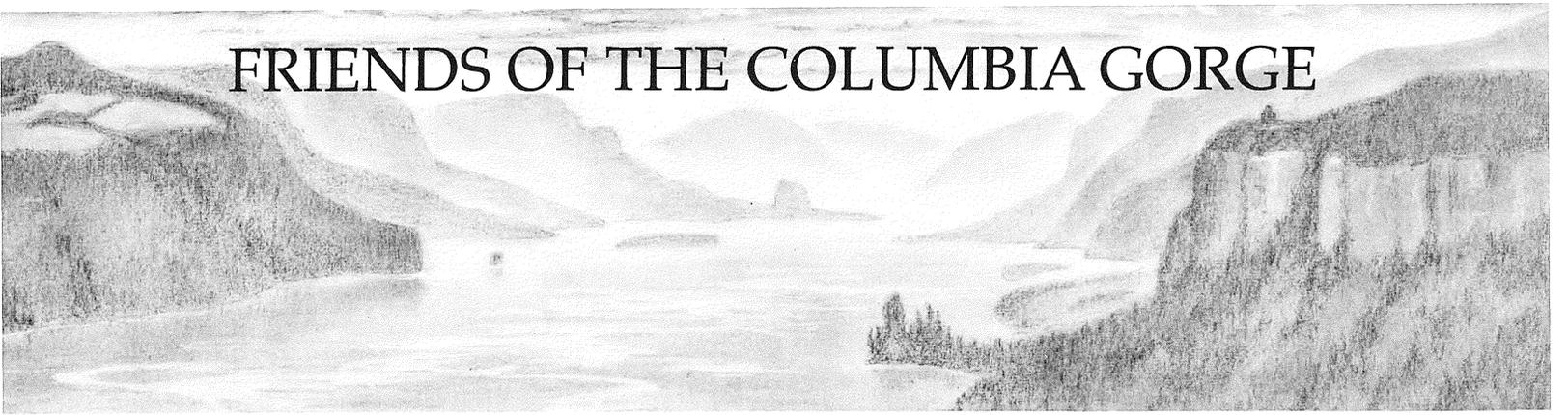


FRIENDS OF THE COLUMBIA GORGE



May 28, 2014

Washington State Energy Facility Site Evaluation Council
P.O. Box 43172
Olympia, WA 98504-3172

Re: Land Use Consistency Review for the Proposed Tesoro Savage Vancouver Energy Distribution Terminal (EFSEC Application No. 2013-01)

Dear Chair Lynch and Members of the Council:

Friends of the Columbia Gorge, Columbia Riverkeeper, the Northwest Environmental Defense Center, the Sierra Club, and the Center for Biological Diversity have reviewed the above-referenced proposal and would like to comment on its consistency with local land use laws. These comments address the February 2014 amended application (“Application”) filed by Tesoro Savage Petroleum Terminal LLC (“Tesoro” or “Applicant”).

As will be explained below, holding a land use consistency hearing at this early stage, without first making available the environmental impact statement (“EIS”), and before the Applicant has supplied necessary information regarding the proposal, is inconsistent with state and local laws. The Council should continue the land use consistency hearing to a new date, after the Applicant completes the Application and after the final EIS is made available.

In addition, although the information available about this proposal and its likely impacts is limited at this time, the information nevertheless demonstrates that the proposal would be inconsistent with key provisions of the City’s land use plans and ordinances. Thus, the Council is required to schedule and hold a “preemption hearing” to receive public testimony on whether the Council should recommend approval of the proposal despite its inconsistencies with local laws.

1. The Council must determine whether the proposal is consistent and in compliance with the City’s land use plans and zoning ordinances.

Pursuant to WAC 463-26-110, the Council must determine “whether the [proposal] is consistent and in compliance with [the City’s] land use plans and zoning ordinances.”¹ Here, this

¹ See also RCW 80.50.090(2). “Land use plans” are defined as comprehensive plans and elements thereof, while “zoning ordinances” are defined as local ordinances that regulate the use of land. RCW 80.50.020(14), (22); see also WAC 463-26-050.

means the Council must review the proposal for consistency with the City of Vancouver's Comprehensive Plan, the City's Subarea Plans, and the relevant provisions of the Vancouver Municipal Code ("VMC"). As part of its review, the Council must allow "testimony by anyone . . . relative to the consistency and compliance with land use plans and zoning ordinances." WAC 463-26-060.

If the Council determines that the proposal is inconsistent with any provisions of the City's plans and ordinances, the Council must then hold an adjudicative proceeding to "consider preemption." WAC 463-28-060(1). Once the preemption proceeding is concluded, the Council must "determine whether to recommend to the governor that the state preempt the land use plans, zoning ordinances, or other development regulations" and approve the proposal. WAC 463-28-060(3); *see also* WAC 463-28-080. If the Council recommends preemption, it must "include conditions in the draft certification agreement which consider state or local governmental or community interests affected by the construction or operation of the energy facility . . . and the purposes of [the preempted local laws]." WAC 463-28-070; *see also* RCW 80.50.100(1). The Governor must then decide whether to deny the proposal, approve the proposal and execute the site certification agreement, or direct the Council to reconsider any aspects of the draft certification agreement. RCW 80.50.100(2).

2. The Council should continue the land use consistency hearing to a new date once the environmental impact statement has been made available.

Holding a land use consistency hearing now, before the EIS has been made available, is inconsistent with state and local laws. Pursuant to WAC 197-11-535(1) and (4),² the land use hearing must include consideration of the environmental impacts of the proposal, and a copy of the EIS must be made available at the hearing. *See also* RCW 43.21C.030(2)(d) (EIS "shall accompany the proposal through the existing agency review processes"); WAC 197-11-655 (EIS "shall accompany proposals through existing agency review processes . . . so that agency officials use them in making decisions."); *West Main Assocs. v. City of Bellevue*, 49 Wn. App. 513, 517-18, 742 P.2d 1266 (1987) (environmental considerations must be integrated into governmental decision-making processes); *King County v. Wash. State Boundary Review Bd.*, 122 Wn. 2d 658, 663-64, 666, 860 P.2d 1024, 1034 (1993) ("One of SEPA's purposes is to provide consideration of environmental factors at the earliest possible stage to allow decisions to be based on complete disclosure of environmental consequences. . . . The point of an EIS is not to evaluate agency decisions after they are made, but rather to provide environmental information to assist with *making* those decisions."); WAC 197-11-406 (The EIS "shall be prepared early enough so it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made.").

In addition, the City of Vancouver's regulations require that the EIS must be made available to the City to allow it to complete its review. VMC § 20.790.130(C) requires that "[w]hen the City is not the lead agency for a proposal, all departments of the City *shall use and consider . . . the . . . final EIS of the lead agency in making decisions on the proposal.*" (emphasis

² Both WAC 197-11-535(1) and (4) are incorporated into EFSEC's rules by WAC 463-47-020.

added).³ Finally, VMC § 20.790.620(D)(1) gives the City the authority to recommend denial of this proposal based on information contained in the final EIS. EFSEC’s statute and rules exempt the City from having to prepare an EIS as a lead agency under RCW 43.21C.030, but do not exempt the City from exercising its substantive authority under RCW 43.21C.060 and considering the likely environmental impacts of the proposal when evaluating consistency with the City’s laws. *See* RCW 80.50.180; WAC 197-11-938(1).⁴ The City is authorized and entitled to defer completion of its review until the EIS is made available.

Pursuant to these state and local laws, the Council should continue the land use consistency hearing to a new date so that the environmental impact statement can be made available and inform the land use consistency review process. The Council should allow further public testimony at the continued hearing, pursuant to WAC 463-26-060.

3. The City’s zoning code gives the City broad authority to recommend denial of the proposal based on its likely environmental impacts.

As explained above, the City is authorized and entitled to use EFSEC’s EIS in evaluating whether the proposal is consistent with the City’s laws, and is therefore authorized and entitled to defer completion of its review until the EIS is made available. In addition, the City’s zoning code provides broad authority to recommend denial of a proposal based on its environmental impacts.

Pursuant to VMC § 20.790.620(D), the City may recommend denial based on a proposal’s environmental impacts, so long as the City finds that the impacts would be significant and adverse, that there are no mitigation measures available that would mitigate the significant impact, and that the proposal is inconsistent with one or more of the following policies, found at VMC § 20.790.630.⁵

A. “Environmental stewardship. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.”

The proposed oil terminal would conflict with surrounding uses, create threats to public safety, threaten sensitive natural resources, and contribute to global climate change. Denying the proposal would fulfill the responsibilities of the current generation as an environmental steward

³ Review by the City of Vancouver for consistency with the City’s land use authorities—whether provided to the Council as comments, a certificate of consistency, or in some other form, is a land use decision. *See* Order, *Columbia Riverkeeper v. Cowlitz County*, Cowlitz County Super. Ct. No. 07-2-00400-0 (May 2, 2007) (attached hereto as Exhibit 18) (Cowlitz County’s land use consistency certificate provided to EFSEC for the Pacific Mountain Energy Center was an interpretive, final decision under RCW 36.70C.020(2)(b), but it could not be appealed under the Land Use Petition Act because any appeal would be preempted by the Energy Facilities Site Locations Act (“EFSLA”). Also attached hereto as Exhibit 19 is the interpretive decision by Cowlitz County that was involved in the *Columbia Riverkeeper v. Cowlitz County* case.

⁴ The exemption granted to the City under RCW 80.50.180 is narrowly defined to the requirement to prepare a “detailed statement” under RCW 43.21C.030 and does not extend to exempting local agencies from any other provisions of SEPA. The City retains its substantive authority under RCW 43.21C.060 to recommend denial or conditional approval of a project based on its environmental impacts.

⁵ VMC § 20.790.620(D)(3) contains a typographical error. This section references the policies in section 20.790.720, which is an unused section reserved for additional definitions. The substantive SEPA policies are actually found at VMC § 20.790.630.

for future generations, by preventing the commitment of resources to a facility that poses great environmental harm and risks.

B. “Protect Washington’s interests. Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings.”

The proposal threatens significant adverse impacts to public safety, public health, productive use of land, aesthetic surroundings, and culturally pleasing surroundings. For example, the proposal would substantially increase the number of trains transporting oil through Vancouver and surrounding areas, which would create a major risk of catastrophic accidents. The proposed oil terminal and associate oil transport plans would be incompatible with the policy of protecting the interests of Washington citizens.

C. “Widest range of beneficial uses. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.”

The proposal would conflict with existing and proposed uses in the vicinity of the terminal and rail line. Rather than achieving a wide range of benefits available through other development alternatives, the proposed oil terminal would limit the range of beneficial uses to a single, dangerous oil shipping facility.

D. “Preservation of national and local heritage. Preserve important historic, cultural and natural aspects of our national and local heritage.”

The proposed oil terminal would likely cause significant impacts to the public’s ability to enjoy the Columbia River waterfront in Vancouver, which is an important part of the region’s historic, cultural, and natural heritage. This heritage includes the historic use of the Vancouver waterfront by indigenous groups, European explorers, and fur trading networks. The cultural significance is recognized by the designation of the Columbia River as part of the Lewis and Clark National Historic Trail. The proposed oil terminal would threaten these heritage resources. In addition, the proposal would cause substantial amounts of rail transport of oil through the surrounding region, threatening heritage and natural resources along the railway, such as the Columbia River Gorge National Scenic Area.

E. “Supportive of diversity and choice. Maintain, wherever possible, an environment which supports diversity and a variety of individual choice.”

The proposed oil terminal would likely limit the opportunities to develop surrounding lands uses in a way that supports diversity and variety of individual choices. Opportunities for individuals to live, work, and play along the Vancouver waterfront would likely be eliminated. The EIS must examine the proposal’s environmental justice impacts on low-income and minority communities. Several communities, including the nearby Fruit Valley neighborhood,⁶ stand to be

⁶ According to the Fruit Valley Subarea Plan, “Fruit Valley’s race and ethnic make-up includes a higher percentage of Hispanic, Asian, and Native American than overall Vancouver does. Fruit Valley’s Census tract has

disproportionately impacted by the oil shipping terminal, the rail transportation of crude, and its drilling/extraction. In addition, traditional tribal lands will likely be affected by the proposal, the treaty-protected fishing rights of Columbia River Tribes will likely be affected, and Tribes along the rail line and in the areas of extraction will likely be impacted by the proposed railroad and the increased drilling and extraction associated with this proposal. Although the City is entitled to await the analysis of environmental justice impacts in the EIS before completing its review of the proposal, it is likely that communities closest to the port site, along the rail line, and near the oil wells—many of which are low-income or have high-minority populations—will bear a disproportionate impact of the project’s impacts, including air and water pollution, noise, chemical exposure, and safety risks.

