

SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES

SKAGIT COUNTY, WASHINGTON

RE SOURCES FOR SUSTAINABLE)
COMMUNITIES, FRIENDS OF THE SAN)
JUANS, FORESTETHICS, WASHINGTON)
ENVIRONMENTAL COUNCIL, FRIENDS OF)
THE EARTH, EVERGREEN ISLANDS,) NOTICE OF APPEAL
Appellants)
_____)

MODIFIED MITIGATED DETERMINATION OF NONSIGNIFICANCE
SHELL PUGET SOUND REFINERY

1. Decision Being Appealed (Skagit County Code § 14.06.110(8)(a))

This is an Appeal of the Modified Mitigated Determination of Nonsignificance (“MDNS”) for the Shell Puget Sound Refinery, Shoreline Substantial Development/Variance Permit PL13-0468 & Forest Practice Conversion Permit PL14-0079, issued by the Skagit County Planning and Development Services on August 13, 2014. A copy of the MDNS is attached to this Notice of Appeal.

2. Identity of Appellants and Representatives (Skagit County Code § 14.06.110(8)(b))

The appellants are:

RE Sources for Sustainable Communities
2309 Meridian Street
Bellingham, WA 98225
360.733.8307

Friends of the San Juans
P.O. Box 1344
Friday Harbor, WA 98250
360.378.2319

ForestEthics
1329 N. State Street, Suite 302
Bellingham, WA 98225
360.734.2951

Washington Environmental Council
1402 Third Ave., Suite 1400
Seattle, WA 98101
206.631.2604

Friends of the Earth
2150 Allston Way, Suite 240
Berkeley, CA 94704
510.900.3142

Evergreen Islands
P.O. Box 223
Anacortes, WA 98221
360.588.8057

The representatives of the appellants are:

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3. Interests of the Appellants (Skagit County Code § 14.06.110(8)(b))

Appellants are non-profit organizations dedicated to (1) protecting the environment and natural resources of Skagit County, Puget Sound, Washington State, and the Pacific Northwest region; (2) ensuring that all citizens of Washington and the Pacific Northwest have clean and healthy air, water, and communities; and (3) working across the region to ensuring that regulations and permits concerning oil transport, oil spill prevention, and oil spill clean-up are as strong as possible. Appellants submitted comments on the MDNS decision issued on August 13, 2014; there has been no response from Skagit County to those comments.

Appellants are deeply concerned about a decision that will authorize the construction of a crude-by-rail facility at the Shell Puget Sound Refinery without a full and complete environmental and public health review. Shell’s proposed expansion will allow “612 incoming fully loaded oil cars and 612 outgoing empty tank cars on a weekly basis.” Crude by Rail East Gate Project Environmental Checklist (Dec. 18, 2013) at 5. The decision to authorize this type of facility, particularly given the fact that other refineries in Skagit and Whatcom counties are already building and/or operating crude-by-rail facilities, poses major environmental risks to the Skagit community, Puget Sound, communities along the rail line, Washington State, and the commenters.

4. Specific Grounds for Appeal (Skagit County Code § 14.06.110(8)(c))

a. Statement of Facts

Extensive crude-by-rail oil transport systems are a recent phenomenon. Instead of pipelines, which are both expensive to build and subject to greater environmental review and regulation, crude oil is loaded onto rail tank cars for deliveries to refineries. In 2008, only 9,500 tank cars transported crude nationally, as compared to over 400,000 tank cars in 2013, an increase of over 4000%.

According to Shell, the oil will be “Mid-continent Crude and other crudes of opportunity.” Environmental Checklist at 5. Shell currently receives an average of three trains per week of approximately 15 cars in each trip. *Id.* at 5. Approval of this project would allow Shell to receive one unit train per day, with each unit train consisting of four locomotives and approximately 102 crude oil tank cars. *Id.* Shell plans to add 22,000 feet (approximately four miles) of track to its facility to allow the unit trains to be maneuvered and unloaded. *Id.* at 6. Because the volume of crude oil per tank car depends on the type of crude being transported, values used to calculate volume vary, but with a conservative estimate of 720 barrels per car, and

with 612 fully loaded oil cars per week, this project will give Shell the capacity to receive approximately 63,000 barrels of crude per day.

