Emails pertaining to Gateway Pacific Project
For June 2-8, 2012
On Tuesday, June 5th, 2012, the Whatcom County Council is scheduled to review three different agreements or contracts regarding Gateway Pacific International Terminal:

1. Communications Protocol Agreement -- this is an agreement between Whatcom County, the Corps of Engineers, and the EIS consultant (CH2M Hill).
2. Contract for Cost Reimbursement -- this is an agreement between Whatcom County, Pacific International Terminals and BNSF Railway for reimbursement of county and consultant costs and fees for preparation of the EIS.
3. Contract for EIS Services -- this is a contract with CH2M Hill for preparation of an EIS for the coal terminal.

Each of these agreements have problems that do not ensure an open and transparent process as outlined. These issues affect not just Whatcom County, but Washington State and the Army Corps of Engineers. Thus, I am sending my comments (attached) to all three legs in this environmental review process.

Thank you for review and considering making adjustments to these documents that are needed to ensure an open and transparent EIS process.

Regards,

David Stalheim
June 3, 2012

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Whatcom County Council
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Tyler Schroeder, Planning Supervisor
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Re: Contracts and Agreements Regarding Gateway Pacific Terminal Project

Elected Officials and Staff:

This Tuesday, the Whatcom County Council is set to review and take action on three different agreements or contracts regarding the environmental review process for the proposed Gateway Pacific International Terminal.

This project, if approved, would build North America’s largest coal export facility at Cherry Point. Reviewing the environmental, socio-economic and health impacts of this proposal is the role of the public agencies – not the applicant. In order to instill public confidence that the environmental review process is done in an open and transparent process, as well as being fair and competent, changes to all three agreements are necessary before the Council or County Executive sign these proposals.

As a preliminary matter, it is unclear what action the County Council will be asked to take on these contracts. The agenda bill states that this is a “Presentation to Council...regarding next steps for the...project...The purpose is to enter into the public record the...agreement and the contract...and seeks Council's endorsement of that action.” Professional Services Agreements more than $35,000 requires Council approval, so Council action is required at least on the CH2M Hill contract. Clarification of the Council action, versus Executive action, should be made clear to the public.
1. **The EIS process is to protect the public’s interest -- not the applicant’s interest.**

The environmental review process under the State and National Environmental Policy Acts (SEPA and NEPA) is meant to ensure that the environmental impacts of the proposed development are identified and that environmental values are considered during decision-making by state and local agencies.

It is the public agencies responsibility to control the environmental review process. That is why the proposed agreements and contracts are troubling in several areas:

- **The CH2M Hill Contract identifies a "conflict of interest" only when the Consultant develops an interest in conflict with the Applicant’s interest.**

36.2 Conflict of Interest:

> "If at any time prior to the commencement of, or during the term of, this Agreement, Consultant, or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant’s interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the Applicant’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination."

(Contract for Services Agreement for EIS Preparation, Section 36.2, p10 of 16, Emphasis added)

I can only assume that the Applicant had great influence in writing this Conflict of Interest provision. As written, CH2M Hill could purchase a financial interest in Gateway Pacific and not be considered a "conflict of interest". The conflict of interest provision should be written to address the following two points:

1. Add a provision that ensures the Consultant does not develop an interest that is in potential conflict the Public’s interest.
2. Add Department of Ecology and Army Corps of Engineers to the decision making process for determining when conflicts exist. Their interest in this matter should be equal to the County’s, and their experience in these matters is substantially greater than Whatcom County’s.

**Recommended Change: The following would be suggested changes to Section 36.2 of the Consultant Contract for Services:**

> "If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant’s or Public’s interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County, Department of Ecology and Army Corps of Engineers, to make an informed judgment as to whether or not the Applicant’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County, Department of Ecology and Army Corps of Engineers, may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination."

David Stalheim
The CH2M Hill Contract includes an implied bias towards the applicant.

The CH2M Hill contract correctly states that "establishing the purpose and need is the first critical path item on the schedule...[as it] will direct the range of alternatives to be developed and reviewed in the EIS document." What is biased is the entire discussion that follows:

"However, it may also be prudent to include background insights on the primary drivers that make this project worth considering and evaluating. Either way, a defensible document must include proper documentation in the purpose and need chapter. The CH2M HILL Team proposes to research drivers so that the public has, in the scoping process, additional insights on the economic situation surrounding this project. The project drivers are anticipated to include a review of available port capacity on the west coast based on readily available information, economic pressures regarding dry bulk materials in the Asian-Pacific region, and national executive orders influencing industrial development. Understanding these elements may also help refine the range of alternatives suggested. The Team economist and planner will research the Applicant's Purpose and Need and make recommendations for The Agencies consideration."

The proposed contract begins to narrowly define the purpose and need to mirror the applicant's perspective ("drivers that make this project worth considering and evaluating"). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives.

This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant's wants, needs, and goals.

Recommended Change: The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation.

2. The EIS process needs to be open and transparent.

There are numerous provisions within these three agreements that are inconsistent with the consultant's proposal that they "will support an open and transparent process."

The Communication Protocol Agreement allows "work products" to be "provided to the applicant's team"

"Work products prepared by the 3rd party team will be submitted directly to the Co-leads. These work products will be additionally provided to the applicant's team only upon the approval of the Co-leads" (Communication's Protocol Agreement, Section 2d)

If the County and partner agencies intend that the agency may withhold these "work products" because they might be privileged under litigation discovery rules (commonly called the "work product" doctrine), then these documents should not be provided to the applicant's team unless they are determined to be public records subject to discovery and disclosure.

Recommended Change: "Work products provided to the applicant's team shall be made available to the public and not be exempt from disclosure under the Public Records Act."

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1 Exhibit A, Phase 1 Scope of Work, Section 2.3.1, April 1, 2012, pg. 5
2 Ibid
Meetings with the Agencies, the Consultant and the Applicant, should be made public.

Since November of 2010, the State of Washington facilitated a process called the Multiagency Permit Team (MAP). This "team", composed of public agencies and the applicants (as well as their attorney) met outside the glare of publicity. Now, it appears that this same "team" process will continue and be sanctioned through these agreements.

"At the reasonable discretion of the County, a meeting and/or conference call may be arranged with the County, Pacific International Terminals, Inc., BNSF Railway Company, and the Consultant, on a bi-weekly or on a different schedule as directed by the County to discuss changes, if any, in the Scope of Work and other issues related to completion of the Scope of Work." (Contract for Reimbursement of Costs, Section 3.6, emphasis added)

"The first team kick-off will include the Agencies, project team representatives and other key Agency invitees, such as key regulatory agencies and Applicant." (Exhibit A, Phase I Scope of Work, Section 1.4, April 1, 2012, page 3, emphasis added)

"This includes meeting minutes (limited to subject topic issues and action items and/or key direction or decisions)" (Exhibit A, Phase I Scope of Work, Section 3.1, April 1, 2012, page 11, emphasis added)

Meetings that include the applicant should be made reasonably accessible to the public to ensure that the process is open and transparent. The proposal for meeting minutes limited to topic issues and action items and/or key direction or decisions, fails to disclose the substance of any conversation that leads to those key directions or decisions, including changes to the Scope of Work that is part of this contract.

These provisions allow the applicant to participate in changing the Scope of Work without the public observing and knowing why.

Recommended Change: The contract should make explicit that any team meetings and conversations should be video-taped or audio recorded, and made available as a public record. Consideration should also be given to including other observers at these "meetings", such as the media, interested parties, and other public agencies.

3. The EIS scoping schedule needs to be adequate and predictable

While it is very troubling to read contracts that started before they are even signed, it is more troubling to review a schedule in a Scope of Work that started on April 1st. Based on this schedule, the public process for scoping should have started this past Friday.

"The following scope will commence in April 2012."  
"Project definition and Purpose and Need... (1st wk of June)  
"Task 2.4 Public and Agency Scoping Meetings ... (June-July)"  
"CH2M HILL Team will host a maximum of 6 scoping meetings in locations to be determined."  
(Exhibit A, Phase I Scope of Work, various pages)
THE SCOPING PROCESS needs to be AT LEAST 120 DAYS in length, and needs to be inclusive of AREAS OUTSIDE WHATCOM COUNTY

Based on the Scope of Work that Whatcom County is set to approve, the public and agencies should expect that the project will be already defined and the purpose and need statement will be completed before the ink is dry on these agreements.

Since the Scope of Work document says that the commencement is April 1st, it might be assumed that the schedule is already two months behind. But, how is the public supposed to know? Whatcom County is being asked to approve a contract that includes a schedule in the Scope of Work where the public and agency scoping meetings are set to end July 31st.

The assumption of only 60 days in the Scope of Work for public and agency scoping is wholly inadequate. Remember, the applicant and agencies have been meeting on this project since November 2010, and the "open and transparent" process envisioned by the consultant is limited to 60 days?

"The agencies have steadfastly refused to provide any information on the "scope" of the project. They haven't published the rail route, to the best of my knowledge. Scoping is a critical juncture for agencies' consideration of reasonable alternatives. For an agency to have to consider a particular alternative, comments have to provide evidence that the alternative is reasonable and feasible. Without knowledge of key aspects of the project until the scoping notice has been released, developing alternatives to the project and the evidence to support the alternatives will take time.

"The proposed definition of the project's "purpose and need" will also first be presented to the public in the scoping notice. The "purpose and need" is a critical component of the NEPA analysis because it guides both the selection of alternatives and the agency's ultimate decision about the project.

"As anyone knows who has ever done a business or policy analysis, how you define your objective determines every other step along the way. The purpose and need statement will define the objective of the Gateway Pacific terminal. The project applicant will want the purpose and need statement to be as narrow as possible, because if it precisely mirrors the goals and features of the project, the project will be the only feasible outcome. The agencies have only spoken to the project applicant; they haven't spoken to us. We might want to point out that NEPA is supposed to look at broader purposes, not just the applicant's wants, needs, and goals.

"Responding to these and other key issues will be important, will take time, organization, and effort, and will be difficult to accomplish in 60 days. As I mentioned above, look how long it has taken the agencies and the applicant to compile sufficient information and evidence to proceed.

"So I think that an extra 60 days is not unreasonable under these circumstances. Let's not forget that this is a really big project. We tend to think of ourselves as little ol' Whatcom County, hidden away up in the top left corner of the country, and of Cherry Point as somewhere out in the hinterlands. But this is not a Whatcom County-scale project. It is a big project in global terms, with global impacts.

"The fact that the agency personnel involved in the environmental review process have never worked on a big project is not a good reason to treat this project as if it were a standard, little project. It isn't, and it deserves more scrutiny than any project Whatcom County has ever seen before."

("Coal Terminal Update: Whose Process is This?" Get Whatcom Planning Blog, March 21, 2012, Jean Melious)
Recommended Change: There are three changes proposed:
1. The Contract should not be approved until an updated schedule is provided.
2. The Contract should include a specific directive that the public scoping period be at least 120 days in length.
3. The Contract should set forth the expectation that the scoping meetings will be located in areas impacted by this project. Suggestions include the following:
   • Those communities affected by shipping (San Juan Islands)
   • Those communities affected by increased rail traffic (Seattle, Vancouver, Spokane)
   • Whatcom County

4. The EIS and application review needs to fully compensate Whatcom County for costs.
Whatcom County amended its fee schedule to charge only $2,625 for preparation of an EIS, the same fee that is charged for a Major Project Permit. The County has already spent at least $16,000 in costs above and beyond those collected.

One of the three agreements under consideration is a contract to reimburse Whatcom County for both County costs and consultant costs in preparation of the EIS, including those costs already incurred by Whatcom County.

The memo says "No Whatcom County Funds will be used for this contract." The current Agreement and controls in place will not achieve this intent.

   • Direct vs. indirect expenses – the agreement requires the applicant to cover "direct out-of-pocket expenses". It does not cover indirect expenses, or overhead. Examples of overhead costs that will be funded by Whatcom County include:
     o Processing and paying invoices (Finance and Auditor staff, plus mailing costs)
     o Administrative staff time (answering calls, filing papers, counter inquiries)
     o Hosting a web site with public comments (IT Staff plus server costs)
     o Office space and records storage (light, power, physical storage of records)
   • County staff costs – the agreement includes salaries and benefits. Does this include all Whatcom County staff that will be involved in this process, such as Health Department, Public Works, Prosecuting Attorney, Sheriff, and Executive’s Office? What about support staff that process paperwork and handle phone calls for the project?

Recommended Change: The following changes are suggested:

1. Include an Administrative Charge. It is too burdensome to track every expenditure. The two options to cover indirect expenses include an hourly rate that includes overhead (the Consultant Contract is based on this assumption), or an Administrative Overhead rate to be added to the hourly rate. A typical Administrative Overhead charged in federal contracts runs between 9 and 14%.
2. Covered Staff. It should be made clear that the staff time of Planning and Development Services, Public Works, Health, Prosecuting Attorney, County Executive, and Sheriff are County staff expected to be involved in the preparation of the EIS, and their costs are reimbursable.

Thank you for consideration of my comments.
David Stalheim (stalheim@aol.com)
This comment incorporates the suggestions and concerns reflected in the June 3, 2012 letter by David Stalheim. Thank goodness there are dedicated citizens spending hours and hours pouring over contracts and details regarding the GPT proposal and informing the public of matters that would not otherwise be disclosed.

This certainly underscores the need to extend the time to comment on the scope of the EIS to 120 days. The complexity and volume of information necessary for review in order to make informed comment is overwhelming. It is not reasonable to limit the scoping comment to 60 days. This is not a typical EIS proposal. It is one of local, regional, national and global significance. If your intention to involve the public is sincere, you will allow a reasonable time for public input.

Sincerely,

Wendy Harris
Dear Council:

Please ensure that the comment period for EIS scoping on GPT is extended to 120 days. This is not a typical EIS. It is extremely complex and voluminous and involves matters of local, regional, national and global significance. The public's interest is not served unless they are provided adequate time to review and comment. This particularly seems one-sided given the energy and time that has been extended in accommodating the applicant.

The map team process is unjustified and needs to be amended immediately to allow public access and review.

The County needs to hire a consultant with expertise to evaluate human health impacts. The consultant being hired has experience in land use and environmental matters and lacks the background needed to provide a meaningful review of the human health costs measured.

Given the Council's committee review of GPT matters, it is ludicrous for the County to pretend that public comment on GPT issues can not be heard in public session. Please have a discussion with your counsel regarding the need to reverse this erroneous legal determination.

Sincerely,
Wendy Harris
From: Eric Jensen <ericjensen41@gmail.com>  
To: <Randel.j.perry@usace.army.mil>, <Alice.kelly@ecy.wa.gov>, <Tschroed@co....  
Date: 6/4/2012 1:02 AM  
Subject: 120 Day Comment Period for GPT

Randel, Alice, and Tyler,

My name is Eric and I have been very involved in education, outreach and engagement on the Gateway Pacific Terminal for the past year. I am a former student at Western Washington University, and that is the community that I am working in on this issue right now. Last week a group that I am part of worked with the Professional and Technical Writing center at WWU to host a series of EIS scoping workshops, in which we shared how to communicate effective oral and written comments.

With the scoping period likely opening in the near future, I am very concerned about the repercussions of having only a 60 day comment period. Bellingham is one of the communities that would be most significantly affected by the proposal. But if scoping opens this month and lasts for only 60 days then 18 percent of Bellingham’s population will be excluded from participating. Of course I am speaking of the WWU student population. During summer most WWU students, of which there are 15,000 in Bellingham, leave the city. If you think that students are not engaged on this issue then you have not considered the nearly 1,000 that have signed out petition calling on the WWU administration to become involved, or the 19 student organizations that endorsed a resolution opposing the Gateway Pacific Terminal, or the hundreds of students that have turned out to each of the public forums on the subject. Students are a part of this community, and many choose to stay in this community, and their voice needs to be heard, and if those 60 days of scoping occur during summer, than you will be excluding WWU students from participating.

The other reason that we need more than 60 days to participate is because this is an issue that goes far beyond Whatcom County. Currently in Helena, MT there is a heated dialogue going on about economic impacts that would result from an influx of trains. This project necessitates upgrades to transportation infrastructure and requires changes in train traffic volumes that affect communities all along the rail corridor, stretching to the Powder River Basin. If you are serious about having a thorough public process and a robust EIS, then there should be scoping hearings in every significantly large city all the way to the Powder River Basin. That will take far more than 60 days.

My final point was made in the last paragraph, and that is that there need to be more public hearings than are currently planned. Currently the application only mentions scoping hearings in Whatcom County. If I were living in Spokane, Washington, I would want the opportunity to participate in this process directly. I recognize that you all are under a lot of pressure, and that organizing scoping hearings presents logistical challenges, and I thank you for the important work that you’re doing. But doing this work is worth it, and will pay dividends in public confidence in the process.

Thank you again for all your work, and I look forward to the opportunity to participate in the process. Let’s do what we need to to make sure that everyone has that opportunity.
Sincerely,
Eric Jensen
Western (WWU) Action Coalition

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Catch the SPROG Magic --> *Register here* [https://docs.google.com/spreadsheet/viewform?formkey=dFp4aUQ0cjRlXzl3d2JxZ1IoVEVFTmc6MA#gid=0]

*SPROG Magic*  (sprahg maj-ik)*   n. *

1. A quality one carries after attending SPROG which enables them to create critical change unlike they had been able to before.
2. A metamorphosis that one undergoes at SPROG; the process of becoming a visionary, inspiring, and empowering individual in their community.
From: Amy Keenan
To: Tyler Schroeder
Date: 6/4/2012 9:45 AM
Subject: Fwd: Contract with CH2M Hill for Scoping Phase of EIS for Shipping Terminal
Attachments: Fwd: Contract with CH2M Hill for Scoping Phase of EIS for Shipping Terminal

Amy Keenan, AICP
Senior Planner
Whatcom County
Planning and Development Services
Northwest Annex, Suite B
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Honorable County Council Members:

As a Whatcom County citizen, who is extremely concerned about the numerous potential impacts of siting a coal handling terminal in Whatcom County, along with the rail and ship traffic connected to the terminal, I am pleased to know that CH2M Hill has been selected for the scoping phase of the EIS process.

I worked with CH2M Hill engineers from their Bellevue office a number of years ago, while managing the Modern Electric Water Company in Spokane. The firm was engaged to prepare a comprehensive water plan and rate structure for the utility. I found the work product to be excellent; and more importantly, all responsibilities were carried out with integrity and the high ethical standards expected of Professional Engineers.

Kind regards,

Susan Kaun
613 Donovan Avenue
Bellingham, WA 98225
Please alter the contract for the work and scope of the EIS for Cherry Point in the following ways:

- 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)

- Scoping meetings need to be held throughout the state -- the contract should commit to meetings outside Whatcom County

- Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant; ensure a fair environmental review process.

- Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

- When the applicant is involved in a meeting or a review of work or work products, the public is provided with equal opportunity to participate.

Thank you,

David Hopkinson
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dh6613@gmail.com
360-441-7639
From: <wechslerlaw@comcast.net>
To: <jlouws@co.whatcom.wa.us>, Alice kelly <Alice.kelly@ecy.wa.gov>, Randel ...
CC: <stalheim@aol.com>
Date: 6/4/2012 11:58 AM
Subject: CH2M Contract

I agree with 99% of David Stalheim's letter of June 3 (https://docs.google.com/a/bellinghamherald.com/file/d/0ByRbnb53t3dnMTdoeUZYMDSVeEU/edit?pli=1), recommending changes to the CH2M contracts. I would broaden the recommendation for locations of scoping hearings, however. SEPA provides:

In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries.... WAC 197-11-060(4)(b).

It is arbitrary to consider rail impacts only on Washington communities given the enormous reasonably foreseeable cumulative impacts on communities in the Powder River Basin given the other 5 terminals currently proposed in Oregon and Washington.

But I completely agree otherwise with David's recommendations, particularly regarding the need for a 120-day scoping period. In some cases, the public may need to obtain documents through public records requests to understand an issue about which they wish to comment, or to locate supporting documentation. This can take 60 days.

I find the notion that documents would be shared with the proponents (SSA and BNSF) and not the public, and that there will be communications with the proponents and the consultant to which the public is not privy, particularly untenable.

Thank you very much for your consideration.

Terry J. Wechsler
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360-656-6180 (r), 541-913-5976 (c)
From: Laurence W Brown <lwb@mac.com>
To: "jlouws@co.whatcom.wa.us" <jlouws@co.whatcom.wa.us>, Alice kelly <Alice....
CC: "wechslerlaw@COMCAST.NET" <wechslerlaw@COMCAST.NET>, Lindsay Taylor <lin...
Date: 6/4/2012 12:34 PM
Subject: CH2M Contract

I agree with the letters of David Stalheim (https://docs.google.com/a/bellinghamherald.com/file/d/0ByRbnb53t3dnMTdoeUZYMDVSeEU/edit?pli=1) and Terry Wechsler, recommending changes to the CH2M contracts.

In particular, I concur with Ms. Wechsler's request to use a broad interpretation of the appropriate coverage of the scope. As she notes, Washington law provides:

In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries.... WAC 197-11-060(4)(b).

Therefore, given the other 5 terminals currently proposed in Oregon and Washington, I too stress that it is arbitrary to consider rail impacts only on Washington communities in light of the enormous reasonably foreseeable cumulative impacts all along the rail lines utilized from the Powder River Basin.

I also completely agree with Mr. Stalheim's recommendation for a 120-day scoping period. As noted by Ms. Wechsler, the public will almost certainly need to obtain documents through public records or other requests to understand an issue about which they wish to comment, or to locate supporting documentation for their comment. Obtaining such documents can easily take 60 days, which leaves no time for analysis and proper reference or inclusion.

Further, I agree that it is completely unacceptable - and contrary to the intent, if not also the letter, of the law - that documents or other supporting material would be shared with the proponents (SSA and BNSF) and not the public, and that there could be communications between the proponents and the consultant to which the public is not privy.

Thank you very much for your consideration.

Laurence W. Brown
37 Deer Run Lane
Bellingham, WA 98229

(cell) 240-383-7077
Dear Mr. Shroeder:

I read David Stalheim's comments and his letter to you yesterday. I agree with his recommendations and will be interested to see how the Council votes on these contracts and if they make recommendations that protect the interests of all the citizens the Council represents. I believe that the EIS is designed to protect the economic, social and environmental aspects of Whatcom County from proposed projects with known and unknown negative impacts. I do not understand how the Applicant can have over a year to influence the creation of the scoping contracts and the public that the EIS protects has such a limited time. From the facts that there are Joint leads for this process and the call for a PEIS and HIA, the scope of this project is much larger than just Whatcom County. Scoping meetings should be held in the entire impact area and by the large scope of this project will require longer than sixty days to do the EIS correctly. I agree with the following proposed changes:

* 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
* Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
* Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
* Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

Thank you for your consideration. I look forward to seeing how responsive the Council is to public concerns.

Sincerely,

Vincent Matteucci
On behalf of SafeGuard the South Fork, I am writing to comment on the contract that sets the work and schedule for the EIS scoping for GPT.

In particular, I am concerned that in the contract there are only 60 days identified for public comment on the scope of the EIS. Given that SEPA requires the EIS to consider direct, indirect and cumulative impacts, it seems logical that the scoping period would need to be held throughout the state and over longer periods of time. Given that currently the scoping period will commence this summer, a longer period of time for scoping is necessary because of how seasonal work may effect important populations from participating. For example, those employed by the fishing industry are fishing. Farmers are working over 12 hour days. Many teachers travel during the summer months, and parents have less free time than during the school year. Furthermore, most of the students at WWU will be away.

One-sided conflict of interest provisions should also be removed from the contract and clarity should be made re: the consultant works for the public. Aligned with this, the applicant should not be afforded any records, meetings or privileges not afforded to the public.

Thank you for your time and consideration to ensuring that the EIS process for GPT is accessible and fair to the public.

Nicole Brown
Mr. Schroeder,

As a citizen of Whatcom Co., I would like to suggest 120 days to comment on the scope of the EIS for the coal port at Cherry Point. This is an important step in this process and time is needed to comment on this project.

Regards,
Chuck Holtorf
Hello, elected officials and staff:

I urge you to adopt the following changes and additions to the agreement being considered for the EIS consultant:

120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)

Scoping meetings need to be held throughout the Northwest to include consideration of the environmental and health impacts from the transportation of the coal from the source

Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant.

Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

Ensure ALL costs of the EIS are covered by the applicant.

Thank you,

Cindy Franklin
520 Ridgeway Drive
Bellingham, WA 98225
I am writing to express concern about certain aspects of the proposed contract with CH2M Hill as the EIS consultant for the GPT permit application.

My primary concern relates to what appear to be severe limits on the extent of public participation that will be allowed during the scoping process.

The Scope of Work provides for no more than 6 public meetings, each up to 3 hours in length. Considering that scoping meetings should be held at several locations outside Whatcom County, such as the San Juan islands, Spokane, Seattle, and Montana, we may be left with as few as 2 scoping meetings in Whatcom County.

This is not a serious attempt to facilitate public participation.

I request that, prior to approval, the contract should amended to reflect the following items:

- All interested parties will have the opportunity to provide information on their concerns, in person, to the people who will then be conducting the scoping work. No person should be stopped from providing their in-person comments because "time is up." As many meetings as required should be scheduled.

- The public comment period should be at least 120 days in duration and potentially longer, given the intense public interest in the proposal.

- If a significant volume of written comments is still being received as the end of the public comment period approaches, then the public comment period should be extended as long as required. Given the fact that the applicant was granted several extensions on their schedule, the public deserve at least the equivalent consideration.

This is not a football game, where it is over once the whistle blows. The end of this legally required process should only occur when all reasonably available public input has been acquired.

While I understand that the agency team could potentially amend the contract once work starts, the initial contract serves as a key baseline from which all changes are measured. Why start with something that is known to be broken on the theory that it can be repaired later?

I urge that the agencies and the Whatcom County council should require that the proposed contract should be fixed, before approval, so that it provides a full opportunity for public participation.

--
James Wells
We shall not participate in our own destruction
101 Reasons to be Concerned About Coal
Export<http://www.dailykos.com/story/2012/05/02/1088274/-101-Reasons-to-be-Concerned-About-Coal-Export>

On Refusing to be Rounded Out of Existence<http://www.dailykos.com/story/2012/05/21/1086945/-On-refusing-to-be-rounded-out-of-existence>
I've been reading some of the criticisms of the contracts and agreements that the county will be asked to approve and sign tomorrow, regarding the GPT terminal.

I find it disturbing that there seems to be a continued lack of concern in regard to protecting the interests of the residents of Whatcom County, who will be most heavily impacted by this project.

The contracts, as written, protect only the applicants, the developers of the GPT project, and make no attempt to protect or give any regard at all to the potential negative impacts of this project. Who will the contractor, CH2Mhll, be working for, GPT, or the people of Whatcom County? With whom is there a potential conflict of interest? Surely not with the council or the people of Whatcom County, but that is how the contract reads.

This process needs to be more open, with more communication between the planners and the people, with a longer scoping period of 120 days, rather than the 60 days that the applicant prefers. The applicant has been working with oversight agencies for over a year on this project, while we, the public was told to "wait until the permit is submitted". Well, the permit was submitted and we are still being told to wait. We need time to digest and discuss the information as a community, and we need full access to the discussions between the developers and the county planners. No more secret meetings and discussions. The GPT developers had their time, now let us have ours.

As I have stated before, the GPT project should be subjected to the BAP, BAT standards. Shippers of coal should be held to the same high standards as the shippers of oil. Ports and terminals all along the west coast are moving toward BAP, BAT standards and the GPT project at Cherry Point should be no exception. The federal EPA refuses to regulate or even monitor coal dust in the air, that will eventually poison the lakes, streams, the Sound, our homes and farms and school yards. The only way to make sure that someone is looking out for the people of Whatcom County is to hold GPT to the BAP, BAT standards.

It is unconscionable consider approving this project under any lesser standards of protection. This coal terminal presents few positive impacts for Whatcom County, the least that the approval agencies can do to make sure that the negative impacts are minimized by holding the GPT developers to the BAP, BAT standards.

Donna D. Shaw
To: County Council and related folks.
RE: Issues for June 5th meeting

I am writing as a concerned citizen watching the process of evaluation and potential planning of the proposed Port at Cherry Point (and the train transport of coal and other products).

My concerns include the scoping process, that should be at least 120 days and should include all areas affected, and all transportation routes including the South Fork Valley. There are many fragile areas along the South Fork of the Nooksack river that need close attention and Environmental study.

Also of concern is the need for transparency during the entire EIS process, to allow public awareness all along the way.

I am also concerned that CH2M-Hill may have a conflict of interest and/or that the contract may allow conflict of interest to develop in the future by provisions.

The issue of compensation to the County for all costs is important as well.

I am deeply concerned about the impacts to the environment and public health if the proposed plan is approved. The environmental impact of a project such as this one, needs close scrutiny and conscionable review.

Please take steps to assure the public that appropriate and careful evaluation of this project be done to prevent deterioration of our environment!

Thank you for your careful consideration.

Linda Gamrath

t.tlcacme@hotmail.com

PO Box 164 Acme, WA 98220
360 595 2897
Dear Public Representatives:

I understand that the Whatcom Finance Committee will be discussing, and possibly approving, an agreement regarding the potential Cherry Point coal port terminal. In your considerations, please allow the public as much opportunity to be involved as possible. This public project has an impact on the community, the state, the region and the world and must encourage public discourse. Three things need to be addressed:

- provide 120 days of comments for the scoping period for the EIS
- include comments "for the record" from outside the Whatcom County borders
- designate all meetings involving the parties of interest (Whatcom County government, Contractors and subcontractors to the EIS process) open to public attendance. Do not simply allow meeting notes disseminated after the meetings have occurred.

Thank you for your attention and care in serving the best interest of me and my neighbors.

________________________
Colleen Berg
3391 Southgate Rd.
Bellingham, WA  98226
From: Michael Isensee <isenseemichael@gmail.com>
To: <council@co.whatcom.wa.us>, <jlouws@co.whatcom.wa.us>
CC: <Tschroed@co.whatcom.wa.us>, <JSUM461@ECY.WA.GOV>, <Randel.j.perry@usace...>
Date: 6/4/2012 11:29 PM
Subject: AB2012-068B GPT contracts, communication protocol (Other Items #1)

Councilmembers and Executive Louws:

Please accept the following comments regarding Agenda Item AB2012-068b for June 5, 2012.

It is unfortunate that this agenda item was not more clearly identified. It was difficult to locate this item with the title "Report on presentation regarding Gateway Pacific Terminal project process and recommendations on EIS scoping phase and communication protocol between Whatcom County Planning and Development, U. S. Army Corps of Engineers, Washington State Department of Ecology and CH2M Hill (*AB2012-068B*<http://www.co.whatcom.wa.us/council/0agendabills/ab2012-068b.pdf>)."

Are these items coming back at a later date for approval if the item before you is simply a presentation? Are you allowed to make changes or is the hearing a rubber stamp of actions already taken? Do contracts of this magnitude require council approval? It is not clear to me what exactly is before you today: a presentation, an endorsement request, a need for council approval, or some combination thereof.

If it within the ability of the council, several items of note should be amended or modified in these contracts and agreements. These changes would help to ensure an adequate public process which facilitates the full disclosure of potential environmental impacts and proposes feasible mitigation measures and/or alternatives to substantially avoid or reduce the potential impacts of the GPT project to the Whatcom County, State of Washington, and global environments.

- First, there should be a clear commitment in the contract to a 120 day scoping period to enable adequate public input into what is possibly the most substantial development project in Whatcom County's history in terms of its potential impacts.
- Item 3.6 (page 17 of http://www.co.whatcom.wa.us/council/0agendabills/ab2012-068b.pdf) in the Agreement between Whatcom County, Pacific International Terminals, and BNSN Railway for Reimbursement of Costs and Fees (contract number 201205029) should be modified or eliminated. Changes in the scope of work should not occur through private discussions between the applicant, consultant and staff. Such changes should occur in public. The consultant is working on behalf of the public and the environmental review process. Agreements should clarify that information provided to the applicant is public information.
- Item 36.2 (page 33) in the contract with CH2M Hill needs to be modified. It currently states that a conflict of interest exists if the consultant develops an interest that is in conflict with the "applicants" interest. Since the contract is between the County and state and federal agencies, not the applicant, the potential for a conflict of interest would be if the consultant has a conflict with the public's interests, such as by having a financial interest in the applicant or related parties.
- The scope of work should be updated prior to approval or approval
should be based upon all dates being moved two months later since the scope is commencing approximately 2 months after its anticipated April start date (page 38)
- The outreach section of the scope anticipated 20 stakeholder interviews, all held in Whatcom County (page 41). It appears to discount the likely potential effects of the project which will occur along the extended transportation route extending from east of Spokane to the west of the San Juan Islands. The scope should be modified to include interview of key people in Spokane, along the Columbia River, in the Puget Sound region (Tacoma, Seattle, Everett) or other locations likely effected by the potential statewide impacts of the project.
- Scoping meetings for such a project of statewide significance should occur in locations that are accessible to people outside of Whatcom County. The current scope is unclear where meetings might be held (page 43) and does not commit to any meetings outside the county. The consultant team should be required to hold at least one scoping meeting east of the Cascades, one in Seattle and one in the San Juan Islands.
- The consultant should commit to the creation of more than 100 copies of the draft EIS and for more than 5 public hearings on the DEIS (page 51). The contract should commit the consultant to public hearings in the same locations as scoping meetings.

Thank you for the opportunity to provide input into these very important documents which will guide a substantial and controversial public process for the next two or more years.

with kind regards,

**

*Michael Isensee*

5939 Artist Dr.

Ferndale, WA 98248
As a resident of Whatcom Co I want* FULL DISCLOSURE* during this EIS process.

I would like to think that the outcome is not a fore gone conclusion as most of the language used during the process seems to indicate. Mitigation is not a tool that provides what I consider an appropriate outcome.

I object to this project on every level. The strip mining in Wyoming, the transportation of the coal across the country to our county, AND most of all the desecration of our only public access to the Georgia Straights from Gulf Rd. For environmental, health, and the long term impact on our land I strongly urge you to deny this project. We need to begin to follow our President's commitment to alternative energy now and begin the renewal of our ecology that will support sustainable and non-polluting energy sources for the longterm health of ALL of us, even those that stand to benefit financially the most from this project.

Paddy Bruce
Hello,

The County Council is set to act on hiring CH2M Hill--and the agreements do not protect the public. At minimum we should ask for 120 days scoping process, not the 60 in the contract.

Also, let's make sure the applicant doesn't have undue influence in the process; we can do that by making records and meetings subject to public review. In addition, we need to address the inappropriate conflict of interest provisions in the contract, and the bias towards the applicant. Finally, let's make sure the County is fully compensated for all costs.

Thank you,

David and Geri Turnoy

Eastsound, WA
Hello Tyler,

I have growing concerns about the contracts and agreements regarding the Gateway Pacific Terminal Project. As a voting senior citizen that stands to be greatly affected by this project, I am concerned that, from the very beginning, it is skewed toward the applicant's interests.

I won't bother to go into the various issues, but I will say that I have read the contract and agreements and am troubled by potential conflicts of interest, the potential lack of transparency and the obvious edge given to the applicant.

This is somewhat understandable since I presume that it is difficult for public figures such as yourself to resist the influence of powerful corporate interests. Gateway has money and influence. I do not. And, for exactly that reason, I count on you to represent my concerns and give me a voice. I expect you to resist that power and influence and, in fact, also represent the those of us on the other side of the Gateway issue. Specifically, those of us that want a thorough vetting, a comprehensive EIS and an outcome that takes much, much more into account than simply the short term benefits that can be provided by wealthy and powerful forces whose interests are much more narrow than those of ordinary citizens in this gorgeous piece of earth we call Whatcom County.

I would appreciate a response.

Thank you for your time.
Leaf Schumann
Deming
With regard to the Whatcom County Council meeting tonight, June 5th, as a private citizen living in Birch Bay, WA, I recommend that the following be included in any agreement with the consultant that is hired to advise the Council on the EIS for Gateway Pacific Terminal:

a. 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
b. Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
c. Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
d. Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

Your consideration is appreciated.

C. Westland
8293 Fawn Crescent
Blaine, WA 98230
Dear Whatcom County Council members, Mr. Louws, and members of Whatcom County's planning department and the Army Corps of Engineers:

I would like to voice my recommendation with regard to the contract that sets the work and schedule for EIS scoping of the proposed coal port at Cherry Point.

Please, at today's and tonight's meetings, which I will be unable to attend, ensure the modification of the contract so that:

-- the scoping process is a minimum of 120 days, not the 60 currently in the proposed contract;

-- remove the clause that effectively allows the applicant to have undue influence in the process by making records and meetings subject to public review;

-- make certain and unquestionable that the County is not to incur any cost for the process, and will be fully compensated for all costs related to the EIS scoping.

Thank you for your time-- and I trust that you will see the correctness and imperativeness of the above.

Alaine Borgias

1700 McKenzie Ave., Bellingham, 98225
Dear County Executive Jack Louws, Whatcom County Council, Whatcom County Planning Supervisor, Department of Ecology and Army Corps of Engineers,

I am deeply concerned about the proposed contract for CH2M Hill for the consulting job on the EIS and scoping processing.

The agreements set forth in the contract do NOT protect the public. They favor the applicant and this doesn't seem right.

Please refer to the letter from David Stalheim found here: <https://docs.google.com/a/bellinghamherald.com/file/d/0ByRbnb53t3dnMTdoeUZYMDVSeEU/edit?pli=1>
https://docs.google.com/a/bellinghamherald.com/file/d/0ByRbnb53t3dnMTdoeUZYMDVSeEU/edit?pli=1

I am concerned about the public process for this unprecedented GPT project proposal, the largest coal export terminal in North America. The public needs to have a voice in this matter and we need to have a transparent process. 60 days is not adequate for public comment. Please allow for 120 days for the scoping process. Please make all records and meetings subject to public review. This is ESSENTIAL. Please remove all bias towards the applicant. This is a faulty contract.

Please consider the changes noted in David's letter.

Thank you, Jill

Jill MacIntyre Witt
Whatcom County resident
360-201-3093
From: Lynne Oulman <lynne.oulman@gmail.com>
To: <jlouws@co.whatcom.wa.us>, <council@co.whatcom.wa.us>, <Tschroed@co.what...
Date: 6/5/2012 8:42 AM
Subject: CH2M Hill--and protecting the public

Dear County Council and Related Parties:

I think you are looking at a contract that is quite biased and not fair to the people of this county. We are regular folks, who do not have fancy lawyers or lots of money. However, our livelihoods are here, we live here, we pay our taxes, and we would like the same rights as the applicant in the coming process. In creating a contract with CH2M Hill, we are asking:

1) 120 days scoping process, not the 60 in the contract. People need the time to handle all the information, understand the process, and participate without rush, anxiety, and ignorance. You folks spend your professional lives doing this work. Give us a little space to learn and respond. This is not a slam-dunk, and you do not want to be accused of ramrod-ing a slipshod process.

2) Please make records and meetings subject to public review. When the applicant is the only party allowed to see records, etc., you are taking away the public's only means to understand and thereby responsibly participate in the process. I believe this is a democratic right. The applicant seems to have undue influence if allowed greater access to information. We the tax payers and the citizens of this county deserve the same opportunities.

3) There seem to be inappropriate conflict of interest provisions in the contract, allowing for the bias towards the applicant. If there is conflict of interest, there will be problems forthcoming. Let's start on an even and honest playing field.

4) Please be sure that the County is fully compensated for all the costs. We are all tightening our belts and working hard. People do not want to find out their tax money is subsidizing corporate interests for a process they initiate for their profit.

Thank you very much for your attention. I hope you will think carefully about these concerns, as the process must be untainted to be believed at all. Sincerely,

Lynne Oulman
Dear Mr. Schroeder,

I am a concerned Bellingham citizen. I strongly urge that public citizens have equal opportunity to be involved in meetings or reviews of the process involving the possible Coal Terminal at Cherry Point. The MAP Team process should be open to the Public, not just the Applicant. What happens at Cherry Point will vitally affect the citizens here in Whatcom County, and we deserve and ask for the opportunity to be involved as completely as the Applicant.

Also I am DEEPLY concerned that a provision in the contract defines a conflict of interest between CHM2 and the Applicant. The contract is between the consultant and the public, not the Applicant. This provision should be changed for obvious reasons.

Finally, I ask for 120 days for the scoping period - beginning in the future, not the past. This is only fair and logical. The scoping should take place state-wide, as the quality-of-life and environmental ramifications of a Coal Terminal WILL be, at least, state-wide.

I look forward to your response. Thank you,
angela Polito

2223 E Birch St.
Bellingham, WA 98229
360-393-2477
From: Mary Ferm <mmferm@gmail.com>
To: <council@co.whatcom.wa.us>, <Tsroed@co.whatcom.wa.us>, <JSUM461@ECY.WA...>
Date: 6/5/2012 8:52 AM
Subject: contract proposed with the consulting company CH2M

Dear officials,

As a resident of Western Washington, I am very concerned about the possible construction of a port for exporting coal in Whatcom County.

I am very concerned that the process in Whatcom County is being rushed, and it seems like it has already been decided. The choice of EIS consultant with such strong ties to the industry confirms the bias toward accepting the port proposal. This exposes your actions to possible litigation.

Promises of increased local jobs are always tempting, however, they never result in the promised numbers of local newly-employed people. Projects like this tend to import workers from outside the area instead.

As someone with family in the San Juan Islands, I am concerned about pollution from coal ships passing through that pristine environment. I am also concerned about pollution from trains in Western Washington.

Coal is full of toxins (remember "black lung"?), and is costly to human health when it is burned. A significant percentage of California smog is now attributed to air pollution from Asia. We cannot send coal to Asia and not expect ramifications to our health here on the western coast of the US. If there was no coal port in Bellingham shipping coal to Asia, the law of supply and demand would cause the cost of coal to remain high for Asia, and they will use less and be forced to come up with other sources of energy. We have our own recent experience of this-- remember how the price of gas has gone up since the disruption of supply from Libya and Iraq. Gas became expensive, and now we are using less.

Once a port is built, it will be costly and difficult to shut it down. We should not be moving toward coal. We should be moving in the opposite direction. There are other ways to supply jobs that do not cause such great harm to people and increased health care costs.

I sincerely hope you have time to read all the comments sent to you before your meeting in only 2 hours.

Sincerely,
Mary Ferm
5062 New Sweden Rd
Bainbridge Is, WA 98110
and member of family with full-time residents in the San Juans.
My wife and I are longterm Whatcom County residents.