F. “Balance. *Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities.”*

The proposal threatens surrounding lands that would otherwise be suitable for residential and commercial development, thus foreclosing opportunities to direct future commercial and residential growth to areas that can accommodate growth with fewer impacts to resources. As a result, the proposal could lead to an imbalance between the needs of a growing population and the use of resources necessary for high standards of living.

G. “Enhancement of renewable resources. *Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.*

The proposed oil terminal would not enhance the quality of renewable resources or support the maximum attainable recycling of depletable resources. To the contrary, the proposal would undercut the use of renewable resources and exacerbate the depletion of depletable resources.

1. *The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.*

The proposal oil terminal would infringe on every person’s fundamental and inalienable right to a healthful environment by constructing a major public safety threat in a major city, by supporting the dangerous shipping of highly flammable oil through numerous communities, by contributing to global climate change, and by exacerbating air pollution and chemical exposure along the rail line and in the area surrounding the proposed terminal.

2. *The City incorporates by reference the policies in the cited City codes, ordinances, resolutions and plans, and all amendments to them in effect prior to the date of fully-complete application of any building permit or preliminary plat, or prior to issuance of a DNS or DEIS for any other action”*

the second highest poverty rate in the City of Vancouver with 35% of the people living in poverty. This is triple Vancouver’s overall poverty rate of 12%.” Fruit Valley Subarea Plan (Exhibit 3) at 6.

This policy expressly incorporates every section of Title 20 of the Vancouver Municipal Code. VMC § 20.790.630(G)(2). Through this incorporation, the City establishes the authority to recommend denial of the project based on significant impacts involving any of its land use regulations. The policy also incorporates federal criteria and policies regarding federally listed salmonids.⁷

In summary, the City's substantive SEPA policies, which are part of the City's Development Code (Title 20), address a wide range of potential impacts that must be considered in the EIS, and by their own terms may be used as a basis for the City to recommend denial of the project. The Siting Council must allow the City to review the EIS and determine whether the proposal would violate any of these policies.

4. The proposal is inconsistent with the City of Vancouver's Comprehensive Plan.

Pursuant to WAC 463-26-110, the Council must determine whether the proposal would be consistent with the City of Vancouver's Comprehensive Plan.⁸ The proposal is inconsistent with key provisions of the Comprehensive Plan, including provisions involving sustainability, community development, economic development, the environment, and public health and safety.

A. The proposal is inconsistent with the Comprehensive Plan's policies and goals regarding community development.

i. The project is inconsistent with Vancouver's commitment to sustainability.

*"Sustainability, generally defined as meeting today's needs without compromising the ability of future generations to meet their's [sic], is one of the City's core strategic commitments."*⁹

CD-16¹⁰ Sustainability

"Facilitate sustainable land use development through measures including but not limited to the following:

- (a) Develop integrated land use patterns and transportation networks that foster reduced vehicle miles traveled and associated greenhouse gas emissions"*¹¹

The proposal would allow the shipping and transfer of an estimated 360,000 barrels of crude oil per day. Reliance on crude oil as an energy source is unsustainable. Oil is non-renewable, and the burning of oil accelerates global climate change, which threatens future generations. In addition, trains, ships, and barges are all significant source of greenhouse gases.¹²

⁷ See *infra* Part 10.

⁸ The Comprehensive Plan is attached hereto as Exhibit 1. Page numbers of the Vancouver Comprehensive Plan will be cited as "VCP."

⁹ VCP at 1-10.

¹⁰ "CD" is the abbreviation used by the City for its numbered Community Development policies.

¹¹ VCP at 1-15.

¹² See, e.g., Exhibit 20 at Ex. 66, p. 5.

The increased rail, ship, and barge traffic caused by the proposal would increase greenhouse gas emissions and would be inconsistent with Vancouver’s sustainability policies. The trains would also increase conflicts with automobiles at crossings, causing congestion, increased vehicle emissions, and increased petroleum consumption. Because the primary purpose of the proposed terminal is to facilitate the use of an unsustainable, environmentally damaging energy source, it would violate Vancouver’s stated commitment to sustainability. The proposal is inconsistent with the Comprehensive Plan.

- ii. **The project is inconsistent with the City’s policies requiring the promotion of infill, redevelopment, urban centers, urban corridors, mixed-use development, and neighborhood livability.**

CD-3 Infill and redevelopment

“Where compatible with surrounding uses, efficiently use urban land by facilitating infill of undeveloped properties, and redevelopment of underutilized and developed properties. Allow for conversion of single to multi-family housing where designed to be compatible with surrounding uses.”

CD-4 Urban centers and corridors

“Achieve the full potential of existing and emerging urban activity centers and the corridors that connect them, by:

- (a) Promoting or reinforcing a unique identity or function for individual centers and corridors*
- (b) Planning for a compact urban form with an appropriate mix of uses*
- (c) Working with stakeholders to develop flexible standards to implement the vision for that center or corridor*
- (d) Encouraging innovative, attractive private development that efficiently uses available land and resources*
- (e) Establishing connectivity within each center and to other areas to provide accessibility*
- (f) Providing a range of transportation options*
- (g) Investing in public facilities and amenities to enhance livability”*

CD-5 Mixed-use development

“Facilitate development that combines multiple uses in single buildings or integrated sites.”

CD-6 Neighborhood livability

“Maintain and facilitate development of stable, multi-use neighborhoods that contain a compatible mix of housing, jobs, stores, and open and public spaces in a well-planned, safe pedestrian environment.”¹³

¹³ VCP at 1-14.

The proposed oil terminal would completely undermine these policies, preventing the city from achieving the full potential of its existing and emerging urban activity centers and the corridors that connect them, thwarting the City's commitments to planned mixed-use developments, and threatening neighborhood livability and safety.

In particular, the proposal would interfere with the City's commitment to The Waterfront at Vancouver, Washington, USA ("Waterfront Development Project"), an infill project that would develop 35 acres of riverfront land along the Columbia River and reconnect this land to the city's historic core. The \$1.3 billion Waterfront Development Project would include up to 3,300 residential units, approximately one million square feet of office space, and retail space for restaurants, specialty shops, and services.¹⁴ The oil terminal would result in multiple unit trains of crude by rail per day traversing the site proposed for the Waterfront Development Project. The proposed oil terminal, the resulting oil train traffic, and their impacts on safety and livability would compromise the economic viability of the waterfront project, devastating the City's plans to promote a unique identity, promote a compact and efficient urban form with an appropriate mix of uses, and reconnect the City's urban core with its waterfront.

The proposal would substantially frustrate the City's commitments to encourage innovative, attractive private development in downtown Vancouver and surrounding areas, such as the Waterfront Development Project, because potential developers and investors will be much less likely to pursue sites threatened by the oil terminal and associated oil train traffic. In a study prepared by Johnson Economics for Columbia Waterfront LLC and submitted with Columbia Waterfront's SEPA scoping comments, Johnson estimates that the Tesoro project would have devastating impacts on the downtown Vancouver study area, including a "\$98.3 million reduction in new construction investment," a "341,000 square feet reduction in commercial space," and "[a] net change of \$138.1 million reduction in Real Market Value."¹⁵

The proposal would result in scenic blight, excessive noise, chemical odors, air pollution, industrial traffic, and severe safety risks in and near neighborhoods, thus deterring potential development that would otherwise occur in these areas. In particular, the risk of train derailment and catastrophic loss of life and property and environmental damage would discourage private and public development from proceeding according to the Comprehensive Plan. Just over the last year, there have been numerous incidents in the United States and Canada of oil train derailments that caused catastrophic property damage and loss of life.¹⁶

In summary, the proposal is inconsistent with the City's development policies. It would substantially interfere with the City's formal commitments to efficiently develop appropriate mixes of uses in compact urban areas, encourage innovative, attractive private development, connect neighborhood centers with appropriate transportation access, promote appropriate mixed-use development, and protect neighborhood livability and safety.

¹⁴ See City of Vancouver, *Waterfront Development Project*, available at <http://www.cityofvancouver.us/ced/page/waterfront-development-project> (attached as Exhibit 23).

¹⁵ Johnson Economics, *Predicted Impacts of the Tesoro Savage Facility on Development and Redevelopment in Downtown Vancouver, Washington*, at 2 (Dec. 18, 2013) (attached as Exhibit 26).

¹⁶ To cite just one example, an oil train derailment in Lac-Megantic, Quebec on July 6, 2013 caused massive property damage, killed 47 people, and resulted in the evacuation of 1,000 people. See Exhibit 20 at 13–14 and exhibits cited therein.

iv. The proposal is inconsistent with the City’s community design policies.

CD-8 Design

“Facilitate development and create standards to achieve the following:

- (a) Increased streetfront use, visual interest, and integration with adjacent buildings*
- (b) Improved pedestrian connections and proximity of uses within developments*
- (c) Enhanced sense of identity in neighborhoods and subareas*
- (d) Publicly and/or privately owned gathering spaces facilitating interaction”¹⁷*

The proposal would result in an enormous industrial operation that would be a nuisance. It would be incompatible with the Fruit Valley neighborhood, creating visual blight and interfering with the neighborhood’s sense of identity. This nuisance would be present during project construction and operation.

In addition, both the facility and the rail use components of the proposal would conflict with the City’s publicly and privately owned parks, trails, and other greenspaces and gathering places, including the Discovery Historic Loop, the Columbia River Renaissance Trail,¹⁸ Esther Short Park, the plaza that will be part of the Waterfront Development Project,¹⁹ the segment of the Lewis & Clark Discovery Greenway Trail planned adjacent to the project site,²⁰ and Frenchman’s Bar Trail.²¹ The noise, safety risks, chemical exposure, and air and water pollution from the proposal would interfere with public use of the City’s recreational resources and decrease interaction at publicly and privately owned gathering spaces. The proposal is therefore inconsistent with the City’s community design policies.

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¹⁷ VCP at 1-14.

¹⁸ See City of Vancouver, *Columbia River Renaissance Trail*, available at http://www.cityofvancouver.us/sites/default/files/fileattachments/parks_and_recreation/page/1737/renaissancetrail.pdf (Fall 2010) (attached as Exhibit 21).

¹⁹ See City of Vancouver, *Waterfront Park Project*, available at <http://www.cityofvancouver.us/waterfrontpark>; City of Vancouver, *Vancouver’s future waterfront includes community park, beach and pier*, available at <http://www.cityofvancouver.us/ced/page/vancouvers-future-waterfront-includes-community-park-beach-and-pier> (Nov. 4, 2013); City of Vancouver, *Present: Your Park Design*, available at <http://www.cityofvancouver.us/waterfrontpark/page/present>; City of Vancouver, *Waterfront Park Future: Discover Your Park*, available at <http://www.cityofvancouver.us/waterfrontpark/page/waterfront-park-future>; City of Vancouver, *Waterfront Park: At-A-Glance Timeline*, available at <http://www.cityofvancouver.us/waterfrontpark/page/waterfront-park-glance-timeline> (collectively attached as Exhibit 24).

²⁰ See *infra* Part 6.

²¹ See City of Vancouver, *Vancouver Lake Park and Frenchmans Bar Park*, available at http://www.cityofvancouver.us/sites/default/files/fileattachments/parks_and_recreation/page/1710/frenchmans_vanlake.pdf (Aug. 2011) (attached as Exhibit 22).

v. The project is inconsistent with the City’s compatible uses policies.

CD-9 Compatible uses

“Facilitate development that minimizes adverse impacts to adjacent areas, particularly neighborhoods.”²²

The visual impacts, noise impacts, air pollution, chemical exposure, and safety risks of the proposal would adversely affect adjacent areas, particularly the Fruit Valley neighborhood and the open space area immediately north of the proposed oil storage site. The latter area is zoned for greenway purposes and designated for use as part of the Lewis & Clark Discovery Greenway Trail. A proposed oil terminal would not be compatible with an adjacent regional trail. The proposed site for oil storage is also immediately adjacent to an extensive wetland to the north and another wetland to the east. The storage of hundreds of thousands of barrels of oil is not compatible with the protection of wetlands. In addition, the proposed transport of dangerous oil trains would adversely affect other areas adjacent to the rail line, such as the Waterfront Development Project and recreational parks and trails discussed above. The proposal is not compatible with surrounding uses and is therefore inconsistent with the Comprehensive Plan.

vi. The project is inconsistent with the City’s policies on public health and the built environment.

