



January 20, 2013

GPT/Custer Spur EIS

c/o CH2M Hill

Via Electronic Transmission: comments@eisgatewaypacificwa.gov

RE: Comment: Alternatives

Dear Agency Co-leads:

SafeGuard the South Fork [SGSF] would like to thank the Washington State Department of Ecology, Army Corp of Engineers, and Whatcom County for committing themselves to a thorough analysis of the Gateway Pacific Terminal (GPT) and related impacts under the State Environmental Policy Act (SEPA) and National Environmental Policy Act [NEPA]. SGSF is a grassroots group working to shape the public policies that affect the quality of life and agricultural safety in the South Fork Valley and neighboring communities. SGSF is located in Whatcom County and recognized as a Washington State not-for-profit.

SGSF asks that the EIS evaluate the impacts on the entire Burlington Northern Santa Fe (BNSF) Railroad system in Whatcom County—including track along the coast as well as track in eastern Whatcom County—for accommodating loaded or empty trains traveling to and from GPT to facilitate rail transportation access to the terminal. In the proposed layout for GPT shown in Figure 1, the largest percentage of space is dedicated to rail transportation access and, specifically, the east and west rail loops. The proposed layout makes clear that PIT's operational plan for GPT has a lot to do with trains. The east and west rail loops would have capacity to stage up to eight trains for Terminal operations—the exact number of trains arriving daily at the terminal if full terminal operations were to occur.

Rail Access to GPT

In proposed layout for GPT shown in Figure 1, a large percentage of space is dedicated to rail transportation access and, specifically, the east and west rail loops. The proposed layout clearly represents that PIT's operational plan for GPT has a lot to do with trains. The east and west rail loops would have capacity to stage up to eight trains for terminal operations—the exact number of trains arriving daily at the terminal if full operations were to occur.



Figure 1: Proposed Layout

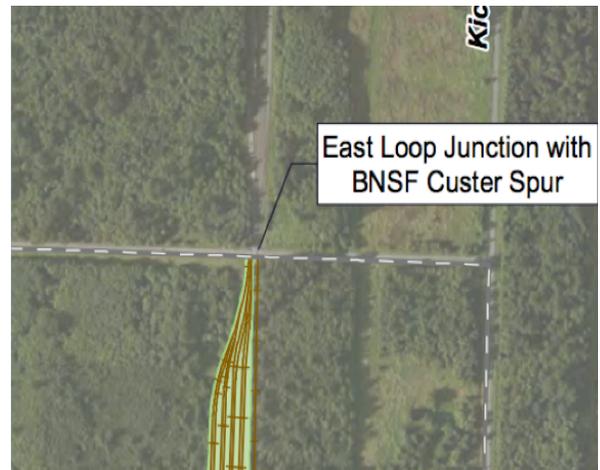


Figure 2: Custer Spur

The east and west rail loops shown in Figure 1 are proposed to connect with the Custer Spur shown in Figure 2, requiring additional infrastructure to 6 miles of the Spur to accommodate the number, length, and weight of trains necessary for the daily operations of the Terminal. BNSF not PIT is the permitting applicant for this, as well as any other interdependent railway projects.

While PIT claims in the permit application that “no interdependent projects have been identified on the BNSF Railway’s mainline,” we know that the east and west rail loops connect with the proposed Custer Spur that connects with the Coastal Route, and that all of this is going to add a lot of stress to existing capacity. This is why the question of interdependence remains at the forefront of scoping comments on rail. Figure 2: Custer Spur taken from the permit application visualizes why the Custer Spur requires new infrastructure to accommodate the expected tonnage of coal being staged on the east and west loops, as well as to manage the required maintenance demands resulting from the increased numbers of trains while maintaining current service levels. However, what about the main line running parallel to I-5 that the Custer Spur feeds into [See Figure 3]?



Figure 3: Custer Spur Connecting to Main Line

Or the Whatcom Farmland Route running through the towns of Acme, Van Zandt, Deming, and Everson? What about all rail lines that would require new infrastructure to move coal between the Powder River Basin and the east and west rail loops at GPT? SGSF asks that all rail infrastructure built to facilitate the 8 trains arriving at GPT to be staged, dumped, and inspected before departing be considered interdependent?

The Whatcom Farmland Route

The question of interdependence apparently is on PIT's mind because in their permit application they state that while the proposal for an east/west rail freight corridor identified in the Whatcom County Comprehensive Plan that connects the Whatcom Farmland Route in Eastern Whatcom County to the Custer Spur "appears to be pertinent to the Gateway Pacific Terminal project...an east/west rail freight corridor is not being proposed."