We urge you to include the suggestions made by David Stalheim in his June 3 letter regarding necessary changes in the consultant agreement with CH2MHILL.

Respectfully,

Jim and Peggy Stewart
I have some concerns related to the agreements being discussed at your 11: AM meeting Tuesday

1. Conflict of Interest:
   A provision in the contract defines a conflict of interest between just the Consultant and the Applicant.  
   The contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers. The contract is not with the applicant, so defining a conflict with the applicant is totally inappropriate. In theory, this one-sided provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict.  
   This provision is simply wrong and needs to be changed!

2. Meetings Can't be Secret: 
   WHENEVER THE APPLICANT IS INVOLVED IN A MEETING OR REVIEW OF "WORK PRODUCTS", THE PUBLIC NEEDS TO HAVE AN EQUAL OPPORTUNITY TO PARTICIPATE. THIS ISSUE IS IMPORTANT TO THE PUBLIC!

Sharon Griemsmann
To whom it may concern:

Please act in the best interest of the citizens of Whatcom County and all of the US. We do NOT want a coal port anywhere on the West Coast.

http://getwhatcomplanning.blogspot.com/2012/06/whose-eis-is-this.html?showComment=1338836673886#c1354671056962098088

David Stalhem's letter of June 3

https://docs.google.com/a/bellinghamherald.com/file/d/0ByRbmb53t3dnMTdoeUYMDVSeEU/edit?pli=1, recommending changes to the CH2M contracts. I ENDORSE ALL RECOMMENDED CHANGES.

The County Council is set to act on hiring CH2M Hill—and the agreements do not protect the public. At minimum we should:
* Ask for 120 days scoping process, not the 60 in the contract.
* Make sure the applicant doesn't have undue influence in the process by making records and meetings subject to public review.
* Address the inappropriate conflict of interest provisions in the contract, and the bias towards the applicant.
Make sure the County is fully compensated for all costs

Thank you.
Sincerely,
Carmella Fatland
Dear future-planners,

Please consider carefully during the County Council meeting today regarding hiring CH2M Hill -- the future of our local and global environment is in your hands. Please think big as this may be one of the most important decisions the County makes this century.

As brought to my attention, I would ask that you consider:

* Asking for 120 days scoping process, not the 60 in the contract.

* Making sure the applicant doesn't have undue influence in the process by making records and meetings subject to public review.

* Addressing the inappropriate conflict of interest provisions in the contract, and the bias towards the applicant.

* Ensuring all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public.

* Making sure the County is fully compensated for all costs.

Thank you,
Chris Patterson
Point Roberts
Tyler. Left you a voicemail yesterday about public records requests and lack of response. Look forward to hearing.

Tom
Elected Officials and Staff

I am concerned that, as currently worded, the agreements or contracts for the environmental review process express a bias in favor of the applicant. There also appears to be a conflict of interest in hiring CH2M Hill for this contract.

I ask that:
- The scoping process be changed to 120 days, not 60.
- Address the bias towards to applicant and the conflict of interest provisions in the contract.
- Records and meetings must be subject to public review to insure the applicant doesn't have undue influence.
- Make sure the County is fully compensated for all costs.

You have received a letter from David Stalheim on this subject. I fully support his suggested changes and objections.

Thank you for your consideration,

A very concerned citizen of Whatcom County

Annie Prevost, 3822 Levitt St. 98226
Regarding the contract that sets the work and schedule for EIS scoping.

Contractual arrangements must be modified to provide for:

• 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)

• Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County

• Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.

• Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

The provision in the contract that defines a conflict of interest between just the Consultant and the Applicant needs to be changed to reflect that a conflict of interest is when a situation arises to undermine the impartiality of someone, in this case CH2M Hill, in the completion of their EIS work.

Since the contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers, it is conceivable that the currently drafted provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict. This is obviously WRONG.

Finally, meetings cannot be held in secret. Provisions should be made such that whenever the applicant is involved in a meeting or review of "work products", that the public has an equal opportunity to participate.

Alan Stein
1808 Taylor Avenue
Bellingham WA 98225
Related to the Coal Port at Cherry Point please add:

Make records and meetings subject to public review, the applicant should not have influence the public cannot see and does not have. *

* There is inappropriate conflict of interest provisions in the contract, the Consultant works for us, the public too, not just the applicant.

Scoping meetings need to be held throughout the state where this project is having an influence on communities.

120 days to comment on the scope of the EIS -- not the 60 days in the contract.

*
Hello Mr. Schroeder,

My name is Michael Whitney and I am a reporter with the Everett Tribune newspaper.

I would like to check with you whether the City of Everett has requested to be a party of record regarding the SEPA analysis of the Gateway Pacific Terminal and if the city has sent any material to your office regarding this.

Could you please let me know by Thursday?

Truly,
Michael

Michael Whitney
Reporter, Everett Tribune
(360) 568-4121
From: "R. Hubert" <thedecorlady@gmail.com>
To: <jlouws@co.whatcom.wa.us>, <council@co.whatcom.wa.us>, <Tschroed@co.whatcom.wa.us>
CC: Sandy Zeitel <sandalabb@gmail.com>, Eliana Steele <eliana.steele@gmail.com>
Date: 6/5/2012 12:46 PM
Subject: Coal Terminal in Whatcom Co.

Dear Esteemed Leaders in our Community:

If you must contract to have a company (CH2MHill) review the implications of a Coal Terminal, then be certain their guidelines include and *emphasize* impact to people's health and the environment. What is the guarantee of thousands of good paying jobs *after* the work is complete. What is the guarantee of *0% pollution* to workers and neighboring communities, including our marine life. There is no acceptable level of pollution where coal is involved.

It stands to reason by allowing a coal terminal in the proposed location, the powers behind this are masking what gets damaged in their path to pursue their profits.

Please do not be influenced by big corporations making empty promises. The simple truth is a coal terminal will be bad for sustaining Whatcom County’s economy. It only encourages more jobs to go to China. It retards efforts to find clean, alternative fuel sources in America. It will fuel polluting factories in China that manufacture poor quality products. These products will be sold to Americans.

I beg you, do not fold to greedy corporations wanting to continue harboring cheap labor facilities in China. This practice continues to foster horrible working conditions for innocent humans who likely have no choice but to work under whatever the conditions are.

I know how deadly coal dust is. I worked for OSHA during the black lung research program in the 70's. It was not just the underground workers who were adversely affected by the dust. *There is no positive picture where coal is involved.*

*Whatcom County's Future is at risk: * When someone is looking for a beautiful, pristine place to live and raise their family; or to start a business; or to retire and enjoy their later years, do you really believe they would consider this area if a coal terminal is part of the County's heart and soul? I know I would not.

Roxanna Hubert
Retired in Birch Bay
Dear Whatcom County Council Members,

The forthcoming scoping study for the proposed Gateway Pacific Terminal (GPT) is a critical opportunity for citizens to express their views and shape the subsequent environmental impact study (EIS). Therefore, the Whatcom County Council, Washington Department of Ecology, and U.S. Army Corps of Engineers must ensure that all their actions promote the fullest and fairest public involvement in this major project.

The proposed contract with CH2M Hill, which county council will consider this evening, appears to be seriously biased in favor of GPT and against the broad public interest. Here are the specifics that underlie my concerns:

* Although the project proponent has had many months to develop its application and discuss the project with the state sponsored Multi-Agency Permit Team, the public has had no opportunity to discuss this project with the three agencies. Therefore, the proposed 60-day public comment period is much too short. Because this is such a large, complicated project (with local, regional, and global impacts on air quality, water quality, and global warming), the public should have at least 120-days to prepare and submit comments during the formal scoping period. Because this project would affect a large geographical area, public meetings the EIS scope should be conducted throughout Washington State, not just within Whatcom County.

* As noted above, the project applicants have been meeting regularly with the agencies that will oversee the EIS, but citizens have had no such opportunity. Therefore, it is essential that, going forward, the process should be completely neutral to ensure that the developer does not influence the regulatory agencies. All agency meetings should be recorded and the audio and video files posted on the internet so that interested citizens can see what transpires in these meetings. Comprehensive meeting minutes should also be posted on the internet.

* Finally, the county should be fully compensated for all its costs associated with the review of this project. This requirement is especially important now, with local government budgets severely constrained.

Thank you.

Eric

----------------------------
Eric Hirst
1932 Rhododendron Way
Bellingham, WA 98229
(360-656-6690 :EricHirst@comcast.net
Dear Ms. Summerhays,

As a resident of Whatcom County, I am extremely alarmed by the conflict of interest that is becoming increasingly clear as the Environmental Review Process for the proposed Gateway Pacific Terminal gets underway. The fact that John Lovenburg, a current executive at BNSF was a former director and executive at CH2M Hill raises one red flag. A second was raised by some excerpts I read from the proposed contract recently put before you by CH2M Hill. I urge you to neither accept nor approve the contract in its current form but to insist on the changes outlined by David Stalheim in his letter to you, the council, the State DOE, ACE, et al.

In particular, I strongly agree with Stalheim on the following points:

- An increase in length of the scoping process is needed, from the proposed 60 days to a more reasonable and public-friendly 120 days

- All items, records and meetings that are made accessible to the applicant should also be made accessible to the public. A project with this scope of impact on the public should have transparency as an utmost priority.

- Whatcom County should be fully compensated for all costs associated with the Environmental Review Process and the EIS.

- The Department of Ecology and Army Corp of Engineer should be included in the decision making process regarding any potential conflicts of interest that might arise during the course of the environmental review process.

Thank you for your serious consideration of these matters.

Carolyn McGown
Dear Mr. Schroeder,

As a resident of Whatcom County, I am extremely alarmed by the conflict of interest that is becoming increasingly clear as the Environmental Review Process for the proposed Gateway Pacific Terminal gets underway. The fact that John Lovenburg, a current executive at BNSF was a former director and executive at CH2M Hill raises one red flag. A second was raised by some excerpts I read from the proposed contract recently put before you by CH2M Hill. I urge you to neither accept nor approve the contract in its current form but to insist on the changes outlined by David Stalheim in his letter to you, the council, the State DOE, ACE, et al.

In particular, I strongly agree with Stalheim on the following points:

- An increase in length of the scoping process is needed, from the proposed 60 days to a more reasonable and public-friendly 120 days

- All items, records and meetings that are made accessible to the applicant should also be made accessible to the public. A project with this scope of impact on the public should have transparency as an utmost priority.

- Whatcom County should be fully compensated for all costs associated with the Environmental Review Process and the EIS.

- The Department of Ecology and Army Corp of Engineer should be included in the decision making process regarding any potential conflicts of interest that might arise during the course of the environmental review process.

Thank you for your serious consideration of these matters.

Carolyn McGown
Thanks!

This message sent from my Blackberry.

Jim Lynch, Partner
KL Gates LLP
Direct (206) 370-6587
Cell (425) 463-8396

----- Original Message ----- 
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 05:14 PM
To: Lynch, James M.; Ari Steinberg <Ari.Steinberg@SSAMarine.com>
Subject: Conflict of Interest Language in CH2M HILL and Whatcom County Contract

Ari and Jim,

Attached is the proposed language given to the Council at this morning's meeting. I am working on updating the language and will provide that to you once it is final.

Thanks,

cpyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

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Dear County Executive Louws,

I sat through the committee meeting this morning, and wanted to comment on your assumption that this project is similar to all the other projects before you seeking permits for development. I respectfully and strongly disagree with your opinion on that.

This project has the potential to cost Whatcom County taxpayers a large amount of money related to you and your staff's time in all the meetings and document reviews. I am not certain which of that is considered direct and indirect, but I believe most people in the county would agree that any costs above and beyond the initial fee submitted should be paid by the applicant.

It was a goodwill gesture for the applicant to voluntarily provide an additional $$ for costs. However, the contract must include the ability to recoup ALL costs - direct and indirect.

Thank you,

Cindy Franklin
520 Ridgeway Drive
Bellingham
Dear Mr. Louws,

I am a concerned Bellingham citizen. I strongly urge that public citizens have equal opportunity to be involved in meetings or reviews of the process involving the possible Coal Terminal at Cherry Point. The MAP Team process should be open to the Public, not just the Applicant.

Also I am DEEPLY concerned that a provision in the contract defines a conflict of interest between CHM2 and the Applicant. The contract is between the consultant and the public, not the Applicant. This provision should be changed for obvious reasons.

Finally, I ask for 120 days for the scoping period - beginning in the future, not the past. This is only fair and logical. The scoping should take place state-wide, as the environmental ramifications of a Coal Terminal WILL be, at least, state-wide.

I look forward to your response. Thank you,
angela Polito

2223 E Birch St.
Bellingham, WA 98229
360-393-2477
Re: Contract Agreement with CH2m Hill.

Do not approve the contract

Dear Council Member,

As a citizen and resident in Bellingham I ask you to not approve the contract with the CH2M Hill Company.

This contract does not contain provisions or a staff of qualified medical doctors to protect the health of the residents of Whatcom County.

Additionally it appears that the people are not protected from a conflict of interest in the review process.

The process needs to be open to public view.

The health impact needs to be addressed. This is not provided for in this contract.

The air quality needs also to be studied. This is not provided for in this contract.

The study time is to short.

Please say No to the CH2M Hill contract.

Sincerely,

Pearl Follett
Regarding the contract that sets the work and schedule for EIS scoping.

Contractual arrangements must be modified to provide for:

- 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
- Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
- Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
- Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

The provision in the contract that defines a conflict of interest between just the Consultant and the Applicant needs to be changed to reflect that a conflict of interest is when a situation arises to undermine the impartiality of someone, in this case CH2M Hill, in the completion of their EIS work.

Since the contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers, it is conceivable that the currently drafted provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict. This is obviously WRONG.

Finally, meetings cannot be held in secret. Provisions should be made such that whenever the applicant is involved in a meeting or review of "work products", that the public has an equal opportunity to participate.

Alan Stein
1808 Taylor Avenue
Bellingham WA 98225
Dear Mr. Louws,

As they say, the devil is in the details. I support David Stalheim’s close reading of the proposed contract with CH2M, and his recommendations for changes before it is signed.

Thank you for your consideration.

Sincerely,

Jean Waight

Jean Waight
919 Coronado Ave.
Bellingham, WA  98229

Nagging drip?
Don't wait.
Fix the leak
And save
The lake.
--Burma Shave?

greenteasymathy.blogspot.com
Dear Executive Louws,

As a resident of Whatcom County, I am extremely alarmed by the conflict of interest that is becoming increasingly clear as the Environmental Review Process for the proposed Gateway Pacific Terminal gets underway. The fact that John Lovenburg, a current executive at BNSF was a former director and executive at CH2M Hill raises one red flag. A second was raised by some excerpts I read from the proposed contract recently put before you by CH2M Hill. I urge you to neither accept nor approve the contract in its current form but to insist on the changes outlined by David Stalheim in his letter to you, the council, the State DOE, ACE, et al.

In particular, I strongly agree with Stalheim on the following points:

- An increase in length of the scoping process is needed, from the proposed 60 days to a more reasonable and public-friendly 120 days

- All items, records and meetings that are made accessible to the applicant should also be made accessible to the public. A project with this scope of impact on the public should have transparency as an utmost priority.

- Whatcom County should be fully compensated for all costs associated with the Environmental Review Process and the EIS.

Thank you for your serious consideration of these matters.

Carolyn McGown
Dear County Executive Louws,

I sat through the committee meeting this morning, and wanted to comment on your assumption that this project is similar to all the other projects before you seeking permits for development. I respectfully and strongly disagree with your opinion on that.

This project has the potential to cost Whatcom County taxpayers a large amount of money related to you and your staff's time in all the meetings and document reviews. I am not certain which of that is considered direct and indirect, but I believe most people in the county would agree that any costs above and beyond the initial fee submitted should be paid by the applicant.

It was a goodwill gesture for the applicant to voluntarily provide an additional $$ for costs. However, the contract must include the ability to recoup ALL costs - direct and indirect.

Thank you,

Cindy Franklin
520 Ridgeway Drive
Bellingham
I am unable to attend this evening's meeting but would like to express my agreement with the June 3 submission by David Stalheim regarding the wording of the contract and agreements of the above.

This is a very expensive and involved process and deserves careful scrutiny by everyone involved. Since I do not know exactly who has been involved - or to what extent - I would like the Council to be cautious and go slow. A two or three week delay in signing the contract to thoroughly examine and understand exactly what the contract says is not out of line. The points raised by Mr. Stalheim are valid and deserve comment and public discussion by the Council.

I hope the County Council will not start this important process amid controversy that so easily could be avoided by delaying action tonight.

Phyllis Graham
5447 Tsawwassen Loop
Blaine WA 98230
I am in complete agreement with the issues in the proposed contract with CH2M Hill as pointed out by David Stalheim, to wit:

a.. 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
b.. Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
c.. Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
d.. Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

Conflict of Interest:
A provision in the contract defines a conflict of interest between just the Consultant and the Applicant. (Read contract here: agenda bill)

A conflict of interest is when a situation arises to undermine the impartiality of someone, in this case CH2M Hill, in the completion of their EIS work. The contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers. The contract is not with the applicant, so defining a conflict with the applicant is totally inappropriate.

In theory, this one-sided provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict..

This provision is simply wrong and needs to be changed!

Lyle Anderson
3723 Pebble Pl
Bellingham, WA 98226
Hi Tyler,

This is Jeremy Schwartz, the reporter from The Northern Light newspaper you spoke with yesterday. Is there any comment you can offer on the county council finance committee’s decision to not pass the CH2M Hill contract on to the full council this evening? What happens now? Will you still be presenting to the full council on the contract this evening?

Thanks in advance for any reply.

Sincerely,

Jeremy Schwartz  
jschwartz@pointrobertspress.com  
Twitter: http://twitter.com/TNLreporter

The Northern Light  
225 Marine Drive, Ste. 200  
Blaine, WA 98230  
Ph: (360) 332-1777 ext. 208  
Fx: (360) 332-2777  
www.thenorthernlight.com
Mr. Louws, County Council members, Mr. Schroeder, Jeannie Summerhays, Mr. Perry, and Alice Kelly,

My family has been fortunate to have inherited a place in Birch Bay. It was handed down to my mother by her grandparents, (my great grandparents) and then to me. Birch Bay has been a part of my life since birth. It is a treasured place for my children and extended family.

Many groups in this area have worked hard to continually keep up or improve the health and well being of the residents and the beach/tidelands. So it is of great concern to all of us that a coal terminal is proposed to be developed here. Many that I have spoken to are not opposed to the original proposal for a terminal that would ship wheat, grains, potash. However, my family and many others are opposed to a coal shipping port.

I have a number of concerns about the proposed contracts and agreements regarding GPT.

1. I believe that the EIS and application review needs to include wording to fully compensate Whatcom County for any and all costs incurred to staff and the administration. We the people should not have to bear the burden of this company's application process.

2. The EIS scoping schedule needs to be adequate and predictable. The public has not been given reliable information about when scoping will occur, when the public may participate in scoping meetings or where meetings will be held. The process needs to be double in length- 120 days and all communities effected should be included!

3. The process of the EIS needs to be guaranteed transparent and open. Any meetings or conversations should be documented thoroughly (audio/video/written) and be available to citizens as public record. A good faith effort would be to allow interested people/parties, news outlets other public agencies to attend team meetings or conversations.

4. My understanding of the the EIS processes that I have been a part of, is to make sure the public is well informed. The purpose of an EIS is to protect the people's / public's interests. We live here! Any contracted county employee's or hired consultants should guarantee to not be involved in a conflict of interest with the applicants.

5. After attending several meetings where "drivers" in favor of this coal terminal proposal were discussed, I believe that the public's concerns have not been addressed.
I have read that NEPA's and SEPA's duty must include alternatives, including broader purposes that would serve Whatcom county residents, not just the applicant. Please make sure that all broader aspects, alternatives and purposes are explored, studied and included.

Thank you for your time and consideration of my concerns,
Claudia Hollo (chollod@hotmail.com)
Thanks Tyler. I am still reviewing this change with BNSF and I do not have their formal consent to this change yet. Perhaps we can touch base on this tomorrow.

From: Tyler Schroeder [tschroed@co.whatcom.wa.us]  
Sent: Tuesday, June 05, 2012 5:11 PM  
To: Lynch, James M.; Ari.Steinberg@SSAMarine.com  
Subject: Resend - PDF copy of Contract changes

Please see the attached language that has been agreed upon by the County and CH2M HiLL. This will be reviewed this evening at Council and signed by the Executive as appropriate.

Thanks,

Tyler

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

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From: "Lynch, James M." <jim.lynch@klgates.com>
To: "Tschroed@co.whatcom.wa.us" <Tschroed@co.whatcom.wa.us>
Date: 6/5/2012 6:12 PM
Subject: Re: Contract changes

Are you around?

This message sent from my Blackberry.

Jim Lynch, Partner
KL Gates LLP
Direct (206) 370-6587
Cell (425) 463-8396

----- Original Message ----- 
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 09:02 PM
To: Lynch, James M.
Subject: Re: Contract changes

Thanks for the response back. I will check in with you tomorrow.

tyler

-----Original Message-----
From: "Lynch, James M." <jim.lynch@klgates.com>
To: Schroeder, Tyler <Tschroed@co.whatcom.wa.us>
To: Ari.Steinberg@SSAMarine.com <Ari.Steinberg@SSAMarine.com>

Sent: 6/5/2012 5:58:41 PM
Subject: RE: Contract changes

Thanks Tyler. I am still reviewing this change with BNSF and I do not have their formal consent to this change yet. Perhaps we can touch base on this tomorrow.

From: Tyler Schroeder [tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 5:11 PM
To: Lynch, James M.; Ari.Steinberg@SSAMarine.com
Subject: Resend - PDF copy of Contract changes

Please see the attached language that has been agreed upon by the County and CH2M HiLL. This will be reviewed this evening at Council and signed by the Executive as appropriate.

Thanks,

Tyler

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From: "Jenn P." <jennifererinpeach@gmail.com>
To: <Tschroed@co.whatcom.wa.us>
Date: 6/5/2012 6:27 PM
Subject: Meeting Tonight- Voicing my support for an increased scoping period!

Hello,

I just wanted to send a quick message that I would like to have the issue of a protracted scoping period be discussed at tonight's meeting- I unfortunately cannot attend. 120 days, not 60! The time starts now, not in April. If you could please do what is in your power to make this a point of discussion I would appreciate it!

Thank you very much, and I respect the work you are doing,

-Jenn Peach
jennifererinpeach@gmail.com
From: Anne B <gotjoy@openaccess.org>
To: <council@co.whatcom.wa.us>, <jlouws@co.whatcom.wa.us>
CC: <Tschroed@co.whatcom.wa.us>, <Rabdel.j.perr@usace.army.mil>, <JSUM461@EC...
Date: 6/6/2012 1:23 AM
Subject: CH2M Hill Contract

Dear County Councilors, et. al.

We believe that the CH2M Hill contract currently before the County Council re: the Gateway Pacific Terminal is deeply flawed in several important ways:

The contract seems to have a _strong bias_ toward the Applicant, especially in terms of looking at _only_ the Applicant's "drivers" which make this project worth consideration and evaluation, specifically the "economic situation" (i.e., jobs). But let's be honest: The Applicant's goal is basically to make money. It is the residents of Whatcom County and perhaps most of coastal Washington State who will have to bear the brunt of the negative results of this project. But to our amazement, there is no mention of any alternative (potentially adverse) "drivers" which could also make this project NOT worthy of further consideration or evaluation._

In addition to the obvious (a worldwide increase in CO2 when China begins burning millions of tons of coal each year, and the effect of this pollution particularly felt on the West Coast of the U.S. including all of WA state), there are a number of "drivers" specific to Whatcom County which we believe MUST be included in the scope of this project: For example:

(a) the impact to public health and safety from contamination of the air and water along the _entire_ train route from coal dust and diesel particulates. (Currently, over 200 Whatcom doctors are very clear about dangers of this contamination, and Anne has personally seen a black layer of coal dust about 4" wide beside the tracks near our house, which BNSF just cleaned up in May.)

(b) the potential impacts upon the livelihoods of farmers and ranchers due to reduced crop productivity and/or the effects of train traffic on livestock being raised for sale (not to mention the higher consumer costs from less product getting to market)

(c) impacts on aquatic plants and animals from these contaminants, particularly in Puget Sound. If the already dwindling herring population is further decimated from the shipping terminal being built right over their breeding grounds, the whole food chain will be affected, from the herring to the salmon to the Orcas to the salmon fishermen to consumer prices in our stores.

(d) the impact of increased train traffic and noise 24/7 upon the public's quality of life, real estate values, traffic congestion, and public access and /or enjoyment of popular parks, boat launches, and beaches, and could also mean fewer tourist dollars.

(e) the impact of trains passing (or on sidings) which could prevent or delay emergency vehicles (such as paramedics and fire fighters) from reaching the scene, resulting in preventable deaths or unnecessary
destruction of homes and businesses.

(f) the impact of eighteen 1-1/2 mile-long trains per day traversing Whatcom County may hinder public access to the long-planned redevelopment of the port of Bellingham, reducing its appeal and marketability to prospective businesses, potential new residents. Will there also be an impact on the tourist trade?

(g) the impact of accidental combustion of Powder River Basin coal (which BNSF's own website confirms is highly subject to spontaneous combustion while in transit on trains and in ocean-going vessels) plus the on-going risk of a fire at the terminal itself, which also happens to be adjacent to BP oil refinery.

_Without considering these alternative drivers and looking only the "economic situation," the so-called evaluation is a foregone conclusion: It will simply mirror the Applicant's perspective, but will not address any of the very real, alternative impacts upon the public (and ultimately, the earth) which could be substantial._ This Contract is so short-sighted in its goals. It is our understanding that NEPA is supposed to look at broader purposes and outcomes, not just the Applicant's needs and goals.

We have also read the letter by David Stahlheim, which is in wide circulation, addressed to the primary elected officials involved in this project. We believe the points he makes are thoughtfully considered and VALID. We strongly support the five changes which he recommends to County Council and believe they should be _included_ in the CH2M Hill Contact presented to you. Specifically:

1. The contract should ensure the consultant researches alternative drivers for this project, not just those preferred by the Applicant.
2. The contract should specify that work products supplied to the Co-leads team ALSO be made available to the Public and not be exempted from disclosure under the Public Records Act.
3. The contract should state that any team meetings and conversations should be videotaped or recorded and made AVAILABLE as public record, and that the Council also consider including the media or other public agencies in the meetings.
4. The EIS scoping period should be predictable and allow adequate time for a thorough review by elected officials and the public. The current contract states that the Scope of Work process was to have started on April 1st. Really? Then why hasn't the first public process for scoping already been started? The Applicant and agencies have been meeting on this project for well over a year, but the "open and transparent" public process is limited to 60 days?? We believe that County Council really needs to require a longer period of time for the public process to be seen as "open and transparent." This is a really BIG project with many potentially serious impacts, including regional and even global implications (yet the general public still doesn't even know the proposed rail route!) We agree with Mr. Stahlheim that a minimum of 120 days of public process is not an unreasonable demand. Whose process is this anyway?
5. The EIS and application review specifically needs to address compensation to Whatcom County for all its direct and incidental costs (which is also in the best interests of the public who pay the taxes in
As it stands now, the CH2M Hill contract includes an implied bias toward the Applicant. The EIS process needs to be open and transparent to the Public. We hope that our County Council will require that the CH2M Hill contract be revised so that all the issues above are fully and fairly addressed before you agree to it. Please remember: *The EIS process that you are an integral part of is designed to protect the Public's interests, not the Applicant's!*  

Thank you for considering our comments.

Anne & Mike Botwin
349 Cove Rd.
Bellingham, WA 98229-8924
From: Jack Louws
To: Tyler Schroeder
CC: gpttoweb@co.whatcom.wa.us
Date: 6/6/2012 7:46 AM
Subject: Fwd: Gateway and CH2M Contract
Attachments: Gateway and CH2M Contract
Hello Jack,

I have growing concerns about the contracts and agreements regarding the Gateway Pacific Terminal Project. As a voting senior citizen that stands to be greatly affected by this project, I am concerned that, from the very beginning, it is skewed toward the applicant's interests.

I won't bother to go into the various issues, but I will say that I have read the contract and agreements and am troubled by potential conflicts of interest, the potential lack of transparency and the obvious edge given to the applicant.

This is somewhat understandable since I presume that it is difficult for public figures such as yourself to resist the influence of powerful corporate interests. Gateway has money and influence. I do not. And, for exactly that reason, I count on you to represent my concerns and give me a voice. I expect you to resist that power and influence and, in fact, also represent the those of us on the other side of the Gateway issue. Specifically, those of us that want a thorough vetting, a comprehensive EIS and an outcome that takes much, much more into account than simply the short term benefits that can be provided by wealthy and powerful forces whose interests are much more narrow than those of ordinary citizens in this gorgeous piece of earth we call Whatcom County.

I would appreciate a response.

Thank you for your time.
Leaf Schumann
Deming
Hi Tyler--

Just got off the phone with Sam Crawford, who filled me in on Tuesday council action on the CH2M Hill contract.

Sam noted that the council's changes--most notably the 120-day minimum scoping period -- would need approval by CH2M Hill as well as ACE and DoE.

Will this be a problem? As soon as you find out, I'd appreciate an update as soon as you can manage it. Thanks for your patience.

*John Stark, Reporter*
The Bellingham Herald and TheBellinghamHerald.com
1155 N. State St., Bellingham, WA 98225
*Voice: (360) 715-2274*
Fax: (360) 756-2826
E-mail: john.stark@bellinghamherald.com
Visit us at www.bellinghamherald.com
Tyler,

How does one become a "stakeholder"?

Thank you.

Terry

Terry J. Wechsler
360-656-6180 (r), 541-913-5976 (c)
Actually, what I wish to know is who are the 20 “key stakeholders”? I ask because “Protect Whatcom” would seem like an obvious community group which should have a representative in that group. I am also interested in the list of community leaders as that will tell us a lot about the geographic scope CH2M Hill is contemplating.

Thank you.

Terry

Terry J. Wechsler
360-656-6180 (r), 541-913-5976 (c)

----- Original Message ----- 
From: wechslerlaw@comcast.net
To: "Tyler Schroeder" <Tschroed@co.whatcom.wa.us>
Sent: Wednesday, June 6, 2012 9:36:00 AM
Subject: GPT EIS Process

Tyler,

How does one become a "stakeholder”?

Thank you.

Terry

Terry J. Wechsler
360-656-6180 (r), 541-913-5976 (c)
From: "Summerhays, Jeannie (ECY)" <JSUM461@ECY.WA.GOV>
To: "Tyler Schroeder (tschroed@co.whatcom.wa.us)" <tschroed@co.whatcom.wa.us>
Date: 6/6/2012 10:44 AM
Subject: Please call us as soon as you can......

My number - below
Alice: 425-649-7128

Best Regards,
Jeannie Summerhays
Regional Director
Northwest Regional Office
Department of Ecology
(425) 649-7010
(425)649-7098 fax
jsum461@ecy.wa.gov<mailto:jsum461@ecy.wa.gov>
Hello,

This will be a reoccurring co-lead conference call as needed for the next 4 months, occurring every week on Wednesday from 3:30 - 4:30. You will see cancellations as meetings are not needed.

Thanks,
Shannell
Tyler,

As you know I have the original contracts, etc. Do you want me to send those back over to you or will you just replace those with others?

Let me know -- excellent work last night, by the way. I don't know how you do it.

Cheers,
Arden
Hi Tyler,

You are probably inundated with requests like this, but could you give me a short summary of where Whatcom County is at in regard to the EIS and any development review of the coal terminal? Our City Council has taken an interest in it and I will likely be directed to review and comment on the EIS since the trains will pass through Vancouver's downtown. I'll be sending a more formal letter asking to be included on your notification list, but would appreciate hearing what the status of everything is at this point.

Sincerely,

Chad Eiken, AICP
Land Use Manager
City of Vancouver
(360) 487-7882
Dear Terry,
Thank you for your comments. I have forwarded them to Tyler Schroeder for his review with the other co-leads of the project. They will also be retained as part of the record. Our website will continue to carry a great deal of information on the project and will be updated frequently with current news on where we are in the process.

Sincerely,

Jack Louws

>>> <wechslerlaw@comcast.net> 6/6/2012 12:30 PM >>>

Please excuse this late request regarding the contract with CH2M Hill. At the prescoping information session at the highschool I orally commented that it would benefit the public greatly if, as comments are received they are put online immediately and sorted by nature of the impact. I note that the contract states the consultant will sort by month and then alphabetically by last name of the commenter. While that theoretically assists the public in locating a specific comment (if they know the month in which it is submitted), it is not helpful at all for those who wish to read other comments that relate to a specific issue. Please consider asking the consultant to change the method of posting comments online.

Also, have the 20 "key stakeholders" been selected? I ask because I have been researching the issue of the proposed terminal and impacts on our and other communities for over a year and a half. My organization, Protect Whatcom, and another local organization, Safeguard the South Fork, have commented on the completeness of the application; I submitted a request for an Economic Impact Assessment; and the two groups have been holding forums throughout the county informing county residents about potential impacts. I would respectfully suggest that representatives of our two groups be considered "key stakeholders" given the fact that we actually are.

Thank you for your attention.

Terry Wechsler

Protect Whatcom
360-656-6180 (r), 541-913-5976 (c)
Ok, I'll wait to hear from you. Jack has already signed the MOA. I have a copy but the original is with Council office. Kathy is the outstanding signature. Council office can help you.

Arden

>>> Tyler Schroeder 6/6/2012 1:26 PM >>>

Thanks Arden,

I will be working with CH to get an updated contract. Why don't you keep the contracts until I hear back for Jodi. I should know by tomorrow or Friday.

Do you know what the process is to have Jack sign the MOA for the amended Settlement Agreement. I believe the Department of Ecology is eagerly awaiting the signed contract?

Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> Arden Landry 6/6/2012 11:35 AM >>>

Tyler,

As you know I have the original contracts, etc. Do you want me to send those back over to you or will you just replace those with others?

Let me know -- excellent work last night, by the way. I don't know how you do it.

Cheers,

Arden
Thanks for your patience.

*John Stark, Reporter*
The Bellingham Herald and TheBellinghamHerald.com
1155 N. State St., Bellingham, WA 98225
*Voice: (360) 715-2274*
Fax: (360) 756-2826
E-mail: john.stark@bellinghamherald.com
Visit us at www.bellinghamherald.com

On Wed, Jun 6, 2012 at 12:48 PM, Tyler Schroeder <Tschroed@co.whatcom.wa.us> wrote:

> John,
> 
> Yes, the County is required to have agreement from those agencies on the
> length of time for scoping (120 days). I have been in contact with USACE
> and DOE, this morning, in regards to the 120-day minimum scoping period.
> The Co-Lead agencies will be reviewing any legal requirements or other
> state and federal requirements in regards to a 120-day scoping period.
> I will also be working with CH2M HiLL on the changes agreed upon by
> Council. I anticipate that CH2M HiLL will be in agreement to the Council
> changes.
> I hope this provides some clarity.
> Thanks,
> Tyler
> 
> Tyler R. Schroeder
> Planning Manager
> Phone: (360) 676-6907 ext. 50202
> Fax: (360)738-2525
> Email: Tschroed@co.whatcom.wa.us
> Address:
> Whatcom County Planning and Development Services
> 5280 Northwest Dr.
> Bellingham, WA  98225
> 
> >>> "Stark, John" <john.stark@bellinghamherald.com> 6/6/2012 9:15 AM >>>
> Hi Tyler--
> 
> Just got off the phone with Sam Crawford, who filled me in on Tuesday
> council action on the CH2M Hill contract.
>
> Sam noted that the council’s changes—most notably the 120-day minimum
> scoping period—would need approval by CH2M Hill as well as ACE and DoE.
> 
> Will this be a problem? As soon as you find out, I’d appreciate an update
> as soon as you can manage it. Thanks for your patience.
>
> *John Stark, Reporter*
> The Bellingham Herald and TheBellinghamHerald.com
> 1155 N. State St., Bellingham, WA 98225
> *Voice: (360) 715-2274*
> Fax: (360) 756-2826
> E-mail: john.stark@bellinghamherald.com
> Visit us at www.bellinghamherald.com
> 
>
Good Afternoon Michael,

I have reviewed our party of record list and comments received and can find no request by the City of Everett to be a party of record, nor can I find any materials from the City to Whatcom County.

Sincerely,

Amy Keenan, AICP
Senior Planner
Whatcom County
Planning and Development Services
Northwest Annex, Suite B
5280 Northwest Drive
(360) 676-6907

>>> Michael Whitney <michael@snoho.com> 6/5/2012 12:12 PM >>>

Hello Mr. Schroeder,

My name is Michael Whitney and I am a reporter with the Everett Tribune newspaper.

I would like to check with you whether the City of Everett has requested to be a party of record regarding the SEPA analysis of the Gateway Pacific Terminal and if the city has sent any material to your office regarding this.

Could you please let me know by Thursday?

Truly,

Michael

Michael Whitney
Reporter, Everett Tribune
(360) 568-4121
Hi Dan,

We made amendments last night that may cover your concerns. You will also have numerous opportunities to comment in the future as there will first be a draft environmental impact statement which will allow anyone to comment on any aspect of the proposal. There will also eventually be council hearing(s) on this item at which time the council will also be able to research and discuss the aspects of the proposal and you will have opportunities to comment at that time too.

Further, I very much trust Tyler Schroeder to do an excellent job of ensuring every type of comment, issue, concern is covered. If, at the time the EIS is released you feel something is missing, please communicate that to Tyler, or to us when it gets to us.

Barbara Brenner, Whatcom County Council Member

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.
-----Original Message-----
Date: Tue, 5 Jun 2012 10:36:28 -0700
Subject: GPT/CH2M Hill Contract considerations and input
From: Dan Pike <danpike1957@gmail.com>
To: JSUM461@ECY.WA.GOV, Randel.j.perry@usace.army.mil, Alice.kelly@ecy.wa.gov, jlouws@co.whatcom.wa.us, council@co.whatcom.wa.us

Please include the attached written testimony in your deliberations today.

In addition to attaching the document to this email, I am pasting it below.

Thank you.

Dan Pike
506 Cypress Road
360-224-7984

Jeannie Summerhays
Northwest Regional Office Director
Department of Ecology
3190 160th Ave. SE
Bellevue, WA  98008
JSUM461@ECY.WA.GOV

Randel Perry
Northwest Field Office
Army Corps of Engineers
1440 10th Street, Suite 102
Bellingham, WA  98225
June 5, 2012

Dear Elected Officials and Staff:

I am writing in regards to the proposed contracts dealing with the proposed Gateway Pacific Terminal, a facility which, if built as proposed would be the largest facility of its kind in North America. Public agencies are charged with reviewing the broad range of potential negative impacts the proposal could visit on the County, the region, the state, and if it is deemed appropriate, the nation. In fact, your authority allows consideration of impacts outside the United States as you examine the project. While the interests of the public and the applicant have some overlap—e.g., all of us want a better economic situation—examining the environmental, socio-economic and health impacts of this proposal is the
role of the public agencies, and not the applicant. As proposed, however, three agreements coming before the Whatcom County Council today require changes to effectively ensure that the public interests are met, and that public confidence in the validity of the process is upheld.

Given the complexities of the contracts you are considering, and the limited opportunities to examine them both by yourselves, and importantly by an engaged public, I request that you delay a decision today for at least two weeks, to allow for greater conversation between the agencies, the proponents, and the public regarding some troubling provisions and omissions. Absent that, former County Planning Director David Stalheim has identified some simple changes to meet these goals which I advocate adopting in toto. Rather than reinvent the wheel, I am simply reiterating, verbatim, Mr. Stalheim's well-considered and effective suggestions for fixing these errors. They are as follows:

1. **The EIS process is to protect the public's interest -- not the applicant's interest.**

The environmental review process under the State and National Environmental Policy Acts (SEPA and NEPA) is meant to ensure that the environmental impacts of the proposed development are identified and that environmental values are considered during decision-making by state and local agencies. It is the public agencies responsibility to control the environmental review process. That is why the proposed agreements and contracts are troubling in several areas:

36.2 Conflict of Interest:

**If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant's interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the Applicant's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the**
provisions herein for termination." *

*(Contract for Services Agreement for EIS Preparation, Section 36.2, p10 of 16, Emphasis added) *

As written, CH2M Hill could purchase a financial interest in Gateway Pacific and not be considered a "conflict of interest". The conflict of interest provision should be written to address the following two points:

1. Add a provision that ensures the Consultant does not develop an interest that is in potential conflict the Public’s interest.

2. Add Department of Ecology and Army Corps of Engineers to the decision making process for determining when conflicts exist. Their interest in this matter should be equal to the County’s, and their experience in these matters is substantially greater than Whatcom County’s.

*Recommended Change: The following would be suggested changes to Section 36.2 of the Consultant Contract for Services: *

"If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant’s or Public’s interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County, Department of Ecology and Army Corps of Engineers to make an informed judgment as to whether or not the Applicant’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County, Department of Ecology and Army Corps of Engineers may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination." *

*THE CH2M HILL CONTRACT INCLUDES AN IMPLIED BIAS TOWARDS THE APPLICANT**.*

The CH2M Hill contract correctly states that "establishing the purpose and need is the first critical path item on the schedule...[as it] will direct the range of alternatives to be developed and reviewed in the EIS document."1

What is biased is the entire discussion that follows:

"However, it may also be prudent to include background insights on the primary drivers that make this project worth consideration and evaluating. Either way, a defensible document must include proper documentation in the purpose and need chapter. The CH2M HILL Team proposes to research drivers so that the public has, in the scoping process, additional insights on the economic situation surrounding this project. The project drivers are anticipated to include a review of available port capacity on the west coast based on readily available information, economic pressures regarding dry bulk materials in the Asian-Pacific region, and national executive
orders influencing industrial development. Understanding these elements may also help refine the range of alternatives suggested. The Team economist and planner will research the Applicant's Purpose and Need and make recommendations for The Agencies consideration.”

1 Exhibit A, Phase 1 Scope of Work, Section 2.3.1, April 1, 2012, pg. 5

2 Ibid

The proposed contract begins to narrowly define the purpose and need to mirror the applicant's perspective ("drivers that make this project worth considering and evaluating"). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives.

This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant's wants, needs, and goals.

*Recommended Change: The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation.*

*2. The EIS process needs to be open and transparent.*

There are numerous provisions within these three agreements that are inconsistent with the consultant's proposal that they "will support an open and transparent process."

