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November 30, 2015

Tyler Schroeder
Executive Offices
Courthouse Suite 108
311 Grand Street
Bellingham, WA 98225

Alice Kelly
Washington State Department of Ecology
3109 160th Ave SE
Bellevue, WA 98004

Randel Perry
USACE Seattle District
Army Corps of Engineers
Regulatory Branch, NW Field Office
1440 10th Street Suite 102
Bellingham WA 98225

Subject: Gateway Pacific Terminal and Custer Spur Modification Draft EIS, CH2M Conflict of Interest

Dear Mr. Schroeder, Ms. Kelly, and Mr. Perry:

As a follow up to my recent discussion with each of you as representatives of the co-lead agencies¹ for the Gateway Pacific Terminal and Custer Spur Modification EIS, this correspondence presents CH2M HILL Engineers, Inc. (CH2M) proposed approach to comply with the conflict of interest provisions in Clause 36.2 of CH2M's contract with Whatcom County regarding work for BNSF. The materials below and in Attachment 1 are provided to demonstrate the absence of conflict of interest and avoidance of actions by CH2M that would result in the co-lead agencies preparing an EIS that is unbiased, fair, and impartial, in accordance with the provisions of Clause 36.2.

Actions to Avoid Conflict of Interest

The enclosure accompanying this correspondence presents CH2M's Conflict of Interest Firewall Mitigation Plan (Plan) for identifying and mitigating real and perceived conflicts of interest. The Plan specifically identifies and documents: 1) Personnel that are excluded from participating on BNSF work based upon current work for the Gateway EIS; 2) Guidelines that define criteria for exclusion of personnel so that future potential personnel conflicts can be avoided; and 3) Nondisclosure Confidentiality statements (template included in the enclosed Plan) that assigned personnel for both the Gateway EIS and BNSF projects will be required to endorse.

¹ Whatcom County, the U.S. Army Corps of Engineers, and the Washington Department of Ecology

List of Environmental Services

The enclosed Plan also presents the types of environmental services that could be conducted by CH2M for BNSF without triggering a conflict of interest. These activities include environmental permitting, engineering services and remediation and facilities support.

Work Location

The co-lead agencies have jurisdiction over various actions proposed in the Gateway project. USACE maintains jurisdiction over activities that would result in discharge of dredge or fill material into navigable waters and construction in or over navigable waters (Clean Water Act Section 404, Rivers and Harbors Act Section 10). The Department of Ecology (Ecology) maintains jurisdiction over projects that have the potential to result in discharges to waters of the US, including wetlands, discharge of stormwater to surface water, and qualifying activity within a coastal county (Clean Water Act 401). Whatcom County maintains jurisdiction over local land use approvals, including those within the designated shoreline evaluated in the USACE's NEPA and Ecology's SEPA documents.

To clarify and simplify where the geographical boundaries might extend for regulatory authority of the co-lead agencies, CH2M proposes that it will not work on BNSF projects in areas defined as the "geographical footprint" of the Gateway EIS during its period of performance on the Gateway EIS. This will include Washington State, and the railroad alignment east of Washington State to Wyoming and Montana.

Your review and consideration of this request is appreciated and we look forward to your reply. Please direct any questions or comments to me at 425 233-3579.

Thank you.

Regards,

CH2M HILL Engineers, Inc.



David C. Sturtevant
Vice President

Cc:

Jason Adkisson/CH2M

Gateway Pacific Terminal and Custer Spur Modification EIS Conflict of Interest Firewall Mitigation Plan

This protocol is applicable to: Gateway Pacific Terminal and Custer Spur Modification EIS. In compliance with CH2M HILL’s policies relating to Ethics and Business Conduct, CH2M HILL is committed to ensuring openness and transparency, and protecting our clients’ interests and safeguarding our professional reputation. CH2M HILL will establish, maintain, and monitor project firewalls between the respective project teams as set out below in this Gateway Pacific Terminal and Custer Spur Modification EIS Conflict of Interest Firewall Mitigation Plan (Plan).

Plan

| | |
|---------------------------|--|
| Affected Projects | <p>This protocol is applicable to the:</p> <ol style="list-style-type: none"> 1. Gateway Pacific Terminal and Custer Spur Modification Draft EIS. 2. BNSF Environmental Permitting, Engineering, and Remediation <p>The types of BNSF project work (covered by this Plan) are listed below under “Work Covered by Conflict of Interest Firewall Mitigation Plan.”</p> |
| Protocol Steward | Jason Adkisson, CH2M HILL Senior Corporate Counsel |
| Affected Employees | <p>Employees affected by this protocol are those who are and will work in support of the Gateway EIS and staff who would support BNSF projects. A list of the staff who are and will support the Gateway EIS will be provided and these staff will not work on BNSF projects.</p> <p>Conversely, staff who support BNSF projects will not work on the Gateway EIS. Affected Employees will be notified of this protocol and of their own obligation to implement and enforce this ethical barrier.</p> |
| Project Separation | <p>Separate Project Teams: Staff working on the NEPA EIS and SEPA EIS will not work on projects for BNSF. Staff to be assigned to work listed below in this plan will not work on the Gateway EIS.</p> <p>Work Outside Co-lead Agencies’ EIS Jurisdiction: The majority of staff working on the Gateway project are based in Washington. The exclusion of BNSF work assignments in Washington will provide additional buffer to the staff firewall created by separate project teams.</p> <p>All employees involved in either of these efforts, including administrative staff supporting either initiative, will be briefed regarding this restriction and project-specific communications, and data will be fire-walled.</p> |