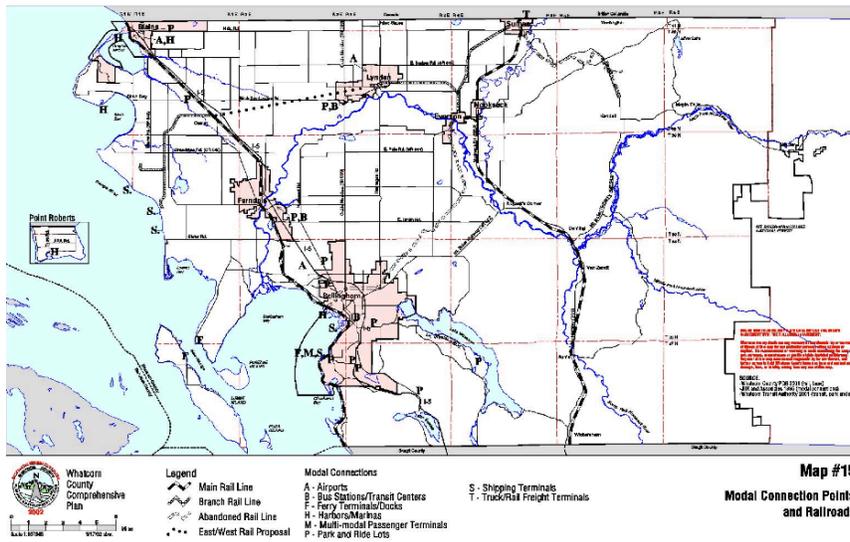


Figure 4: Map #15 Whatcom County Comprehensive Plan

Also relevant to understanding the probability of the Whatcom Farmland Route being used to facilitate trains traveling to or from the proposed GPT is the 1992 proposal for a Washington State Commerce Corridor along the Whatcom Farmland Route.¹ This Commerce Corridor proposal was evaluated as being infeasible as proposed, however recommendations were made on how to make the project more feasible. Many of the elements of the findings in the Commerce Corridor concept, especially rail and highway development in eastern Whatcom County are the same logical possibilities that are inherent in the GPT picture. Recommendation #2 in the report is to Pursue a Multimodal Freight Based Corridor Strategy.

Public Commentary on Whatcom Farmland Route

In 2011 public officials and community groups in Bellingham, WA recommended that the impacts of coal trains on Bellingham be mitigated by rerouting those trains to the Whatcom Farmland Route and across the Sumas border or via a the proposed rail link west from Lynden to the main line at Custer. In a May 2011 Bellingham Herald article, Suann Lundsberg, a BNSF spokesperson, responded to the alternatives available on the Whatcom Farmland Route, stating that neither alternative to Bellingham appears practical to railway officials.² However in May 2012, Lundsberg, speaking to capacity challenges, clarified her position and stated in the Bellingham Herald that, "we could not know which line the coal trains would

¹ Final Report Washington Commerce Corridor Feasibility Study Washington State Department of Transportation Prepared by: Wilbur Smith & Associates. 1992.

² "BNSF says Bellingham is only practical route to Cherry Point cargo terminal." *Bellingham Herald*, May 31, 2011.

use...we can't tell you...what the market will bring on lines that are shared by all different commodities.”³

Magnifying the issue of freight capacity and rail routing possibilities is the *The Cascadia Transportation Plan: Increased Higher Speed Passenger and Freight Rail Service* prepared for the Cascadia Project in 2000. Table 14 in this report speaks to expected increase in freight train traffic across the US-Canada Border on the BNSF Line on the Cascadia Corridor between Vancouver, B.C. and Everett, WA which are “divertible to the Cascade Foothills Corridor from Sumas to Snohomish in Washington.” BNSF does have track rights in lower British Columbia. Hundreds of millions of dollars are being spent to improve rail mobility from Abbotsford just north of Sumas to the West Shore coal port; thus creating a modernized connector to a rehabilitated and now state of the art rail corridor in eastern Whatcom County farmlands, paralleling much of the Nooksack River from Wickersham to Sumas.

Despite claims in the PIT permit application for GPT that interdependent rail project will be permitted through BNSF, GPT states the following under FAQ on their web site.

Q: Is there a different route the trains can take so that they don't have to pass through Whatcom County?

A: No. Routing trains via the Sumas branch line and into the Gateway Pacific Terminal has been studied and determined not to be a feasible alternative. That option would have substantially more environmental impacts than upgrading the existing rail line into the facility. It would require building approximately 15 miles of new rail, rehabilitating 38 additional miles of rail, acquiring about 100-150 acres of land, crossing the Nooksack River, building between 2 to 3 miles of new rail in the floodplain alongside the Nooksack River (which is a very flood-prone area) and disturbing up to 20 acres of wetlands. The non-wetland areas are predominately farmland, including areas the State of Washington has declared Prime Farmland, which would be taken out of production in order to build rail. Several at-grade crossings would have to be built as part of this option. This route would also increase the haul distance for every train that needed to enter the facility and for many other trains going both to and from the ports that are not connected to the facility. This increased haul distance would increase the cost for shippers and, ultimately, for consumers.

First off, please note that the question is phrased incorrectly. Presuming the answer on the web site refers to the Whatcom Farmland Route, then this route does pass through Whatcom County—eastern Whatcom County. SGSF requested access to the study that GPT mentions on their web site leading to their determination that the Whatcom Farmland Route is not a feasible alternative. We did not receive a reply. In particular, we are interested in understanding the rail development plan they describe, since it does not appear to be aligned with the east/west rail proposal in the Whatcom County Comprehensive Plan or the existing line through Sumas. SGSF asks that the Whatcom Farmland Route be studied as an existing rail line, as well as the possibility for new rail line developments, in the EIS. If the route is officially determined to not be a feasible alternative, then we ask that a legally binding statement be made by both GPT and BNSF that the Whatcom County Farmland Route will not be used for trains traveling to or from GPT.

Ms Lundberg's equivocation and the FAQ on the GPT web site aside, what is the case? “YES” or “NO.” Is there “ANY” possibility that the Whatcom Farmland Route would be developed or used for trains traveling to or from GPT? If so, then any and all impacts in eastern Whatcom as well as Skagit County must be identified and considered as an integral element of the proposed GPT. If not then the EIS must determine that the Coastal Route is the one solitary feasible route through Whatcom County to the

³ State seeks wide-ranging review of all coal terminals in NW, including Cherry Point. May 9, 2012. Ralph Schwartz.

proposed GPT and thoroughly address the associated impacts..

