

Appendix N: Preliminary Permitting Assessment



March 2023
Austin Point Dockside Industrial Infrastructure Plan



Permitting Report

Prepared for Port of Woodland

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Prepared for
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TABLE

Table 1	Summary of Environmental Permits and Approvals Likely Required for This Project.....	3
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ABBREVIATIONS

APE	area of potential effects
APPS	Aquatic Protection Permitting System
CDID	Consolidated Diking Improvement District
County	Cowlitz County
CSGP	Construction Stormwater General Permit
CZMA	Coastal Zone Management Act
CWA	Clean Water Act
DAHP	Department of Archaeology and Historic Preservation
EA	environmental assessment
EC	Engineering Circular
Ecology	Washington State Department of Ecology
EIS	environmental impact statement
EO	Executive Order
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
FNC	Federal Navigation Channel
gpm	gallons per minute
HPA	Hydraulic Project Approval
KPFF	KPFF Consulting Engineers
ISGP	Industrial Stormwater General Permit
JARPA	Joint Aquatic Resources Permit Application
N/A	not applicable
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
Port	Port of Woodland
project	Austin Point Dockside Industrial Infrastructure Plan
RCW	Revised Code of Washington
SEPA	State Environmental Policy Act
Services	NMFS and USFWS
SHPO	State Historic Preservation Officer
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service

WAC	Washington Administrative Code
WCM	Water Control Management Plan
WDFW	Washington Department of Fish and Wildlife
WDNR	Washington State Department of Natural Resources
WQC	Water Quality Certification

1 Introduction

Anchor QEA, as a subconsultant to KPFF Consulting Engineers (KPFF), has been hired by the Port of Woodland (Port) to provide permitting support for the Port's Austin Point Dockside Industrial Infrastructure Plan project (project). Austin Point is located along the Columbia River and accessible to the Federal Navigation Channel (FNC). This approach is based on early design concepts and our understanding of the project in its current form and may need to be updated as design and agency coordination progresses.

1.1 Project Understanding

The project would develop a marine port terminal and turning basin along the Columbia River at Austin Point. The Austin Point properties include parcels inside and outside the federally constructed dike. The plan that is the subject of this report will focus entirely on the waterside parcels WB3513002, WA0203001, and WA0202002. The combined size of the parcels is 132.73 acres, including industrial areas, wetlands, and public recreational areas owned by the Port. A portion of the area is currently used for dredge spoil placement by the U.S. Army Corps of Engineers (USACE) as part of the Columbia River Channel Maintenance project and within the same location leased by a Port tenant. Dredged material is sold wholesale by the Port unless deemed necessary for Port improvements, including any fill at Austin Point. A portion of the property is accessible to the public within a control area that is separated from wetland sensitive sites within the Point. The Port is currently working with another consultant within parcel WA0203001 on a wetland restoration plan for future mitigation credit for linked project development. The area within parcel WB3513002 would be a potential area for mitigation for dockside improvements, given its proximity to the USACE project at Woodland Island, just off the northern portion of Austin Point.

This report is one of several that evaluate regulatory requirements, potential constraints, considerations for project development, and identification of fatal flaws. This report contains the permits anticipated to be needed to develop the project. The permits are based on the project as understood today, and changes to project design could require additional permits or negate the need for some of these permits.

2 Anticipated Permits and Project Considerations

The following assumptions were used to prepare this report:

- The Columbia and Lewis rivers and their tributaries are shorelines of the state and are critical habitat.
- All wetlands would be avoided.
- Critical areas (buffers and aquifer recharge areas) could be impacted, and the project would require a critical areas review.
- Waterways that would be impacted are waters of the United States and State of Washington.
- In-water work will occur.
- Endangered Species Act (ESA)-listed fish are present in the Columbia and Lewis rivers.
- A floodplain permit would be needed. The project site is in Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map Zone 53015C0981G and is designated as Zone AE (Regulatory Floodway).
- No permit applications or associated application materials will be developed by Anchor QEA at this time.
- There will be no point of discharge for stormwater, operational water, or runoff during operation.
- It is assumed that no project-related activities will occur within 660 feet of an eagle nest. Accordingly, no incidental take permit will need to be obtained prior to construction.

Based on these assumptions, the typical permits considered for a project like this are included in Table 1. Table 1 also includes the approvals likely required and needed for constructing the project. A description of the Individual Permit and process follows. If any grants are obtained, the process timelines might be slightly different, but the overall process and permits would be the same.

