

**BEFORE THE COWLITZ COUNTY HEARING EXAMINER**

IN RE THE MATTER OF MILLENNIUM	)	COWLITZ COUNTY SHORELINE
BULK TERMINALS- LONGVIEW, LLC	)	SUBTANTIAL DEVELOPMENT AND
COAL EXPORT FACILITY	)	SHORELINE CONDITIONAL USE
	)	PERMITS
APPLICANT:	)	
MILLENNIUM BULK	)	FILE NO. 12-04-0375
TERMINALS-LONGVIEW, LLC	)	SHORELINE PERMIT NO. 17-0992
	)	
	)	SUPPLEMENTAL PUBLIC
	)	HEARING RULES
	)	

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Cowlitz County ("County") has received applications for a Shoreline Substantial Development Permit and a Shoreline Conditional Use Permit from Millennium Bulk Terminals-Longview, LLC ("MBT-Longview" or "Applicant ") for development in the shoreline related to the MBT-Longview Coal Export Terminal. The County has designated these applications as File No. 12-04-0375. Cowlitz County Code §19.20.050 requires the Cowlitz County Hearing Examiner to conduct a public hearing on File No. 12-04-0375 prior to taking action. The matter has been set for a public hearing commencing on November 2, 2017, beginning at 9:00 a.m. at the Cowlitz Regional Conference Center located at 1900 7th Avenue, SW, Longview, Washington and concluding upon completion of the proceedings.

The Applicant requested that the Hearing Examiner consider special scheduling rules and supplemental procedures to the Hearing Examiner Rules of Procedure to accommodate a large, public attendance, and to ensure orderly proceedings and adequate due process to both Applicants and attendees. A telephonic pre-public hearing conference on these procedural matters was conducted on Tuesday, September 26, 2017. Cowlitz County Hearing Examiner Mark C. Scheibmeir presided. In attendance were Cowlitz County Building and Planning Director, Dr. Elaine Placido, Cowlitz County Senior Environmental Planner, Ron Melin, Cowlitz County Deputy Prosecuting Attorney, Doug Jensen, MBTL-Longview counsel Jon Sitkin of Chmelik Sitkin & Davis P.S., and Ankur Tohan of K&L Gates, LLP, Bill Chapman, Chief Executive Officer for MBT-Longview, and Kristin Gaines, Vice President of Environmental Planning and Services for MBT-Longview. A second telephonic pre-public hearing conference on these procedural matters was conducted on Monday, October 9, 2017. Cowlitz County Hearing Examiner Mark C. Scheibmeir presided. In attendance were Cowlitz County Building and Planning Director, Dr. Elaine Placido, Cowlitz County Senior Environmental Planner, Ron Melin, Cowlitz County Deputy Prosecuting Attorney, Doug Jensen, MBTL-Longview counsel Jon Sitkin of Chmelik Sitkin & Davis P.S., Bill Chapman, Chief Executive Officer for MBT-Longview, and Kristin Gaines, Vice President of Environmental Planning and Services for MBT-Longview. A third pre-public hearing conference on these procedural matters was conducted on Monday, October 17, 2017 Cowlitz County Hearing Examiner Mark C. Scheibmeir presided. In attendance were Cowlitz County Building and Planning Director, Dr. Elaine Placido, Cowlitz County Senior Environmental Planner, Ron Melin, Cowlitz County Deputy Prosecuting Attorney, Doug Jensen, MBTL-Longview counsel Jon Sitkin of Chmelik Sitkin & Davis P.S., Bill Chapman, Chief Executive Officer for MBT-Longview, and Kristin Gaines, Vice President of Environmental Planning and Services for MBT-Longview.

COWLITZ COUNTY PERMIT NO. 12-04-0375; SHORELINE PERMIT NO. 17-0992  
PUBLIC HEARING RULES

Based on the conferences, the Hearing Examiner enters the following Public Hearing Conference Rules:

## I. SCHEDULING RULES FOR HEARING

This matter has been set for a public hearing commencing on November 2, 2017, beginning at 9:00 a.m. at the Cowlitz Regional Conference Center located at 1900 7th Avenue, SW, Longview, Washington. The Hearing Examiner will determine, after up to three days of consecutive proceedings, whether the hearing should be continued to a future date(s) to ensure an inclusive proceeding where all those who wish to express their views are afforded the opportunity to do so either in writing or in person testimony. The public testimony portion of this hearing will only continue for as many hours or days, as necessary to reasonably accommodate all members of the public who have requested the opportunity to speak within the timeframe allotted or to provide an opportunity to submit written testimony if there is not sufficient time for in person testimony and, as such, the public testimony portion may end earlier than the dates and times indicated above, and the time for response and questions shall be advanced accordingly. During this public testimony portion of the public hearing a time limit of ten (10) minutes per speaker will be enforced. All testimony is to be given under group or individual oath or affirmation, including testimony submitted to the Hearing Examiner in writing at the public hearing in lieu of oral comments. All witnesses will be asked to provide their name and address, and may be requested to spell their name. In the interests of assuring broader participation for larger groups, the Hearing Examiner reserves the right to allocate additional time to those groups that have requested additional time in advance of the public hearing, and further to direct the group to appoint a spokesman to speak for the group. Written submissions shall be entered into the official hearing record and considered like all other testimony. The order of the hearing and presentation of testimony shall be as follows<sup>1</sup>:

### **Thursday, November 2, 2017:**

9:00 a.m.	Introductory remarks by Hearing Examiner Scheibmeir
9:15 a.m.	Cowlitz County staff presentation (estimated time)
10:15 a.m. - 10:30 a.m.	Break
10:30 a.m. - noon	Applicant presentations
Noon - 1:30 p.m.	Lunch
1:30 p.m. - 5:00 p.m. <sup>2</sup>	Complete Applicant Presentation and Commence Public testimony

### **Friday, November 3, 2017:**

9:00 a.m. - noon	Public testimony
Noon - 1:30 p.m.	Lunch
1:30 p.m. - 5:00 p.m.	Public testimony

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<sup>1</sup> The Hearing Examiner may ask questions during County staff and Applicant presentations, prior to commencement of public comment, or at the end of the public comment, and may ask questions of parties testifying at the hearing during or at the end of their testimony, or at the end of public comment. These time periods may be adjusted by the Hearing Examiner as needed for a full and fair hearing, including but not limited to accommodation of time taken for Hearing Examiner questions.

<sup>2</sup> Continuation of proceedings into the evening will be announced by Hearing Examiner at 5:00 p.m. daily.

**Monday, November 6, 2017:**

9:00 a.m. - noon	Public testimony
Noon - 1:30 p.m.	Lunch
1:30 p.m. - 4:30 p.m. <sup>3</sup>	Staff and Applicant's response and public testimony derived questions posed by Hearing Examiner to County or Applicant
4:30 p.m. – 5:00 p.m.	Closing remarks, decision on post-hearing briefing, and submittals by Hearing Examiner Scheibmeir

As the above timelines are estimates, Tuesday, November 7<sup>th</sup>, 2017 is reserved in the event there is a delay or postponement of the timelines above.

Those wishing to testify at the public hearing shall be called to the lectern by the Hearing Examiner based on the order of the sign-in sheets and will be asked to state their name and address and to state whether they are speaking as an individual or for a group. Attendees will not be required to state a preference for or against the proposal on such sign-in sheets, and support or opposition to the project shall not dictate the order in which the Hearing Examiner receives public testimony. Depending on the number of members of the public signed up to testify, the Hearing Examiner may choose to limit the amount of time allotted to each speaker.

**II. SUPPLEMENTAL PROCEDURAL RULES**

- A. **Applicability to Interested Third-Parties:** These Supplemental Public Hearing Rules will apply equally to the County, the Applicant, to any interested third-parties and the public appearing at hearing.
  
- B. **Pre-Public Hearing Submittals:** To facilitate a fair and efficient hearing process, the Hearing Examiner has established the following schedule for pre-hearing submittals. This Rule does not prevent Cowlitz County staff, the Applicants or interested parties from submitting additional exhibits during the normal course of the public hearing.

October 20, 2017: Cowlitz County Staff Report

October 26, 2017: Pre-Hearing Memoranda

October 26, 2017: Pre-filed, Marked Exhibits<sup>4</sup>:  
C = County, Exhs. #1 -25<sup>5</sup>  
A = Applicant-Millennium Bulk Terminals-Longview, LLC, Exhs. #26-100  
P=Public, Exhs. #101- \_\_\_

The County Staff Report and accompanying exhibits will be marked as “C” and sequentially numbered from 1-25. Applicant’s exhibits will be marked as “A” and sequentially numbered 26-100. Publicly-submitted exhibits received at the hearing will be marked as “P” and sequentially numbered commencing with the number

<sup>3</sup> Continuation of public testimony and delay of Applicants' response/public testimony-derived questions posed by Hearing Examiner to County or Applicants will be announced by Hearing Examiner as deemed necessary.