CD-15 Public Health and the built environment

“Promote improved public health through measures including but not limited to the following:

(a) Develop integrated land use and street patterns, sidewalk and recreational facilities that encourage walking or biking.”²³

As discussed above, the proposal would increase dangerous and incompatible rail traffic along and near areas dedicated to recreational amenities such as trails and parks. As a result, the proposal would discourage walking and biking in areas planned for these activities and fail to promote improved public health. The proposal would also increase delays for bicycling at railroad crossings, thus decreasing the desirability of biking.²⁴ The proposal is inconsistent with the City’s policies regarding public health and the built environment.

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²² VCP at 1-14.

²³ VCP at 1-15.

²⁴ Three of the 26 at-grade railroad crossings in the City of Vancouver (at SE Beach Drive, 8th Street, and Jefferson Street) are also on designated bike paths.

B. The proposal is inconsistent with the Comprehensive Plan’s policies and goals regarding economic development.

i. The proposal is inconsistent with the City’s policies requiring the efficient use of employment land.

EC-6 Efficient use of employment land

“Maximize utilization of land designated for employment through more intensive new building construction and redevelopment and intensification of existing sites.”²⁵

The proposal is inconsistent with the City’s policies requiring the efficient use of employment land. As discussed above, the proposal would severely frustrate the \$1.3 billion Waterfront Development Project and its economic benefits. According to Johnson Economics, the proposed oil terminal would result in 2,100 fewer waterfront construction jobs and 613 fewer permanent jobs just at the Waterfront Development Project site, and Johnson also cautions that it is “important to remember that the Vancouver Waterfront development represents only a portion of the impact area that should be evaluated.”²⁶ Because the proposal would discourage the maximum utilization of land designated for employment, it is inconsistent with the City’s policies regarding efficient use of employment land.

ii. The proposal is inconsistent with the City’s policies requiring a regional focus to attract new business.

EC-7 Regional focus

“Work with the larger Portland-Vancouver region to leverage opportunities, unique site availability, and marketing to promote the region nationally and globally to attract new business.”²⁷

The proposal is inconsistent with the City of Vancouver’s policies requiring a regional focus to attract new business. For example, the City and its partners have promoted the Waterfront Development Project nationally and globally in an effort to attract new business, including retail stores, restaurants, and a new hotel. The proposed oil terminal and its threats to safety, human health, property values, sustainability, and livability severely compromise these marketing efforts. Simply put, if the proposal is approved, the City of Vancouver will be known nationally and globally as the site of the largest oil terminal in the Pacific Northwest, which, because of the attendant impacts and risks, makes the City an unattractive location to start a new business.

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²⁵ VCP at 2-7.

²⁶ Exhibit 25 at 2, 4.

²⁷ VCP at 2-7.

C. The proposal is inconsistent with the Comprehensive Plan’s policies and goals regarding protection of the environment.

i. The project is inconsistent with Vancouver’s commitment to protect public health and safety from earthquakes.

Public health and safety

“Vancouver will help protect public health and safety from flooding, landslides, and earthquakes.”²⁸

The proposal is inconsistent with the City’s commitment in the Comprehensive Plan to protect public health and safety from flooding, landslides, and earthquakes. The proposed project site is within the 100-year floodplain. The proposal would also place the facility directly in a geological hazard zone vulnerable to liquefaction. Liquefaction is a phenomenon whereby an earthquake causes soil to lose strength and stiffness; it has been responsible for enormous amounts of damage worldwide.²⁹ If the proposal were built and an earthquake occurred, the soil underneath the facility could drastically shift, causing catastrophic damage. The proposed siting of the facility is inconsistent with Vancouver’s goal to protect public health and safety.

ii. The project is inconsistent with the City’s policies requiring the protection of priority habitats, locally important habitats, priority species, and threatened and endangered species.

Habitats and species

“Vancouver will protect priority habitats, locally important habitats, and priority species. Vancouver will protect salmon and work with others in the region to develop and implement recovery plans for threatened salmon species.”

Endangered Species Act

“Vancouver will avoid harming ESA-listed species and their habitat. The City will work with others in the region to plan and implement actions in order for listed species to recover again.”³⁰

EN-7³¹ Endangered species

“Protect habitat for salmonids and other listed species and facilitate recovery. Encourage and support actions that protect other species from becoming listed.”³²

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²⁸ VCP at 4-9.

²⁹ See Jörgen Johansson, University of Washington, *What is Soil Liquefaction*, available at <http://www.ce.washington.edu/~liquefaction/html/what/what1.html> (attached as Exhibit 27).

³⁰ VCP at 4-9.

³¹ “EN” is the abbreviation used by the City for its numbered environmental policies.

³² VCP at 4-10.

The proposal would be inconsistent with the City’s policies requiring the protection of priority habitats, locally important habitats, priority species, and threatened and endangered species. The Applicant acknowledges that salmonids listed under the federal Endangered Species Act “use portions of the site and the surrounding areas.”³³ Other priority species in the Vancouver area include the bald eagle, western grey squirrel, great blue heron, peregrine falcon, purple martin, and leopard dace.³⁴ A crude oil spill would be devastating to fish and wildlife at the site and the surrounding area.

Crude oil is extremely toxic to fish and wildlife. Past oil spills have caused documented harm to aquatic fish, shellfish, and wildlife. Oil spills release polycyclic aromatic hydrocarbons (“PAHs”), including phenanthrene, anthracene, fluoranthene, and pyrene, which can be toxic to aquatic organisms, into surrounding waters. Oil can harm fish and wildlife through ingestion, chemical burns, and from causing fur and feathers to become matted, resulting in hypothermia and death.³⁵

Approving the proposal would create a serious risk of harming sensitive and protected fish and wildlife, and would thus be inconsistent with the City’s policies requiring the protection of habitats and species.

iii. The project is inconsistent with the City’s policies requiring the promotion of energy conservation.

EN-3 Energy Conservation

“Promote and facilitate energy conservation and alternative energy sources and generation.”³⁶

The primary purpose of the proposed oil terminal is to promote and facilitate the use of a non-renewable, environmentally damaging energy source. Facilitating the increased use of oil is inconsistent with the City’s policy to promote energy conservation and alternative energy sources.

iv. The project is inconsistent with the City’s policies requiring the promotion of ecosystem restoration and enhancement.

EN-4 Restoration and enhancement

“Promote and facilitate ecosystem restoration and enhancement.”³⁷

The project would result in extensive construction and industrial activities in and near wetlands. Wetlands are essential components of healthy ecosystems. Furthermore, the increased industrial rail traffic caused by the operation of the terminal could also adversely affect

³³ Application at 4-396; *see also id.* at 1-16, 1-17, 2-19–2-20, 3-308.

³⁴ VCP at 4-4.

³⁵ Northwest Area Committee & Region 10 Regional Response Team, Environmental Protection Agency, *Oiled Wildlife Response*, available at <http://www.rtt10nwac.com/Files/FactSheets/130301060030.pdf> (attached as Exhibit 28).

³⁶ VCP at 4-10.

³⁷ *Id.*

ecosystems in the surrounding area. The construction and operation of the proposed oil terminal threatens ecosystems, rather than restoring or enhancing them, and is thus inconsistent with the City's policies.

v. The project is inconsistent with the City's habitat policies.

EN-6 Habitat

*"Protect riparian areas, wetlands, and other fish and wildlife habitat."*³⁸

The project site is located in and/or adjacent to riparian areas, wetlands, and other fish and wildlife habitat. These areas will be adversely affected by the construction and operation of the proposed oil terminal. More study is necessary to determine the full extent of likely effects to riparian areas, wetlands, and habitat. The environmental impact statement must disclose and evaluate these impacts.

vi. The project is inconsistent with the City's policies regarding water quality and quantity.

EN-8 Water quality and quantity

*"Enhance and protect surface water, stormwater, and groundwater quality from septic discharge, impervious surface runoff, improper waste disposal, and other potential contaminant sources."*³⁹

The proposed site is adjacent to the Columbia River, which is listed in the Comprehensive Plan as one of the Vancouver-area waters that does not currently meet state water quality standards.⁴⁰ Moreover, the proposed site is in or adjacent to sizable wetlands and the 100-year floodplain.⁴¹ Due to its proximity to these water resources, the proposed oil terminal poses a major threat to water quality in the Vancouver area via contaminants from oil spillage and other accidents, as well as runoff and waste disposal associated with this type of industrial land use. The proposal is inconsistent with the City's policies regarding water quality and quantity.

vii. The project is inconsistent with the City's policies regarding trees and other vegetation.

EN-9 Trees and other vegetation

*"Conserve and restore tree and plant cover, particularly native species, throughout Vancouver. Promote planting using native vegetation. Protect historic and other significant trees. Work towards the Vancouver Urban Forestry Program goal of covering 28% of Vancouver's surface area with tree canopy."*⁴²

³⁸ *Id.*

³⁹ *Id.* at 4-10-4-11.

⁴⁰ *Id.* at 4-11.

⁴¹ *See id.* at 4-5.

⁴² *Id.* at 4-11.

The Applicant proposes to conduct tree removal in order to construct a pipeline.⁴³ Although the Applicant proposes to plant new trees, the current cover in the project area would not be conserved. Furthermore, the replacement trees would be young and would not provide the same level of cover, thus undermining the City’s goal of covering 28% of Vancouver’s surface area with tree canopy.

viii. The project is inconsistent with the City’s air quality policies.

EN-10 (Air quality)

“Protect and enhance air quality, in coordination with local and regional agencies and organizations.”⁴⁴

Construction and operation of the proposed oil terminal will result in harmful air emissions. Furthermore, the proposed increase in rail traffic will result in additional daily harmful emissions throughout the rail corridor, including within the Columbia River Gorge National Scenic Area, which already suffers from poor air quality.⁴⁵ The proposal would decrease air quality rather than protecting and enhancing it, and is thus inconsistent with the City’s policies.

5. The proposal is inconsistent with the City of Vancouver’s Subarea Plans.

The proposal is inconsistent with the City of Vancouver’s Subarea Plans, which are incorporated into the Vancouver Comprehensive Plan by reference.⁴⁶ In particular, the proposal is inconsistent with the Vancouver City Center Vision & Subarea Plan and the Fruit Valley Subarea Plan.⁴⁷

A. The proposal is inconsistent with the Vancouver City Center Vision & Subarea Plan.

The proposal is inconsistent with the Vancouver City Center Vision & Subarea Plan (“City Center Plan”). This plan was adopted to guide development in the downtown and waterfront areas. Among its goals are to “[p]romote residential development including affordable housing as key to a vital and attractive city center” and to “[c]reate and support ‘messy vitality’, a dynamic and rich mix of residential, cultural, civic, retail and entertainment places that will

⁴³ Application at 4-397.

⁴⁴ VCP at 4-11.

⁴⁵ In addition to the City of Vancouver’s Comprehensive Plan, the Management Plan for the Columbia River Gorge National Scenic Area requires the protection and enhancement of air quality in the National Scenic Area. Management Plan at I-3-32–I-3-33 (attached as Exhibit 29). Because the Vancouver Comprehensive Plan requires coordination with local and regional agencies and organizations, VCP at 4-11, in order to ensure consistency EFSEC must consult with the U.S. Forest Service, Columbia River Gorge Commission, and Southwest Clean Air Agency regarding potential impacts to air quality in the Scenic Area.

⁴⁶ VCP at App. E.

⁴⁷ The Vancouver City Center Vision & Subarea Plan is attached as Exhibit 2. The Fruit Valley Subarea Plan is attached as Exhibit 3.

attract growth, jobs and round-the-clock activity in the VCCV area.”⁴⁸ The City Center Plan sets forth a number of relevant policies, including policies to “[e]ncourage residential development,” “[r]evitalize downtown uses,” “[f]ocus waterfront redevelopment on residential uses supported by significant public access, recreation, cultural, hospitality, entertainment and limited commercial uses,” “[e]ncourage key support services, such as a full-service grocery store and lifestyle retail center,” and “[e]ncourage development within the west subarea of the VCCV primarily for government services complemented by residential, entertainment and cultural uses.”⁴⁹

The proposal would be inconsistent with many, if not all, of these policies. The proposal would be incompatible with development projects in the City Center Subarea focused on residential, significant public access, recreation, cultural, hospitality, entertainment, and limited commercial uses. As discussed above, potential developments in the city center and waterfront, like the \$1.3 billion Waterfront Development Project, would be hampered if not devastated by heavy oil train traffic through this Subarea. Potential developers and investors would be deterred from proposing and implementing projects consistent with the City Center Plan—both because of the nuisance these trains present and the potential of catastrophic danger they pose. Thus, the proposal is inconsistent with Vancouver’s City Center policies.

