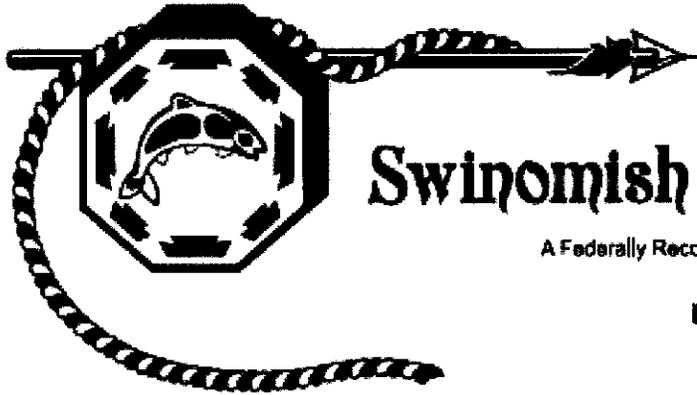


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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

11404 Moorage Way

LaConner, Washington 98257-0817

January 18, 2013

GPT/Custer Spur EIS
c/o CH2M Hill
1100 112 Avenue N.E., Suite 400
Bellevue, Washington 98004

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

Ms. Alice Kelly
Northwest Regional Office
Department of Ecology

Mr. Tyler Schroeder
Planning and Development Services
Whatcom County

Re: Scoping Comments regarding the Gateway Pacific Terminal (GPT)
and Custer Spur Modifications

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

The Swinomish Indian Tribal Community (the "Tribe") submits the following scoping comments pursuant to the Gateway Pacific Terminal and Custer Spur Modifications proposal. The Tribe has concerns regarding the potential adverse impacts of this project on the health of Tribal members, our treaty secured fishing resources, the ecosystem and air shed of the Salish Sea, the Swinomish Reservation, and our usual and accustomed fishing and hunting areas. We therefore ask the lead agencies to pursue a thorough and broadly-scoped analysis of cumulative impacts of the full project including the construction and operation of the port facility, associated rail and marine transportation as well as the cumulative impacts of the operation of this port in conjunction with related transportation of coal from the Powder River Basin to the multitude of proposed ports in addition to the Cherry Point site.

The Tribe has adjudicated fishing rights secured by the Point Elliot Treaty of 1855 throughout Northern Puget Sound. In particular, the proposed terminal at Cherry Point in combination with the other proposed ports throughout the Northwest has the very real potential to adversely impact tribal fishing opportunities both within Bellingham Bay and throughout the usual and accustomed areas within which the Tribe fishes. This letter will focus on larger issues associated with the permitting of this combined project, as well as identify a list of specific issues we believe are necessary to be addressed to adequately scope this project.

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Additional Alternatives: We believe it is appropriate for the DEIS to consider two additional alternatives.

1. Scaling the project back to allow only the original pier contemplated in the Aquatic Reserve Management Plan (2010) and Settlement Agreement (1999). This plan contains environmental analysis and studies highlighting the fragile nature of the herring, water quality, and shoreline that could be adopted as part of the DEIS and identifies potential proposed options that should be considered as part of the DEIS.
2. Utilizing existing ports around the country (Gulf, Great Lakes, East Coast), where planned coal-export expansions are underway (see www.csgcoal.sqsp.com), instead of constructing this new port in an Aquatic Reserve and in the middle of treaty fishing areas.

Cumulative Effects Analysis: It is our view that there is a need for a regional EIS to analyze the cumulative effects of the potential for six export facilities, as a source of information for each project-specific EIS. The transportation, air and water quality, and environmental impacts of Gateway Pacific Terminal should be evaluated in conjunction with the cumulative impacts that may occur with the development of additional ports in Longview, Gray's Harbor, Port of Morrow, St. Helens, and Coos Bay. Piecemeal analysis of these multiple projects is not consistent with our understanding of NEPA requirements, since the outlines of those proposals are known, along with estimated export volumes and rail traffic. A regional evaluation in conjunction with a site specific assessment of the GPT proposal is fundamental to understanding the true environmental impacts of the increased use, transportation and storage of coal in the Northwest. Based on the purposes of NEPA and SEPA, we are formally requesting that the Corps commence, and the Department of Ecology and Whatcom County contribute to a second, parallel EIS process addressing regional, cumulative impacts for all six of the identified coal export proposals, and their combined transportation from the Powder River Basin to the westward extent of U.S. International Waters in Alaska. That cumulative analysis should also take into account increased vessel traffic from proposed energy export terminal expansions in British Columbia using the same vessel routes as the U.S. energy export proposals.

