

January 26, 2014

Whatcom County Council
311 Grand Avenue
Bellingham, WA 98225

RE: Gateway Pacific Terminal Project Update
AB2014-034A

Dear Council Members:

The Council is scheduled to get a project update at the next Council Finance Committee meeting. Council Chair Carl Weimer asked a series of questions to Executive Louws that have received response from Planning and Development Services (PDS) by email.

Before you take on this issue, I would encourage the County Council to review the minutes of the [Finance Committee](#) and [Regular Council](#) meeting of June 5, 2012 regarding the questions and commitments that were made at that time. Then, I would request the Council to consider the following:

Council Action on Contracts

On June 5, 2012, the County Council approved contracts with CH2M Hill in the amount of \$961,703. Since that time, Executive Louws has entered into three amendments totaling \$889,507 without County Council approval. A fourth amendment that is reportedly adding \$6 million or more in services for preparation of the Draft EIS, has been drafted but not available for the public to review.

Executive Louws and the Administration believe that County Council approval is not required because the contract for CH2M Hill services will be paid by the applicant, and not with county funds.

I respectfully disagree with the Executive's decision and the advice that has been given. ***When the County enters into a \$6 million agreement for EIS consultant services, the County is committing county resources to manage that project. As such, the County Council must approve such contracts.***

County Cost Reimbursement

On June 5, 2012, the County Council also reviewed the cost-reimbursement agreements with Pacific International Terminals, Inc. and BNSF Railway. These agreements are meant to cover costs for CH2M Hill services, as well as county staff. At the time, Chair Weimer observed "the people of Whatcom County will subsidize this effort in the amount of \$200,000 or \$300,000." Weimer was "interested in changing the contract to include the cost for indirect costs, which the County normally builds into contracts."

PDS has responded that they have been accurately and adequately billing hours spent on the project, and that no additional or extra professional staff is needed.

Again, I respectfully disagree with this characterization from the County Executive and PDS.

PDS has sent me the spreadsheets that show time accounting for services billed to Pacific International Terminals, Inc. Here is a short summary of the billings from June 2012 through November 2013:

Department	Hours	Amount
County Attorney	0	\$ 0
County Council Office	0	\$ 0
County Executive Office	0	\$ 0
Public Works	4.7	\$ 365.19
Health Department	209	\$ 15,867.74
PDS	634.5	\$ 46,698.07
TOTALS*	848.2	\$ 59,931.00

* In these records, no time was charged for any administrative support staff.

The time accounting sheets reveal the following:

- Recent amendments reduced the billing rate of the County Health Officer from the actual cost of \$107.72 to a standardized rate of \$100 per hour (not full reimbursement).
- Public Works Department, which is responsible for stormwater, water quality and transportation impacts, spent (or charged) less than five hours' time.
- No time has been charged for county attorney review of contracts or other documents.
- No time has been charged for administrative support staff.
- No time has been charged from the Finance Department that processes contracts and pays bills.
- No time has been charged from the IT Department that maintains and updates the County's website related to Gateway Pacific Terminal.
- No time has been charged from staff in the County Executive or County Council office, which process letters, questions and other issues related to the project.

The above list is further evidence of why the County is not getting fully reimbursed when it enters into the contract with CH2M Hill. ***If the County wishes to continue subsidizing this project review, then County Council approval is required under County Code.***

EIS Scope and Consultant Contract

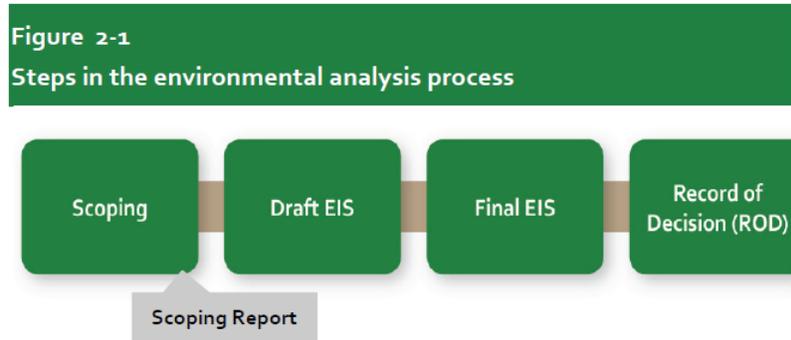
Chair Weimer commented that since "the Council will be using the EIS to make the decision it seems like the scope of that document should be discussed with the decision makers to make sure it will be able to inform them adequately."

