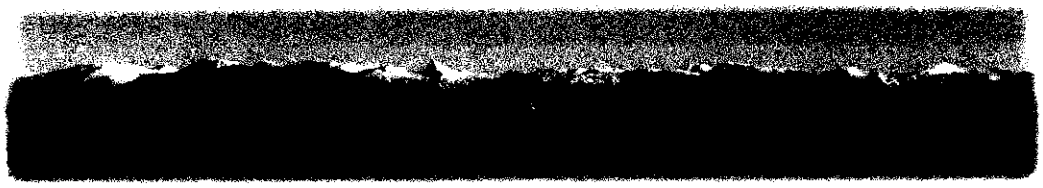
Center for Salish Community Strategies



A Washington Non-Profit Public Interest Law and Policy Center
Navigating Toward the Future

January 22, 13

Ms. Alice Kelly
Northwest Regional Office, Department of Ecology

Mr. Randel Perry
U.S. Army Corps of Engineers, Regulatory Branch
Northwest Field Office

Mr. Tyler Schroeder
Planning and Development Services, Whatcom County

GPT/BNSF Custer Spur EIS Co-Lead Agencies
c/o CH2M Hill
1100 112th Avenue NE, Suite 400
Bellevue, WA 98004

Re: Scoping Comment Letter for the Gateway Pacific Terminal and Custer Spur Environmental Impact Statement

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

Thank you for the steps you've taken this past twelve months to bring the review of the proposed Gateway Pacific Terminal into the light. We greatly appreciate each of your efforts to log correspondence, provide meaningful website links, and hold several public meetings on scoping within Washington State. Thank you for this opportunity to provide you with comments on the scope of the Environmental Impact Statement (EIS) for the above-referenced project.

As you know, our non-profit promotes transparency in government land use process and a regional dialogue balancing natural resources conservation and sustainable economic growth. We offer the following comments relevant to your decisions in the public interest.

1. Process.

(a) Transparency. We urge you to create a joint website log, where the agency staff responsible for managing the EIS consultant, and the consultant – CH2MHill, divulge contacts and correspondence with the applicants in real time. It would undermine the appearance of fairness in the EIS process to allow the applicant to provide oral or written comments on outlines and drafts of the Environmental Impact Statement and its predicate studies without public disclosure and an equal opportunity for agencies and the public to

comment on those drafts as well. Based on our 45 plus years of combined experience working on EIS, there will be no more important step toward maintaining the integrity of the EIS process.

(b) Applicant Submittals. Similarly, we urge you to maintain a daily log of any new information submitted by the applicant or their agents/consultants following the close of the scoping comment period, so that the public, agencies and tribes have a fair opportunity to evaluate and respond to the information.

(c) Stormwater Concept. It is our understanding the applicant has not provided an NPDES application or an application for water quality certification to Ecology that would describe the engineering concept for its construction and operation of stormwater and runoff control facilities. Previously, during applicant discussions with the Multi-Agency Permit Team, numerous agencies requested this detail without receiving any new information. As soon as that information is submitted, and thus the critical water pollution potential impacts of the project become clearer, the public, agencies and tribes should be afforded an opportunity to comment on the scope of the Draft EIS.

(d) Scoping Report: EIS for NPDES and Water Quality Certifications from Ecology. We request that the Scoping Report be explicit in confirming that Ecology is acting as co-lead on the EIS, based in part on its determination that an EIS was required prior to issuance of any NPDES approvals or Water Quality Certifications. We understand this to be the case, based on our reading of the Determination of Significance issued jointly with Ecology.

It would be helpful if the Scoping Report clarified that that Ecology went ahead with the EIS, having identified NPDES and Clean Water Act compliance as a goal of the agency after receiving substantial information describing a proposal for the largest coal terminal in North America. When we inquired, Ecology clarified last year that it could go ahead with the SEPA process, even before the NPDES permit application was filed, because it has authority to commence SEPA for the NPDES permit "at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified." WAC 197-11-055.

(e) Scoping Report: EIS for DNR, Coast Guard, NOAA, and Other Agency Decisions.

