ORDER NUMBER: 579
DATE: November 26 1979

BEFORE THE WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application of NORTHERN TIER PIPELINE COMPANY, A Montana Corporation.	)	APPLICATION No. 76-2 LAND USE AND ZONING ORDER

This matter came on regularly for hearing, pursuant to notice duly given, on July 31, 1979, in Coupeville, Washington, on August 1 and 6, 1979, in Seattle, Washington, on August 2 and 3, 1979, in Everett, Washington on August 7, 1979, in Port Townsend, Washington, on August 8, 9, 10, 29, 30, and 31, 1979, in Port Angeles, Washington, on August 21 and 22, 1979, in Oak Harbor, Washington, and on September 18 and October 22, 1979, in Olympia, Washington, before the Energy Facility Site Evaluation Council.

The parties were represented as follows:

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MEMORANDUM
Statement of Proceedings

On March 30 and June 15, 1979, the Northern Tier Pipeline Company ("Northern Tier" or "applicant") filed a two part amendment ("1979 amendment") to its July 6, 1976 application for certification of an energy facility site consisting of a tanker unloading facility, an onshore storage facility, a pipeline, and associated facilities.

Northern Tier first made application in this cause on July 6, 1976. The Energy Facility Site Evaluation Council ("Council") held hearings to determine whether or not the route as then identified was consistent and in compliance with county or regional land use plans or zoning ordinances in Clallam, Jefferson, Mason, Thurston, Pierce, King, Kittitas, Grant, Lincoln, and Spokane counties. The Council, in its Order

Number 529, as amended April 11, 1977, entered findings, conclusions, and an order pertaining to the consistency and compliance of the Northern Tier site, as identified prior to June 30, 1978, with county and regional land use plans and zoning ordinances.

On June 30 and August 18, 1978, Northern Tier filed a two-part amendment to its application, which amendment included certain specified site changes. The Council reopened its hearings to determine whether the site changes identified in the 1978 amendment were consistent and in compliance with county or regional land use plans or zoning ordinances in King, Kittitas, Spokane, and Adams counties. The Council, in its Order No. 550, dated December 11, 1978, entered findings, conclusions, and an order pertaining to those portions of the site newly identified in the 1978 amendments.

On March 30 and June 15, 1979, Northern Tier filed a two-part amendment which identified additional specified changes in portions of the total site at issue. The 1979 amendment alters portions of the site in Clallam, Jefferson, and King counties; adds site portions in Island and Snohomish counties; and abandons site portions previously identified in Mason, Thurston, and Pierce counties. The Council again reconvened the hearings to determine the consistency and compliance, if any, of those newly identified portions of the total site with county or regional land use plans and zoning ordinances.

In its Order No. 529, the Council made general findings concerning the scope of the matter, the corporate personage of Northern Tier, the original filing time and scope of Application No. 76-2, and the procedure by which the Council determined the applicant's status.

Issue in the Present Hearings

The ultimate issue the Council must resolve is whether or not the proposed site is consistent and in compliance with county and regional land use plans and zoning ordinances. Important subsidiary issues include definition of the site to be analyzed for consistency and compliance, determination of the date of application for this site, and specification of those county or regional plans or ordinances which may properly be considered under RCW 80.50.090(1) and (2).

The Site

The site properly at issue in the instant proceeding consists only of any territory in the State of Washington for which certification has been first requested in Northern Tier's 1979 amendments, together with any territory treated in orders No. 529 or No. 550 for which the 1979 amendment proposes a use substantially different than the use identified in

proceedings producing the prior orders. The term "use substantially different" means a use sufficiently at variance with a previously proposed and considered use to put the affected territory in a different category or classification as set forth in applicable land use plans or zoning ordinances. The problem of new uses in previously identified territory is academic in the instant proceeding, since, as discussed below, no new uses sufficient to cause a reclassification have been proposed. [Hereinafter, unless differently specified, the term "total project site" refers to the total territory for which applicant seeks certification, while the term "site" refers to that portion of the total project site identified in this paragraph as the site properly at issue in these consistency and compliance hearings.

The above delineation of the site to be considered is consistent with the Council's prior determinations as set forth in Order No. 550. That order considered only portions of the total project site first identified in the 1978 amendment.

The 1979 amendment has not basically altered the character of Northern Tier's application, and the Council need not treat the 1979 amendment, for the purposes set forth in RCW 80.50.090(1) and (2), as an application for an entirely new site. Some new territory has been added to the portion of the total project site dedicated to berthing facilities, and certain additions to the equipment to be employed there have been proposed, but the basic concept is unaltered, and the location is still on the outer portion of Ediz Hook in the most northerly part of Port Angeles harbor. The northern extremity of the submarine transfer line has been shifted approximately 1½ miles east of its former route, and the transfer line has consequently assumed a different radius in the harbor, but the common focal point, at the line's southern extremity, is still the Green Point tank farm. The 1979 amendment suggests no basic change in the tank farm site itself, in spite of the Council's previous findings of inconsistency for this portion of the total project site.

The 1979 amendment proposes an altered pipeline route from the point of the pipeline's exit from the Green Point tank farm site to a point in King County 8 miles generally east of the community of North Bend. The 1976 route (with 1978 alterations) proceeded eastward from the tank farm site on a land route around the western, southern and eastern borders of Puget Sound to the aforementioned King County point. The 1979 route leaves the Olympic Peninsula land mass at a point near Port Williams in Clallam County, proceeds under the waters of the Strait of Juan de Fuca and Admiralty Inlet to Whidbey Island. After crossing Whidbey Island, the route proceeds under the waters of Saratoga Passage, onto Camano Island, and then onto the main land mass of Western Washington, advancing by turns south and east to the aforementioned King County point. The route crosses sensitive areas and

will be closely considered by the Council in its contested case hearings.