Incompleteness of GPT Permit Application

In a May 15, 2012 letter commenting on the completeness of the permit application, SGSF states that absent items pertaining to offsite transportation, PIT's permit application for GPT should be considered incomplete [See Attachment A]. SGSF maintains this recommendation that PIT's permit application be resubmitted with attention to transportation impacts.

There appears to be necessity in the design stage for GPT to enhance rail options in Whatcom County. The truth of the matter must be set out at the inception. Evasion of facts at the outset compromises the functionality of the system downstream. In Northern Plains Resource Council v. The Surface Transportation Board, the Ninth Circuit Court of Appeals remanded and stated in response to the preemptive decision of the Surface Transportation Board,

... "in evaluating the new TRRC III (Tongue River Railroad) application, the Board still did not review the new evidence of operational and safety concerns, and instead considered the Four Mile Creek Alternative as "currently authorized," and the "no-build" alternative considered in TRRC III. By the time the Board prepared the DSEIS in October 2004, the Board was well aware of the concerns that the TRRC and BNSF had raised about the viability of the Four Mile Creek Alternative from a safety and operational perspective. Moreover, in 2004, the Board was aware that the TRRC had asked to suspend proceedings due to financial problems in 2000, after which review was suspended for almost three years. The Board also did not revisit the financial viability of the Four Mile Creek Alternative when it considered it the "no-build" alternative in TRRC III in light of the changed financial circumstances. Thus, we conclude that the Board's decision in TRRC III was arbitrary and capricious in light of the evidence it had before it regarding the TRRC and BNSF's safety concerns that arose subsequent to the Board's approval of TRRC II.

[35] To summarize our holdings for Section II, we find that the Board's decision not to review new evidence of oper-21480 NORTHERN PLAINS RESOURCE v. TONGUE RIVER RR operational and safety concerns for the Four Mile Creek Alternative in TRRC III to be arbitrary and capricious, and we reverse and remand on that ground. We affirm the Board on Petitioners' other railroad claims."

The Whatcom County Farmland Route must be acknowledged in the EIS, stemming from the 9th Circuits reasoning that reflects upon environmental consideration for new, or in our case profound construction, prior to rather than after the fact of a permit being considered [See Attachment B].

Impacts to Rail Communities

SGSF requests that the EIS conduct a regional cumulative rail traffic study that:

1. evaluates capacity on the Coastal Route with or without upgrades or new construction and, if upgrades or new construction were required, what would those be?
2. assesses the feasibility of using the Whatcom Farmland Route with or without upgrades or new construction and, if upgrades or new construction were required, what would those be?

SGSF asks that you also consider the following social, economic, and ecological impacts reasonably foreseeable to all rail communities impacted by trains going to and from GPT, including the Whatcom Farmland Route:

NOISE and impacts on sleep cycles of residents, children, the elderly, livestock, as well as cumulative effects of noise on health and near schools.

CONSTRUCTION upgrades, spurs, links, bridges, etc. and the impacts of that construction on traffic, the

environment, the community, public funds, etc..

AGRICULTURE and vibration and noise on livestock/dairy production, soil or crop pollution, crop damage, loss or division of farmland, sense of place, heritage.

DERAILMENTS and increased risks associated with wet soils, landslides, and seismic activity areas;

TRAFFIC and the potential for ACCIDENTS at unsafe crossings.

WAIT TIMES for trains to cross or if a train derails, including impacts on first responders, school bus routing, and increased commute times, etc.

COMMUNITY HEALTH risks associated with diesel particulates, coal dust, and runoff— either airborne or after settling on crops and water.

SCHOOLS and proximity of schools to the tracks and student exposure to noise and pollution.

WATERWAYS and FISH and the proximity of habitats to the tracks.

It is up to the Whatcom County Council, the State of Washington, and the United States Army Corp of Engineers to evaluate scoping comments and decide whether the cumulative impacts are sufficiently significant to overshadow the ability to mitigate them. At that point, when the environment is subject to unmanageable abuse, they must declare that the cost of catering to someone's business endeavor is so ruining to the fabric of our communities that, despite perceived benefits, we cannot permit the project. Based on the transformative impacts that the proposed GPT will have on communities throughout the rail corridor, as well as the schools, businesses, and farms sustained by these communities, SGSF recommends that no action be taken because the financial and cumulative degradation to the environment overwhelm the benefit of approving the project.

Thank you in advance for your consideration of this Comment. If you have any questions, please contact Nicole Brown or Jeff Margolis at info@safeguardthesouthfork.org.

Sincerely,

Safeguard the South Fork by:

Nicole Brown, PhD
Co-Chair, SafeGuard the South Fork

Jeff Margolis
Co-Chair, SafeGuard the South Fork

May 15, 2012



Tyler Schroeder
Planning Supervisor and SEPA Primary, GPT Project
Whatcom County Planning & Development Services
Via Facsimile Transmission: tschroed@co.whatcom.wa.us

Sam Ryan
Director and SEPA Secondary, GPT Project
Whatcom County Planning & Development Services
Via Facsimile Transmission: jryan@co.whatcom.wa.us

Loree' Randall, SEPA Primary
Washington Department of Ecology
Via Facsimile Transmission: loree.randall@ecy.wa.gov

Alice Kelly, SEPA Primary
Washington Department of Ecology
Via Facsimile Transmission: alice.kelly@ecy.wa.gov

SUBJECT: Comment on Completeness of Applications filed with Whatcom County
for the Gateway Pacific Terminal

May 15, 2012

Dear Sam Ryan, Loree' Randall, Alice Kelly, and Tyler Schroeder:

We'd like to thank the Washington State Department of Ecology and Whatcom County for committing themselves to a thorough analysis of the Gateway Pacific Terminal (GPT) proposals and related impacts under the State Environmental Policy Act (SEPA). SEPA requires identification and study of all reasonably foreseeable significant impacts—direct, indirect and cumulative—caused by a proposal regardless of where those impacts occur. A complete permit application and thorough review of compliance with the major project permit requirements ensure that the proposed major development will be appropriately responsive to any EIS prepared from the project. WCC sec. 20.88.130.