Table 1
Summary of Environmental Permits and Approvals Likely Required for This Project

Permit or Approval	Agency	Trigger	Approximate Agency Review Time Frame	Notes
Section 10/404 Individual Permit*	USACE	Work within navigable waters of the United States under Section 10 and discharge of fill material to waters of the United States under CWA Section 404	1 to 3 years	It is assumed that no wetlands under USACE jurisdiction would be impacted. However, impacts to the Columbia River, a navigable water, would occur. Therefore, a CWA Section 404 permit would be needed. A JARPA will need to be prepared and submitted to USACE.
Section 408 Permit*	USACE	Proposed alteration(s) to a federally authorized project	12 to 18 months	A cover letter and supporting materials will need to be prepared and submitted to request Section 408 permission.
NEPA Compliance*	USACE	Requirement for a project requiring a federal permit and/or federal funding	1 to 3 years	Given the potential impacts of the project, it is assumed that an EA or EIS would be required to satisfy NEPA requirements.
NHPA Section 106 Compliance	USACE in Consultation with DAHP	Associated with proposals that may affect archaeological or cultural resources or historic properties	12 to 18 months**	The project includes construction-related ground disturbance. As the federal lead agency, USACE will consult with tribes and the SHPO as part of the permit review process.
ESA Compliance	USACE in consultation with NMFS/USFWS	Associated with approvals of activity that may affect species listed under ESA Section 7	1 to 3 years**	A biological assessment will need to be submitted with the JARPA to initiate consultation.
Bald and Golden Eagle Protection Act	USFWS	Requirement for a project that will occur within 660 feet of an eagle nest	N/A	The Bald and Golden Eagle Protection Act prohibits the taking of bald and golden eagles, including their parts, nests, or eggs, without an incidental take permit issued by USFWS. An incidental take permit will not be needed for this project.
CZMA Consistency Determination	USACE in coordination with Ecology	Projects that contain a federal nexus proposed within any of Washington's 15 coastal counties	12 to 18 months	A CZMA consistency form will be submitted to USACE for consultation with Ecology.

Permit or Approval	Agency	Trigger	Approximate Agency Review Time Frame	Notes
CWA Section 401 WQC	Ecology	Necessary for federal approvals for discharge of fill material to waters of the United States under CWA Section 404	12 months	A pre-filing meeting request must now be submitted to Ecology at least 30 days before submitting a 401 WQC request. As part of the 401 WQC process, there is now an additional 30-day internal coordination period between USACE and EPA to identify any impacts to neighboring jurisdictions. A Water Quality Monitoring Plan will need to be prepared and submitted with the JARPA to Ecology and USACE.
Water Right Application	Ecology	Needed to draw water from surface (Columbia River) or ground to supply the operations and for fire suppression	1 to 10 years***	A pre-application consultation ensures applicants have a clear understanding of the process and timeline.
NPDES CSGP	Ecology	Clearing, grading, or excavation activities that disturb an area of 1 acre or more or discharge stormwater to surface waters of the state	1.5 to 3 months	The construction activities may trigger NPDES. A NOI will be submitted at least 90 days prior to construction.
ISGP	Ecology	Necessary for facilities if stormwater from the facility discharges to a surface waterbody or to a storm sewer system that discharges to a surface waterbody	1.5 to 3 months	New facilities must submit a complete and accurate NOI and permit application at least 60 days before the commencement of stormwater discharge from the facility.
HPA	WDFW	Necessary for any work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state per WAC 220-660	45 days; however, cannot apply for HPA until SEPA process is complete	An online application would be submitted via the WDFW APPS for issuance of an HPA.
Aquatic Use Authorization	WDNR	Work occurring in or over state-owned aquatic lands	12 to 18 months	It is assumed that the Port will coordinate Aquatic Use Authorization under their existing Port Management Agreement with WDNR.

Permit or Approval	Agency	Trigger	Approximate Agency Review Time Frame	Notes
SEPA Compliance*	County	Any project that requires a local agency decision	1 to 2 years	Based on the nature of the project and potential impacts, it is expected that an EIS would be required.
Planning Clearance	County	Necessary for single-family dwellings, accessory structures, on-site septic systems, commercial proposals, and industrial developments	6 months	The County permitting process begins with Planning Clearance. Projects are reviewed for compliance with required setbacks, zoning, critical areas, and other applicable land use codes.
Critical Areas Review	County	Necessary for work occurring within any designated critical areas in County jurisdiction	6 to 12 months	The Columbia and Lewis rivers are considered a critical habitat. Work is expected to occur in the river, so a critical areas ordinance consistency determination would be required.
Floodplain Permit	County	Necessary for all work occurring within areas identified as frequently flooded	6 to 12 months	The project is within Zone AE (Regulatory Floodway). The project is identified as being in a frequently flooded area in accordance with Cowlitz County Code Section 16.25.040. Accordingly, a floodplain permit would be required.
Stormwater Permit	Cowlitz County Public Works Department	Necessary for development within the County	6 to 12 months	A stormwater permit application would need to be prepared and submitted to the County for review.
Level 2 Substantial Shoreline Development Permit	County	Necessary for work within a shoreline of the state	6 to 12 months	The Columbia and Lewis rivers are shorelines of the state, so a Level 2 Substantial Shoreline Development Permit would likely be needed. A pre-application meeting is recommended by the County.
Building Permit	Cowlitz County Public Works Department	Necessary for proposals to build new structures within the County	2.5 months	A building permit application will be prepared and submitted to the County.
Fill and Grade Permit	County	Necessary for filling and grading activities within the County	2.5 months	A grading permit application will be prepared and submitted to the County.
Application for Approach/Access to County Road	Cowlitz County Public Works Department	Necessary for all work within County road rights-of-way	2.5 months	An application to perform work on and within the County road right-of-way will be prepared and submitted to the Cowlitz County Public Works Department.