East of the King County point, no alterations are proposed. Northern Tier seeks certification for the same corridor through Eastern Washington and into Idaho that it had placed before the Council prior to March 29, 1979. The use Northern Tier proposes, the movement of petroleum through a pipeline, is unchanged.

In sum, though the 1979 amendment proposes significant changes in some parts of the Northern Tier proposal, the amendment does not change the fundamental concept of the proposal, the scope of the proposal, or the extent of the Council's responsibility to process the application. The Council still has before it an application for a port and associated facilities, including a tank farm, at or near Port Angeles harbor, and for a pipeline to move petroleum from those facilities to a point on the Washington-Idaho border. There are altered elements, but there is not a new application.

The Council has previously made consistency and compliance determinations for much of the berthing facilities site, for the tank farm site, and for the pipeline corridor east of the aforementioned King County point. Absent any substantial change in use on these parts of the total project site, the parties should not be made to relitigate issues the Council has already resolved. Further, no useful purpose would be served by rehearing these consistency and compliance issues. Issues have been presented, and the Council has determined them.

The Council has determined that the Green Point tank farm site is in some ways inconsistent with applicable county or regional land use plans and zoning ordinances. The pertinent statute [RCW 80.50.090] speaks of the site of a total project on a unitary basis. However, to say that the entire site is inconsistent on the basis of the previous tank farm determinations unreasonably stretches and strains the wording of RCW 80.50.090 and makes that wording inconsistent with RCW 80.50.020, which defines facilities the Council must address, and RCW 80.50.030 which mandates local governmental participation on the Council.

Application 76-2 seeks certification for a project consisting of several elements which by themselves could properly be the subject of an application. It passes through many jurisdictions, each with separate plans and ordinances, and most entitled to representations on the Council.

The Council's approach, as set forth in Order No. 529, that of dissecting the application on a facility-by-facility and jurisdiction-by-jurisdiction basis and looking separately at each part of applicable plans or ordinances which may affect

the site, is proper, is clearly superior to an indiscrete meshing of determinations applying differing plans and ordinances to different parts of the project, and should not be disturbed. The Council's approach derives from the rules on local government participation, the definitions contained in RCW 80.50.020, and the multifacility, multicounty nature of the application.

Date of Application

The date of application for the site now before the Council for determinations on consistency and compliance is March 30, 1979, the date on which Northern Tier first formally identified the new territory for which it requests certification. WAC 463-42-060 through 463-42-080 specify two alternate methods by which an application may be submitted. [In the absence of a specific amendatory rule, these provisions properly apply to an application for a new portion of a total project site previously before the Council]. In submitting its 1979 amendment, Northern Tier has adhered to the provisions of the method, contemplating a two-part submittal.

The date, July 6, 1976, is improper because the 1979 amendment identified territorial changes in the total project site as first delineated on July 6, 1976. Those changes were not considered by the Council in the course of issuing either Order 529 or Order 550, because those changes were not then before the Council. Most elementally, the Council's responsibility is to evaluate energy facility sites. Any such site is, according to RCW 80.50.020(4), the "location of an energy facility(.)" WAC 463-42-190 requires a legal description [i.e., metes and bounds] of the site. Any project site is therefore discrete, limited by a description in the application and by the Council's rules.

A project site cannot be evaluated until it has been identified. Though, as noted above, a site is not automatically coextensive with the boundaries of a county or the state, to conclude that the application date for present purposes is July 6, 1976, would be to conclude that had Island and Snohomish counties wished to address pipelines in their comprehensive plans they must have done so before July 6, 1976, though the initial application did not affect those counties. One would similarly conclude that by filing its initial application, Northern Tier had acquired certain vested rights in those two counties, though it did not include them in its July 6, 1976 application. Finally, one would be forced to conclude that the Council, to discharge its duty, should have held consistency and compliance hearings in Island and Snohomish counties, and indeed for the length and breadth of every county in the state, in response to the original Northern Tier application. The result of assigning a July 6, 1976 date to the 1979 amendments would be absurd and untenable, and the analysis leading to this conclusion applies

with equal force to the effect of imposing the July 6, 1976 date on the 1979 site changes announced for Clallam, Jefferson, and King counties.

To hold that the application date should be some unspecified future date when the Council determines that the application is complete is unacceptably inconsistent with Council procedures as set forth in pertinent statutes and rules. There is simply no such requirement in chapter 80.50 RCW or in the Council's rules. Northern Tier has certified that the application is substantially complete, which is part of its responsibility under WAC 463-42-060. Other than submission of the application itself, compliance with the provisions of WAC 463-42-060 is the only extant precondition to initiation of any Council prehearing or hearing procedures.

The Council's power [pursuant to RCW 80.50.040(1)] to investigate an application's sufficiency is not equivalent to an obligation to pass on whether the application complies with Council requirements. Because the Council's decision on the application's completeness necessitates a substantive evaluation of the application, the Council could not render such a determination absent its having held an evidentiary hearing in accordance with the dictates of chapter 34.04 RCW. The Council intends, pursuant to RCW 80.50.090(3), to hold such a hearing in the matter of Application No. 76-2. Following that hearing the Council, acting in accordance with RCW 80-.50.040(10)(a), will pass on the application's completeness in the course of the Council's recommendation to the Governor.

