

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the  
Application of  
TRANS MOUNTAIN PIPE LINE  
CORPORATION  
A DELAWARE CORPORATION  
.....

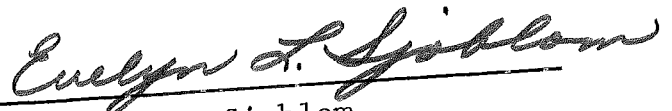
APPLICATION NO. 77-1  
CERTIFICATE OF SERVICE

The undersigned certifies that on August 24, 1977 she served the  
attached:

Council Order No. 542 dated August 22, 1977 regarding  
land use hearing held June 24, 1977 at Ferndale,  
Washington

by depositing copies thereof in the United States mail, properly  
stamped and addressed, as indicated on the Trans Mountain Distri-  
bution List dated July 11, 1977.

Dated August 24, 1977



Evelyn L. Sjoblom  
Administrative Assistant

ORDER NUMBER: 542  
DATED: August 22, 1977

BEFORE THE WASHINGTON STATE ENERGY  
FACILITY SITE EVALUATION COUNCIL

In the Matter of Application )  
No. 77-1 of the )  
 )  
TRANS MOUNTAIN OIL PIPE LINE )  
CORPORATION: )  
 )  
A DELAWARE CORPORATION )  
. . . . . )

FINAL ORDER

This matter came on regularly for hearing, pursuant to notice duly given, before the Energy Facility Site Evaluation Council on June 24, 1977, in Ferndale, Washington. Council members present included:

Lawrence B. Bradley  
Virgil Cunningham  
James Booth  
  
Fred Hahn  
David Guier  
Al Lasater  
John Ward  
Richard Langabeer  
Thomas Glenn  
Sam Reed  
  
Russell Albert  
Bruce Reeves  
John Clark  
  
Ben Ellwanger  
Tom Stacer

Chairman  
Department of Agriculture  
Department of Commerce and  
Economic Development  
Department of Ecology  
Department of Emergency Services  
Department of Fisheries  
Department of Game  
Whatcom County  
Port of Bellingham  
Department of Social and  
Health Services  
Department of Highways  
Department of Natural Resources  
State Parks and Recreation  
Commission  
Office of Community Development  
Utilities and Transportation  
Commission

The Administrative Law Judge presiding at the hearing was John von Reis.

The parties were represented as follows:

APPLICANT: TRANS MOUNTAIN OIL PIPE LINE  
CORPORATION  
By Craig Hayes  
P. O. Box 399  
Bellingham, Washington

TONY PAUL AND ED TWINE  
General Counsel  
Atlantic Richfield Corporation  
Los Angeles, California

INTERVENORS: COALITION AGAINST OIL POLLUTION  
By William Becker  
Seattle, Washington

PROTECT OUR WATERS  
By Rand Jack and Dean Brett  
Bellingham, Washington

COUNSEL FOR THE ENVIRONMENT  
Lee Johnson and Marianne McGettigan  
Assistant Attorneys General  
Temple of Justice  
Olympia, Washington

### I. BACKGROUND

On April 28, 1977, the Trans Mountain Oil Pipe Line Corporation made application with the Council for certification of a Whatcom County site for a proposed energy facility as defined in RCW 80.50.020. The Council held the June 24, 1977 hearing to determine, pursuant to the provisions of RCW 80.50.090(1) and (2), and the Council rules promulgated in accordance therewith, whether or not the proposed facility (consisting of an additional berth together with associated facilities at an existing pier located on Atlantic Richfield Company leased property near Cherry Point in Whatcom County, a tank farm to be located on Atlantic Richfield Company property, and a pipeline, pump station, and associated facilities to be located along the route of the existing Trans Mountain Oil Pipe Line in Whatcom County) is consistent and in compliance with county and regional land use plans or zoning ordinances. The sole effect of a determination that the facility proposed for the site conforms with existing land use plans or zoning ordinances in force as of the date of the application is that county or regional planning authorities may not thereafter change land use plans or zoning ordinances in a manner affecting the proposed site.

In the course of the June 24, 1977 hearing, the Council considered plans and ordinances, including pertinent requirements for major development permits or conditional use permits. In making its determinations the Council recognizes that the contested case hearing to be held pursuant to RCW 80.50.090(3) is intended to consider matters of the sort treated in major development or conditional use permits. In its subsequent hearing, the Council will consider whether or not major development and conditional use permit criteria have been satisfied.

Having considered the record in this matter, and having made its determination at the initial public hearing in accordance with the requirements of RCW 80.50.090(2), the Council enters the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Trans Mountain Oil Pipe Line Corporation (sometimes referred to as "applicant") submitted, on April 28, 1977, an application to the Energy Facility Site Evaluation Council for site approval of an energy facility consisting of expansion of existing pier facilities, a tank farm, pump stations, and a pipeline, all to be located in Whatcom County, Washington, for the purpose of receiving, storing, and transshipping crude petroleum.

2. The project's proposed route begins with berthing and pier locations in waters adjacent to the shoreline of Whatcom County. Applicant proposes to construct a tank farm on proximate Whatcom County uplands owned by the Atlantic Richfield Company. The proposed pipeline route runs from the pier and tank farm to the Mobil refinery, from that refinery to a pump location near Laurel, Washington, and from Laurel to the U. S., Canadian border at Sumas, Washington. The proposed pipeline route, which crosses portions of the City of Ferndale and the City of Everson, parallels the route through Whatcom County of the existing Trans Mountain pipe line.

3. As of April 28, 1977, Whatcom County had in effect a comprehensive plan and map, an interim zoning ordinance and map, and a shorelines management program, each of which regulates land uses in portions of the proposed project route.