Ø "The Communication Protocol Agreement allows "Work Products" to be "Provided to the Applicant's Team""

"Work products prepared by the 3rd party team will be submitted directly to the Co-leads. These work products will be additionally provided to the applicant's team only upon the approval of the Co-leads" (Communications Protocol Agreement, Section 2d)*

If the County and partner agencies intend that the agency may withhold these "work products" because they might be privileged under litigation discovery rules (commonly called the "work product" doctrine), then these documents should not be provided to the applicant's team unless they are determined to be public records subject to discovery and disclosure.

*Recommended Change: "Work products provided to the applicant's team shall be made available to the public and not be exempt from disclosure under the Public Records Act."*

*M*EETINGS WITH THE **A**GENCIES, **THE **C**ONSULTANT, AND THE **A**PLICANT **SHOULD BE MADE PUBLIC*. *
Since November of 2010, the State of Washington facilitated a process called the Multiagency Permit Team (MAP). This "team", composed of public agencies and the applicants (as well as their attorney) met outside the glare of publicity. Now, it appears that this same "team" process will continue and be sanctioned through these agreements.

"At the reasonable discretion of the County, a meeting and/or conference call may be arranged with the County, Pacific International Terminals, Inc., BNSF Railway Company, and the Consultant, on a bi-weekly or on a different schedule as directed by the County to discuss changes, if any, in the Scope of Work and other issues related to completion of the Scope of Work." *

*(Contract for Reimbursement of Costs, Section 3.6, emphasis added) *

"The first team kick-off will include the Agencies, project team representatives and other key Agency invitees, such as key regulatory agencies and Applicant." *

*(Exhibit A, Phase I Scope of Work, Section 1.4, April 1, 2012, page 3, emphasis added) *

"This includes meeting minutes (limited to subject topic issues and action items and/or key direction or decisions)" *

*(Exhibit A, Phase I Scope of Work, Section 3.1, April 1, 2012, page 11, emphasis added) *

Meetings that include the applicant should be made reasonably accessible to the public to ensure that the process is open and transparent. The proposal for meeting minutes limited to topic issues and action items and/or key direction or decisions, fails to disclose the substance of any conversation that leads to those key directions or decisions, including changes to the Scope of Work that is part of this contract.

These provisions allow the applicant to participate in changing the Scope of Work without the public observing and knowing why.

*Recommended Change: The contract should make explicit that any team meetings and conversations should be video-taped or audio recorded, and made available as a public record. Consideration should also be given to including other observers at these "meetings", such as the media, interested parties, and other public agencies. *

*3. The EIS scoping schedule needs to be adequate and predictable. *

While it is very troubling to read contracts that started before they are even signed, it is more troubling to review a schedule in a Scope of Work that started on April 1st. Based on this schedule, the public process for scoping should have started this past Friday.
"The following scope will commence in April 2012."

"Project definition and Purpose and Need..(1st wk of June)"

"Task 2.4 Public and Agency Scoping Meetings… (June-July)"

"CH2M HILL Team will host a maximum of 6 scoping meetings in locations to be determined."

"*(Exhibit A, Phase I Scope of Work, various pages)"

"THE SCOPING PROCESS NEEDS TO BE AT LEAST 120 DAYS IN LENGTH, AND NEEDS TO BE INCLUSIVE OF AREAS OUTSIDE WHATCOM COUNTY"

Based on the Scope of Work that Whatcom County is set to approve, the public and agencies should expect that the project will be already defined and the purpose and need statement will be completed before the ink is dry on these agreements.

Since the Scope of Work document also says that the commencement is April 1st, it might be assumed that the schedule is already two months behind. But, how is the public supposed to know? Whatcom County is being asked to approve a contract that includes a schedule in the Scope of Work where the public and agency scoping meetings are set to end July 31st.

The assumption of only 60 days in the Scope of Work for public and agency scoping is wholly inadequate. Remember, the applicant and agencies have been meeting on this project since November 2010, and the "open and transparent" process envisioned by the consultant is limited to 60 days?

"The agencies have steadfastly refused to provide any information on the "scope" of the project. They haven't published the rail route, to the best of my knowledge. Scoping is a critical juncture for agencies' consideration of reasonable alternatives. For an agency to have to consider a particular alternative, comments have to provide evidence that the alternative is reasonable and feasible. Without knowledge of key aspects of the project until the scoping notice has been released, developing alternatives to the project and the evidence to support the alternatives will take time. "The proposed definition of the project's "purpose and need" will also first be presented to the public in the scoping notice. The "purpose and need" is a critical component of the NEPA analysis because it guides both the selection of alternatives and the agency's ultimate decision about the project. "As anyone knows who has ever done a business or policy analysis, how you define your objective determines every other step along the way. The purpose and need statement will define the objective of the Gateway Pacific terminal. The project applicant will want the purpose and need statement to be as narrow as possible, because if it precisely mirrors the goals and features of the project, the project will be the only feasible outcome. The agencies have only spoken to the project applicant; they haven't spoken to us. We might want to point out that NEPA is supposed to
look at broader purposes, not just the applicant's wants, needs, and goals. "Responding to these and other key issues will be important, will take time, organization, and effort, and will be difficult to accomplish in 60 days. As I mentioned above, look how long it has taken the agencies and the applicant to compile sufficient information and evidence to proceed. "So I think that an extra 60 days is not unreasonable under these circumstances. Let's not forget that this is a really big project. We tend to think of ourselves as little ol' Whatcom County, hidden away up in the top left corner of the country, and of Cherry Point as somewhere out in the hinterlands. But this is not a Whatcom County-scale project. It is a big project in global terms, with global impacts. "The fact that the agency personnel involved in the environmental review process have never worked on a big project is not a good reason to treat this project as if it were a standard, little project. It isn't, and it deserves more scrutiny than any project Whatcom County has ever seen before."*

*("Coal Terminal Update: Whose Process is This?" Get Whatcom Planning Blog, March 21, 2012, Jean Melious)*

*Recommended Change: There are three changes proposed:*

*1. The Contract should not be approved until an updated schedule is provided. *

*2. The Contract should include a specific directive that the public scoping period be at least 120 days in length. *

*3. The Contract should set forth the expectation that the 6 scoping meetings will be located in areas impacted by this project. Suggestions include the following: *

• *Those communities affected by shipping (San Juan Islands) *

• *Those communities affected by increased rail traffic (Seattle, Vancouver, Spokane) *

• *Whatcom County *

*4. The EIS and application review needs to fully compensate Whatcom County for costs. *

Whatcom County amended its fee schedule to charge only $2,625 for preparation of an EIS, the same fee that is charged for a Major Project Permit. The County has already spent at least $16,000 in costs above and beyond those collected. One of the three agreements under consideration is a contract to reimburse Whatcom County for both County costs and consultant costs in preparation of the EIS, including those costs already incurred by Whatcom County.

The memo says "No Whatcom County Funds will be used for this contract." The current Agreement and controls in place will not achieve this intent.

• Direct vs. indirect expenses -- the agreement requires the applicant to
cover "direct out-of-pocket expenses". It does not cover indirect expenses, or overhead. Examples of overhead costs that will be funded by Whatcom County include:

- Processing and paying invoices (Finance and Auditor staff, plus mailing costs)
- Administrative staff time (answering calls, filing papers, counter inquiries)
- Hosting a web site with public comments (IT staff plus server costs)
- Office space and records storage (light, power, physical storage of records)

- County staff costs -- the agreement includes salaries and benefits. Does this include all Whatcom County staff that will be involved in this process, such as Health Department, Public Works, Prosecuting Attorney, Sheriff, and Executive’s Office? What about support staff that process paperwork and handle phone calls for the project?

*Recommended Change: The following changes are suggested:*

*1. Include an Administrative Charge. It is too burdensome to track every expenditure. The two options to cover indirect expenses include an hourly rate that includes overhead (the Consultant Contract is based on this assumption), or an Administrative Overhead rate to be added to the hourly rate. A typical Administrative Overhead charged in federal contracts runs between 9 and 14%.

*2. Covered Staff. It should be made clear that the staff time of Planning and Development Services, Public Works, Health, Prosecuting Attorney, County Executive, and Sheriff are County staff expected to be involved in the preparation of the EIS, and their costs are reimbursable.*

**

The above suggested contract and approach revisions will go far in reassuring the public that this is an open and fair process. In particular, please require full videotaping of all meetings, as the public interest and level of concern are extraordinarily high, and the public deserves to know that the process is fair and transparent. Also, please fully address the recapture of County costs related to this project. As an experienced manager on both state and federal projects, I know that standard protocol for these charges includes overhead rates to capture costs which would otherwise be difficult to track. These costs are real, and particularly at a time when the County is struggling to balance its budget and meet its constitutional obligations, the taxpayers should not be expected to underwrite costs incurred on behalf of a for-profit enterprise—and whose backers have indicated a willingness to cover those costs.
Thank you for your consideration of my request, and for all your work on behalf of our community.

Sincerely,

Daniel V. Pike
506 Cypress Road
Bellingham, WA 98225
360-224-7984
Danpike1957@gmail.com

Please include the attached written testimony in your deliberations today.

Jeannie Summerhays
Northwest Regional Office Director
3190 160th Ave. SE
Bellevue, WA 98008
JSUM461@ECY.WA.GOV

Randel Perry
Northwest Field Office
narrowly define the purpose and need to mirror the applicant's perspective ("drivers that make this project worth considering and evaluating"). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives. </span>

This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant's wants, needs, and goals. </span>

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because they might be privileged under litigation discovery rules (commonly called the "work product" doctrine), then these documents should not be provided to the applicant’s team unless they are determined to be public records subject to discovery and disclosure.

Recommended Change:
"Work products provided to the applicant’s team shall be made available to the public and not be exempt from disclosure under the Public Records Act."
Meetings that include the applicant should be made reasonably accessible to the public to ensure that the process is open and transparent. The proposal for meeting minutes limited to topic issues and action items and/or key direction or decisions, fails to disclose the substance of any conversation that leads to those key directions or decisions, including changes to the Scope of Work that is part of this contract.

These provisions allow the applicant to participate in changing the Scope of Work without the public observing and knowing why.

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While it is very troubling to read contracts that started before they are even signed, it is more troubling to review a schedule in a Scope of Work that started on April 1st. Based on this schedule, the public process for scoping should have started this past Friday.

The following scope will commence in April 2012.
Project definition and Purpose and Need.. (1st wk of June) "Task 2.4 Public and Agency Scoping Meetings… (June-July)"

"CH2M HILL Team will host a maximum of 6 scoping meetings in locations to be determined."

"(Exhibit A, Phase I Scope of Work, various pages)"

""The coping process needs to be at least 120 days in length, and needs to be inclusive of areas outside Whatcom County."

Based on the Scope of Work that Whatcom County is set to approve, the public and agencies should expect that the project will be already defined and the purpose and need statement will be completed before the ink is dry on these agreements. 

Since the Scope of Work document also says that the commencement is April 1st, it might be assumed that the schedule is already two months behind. But, how is the public supposed to know? Whatcom County is being asked to approve a contract that includes a schedule in the Scope of Work where the public and agency scoping meetings are set to end July 31st. 

The assumption of only 60 days in the Scope of Work for public and agency scoping is wholly inadequate. Remember, the applicant and agencies have been meeting on this project since November 2010, and the "open and transparent" process envisioned by
the consultant is limited to 60 days? 

"The agencies have steadfastly refused to provide any information on the scope of the project. They haven’t published the rail route, to the best of my knowledge. Scoping is a critical juncture for agencies’ consideration of reasonable alternatives. For an agency to have to consider a particular alternative, comments have to provide evidence that the alternative is reasonable and feasible. Without knowledge of key aspects of the project until the scoping notice has been released, developing alternatives to the project and the evidence to support the alternatives will take time. The proposed definition of the project’s purpose and need will also first be presented to the public in the scoping notice. The purpose and need is a critical component of the NEPA analysis because it guides both the selection of alternatives and the agency’s ultimate decision about the project. As anyone knows who has ever done a business or policy analysis, how you define your objective determines every other step along the way. The purpose and need statement will define the objective of the Gateway Pacific terminal. The project applicant will want the purpose and need statement to be as narrow as possible, because if it precisely mirrors the goals and features of the project, the project will be the only feasible outcome. The agencies have only spoken to the project applicant; they haven’t spoken to us. We might want to point out that NEPA is supposed to look at broader purposes, not just the applicant’s wants, needs, and goals. Responding to these and other key issues will be important, will take time, organization, and effort, and will be difficult to accomplish in 60 days. As I mentioned above, look how long it has taken the agencies and the applicant to compile sufficient information and evidence to proceed. So I think that an extra 60 days is not unreasonable under these circumstances. Let’s not forget that this is a really big project. We tend to think of ourselves as little ol’ Whatcom County, hidden away up in the top left corner of the country, and of Cherry Point as somewhere out in the hinterlands. But this is not a Whatcom County-scale project. It is a big project in global terms, with global impacts. The fact that the agency personnel involved in the environmental review process have never
worked on a big project is not a good reason to treat this project as if it were a standard, little project. It isn’t, and it deserves more scrutiny than any project Whatcom County has ever seen before.”

(&quot;Coal Terminal Update: Whose Process is This?&quot; Get Whatcom Planning Blog, March 21, 2012, Jean Melious) 

Recommended Change: There are three changes proposed: 

1. The Contract should not be approved until an updated schedule is provided. 

2. The Contract should include a specific directive that the public scoping period be at least 120 days in length. 

3. The Contract should set forth the expectation that the 6 scoping meetings will be located in areas impacted by this project. Suggestions include the following:
   • Those communities affected by shipping (San Juan Islands) 
   • Those communities affected by increased rail traffic (Seattle, Vancouver, Spokane) 
   • Whatcom County 

4. The EIS and application review needs to fully compensate Whatcom County for costs.

Whatcom County amended its fee schedule to charge only $2,625 for preparation of an EIS, the same fee that is charged for a Major Project Permit. The County has already spent at least $16,000 in costs above and beyond those collected. 

One of the three agreements under consideration is a contract to reimburse Whatcom County for both County costs and consultant costs in preparation of the EIS, including those costs already incurred by Whatcom County.

The memo says &quot;No Whatcom
County Funds will be used for this contract. "The current Agreement and controls in place will not achieve this intent."

- Direct vs. indirect expenses -- the agreement requires the applicant to cover "direct out-of-pocket expenses." It does not cover indirect expenses, or overhead. Examples of overhead costs that will be funded by Whatcom County include:
  - Processing and paying invoices (Finance and Auditor staff, plus mailing costs)
  - Administrative staff time (answering calls, filing papers, counter inquiries)
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- County staff costs -- the agreement includes salaries and benefits. Does this include all Whatcom County staff that will be involved in this process, such as Health Department, Public Works, Prosecuting Attorney, Sheriff, and Executive's Office? What about support staff that process paperwork and handle phone calls for the project?

Recommended Change: The following changes are suggested:

1. Include an Administrative Charge. It is too burdensome to track every expenditure. The two options to cover indirect expenses include an hourly rate that includes overhead (the Consultant Contract is based on this assumption), or an Administrative Overhead rate to be added to the hourly rate. A typical Administrative Overhead charged in federal contracts runs between 9 and 14%.
2. Covered Staff. It should be made clear that the staff time of Planning and Development Services, Public Works, Health, Prosecuting Attorney, County Executive, and Sheriff are County staff expected to be involved in the preparation of the EIS, and their costs are reimbursable.

The above suggested contract and approach revisions will go far in reassuring the public that this is an open and fair process. In particular, please require full videotaping of all meetings, as the public interest and level of concern are extraordinarily high, and the public deserves to know that the process is fair and transparent. Also, please fully address the recapture of County costs related to this project. As an experienced manager on both state and federal projects, I know that standard protocol for these charges includes overhead rates to capture costs which would otherwise be difficult to track. These costs are real, and particularly at a time when the County is struggling to balance its budget and meet its constitutional obligations, the taxpayers should not be expected to underwrite costs incurred on behalf of a for-profit enterprise—and whose backers have indicated a willingness to cover those costs.

Thank you for your consideration of my request, and for all your work on behalf of our community.

Sincerely,
<span style="font-size:11.0pt">Daniel V. Pike</span>

<span style="font-size:11.0pt">506 Cypress Road</span>

<span style="font-size:11.0pt">Bellingham, WA 98225</span>

<span style="font-size:11.0pt">360-224-7984</span>

<span style="font-size:11.0pt">Danpike1957@gmail.com</span>
Tyler

I was told that you actually have the name of the person that CH2M Hill will be having work on a HIA if one is called for in the scoping process, that is that they have staff in house to do the work and that was why no subcontractor was considered for this element of the the proposed contract. Could you tell me who that person is? Thanks

Frank

Frank James
201-2505
Ms Wechsler,

I am forwarding your request regarding what I assume to be the "Conflict of Interest" section amendments to the CH2M Hill contract. Please let me know if you do not receive it within 24 hours. Thanks, Ken

Ken Mann
Whatcom County Councilmember
(360) 676-6690 (office)
(360) 483-6020 (mobile)
kmann@co.whatcom.wa.us
http://www.facebook.com/pages/Ken-Mann-Whatcom/77546362394

Could you please send me your amendment?

Thank you.

Terry

Terry J. Wechsler
360-656-6180 (r), 541-913-5976 (c)
Good Morning Michael,

We do not have a comprehensive list of jurisdictions that are a part of the party of record list. Please reference our website where we have listed all letters and comments received.

Sincerely,

Amy Keenan, AICP
Senior Planner
Whatcom County
Planning and Development Services
Northwest Annex, Suite B
5280 Northwest Drive
(360) 676-6907

>>> Michael Whitney <michael@snoho.com> 6/6/2012 1:54 PM >>>
Thank you Amy.

Which cities are part of the party of record on the Gateway Pacific Terminal project?

-- Michael

Michael Whitney
Reporter, Everett Tribune
(360) 568-4121

On Jun 6, 2012, at 1:48 PM, Amy Keenan wrote:

> Good Afternoon Michael,
> 
> I have reviewed our party of record list and comments received and can find no request by the City of Everett to be a party of record, nor can I find any materials from the City to Whatcom County.
> 
> Sincerely,
>
>
> Amy Keenan, AICP
> Senior Planner
> Whatcom County
> Planning and Development Services
> Northwest Annex, Suite B
> 5280 Northwest Drive
> (360) 676-6907
Hello Mr. Schroeder,

My name is Michael Whitney and I am a reporter with the Everett Tribune newspaper. I would like to check with you whether the City of Everett has requested to be a party of record regarding the SEPA analysis of the Gateway Pacific Terminal and if the city has sent any material to your office regarding this. Could you please let me know by Thursday?

Truly,

Michael

Michael Whitney
Reporter, Everett Tribune
(360) 568-4121
Thanks for all the process information Dan. I am copying Tyler Schroeder, who is the planning staffer responsible for putting it all together. After listening to him I did feel reassured that we will capture all costs that are applicable. It is my understanding that some of the costs are captured through our permit process and others are the same for all applicants. If that is not the case, we do have some other bites at this further along.

I did want to reassure you I contacted the attorney general's office and MRSC long ago to discuss the issue of if we could obtain information at this time. I was very uncomfortable that we were told we could not and am certainly not used to keeping my nose out of issues. Both offices were pretty firm that we need to stay out of the process until it gets to the council level. I had an exceptionally unique problem because for a while I was a candidate as well as a council member. I was told I could become involved as a candidate but that would not prevent me from having to be recused as a council member if I was to retain my seat. I am now okay to keep a distance knowing that, when it comes to us we will be able to discuss and research as much as necessary. I tend to be an obsessive researcher and I think that will work. I certainly would not support anything if I didn't think I had ample time to research it and hear from everyone interested.

I don't know if that makes you more comfortable but I do feel I will be able to obtain all information I need and hear from everyone who wants to speak to me through our council hearing process when it gets to us. Someone poo-pooed me for saying that it would be no different than me knowing something ex-parte before a custody case. But that was what I was told by the attorney general.

I hope you will continue to have faith in me.

Barbara

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

In a message dated 6/7/2012 8:38:44 A.M. Pacific Daylight Time, danpike1957@gmail.com writes:

Hi Barbara,
Thanks for responding to my letter. I was pleased to see pretty much the entire Council take the public's concerns seriously. The changes adopted are appreciated, and go a long ways towards correcting some weaknesses in the draft contract.

One area of continuing concern, though, is the lack of indirect cost
allocations. This may seem like a minor point—the Executive seemed to think so—but this is a glaring weakness not only for this project, but others, too. It is particularly important on projects of this scale, because their reach into everything the County does. The Council meeting Tuesday was a great example of this—hours of time spent discussing GPT in afternoon and evening sessions, and I'm sure considerable time spent as well among staff trying to figure things out and provide the best information to you folks as decision-makers.

I've heard from a few staff that they are only to charge when directed by their managers to do so; this isn't happening much of the time. Part of the reason to capture indirect costs is so managers are stuck trying to micromanage the billing. In addition, all the infrastructure of the County government apparatus—buildings, vehicles, police equipment, emergency management stuff, public works, all the computers, printers, desks—helps undergird everything you do, including providing the template for handling their applications. At the federal level, indirect cost allocation is written into pretty much every contract, with contractors allowed to charge as a percentage of their direct costs. In this case, the County is acting as the contractor for services to PIT. In contracts I've dealt with as a project manager overseeing federal funds, I saw rates sometimes over 25%, for firms with high overhead in Seattle or other large cities. Locally, the Whatcom COG charges a flat 15%, I believe, and when I was Mayor, the County charged the City 15% overhead (or indirect costs, if you prefer that term), too, on things like elections.

If you want to see how these charges can be determined, here's a pretty good template:

_http://rates.psc.gov/fms/dca/shortform1.pdf_  
(http://rates.psc.gov/fms/dca/shortform1.pdf)

Anyway, thanks for your work on this. I don't always agree with every decision you make, but I know your heart is always in the right place—and I am probably wrong sometimes when I disagree with you...

One more issue—I continue to disagree with your counsel's advice against listening to or independently gathering any coal-related info. My opinion is based on conversations about this with a number of lawyers around the country, who are universally surprised at the advice you've been given. It's correct that you ought not state as firmly held conviction that GPT is right or wrong, good or bad, but you can look into how coal facilities operate, what the consequences of coal terminals in other areas have been—good and bad, such as new jobs, environmental challenges, etc. I'm not advocating that you do this; but advocate pushing counsel, and maybe ask some lawyer friends for their opinions. Not sure what local lawyers would say, as this is a hot issue locally, as you know all too well, but if you know someone in Seattle or further, they could possibly share some insights.

Thanks for listening,
Dan

On Wed, Jun 6, 2012 at 6:34 PM, <_BBGUN1010@aol.com_ (mailto:BBGUN1010@aol.com) > wrote:

Hi Dan,

We made amendments last night that may cover your concerns. You will also have numerous opportunities to comment in the future as there will first be a draft environmental impact statement which will allow anyone to comment on any aspect of the proposal. There will also eventually be council hearing(s) on this item at which time the council will also be able to research and discuss the aspects of the proposal and you will have opportunities to comment at that time too.

Further, I very much trust Tyler Schroeder to do an excellent job of ensuring every type of comment, issue, concern is covered. If, at the time the EIS is released you feel something is missing, please communicate that to Tyler, or to us when it gets to us.

Barbara Brenner, Whatcom County Council Member

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, _bbrenner@co.whatcom.wa.us_ (mailto:bbrenner@co.whatcom.wa.us) . Thank you.

In a message dated 6/5/2012 11:17:53 A.M. Pacific Daylight Time, _BBrenner@co.whatcom.wa.us_ (mailto:BBrenner@co.whatcom.wa.us) writes:

-----Original Message-----
Date: Tue, 05 Jun 2012 11:17:43 -0700
From: "Council Council" <_Council@co.whatcom.wa.us_ (mailto:Council@co.whatcom.wa.us) >
To: "Barbara Brenner" <_BBrenner@co.whatcom.wa.us_ (mailto:BBrenner@co.whatcom.wa.us) >,
"Bill Knutzen" <_bknutzen@co.whatcom.wa.us_ (mailto:bknutzen@co.whatcom.wa.us) >,
"Carl Weimer" <_CWeimer@co.whatcom.wa.us_ (mailto:CWeimer@co.whatcom.wa.us) >,
"GPTtoWeb@co.whatcom.wa.us_ (mailto:GPTtoWeb@co.whatcom.wa.us) >,
"Kathy Kershner" <_kkershne@co.whatcom.wa.us_ (mailto:kkershne@co.whatcom.wa.us) >,
"Ken Mann" <_kmann@co.whatcom.wa.us_ (mailto:kmann@co.whatcom.wa.us) >,
"Pete Kremen" <_PKremen@co.whatcom.wa.us_ (mailto:PKremen@co.whatcom.wa.us) >,
Please note: Emails are public records subject to public disclosure upon request.

-----Original Message-----
Date: Tue, 5 Jun 2012 10:36:28 -0700
Subject: GPT/CH2MHill Contract considerations and input
From: Dan Pike <danpike1957@gmail.com> (mailto:danpike1957@gmail.com)
To: JSUM461@ECY.WA.GOV (mailto:JSUM461@ECY.WA.GOV), Randel.j.perry@usace.army.mil (mailto:Randel.j.perry@usace.army.mil), Alice.kelly@ecy.wa.gov (mailto:Alice.kelly@ecy.wa.gov), jlouws@co.whatcom.wa.us (mailto:jlouws@co.whatcom.wa.us), council@co.whatcom.wa.us (mailto:council@co.whatcom.wa.us)

Please include the attached written testimony in your deliberations today.

In addition to attaching the document to this email, I am pasting it below.

Thank you.

Dan Pike
506 Cypress Road
360-224-7984 (tel:360-224-7984)

Jeannie Summerhays
Northwest Regional Office Director
Department of Ecology
3190 160th Ave. SE
Bellevue, WA 98008
JSUM461@ECY.WA.GOV (mailto:JSUM461@ECY.WA.GOV)
June 5, 2012

Dear Elected Officials and Staff:

Randel Perry
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Army Corps of Engineers
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Jack Louws, County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225
_jlouws@co.whatcom.wa.us_ (mailto:jlouws@co.whatcom.wa.us)

Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225
_council@co.whatcom.wa.us_ (mailto:council@co.whatcom.wa.us)
I am writing in regards to the proposed contracts dealing with the proposed Gateway Pacific Terminal, a facility which, if built as proposed would be the largest facility of its kind in North America. Public agencies are charged with reviewing the broad range of potential negative impacts the proposal could visit on the County, the region, the state, and if it is deemed appropriate, the nation. In fact, your authority allows consideration of impacts outside the United States as you examine the project. While the interests of the public and the applicant have some overlap—e.g., all of us want a better economic situation—examining the environmental, socio-economic and health impacts of this proposal is the role of the public agencies, and not the applicant. As proposed, however, three agreements coming before the Whatcom County Council today require changes to effectively ensure that the public interests are met, and that public confidence in the validity of the process is upheld.

Given the complexities of the contracts you are considering, and the limited opportunities to examine them both by yourselves, and importantly by an engaged public, I request that you delay a decision today for at least two weeks, to allow for greater conversation between the agencies, the proponents, and the public regarding some troubling provisions and omissions. Absent that, former County Planning Director David Stalheim has identified some simple changes to meet these goals which I advocate adopting in toto. Rather than reinvent the wheel, I am simply reiterating, verbatim, Mr. Stalheim’s well-considered and effective suggestions for fixing these errors. They are as follows:

1. **The EIS process is to protect the public’s interest -- not the applicant’s interest.**

   The environmental review process under the State and National Environmental Policy Acts (SEPA and NEPA) is meant to ensure that the environmental impacts of the proposed development are identified and that environmental values are considered during decision-making by state and local agencies. It is the public agencies responsibility to control the environmental review process. That is why the proposed agreements and contracts are troubling in several areas:

   **

   **THE CH2M HILL CONTRACT IDENTIFIES A "CONFLICT OF INTEREST" ONLY WHEN THE CONSULTANT DEVELOPS AN INTEREST IN CONFLICT WITH THE APPLICANT’S INTEREST.**

   36.2 Conflict of Interest:
**If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant's interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the Applicant's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination." **

*(Contract for Services Agreement for EIS Preparation, Section 36.2, p10 of 16, Emphasis added)*

As written, CH2M Hill could purchase a financial interest in Gateway Pacific and not be considered a "conflict of interest". The conflict of interest provision should be written to address the following two points:

1. Add a provision that ensures the Consultant does not develop an interest that is in potential conflict with the Public's interest.

2. Add Department of Ecology and Army Corps of Engineers to the decision making process for determining when conflicts exist. Their interest in this matter should be equal to the County's, and their experience in these matters is substantially greater than Whatcom County's.

*Recommended Change: The following would be suggested changes to Section 36.2 of the Consultant Contract for Services: *

**If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant's or Public's interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County, Department of Ecology and Army Corps of Engineers to make an informed judgment as to whether or not the Applicant's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County, Department of Ecology and Army Corps of Engineers may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination." **

*T**HE **CH2M H**ILL **C**ONTRACT INCLUDES AN IMPLIED BIAS TOWARDS THE APPLICANT**. *

The CH2M Hill contract correctly states that "establishing the purpose and need is the first critical path item on the schedule...[as it] will direct the range of alternatives to be developed and reviewed in the EIS
What is biased is the entire discussion that follows:

"However, it may also be prudent to include background insights on the primary drivers that make this project worth consideration and evaluating. Either way, a defensible document must include proper documentation in the purpose and need chapter. The CH2M HILL Team proposes to research drivers so that the public has, in the scoping process, additional insights on the economic situation surrounding this project. The project drivers are anticipated to include a review of available port capacity on the west coast based on readily available information, economic pressures regarding dry bulk materials in the Asian-Pacific region, and national executive orders influencing industrial development. Understanding these elements may also help refine the range of alternatives suggested. The Team economist and planner will research the Applicant's Purpose and Need and make recommendations for The Agencies consideration."**2*

1 Exhibit A, Phase 1 Scope of Work, Section 2.3.1, April 1, 2012, pg. 5

2 Ibid

The proposed contract begins to narrowly define the purpose and need to mirror the applicant's perspective ("drivers that make this project worth considering and evaluating"). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives.

This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant’s wants, needs, and goals.

*Recommended Change: The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation.*

*2. The EIS process needs to be open and transparent.*

There are numerous provisions within these three agreements that are inconsistent with the consultant’s proposal that they "will support an open and transparent process."

Ø **T**HE **C**OMMUNICATION **P**ROTocol **A**GREEMENT ALLOWS *****WORK PRODUCTS*** **TO BE ****PROVIDED TO THE APPLICANT***** TEAM***

"Work products prepared by the 3rd party team will be submitted directly to the Co-leads. These work products will be additionally provided to the applicant's team only upon the approval of the Co-leads" (Communications Protocol Agreement, Section 2d) *

If the County and partner agencies intend that the agency may withhold
these "work products" because they might be privileged under litigation discovery rules (commonly called the "work product" doctrine), then these documents should not be provided to the applicant's team unless they are determined to be public records subject to discovery and disclosure.

*Recommended Change: "Work products provided to the applicant's team shall be made available to the public and not be exempt from disclosure under the Public Records Act." *

*MEETINGS WITH THE **A**GENCIES, **THE **C**ONSULTANT, AND THE **A**PPICANT** **SHOULD BE MADE PUBLIC**. *

Since November of 2010, the State of Washington facilitated a process called the Multiagency Permit Team (MAP). This "team", composed of public agencies and the applicants (as well as their attorney) met outside the glare of publicity. Now, it appears that this same "team" process will continue and be sanctioned through these agreements.

**At the reasonable discretion of the County, a meeting and/or conference call may be arranged with the County, Pacific International Terminals, Inc., BNSF Railway Company, and the Consultant, on a bi-weekly or on a different schedule as directed by the County to discuss changes, if any, in the Scope of Work and other issues related to completion of the Scope of Work." *

*(Contract for Reimbursement of Costs, Section 3.6, emphasis added) *

**The first team kick-off will include the Agencies, project team representatives and other key Agency invitees, such as key regulatory agencies and Applicant." *

*(Exhibit A, Phase I Scope of Work, Section 1.4, April 1, 2012, page 3, emphasis added) *

**This includes meeting minutes (limited to subject topic issues and action items and/or key direction or decisions)" *

*(Exhibit A, Phase I Scope of Work, Section 3.1, April 1, 2012, page 11, emphasis added) *

Meetings that include the applicant should be made reasonably accessible to the public to ensure that the process is open and transparent. The proposal for meeting minutes limited to topic issues and action items and/or key direction or decisions, fails to disclose the substance of any conversation that leads to those key directions or decisions, including changes to the Scope of Work that is part of this contract.

These provisions allow the applicant to participate in changing the Scope of Work without the public observing and knowing why.
*Recommended Change: The contract should make explicit that any team meetings and conversations should be video-taped or audio recorded, and made available as a public record. Consideration should also be given to including other observers at these "meetings", such as the media, interested parties, and other public agencies. *

*3. The EIS scoping schedule needs to be adequate and predictable. *

While it is very troubling to read contracts that started before they are even signed, it is more troubling to review a schedule in a Scope of Work that started on April 1st. Based on this schedule, the public process for scoping should have started this past Friday.

**"The following scope will commence in April 2012."**

**"Project definition and Purpose and Need... (1st wk of June)"**

**"Task 2.4 Public and Agency Scoping Meetings... (June-July)"**

**"CH2M HILL Team will host a maximum of 6 scoping meetings in locations to be determined."**

*(Exhibit A, Phase I Scope of Work, various pages)*

**"THE SAGING PROCESS NEEDS TO BE AT LEAST 120 DAYS IN LENGTH**, **AND NEEDS TO BE INCLUSIVE OF AREAS OUTSIDE WATCOM COUNTY**

Based on the Scope of Work that Whatcom County is set to approve, the public and agencies should expect that the project will be already defined and the purpose and need statement will be completed before the ink is dry on these agreements.

Since the Scope of Work document also says that the commencement is April 1st, it might be assumed that the schedule is already two months behind. But, how is the public supposed to know? Whatcom County is being asked to approve a contract that includes a schedule in the Scope of Work where the public and agency scoping meetings are set to end July 31st.

The assumption of only 60 days in the Scope of Work for public and agency scoping is wholly inadequate. Remember, the applicant and agencies have been meeting on this project since November 2010, and the "open and transparent" process envisioned by the consultant is limited to 60 days?

**"The agencies have steadfastly refused to provide any information on the "scope" of the project. They haven't published the rail route, to the best of my knowledge. Scoping is a critical juncture for agencies' consideration of reasonable alternatives. For an agency to have to consider a particular alternative, comments have to provide evidence that the alternative is reasonable and feasible. Without knowledge of key aspects of the project**
until the scoping notice has been released, developing alternatives to the project and the evidence to support the alternatives will take time. "The proposed definition of the project's "purpose and need" will also first be presented to the public in the scoping notice. The "purpose and need" is a critical component of the NEPA analysis because it guides both the selection of alternatives and the agency’s ultimate decision about the project. "As anyone knows who has ever done a business or policy analysis, how you define your objective determines every other step along the way. The purpose and need statement will define the objective of the Gateway Pacific terminal. The project applicant will want the purpose and need statement to be as narrow as possible, because if it precisely mirrors the goals and features of the project, the project will be the only feasible outcome. The agencies have only spoken to the project applicant; they haven't spoken to us. We might want to point out that NEPA is supposed to look at broader purposes, not just the applicant’s wants, needs, and goals. "Responding to these and other key issues will be important, will take time, organization, and effort, and will be difficult to accomplish in 60 days. As I mentioned above, look how long it has taken the agencies and the applicant to compile sufficient information and evidence to proceed. "So I think that an extra 60 days is not unreasonable under these circumstances. Let's not forget that this is a really big project. We tend to think of ourselves as little ol' Whatcom County, hidden away up in the top left corner of the country, and of Cherry Point as somewhere out in the hinterlands. But this is not a Whatcom County-scale project. It is a big project in global terms, with global impacts. "The fact that the agency personnel involved in the environmental review process have never worked on a big project is not a good reason to treat this project as if it were a standard, little project. It isn't, and it deserves more scrutiny than any project Whatcom County has ever seen before." *

*"Coal Terminal Update: Whose Process is This?" Get Whatcom Planning Blog, March 21, 2012, Jean Melious)*

*Recommended Change: There are three changes proposed: *

*1. The Contract should not be approved until an updated schedule is provided. *

*2. The Contract should include a specific directive that the public scoping period be at least 120 days in length. *

*3. The Contract should set forth the expectation that the 6 scoping meetings will be located in areas impacted by this project. Suggestions include the following: *

*Those communities affected by shipping (San Juan Islands) *

*Those communities affected by increased rail traffic (Seattle, Vancouver, Spokane) *

*Whatcom County *

*4. The EIS and application review needs to fully compensate Whatcom County
Whatcom County amended its fee schedule to charge only $2,625 for preparation of an EIS, the same fee that is charged for a Major Project Permit. The County has already spent at least $16,000 in costs above and beyond those collected.

One of the three agreements under consideration is a contract to reimburse Whatcom County for both County costs and consultant costs in preparation of the EIS, including those costs already incurred by Whatcom County.

The memo says "No Whatcom County Funds will be used for this contract." The current Agreement and controls in place will not achieve this intent.

- Direct vs. indirect expenses -- the agreement requires the applicant to cover "direct out-of-pocket expenses". It does not cover indirect expenses, or overhead. Examples of overhead costs that will be funded by Whatcom County include:
  - Processing and paying invoices (Finance and Auditor staff, plus mailing costs)
  - Administrative staff time (answering calls, filing papers, counter inquiries)
  - Hosting a web site with public comments (IT staff plus server costs)
  - Office space and records storage (light, power, physical storage of records)

- County staff costs -- the agreement includes salaries and benefits. Does this include all Whatcom County staff that will be involved in this process, such as Health Department, Public Works, Prosecuting Attorney, Sheriff, and Executive's Office? What about support staff that process paperwork and handle phone calls for the project?

*Recommended Change: The following changes are suggested:*

*1. Include an Administrative Charge. It is too burdensome to track every expenditure. The two options to cover indirect expenses include an hourly rate that includes overhead (the Consultant Contract is based on this assumption), or an Administrative Overhead rate to be added to the hourly rate. A typical Administrative Overhead charged in federal contracts runs between 9 and 14%. *

*2. Covered Staff. It should be made clear that the staff time of Planning and Development Services, Public Works, Health, Prosecuting Attorney, County Executive, and Sheriff are County staff expected to be involved in the preparation of the EIS, and their costs are reimbursable.*
reassuring the public that this is an open and fair process. In particular, please require full videotaping of all meetings, as the public interest and level of concern are extraordinarily high, and the public deserves to know that the process is fair and transparent. Also, please fully address the recapture of County costs related to this project. As an experienced manager on both state and federal projects, I know that standard protocol for these charges includes overhead rates to capture costs which would otherwise be difficult to track. These costs are real, and particularly at a time when the County is struggling to balance its budget and meet its constitutional obligations, the taxpayers should not be expected to underwrite costs incurred on behalf of a for-profit enterprise—and whose backers have indicated a willingness to cover those costs.

Thank you for your consideration of my request, and for all your work on behalf of our community.

Sincerely,

[Dan Pike signature]

Daniel V. Pike
506 Cypress Road
Bellingham, WA 98225
_360-224-7984_ (tel:360-224-7984)
_Danpike1957@gmail.com_ (mailto:Danpike1957@gmail.com)

Please include the attached written testimony in your deliberations today.

In addition to attaching the document to this email, I am pasting it below.

Thank you.

Dan Pike
506 Cypress Road
_360-224-7984_ (tel:360-224-7984)

Jeannie Summerhays
Northwest Regional Office Director
Department of Ecology

3190 160th Ave. SE
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Bellevue, WA 98008

Alice.kelly@ecy.wa.gov

Jack Louws, County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225
June 5, 2012

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I am writing in regards to the proposed contracts dealing with the proposed Gateway Pacific Terminal, a facility which, if built as proposed would be the largest facility of its kind in North America. Public agencies are charged with reviewing the broad range of potential negative impacts the proposal could visit on the County, the region, the state, and if it is deemed appropriate, the nation. In fact, your authority allows consideration of impacts outside the United States as you examine the project. While the interests of the public and the applicant have some overlap—e.g., all of us want a better economic situation—examining the environmental, socio-economic and health impacts of this proposal is the role of the public agencies, and not the applicant. As proposed, however, three agreements coming before the Whatcom County Council today require changes to effectively ensure that the public interests are met, and that public confidence in the validity of the process is upheld.

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both by yourselves, and importantly by an engaged public, I request that you delay a decision today for at least two weeks, to allow for greater conversation between the agencies, the proponents, and the public regarding some troubling provisions and omissions. Absent that, former County Planning Director David Stalheim has identified some simple changes to meet these goals which I advocate adopting in toto. Rather than reinvent the wheel, I am simply reiterating, verbatim, Mr. Stalheim’s well-considered and effective suggestions for fixing these errors.

They are as follows:

1. The EIS process is to protect the public’s interest -- not the applicant’s interest.

The environmental review process under the State and National Environmental Policy Acts (SEPA and NEPA) is meant to ensure that the environmental impacts of the proposed development are identified and that environmental values are considered during decision-making by state and local agencies. It is the public agencies responsibility to control the environmental review process. That is why the proposed agreements and contracts are troubling in several areas:

*CH2M HILL CONTRACT IDENTIFIES A "CONFLICT OF INTEREST" ONLY WHEN THE CONSULTANT DEVELOPS AN INTEREST IN CONFLICT WITH THE APPLICANT’S INTEREST*
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As written, CH2M Hill could purchase a financial interest in Gateway Pacific and not be considered a “conflict of interest.” The conflict of interest provision should be written to address the following two points:

1. Add a provision that ensures the Consultant does not develop an interest that is in potential conflict with the Public’s interest.

2. Add Department of Ecology and Army Corps of Engineers to the decision making process for determining when conflicts exist. Their interest in this matter should be equal to the County’s, and their experience in these matters is substantially greater than Whatcom County’s.

Recommended Change: The following would be suggested changes to Section 36.2 of the Consultant Contract for Services:

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to the commencement of, or during the term of, this Agreement, Consultant
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"THE CH2M HILL CONTRACT INCLUDES AN IMPLIED BIAS TOWARDS THE APPLICANT."

