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January 21, 2013

Mr. Randel Perry, EIS Project Manager
U. S. Army Corps of Engineers
Seattle District Regulatory Branch
c/o GPT/BNSF Custer Spur EIS Co-Lead Agencies
1100 112th Avenue Northeast, Suite 400
Bellevue, Washington 98004

Ms. Alice Kelly, Planner
WA Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

Mr. Tyler Schroeder, Planning Manager
Planning and Development Services
Whatcom County
5280 Northwest Drive
Bellingham, WA 98226

Re: Scoping Comments on the proposed Gateway Pacific Terminal/Custer Spur projects EIS scoping

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

I am writing to express my opposition to the proposed Gateway Pacific Terminal/Custer Spur projects, and to identify the elements that need to be included in the scope of the Environmental Impact Statement (EIS) and the range of alternatives to be considered. Significant impacts have already occurred at the GPT site due to unpermitted clearing that harmed the environment and substantive cultural resources. If approved, the proposed projects would pose great harm to our environment both the development of the project and the export of coal. The EIS team is accepting scoping comments on the range of alternatives to be considered, important resources to be identified, impacts to be analyzed, and mitigation to be identified. Although I oppose the projects, I provide items that need to be included in the scope of the EIS.

The following is a list of issues, concerns, and opportunities that need to be included in the scope of the EIS:

- A cultural resources assessment according to state and federal laws where there will likely be an area of potential effect (APE), and proper consultation with Tribal THPO. This includes all connected actions of the proposed projects.
- An effective detailed cumulative impacts analysis, including all connected actions. This includes, but is not limited to the transportation network, potential improvements to it, and potential human and environmental impacts from use of it.
- Preparation of a programmatic EIS first, before this EIS is completed since agencies cannot make a well-informed decision on the proposed Gateway Pacific Terminal/Custer Spur projects until an analysis of the combined effects of all five terminals are considered. Each proposed terminal may serve as the least environmentally damaging practicable alternative to another terminal. The only way to determine the least damaging practicable alternative is to evaluate each of the five terminals in one EIS, such as a programmatic EIS.
- Address a full range of alternatives, including the no action alternative.
- A detailed benefit/cost analysis of each of the alternatives considered, cumulative impacts, and connected actions.
- In regard to action alternatives, the project proponents hold existing and valid permits for a smaller-scaled terminal facility. On page eight of the proponent's application (PL4-83-010A), the applicant states "The primary circumstances that make it difficult or impossible to meet the required setbacks are the critical areas on the site, most importantly, the wetlands, Stream 1, and the coastal bluffs. Efforts to avoid these areas to the extent practicable resulted in the previously approved location of the trestle and the proposed location of the rail loops, conveyors, transfer towers and other facilities." Since the applicant holds a valid active permit for the previously approved, but smaller project referenced in the quote above; under Whatcom County Code (WCC) 16.16.270B, the applicant must implement a feasible project design that avoids or minimizes impacts to critical areas. Such an action would avoid the need for a variance. The granting of a variance for the reasons given by the applicant would constitute "a grant of special privilege.....and the proposed modification to a critical area will be the minimum necessary to allow reasonable and economically viable use of the property." The proposed project design and capacity are not the "minimum necessary to allow reasonable and economically viable use of the property" since the applicant has not withdrawn the existing permits and the project allowed by those existing permits are economically viable and involve a reduced level of impacts to critical areas compared to the proposal described in these applications. Further, there are other uses of the project area and/or a smaller industrial complex that avoid or minimize critical area impacts and that meet the reasonable use test. As such, the granting of a variance for the proposed project would be inappropriate and inconsistent with the County's regulations. This issue must be given rigorous analysis in the EIS.
- An analysis must be conducted of the regulatory implications of an incorrect declaration by DNR that the unpermitted clearing and grading accomplished for the geotechnical testing in support of the proposed development was not conversion. The applicants have in hand an active permit for a smaller-scaled project and such declares their intent to convert the subject parcels. It makes no sense that DNR could interpret the clearing as not being conversion. Further, clearing 10 acres for geotechnical testing is not for forest practices, but for conversion. DNR has not, as of this date, provided a complete regulatory explanation of their determination presented in an Informal Conference Note (ICN) that conversion had not taken place. If the applicant had

followed the required regulatory path, the impacts to the significant cultural site and on-site wetlands would have been avoided.

- A thorough and broad-scoped cumulative impacts analysis (i.e., past, present, and reasonably foreseeable future actions) must be conducted across the full geographic extent of the project, including the possibility that more than one coal export terminal in the Pacific Northwest may be constructed.
- Treated/untreated stormwater runoff to wetlands, streams, and marine shorelines and nearshore habitats, including the effects of this on aquatic resources.

Page 3
GPT comment letter
January 15, 2013

- Impacts on the socioeconomics of the full geographic extent of the project (i.e., source of coal, transportation of coal to GPT and then on to the recipient).
- Impacts of diesel emissions and coal dust on human health and safety. This needs to include the entire transportation network, including the potential for a route up the Nooksack River and along the South Fork Nooksack River. That rail line bisects Nooksack Tribal offices, and interruptions to movement and human health effects need to be assessed.
- The cumulative impact of individual trains interrupting traffic multiple times at different crossings needs to be assessed. A single train can halt public and emergency services transportation on State Route 9 multiple times as once passed, automobiles can go faster than the train, and be stopped again at the next rail crossing. This also occurs for traffic stopped at Kincaid Street in Mt. Vernon for trains heading north, as disrupted commutes are again stopped at the crossing of Cook Road by the same train. Similar impacts at all other locations along the transportation route need to be assessed.
- Impacts of coal dust on eelgrass and other shade-intolerant species.
- Health and safety impacts of increased train traffic on rural and urban areas.
- Effects of marine vessel traffic on Treaty fishing opportunities
- Effects of increased marine vessel traffic on marine and treaty resources through increased potential for oil spills, and the potential for lost revenue by Tribal fishers in Puget Sound.
- Effects of marine vessel traffic on air pollution, and the impacts on humans and the environment. Assessment of the project's contribution to exacerbating global warming and climate change, and how that will affect Treaty and ESA protected resources including Nooksack spring Chinook. Climate modeling must be accomplished to show the contribution of burning coal from this project on climate change.
- Cumulative effects on the food based energetics supporting Nooksack treaty resources.
- Effects on Treaty shellfish resources including bivalves, Dungeness crab, and shrimp.
- Effects on the treaty reserved resource of Cherry point herring, and recovery of these fish which are severely depressed, and no longer productive enough to support Tribal harvest. They are also critical forage for Chinook and other Treaty reserved resources, and effects of any potential impacts to herring must also be analyzed for additional effects on Chinook and other commercial Treaty reserved species. Chinook make up the majority of Puget Sound orca diets, and food web impacts on orcas must also be assessed.
- Effects of increased marine vessel traffic on marine mammals including orcas by trauma, pollution and reduced prey base.

- Cumulative effects on business commerce and emergency services along the entire rail lines from coal source to the terminal.
- Effects on the safety of Tribal fishers.

Sincerely,

Oliver Grah