Notes:

* This process is outlined in the corresponding section of this report.

** Concurrent with NEPA and USACE review processes

*** The water rights timeline is dependent on many factors, including other applications and type of project.

2.1 Federal Permits and Approvals

2.1.1 Section 10/404 Individual Permit

USACE is anticipated to be the federal lead agency for the project. The project includes Rivers and Harbors Act Section 10 and Clean Water Act (CWA) Section 404 actions that will require coverage under a USACE Individual Permit. The Joint Aquatic Resources Permit Application (JARPA) package will include sufficient documentation to cover archaeological and cultural resources and ESA consultation. For compliance with CWA Section 404, USACE will require an Alternatives Analysis demonstrating the Least Environmentally Damaging and Practicable Alternative.

The Individual Permit review process is initiated via submittal of a JARPA to USACE. Once the application is determined complete by USACE, there is a 30-day public notice period that can be combined with the Washington State Department of Ecology (Ecology) CWA Section 401 review process.

There are many strategies for approaching the federal permitting process when completing a separate National Environmental Policy Act (NEPA) process outside of the CWA Section 404 review process. The timing of the submittal of the JARPA will be determined by the level of NEPA compliance required (i.e., environmental impact statement [EIS] or environmental assessment [EA]) and whether federal funding will be sought. The NEPA process will provide additional public review of the project and consultation for the ESA. Section 106 will be linked to the NEPA process, and permits cannot be issued prior to a Record of Decision or Finding of No Significant Impact. Assuming an EIS would be required, the time frame for the Individual Permit would be linked to the NEPA process and, therefore, is anticipated to be approximately 1 to 3 years. Section 408 review must be completed before the Individual Permit is issued and would be completed concurrent with the other processes.

2.1.2 Section 408 Considerations

Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 United States Code 408 (commonly referred to as "Section 408") authorizes USACE, via the District Engineer, to grant permission for the alteration, occupation, or use of a USACE civil works project if USACE determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. Due to the presence of the USACE-maintained levee along the Columbia River (operated by the Cowlitz Consolidated Diking Improvement District [CDID] No. 2), pile dikes in the Columbia River, the potential for modifications to the Columbia River FNC, and proposed berthing adjacent to the channel, development at Austin Point will be subject to Section 408 review by USACE. Because of the intricacies and level of potential impacts to Section 408 resources, this process is outlined in more detail in Section 4.2.

2.1.3 National Historic Preservation Act Section 106 Concurrence

The lead agency for Section 106 of the National Historic Preservation Act consultation is USACE. Section 106 requires that the federal agency determine whether a project will have an adverse effect on historic properties, including archaeological and cultural resources, historic structures, and Traditional Cultural Properties. The Section 106 process requires identification of the area of potential effects (APE), evaluation of potential historic properties in the APE, and a determination of project effects. Consultation with tribes and the State Historic Preservation Officer (SHPO) occurs as part of Section 106 consultation. Typically, USACE requires the applicant to provide documentation that describes the APE, identifies and evaluates historic properties, and describes project effects, which the agency then shares with tribes and SHPO. The review process will occur concurrent with the NEPA process and Individual Permit review and is anticipated to take approximately 12 to 18 months to complete. There is no public notice process associated with this approval.

2.1.4 Endangered Species Act Section 7 Concurrence

The lead agency for ESA Section 7 consultation, in coordination with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS; collectively, the Services), is USACE. The project proposes in-water activities that have the potential to affect ESA-listed species or critical habitat. To avoid or minimize adverse impacts to ESA-listed species, best management practices and conservation measures will be incorporated into the project definition, including working within the in-water work window when ESA-listed fish species are less likely to be present.

The ESA consultation process will occur concurrent with NEPA and the Individual Permit review and is anticipated to take approximately 1 to 3 years to complete. No public notice process is associated with this approval. Recent delays have been experienced with ESA consultation (with NMFS and USFWS), due to budget and staffing constraints; however, the estimated 1 to 3 year time frame for the completion of the NEPA process includes time for the Services to complete their evaluation and agree on the mitigation approach.

2.1.5 Coastal Zone Management Act Consistency Determination

The lead agency for Coastal Zone Management Act (CZMA) consistency review in coordination with Ecology is USACE. A Certification of Consistency with the Washington State Coastal Zone Management Program for Federally Licensed or Permitted Activities form is completed and submitted with the JARPA. The CZMA consistency determination is typically issued after federal, state, and local permits and approvals are obtained (estimated 12 to 18 months). There is no public notice process associated with this approval.

2.1.6 Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act prohibits the taking of bald and golden eagles, including their parts, nests, or eggs, without an incidental take permit issued by USFWS. If the activities associated with a project were to occur farther than 660 feet from an eagle nest, an incidental take permit would be required. An incidental take permit will not be needed for this project because it is assumed that no eagle nests are within 660 feet of the project site.

