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VIA ELECTRONIC TRANSMISSION

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RE: Key Stakeholder Interviews & "Fairness" of Scoping

Dear Ms. Reutimann and Ms. Rodero:

This is a follow-up to our "key stakeholder" phone interview Monday, 8/21/12, at 1:00 about scoping for the Gateway Pacific Terminal (GPT). I was disturbed by the fact that you "steered" my comments away from the "substance" of scoping, choosing to focus on "process" and what would be "fair." Specifically, you would not allow any discussion of rail or shipping. But GPT would not be a coal **storage** facility; it would be a coal **shipping** facility, so a fair scoping process can't limit itself to the project as described in the proponents' permit applications. Those applications don't discuss rail beyond the Custer Spur, and shipping is only briefly discussed with an acknowledgement there will be a Vessel Traffic Study. Given the scale of shipping by rail and ships related to operation of GPT, no fair scoping process, including notice, can ignore those activities.

The Corps of Engineers (USACE) has already acknowledged that the scale and nature of the projects require impacts of terminal construction and rail upgrades "reviewed in combination,"¹ noting "[o]peration of the PIT facility, as facilitated by the BNSF project, would result in an increase of rail traffic locally as well as statewide...."² Inexplicably, the Corps, while acknowledging the broad regional rail impacts (and we argue the impacted "region" is not merely western Washington or even the entire state – an arbitrary geographic limiter given the nature of the rail activities – but also Oregon, Idaho, Wyoming, and Montana), the Corps persists in referring to the rail project as defined by the proponents in their permit applications: "The Custer Spur Upgrade Project[]." *Id.* The reality is that there may be many more upgrades required to move the volume of coal proposed to GPT and the other four terminals currently proposed in Oregon and Washington, from the Powder River Basin (PRB), and a scoping notice process that does not begin with this understanding and define this project based on its regional activities is already inherently "unfair."

¹ Randel Perry, Project Manager, Regulatory Branch, USACE, Letter to Pacific International Terminals, Inc., June 13, 2011.

² Col. Anthony O. Wright, District Engineer, USACE, Memorandum for the Record, June 25, 2011, found at https://secureaccess.wa.gov/ofm/iprmt24/Portals/_1357/images/default/USACE%20EIS%20Determination%20Letter%20and%20memorandum.pdf.

The purpose of scoping is to identify “the probable significant adverse impacts and reasonable alternatives, including mitigation measures.” Wash. Admin. Code sec. 197-11-408(1).

When an opportunity to comment on a SEPA document is missed or ignored, the opportunity to have a beneficial effect on the proposal is often lost. Comments can provide the lead agency with missing information on the proposal, identify inaccurate information, and/or provide input on possible mitigation or alternatives.

Wash. SEPA Online Handbook sec. 5.1.³

We would argue that a “fair” scoping process requires (1) identifying the region in which activities – both shipping and rail – will impact, and (2) providing *meaningful* notice to all impacted communities in that region, including (3) accurately describing the projects and related activities based on reality and not as defined by the permit applications. Specifically, we wish to address the following:

Project Description

Pacific International Terminals (PIT) describes GPT as “a multimodal marine terminal ... for export and import of multiple dry bulk commodities” which, to be generous, is disingenuous. PIT, a subsidiary of SSA Marine, Inc., obtained permits in 1997 from Whatcom County to build that terminal and has confirmed with the county those permits are still active. What they propose now, and for which they have filed new Major Project and Shoreline Substantial Development permits with the county, is to reduce the scale of the previously permitted terminal from 8.2 mil. tons to 6 mil. tons per annum of dry bulk commodities (originally identified as wheat, potash, sulfur, calcined coke, and Canadian potash), and relocate it to the northwest. Further, PIT’s permit application states that terminal will ***not be built in the first stage (if ever)***. We note that market demand would determine if and when that terminal is built; and PIT has made no attempt to move forward to permit, obtain a lease from DNR, or build that terminal since 1999, the date of the Settlement Agreement related to the 1997 county permits).

What would be constructed immediately, if permitted – ***and the purpose of filing the new permit applications with Whatcom County*** – is a second terminal to the southeast to ship 48 mil. tons of coal. It is this second terminal that should be described in public notices, and the relevance of that scale explained: that it would require 16 trains per day, each 1.6 miles long, traveling to the coast from the Powder River Basin; a three-berth pier long enough to accommodate cape size vessels, and 478 ship calls per year; and coal storage in an open-air, unlined 80-acre pile 60’ high which would sit less than a mile from the spawning grounds of the Cherry Point herring. (We believe a terminal and pier that size could be expanded in the future to ship as much coal as the largest coal terminal in the world at Kooragang, Australia, or 120 mil. tons per annum. No scoping notice could be fair if the sheer scale – as proposed and potentially expanded – is not clearly communicated.)

