jonathan K. Sitkin, WSBA # 17604
Attorneys for Petitioner

CERTIFICATE OF SERVICE


I, Ethan Morss, certify as follows:

1. I am a citizen of the United States, a resident of King County, State of Washington, am over 18 years of age, and not a party to this action.

2. I certify that on December 4, 2017, I caused true and correct copies of MILLENNIUM BULK TERMINALS - LONGVIEW, LLC'S PETITION FOR REVIEW to be delivered as follows:

Shorelines Hearings Board Environmental Hearings Office P.O. Box 40903 Olympia, WA 98504-0903 <u>pchb-shbappeals@luho.wa.gov</u>	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Electronic Filing <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail
Cowlitz County Hearing Examiner Attn: Mark C. Scheibmeir 299 N.W. Center Street Chehalis, WA 98532	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Electronic Filing <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail
Maia Bellon Director Washington State Department of Ecology 300 Desmond Drive SE Lacey, WA 98503	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Electronic Filing <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail
Bob Ferguson Attorney General Washington State Office of the Attorney General 1125 Washington Street SE Olympia, WA 98504	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Electronic Filing <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail

DATED this 4th day of December, 2017.



Ethan Morss