The effect of making the date of the application the date on which the Council determines completeness would be to delay the consistency and compliance hearings until the Council makes its recommendation to the Governor. It should also be noted that the provisions of WAC 462-42-070(2), to which Northern Tier has adhered, differentiate between an application "sufficient only for the purpose of the land use and zoning ordinance consistency determination" and an application suited for complete processing.

The third alternate suggested as the date of application for the 1979 amendment, June 15, 1979, the date on which amendatory material outstanding after March 30, 1979 was submitted is also unjustified. At least three inconsistencies exist between the June 15, 1979 date and Council procedures:

First, the Council has accepted the filing of the 1979 amendment as of March 30, 1979; second, as noted above, WAC 463-42-070(2) contemplates a bifurcated filing, such as the 1979 amendment; and third, March 30, 1979 was the date on which Northern Tier formally identified the site to the Council, to the parties, and to the general public. The third reason bears special consideration, because, were the Council to determine a date later than March 30, 1979, that determination

would give counties and regional governments an unwarranted opportunity, were they so inclined, to defeat RCW 80.50.090(1) and (2); clear purpose, which is to prevent any county or regional government from changing land use plans or zoning ordinances so as to affect a conforming energy facility site at any time after that site has been identified to the Council. Plans or ordinances adopted after March 30, 1979 do not apply.

From previous discussion, it can be summarized that March 30, 1979 is the date of application for the following portions of the total project site:

(1) All proposed portions dedicated to berthing facilities which are located on or adjacent to Ediz Hook, either inside or outside the limits of the City of Port Angeles, and not treated in Order No. 550;

(2) The proposed transfer pipeline route and corridor exiting from the berthing facilities, passing under Port Angeles harbor, and entering the Green Point tank farm as that route and corridor were identified in the 1979 amendment;

(3) The entire portion of the pipeline route and corridor proposed for Clallam County, from the point of exit from the Green Point tank farm to the Jefferson County border;

(4) Those portions of the pipeline route and corridor proposed for Jefferson, Island, and Snohomish counties; and

(5) That portion of the pipeline route and corridor proposed for King County which lies generally west and northwest of the aforementioned point lying some 8 miles east of North Bend.

July 6, 1976 is the application date for the rest of the Western Washington total project site. As discussed below, applicant's request to reconsider and alter the previous determination of inconsistency regarding the Green Point tank farm should be denied.

Applicable Land Use Plans and Zoning Ordinances

Although the testimony presented without objection by many intervenor parties on a multitude of plans and ordinances might suggest a harmonious view among all parties as to what constitutes an applicable land use plan and zoning ordinance, scrutiny of applicant's closing arguments for the several counties reveals substantial disagreement between applicant and other parties as to what land use plans and zoning ordinances the Council may properly consider while discharging its responsibility under RCW 80.50.090(1) and (2). Applicant's position on the issue is considerably more restrictive

than any of the positions advocated by other parties. Having considered the evidence, the Council in large part, agrees with applicant's arguments: Applicable county or regional land use plans and zoning ordinances are few.

The meaning of "county" in RCW 80.50.090 is self-evident. The term "regional" refers to noncounty local governments with power to control land use by planning and/or zoning. A "regional" government could encompass land within more than one county (a river basin commission), or land within a county (a city).

RCW 80.50.020(15) and (16), respectively, define "Land use plan," and "Zoning ordinance." The definitions are brief:

> RCW 80.50.020 Definitions.
>
> . . .(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a local government pursuant to chapters 35.63, 35A.63, or 36.70 RCW;
>
> (16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the State Constitution.

To be considered by the Council in its consistency and compliance hearings, a local law must fit within one or the other of the above definitions. Each definition contains a number of criteria. The criteria should be identified and compared with characteristics of the laws submitted to the Council in these proceedings.

A land use plan is either an entire comprehensive plan, or the land use element of a comprehensive plan. It must be adopted by a local governmental body, and it must be adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW. These three chapters treat a comprehensive plan as a planning document outlining a proposal for an area's development, normally in terms of assigning various general uses such as agriculture, commerce, industry, or housing to land segments, specifying desired concentrations for population and building, and setting forth similar design goals the governmental body may seek for the land area.

A comprehensive plan must be adopted by a legislative body having jurisdiction over the affected land area. A comprehensive plan serves as an outline, a guide for the structure and content of subsequent land use regulatory measures enacted as zoning ordinances. The comprehensive plan does not itself

attain the status of a zoning ordinance. By itself, a comprehensive plan does not ordinarily prohibit uses in the area for which it is drawn.

A zoning ordinance must have been officially adopted by a local governmental body as an ordinance. More precisely, it must have been adopted by the body pursuant to chapters 35.63, 35A.63, or 36.70 RCW, or Article XI of the State Constitution. The ordinance must regulate the use of land. A local governmental body regulates land by dividing the area over which it has jurisdiction into districts and then restricts uses of land in the districts, as well as number, size, location, and type of structures, lot size, consumption of open space, and similar items, all with the intent of stabilizing property uses and promoting consistent and compatible uses within selected areas.