Shell is the fourth of Washington's refineries to apply to build crude-by-rail capacity. The BP Refinery in Ferndale, Washington built a crude-by-rail facility that will allow the refinery to accept 70,000 barrels of oil per day. It began receiving oil trains in December 2013. The Phillips 66 Refinery, also in Ferndale, is in the process of building a crude-by-rail facility that will allow the plant to receive 35,000 barrels of oil per day. Refinery officials have estimated that work will be complete by December 2014. Right next door to Shell's refinery, Tesoro completed a \$60 million rail improvement project in 2012 that allows it to receive 50,000 barrels of oil per day by railcar. Each of these projects adds hundreds of oil tank cars to the rails per week, increasing rail traffic, air pollution, oil spill risks, and other environmental and public health harms.

Shell's project, by itself and in combination with other current and proposed crude oil and coal shipping facilities, will cause significant, harmful impacts to the air, water, fish and wildlife, economics, public health, culture, and communities across our region. The MDNS fails to account for the significant environmental impacts posed by crude oil spill risks and impacts along the rail route and at the facility; increased rail traffic and necessary coordination; impacts to streams, wetlands, salmon, and fishing areas; air quality and respiratory impacts; rail tank car safety; types of crude oil shipped and its unique properties for health risks, explosions, spill clean-up, and climate impacts; impacts on historic and cultural resources; and global warming impacts from transportation, refining, and combustion of the oil.

b. Specific Errors under the State Environmental Policy Act

The Skagit County Planning and Development Services issued a Mitigated Determination of Nonsignificance ("MDNS") under the State Environmental Policy Act ("SEPA") on August 13, 2014 that concluded that the Project "does not have probable significant impact on the

environment provided that the applicable development regulations outlined in the Skagit County Code and other adopted plans and standards and the conditions set out below are satisfied.

Accordingly, an environmental impact statement is not required....”¹ The MDNS included 19 conditions of approval for the Project, most of which simply affirm Shell’s existing duties under other statutes and regulations.

In concluding that the crude-by-rail facility would not have a significant environmental impact, the MDNS neglected a number of environmental factors in its consideration of the environmental impact of building a crude-by-rail shipping facility, including at least the following:

- a. the cumulative impacts of Shell’s proposed facility with other crude-by-rail and coal export facilities in Puget Sound;
- b. the direct, indirect, and cumulative impacts of transporting crude oil long distances to the facility by rail, including risks of derailment and explosion, risks of oil spills along the rail line and/or into fresh water to species and the aquatic environment, risks to human health from air toxics released during transport, transfer, and storage, increase in rail traffic, and harm to safety, recreation, and aesthetics; and
- c. the direct, indirect, and cumulative impacts of transporting crude oil long distances from the facility by marine vessels, including impacts to commercial, recreational, and fishing, risks of oil spills into Puget Sound, and harm to safety, recreation, and aesthetics. While Shell avers that this project will not increase the amount of crude oil transported over marine waters, the MDNS does not make that condition clear, enforceable, or monitored.

¹ On April 24, 2014, Skagit County Planning and Development Services issued its first MDNS (containing 10 mitigation conditions) for Shell’s proposed project. After the comment period closed, but before the appeal period expired, Skagit County withdrew the first MDNS and asked Shell for additional information. The second threshold decision adds nine conditions to the original MDNS, but continues to find that a full environmental impact statement is not required.

Had the responsible officials considered these reasonably foreseeable direct, indirect, and cumulative effects of building the Shell crude-by-rail facility, they would have concluded that the Project is likely to have a significant adverse environmental impact. This would, in turn, trigger the duty to prepare a full environmental impact statement prior to a decision to grant any permit, as required by SEPA. However, the responsible officials erroneously believed that SEPA only required consideration of the immediate, local impacts in Skagit County of building and operating this project, and they failed to include or consider the above effects in their SEPA documentation.

Additionally, Skagit County's proposed mitigation primarily relies on stating that Shell, the applicant, shall "receive and comply" or simply "comply" with a list of already required permits and approvals. MDNS at 1-2 (Conditions 1-10). Instead of performing a project-specific analysis of the mitigation necessary to avoid adverse environmental effects, the MDNS includes as mitigation already-required compliance with various laws and permitting structures. It assumes without scrutiny that those general laws can stand in for specific mitigation. SEPA demands more.