NEPA specifically authorizes "tiering" to ensure regional overview that must be completed prior to completion of any Draft EIS for any specific project. (40 C.F.R. §1502.20). SEPA specifically prohibits the kind of phased review Ecology and Whatcom County are pursuing for GPT, and Ecology is pursuing with Cowlitz County for Longview, i.e., where EIS's are fragmented into separate pieces to avoid analysis of the total cumulative impacts of several proposals affecting the same transportation corridors.

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Currently, both Longview and GPT are proposing to use the Columbia River railroad corridor and Great Northern Circle shipping lanes to Asia. Longview and GPT may both return rail cars containing coal residue to the Powder River Basin over the Stevens Pass rail corridor. For efficiency and a more coherent public review of impacts, the rail and shipping corridor impacts should be reviewed in an early, "first-tier" EIS. The information on impacts from the GPT, Longview and Port of Morrow proposals are all well enough described in their applications to conduct this regional impact analysis.

The regional EIS is also necessary for defining additional parameters that need to be analyzed in the project-specific EIS'. For example, regional analysis might show that up to 60 trains per day will be moving through Eastern Washington cumulatively for all proposals. The regional EIS would indicate the need for each project-specific EIS to study how its particular diesel emissions could be reduced or mitigated as a condition of permit approval on that specific proposal. Similarly, the regional EIS might analyze the cumulative impacts of all railroad traffic on our usual and accustomed hunting and gathering areas, that would not be seen by focusing on one individual proposal. Based on this information, each individual EIS involving rail traffic through those areas would analyze how its specific project might mitigate the impact, through project-specific conditions.

In the event your scoping report for Cherry Point/Custer Spur is completed before any decision on a regional EIS, we believe the scope of the project-specific EIS should include the broad cumulative impacts analysis described above for the regional EIS.

Displacement of Tribal Fishing Activities: Additional dock construction and vessel traffic has the potential to displace tribal fishing for shellfish and finfish. Please evaluate the cumulative impacts on Tribal fishing areas and opportunities resulting from a series of increased vessel traffic occurring in the same general timeframe including the Gateway Pacific Terminal; BP Refinery; Anacortes Refineries; and Vancouver B.C., including tanker traffic at the Kinder Morgan pipeline, coal barging and vessel loading at Surrey Docks and Texada Island, and, possible expansions at the Westshore and Neptune coal Terminals, and any other reasonably foreseeable projects that will increase vessel traffic in areas where the Swinomish Tribe fishes.

In addition to construction of the GPT port itself and vessel movement through the Salish Sea to and from the port, anchoring of boats has the very real possibility of displacing Tribal net as well as shellfish operations. Please study the probable reduction in fishing opportunities due to physical loss of fishing area from displacement by the new pier structure and anchoring, as well as the economic impact of lost fishing gear.

Adverse impacts to Tribal fisheries resources resulting from adverse habitat modifications. The EIS should evaluate loss of salmon, shellfish, and forage fish habitat and impacts on herring, salmon and forage fish populations. The Swinomish Tribe has