Local governments regularly adopt and enforce regulatory ordinances intended to control aspects of community life other than the use of land. Some of these other regulatory ordinances treat subject matter incidental to the use of land. Building codes, for example, set construction, material, and equipment standards so as to affect the safety of buildings. Fire code standards are known to prevent or minimize fire hazards. Subdivision and platting ordinances set criteria which developers and land promoters must observe in planning their projects. Other ordinances may set terms for access to rights of way or policies governing agricultural lands. The genesis of many elements of these other ordinances may be the comprehensive plan. However, though these other ordinances may have some incidental impact on land use, they do not have as their purpose the control of uses of land, and their application to any set of circumstances is occasioned by a proposal, usually for a permit, of a different nature than one for a particular land use. A local government may create an effective land use plan or zoning ordinance without so titling the creation, but the correct scope of the Council's concern is with properly passed planning elements which set guidelines for the use of land, and properly passed ordinances which segment land areas and restrict purposes for which land in the segments may be used. Specific findings set forth below identify plans, ordinances, or classes of plans or ordinances introduced in this hearing as being within or without the scope of RCW 80.50.020(15) and (16).

Shoreline Management Master Programs submitted to the Council by various county and regional governmental bodies are not land use plans or zoning ordinances within the meaning of RCW 80.50.020(15) and (16). The Council has previously made this determination in this proceeding in orders No. 529 and No. 550, and nothing advanced in the 1979 hearings suffices for a change in analysis. A summary of certain characteristics which distinguish Shoreline Management Master Programs

from land use plans and zoning ordinances is appropriate. First, authority for these programs comes not from chapter 35.63, 35A.63, or 36.70 RCW, or from Article XI of the State Constitution, but rather from chapter 90.58 RCW. Second, Shoreline Management Master Program elements and determinations are subject to administrative review at the state level. Third, program provisions such as the substantial development permit process cannot be said to be consonant with the function of a comprehensive plan, while policy declarations such as those stated in each program amount to planning elements rather than regulatory measures.

The Meaning of "Consistent and in Compliance."

The Council's unvarying interpretation of the terms has been "permitted absolutely or permitted conditionally." That is to say that when an energy facility is permitted without reservation by provisions of a plan or code, or when a facility is permitted only if it meets certain conditions imposed by a plan or ordinance, the facility is consistent and in compliance with the applicable plan or ordinance. Only if a plan or code unequivocally prohibits a facility is that facility inconsistent and out of compliance.

GENERAL FINDINGS

[Pertaining to all counties and political subdivisions]

Having set forth above in discussion form certain findings and conclusions, the Council now enters summary findings and conclusions applicable to all five counties and political subdivisions thereof. Findings and conclusions set forth in the Memorandum portion are incorporated herein by this reference.

1. On March 30 and June 15, 1979, Northern Tier submitted an amendment to its Application No. 76-2, which amendment identified certain site changes in Clallam, Jefferson, and King counties, added site portions in Island and Snohomish counties, and eliminated portions in Mason, Thurston, and Pierce counties.

2. The portion of the 1979 amendment submitted on March 30, 1979 included completion of application forms as necessary, together with descriptions of the applicant, its project, the site, and an application completion schedule.

3. The Council accepted March 30, 1979 as the filing date for the 1979 amendment.

4. Many ordinances submitted by intervenor parties are not "land use plans" or "zoning ordinances." These ordinances, which do not contain land use planning elements and do not regulate the use of land, but rather set

performance standards for development of land include, for Clallam County: Ordinance No. 53, SEPA Implementation; Subdivision and Short Plat Regulation, as amended; Ordinance No. 103, Building, Plumbing and Mechanical Code; Ordinance No. 75, Fire Code; and,

for the City of Port Angeles: Ordinance No. 1886, SEPA Implementation; Ordinance No. 1935, Building, Plumbing and Mechanical Code; Ordinance No. 1880, Port Angeles Fire Code;

and for Island County: Island County Code, §12.12, Entry Permits; Island County Code, §12.16, Franchises for Use of County Rights-of-Way; Island County Code §12.20, Road Closures and Restrictions; Island County Code, §14.01, Building Plumbing and Mechanical Code; Island County Code, §14.02, Review Procedures of Guiding Development in Flood and Landslide Prone Areas; Island County Code, §14.03, Uniform Fire Code; Island County Code, §16.01, Plats Subdivisions and Dedications; Island County Code, §16.04, Short Plats and Short Subdivisions; Island County Code, §16.14, County Environmental Policy; Island County Code, §16.18, Historic Preservation Districts; and, §12.20, Road Closures and Restrictions; Island County Code, and,

for Snohomish County: Snohomish County Code Title XXIII, Environmental Policy. These ordinances may be considered at the contested case hearing required by RCW 80.50.090(3).

5. Plans, ordinances, or amendments thereto enacted after March 30, 1979, include for the City of Port Angeles: Ordinances No. 2017, Port Angeles Fire Code. For Jefferson County: The text and map of "Jefferson County Comprehensive Plan, A Policy Guide for Growth and Development"; and,

for Snohomish County: The City of Stanwood (Eastern Portion) Comprehensive Plan; and

for King County: Ordinance No. 4365, King County Sensitive Areas Ordinance; and Ordinance No. 4341, the King County Farmlands Ordinance.

6. The Shoreline Management Master Programs for Clallam County, the City of Port Angeles, Jefferson County, Island County, Snohomish County, the City of Lake Stevens, and King County are not county or regional land use plans adopted pursuant to chapters 35.63, 35.63A, or 36.70 RCW, or county of regional zoning ordinances adopted pursuant to chapters 35.63, 35.63A, or 36.70 RCW, or Article XI of the State Constitution. These programs will be considered in the contested case hearing.

