



## Salish Land Policy Solutions

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*Via Electronic Mail*  
tstu461@ecy.wa.gov

Mr. Ted Sturdevant, Director  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
160th Ave SE  
Bellevue, WA 98008-5452

**Re: Gateway Pacific Terminal Pre-Scoping Considerations**

Dear Director Sturdevant:

We are a Bellingham-based policy consulting firm writing on behalf of a group of business and property owners concerned about the process Washington is using to determine the appropriateness of coal export facilities in the state. Our group favors wise development of the Cherry Point urban growth area, with appropriate environmental controls. Unfortunately, the agency review of the Gateway Pacific Terminal proposal this past year raises substantial concerns about the structure for making these major decisions.

We know you share these concerns. We appreciate your decision in July 2011 to accept SEPA co-lead status. This ensures a statewide assessment will take place. In April 2011, we forwarded a letter stating our deep concern that significant agency review was taking place under the ORA mandate, without providing any portals for public review and comment. No public meetings on the project have been held during this year of work, and the public is barred from even watching the ORA meetings.

We met with ORA staff on September 22, 2011 to again express our concerns about the structure of the ORA MAP team process. ORA's minutes of the meeting are attached. ORA suggested we may wish to contact you

directly with concerns specific to the structure of the Gateway environmental review related to the Request for Proposals (RFP).

We would appreciate your consideration of the following, as you finalize your thinking on the foundational issues that shape the environmental review for this project, particularly the depth and range of consultant-team expertise needed to respond to an RFP for EIS preparation.

A. Full Disclosure of Critical Factual Information is Needed at the Outset.

1. Certain basic facts asserted by the applicant appear to be under review by the MAP team without critical review. Our concern is that those factual premises are shaping the review, without simple groundtruthing at the outset. Agencies typically check the facts when an environmental checklist is submitted prior to a threshold determination. While a SEPA checklist is not required if you have determined an EIS is needed, the same disclosure principle holds here. We are sure Ecology takes its role seriously in requiring truthful full disclosures from the applicant, as the basis for structuring the environmental review.

2. SSA Marine's Project Information Document and JARPA application from February 2011 are already outdated and lack critical baseline information necessary to commence SEPA review. In the absence of a demand for better information at this early stage, it seems to us the review structure begins with a weak foundation that may lead to significant disruption and lack of cohesion at a later date.

3. Our research indicates that the applicant's factual premises about key planning numbers are not supported by any documented evidence, thus raising questions about the foundation for designing the environmental review. For example:

» Canadian Coal Train Traffic. The applicant contends in numerous meetings that it will simply be diverting coal trains that otherwise would be going up to Canada, and therefore their proposal will generate very little net train traffic increase.

- Since this is a central premise of environmental review, agencies should require the applicant and BNSF to provide copies of the

Canadian export contracts generating current rail traffic, so that their lifespan can be determined. Our research has found one U.S. coal company contract for Canadian export expires in 2015. Canadian coal producers are vying for the expansion capacity of Canadian terminals.

- No data on the number of daily trains going to Canada or volume of coal has been provided to calculate current impact levels as a baseline for reviewing project increases.
  - A key part of this premise is that, after the Gateway terminal is built, coal trains will cease going to Canada, and thus there will be no net train traffic increase. There is no documentation to support the assumption. Thus, as an alternative analysis, the EIS consultant should be prepared to analyze SSA's 18 trains per day, in *addition to* coal rail shipments to Canada.
- » No Ceiling on Export Volumes or Trains Per Day. The applicant contends that the project at full build-out will only result in 18 trains per day and 48 million tonnes exported per year. This premise is not supported by any regulatory or voluntary limits.
- There is no promise or voluntary condition in the SSA or BNSF JARPA applications or the SSA Project Information Document limiting daily train traffic to this number.
  - Coal ports are becoming increasingly automated worldwide. Future efficiencies at the loading facility could create conditions where export volumes expand beyond the applicant's planning numbers.
  - Other coal ports in Australia and South Africa export 90 million tonnes per year. The SSA marine site is 1,000 acres.
- » The Location of Holding Areas for Capesize Vessels. SSA's Project Information Document (p.54) states:

At full operational capacity, approximately 487 vessels per year are expected to call at Gateway Pacific Terminal (Table 4-6).