We also request that the Scoping Report state that this EIS is being prepared with the intention of providing the environmental documentation necessary for decisions by other agencies, based on their input as to scope, i.e., decisions by the Washington Department of Natural Resources on whether to grant an aquatic lease, Coast Guard decisions on appropriate anchoring locations and vessel practices, National Marine Fisheries Service determinations on compliance with the Endangered Species Act, clean air agency permits, Washington Hydraulic Project Approvals, and any other agency permits not listed in the scoping notice.

We believe identification of each of the agency decisions to be analyzed in the DEIS is critical to the essential function of the EIS. Only by analyzing whether the proposal addresses the specific criteria in the relevant permit decisions, can the EIS determine whether a probable significant adverse environmental impact may result, after applying the required permit

mitigation. We respectfully request that the Scoping Report list each of the permits, and their statutory criteria, to be analyzed in the EIS.

(f) Scoping Omissions. We urge you to pay special attention in your Scoping Report to two issues that were not identified in the scoping notice:

- Whether the Vessel Traffic Study currently commissioned by Ecology is adequate in scope (Glostein);
- Whether the alternative location of the proposed pier, advocated by several agencies during the MAP Team process, should be studied as one of the alternatives; and

When we inquired about the lack of agency comment on the scope of the Ecology Vessel Traffic Study last year, we were assured by Ecology in writing that the scope of the study would be evaluated during scoping for the EIS on the current proposal to export 54 Million U.S. tons of coal. We request that the Scoping Report explicitly evaluate the adequacy of that ongoing VTS. It appears inadequate because, in part, it failed to include all of the issues recommended by tribes and failed to analyze proposed anchoring locations.

We also request explicit discussion of whether the alternative pier location described by Washington Fish and Wildlife during the MAP Team correspondence will be analyzed in the EIS.

2. Baseline Information. We urge the co-leads to provide a description of baseline conditions and a description of the proposed project in the Scoping Report that is more detailed than contained in the Scoping Notice. Alternatively, the discussion of baseline conditions – against which project impacts would be measured – in the DEIS and a description of the project should include the following.

- **Geomorphology.** A physical description of the site that acknowledges it is part of the "Fraser Lowland Zone" geomorphology, subject to historical flooding, tideflows, and wind patterns that are unique from the Salish Sea in general. Note: The Cherry Point Aquatic Reserve Management Plan contains a discussion about the unique ecology of the nearshore environment due to these phenomena that should be incorporated.
- **Common Experience.** What is the environmental track record of other coal export terminals in the United States and Canada? How many enforcement cases and lawsuits over water quality or dust have been filed and decided? Please include an investigation of the recent Westshore terminal ship accident that destroyed the conveyor belt. Please also describe in detail each of the fugitive coal dust events that occurred at Westshore this past year, even with spray equipment and methods for control in place. Please also analyze the Westshore 2001 coal dust study suggesting that up to 750 metric tons of dust per year escape the facility.
- **Rail Traffic Background Levels.** Two critical facts should be identified early in the review process, as a baseline. The number of current coal trains using the BNSF mainline is 2-3 per day, only. The average number of freight trains per day utilizing the BNSF mainline north of Everett is 15-18, according to WSDOT plans.

- **Capacity of the BNSF Mainline.** WSDOT estimates the daily capacity of the BNSF mainline is 18 trains per day. If BNSF disagrees with this figure, it should provide non-proprietary data verifiable by a third party consultant. Otherwise, the EIS should use the best available estimate of capacity from WSDOT.

3. Project Description. We urge the co-leads to provide a description of the proposed project in the Scoping Report that is more detailed than contained in the Scoping Notice. Alternatively, the discussion of the in the DEIS should include the following.

- **Evaluate Impacts Using the Maximum Possible Maximum Length of Trains.** It appears the applicant has provided a description of train length that does not conform to what actually happens in the real world. We understand coal trains can reach up to 12,000 feet long and involve as many as five locomotives. The EIS should analyze traffic delays and other impacts utilizing the maximum possible length for coal trains, unless of course the applicant or BNSF is proposing a NEPA/SEPA condition or project condition that limits train length.