The CH2M Hill contract correctly states that "establishing the purpose and need is the first
critical path item on the schedule...[as it] will direct the range of alternatives to be developed and reviewed in the EIS document." What is biased is the entire discussion that follows:

"However, it may also be prudent to include background insights on the primary drivers
that make this project worth consideration and evaluating. Either way, a defensible document must include proper documentation in the purpose and need chapter. The CH2M HILL Team proposes to research drivers so that the public has, in the scoping process, additional insights on the economic situation surrounding this project. The project drivers are anticipated to include a review of available port capacity on the west coast based on readily available information, economic pressures regarding dry bulk materials in the Asian-Pacific region, and national executive orders influencing industrial development. Understanding these elements may also help refine the range of alternatives suggested. The Team economist and planner will research the
Applicant’s Purpose and Need and make recommendations for The Agencies consideration.”

Exhibit A, Phase 1 Scope of Work, Section 2.3.1, April 1, 2012, pg. 5

Ibid

The proposed contract begins to narrowly define the purpose and need to mirror the applicant’s perspective (drivers that make this project worth considering and evaluating). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives.

This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant’s wants, needs, and goals.

Recommended Change: The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation.

The EIS process needs to be open and transparent.

There are numerous provisions within these three agreements that are inconsistent with the consultant’s proposal that they will support an open and transparent process.

Recommended Change: The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation.

The EIS process needs to be open and transparent.

There are numerous provisions within these three agreements that are inconsistent with the consultant’s proposal that they will support an open and transparent process.
Work products prepared by the 3rd party team will be submitted directly to the Co-leads. These work products will be additionally provided to the applicant’s team only upon the approval of the Co-leads (Communications Protocol Agreement, Section 2d).

If the County and partner agencies intend that the agency may withhold these “work products” because they might be privileged under litigation discovery rules (commonly called the “work product” doctrine), then these documents should not be provided to the applicant’s team unless they are determined to be public records subject to discovery and disclosure.

Recommended Change: “Work products provided to the applicant’s team shall be made available to the public and not be exempt from disclosure under the Public Records Act.”

MEETINGS WITH THE AGENCIES, THE CONSULTANT, AND THE APPLICANT SHOULD BE MADE PUBLIC.

Since November of 2010, the State of Washington facilitated a process called the Multiagency Permit Team (MAP). This “team,” composed of public agencies and the applicants (as well as their attorney) met outside the glare of publicity. Now, it appears that this same “team” process will continue and be sanctioned through these agreements.

At the reasonable discretion of the County, a meeting and/or conference call may be arranged with the County, Pacific International Terminals, Inc., BNSF Railway Company, and the Consultant, on a bi-weekly or on a different
schedule as directed by the County to discuss changes, if any, in the Scope of Work and other issues related to completion of the Scope of Work.

(Contract for Reimbursement of Costs, Section 3.6, emphasis added)

The first team kick-off will include the Agencies, project team representatives and other key Agency invitees, such as key regulatory agencies and Applicant.

(Exhibit A, Phase I Scope of Work, Section 1.4, April 1, 2012, page 3, emphasis added)

This includes meeting minutes (limited to subject topic issues and action items and/or key direction or decisions).

(Exhibit A, Phase I Scope of Work, Section 3.1, April 1, 2012, page 11, emphasis added)

Meetings that include the applicant should be made reasonably accessible to the public to ensure that the process is open and transparent. The proposal for meeting minutes limited to topic issues and action items and/or key direction or decisions, fails to disclose the substance of any conversation that leads to those key directions or decisions, including changes to the Scope of Work that is part of this contract.

These provisions allow the applicant to participate in changing the Scope of Work without the public observing and knowing why.

Recommended Change: The contract should make explicit that any team meetings and conversations should be video-taped or audio recorded, and made available as a public record. Consideration should also be given to including other observers at these meetings; such as the media, interested parties, and other public agencies.

3. The EIS scoping schedule needs to be adequate and predictable.
While it is very troubling to read contracts that started before they are even signed, it is more troubling to review a schedule in a Scope of Work that started on April 1st. Based on this schedule, the public process for scoping should have started this past Friday.

"The following scope will commence in April 2012."

"Project definition and Purpose and Need... (1st wk of June)"

"Task 2.4 Public and Agency Scoping Meetings... (June-July)"

"CH2M HILL Team will host a maximum of 6 scoping meetings in locations to be determined."

Based on the Scope of Work that Whatcom County is set to approve, the public and agencies should expect that the project will be already defined and the purpose and need statement will be completed before the ink is dry on these agreements. Since the Scope of Work document also says that the commencement is April 1st.
It might be assumed that the schedule is already two months behind. But, how is the public supposed to know? Whatcom County is being asked to approve a contract that includes a schedule in the Scope of Work where the public and agency scoping meetings are set to end July 31st. The assumption of only 60 days in the Scope of Work for public and agency scoping is wholly inadequate. Remember, the applicant and agencies have been meeting on this project since November 2010, and the "open and transparent" process envisioned by the consultant is limited to 60 days?

The agencies have steadfastly refused to provide any information on the scope of the project. They haven't published the rail route, to the best of my knowledge. Scoping is a critical juncture for agencies; consideration of reasonable alternatives. For an agency to have to consider a particular alternative, comments have to provide evidence that the alternative is reasonable and feasible. Without knowledge of key aspects of the project until the scoping notice has been released, developing alternatives to the project and the evidence to support the alternatives will take time.

The proposed definition of the project's purpose and need will also first be presented to the public in the scoping notice. The purpose and need is a critical component of the NEPA analysis because it guides both the selection of alternatives and the agency's ultimate decision about the project. As anyone knows who has ever done a business or policy analysis, how you define your objective determines every other step along the way. The purpose and need statement will define the objective of the Gateway Pacific terminal. The project applicant will want the purpose and need statement to be as narrow as possible, because if it precisely mirrors the goals and features of the project, the project will be the only feasible outcome. The agencies have only spoken to the project applicant; they haven't spoken to us. We might want to point out that NEPA is supposed to look at broader purposes, not just the applicant's wants, needs, and goals. Responding to these and other key issues will be important, will take time, organization, and effort,
and will be difficult to accomplish in 60 days. As I mentioned above, look how long it has taken the agencies and the applicant to compile sufficient information and evidence to proceed. So I think that an extra 60 days is not unreasonable under these circumstances. Let’s not forget that this is a really big project. We tend to think of ourselves as little ol’ Whatcom County, hidden away up in the top left corner of the country, and of Cherry Point as somewhere out in the hinterlands. But this is not a Whatcom County-scale project. It is a big project in global terms, with global impacts. The fact that the agency personnel involved in the environmental review process have never worked on a big project is not a good reason to treat this project as if it were a standard, little project. It isn’t, and it deserves more scrutiny than any project Whatcom County has ever seen before.

(&quot;Coal Terminal Update: Whose Process is This?&quot; Get Whatcom Planning Blog, March 21, 2012, Jean Melious)

Recommended Change: There are three changes proposed:

1. The Contract should not be approved until an updated schedule is provided.
2. The Contract should include a specific directive that the public scoping period be at least 120 days in length.
3. The Contract should set forth the expectation that the 6 scoping meetings will be located in areas impacted by this project. Suggestions include the following:
   • Those communities affected by shipping (San Juan Islands)
   • Those communities affected by increased rail traffic (Seattle, Vancouver, Spokane)
   • Whatcom County

4. The EIS and application review needs to fully compensate Whatcom County for costs.
Whatcom County amended its fee schedule to charge only $2,625 for preparation of an EIS, the same fee that is charged for a Major Project Permit. The County has already spent at least $16,000 in costs above and beyond those collected.

One of the three agreements under consideration is a contract to reimburse Whatcom County for both County costs and consultant costs in preparation of the EIS, including those costs already incurred by Whatcom County.

The memo says &quot;No Whatcom County Funds will be used for this contract.&quot; The current Agreement and controls in place will not achieve this intent.

Direct vs. indirect expenses -- the agreement requires the applicant to cover &quot;direct out-of-pocket expenses&quot;. It does not cover indirect expenses, or overhead. Examples of overhead costs that will be funded by Whatcom County include:

- Processing and paying invoices (Finance and Auditor staff, plus mailing costs)
- Administrative staff time (answering calls, filing papers, counter inquiries)
- Hosting a web site with public comments (IT staff plus server costs)
- Office space and records storage (light, power, physical storage of records)

County staff costs -- the agreement includes salaries and benefits. Does this include all Whatcom County staff that will be involved in this process, such as Health Department, Public Works, Prosecuting Attorney, Sheriff, and Executive’s Office? What about support staff that process paperwork and handle phone calls for the project?
Recommended Change: The following changes are suggested:

1. Include an Administrative Charge. It is too burdensome to track every expenditure. The two options to cover indirect expenses include an hourly rate that includes overhead (the Consultant Contract is based on this assumption), or an Administrative Overhead rate to be added to the hourly rate. A typical Administrative Overhead charged in federal contracts runs between 9 and 14%.

2. Covered Staff. It should be made clear that the staff time of Planning and Development Services, Public Works, Health, Prosecuting Attorney, County Executive, and Sheriff are County staff expected to be involved in the preparation of the EIS, and their costs are reimbursable.

The above suggested contract and approach revisions will go far in reassuring the public that this is an open and fair process. In particular, please require full videotaping of all meetings, as the public interest and level of concern are extraordinarily high, and the public deserves to know that the process is fair and transparent. Also, please fully address the recapture of County costs related to this project. As an experienced manager on both state and federal projects, I know that standard protocol for these charges includes overhead rates to capture costs which would otherwise be difficult to track. These costs are real, and particularly at a time when the County is struggling to balance its budget and meet its constitutional obligations, the taxpayers should not be expected to underwrite costs incurred on behalf of a for-profit enterprise—and whose backers have indicated a willingness to cover those costs.

Thank you for your consideration of my request, and for all your work on behalf of our community.
Sincerely,

Daniel V. Pike

506 Cypress Road

Bellingham, WA 98225

_360-224-7984_ (tel:360-224-7984)

_Danpike1957@gmail.com_ (mailto:Danpike1957@gmail.com)
Alaine,

I think your best bet is to contact the council office and request a copy of the minutes when they are available (probably next week). The number is 676-6690. I am also copying our EIS staff person, Tyler Schroeder. He may be able to give you the information you want right now.

Barbara

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

In a message dated 6/7/2012 8:32:37 A.M. Pacific Daylight Time, AlaineB@comcast.net writes:

Thank you for the note back, Barbara. I appreciate the communication. Can you tell me what was resolved with regard to clarifying the County’s financial obligation, or refer me to a link whereby I can find out how the council addressed this? Alaine

From: BBGUN1010@aol.com [mailto:BBGUN1010@aol.com]
Sent: Wednesday, June 06, 2012 7:06 PM
To: AlaineB@comcast.net
Cc: NHanson@co.whatcom.wa.us
Subject: Re: Recommend changes to the EIS scoping contract

Alaine,

We made amendments last night that I believe covered your concerns. You will also have numerous opportunities to comment in the future as there will first be a draft environmental impact statement which will allow anyone to comment on any aspect of the proposal. There will also eventually be council hearing(s) on this item at which time the council will also be able to research and discuss the aspects of the proposal and you will have opportunities to comment at that time too.

Barbara Brenner, Whatcom County Council Member
If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, _bbrenner@co.whatcom.wa.us_. Thank you.

In a message dated 6/5/2012 9:46:50 A.M. Pacific Daylight Time, _BBrenner@co.whatcom.wa.us_ (mailto:BBrenner@co.whatcom.wa.us) writes:

-----Original Message-----
Date: Tue, 05 Jun 2012 09:46:30 -0700
From: "Council Council" <_Council@co.whatcom.wa.us_ (mailto:Council@co.whatcom.wa.us) >
To: "Barbara Brenner" <_BBrenner@co.whatcom.wa.us_ (mailto:BBrenner@co.whatcom.wa.us) >,
"Bill Knutzen" <_bknutzen@co.whatcom.wa.us_ (mailto:bknutzen@co.whatcom.wa.us) >,
"Carl Weimer" <_CWeimer@co.whatcom.wa.us_ (mailto:CWeimer@co.whatcom.wa.us) >,
"GPTtoWeb@co.whatcom.wa.us_ (mailto:GPTtoWeb@co.whatcom.wa.us) >,
"Kathy Kershner" <_kkershner@co.whatcom.wa.us_ (mailto:kkershner@co.whatcom.wa.us) >,
"Ken Mann" <_kmann@co.whatcom.wa.us_ (mailto:kmann@co.whatcom.wa.us) >,
"Pete Kremen" <_PKremen@co.whatcom.wa.us_ (mailto:PKremen@co.whatcom.wa.us) >,
"Sam Crawford" <_SCrawfor@co.whatcom.wa.us_ (mailto:SCrawfor@co.whatcom.wa.us) >
Subject: Fwd: Recommend changes to the EIS scoping contract

Please note: Emails are public records subject to public disclosure upon request.

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To: "jlouws@co.whatcom.wa.us_ (mailto:jlouws@co.whatcom.wa.us) >,
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"tschroed@co.whatcom.wa.us_ (mailto:tschroed@co.whatcom.wa.us) >,
"jsum461@ecy.wa.gov_ (mailto:jsum461@ecy.wa.gov) >,
Subject: Recommend changes to the EIS scoping contract
Date: Tue, 5 Jun 2012 08:40:07 -0700

Dear Whatcom County Council members, Mr. Louws, and members of Whatcom County's planning department and the Army Corps of Engineers:

I would like to voice my recommendation with regard to the contract that sets the work and schedule for EIS scoping of the proposed coal port at Cherry Point.

Please, at today's and tonight's meetings, which I will be unable to attend, ensure the modification of the contract so that:

-- the scoping process is a minimum of 120 days, not the 60 currently in the proposed contract;

-- remove the clause that effectively allows the applicant to have undue influence in the process by making records and meetings subject to public review;

-- make certain and unquestionable that the County is not to incur any cost for the process, and will be fully compensated for all costs related to the EIS scoping.

Thank you for your time-- and I trust that you will see the correctness and imperativeness of the above.

Alaine Borgias

1700 McKenzie Ave., Bellingham, 98225

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Dear Whatcom County Council members, Mr. Louws, and members of Whatcom County's planning department and the Army Corps of Engineers:

I would like to voice my recommendation with regard to the contract that sets the work and schedule for EIS scoping of the proposed coal port at Cherry Point. Please at today's and tonight's meetings, which I will be unable to attend, ensure the modification of the contract so
that: <span style='font-size:10.0pt; font-family:"Calibri","sans-serif"; color: black'>-- the scoping process is a minimum of 120 days, not the 60 currently in the proposed contract; </span>

<span style='font-size:10.0pt; font-family:"Calibri","sans-serif"; color: black'>-- remove the clause that effectively allows the applicant to have undue influence in the process by making records and meetings subject to public review; </span>

<span style='font-size:10.0pt; font-family:"Calibri","sans-serif"; color: black'>-- make certain and unquestionable that the County is not to incur any cost for the process, and will be fully compensated for all costs related to the EIS scoping. </span>

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<span style='font-size:10.0pt; font-family:"Calibri","sans-serif"; color: black'>Alaine Borgias</span>

<span style='font-size:10.0pt; font-family:"Calibri","sans-serif"; color: black'>1700 McKenzie Ave., Bellingham, 98225</span>
Hello Tyler,

What is the process for obtaining a debrief on this process? We would like to schedule one quickly so everyone's memory is still relatively fresh. Thanks!

Greg Summers

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Wednesday, May 30, 2012 3:09 PM
To: Summers, Greg
Subject: Re: GPT Consultant Selection Update

Greg,

I want to provide an update to the GPT Consultant Selection process. Environmental consulting company CH2M Hill has been selected by Whatcom County, the Washington Department of Ecology and the U.S. Army Corps of Engineers to help prepare the required environmental impact statement (EIS). County Executive Louws will be seeking Whatcom County Council's endorsement of the contract during the Whatcom County Council meeting on June 5th, 2012.

Again, thank you for your firm's proposal and your patience on hearing the final selection.

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> Tyler Schroeder 3/30/2012 9:45 AM >>>
Greg,

I want to update you and your firm on the status of the consultant selection process for the GPT project. At this time, the County, in coordination with DOE and the Corps, have made a preliminary selection for the most qualified consultant. This selection is based off of the review of the proposal and the interview process. The County is now working through the contracting process with the preliminarily selected firm. If the situation arises that the contract negotiations are not finalized, the County will be re-reviewing the firms that were interviewed for possible selection.
Thank you for your firm’s proposal and we will be formally noticing you of the selected firm once the contracting process is final.

Tyler

Tyler R. Schroeder  
Current Planning Supervisor  
Phone: (360) 676-6907 ext. 50202  
Fax: (360)738-2525  
Email: Tschroed@co.whatcom.wa.us  
Address:  
Whatcom County Planning and Development Services  
5280 Northwest Dr.  
Bellingham, WA  98225
Lynne,

Long ago I did check with the attorney general and with Municipal Research (a non profit paid for by state dollars, entrusted with providing elected officials with legal information). They both told me we should stay out of the process until it gets to the council. At that time I was told I can research and discuss everything I need to make a knowledgeable decision. I would not vote for anything about which I did not feel I knew everything I need to know.

This is going to be a long process because the council will have the time to become very knowledgeable about the issue and hear from anyone interested. It would be no different than if I knew something ex-parte about a parent before his/her custody case that was coming before me. Council members don't deal with custody cases but we will be sitting as judges on this issue. While our main function is as legislators, this is one type of function also delegated to us. It doesn't happen very often, and never before regarding something so big.

All I can do is my best.

Barbara Brenner

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

In a message dated 6/6/2012 10:47:34 P.M. Pacific Daylight Time, lynne.oulman@gmail.com writes:

Thank you. I was there last night and I have to say that while I understand the "quasi judicial nature" of the the council's position vis a vis GPT, I am shocked that you folks are kept in the dark about much that is going on. You people should be the most informed of all, and yet it became obvious last night, that you are being hamstrung by sequestration. The scoping process is difficult to follow, and it is amazing that our community leaders are kept from leading. I wish you all the best, and hope the council will have adequate time to catch up and think deeply, because this decision will be - one way or another - a landmark for the future. Wishing you the best,
sincerely,
Lynne Oulman
Lynne,

We made amendments last night that I believe covered your concerns. You will also have numerous opportunities to comment in the future as there will first be a draft environmental impact statement which will allow anyone to comment on any aspect of the proposal. There will also eventually be council hearing(s) on this item at which time the council will also be able to research and discuss the aspects of the proposal and you will have opportunities to comment at that time too.

Barbara Brenner, Whatcom County Council Member

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

In a message dated 6/5/2012 10:01:08 A.M. Pacific Daylight Time, BBrenner@co.whatcom.wa.us writes:

-----Original Message-----
Date: Tue, 05 Jun 2012 09:48:42 -0700
From: "Council Council" <Council@co.whatcom.wa.us>
To: "Barbara Brenner" <BBrenner@co.whatcom.wa.us>,
"Bill Knutzen" <bknutzen@co.whatcom.wa.us>,
"Carl Weimer" <CWeimer@co.whatcom.wa.us>,
"GPTtoWeb@co.whatcom.wa.us",
"Kathy Kershner" <kkershner@co.whatcom.wa.us>,
"Ken Mann" <kmann@co.whatcom.wa.us>,
"Pete Kremen" <PKremen@co.whatcom.wa.us>,
"Sam Crawford" <SCrawfor@co.whatcom.wa.us>
Subject: Fwd: CH2M Hill--and protecting the public

Please note: Emails are public records subject to public disclosure upon request.

<HEAD>
<META http-equiv=Content-Type content="text/html; charset=UTF-8" name=GENERATOR>
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Dear County Council and Related Parties:

I think you are looking at a contract that is quite biased and not fair to the people of this county. We are regular folks, who do not have fancy lawyers or lots of money. However, our livelihoods are here, we live here, we pay our taxes, and we would like the same rights as the applicant in the coming process. In creating a contract with CH2M Hill, we are asking:

1) 120 days scoping process, not the 60 in the contract. People need the time to handle all the information, understand the process, and participate without rush, anxiety, and ignorance. You folks spend your professional lives doing this work. Give us a little space to learn and respond. This is not a slam-dunk, and you do not want to be accused of ramrod-ing a slipshod process.

2) Please make records and meetings subject to public review. When the applicant is the only party allowed to see records, etc., you are taking away the public’s only means to understand and thereby responsibly participate in the process. I believe this is a democratic right. The applicant seems to have undue influence if allowed greater access to information. We the tax payers and the citizens of this county deserve the same opportunities.

3) There seem to be inappropriate conflict of interest provisions in the contract, allowing for the bias towards the applicant. If there is conflict of interest, there will be problems forthcoming. Let’s start on an even and honest playing field.

4) Please be sure that the County is fully compensated for all the costs. We are all tightening our belts and working hard. People do not want to find out their tax money is subsidizing corporate interests for a process they initiate for their profit.

Thank you very much for your attention. I hope you will think carefully about these concerns, as the process must be untainted to be believed at all. Sincerely,
Dear County Council and Related Parties:

I think you are looking at a contract that is quite biased and not fair to the people of this county. We are regular folks, who do not have fancy lawyers or lots of money. However, our livelihoods are here, we live here, we pay our taxes, and we would like the same rights as the applicant in the coming process. In creating a contract with CH2M-Hill, we are asking:

1) 120 days scoping process, not the 60 in the contract. People need the time to handle all the information, understand the process, and participate without rush, anxiety, and ignorance. You folks spend your professional lives doing this work. Give us a little space to learn and respond. This is not a slam-dunk, and you do not want to be accused of ramroding a slipshod process.

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Thank you very much for your attention. I hope you will think carefully about these concerns, as the process must be untainted to be believed at all. Sincerely,

Lynne Oulman
attached. Good job tyler!
Let me know if you have questions or concerns.
Jill

*minutes are draft, subject to change upon approval of the full council.

Administrative Clerk
Whatcom County Council Office
311 Grand Avenue, Suite 105
Bellingham, Washington 98225
360-676-6690 (phone)
Pleasing NOTE: All incoming and outgoing emails are public records subject to public disclosure upon request.
CALL TO ORDER

Council Chair Kathy Kershner called the meeting to order at 7:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

7:02:37 PM
Present: Barbara Brenner, Ken Mann, Sam Crawford, Bill Knutzen, Kathy Kershner, Carl Weimer and Pete Kremen.
Absent: None.

OTHER ITEMS

1. REPORT ON PRESENTATION REGARDING GATEWAY PACIFIC TERMINAL PROJECT PROCESS AND RECOMMENDATIONS ON EIS SCOPING PHASE AND COMMUNICATION PROTOCOL BETWEEN WHATCOM COUNTY PLANNING AND DEVELOPMENT, U. S. ARMY CORPS OF ENGINEERS, WASHINGTON STATE DEPARTMENT OF ECOLOGY AND CH2M HILL (AB2012-068B) (9:03:16 PM)

Mann reported for the Finance and Administrative Services Committee and moved to approve the contract between the County and CH2MHill as presented in the Council packet. He moved to approve the substitute version of section 36.2 regarding conflict of interest. He read the substitute section,

"36.2 Conflict of Interest:

If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Agencies’ interest in developing an EIS that is unbiased, fair and impartial, then the Consultant shall immediately notify the County of the conflict. The notification to the County shall be made with sufficient specificity to enable the County, Department of Ecology, and the U.S. Army Corps of Engineers (for NEPA purposes) to make an informed judgment as to whether or not the EIS preparation may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination."
Consultant team must be an independent third party during preparation of the EIS. The prime contractor, CH2MHILL Engineers Inc., has no current or pending contracts, nor will they engage in future contracting with either PIT or BNSF, in the joint-applicants’ proposed project. During the execution of scope under contract, the required disclosure and subsequent judgment of potential conflict by the Agencies, as outline above, will be required for any pending contracts or negotiations with CH2MHILL Engineers Inc. and PIT or BNSF. In Section 3.13 of the RFP this Consultant and subcontractors were required to disclose any current or expected future contractual relationships with the following entities:

- PIT including parent company SSA Marine Inc.
- BNSF
- Local Indian Tribes
- Federal agencies with trustee status for marine or near-shore resources
- State agencies with trustee status for marine or near-shore resources
- Environmental NGOs.

Consultant submitted its Disclosure Statement in Section 3 of its proposal. This statement is also included in this contract as Exhibit D.”

*Kremen* stated the amendment addresses the conflict of interest issues. It does not address the 120-day extension, which is appropriate. He suggested a friendly amendment to amend bullet three, “Local Indian Native American Nations or Tribes.”

*Mann accepted* Councilmember Kremen’s friendly amendment.

*Weimer* stated he still has concerns with the conflict of interest language, particularly the sentence, “The prime contractor, CH2MHILL Engineers Inc., has no current or pending contracts, nor will they engage in future contracting with either PIT or BNSF, in the joint-applicants’ proposed project.” This sentence narrowly defines the conflict if they’re contracting in the project at Cherry Point. The language doesn’t preclude the contractor from working with either proponent on an unrelated project elsewhere. Broaden the language to prohibit all contracts with PIT and BNSF. He suggested a friendly amendment to delete language, “The prime contractor, CH2MHILL Engineers Inc., has no current or pending contracts, nor will they engage in future contracting with either PIT or BNSF, in the joint-applicants’ proposed project during the term of the contract.”

*Mann did not accept* the friendly amendment. The language in the next paragraph requires disclosure of any contract and agency evaluation. It’s a reasonable compromise.

Jack Louws, County Executive, stated CH2MHill is a worldwide engineering company. It is a quality company. This will be a drawn-out process. They have work all over. The suggested friendly amendment isn’t reasonable. It goes beyond what the County can expect with any contract, even locally. Someone working on their own needs to continue to develop their business. It’s unreasonable to preclude themselves totally from that. The company does have to disclose those contracts.

Brenner asked if the scoping documents are public and if the public can comment on the environmental impact statement (EIS) when it’s done.
Tyler Schroeder, Planning and Development Services Department, stated there are a number of different times for public involvement during the process of EIS development. This contract is only for the first phase of that process, which is the scoping phase. The scoping phase will end with a final scoping report, which is a document by the agencies that indicates each agency opinion after considering all the scoping comments that have been submitted. There won’t be specific comments on that document. That document, in association with the methodology document in the scope of work, shows how the studies will be prepared for the draft EIS. After this phase is done, they move into the draft EIS process, which is when the scientific review and studies are prepared. When the draft EIS is issued, there will be public comment associated with the draft EIS.

Brenner asked if comments on the draft EIS are considered. Tyler stated they are. After the draft EIS and its associated comments, there is an entire other round of comment review before issuing the final EIS.

Brenner asked if the scope can be expanded during the draft EIS process. Schroeder stated the scope could be expanded. It’s up to the comments that are submitted. This is the first phase, which is the scoping phase, of the EIS development. There are a number of different public comment times when people can be involved as they move forward.

Crawford asked if the $961,000 is just for phase one. Schroeder stated it is.

Schroeder stated tonight’s action is just to approve the County’s contract with CH2MILL. It’s the only action that is over the $35,000 discussed in committee. The other contract is a straight reimbursement from the companies to the County, which only requires Executive approval. The motion applies to the third item in the packet, which is the contract.

The motion to amend carried by the following vote:

Ayes: Kremen, Crawford, Brenner, Knutzen, Mann and Kershner (6)
Nays: Weimer (1)

Crawford moved to amend:
- Council packet page 59, page seven of the scope of work. Amend the second paragraph to add a sixth bullet point, “The time period for public comment on the scope of the EIS shall not be less than 120 days.”
- Council packet page 39, the term of contract, “November 30, 2012 to January 31, 2013”
- Council packet page 53, third paragraph, “The following scope will commence in April—July 2012 at date of signature and is project to carry through October-December 31, 2012.”
- Council packet page 54, task 2.4 in the table, “Task 2.4 Scoping period (June—July-October)”
- Council packet page 57, “Deliverables: up to monthly media and comment updates, but only 3 5 months of updates....”
- Any other minor changes to implement the changed timeframe.

The administration’s biggest concern is that the County is not the unilateral decision-
maker on this contract. The other agencies may have their own timeframes. Additionally, the contractor may have full-time staff assigned to this project. If the project is two months longer, it may impact the contractor’s cost to perform the contract. His motion is to respond to the citizens. It’s the Council’s job to represent those people. The administration will see if the amended contract works for the other agencies. If it doesn’t work, it can come back before the Council.

**Weimer suggested a friendly amendment** to amend Council packet page 60, the first full paragraph below the bullets, “During the Scoping Process...The online scoping meeting will be open for thirty 120 days and will include:...”

**Crawford accepted** the friendly amendment.

**Kremen suggested a friendly amendment** to include language, “Any changes necessary to be consistent with a minimum of a 120-day timeframe.”

**Crawford accepted** the friendly amendment as direction to the administration on the Council’s intent.

Knutzen asked if the administration is comfortable with the changes. Louws stated he agrees. If they can get CH2MHill to approve, the changes will be great. It’s the will of the people. There shouldn’t be a problem. He desires that they be as open and transparent as possible. The community wants a bit more time to be involved in the scoping process. Allow the community that opportunity. He will present the changes and advocate for their approval to the contractor.

The motion carried by the following vote:

| Ayes: Kremen, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7) |
| Nays: None (0) |

**Weimer moved** to amend the deliverables item at the bottom of Council packet page 60, “Deliverables: Public notice including one display ad, one postcard mailing, one media advisory, text for web site/email distribution for each scoping meeting”

Louws stated an assumption listed is that CH2MHill will print and mail up to 20,000 postcards. The postcard will include a list of all six meeting. The motion would require six mailing.

Weimer stated they need more than one display ad, unless it’s one ad posted in six different newspapers. Louws stated the ad will be posted to six different newspapers, and the online information would include all the meetings. The postcards would include information for all the meetings. The motion will start meddling with the dollar amount for the contract.

**Weimer withdrew** his motion.

**Crawford moved** to amend the deliverables item at the bottom of Council packet page 60, “Deliverables: Public notice including one display ad, one postcard mailing, one media advisory, text for web site/email distribution”
The motion carried by the following vote:

**Ayes:** Kremen, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

**Nays:** None (0)

Brenner asked if the applicant will pay for the total cost of the Hearing Examiner process. Schroeder stated this contract is for preparation of the EIS and associated costs. It doesn’t go to the Hearing Examiner. At the very end of the process, there will be a final EIS. That final EIS will be integrated into the staff report recommendations to the Hearing Examiner, which is a separate part of the process and would have to be negotiated.

Crawford stated they will deal with that down the road when they get to it.

Brenner asked if there will be another opportunity at that point. Schroeder stated there would have to be another contract for that staff time. They could negotiate that contract in the future.

Kershner stated this contract that the Executive will negotiate goes through November 2012, which would have been the original dates. If they extend the scoping period, they may want to extend that timeline. Schroeder stated that contract has an automatic one-year qualifier. He will look at that timeline.

Weimer asked why the Council isn’t allowed to vote on the contract among Whatcom County, Pacific International Terminals (PIT) and BNSF for reimbursement of county and consultant costs and fees. The amount is over $15,000 and is a professional services contract. Louws stated the contract amount is for the receipt of money, not expenditure.

Brad Bennett, Administrative Services Department, stated Whatcom County Code (WCC) Chapter 3.08, the County purchasing process, addresses Council awards. It’s pursuant to the competitive bidding process in the Council awards section of the code. The County Code does not deal with the receipt of revenues. If an award to a contract exceeds $15,000 for professional services, the administration needs Council approval for that award.

Brenner stated the contract doesn’t include all costs for the Hearing Examiner process, which is another step. The cost could be more than $15,000. Bennett stated the agreement they’re talking about is the agreement that establishes that the applicant will reimburse the County for EIS preparation. He’s not sure how the Hearing Examiner fits into that process. That is a different process that happens in the future. This contract ends when the scoping contract ends.

Crawford stated it’s premature to be concerned about the Hearing Examiner process. However, he asks that the Executive work with the Clerk of the Council regarding additional costs when the process gets to the Hearing Examiner.

Weimer stated the County should charge for indirect costs, not just direct costs. Over the course of this contract, the people of Whatcom County will subsidize this effort in the amount of $200,000 or $300,000. He’s interested in changing the contract to include the cost for indirect costs, which the County normally builds into contracts that deal with the
homeless population, the developmentally disabled, jail, or any criminal justice contract. The County always takes its ten to thirty percent of indirect cost. The County isn’t doing that with this contract.

Brenner stated this contract is different because permits are involved. There are charges received from permits that the County doesn’t get when contracting for homeless housing. It’s a different type of contract.

Weimer stated that’s true. The Unified Fee Schedule used to include a fee of $100 per hour when the cost exceeded a certain amount. That fee covered the County’s indirect costs. The Executive’s Office and Planning and Development Services Department knew before this proposal was submitted that the problem existed. They had a chance to fix the problem, and didn’t. This is another chance to fix the problem and make sure the people of Whatcom County aren’t charged $200,000 to $300,000 to process this permit.

Louws stated the contract is for $961,000. The sub-agreement is that staff time will be charged to and reimbursed from Pacific International Terminals for the scoping portion. He anticipates that charges for this portion for the contract that go beyond $16,000 will be $30,000 to $40,000 total. He’s not sure where the estimate of $300,000 number comes from. For the term of this contract, staff time won’t cost hundreds of thousands of dollars. They money received will go into an escrow account and reimbursed to CH2M-Hill. It’s direct pass-through money. He will also charge for the County’s staff time for the County’s involvement.

Weimer stated he agrees, because this money is going into escrow. The cost will probably be tens of thousands.

Crawford asked the billing rate. Louws stated they are going to charge the direct amount for the people involved throughout the organization. It won’t be a flat $100 per hour, but it will be the direct cost. This is how they take care of it with other applications, according to the Planning Department Director. They’re doing the best they can. They’re recouping direct costs incurred throughout the organization. It’s not a perfect system, but it’s fair. The County has a responsibility to the applicant to process this application just as they do for any application.

Mann stated the cone of silence the Council has taken on is uncomfortable and frustrating. Now that the County has a contract, everyone knows more about this than he does. The Council heard testimony that he can’t fairly judge because he’s not informed on the subject. He asked about the transparency of the selection of the contractor, including the information provided to the public on the website. He asked if all the proposals are available for the public to review. Schroeder stated the Planning and Development Services Department (PDS) has strived to have an open and transparent process from the beginning, especially regarding the web site. That’s something PDS hasn’t done in the past. The Planning Department web site is updated daily to provide information to the public. The contract process has specifically been between the County and the applicant for that contract. That has not been made public, because it is a negotiation process. In normal situations, those contracts aren’t publicly available until they’re signed and approved. In this case, the contract became publicly available when presented to the Council. Other EIS contracts haven’t done that in the past. This contracting process is more open and transparent than other historical EIS contracts.
Mann stated a comment was made that the scope isn’t broad enough.

Crawford stated the scope hasn’t been determined yet.

Schroeder stated Councilmember Crawford’s motion addresses a lot of the public concerns he’s heard in the last four or five days. The scope and the scoping process isn’t yet determined. It will be determined by the Army Corps of Engineers, Ecology, and County as they move forward through the process. This contract is just to start that process. The scope of work that is in there is for budgeting purposes, and is a preliminary idea about where that scoping process will go, so their can be a firm contractual amount of information and monies behind that. All of the comments he’s received have also gone to staff at the State Department of Ecology and Army Corps of Engineers. After this contract is signed, they will make those scoping decisions internally by those agencies as they move forward.

Knutzen stated he’s frustrated. At the last Council meeting was a decision on the largest land acquisition proposal in Whatcom County history, with no EIS. There was a lot of public comment that the process wasn’t open and was pushed through. Now, they’re asking to get an EIS done, and they’re talking it to death. The same people last month who tried to shove this through without any more public comment or an EIS are the same people who are today saying this needs to be drawn out longer.

Weimer stated this is important, and they need to get it right. His questions and comments aren’t against CH2M Hill or anyone else. The Council needs to create a good foundation. One comment received is about geographically enlarging the scope area. He asked if they should scope the region, not just statewide. He also hears comments that the Army Corps is considering a programmatic EIS, which would include multiple programs that may include the entire region. He asked how this proposal would interface with a programmatic EIS. Schroeder stated there have been preliminary discussions about the geographical scope of the EIS. No decisions have been made about that yet. Those will be made after this contract is signed, so they can move into those discussions and make some concrete decisions on the appropriate levels of the scope and locations of the meetings.

Weimer asked if the cost of the contract will change, requiring an amendment, if they decide that Montana and Idaho will be included. Schroeder stated it would require an amendment, however it’s a scoping decision part of the scope of work. It’s not part of the contractual agreement that the Council is voting on. He’d have to talk with the Prosecutor’s Office about how to handle changes to the scope of work as the agencies move forward.

Weimer referenced Council packet page 53, a sentence in the second paragraph, “This Phase will not include the development and screening of alternatives outside of what is provided by PIT through Whatcom County.” He asked what that sentence means. Schroeder stated that talks about the information provided by the applicant for the development of the alternatives in the purpose and needs section of the contract. It gets to the technical discussion that prepares the notices of the purpose and need in the different documents as they move forward. He referenced Council packet page 59. A number of reports are listed that will be reviewed by CH2M Hill as they move forward. As it moves forward to the screening of alternatives in the phase two section, Council packet page 66, it includes discussion of the development of the draft EIS, alternatives analysis, public hearings, and final EIS. Those actions will happen in the next phase of the contract.
Brenner stated she would like to know about how the Council has to stay out of this and won’t know about the scoping. She asked if the Council will have an opportunity through the EIS to request a broader scope, if the Council doesn’t feel the scoping is broad enough. Schroeder stated the Council will have an opportunity to review the EIS as presented through the permit review of the local land use permits.

Brenner asked if that’s also part of the EIS. The Council is out of the loop regarding the scope. The EIS will be developed. The Council may look at the EIS and feel like something else should have been included. Schroeder stated the EIS is an administrative document. It’s a function of the executive branch to prepare the EIS. As the process moves forward, the EIS will be presented to the Council. There will be a review of the applicable regulations for either approval, denial, or approval with mitigation based on the information in the EIS. If there are deficiencies to the EIS for the Council to make a decision, the Council could require additional information through the permitting process. That is additional information he would like to provide to the Council as they move forward through the process, and provide guidance to the Council as appropriate regarding decision-making.

Brenner asked how the Council would address comments on the draft EIS regarding a regional scope. Schroeder stated that if there are questions on the scope, there will be discussions on the draft EIS about why additional information should be in the scope. He will have to work with legal counsel on a decision about the Council’s involvement in the EIS process.

Brenner stated she wants an answer on the question of how the Council would make comments if the Council feels that the draft EIS was not broad or adequate enough. She understands that everyone, including the Council, can comment on the draft EIS. She is a citizen. Louws stated the councilmembers are quasi-judicial judges in this process. The administration will facilitate this process. The Council will be involved in the process when legally appropriate. At the end of the day, the Council will have a complete body of work that has come through the Hearing Examiner for Council decision. At the very end, the Council makes a decision based on the body of work presented.

Mann asked about screening alternatives. He asked if the applicant screens the alternatives that are in the EIS. Schroeder stated PIT submitted information to Whatcom County. That information, as well as other studies provided by PIT for peer review and use during development of the EIS, will be reviewed. It doesn’t include any other information associated with it.

Weimer stated that’s not what it says.

Mann stated this language makes it sound like the applicant gets to screen the alternatives. That seems odd. Schroeder stated the language provides guidance about what will generally happen through the first phase, and what will be further refined in phase two, which is part of the contract and scope of work that is not in this document except for reference at the end. The rest of the scope of work further defines and gives more clarity to that sentence in those sections.

Mann asked where the screening alternatives come from. Schroeder stated the first
phase will not include development and screening of alternatives, outside of the information that is already on the record. In phase two of the contract, there will be a lot more information and time spent by CH2MHill. To start to develop those alternatives. In phase two, the agencies will direct CH2MHill on alternatives analysis and alternatives creation.

Kremen asked if there are going to be several other federal and state agencies, such as the Environmental Protection Agency, Department of Natural Resources, Department of Fish and Wildlife, Department of Health, and others that will all be scrutinizing this project, even if they’re not co-lead agencies with the Army Corps of Engineers, Department of Ecology, and Whatcom County. Schroeder stated a key component of the EIS preparation is the agency input associated. All of those state and federal agencies will have a chance to discuss the scope and preparation of the EIS.

Kremen stated the Council adopted all the comments about the timeframe and about making sure the County doesn’t pay for the process for the proponent. He compliments Mr. Schroeder for his effort to be impartial, professional, and have integrity with no agenda. Mr. Schroeder has fielded a plethora of constituent contacts with grace and poise. Mr. Schroeder has helped the County Council to better understand a very complex and difficult issue. He thanked Mr. Schroeder for his service to the community.

Kershner stated she’s pleased that comments received were specific and solution-oriented. The Council was able to take care of concerns about the extended public timeline for the scoping process. She will support the amended contract.

