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Tyler Schroeder
Whatcom County Planning and Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097

Re: Gateway Pacific Terminal

Dear Tyler:

This letter follows our conversations regarding my July 25, 2012 letter to County Executive Jack Louws. Communitywise Bellingham requests that the County require the proponent of the Gateway Pacific Terminal to supplement their major project permit application. The current application and project information document fail to explain how the proponent will resolve the rail choke point between Bow and Ferndale. Under WCC 20.88.130(5)-(6), the proponent must resolve this issue before qualifying for a major project permit.

I. More Information Is Necessary

On April 2, 2012, the County determined that the applications for a major project permit, shoreline substantial development permit, and zoning variance permit were complete. This does not mean that the proponent has submitted all the information necessary to evaluate the project. As the County's April 2, 2012 notes, "according to WCC 2.33.050(D)(3), a determination of completeness shall not preclude the county from requiring additional information or studies at any time prior to approval of the permits.

The County has compelling reasons to require additional information and studies on how the proponent intends to double rail capacity between Bow and Ferndale.

As Communitywise documented in its July 25, 2012 letter, the rail line between Bow and Ferndale has a sustained maximum capacity of 15 train trips per day. The proposed Gateway Terminal will increase rail traffic to 30 trips per day. There should be no dispute that the current rail line cannot handle the Terminal's additional load.

Under WCC 20.88.130(5)-(6), an applicant must prove that a major project:

(5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the appropriate agency or division thereof.

(6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and will not impose uncompensated costs on other property owned.

The Terminal's proponent has thus far failed to satisfy this standard

II. The Applicant Has Provided Less Information About Rail Capacity, Not More

On February 28, 2011, the Terminal's proponent submitted its original project information document. The original document devoted an entire section, 5.6, to rail impacts. On June 23, 2011, the County determined the application was incomplete and specifically asked the proponent "to demonstrate how the proposed MDP complies with the criteria outlined in WCC 20.88.130 and the application forms provided by WCPDS." (6/23/11 Schroeder Letter at 2).

In response, on March 19, 2012, the proponent submitted supplemental information to comply with the County's letter. Attachment A to the supplemental submission cross referenced the County's code requirements with the relevant sections of the application. (Attachment A attached). On page 4 of the Attachment, the proponent addressed WCC 20.88.130(5) & (6).

20.88.130(5) The project will provide utility infrastructure consistent with the requirements of each utility provider. Assurances of service by the appropriate providers will be ongoing during the review process. See Attachment C – Revised PID Sections 5.8 and 5.9.

20.88.130(6) The project will meet applicable standards for public service and facilities, will contribute significantly to the economic well-being of the service and facility providers, will mitigate impacts as required by law. No uncompensated requirements or costs are expected. See Attachment C – Revised PID Sections 5.5, 5.8, and 5.9.

Attachment A provides no information about rail capacity and its limits on the project. Furthermore, the revised project information document *deleted* all references to rail capacity except one:

The Washington State Transportation Plan identifies shortages of rail capacity as a limitation in providing the level of service necessary to meet expected growth within the state transportation network.

(Revised Public Information Document § 5.10.2 at 5-101). The supplemental submission said even less about rail capacity than the original application.

As it stands, the proponent has expressly acknowledged shortages in rail capacity state-wide. Tacitly, the proponent has retreated from its position that adequate rail capacity exists between Bow and Ferndale. The County, the City of Bellingham, and the community can only guess at how the proponents intend to squeeze 30 daily rail trips through a rail line that can handle a maximum of 15.

III. Increasing Rail Capacity Will Impose Uncompensated Public Expense

Doubling rail trips through the City of Bellingham will require significant mitigation at public expense. But neither the City nor County can estimate these costs when the applicant has withdrawn all specific information about rail capacity. As long as the plans remain vague, the costs estimates are unreliable.

To accurately gauge the cost of mitigation, the County must have detailed information on the number of daily train trips and the plans to increase capacity to accommodate them. If, as suspected, the Terminal requires construction of an 8,500 foot siding through Bellingham, the City will incur significant expenses mitigating this second track. Boulevard Park will be inaccessible by car and foot and the double train track will require security fencing throughout. A busy rail corridor will bisect the City's waterfront.

The County has authority under WCC 20.88.130(6) to condition a major project permit on the applicant not imposing uncompensated expenses on the City. In addition, if the applicant cannot mitigate these costs, the County code bars issuing a permit. Therefore, the Terminal's proponent must provide specific plans for increasing rail capacity through Bellingham, and not rely on the vague statements in the current public information document.

IV. The Applicant Must Resolve These Issues To Qualify For A Major Project Permit

By rejecting the original application, the County acknowledges that the Code provisions, including WCC 20.88.130, are mandatory requirements for project approval. The proponent has failed to satisfy WCC 20.88.130(5)-(6) with regard to rail service. Although the proponent might provide more information in response to the environmental impact statement, the County should ask for the information directly, now, to give all parties time to evaluate the answers and provide additional information and studies.

The County asked the Terminal's proponent for more information responsive to WCC 20.88.130. The proponent provided less. Because this has thwarted the public process as well as the County's evaluation of the project, Communitywise Bellingham respectfully requests the County to require a complete answer.

Sincerely,

BURI FUNSTON MUMFORD, PLLC


Philip J. Buri