2.2 State Permits and Approvals

2.2.1 Section 401 Water Quality Certification

Ecology is the review agency for the CWA Section 401 Water Quality Certification (WQC). Ecology reviews all projects requiring work within waters of the state for consistency with the Washington State Water Quality Standards per Washington Administrative Code (WAC) Chapter 173-201A. The WQC review process is initiated via submittal of a JARPA and a Water Quality Monitoring Plan to Ecology, concurrent with the USACE submittal. USACE frequently coordinates with Ecology to issue a joint public notice to streamline the process. The time frame for WQC review is anticipated to be 12 to 18 months from the complete application determination.

2.2.2 Water Rights Application

Water needs were evaluated for the project (i.e., two alternative designs at this time: Alternative 1 and Alternative 2; see the project design report for details of the alternatives) to assess how much water would be needed and what sources of water are available. During typical operations, the anticipated maximum daily demand and peak hourly demand are expected to be relatively low (see following summary). However, in the event that a vessel needs to fill its onboard water tank, the maximum daily demand could increase significantly. The need for water in the event of a fire was also evaluated and included in the following information.

- Domestic Water Demand (Well) – Both Alternatives 1 and 2
 - Maximum daily demand including vessel filling = 59,150 gallons per day
 - Maximum daily demand without vessel filling = 1,550 gallons per day
 - Peak Hourly Demand including vessel filling = 108 gallons per minute (gpm)
 - Peak Hourly Demand without vessel filling = 68 gpm
- Fire Water Demand – Alternative 1
 - Peak Flowrate = 4,000 gpm
 - Maximum Daily Volume = 960,000 gallons per day
- Fire Water Demand – Alternative 2
 - Peak Flowrate = 1,750 gpm
 - Maximum Daily Volume = 420,000 gallons per day

There are no current public water supply mains, groundwater rights, or surface water rights in the area that would service the needs for the project. Consideration was given to obtaining water from a groundwater well or the Columbia River. The well configuration would likely be a large Ranney well and may include a storage tank. The Columbia River system would likely have pumps mounted to an overwater structure that draw directly from the river and feed the upland system. The fire system demands vary between Alternatives 1 and 2. This is because Alternative 1 locates the grain silo landside of the levee, which in turn increases the required fire flow.

Austin Point is located within Water Resource Inventory Area 27 (Lewis Watershed). According to WAC 173-527-090, Austin Point is located within a regional supply area (west of Interstate Highway 5, north of Lewis River Mainstem, and within the Lower Lewis subbasin) where water is potentially available on a year-round basis for future groundwater withdrawals, so no special restrictions beyond requirements from the Water Code (Revised Code of Washington [RCW] 90.03) and/or Regulation of Public Groundwaters (RCW 90.44) apply in obtaining water supply.

Both water supplies are likely feasible; however, the requirements and permitting for drawing water from the Columbia River are potentially greater than required for a groundwater permit. A water right from the Columbia River would require multiple permits, including a water right application through Ecology and consultation with the NMFS regarding ESA-listed salmonids in the river. The permit would likely have design requirements to minimize impacts to salmonids (e.g., fish screens, water intake depth and distance).

A new groundwater permit has fewer permit requirements but can also take time to obtain. However, because there are not any nearby public water mains, the use of a groundwater well to supply water to the site is anticipated. Because the demand is above the 5,000-gallons-per-day limit for exempt wells, the water right process would also require a water right application through Ecology.

In both the groundwater and surface water alternatives, water right processing is dependent on other pending applications in the area because applications are processed in the order in which they are received. A brief review of active applications and permits in the Lewis Watershed listed in Ecology's database found 100 applications (Ecology 2022); some of these applications date back to 1990.

It is recommended that a pre-application consultation be scheduled with Ecology. This consultation provides the opportunity to discuss water supply options and considerations prior to paying fees and filing a water right application. This consultation will also provide information such as other pending applications in the area, expected processing timelines, data and analysis requirements, and any potential options or alternatives for processing. Because Ecology is the final processor of the water right applications, its feedback and early involvement is essential to streamline the water right application process and to have a full understanding of the process and timeline.

2.2.3 National Pollutant Discharge Elimination System Permits

Ecology is the local lead agency for National Pollutant Discharge Elimination System (NPDES) permit compliance. Stormwater and construction process water will be appropriately managed for all upland materials transloading, stockpiling, and rehandling. Current research and coordination with West Coast Training contacts indicate that there are no existing permits, so a new permit would be needed.

The project would also require an NPDES Construction Stormwater General Permit (CSGP) for construction activities. The CSGP is triggered by clearing, grading, or excavation activities that disturb an area of 1 acre or more or discharge stormwater to surface waters of the state. Ecology has the authority to require CSGP coverage for certain potentially impactful activities even if they will result in the disturbance of less than an area of 1 acre. The CSGP review process is initiated via electronic submittal of a Notice of Intent (NOI) and publication of the NOI in the local newspaper for 2 consecutive weeks. The review process takes approximately 3 months after submittal of a complete application.