historically harvested herring in this area, and expects to do so in the future when populations rebuild. The EIS should analyze project impacts to finfish and shellfish and their habitats due to physical changes resulting from dock construction, shoreline armoring, and loss of eelgrass. In addition, an analysis of impacts and possible adverse effects on treaty reserved fisheries resources resulting from increased train and marine vessel traffic, ongoing port operations as well the cumulative introduction of coal to marine waterways resulting from spills, direct application, or airborne loss is necessary. The analysis of cumulative impacts on herring should incorporate the scientific discussion in the paper by David Roberts, Kulshan Environmental Services, entitled: *Fact Check: Are Natural Factors the Cause of Cherry Point Herring Decline?* Also necessary are analyses of water quality impacts associated with ongoing port operations as well as from additional impervious surface associated with port construction. The DEIS should take into account the scoping questions analyzed in another paper by David Roberts, Kulshan Environmental Services, entitled: *Report on Status of GPT Studies; and Recommendations for SEPA Scoping* (Nov. 2011). While the report is over a year old, the questions it raises for DEIS study are relevant today.

Marine Habitat Effects of the Dock. The trestle containing the coal-loading mechanism is 600 feet long. Please study the environmental effects of the dock structure on the aquatic environment, including fish and shellfish populations and aquatic plant environment. Please include all reasonably foreseeable impacts, from construction to reclamation of the site.

Coal Dust in the Nearshore Environment. Please examine the environmental effects of coal dust in the nearshore environment. Please quantify likely amounts of coal dust to reach the nearshore environment and the effects it will have to the aquatic environment. The types of coal dust studies should approximate the chemical composition of coal from all likely mine sources.

Pollutants concentrated at dock. Please study the environmental effects of ships and support vessels idling at the pier, and the air quality and water quality effects from diesel emissions, noise and light pollution, and other potential discharge of pollutants in the dock vicinity, including an analysis of cumulative effects from accidental discharges of fuels and ballast water over time.

Environmental Risks associated with train derailment. The Draft EIS should include an analysis to determine the environmental impacts associated with any increased likelihood of train derailments associated with the increased amount of coal related traffic, track failures, and landslides associated with changing climate conditions. It is critical that all environmental assessments be based not only on today's existing climatic conditions, but also those expected to occur as a result of global climate change. The Corps of Engineers has a responsibility to evaluate these climate impacts as part of the EIS process. This analysis should be based on an in depth inventory of existing rail lines

and their susceptibility due to age, construction, and likelihood of failure due to storm surges, landslides, and a higher incidence of extreme weather events. This analysis should include an estimate of the additional need for shoreline stabilization and concomitant natural resource impacts necessary to accommodate any additional traffic associated with the project.

Impacts to Tribal economic interests. The Swinomish Tribe requests that an in depth analysis be conducted to evaluate the impact of additional rail traffic on local surface traffic and the related impacts to Tribal economic enterprises. At a minimum, analyses should consider if additional rail traffic will impact the Swinomish Casino and Lodge and gas station, as well as other potential Tribal operations. This analysis should take into account the recently increased number of tanker rail cars serving the Anacortes refineries, and any plans for additional expansions.

Risks associated with additional marine vessel traffic. There are a number of significant adverse impacts that may occur as a result of additional marine vessel traffic. We believe a cumulative vessel traffic study should be undertaken that includes the following:

- Please identify all likely sources of new ship traffic likely to traverse the Straits of Juan de Fuca and particularly focus on those likely to use Rosario and Haro Straits.
- Perform a risk assessment that calculates likelihood and magnitude of an accident, a fuel or cargo spill, or other environmental emergency associated with additional vessel traffic. The fuel spill assessment should include documentation as to the amount and type of vessel fuel that bulk carriers could potentially carry. Please consider the fact that to our knowledge the applicant has not proposed any limit on the size of bulk carrier vessels or their fuel carrying capacity. Please consider the likelihood that absent any size limitations, vessel size may increase over time. The DEIS should consider as a basis for analysis, at a minimum, the largest bulk carrier vessel known to date, unless and until the applicant proposes a NEPA/SEPA condition limiting the size of vessels allowed to call on the proposed Gateway Pacific Terminal.
- An estimate of environmental impacts in various locations of the Salish Sea associated with a major spill associated with such emergencies, including possible collision with an oil tanker from the Cherry Point, Anacortes, or Vancouver, B.C. refineries.