7. The energy facility the applicant proposes is a privately owned, multiple-feature system intended to provide a means of transporting crude petroleum for members of the petroleum shipping public in exchange for tariffs paid. It thus provides a service to the public.

8. In the course of its hearings, the Council was presented, in exhibit form or by official notice, with the texts and maps of applicable county or regional land use plans and zoning ordinances. The applicant presented the expert testimony of consultants concerning land use and zoning matters, and also project design. Intervenors presented the testimony of individuals who administered various land use plans and zoning ordinances. Members of the public offered testimony.

GENERAL CONCLUSIONS

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

2. March 30, 1979 is the date of application for those portions of the proposed site newly identified in the 1979 amendment.

3. The plans and ordinances listed above in General Findings 4 and 5, and the Shorelines Management Master Programs listed in General Findings 6 have no applicability to the Council's "consistency and compliance" determinations, and in this proceeding, the Council need not consider them.

4. The energy facility applicant proposes is a public utility for purposes of these "consistency and compliance" proceedings.

5. No geographical area identified in the 1976 application as part of the proposed site and also identified in the 1979 amendment as part of the site should be considered by the Council in this proceeding. These areas have been treated in Order No. 529.

6. Discretion given administrators by SEPA to deny permits on the basis of adverse environmental impacts corresponds to the Council's power to deny certification and is not applicable in RCW 80.50.090(1) and (2) proceedings.

Those findings and conclusions, set forth above in the Memorandum portion or in the General Findings and General Conclusions portions of this order, which have pertinence to the determinations made in regard to particular counties or the City of Port Angeles, are by this reference incorporated in the appropriate specific finding and conclusions as if set forth in full.

1. Clallam County and City of Port Angeles

A. Findings

(1) The changed primary berth site as identified in the 1979 amendment still encompasses much of the berthing facilities site as proposed in the 1976 application. The primary alternative berthing facilities site, entirely within Clallam County, is a feature not identified before March 30, 1979. New equipment, most notably a bunker fuel storage barge, has been added to the berthing facilities site by the 1979 amendment. The submarine transfer pipeline site and the site of the pipeline exiting from the tank farm were changed by the 1979 amendment. The tank farm site has not changed.

(2) The primary or primary alternate berthing facilities together with the bunker fuel storage barge, the submarine transfer lines, the tank farm, and the pipeline, taken together as a total site, are substantially the same for Clallam County and the City of Port Angeles land use and zoning considerations as were the site elements identified in the 1976 applications.

(3) In 1973, Clallam County adopted a solid waste plan. This solid waste plan, Resolution No. 76, presents nothing of significance pertaining to consideration of the proposed site's consistency and compliance with land use plans and zoning ordinances.

(4) In 1971, Clallam County adopted a water and sewerage plan which generally provides for water and sewerage facilities. The plan presents nothing of significance pertaining to consideration of the proposed site's consistency and compliance with land use plans and zoning ordinances.

(5) The applicable land use plans and zoning ordinances of Clallam County consist of the following:

(a) Clallam County Comprehensive Plan, adopted by Resolution No. 12, April 20, 1967; and amended by Ordinance No. 70, July 8, 1976;

(b) Clallam County "Temporary Interim Zoning Maps," adopted December 20, 1973;

(c) Clallam County Flood Plain Zoning for Dungeness River, Resolution No. 37, adopted September 12, 1969.

(6) The applicable land use plans and zoning ordinances of the City of Port Angeles consist of the following:

(a) Port Angeles Comprehensive Plan, Ordinance No. 1885, July 6, 1976; as amended by Ordinance No. 1893, October 5, 1976; as amended by Ordinance No. 1965, March 21, 1978;

(b) Port Angeles Zoning Ordinance No. 1709, December 15, 1970; as amended by Ordinance Nos. 1894 and 1895, December 15, 1976; as amended by Ordinance No. 1973, May 2, 1978; as amended by Ordinance 1996, September 19, 1978;

(7) The Clallam County Comprehensive Plan is a general policy guideline disigned to direct the future growth and development of the County. It contains several illustrative charts and maps, including a map entitled "Land Use."

(8) On July 8, 1976, following hearings by the Planning Commission and Board in May, June, and July of 1976, the Clallam County Board of Commissioners adopted as part of the Clallam County Comprehensive Plan Ordinance No. 70, which would prohibit an oil port and related facilities from being constructed in Clallam County. The prohibition is not vaguely stated in the ordinance. The history of its passage does not with reliable clarity reflect that the ordinance was passed with exclusionary intent rather than as part of the county's ongoing effort to direct growth and development.

(9) The Clallam County "Temporary Interim Zoning Maps" of December 20, 1973 regulates land in the eastern portions of the county, including the area traversed by the pipeline which exists from the tank farm. The pipeline would be located in areas zoned "residential" and "agricultural."

(10) On March 2, 1972, Clallam County adopted a Temporary Interim Zoning Ordinance (Ordinance No. 41). The text of Ordinance No. 41 was subsequently declared to be invalid by a decision of the Washington State Supreme Court in the case of Byers v. Board of Clallam County Commissioners, 84 Wn.2d 796 (1974).

(11) Clallam County's "Temporary Interim Zoning Maps" contain no provisions which would preclude the location of an oil pipeline and associated facilities.