On behalf of the citizens group, duly recognized by the State of Washington as Safeguard the SouthFork (SGSF) we maintain that GPT's Major Project Permit Application submitted by Pacific International Terminals (PIT) is incomplete and must be resubmitted. PIT defines the proposed GPT as including the following key facilities: (1) deep-draft wharf with access trestle; (2) dry bulk materials handling and storage facilities; and (3) rail transportation access. However, the permit application does not acknowledge all pertinent rail line construction that would occur in Whatcom County if GPT is permitted.

As required for the Major Project Permit application, PIT provided an Engineered Traffic Study of “existing traffic conditions, potential effects of the Terminal on congestion and safety, and improvements that would be needed to address the impacts of the Terminal on traffic conditions.” While traffic analyses were reported for roads and 17 intersections that “could experience increased traffic due to the construction and operations of the Terminal,” the Engineered Traffic Study provides no analysis whatsoever of the increased volume of rail traffic that will occur as a result of terminal development and operations, despite both freight and passenger rail services being provided in the project study area and the development of the Custer Spur being a part of the key terminal facilities in the permit application. Currently, the traffic study required to meet the Whatcom County Major Permit Application Requirements lacks scientific technical information about existing conditions of rail traffic and the projected effects of project operations on additional land acquisition and new rail line construction in Whatcom County *connected to* the Custer Spur and other key Terminal facilities named in the permit application.

According to the Engineered Traffic Study submitted by Pacific International Terminals,

*The BNSF Railway would provide the main inland freight access via BNSF Railway’s existing rail network. Specifically, the BNSF Railway’s existing Bellingham Subdivision main line runs approximately north-south, roughly parallel to I-5, in the project vicinity. This main line feeds the Custer Spur (Cherry Point Subdivision Main Line), **the only existing rail line** serving the Cherry Point Industrial UGA. (March 2012, 3-2, emphases added)*

Connecting to this existing rail line, PIT identifies new rail construction for the Custer Spur that, despite a lack of scientific technical information about existing conditions of rail traffic and the projected effects of project operations on rail traffic, they know is necessary to handle the number, length, and weight of trains transporting the expected tonnages of bulk commodities for the primary operations of GPT.

Despite not providing analysis of improvements that would be needed to address the impacts of GPT on rail traffic conditions, PIT makes claims regarding plans for future development of the project as defined by Whatcom County’s Comprehensive Plan. In Table 2-1 of Attachment F of the Project Information Document (PID), PIT identifies the goals and policies of the Comprehensive Plan related to traffic that appears to be “pertinent” to the Gateway Pacific Terminal project. More specifically, PIT acknowledges on pages 2-1 to 2-2 that the proposal for an east/west (E/W) rail freight corridor connecting an existing north/south rail line in Eastern Whatcom County (hereinafter “the farmland route”) to the Custer Spur “appears to be pertinent to the Gateway Pacific Terminal project” while simultaneously stating that “an east/west rail freight corridor is not being proposed.” Because the Whatcom County Comprehensive Plan is used by public officials to guide growth in unincorporated Whatcom County for the next 20 years, the relationship between land use and traffic conditions in the vicinity of GPT directly effects what projects will likely occur in the future and these major projects should be identified in the permit application for GPT.

In the existing permit application, PIT claims “the impacts of rail traffic on vehicle traffic is being completed by BNSF Railway as part of their permitting documents for the Custer Spur upgrade project.” However, PIT does not identify additional new rail development required if GPT is permitted. Additional rail projects—such as the E/W rail freight corridor that connects the existing N/S Farmland Route in Eastern Whatcom County with the Custer Spur and operations at the Terminal—should also be identified in their permit application. Therefore, if there were ever to be an E/W rail expansion to Cherry Point for the facilitation of coal export, it must necessarily be included. The absence of this E/W rail freight corridor in the existing permit application risks that the permitting process would unfold in a backwards manner wherein fundamental issues would not be recognized as either existent, pertinent or relevant to environmental review.

On May 9th, a news report—“DOE to Study Coal Ports’ Joint Effect”—in the Bellingham Herald addressed the issue of which line the coal trains heading to and from GPT would use. BNSF spokeswoman Suann Lundsberg stated that “[the company] could not know which line the coal trains would use [because they] can’t tell [us]...what the market will bring on lines that are shared by all different commodities.” In short, BNSF is *not* saying they plan to use “existing rail lines” when GPT is operating, which necessarily means all reasonably foreseeable land acquisition and new rail construction for facilitating the transporting of bulk commodities to the terminal must be included in the permit application, including construction and upgrades to the Farmland Route and the E/W rail freight corridor that would connect the N/S rail line in Eastern Whatcom County to the terminal at Cherry Point – a new construction project not discussed in PIT’s permit application.

In 2011, the Ninth Circuit Court of Appeals in *Northern Plains Resource Council v. Tongue River RR*, heard arguments of the Surface Transportation Board's (STB) denial of a request to stop construction of a 130 mile-long rail project in Montana intended to interconnect to the existing BNSF system at both the north and south ends [No. 97-70037 TRAN No. 30186⁴]. The Tongue River Railroad project was to facilitate the transport of coal from Montana to Asian markets. In the case of the Tongue River Railroad project, rather than having the impact of the entire project evaluated as a whole by a single EIS, BNSF segmented the project into three separate proceedings before the STB over the past 24 years, which was the basis of the litigation on review by the Ninth Circuit.