Ballast Water. Release of ballast water has the very real potential to further exacerbate the already serious problem of introduction of exotic species into Northwest waters, which in turn has the potential to adversely impact Tribal resources. Please indicate how the applicant proposes to prevent the dumping of ballast water inside the 200-mile limit. Please evaluate the likelihood of success of the applicant's plan on ballast water, and

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potential malfunctions based on unique analyses or based on peer reviewed analyses conducted under similar circumstances.

The DEIS should also address how the applicant intends to meet the recommendations of the 2007 Ballast Water Management Plan: (http://www.psparchives.com/our_work/protect_habitat/ans/ballastwater.htm). If the applicant is not planning on meeting these standards, the DEIS should study the risk and severity of environmental degradation. The DEIS should address how will ballast water be treated and any circumstances where ballast water will come into the Salish Sea. The impacts of foreign/invasive species in the Salish Sea should be analyzed. The DEIS should also discuss how state and federal governments plan to monitor compliance with applicable safety protocols proposed by the Applicant, including applicable enforcement regulations.

Oil Spill Response. Please evaluate the adequacy of the current programs, staffing, capabilities and funding for the Coast Guard, the Department of Ecology “SPILL” section, and other entities charged with monitoring and policing vessel traffic, preventing discharge of ballast water, and responding to collisions, groundings, spills and other accidents in the Salish Sea.

The baseline study should be based on existing spill response and piloting requirements, rather than speculative and unbudgeted future systems or future suggestions that may not materialize. In light of these concerns, the DEIS should analyze whether existing response resources, the regulations currently in place, and the budget allocated to these efforts operate can assure that the risks involved in the increased vessel traffic from GPT will not adversely affect or interfere with tribal treaty rights to fish and gather shellfish.

Queuing/Anchoring/Vessel Movement of Ships Going Into Port. Ecology has already commenced a Vessel Traffic Study (VTS), under an RFP and Scope of Work approved this past fall. This early VTS includes an important omission. The VTS purports to study the impacts of the Gateway Pacific Terminal, as evidenced in the RFP and Scope of Work approved for that study. However, it expressly excludes study of a direct impact of the GPT proposal related to anchoring locations for new vessel traffic. Page 3 of the VTS Scope of Work states that it will rely upon the Harbor Safety Plan of the USCG as the definitive source on anchorage usage and capacity, but also states that it (the new vessel traffic study) expressly excludes study of whether that capacity is adequate to serve the GPT proposal:

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It is acknowledged that anchorage grounds siting and approvals are the purview of the United States Coast Guard and outside the scope of this study. Therefore, while the study will assess and inform the need for additional anchorage capacity, the study will not include recommendations for siting of any additional anchorage grounds.

It therefore appears that there will be inadequate information to make an informed decision regarding the environmental consequences of port construction and operation and commensurate increase in vessel traffic. We believe that the issue of the criteria, requirements and mitigation to be required by the Coast Guard for establishing new anchoring sites, or the use of existing sites, should be addressed as part of the EIS. The DEIS should analyze existing federal or state regulations and discuss whether they limit queuing to any specific locations. We also request that the DEIS evaluate existing anchorage sites in detail to determine whether capacity limitations trigger the need for new sites, and then to identify where they might be, and what the impacts of using those new sites might be. The DEIS should include a vessel traffic study independent of the early VTS study approved by Ecology, since it does not study all impacts.

For all commercial vessel and waterways management, marine safety, port safety and environmental protection and spill preparedness and response issues in Washington state waters, including all of Puget Sound and the various connecting straits, it is our understanding the Washington Department of Ecology Spills Prevention, Preparedness, and Response (SPILLS) Program is the primary state authority responsible for dealing with vessel and facility incidents as they might impact state marine resources. With Ecology having primary responsibility for vessel incidents, and as a co-lead agency for NEPA/SEPA review, the DEIS should analyze the need for additional anchorage capacity, including potential siting, in fulfillment of SEPA's purposes and procedural requirements. This is also necessary in order to avoid piecemeal review under NEPA, involving the Coast Guard's decisions regarding the use and capacity of anchoring sites.