(12) On September 12, 1969, Clallam County adopted flood plain zoning for the Dungeness River (Resolution No. 37). Resolution No. 37 lists specific uses which are permitted within the flood plain of the Dungeness River, which is crossed by the pipeline portion of the proposed project. A pipeline is not a use literally permitted under the terms of the ordinance.

(13) The applicant proposes to bury the proposed pipeline under the flood plain of the Dungeness River at a point below the 100-year scour depth. Construction of the project in such a manner would be consistent with the purposes expressed in Resolution No. 37.

(14) The Port Angeles Comprehensive Plan of July 6, 1976 is a general policy plan which also provides land use maps and charts illustrating the policies within the plan. The illustrative land use map in the plan shows the Port Angeles Harbor as industrial.

(15) Port Angeles amended its Comprehensive Plan in October 5, 1976 to provide that the establishment of an oil port in the City of Port Angeles is hazardous to the community and detrimental to the environment and general ecology of the area and accordingly prohibited.

(16) Port Angeles, on March 21, 1978, further amended its Comprehensive Plan to provide that petroleum refineries and other energy-related facilities should be prohibited within the City of Port Angeles.

(17) The City of Port Angeles Zoning Ordinance No. 1709 zoned those portions of Ediz Hook where the proposed facility would be located within the city as M-2 Industrial District Zone. Until amendment of the zoning text on

December 15, 1976, the M-2 zone permitted an industrial berthing facility.

(18) The City of Port Angeles on December 15, 1976 amended the M-2 zone to prohibit oil port facilities. This was an implementation of the related comprehensive plan amendment.

(19) The City of Port Angeles, on May 2, 1978, further amended the M-2 zone to prohibit petroleum refineries and related energy facilities. This was also an implementation of an earlier comprehensive plan amendment.

(20) Construction and operation of the Northern Tier facilities in Clallam County and the City of Port Angeles would also involve the following land uses: storage and stockpiling of equipment and materials, dredging and depositing of waste materials; borrow pits for sand and gravel; and other industrial uses. These uses will be considered in the contested case hearing.

(21) Construction of the Northern Tier project on the site would necessitate relocation of certain existing industrial and recreational uses.

B. Conclusions

(1) There is a single application before the Council. While the application has been amended, it has not been withdrawn, and no new application has been submitted for it.

(2) March 30, 1979 is, for the purpose of determining consistency and compliance with Clallam County and City of Port Angeles land use plans and zoning ordinances of those geographical portions of the site first identified in the 1979 amendment, the date of application. For territory first identified in the original application and still remaining in the site after the 1979 amendment, the date of application is July 6, 1976.

(3) The Clallam County Solid Waste Plan is not relevant to the proposed project. However, insofar as it applies to the proposed project, the proposed project is consistent and in compliance with it.

(4) The Clallam County Water and Sewerage Plan is not relevant to the proposed project. However, insofar as it applies, the proposed project is consistent and in compliance with it.

(5) Those territorial portions of the primary berthing facilities which were first identified in the 1979 amendment and which lie within the City of Port Angeles, together with any portions of the submarine transfer pipeline route which lie within the city are inconsistent and not in compliance with the Port Angeles Comprehensive Plan oil port and oil refinery amendments of October 5, 1976 and March 21, 1978. The berthing and unloading facilities constitute an oil port and energy facility which would be prohibited by such amendments.

(6) Those territorial portions of the primary berthing facilities first identified in the 1979 amendment and which lie within the City of Port Angeles, together with any portions of the submarine transfer pipeline route which lie within the city, are inconsistent and not in compliance with the Port Angeles Zoning Amendments of December 15, 1976 and May 2, 1978. Such facilities consitute oil port and energy facilites prohibited by such zoning.

(7) Those portions of the primary alternate berthing facilities lying within the City of Port Angeles are not zoned by the city.

(8) Territorial portions of any berthing facilities first identified in the 1979 amendment and proposed for unincorporated areas of the harbor, together with portions of the submarine transfer line proposed for portions of the harbor, would be inconsistent and not in compliance with the Clallam County Comprehensive Plan as amended July 8, 1976, because these facilities are prohibited by the plan.

(9) There is no Clallam County zoning ordinance covering the unincorporated portions of Port Angeles Harbor.

(10) The pipeline after leaving the tank farm within the unincorporated portions of Clallam County is inconsistent and not in compliance with the Clallam County Comprehensive Plan as amended July 8, 1976.

(11) The pipeline with associated facilities is consistent and in compliance with the Clallam County Interim Zoning Maps.

(12) The proposed pipeline is not included in the list of designated uses permitted in the Clallam County Flood Plain Zoning for the Dungeness River, Resolution No. 37. However, the construction of a buried pipeline under the flood plain is consistent with all the underlying purposes of the flood plain zoning ordinance.

2. Jefferson County

A. Findings

(1) On June 28, 1971, Jefferson County adopted a county comprehensive plan with text and map. The plan was still in effect as of March 30, 1979. The plan contains no provisions precluding the location of an oil pipeline and associated facilities.

(2) Jefferson County has not adopted a zoning ordinance and has not otherwise classified land for specific uses.

B. Conclusion

(1) The proposed pipeline and associated facilities are consistent and in compliance with county or regional land use plans or zoning ordinances in effect on the date of application for the changed Jefferson County pipeline site.

3. Island County

A. Findings

(1) On December 5, 1966, Island County adopted an amended Interim Zoning Ordinance. On September 27, 1971, the County revised the Interim Zoning Map accompanying the ordinance. In all districts or classifications established in the ordinance, a public utility is a conditional use. The ordinance does not define the term "public utility."

