

TO: Alex Cuyler
FROM: Intergovernmental Relations Staff
DATE: November 30, 2012
RE: EIS Process for Proposed Coos Bay Bulk Export Terminal Project

This memo clarifies the process federal agencies are required to follow when preparing an environmental impact statement and how that process may affect the proposed development of the Coos Bay Bulk Export Terminal Project.

An environmental impact statement (EIS), under United States environmental law, is a document required by the National Environmental Policy Act of 1969 (NEPA) for certain actions “significantly affecting the quality of the human environment”. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. An EIS is a tool for decision making. It describes the positive and negative environmental effects of a proposed action, and it usually lists one or more alternative actions that may be chosen instead of the action described in the EIS. Several state governments require that a document similar to an EIS be submitted to the state for certain actions.

An EIS also acts as an enforcement mechanism to ensure that the federal government adheres to the goals and policies outlined in the NEPA. An action may be deemed subject to NEPA’s EIS requirement even though the action is not specifically sponsored by a federal agency. These factors may include actions that receive federal funding, federal licensing or authorization, or that are subject to federal control. An EIS should be created in a timely manner as soon as the agency is planning development or is presented with a proposal for development.

Federal agencies are required to prepare an EIS in accordance with Section 1502 of the Council on Environmental Quality Regulations (CEQ) for Implementing The Provisions of The NEPA. The Council on Environmental Quality (CEQ) is a division of the Executive Office of the President that coordinates federal environmental efforts in the United States and works closely with agencies and other White House offices in the development of environmental and energy policies and initiatives. Federal agencies are also required to file EISs with the Environmental Protection Agency (EPA) as specified in Section 1506.9 of the CEQ Regulations. The EPA is responsible for the receipt and filing of EISs prepared by the federal agencies. Every week in the Federal Register, the EPA publishes Notices of Availability for all EISs filed during the previous week.

By requiring projects to complete an EIS, the act encourages the action of the environmental costs of a project and introduces new information into the decision-making process. The intent is to help key decision makers and stakeholders balance the need to implement an action with its

impacts on the surrounding human and natural environment, and provide opportunities for mitigating those impacts while keeping the cost and schedule for implementing the action under control. Many states and local jurisdictions have enacted environmental laws and ordinances, requiring additional state and local permits before the action can proceed.

The question of whether or not a federal agency will determine that an EIS is necessary for the development of The Coos Bay Bulk Export Terminal Project is unknown at this point. The Coos Bay Bulk Export Terminal Project is still just conceptual at this point. When it comes to the development of a deep-draft marine terminal for export or import of bulk commodities (whether it is coal or any other bulk commodity), the determination of whether an EIS is required will most likely come from the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The concern is with sedimentation and water quality impacts specific to the Coos Bay Estuary as they relate to the development of the vessel access/berthing area. Another possible area of concern is the shoreside development and whether there is potential for impacting wetlands and, if so, what the scope of that might be.

Once a project developer files a permit application for development of the terminal, those agencies would then make the determination of whether or not an EIS is necessary. At that point, they would have the design footprint and other business specific information that would help determine how to proceed. A future terminal development project would also be required to meet all applicable state and local environmental and land use permitting processes.

In regards to the rehabilitation of the Coos Bay rail line, whether those improvements would be tied to the Coos Bay Bulk Export Terminal, an intermodal container terminal development, or some other large-scale freight transportation need, an EIS is unlikely to be required. Most of the upgrades would be to existing rail infrastructure. It is also unlikely an EIS would be required for the new construction of sidings (a short stretch of railroad track used to store rolling stock or enable trains on the same line to pass). The U.S. Surface Transportation Board oversees the regulation of railroads. From a state and local permitting perspective, railroads are exempt from any state and local regulation of actions or activities tied to interstate commerce. The permit exemption includes construction, operation, and maintenance of railroad infrastructure. Currently, federal inspectors oversee construction on the rail line to ensure compliance with environmental regulations.

Staff recommends that the draft resolution submitted by Commissioner Handy not be forwarded to the full Board of Commissioners due to:

- 1) The inability of a local government to request an environmental impact study,
- 2) The lack of an actual project at the Port of Coos Bay, and
- 3) The recognition that the National Surface Transportation Board is the body responsible for all things construction and operations as they pertain to railroads.

Draft Resolution:

-IN THE MATTER OF calling on the Army Corp of Engineers (ACOE) and the Bureau of Land Management (BLM) to conduct a comprehensive and expedited programmatic Environmental Impact Statement (EIS) involving potential coal transport and potential coal export facilities in Oregon.

WHEREAS, there are economic development opportunities and impacts for local communities that need to be examined with the potential shipping of coal across the northwest to potential coal export facilities along the Pacific coast, including ports in Oregon;

WHEREAS, there are concerns about the public health impacts on communities from transport, as well as to coal transport workers on the railways, barges, ships, and at port that transport the coal;

WHEREAS, there are concerns about the local and global public health impacts of emissions from the burning of coal;

WHEREAS, there would be benefit to have a thorough assessment of coal transport impacts on Oregon streams, rivers, and territorial sea; WHEREAS, Oregon Governor Kitzhaber and United States Senator Merkley have called on the Army Corp of Engineers (ACOE) and the Bureau of Land Management (BLM) to conduct a comprehensive and expedited programmatic Environmental Impact Statement (EIS) that examines the cumulative effects of coal transport to the west coast, the effects of the use of that coal to produce energy in Asia here in the United States, and the impacts on the people and natural resources in Oregon;

WHEREAS, Oregon Physicians for Social Responsibility, City of Portland and other communities across the state have endorsed Governor Kitzhaber and Senator Merkley's efforts.

NOW, THEREFORE, be it resolved that the Lane County Board calls on the Army Corp of Engineers (ACOE) and the Bureau of Land Management (BLM) to conduct a comprehensive and expedited programmatic Environmental Impact Statement (EIS) that examines the cumulative effects of coal transport to the west coast, the effects of the use of that coal to produce energy in Asia here in the United States, and the impacts on the people, commerce and natural resources of Oregon.

ADOPTED this ____ day of December, 2012