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| <p>Communication and Documentation Restrictions</p> | <p>CH2M shall lock down project data thereby prohibiting electronic and physical access between Affected Employee teams providing services to the Projects.</p> <p>As at this date, to the best of our knowledge, there has been no electronic or physical access between Affected Employees on the respective CH2M HILL teams, or sharing of documents or information.</p> <p>CH2M will immediately implement a program-tested procedure for locking down all related project-specific data and maintain strict separation of project communications systems, including SharePoint access, any project-specific email access/accounts, data rooms, and filing systems. The respective projects will have a firewall created for additional security and with restricted access to approved staff members.</p> |
| <p>Geographic/Physical/Electronic Separation</p> | <p>A physical separation for each affected project shall be put in place via data rooms and will be continued for the respective pursuits.</p> <p>Each physical data room shall have electronic barriers and will benefit from the locking down of project data noted above.</p> |
| <p>Training and Audit Functions</p> | <p>CH2M will create training and auditing procedures to ensure that the firewall mitigation procedures are being carried out properly and working effectively.</p> <p>CH2M will monitor compliance with this Plan, update the personnel who are required to execute non-disclosure certifications, brief additional employees as necessary, notify clients of concerns, and take disciplinary action against any employees who violate the Plan, as appropriate.</p> |
| <p>Certificate of Confidentiality Agreement</p> | <p>CH2M will impose ethical obligations not to communicate with Affected Employees on other Affected Project team or access screened documents or information.</p> <p>These obligations are documented in the attached Certifications of Non-disclosure.</p> |
| <p>Timeline Separation</p> | <p>This Firewall Mitigation Plan will remain in effect until the pursuits are substantially complete.</p> |

Work Covered by Plan

Environmental Permitting

- Clean Water Act Nationwide and Individual Permits. Permits. Section 401 (fill to state waters), 402 (stormwater/NPDES/SPCCC), 404 (dredge and fill), 408 (levees/encroachments).
- Rivers and Harbors Act Permits, Section 10 permits (navigable waters).
- U.S. Coast Guard Permits and compliance plans for bridge safety.
- Hydraulics and hydrology reports.
- Local flood control permitting for district encroachment permits.
- Endangered Species Act Biological Resources. Wetland delineations, biological assessments, species surveys, essential fish habitat review and reports, restoration plans, noxious weed plans, revegetation plans.
- Clean Air Act air modeling and studies.
- Landscaping plans and surveys.
- Coastal consistency determinations and permits Visual resources modeling and assessments.
- Paleontological surveys and reports.
- Traffic and noise studies.
- Support to federal and state agencies for tribal consultations.
- Federal special land use permits, such as access agreements and MOAS, SUPs, ROW Grants with BLM, USFS, or other federal land management agencies.
- National Historic Preservation Act, Cultural Resources literature searches, historic structures eligibility determinations, pedestrian surveys and cultural resources reports/documentation, MOAs.
- Construction compliance monitoring of permit conditions.
- Mitigation bank identification, assessment, and design.
- Environmental review and documentation under NEPA and state NEPA-like documents (excluding Washington State).
- State (excluding Washington) and local permits for environmental compliance (e.g., grading permits, local land use, scenic area review, special use permits).
- Earth disturbance and soil erosion and sedimentation control permits.

Engineering

- General Civil engineering services including Site Grading and Drainage, Hydrologic and hydraulic studies and design, Culvert replacements, Geotechnical investigations.
- Railroad Structural engineering services, including Bridge structural inspections and rating, Bridge pier inspections, Underwater inspections, Bridge replacement designs, Bridge repair designs, Retaining walls, General Structural design.
- Railroad Signals engineering, including Track circuit plans for new, rehabilitation, upgrades, and modification work, Communications systems, Antenna sites, Signal Power supply
- Track engineering, including Siding extension design, New track and siding design, Route capacity improvements, Track and route realignment, Route upgrades, Clearance improvements.
- Railroad Tunnel engineering, including New Tunnels, Tunnel repairs, Tunnel Enlargements, Railroad Facilities engineering, Staff welfare facilities, Industrial support yards and trans-loading sites, Intermodal yards, Railroad shop design and modifications, Fueling and sanding facilities, Architecture.
- DOT Project Support on behalf of BNSF, including Grade Separation design and field monitoring, Bridge repair and replacement plan reviews and field monitoring, Utility relocations, Highway grade crossing replacement, upgrade, design and field monitoring, Network modelling, Vehicle engineering support.

Remediation and Facilities Support

- Implement site investigations of environmental media (soil/soil vapor /surface water/groundwater) at various rail yards and lease sites to characterize the nature/extent and fate/transport of site contaminants and development of site specific risk assessments, as necessary, following state and federal regulations
- Selection, design and construction of remedial systems for soil, groundwater and soil vapor contaminants related to rail operations and provide optimization evaluations and changes to existing remediation systems at various sites to reduce system operation costs and shorten remediation lifecycle
- Provided support for permit applications and compliance reporting pursuant to local and state discharge permits for CWA including stormwater and wastewater and design and construction support of treatment systems if required.

CH2M HILL Engineers, Inc. Certification of Conflict of Interest Protocol

I hereby confirm receipt of the Gateway Pacific Terminal and Custer Spur Modification Draft EIS Conflict of Interest Mitigation Protocol, dated _____ (“Protocol”).

By this certification, I acknowledge and agree to comply with the Protocol. I further agree not to accept and/or disseminate any information that would violate CH2M HILL Ethics & Business Conduct Policy. This includes information developed by CH2M HILL or other third parties that is provided by others but was not authorized for release or that was not available in the public domain.

I acknowledge and agree that failure to comply with this Protocol and CH2M HILL’s Business & Conduct Policy may result in disciplinary action, including termination of employment.

Signature _____ Date _____

Printed Name _____

CH2M HILL Engineers, Inc.