

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

1	In the Matter of Application	)	
2	of the	)	APPLICATION NO. 79-1
3	TRANS MOUNTAIN OIL PIPE LINE	)	FINDINGS OF FACT,
4	CORPORATION,	)	CONCLUSIONS OF LAW AND
5	A Delaware Corporation	)	ORDER OF CONSISTENCY AND
		)	COMPLIANCE FOR CLALLAM
		)	COUNTY

6 THIS MATTER came on regularly for hearing, pursuant to notice  
7 duly given, on December 12, 1979, in Port Angeles, Washington,  
8 before the Energy Facility Site Evaluation Council for deter-  
9 mination pursuant to RCW 80.50.090 and WAC 463-26 of the con-  
10 sistency and compliance of the proposed Trans Mountain Oil Pipe  
11 Line Corporation's site as described in Application 79-1 with the  
12 Clallam County, Land Use Plans.

13 The parties were represented as follows: Trans Mountain Oil  
14 Pipe Line Corporation--Charles Blumenfeld and Richard Bersin,  
15 Attorneys at Law, The Bank of California Center, Seattle,  
16 Washington 98164; Clallam County--Craig Knutson, Deputy  
17 Prosecuting Attorney, Clallam County Courthouse, Port Angeles  
18 Washington 98362; City of Port Angeles--Craig Miller, P. O. Box  
19 711, Port Angeles, Washington, 98362, and Counsel for  
20 Environment--Robert Mack, Assistant Attorney General, Temple of  
21 Justice, Olympia, Washington.

22 FINDINGS OF FACT

23 I.

24 On August 21, 1979, Trans Mountain Oil Pipe Line Corporation  
25 submitted its Application No. 79-1. On September 7, 1979, Trans  
26 Mountain Oil Pipe Line Corporation submitted a revised applica-  
27 tion. The revised application did not affect the route and faci-  
28 lity in Clallam County.

29 II.

30 The Shoreline Management Master Program for Clallam County,  
31 Clallam County SEPA Ordinances (Clallam County Ordinance 53),  
32 Clallam County Building and Mechanical Code (Clallam County Code

Find.of Fact, Con.  
of Law-1

1 21.01), Clallam County Fire Code (Clallam County Ordinance 75),  
2 Clallam County Subdivision Ordinance (Clallam County Ordinance  
3 40), City of Port Angeles SEPA Ordinance (Port Angeles Ordinance  
4 1886) and City of Port Angeles Ordinance 1980, are not county or  
5 regional land use plans within the meaning of RCW  
6 80.50.020(15)(16), and therefore not admissible in the initial  
7 public hearing pursuant to WAC 463.26. The Ordinances above  
8 referred purposes are to control public welfare concerns other  
9 than use of land, even though such Ordinances may have incidental  
10 effect on land uses and set performance standards for the  
11 develop-ment of land. The above referred Ordinances and  
12 Shoreline Master Program are not County or Regional Land Use  
13 Plans adopted pursuant to Chapter 35.63, 35.63A, or 36.70 RCW, or  
14 County or Regional Zoning Ordinances adopted pursuant to Chapters  
15 35.63, 35.63A, or 36.70, or Article 11 of the State Constitution.

16 III.

17 The proposed facility site will provide a service to the  
18 public by providing a means of transporting crude petroleum for  
19 the petroleum shipping public.

20 IV.

21 The applicable land use plans and zoning ordinances of  
22 Clallam County consist of the following:

- 23 a. Clallam County Comprehensive Plan adopted by Resolution  
24 No. 12, April 20, 1967; and amended by Ordinance No. 70, July 8,  
25 1976;
- 26 b. Clallam County Temporary Interim Zoning Maps east of  
27 Morse Creek, adopted December 20, 1973;
- 28 c. Clallam County Flood Plain Zoning for the Elwha River and  
29 Dungeness River, Resolution No. 37, adopted September 12, 1969.

30 V.

31 The applicable land use plans and zoning ordinances of the  
32 City of Port Angeles consist of the following:

Find. of Fact, Con.  
Of Law-2

1 a. Port Angeles Comprehensive Plan, Ordinance No. 1885,  
2 July 6, 1976; as amended by Ordinance No. 1893, October 5, 1976,  
3 as amended by Ordinance No. 1965, March 21, 1978;  
4 b. Port Angeles Zoning Ordinance No. 1709, December 15,  
5 1970, as amended by Ordinance Numbers 1894 and 1895, December 15,  
6 1976; as amended by Ordinance No. 1973, May 2, 1978; as amended  
7 by Ordinance 1996, September 19, 1978.

8 VI.

9 On March 2, 1972, Clallam County adopted a Temporary Interim  
10 Zoning Ordinance (Ordinance No. 41). The text of Ordinance No.  
11 41, and the zoning maps west of Morse Creek were subsequently  
12 declared to be invalid by decision of the Washington State  
13 Supreme Court in the case of Byers vs. Board of Clallam County  
14 Commissioners, 84 Wn.2d 796 (1974).

15 VII.

16 The Clallam County Temporary Interim Zoning Maps of  
17 December 20, 1973 regulates land in eastern portions of the  
18 County east of Morse Creek.

19 VIII.

20 The applicant stipulated that it had no plans to dispose of  
21 solid waste on the site. This would include no sanitary landfill  
22 and no facilities for disposing of used oils and other hazardous  
23 wastes.