- The applicant has not disclosed yet where in the Salish Sea these vessels would wait for loading at the Cherry Point pier.
  - Tankers currently stage north of Samish Island.
  - One issue is whether the RFP and EIS will consider evaluation of impacts to water quality in Samish Bay, if the Samish/Chuckanut area is to be used as a vessel staging area.
- » Biological Assessment Not Revealed.
- Since submittal of the Feb. 2011 JARPA application, the ORA website has contained very little of BNSF's permitting information.
  - A biological evaluation for the impacts of the BNSF improvements has been delayed repeatedly (see attached ORA schedules).
  - Selection of a consultant seems premature if the range of endangered species at issue is not defined. For example, if study of the southern resident population of orcas is required, the RFP should reflect this.
  - If, on the other hand, BNSF and SSA have already submitted a draft biological evaluation for agency review, the public is entitled to review it. We urge you to require disclosure of the document on the Ecology and/or ORA websites as soon as a draft is received from the applicant.
- » Stormwater Runoff from Coal Cars Along the Entire Rail Line.
- Ecology's climate change website contains reports that predict increasing volumes of rain during fall and winter rainstorm events. Leaching from 125 coal cars, 18 times a day could pose a potentially significant non-point source of toxins or hazardous materials. That discharge will occur along the entire line that borders the Salish Sea for long stretches and crosses dozens of rivers and streams. It does not appear any agency has requested information from BNSF or the applicant concerning the potential for Clean Water Act violations.

4. If these and other factual questions are not groundtruthed at the outset, the RFP will call for study of the wrong project and level of impacts. Without basic fact-checking of the applicant's planning assumptions, the foundation of the EIS is weakened from the start.

B. Opening a Portal for Input From Affected Cities and Counties.

There is substantial localized knowledge among cities and counties along the BNSF rail line, as to existing conditions. For example, many have already assembled information on the most important at-grade crossings likely to be affected by this proposal. Ecology should create a portal for receiving that information in a manner that does not disrupt the pre-scoping work you are doing.

- » The better your basic geographic information, the better your RFP will be.
- » The ORA MAP Team process does not contain any avenue for factual input from affected cities and counties along the rail line. Faith Lumsden, Director at ORA, has denied Bellingham, Skagit County, Burlington and others a seat at the ORA table.
- » By creating a portal to accept this information at this time you could greatly improve the quality of information considered pre-scoping.

While our clients have not taken a position on the project, they remain very concerned about the lack of good information and analysis available to the public. There is still time to correct the fast-cementing impression that this process has been kept under wraps by the state and that it is designed solely for the benefit of the applicant. Unfortunately, if true, that approach seems to exclude the views of community leaders and elected officials concerned about economic impacts along the rail line.

C. The Integrity of the EIS Consultant Selection Process. We appreciate the effort by your office to bring a more regional and statewide perspective to the environmental review process. We urge all of the co-leads during the environmental review process, to place a high priority on ensuring that the EIS consultant team is impartial. It goes without saying

that the integrity of the selection process will be closely watched, as the key to public confidence in the fairness of the EIS review.

We are concerned, given the lack of transparency in the process thus far, that this trend may continue into the Request For Proposals process. We already know that your agency is very experienced with this process and understands its many nuances. First and foremost, the agency has an ethical duty under Washington state law to conduct a fair and transparent public process that allows an even playing field to consultants who wish to bid for this work. As the Washington State Purchasing Manual states, one of the objectives of open and effective competition in the purchasing process is to "instill confidence in the state and the public about the integrity and cost effectiveness of public sector procurement." Washington State Purchasing Manual at 26. Ethical behavior in this process requires that the lead agency "[b]ehave with impartiality, fairness, independence, openness, integrity and professionalism in dealings . . . " *Id.*

Given the recent press regarding issues with the EIS supporting the Keystone Pipeline, we suggest you research what was done by the Department of State in that instance and work to avoid some of the missteps taken there to avoid any appearance of impropriety. One way to avoid the appearance of less than an arm's length relationship between the consultant and the applicant may be to consider requiring each member of the consultant team to affirm in writing that they have not had any prior business dealings with Peabody Coal, BNSF, or the Carrix, Inc. family of companies. In light of the recent experience with the Keystone pipeline environmental review in the Midwest, this request seems reasonable.

Thank you for your consideration of these ideas and our clients' concerns. We look forward to working with you and your staff in the coming year.

Very truly yours,



Tom Ehrlichman



Barbara Dykes

encl.

cc: Mr. Tyler Schroeder, Whatcom County SEPA Responsible Official  
Mr. Randall Perry, NW Field Office, U.S. Army Corps of Engineers  
Ms. Faith Lumsden, Office of Regulatory Assistance