Even where the MDNS proposes some mitigation beyond mere citation to other requirements, in Conditions 11-19, the mitigation measures are insufficient when viewed in light of the cumulative and indirect impacts of Shell's proposal and the concerns that the tank cars used to transport crude are inherently unsafe and will be so for years; that the stream of oil trains to Shell and other refineries will disrupt everyday life and travel in Skagit County; and that Shell will begin to ship crude oil over marine waters that it has received by rail. Although Condition 17 states that "[t]he project will no involve any change in refining capacity, nor involve an increase in the amount of crude transported over marine waters," that condition does not explicitly prohibit crude coming by rail from being transported over marine waters. Conditions

addressing these concerns must be made mandatory, and the agency must include monitoring to ensure compliance.

Further, while the MDNS presumes that the crude oil will be coming from the Bakken play in North Dakota, there are indications that the crude might also come from Alberta, Canada. Alberta tar sands oil is very different from other crude oil; it is more precisely called diluted bitumen, and is also heavier, making it much harder to clean up after a spill. Because the MDNS does not define the type and/or composition of the crude oil that will be received at Shell's facility, the actual environmental impacts of this project are essentially unknown, unexamined, and certainly not mitigated.

5. Desired Outcome or Changes to the Decision (Skagit County Code § 14.06.110(8)(d))

Appellants respectfully request that the Hearing Examiner reverse the Skagit County Planning and Development Services decision not to require a full, complete, and transparent environmental impact statement and prohibit the County from issuing the underlying permits until it has adequately complied with SEPA.

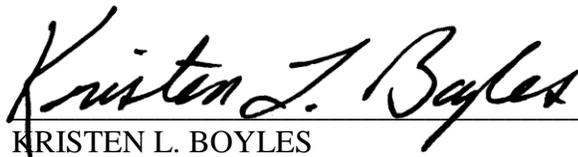
Additionally, appellants request that the Hearing Examiner find that for any project conditions and mitigation measures, the agency must issue clear, mandatory, and enforceable conditions for tank car and first responder safety and minimization of rail traffic impacts, and plainly require that: (1) Shell shall not use crude oil coming by rail via the project to increase refining capacity; (2) Shell shall not ship any amount of crude oil received at the facility by rail over marine waters, nor in general increase its capacity to ship crude oil over marine waters; and (3) the agency will regularly monitor Shell's compliance with these and other binding conditions, including by requiring regular sworn compliance reports.

6. Relevant Skagit County Code Sections (Skagit County Code § 14.06.110(8)(e))
- SCC 14.12 (SEPA)
 - SCC 14.06 (Permit Procedures)

7. Appeal Fee (Skagit County Code § 14.06.110(9))

This Notice of Appeal is accompanied by the appropriate appeal fee (\$1000).

Respectfully submitted this 10th day of September, 2014.



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Friends of the Earth, and Evergreen Islands*

**SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES
MODIFIED MITIGATED DETERMINATION OF NONSIGNIFICANCE (MDNS)**

Shoreline Substantial Development/Variance Permit PL13-0468
& Forest Practice Conversion Permit PL14-0079
For Shell Puget Sound Refinery

PROJECT DESCRIPTION: Shell Puget Sound Refinery proposes to build a rail spur from the existing adjacent Burlington Northern Santa Fe mainline onto Shell PSR property with equipment to pump oil from rail cars into the refinery. The crude brought in by rail would replace some supply currently brought in by ship and would serve to maintain current production, not increase capacity. The project is located within Anacortes Urban Development zoning/comprehensive plan designated areas as indicated in the Skagit County Comprehensive Plan.

PROPONENT: Shell Puget Sound Refinery, c/o Tom Rizzo, PO Box 622, Anacortes, WA 98221. Project Contact: URS Corporation, c/o Jeff Walker, 1501 4th Avenue, Suite 1400, Seattle, WA 98101.

PROJECT LOCATION: The project is located at 8505 South Texas Road, within a portion of Sections 33 & 34, Township 35 N, Range 2 E, W.M. and a portion of Section 4, Township 34 N, Range 2 E W.M., situated within Skagit County, Washington.