4. As of April 28, 1977, the City of Ferndale had in effect a zoning ordinance which regulates land use in a portion of the proposed project route.

5. As of April 28, 1977, the City of Everson had in effect a comprehensive plan which regulates land use in a portion of the proposed project route.

6. As of April 28, 1977, the Washington State Coastal Zone Management program, a document which is not part of state, county or municipal laws, ordinances, plans, or regulations governing land uses, spoke to the matter of locating oil transshipment facilities within the State of Washington.

7. Nothing of record indicates that Lummi tribal comprehensive plans or zoning ordinances, if such exist, regulate or affect any portions of the proposed project's route.

8. The proposed project, if built, would likely affect air quality in the region.

9. Commercial fishermen harvest fish in waters near the location proposed for the project.

10. Policies stated in the Whatcom County shorelines management program do not preclude construction of the project's berth, pier, and associated facilities at their proposed locations, or the pipeline along its proposed route. The pier location is designated "aquatic." Affected portions of the pipeline route are designated "rural" and "conservancy."

11. The Whatcom County comprehensive plan contains no provisions which preclude siting of the proposed project.

12.(a) The proposed berth and tank farm are to be located in the only primary industrial area established by the Whatcom County comprehensive plan. These facilities are permitted or conditionally permitted uses in the primary industrial area. (b) All land areas regulated by the Whatcom County interim zoning ordinance which are part of the proposed site, including locations for berth facilities, tank farm, pipe line route, and pumping stations, are in areas zoned "general protection." The proposed facilities are either permitted or conditionally permitted uses in the general protection zone. (c) Nothing in the Whatcom County interim zoning ordinance or comprehensive plan precludes siting of any part of the project in the areas proposed.

13. It is uncontradicted that the portion of the pipeline route which is proposed to cross the City of Ferndale is a permitted use under the zoning ordinance of the City of Ferndale.

14. It is uncontradicted that the portion of the pipeline route which is proposed to cross the City of Everson is a permitted use under the comprehensive plan of the City of Everson.

15. Certain regional and county land use plans and zoning ordinances herein considered require the issuance of conditional use or major development permits as preconditions to construction of projects such as applicant has proposed. Satisfaction of conditional use or major development permit criteria is a matter to

be considered at a later stage of the processing of the instant application.

16. County and regional land use plans and zoning ordinances accommodate all parts of the proposed project site without plan or ordinance amendment. No county or regional land use plan or zoning ordinance contains a bar to any element of the proposed project site.

#### CONCLUSIONS OF LAW

1. The Washington State Energy Facility Site Evaluation Council has jurisdiction over the persons and subject matter of this proceeding.

2. The determination required by RCW 80.50.090(2) as to whether or not the proposed project site is consistent and in compliance with county or regional land use plans or zoning ordinances is a determination to be made solely by the Council.

3. The Washington State Coastal Zone Management program is not a county or regional land use plan or zoning ordinance within the meaning of RCW 80.50.090(2).

4. Issues arising from the proposed project's possible effects on air quality may properly be considered at the contested case hearing to be later held in the matter pursuant to the provisions of RCW 80.50.090(3). Air quality issues are not properly a part of the instant determination.

5. The effects, if any, of the proposed project on the operations of commercial fishermen may properly be considered at the later contested case hearing rather than as part of the present determination.

6. The application, exempt from the Shorelines Management Act permit process, is consistent with and in compliance with policies of the act as they affect the proposed use of the site.

7. No Lummi tribal land use plans or zoning ordinances affect the proposed site.

8. The existence of conditional use permit and major development permit criteria which must be satisfied before construction can begin at the proposed project site is not inconsistent with the site's conformity to land use plans and zoning ordinances. Conditional use and major development permit issuance processes exist to permit scrutiny and review of uses and sites which

already conform to the provisions of applicable land use plans and zoning ordinances. The Council's concern is whether or not the project is proposed to be sited in areas the land use planning for which or the zoning of which can, without amendment, accommodate the project as a conforming use. The Council's concern in the present matter is not whether all review processes specified in land use plans and zoning ordinances have been completed.

9. The proposed project site is consistent with, in compliance with, and in conformity with the Whatcom County comprehensive plan.

10. The proposed project site is consistent with, in compliance with, and in conformity with the Whatcom County interim zoning ordinance.

11. The proposed project site is consistent with, in compliance with, and in conformity with the comprehensive plan of the City of Everson.

12. The proposed project site is consistent with, in compliance with, and in conformity with the zoning ordinance of the City of Ferndale.

13. The proposed project site is consistent with, in compliance with, and in conformity with all county and regional land use plans and zoning ordinances affecting the project site. All such plans and ordinances admit respective parts of applicant's project as contemplated uses in the areas proposed.

14. County and regional land use authorities should be prohibited from changing land use plans or zoning ordinances in any way affecting the proposed project site.

From the foregoing findings of fact and conclusions of law, the Council enters the following order:

#### ORDER

It is hereby determined that the site proposed in Application No. 77-1 by the Trans Mountain Oil Pipe Line Corporation is consistent and in compliance with, and in conformity with Whatcom County or regional land use plans or zoning ordinances.

County and regional land use authorities are prohibited from changing land use plans or zoning ordinances in any way affecting the proposed project site as provided by RCW 80.50.090.

ORDERED AND DECLARED By the Energy Facility Site Evaluation Council on August 22, 1977, in Olympia, Washington, in open meeting.

WASHINGTON STATE ENERGY FACILITY  
SITE EVALUATION COUNCIL

BY Lawrence B. Bradley  
Lawrence B. Bradley  
Chairman

ATTEST:

BY Roger Polzin  
Roger Polzin  
Executive Secretary

APPROVED AS TO FORM:  
BY Thomas W. Carr  
Thomas W. Carr  
Assistant Attorney General