The failure to identify necessary anchorage sites defeats paragraph 13 of the early VTS, which promises an analysis of how anchorage exclusion zones could affect tribal treaty rights and fishing areas. Once the locations are identified, it is essential that the DEIS study adverse effects on tribal treaty rights and fishing areas, due to: (a) the effects of anchors, anchor chains, and diesel particulate emissions on the marine environment; (b) increased risks of collisions with oil tankers and other ships in these locations; and (c) anchorage exclusion zones.

Baseline water quality studies: Comprehensive water quality studies are needed to determine a baseline of current impacts prior to consideration of any new sources of pollution.

Battelle has completed a detailed hydrodynamic model of nearby Bellingham Bay. This model should be extended north from its boundary in Hale Passage to the Canadian border. This will provide an understanding of current and tides. Using this modeling data, Ecology – in cooperation with EPA -- should design and carry out a detailed water quality study of the entire Cherry Point reach to determine concentrations of key pollutants over space and time. The study should include a follow up on the state of groundwater contamination reaching the shoreline, identified in the Cherry Point Aquatic Reserve Management Plan, emanating from the TreOil site. Independent studies should be conducted and peer reviewed, with results and data made available to tribes and agencies for confirmation.

Disclosure of Stormwater Standards and Coal Pile Discharge Standards. Standards that will apply and regulate stormwater runoff and coal pile discharges should be clearly identified and discussed. Those standards should address heavy metals that may leach into groundwater or surface waters. The specific chemical composition of all sources of coal likely to be transported and shipped from the proposals must be established through laboratory analysis of samples. In the event the scientific literature does not include studies of the resulting chemical processes when these various types of coal are immersed in water, we request that the DEIS include new chemical and laboratory studies. Mitigation measures that will be utilized to address discharge of heavy metals into ground or surface water should be identified.

Study Coal Car Stormwater Releases. As part of the analysis of impacts, the DEIS should include a study that takes a typical coal car full of the various types of coal, discharges water into the car at the highest possible storm event, and measures the outflow of water from the car for the entire period of time the car could be on the rail lines, from mine to unloading. The outflow must be measured and analyzed for chemical composition, including heavy metals, hydrocarbons, and suspended solids.

Stormwater Discharge at the Site. Information on stormwater runoff, project runoff, and groundwater discharges (“stormwater”) should be provided in the DEIS, with baseline information to compare to anticipated changes. The DEIS should address the mechanics of regulating stormwater on the site and how monitoring will occur to determine or estimate the amount of coal dust and coal leachate that enters into surface water. Monitoring and performance standards should be identified to insure that adequate information will be collected, and a list of constituents that will be monitored

for should be provided. Stormwater management systems and operations should be identified. Studies evaluating additional discharges to the creek, and salinity changes associated with additional impervious surface and operations should be provided. These studies should also evaluate environmental changes to the nearshore estuary and feeder creeks associated with additional stormwater runoff.

General Construction NPDES Permit. Please require the applicant to provide all detailed information necessary to consider the NPDES Construction Permit as a part of the DEIS.

Freshwater and Wetlands. Please consider the following questions of impacts to existing streams and wetlands in the DEIS study:

- How does the project conform to wetland avoidance sequence required by WCC 16.16.260(A).
- How will the applicant address wetland fill alternatives.
- What type of mitigation and at what ratio is mitigation proposed for the stated 170 acres of wetland fill. How will that mitigation equal or better the functions of the existing wetlands to achieve no net loss?
- The applicant apparently proposes elimination of an emergent wetland to create a stormwater pond. How does this meet the avoidance sequence?
- Will the agencies require the RR tracks be elevated to eliminate wetland fill
- How will the applicant provide 100 foot buffers from streams? Will those buffers be adequate to provide for no net loss of functions and values?
- Wetland creation areas B,C,H,L, F are disconnected, from a water and habitat perspective. How will no net loss be achieved using these areas?
- What are the impacts to wetlands and restored wetlands over time(temporal impacts)?
- How does the rechannelization and straightening of California Creek provide replacement habitat for a meandering channel?
- How will the work in and around Terrell and California Creeks and their associated wetlands affect salmon habitat and reproduction?