LEAD AGENCY: Skagit County Planning and Development Services

DETERMINATION and CONDITIONS: The original MDNS for this proposal was published on April 24, 2014. The County received a significant numbers of comments on that determination. Based on those comments, additional information was requested on June 3, 2014. The applicant submitted the requested information on July 17, 2014. The Responsible Official reviewed that information and determined that additional conditions are appropriate. The modifications to the conditions do not significantly alter the County's earlier SEPA review. The modified and added conditions continue to address the project's environmental impacts. Consequently, the lead agency for this proposal has determined that it does not have a probable significant adverse impact to the environment provided that the applicable development regulations outlined in Skagit County Code and other adopted plans and standards and the conditions set out below are satisfied. Accordingly, an environmental impact statement is not required under RCW 43.21C.030(2)(c). This decision was made after review of the environmental information and analysis on file with the lead agency. This information is available to the public on request. This determination is subject to the mitigation measures as identified below and shall be deemed conditions of approval of the land use and/or permit pursuant to Skagit County Code 14.12. Such conditions are considered binding and may not be altered by subsequent decisions unless a threshold determination is re-issued.

1. The applicant shall receive and comply with all permits and approvals from Northwest Clean Air Agency requirements.
2. The applicant shall receive and comply with the Eagle Non-purposeful Take Permit and Eagle Nest Take Permit from U. S. Fish and Wildlife prior to disturbance of any bald eagle nest tree.
3. The applicant shall receive and comply with all permits and approvals from the Washington State Department of Fish and Wildlife including but not necessarily limited to the Hydraulic Project Approval.
4. The applicant shall receive and comply with all permits and approvals from the Washington State Department of Ecology, including but not limited to the 401 Water Quality Certification and Coastal Zone Management Consistency.
5. The applicant shall receive and comply with all permits and approvals from the U. S. Army Corps of Engineers including but not necessarily limited to the Section 404 Individual Permit.

6. The applicant shall comply with applicable provisions and regulations of the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration.
7. The applicant shall comply with all applicable provisions of Skagit County Code (SCC) 14.24, the Critical Areas Ordinance.
8. The applicant shall comply with all applicable provisions of SCC 14.32, the Drainage Ordinance.
9. The applicant shall comply with the International Building Code.
10. The applicant shall comply with the International Fire Code.
11. The applicant shall work in good faith with BNSF and other local oil refiners to develop a mutual aid agreement associated with responding to crude railcar incidents off-site of refinery property.
12. The applicant shall comply with United State Department of Transportation safety advisory 2014-01.
13. The applicant must fully transition out of using "legacy" DOT 111 cars in its fleet for transporting crude as soon as practicable. All new rail cars added to the applicant's fleet will be "good faith CPC 1232" type cars unless the federal standards change.
14. The applicant must not knowingly accept at its facility any rail cars that do not meet all applicable United States Department of Transportation regulations.
15. The applicant shall ensure that all lighting installed for this proposal will be International Dark Sky Association Dark Sky compliant.
16. The applicant shall comply with the Washington State Department of Fish & Wildlife noise buffer guidelines and distances for great blue heron colonies.
17. The project will not involve any change in refining capacity, nor involve an increase in the amount of crude transported over marine waters.
18. The applicant shall make a request to BNSF that trains arrive and depart during non-peak traffic hours.
19. The avoidance and minimization measures listed on pages 20 & 21 of the July 17, 2014 response from Shell must be completed as proposed.

This MDNS is issued under 197-11-340(2). The lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by **August 28, 2014**.

You may appeal this threshold determination by addressing those criteria as set forth in SCC 14.12.210 and then by filing per Section 14.06.110 such with Skagit County Planning and Development Services for service to the SEPA responsible official(s).

Appeals must be submitted no later than: **September 11, 2014**.

RESPONSIBLE OFFICIAL: Director of Planning and Development Services

CONTACT PERSON: Leah Forbes, Senior Planner

MAILING ADDRESS: 1800 Continental Place, Mount Vernon, WA 98273

PHONE: (360) 336-9410

Date: 8-14-14 **Signature:** Leah Forbes, AICP

On behalf of Dale Pernula AICP, Planning and Development Services Director

cc: WDOE, WSDOT, Public Works, NW Clean Air Agency, Fire Marshal, Skagit County Fire Protection Districts 1, 2, 3,6, 12 and 13, WDFW, US Army Corps of Engineers, USFWS, City of Mount Vernon, City of Burlington, City of Anacortes, WDAHP, Skagit River System Cooperative, Samish Indian Nation, Upper Skagit Tribe, Swinomish Tribe, Applicant, parties of record

Please Publish: 8-14-14