2.2.4 Industrial Stormwater General Permit

Ecology is the lead agency for Industrial Stormwater General Permit (ISGP) compliance. This project would require an ISGP for operational activities. The ISGP is required for facilities conducting industrial activities that discharge stormwater to a surface waterbody or to a storm sewer system that drains to a surface waterbody. Issuance of this permit authorizes discharge of stormwater and conditionally approved non-stormwater discharges to waters of the United States. The ISGP review process is initiated via electronic submittal of a NOI and permit application. New facilities must submit a complete and accurate permit application at least 60 days before the commencement of stormwater discharge from the facility.

2.2.5 Hydraulic Project Approval

The lead review agency for the Hydraulic Project Approval (HPA), issued under the Washington State Hydraulic Code, is the Washington Department of Fish and Wildlife (WDFW). The HPA defines state requirements for construction activities in order to avoid unnecessary disturbance to fish, shellfish, and wildlife. The HPA is applied for via the WDFW Aquatic Protection Permitting System (APPS) for issuance of the HPA and takes approximately 45 days. The HPA cannot be applied for until the State Environmental Policy Act (SEPA) process is completed.

2.2.6 Aquatic Use Authorization

The Washington State Department of Natural Resources (WDNR) administers the review and approval process for activities occurring on or over state-owned aquatic lands. The Port and WDNR currently have a Port Management Agreement in place for state-owned aquatic lands within the

project area. The Port will coordinate Port Management Agreement consistency with WDNR related to project actions in these areas. The Aquatic Use Authorization process is initiated via submittal of the JARPA and a completed JARPA Attachment E to WDNR. WDNR reviews and issues a signed Attachment E within months of submittal. However, the Aquatic Use Authorization, in the form of a lease or similar agreement, is typically not issued by WDNR until all local, state, and federal permits and approvals are obtained (estimated 12 to 18 months). There is no public notice process associated with this approval.

2.3 Local Permits and Approvals

2.3.1 Planning Clearance

The Planning Clearance is Cowlitz County's (the County's) process for reviewing a proposed project. Proposed projects are reviewed for compliance with all applicable land use and environmental regulations. All parcels with a proposed development must have Planning Clearance review completed in advance of other permits.

2.3.2 Critical Areas Ordinance Consistency Determination

The County is the lead review agency for critical areas ordinance consistency, per Cowlitz County Municipal Code Chapter 16.55. The substantive provisions of the County's critical areas ordinance will be considered by Ecology as part of the project, but a critical areas consistency determination will not be required. The project is in a mapped erosive soils area and will require a geotechnical assessment. A wetland delineation and a level 2 habitat assessment will also be required. This process takes approximately 6 to 12 months.

2.3.3 Floodplain Permit

As discussed in Table 1, the project is within a FEMA flood zone and is identified as being in a frequently flooded area in accordance with Cowlitz County Code Section 16.25.040. A floodplain permit would be required in accordance with Chapter 16.25. The County will be the issuing agency for the floodplain permit. This permit will include a zero-rise analysis. This process takes 6 to 12 months.

2.3.4 Stormwater Permit

The Cowlitz County Building and Planning Department will review development applications and determine if a stormwater permit is required. If required, stormwater permits are processed and issued through the Department of Public Works. It is expected that the project will require a stormwater permit. This process takes approximately 6 to 12 months.

2.3.5 Shoreline Permit

The County is the lead review agency for Shoreline Management Act consistency. Applications for shoreline permits required under the Shoreline Management Act (RCW Chapter 90.58) will be submitted to the Department of Building and Planning. Prior to the County considering the issuance of a proposed substantial shoreline development permit, a project must obtain a Planning Clearance from the County. To approve a shoreline development, the County must find that a proposal is consistent with the requirements of Section 8.6.4 of the County's Shoreline Management Plan.

The Columbia and Lewis rivers are shorelines of the state, so a Level 2 Substantial Shoreline Development Permit would likely be needed. As part of the Substantial Shoreline Development Permit process, a hydrologic analysis evaluating the impact to the floodplain must be completed, and the analysis must indicate zero rise in flood elevation. To achieve this, the project needs to have a balanced cut and fill within the floodplain and will likely require an amount of material be removed from the floodplain equal to the volume of material placed in the floodplain. The northernmost parcel is zoned Forestry/Recreation and would require a Special Use Permit that would go to a special hearing if any development is proposed for that parcel. This hearing would be part of the Level 2 Substantial Shoreline Development Permit process. A pre-application meeting is recommended by the County. This process takes approximately 6 to 12 months.

2.3.6 Building Permit

The County requires a building permit for projects that include demolition or construction of structures requiring County review. It is anticipated that the demolition of existing structures and construction of pier structures within the project area will require a building permit. The building permit review process is initiated via submittal of a building permit form and 90% or 100% design level plans and specifications. There are typically specific inspection requirements during demolition and construction to ensure that the project was completed to plan. The building permit review process typically takes 4 to 6 months. There is no public notice process associated with this approval. The building permit review process may include sanitary sewer and domestic water connection approval, if required.