- **Evaluate Impacts Using the Maximum Possible Number of Trains per Day.** Similarly, the EIS estimate of project impacts should utilize the maximum number of trains per day that could theoretically occur in relation to this proposed coal port. To utilize a smaller number, i.e., the number picked by the applicant, would underestimate total project impacts. The number of trains per day is limited only by the capacity of the BNSF mainline, since delivery of coal to the site involves storage and the applicant could conceivably add multiple car deloaders. The DEIS should analyze impacts and economics for more than 18 trains per day, based on the maximum possible export volume of the pier.

- **Utilize U.S. Short Tons, not Metric Tonnes as the Measure of Export Volume.** Throughout the review, agencies have mistakenly utilized metric measures proposed by the applicant. In the United States, the federal government measures coal volumes in "U.S. Short Tons." We see no reason to alter that standard approach for this one applicant. The applicant's estimate of 48 million short tonnes of coal per year equates to 54 million U.S. short tons per year (multiplier of 1.1023).[1] Please utilize 54 Million tons as the unit measure.

- **Evaluate Impacts Using the Maximum Possible Export Volume of the Facility.** The EIS estimate of project impacts should utilize the maximum annual export volume the proposed facility could feasibly handle. The theoretical capacity of the facility appears to be larger than the 54 million U.S. tons the applicant has suggested, utilizing load rates from other coal ports around the world (see attached calculations). To utilize a smaller number, i.e., the number picked by the applicant, would underestimate total project impacts.

  The EIS should utilize the maximum theoretical capacity of the pier and facility, based on a review of load rates at other operating coal export terminals. Some quick calculations suggest those load rates would yield export of another 27.6 Million US short tons per

[1] http://www.metric-conversions.org/weight/metric-tons-to-short-tons.htm

year above the 54 million tons the applicant describes. The DEIS should use this higher number (81.6 Mty), unless of course the applicant is proposing a NEPA/SEPA condition or project condition that limits annual shipping volumes.

- **Utilize the Estimated Jobs Increase From the Application.** We request that the DEIS utilize the jobs increase described in the application itself, rather than in the applicant's economic studies. The application submitted to Whatcom County described on-site jobs as 213 jobs.

4. Alternatives Analysis.

In light of the potential cultural impacts, extraordinary amount of wetland fill proposed (approximately 170 acres), and a high level of regional concern about potential lost jobs and adverse economic impacts of the proposals, we request a robust analysis of whether alternative sites could meet some or all of the applicant's objective to ship coal to Asia.

- The DEIS should include an analysis of reasonable alternatives to any further disturbance of the Cherry Point Aquatic Reserve, treaty-protected fishing grounds, and the Lummi ancestral homeland (as described by the Lummi Nation), including the GPT property.
- Alternative ports for shipment of coal should be analyzed in detail, including the relative costs and savings of those end-shipment points, in light of the tremendous private and public costs associated with construction of the Cherry Point facility, Custer Spur improvements, and related infrastructure upgrades necessary within the multi-state rail corridor. The applicants should be required to provide verifiable construction and operation/transportation cost estimates, prior to commencement of this alternatives analysis.
- Under NEPA (and SEPA), the co-lead agencies have a duty to analyze alternatives that are within the realm of possibility, i.e., as long as they are not purely speculative or remote. In the case of coal shipments, since shipments are already being sent to Asia and other export destinations, the Corps and Ecology in particular have a duty to analyze the feasibility of utilizing ports in the Gulf of Mexico, the Great Lakes and the East Coast. Laguna Greenbelt, Inc. v. U.S. Dept. of Transportation, 42 F.3d 517, 524-25 (9th Cir. 1994) (a determination of "no reasonable alternative" involves only a review of alternatives whose effects can be readily ascertained, citing Vermont Yankee Nuclear Power Corp., 435 U.S. at 551, 98 S.Ct. 1197).
- In light of the substantial wetland fill proposed by BNSF and Pacific International Terminals, we request that the EIS include the type of alternatives analysis required by the Corps for the proposed Costco store relocation in Bellingham last year (see email from Randal Perry in document set).