B. The project is inconsistent with the Fruit Valley Subarea Plan.

Disconnected from Services

“Physically separated by the BNSF railroad tracks, a steep ridge, and distance from daily destinations, Fruit Valley residents are disconnected from most commercial services. Aside from the two convenience markets within Fruit Valley, all services are distant enough that most residents need a car to reach them. For example, the nearest grocery store is near the intersection of 39th Street and Main Streets, nearly two miles from the core Fruit Valley neighborhood. Existing bus service is infrequent and falls short in offering convenient routes to shopping destinations limiting access to healthy food options. The relatively small residential population and the abundance of industry within the plan area do not support the required market demand for significant or even medium scale commercial services such as a neighborhood grocery store to locate within the plan boundary (refer to the Leland Report found in the appendix). Fruit Valley has the poorest access to healthy food of any neighborhood in Vancouver.”

Pedestrian Circulation

*“Fruit Valley’s main street is Fruit Valley Road, a large road that bisects the neighborhood. Although Fruit Valley Road has been improved for pedestrian, vehicle and truck traffic safety, area residents feel that specific locations and intersections, especially in the vicinity of the elementary school and along school walk routes, provide less than adequate opportunities for safe roadway crossing. **Freight traffic, particularly near the school is seen as a potentially dangerous aspect of the interface and an area where ongoing vigilance will be needed.***

⁴⁸ City Center Plan at 3.

⁴⁹ *Id.*

*Fruit Valley’s major features need to be more effectively connected into a cohesive circulation network.”*⁵⁰

Access and Circulation

FV-20⁵¹ *“Make the pedestrian environment safe, convenient, attractive and accessible for all users through planning and developing a network of continuous sidewalks, pathways, and crossing improvements.”*

FV-21 *“Utilize passive traffic calming methods where appropriate to create a safe pedestrian environment.”*

Pedestrian Connections

FV-22 *“Improve pedestrian circulation both within and to and from the plan area, especially connecting to nearby destinations.”*

FV-23 *“Sustain the existing respectful relationship between residents and industry by providing a safe and efficient circulation network for pedestrians, automobiles and trucks.”*⁵²

The proposal and resulting oil train traffic are inconsistent with the transportation provisions of the Fruit Valley Subarea Plan. Under the Fruit Valley Plan, “major features need to be more effectively connected into a cohesive circulation network,” pedestrian circulation both within and to and from the neighborhood must be improved, the pedestrian environment must be safe, and train traffic is expressly identified as “a potentially dangerous aspect of the interface and an area where ongoing vigilance will be needed.”⁵³ The proposal would result in significant numbers of unit trains transporting crude oil along the edges of the Fruit Valley neighborhood, thus further disconnecting the neighborhood from the rest of the City and heightening the very danger that the Fruit Valley Plan cautioned against. The proposal is inconsistent with the Plan.

6. The proposal is inconsistent with the City of Vancouver’s planning documents for regional trails, greenways, bikeways, and water trails.

The proposal is inconsistent with the City of Vancouver’s planning documents for regional trails, greenways, bikeways, and water trails, including the following plans and documents, all of which are incorporated by reference into the Vancouver Comprehensive Plan⁵⁴:

- the Vancouver Regional Trail & Bikeway Systems Plan (2006) (“Trails & Bikeways Plan”,⁵⁵

⁵⁰ Fruit Valley Subarea Plan at 7 (emphasis added).

⁵¹ “FV” is the abbreviation used by the City for its Fruit Valley Policies.

⁵² Fruit Valley Subarea Plan at 20–21.

⁵³ *Id.* at 7; *see also id.* at 8.

⁵⁴ VCP at 1-7, 5-36, Appendix E.

⁵⁵ The Trails & Bikeways Plan is attached hereto as Exhibit 4.

- the Vancouver-Clark Comprehensive Parks, Recreation, & Open Space Plan (2007 & 2009) (“Recreation Plan”),⁵⁶
- the 2004 Vancouver Walking and Bicycle Master Plan – Paths & Trails Element (Discovery Historic Loop Trail amended 2009) (“Discovery Historic Loop Plan”),⁵⁷ and
- the Fruit Valley Subarea Plan.

The proposal would be incompatible with the City’s plans and policies established in these planning documents, including formal plans for several trails. According to the City, “[t]hese trails are regional because they connect people with and to the places they want to go—from residential areas to employment and commercial areas, as well as to the rural areas and open spaces we want to enjoy.”⁵⁸

For example, the very first trail addressed in Vancouver’s Trails & Bikeways Plan is the Lewis & Clark Discovery Greenway Trail, a 46.1-mile trail “extend[ing] from Washougal to Vancouver and on to Ridgefield following the Columbia River downstream retracing the route of [Meriwether] Lewis and William Clark 200 years ago.”⁵⁹ More than 9.5 miles of the Lewis & Clark Discovery Greenway Trail have already been built,⁶⁰ a new segment was built in 2013 *immediately adjacent* to the oil tanker storage site,⁶¹ and new segments in the immediate vicinity are scheduled in 2014.⁶² This multimodal trail, also known as the Lower River Road Trail, is a critical segment of the Lewis & Clark Discovery Greenway Trail—not only because of the significance of the Lewis & Clark Trail itself, but also because this particular segment will connect several other trails with each other, including the Frenchman’s Bar Trail, the Vancouver Lake Trail, the Lake to Lake Regional Trail, the Waterfront Renaissance Trail, and the Discovery Historic Loop.⁶³ This segment of the Lewis & Clark Discovery Greenway Trail “will connect [the] Fruit Valley [neighborhood],” as well as the downtown and Columbia waterfront areas, to pedestrian/bicycle access to Vancouver Lake and Frenchman’s Bar Regional Parks.”⁶⁴ It will also provide a connection for a safe five-mile bicycle ride from Esther Short Park to the Frenchman’s Bar Trail.⁶⁵ The City of Vancouver has been planning for this trail since at least

⁵⁶ The Recreation Plan is attached hereto as Exhibit 5.

⁵⁷ The Discovery Historic Loop Plan is attached hereto as Exhibit 7.

⁵⁸ Trails & Bikeways Plan at 2-2.

⁵⁹ Trails & Bikeways Plan at 2-8.

⁶⁰ Recreation Plan at Appendix C, Table C-13; Trails & Bikeways Plan at 2-9—2-10. Additional sections have been built since these maps and lists were published, including a section from the Port of Vancouver’s administration office to the proposed project site. Elliot Njus, “Port of Vancouver to extend multiuse path that will eventually connect downtown to Vancouver Lake,” *Oregonian*, available at http://www.oregonlive.com/cycling/index.ssf/2013/08/port_of_vancouver_to_extend_mu.html (attached as Exhibit 30).

⁶¹ See Exhibit 30 (*Oregonian* article).

⁶² See Port of Vancouver USA, Notice of Mitigated Determination of Nonsignificance (MDNS), Port of Vancouver Trail Project, CP0280/281 (Mar. 21, 2014) (attached hereto as Exhibit 31); Exhibit 30 (*Oregonian* article).

⁶³ Trails & Bikeways Plan at 2-9–2-10; Recreation Plan at Appendix H, Map 6 (Dec. 2006); Vancouver-Clark Comprehensive Parks, Recreation, & Open Space Plan – Proposed Park and Recreation Facilities Map (Oct. 2006) (“Recreation Map”) (attached hereto as Exhibit 6); Fruit Valley Subarea Plan at 17.

⁶⁴ Fruit Valley Subarea Plan at 17.

⁶⁵ Washington Bikes, “Complete the Lower River Road Trail in Vancouver” (Aug. 21, 2013) (attached hereto as Exhibit 32).

1992.⁶⁶ The Applicant’s proposal to site a massive industrial oil terminal immediately adjacent to a recreational greenway trail is inherently incompatible with the use of this trail for recreational, human health, and greenway purposes. The proposal is thus inconsistent with the City’s formal trail planning documents.

The proposal would also conflict with other existing trails recognized in the City’s formal trail planning documents. For example, the site where the Applicant proposes to unload hundreds of thousands of barrels of oil every day is located only approximately one mile from the Frenchman’s Bar Trail.⁶⁷ The noise, air and light pollution, odors, dust, chemical exposure, and impacts to wildlife caused by the constant unloading of several unit trains of crude oil every day is inherently incompatible with recreational use of this trail.

In addition, the proposed marine loading site for this project is located *immediately adjacent* to the Lower Columbia River Water Trail.⁶⁸ The use of this site for loading barges with hundreds of thousands of barrels of oil along the Columbia each day will present safety risks and interfere with the semi-primitive use of the Water Trail for recreational solitude and the viewing of fish and wildlife in their natural habitat.

Because the proposal would conflict with the City’s existing and planned trails, it would also conflict with the following goals and objectives of the Recreation Plan:

GOAL 1: PROVIDE A BALANCED, COMPREHENSIVE, AND INTERCONNECTED PARK, TRAIL, AND OPEN SPACE SYSTEM

“The VCPRD will strive to create a network of parks and open spaces that are connected via trails, bikeways, streets, bus routes, and wildlife corridors. This system will link all parts of the VCPRD planning area into one diverse and integrated system, and provide a wider variety of recreation opportunities to all Clark County residents.”

1-1. “Provide a diverse system of parks and natural areas, including neighborhood parks, community parks, regional parks, natural areas, trails and greenways, and special use areas.”

1-2. “Distribute parks and open spaces equitably throughout the UGA and the planning area by allocating needed parkland to areas that are currently underserved, including areas of high projected growth.”

1-6. “Create connections between parks, recreation, and open space and other community destinations through the development of bike and pedestrian trails, water trails, and habitat corridors.”

1-8. “Evaluate transportation barriers affecting the ability of existing parks to serve residents effectively, and develop strategies, such as providing

⁶⁶ Trails & Bikeways Plan at 2-56.

⁶⁷ See Exhibit 22 (map of Frenchman’s Bar Trail).

⁶⁸ See Trails & Bikeways Plan at 2-54–2-55.

sidewalks, bike paths, bike lanes, and bridges, to increase accessibility and maximize the number of residents served.”

As discussed above, the proposal interferes with the City’s trails and greenways (both existing and proposed) at and near the project site. In addition, the proposal interferes with the City’s plans to connect the Fruit Valley, downtown, and Columbia waterfront communities with natural areas and parks at Vancouver Lake and Frenchman’s Bar. The Fruit Valley, downtown, and waterfront areas are planned for high projected growth, and these areas are currently underserved by recreational trails and amenities. Siting a massive oil terminal and hauling hundreds of thousands of barrels of oil freight through and adjacent to these neighborhoods will interfere with existing and planned bikeways, greenways, trails, and water trails in violation of the City’s policies, and will impede connections between parks, recreation, and open space and other community destinations.

In conclusion, the proposed oil terminal, oil train traffic, rail unloading area, and marine loading area are incompatible with use of the City’s existing and planned trail, greenway, bikeway, and water trail resources. The proposal is thus inconsistent with the City’s formal planning documents for these resources.

7. The proposal is inconsistent with the Port of Vancouver’s Strategic Plan.

The proposal is inconsistent with the safety, security, and environmental policies set forth in the Port of Vancouver USA Strategic Plan 2014–2013 (“Strategic Plan”).⁶⁹

A. The proposal is inconsistent with the safety elements of the Strategic Plan.

Safety

*“The port believes each employee should be provided a safe and healthy work environment”*⁷⁰

The Applicant proposes to place an industrial-scale oil terminal in a geological hazard zone that is vulnerable to liquefaction. As a result, the proposal oil terminal would be at risk of catastrophic incidents such as fires and explosions. This is an inherently unsafe work environment. The siting is thus inconsistent with the Port of Vancouver’s Strategic Plan.

B. The proposal is inconsistent with the security elements of the Strategic Plan.

Security

*“Security means protecting employees, tenants, customers, visitors, our neighbors and the environment. . . .”*⁷¹

As discussed above, the proposed site is in a geological hazard area susceptible to liquefaction. The proposed site exacerbates risks to employees, tenants, customers, visitors,

⁶⁹ The Strategic Plan is attached hereto as Exhibit 33.

⁷⁰ Strategic Plan at 5.

⁷¹ *Id.*

neighbors, and the environment. Furthermore, the site threatens wetlands, riparian habitat, air quality, and the global climate. The project is inconsistent with the Strategic Plan.

C. The proposal is inconsistent with the environmental elements of the Strategic Plan:

Integrated Decision Making

“Incorporate environmental costs, risks, impacts and benefits into our business choices, operating decisions, and facility planning. Promote a corporate culture where environmental stewardship is demonstrated by the way we do business.”

Sustainability

“Sustain our natural resources through the protection of our air shed, lands and water. Build strong relationships with our community, stakeholders, customers, and suppliers for the benefit of the environment. Conserve energy and maximize the use of sustainable resources in the construction and operation of facilities and delivery of our services.”