The motion to approve the contract as amended carried by the following vote:

**Ayes:** Kremen, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

**Nays:** None (0)
From: Stephanie Drake
To: Jill Nixon; Tyler Schroeder
Date: 6/7/2012 12:40 PM
Subject: Re: draft Council minutes

Thank you Jill!
Stephanie

~~~~~~~~~~~~~~~~~~~~~~~~~~~
Stephanie Drake
Whatcom County Planning & Development Services
SDrake@co.whatcom.wa.us
(360) 676-6907 Ext. 50201

>>> Jill Nixon 6/7/2012 12:28 PM >>>
attached. Good job tyler!
Let me know if you have questions or concerns.
Jill

*minutes are draft, subject to change upon approval of the full council.

Administrative Clerk
Whatcom County Council Office
311 Grand Avenue, Suite 105
Bellingham, Washington 98225
360-676-6690 (phone)
PLEASE NOTE: All incoming and outgoing emails are public records subject to public disclosure upon request.
Tyler, any update on status of revised K?

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 6:15 PM
To: Lynch, James M.
Subject: Re: Contract changes

I am around tomorrow, between 10 and noon works best.

Thanks,

Tyler

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

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Tyler,

I am available for a call any time tomorrow morning until 9:45a. If the call will take more than a half hour could we start a little earlier than 9:15?

Ari

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Thursday, June 07, 2012 3:53 PM
To: James M. Lynch
Cc: Ari Steinberg
Subject: RE: Contract changes

Jim and Ari,

I have been working with CH2M Hill on the updates to their contract. I will forward you on a copy of that in a following email. I would like to schedule time tomorrow to discuss the changes that have been incorporated. Are you both available 9:15 am tomorrow for a call?

Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> "Lynch, James M." <jim.lynch@klgates.com> 6/7/2012 3:33 PM >>>

Tyler, any update on status of revised K?

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 6:15 PM
To: Lynch, James M.
Subject: Re: Contract changes

I am around tomorrow, between 10 and noon works best.

Thanks,

Tyler
To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

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If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

Dear Barbara,

Thank you for answering my note. I truly appreciate your taking the time to respond to me.
It is difficult to correspond with you because I need to observe the GAG rule but I will give it a try.
It is very unfortunate that you and the other six members have been excluded from attending the information events concerning this issue and from hearing from your constituents about it, most of whom have been working for over a year now on it. If you had you would be aware of the magnitude of this problem and of the wide support we have in our fight to protect our county and the world. The group that you saw at the meeting was only a very small sample of the people who are working on this issue.
Although I realize that the "word on the street" is that CH2M is a reputable corporation and I also realize that the county has worked with CH2M before, if you had been allowed contact with the people of Whatcom County working on this issue, then possibly you would share our view that the selection of CH2M Hill may not be in our best interest.
Information about this company is easy to find. The following is a brief list of some information just pertaining to conflict of interest questions about CH2M Hill gathered by a lay person.

Information from the web:
(1) Robert Card served as the US Department of Energy Undersecretary under GWB. In this position, Card maintained financial and personal ties to CH2M while overseeing its work as DOE Undersecretary.
"Questions Rose over Energy Dept. Official’s Industry Ties," 6/6/02, NY Times. After protest by Senator Reid, Card resigned his position as DOE Undersecretary and immediately returned to CH2M as a board member and executive. Id.

(2) Ecology Party of Florida - Press Release
04/29/2011

(3) Conflict of interest discovered for Army Corps of Engineers’ phosphate mining environmental impact contractor

(4) Press Inquiries: Cara Campbell, 954-525-4522; or email, chair@ecologyparty.org

5) See original article

(6) The Ecology Party of Florida has discovered a direct conflict of interest with CH2M Hill, the engineering firm awarded the U.S. Army Corps of Engineers (Army Corps) contract for preparing the Area wide Environmental Impact Statement (AEIS) on phosphate mining. The AEIS is supposed to determine all of the direct, indirect and cumulative impacts of phosphate mining in Florida, including groundwater pirated from the Everglades watershed by the phosphate mining companies.

(7) One of the adverse impacts of phosphate mining is that a hazardous form of fluoride is produced as one of the mining by-products. Instead of properly disposing of this hazardous waste, phosphate mining companies such as Mosaic, one of the companies with mines being evaluated under the AEIS, “dispose” of the hazardous fluoride by selling it to be dumped into municipal water systems throughout the US as fluoridation of our tap water.

(8) “While preparing comments for the Army Corps’ initial public comment period regarding issues to be addressed in the AEIS we discovered that the Army privatized its water and wastewater systems at Fort Campbell, Kentucky in 2007 in a 50-year deal with CH2M Hill. In that deal CH2M Hill produces fluoridated water for the Army’s 101st Airborne Division and any other military personnel at Fort Campbell,” says Cara Campbell, Chair of the Ecology Party of Florida.

“That arrangement means CH2M Hill is using the Army as a lucrative market for the hazardous fluoride produced by the mining companies that the Army Corps hired CH2M Hill to evaluate in the AEIS,” Campbell explained. “If that sounds convoluted, that’s because it is, and in our opinion, that conflict of interest makes it impossible for CH2M Hill to produce an unbiased AEIS.

I do regret the “yes” vote at this time. It seems that it was rushed and it seems that council members should have tabled the contract endorsement for an in-depth study. The council has done such things before for matters of far less import. I think many of us feel that the agencies involved, the applicant for the project and CH2M rushed this through last week in order to get exactly the results we saw. Even if the contract were to be endorsed further down the line it might include more safeguards than it does now if the county council had more time to look it over.

I do thank you again and wish the very best for you.

Pearl Follett
On Wed, Jun 6, 2012 at 6:36 PM, <BBGUN1010@aol.com> wrote:
> Hi Pearl,
> 
> We made amendments last night that may have covered your concerns. You will
> also have numerous opportunities to comment in the future as there will
> first be a draft environmental impact statement which will allow anyone to
> comment on any aspect of the proposal. There will also eventually be council
> hearing(s) on this item at which time the council will also be able to
> research and discuss the aspects of the proposal and you will have
> opportunities to comment at that time too.
> 
> Barbara Brenner, Whatcom County Council Member
> 
> If this e-mail is about county business, it is a public record subject to
> public disclosure upon request. Please send all e-mails related to county
> business to my official county e-mail address, bbrenner@co.whatcom.wa.us.
> Thank you.
>
> In a message dated 6/5/2012 10:18:25 A.M. Pacific Daylight Time,
> BBrenner@co.whatcom.wa.us writes:
> 
> -----Original Message-----
> Date: Tue, 05 Jun 2012 10:18:12 -0700
> From: "Council Council" <Council@co.whatcom.wa.us>
> To: "Barbara Brenner" <BBrenner@co.whatcom.wa.us>,
> "Bill Knutzen" <bknutzen@co.whatcom.wa.us>,
> "Carl Weimer" <CWeimer@co.whatcom.wa.us>,
> <GPTtoWeb@co.whatcom.wa.us>,
> "Kathy Kershner" <kkershne@co.whatcom.wa.us>,
> "Ken Mann" <kmann@co.whatcom.wa.us>,
> "Pete Kremen" <PKremen@co.whatcom.wa.us>,
> "Sam Crawford" <SCrawfor@co.whatcom.wa.us>
> Subject: Fwd: Contract Agreement with CH2m Hill-Do not approve the contract
> 
> Please note: Emails are public records subject to public disclosure upon
> request.
>
> -----Original Message-----
> Date: Tue, 5 Jun 2012 10:15:58 -0700
>
Re: Contract Agreement with CH2m Hill.

Dear Council Member,

As a citizen and resident in Bellingham I ask you to not approve the contract with the CH2M Hill Company.

This contract does not contain provisions or a staff of qualified medical doctors to protect the health of the residents of Whatcom County.

Additionally it appears that the people are not protected from a conflict of interest in the review process.

The process needs to be open to public view.

The health impact needs to be addressed. This is not provided for in this contract.

The air quality needs also to be studied. This is not provided for in this contract.

The study time is too short.

Please say No to the CH2M Hill contract.

Sincerely,

Pearl Follett
Tyler,

Would you please contact Terry (listed in her e-mail below) and figure out how to ensure the public can obtain relevant information? I am not in support nor against support for the two organizations she listed. I just want to be sure the county remains transparent. In particular, I think she would greatly appreciate a response from the county.

Thanks.

Barbara Brenner

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

____________________________________

From: wechslerlaw@comcast.net
To: BBGUN1010@aol.com
Sent: 6/7/2012 1:30:48 P.M. Pacific Daylight Time
Subj: Re: CH2M Contract

Thanks, Barbara. Actually, most our concerns were not addressed. E.g., the notion that SSA is guaranteed receiving information and the public not is fairly outrageous.

I'm familiar with all the opportunities to comment. I've been researching this for a year and a half, and wanted to answer your question to Tyler Tuesday night: if when you receive the record you don't believe it is complete, generally speaking you can send it back to the hearing examiner for additional findings, or hold your own hearings for additional findings. (I am not a WA attorney, and this is not a legal opinion or legal advice, just my recollection of the county code's procedures for major development and shoreline substantial development permits).

I've been involved in the process from the beginning, having submitted queries and suggestions for the past 6 months. I'm a co-founder of Protect Whatcom. One of the issues in the contract was the selection of 20 "key stakeholders" to meet with the consultants and guide them in identifying constituencies in the scoping process. To date, neither my organization nor Safeguard the South Fork have been contacted by the planning dep't and asked to identify who in our organizations we wished to put forward as "key stakeholders." I find this very disturbing, and would very much appreciate your support of these two organizations which have been actively involved in informing the public about the proposed terminal, and coordinating with stakeholders in and beyond the northwest region for over a year.

Thank you very much for your time and attention.
From: BBGUN1010@aol.com  
To: wechslerlaw@comcast.net  
Cc: NHanson@co.whatcom.wa.us  
Sent: Thursday, June 7, 2012 12:46:49 PM  
Subject: Re: CH2M Contract  

Terry,

I think the amendments we made on Tuesday night may cover most, if not all of your concerns. You will also have numerous opportunities to comment in the future as there will first be a draft environmental impact statement which will allow anyone to comment on any aspect of the proposal. There will also eventually be council hearing(s) on this item at which time the council will also be able to research and discuss the aspects of the proposal and you will have opportunities to comment at that time too.

Barbara Brenner, Whatcom County Council Member

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us.
Thank you.

In a message dated 6/4/2012 1:23:41 P.M. Pacific Daylight Time, BBrenner@co.whatcom.wa.us writes:

-----Original Message-----
Date: Mon, 04 Jun 2012 13:23:31 -0700
From: "Council Council" <Council@co.whatcom.wa.us>
To: "Barbara Brenner" <BBrenner@co.whatcom.wa.us>,
"Bill Knutzen" <bknutzen@co.whatcom.wa.us>,
"Carl Weimer" <CWeimer@co.whatcom.wa.us>,
"Kathy Kershner" <kkershne@co.whatcom.wa.us>,
"Ken Mann" <kmann@co.whatcom.wa.us>,
"Pete Kremen" <PKremen@co.whatcom.wa.us>,
"Sam Crawford" <SCrawfor@co.whatcom.wa.us>
Subject: Fwd: CH2M Contract
I agree with 99% of David Stalheim's letter of June 3 (https://docs.google.com/a/bellinghamherald.com/file/d/0ByRbnb53t3dnMTdoeUZYMDVSeEU/edit?pli=1), recommending changes to the CH2M contracts. I would broaden the recommendation for locations of scoping hearings, however. SEPA provides:

In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries...
WAC 197-11-060(4)(b).

It is arbitrary to consider rail impacts only on Washington communities given the enormous reasonably foreseeable cumulative impacts on communities in the Powder River Basin given the other 5 terminals currently proposed in Oregon and Washington.

But I completely agree otherwise with David's recommendations, particularly regarding the need for a 120-day scoping period. In some cases, the public may need to obtain documents through public records requests to understand an issue about which they wish to comment, or to locate supporting documentation. This can take 60 days.

I find the notion that documents would be shared with the proponents (SSA
and BNSF) and not the public, and that there will be communications with the proponents and the consultant to which the public is not privy, particularly untenable.

Thank you very much for your consideration.

Terry J. Wechsler
304 Morey Ave.
Bellingham, WA  98225
360-656-6180 (r), 541-913-5976 (c)

I agree with 99% of David Stalheim's letter of June 3, recommending changes to the CH2M contracts. I would broaden the recommendation for locations of scoping hearings, however. SEPA provides:

In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries....

WAC 197-11-060(4)(b).

It is arbitrary to consider rail impacts only on Washington communities given the enormous reasonably foreseeable cumulative impacts on communities in the Powder River Basin given the other 5 terminals currently proposed in Oregon and Washington.

But I completely agree otherwise with David's recommendations, particularly regarding the need for a 120-day scoping period. In some cases, the public may need to obtain documents through public records requests to understand an issue about which they wish to comment, or to locate supporting documentation. This can take 60 days.

I find the notion that documents would be shared with the proponents (SSA and BNSF) and not the public, and that there will be communications with the proponents and the consultant to which the public is not privy, particularly untenable.

Thank you very much for your consideration.
Terry J. Wechsler
304 Morey Ave.
Bellingham, WA 98225
360-656-6180 (r), 541-913-5976 (c)
Ok. We'll start in 10 minutes at 9:15.

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Friday, June 08, 2012 9:03 AM
To: Ari Steinberg
Cc: skip.kalb@bnsf.com; jim.lynch@klgates.com
Subject: Re: Contract changes

I will call in at 9:15

Sorry for the delay.

Tyler

-----Original Message-----
From: Tyler Schroeder
Cc: <skip.kalb@bnsf.com>
Cc: <jim.lynch@klgates.com>
To: <Ari.Steinberg@SSAMarine.com>
Sent: 6/7/2012 5:05:36 PM
Subject: RE: Contract changes

Ari,

Let's start at 9 am. Does anyone have a conference call #? If not, I can call you both and connect the calls.

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> Ari Steinberg <Ari.Steinberg@SSAMarine.com> 06/07/12 4:57 PM >>>
Tyler,

I am available for a call any time tomorrow morning until 9:45a. If the call will take more than a half hour could we start a little earlier than 9:15?

Ari

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Thursday, June 07, 2012 3:53 PM
To: James M. Lynch  
Cc: Ari Steinberg  
Subject: RE: Contract changes  

Jim and Ari,

I have been working with CH2M Hill on the updates to their contract. I will forward you on a copy of that in a following email. I would like to schedule time tomorrow to discuss the changes that have been incorporated. Are you both available 9:15 am tomorrow for a call?

Thanks,

Tyler

Tyler R. Schroeder  
Planning Manager  
Phone: (360) 676-6907 ext. 50202  
Fax: (360)738-2525  
Email: Tschroed@co.whatcom.wa.us  
Address:  
Whatcom County Planning and Development Services  
5280 Northwest Dr.  
Bellingham, WA  98225

>>> "Lynch, James M." <jim.lynch@klgates.com> 6/7/2012 3:33 PM >>>

Tyler, any update on status of revised K?

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]  
Sent: Tuesday, June 05, 2012 6:15 PM  
To: Lynch, James M.  
Subject: Re: Contract changes

I am around tomorrow, between 10 and noon works best.

Thanks,

Tyler

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at jim.lynch@klgates.com.
Hi Tyler: I understand Jill Nixon has sent you the transcribed minutes that include the amendments to the Gateway contract (AB2012-068B).

I have attached the approved amendments in a memo format. This memo usually provided to department staff when amendments to various agenda items are made at council meetings. This may appear to be a duplication of effort, but it provides everyone with a written record.

We will interoffice a hard copy when the council chair signs the memo.

Once the amendments are made to the contract we would appreciate a copy for our records.

Thank you Tyler.

Martha Ü

Martha L. Blakely
Whatcom County Council
311 Grand Avenue; Suite 105
Bellingham, WA  98225
mblakely@co.whatcom.wa.us
(360) 676-6690

Please note: Emails are public records subject to public disclosure upon request
June 7, 2012

MEMORANDUM

TO:        Jack Louws, County Executive
FROM:      Kathy Kershner, Council Chair
SUBJ:      Council Action at the June 7, 2012 meeting.

The Council, at its June 7, 2012 meeting, took action as shown on the portion of minutes printed below:

OTHER ITEMS

1. REPORT ON PRESENTATION REGARDING GATEWAY PACIFIC TERMINAL PROJECT PROCESS AND RECOMMENDATIONS ON EIS SCOPING PHASE AND COMMUNICATION PROTOCOL BETWEEN WHATCOM COUNTY PLANNING AND DEVELOPMENT, U. S. ARMY CORPS OF ENGINEERS, WASHINGTON STATE DEPARTMENT OF ECOLOGY AND CH2M HILL (AB2012-068B) (9:03:16 PM)

Mann reported for the Finance and Administrative Services Committee and moved to approve the contract between the County and CH2MHill as presented in the Council packet. He moved to approve the substitute version of section 36.2 regarding conflict of interest.

Kremen stated the amendment addresses the conflict of interest issues. It does not address the 120-day extension, which is appropriate. He suggested a friendly amendment to amend bullet three, "Local Indian Native American Nations or Tribes.

Mann accepted Councilmember Kremen’s friendly amendment.

The motion to amend carried by the following vote:

Ayes: Kremen, Crawford, Brenner, Knutzen, Mann and Kershner (6)
Nays: Weimer (1)

Crawford moved to amend:

- Council packet page 59, page seven of the scope of work. Amend the second paragraph to add a sixth bullet point, "The open house for public comment on the scope of the EIS shall not be less than 120 days.
- Council page 53, third paragraph, "The following scope will commence in April 2012 at date of signature and is project to carry through October 31, 2012."
- Council packet page 54, task 2.4 in the table, "Task 2.4 Scoping period (June–July)
- Council packet page 54, task 4.1 in the table, "Task 4.1 Within 2 months of close of scoping period. (Aug–Sept)"
• Council packet page 57, “Deliverables: up to monthly media and comment updates, but only 3 1/2 months of updates...”
• Any other minor changes to implement the changed timeframe.

**Weimer suggested a friendly amendment** to amend Council packet page 60, the first full paragraph below the bullets, "During the Scoping Process...The online scoping meeting will be open for thirty 30 days and will include:..."

**Crawford accepted** the friendly amendment.

**Kremen suggested a friendly amendment** to include language, “Any changes necessary to be consistent with a minimum of a 120-day timeframe.”

**Crawford accepted** the friendly amendment as direction to the administration on the Council’s intent.

**Crawford moved** to amend the deliverables item at the bottom of Council packet page 60, “**Deliverables:** Public notice including one display ad, one postcard mailed, one media advisory, text for web site/email distribution”

The motion carried by the following vote:

**Ayes:** Kremen, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

**Nays:** None (0)

The motion to approve the contract as amended carried by the following vote:

**Ayes:** Kremen, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

**Nays:** None (0)

If you have not already done so, please provide our office with an amended version of this contract agreement for our records.

Thank you.

C: Sam Ryan, Planning & Development Services Director
   Tyler Schroeder, Planning & Development Services
   Dana Brown-Davis, Clerk of the Council
   AB2012-068B
   Correspondence File

KK: mb

I:\COUNCIL\Kathy Kershner\After Meeting Council\JLAB2012-068B.doc
Hi Tyler: I sent the original MOA interoffice. You should receive it today.

Have a great weekend.

Martha

Martha L. Blakely  
Whatcom County Council  
311 Grand Avenue; Suite 105  
Bellingham, WA  98225  
mblakely@co.whatcom.wa.us  
(360) 676-6690

Please note: Emails are public records subject to public disclosure upon request
Hi Alice,
Attached is the signed Memo of Agreement. Let me know where you'd like me to mail the hard copy.

Thank you,
Stephanie

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
Stephanie Drake
Whatcom County Planning & Development Services
SDrake@co.whatcom.wa.us
(360) 676-6907 Ext. 50201
WHATCOM COUNTY COUNCIL AGENDA BILL

MAY 29 2012
WHATCOM COUNTY COUNCIL

TITLE OF DOCUMENT: Memorandum of Agreement Regarding the Preparation of the Vessel Traffic Study as required by the Gateway Pacific Terminal (GPT) Settlement Agreement, SHB NO. 97-22 & NO. 97-23

ATTACHMENTS:

SEPA review required? ( ) Yes ( ) NO Should Clerk schedule a hearing? ( ) Yes ( ) NO
SEPA review completed? ( ) Yes ( ) NO Requested Date:

COMMITTEE ACTION: 6/5/2012: Forwarded to Council for approval

COUNCIL ACTION: 6/5/2012: Council Approved 7-0

Related County Contract #: Related File Numbers: Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
Memorandum of Agreement regarding Gateway Pacific Terminal Vessel Traffic and Risk Assessment Study

WHEREAS, in 1992, Pacific International Terminals ("PIT") applied to Whatcom County for a Major Development Permit, MDP No. 92-003, and Shoreline Substantial Development Permit, SHS 92-0020, to develop a multi-use marine terminal at Cherry Point in Whatcom County to be composed of a deep water wharf with upland commodity storage facilities to be known as Gateway Pacific Terminal ("GPT");

WHEREAS, the Washington Departments of Ecology and Fish and Wildlife (collectively "State Agencies"), and North Cascades Audubon Society, People for Puget Sound, League of Women Voters of Bellingham/Whatcom County, and Washington Environmental Council (collectively "Conservation Groups"), appealed Whatcom County's 1997 issuance of the Shoreline Substantial Development Permit for GPT in actions that were consolidated before the Washington Shoreline Hearings Board ("SHB"), SHB Nos. 97-22 and 97-23;

WHEREAS, the appeals of the 1997 Shoreline Substantial Development Permit for GPT were resolved in a 1999 settlement agreement ("1999 Agreement");

WHEREAS, paragraph 2.10.a of the 1999 Agreement requires the Washington Department of Ecology to oversee PIT's completion of a vessel traffic analysis that "describes the current environment in detail and models the changes and impacts to vessel traffic safety and the environment resulting from the operation of the GPT facility and recommends operating protocols that will reduce, to the greatest extent feasible, the risk of vessel collisions, powered and drift groundings, allisions, spills, routine discharges and other incidents resulting from the operation of the GPT facility";

WHEREAS, the undersigned parties agree that some of the requirements of paragraph 2.10.a of the 1999 Agreement are no longer feasible to implement, particularly the requirement that the method of the analysis conform to the requirements of Appendix G of the 1999 Agreement, and the requirement that the vessel traffic analysis be performed by Jack Hernald Ph.D. and Captain Jim Townley;

THEREFORE, the undersigned parties agree that:

1. The document attached hereto entitled "Scope of Work for Gateway Pacific Terminal Vessel Traffic and Risk Assessment Study" (hereinafter "Scope of Work Document") shall be deemed to meet the requirements of Appendix G of the 1999 Agreement; and

2. A vessel traffic analysis conducted in compliance with the Scope of Work Document shall be deemed to be in compliance with Appendix G of the 1999 Agreement; and

3. PIT shall not be required to retain Jack Hernald Ph.D. and Captain Jim Townley to perform the vessel traffic analysis, but shall instead retain The Glosten
Associates, Inc., to perform the vessel traffic analysis in conformance with the attached Scope of Work Document; and

The provisions of the Scope of Work are hereby incorporated as provisions of the Settlement Agreement in place of Appendix G, enforceable in the same manner as other provisions, subject to the following:

4.1 This requirement does not diminish any authority of the Department of Ecology to oversee the Scope of Work under paragraph under Paragraph 2.10.a of the 1999 Agreement, including any authority that may exist to modify the Scope of Work in light of impracticalities; and

4.2 The provisions of the Scope of Work that were requested solely by the Lummi Nation, including those that address impacts on the Lummi Nation’s treaty fishing rights, natural resources, cultural rights, and other interests, or that rely upon Lummi Nation materials, information, resources or review, are not part of the 1999 Settlement Agreement and do not create enforceable rights by any party to that 1999 Agreement; and

5. Except as expressly provided herein, this MOA does not amend any provisions of the 1999 Agreement; and

Nothing in this Memorandum of Agreement or in the attached Scope of Work Document shall be deemed to be a concession or admission by any party as to any claim, defense, or argument relating to (a) environmental impacts and risks caused by vessels calling on GPT; (b) the permitting, siting, construction, or operation of GPT; and (c) changes in the project proposal, including proposed increases in vessel volume and inclusion of coal as a commodity to be exported from the facility.

PACIFIC

By: 
Its: 
Date: 

WHATCOM COUNTY

By: Council Chair 
Date: 

By: 
Date: 
WASHINGTON DEPARTMENT OF ECOLOGY

By: [Signature]
Date: 4/27/17

OF FISH AND WILDLIFE

By:
Its:
Date:

NORTH

By:
Its:

PEOPLE FOR PUGET SOUND


WOMEN VOTERS OF BELLINGHAM/WHATCOM COUNTY

WASHINGTON ENVIRONMENTAL COUNCIL

By:
Its:
Date: [Signature]
FYI, came through our media folks.

Top front-page story in today's Skagit Valley Herald.

Railroad spokesman talks coal trains to MV council

By KATE MARTIN
Staff Writer

MOUNT VERNON - There have been many "exaggerations and misstatements and outright falsehoods" about a proposed bulk commodities shipping port in Bellingham and associated rail traffic, a railroad company spokesman told the Mount Vernon City Council on Wednesday.

The council heard a presentation from Terry Finn, executive director of government affairs at Burlington Northern Santa Fe Railway Co. Finn addressed what has become a public outcry in some circles against the proposed Gateway Pacific Terminal in Bellingham. The proposed bulk commodities port would allow the shipment of coal and other products to Asia, where there is a high demand.

Public criticism of the project has included complaints about the potential increase of coal dust, more train engine emissions and the increased traffic that more trains would bring.

Finn told the council that loads of coal are sprayed with a plastic-like coating to lower the amount of dust released. He said the dust is bad for the train tracks.

Trains are also more fuel-efficient than in the past, he said, and are more efficient still than shipping the same load by truck on a highway.

He also said insisting on an environmental impact process - including cumulative effects of coal trains - could set a "dangerous precedent" for other commodities, like parts for Boeing airplanes.

In determining impact for rail shipment of jet planes, he said, "A London to Bombay run would have to be included in the final analysis for rail service to a Boeing plant."

While council members were able to ask questions afterward, public comment was not accepted, as is typically the policy for committee hearings.

Councilman Mark Hulst said that he had heard concerns from city residents about getting emergency vehicles across tracks when additional trains might restrict flow.

Finn told the council that the railroad could in some cases contribute up to 5 percent of the cost of an overpass.
Councilman Gary Molenaar asked who would pay for the remainder.

"Five percent is typically the limit. Usually it's a matter of federal, state and local governments to cough up the dough," Finn said.

Railroads are a fixed system and are incredibly difficult to move, he said.

"In most cases the railroad was there before the communities," Finn said. "That non-rail volume has really contributed to a lot of the conflicts."

After the presentation, Finn made himself available to residents for questions, but few people in the packed council hearing room approached him.

The city invited BNSF to send a speaker some time ago. Last fall, the council allowed consultants for and against the proposed Bellingham coal terminal to speak at a meeting.

Bow resident Ginny Wolff said she liked some of the council members' questions.

"How are we going to pay for what's going to keep our economy alive?" she asked. "Maybe the railroad thinks it has the capacity, but do we?"

Kate Martin can be reached at 360-416-2145 or kmartin@skagitpublishing.com. Follow her on Twitter at www.twitter.com/gov_svh. 
FYI, Royce let's discuss this in the morning with Jack. Call me today if you would like.

Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

On Tuesday, June 5th, 2012, the Whatcom County Council is scheduled to review three different agreements or contracts regarding Gateway Pacific International Terminal:

1. Communications Protocol Agreement -- this is an agreement between Whatcom County, the Corps of Engineers, and the EIS consultant (CH2M Hill).
2. Contract for Cost Reimbursement -- this is an agreement between Whatcom County, Pacific International Terminals and BNSF Railway for reimbursement of county and consultant costs and fees for preparation of the EIS.
3. Contract for EIS Services -- this is a contract with CH2M Hill for preparation of an EIS for the coal terminal.

Each of these agreements have problems that do not ensure an open and transparent process as outlined. These issues affect not just Whatcom County, but Washington State and the Army Corps of Engineers. Thus, I am sending my comments (attached) to all three legs in this environmental review process.

Thank you for review and considering making adjustments to these documents that are needed to ensure an open and transparent EIS process.

Regards,

David Stalheim
June 3, 2012

Jack Louws, County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225
jlouws@co.whatcom.wa.us

Whatcom County Council
311 Grand Avenue, Suite 105
Bellingham, WA 98225
council@co.whatcom.wa.us

Tyler Schroeder, Planning Supervisor
Planning and Development Services
5280 Northwest Drive
Bellingham, WA 98225
Tschoed@co.whatcom.wa.us

Jeannie Summerhays
Northwest Regional Office Director
Department of Ecology
3190 160th Ave. SE
Bellevue, WA 98008
JSUM461@ECY.WA.GOV

Randel Perry
Northwest Field Office
Army Corps of Engineers
1440 10th Street, Suite 102
Bellingham, WA 98225
Randel.j.perry@usace.army.mil

Alice Kelly
Northwest Regional Office
Department of Ecology
3190 160th Ave. SE
Bellevue, WA 98008
Alice.kelly@ecy.wa.gov

RE: Contracts and Agreements Regarding Gateway Pacific Terminal Project

Elected Officials and Staff:

This Tuesday, the Whatcom County Council is set to review and take action on three different agreements or contracts regarding the environmental review process for the proposed Gateway Pacific International Terminal.

This project, if approved, would build North America’s largest coal export facility at Cherry Point. Reviewing the environmental, socio-economic and health impacts of this proposal is the role of the public agencies — not the applicant. In order to instill public confidence that the environmental review process is done in an open and transparent process, as well as being fair and competent, changes to all three agreements are necessary before the Council or County Executive sign these proposals.

As a preliminary matter, it is unclear what action the County Council will be asked to take on these contracts. The agenda bill states that this is a “Presentation to Council...regarding next steps for the project...The purpose is to enter into the public record the...agreement and the contract...and seeks Council’s endorsement of that action.” Professional Services Agreements more than $35,000 requires Council approval, so Council action is required at least on the CH2M Hill contract. Clarification of the Council action, versus Executive action, should be made clear to the public.
1. The EIS process is to protect the public’s interest -- not the applicant’s interest.

The environmental review process under the State and National Environmental Policy Acts (SEPA and NEPA) is meant to ensure that the environmental impacts of the proposed development are identified and that environmental values are considered during decision-making by state and local agencies.

It is the public agencies responsibility to control the environmental review process. That is why the proposed agreements and contracts are troubling in several areas:

- The CH2M Hill Contract identifies a "conflict of interest" only when the Consultant develops an interest in conflict with the Applicant’s interest.

36.2 Conflict of Interest:

“If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant’s interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the Applicant’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.”

(Contract for Services Agreement for EIS Preparation, Section 36.2, p10 of 16, Emphasis added)

I can only assume that the Applicant had great influence in writing this Conflict of Interest provision. As written, CH2M Hill could purchase a financial interest in Gateway Pacific and not be considered a "conflict of interest". The conflict of interest provision should be written to address the following two points:

1. Add a provision that ensures the Consultant does not develop an interest that is in potential conflict the Public’s interest.
2. Add Department of Ecology and Army Corps of Engineers to the decision making process for determining when conflicts exist. Their interest in this matter should be equal to the County’s, and their experience in these matters is substantially greater than Whatcom County’s.

**Recommended Change**: The following would be suggested changes to Section 36.2 of the Consultant Contract for Services:

“If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant’s or Public’s interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County and Department of Ecology and Army Corps of Engineers to make an informed judgment as to whether or not the Applicant's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County, Department of Ecology and Army Corps of Engineers, may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.”
The CH2M Hill Contract includes an implied bias towards the applicant.

The CH2M Hill contract correctly states that "establishing the purpose and need is the first critical path item on the schedule...[as it] will direct the range of alternatives to be developed and reviewed in the EIS document." However, it may also be prudent to include background insights on the primary drivers that make this project worth considering and evaluating. Either way, a defensible document must include proper documentation in the purpose and need chapter. The CH2M HILL Team proposes to research drivers so that the public has, in the scoping process, additional insights on the economic situation surrounding this project. The project drivers are anticipated to include a review of available port capacity on the west coast based on readily available information, economic pressures regarding dry bulk materials in the Asian-Pacific region, and national executive orders influencing industrial development. Understanding these elements may also help refine the range of alternatives suggested. The Team economist and planner will research the Applicant's Purpose and Need and make recommendations for The Agencies consideration.

The proposed contract begins to narrowly define the purpose and need to mirror the applicant's perspective ("drivers that make this project worth considering and evaluating"). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives.

This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant's wants, needs, and goals.

Recommended Change: The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation.

2. The EIS process needs to be open and transparent.

There are numerous provisions within these three agreements that are inconsistent with the consultant's proposal that they will support an open and transparent process.

The Communication Protocol Agreement allows "work products" to be "provided to the applicant's team."

"Work products prepared by the 3rd party team will be submitted directly to the Co-leads. These work products will be additionally provided to the applicant's team only upon the approval of the Co-leads" (Communication Protocol Agreement, Section 2d)

If the County and partner agencies intend that the agency may withhold these "work products" because they might be privileged under litigation discovery rules (commonly called the "work product" doctrine), then these documents should not be provided to the applicant's team unless they are determined to be public records subject to discovery and disclosure.

Recommended Change: "Work products provided to the applicant's team shall be made available to the public and not be exempt from disclosure under the Public Records Act."

---

1 Exhibit A, Phase 1 Scope of Work, Section 2.3.1, April 1, 2012, pg. 5
2 Ibid
Meetings with the Agencies, the Consultant and the Applicant, should be made public.

Since November of 2010, the State of Washington facilitated a process called the Multiagency Permit Team (MAP). This “team”, composed of public agencies and the applicants (as well as their attorney) met outside the glare of publicity. Now, it appears that this same “team” process will continue and be sanctioned through these agreements.

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Recommended Change: The contract should make explicit that any team meetings and conversations should be video taped or audio recorded, and made available as a public record. Consideration should also be given to including other observers at these meetings, such as the media, interested parties, and other public agencies.

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"The following scope will commence in April 2012."
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"Task 2.4 Public and Agency Scoping Meetings ... (June-July)"
"CH2M HILL Team will host a maximum of 6 scoping meetings in locations to be determined..." (Exhibit A, Phase I Scope of Work, various pages)
THE SCOPING PROCESS needs to be AT LEAST 120 DAYS in length, and needs to be inclusive of AREAS OUTSIDE WHATCOM COUNTY

Based on the Scope of Work that Whatcom County is set to approve, the public and agencies should expect that the project will be already defined and the purpose and need statement will be completed before the ink is dry on these agreements.

Since the Scope of Work document as it says that the commencement is April 1st, it might be assumed that the schedule is already two months behind. But, how is the public supposed to know? Whatcom County is being asked to approve a contract that includes a schedule in the Scope of Work where the public and agency scoping meetings are set to end July 31st.

The assumption of only 60 days in the Scope of Work for public and agency scoping is wholly inadequate. Remember, the applicant and agencies have been meeting on this project since November 2010, and the "open and transparent" process envisioned by the consultant is limited to 60 days?

"The agencies have steadfastly refused to provide any information on the "scope" of the project. They haven’t published the rail route, to the best of my knowledge. Scoping is a critical juncture for agencies’ consideration of reasonable alternatives. For an agency to have to consider a particular alternative, comments have to provide evidence that the alternative is reasonable and feasible. Without knowledge of key aspects of the project until the scoping notice has been released, developing alternatives to the project and the evidence to support the alternatives will take time.

"The proposed definition of the project's "purpose and need" will also first be presented to the public in the scoping notice. The "purpose and need" is a critical component of the NEPA analysis because it guides both the selection of alternatives and the agency’s ultimate decision about the project.

"As anyone knows who has ever done a business or policy analysis, how you define your objective determines every other step along the way. The purpose and need statement will define the objective of the Gateway Pacific terminal. The project applicant will want the purpose and need statement to be as narrow as possible, because if it precisely mirrors the goals and features of the project, the project will be the only feasible outcome. The agencies have only spoken to the project applicant; they haven’t spoken to us. We might want to point out that NEPA is supposed to look at broader purposes, not just the applicant’s wants, needs, and goals.

"Responding to these and other key issues will be important, will take time, organization, and effort, and will be difficult to accomplish in 60 days. As I mentioned above, look how long it has taken the agencies and the applicant to compile sufficient information and evidence to proceed.

"So I think that an extra 60 days is not unreasonable under these circumstances. Let’s not forget that this is a really big project. We tend to think of ourselves as little ol’ Whatcom County, hidden away up in the top left corner of the country, and of Cherry Point as somewhere out in the hinterlands. But this is not a Whatcom County-scale project. It is a big project in global terms, with global impacts.

"The fact that the agency personnel involved in the environmental review process have never worked on a big project is not a good reason to treat this project as if it were a standard, little project. It isn’t, and it deserves more scrutiny than any project Whatcom County has ever seen before."

(“Coal Terminal Update: Whose Process is This?” Get Whatcom Planning Blog, March 21, 2012, Jean Melious)
Recommended Change: There are three changes proposed:

1. The Contract should not be approved until an updated schedule is provided.
2. The Contract should include a specific directive that the public scoping period be at least 120 days in length.
3. The Contract should set forth the expectation that the 6 scoping meetings will be located in areas impacted by this project. Suggestions include the following:
   - Those communities affected by shipping (San Juan Islands)
   - Those communities affected by increased rail traffic (Seattle, Vancouver, Spokane)
   - Whatcom County

4. The EIS and application review needs to fully compensate Whatcom County for costs.

Whatcom County amended its fee schedule to charge only $2,625 for preparation of an EIS, the same fee that is charged for a Major Project Permit. The County has already spent at least $16,000 in costs above and beyond those collected.

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- Direct vs. indirect expenses -- the agreement requires the applicant to cover "direct out-of-pocket expenses". It does not cover indirect expenses, or overhead. Examples of overhead costs that will be funded by Whatcom County include:
  - Processing and paying invoices (Finance and Auditor staff, plus mailing costs)
  - Administrative staff time (answering calls, filing papers, counter inquiries)
  - Hosting a web site with public comments (IT staff plus server costs)
  - Office space and records storage (light, power, physical storage of records)

- County staff costs -- the agreement includes salaries and benefits. Does this include all Whatcom County staff that will be involved in this process, such as Health Department, Public Works, Prosecuting Attorney, Sheriff, and Executive’s Office? What about support staff that process paperwork and handle phone calls for the project?

Recommended Change: The following changes are suggested:

1. Include an Administrative Charge. It is too burdensome to track every expenditure. The two options to cover indirect expenses include an hourly rate that includes overhead (the Consultant Contract is based on this assumption), or an Administrative Overhead rate to be added to the hourly rate. A typical Administrative Overhead charged in federal contracts runs between 9 and 14%.
2. Covered Staff. It should be made clear that the staff time of Planning and Development Services, Public Works, Health, Prosecuting Attorney, County Executive, and Sheriff are County staff expected to be involved in the preparation of the EIS, and their costs are reimbursable.

Thank you for consideration of my comments.
David Stalheim (stalheim@aol.com)
Could you put this on the website.

Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

On Tuesday, June 5th, 2012, the Whatcom County Council is scheduled to review three different agreements or contracts regarding Gateway Pacific International Terminal:

1. Communications Protocol Agreement -- this is an agreement between Whatcom County, the Corps of Engineers, and the EIS consultant (CH2M Hill).
2. Contract for Cost Reimbursement -- this is an agreement between Whatcom County, Pacific International Terminals and BNSF Railway for reimbursement of county and consultant costs and fees for preparation of the EIS.
3. Contract for EIS Services -- this is a contract with CH2M Hill for preparation of an EIS for the coal terminal.

Each of these agreements have problems that do not ensure an open and transparent process as outlined. These issues affect not just Whatcom County, but Washington State and the Army Corps of Engineers. Thus, I am sending my comments (attached) to all three legs in this environmental review process.

Thank you for review and considering making adjustments to these documents that are needed to ensure an open and transparent EIS process.

Regards,

David Stalheim
June 3, 2012

RE: Contracts and Agreements Regarding Gateway Pacific Terminal Project

Elected Officials and Staff:

This Tuesday, the Whatcom County Council is set to review and take action on three different agreements or contracts regarding the environmental review process for the proposed Gateway Pacific International Terminal.

This project, if approved, would build North America’s largest coal export facility at Cherry Point. Reviewing the environmental, socio-economic and health impacts of this proposal is the role of the public agencies -- not the applicant. In order to instill public confidence that the environmental review process is done in an open and transparent process, as well as being fair and competent, changes to all three agreements are necessary before the Council or County Executive sign these proposals.

As a preliminary matter, it is unclear what action the County Council will be asked to take on these contracts. The agenda bill states that this is a "Presentation to Council...regarding next steps for the...project...The purpose is to enter into the public record the...agreement and the contract...and seeks Council's endorsement of that action." Professional Services Agreements more than $35,000 requires Council approval, so Council action is required at least on the CH2M Hill contract. Clarification of the Council action, versus Executive action, should be made clear to the public.
1. **The EIS process is to protect the public’s interest -- not the applicant’s interest.**

The environmental review process under the State and National Environmental Policy Acts (SEPA and NEPA) is meant to ensure that the environmental impacts of the proposed development are identified and that environmental values are considered during decision-making by state and local agencies.

It is the public agencies responsibility to control the environmental review process. That is why the proposed agreements and contracts are troubling in several areas:

- **THE CH2M HILL CONTRACT IDENTIFIES A "CONFLICT OF INTEREST " ONLY WHEN THE CONSULTANT DEVELOPS AN INTEREST IN CONFLICT WITH THE APPLICANT’S INTEREST.**

36.2 Conflict of Interest:

> "If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant’s interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the Applicant’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination."

*(Contract for Services Agreement for EIS Preparation, Section 36.2, p10 of 16, Emphasis added)*

I can only assume that the Applicant had great influence in writing this Conflict of Interest provision. As written, CH2M Hill could purchase a financial interest in Gateway Pacific and not be considered a "conflict of interest". The conflict of interest provision should be written to address the following two points:

1. Add a provision that ensures the Consultant does not develop an interest that is in potential conflict the Public's interest.
2. Add Department of Ecology and Army Corps of Engineers to the decision making process for determining when conflicts exist. Their interest in this matter should be equal to the County's, and their experience in these matters is substantially greater than Whatcom County's.

**Recommended Change: The following would be suggested changes to Section 36.2 of the Consultant Contract for Services:**

> "If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant’s or Public’s interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County, Department of Ecology and Army Corps of Engineers to make an informed judgment as to whether or not the Applicant’s interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County, Department of Ecology and Army Corps of Engineers may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination."

---

David Stalheim
The CH2M Hill contract correctly states that "establishing the purpose and need is the first critical path item on the schedule...[as it] will direct the range of alternatives to be developed and reviewed in the EIS document." What is biased is the entire discussion that follows:

"However, it may also be prudent to include background insights on the primary drivers that make this project worth considering and evaluating. Either way, a defensible document must include proper documentation in the purpose and need chapter. The CH2M HILL Team proposes to research drivers so that the public has, in the scoping process, additional insights on the economic situation surrounding this project. The project drivers are anticipated to include a review of available port capacity on the west coast based on readily available information, economic pressures regarding dry bulk materials in the Asian-Pacific region, and national executive orders influencing industrial development. Understanding these elements may also help refine the range of alternatives suggested. The Team economist and planner will research the Applicant's Purpose and Need and make recommendations for The Agencies consideration,"

The proposed contract begins to narrowly define the purpose and need to mirror the applicant's perspective ("drivers that make this project worth considering and evaluating"). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives.

This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant's wants, needs, and goals.

**Recommended Change:** The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation.

2. **The EIS process needs to be open and transparent.**

There are numerous provisions within these three agreements that are inconsistent with the consultant's proposal that they "will support an open and transparent process."

**The Communication Protocol Agreement allows "work products" to be "provided to the applicant's team"**

"Work products prepared by the 3rd party team will be submitted directly to the Co-leads. These work products will be additionally provided to the applicant's team only upon the approval of the Co-leads" (Communication Protocol Agreement, Section 2d)

If the County and partner agencies intend that the agency may withhold these "work products" because they might be privileged under litigation discovery rules (commonly called the "work product" doctrine), then these documents should not be provided to the applicant's team unless they are determined to be public records subject to discovery and disclosure.

**Recommended Change:** "Work products provided to the applicant's team shall be made available to the public and not be exempt from disclosure under the Public Records Act."

---