The string of EIS’s dating back two decades did not consider the railroad as a whole and did not consider the cumulative impacts nor economic justification to support the construction of the new rail line to service the Otter Creek coal mine. The rail line at issue had no practical value on its own, and its relative impacts were not the issue when, in December 2011, the Ninth Circuit ruled BNSF could not industrialize an entire agricultural valley for a right-of-way to send coal to Asian markets without taking a careful look at the environmental impacts that would result from the construction of a new rail route to service a coal mine at Otter Creek. The Ninth Circuit ruling ordered the STB to look at how the Otter Creek coal mine—the largest new mine proposed in the lower 48 states today—factors into construction of all phases of the Tongue River Railroad.

SGSF maintains the current GPT application is analogous to the *Tongue River* case and avers the *reasonably foreseeable likelihood* that operations at the Terminal, if permitted, will require the construction of the E/W rail freight corridor, as well as expand the existing Farmland Route, which will have foreseeable deleterious and transformative impacts. In the Tongue River III case, the STB had denied a request to scope the entire project, saying the appellants had not proven the need for thorough environmental review. Appellants argued that "public convenience and necessity" were the most important statutory issue, and that (similar to the question at hand with the currently incomplete GPT application) the issue of impacts was being fundamentally ignored and at best—without any research—was relegated to insignificance and not a matter of imminent discussion but rather a matter which BNSF and the Otter Creek Mine sought to mitigate after the fact.

In reviewing the permit Supplemental Application for GPT, we counted, and the word “coal” appears 28 times in the PID, and once in App. F, the Engineered Traffic Study. However, the words “Powder River Basin” never appear in either document, as though the coal will magically appear at the Custer Spur, and *this is the point* and consistent with the applications GPT and, presumably, BNSF, are filing. GPT is not providing a rail traffic analysis at all and defer in their permit application to a to-be-filed permit application from BNSF to address Custer Spur development and presumably nothing else other than on-

⁴ <http://www.ca9.uscourts.gov/datastore/opinions/2011/12/29/97-70037.pdf>

site construction. We have been led to believe rail construction will be scoped together with the GPT EIS. However, with BNSF stating they “cannot know” which rail lines they will use, we must assume they plan to limit their permit application to construction on-site and for the Custer Spur.

The State seemed to announce this scoping “gap” when on November 21, 2011, Ted Sturdevant, Director of the Washington Department of Ecology (ECOL) stated that while the ECOL does “not consider the statewide rail traffic to be part of the ‘proposal’ itself,” that the “full scope of any rail impacts analysis, including geographic scope, will be determined through the public scoping process.” This gap in logic—the rail impacts aren’t in the permit application itself but somehow will magically be scoped—is untenable. SGSF maintains that the GPT permit applications are incomplete unless they are considered together with the BNSF permit applications, and anticipating that neither will address rail impacts beyond the site and the Custer Spur, both are incomplete.

This refusal to link the “full scope of any rail impacts” to the project proposal is setting up communities along all rail lines to challenge the adequacy of scoping because the scoping notice will address only that which is in the permit applications. It is as if the agencies, by accepting these “Tongue River IV”-type permit applications from GPT and BNSF are forcing the public to litigate the issue of scoping all rail impacts which would not occur *but for* the construction of GPT. Regardless of the precedent for such a traffic analysis, where, as here, the traffic change is this significant, an application that does not anticipate such consideration is wholly inadequate.

PIT’s Supplemental Application states they need not complete a SEPA checklist because the Whatcom County SEPA Responsible Official has determined an EIS will be required. A distinction must be made, however, between a SEPA review of transportation impacts on existing highways or rail line and projected effects of project operations leading to land acquisition (including farmland and wetlands), new rail line construction, bridges, etc. that—like the Custer Spur—would occur in direct relationship to operations at GPT if permitted.

We urge the County to return the permit applications to GPT as incomplete, and inform them they must submit their applications in conjunction with BNSF. It is impossible to publish a proper scoping notice and invite comments without addressing all rail activities related to GPT terminal operations described in the current Project Information Document.

Thank you in advance for your consideration of this Comment. If you have any questions, please contact Nicole Brown or Jeff Margolis at info@safeguardthesouthfork.org.

Sincerely,

Safeguard the South Fork by:

Nicole Brown, PhD
Co-Chair, SafeGuard the South Fork

Jeff Margolis
Co-Chair, SafeGuard the South Fork

Cc: Randel Perry, NEPA Primary
U.S. Army Corps of Engineers
Via Facsimile Transmission: Randel.J.Perry@nws02.usace.army.mil



SafeGuard the South Fork

p.o. box 262, Deming, WA 98220

January 13, 2013

Docket No. FD 30186

Attention of: Mr. Ken Blodgett

This letter is written on behalf of SafeGuard the South Fork [SGSF], a grassroots group organized around protecting agricultural value in Whatcom County, WA. We are writing concerning the Environmental Impact Statement (EIS) for the Tongue River Railroad Company's (TRRC) proposed construction of a new rail line through ranchlands and communities in the Powder River Basin of Montana. In the context of NEPA's requirements to identify and study all reasonably foreseeable significant impacts—direct, indirect and cumulative regardless of where those impacts occur—we request that in addition to robust environmental review of the proposed Tongue River Railroad [TRR] that you conduct a Programmatic Environmental Impact Statement [PEIS] linking the TRRC's proposal with the impacts of interdependent rail infrastructure projects in Washington State specifically for exporting coal to Asian markets from the Powder River Basin of Montana.