5. Architecture of Economic Analysis. We understand the Corps will likely conduct an analysis of economic losses as well as benefits from the proposal. In calculating net economic loss or gain, we request that you utilize the standardized methods utilized in other cases, such as the Exon Valdez spill. This approach requires more than an assessment of short term job gains through build out. It also requires an assessment of possible adverse effects on existing

jobs and on *the potential for growth* of jobs in areas affected by the transportation corridor, as pointed out in many of the letters contained in the document set.

Others, including Senator Cantwell in her letter to the state Utilities and Transportation Commission, have noted the need for a comprehensive calculus of possible public funding demands that may arise directly or indirectly from these proposals, and we join in calling for the math.

The study should also include an environmental justice component. In particular, the study should focus on impacts to special geographic areas and populations, and make assessments of losses to culture, way of life, natural resource aesthetics and "sense of place." These are longer term effects that need to be assessed in a calculus of lost economic potential. There are several good studies available today calculating the value of Northwest ecosystem services, tourism, eco-tourism, recreation industries, and "sense of place" factors that draw industry and jobs to the area. We request that you gather these studies and analyze them during the economic assessment.

6. Climate Change. We request that the EIS discussion of climate change impacts analyze existing studies that calculate the tonnage of CO2 output, mercury and other heavy metals that results from each ton of thermal coal shipped to Asia (Alaska; Vancouver), in light of Dr. Jaffe's (UW) papers on the transport of pollutants to North America from Asian coal-fired plants and other sources. Please see the SLPS letter to the ORA (April 2011).

7. Make an Early Determination of Project Viability. In light of new information developed this past six months, long after the applicants submitted their JARPAs and agencies began reviewing the project, we believe the co-leads should pause and make an assessment at this time as to whether the original proposals are even feasible any more. Doing so could avoid the needless expense of the planned public review process, occupying years of agency time. That determination could be made fairly swiftly, as a preliminary determination that completion of the EIS process would not change the outcome in light of facts. This new information suggests the proposed rail transport route to Cherry Point may not be feasible any more, due to train derailments. Please consider the following:

- The number of mudslides occurring since Thanksgiving, and the recent freight train derailment near Everett from mudslide.
- Climate change predictions for the Northwest, suggesting increasingly intense rainfall events, and even more intensive mudslides.
- The lack of feasible alternatives available to BNSF to correct the mudslide problem (no additional fill of the Salish Sea or bulk heading would be permitted under Ecology guidelines for armoring or under the federal trust obligation – Treaties at Risk).
- The nine coal train derailments in July and August 2012, due to "sun kinks" that are occurring regularly with record heat, due to climate change.

8. Environmental Justice Impacts. Environmental justice is mandated as a component of NEPA EIS review, under federal guidance provided by the White House Council for Environmental Quality (CEQ). Please study whether the proposal to build and operate the

largest coal terminal in all of North America is likely to impose disproportionately high and adverse human health or environmental effects on minority, low-income, or Native American populations. Please thoroughly review the CEQ manual entitled:

> *Environmental Justice Guidance Under the National Environmental Policy Act* (December 10, 1997) (CEQ Manual).

Please also ensure that the NEPA process complies with the following Executive Orders mandating review of environmental justice impacts:

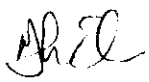
> Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations*; and
>
> Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.

9. Water Quality. In your Scoping Report, please ensure the EIS will analyze the following in its review of water quality impacts:

- The apparent lack of any numerical standards for discharges from coal transport or storage, i.e., reliance on "Best Management Practices" never yet applied to this activity.
- The goals and targets set in the Cherry Point Aquatic Reserve Management Plan and the recent report of the Puget Sound Partnership, targeting restoration of the Cherry Point Herring population as a statewide goal.
- Peabody Coal's letter to County Executive Jack Louws verifying that surfactants will be used on all coal cars entering the State of Washington. The EIS should analyze the chemical composition and residue from surfactants as they evaporate and blow off of coal cars during transport, as well as their decomposition when mixed with stored coal at Cherry Point.
- Documented groundwater contamination of the Gateway Pacific site, through migration from the TreOil hazardous waste site, listed by Ecology and noted in the Cherry Point Aquatic Reserve Management Plan. No cleanup has been initiated by any landowner or by Ecology since the spill was identified a dozen years ago. The Management Plan suggested study to determine whether the hazardous waste had reached the intertidal wetland and near shore environment. It also suggested expedited cleanup to prevent further harm to DNR tidelands. We urge an independent Level II groundwater analysis, a groundwater migration study, and a study to determine the effects on herring spawn and juvenile salmon rearing in the event of migration of identified substances to the shoreline.