1. Exhibit A, Phase 1 Scope of Work, Section 2.3.1, April 1, 2012, pg. 5
2. Ibid
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Thank you for consideration of my comments.
David Stalheim (stalheim@aol.com)
Ari and Jim,

Attached is the proposed language given to the Council at this morning's meeting. I am working on updating the language and will provide that to you once it is final.

Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA 98225
36.2 **Conflict of Interest:**

If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Agencies’ interest in developing an EIS that is unbiased, fair and impartial, , then the Consultant shall immediately notify the County of the conflict. The notification to the County shall be made with sufficient specificity to enable the County, Department of Ecology and the U.S. Army Corps of Engineers (for NEPA purposes) to make an informed judgment as to whether or not the EIS preparation may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

Consultant team must be an independent third party during preparation of the EIS. The prime contractor, CH2MHIll Inc., has no current nor will they engage in future contracting with either PIT or BNSF in the joint-applicants’ proposed project. In Section 3.13 of the RFP this Consultant and subcontractors were required to disclose any current or expected future contractual relationships with the following entities:

- PIT including parent company SSA Marine Inc.
- BNSF
- Local Indian Tribes
- Federal agencies with trustee status for marine or near-shore resources
- State agencies with trustee status for marine or near-short resources
- Environmental NGOs.

Consultant submitted its Disclosure Statement in Section 3 of its proposal. This statement is also included in this contract as Exhibit D.
Attached is the update language for the GPT contract. This needs to be included in the motion to approved the contract as amended with this language.

Thanks,

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Jill,

I will have a pdf copy shortly without the comments.

Thanks

-----Original Message-----
From: Tyler Schroeder
To: Brown-Davis, Dana <DBrown@co.whatcom.wa.us>
To: Nixon, Jill <JNixon@co.whatcom.wa.us>

Sent: 6/5/2012 4:20:58 PM
Subject: Fw: gpt-contract-addendum-36-2-06052012-trs-edits.docx

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36.2 Conflict of Interest:

If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Agencies' interest in developing an EIS that is unbiased, fair and impartial, then the Consultant shall immediately notify the County of the conflict. The notification to the County shall be made with sufficient specificity to enable the County, Department of Ecology and the U.S. Army Corps of Engineers (for NEPA purposes) to make an informed judgment as to whether or not the EIS preparation may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

Consultant team must be an independent third party during preparation of the EIS. The prime contractor, CH2MILL Engineers Inc., has no current or pending contracts nor will they engage in future contracting with either PET or BNSF in the joint-applicants' proposed project. During the execution of scope under contract, the required disclosure and subsequent judgment of potential conflict by the Agencies, as outline above, will be required for any pending contracts or negotiations with CH2MILL Engineers Inc.’s and PET or BNSF. In Section 3.13 of the RFP this Consultant and subcontractors were required to disclose any current or expected future contractual relationships with the following entities:

- PET including parent company SSA Marine Inc.
- BNSF
- Local Indian Tribes
- Federal agencies with trustee status for marine or near-shore resources
- State agencies with trustee status for marine or near-shore resources
- Environmental NGOs.

Consultant submitted its Disclosure Statement in Section 3 of its proposal. This statement is also included in this contract as Exhibit D.
Please see the attached language that has been agreed upon by the County and CH2M HILL. This will be reviewed this evening at Council and signed by the Executive as appropriate.

Thanks,

Tyler
36.2 **Conflict of Interest:**

If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Agencies’ interest in developing an EIS that is unbiased, fair and impartial, then the Consultant shall immediately notify the County of the conflict. The notification to the County shall be made with sufficient specificity to enable the County, Department of Ecology and the U.S. Army Corps of Engineers (for NEPA purposes) to make an informed judgment as to whether or not the EIS preparation may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

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- BNSF
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- Federal agencies with trustee status for marine or near-shore resources
- State agencies with trustee status for marine or near-shore resources
- Environmental NGOs.

Consultant submitted its Disclosure Statement in Section 3 of its proposal. This statement is also included in this contract as Exhibit D.
Yes, there is a report on the presentation this evening at full council.

Thanks,

Tyler

-----Original Message-----
From: Jeremy Schwartz <jschwartz@pointrobertspress.com>
To: Schroeder, Tyler <Tschroed@co.whatcom.wa.us>
Sent: 6/5/2012 4:49:57 PM
Subject: Regarding CH2M Hill Contract, Jeremy Schwartz from The Northern Light

Hi Tyler,

This is Jeremy Schwartz, the reporter from The Northern Light newspaper you spoke with yesterday. Is there any comment you can offer on the county council finance committee's decision to not pass the CH2M Hill contract on to the full council this evening? What happens now? Will you still be presenting to the full council on the contract this evening?

Thanks in advance for any reply.

Sincerely,

Jeremy Schwartz
jschwartz@pointrobertspress.com
Twitter: http://twitter.com/TNLreporter

The Northern Light
225 Marine Drive, Ste. 200
Blaine, WA 98230
Ph: (360) 332-1777 ext. 208
Fx: (360) 332-2777
www.thenorthernlight.com
Please see the attached language that has been agreed upon by the County and CH2M Hill. This will be reviewed this evening at Council and signed by the Executive as appropriate.

Thanks,

Tyler
36.2 **Conflict of Interest:**

If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Agencies’ interest in developing an EIS that is unbiased, fair and impartial, then the Consultant shall immediately notify the County of the conflict. The notification to the County shall be made with sufficient specificity to enable the County, Department of Ecology and the U.S. Army Corps of Engineers (for NEPA purposes) to make an informed judgment as to whether or not the EIS preparation may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

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- PIT including parent company SSA Marine Inc.
- BNSF
- Local Indian Tribes
- Federal agencies with trustee status for marine or near shore resources
- State agencies with trustee status for marine or near shore resources
- Environmental NGOs.

Consultant submitted its Disclosure Statement in Section 3 of its proposal. This statement is also included in this contract as Exhibit D.
John,

Attached is a copy of the proposed language for council tonight.

Thanks,

Tyler
36.2 **Conflict of Interest:**

If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Agencies’ interest in developing an EIS that is unbiased, fair and impartial, then the Consultant shall immediately notify the County of the conflict. The notification to the County shall be made with sufficient specificity to enable the County, Department of Ecology and the U.S. Army Corps of Engineers (for NEPA purposes) to make an informed judgment as to whether or not the EIS preparation may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

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- □ BNSF
- □ Local Indian Tribes
- □ Federal agencies with trustee status for marine or near shore resources
- □ State agencies with trustee status for marine or near shore resources
- □ Environmental NGOs.

Consultant submitted its Disclosure Statement in Section 3 of its proposal. This statement is also included in this contract as Exhibit D.
Rescheduling it works for me. Let's do Thursday or Friday so that I have a day or so before discussing the contracts.

Thanks

-----Original Message-----
From: "Kelly, Alice (ECY)" <AKEL461@ECY.WA.GOV>
To: Schroeder, Tyler <Tschroed@co.whatcom.wa.us>
To: Perry, Randel J NWS <Randel.J.Perry@usace.army.mil>

Sent: 6/5/2012 11:43:26 AM
Subject: re-schedule co-lead conf call June 6?

Hi Randel and Tyler,

Can we re-schedule our co-lead conference call for this week? I have a conflict.

I propose:
Weds 11:00 a.m.
Thursday anytime from 11 to 4
Friday anytime

Or, ya'll can chat without me.

Alice
Thanks for the response back. I will check in with you tomorrow.

--- Original Message ---
From: "Lynch, James M." <jim.lynch@klgates.com>
To: Schroeder, Tyler <Tschroed@co.whatcom.wa.us>
To: Ari.Steinberg@SSAMarine.com <Ari.Steinberg@SSAMarine.com>
Sent: 6/5/2012 5:58:41 PM
Subject: RE: Contract changes

Thanks Tyler. I am still reviewing this change with BNSF and I do not have their formal consent to this change yet. Perhaps we can touch base on this tomorrow.

From: Tyler Schroeder [tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 5:11 PM
To: Lynch, James M.; Ari.Steinberg@SSAMarine.com
Subject: Resend - PDF copy of Contract changes

Please see the attached language that has been agreed upon by the County and CH2M HiLL. This will be reviewed this evening at Council and signed by the Executive as appropriate.

Thanks,

Tyler

---
To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

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From: Tyler Schroeder
To: jim.lynch@klgates.com
Date: 6/5/2012 6:15 PM
Subject: Re: Contract changes

I am around tomorrow, between 10 and noon works best.

Thanks,

Tyler

-----Original Message-----
From: "Lynch, James M." <jim.lynch@klgates.com>
To: Schroeder, Tyler <Tschroed@co.whatcom.wa.us>
Sent: 6/5/2012 6:12:04 PM
Subject: Re: Contract changes

Are you around?

This message sent from my Blackberry.

Jim Lynch, Partner
KL Gates LLP
Direct (206) 370-6587
Cell (425) 463-8396

----- Original Message ----- 
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us] 
Sent: Tuesday, June 05, 2012 09:02 PM
To: Lynch, James M.
Subject: Re: Contract changes

Thanks for the response back. I will check in with you tomorrow.

tyler

-----Original Message-----
From: "Lynch, James M." <jim.lynch@klgates.com>
To: Schroeder, Tyler <Tschroed@co.whatcom.wa.us>
To: Ari.Steinberg@SSAMarine.com <Ari.Steinberg@SSAMarine.com>

Sent: 6/5/2012 5:58:41 PM
Subject: RE: Contract changes

Thanks Tyler. I am still reviewing this change with BNSF and I do not have their formal consent to this change yet. Perhaps we can touch base on this tomorrow.

From: Tyler Schroeder [tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 5:11 PM
To: Lynch, James M.; Ari.Steinberg@SSAMarine.com
Subject: Resend - PDF copy of Contract changes

Please see the attached language that has been agreed upon by the County and CH2M HiLL. This will be reviewed this evening at Council and signed by the Executive as appropriate.

Thanks,
To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

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Yes, Whatcom County approved the MOA. I will make sure that the MOA is signed shortly and sent back to the parties. Also, the contract was passed 7-0, with some changes that we will need to discuss at our next conference call.

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA 98225

>>> "Kelly, Alice (ECY)" <AKEL461@ECY.WA.GOV> 6/6/2012 8:35 AM >>>

Did Whatcom County sign the MOA yesterday as scheduled?
John,

Yes, the County is required to have agreement from those agencies on the length of time for scoping (120 days). I have been in contact will USACE and DOE, this morning, in regards to the 120-day minimum scoping period. The Co-Lead agencies will be reviewing any legal requirements or other state and federal requirements in regards to a 120-day scoping period.

I will also be working with CH2M HiLL on the changes agreed upon by Council. I anticipate that CH2M HiLL will be in agreement to the Council changes.

I hope this provides some clarity.

Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> "Stark, John" <john.stark@bellinghamherald.com> 6/6/2012 9:15 AM >>>
Hi Tyler--

Just got off the phone with Sam Crawford, who filled me in on Tuesday council action on the CH2M Hill contract.

Sam noted that the council's changes--most notably the 120-day minimum scoping period -- would need approval by CH2M Hill as well as ACE and DoE.

Will this be a problem? As soon as you find out, I'd appreciate an update as soon as you can manage it. Thanks for your patience.

*John Stark, Reporter*
The Bellingham Herald and TheBellinghamHerald.com
1155 N. State St., Bellingham, WA 98225
*Voice: (360) 715-2274*
Fax: (360) 756-2826
E-mail: john.stark@bellinghamherald.com
Visit us at www.bellinghamherald.com
From: Tyler Schroeder
To: Amy Keenan
Date: 6/6/2012 1:32 PM
Subject: Fwd: (Media) Gateway Pacific Terminal - City of Everett a party of record for SEPA?

Could you look into this?

Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> Michael Whitney <michael@snoho.com> 6/5/2012 12:12 PM >>>
Hello Mr. Schroeder,

My name is Michael Whitney and I am a reporter with the Everett Tribune newspaper.

I would like to check with you whether the City of Everett has requested to be a party of record regarding the SEPA analysis of the Gateway Pacific Terminal and if the city has sent any material to your office regarding this.

Could you please let me know by Thursday?

Truly,
Michael

Michael Whitney
Reporter, Everett Tribune
(360) 568-4121
Jim and Ari,

I have been working with CH2M Hill on the updates to their contract. I will forward you on a copy of that in a following email. I would like to schedule time tomorrow to discuss the changes that have been incorporated. Are you both available 9:15 am tomorrow for a call?

Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> "Lynch, James M." <jim.lynch@klgates.com> 6/7/2012 3:33 PM >>>

Tyler, any update on status of revised K?

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 6:15 PM
To: Lynch, James M.
Subject: Re: Contract changes

I am around tomorrow, between 10 and noon works best.

Thanks,

Tyler

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

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message is prohibited. If you have received this e-mail in error, please contact me at jim.lynch@klgates.com.
From: Tyler Schroeder  
To: Ari.Steinberg@SSAMarine.com 
CC: skip.kalb@bnsf.com,jim.lynch@klgates.com 
Date: 6/7/2012 5:05 PM 
Subject: RE: Contract changes 

Ari,

Let's start at 9 am. Does anyone have a conference call #? If not, I can call you both and connect the calls.

Tyler

Tyler R. Schroeder  
Planning Manager  
Phone: (360) 676-6907 ext. 50202  
Fax: (360)738-2525  
Email: Tschroed@co.whatcom.wa.us  
Address:  
Whatcom County Planning and Development Services  
5280 Northwest Dr.  
Bellingham, WA  98225  

>>> Ari Steinberg <Ari.Steinberg@SSAMarine.com> 06/07/12 4:57 PM >>>

Tyler,

I am available for a call any time tomorrow morning until 9:45a. If the call will take more than a half hour could we start a little earlier than 9:15?

Ari

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]  
Sent: Thursday, June 07, 2012 3:53 PM  
To: James M. Lynch  
Cc: Ari Steinberg  
Subject: RE: Contract changes 

Jim and Ari,

I have been working with CH2M Hill on the updates to their contract. I will forward you on a copy of that in a following email. I would like to schedule time tomorrow to discuss the changes that have been incorporated. Are you both available 9:15 am tomorrow for a call?

Thanks,

Tyler

Tyler R. Schroeder  
Planning Manager  
Phone: (360) 676-6907 ext. 50202  
Fax: (360)738-2525  
Email: Tschroed@co.whatcom.wa.us  
Address:  
Whatcom County Planning and Development Services  
5280 Northwest Dr.  
Bellingham, WA  98225
Tyler, any update on status of revised K?

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 6:15 PM
To: Lynch, James M.
Subject: Re: Contract changes

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Thanks,

Tyler

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I will call in at 9:15

Sorry for the delay.

Tyler

-----Original Message-----
From: Tyler Schroeder
Cc: <skip.kalb@bnsf.com>
Cc: <jim.lynch@klgates.com>
To: <Ari.Steinberg@SSAMarine.com>
Sent: 6/7/2012 5:05:36 PM
Subject: RE: Contract changes

Ari,

Let's start at 9 am. Does anyone have a conference call #? If not, I can call you both and connect the calls.

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

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Ari

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Sent: Thursday, June 07, 2012 3:53 PM
To: James M. Lynch
Cc: Ari Steinberg
Subject: RE: Contract changes

Jim and Ari,

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Thanks,

Tyler

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5280 Northwest Dr.
Bellingham, WA  98225

>>> "Lynch, James M." <jim.lynch@klgates.com> 6/7/2012 3:33 PM >>>

Tyler, any update on status of revised K?

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 6:15 PM
To: Lynch, James M.
Subject: Re: Contract changes

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Thanks,

Tyler

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Ari,

Let's start at 9 am. Does anyone have a conference call #? If not, I can call you both and connect the calls.

Tyler

Tyler R. Schroeder
Planning Manager
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Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Thursday, June 07, 2012 3:53 PM
To: James M. Lynch
Cc: Ari Steinberg
Subject: RE: Contract changes

Jim and Ari,

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Thanks,

Tyler

Tyler R. Schroeder
Planning Manager
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225
Tyler, any update on status of revised K?

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, June 05, 2012 6:15 PM
To: Lynch, James M.
Subject: Re: Contract changes

I am around tomorrow, between 10 and noon works best.

Thanks,

Tyler

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Barbara,

Working documents need to be part of the public record. In regards to the Gateway Pacific Terminal or other projects, only approve them if all communications are part of the public record. We have a right to know what is going on in our county.

Thank you

Regards,

Paul Orlowski

The Refining Community: CokingCom CatCrackingCom SulfurUnitCom

360.966.7251

Refining-Community
Pete,

Working documents need to be part of the public record. In regards to the Gateway Pacific Terminal or other projects, only approve them if all communications are part of the public record. We have a right to know what is going on in our county.

Thank you

Regards,

Paul Orlowski

The Refining Community: CokingCom CatCrackingCom SulfurUnitCom
360.966.7251

Refining-Community
Kathy,

Working documents need to be part of the public record. In regards to the Gateway Pacific Terminal or other projects, only approve them if all communications are part of the public record. We have a right to know what is going on in our county.

Thank you

Regards,

Paul Orlowski

The Refining Community: CokingCom CatCrackingCom SulfurUnitCom

360.966.7251

Refining-Community
Carl,

Working documents need to be part of the public record. In regards to the Gateway Pacific Terminal or other projects, only approve them if all communications are part of the public record. We have a right to know what is going on in our county.

Thank you

Regards,

Paul Orlowski

The Refining Community:  CokingCom CatCrackingCom SulfurUnitCom

360.966.7251

Refining-Community
From: "Paul Orlowski" <paul@coking.com>
To: <scrawfor@co.whatcom.wa.us>
CC: <council@co.whatcom.wa.us>
Date: 6/2/2012 10:40 AM
Subject: Working documents need to be public record

Sam,

Working documents need to be part of the public record. In regards to the Gateway Pacific Terminal or other projects, only approve them if all communications are part of the public record. We have a right to know what is going on in our county.

Thank you

Regards,

Paul Orlowski

The Refining Community: CokingCom CatCrackingCom SulfurUnitCom

360.966.7251

Refining-Community
Ken,

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Thank you

Regards,

Paul Orlowski

The Refining Community: CokingCom CatCrackingCom SulfurUnitCom

360.966.7251

Refining-Community
From: "Paul Orlowski" <paul@coking.com>
To: <bknutzen@co.whatcom.wa.us>
CC: <council@co.whatcom.wa.us>
Date: 6/2/2012 10:41 AM
Subject: Working documents need to be public record

Bill,

Working documents need to be part of the public record. In regards to the Gateway Pacific Terminal or other projects, only approve them if all communications are part of the public record. We have a right to know what is going on in our county.

Thank you

Regards,

Paul Orlowski

The Refining Community: CokingCom CatCrackingCom SulfurUnitCom
360.966.7251

Refining-Community
From: David Hopkinson <dh6613@gmail.com>
To: <jlouws@co.whatcom.wa.us>, <council@co.whatcom.wa.us>, <Tschroed@co.what...
Date: 6/4/2012 10:15 AM
Subject: EIS Contract

Please alter the contract for the work and scope of the EIS for Cherry Point in the following ways:

- 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)

- Scoping meetings need to be held throughout the state -- the contract should commit to meetings outside Whatcom County

- Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant; ensure a fair environmental review process.

- Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

- When the applicant is involved in a meeting or a review of work or work products, the public is provided with equal opportunity to participate.

Thank you,

David Hopkinson
1446 Franklin, B
Bellingham, Washington 98225
dh6613@gmail.com
360-441-7639
June 4, 2012

Dear Mr Louws, Whatcom County Council, Jeannie Summerhays, and Randel Perry:

In regard to the proposed coal port at Cherry Point and agreements in the contract that sets the work and schedule for EIS scoping:

- Please allow 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July).

- Please hold scoping meetings throughout the state, not just in Whatcom County.

- Please remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.

- Please ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public.

Thanks so much for considering these comments.

Sincerely,

Lee First
1814 W North Street
Bellingham, WA
98225
I agree with 99% of David Stalheim’s letter of June 3 (https://docs.google.com/a/bellinghamherald.com/file/d/0ByRbnb53t3dnMTdoeUZYMDVSeEU/edit?pli=1), recommending changes to the CH2M contracts. I would broaden the recommendation for locations of scoping hearings, however. SEPA provides:

In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries.... WAC 197-11-060(4)(b).

It is arbitrary to consider rail impacts only on Washington communities given the enormous reasonably foreseeable cumulative impacts on communities in the Powder River Basin given the other 5 terminals currently proposed in Oregon and Washington.

But I completely agree otherwise with David's recommendations, particularly regarding the need for a 120-day scoping period. In some cases, the public may need to obtain documents through public records requests to understand an issue about which they wish to comment, or to locate supporting documentation. This can take 60 days.

I find the notion that documents would be shared with the proponents (SSA and BNSF) and not the public, and that there will be communications with the proponents and the consultant to which the public is not privy, particularly untenable.

Thank you very much for your consideration.

Terry J. Wechsler
304 Morey Ave.
Bellingham, WA 98225
360-656-6180 (r), 541-913-5976 (c)
From: Bob Aegerter <boba@openaccess.org>
To: <council@co.whatcom.wa.us>
Date: 6/4/2012 12:10 PM
Subject: Amendments to proposed contract with EIS consultant CH2M - Hill

Please defer consideration of the proposed contract with EIS consultant CH2M - Hill to give adequate time for county staff and attorneys to adequately review and recommend needed changes.

Thank you,

Bob Aegerter
78 North Point Drive
Bellingham WA 98229-7931
360-671-2652
I agree with the letters of David Stalheim
and Terry Wechsler, recommending changes to the CH2M contracts.

In particular, I concur with Ms. Wechsler's request to use a broad interpretation of the appropriate
coverage of the scope. As she notes, Washington law provides:

In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's
impacts only to those aspects within its jurisdiction, including local or state boundaries....
WAC 197-11-060(4)(b).

Therefore, given the other 5 terminals currently proposed in Oregon and Washington, I too stress that it is
arbitrary to consider rail impacts only on Washington communities in light of the enormous reasonably
foreseeable cumulative impacts all along the rail lines utilized from the Powder River Basin.

I also completely agree with Mr. Stalheim's recommendation for a 120-day scoping period. As noted by
Ms. Wechsler, the public will almost certainly need to obtain documents through public records or other
requests to understand an issue about which they wish to comment, or to locate supporting
documentation for their comment. Obtaining such documents can easily take 60 days, which leaves no
time for analysis and proper reference or inclusion.

Further, I agree that it is completely unacceptable - and contrary to the intent, if not also the letter, of the
law - that documents or other supporting material would be shared with the proponents (SSA and BNSF)
and not the public, and that there could be communications between the proponents and the consultant to
which the public is not privy.

Thank you very much for your consideration.

Laurence W. Brown
37 Deer Run Lane
Bellingham, WA 98229

(cell) 240-383-7077
Dear County Council:

I read David Stalheim's comments and his letter to you yesterday. I agree with his recommendations and will be interested to see how the Council votes on these contracts and if they make recommendations that protect the interests of all the citizens the Council represents. I believe that the EIS is designed to protect the economic, social and environmental aspects of Whatcom County from proposed projects with known and unknown negative impacts. I do not understand how the Applicant can have over a year to influence the creation of the scoping contracts and the public that the EIS protects has such a limited time. From the facts that there are Joint leads for this process and the call for a PEIS and HIA, the scope of this project is much larger than just Whatcom County. Scoping meetings should be held in the entire impact area and by the large scope of this project will require longer than sixty days to do the EIS correctly. I agree with the following proposed changes:

* 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
* Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
* Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
* Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

Thank you for your consideration. I look forward to seeing how responsive the Council is to public concerns.

Sincerely,

Vincent Matteucci

mailgate.hinet.org made the following annotations

---------------------------------------------------------------------
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---------------------------------------------------------------------
Let me expand my previous cryptic comments.

I started by referring to the state level to the behind-closed-doors meetings that have been going on for at least 2 years between the agencies and project proponents: SSA, BNSF, Ecology, DNR, DFW, etc. These have been under the aegis of the Office of Regulatory Assistance, originally, then transitioned into the Multi-Agency Permitting team.

SOME of the notes of those meetings are "publicly available" if you wish to give your name and sign up for a secure password at SecureAccess Washington. How many aren't available? No one knows. Why the password/account protection? No one knows.

They also have been reviewing the legal issues (according to MAP team notes - Gateway Pacific Multi-Agency Permit Team) around being allowed to have secret interagency communications to discuss the issues.

So there is very little actual transparency at the state level.

Before we head into the GPT or other projects at our county level, I wanted to give my opinion on having open communication and documentation.

The super secretive MAP Team process is now sanctioned by Whatcom County in these agreements.

1. "Work products" will be shared amongst the "team", which includes the applicant. These "work products" will likely be claimed as exempt from public disclosure under the Public Records Act and Freedom of Information Act.

2. "Team kick-off" meetings will include the applicant, and the public will only be provided meeting minutes "limited to subject topic issues and action items and/or key direction or decisions"

3. The project scope will commence in April (today is June 4th), and the scoping meetings will be done by the end of July.
Whenever the applicant is involved in a meeting or review of “work products”

THE PUBLIC HAS AN EQUAL OPPORTUNITY TO PARTICIPATE

This blog <http://getwhatcomplanning.blogspot.com/>
(http://getwhatcomplanning.blogspot.com/) gives a more detailed explanation.

Paul Orlowski
1410 Lowe Ave
Bellingham 98229
360.441.1214

From: Paul Orlowski [mailto:paul@coking.com]
Sent: Saturday, June 02, 2012 10:40 AM
To: 'council@co.whatcom.wa.us'
Subject: Working documents need to be public record

Working documents need to be part of the public record. In regards to the Gateway Pacific Terminal or other projects, only approve them if all communications are part of the public record. We have a right to know what is going on in our county.

Thank you

Regards,
Paul Orlowski

The Refining Community: CokingCom CatCrackingCom SulfurUnitCom
360.966.7251
Refining-Community
County Council Members,

As a citizen of Whatcom Co., I would like to see 120 days to comment on the scope of the EIS for the coal terminal at Cherry Point. More time is needed for such a large project.

Regards,
Chuck Holtorf
Hello, elected officials and staff:

I urge you to adopt the following changes and additions to the agreement being considered for the EIS consultant:

120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
Scoping meetings need to be held throughout the Northwest to include consideration of the environmental and health impacts from the transportation of the coal from the source

Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant.

Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public
Ensure ALL costs of the EIS are covered by the applicant.

Thank you,

Cindy Franklin
520 Ridgeway Drive
Bellingham, WA 98225
Dear Council members;

I am writing to ask that you make sure that the scoping process for the application by Gateway Pacific be extended to 120 days instead of 60. I also ask that you make sure the process is transparent and that records and meetings will be subject to public review. I think it is important to address the conflict of interest provisions in the contract and the bias towards the applicant. In addition please make sure the County is fully compensated for all costs.

Thank you for assuring that the public health and safety will be protected and not steam-rolled by large corporate interests.

Sincerely,

Lindy Early-Rosen

--

Alan Rosen alanrosenfurniture.com (360) 758-7452
Dear County Council Board,

Please carefully consider the public interest as you proceed with the process of hiring this firm for the environmental review of the Cherry Point terminal. The process since it involves so many aspects needs to be the 120 days for the scooping process and to make sure all meetings are open to the public. Of course, any conflict of interest should be investigated and no public monies should be used.

Thank you for considering these issues since this is the most important issue for the environment and the health and safety of our community.

Sincerely,

Judith Akins
2156 E Birch St.
Bellingham, WA 98229
Dear Whatcom County Executive, Whatcom County Council Members, Mr. Schroeder, Ms. Summerhays, Mr. Perry and Ms. Kelly,

At the Whatcom County Council meeting on Tuesday June 5, the Council is being asked to review and take action on several contracts for the Gateway Pacific Terminal project. In its review of those contracts, I respectfully request that the Council vote to approve the following suggested revisions to those contacts:

- Provide 120 days to comment on the scope of the EIS -- not the 60 days as provided in the pending contract.
- Provide an updated schedule for scoping, since the current target dates are already out of date. The Contract should not be approved until an updated schedule is provided.
- Scoping meetings need to be held throughout the state, and impacted Oregon communities and all the way to Powder River Basin -- the contract doesn't commit to meetings outside Whatcom County. Scoping hearings must occur all the way back to the PRB.
- "In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries...." WAC 197-11-060(4)(b).

The Contract should require that the scoping meetings will be located in areas impacted by this project. Given the breadth of the project, and given that various State Agencies (both Oregon and Washington) have requested Programmatic and Comprehensive Environmental Impact Statement (under NEPA), there should be as many scoping meetings as necessary to provide opportunity to the impacted communities. In addition, those scoping meetings should be held over the entire geographic area impacted to obtain input from all impacted communities.

Suggestions for meeting places include all of the following:

a. Those communities affected by shipping of the coal from the west coast (San Juan Islands, with meetings on each of the larger islands served by ferries); and

b. Those communities affected by increased rail traffic, mining, coal storage (including but not limited to Seattle, Vancouver, Spokane, Powder River Basin, and Portland, Oregon); and

c. Whatcom County (including not only Bellingham but also communities along Highway 9 as well as Lynden and Custer) which are impacted by the above impacts.

Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. Conflict of Interest provisions should be determined by standards established by rule of law, not by contract. This ensures a fair
environmental review process. The current contract definition is limited and would not include all possible conflicts of interest. Ensure all records are accessible to the public -- "Work products" provided to the applicant's team shall be made available to the public and not be exempt from disclosure under the Public Records Act. Ensure that all Meetings are public to ensure that the process is open and transparent, or that recordings thereof are immediately publicly available:

Under the pending contract, "Team kick-off" meetings would include the applicant, and the public will only be provided meeting minutes "limited to subject topic issues and action items and/or key direction or decisions". However, such meetings should be available to the public and include observers and interested parties and other public agencies. Also, the proposed minutes merely would provide an outline of topics, and would fail to disclose substance, including detailed discussion on changing the Scope of Work; the public should instead have either a recording by DVD of the actual meeting (similar to the recording of County Council sessions), or be part of that process.

Thank you for your consideration of my concerns and requests for revisions to these very important contracts.

Sincerely,
Amy L. Mower
PO Box 2004
Maple Falls, WA 98266
I am writing to express concern about certain aspects of the proposed contract with CH2M Hill as the EIS consultant for the GPT permit application.

My primary concern relates to what appear to be severe limits on the extent of public participation that will be allowed during the scoping process.

The Scope of Work provides for no more than 6 public meetings, each up to 3 hours in length. Considering that scoping meetings should be held at several locations outside Whatcom County, such as the San Juan islands, Spokane, Seattle, and Montana, we may be left with as few as 2 scoping meetings in Whatcom County.

This is not a serious attempt to facilitate public participation.

I request that, prior to approval, the contract should amended to reflect the following items:

- All interested parties will have the opportunity to provide information on their concerns, in person, to the people who will then be conducting the scoping work. No person should be stopped from providing their in-person comments because "time is up." As many meetings as required should be scheduled.

- The public comment period should be at least 120 days in duration and potentially longer, given the intense public interest in the proposal.

- If a significant volume of written comments is still being received as the end of the public comment period approaches, then the public comment period should be extended as long as required. Given the fact that the applicant was granted several extensions on their schedule, the public deserve at least the equivalent consideration.

This is not a football game, where it is over once the whistle blows. The end of this legally required process should only occur when all reasonably available public input has been acquired.

While I understand that the agency team could potentially amend the contract once work starts, the initial contract serves as a key baseline from which all changes are measured. Why start with something that is known to be broken on the theory that it can be repaired later?

I urge that the agencies and the Whatcom County council should require that the proposed contract should be fixed, before approval, so that it provides a full opportunity for public participation.

--
James Wells
We shall not participate in our own destruction
101 Reasons to be Concerned About Coal
Export<http://www.dailykos.com/story/2012/05/02/1088274/-101-Reasons-to-be-Concerned-About-Coal-Export>
On Refusing to be Rounded Out of
Existence<http://www.dailykos.com/story/2012/05/21/1086945/-On-refusing-to-be-rounded-out-of-existence>
To all of you with the power to do something about this:

Please put these points into your final contract with CH2M Hill for the scoping for the EIS regarding the Terminal at Cherry Point. Without these changes, the whole investigation takes on a one-sided investigation and one that will never satisfy the public, the group the EIS is supposed to protect.

* Increase the period for comment on the scope of the EIS to 120 days -- not the 60 days in the contract (due at end of July)
* Scoping meetings must be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
* Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
* Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public
I've been reading some of the criticisms of the contracts and agreements that the county will be asked to approve and sign tomorrow, regarding the GPT terminal.

I find it disturbing that there seems to be a continued lack of concern in regard to protecting the interests of the residents of Whatcom County, who will be most heavily impacted by this project.

The contracts, as written, protect only the applicants, the developers of the GPT project, and make no attempt to protect or give any regard at all to the potential negative impacts of this project. Who will the contractor, CH2Mhll, be working for, GPT, or the people of Whatcom County? With whom is there a potential conflict of interest? Surely not with the council or the people of Whatcom County, but that is how the contract reads.

This process needs to be more open, with more communication between the planners and the people, with a longer scoping period of 120 days, rather than the 60 days that the applicant prefers. The applicant has been working with oversight agencies for over a year on this project, while we, the public, were told to "wait until the permit is submitted". Well, the permit was submitted and we are still being told to wait. We need time to digest and discuss the information as a community, and we need full access to the discussions between the developers and the county planners. No more secret meetings and discussions. The GPT developers had their time, now let us have ours.

As I have stated before, the GPT project should be subjected to the BAP, BAT standards. Shippers of coal should be held to the same high standards as the shippers of oil. Ports and terminals all along the west coast are moving toward BAP, BAT standards and the GPT project at Cherry Point should be no exception. The federal EPA refuses to regulate or even monitor coal dust in the air, that will eventually poison the lakes, streams, the Sound, our homes and farms and school yards. The only way to make sure that someone is looking out for the people of Whatcom County is to hold GPT to the BAP, BAT standards.

It is unconscionable consider approving this project under any lesser standards of protection. This coal terminal presents few positive impacts for Whatcom County, the least that the approval agencies can do to make sure that the negative impacts are minimized by holding the GPT developers to the BAP, BAT standards.

Donna D. Shaw
Dear Council Members:

I would like to say that having carefully read David Stalheim's letter to the Council concerning the Contracts and Agreements for the Gateway Pacific Terminal Project; that I am in complete agreement with his analysis and suggestions. I believe his suggestions are important to protect the rights of community members. The EIS process is definitely to PROTECT THE PUBLIC'S INTEREST NOT THE APPLICANT'S INTEREST. I urge you to implement the changes and language he suggests.

I also wish to say that having come here after living many years in Southwestern Virginia - where long long dirty smelly coal trains inconvenienced and most likely harmed the public health day after day, year after year - your paramount responsibility is to protect the health and well-being of community residents. Bias in favor of said applicant SHOULD NOT BE TOLERATED!

Respectfully,

Carolyne Pion
2220 South St.
Bellingham, WA 98225
On behalf of SafeGuard the South Fork, I am writing to comment on the contract that sets the work and schedule for the EIS scoping for GPT.

In particular, I am concerned that in the contract there are only 60 days identified for public comment on the scope of the EIS. Given that SEPA requires the EIS to consider direct, indirect and cumulative impacts, it seems logical that the scoping period would need to be held throughout the state and over longer periods of time. Given that currently the scoping period will commence this summer, a longer period of time for scoping is necessary because of how seasonal work may effect important populations from participating. For example, those employed by the fishing industry are fishing. Farmers are working over 12 hour days. Many teachers travel during the summer months, and parents have less free time than during the school year. Furthermore, most of the students at WWU will be away.

One-sided conflict of interest provisions should also be removed from the contract and clarity should be made re: the consultant works for the public. Aligned with this, the applicant should not be afforded any records, meetings or privileges not afforded to the public.

Thank you for your time and consideration to ensuring that the EIS process for GPT is accessible and fair to the public.

Nicole Brown
Ladies and Gentlemen:

The purpose of this email is to request that you implement the changes to the deal made by the Whatcom County Planning Department with the promoters of the plan to transfer coal through Whatcom County to foreign customers for the preparation of an environmental impact statement outlined in David Stalheim’s letter to Jack Louws, the Council, and others.

I am not an attorney and am not qualified to practice law. My strong support for the changes recommended by David Stalheim is based on my experience as a contractor for many state government projects. As a contractor, my firm always referred contracts to attorneys in our national office who would painstakingly negotiate the terms of the contract in the interest of the firm. At first reading, the provisions cited by Stalheim show no sign of having been approved by a qualified legal counsel representing the people of Whatcom County.

Please, do not offer the excuse that the County cannot afford a competent review. This salient issue has motivated many people to volunteer many hours to fight for the interests of Whatcom County citizens. Among the many people who are already spending their days working on this issue, there are attorneys who would be pleased to assist with negotiating a contract that in the interest of the people who live and make their living in this community.

Put this deal on hold until it has been properly reviewed by qualified attorneys that represent the people of Whatcom County.

Respectfully,

John Bremer

2604 Kentucky Street

Bellingham, WA 98229

(360) 527-3503
To: County Council and related folks.
RE: Issues for June 5th meeting

I am writing as a concerned citizen watching the process of evaluation and potential planning of the proposed Port at Cherry Point (and the train transport of coal and other products).

My concerns include the scoping process, that should be at least 120 days and should include all areas affected, and all transportation routes including the South Fork Valley. There are many fragile areas along the South Fork of the Nooksack river that need close attention and Environmental study.

Also of concern is the need for transparency during the entire EIS process, to allow public awareness all along the way.

I am also concerned that CH2MHill may have a conflict of interest and/or that the contract may allow conflict of interest to develop in the future by provisions.

The issue of compensation to the County for all costs is important as well.

I am deeply concerned about the impacts to the environment and public health if the proposed plan is approved. The environmental impact of a project such as this one, needs close scrutiny and conscionable review.

Please take steps to assure the public that appropriate and careful evaluation of this project be done to prevent deterioration of our environment!

Thank you for your careful consideration.

Linda Gamrath

t.tlcacme@hotmail.com

PO Box 164 Acme, WA 98220
360 595 2897
I am in complete agreement with the issues in the proposed contract with CH2M Hill as pointed out by David Stalheim, to wit:

a. 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
b. Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
c. Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
d. Ensure all records and meetings are accessible to the public -- the applicant isn't provided any priviledges not afforded the public

Conflict of Interest:
A provision in the contract defines a conflict of interest between just the Consultant and the Applicant. (Read contract here: agenda bill)

A conflict of interest is when a situation arises to undermine the impartiality of someone, in this case CH2M Hill, in the completion of their EIS work. The contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers. The contract is not with the applicant, so defining a conflict with the applicant is totally inappropriate.

In theory, this one-sided provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict..

This provision is simply wrong and needs to be changed!

Lyle Anderson
3723 Pebble Pl
Bellingham, WA 98226
Dear Public Representatives:

I understand that the Whatcom Finance Committee will be discussing, and possibly approving, an agreement regarding the potential Cherry Point coal port terminal. In your considerations, please allow the public as much opportunity to be involved as possible. This public project has an impact on the community, the state, the region and the world and must encourage public discourse. Three things need to be addressed:

- provide 120 days of comments for the scoping period for the EIS
- include comments "for the record" from outside the Whatcom County borders
- designate all meetings involving the parties of interest (Whatcom County government, Contractors and subcontractors to the EIS process) open to public attendance. Do not simply allow meeting notes disseminated after the meetings have occurred.

Thank you for your attention and care in serving the best interest of me and my neighbors.

________________________
Colleen Berg
3391 Southgate Rd.
Bellingham, WA  98226
Dear Whatcom County Council,

I am writing to ask you to please consider two things when refining the contract with H2M Hill.

1. Please mandate a scoping period of 120 days. Considering the size and multi-state impacts, this is reasonable to ensure that all impacted parties have enough time to submit. SSA Marine requested and was granted multiple extensions on their permit application, and the public should be afforded the same level of respect.

2. Please consider a clause that H2M Hill not be allowed to become employed by SSA in the construction of the project. Otherwise, it would represent a major conflict of interest to have a local engineering firm conduct the scoping.

3. Please consider a clause that dictates that all communications between SSA and H2M Hill be made public, to ensure a fair and transparent process.

Thank you for your leadership,

Greg Wolgamot, MD PhD
Please accept the following comments regarding Agenda Item AB2012-068b for June 5, 2012.

It is unfortunate that this agenda item was not more clearly identified. It was difficult to locate this item with the title "Report on presentation regarding Gateway Pacific Terminal project process and recommendations on EIS scoping phase and communication protocol between Whatcom County Planning and Development, U. S. Army Corps of Engineers, Washington State Department of Ecology and CH2M Hill (http://www.co.whatcom.wa.us/council/agendabills/ab2012-068b.pdf)."

Are these items coming back at a later date for approval if the item before you is simply a presentation? Are you allowed to make changes or is the hearing a rubber stamp of actions already taken? Do contracts of this magnitude require council approval? It is not clear to me what exactly is before you today: a presentation, an endorsement request, a need for council approval, or some combination thereof.

If it within the ability of the council, several items of note should be amended or modified in these contracts and agreements. These changes would help to ensure an adequate public process which facilitates the full disclosure of potential environmental impacts and proposes feasible mitigation measures and/or alternatives to substantially avoid or reduce the potential impacts of the GPT project to the Whatcom County, State of Washington, and global environments.

- First, there should be a clear commitment in the contract to a 120 day scoping period to enable adequate public input into what is possibly the most substantial development project in Whatcom County's history in terms of its potential impacts.
- Item 3.6 (page 17 of http://www.co.whatcom.wa.us/council/agendabills/ab2012-068b.pdf) in the Agreement between Whatcom County, Pacific International Terminals, and BNSN Railway for Reimbursement of Costs and Fees (contract number 201205029) should be modified or eliminated. Changes in the scope of work should not occur through private discussions between the applicant, consultant and staff. Such changes should occur in public. The consultant is working on behalf of the public and the environmental review process. Agreements should clarify that information provided to the applicant is public information.
- Item 36.2 (page 33) in the contract with CH2M Hill needs to be modified. It currently states that a conflict of interest exists if the consultant develops an interest that is in conflict with the "applicants" interest. Since the contract is between the County and state and federal agencies, not the applicant, the potential for a conflict of interest would be if the consultant has a conflict with the public's interests, such as by having a financial interest in the applicant or related parties.
- The scope of work should be updated prior to approval or approval
should be based upon all dates being moved two months later since the scope is commencing approximately 2 months after its anticipated April start date (page 38)
- The outreach section of the scope anticipated 20 stakeholder interviews, all held in Whatcom County (page 41). It appears to discount the likely potential effects of the project which will occur along the extended transportation route extending from east of Spokane to the west of the San Juan Islands. The scope should be modified to include interview of key people in Spokane, along the Columbia River, in the Puget Sound region (Tacoma, Seattle, Everett) or other locations likely effected by the potential statewide impacts of the project.
- Scoping meetings for such a project of statewide significance should occur in locations that are accessible to people outside of Whatcom County. The current scope is unclear where meetings might be held (page 43) and does not commit to any meetings outside the county. The consultant team should be required to hold at least one scoping meeting east of the Cascades, one in Seattle and one in the San Juan Islands.
