COLUMBIA RIVER ESTUARY
STUDY TASKFORCE

January 16, 2015

U.S. Army Corps of Engineers
Richard Chong (CENWP-OD-G)
PO Box 2946
Portland, OR 97208-2946

Via Email: OregonLNG@usace.army.mil

RE: NWP-2005-748 – Public Comment

Dear Mr. Chong:

The Columbia River Estuary Study Taskforce is a council of governments located in Astoria, Oregon. We specialize in assisting local member jurisdictions with land use planning focused on natural resource issues and we implement large scale watershed restoration projects in the Columbia River Estuary. The comments below regarding the application for the Department of the Army permit for the Oregon LNG terminal and pipeline are based on our professional, local expertise in estuary restoration and Oregon land use.

Columbia River Estuary Habitat Considerations for Threatened and Endangered Salmon

Wild stocks in the watershed Lower Columbia River Estuary, Youngs Bay, and the Lewis & Clark River are severely depressed due to past land management practices that restrict fish rearing and refuge opportunities (e.g. floodplain diking), as well as consistent water quality issues related to high temperatures and pollution. CREST, the National Park Service, Clatsop County Soil and Water Conservation District and other groups have been systematically improving riparian conditions and off-channel wetland habitat access to recover salmon stocks throughout the Lower Columbia River Estuary and its tributaries. Several million dollars in public funds have been invested in restoring these habitats. The proposed project will impact limited and fragmented habitats and ongoing salmon recovery efforts.

In the *Applicant – Prepared Draft Biological Assessment and Essential Fish Habitat Assessment for the Oregon LNG Terminal and Oregon Pipeline Project*, 2013, the applicant asserts "existing

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habitat conditions on the Skipanon Peninsula are degraded. Their present value to federally listed species is primarily their annual contribution of organic detritus produced in the low and high marsh regions of the site. This detritus contributes ultimately to the food web of juvenile salmonids, green sturgeon, and eulachon." While current conditions may be degraded, there is a significant, ongoing efforts to improve high and low marsh conditions in the Columbia River Estuary. The location of the Skipanon Peninsula is a high priority for restoration efforts. CREST believes that the site already provides essential salmon habitat and that it can be improved to provide additional benefits.

There is ongoing watershed restoration work occurring on the Skipanon River. CREST will be removing the 8th Street Dam in Warrenton in partnership with the Skipanon Water Control District and the City of Warrenton. The District is working on two additional projects at the Middle Control Structure and the Cullaby Lake Fish Ladder to provide fish passage throughout the watershed. This large scale investment in restoration on the Skipanon could be extended with additional restoration work on the Skipanon Peninsula, providing valuable habitat benefits to ESA species from throughout the Columbia River Basin.

We disagree with the assertions in the Habitat Prioritization Table 1. taken from the *Oregon LNG Report APPENDIX 3B Biological Survey Reports – Aquatic Species and Habitat*, 2013.

CREST would assert that the low and high marsh habitat on Skipanon Peninsula **is** essential habitat for fish and wildlife with a high potential for restoration. We believe a habitat category 2 is appropriate for this habitat. The entire peninsula has a high potential for restoration, is close to the mouth of the Columbia River, and is hydrologically connected to ongoing restoration work in the Skipanon River, Youngs Bay, and Youngs Bay tributaries. The development of the Oregon LNG terminal and loss of wetlands should be viewed within the historical context of low and high marsh habitat loss in the Columbia River Estuary, and ongoing restoration efforts.

The proposed pipeline will cross the Lewis and Clark River in two locations. Long-term monitoring performed by CREST has found five species of federally listed juvenile salmon species using restored wetlands in the Lewis & Clark River watershed, including the Lower Columbia River Evolutionary Significant Unit (ESU) of coho (*Onchorhychus kisutch*), Lower Columbia River ESU of Chinook (*Oncorhybnchus tshawytscha*), chum (*Oncorhynchus keta*) and coastal cutthroat (*Oncorhynchus clarki*). In addition, genetic testing of juvenile Chinook salmon sampled at two locations along the Lewis and Clark River between pipeline milepost 3.1 and pipeline milepost 5.7 found that Upper Willamette River Chinook, another federally listed Chinook ESU, also uses the Lewis and Clark River for rearing.