Please reference the Tongue River Railroad comment of January 3, 2012 from Ted Sturdevant, Director of the Washington Department of Ecology, to Ray LaHood, Secretary of the U.S. Department of Transportation, and Ken Blodgett of the Surface Transportation Board. SGSF shares the concern defined by the Washington Department of Ecology that the notice of intent for the Tongue River Railroad [TRR] and the scope of the potential impacts identified are either (1) limited to the project area; or (2) that the geographic project range is not clearly identified. It is expected that rail infrastructure projects—including the possibility for new rail line construction—are likely to occur throughout the Washington State rail system interdependent to the proposed development of the TRR [<http://www.eisgatewaypacificwa.gov/about/proposal-map>]. Because of the multi state impacts associated with proposals like the TRR, SGSF requests a PEIS of the transportation impacts associated with all rail proposals – proposed and possible – interdependent to the TRR.

The last minute announcement this week by the Surface Transportation Board accepting the Colstrip, Mont. route from Otter Creek as another possible route further defines the necessity for a PEIS. This announcement makes it unclear which proposal the public is commenting on for the proposed TRR, what will be done, where will it be done, and what other interdependent projects there are or there will likely be interdependent to the TRR and the TRRC's proposed need to transport coal to Asian markets. Without a thorough PEIS, the public's ability to identify specific adverse impacts upon shared public infrastructure, air, soils, waters, and communities, in addition to bioregional agricultural industries that operate globally is being piecemealed.

The probable adverse impacts of the construction and use of the TRR are shared by many communities in critical areas all along the rail line from the Powder River Basin mines to proposed west coast ports. As WA State Department of Ecology notes in their comment regarding the proposed TRR, "In 1997, the Council on Environmental Quality (CEQ) issued guidance to federal agencies that: "The range of actions that must be considered includes not only the project proposal, but all connected and similar actions that

could contribute to cumulative effects.” At a minimum please study the following cumulative impacts in relationship to rail construction, maintenance, and use of the proposed TRR, as well as all existing, proposed, and probable rail projects interdependent to the TRRC’s proposed need to export coal to Asian markets.

Impacts Associate with the Construction, Use, and Maintenance of Rail

- impact of railroad construction activities that disturb the land—such as the use of bulldozers, excavators, graters, and dump trucks to remove trees, brush, move rocks and earth, and to fill or level the land—and the potential for soil erosion and stream sedimentation problems to develop.
- environmental effects of treatments to timber sleepers to prevent rotting on soils and waterways.
- impacts of herbicides—on native and non-native vegetation—used to clear railways and railway embankments, since these are non-selective and kill all plant material they come into contact with.
- impacts of heavy metals and acids in the storm water discharge of coal runoff from coal carrying trains and the environmental impacts of managing this discharge through a conveyance such as a channel, ditch, stream or separate storm source system.
- health risks caused by emissions from rail traffic and pollutant dispersion in air, soils, and waters.
- effects of Polycyclic Aromatic Hydrocarbons (PAH) and heavy metal contents accumulated in soil and plants along the rail corridor and the effects of this pollution on native and non native plants, grazing lands, wildlife, cattle, and waterways.

Risks of Accidents and Impacts on Community Welfare

- economic costs related to property values, property rights, and taxpayer expense for rail infrastructure construction and maintenance.
- impacts of noise on sleep cycles of residents, children, the elderly, livestock, and wildlife on the entire rail system, as well as cumulative effects of noise on health and near schools
- risks of industrializing the Tongue River valley with a railroad and adverse impacts on wildlife habitat and elk and mule deer populations, as well as upland birds that attract recreationists to this area.

Impacts to Ranchers and Farmers

- harmful effects of vibration and noise on livestock, particularly during calving.
- economic and environmental costs associated with the spread of non-native weeds on grazing lands.
- devaluation of property values and the difficulty and expense on farms that will be cut off from the river or divided.

In closure, SGSF would like to endorse the conclusion made by Protect Whatcom in their comment on the TRR.

The federal government – through the Bureau of Land Management, the Surface Transportation Board, and the Corps of Engineers – simply cannot continue to take a piecemeal approach to EIS's related to mining PRB coal and transporting it to proposed terminals on the west coast. The proponents, in touting the combined "benefits" of the proposals through their lobbying organization, Alliance for Northwest Jobs and Exports (<http://createnwjobs.com/learn-more/proposed-projects>), makes a mockery of a process that refuses to consider impacts "cumulative" until projects are permitted. The paradox is that while politicians' heads swoon at the prospect of the combined jobs and tax revenues, there is never a comprehensive analysis of the cumulative costs to the environment, human health, transportation infrastructure, and our economies.

The Tongue River Railroad is directly related and interdependent to the environmental, social, and economic costs of mining PRB coal, transporting coal to West Coast terminals, and shipping coal by ships to unstable Asian markets. As a grassroots group working to shape the public policies that affect agricultural interests, SGSF is particularly concerned about the significant adverse impacts that this proposed expansion of mining, shipping, and burning of coal will have on food and agricultural industries that rely upon healthy air, water, soils, and ranchlands. Thank you in advance for your attention to the

comment. If you have any questions, please contact Nicole Brown or Jeff Margolis at info@safeguardthesouthfork.org.