- The consultant should commit to the creation of more than 100 copies of the draft EIS and for more than 5 public hearings on the DEIS (page 51). The contract should commit the consultant to public hearings in the same locations as scoping meetings.

Thank you for the opportunity to provide input into these very important documents which will guide a substantial and controversial public process for the next two or more years.

with kind regards,

**

*Michael Isensee*

5939 Artist Dr.

Ferndale, WA 98248
The Birch Bay Habitat Impact Evaluation Data Form fails to reflect the findings and data gaps from the Fish and Wildlife Assessment, Exhibit E, of the Pilot Study. I urge you to revise the Action Plan with the assistance and expertise of an independent and competent wildlife biologist in order to correct these deficiencies.

The Pilot Study was based on evaluation of multi-group focal species (waterbirds, grassland/marsh birds, areas sensitive birds, mid-sized mammals, pond-breeding amphibians, salmonids, nearshore spawning fish, and shellfish.) The focal species were then evaluated on a range of development stressors to determine metrics-based habitat needs. Stressors included dwelling density, mosaics of habitat, roads and traffic intensity, soil drainage, invasive species such as bullfrogs, cats and dogs, stream temperature, % of vegetation cover, noise and light pollution. Because a metrics based analysis was not completed before the Pilot Study was issued, this needs to be completed before developing an Action Plan. (See Exhibit E of Pilot Study.)

The data form fails to incorporate the focal species and the stressors reviewed in the Pilot Study. Instead, it reflects general site information without a blueprint for interpretation. It is unclear how this form evaluates habitat function without established, quantifiable standards for evaluating and determining appropriate habitat buffers. Will this form be used in protection, development or restoration sub-basins and how will use of this form differ among the sub-basins? This information is not evident from the form.

A site specific determination of connectivity to adjacent habitat fails to reveal the size and extent of a corridor in totality, the type and quality of habitat that is connected, and the diversity of species that could be supported. This is necessary for County wide planning and critical area protection. A data form can not substitute for a comprehensive watershed based analysis.

The request for quantification of impacts on the data form is vague. For example, it references the new CAO chapter in totality, rather than the specific provisions that are applicable. What is the standard for determining “disturbance from roads or highways” or “other human impacts”? This will result in subjective and uneven results. It is not clear how this data form complies with the avoidance criterion of mitigation sequencing.

To protect fly zones, the Pilot Study recommends a .5 miles buffer with more than 80% natural or open habitat, reduced lighting, relocation of tall buildings and towers outside of the flyway air flights, including helicopters, above 500 feet. (Pilot Study, page 75.) However, the data form fails to even consider fly zones, although Birch Bay is part of the Pacific Flyway and provides important habitat for migrating shoreline birds and waterbirds. Nor does the data form appear to consider fish species. There is no mention of open fields, which is required habitat for many Birch Bay bird species. The data form does not require proximity between amphibians and ponds. In other words, the data forms fails to address a wide variety of species and habitat, and thus, is not a reliable assessment tool.
Hi Wendy,

Thank you for sharing Mr. Boggs email. It provides good vindication for our proposed mitigation program by the scientific community. I have attached the Birch Bay Habitat Impact Evaluation Data Form. This was done in response to a request from the Birch Bay ad hoc group, by biologist at ESA and with the assistance of Emily Hirsch at the Conservation District. This form would be filled out by a qualified professional as part of the site assessment report (WCC 16.16.960) whenever there are proposed impacts to buffers. It quantifies the amount of vegetation, habitat features, connectivity, and continuity of the habitat pre and post construction. This tool will go a long way in determining and tracking the loss of function at impact sites that Mr. Boggs and yourself have brought up.

As for the Letter from Department of Ecology, DFW and Ecology were partners in writing the Pilot Study and supported funding its implementation. Ecology has participated in public meetings and provided feedback all along, but this is a local program guided by Whatcom County residents and Planning Commissioners. They agreed to the meeting in April to hear your concerns, but they have not changed their position with respect to supporting the program.

I am sorry you are frustrated with the process, we have gone to great lengths to make this fair, open, and inclusive since beginning. Your great effort is appreciated, especially with respect to tying the code closer to the Pilot Study. This is now well incorporated into the current iteration of the program.

The attached form can also be found here, under Nov 3, 2011 Public Drafts:
http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp

Peter Gill
Natural Resources Division

------------------------------------------------------------------------------
Whatcom County Planning & Development Services
322 N. Commercial Street
Bellingham, WA 98225
360-676-6907 x50263
pgill@co.whatcom.wa.us

------------------------------------------------------------------------------

>>> "Wendy Harris" <w.harris2007@comcast.net> 6/1/2012 10:49 PM >>>
After reading the Agenda Packet for the Natural Resource Committee meeting, I would like to clarify information provided by the Planning Department in its Memo of May 29, 2012 regarding the Birch Bay Watershed Action Plan.

A letter of support from DOE, dated January 12, 2012, was attached to the memo. Subsequent to issuance of this letter, I contacted the author, Gordon White, DOE Program Manager for Shorelands and Environmental Assistance and he agreed that my concerns warranted discussion and explanation.

I also contacted WDFW with my concerns. A meeting to discuss these matters was held between WDFW, DOE, PDS, Whatcom Conservation District, Resources and me. Concerns raised at this meeting have not been resolved, despite efforts by Resources to obtain mutual agreement. Because the attached DOE letter predates this meeting, it is not clear if DOE believes that certain revisions might be prudent.

However, the attached public comments were submitted after the meeting and address the same unresolved issues discussed at the meeting. A relevant letter from George Boggs of the Conservation District, the County’s co-manager in the off-site mitigation fund proposal, has not been included with the PDS Memo, although it notes a potential problem in determining loss of habitat function and suggests using stream modeling assessments. I am attaching this email for your review below.

I would like to express my frustration with the advocacy position adopted by PDS and the great amount of effort that has been necessary from me and Resources to make PDS reconsider appropriate revisions. Because these concerns come directly from the Pilot Study recommendations, PDS should have been more responsive when these concerns were first raised.

Sincerely,

Wendy Harris

----- Original Message -----
Good Morning,

Recently I attended the Conservation and Wetlands Mitigation Banking conference in Sacramento. There were a number of references provided to me that I think are germane to the HMF.


- A watershed approach would improve permit decision making. Wetland functions must be understood within a watershed framework in order to secure the purposes of the Clean Water Act.
- The committee concluded that such a preference for on-site and in-kind mitigation should not be automatic, but should follow from an analytically based assessment of the wetland needs in the watershed and the potential for the compensatory wetland to persist over time.
- Avoidance is strongly recommended for wetlands that are difficult or impossible to restore, such as fens or bogs.

The 2008 DOD Mitigation Rule is also a source of information. While the Mitigation sequence is retained (avoid, minimize, compensate) it establishes a hierarchy for mitigation options. The first is mitigation bank credits and the second is in-lieu fee program credits. On-site and or in-kind permittee responsible mitigation is fourth out of five.

The County appears to be on track with the first two bullets insofar as mitigation sites. If there is a deficiency the HMF methodology it may be that it falls short in analyzing the loss of function of the impacted sites. It may be that by virtue of their location that they are degraded or will degrade over due to their proximity to urban land uses. I don’t know if this is the case but it seems unacceptable to certain of the program detractors. Maybe if reconnoitered folks would feel comfortable with this conclusion. A more cautious approach appropriate for a pilot might be to run a steam assessment.

I learned that a number of USACE districts have developed stream riparian assessments. There has been a lot of steam mitigation banking in Virginia. The Unified Stream Methodology for Use in Virginia can be found at: http://www.deq.virginia.gov/Portals/0/DEQ/Water/WetlandsStreams/USM_PN-01-18-07.pdf It is felt by the USACE that: “We anticipate that the USM will help achieve our agencies’ mutual stream mitigation goals: simplicity of use; production of replicable results; enhancement of program predictability; and protection of the aquatic environment. “

Perhaps if something like this was used to quantify impacts it would be a way to garner enough support to move the pilot forward?

I apologize if you were already familiar with this stuff. I expect that you were because of all the work you have been doing with the agencies. Nevertheless, I would really like to see the HMF move forward and think that a tool like the USM could help.
Let me know if I can do anything.

Cheers

George J. Boggs, JD
Whatcom Conservation District
6975 Hannegan Road
Lynden, WA 98264
W360.354.2035 x 115; C360.815.5342; Fx360.354.4678
www.whatcomcd.org
To City Council Members,

Regarding the upcoming environmental assessment for the Cherry Point coal terminal.

I think the public deserves the following in order to have a fair transparent process:

120 days scoping process, not the 60 in the contract.Make sure the applicant doesn't have undue influence in the process by making records and meetings subject to public review.
Address the inappropriate conflict of interest provisions in the contract, and the bias towards the applicant.Make sure the County is fully compensated for all costs.
Thank you,Nicholas Evergates
Registered Voter in Whatcom County
From: ernie <roserefnet@aol.com>
To: <council@co.whatcom.wa.us>, <bknutzen@co.whatcom.wa.us>, <kkershne@co.wh...
CC: <JLouws@co.whatcom.wa.us>
Date: 6/5/2012 5:35 AM
Subject: Question from the Ferry Crew

Dear Councilmembers,

As you know the crew of the Whatcom Chief has been in contract negotiations with Whatcom County since December of 2010. In this time both sides have bargained in good faith.

However, there are two questions we have for you.
First. Do you have any involvement with contract negotiations regarding the ferry?

Second. What is your opinion on the rule regarding retiree passage, which has been in place since at least 1975?

Thank you for your time.

Ernie Pearson
Master, M/V Whatcom Chief
From: Hannah Sullivan <hsullivan33@gmail.com>
To: "council@co.whatcom.wa.us" <council@co.whatcom.wa.us>
Date: 6/5/2012 7:37 AM
Subject: Coal trains

Please vote NO on the coal trains coming to Bellingham.
Thank you.

Sent from my iPhone
Hello,

The County Council is set to act on hiring CH2M Hill—and the agreements do not protect the public. At minimum we should ask for 120 days scoping process, not the 60 in the contract.

Also, let's make sure the applicant doesn't have undue influence in the process; we can do that by making records and meetings subject to public review. In addition, we need to address the inappropriate conflict of interest provisions in the contract, and the bias towards the applicant. Finally, let's make sure the County is fully compensated for all costs.

Thank you,

David and Geri Turnoy

Eastsound, WA
Dear Whatcom County Council,

I have growing concerns about the contracts and agreements regarding the Gateway Pacific Terminal Project. As a voting senior citizen that stands to be greatly affected by this project, I am concerned that, from the very beginning, it is skewed toward the applicant's interests.

I won't bother to go into the various issues, but I will say that I have read the contract and agreements and am troubled by potential conflicts of interest, the potential lack of transparency and the obvious edge given to the applicant.

This is somewhat understandable since I presume that it is difficult for public figures such as yourself to resist the influence of powerful corporate interests. Gateway has money and influence. I do not. And, for exactly that reason, I count on you to represent my concerns and give me a voice. I expect you to resist that power and influence and, in fact, also represent the those of us on the other side of the Gateway issue. Specifically, those of us that want a thorough vetting, a comprehensive EIS and an outcome that takes much, much more into account than simply the short term benefits that can be provided by wealthy and powerful forces whose interests are much more narrow than those of ordinary citizens in this gorgeous piece of earth we call Whatcom County.

I would appreciate a response.

Thank you for your time.
Leaf Schumann
Deming
From: Council
To: All CM's; gpttoweb@co.whatcom.wa.us
Date: 6/5/2012 9:43 AM
Subject: Fwd: agreement contracts/meeting June5
Attachments: agreement contracts/meeting June5

Please note: Emails are public records subject to public disclosure upon request.
County Council Members,
We share the concerns stated in David Stalheims letter to you dated June 3, 2012 and strongly urge you to make the changes, safeguards for the public's interests and revisions before entering into the contracts and agreements regarding the Gateway Pacific Terminal project.
David and Teresa Anderson
3947 Cliffside Drive
Bellingham, WA 98225
With regard to the Whatcom County Council meeting tonight, June 5th, as a private citizen living in Birch Bay, WA, I recommend that the following be included in any agreement with the consultant that is hired to advise the Council on the EIS for Gateway Pacific Terminal:

a. 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
b. Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
c. Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
d. Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

Your consideration is appreciated.

C. Westland
8293 Fawn Crescent
Blaine, WA 98230
Dear Whatcom County Council members, Mr. Louws, and members of Whatcom County's planning department and the Army Corps of Engineers:

I would like to voice my recommendation with regard to the contract that sets the work and schedule for EIS scoping of the proposed coal port at Cherry Point.

Please, at today’s and tonight’s meetings, which I will be unable to attend, ensure the modification of the contract so that:

-- the scoping process is a minimum of 120 days, not the 60 currently in the proposed contract;

-- remove the clause that effectively allows the applicant to have undue influence in the process by making records and meetings subject to public review;

-- make certain and unquestionable that the County is not to incur any cost for the process, and will be fully compensated for all costs related to the EIS scoping.

Thank you for your time-- and I trust that you will see the correctness and imperative of the above.

Alaine Borgias

1700 McKenzie Ave., Bellingham, 98225
Dear County Executive Jack Louws, Whatcom County Council, Whatcom County Planning Supervisor, Department of Ecology and Army Corps of Engineers,

I am deeply concerned about the proposed contract for CH2M Hill for the consulting job on the EIS and scoping processing.

The agreements set forth in the contract do NOT protect the public. They favor the applicant and this doesn't seem right.

Please refer to the letter from David Stalheim found here: https://docs.google.com/a/bellinghamherald.com/file/d/0ByRbnb53t3dnMTdoeUZYMDVSeEU/edit?pli=1

I am concerned about the public process for this unprecedented GPT project proposal, the largest coal export terminal in North America. The public needs to have a voice in this matter and we need to have a transparent process. 60 days is not adequate for public comment. Please allow for 120 days for the scoping process. Please make all records and meetings subject to public review. This is ESSENTIAL. Please remove all bias towards the applicant. This is a faulty contract.

Please consider the changes noted in David's letter.

Thank you, Jill

Jill MacIntyre Witt
Whatcom County resident
360-201-3093
Dear County Council and Related Parties:

I think you are looking at a contract that is quite biased and not fair to the people of this county. We are regular folks, who do not have fancy lawyers or lots of money. However, our livelihoods are here, we live here, we pay our taxes, and we would like the same rights as the applicant in the coming process. In creating a contract with CH2M Hill, we are asking:

1) 120 days scoping process, not the 60 in the contract. People need the time to handle all the information, understand the process, and participate without rush, anxiety, and ignorance. You folks spend your professional lives doing this work. Give us a little space to learn and respond. This is not a slam-dunk, and you do not want to be accused of ramrod-ing a slipshod process.

2) Please make records and meetings subject to public review. When the applicant is the only party allowed to see records, etc., you are taking away the public's only means to understand and thereby responsibly participate in the process. I believe this is a democratic right. The applicant seems to have undue influence if allowed greater access to information. We the tax payers and the citizens of this county deserve the same opportunities.

3) There seem to be inappropriate conflict of interest provisions in the contract, allowing for the bias towards the applicant. If there is conflict of interest, there will be problems forthcoming. Let's start on an even and honest playing field.

4) Please be sure that the County is fully compensated for all the costs. We are all tightening our belts and working hard. People do not want to find out their tax money is subsidizing corporate interests for a process they initiate for their profit.

Thank you very much for your attention. I hope you will think carefully about these concerns, as the process must be untainted to be believed at all. Sincerely,

Lynne Oulman
Dear Council Members,

I am a concerned Bellingham citizen. I strongly urge that public citizens have equal opportunity to be involved in meetings or reviews of the process involving the possible Coal Terminal at Cherry Point. The MAP Team process should be open to the Public, not just the Applicant. What happens at Cherry Point will vitally affect the citizens here in Whatcom County, and we deserve and ask for the opportunity to be involved as completely as the Applicant.

Also I am DEEPLY concerned that a provision in the contract defines a conflict of interest between CHM2 and the Applicant. The contract is between the consultant and the public, not the Applicant. This provision should be changed for obvious reasons.

Finally, I ask for 120 days for the scoping period - beginning in the future, not the past. This is only fair and logical. The scoping should take place state-wide, as the environmental ramifications of a Coal Terminal WILL be, at least, state-wide.

I look forward to your response. Thank you,
angela Polito

2223 E Birch St.
Bellingham, WA 98229
360-393-2477
Dear officials,

As a resident of Western Washington, I am very concerned about the possible construction of a port for exporting coal in Whatcom County.

I am very concerned that the process in Whatcom County is being rushed, and it seems like it has already been decided. The choice of EIS consultant with such strong ties to the industry confirms the bias toward accepting the port proposal. This exposes your actions to possible litigation.

Promises of increased local jobs are always tempting, however, they never result in the promised numbers of local newly-employed people. Projects like this tend to import workers from outside the area instead.

As someone with family in the San Juan Islands, I am concerned about pollution from coal ships passing through that pristine environment. I am also concerned about pollution from trains in Western Washington.

Coal is full of toxins (remember "black lung"?), and is costly to human health when it is burned. A significant percentage of California smog is now attributed to air pollution from Asia. We cannot send coal to Asia and not expect ramifications to our health here on the western coast of the US. If there was no coal port in Bellingham shipping coal to Asia, the law of supply and demand would cause the cost of coal to remain high for Asia, and they will use less and be forced to come up with other sources of energy. We have our own recent experience of this-- remember how the price of gas has gone up since the disruption of supply from Libya and Iraq. Gas became expensive, and now we are using less.

Once a port is built, it will be costly and difficult to shut it down. We should not be moving toward coal. We should be moving in the opposite direction. There are other ways to supply jobs that do not cause such great harm to people and increased health care costs.

I sincerely hope you have time to read all the comments sent to you before your meeting in only 2 hours.

Sincerely,
Mary Ferm
5062 New Sweden Rd
Bainbridge Is, WA 98110
and member of family with full-time residents in the San Juans.
Dear Mr. Louws and the Council,

Regarding the wording of the contract with CH2M-Hill that you will consider this morning:

When one considers the economic drivers of the project and is charged with making the public aware of them, I presume that CH2M-Hill will equally be charged with investigating negative economic impact of the proposed project. While it may not yet be possible to determine the economic impact on development of the port of Bellingham, it should be feasible to look into the impact on existing businesses. I refer especially to the potential loss of business and tenancy at Squalicum Harbor, including the Bellwether Hotel, TD Curran, Giuseppe’s Restaurant and office spaces, that will lead to the loss of hundreds of existing permanent jobs, not temporary construction jobs. These businesses, as well as those at the Woods Cafe at Boulevard Park and other entities on Bellingham Bay, will be rendered far less desirable because of increased noise and lack of access.

Thank you,
Christine Myers
Elected Officials and Staff,

I have concerns about the three agreements/contracts under consideration regarding the Gateway Pacific Terminal. Specifically, the following items shall be improved:

*The public needs 120 days to comment on the scope of the EIS, not the 60 days in the contract (due at end of July). The schedule in the contract begins April 1st, which is prior to the contract even being signed.
*Scoping meetings need to be held throughout the state, the contract doesn't commit to meetings outside Whatcom County
*Specify a minimum (in addition to maximum) number of scoping meetings to be held.

*Remove one-sided conflict of interest provisions, the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
*Specify that work products will be available to the public and eligible for disclosure under the Public Records Act.
*Specify that all meetings of agencies, the consultant and the applicant will be open to observers including media, interested parties and public agencies, and accessible to the public via video tape and/or audio recording.
*Ensure all records and meetings are accessible to the public, and the applicant is not provided any privileges not afforded the public
*Revise the CH2M Hill contract to ensure the consultant researches alternative drivers that would make the project unworthy of consideration and evaluation.

Remedies to these problems and more are outlined in David Stalheim's document linked below.
https://docs.google.com/file/d/0ByRbnb53t3dnMTdoeUZYMDVSeEU/edit

Sincerely,
Elizabeth Hartsoch
2323 Lynn Street
Bellingham, WA 98225
My wife and I are longterm Whatcom County residents.

We urge you to include the suggestions made by David Stalheim in his June 3 letter regarding necessary changes in the consultant agreement with CH2MILL.

Respectfully,

Jim and Peggy Stewart
I have some concerns related to the agreements being discussed at your 11: AM meeting Tuesday

1. Conflict of Interest:
   A provision in the contract defines a conflict of interest between just the Consultant and the Applicant.
   The contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers. The contract is not with the applicant, so defining a conflict with the applicant is totally inappropriate. In theory, this one-sided provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict.
   This provision is simply wrong and needs to be changed!

2. Meetings Can't be Secret:
   WHENEVER THE APPLICANT IS INVOLVED IN A MEETING OR REVIEW OF "WORK PRODUCTS", THE PUBLIC NEEDS TO HAVE AN EQUAL OPPORTUNITY TO PARTICIPATE. THIS ISSUE IS IMPORTANT TO THE PUBLIC!

Sharon Griemsmann
Dear future-planners,

Please consider carefully during the County Council meeting today regarding hiring CH2M Hill -- the future of our local and global environment is in your hands. Please think big as this may be one of the most important decisions the County makes this century.

As brought to my attention, I would ask that you consider:

* Asking for 120 days scoping process, not the 60 in the contract.

* Making sure the applicant doesn't have undue influence in the process by making records and meetings subject to public review.

* Addressing the inappropriate conflict of interest provisions in the contract, and the bias towards the applicant.

* Ensuring all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public.

* Making sure the County is fully compensated for all costs.

Thank you,
Chris Patterson
Point Roberts
Pearl Follett
2605 Lakeridge Lane
Bellingham, WA98226
pbfollett@gmail.com

Re: Contract Agreement with CH2m Hill.

Do not approve the contract

Dear Council Member,

As a citizen and resident in Bellingham I ask you to not approve the contract with the CH2M Hill Company.

This contract does not contain provisions or a staff of qualified medical doctors to protect the health of the residents of Whatcom County.

Additionally it appears that the people are not protected from a conflict of interest in the review process.

The process needs to be open to public view.

The health impact needs to be addressed. This is not provided for in this contract.

The air quality needs also to be studied. This is not provided for in this contract.

The study time is to short.

Please say No to the CH2M Hill contract.

Sincerely,

Pearl Follett
Please include the attached written testimony in your deliberations today.

In addition to attaching the document to this email, I am pasting it below.

Thank you.

Dan Pike
506 Cypress Road
360-224-7984

Jeannie Summerhays
Northwest Regional Office Director
Department of Ecology
3190 160th Ave. SE
Bellevue, WA 98008
JSUM461@ECY.WA.GOV

Randel Perry
Northwest Field Office
Army Corps of Engineers
1440 10th Street, Suite 102
Bellingham, WA 98225
Randel.j.perry@usace.army.mil

Alice Kelly
Northwest Regional Office
Department of Ecology
3190 160th Ave. SE
June 5, 2012

Dear Elected Officials and Staff:

I am writing in regards to the proposed contracts dealing with the proposed Gateway Pacific Terminal, a facility which, if built as proposed would be the largest facility of its kind in North America. Public agencies are charged with reviewing the broad range of potential negative impacts the proposal could visit on the County, the region, the state, and if it is deemed appropriate, the nation. In fact, your authority allows consideration of impacts outside the United States as you examine the project. While the interests of the public and the applicant have some overlap—e.g., all of us want a better economic situation—examining the environmental, socio-economic and health impacts of this proposal is the role of the public agencies, and not the applicant. As proposed, however, three agreements coming before the Whatcom County Council today require changes to effectively ensure that the public interests are met, and that public confidence in the validity of the process is upheld.

Given the complexities of the contracts you are considering, and the limited opportunities to examine them both by yourselves, and importantly by an engaged public, I request that you delay a decision today for at least two weeks, to allow for greater conversation between the agencies, the proponents, and the public regarding some troubling provisions and omissions. Absent that, former County Planning Director David Stalheim has identified some simple changes to meet these goals which I advocate adopting in toto. Rather than reinvent the wheel, I am simply reiterating, verbatim, Mr. Stalheim’s well-considered and effective suggestions for
fixing these errors. They are as follows:

1. **The EIS process is to protect the public's interest -- not the applicant's interest.**

The environmental review process under the State and National Environmental Policy Acts (SEPA and NEPA) is meant to ensure that the environmental impacts of the proposed development are identified and that environmental values are considered during decision-making by state and local agencies. It is the public agencies responsibility to control the environmental review process. That is why the proposed agreements and contracts are troubling in several areas:

**THE CH2M HILL CONTRACT IDENTIFIES A "CONFLICT OF INTEREST" ONLY WHEN THE CONSULTANT DEVELOPS AN INTEREST IN CONFLICT WITH THE APPLICANT'S INTEREST.**

36.2 Conflict of Interest:

"If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant's interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the Applicant's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination." *

*(Contract for Services Agreement for EIS Preparation, Section 36.2, p10 of 16, Emphasis added) *

As written, CH2M Hill could purchase a financial interest in Gateway Pacific and not be considered a "conflict of interest". The conflict of interest provision should be written to address the following two points:

1. Add a provision that ensures the Consultant does not develop an interest that is in potential conflict the Public's interest.

2. Add Department of Ecology and Army Corps of Engineers to the decision making process for determining when conflicts exist. Their interest in this matter should be equal to the County's, and their experience in these matters is substantially greater than Whatcom County's.
*Recommended Change: The following would be suggested changes to Section 36.2 of the Consultant Contract for Services:*

"If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant's or Public's interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County, Department of Ecology and Army Corps of Engineers to make an informed judgment as to whether or not the Applicant's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County, Department of Ecology and Army Corps of Engineers may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination." *

**THE CH2M HILL CONTRACT INCLUDES AN IMPLIED BIAS TOWARDS THE APPLICANT**.

The CH2M Hill contract correctly states that "establishing the purpose and need is the first critical path item on the schedule…[as it] will direct the range of alternatives to be developed and reviewed in the EIS document." 1 What is biased is the entire discussion that follows:

"However, it may also be prudent to include background insights on the primary drivers that make this project worth consideration and evaluating. Either way, a defensible document must include proper documentation in the purpose and need chapter. The CH2M HILL Team proposes to research drivers so that the public has, in the scoping process, additional insights on the economic situation surrounding this project. The project drivers are anticipated to include a review of available port capacity on the west coast based on readily available information, economic pressures regarding dry bulk materials in the Asian-Pacific region, and national executive orders influencing industrial development. Understanding these elements may also help refine the range of alternatives suggested. The Team economist and planner will research the Applicant's Purpose and Need and make recommendations for The Agencies consideration." 2

1 Exhibit A, Phase 1 Scope of Work, Section 2.3.1, April 1, 2012, pg. 5
2 Ibid

The proposed contract begins to narrowly define the purpose and need to mirror the applicant's perspective ("drivers that make this project worth considering and evaluating"). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives.

This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant's wants,
needs, and goals.

*Recommended Change: The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation. *

*2. The EIS process needs to be open and transparent. *

There are numerous provisions within these three agreements that are inconsistent with the consultant's proposal that they "will support an open and transparent process."

Ø *T**H**E **C**OMMUNICATION **P**ROTOCOL **A**GREEMENT ALLOWS ****WORK PRODUCTS** *** **TO BE ****PROVIDED TO THE APPLICANT*****S TEAM*** *

**"Work products prepared by the 3rd party team will be submitted directly to the Co-leads. These work products will be additionally provided to the applicant's team only upon the approval of the Co-leads" (Communications Protocol Agreement, Section 2d) *

If the County and partner agencies intend that the agency may withhold these "work products" because they might be privileged under litigation discovery rules (commonly called the "work product" doctrine), then these documents should not be provided to the applicant's team unless they are determined to be public records subject to discovery and disclosure.

*Recommended Change: "Work products provided to the applicant's team shall be made available to the public and not be exempt from disclosure under the Public Records Act." *

*M**EETINGS WITH THE **A**GENCIES**, **T**HE **C**ONSULTANT, AND THE **A**PPPLICANT** **SHOULD BE MADE PUBLIC**.*

Since November of 2010, the State of Washington facilitated a process called the Multiagency Permit Team (MAP). This "team", composed of public agencies and the applicants (as well as their attorney) met outside the glare of publicity. Now, it appears that this same "team" process will continue and be sanctioned through these agreements.

**At the reasonable discretion of the County, a meeting and/or conference call may be arranged with the County, Pacific International Terminals, Inc., BNSF Railway Company, and the Consultant, on a bi-weekly or on a different schedule as directed by the County to discuss changes, if any, in the Scope of Work and other issues related to completion of the Scope of Work."

*(Contract for Reimbursement of Costs, Section 3.6, emphasis added) *

**"The first team kick-off will include the Agencies, project team representatives and other key Agency invitees, such as key regulatory agencies and Applicant." *
*(Exhibit A, Phase I Scope of Work, Section 1.4, April 1, 2012, page 3, emphasis added) *

**"This includes meeting minutes (limited to subject topic issues and action items and/or key direction or decisions)"** *

*(Exhibit A, Phase I Scope of Work, Section 3.1, April 1, 2012, page 11, emphasis added) *

Meetings that include the applicant should be made reasonably accessible to the public to ensure that the process is open and transparent. The proposal for meeting minutes limited to topic issues and action items and/or key direction or decisions, fails to disclose the substance of any conversation that leads to those key directions or decisions, including changes to the Scope of Work that is part of this contract.

These provisions allow the applicant to participate in changing the Scope of Work without the public observing and knowing why.

*Recommended Change: The contract should make explicit that any team meetings and conversations should be video-taped or audio recorded, and made available as a public record. Consideration should also be given to including other observers at these "meetings", such as the media, interested parties, and other public agencies. *

*3. The EIS scoping schedule needs to be adequate and predictable. *

While it is very troubling to read contracts that started before they are even signed, it is more troubling to review a schedule in a Scope of Work that started on April 1st. Based on this schedule, the public process for scoping should have started this past Friday.

**"The following scope will commence in April 2012."** *

**"Project definition and Purpose and Need..(1**st **wk of June) **

**"Task 2.4 Public and Agency Scoping Meetings… (June-July)"** *

**"CH2M HILL Team will host a maximum of 6 scoping meetings in locations to be determined."** *

*(Exhibit A, Phase I Scope of Work, various pages) *

*THE **S**COPING **P**ROCESS NEEDS TO BE **AT LEAST 120 DAYS **IN LENGTH**, **AND NEEDS TO BE INCLUSIVE OF AREAS OUTSIDE **W**HATCOM **C**OUNTY *
Based on the Scope of Work that Whatcom County is set to approve, the public and agencies should expect that the project will be already defined and the purpose and need statement will be completed before the ink is dry on these agreements.

Since the Scope of Work document also says that the commencement is April 1st, it might be assumed that the schedule is already two months behind. But, how is the public supposed to know? Whatcom County is being asked to approve a contract that includes a schedule in the Scope of Work where the public and agency scoping meetings are set to end July 31st.

The assumption of only 60 days in the Scope of Work for public and agency scoping is wholly inadequate. Remember, the applicant and agencies have been meeting on this project since November 2010, and the "open and transparent" process envisioned by the consultant is limited to 60 days?

"The agencies have steadfastly refused to provide any information on the "scope" of the project. They haven't published the rail route, to the best of my knowledge. Scoping is a critical juncture for agencies' consideration of reasonable alternatives. For an agency to have to consider a particular alternative, comments have to provide evidence that the alternative is reasonable and feasible. Without knowledge of key aspects of the project until the scoping notice has been released, developing alternatives to the project and the evidence to support the alternatives will take time. "The proposed definition of the project's "purpose and need" will also first be presented to the public in the scoping notice. The "purpose and need" is a critical component of the NEPA analysis because it guides both the selection of alternatives and the agency's ultimate decision about the project. "As anyone knows who has ever done a business or policy analysis, how you define your objective determines every other step along the way. The purpose and need statement will define the objective of the Gateway Pacific terminal. The project applicant will want the purpose and need statement to be as narrow as possible, because if it precisely mirrors the goals and features of the project, the project will be the only feasible outcome. The agencies have only spoken to the project applicant; they haven't spoken to us. We might want to point out that NEPA is supposed to look at broader purposes, not just the applicant's wants, needs, and goals. "Responding to these and other key issues will be important, will take time, organization, and effort, and will be difficult to accomplish in 60 days. As I mentioned above, look how long it has taken the agencies and the applicant to compile sufficient information and evidence to proceed. "So I think that an extra 60 days is not unreasonable under these circumstances. Let's not forget that this is a really big project. We tend to think of ourselves as little ol' Whatcom County, hidden away up in the top left corner of the country, and of Cherry Point as somewhere out in the hinterlands. But this is not a Whatcom County-scale project. It is a big project in global terms, with global impacts. "The fact that the agency personnel involved in the environmental review process have never worked on a big project is not a good reason to treat this project as if it were a standard, little project. It isn't, and it deserves more scrutiny than any project Whatcom County has ever seen before." *

*"(Coal Terminal Update: Whose Process is This?" Get Whatcom Planning Blog, March 21, 2012, Jean Melious) *

*Recommended Change: There are three changes proposed: *
*1. The Contract should not be approved until an updated schedule is provided. *

*2. The Contract should include a specific directive that the public scoping period be at least 120 days in length. *

*3. The Contract should set forth the expectation that the 6 scoping meetings will be located in areas impacted by this project. Suggestions include the following: *

• *Those communities affected by shipping (San Juan Islands) *

• *Those communities affected by increased rail traffic (Seattle, Vancouver, Spokane) *

• *Whatcom County *

*4. The EIS and application review needs to fully compensate Whatcom County for costs. *

Whatcom County amended its fee schedule to charge only $2,625 for preparation of an EIS, the same fee that is charged for a Major Project Permit. The County has already spent at least $16,000 in costs above and beyond those collected.

One of the three agreements under consideration is a contract to reimburse Whatcom County for both County costs and consultant costs in preparation of the EIS, including those costs already incurred by Whatcom County.

The memo says "No Whatcom County Funds will be used for this contract." The current Agreement and controls in place will not achieve this intent.

• Direct vs. indirect expenses -- the agreement requires the applicant to cover "direct out-of-pocket expenses". It does not cover indirect expenses, or overhead. Examples of overhead costs that will be funded by Whatcom County include: o Processing and paying invoices (Finance and Auditor staff, plus mailing costs)

 o Administrative staff time (answering calls, filing papers, counter inquiries)

 o Hosting a web site with public comments (IT staff plus server costs)

 o Office space and records storage (light, power, physical storage of records)

• County staff costs -- the agreement includes salaries and benefits. Does this include all Whatcom County staff that will be involved in this process, such as Health Department, Public Works, Prosecuting Attorney, Sheriff, and Executive’s Office? What about support staff that process paperwork and handle phone calls for the project?
*Recommended Change: The following changes are suggested: *

*1. Include an Administrative Charge. It is too burdensome to track every expenditure. The two options to cover indirect expenses include an hourly rate that includes overhead (the Consultant Contract is based on this assumption), or an Administrative Overhead rate to be added to the hourly rate. A typical Administrative Overhead charged in federal contracts runs between 9 and 14%. * *

*2. Covered Staff. It should be made clear that the staff time of Planning and Development Services, Public Works, Health, Prosecuting Attorney, County Executive, and Sheriff are County staff expected to be involved in the preparation of the EIS, and their costs are reimbursable.*

* *

The above suggested contract and approach revisions will go far in reassuring the public that this is an open and fair process. In particular, please require full videotaping of all meetings, as the public interest and level of concern are extraordinarily high, and the public deserves to know that the process is fair and transparent. Also, please fully address the recapture of County costs related to this project. As an experienced manager on both state and federal projects, I know that standard protocol for these charges includes overhead rates to capture costs which would otherwise be difficult to track. These costs are real, and particularly at a time when the County is struggling to balance its budget and meet its constitutional obligations, the taxpayers should not be expected to underwrite costs incurred on behalf of a for-profit enterprise—and whose backers have indicated a willingness to cover those costs.

Thank you for you consideration of my request, and for all your work on behalf of our community.

Sincerely,

[image: Dan Pike signature]

Daniel V. Pike
506 Cypress Road
Bellingham, WA 98225
360-224-7984
Danpike1957@gmail.com
June 5, 2012

Dear Elected Officials and Staff:

I am writing in regards to the proposed contracts dealing with the proposed Gateway Pacific Terminal, a facility which, if built as proposed would be the largest facility of its kind in North America. Public agencies are charged with reviewing the broad range of potential negative impacts the proposal could visit on the County, the region, the state, and if it is deemed appropriate, the nation. In fact, your authority allows consideration of impacts outside the United States as you examine the project. While the interests of the public and the applicant have some overlap—e.g., all of us want a better economic situation—examining the environmental, socio-economic and health impacts of this proposal is the role of the public agencies, and not the applicant. As proposed, however, three agreements coming before the Whatcom County Council today require changes to effectively ensure that the public interests are met, and that public confidence in the validity of the process is upheld.

Given the complexities of the contracts you are considering, and the limited opportunities to examine them both by yourselves, and importantly by an engaged public, I request that you delay a decision today for at least two weeks, to allow for greater conversation between the agencies, the proponents, and the public regarding some troubling provisions and omissions. Absent that, former County Planning Director David Stalheim has identified some simple changes to meet these goals which I advocate adopting in toto. Rather than reinvent the wheel, I am simply reiterating, verbatim, Mr. Stalheim’s well-considered and effective suggestions for fixing these errors. They are as follows:

1. **The EIS process is to protect the public’s interest -- not the applicant’s interest.**
   The environmental review process under the State and National Environmental Policy Acts (SEPA and NEPA) is meant to ensure that the environmental impacts of the proposed development are identified and that environmental values are considered during decision-making by state and local agencies. It is the public agencies responsibility to control the environmental review process. That is why the proposed agreements and contracts are troubling in several areas:
THE CH2M HILL CONTRACT IDENTIFIES A "CONFLICT OF INTEREST" ONLY WHEN THE CONSULTANT DEVELOPS AN INTEREST IN CONFLICT WITH THE APPLICANT'S INTEREST.

36.2 Conflict of Interest:
"If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant's interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the Applicant's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination."
(Contract for Services Agreement for EIS Preparation, Section 36.2, p10 of 16, Emphasis added)

As written, CH2M Hill could purchase a financial interest in Gateway Pacific and not be considered a "conflict of interest". The conflict of interest provision should be written to address the following two points:
1. Add a provision that ensures the Consultant does not develop an interest that is in potential conflict the Public's interest.
2. Add Department of Ecology and Army Corps of Engineers to the decision making process for determining when conflicts exist. Their interest in this matter should be equal to the County's, and their experience in these matters is substantially greater than Whatcom County's.

Recommended Change: The following would be suggested changes to Section 36.2 of the Consultant Contract for Services:
"If at any time prior to the commencement of, or during the term of, this Agreement, Consultant or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the Applicant's or Public's interest, then the Consultant shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County, Department of Ecology and Army Corps of Engineers to make an informed judgment as to whether or not the Applicant's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County, Department of Ecology and Army Corps of Engineers may require the Consultant to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination."

THE CH2M HILL CONTRACT INCLUDES AN IMPLIED BIAS TOWARDS THE APPLICANT.
The CH2M Hill contract correctly states that "establishing the purpose and need is the first critical path item on the schedule...[as it] will direct the range of alternatives to be developed and reviewed in the EIS document." What is biased is the entire discussion that follows:
"However, it may also be prudent to include background insights on the primary drivers that make this project worth consideration and evaluating. Either way, a defensible document must include proper documentation in the purpose and need chapter. The CH2M HILL Team proposes to research drivers so that the public has, in the scoping process, additional insights on the economic situation surrounding this project. The project drivers are anticipated to include a review of available port capacity on the west coast based on readily available information, economic pressures regarding dry bulk materials in the Asian-Pacific region, and national executive orders influencing industrial development. Understanding these elements may also help refine the range of alternatives suggested. The Team economist and planner will research the Applicant's Purpose and Need and make recommendations for The Agencies consideration."
1 Exhibit A, Phase 1 Scope of Work, Section 2.3.1, April 1, 2012, pg. 5
The proposed contract begins to narrowly define the purpose and need to mirror the applicant's perspective ("drivers that make this project worth considering and evaluating"). With this language, the only feasible outcome of the EIS will be this project, and not other reasonable alternatives. This bias and perspective is the result of more than a year of the agencies talking only with the applicant, and not with the public. NEPA and SEPA are both supposed to look at broader purposes, not just the applicant's wants, needs, and goals.

**Recommended Change:** The contract should ensure that the consultant researches alternative drivers for this project, such as those that would make it not worth consideration and evaluation.

**2. The EIS process needs to be open and transparent.**

There are numerous provisions within these three agreements that are inconsistent with the consultant's proposal that they "will support an open and transparent process."

- **The Communication Protocol Agreement allows "work products" to be "provided to the applicant's team"**

"Work products prepared by the 3rd party team will be submitted directly to the Co-leads. These work products will be additionally provided to the applicant's team only upon the approval of the Co-leads" (Communications Protocol Agreement, Section 2d)

If the County and partner agencies intend that the agency may withhold these "work products" because they might be privileged under litigation discovery rules (commonly called the "work product" doctrine), then these documents should not be provided to the applicant's team unless they are determined to be public records subject to discovery and disclosure.

**Recommended Change:** "Work products provided to the applicant's team shall be made available to the public and not be exempt from disclosure under the Public Records Act."

**Meetings with the Agencies, the Consultant, and the Applicant should be made public.**

Since November of 2010, the State of Washington facilitated a process called the Multiagency Permit Team (MAP). This "team", composed of public agencies and the applicants (as well as their attorney) met outside the glare of publicity. Now, it appears that this same "team" process will continue and be sanctioned through these agreements.

"At the reasonable discretion of the County, a meeting and/or conference call may be arranged with the County, Pacific International Terminals, Inc., BNSF Railway Company, and the Consultant, on a bi-weekly or on a different schedule as directed by the County to discuss changes, if any, in the Scope of Work and other issues related to completion of the Scope of Work."