Air Quality Impacts: The Tribal Airshed and potentially the health of Tribal members, as well as others in the region, may be significantly adversely impacted by air pollutant emissions from the project. Potential impacts which need further analysis in the Environmental Review process include those from diesel emission from the 18 or more additional trains through the Skagit Valley and along the shoreline north of the Reservation; emission from diesel or potentially bunker fuel from 467 or more additional ships transiting twice through the area; increased auto emissions from idling vehicles waiting at blocked rail crossings from the coal trains; and anchored vessels idling their

engines. This analysis should be done at least for the Northwest Washington airshed (Whatcom, Skagit, Island and San Juan Counties) and potentially such analysis done for areas subject to increased air emissions throughout the length of the coal transport route. Pollutants of concern for air quality and health impacts include Nitrous Oxides, Sulphur dioxide, particulates and ozone.

Air quality monitoring by the Swinomish Tribe, which passes EPA Quality assurance requirements, indicates that our airshed is on the borderline of exceeding National Ambient Air Quality Standards for ozone and particulates (PM10 and PM2.5). This is a concern for health impacts to the general population of the airshed and especially to the Swinomish community which has an asthma rate well above that of the general population. In addition, this raises questions regarding economic impacts to the area. If this project is sufficient to cause the area to get into Non-Attainment for one or more criteria pollutants under the Clean Air Act, additional pollution control requirement costs for existing facilities to provide off-sets could be significant. These potential impacts to health and to environmental resources need further analysis. Potential economic impacts to existing industries and other air emission sources that may need to increase controls to address criteria pollutant non-attainment in the air quality control region also need further analysis.

Particulates from not only diesel emissions, but coal dust blown off from train cars, the facility itself and ships leaving the facility are significant potential sources of particulate matter with potential impacts to health and the ecosystem. Potential impacts include those from breakdown products in coal spilled or blown off into waters within the Swinomish U & A or affecting Treaty resources. Such analysis should including testing of constituents in the coal being shipped such as PAHs and heavy metals such as mercury and specific breakdown products from the coal deposited in either fresh or marine waters. Issues associated with both toxicity and increases in acidity of marine waters should be addressed in the analysis.

Necessary Permits: The DEIS should identify all of the federal, state and local permit approvals it intends to cover, as well as analyze the approval criteria. For example, it should be explicit about whether it is being scoped to cover Coast Guard decisions and authorizations, the DNR lease, or any portions of the upcoming DNR Habitat Conservation Plans for the Cherry Point Aquatic Reserve, or any Federal or State approvals for rail line construction or maintenance or associated mitigation projects.

In summary, the Swinomish Tribe is very concerned that Tribal natural resources, Treaty reserved fishing rights, and the health and wellbeing of our Tribal members may be adversely effected by the construction and operation of this port, particularly in

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conjunction with other coal related transportation proposals around the Pacific Northwest. We would therefore like to request that the Tribe have the opportunity to have ongoing consultation with the Corps and Ecology during the EIS process. In particular, we would like to receive periodic briefings, and have the opportunity to comment directly when studies identified during scoping are [defined as to scope and again when they are] completed. We believe that this will be beneficial for the Tribe, as well as for the Corps. For example, we cannot begin to assess the impacts of additional vessel traffic and anchoring on displacement of Tribal fisheries until those studies are completed. At that time, we will want to begin discussions with the Corps on how it intends to assess impacts on Tribal fishing activities from increased vessel activity and other impacts associated with project operations. We believe this will be an iterative process that will require multiple interactions between the Tribe and its Trustee. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Brian Cladoosby". The signature is written in a cursive style with a large, stylized initial 'B' and a long, sweeping tail on the 'y'.

Brian Cladoosby, Chairman
Swinomish Indian Tribal Community