

ORDER NUMBER: 588
DATE: April 14, 1980

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of)	
Application No. 79-1 of the)	
Trans Mountain Oil Pipe Line)	FINDINGS OF FACT,
Corporation)	CONCLUSIONS OF LAW AND
A Delaware Corporation)	ORDER OF CONSISTENCY AND
.)	COMPLIANCE FOR ISLAND COUNTY

THIS MATTER came on regularly for hearing, pursuant to notice duly given, on December 4, 1979, in Coupeville, Washington, before the Energy Facility Site Evaluation Council for determination pursuant to RCW 80.50.090 and WAC 463.26 of the consistency and compliance of the proposed Trans Mountain Oil Pipe Line Corporation's site as described in Application 79-1 with the Island County Land Use Plans.

The parties were represented as follows: Trans Mountain Oil Pipe Line Corporation--Charles Blumenfeld and Richard Bersin, Attorneys at Law, the Bank of California Center, Seattle, Washington 98164; Island County--Alan Hancock, Deputy Prosecuting Attorney, Island County Courthouse, Coupeville, Washington 98239; Citizens' Pipeline Task Force--G. Tim Martin, 230 First Street, Langley, Washington, and Counsel for Environment--Robert Mack, Temple of Justice, Olympia, Washington.

FINDINGS OF FACT

I.

On August 21, 1979, Trans Mountain Oil Pipe Line Corporation submitted its Application No. 79-1. On September 7, 1979, Trans Mountain Oil Pipe Line Corporation submitted a revised application. The revised application did affect the route and facility site in Island County.

II.

The facility in Island County, as proposed by Application No. 79-1, shall be sited outside the boundaries of all municipalities in Island County.

III.

The Shoreline Management Master Program for Island County, Island County SEPA Ordinances (Island County Code 16.14.A), Island County Building and Mechanical Code (Island County Code 14.01), Island County Franchises For Use Of Right Of Way (Island County Code 12.20), Island County Fire Code (Island County Code 14.03), Island County Entry Permits (Island County Code 12.16), Island County Road Closures and Restrictions (Island County Code 12.20), and Island County Review Procedures for Guiding Development in Flood and Landslide

Prone Areas (Island County Code 14.02) are not county or regional land use plans within the meaning of RCW 80.50.020 (15) (16), and therefore not admissible in the initial public hearing pursuant to WAC 463.26. The Ordinances above referred purposes are to control public welfare concerns other than use of land even though such Ordinances may have incidental effect on land uses. The above referred Ordinances and Shoreline Master Program are not County or Regional Land Use Plans adopted pursuant to Chapter 35.63, 35.63A, or 36.70 RCW, or County or Regional Zoning Ordinances adopted pursuant to Chapters 35.63, 35.63A, or 36.70, or Article 11 of the State Constitution.

IV.

Island County adopted its Comprehensive Plan in 1977. The Island County Comprehensive Plan refers to and treats only those local utility uses over which county or municipal governments would either provide primary regulatory responsibility, or for which it would have great regulatory concern. The Plan does not address utilities such as telephones and natural gas for which the county has not primary responsibility, or for which it would have great regulatory concern. The Plan does not address utilities such as telephones and natural gas for which the county has primary responsibility.

V.

Island County adopted its Zoning Ordinance on December 5, 1966. The Island County Zoning Ordinance refers to public utilities, however, it does not provide a definition of the term. The Island County Comprehensive Plan sets forth examples of public utilities. However, because the Comprehensive Plan was adopted subsequent to the Zoning Ordinance, the drafters of the Zoning Ordinance clearly could not have had the examples of utilities in the Comprehensive Plan in mind with regard to a public utility definition. Therefore the general accepted definition of public utilities clearly applies.

VI.

The facility proposed for the site will provide a service to the public by providing the means of transporting crude petroleum for the petroleum shipping public. The meaning of public utility within the Island County Zoning Ordinance is clear and unambiguous and the proposed facility is a public utility within its meaning.

VII.

The use designations pursuant to the Island County Zoning Code, upon which the proposed facility site will be located are residential, rural and commercial. Public utilities are allowed as a conditional use in all of the above use designations. The proposed facility site is not prohibited expressly or by operation by the Island County Zoning Ordinance.

VIII.

The Island County Comprehensive Plan does not expressly or by operation prohibit the proposed facility.

CONCLUSIONS OF LAW

I.

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

II.

September 7, 1979 is the date of application for the purpose of the siting of the facility site in Island County.

III.

The Island County Shoreline Management Master Program, Island County SEPA Ordinances (Island County Code 16.14.A), Island County Building and Mechanical Code (Island County Code 14.01), Island County Franchises for Use of Right Of Way (Island County Code 12.20), Island County Fire Code (Island County Code 14.03), Island County Entry Permits (Island County Code 12.16), Island County Road Closures and Restrictions (Island County Code 12.20), and Island County Review Procedures for Guiding Development in Flood and Landslide Prone Areas (Island County Code 14.02) have no applicability to the Council's consistency and compliance determination in this proceeding.

IV.

The pipeline to be located on the site as proposed by the applicant is a public utility within the framework of the Island County Zoning Ordinance.

V.

The energy facility site as contained and described in Trans Mountain Oil Pipe Line Corporation's Application 79-1 is consistent and in compliance with land use plans and zoning ordinances if it is permitted absolutely or conditionally. To be inconsistent and in noncompliance, the plan or ordinance must expressly, or by operation clearly, convincingly and unequivocally prohibit the facility site.

VI.

The proposed facility site is consistent and in compliance with the Island County Comprehensive Plan.

VII.

The proposed facility site is consistent and in compliance with the Island County Zoning Ordinance.

ORDER

It is hereby ORDERED as follows:

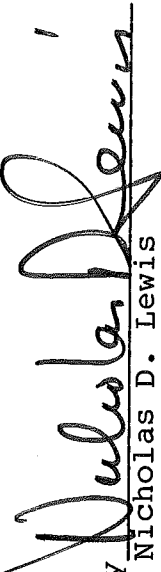
1. That the facility site as proposed by Application No. 79-1 is consistent and in compliance with the Island County Comprehensive Plan.

2. That the pipeline portion of the proposed facility site is consistent and in compliance with the Island County Zoning Ordinance.

Dated at Olympia, Washington, and effective this 14th day of April, 1980.

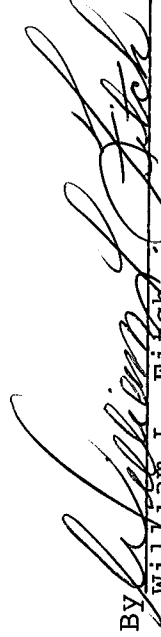
WASHINGTON STATE ENERGY FACILITY
SITE EVALUATION COUNCIL

BY


Nicholas D. Lewis
Chairman


ATTEST:

BY


William L. Fitch
Executive Secretary

APPROVED AS TO FORM:

BY


Kevin M. Ryan,
Assistant Attorney General