2.3.7 Development Permits

Projects within the County that include fill and grade activities and construction of new infrastructure require grading, building, road approach and access, or other related development permits. These permits are issued by the County and their departments and include requirements to protect the environment and human health and safety.

3 Permitting Considerations

Based on the assumptions listed previously, permitting would occur at the federal, state, and local level. Most of the permits and approvals listed in Table 1 are anticipated to be relatively straightforward and would be obtained with the appropriate supporting field work and environmental documentation. The exceptions are the Section 408, NEPA, and SEPA processes, and those processes are discussed in greater detail in Sections 2.2 and 5.

3.1 Fatal Flaws Considerations

The time frames included in this report are based on previous regulatory experience and best professional judgement. These time frames are subject to change and could be impacted by post-submittal design updates or agency coordination. In-water construction associated with the project is generally subject to agency-approved in-water work windows established for the region. The approved in-water work window for the applicable portion of the Columbia River (the mouth of the river to the Snake River) is from November 1 through February 28. The approved in-water work window for the applicable portion of the Lewis River (mouth to forks) is June 1 through October 31.

The lengthiest aspects of the permitting processes described in Table 1, including the Section 10/404 Individual Permit, ESA consultation, the CZMA consistency determination, and the Aquatic Use Authorization could take up to approximately 1 to 3 years to complete. It is recommended that these processes are commenced at the earliest opportunity and linked with the NEPA process. Water Rights can take up to 10 years and can be completed independent of the NEPA process.

No known fatal flaws were identified for this project. Early coordination with agencies would verify this and ensure there are no unknown fatal flaws. Discussions with agencies could include discussing potential development scenarios and potential hindrances in permit issuance. A separate discussion concerning fatal flaws considerations for the Section 408, NEPA, and SEPA processes are provided later in this report.

3.2 Potential Mitigating Measures

Impacts to waters of the United States or waters of the state will require mitigation for overwater structures. This can be in the form of creation of fish habitat (e.g., off channel habitat or in-water wood placement), removal of other overwater structures, or other negotiated options. This mitigation will be in coordination with the ESA consultation and would mitigate for both regulations.

The Section 408 process must be completed before USACE can issue a Section 404 or Section 10 permit. This is further described in Section 4.2. The Port of Woodland should enter in the regulatory processes with regulatory agencies at the time that 30% design documents are available.

Project-specific mitigating measures may be identified by regulatory agencies during further design-phase discussions.

4 Section 408 Process Overview

4.1 Section 408 Process Initiation

The USACE Portland District Program Manager for Section 408 is Sally Bird-Gauvin, and her phone number is 503-808-4765. To initiate the Section 408 permitting process, an applicant must email section408nwp@usace.army.mil and provide their contact information and project information.

4.2 Section 408 Considerations

Due to the presence of the USACE-owned levee (operated by CDID No. 2), the potential impacts to the Columbia River FNC, and up to two pile dikes, development at Austin Point will be subject to Section 408 review by USACE.

4.2.1 *Existing Conditions*

The USACE-owned levee, the Columbia River FNC, and the pile dikes are all currently operable civil works projects maintained by USACE. There are no current encroachments of the FNC or the pile dikes associated with existing conditions at Austin Point. The County and the Port will need to enact a franchise agreement to guide the development of any proposed structures over the levee at Austin Point.

4.2.2 *Key Development Considerations*

Section 408 review may require development of substantial engineering-related information detailing any potential impacts to federally controlled structures. Specifically, any associated structures crossing or alterations to the CDID No. 2-owned levee, work near or within the FNC, or alterations to the pile dikes may require detailed engineering drawings. USACE has developed scalable procedures and required information to make determination on Section 408 projects. Based on the proposed alterations, the USACE Portland District will determine the data, analyses, and documentation necessary to make a determination on whether proposed alteration(s) caused by the Austin Point project impairs the usefulness of the federal civil works projects or is injurious to the public interest. The proposed development at Austin Point could impact the aforementioned USACE civil works projects and is potentially expected to be considered a major (as opposed to a minor) development based on the existing USACE guidance on completing Section 408 review (Bird 2022). Encroachment would occur to the FNC for the proposed turning basin and for dockside work. There are two options regarding development of the turning basin. The first option is to request that a cost-shared civil works project be developed in coordination with USACE and that the new turning basin be constructed in the FNC. The second option is to develop a private turning basin that would be maintained by the Port. The advantage of a cost-shared civil works project with USACE is there can be cost sharing of studies, construction, and future maintenance costs. However, USACE would

have to identify a federal economic benefit for the turning basin to justify the cost sharing. It is possible that funds and time could be expended before that conclusion is reached; the overall process is very slow (i.e., 10 to 15 years) and must determine a high cost-benefit ratio to prioritize the project if the federal economic benefit hurdle can be overcome. A private turning basin would have a faster timeline (i.e., 3 to 5 years) and would not require as high of a level of demonstrated public benefit. The public benefit threshold would likely be met through the provision of export facility products to the public, and rather than being required to demonstrate a federal economic benefit, the Port would only need to develop a purpose and need statement.