Likewise, as described below, scoping notices must be published in rail communities impacted by GPT’s operations at maximum proposed operations including cumulative impacts of rail traffic to the reasonably foreseeable terminals proposed in Oregon and Washington using their estimates of maximum activity. To illustrate why this is so: an Idaho farmer or rancher would have no reason to

³ <http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbch05.html>.

know why a legal notice was published in his newspaper inviting comments on a proposed “multi-modal marine terminal at Cherry Point, Whatcom County, Washington.” The relevant context for that person would be that if GPT and other coal terminals were permitted on the west coast, X number of trains could use rails through his or her community and/or farmlands, blocking at-grade crossings for Y minutes per day, emitting Z quantities of diesel particulates linked to cancer and other health issues for populations within a certain distance from the tracks, and describing particularly at-risk populations (e.g., the very young and aged or health compromised), etc. Presumably (s)he would know that vibrations associated with 1.6 mile-long coal trains would decrease reproduction and dairy production in cattle, but that person can’t comment in any meaningful way on how an Idaho farm or ranch near or bisected by rails used for coal transport would be impacted without receiving notice with adequate information of the local impacts of activities related to GPT and other proposed coal terminals on the west coast.

Publication of Public Notice

SEPA requires “reasonable methods to inform the public” which may include “[p]lacing notices in appropriate regional, neighborhood, ethnic, or trade journals.” Wash. Admin. Code sec. 197-11-510(1)(e). Agencies have broad discretion to use expanded scoping “to encourage and assist public participation.” *Id.* sec. 197-11-410(1)-(2). Having already determined rail activities will have regional impacts, and given the nature, source, and volume of comments already received by the agencies (e.g., letters from organizations and governmental entities in the five states listed above), we would argue that all communities potentially impacted by rail traffic and vessel collisions must be notified in a way that is likely to reach and inform them of the nature of the impacts. There are regional and local newspapers throughout the PRB and Pacific Northwest, and fair notice requires targeting communities through media sources relied on by them for their local news, which will typically mean local newspapers, though not always.

The Corps, in its memorandum cited, notes the 9th Circuit *Ocean Advocates* case required a Vessel Traffic Study associated with the BP pier expansion, including cumulative vessel traffic. That study was completed and included, in reasonably foreseeable future cumulative vessel traffic, ship calls to the GPT pier based on the 1997 permits. Though that study is now out-of-date given ship calls in the new terminal permit application, there is enough data in that study to identify all potentially impacted communities when the inevitable collisions/groundings and related spills predicted by that study occur. “Fair” notice to those communities would identify, at the least, the inevitability of spills and likely locations.

Rail activities are not known at this time because BNSF will not identify exactly which routes it will be using from the PRB to GPT stating, accurately, it can’t plan for that until it knows which terminals are permitted and what volume of contracts it will have to the various proposed terminals (we note that other rail carriers would have contracts for some of the other proposed terminals, and a good cumulative impacts analysis must include all of that information, in addition to other freight and passenger rail service). What is required is a preliminary Rail Traffic Study to analyze reasonably foreseeable future cumulative rail traffic, to identify (1) where rail line expansions may occur (sidings, new tracks, etc.), (2) if private property takings will be required, (3) maximum potential rail traffic and concomitant wait times at at-grade crossings, etc. It is only with this information that fair notice can be given to communities in the “region” of the level of activity they could experience and how that would

impact them. Without that notice **with that information**, the relevant “public” is not able to participate in scoping in a meaningful way.

In conclusion, with respect, you’re “gonna need a bigger boat.” The project proponents speak of the unprecedented nature of the scoping proposed by the public, and it may be that the method of publication and content of public notice is also unprecedented, but that is because the nature of the terminals proposed is unprecedented. Either GPT or the terminal proposed at Longview would be the largest coal export facilities in North America. Together, and with the other three proposed terminals, exporting coal to China and other Asian markets would **transform** the Pacific Northwest, and have huge impacts on all rail communities including those in the Powder River Basin.

We do not address in this letter notice that should be given to mining communities (addressing water depletion, environmental impacts, coal seam fires from unsealed abandoned mining operations, etc.), risks at all stages of activities of fires from the highly spontaneously combustible PRB coal, greenhouse gas contributions from all activities including end use of the coal, etc. Certainly a fair scoping process – including notice – would identify all communities potentially impacted by elements of the environment as listed in Wash. Admin. Code sec. 197-11-444, but the Federal Register is not an adequate means of public notice for communities tangibly and immediately impacted by known and/or identifiable and quantifiable activities and impacts.

Thank you for your attention and consideration of these comments.

Respectfully submitted,

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