(2) Island County has adopted two phases of a Comprehensive Plan. The first phase, describing existing conditions, was enacted in 1974. The second phase, setting forth planning

policy, was enacted in 1977. The Island County plan sets forth a definition of "public utility," but the writers of the Island County Interim Zoning Ordinance could not have had the Comprehensive Plan definition in mind when they drafted the zoning ordinance.

(3) The Island County Comprehensive Plan treates only those local utility uses over which county or municipal governments would either provide, have primary regulatory responsibility for, or have great concern for. The plan does not address utilities such as telephones and natural gas over which the county has no primary responsibility.

(4) The Island County plan sets forth certain goals and policies representing the direction in which the county wishes to guide development. The plan does not prohibit crude petroleum pipelines.

(5) The City of Oak Harbor adopted an updated Comprehensive Plan in October, 1973. In October, 1977, the city adopted a Comprehensive Plan Map. The city has not extended the scope of its planning to include the portion within the proposed site.

(6) By Ordinance No. 510, passed May 2, 1978, the City of Oak Harbor amended its zoning ordinance. The city adopted an official zoning map in December, 1978.

B. Conclusions

(1) The proposed pipeline and associated facilities are consistent and in compliance with the Island County Interim Zoning Ordinance.

(2) The proposed pipeline and associated facilities are consistent and in compliance with the Island County Comprehensive Plan. Conditions on the project, appropriate in light of goals stated in the plan, are a proper topic for the contested case hearings.

(3) The proposed pipeline and associated facilities are consistent and in compliance with the City of Oak Harbor's amended zoning ordinance, and with that city's Comprehensive Plan.

4. Snohomish County

A. Findings

(1) Snohomish County zoning code, Title 18 of the Snohomish County Code was adopted in 1966 and amended through March 30, 1979.

(2) The proposed Northern Tier pipeline route passes through areas zoned Forestry and Recreation, SCC 18.66; Mineral Conservation, SCC 18.70; and Flood Hazard, SCC 18.68.

(3) The Forestry and Recreation zone; the Mineral Conservation zone; and the Flood Hazard Zone Floodway portions, prohibit any utilities in their zones. Utilities are neither permitted uses, nor are they provided for under the conditional use classifications of these zones. None of these zones blocks the entire pipeline corridor. The pertinent Forestry and Recreation and Mineral Conservation zones do not extend across the width of the corridor, while passage may be made over or under the flooway portion of the pertinent flood hazard zone.

(4) The Snohomish County Zoning Code recognizes both public and private utilities. The Northern Tier Pipeline proposal, intended to provide a freight transportation system for members of the crude petroleum shipping public on the basis of tariff payments, a privately owned public utility for purposes of land use plans and zoning ordinances in Snohomish County. As such it is permitted or conditionally permitted in all zoned classifications save those identified in Snohomish County Finding No. 3 above.

(5) The Snohomish River Basin Mediated Agreement of 1978 sets locational and design criteria for facilities located in the Snohomish River Basin. The criteria are intended to achieve certain goals pertaining to location, engineering, flood proofing, construction, and maintenance in the interaction of facilities and the basin environment. The agreement does not exclude facilities such as crude petroleum pipelines.

(6) A Stanwood Area Comprehensive Plan, a City of Stanwood Comprehensive Plan (western portion, and a City of Stanwood Zoning Ordinance were

in effect as of March 30, 1979, as was a Stanwood Comprehensive Park Plan. All of these ordinances impose conditions on construction of a facility such as applicant proposes, but none prohibit it.

(7) An Arlington Area Plan, a Town of Arlington Comprehensive Plan, and a Town of Arlington Comprehensive Zoning Ordinance were in effect as of March 30, 1979. The Arlington Area Plan and the Town of Arlington Comprehensive Plan state conditions applicable to the project. The Arlington zoning ordinance does not permit, by recognition or by omission, transmission utilities. The area regulated by the Arlington zoning ordinance does not include the width of the corridor or the proposed route at the corridor's centerline.

(8) A Marysville Area Plan was in effect as of March 30, 1979. The plan contains no prohibition against facilities such as applicant proposes.

(9) A Snohomish/Lake Stevens Area Plan, a 1990 Comprehensive Plan for Snohomish/Lake Stevens, and Lake Stevens Zoning Regulations were in effect as of March 30, 1979. Nothing in any of these plans and ordinances prohibits a facility of the sort herein proposed.

(10) A Skykomish Valley Area Plan and a Skykomish Valley Comprehensive Plan were in effect as of March 30, 1979. These two plans contain no provision which would prohibit the proposed facility.

(11) As of March 30, 1979, a Snohomish County 1990 Comprehensive Park Plan Map was in effect. The map contains nothing which would prohibit the proposed project.

(12) No tank farm is proposed by Northern Tier for Snohomish County.

(13) "Goals and Policies for Regional Development" (February, 1977) and "Regional Development Plan," (January 25, 1979) are regional planning documents created under the auspices of the Puget Sound Council of Governments. Nothing in the content of these documents acts as a prohibition against the construction of a crude petroleum pipeline in Snohomish County.

B. Conclusions of Law

(1) The proposed facility is inconsistent and not in compliance, across parts of the corridor, with Forestry and Recreation, Mineral Conservation, and Floodway portions of flood hazard zones as identified in the Snohomish County Zoning Code, and is also not consistent and not in compliance across part of the corridor with the Town of Arlington zoning ordinance. At no point is an entire plane of the corridor inconsistent or not in compliance with land use plans or zoning ordinances of Snohomish County or its political subdivisions.