The review process should address cumulative terminal and pipeline impacts on federally listed salmon using the Columbia River Estuary, the Skipanon River, Youngs Bay, and Lewis and Clark River and impacts on publically funded habitat restoration sites built specifically to implement salmon recovery plans.

Land Use and Public Access

The City of Warrenton's Comprehensive Plan, Section 5.323 (Public Access) sub-section 5.323(1) states "Existing public ownership, right-of-ways, and similar public easements in estuary shorelands which provide access to or along the estuary shall be retained or replaced if sold, exchanged or transferred." This sub-section further states "Right-of-ways may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained." In sub-section 5.323(3) it states "Proposed major shoreline developments shall not, individually or cumulatively, exclude the public from shoreline access to areas traditionally used for fishing, hunting or other shoreline activities." And finally, sub-section 5.323(7) states "The City will consider the recreational and public access value of any public lands proposed to be leased or sold to private interests, or used for public purpose which would reduce needed public access. The City will hold a public hearing to dispose of or lease public property, and will consider public input."

Oregon's Goal 17 covers "Public Access" of which the subject tax lot 810140000380 has a platted 100 foot right-of-way shown as "Road 300" as well as City of Warrenton Roads "NE Kings Ave and Bay Front Rd." Public access is one of the "Key" elements of the CZMP, which is "Providing public access for recreation." Oregon's Goal 17 (C) Open Space, Natural Areas and Aesthetic Resources, and Recreation also has public access as an important aspect to the states planning goals. All 29 of the coastal programs under the federal act emphasize the importance of safeguarding existing public access to coastal shorelands. The Public Trust Doctrine also plays an important role in maintaining and providing public access to tidal and navigable waters, the land beneath, in addition to the living resources held in trust by the state (Hildreth, 1989; Slade, 1990). The City of Warrenton Comp Plan, Section 5.323 (Goal 17) seems to back this up by protecting public access and stating that it **"shall"** not be eliminated and that if it is that "access across the affected site is retained."

The proposed LNG Terminal site is shown to have a designated trail under Warrenton's Trails Master Plan and Parks Plan, where the trail within the project site follows Bay Front Rd along the east bank of the Skipanon. In 2004, the Trails Association applied for and received a technical assistance grant from the National Park Service's Rivers and Trails program. Part of this grant funding was used to help inventory and map the Skipanon Trail section at the proposed LNG site. If the LNG project receives both state and local permits to construct and operate the facility, it will effectively eliminate public access and

use of the trail, which is both designated as a public trail and is protected under Section 5.323 of Warrenton's Comp Plan.

Based on the security requirements required for the Oregon LNG terminal site at the Skipanon River and that fact there is a platted city road through the proposed Terminal Site Plan, CREST would assert that the project proposes to effectively eliminate an existing "Public Access" point to coastal shorelands. This would be in direct conflict with the City of Warrenton's Comp Plan, Goal 17 Policies, and the Coastal Zone Management Act. Oregon LNG has failed to show how they have complied with Section 5.323, by retaining public access across the effected site. In addition, Oregon LNG has proposed to build within a public right of way, which they do not have the right to do as they have yet to secure a Public Hearing to Vacate the public right-of-way. The platted road belongs to the public as explicitly stated in state law.

Environmental Compliance

CREST completes environmental compliance and permitting with federal and state agencies for multiple projects occurring on the Columbia River and its estuaries each year. We have implemented two projects that required USACOE Section 408 permits and believe the proposed Oregon LNG terminal may be required to go through the Section 408 permitting process for impacts to federal levees.

CREST has concerns regarding this Section 404 public comment process. It is difficult for the public to have a full understanding of the cumulative impacts of the terminal and pipeline project without a complete NEPA process and local jurisdictional permitting. We question the ability to undertake a 404 review and make an informed decision without a final project EA and/or EIS and without local jurisdictional approval.

Thank you for the opportunity to provide comments.

Sincerely,

Denise Lofman
Director