Pollution Prevention

“Prevent new sources of contamination on port property through best management practices and continued improvement of our environmental programs. . . .”⁷²

Both because of the increased risk of earthquake damage associated with liquefaction and the nature of the day-to-day operations of the proposal, the Columbia River—perhaps Vancouver’s most important natural resource—will be in constant danger of contamination via oil spillage. Because of the heightened potential for contamination—both of the Port’s lands and waters and the surrounding ecosystems—the proposal is inconsistent with the pollution prevention values expressed in the Port’s Strategic Plan. In addition, the air emissions from the facility and associated train and barge traffic would pollute Vancouver’s airshed, which is inconsistent with the sustainability values expressed in the Port of Vancouver Strategic Plan. Oil is a dirty, non-renewable energy resource, and its use accelerates global climate change. The primary function of the proposal would be to facilitate the use of this unsustainable resource. Finally, the Port failed to evaluate and incorporate these and other environmental costs, risks, and impacts into its decision-making process when it decided to enter into a long-term lease with the Applicant for the use of the Port’s land and facilities for this proposal. The proposal is inconsistent with the environmental elements of the Port’s Strategic Plan.

8. The Applicant fails to demonstrate that the proposal is consistent with the City of Vancouver’s Critical Areas Ordinance (VMC Chapter 20.740).

The City of Vancouver imposes heightened protections and requirements for siting development within critical areas. Tesoro’s proposal implicates the following critical areas: frequently flooded areas, geologic hazard areas (seismic hazards), wetlands, and fish and wildlife

⁷² *Id.*

habitat conservation areas. For the reasons explained below, Tesoro fails to demonstrate that the project is consistent with the City's Critical Areas Ordinance.

A. Because Tesoro failed to file a Critical Areas Report, it is impossible for the public, the City, and the Siting Council to review the proposal for compliance with the Critical Areas Ordinance.

The starting point for reviewing a project's compliance with the Critical Areas Ordinance, VMC Chapter 20.740, is a Critical Areas Report. VMC § 20.740.050(B). Tesoro, however, failed to file this required report. Without a Critical Areas Report, it is impossible for the public, the City of Vancouver, and the Siting Council to review the proposal's compliance with the Critical Areas Ordinance.

By failing to file a Critical Areas Report, Tesoro fails to demonstrate that the proposal complies with VMC Chapter 20.740. For example, the VMC requires that the Critical Areas Report include "[a]n assessment of the probable impacts to critical areas and buffers and risk of injury or property damage including permanent, temporary, temporal, and indirect impacts from development of the site and the operations of the proposed development." VMC § 20.740.050(B)(5). Such information is necessary for a determination of consistency under VMC § 20.740.060. By failing to file this required information, Tesoro fails to demonstrate that the project is consistent with the Critical Areas Ordinance.

In Tesoro's June 2013 Pre-Application Conference Report to the City ("Pre-Application Report"),⁷³ Tesoro stated that a Critical Areas Report "will be submitted to address project compliance."⁷⁴ Nearly a year later, it is unclear why (1) Tesoro has not filed a Critical Areas Report after representing to the City that it intended to file the report, and (2) the Siting Council would schedule a land use hearing in the absence of this fundamental document, which is required for reviewing a proposal's compliance with the City's Critical Areas Ordinance. The Council should continue the land use consistency hearing until the Applicant completes the Application by filing a Critical Areas Report.

B. Tesoro fails to demonstrate that the proposal is consistent with the geologic hazard areas provisions of the City's ordinance.

i. Tesoro has failed to file a Geotechnical Investigation and fails to describe engineering designs for over-water structures and portions of the terminal along the riverbank.

Tesoro fails to demonstrate that the project is consistent with VMC § 20.740.130, the City's regulations governing siting projects within geologic hazard areas. As an initial matter, Tesoro wholly fails to address geologic hazards at Berths 13 and 14, as well as portions of the terminal along the riverbank. Tesoro asserts in its amended application that "[t]he supplemental investigation addressing the dock modifications and portions of the terminal along the riverbank

⁷³ The Pre-Application Report is attached to the Application at Appendix I.1.

⁷⁴ Pre-Application Report at 20.

is in progress”⁷⁵ and that “[m]odifications to the docks and moorage dolphins and other Area 400 elements are not part of the scope of this geotechnical report and will be addressed in a supplemental report.”⁷⁶ To date, Tesoro has not filed a geotechnical investigation addressing Berths 13 and 14 and portions of the terminal along the riverbank. Without an applicant-generated report on geologic hazards covering the *entire project*, the public, the City, and the Siting Council cannot evaluate the proposal’s compliance with the geologic hazard requirements of the Vancouver Code.

ii. Tesoro fails to demonstrate that the proposal satisfies the geologic hazard requirements of VMC § 20.740.130.

Tesoro fails to demonstrate that the project is consistent with VMC § 20.740.130 because Tesoro has yet to provide any specific proposal for mitigating seismic hazards.⁷⁷ Tesoro proposes to build oil tanks, ancillary facilities, oil pipelines, and to utilize two existing berths, all of which are within areas designated as Seismic Hazard Areas based on their potential for liquefaction.⁷⁸ Liquefaction is a soil behavior phenomenon in which saturated sand softens and loses strength during strong earthquake ground shaking.⁷⁹ Tesoro states in its Application that “[o]ur studies indicate that during the design level earthquake, the loose to medium dense sands and layers to low-plasticity, soft to medium stiff silt and sandy silt that are present below the groundwater level in all areas of the site could liquefy to the top of the gravel layer.”⁸⁰ Tesoro further states that “[l]iquefaction results in settlement, reduction of soil strength, and significant later spreading deformations near the riverbank.”⁸¹ The Applicant fails to describe how it proposes to address these risks.

In its Pre-Application Report, Tesoro states that a geotechnical report will be “provided to address the liquefaction potential on the site and recommend[] construction techniques to address any identified potential soils instability and seismic issues.”⁸² Tesoro later filed a Geotechnical Investigation,⁸³ which only covers the upland terminal, and described this investigation as “preliminary.”⁸⁴ The public, the City, and the Siting Council cannot evaluate or

⁷⁵ Application, App. L at 1.

⁷⁶ *Id.* at 2.

⁷⁷ Tesoro notes three types of seismic events that may affect the upland site: subduction zone events, subcrustal (intraslab) events, and local crustal events. *Id.* at B-2 (Appendix B to Application, App. L).

⁷⁸ See Pre-Application Report at 20 (acknowledging that the proposed project site includes moderate-to-high potential for liquefaction); Application at App. L (describing potential for liquefaction throughout the proposed oil terminal site).

⁷⁹ Oregon Department of Geology and Mineral Industries, *Earthquake Risk Study for Oregon’s Critical Energy Infrastructure Hub*, Open File Report 0-13-19, at 7 (2013) (attached as Exhibit 34). In 2013, the Oregon Department of Geology and Mineral Industries (“DOGAMI”) released a study on earthquake risk and Oregon’s critical energy infrastructure, which focused on the Portland metro area. In that report, DOGAMI stated that “[l]iquefaction and lateral spreading hazards are the *primary concern* to the oil terminals that handle Oregon’s fuel supply.” *Id.* (emphasis added).

⁸⁰ Application, App. L at 7.

⁸¹ *Id.* at 7.

⁸² Pre-Application Report at 20–21.

⁸³ Application, App. L.

⁸⁴ Application at 3-237, § 3.1 (stating that “the results of preliminary geotechnical investigation conducted at the site have determined that site improvement will be required to mitigate static and seismic settlement and lateral deformations as addressed in Appendix L, Geotechnical Investigation”).

determine the proposal’s consistency with the geohazard requirements of VMC 20.740.130 using only a “preliminary” geotechnical investigation. The detailed findings required by VMC 20.740.130 are impossible with a mere “preliminary” investigation.

In its preliminary geotechnical investigation, Tesoro described some of the risks of liquefaction and potential engineering methods to mitigate these risks. Tesoro describes several alternative measures, including ground improvement (such as stone columns, vibro-compaction, jet-grouted columns and soil mixing) and steel piles to various depths.⁸⁵ Tesoro fails, however, to provide any specificity as to *which* engineering measure(s) it actually intends to use at the site and fails to demonstrate the viability of such measures, taking into account the specific geologic conditions at the site. Without this information, Tesoro fails to demonstrate how its project complies with the geological hazard areas requirements of the Critical Areas Ordinance found at VMC § 20.740.130.

Other than the preliminary geotechnical investigation, Tesoro addresses mitigation measures for earthquake hazards only in sections 2.18 and 3.1 of the Application. In section 2.18, Tesoro describes liquefaction, lateral spreading, and mitigation measures only in a broad, summary fashion.⁸⁶ For example, Tesoro merely states that “[a]ll structures and pipelines constructed for the Facility will be designed and built in accordance with the applicable design provisions and seismic requirements of” various design codes.⁸⁷ Tesoro fails to explain its project plans with any specificity and fails to demonstrate how those plans comply with the seismic design criteria. Instead, Tesoro states that “[f]inal analysis of the seismic conditions and determination of the building foundation designs will be completed to address seismic conditions found at the site prior to construction.”⁸⁸ An applicant’s promise to “address seismic conditions” at a later, unspecified date prior to construction falls far short of demonstrating compliance with VMC § 20.740.130.

Similarly, in section 3.1, Tesoro presents only a broad overview of geologic hazards and, in less than one page, describes potential alternative measures to mitigate seismic hazards.⁸⁹ Tesoro fails to describe these measures in any detail, and fails to explain *which* of these measures it has selected for the project. Tesoro’s decision to defer seismic engineering decisions to a later, unspecified date, robs the public and the City of Vancouver of the opportunity to comment, during the legally required land use consistency hearing, on the proposal’s compliance with the Critical Areas Ordinance. So long as the applicant fails to provide fundamental information on project design, the public cannot comment on—and the Council cannot review—the proposal’s compatibility with VMC § 20.740.130. For these reasons, Tesoro fails to demonstrate that its proposal meets the City’s geologic hazard requirements. The Council should continue the land use hearing to a later date, once the Applicant completes its Application and supplies this required information.

⁸⁵ Application, App. L at 7, 12, 13, 14, 15, 17.

⁸⁶ *See id.* at 2-197–2-199.

⁸⁷ *Id.* at 2-198.

⁸⁸ *Id.* at 2-199.

⁸⁹ *Id.* at 3-248.

C. Tesoro fails to demonstrate that the proposal is consistent with the fish and wildlife habitat conservation areas requirements of VMC § 20.740.110.

The proposed project activities at Berths 13 and 14 would be located within the riparian management area (“RMA”) and the riparian buffer area of the Columbia River. The proposal is thus subject to VMC 20.740.110, Fish and Wildlife Habitat Conservation Areas. Tesoro states that “[a] critical areas report addressing the issue [of Fish and Wildlife Habitat Conservation Areas] will be provided during preliminary review to satisfy the requirements of VMC § 20.740.110.”⁹⁰ As noted above, Tesoro failed to file a Critical Areas Report. Without a Critical Areas Report, Tesoro fails to demonstrate how its proposal is consistent with the requirements of VMC § 20.740.110.

D. Tesoro fails to demonstrate that the proposal is consistent with the frequently flooded areas requirements of VMC § 20.740.120.

A portion of the proposed project would be located within areas designated as “Frequently Flood Areas.”⁹¹ Therefore, Tesoro must demonstrate compliance with VMC § 20.740.120, which governs all structures and developments within areas designated as Frequently Flooded Areas. Tesoro states that “it is anticipated that the critical areas report will include a review under the frequently flooded area provisions of Section 20.740.120.”⁹² Tesoro failed to file this report. Tesoro thus fails to demonstrate how the project complies with the reporting requirements of VMC 20.740.120(B) and the performance standards of VMC 20.740.120(C).

E. Tesoro fails to demonstrate that the proposal is consistent with the wetlands requirements of VMC § 20.740.140.

Tesoro acknowledges that VMC § 20.740.140, which regulates development over and adjacent to wetlands, applies to its proposal.⁹³ Nonetheless, Tesoro failed to file a Critical Areas Report addressing the project’s compliance with VMC § 20.740.140. The public, the City of Vancouver, and the Siting Council are unable to review the proposal for consistency with VMC § 20.740.140 unless and until Tesoro files a report addressing the wetlands requirements of the Critical Areas Ordinance.

9. The proposal is inconsistent with the City’s Shoreline Master Program.

Tesoro’s proposal is not consistent with the City’s Shoreline Master Program (“Shoreline Program”),⁹⁴ which is intended to guide the development of shorelines in the City in a positive, effective, and equitable manner consistent with the Shoreline Management Act.⁹⁵

⁹⁰ Pre-Application Report at 20.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Pre-Application Report at 21.