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Meetings that include the applicant should be made reasonably accessible to the public to ensure that the process is open and transparent. The proposal for meeting minutes limited to topic issues and action items and/or key direction or decisions, fails to disclose the substance of any conversation that leads to those key directions or decisions, including changes to the Scope of Work that is part of this contract. These provisions allow the applicant to participate in changing the Scope of Work without the public observing and knowing why.
Coal Based

THE

Recommended Change: The contract should make explicit that any team meetings and conversations should be video-taped or audio recorded, and made available as a public record. Consideration should also be given to including other observers at these "meetings", such as the media, interested parties, and other public agencies.

3. The EIS scoping schedule needs to be adequate and predictable.
While it is very troubling to read contracts that started before they are even signed, it is more troubling to review a schedule in a Scope of Work that started on April 1st. Based on this schedule, the public process for scoping should have started this past Friday.
"The following scope will commence in April 2012."
"Project definition and Purpose and Need..(1st wk of June)
"Task 2.4 Public and Agency Scoping Meetings... (June-July)"
""CH2M HILL Team will host a maximum of 6 scoping meetings in locations to be determined."
(Exhibit A, Phase I Scope of Work, various pages)

THE SCOPING PROCESS needs to be AT LEAST 120 DAYS IN LENGTH, AND NEEDS to BE INCLUSIVE OF AREAS OUTSIDE WHATCOM COUNTY

Based on the Scope of Work that Whatcom County is set to approve, the public and agencies should expect that the project will be already defined and the purpose and need statement will be completed before the ink is dry on these agreements.
Since the Scope of Work document also says that the commencement is April 1st, it might be assumed that the schedule is already two months behind. But, how is the public supposed to know? Whatcom County is being asked to approve a contract that includes a schedule in the Scope of Work where the public and agency scoping meetings are set to end July 31st.
The assumption of only 60 days in the Scope of Work for public and agency scoping is wholly inadequate. Remember, the applicant and agencies have been meeting on this project since November 2010, and the "open and transparent" process envisioned by the consultant is limited to 60 days.
"The agencies have steadfastly refused to provide any information on the “scope” of the project. They haven't published the rail route, to the best of my knowledge. Scoping is a critical juncture for agencies' consideration of reasonable alternatives. For an agency to have to consider a particular alternative, comments have to provide evidence that the alternative is reasonable and feasible. Without knowledge of key aspects of the project until the scoping notice has been released, developing alternatives to the project and the evidence to support the alternatives will take time. "The proposed definition of the project’s "purpose and need" will also first be presented to the public in the scoping notice. The "purpose and need" is a critical component of the NEPA analysis because it guides both the selection of alternatives and the agency's ultimate decision about the project. "As anyone who has ever done a business or policy analysis, how you define your objective determines every other step along the way. The purpose and need statement will define the objective of the Gateway Pacific terminal. The project applicant will want the purpose and need statement to be as narrow as possible, because if it precisely mirrors the goals and features of the project, the project will be the only feasible outcome. The agencies have only spoken to the project applicant; they haven't spoken to us. We might want to point out that NEPA is supposed to look at broader purposes, not just the applicant's wants, needs, and goals. "Responding to these and other key issues will be important, will take time, organization, and effort, and will be difficult to accomplish in 60 days. As I mentioned above, look how long it has taken the agencies and the applicant to compile sufficient information and evidence to proceed. "So I think that an extra 60 days is not unreasonable under these circumstances. Let's not forget that this is a really big project. We tend to think of ourselves as little ol' Whatcom County, hidden away up in the top left corner of the country, and of Cherry Point as somewhere out in the hinterlands. But this is not a Whatcom County-scale project. It is a big project in global terms, with global impacts. "The fact that the agency personnel involved in the environmental review process have never worked on a big project is not a good reason to treat this project as if it were a standard, little project. It isn't, and it deserves more scrutiny than any project Whatcom County has ever seen before."
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Recommended Change: There are three changes proposed:
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2. The Contract should include a specific directive that the public scoping period be at least 120 days in length.
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   • Those communities affected by shipping (San Juan Islands)
   • Those communities affected by increased rail traffic (Seattle, Vancouver, Spokane)
   • Whatcom County

4. The EIS and application review needs to fully compensate Whatcom County for costs.
Whatcom County amended its fee schedule to charge only $2,625 for preparation of an EIS, the same fee that is charged for a Major Project Permit. The County has already spent at least $16,000 in costs above and beyond those collected.
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The memo says "No Whatcom County Funds will be used for this contract." The current Agreement and controls in place will not achieve this intent.
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   • County staff costs -- the agreement includes salaries and benefits. Does this include all Whatcom County staff that will be involved in this process, such as Health Department, Public Works, Prosecuting Attorney, Sheriff, and Executive's Office? What about support staff that process paperwork and handle phone calls for the project?

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2. Covered Staff. It should be made clear that the staff time of Planning and Development Services, Public Works, Health, Prosecuting Attorney, County Executive, and Sheriff are County staff expected to be involved in the preparation of the EIS, and their costs are reimbursable.

The above suggested contract and approach revisions will go far in reassuring the public that this is an open and fair process. In particular, please require full videotaping of all meetings, as the public interest and level of concern are extraordinarily high, and the public deserves to know that the process is fair and transparent. Also, please fully address the recapture of County costs related to this project. As an experienced manager on both state and federal projects, I know that standard protocol for these charges includes overhead rates to capture costs which would otherwise be difficult to track. These costs are real, and particularly at a time when the County is struggling to balance its budget and meet its
constitutional obligations, the taxpayers should not be expected to underwrite costs incurred on behalf of a for-profit enterprise—and whose backers have indicated a willingness to cover those costs.

Thank you for your consideration of my request, and for all your work on behalf of our community.

Sincerely,

[Signature]

Daniel V. Pike
506 Cypress Road
Bellingham, WA 98225
360-224-7984
Danpike1957@gmail.com
From: "Annie Prevost" <lemprev@alphahunt.com>
To: <jlouws@co.whatcom.wa.us>, <Council@co. Whatcom.wa.us>, <Tschroed@co.what...
Date: 6/5/2012 10:50 AM
Subject: Gateway Pacific Terminal Project Contracts and Agreements

Elected Officials and Staff

I am concerned that, as currently worded, the agreements or contracts for the environmental review process express a bias in favor of the applicant. There also appears to be a conflict of interest in hiring CH2M Hill for this contract.

I ask that:
- The scoping process be changed to 120 days, not 60.
- Address the bias towards to applicant and the conflict of interest provisions in the contract.
- Records and meetings must be subject to public review to insure the applicant doesn't have undue influence.
- Make sure the County is fully compensated for all costs.

You have received a letter from David Stalheim on this subject. I fully support his suggested changes and objections.

Thank you for your consideration,

A very concerned citizen of Whatcom County
Annie Prevost, 3822 Levitt St. 98226
Regarding the contract that sets the work and schedule for EIS scoping.

Contractual arrangements must be modified to provide for:

- 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
- Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
- Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
- Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

The provision in the contract that defines a conflict of interest between just the Consultant and the Applicant needs to be changed to reflect that a conflict of interest is when a situation arises to undermine the impartiality of someone, in this case CH2M Hill, in the completion of their EIS work.

Since the contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers, it is conceivable that the currently drafted provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict. This is obviously WRONG.

Finally, meetings cannot be held in secret. Provisions should be made such that whenever the applicant is involved in a meeting or review of "work products", that the public has an equal opportunity to participate.

Alan Stein
1808 Taylor Avenue
Bellingham WA 98225
Related to the Coal Port at Cherry Point please add:

Make records and meetings subject to public review, the applicant should not have influence the public cannot see and does not have. *

* There is inappropriate conflict of interest provisions in the contract, the Consultant works for us, the public too, not just the applicant.

Scoping meetings need to be held throughout the state where this project is having an influence on communities.

120 days to comment on the scope of the EIS -- not the 60 days in the contract.

*
Dear Mr. Louws,

I'm very concerned about fairness in the handling of the EIS of the proposed coal terminal:

1) The public comment period for the EIS should be extended from 60 days to 120 days.
2) Scoping meetings should be held throughout the state, not just Whatcom County.
3) Ensure all records and meetings are accessible to the public.

Yours truly,

Barry Ulman

Bellingham, WA.
Dear Esteemed Leaders in our Community:

If you must contract to have a company (CH2M Hill) review the implications of a Coal Terminal, then be certain their guidelines include and *emphasize* impact to people's health and the environment. What is the guarantee of thousands of good paying jobs *after* the work is complete. What is the guarantee of *0% pollution* to workers and neighboring communities, including our marine life. There is no acceptable level of pollution where coal is involved.

It stands to reason by allowing a coal terminal in the proposed location, the powers behind this are masking what gets damaged in their path to pursue their profits.

Please do not be influenced by big corporations making empty promises. The simple truth is a coal terminal will be bad for sustaining Whatcom County’s economy. It only encourages more jobs to go to China. It retards efforts to find clean, alternative fuel sources in America. It will fuel polluting factories in China that manufacture poor quality products. These products will be sold to Americans.

I beg you, do not fold to greedy corporations wanting to continue harboring cheap labor facilities in China. This practice continues to foster horrible working conditions for innocent humans who likely have no choice but to work under whatever the conditions are.

I know how deadly coal dust is. I worked for OSHA during the black lung research program in the 70's. It was not just the underground workers who were adversely affected by the dust. *There is no positive picture where coal is involved.*

*Whatcom County's Future is at risk: * When someone is looking for a beautiful, pristine place to live and raise their family; or to start a business; or to retire and enjoy their later years, do you really believe they would consider this area if a coal terminal is part of the County's heart and soul? I know I would not.

Roxanna Hubert
Retired in Birch Bay
Dear Council Members,

Thank you for taking the time to discuss the recent comments on the Birch Bay Low Impact Development (LID) program and Habitat Mitigation Fund (HMF). As a member of the Ad Hoc committee and a local wetland consultant, I am supportive of the programs in concept. However, I wish to reiterate my prior comments. While Peter's presentation mentioned several of my prior comments and I appreciate his work, I still feel the presentation did not address the primary issues. Below is a copy of the comments given to staff on May 14, 2012.

One additional comment. I applaud the intent of the Birch Bay Habitat Impact Evaluation Data Form. I am happy to see an attempt at making an easy-to-follow and consistent evaluation tool. However, I believe the data form does not accurately address impacts. I would be happy to participate in field-testing and modifying the form with staff. I am sure many other local consultants would be happy to participate as well.

Thank You,

Analiese Burns, PWS, LEED AP
Northwest Ecological Services, LLC
1911 C Street
Bellingham, WA 98225
O 360.734.9484
C 360.920.0512
www.nwecological.com

Comments to staff on May 14, 2012:

I am in support of the following changes:
1) Make the code more clear. Unfortunately, the code and associated guidance are still confusing. A few ideas to provide better clarity are

   a) Not linking (cross-referencing) the LID and HMF. Can they be stand alone documents?

   b) Change 16.16.920 "Application" to be "Eligibility" and then start with a VERY simple, very concise set of answers to the following questions "when is this code applicable? When is it not? If not, what is?

     c) Some criteria is in the code, some in the Management Plan. It is not intuitive which document contains what info

2) Consider making the program only eligible for projects in the "development" drainage basins. If this is not possible, then try to exempt the program from use in the highest functioning, most ecologically important areas (Terrell Creek.)

3) I agree the County should make sure they feel comfortable that the fee schedule adequately incorporates

   a) a three-year temporal loss (instead of the two-years under traditional permitting)

   b) the ability for the County to implement a contingency plan should the mitigation project fail

4) Instead of having the fee in code, consider adopting the fee in a manner that allows the County to change the fee more easily. No one knows what the correct fee will be. This will need to be done with adaptive management.

4) The 5 year reporting requirements should include a detailed ledger of credits/debits by function. This should be done in a scientifically defensible way. One method is Ecology's Credit-Debit Method (Publication 10-06-011).

5) Remove 16.16.970 Wetland Mitigation Sequencing from the HMF. This code section doesn't really apply to the HMF and makes the HMF confusing. Instead, include this in 16.16.260 as part of the CAO update process.

I appreciate the opportunity to submit my thoughts. Thank you and have a wonderful day.
To each member of County Council,

As they say, the devil is in the details. I support David Stalheim's close reading of the proposed contract with CH2M, and his recommendations for changes before it is signed.

Thank you for your consideration.

Sincerely,

Jean Waight

Jean Waight
919 Coronado Ave.
Bellingham, WA 98229

Nagging drip?
Don't wait.
Fix the leak
And save
The lake.
--Burma Shave?

greenteasympathy.blogspot.com
Dear Whatcom County Council Members,

The forthcoming scoping study for the proposed Gateway Pacific Terminal (GPT) is a critical opportunity for citizens to express their views and shape the subsequent environmental impact study (EIS). Therefore, the Whatcom County Council, Washington Department of Ecology, and U.S. Army Corps of Engineers must ensure that all their actions promote the fullest and fairest public involvement in this major project.

The proposed contract with CH2M Hill, which county council will consider this evening, appears to be seriously biased in favor of GPT and against the broad public interest. Here are the specifics that underlie my concerns:

* Although the project proponent has had many months to develop its application and discuss the project with the state sponsored Multi-Agency Permit Team, the public has had no opportunity to discuss this project with the three agencies. Therefore, the proposed 60-day public comment period is much too short. Because this is such a large, complicated project (with local, regional, and global impacts on air quality, water quality, and global warming), the public should have at least 120-days to prepare and submit comments during the formal scoping period. Because this project would affect a large geographical area, public meetings the EIS scope should be conducted throughout Washington State, not just within-Whatcom County.
* As noted above, the project applicants have been meeting regularly with the agencies that will oversee the EIS, but citizens have had no such opportunity. Therefore, it is essential that, going forward, the process should be completely neutral to ensure that the developer does not influence the regulatory agencies. All agency meetings should be recorded and the audio and video files posted on the internet so that interested citizens can see what transpires in these meetings. Comprehensive meeting minutes should also be posted on the internet.
* Finally, the county should be fully compensated for all its costs associated with the review of this project. This requirement is especially important now, with local government budgets severely constrained.

Thank you.

Eric

Eric Hirst
1932 Rhododendron Way
Bellingham, WA 98229
(360-656-6690 : EricHirst@comcast.net)
As a resident of Whatcom County, I am extremely alarmed by the conflict of interest that is becoming increasingly clear as the Environmental Review Process for the proposed Gateway Pacific Terminal gets underway. The fact that John Lovenburg, a current executive at BNSF was a former director and executive at CH2M Hill raises one red flag. A second was raised by some excerpts I read from the proposed contract recently put before you by CH2M Hill. I urge you to neither accept nor approve the contract in its current form but to insist on the changes outlined by David Stalheim in his letter to you, the council, the State DOE, ACE, et al.

In particular, I strongly agree with Stalheim on the following points:

- An increase in length of the scoping process is needed, from the proposed 60 days to a more reasonable and public-friendly 120 days.

- All items, records and meetings that are made accessible to the applicant should also be made accessible to the public. A project with this scope of impact on the public should have transparency as an utmost priority.

- Whatcom County should be fully compensated for all costs associated with the Environmental Review Process and the EIS.

- The Department of Ecology and Army Corp of Engineer should be included in the decision making process regarding any potential conflicts of interest that might arise during the course of the environmental review process.

Thank you for your serious consideration of these matters.

Carolyn McGown
As a resident of Whatcom Co I want FULL DISCLOSURE during this EIS process.

I would like to think that the outcome is not a foregone conclusion as most of the language used during the process seems to indicate. Mitigation is not a tool that provides what I consider an appropriate outcome.

I object to this project on every level. The strip mining in Wyoming, the transportation of the coal across the country to our county, AND most of all the desecration of our only public access to the Georgia Straights from Gulf Rd. For environmental, health, and the long term impact on our land I strongly urge you to deny this project. We need to begin to follow our President's commitment to alternative energy now and begin the renewal of our ecology that will support sustainable and non-polluting energy sources for the longterm health of ALL of us, even those that stand to benefit financially the most from this project.

Paddy Bruce
Dear County Executive Louws,

I sat through the committee meeting this morning, and wanted to comment on your assumption that this project is similar to all the other projects before you seeking permits for development. I respectfully and strongly disagree with your opinion on that.

This project has the potential to cost Whatcom County taxpayers a large amount of money related to you and your staff's time in all the meetings and document reviews. I am not certain which of that is considered direct and indirect, but I believe most people in the county would agree that any costs above and beyond the initial fee submitted should be paid by the applicant.

It was a goodwill gesture for the applicant to voluntarily provide an additional $$ for costs. However, the contract must include the ability to recoup ALL costs - direct and indirect.

Thank you,

Cindy Franklin
520 Ridgeway Drive
Bellingham
Dear Mr. Louws,

I am a concerned Bellingham citizen. I strongly urge that public citizens have equal opportunity to be involved in meetings or reviews of the process involving the possible Coal Terminal at Cherry Point. The MAP Team process should be open to the Public, not just the Applicant.

Also I am DEEPLY concerned that a provision in the contract defines a conflict of interest between CHM2 and the Applicant. The contract is between the consultant and the public, not the Applicant. This provision should be changed for obvious reasons.

Finally, I ask for 120 days for the scoping period - beginning in the future, not the past. This is only fair and logical. The scoping should take place state-wide, as the environmental ramifications of a Coal Terminal WILL be, at least, state-wide.

I look forward to your response. Thank you,
angela Polito

2223 E Birch St.
Bellingham, WA 98229
360-393-2477
Pearl Follett
2605 Lakeridge Lane
Bellingham, WA98226
pbfollett@gmail.com

Re: Contract Agreement with CH2m Hill.

Do not approve the contract

Dear Council Member,

As a citizen and resident in Bellingham I ask you to not approve the contract with the CH2M Hill Company.

This contract does not contain provisions or a staff of qualified medical doctors to protect the health of the residents of Whatcom County.

Additionally it appears that the people are not protected from a conflict of interest in the review process.

The process needs to be open to public view.

The health impact needs to be addressed. This is not provided for in this contract.

The air quality needs also to be studied. This is not provided for in this contract.

The study time is to short.

Please say No to the CH2M Hill contract.

Sincerely,

Pearl Follett
Regarding the contract that sets the work and schedule for EIS scoping.

Contractual arrangements must be modified to provide for:

• 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)

• Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County

• Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.

• Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

The provision in the contract that defines a conflict of interest between just the Consultant and the Applicant needs to be changed to reflect that a conflict of interest is when a situation arises to undermine the impartiality of someone, in this case CH2M Hill, in the completion of their EIS work.

Since the contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers, it is conceivable that the currently drafted provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict. This is obviously WRONG.

Finally, meetings cannot be held in secret. Provisions should be made such that whenever the applicant is involved in a meeting or review of "work products", that the public has an equal opportunity to participate.

Alan Stein

1808 Taylor Avenue

Bellingham WA 98225
Dear Mr. Louws,

As they say, the devil is in the details. I support David Stalheim's close reading of the proposed contract with CH2M, and his recommendations for changes before it is signed.

Thank you for your consideration.

Sincerely,

Jean Waight

Jean Waight
919 Coronado Ave.
Bellingham, WA 98229

Nagging drip?
Don't wait.
Fix the leak
And save
The lake.

--Burma Shave?

greenteasympathy.blogspot.com
Dear Executive Louws,

As a resident of Whatcom County, I am extremely alarmed by the conflict of interest that is becoming increasingly clear as the Environmental Review Process for the proposed Gateway Pacific Terminal gets underway. The fact that John Lovenburg, a current executive at BNSF was a former director and executive at CH2M Hill raises one red flag. A second was raised by some excerpts I read from the proposed contract recently put before you by CH2M Hill. I urge you to neither accept nor approve the contract in its current form but to insist on the changes outlined by David Stalheim in his letter to you, the council, the State DOE, ACE, et al.

In particular, I strongly agree with Stalheim on the following points:

- An increase in length of the scoping process is needed, from the proposed 60 days to a more reasonable and public-friendly 120 days

- All items, records and meetings that are made accessible to the applicant should also be made accessible to the public. A project with this scope of impact on the public should have transparency as an utmost priority.

- Whatcom County should be fully compensated for all costs associated with the Environmental Review Process and the EIS.

Thank you for your serious consideration of these matters.

Carolyn McGown
Dear County Executive Louws,

I sat through the committee meeting this morning, and wanted to comment on your assumption that this project is similar to all the other projects before you seeking permits for development. I respectfully and strongly disagree with your opinion on that.

This project has the potential to cost Whatcom County taxpayers a large amount of money related to you and your staff's time in all the meetings and document reviews. I am not certain which of that is considered direct and indirect, but I believe most people in the county would agree that any costs above and beyond the initial fee submitted should be paid by the applicant.

It was a goodwill gesture for the applicant to voluntarily provide an additional $$ for costs. However, the contract must include the ability to recoup ALL costs - direct and indirect.

Thank you,

Cindy Franklin
520 Ridgeway Drive
Bellingham
To Whom It May Concern:

I am writing in support of David Stalheim’s points and recommendations in the letter he sent this week. I am also skeptical of this process and project, and I hope that you will protect the rights of the people by, amongst other things:

Changing the scoping process to 120 days, not the 60 currently in the contract;

Making all records and meetings subject to public review and available in a timely manner;

Address the inappropriate conflict of interest provisions in the contract and the bias towards the applicant.

Additionally, the County should be fully compensated for all costs; this should not sit on the backs of the taxpayers, particularly when our economy is challenged.

I will not be able to attend this evenings meeting, but would appreciate a copy of the minutes. Please represent my opinion and share as necessary.

Thank you for the work you do towards the public good!

Erin Malone
erinmalone@comcast.net
204 I Street
Bellingham WA 98225
From: phyllis graham <pag5447@gmail.com>
To: County Executive <jlouws@co.whatcom.wa.us>, Whatcom County Council <coun...
Date: 6/5/2012 4:09 PM
Subject: Environmental Review Process/Gateway Pacific

I am unable to attend this evening's meeting but would like to express my agreement with the June 3 submission by David Stalheim regarding the wording of the contract and agreements of the above.

This is a very expensive and involved process and deserves careful scrutiny by everyone involved. Since I do not know exactly who has been involved - or to what extent - I would like the Council to be cautious and go slow. A two or three week delay in signing the contract to thoroughly examine and understand exactly what the contract says is not out of line. The points raised by Mr. Stalheim are valid and deserve comment and public discussion by the Council.

I hope the County Council will not start this important process amid controversy that so easily could be avoided by delaying action tonight.

Phyllis Graham
5447 Tsawwassen Loop
Blaine WA 98230
I am in complete agreement with the issues in the proposed contract with CH2M Hill as pointed out by David Stalheim, to wit:

a.. 120 days to comment on the scope of the EIS -- not the 60 days in the contract (due at end of July)
b.. Scoping meetings need to be held throughout the state -- the contract doesn't commit to meetings outside Whatcom County
c.. Remove one-sided conflict of interest provisions -- the Consultant works for the public, not the applicant. This ensures a fair environmental review process.
d.. Ensure all records and meetings are accessible to the public -- the applicant isn't provided any privileges not afforded the public

Conflict of Interest:
A provision in the contract defines a conflict of interest between just the Consultant and the Applicant. (Read contract here: agenda bill)

A conflict of interest is when a situation arises to undermine the impartiality of someone, in this case CH2M Hill, in the completion of their EIS work. The contract with CH2M Hill is with the County, and authorized by the State of Washington (Department of Ecology) and Army Corps of Engineers. The contract is not with the applicant, so defining a conflict with the applicant is totally inappropriate.

In theory, this one-sided provision would allow CH2M Hill to have a financial interest in the Coal Port and it wouldn't be a conflict..

This provision is simply wrong and needs to be changed!

Lyle Anderson
3723 Pebble Pl
Bellingham, WA 98226
Whatcom County Council:

With regard to the refinement of the contract with H2M Hill, I would strongly urge that you consider disallowing H2M Hill from future profitable involvement with SSA, which would be a serious conflict of interest. I would also recommend requiring full public disclosure of any relations between or communications between H2M Hill and SSA. Finally, I urge you to consider a scoping period of 120 days, as this project has an enormous potential community and statewide impact and the public should be allowed sufficient time for input.

Thank you very much,

Ryan Fortna

Ryan R. Fortna, MD, PhD
Dermatopathology and Anatomic Pathology
Director of Molecular Pathology
Northwest Pathology, P.S.
Bellingham, WA
(360) 734-2800 (office)
(360) 527-7089 (pager)
Hello Jack,

I have growing concerns about the contracts and agreements regarding the Gateway Pacific Terminal Project. As a voting senior citizen that stands to be greatly affected by this project, I am concerned that, from the very beginning, it is skewed toward the applicant's interests.

I won't bother to go into the various issues, but I will say that I have read the contract and agreements and am troubled by potential conflicts of interest, the potential lack of transparency and the obvious edge given to the applicant.

This is somewhat understandable since I presume that it is difficult for public figures such as yourself to resist the influence of powerful corporate interests. Gateway has money and influence. I do not. And, for exactly that reason, I count on you to represent my concerns and give me a voice. I expect you to resist that power and influence and, in fact, also represent the those of us on the other side of the Gateway issue. Specifically, those of us that want a thorough vetting, a comprehensive EIS and an outcome that takes much, much more into account than simply the short term benefits that can be provided by wealthy and powerful forces whose interests are much more narrow than those of ordinary citizens in this gorgeous piece of earth we call Whatcom County.

I would appreciate a response.

Thank you for your time.
Leaf Schumann
Deming
Mr. Louws, County Council members, Mr. Schroeder, Jeannie Summerhays, Mr. Perry, and Alice Kelly,

My family has been fortunate to have inherited a place in Birch Bay. It was handed down to my mother by her grandparents, (my great grandparents) and then to me. Birch Bay has been a part of my life since birth. It is a treasured place for my children and extended family.

Many groups in this area have worked hard to continually keep up or improve the health and well being of the residents and the beach/tidelands. So it is of great concern to all of us that a coal terminal is proposed to be developed here. Many that I have spoken to are not opposed to the original proposal for a terminal that would ship wheat, grains, potash. However, my family and many others are opposed to a coal shipping port.

I have a number of concerns about the proposed contracts and agreements regarding GPT.

1. I believe that the EIS and application review needs to include wording to fully compensate Whatcom County for any and all costs incurred to staff and the administration.
   We the people should not have to bear the burden of this company's application process.

2. The EIS scoping schedule needs to be adequate and predictable. The public has not been given reliable information about when scoping will occur, when the public may participate in scoping meetings or where meetings will be held. The process needs to be double in length- 120 days and all communities effected should be included!

3. The process of the EIS needs to be guaranteed transparent and open. Any meetings or conversations should be documented thoroughly (audio/video/written) and be available to citizens as public record. A good faith effort would be to allow interested people/parties, news outlets other public agencies to attend team meetings or conversations.

4. My understanding of the the EIS processes that I have been a part of, is to make sure the public is well informed. The purpose of an EIS is to protect the people's / public's interests.
   We live here! Any contracted county employee's or hired consultants should guarantee to not be involved in a conflict of interest with the applicants.

5. After attending several meetings where "drivers" in favor of this coal terminal proposal were discussed, I believe that the public's concerns have not been addressed.
   I have read that NEPA's and SEPA's duty must include alternatives, including broader purposes that would serve Whatcom county residents, not just the applicant. Please make sure that all broader aspects, alternatives and purposes are explored, studied and included.

Thank you for your time and consideration of my concerns,
Claudia Hollod (chollod@hotmail.com)
Dear County Council Members,

In considering contracts regarding the environmental review process for the proposed Gateway Pacific International Terminal, I would like you to keep the following in consideration. Your responsibilities in this process include (but are not limited to):

- protecting the Public's interests, not just the applicant's;
- ensuring that the process is transparent to the Public;
- ensuring that the Public's has adequate access to the process;
- allowing adequate time for Public input and comment;
- ensuring that all costs incurred by the county are fully covered by the applicant.

Thank you for conscientiously addressing these concerns.

M. Lynne Pendleton
2415 Williams St
Bellingham, WA 98225
Dear Elected Officials and Staff:

My husband and I planned to attend tonight's County Council session to present these comments orally in person, but have been prevented from coming due to an unexpected emergency at home. However, we wish to convey our sentiments to you directly by e-mail, hopefully before the anticipated Council vote on the CH2M Contract is taken.

We have read CH2M's current contract before the Council, believe it is inadequate in several significant ways, and should be rejected until it satisfactorily addresses the following issues:

1. Any potential conflict of interest should NOT be limited to only the Applicant's interests, but also to the Public interest, and that this conflict should also be conveyed to the Dept. of Ecology and to the Army Corps of Engineers, as well as to the Whatcom County Council.

The public's right to know and participate in the Scoping process. Transparency is certainly NOT served by providing their work product only to Applicant, specifically excluding the Councilors and the Public from their "work products."

read David Stalheim's
Dear Sirs/Madaams

As presently written, the agreements to hire CH2M Hill do not protect the public. At minimum there should be:

* 120 days scoping process, not the 60 in the contract.

* Requiring that the applicant doesn't have undue influence in the process by guaranteeing that all records and meetings subject to public review.

* Corrections to address the inappropriate conflict of interest provisions in the contract, and the bias towards the applicant.

* Make sure the County is fully compensated for all costs.

Sincerely,

Paula Rotondi

Birch Bay
Dear County Councilors, et. al.
We believe that the CH2M Hill contract currently before the County Council re: the Gateway Pacific Terminal is deeply flawed in several important ways:

The contract seems to have a _strong bias_ toward the Applicant, especially in terms of looking at _only_ the Applicant's "drivers" which make this project worth consideration and evaluation, specifically the "economic situation" (i.e., jobs). But let's be honest: The Applicant's goal is basically to make money. It is the residents of Whatcom County and perhaps most of coastal Washington State who will have to bear the brunt of the negative results of this project. _But to our amazement, there is no mention of any alternative (potentially adverse) "drivers" which could also make this project NOT worthy of further consideration or evaluation._

In addition to the obvious (a worldwide increase in CO2 when China begins burning millions of tons of coal each year, and the effect of this pollution particularly felt on the West Coast of the U.S. including all of WA state), there are a number of "drivers" specific to Whatcom County which we believe MUST be included in the scope of this project. For example:

(a) the impact to public health and safety from contamination of the air and water along the _entire_ train route from coal dust and diesel particulates. (Currently, over 200 Whatcom doctors are very clear about dangers of this contamination, and Anne has personally seen a black layer of coal dust about 4" wide beside the tracks near our house, which BNSF just cleaned up in May.)

(b) the potential impacts upon the livelihoods of farmers and ranchers due to reduced crop productivity and/or the effects of train traffic on livestock being raised for sale (not to mention the higher consumer costs from less product getting to market)

(c) impacts on aquatic plants and animals from these contaminants, particularly in Puget Sound. If the already dwindling herring population is further decimated from the shipping terminal being built right over their breeding grounds, the whole food chain will be affected, from the herring to the salmon to the Orcas to the salmon fishermen to consumer prices in our stores.

(d) the impact of increased train traffic and noise 24/7 upon the public's quality of life, real estate values, traffic congestion, and public access and/or enjoyment of popular parks, boat launches, and beaches, and could also mean fewer tourist dollars.

(e) the impact of trains passing (or on sidings) which could prevent or delay emergency vehicles (such as paramedics and fire fighters) from reaching the scene, resulting in preventable deaths or unnecessary
destruction of homes and businesses.

(f) the impact of eighteen 1-1/2 mile-long trains per day traversing Whatcom County may hinder public access to the long-planned redevelopment of the port of Bellingham, reducing its appeal and marketability to prospective businesses, potential new residents. Will there also be an impact on the tourist trade?

(g) the impact of accidental combustion of Powder River Basin coal (which BNSF's own website confirms is highly subject to spontaneous combustion while in transit on trains and in ocean-going vessels) plus the on-going risk of a fire at the terminal itself, which also happens to be adjacent to BP oil refinery.

_Without considering these alternative drivers and looking only the "economic situation," the so-called evaluation is a foregone conclusion: It will simply mirror the Applicant's perspective, but will not address any of the very real, alternative impacts upon the public (and ultimately, the earth) which could be substantial._ This Contract is so short-sighted in its goals. It is our understanding that NEPA is supposed to look at broader purposes and outcomes, not just the Applicant's needs and goals.

We have also read the letter by David Stahlheim, which is in wide circulation, addressed to the primary elected officials involved in this project. We believe the points he makes are thoughtfully considered and VALID. We strongly support the five changes which he recommends to County Council and believe they should be _included_ in the CH2M Hill Contact presented to you. Specifically:

1. The contract should ensure the consultant researches alternative drivers for this project, not just those preferred by the Applicant.
2. The contract should specify that work products supplied to the Co-leads team ALSO be made available to the Public and not be exempted from disclosure under the Public Records Act.
3. The contract should state that any team meetings and conversations should be videotaped or recorded and made AVAILABLE as public record, and that the Council also consider including the media or other public agencies in the meetings.
4. The EIS scoping period should be predictable and allow adequate time for a thorough review by elected officials and the public. The current contract states that the Scope of Work process was to have started on April 1st. Really? Then why hasn't the first public process for scoping already been started? The Applicant and agencies have been meeting on this project for well over a year, but the "open and transparent" public process is limited to 60 days?? We believe that County Council really needs to require a longer period of time for the public process to be seen as "open and transparent." This is a really BIG project with many potentially serious impacts, including regional and even global implications (yet the general public still doesn't even know the proposed rail route!) We agree with Mr. Stahlheim that a minimum of 120 days of public process is not an unreasonable demand. Whose process is this anyway?
5. The EIS and application review specifically needs to address compensation to Whatcom County for _all_ its direct and incidental costs (which is also in the best interests of the public who pay the taxes in
As it stands now, the CH2M Hill contact includes an implied bias toward the Applicant. The EIS process needs to be open and transparent to the Public. We hope that our County Council will require that the CH2M Hill contract be revised so that all the issues above are fully and fairly addressed before you agree to it. Please remember: "The EIS process that you are an integral part of is designed to protect the Public's interests, not the Applicant's!"

Thank you for considering our comments.

Anne & Mike Botwin
349 Cove Rd.
Bellingham, WA 98229-8924
Dear Terry,

Thank you for your comments. I have forwarded them to Tyler Schroeder for his review with the other co-leads of the project. They will also be retained as part of the record. Our website will continue to carry a great deal of information on the project and will be updated frequently with current news on where we are in the process.

Sincerely,

Jack Louws

>>> <wechslerlaw@comcast.net> 6/6/2012 12:30 PM >>>

Please excuse this late request regarding the contract with CH2M Hill. At the prescoping information session at the highschool I orally commented that it would benefit the public greatly if, as comments are received they are put online immediately and sorted by nature of the impact. I note that the contract states the consultant will sort by month and then alphabetically by last name of the commenter. While that theoretically assists the public in locating a specific comment (if they know the month in which it is submitted), it is not helpful at all for those who wish to read other comments that relate to a specific issue. Please consider asking the consultant to change the method of posting comments online.

Also, have the 20 "key stakeholders" been selected? I ask because I have been researching the issue of the proposed terminal and impacts on our and other communities for over a year and a half. My organization, Protect Whatcom, and another local organization, Safeguard the South Fork, have commented on the completeness of the application; I submitted a request for an Economic Impact Assessment; and the two groups have been holding forums throughout the county informing county residents about potential impacts. I would respectfully suggest that representatives of our two groups be considered "key stakeholders" given the fact that we actually are.

Thank you for your attention.

Terry Wechsler

Protect Whatcom
360-656-6180 (r), 541-913-5976 (c)
Dear County Council:

I thank all of you for protecting the interests of Whatcom County residents by extending the EIS comment period for GPT. In particular, I would like to commend Council Members Weimer and Mann for their efforts to ensure a fair public process.

Wendy Harris
From: "ChairKathy" <chairkathy@birchbayinfo.org>
To: <Undisclosed-Recipient:;>
Date: 6/7/2012 10:13 AM
Subject: EMS System & GPT/SSA Updates

EMS System Update in the Bellingham Herald
http://www.bellinghamherald.com/2012/06/05/2551463/bellingham-county-approve-framework.html

GPT/SSA Coal Terminal Study Update in Bellingham Herald
http://www.bellinghamherald.com/2012/06/06/2552178/whatcom-county-mandates-extended.html
From: <BBGUN1010@aol.com>
To: <ddsinwa@gmail.com>
CC: <council@co.whatcom.wa.us>, <NHanson@co.whatcom.wa.us>
Date: 6/6/2012 8:16 PM
Subject: Re: CONTRACTS AND AGREEMENTS WITH GPT

Donna,

Until this issue gets to the council I am not allowed to do any research or discuss it with anyone as we will be sitting as judges at that time (called quasi-judicial). As I told you in my e-mail, when it finally does get to us, we will have the time to research and discuss and you will have opportunities to comment to us. Nothing will be done until the council has the opportunity to know enough on the issue and hear from everyone who is interested.

Barbara

If this e-mail is about county business, it is a public record subject to public disclosure upon request. Please send all e-mails related to county business to my official county e-mail address, bbrenner@co.whatcom.wa.us. Thank you.

In a message dated 6/6/2012 8:09:34 P.M. Pacific Daylight Time, BBrenner@co.whatcom.wa.us writes:

-----Original Message-----
From: Donna Shaw <ddsinwa@gmail.com>
Subject: CONTRACTS AND AGREEMENTS WITH GPT
Date: Wed, 6 Jun 2012 20:08:57 -0700
To: BBRENNER@co.whatcom.WA.US

Thank you for responding to my concerns about the contracts and agreements with GPT. Yes, most of my concerns were addressed by the revisions that were made to the contract, all except the BAP, BAT standards.

Last year, Craig Olsson told me that the federal EPA had been tasked with the oversight of the coal dust, whether or not that coal dust settles on the lake, the streams or our homes. He also told me that the EPA doesn't monitor or even measure coal dust, so how are they going to regulate it? The only way to protect the local environment from the coal dust from the open piles of coal, is to enforce the BAP, BAT standards on the project operations and construction.

I don't see any reason why the same standards that the state applies to the transporters of oil should not apply to the transporters of coal. It seems as though the contractors should be tasked with keeping in mind the BAP, BAT standards when they evaluate this project.

Thank you again for your response.

Donna Shaw

PS: One other concern that I have not seen addressed is that the run-off,
from the water that is sprayed on the coal piles, produces a sludge (when it's filtered or allowed to evaporate) that must be disposed of at a hazardous waste site and I haven't seen any provisions for this. (I have a friend who has managed two different coal terminals and built one)
nicely analyzed Greg and good work making complaint. Makes me
Think of other scenarios where this occurring. Ron

Sent from Ron Reimer

Cell 360-815-5914

On Jun 7, 2012, at 1:42 PM, "Greg and Karen Brown" <gkbrown4@gmail.com> wrote:

> For your information, I have submitted this letter to State Auditor via the Citizen Hotline.
> State Auditor Sonntag,
> I am very concerned that a recent forum held at the Western Washington University campus was a
> misuse of taxpayer funds and resources, and am writing to request a full inquiry into the matter to ensure
> that this type of violation is not allowed to happen again.
> A color flyer was posted around Bellingham that announced the meeting as an “Environmental Impact
Statement Workshop” for the proposed Gateway Pacific Terminal (a proposed export facility in our
> county), and an opportunity to learn how to write comments during the upcoming scoping process. The
flyer also noted that the May 25th event was hosted by the WWU Professional and Technical Writing
Program.
> My wife and I attended the event and witnessed that is was actually a meeting on how to oppose the
project and burden the scoping process. As a taxpayer and university alumni, I was very disappointed by
the misuse of public resources to advance the personal and political position of a handful of faculty
members. These individuals offered class credit to students to participate, but offered absolutely no
balance or discussion on the merits of the project, only on the possible negative “threats”.
> Listed as a general informational workshop, it was instead a one-sided view on how to advocate against
the project. They also advertised “experts” but presenters were partisans with no expertise in the content.
University professors should NOT be telling our students what to think and say. Nor should they be using
their position at the state-funded institution, the facilities at their disposal, or university materials for
political advocacy.
> I am happy to provide materials distributed at the event, as well as share my observations from
witnessing the meeting, at your earliest convenience. I believe these will shed additional light on the
problem. I support and encourage real academic freedom and learning, and would have no problem with
a balanced forum where all sides of an issue are presented. This was not the case at the May 25th WWU
“Workshop”, and should not be allowed to happen again.
> Respectfully,

> Greg Brown
> 360-319-2542
> Bellingham WA.
I'd like to remind each council member that while there seems to be more activism in opposition to the Gateway terminal and the transportation of coal, the reality is that there are many people not as bent toward activism who are FOR the Gateway Pacific Terminal project.

I was at last Tuesday's meeting and I think that it's unfortunate that more people aren't showing up in support. Though I believe they will. From my personal experience, I think people are mostly for the Gateway project. Certainly there is enough support to move forward with the process and I would like to encourage the council to not feel pressure to take longer than they need to take to review the EIS. The opposition clearly organized to push for a 120 day review, but that may not be necessary. If it is not, then you should not feel pressure to delay just because people who are pre-disposed to fighting this project attempt to use delay tactics.

It was said that you should not take this lightly and that you don't want to look back and regret the day that you approved this project. I would say that you don't want to look back and regret the day that you blocked this project and denied huge opportunities for job growth in this county. This county obviously needs jobs, and we should support what is clearly in the mainstream of jobs in America such as storage and transportation of dry commodities. That includes the shipment and storage of coal.

It is alarming to me that we are so afraid of progress in this county, and a fear based mindset is even trying to take hold across the USA. All the way up to the highest levels, our representatives are fighting the progress of business and job creation. Yet when we get opportunities to create jobs, the agencies and elected officials always seem to hinder more than they help. Then we wonder why unemployment is so high! It's astounding!

Please use common sense and lean towards job creation, and do not be afraid. Fear is not our friend.

Thank you for your service as county council members. I know that it can't be an easy job to serve in such a unique county.

Daryl Groves
North Whatcom County