(2) Except for those land use plans and zoning ordinances identified in Snohomish County Conclusions of Law No. 1 above, the proposed facility site's Snohomish County portion, first identified on March 30, 1979, in the 1979 amendment, is consistent and in compliance with Snohomish County land use plans and zoning ordinances, with multicounty regional plans affecting Snohomish County, and with the land use plans and zoning ordinances of municipal regional governments within Snohomish County.

5. King County

A. Findings

(1) King County adopted a comprehensive plan in 1964, and supplemented that plan through 1975. The King County Comprehensive Plan, insofar as it addresses facilities such as that applicant proposes, sets forth goals and objectives. The plan groups transmission facilities and freight transportation similar to crude petroleum pipelines as public utilities.

(2) King County enacted a zoning code and has updated the code. The county has adopted zoning maps which accompany the code.

(3) The definition of "public utility" in the King County Zoning Code places no geographic limit as to the qualifying area in which public service must be performed. Likewise, the definition sets no limit on type of commodity or service. The code definition addresses pipelines and transporters of freight as public utilities.

(4) Public utilities are exempt uses in all county zoning classifications and are permitted in all areas designated by the comprehensive plan.

(5) Since passage of the zoning ordinance, a petroleum products pipeline has been permitted in King County.

(6) The King County agricultural lands policy ordinances set conditions for facilities such as that applicant proposes. These agricultural lands policy ordinances contain no provisions prohibiting pipelines within the portion of the King County site first identified in the 1979 amendment to the Northern Tier application.

(7) The Snohomish River Basin Mediated Agreement of 1978 sets locational and design criteria for facilities located in the Snohomish River Basin. The criteria are intended to achieve certain goals (see Snohomish County Finding No. 5) in the interaction of facilities and the environment of the basin. The Agreement does not exclude facilities such as crude petroleum pipelines.

(8) "Goals and Policies for Regional Development," (February, 1977), "Regional Development Plan," (January 25, 1979), and "King Subregional Plan," (December 14, 1978) are three regional planning documents created under the auspices of the Puget Sound Council of Governments. Nothing in the content of these documents acts as a prohibition against the construction of a crude petroleum pipeline in King County.

(9) The City of North Bend has adopted an Interim Zoning Code, an Official Zoning Map, Area Zoning Guidelines, and Adopted Zoning Maps for the North Bend study area by the county. The city ordinance recognizes pipelines as a permitted conditional use. The county guidelines and maps does not address pipelines.

B. Conclusions of Law

(1) The project site's changed King County portion, first identified on March 30, 1979, in the 1979 amendment, is consistent and in compliance with King County land use plans and zoning ordinances, with regional plans affecting King County, and with the zoning code and map of the City of North Bend.

MEMORANDUM

Insofar as the Shoreline Management Act of 1971 and its effect on the issues in this matter, attention is directed to the provisions of chapter 80.50 RCW, with particular reference to RCW 80.50.110, and chapter 90.58 RCW of said act, with particular reference to RCW 90.58.140(a). The Council recognizes that the future contested case hearing mandate by RCW 80.50.080 is designed, and will be utilized to consider provisions of the nature of those provided for by the Shoreline Management Act, as well as by other state statutes that are superseded by the provisions of chapter 80.50 RCW.

In the course of the above hearing sessions, the Council encountered a number of ordinances wherein conditional or unclassified use provisions may have to be exercised for the proposed pipeline and associated facilities; these provisions may include prerequisite conditions to be fulfilled. In arriving at its determinations, the Council recognizes that the future contested case hearing mandated by RCW 80.50.090 is designed, and will be utilized, to consider provisions of the nature provided for by conditional or unclassified use provisions of zoning ordinances. The issue of fulfillment or nonfulfillment will be evaluated in the course of hearing in connection with formulation of Council recommendations to the Governor as to whether or not the proposed pipeline should be certificated.

ORDER

IT IS HEREBY ORDERED That, insofar as Clallam County and the City of Port Angeles:

1. The changed portion of primary berthing facilities first identified on March 30, 1979, and the primary alternative berthing facilities and rerouted submarine transfer line first identified on March 30, 1979, are consistent and in compliance with county zoning ordinances but are inconsistent and not in compliance with City of Port Angeles zoning ordinances and with county or City of Port Angeles land use plans in effect on March 30, 1979.

2. The rerouted pipeline exiting from the tank farm is inconsistent and not in compliance with the Clallam County Comprehensive Plan in effect as of March 30, 1979. The rerouted pipeline is consistent with Clallam County zoning ordinances except for an inconsistency across the pipeline corridor in regard to the Dungeness River Flood Hazard Zone.

Insofar as Snohomish County:

> The proposed pipeline corridor is consistent and in compliance with county or regional land use plans and all but two zoning ordinances in effect as of March 30, 1979, but is inconsistent and not in compliance across part of its corridor with the Snohomish County Zoning Code and the Town of Arlington Zoning Code in effect as of March 30, 1979.

Insofar as Jefferson, Island, and King Counties:

> Those portions of the pipeline corridor first identified on March 30, 1979 are consistent and in compliance with county or regional land use plans or zoning ordinances in effect as of March 30, 1979.

Dated at Olympia, Washington, and effective this 26th day of November 1979.

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 Ryan
Assistant Attorney General