⁹⁴ The City adopted the Shoreline Program in 2012. A copy is attached hereto as Exhibit 8.

⁹⁵ Shoreline Program § 1.3(1).

Tesoro’s proposal calls for transporting and storing a staggering amount of oil adjacent to and over the Columbia River.⁹⁶ By comparison, the Tesoro proposal would handle

- more crude oil per day than the TransMountain pipeline—one of the largest oil pipelines on the West Coast;
- just under half the amount of oil proposed for transport in the controversial Keystone XL pipeline proposal; and
- significantly more oil than Washington State’s largest refinery, BP Cherry Point, is capable of refining (209,000 barrels per day).

Where oil goes, spills follow. Research on oil spills demonstrates that spills are clustered at major oil ports, where storage facilities, refineries, tankers, and pipelines link up.⁹⁷ One-third of all waterborne spills take place in rivers and canals, which are heavily trafficked by ships moving oil to refineries and storage tanks.⁹⁸

The proposal is inconsistent with the Shoreline Program. First, as explained above, Tesoro fails to demonstrate that the proposal is consistent with the City’s Critical Areas Ordinance,⁹⁹ which is incorporated into the Shoreline Program.¹⁰⁰

Second, the proposal is inconsistent with section 3.2 of the Shoreline Program, “Shorelines of Statewide Significance.” This section states that

[w]ithin the City of Vancouver, the Columbia River and Vancouver Lake are designated shorelines of statewide significance (SSWS). Shorelines of statewide significance are value of value to the entire state. In accordance with RCW 90.58.020, SSWS will be managed as follows:

1. Preference shall be given to the uses that are consistent with the statewide interest in such shorelines. These are uses that:
 - a. Recognize and protect the statewide interest over local interest;
 - b. Preserve the natural character of the shoreline;
 - c. Result in long term over short term benefit;
 - d. Protect the resources and ecological function of the shoreline;
 - e. Increase public access to publicly-owned areas of the shorelines;
 - f. Increase recreational opportunities for the public in the shoreline; and
 - g. Provided for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

⁹⁶ Sightline Institute, *The Northwest’s Pipeline on Rails* (June 2013) (attached as Exhibit 35).

⁹⁷ Evan Applegate, *Twenty Five Years of Oil Spills*, Bloomberg BusinessWeek (Mar. 13, 2014) (attached as Exhibit 36)

⁹⁸ *Id.*

⁹⁹ *See supra* Part 8.

¹⁰⁰ Shoreline Program at § 5.3.1.

Section 3.2(2) further states that “[u]ses that are not consistent with these policies should not be permitted on SSWS.”

The public, the City of Vancouver, and the Siting Council cannot evaluate the proposal for compliance with these requirements without first reviewing a final EIS. For example, the environmental and public health impacts of the proposal, which must be disclosed in an EIS, would inform the required evaluation as to whether the proposal would “[r]esult in long term over short term benefit.” Shoreline Program § 3.2(2)(c). Specifically, the EIS must address the risk of oil spills on the Columbia River and potential long-term impacts to public safety and aquatic life, including endangered and threatened species.¹⁰¹ The EIS will also inform the required review as to whether the proposed uses would “[r]ecognize and protect the statewide interest over local interest,” Shoreline Program § 3.2(1)(a), and whether the uses would “[p]rotect the resources and ecological function of the shoreline,” Shoreline Program § 3.2(1)(d). The Council should continue land use hearing until the Council, the City, and the public have the opportunity to review the EIS.

Even without the EIS, based solely on information disclosed in SEPA scoping comments, the Council cannot conclude that Tesoro’s proposal is consistent with the Shoreline Program. On December 17, 2013, Earthjustice filed detailed SEPA scoping comments on behalf of a coalition of conservation organizations.¹⁰² These comments describe the proposal’s environmental and public safety impacts and risks that EFSEC must evaluate in an EIS.¹⁰³ Based on information disclosed in these SEPA scoping comments alone, Tesoro’s proposal fails to “[p]reserve the natural character of the shoreline,” “[r]esult in long term over short term benefit,” and “[p]rotect the resources and ecological function of the shoreline.” Shoreline Program §§ 3.2(1)(b)–(d). Furthermore, the proposal is inconsistent with policy 3.2(1)(b) because its massive industrial development would substantially alter the natural character of the shoreline. Likewise, it is inconsistent with policy 3.2(1)(d) because the construction and operation of the facility fails to protect the resources and ecology of the shoreline. Public access and recreational opportunities along the Columbia River would be decreased in violation of policy 3.2(1)(e) and (f). And finally, because the proposed site is used by protected salmonids, which are both scarce and sensitive resources, the proposal is inconsistent with section 3.2(3).

The proposal is also inconsistent with section 3.6 of the Shoreline Program, “Flood Prevention and Flood Damage Minimization,” which states that the City’s “goal for flood hazards is to promote public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas.” Shoreline Program § 3.6.1. Rather than minimize potential flood damage, the proposal would greatly exacerbate potential damages from floods. The facility would house a massive volume of oil. Flood events could cause this oil to spill into the Columbia River, causing unprecedented damage to protected salmonids, their

¹⁰¹ See e.g., Washington Department of Health, SEPA Scoping Comments on the Tesoro Savage Project (Dec. 17, 2013) (describing impacts to public health that EFSEC should disclose in the EIS) (attached as Exhibit 37); Washington Department of Natural Resources, SEPA Scoping Comments on the Tesoro Savage Project (Dec. 18, 2013) (attached as Exhibit 38) (describing impacts to the Columbia River, including oil spill risks, that EFSEC should describe in the forthcoming EIS).

¹⁰² Earthjustice, SEPA Scoping Comments on the Tesoro Savage Project (Dec. 17, 2013) (attached as Exhibit 20).

¹⁰³ *Id.*; see also Exhibits 37 & 38.

habitat, and the water itself. The fact that the project site is in the middle of a 100-year floodplain further heightens the risk of substantial flood damage. Further, the Applicant fails to “clearly demonstrate that life, property, and natural resource values within the stream system will not be endangered,” in violation of section 3.6.2(4).

Tesoro also fails to demonstrate that the proposal is consistent with section 5.1(15) of the Shoreline Program, which protects shallow water habitat. This section states that “[d]evelopments permitted in the Aquatic Shoreline Designation along the Columbia River shall be sited waterward of -15 feet Columbia River Datum (CRD) unless shallow water habitat will be created as mitigation.” Tesoro proposes a pile installation in the Aquatic Shoreline Designation of the Columbia River in shallow water areas above -15 feet Columbia River Datum.¹⁰⁴ Tesoro claims that “[t]he project will ‘create’ shallow water habit [*sic*] by removing structures in a number that at least equals those being placed.”¹⁰⁵ Tesoro fails to demonstrate how removing pilings creates shallow water habitat. Without this showing, Tesoro’s proposal is not consistent with section 5.1(15) of the Shoreline Program.

10. Tesoro has failed to demonstrate compliance with the City’s criteria and policies for the protection of federally listed threatened and endangered salmon species.

The City of Vancouver has incorporated directly into its Development Code federal criteria for protecting federally listed threatened and endangered salmon species, and has adopted policies for applying these criteria within the City of Vancouver:

Endangered Species Act. The City incorporates by reference the evaluation criteria for protecting, during development, threatened and endangered salmon species listed under the federal Endangered Species Act as presented in the Federal Register, Vol 65, No. 132, Monday, July 10, 2000, Rules and Regulations and in “A Citizen’s Guide to the 4(d) Rule for Threatened Salmon and Steelhead on the West Coast,” National Marine Fisheries Service, June 20, 2000.¹⁰⁶ As applied in the City of Vancouver, it is the City’s policy that development within the City limits shall to the degree necessary to protect threatened and endangered species:

- 1. Meet demands on water supply without affecting, either directly or through groundwater withdrawals, the flows salmon need.*
- 2. Avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.*
- 3. Avoid stream crossings, whether by roads, utilities, or other linear development, wherever possible and where crossings must be provided, minimize impacts.*
- 4. Protect wetlands, wetland buffers and wetland function, including isolated wetlands.*
- 5. Prevent erosion and sediment run-off during and after construction, thus preventing sediment and pollutant discharge to streams, wetlands and other water bodies that support listed fish.*

¹⁰⁴ Application, App. I.2 at 11.

¹⁰⁵ *Id.*

¹⁰⁶ A copy of this Citizen’s Guide is attached as Exhibit 39.

6. *Adequately prevent stormwater discharge impacts on water quality and quantity and stream flow patterns in the watershed - including peak and base flows in perennial streams.*
7. *Adequately preserve permanent and intermittent streams' ability to pass peak flows.*
8. *Stress landscaping with native vegetation to reduce the need to water and apply herbicides, pesticides and fertilizer.*
9. *Adequately protect historic stream meander patterns and channel migration zones and avoid hardening stream banks and shorelines.*
10. *Protect riparian areas to attain or maintain properly functioning conditions for salmonid habitat around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams.*
11. *Where application of these policies creates a conflict with existing development regulations, the level of protection necessary to protect threatened salmon species shall apply.¹⁰⁷*

The Applicant has the burden of demonstrating compliance with the City's code requirements for protecting threatened and endangered salmon and steelhead species, including the criteria and policies quoted above. The Applicant fails, however, to address these criteria and policies in the Application.

In addition, both the EIS for this project and the review of the project by the federal fish and wildlife agencies will necessarily inform the Council's review for consistency with the City's policies and criteria. The Siting Council should continue the land use hearing until the EIS is available and the federal fish and wildlife agencies' review is complete, and should allow the City and the public sufficient time to evaluate this information so that compliance with the City's regulations may be properly addressed at the continued hearing.

11. Tesoro has not demonstrated consistency with the City's Water and Sewers Code (Title 14).

VMC § 14.26.130 imposes heightened standards for hazardous materials operations. Under section 14.26.130(B), applicants must prepare a Spill Emergency Response Plan. To date, the Applicant has only filed a *preliminary* Spill Prevention Control and Countermeasure Plan ("SPCCP").¹⁰⁸ The Siting Council is legally required, as part of the land use consistency process, to evaluate the consistency of a spill emergency response plan with the City's laws. Similarly, the land use consistency process must also include an opportunity for the public and the City of Vancouver to evaluate and comment on consistency. The Siting Council should therefore require the Applicant to submit a *final* response plan, and should continue the land use consistency hearing until the final plan is submitted.

¹⁰⁷ This provision is found at VMC § 20.790.630(A), but there is a scrivener's error in the numbering of this code section: three different sections in the code are codified at VMC § 20.790.630(A). This comment is intended to quote the second of those three sections.

¹⁰⁸ Application at App. B.2.

Similarly, under VMC § 14.26.130(E), the Applicant must file a Closure Plan. Under section 14.26.130(E), the Closure Plan must include (1) a listing of the types and quantities of hazardous materials reasonably expected to be present on-site during the operation life of the facility, (2) a description of the plan for removal and disposal of hazardous materials, (3) a description of the plan to decontaminate containment systems and ancillary equipment, and (4) an estimate of the cost to implement the Closure Plan, using the assumption that a third party will conduct removal and disposal activities. VMC § 14.26.130(E)(2). Because EFSEC is the lead agency for siting Tesoro’s proposal and the land use consistency process is the only available opportunity for the City and the public to evaluate consistency, the Siting Council should (1) require the applicant to file a Closure Plan and (2) provide the public with an opportunity to review and comment on the Closure Plan to ensure consistency with the requirements of VMC § 14.26.130(E).

12. The proposal is inconsistent with the Columbia River Shoreline Enhancement Plan District provisions (VMC Chapter 20.620).

The proposal is inconsistent with the Columbia River Shoreline Enhancement Plan, particularly the provisions at VMC §§ 20.620(A), VMC 20.620(A)(1), and VMC 20.620(A)(3).

A. The proposal is inconsistent with VMC § 20.620.010(A).

“The Columbia River Shoreline Enhancement Plan District is intended to provide standards for development that will conserve and enhance the community appearance along the city’s Columbia River shoreline, and provide a general framework of standards and goals for waterfront development.”

The proposal would result in a massive increase in rail traffic along the border of the Columbia River Shoreline Enhancement District. *See* VMC § 20.620.020 (district boundaries). The presence of multiple oil trains per day, each up to 120 railcars in length, fails to conserve and enhance the community appearance along the City’s Columbia River shoreline. Thus, the project is inconsistent with VMC § 20.620.010(A).