It should be noted that encroachments or impacts to the levee, FNC, or pile dikes may be allowed by USACE but must be addressed through mitigating measures developed during the design phase through coordination with USACE and other applicable landowners/levee-owners. The general nature of the analysis and documentation expected to be required by USACE for a major development can be found in Attachment A (USACE Engineering Circular [EC] 1165-2-220).

Appendix E (Dams and Levees) of EC 1165-2-220 provides supplemental guidance to be used when alterations are proposed by others to federally authorized dams, reservoirs, and levee systems. There are other requirements that may be needed to assess potential impacts to the FNC and pile dikes. No current guidance for potential impacts to the FNC and pile dikes was located, and further discussion with USACE would be required. Based on existing guidance, the following information or analyses may be required:

- **Risk Assessment:** The requester may be required to provide a risk assessment showing risk estimates associated potential failure modes with and without the proposed alteration in place.
- **Discussion of Executive Order (EO) 11988 Considerations:** The requester may have to submit sufficient data so that USACE can conduct its analysis and ensure that the proposed alteration would be compliant with EO 11988. USACE may require the requester to submit sufficient data in order that the district may conduct its analysis required by reference A.35 to ensure that the proposed alteration is compliant with EO 11988. The request should be assessed as to whether there would be induced development in the floodplain, as defined in A.35, as a result of the proposed alteration and address the positive and negative impacts to the natural floodplain functions.
- **Civil:** Each requester should clearly identify existing condition of the USACE project being altered. The requester should also include plan, profile, and design details of the proposed alteration, which may include the following:
 - Alteration location (vicinity map and specific alteration location in station or river mile and/or decimal degrees)
 - Applicable datum

- Real property, existing and to be acquired, needed for the proposed alteration
- Grading plans
- Layout plan, profiles, and cross sections of proposed alteration
- Previous inspection reports to assist in identifying existing deficiencies and their proximity to the proposed alteration
- Temporary measures required during construction (bypasses, cofferdams, etc.)
- **Geotechnical:** If proposed alterations alter the USACE project cross section or penetrate the natural blanket or foundation, the following information may be necessary:
 - Erosion control (changes in erosive forces on a slope)
 - Material usage/borrow/waste/transport/hauling
 - Liquefaction susceptibility
 - Placement of stockpiles, heavy equipment, or other surcharges
 - Drilling plan
 - Results of subsurface investigation – boring logs, test pit logs, laboratory test results, etc.
 - Seepage analysis
 - Settlement analysis
 - Stability analysis
 - Vegetation
- **Structural:** The following is a list of analyses or information that may be necessary to evaluate the impacts of proposed alterations to concrete, floodwalls, or drainage structures:
 - Bridges and related abutments
 - Design analysis for retaining walls and excavation support system
 - Design of shallow or deep foundations, including bearing capacity and settlement analysis if the construction is located within the line of protection or right-of-way and creates potential seepage problems
 - Design recommendations for foundations on expansive soils
 - Diaphragm walls
 - Gates or other operable features
 - Other structural components integral to the USACE project
 - Pier penetrations of embankments
 - Stability analysis, including sliding, overturning, bearing, floating, uplift, and any seismic load effects for any alteration to the channel walls and/or flood walls
 - Structural drainage control methods
 - Water stops and contraction/expansion joints
- **Hydrology and Hydraulics:** Appendix H of EC 1165-2-220 outlines when and how a hydrology and hydraulic system analysis should be conducted. The following are examples of factors that should be considered when evaluating hydrology and hydraulics impacts:

- Changes in inflow
- Changes in velocity
- Changes in water surface profiles and flow distribution
- Consideration of impacts to energy dissipation measures, hydropower generation, sedimentation, or navigation
- Scour analysis
- Sediment transport analysis
- **Water Control Management Plan:** If alterations to the pile dikes are proposed, the requester should consider any impacts or changes to water control plans that may be necessary. If a change to a water control manual is required, the NEPA document developed for Section 408 alteration should incorporate appropriate analysis for updating the water control manual. Alterations that will work in conjunction with an existing Federal Water Control Manual (WCM) should be documented and incorporated into that WCM. Items to be considered are:
 - Effects on biological opinions, Water Quality Certifications, and Coastal Zone Management Concurrences should evaluate project impacts on any legal document, agreement, or requirement that informs water control management by USACE.
 - Impacts/revisions to the operation of USACE facilities or other projects within the basin
- **Operations, Maintenance, and Flood Fighting:** Alterations may change how a dam, levee, floodwall, or channel project is to be operated or maintained. This may also require special flood-fighting procedures. USACE will consider the following factors to determine potential effects:
 - Project and maintenance access
 - Special inspections requirements
 - Maintenance practices
 - Flood-fighting requirements and practices
 - A flood contingency plan should be used during construction, including the following:
 - Measures proposed to protect the area under construction
 - Monitoring of the river level
 - The river stage at which the plan will be activated
 - Materials and equipment to be used to activate the plan
 - Personnel contact and telephone numbers to activate the plan

4.2.3 *Fatal Flaws Considerations*

In order to grant permission under Section 408, USACE must determine that the proposed alterations do not impair the usefulness of the USACE project, which includes retaining the project's authorized purpose, and are not injurious to the public interest. In order to determine whether there are fatal flaws, a preliminary discussion with USACE to discuss potential development scenarios would be required. This conversation would verify assumptions and outline the path forward.