Sincerely,

Safeguard the South Fork by:

Nicole Brown, PhD
Co-Chair, SafeGuard the South Fork

Jeff Margolis
Co-Chair, SafeGuard the South Fork



SafeGuard the South Fork

p.o. box 262, Deming, WA 98220

May 15, 2012

Tyler Schroeder
Planning Supervisor and SEPA Primary, GPT Project
Whatcom County Planning & Development Services
Via Facsimile Transmission: tschroed@co.whatcom.wa.us

Sam Ryan
Director and SEPA Secondary, GPT Project
Whatcom County Planning & Development Services
Via Facsimile Transmission: jryan@co.whatcom.wa.us

Loree' Randall, SEPA Primary
Washington Department of Ecology
Via Facsimile Transmission: loree.randall@ecy.wa.gov

Alice Kelly, SEPA Primary
Washington Department of Ecology
Via Facsimile Transmission: alice.kelly@ecy.wa.gov

SUBJECT: Comment on Completeness of Applications filed with Whatcom County
for the Gateway Pacific Terminal

May 15, 2012

Dear Sam Ryan, Loree' Randall, Alice Kelly, and Tyler Schroeder:

We'd like to thank the Washington State Department of Ecology and Whatcom County for committing themselves to a thorough analysis of the Gateway Pacific Terminal (GPT) proposals and related impacts under the State Environmental Policy Act (SEPA). SEPA requires identification and study of all reasonably foreseeable significant impacts—direct, indirect and cumulative—caused by a proposal regardless of where those impacts occur. A complete permit application and thorough review of compliance with the major project permit requirements ensure that the proposed major development will be appropriately responsive to any EIS prepared from the project. WCC sec. 20.88.130.

On behalf of the citizens group, duly recognized by the State of Washington as Safeguard the SouthFork (SGSF) we maintain that GPT's Major Project Permit Application submitted by Pacific International Terminals (PIT) is incomplete and must be resubmitted. PIT defines the proposed GPT as including the following key facilities: (1) deep-draft wharf with access trestle; (2) dry bulk materials handling and storage facilities; and (3) rail transportation access. However, the permit application does not acknowledge all pertinent rail line construction that would occur in Whatcom County if GPT is permitted.

As required for the Major Project Permit application, PIT provided an Engineered Traffic Study of “existing traffic conditions, potential effects of the Terminal on congestion and safety, and improvements that would be needed to address the impacts of the Terminal on traffic conditions.” While traffic analyses were reported for roads and 17 intersections that “could experience increased traffic due to the construction and operations of the Terminal,” the Engineered Traffic Study provides no analysis whatsoever of the increased volume of rail traffic that will occur as a result of terminal development and operations, despite both freight and passenger rail services being provided in the project study area and the development of the Custer Spur being a part of the key terminal facilities in the permit application. Currently, the traffic study required to meet the Whatcom County Major Permit Application Requirements lacks scientific technical information about existing conditions of rail traffic and the projected effects of project operations on additional land acquisition and new rail line construction in Whatcom County *connected to* the Custer Spur and other key Terminal facilities named in the permit application.

According to the Engineered Traffic Study submitted by Pacific International Terminals,

*The BNSF Railway would provide the main inland freight access via BNSF Railway’s existing rail network. Specifically, the BNSF Railway’s existing Bellingham Subdivision main line runs approximately north-south, roughly parallel to I-5, in the project vicinity. This main line feeds the Custer Spur (Cherry Point Subdivision Main Line), **the only existing rail line** serving the Cherry Point Industrial UGA. (March 2012, 3-2, emphases added)*

Connecting to this existing rail line, PIT identifies new rail construction for the Custer Spur that, despite a lack of scientific technical information about existing conditions of rail traffic and the projected effects of project operations on rail traffic, they know is necessary to handle the number, length, and weight of trains transporting the expected tonnages of bulk commodities for the primary operations of GPT.

Despite not providing analysis of improvements that would be needed to address the impacts of GPT on rail traffic conditions, PIT makes claims regarding plans for future development of the project as defined by Whatcom County’s Comprehensive Plan. In Table 2-1 of Attachment F of the Project Information Document (PID), PIT identifies the goals and policies of the Comprehensive Plan related to traffic that appears to be “pertinent” to the Gateway Pacific Terminal project. More specifically, PIT acknowledges on pages 2-1 to 2-2 that the proposal for an east/west (E/W) rail freight corridor connecting an existing north/south rail line in Eastern Whatcom County (hereinafter “the farmland route”) to the Custer Spur “appears to be pertinent to the Gateway Pacific Terminal project” while simultaneously stating that “an east/west rail freight corridor is not being proposed.” Because the Whatcom County Comprehensive Plan is used by public officials to guide growth in unincorporated Whatcom County for the next 20 years, the relationship between land use and traffic conditions in the vicinity of GPT directly effects what projects will likely occur in the future and these major projects should be identified in the permit application for GPT.

In the existing permit application, PIT claims “the impacts of rail traffic on vehicle traffic is being completed by BNSF Railway as part of their permitting documents for the Custer Spur upgrade project.” However, PIT does not identify additional new rail development required if GPT is permitted. Additional rail projects—such as the E/W rail freight corridor that connects the existing N/S Farmland Route in Eastern Whatcom County with the Custer Spur and operations at the Terminal—should also be identified in their permit application. Therefore, if there were ever to be an E/W rail expansion to Cherry Point for the facilitation of coal export, it must necessarily be included. The absence of this E/W rail freight corridor in the existing permit application risks that the permitting process would unfold in a backwards manner wherein fundamental issues would not be recognized as either existent, pertinent or relevant to environmental review.