B. The project is inconsistent with VMC § 20.260.010(A)(1).

“Provide for the management of the Columbia River shoreline by planning for and fostering all reasonable and appropriate uses of the shoreline”

The proposal and its oil train traffic would greatly hamper, if not devastate, the planned multi-billion dollar Waterfront Development Project. Thus, the proposal would impede reasonable and appropriate uses of the shoreline, rather than fostering such uses, and is therefore inconsistent with VMC § 20.620.010(A)(1).

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C. The project is inconsistent with VMC § 20.620.010(A)(3).

“Secure public shoreline access to or along the waterfront, to include waterfront access plans, construction of waterfront parks, trails, esplanades, bikeways and viewpoints.”

As discussed above, the proposal would result in significant amounts of oil train traffic along the boundaries of the Columbia River Shoreline Enhancement Plan District. This increase in dangerous traffic would impede access to the shoreline throughout the District. Furthermore, the threat of the trains and associated risks will deter private and public developers from investing in projects to construct waterfront parks, trails, esplanades, bikeways, and viewpoints within the District. For these reasons, the proposal is inconsistent with VMC § 20.620.010(A)(3).

13. The proposal is inconsistent with the City Center Waterfront provisions (VMC § 20.630.080).

VMC § 20.630.080(A) sets forth the purposes of the City Center Waterfront. This section envisions a pedestrian-friendly, residential-oriented waterfront, with a focus on amenities involving retail, entertainment, cultural, and other such opportunities. *See* VMC § 20.630.080(A)(1). The proposed oil terminal and associated rail traffic, however, would stand in the way of this vision. For example, the proposal would largely ruin the plans for the Waterfront Development Project. The danger and nuisance presented by the oil trains constantly rolling along the waterfront district would deter development, visitors, and potential residents. The oil trains would also deter investors, given the serious risk of catastrophic property damage.

The City Center Waterfront provisions also establish the city’s intent to increase tangible connectivity between downtown and the waterfront. VMC § 20.630.080(A)(4). In direct conflict with these provisions, giant oil trains constantly passing through the area between downtown and the waterfront would act as an obstacle to connectivity. In addition, the proposal would increase “the barrier like feeling of the railroad and berm between downtown and the waterfront,” thus violating VMC § 20.630.080(A)(1)(d). The proposal is also inconsistent with VMC § 20.630.080(A)(5), which contains the City’s plans to “encourage pedestrian activity” in the waterfront area, VMC § 20.630.080(A)(1)(e) which contains the city’s plan to “[s]trengthen the primary street connections to the waterfront,” VMC § 20.630.080(A)(1)(c), which contains the City’s plans to connect downtown with the waterfront, and VMC § 20.630.080(D)(7), which contains the City’s plans to allow people to “interact with the river,” to provide visual and physical access to the river, to “[p]rovide pedestrian connections and specific design elements to connect the varied open spaces into a cohesive open space system,” to “[e]xtend the Columbia River Renaissance Trail from east to west,” and to “[p]rovide primary pedestrian connections between the existing Esther Short Park and new waterfront development.” The increased dangerous rail traffic associated with the proposal would be an impediment to anyone wishing to travel between the waterfront and downtown or along the City’s trails. The proposal is inconsistent with the City Center Waterfront provisions because it would separate areas that the City wishes to connect.

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Finally, the proposal is inconsistent with the City's plans to "[e]ncourage environmentally friendly site and development design and construction." VMC § 20.630.080(A)(8). The trains would emit air pollution while traveling directly adjacent to the waterfront area, expose residents and visitors to dangerous chemicals, and pose serious risks of environmental contamination.

14. The Applicant fails to demonstrate consistency with the City's Tree Conservation Ordinance (VMC Chapter 20.770).

The Applicant fails to demonstrate consistency with the City's Tree Conservation Ordinance, VMC Chapter 20.770. The purpose of this ordinance is to provide for the protection, preservation, replacement, proper maintenance and use of trees in order to preserve and enhance Vancouver's environmental, economic, and social character. VMC § 20.770.010(A). The rationale behind this purpose is that trees and vegetation are important elements of the physical environment which protect public health, safety, and general welfare. VMC § 20.770.010(B).

The Applicant incorrectly claims that the ordinance applies only to existing pervious surfaces, and argues that most of the site would be exempt from the tree ordinance.¹⁰⁹ VMC § 20.770.020(B) states that all development sites require a tree plan and must meet the minimum tree density. VMC § 20.770.030 provides exemptions from the requirement to submit a Tree Plan, but the Applicant's proposal does not fall under any of the specified exemptions. Moreover, VMC § 20.770.080(B)(3) expressly states that "[o]ne major objective of the ordinance is to offset the impacts of *impervious* surfaces with tree canopy" (emphasis added). Only "required *pervious* areas where trees cannot reside, such as drainage facilities and ball fields, . . . are excluded from the tree density calculation." *Id.* (emphasis added). The Applicant concedes that the majority of the proposed site consists of impervious surfaces.¹¹⁰ Thus, a Tree Plan is required and the proposal must meet the minimum tree density requirements.

Here, because the proposal would involve site disturbance at an industrial location, the Applicant must prepare a Level II Tree Plan. VMC § 20.770.050(B)(2). The Tree Plan must show compliance for all portions of the proposed site, including the proposed terminal site; the proposed loading, unloading, and storage areas; and the proposed pipeline. The Tree Plan must include all of the elements specified at VMC § 20.770.050(B)(2). The Applicant, however, has failed to submit the required Level II Tree Plan.

Pursuant to VMC § 20.770.070(B)(4), at sites where the required tree density is not currently met, replacement tree plantings are required. The minimum density standard is 30 trees per acre. VMC § 20.770.080(A). The priority is to plant the trees on site, however, if room is unavailable at the site, trees may be planted at another location approved by the City. VMC 20.770.080(B)(5). The Applicant must submit a Level II Tree Plan showing how the density requirements will be met.

Because the Applicant has failed to submit the required Level II Tree Plan, it is impossible for the reviewing public, the City of Vancouver, and the Siting Council to evaluate

¹⁰⁹ Pre-Application Report at 23.

¹¹⁰ *Id.*

consistency with the City’s Tree Conservation Ordinance. The Council should require the Applicant to prepare and submit the required Tree Plan and should continue the land use consistency hearing to a new date once the Plan has been made available for public review.

15. The Applicant fails to demonstrate consistency with the City’s Landscaping Ordinance (VMC Chapter 20.925).

The Applicant fails to demonstrate consistency with the City’s Landscaping Ordinance, VMC Chapter 20.925. As a threshold matter, the Applicant apparently failed to submit a Landscape Plan with the Application, as required by VMC §§ 20.925.020 and 20.925.110. The Applicant’s failure to submit a Landscape Plan makes it impossible for the reviewing public, the City, and the Siting Council to review the proposal for consistency with the Landscaping Ordinance.

The Applicant argues that the buffering and screening requirements of VMC § 20.925.070 do not apply to adjacent industrial sites owned by the Port.¹¹¹ The Applicant’s argument, however, is contrary to the plain language of sections 20.925.020 and 20.925.070, as well as the stated purposes of the Landscaping Ordinance. Those purposes include providing “landscaping to ameliorate air and noise pollution,” “afford[ing] protection from wind and inclement weather,” and “regulat[ing] open storage to protect and enhance property values and make the City a more aesthetically pleasing place to live and work.” VMC § 20.925.010(A). The fact that the Port owns adjacent industrial sites has no bearing on whether it is necessary to mitigate air and noise pollution and meet the other purposes of the ordinance. The Applicant is required to submit a Landscape Plan with its Application, and must protect community interests by meeting the requirements of the ordinance.

The Landscape Plan must contain all elements specified in sections 20.270.040(F) and 20.925.110, and must demonstrate consistency with all provisions of the Landscaping Ordinance. In particular, the Applicant must demonstrate consistency with the minimum landscaping and buffer setback standards (VMC Table 20.925.030-1), the street tree requirements (VMC § 20.925.060), the buffering and screening requirements (VMC § 20.925.070), the interior parking areas requirements (VMC §§ 20.925.080, 20.945.040), the revegetation requirements (VMC § 20.925.090), and the water conservation standards (VMC § 20.925.100).

The Council should continue the land use hearing to allow sufficient time for the Applicant to prepare the required Landscape Plan and to allow the public and the City sufficient time to evaluate the Landscape Plan for compliance with the City’s ordinance.

16. The Applicant fails to demonstrate consistency with the City’s Archaeological Resource Protection Ordinance (VMC Chapter 20.710).

The Applicant fails to demonstrate consistency with the City’s Archaeological Resource Protection Ordinance, VMC Chapter 20.170. The proposed site is in an area designated as Predictive Model Probability Level A, as shown in VMC Figure 20.710-1. All of the provisions of Chapter 20.710 apply to ground-disturbing activities within a Level A area. Furthermore, the

¹¹¹ *Id.*

proposal does not fall under any of the exemptions outlined in VMC § 20.710.020 (C). Thus, a predetermination report is required pursuant to VMC § 20.710.070.

It is unclear whether the Applicant has prepared and submitted a predetermination report as required by the ordinance. In addition, the Applicant stated in June 2013 that it “anticipates conducting a new archaeological survey for areas not previously studied.”¹¹² It is unclear whether these surveys have been completed or submitted to EFSEC and the City. Pursuant to VMC § 20.710.070(C), the City and the Siting Council should require the completion of these surveys and the submission of the predetermination report, so that consistency with the applicable laws can be properly evaluated during EFSEC’s land use consistency review process.

VMC § 20.710.080 provides the standards for archaeological resource surveys. These standards must be strictly adhered to as part of the EFSEC land use consistency review process. Once the cultural resource surveys and predetermination report are made available, they should be provided to the Tribes per VMC § 20.710.060.

If any artifacts are discovered during construction, the provisions of VMC § 20.710.090 must be followed. Among other requirements, all ground-disturbing activity must cease immediately and the site must be adequately investigated and documented by an archaeologist. VMC § 20.710.090.

17. The proposal is inconsistent with VMC Chapter 20.935 (Off-Site Impacts).

A. The proposal is inconsistent with the environmental noise requirements at VMC § 20.935.030(A).

“Environmental Noise. Unless otherwise exempted by WAC 173-60-050, no development or use may create noise impacts, measured at the property line of the receiving property that exceed the maximum environmental noise levels established by WAC 173-60-050 listed in Table 20.935.030-1”

The proposal is inconsistent with the environmental noise requirements at VMC § 20.935.030(A). The Applicant recognizes that the Vancouver Municipal Code applies,¹¹³ but seems to believe that these particular standards are optional. For instance, VMC § 20.935.030(A)(4) mandates that “[o]utdoor construction activity, including construction staging, shall occur no earlier than 7 a.m. and no later than 8 p.m., seven days a week.” Regarding this provision, the Applicant states,

The Applicant will, to the greatest extent feasible, schedule noisy construction activities to the hours identified in VMC 20.935.030(4)[*sic*], i.e., between 7 AM and 8 PM. If outdoor construction is required outside of these hours, the Applicant will consult with the City, will notify EFSEC in advance, and will not conduct the work until EFSEC has reviewed and approved the planned activities.¹¹⁴

¹¹² *Id.*

¹¹³ See Application at 4-376 (“The project is located within the City and therefore subject to the VMC.”).

¹¹⁴ See *id.* at 4-347.

In essence, the Applicant is planning to violate the code provision. The Applicant admits that it will attempt to meet the code requirements only “to the greatest extent feasible,” implies that the code requirements are not mandatory, and offers a nebulous promise to “consult with the City” prior to violating the code.¹¹⁵ Given these statements, the proposal is inconsistent with the code.

Additionally, VMC § 20.935.030(A)(2) calls for mitigation measures to protect adjacent uses. That provision states,

“Where potential noise impacts to adjacent uses from a proposed land use or development activity are identified, measures to mitigate such impacts may be imposed upon the land use or activity through the applicable review process, and may include: construction of a sound wall or fence; reorientation of buildings, parking and loading areas; and/or placement of berms and landscaping.”

Both the construction and operation of the oil terminal would interfere with recreational use of the immediately adjacent Lower River Road Trail. The Applicant, however, offers no plans to mitigate the project’s noise impacts to the trail and the surrounding area. VMC § 20.935.030(A)(2) states that mitigation measures may be required whenever “potential noise impacts to adjacent uses from a proposed land use or development activity are identified.” Because the proposed terminal would adversely impact the use of the trail, the Applicant must propose mitigation measures to protect this adjacent use.

B. The proposal is inconsistent with the off-site drainage requirements at VMC § 20.935.030(B).

“Off-site drainage. No property may be graded, filled, or otherwise altered in a way that allows stormwater runoff to flow onto another property. . . .”