24 IX.

25 The proposed facility is prohibited by the Clallam County  
26 Comprehensive Plan pursuant to Ordinance No. 70. Ordinance No.  
27 70 prohibits the offloading area in Clallam County waters, tank  
28 farm and pipeline transmission facilities.

29 X.

30 Clallam County's Temporary Interim Zoning Maps contain no  
31 provisions which would preclude the location of a pipeline or  
32 associated facilities.

Find. of Fact, Con.  
of Law-3-

XI.

On September 12, 1969, Clallam County adopted a Flood Plain Zoning Ordinance for the Dungeness and Elwha Rivers (Resolution No. 37). Resolution No. 37 lists specific uses which are permitted within the Flood Plains and which are crossed by the pipeline portion of the proposed project. A pipeline is not a use literally permitted under the terms of the Ordinance.

XII.

The proposed facility site within the city limits of Port Angeles is prohibited by the Port Angeles Comprehensive Plan pursuant to Port Angeles Ordinance No. 1965.

XIII.

On August 2, 1978, the City Council of Port Angeles passed an Ordinance amending Section 12 of Ordinance No. 17059, entitled "M2-Industrial District". The amendment prohibited petroleum refineries, liquified natural gas and liquified petroleum gas facilities, energy facilities, energy plants and associated facilities and associated transmission facilities as defined in RCW 80.50. in the M2 designated zone. Neither this language or any similar language was ever added to other districts or use areas defined by the zoning code.

The proposed facility site in Port Angeles passes through the following designated use areas pursuant to the zoning code:

a. Land Use designation of public parks and buildings.

b. The following residential zones: RS7, RS9 and RMF.

The provisions in the City of Port Angeles Zoning Code and Amendments are unambiguous and do not prohibit the proposed facility site within the zoning designations through which it passes in the City of Port Angeles.

CONCLUSIONS OF LAW

I.

The Washington State Energy Facility Site Evaluation Council

1 has jurisdiction over the subject matter of this proceeding.

2 II.

3 August 21, 1979, is the date of application for the purpose  
4 of the siting of the facility site within Clallam County.

5 III.

6 The Shoreline Management Master Program for Clallam County,  
7 Clallam County SEPA Ordinances (Clallam County Ordinance 53),  
8 Clallam County Building and Mechanical Code (Clallam County Code  
9 21.01), Clallam County Fire Code (Clallam County Ordinance No.  
10 75, Clallam County Subdivision (Clallam County Ordinance No. 40)  
11 City of Port Angeles SEPA Ordinance (Port Angeles Ordinance 1886)  
12 and City of Port Angeles Ordinance 1980 have no applicability to  
13 the Council's consistency and compliance determination in this  
14 proceeding.

15 IV.

16 The pipeline and associated facilities as proposed by the  
17 applicant is a public utility.

18 V.

19 Clallam County's Solid Waste Plan is not relevant to the pro-  
20 posed project, on the basis of the stipulation of the parties.

21 VI.

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

29 VII.

30 The proposed facility site is inconsistent and not in  
31 compliance with the Clallam County Comprehensive Plan.

32 Find. of Fact, con.  
of Law-5-

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VIII.

The pipeline with associated facilities is consistent and in compliance with the relevant Clallam County Interim Zoning Maps east of Morse Creek.

IX.

The proposed pipeline is not included in the list of designated uses permitted in the Clallam County Flood Plain Zoning for the Dungeness and Elwha Rivers, Resolution No. 37, and therefor is inconsistent and not in compliance with it.

X.

The proposed facility site is inconsistent and not in compliance with the City of Port Angeles' Comprehensive Plan.

XI.

The proposed facility site is consistent and in compliance with the City of Port Angeles Zoning Ordinance.

ORDER

It is hereby ORDERED as follows:

1. That the facility site as proposed by Application 79-1 is inconsistent and not in compliance with the Clallam County Comprehensive Plan.
2. That the facility site as proposed by Application 79-1 is consistent and in compliance with the relevant Clallam County Interim Zoning Maps east of Morse Creek.
3. That the proposed facility site is not included in the list of designated uses permitted in the Clallam County Flood Plain Zoning for the Dungeness and Elwha Rivers, and is inconsistent therewith.
4. That the facility site as proposed by Application 79-1 is inconsistent and not in compliance with the City of Port Angeles' Comprehensive Plan.
5. That the facility site as proposed by Application 79-1 is

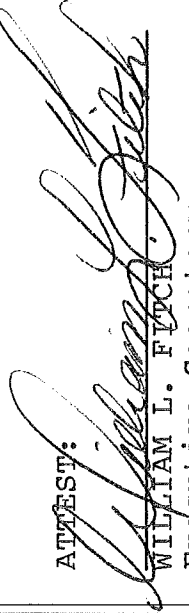
1 consistent and in compliance with the City of Port Angeles'  
2 Zoning Ordinances.

3 DATED at Olympia, Washington, and effective this 12th day of  
4 May, 1980.



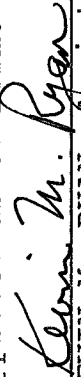
NICHOLAS D. LEWIS, Chairman  
Washington State Energy Facility  
Site Evaluation Council

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6  
7 ATTEST:



WILLIAM L. FITCH,  
Executive Secretary

8 Approved as to Form:



KEVIN M. RYAN, Assistant  
Attorney General