PDS responded that one way "to ensure that the Final EIS will be able to inform the council adequately is to provide comment to the draft EIS." In other words, the County Council has been advised to comment on the Draft EIS to ensure that the Final EIS will inform them.

This response to the Council is not only inappropriate, it is undoubtedly illegal for a quasi-judicial body to comment on a Draft EIS prior to the record coming before that body.

PDS has also taken a position that "the actual scope of the EIS will not be final until the final EIS is actually issued...the Draft EIS serves as the scoping decision document."

This response is not consistent with SEPA Rules. The EIS scoping process has concluded (see WAC 197-11-408), and once that process has concluded, the EIS must be prepared “according to the scope decided upon by the lead agency in its scoping process.”



Input from the public [scoping process](#) will be used to develop a scope of analysis for the Draft EIS, which is the next major step in the environmental review process.

Source: “Scoping Summary Report”, Environmental Impact Statement, Proposed Gateway Pacific Terminal/Custer Spur, March 29, 2013, pg. 2-1

Rather than issue a scoping document, the county and state issued a [two-page press release](#). The only way the public can know what is going to likely be in the EIS is by review of the scope of work for CH2M Hill, which has only been made available to the applicant to review.

While a scoping document is not required, it can be a valuable tool. The SEPA Handbook identifies the following benefits of a scoping document:

- Provide a record of the scoping process;
- Provide a summary of the issues raised during scoping;
- Communicate the decisions made on what is to be analyzed in the EIS; and
- Provide a reference for the reader to assess whether the agency has heard all the concerns and is accurately interpreting them.

Whatcom County has achieved the first two bullets above, but has thus far declined to address the final two bullets – at least in a way accessible to the public and decision-makers. Conversely, the U.S. Army Corps of Engineers issued a fairly detailed [scoping document](#) available for public review.

When the contract for CH2M Hill was presented to the County Council in June 2012, PDS said that the “scoping phase will end with a final scoping report, which is a document by the agencies that...shows how the studies will be prepared for the draft EIS.” (Council minutes, June 5, 2012)

Without consultation with the County Council, PDS has now taken a different approach to informing the public about what will be analyzed in the EIS. This is an extreme disadvantage to the public, which is afforded only 30-days to comment on the Draft EIS. The Council will have 20 working days after getting a recommendation of the hearing examiner.

The County Council and the public should know what is going to be analyzed in the EIS, and both should know whether the concerns already submitted are accurately being interpreted.

Adequate Professional Attention to Project

Executive Louws and PDS believe that they are able to professionally and efficiently manage this complex project, the biggest coal export facility proposed on the west coast.

The Administration has entered into three contract amendments, with a fourth amendment imminent, without informing the County Council or the public. The county's webpage has not been updated with correspondence since June 20, 2013, and no contract drafts have been made available to the public to review and comment on.

The EIS is meant to inform decision-makers and the public regarding the significant adverse impacts that might be caused by a project, and the reasonable alternatives to the proposal. The only people outside the public agencies to review the CH2M Hill scope of work for this study is the applicant; the decision-makers and the public – the audience for this EIS, have been excluded thus far.

In June 2012, the Council asked PDS to address the limited timeframe for the Council to review the entire record prior to making the decision, as well as the costs that will be incurred for the Hearing Examiner process. Twenty months have now passed, and no effort has taken place to prepare an amendment.

Most local governments handle big projects like this, not by assigning existing staff that have other priorities, but by hiring a project manager experienced in such major project reviews. These positions are fully paid for by the applicant.

A project of this magnitude deserves the attention of a project manager with sufficient experience to address the public interest in this major project, and the numerous substantive issues raised in the process.

Request for County Council Action

The County Council is respectfully asked to consider the following:

- 1) Direct PDS to prepare an EIS Scoping Document that identifies the issues and alternatives that will be addressed in the Draft EIS. This document should be presented to County Council prior to any contracts awarded to CH2M Hill.
- 2) The County Executive should be directed to include a paid project manager in the Cost Reimbursement Agreements that will ensure an open, transparent and thorough EIS process.
- 3) Direct the County Executive to bring back Cost Reimbursement Agreements, prior to signing any contract with CH2M Hill, which addresses all costs incurred by Whatcom County through the application review, including a paid project manager.
- 4) Direct the County Executive to bring the CH2M Hill contract back to Council for review and approval. The review should be limited to ensuring consistency with the EIS Scoping Document and direction for cost reimbursement, and it is not meant to be a new opportunity for public comment.

Respectfully submitted,

David Stalheim