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VIA ELECTRONIC FILING

Millennium Bulk Terminals—Longview NEPA EIS
c/o ICF International
710 Second Ave, Suite 550
Seattle, WA 98104

Re: SEPA Draft EIS Public Comment

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, as well as state and local chambers and industry associations, writes to express strong support for the proposed Millennium Bulk Terminal (MBT) and the associated U.S. Army Corps of Engineers draft environmental impact statement (EIS) for the project.

The importance of energy development and expanded trade opportunities to boosting lackluster U.S. economic growth is widely acknowledged. Nonetheless, our domestic policies continue to send mixed signals both to global and to U.S. markets. In particular, we are concerned about increasing regulatory restrictions that paralyze capital and threaten the fate of major U.S. infrastructure and energy projects. We need to make it clear to investors and consumers here and abroad that U.S. energy markets are open for business, and the Millennium export terminal is a perfect example of this need.

By cleaning up the site of a former Reynolds Aluminum smelter and redeveloping it into a port facility to export coal, MBT's brownfield revitalization emphasizes local environmental stewardship and would generate extensive economic benefits for state and local residents. As detailed in the draft EIS, Millennium expects the local economic benefits of the project will be substantial, generating more than \$102 million in state and local tax revenue over a 30-year period and resulting in more than 2,600 direct and indirect construction jobs, as well as 300 permanent jobs (including high-paying fields such as longshoremen, which earn an average of \$130,000 annually in wages and benefits).

For these reasons, we are pleased that the Army Corps' review of the project was thorough, appropriately focused, and broadly favorable. The Corps' exhaustive, 3,000 page EIS

affirms that the project will maintain exemplary environmental performance on a wide range of issues. In particular, the Corps' review concluded that the project would not have an adverse impact on air quality, water quality, fish and wildlife, tribal fishing, or traffic at rail crossings. With respect to coal dust—a concern heavily emphasized by project opponents—the Corps found that any coal dust from passing trains would be well below strict national air quality standards, and that “there would be no unavoidable or significant adverse environmental impacts from coal dust” associated with MBT.

Perhaps most important, we commend the Corps for keeping with the spirit of NEPA and decades of environmental permitting practice by focusing its analysis on the characteristics of the site itself, not the product being sold or what happens to it thousands of miles away from the facility under review. As the Chamber noted in comments to the Corps at the outset of this process three years ago, Congress never intended NEPA to apply to actions within other countries undertaken by foreign citizens.¹ If this were not true, countless transactions with other countries could be subject to review under the Act.

Unfortunately, in the wake of recently finalized NEPA guidance from the White House Council on Environmental Quality (CEQ), efforts are underway to overturn this longstanding statutory interpretation and agency practice by pressuring agencies to undertake complete life-cycle reviews of and mitigation for upstream and downstream greenhouse gas emissions. The U.S. Chamber strongly opposes this dramatic expansion of NEPA EIS scoping. While we fully support the fundamental purpose of NEPA in ensuring that the impact of the environment is considered in proposed federal actions, the expanded guidance goes beyond environmental protection, and hands special interests another tool to stop infrastructure development and land management activities in their tracks.

It is also important to recognize two key legal aspects of this issue: (1) courts have made clear that agency NEPA reviews need not consider the environmental effects of actions over which the agency has no control; and (2) courts have frequently found that a proposed federal action cannot be considered a “proximate cause” of an upstream or downstream action if the upstream or downstream action would occur regardless of the federal action.”² This is a key reason why other agencies such as the Federal Energy Regulatory Commission and Department of Energy have declined to undertake speculative consideration of upstream and downstream GHGs related to energy infrastructure projects. It is also certainly the case with respect to Millennium, because the Corps of Engineers has no control over the fate of U.S. coal exported to Asia, and because any downstream impacts related to Asian power generators' purchase and use of coal will occur regardless of the Corps' ultimate decision.

¹ <https://www.uschamber.com/sites/default/files/documents/files/110613-EIS%2520for%2520Millennium%2520Bulk%2520Terminals%2520Comments.pdf>

² Testimony of Roger Martella to House Committee on Natural Resources, May 13, 2015. Available at <http://naturalresources.house.gov/uploadedfiles/martellatestimony.pdf>

Nonetheless, the project is threatened by unprecedented conditions proposed by the state of Washington that would require the purchase of carbon offsets for greenhouse gas emissions from coal transported through MBT for sale in Asia. Such requirements could make MBT and other projects like it economically infeasible. For example, at a carbon credit price of \$20 per ton, the Millennium project's estimated 1.3 million tons of additional emissions could effectively cost port owners more than \$25 million per year. That amounts to what is effectively an enormous *export tariff* on an American product.

Moreover, if carbon mitigation requirements as envisioned by the State of Washington and the CEQ NEPA guidance were to advance, they could rapidly be expanded to an endless range of other exported products. The implications for other energy resources such as oil and natural gas are obvious, but it is entirely conceivable that other export products are similarly penalized, including aircraft, vehicles, heavy machinery, medical equipment, refrigerators, computers and electronic equipment, and even agricultural products. The same logic applies—use of all these products requires significant amounts of energy, and that energy increases carbon emissions.

In fact, energy is so ubiquitous in trade and commerce that nearly every transaction involving overseas use of American products could theoretically become subject to global carbon offset conditions. This is a path that would result in immeasurable harm to the U.S. economy while failing to actually reduce emissions, as activities made uneconomic by such domestic policies very likely could move overseas (along with their emissions) to countries that do not impose similar restrictions.

The Millennium Bulk Terminal project is a clear win for jobs, the economy, and expanded trade, and the NEPA EIS demonstrates that it will be fully protective of human health and the environment. We commend the Corps on its thorough and appropriately scoped review of this important project, and we urge it to resist pressure from interests both inside and outside of government to expand the scope or impose undue conditions upon MBT.

By pursuing sensible and balanced trade and energy policy at all levels of government, we can foster a regulatory environment that embraces trade and energy development as the economic anchor, and make it clear to the world that America is open for business.

Thank you for the opportunity to comment on this important project.

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Sincerely,



Karen A. Harbert