Thank you very much for your consideration of these comments and the accompanying letter providing a complete set of documents for the scooping review and the record.

Very truly yours,



Tom Ehrlichman
Co-Executive Director

cc: Governor Jay Inslee, Washington State
Mr. Peter Goldmark, Washington State Commissioner of Public Lands
Mr. Jack Louws, Whatcom County Executive

Ms. Nancy Sutley, Chair, White House Council on Environmental Quality
Ms. Jodi Gillette, White House Senior Policy Advisor
Mr. Charles Galbraith, Associate Director for the White House Office of Public Engagement

Secretary Leon Panetta, U.S. Department of Defense
Ms. Lisa Jackson, U.S. Environmental Protection Agency (Cooperating Agency)
Admiral Robert J. Papp, Jr., Commandant, U.S. Coast Guard (Cooperating Agency)

Mr. Dennis J. McLerran, U.S. Environmental Protection Agency
Ms. Kate Kelly, E.P.A., Office of Ecosystems, Tribal and Public Affairs
Ms. Polly Zehm, Acting Director, Washington State Department of Ecology
Lt. General Thomas P. Bostick,
USACE Commanding General and Chief of Engineers
Colonel Bruce E. Estok, Commander, USACE Seattle District
Mr. William W. Stelle, Jr. NOAA, National Marine Fisheries Service
Mr. Daniel Ashe, U.S. Fish & Wildlife Service
Hon. Daniel Elliot III, U.S. Surface Transportation Board

Senator Patty Murray
Senator Maria Cantwell

Hon. Susan DelBene (1st District)
Hon. Jim McDermott (7th Distict)
Hon. Dave Reichert (8th District)
Hon. Adam Smith (9th District)

Senator Kevin Ranker
Representative Joe Fitzgibbon

Calculation of Maximum Loading Volume Cherry Point Gateway Pacific Terminal

Based on the research, below, the total coal export volume from the proposed Gateway Pacific Terminal at Cherry Point (and thus the number of trains and ships) could be much higher than is being suggested for environmental review (48 Million Metric Tonnes/Year and 18 Trains per day).

Consider the following:

1. The proposed pier will be capable of handling large ships reaching 180,000 Deadweight Tons or more.

2. The hourly load rate can be estimated by looking at other real world examples. Using 2012 data from the third largest port in the world, DBCT, Australia, the average hourly load rate (in metric tons) was 4,675 tonnes/hour.[1] That rate converts to 5,153 U.S. short tons per hour.

3. At an average hourly load rate of 5,000 tons per hour, the daily load rate would be 120,000 U.S. short tons per day.

4. Using this daily rate, and assuming operations for less than a full year (allowing for breakdowns or maintenance), a 340 day schedule at 120,000 tons per day results in a total maximum annual loading rate of 40.8 million US tons per year *loading a single ship.*

5. The Cherry Point pier is designed to load more than one ship per day, with docking capability for up to three ships.

6. Assuming the loading of only two ships at once, at 40.8 million tons per year yields a theoretical export capacity of 81.6 million U.S. short tons per year.

7. This is 27.6 Million US tons more than described.

8. If the 54 Million tons results in 480 ship visits per year (.1125 million tons per ship on average), then the additional 27.6 Million capacity translates to another 245 ships per year.

Using these average rates, the total export volume from Cherry Point (and thus the number of trains) could be much higher than is being suggested for environmental review (54 Million U.S. Tons/Year and 18 Trains per day).

If so, then the applicant's suggested total annual ship visits of 480 plus ships is also too low and environmental review should a possible additional 245 ships per year, using the averages supplied by the applicant.

[1] http://www.dbctm.com.au/_files/KPIReports/KPIQ22012.pdf