4.2.4 Potential Mitigating Measures

The Section 408 process must be completed before USACE can issue a Section 404 or Section 10 permit for a project. However, the Section 408 process is independent from those for Section 404 or Section 10. Therefore, as a time-saving measure, the Port should enter into the Section 408 process with USACE and other applicable landowners/levee owners at the time that 30% design documents are available. Project-specific mitigating measures may be identified by USACE and other applicable landowners/levee owners during further design-phase discussions.

5 SEPA and NEPA Process Overview

Proposed development at Austin Point will be expected to satisfy SEPA and NEPA requirements. Based on the conceptual site plans, it is anticipated that SEPA compliance would be achieved through the development of a SEPA EIS. A separate NEPA process will be required for any proposed in-water work that would trigger a USACE permit. This USACE NEPA process would most likely be led by USACE, and an independent EA or EIS would be prepared, although a joint SEPA/NEPA process could also be used to satisfy these requirements. For planning purposes, it is anticipated that a NEPA EIS would be needed due to the likelihood of potentially significant impacts associated with endangered species and fish and the addition of overwater structures.

For the purposes of complying with SEPA, it is anticipated that a SEPA EIS would need to be developed. For a SEPA evaluation, the Port would need to identify development alternatives on the site specific to the tenants' needs and requirements and the specific materials to be handled at the site. Specific impacts associated with these development alternatives would be assessed, and mitigating measures would be identified to offset potential impacts.

For SEPA review, the SEPA process requires that the Port evaluate the project against the purpose and need for the proposed action and identify and evaluate the potential impacts of the proposed action compared with those of the identified alternatives. The SEPA EIS would require evaluation of the project based on purpose and need, as determined by the Port and, if applicable, the tenant. To meet these requirements, a SEPA EIS for the Austin Point project would address various aspects of developing Austin Point, including the following:

- Reasonable alternatives for development of a project, including a No Action alternative
- Environmental studies conducted for the project (including but not limited to: ESA biological assessment, CWA Section 404(b)(1), wetland delineations, and hydrodynamic evaluations)
- The potential for and significance of any adverse impacts as a result of implementing the project
- Mitigation measures designed into the project to minimize or avoid probable significant adverse impacts
- Any significant adverse impacts that cannot be avoided by the project's design and compensatory mitigation measures that could be used to reduce those impacts
- Other federal, state, and local permits, licenses, or other approvals required for the project, including the approvals for a proposed pipeline

A separate NEPA process will be required for any proposed in-water work (i.e., the construction of new marine terminals) and would likely be led by USACE. NEPA requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. The NEPA review

would need to include a similar review of reasonable alternatives, significant impacts, mitigation measures, and other related permits, licenses, or approvals as detailed previously for the SEPA process. The specific NEPA mechanism to be used would need to be determined by USACE but is expected to be a NEPA EIS, based on the anticipated impacts from developing Austin Point and other recent projects proposed on the Columbia River.

Early in the process, the federal lead agency should be verified. This will most likely be USACE. If any federal funding or grants will be used, it is possible that federal agency could be the lead (e.g., Maritime Administration could be the federal lead if a grant is applied for through that agency). Once the federal lead is identified, the level of NEPA documentation (EA or EIS) will be determined, and the overall NEPA and permitting approach can be planned out. The primary federal permitting processes (ESA, Section 106, and CWA Section 404) would be linked to the NEPA process, and their timelines, including consultation, would be concurrent with the NEPA process and would track accordingly. As such, the overall permitting timeline is contingent upon the level of NEPA compliance and the NEPA timeline. If an EIS is determined to be needed, the timeline would likely be 18 months to 3 years. It is anticipated that a NEPA EIS would be needed. However, if an EA is determined to be adequate, the overall permitting timeline could be 12 to 18 months.

5.1 SEPA/NEPA Fatal Flaws Considerations

No fatal flaws have been identified for the SEPA/NEPA process associated with the development of Austin Point. However, due to recent trends related to the level of public involvement associated with projects involving impacts to the Columbia River, the Port should be aware that there could be potential delays in the environmental process related to proposing development at Austin Point due to potential permit appeals or the need to respond to extensive public comments related to potentially sensitive aspects of the project.

5.2 Potential Mitigating Measures

As part of the SEPA and NEPA processes for the project, the Port should consider engaging specific groups or individuals with potential interest in or opposition to any element of the project. These interactions can occur in advance or as part of the EIS scoping process to identify specific concerns and proactively address potential project impacts and identify mitigation measures.

6 References

Bird, Sally (U.S. Army Corps of Engineers), 2022. Personal communication with Greg Summers (Anchor QEA, LLC). July 25, 2022.

Ecology (Washington State Department of Ecology), 2022. "Water rights." Accessed December 20, 2022. Available at: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights>.