101. If a particular entity or organization intends to submit a large volume of exhibits, the Examiner may assign a specific, separate exhibit designation.

October 26, 2017: List of Witnesses and Pre-filed Curriculum Vitae or Qualifications of Expected Expert Witnesses

- C. **Hearing Plan:** Prior to the public hearing, the County shall submit a plan for logistical organization and conduct of the public hearing (Hearing Plan) to the Hearing Examiner for review and approval. The Hearing Plan shall address or contain, without limit, provisions for the following:
1. A single, to-be-designated room at the Cowlitz Regional Conference Center that is sized appropriately taking into consideration the number of attendees at the DEIS Public Hearing previously held for this project.
  2. Cowlitz County Building and Planning staff to manage sign-in sheets for those who wish to testify, and to answer public attendees' questions regarding methods of testifying.
  3. Crowd-management controls that promote a safe environment for public testimony and protect rights of free speech and assembly.
  4. Adequate microphones/speakers and tables for the Hearing Examiner/support staff and four equally-equipped stations for applicants, staff, and legal counsel.
  5. A lectern, with microphone, at which the public may present testimony.
  6. Laptop, projector, and screen.
  7. Recording methods that create an audio record and a transcript of proceedings.
  8. Staff, security, and emergency support adequate to handle anticipated numbers of attendees and as necessary to enforce the rules established by the Hearing Examiner for this proceeding. See Additional Considerations D (1) and D (2) below.

D. **Additional Considerations:**

1. In concert with these supplemental procedural rules, this public hearing will be conducted by the Hearing Examiner consistent with, limited by, and on the terms established by the Hearing Examiner and the adopted Rules of Procedure before the Cowlitz County Hearings Examiner ("Rules of Procedure"). This proceeding is intended for the receipt of testimony and evidence from the County, Applicants and interested parties regarding Shoreline Permit Applications No. 12-04-0375. All testimony, evidence, and project-related questions shall be directed to the Hearing Examiner and not the County or Applicants, except as may be provided for by the Hearing Examiner. Because this is a public comment hearing and not an appeal hearing, the Hearing Examiner intends to only allow questions of

expert witnesses or representatives of the Applicants, and not of general members of the public. In addition, direct cross examination of any expert witness shall only be permitted by legal counsel representing a party to the proceedings, and will be conducted after completion of the public comment during the County/Applicant response. Other questions shall be directed to the Hearing Examiner during the public comment portion of the hearing and the Hearing Examiner will then ask the question during the response portion of the proceedings.

2. The Hearing Examiner will establish and enforce rules of decorum as deemed appropriate consistent with the Rules of Procedure. This is not an adversarial proceeding. No discovery is authorized for this public hearing. The Cowlitz County Rules of Procedure provide that the Hearing Examiner may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony in order to expedite the proceeding and avoid the continuation of the hearing, while at all times providing a process for all those who wish to be heard the equal opportunity to testify or submit written evidence. For interested parties who wish to have a more formal presentation, with multiple witnesses, the County should be contacted to request a portion of time on this agenda that follows the presentation by Applicant. The Hearing Examiner further serves the right and opportunity to further modify these supplemental procedures as deemed necessary in the discretion of the Hearing Examiner to ensure a fair and efficient proceeding.
3. The Hearing Examiner and all parties shall make every reasonable effort to avoid delay at each stage of this matter. County staff shall keep the Hearing Examiner apprised of any new, changed or additional information received by the County prior to the public hearing that is related to or affects the procedural matters or hearing conduct provisions above. Requests for additional pre-public hearing conferences on procedural matters with the Hearing Examiner shall be directed to the attention of Kristin L. Friend, Legal Secretary for Mark C. Scheibmeir, at Hillier, Scheibmeir & Kelly, P.S., 299 N.W. Center Street, P.O. Box 939, Chehalis, WA 98532, tel.: 360-748-3386, or [kfriend@localaccess.com](mailto:kfriend@localaccess.com). All parties identified in pp. 1-2 above shall be notified telephonically or via email of any such request before or contemporaneously with the request itself.

DATED: \_\_\_\_\_, 2017.

COWLITZ COUNTY  
HEARING EXAMINER

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Mark C. Scheibmeir

Draft 10/6/17