Although the Applicant identifies some stormwater and drainage standards,¹¹⁶ the performance standard at VMC § 20.935.030(B) is ignored. The Application fails to demonstrate that stormwater runoff will not flow onto other properties. For these reasons, the proposal is inconsistent with VMC § 20.935.030(B).

C. The proposal is inconsistent with the vibration standards at VMC § 20.935.030(E).

“Vibration. No development or use shall create off-site vibration impacts, discernible without instruments at the property line of the affected use.”

The Application fails to address the performance standard for vibration located at VMC § 20.935.030(E). Unless the Applicant demonstrates that construction and operation of the project

¹¹⁵ *Id.*

¹¹⁶ *See generally* Application at §§ 2.9, 2.11

would not create any off-site vibration impacts, the proposal should be deemed inconsistent with the code.

18. The Council should continue the land use consistency hearing in order to allow the City of Vancouver to complete its review of the proposal for consistency with the City’s Fire Code (VMC Title 16) and the International Fire Code.

If approved, the facility would accept crude oil shipped by rail to the Port of Vancouver, where it would be stored, then loaded onto ships or barges. Crude oil is a hazardous material as defined by the U.S. Department of Transportation and it has certain properties that make it very dangerous, including the fact that it is extremely flammable. As discussed elsewhere in this comment and in the Earthjustice SEPA scoping comments, the recent rise in transportation of crude oil by rail has resulted in a soaring number of incidents across the nation, some with significant loss of life and property damage.¹¹⁷

The Council must determine whether the Application is consistent with local land use authorities, including VMC Title 20. VMC Title 20, in turn, incorporates other chapters of the Code. Specifically, Title 20 provides in pertinent part that “[n]o building or other structure shall be constructed, improved, altered, enlarged, or moved, nor shall any use or occupancy of premises within the city be commenced or changed; nor shall any condition of or upon real property be caused or maintained after the effective date of this Title, *except in conformity* with the conditions prescribed for each of the several zones established hereunder and *with all applicable local, state and federal laws and regulations.*” VMC § 20.140.010A (emphasis added). One such local law is Title 16, the City’s Fire Code. Because Title 16 is incorporated into Title 20, the Council must determine whether the application is consistent with Title 16.¹¹⁸

For the most part, Vancouver’s Fire Code adopts the 2012 International Fire Code (“IFC”). See VMC Section 16.004.010.¹¹⁹ Unless amended by specific provisions of Title 16, the IFC is the applicable local law. Several provisions of Title 16 and the IFC are pertinent here.

First, section 109.1 of the IFC, as amended by VMC § 16.004.110, states that “[i]t shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize a building occupancy premises or system regulated by this code, or cause same to be done in conflict with or violation of any of the provisions of this Code.” Thus, if the application cannot demonstrate compliance with all provisions of Title 16, it is inconsistent with local land use authorities. Section 102.9 of the IFC further states that “requirements that are essential for the public safety of an existing or proposed activity, building, or structure, or for the safety of the occupants thereof which are not specifically provided for by this code *shall be determined by the fire code office*” (emphasis in original). It is our understanding that, because this proposal is the

¹¹⁷ Ex. 20 at 13–14.

¹¹⁸ In addition, the Council is required by EFSLA and its own rules to evaluate consistency with “any ordinance of a unit of local government regulating the use of land and adopted pursuant to . . . Article XI of the state Constitution.” RCW 80.50.020(22); see also RCW 80.50.090(2); WAC 463-26-110. Here, the City’s Fire Code regulates the use of land and was adopted pursuant to Article XI of the Washington Constitution, and therefore must be included in EFFSEC’s land use consistency review.

¹¹⁹ Attached as Exhibit 14 is a copy of the 2012 International Fire Code. Attached as Exhibit 15 is a copy of Washington State’s amendments to the 2012 International Fire Code.

first of its kind within the City of Vancouver, the fire code official is in the process of determining the appropriate measures for protecting the public safety in this matter. The City's review is ongoing; until it is complete, it is impossible to determine whether the Application is consistent with the requirements of the Fire Code. Given the potential disastrous impacts of an explosion and/or fire, the City of Vancouver should be given time to complete its analysis.

In order to allow the City of Vancouver sufficient time to complete its review of the proposal for consistency with the Fire Code and IBC, the Siting Council should continue the land use consistency hearing and should keep the record open to allow the submission of relevant information by the City, the Applicant, and the public.

19. The Applicant has failed to demonstrate compliance with the City's Building Code (VMC Title 17) and the International Building Code.

As part of the land use consistency process, the Council must determine whether the proposed oil terminal will comply with the City's Building Code, VMC Title 17, which incorporates by reference the 2012 version of the International Building Code ("IBC"). *See* VMC § 17.012.010.¹²⁰ Title 17 of the Municipal Code regulates the use of land and was adopted pursuant to the City of Vancouver's police powers under Article XI, Section 11 of the Washington State Constitution. Title 17 is, therefore, a "zoning ordinance" within the meaning of EFSEC's governing laws. *See* RCW 80.50.020(22) (defining "zoning ordinance" to mean "any ordinance of a unit of local government regulating the use of land and adopted pursuant to . . . Article XI of the state Constitution"). Because Title 17 incorporates the International Building Code by reference, the latter is also a zoning ordinance within the meaning of EFSEC's governing laws.

Thus, the Council must determine whether the proposal will comply with Title 17 and the International Building Code *before* the Council makes its recommendation to the Governor. *See* WAC 463-26-110, 463-28-060(1), (3). Yet, the Application does not provide sufficient information to make that determination.

For example, the International Building Code contains many detailed provisions governing the structural design of buildings, including provisions designed to reduce the risk of damage from wind, snow, and earthquakes.¹²¹ With respect to wind and snow, the Application acknowledges that these provisions are relevant and must be satisfied. But rather than provide information on how these standards will be met, the Application provides that compliance will be determined later, during the permit-writing process, and not until *after* the Council has made its recommendation to the Governor.¹²² Under EFSEC's governing laws, the Council cannot defer consideration of these issues until after it has made a recommendation to the Governor. It

¹²⁰ A copy of the 2012 International Building Code is attached as Exhibit 16.

¹²¹ *See, e.g.*, IBC §§ 1608 (Snow Loads), 1609 (Wind Loads), 1613 (Earthquake Loads).

¹²² *See, e.g.*, Application at 2-202 (providing that "[c]ompliance with code provisions will be determined during the building permits administered by EFSEC"). *See also id.* at Page 1-12 (same); Page 2-232 (providing that that Applicant anticipates that EFSEC will contract with the City of Vancouver, who will determine compliance at a later date).

must determine compliance with these code provisions now, as part of the land use consistency process. *See* WAC 463-26-110, 463-28-060(1), (3).

With respect to the IBC provisions that relate to earthquake hazards, the Application contains a geotechnical report that identifies the various risks associated with liquefaction, lateral spreading, and other earthquake-related hazards.¹²³ But the report fails to identify the proposal’s “seismic design category,” as the Code requires. Similarly, the Application indicates that compliance with the Code will not be determined until after the applicant submits its “final design” for the proposed oil terminal.¹²⁴ As above, the Council cannot defer consideration of these issues until some future, unspecified date—it must make a determination of compliance (or non-compliance) prior to making a recommendation to the Governor.

The International Building Code also contains a number of relevant provisions for which the Application provides no information whatsoever. At the very least, relevant portions of the International Building Code include Chapter 4 (especially Sections 413 and 414 governing combustible and hazardous materials); Chapter 5 (governing building heights and areas); Chapter 7 (Fire and Smoke Protection Features); Chapter 9 (Fire Protection Systems); Chapter 16 (Structural Design); Chapter 17 (Structural Tests and Special Inspections); Chapter 18 (Soils and Foundations); Chapters 19, 20, 22, and 23 (special provisions for concrete, aluminum, steel, and wood construction); Chapter 27 (Electrical); Chapter 28 (Mechanical Systems); Chapter 29 (Plumbing Systems); Chapter 30 (Elevators and Conveying Systems); Chapter 31 (Special Construction); and Chapter 33 (Safeguards During Construction). The Council must determine, as part of its land use consistency review process, whether the proposal will satisfy the relevant provisions of these chapters before it makes its recommendation to the Governor.

The Application is also completely silent with respect to the following relevant chapters of the Vancouver Building Code: Chapter 17.09 (Energy Code), Chapter 17.14 (Minimum Property Maintenance Code), Chapter 17.16 (National Electric Code), 17.20 (Uniform Plumbing Code), 17.24 (International Mechanical Code), and 17.30 (Ventilation and Indoor Air Quality Code). As above, the Council must determine compliance with these chapters of the Code during its land use consistency review process.

20. The Council should continue the land use consistency hearing to allow the proposal to be reviewed for consistency with the City’s major grading permit standards.

Tesoro’s Application acknowledges that the proposal is subject to the requirements for a “Major Grading Permit” as part of the consistency review, and cites Titles 12 and 17 of the Vancouver Municipal Code as applicable regulations.¹²⁵ It is unclear the extent to which Titles 12 and 17 are relevant to major grading permits.¹²⁶ Instead, the Vancouver Municipal Code

¹²³ *See* Application at App. L.

¹²⁴ *See* Application at Page 3-248 (“The proposed *final design* of the Facility will comply with the provisions of the building codes and requirements for seismic hazards that apply to the proposed location,” including IBC Chapters 16, 17, 18, 19, 22, and 23) (emphasis added).

¹²⁵ Application at 2-218.

¹²⁶ Title 12 is a City ordinance pertaining to trees and vegetation, while Title 17 is the City Building Code.

applies “Chapter 70 of the City Adopted Building Code(s)” to grading permits,¹²⁷ which is ostensibly a reference to Chapter 70 of an outdated version of the International Building Code.¹²⁸ In the 2012 IBC, the grading requirements are found in the optional Appendix J (“Grading”).¹²⁹ It is unclear which version of the International Building Code grading requirements the City has adopted by incorporation into its ordinance. Regardless, the application materials submitted by Tesoro fail to adequately address any of these requirements.

Tesoro asserts that compliance with these standards is demonstrated in the Application at Section 3.1 and Appendix G.¹³⁰ However, these portions of the Application do not demonstrate compliance with the major grading permit standards, whether found in Title 12, Title 17, the 2012 IBC, or a prior version of the IBC.

To the contrary, section 3.1 of the Application addresses WAC 463-60-302, which is EFSEC’s application requirements for disclosing impacts to physical features of the natural environment such as geology, soils, topography, unique physical features, erosion and accretion, and compliance with state building code requirements for seismic safety. Tesoro’s application does not explain how the disclosures required by WAC 463-60-302 demonstrate compliance with the City’s grading permit standards.

Similarly, Appendix G of the Application does not provide any information regarding the City’s grading standards and how the proposal would satisfy those standards. Instead, Appendix G provides a list of “Material Safety Data Sheets” for materials that are likely to be used or stored at the proposed oil terminal. There does not appear to be any explanation of how disclosure of such information demonstrates compliance with the City’s major grading permit requirements.

Finally, Tesoro’s Pre-Application Report acknowledges that a Major Grading Permit is required,¹³¹ but fails to provide any substantive analysis of the grading permit requirements and how they will be met.

The Applicant must address, and the Council must determine consistency with, all applicable standards. The Council should continue the land use hearing to allow the Applicant to submit a grading plan, and to allow the public and the City of Vancouver to review the plan for consistency with the City’s major grading permit standards. In the meantime, the City should clarify whether it reviews major grading proposals for consistency with the standards of Appendix J of the International Building Code, or some other source of law.

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¹²⁷ VMC § 20.150.040A (definition of “grading permit”) (“The permit required under Chapter 70 of the City Adopted Building Code(s).”).

¹²⁸ The IBC, previously named the Uniform Building Code, contained excavation and grading requirements as an optional appendix at Chapter 70. As an example, a copy of Chapter 70 (Excavation and Grading) from the 1991 Uniform Building Code is attached as Exhibit 17.

¹²⁹ See Exhibit 16 (2012 IBC) at Appendix J.

¹³⁰ *Id.*

¹³¹ Pre-Application Report at 4, 43.

21. Conclusion

For the reasons stated above, the Council should continue the land use hearing to a later date, once the Applicant has provided necessary information regarding the proposal and its impacts, once the environmental impact statement has been made available, and once the public and the City of Vancouver have been given time to review and comment on these authorities. In the alternative, the Council should deem the proposal inconsistent with the relevant provisions of the City of Vancouver’s Comprehensive Plan and Subarea Plans, the Vancouver Municipal Code, and the additional authorities incorporated therein.

Sincerely,



Nathan Baker, Staff Attorney
Friends of the Columbia Gorge



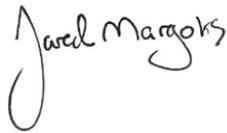
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