On May 9th, a news report—“DOE to Study Coal Ports’ Joint Effect”—in the Bellingham Herald addressed the issue of which line the coal trains heading to and from GPT would use. BNSF spokeswoman Suann Lundsberg stated that “[the company] could not know which line the coal trains would use [because they] can’t tell [us]...what the market will bring on lines that are shared by all different commodities.” In short, BNSF is *not* saying they plan to use “existing rail lines” when GPT is operating, which necessarily means all reasonably foreseeable land acquisition and new rail construction for facilitating the transporting of bulk commodities to the terminal must be included in the permit application, including construction and upgrades to the Farmland Route and the E/W rail freight corridor that would connect the N/S rail line in Eastern Whatcom County to the terminal at Cherry Point – a new construction project not discussed in PIT’s permit application.

In 2011, the Ninth Circuit Court of Appeals in *Northern Plains Resource Council v. Tongue River RR*, heard arguments of the Surface Transportation Board's (STB) denial of a request to stop construction of a 130 mile-long rail project in Montana intended to interconnect to the existing BNSF system at both the north and south ends [No. 97-70037 TRAN No. 30186⁵]. The Tongue River Railroad project was to facilitate the transport of coal from Montana to Asian markets. In the case of the Tongue River Railroad project, rather than having the impact of the entire project evaluated as a whole by a single EIS, BNSF segmented the project into three separate proceedings before the STB over the past 24 years, which was the basis of the litigation on review by the Ninth Circuit.

The string of EIS’s dating back two decades did not consider the railroad as a whole and did not consider the cumulative impacts nor economic justification to support the construction of the new rail line to service the Otter Creek coal mine. The rail line at issue had no practical value on its own, and its relative impacts were not the issue when, in December 2011, the Ninth Circuit ruled BNSF could not industrialize an entire agricultural valley for a right-of-way to send coal to Asian markets without taking a careful look at the environmental impacts that would result from the construction of a new rail route to service a coal mine at Otter Creek. The Ninth Circuit ruling ordered the STB to look at how the Otter Creek coal mine—the largest new mine proposed in the lower 48 states today—factors into construction of all phases of the Tongue River Railroad.

SGSF maintains the current GPT application is analogous to the *Tongue River* case and avers the *reasonably foreseeable likelihood* that operations at the Terminal, if permitted, will require the construction of the E/W rail freight corridor, as well as expand the existing Farmland Route, which will have foreseeable deleterious and transformative impacts. In the Tongue River III case, the STB had denied a request to scope the entire project, saying the appellants had not proven the need for thorough environmental review. Appellants argued that "public convenience and necessity" were the most important statutory issue, and that (similar to the question at hand with the currently incomplete GPT application) the issue of impacts was being fundamentally ignored and at best—without any research—was relegated to insignificance and not a matter of imminent discussion but rather a matter which BNSF and the Otter Creek Mine sought to mitigate after the fact.

In reviewing the permit Supplemental Application for GPT, we counted, and the word “coal” appears 28 times in the PID, and once in App. F, the Engineered Traffic Study. However, the words “Powder River Basin” never appear in either document, as though the coal will magically appear at the Custer Spur, and *this is the point* and consistent with the applications GPT and, presumably, BNSF, are filing. GPT is not providing a rail traffic analysis at all and defer in their permit application to a to-be-filed permit application from BNSF to address Custer Spur development and presumably nothing else other than on-

⁵ <http://www.ca9.uscourts.gov/datastore/opinions/2011/12/29/97-70037.pdf>

site construction. We have been led to believe rail construction will be scoped together with the GPT EIS. However, with BNSF stating they “cannot know” which rail lines they will use, we must assume they plan to limit their permit application to construction on-site and for the Custer Spur.

The State seemed to announce this scoping “gap” when on November 21, 2011, Ted Sturdevant, Director of the Washington Department of Ecology (ECOL) stated that while the ECOL does “not consider the statewide rail traffic to be part of the ‘proposal’ itself,” that the “full scope of any rail impacts analysis, including geographic scope, will be determined through the public scoping process.” This gap in logic—the rail impacts aren’t in the permit application itself but somehow will magically be scoped—is untenable. SGSF maintains that the GPT permit applications are incomplete unless they are considered together with the BNSF permit applications, and anticipating that neither will address rail impacts beyond the site and the Custer Spur, both are incomplete.

This refusal to link the “full scope of any rail impacts” to the project proposal is setting up communities along all rail lines to challenge the adequacy of scoping because the scoping notice will address only that which is in the permit applications. It is as if the agencies, by accepting these “Tongue River IV”-type permit applications from GPT and BNSF are forcing the public to litigate the issue of scoping all rail impacts which would not occur *but for* the construction of GPT. Regardless of the precedent for such a traffic analysis, where, as here, the traffic change is this significant, an application that does not anticipate such consideration is wholly inadequate.

PIT’s Supplemental Application states they need not complete a SEPA checklist because the Whatcom County SEPA Responsible Official has determined an EIS will be required. A distinction must be made, however, between a SEPA review of transportation impacts on existing highways or rail line and projected effects of project operations leading to land acquisition (including farmland and wetlands), new rail line construction, bridges, etc. that—like the Custer Spur—would occur in direct relationship to operations at GPT if permitted.

We urge the County to return the permit applications to GPT as incomplete, and inform them they must submit their applications in conjunction with BNSF. It is impossible to publish a proper scoping notice and invite comments without addressing all rail activities related to GPT terminal operations described in the current Project Information Document.

Thank you in advance for your consideration of this Comment. If you have any questions, please contact Nicole Brown or Jeff Margolis at info@safeguardthesouthfork.org.

Sincerely,

Safeguard the South Fork by:

Nicole Brown, PhD
Co-Chair, SafeGuard the South Fork

Jeff Margolis
Co-Chair, SafeGuard the South Fork

Cc: Randel Perry, NEPA Primary
U.S. Army Corps of Engineers
Via Facsimile Transmission: Randel.J.Perry@nws02.usace.army.mil