1	Traffic Discipline Report	Models project effects	Q3 2011	Land Transport
2	Bird Habitats and Presence Report	Adds 2011 survey data to previous data	Q3 2011	Wetland & Stream, Marine Env
3	Stream and Fish Report	Includes results of fishing in 2011	Q3 2011	Wetland & Stream, Marine Env
4	Marine Habitat Characterization Report	Includes marine fish habitat evaluation, including rockfish	Q3 2011	Marine Env
5	Marine Biota Report	Includes geoduck, marine vegetation, forage fish, and marine invertebrates	Q3 2011	Marine Env
6	Stormwater Technical Information Report	Technical details on proposed management of stormwater	Q3 2011	Hydrology
7	Noise Impact (land) Report	Modeling of future noise conditions	Q3 2011 (delayed)	Land Transport
8	Biological Assessment	Supports ESA consultation	Q3 2011 (delayed)	Wetland & Stream, Marine Env
9	Hydrology (land) Report	Includes surface water, groundwater, fresh water quality	Q4 2011	Hydrology
10	Marine Sediment, Tissue, and Water Quality Report	Includes marine sediment chemistry	Q4 2011	Marine Env
11	Air Quality Impact Report	Modeling of construction and operations	Q4 2011	Air Issues
12	Marine Geotechnical Report	Seismic analysis, stratigraphy, grain size	Q4 2011	Marine Env
13	Upland Geotechnical Report	Seismic analysis, stratigraphy, grain size	Q1 2012	Hydrology
14	Hydrography (Marine Wave and Current) Report	Includes wave, current, scour, etc.	Q1 2012	Marine Env
15	Herring Behavior Report	Evaluates specific questions related to herring behavior and wharf operations	Q3 2012	Marine Env
16	Vessel Traffic Analysis Report	Routing, moorage, risk minimization, etc.	TBD	Marine Vessel Traffic
17	Wetland Impacts and Mitigation Plan	Needs to include updated amphibian report	TBD	Wetland & Stream

Updated: August 17, 2011





## Meeting Notes

**Multi-agency Permit (MAP) Team  
Gateway Pacific Terminal (GPT) Project  
Community Meeting  
September 22, 2011**

Please send questions to [Jane.Dewell@ora.wa.gov](mailto:Jane.Dewell@ora.wa.gov)

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<b>Meeting Locations</b>	Salish Land Policy Solutions – Governor's Office of Regulatory Assistance (ORA) Office, Olympia
<b>Meeting Purpose</b>	Brief on ORA and MAP Team. Listen about community interests and concerns.

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### Introduction

The community meeting was initiated by Salish Land Policy Solutions (SLPS) to speak with ORA staff about MAP Team process and other concerns. The agenda included a brief overview of ORA mission and MAP Team purpose and goals, and listening to concerns about the MAP team process and GPT project.

The meeting included Tom Ehrlichman and Barbara Dykes of SLPS; Bob Rose, a conservation consultant; and Michael McCormick, a planning consultant. ORA representatives were Jane Dewell and Scott Boettcher. The notes provide a brief summary of discussion items raised during the meeting.

### Key Points

The following issues were discussed:

- Public process and MAP Team set up. There isn't a statutorily defined public process associated with MAP Team development or early project review. SLPS expressed the concern that the public process associated with environmental review and permits is inadequate because the MAP Team early project review has been stretched to almost a year, without public meetings and without a mechanism for public input. It would be useful to define how the public could interact with and provide input to the MAP Team.
- The status of regulatory process – NEPA/SEPA, and County permits and extension. ORA shared that the co-lead agencies are close to completing a memorandum of understanding (MOU) on co-lead NEPA/SEPA process, and are drafting a request for proposal (RFP) to procure a consultant for the environmental impact statement (EIS) document. It is ORA's understanding that the MOU will be procedural and not define the scope of the EIS, although ORA is not a party to the MOU.
- It may be useful to define how the public could provide baseline questions for consideration by the co-lead agencies prior to issuance of the RFP.
- It is unlikely the NEPA/SEPA scoping would begin in 2011.



- There is concern that the MAP Team is defining the scope of applicant studies in detail before baseline information is developed and before the public has an opportunity to provide input on the scope of those studies or feedback on the agency comments. .
- SLPS is interested in the overall process for decisions on siting large-scale projects. It would be useful for future projects to define how the team is set up, and what requirements (e.g., permit applications, deadlines for submittal of information) are necessary before a MAP Team convenes for a particular project.
- The GPT project triggers consideration of policy issues such as where industries are sited and whether the expected high volumes of coal rail shipments should be exported through WA. These are issues that need discussion and consideration in advance of developing site-specific projects such as GPT.
- Under the existing MAP team process, and to properly evaluate the GPT project, there is a need to compile basic baseline data. Public input on how baselines are determined would be valuable. This includes baseline data on existing water quality in the Cherry Point marine environment and baseline levels of freight and passenger rail traffic.
- Discussed how input on the project and MAP Team process could work prior to the opening of the NEPA/SEPA public scoping process. ORA could act as a contact for input to the MAP Team, but the public may also provide input directly to any public agency at any time. An idea put forth for receiving input prior to scoping included issuance of a 'Request for Information' prior to the end of the year, and without a requirement for agency responses.
- SLPS expressed a concern that the original schedule – submittal of applications and project information document, review by the MAP team, and EIS scoping – slipped and the applicant has not informed the agencies or the public when the schedule would restart. While development of additional studies and information by the applicant could improve the review process, the applicant has not defined what work is being done, the reasons for delay, or the anticipated completion date, prior to starting public input. SLPS believes public open houses and/or other avenues for public input would be helpful.