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October 26, 2018

Meg Bommarito, Regional Planner
Washington Department of Ecology
300 Desmond Dr SE
Lacey, WA 98503

SENT VIA WEBFORM

RE: PacWest Scoping Comments

Dear Ms. Bommarito:

These comments are sent on behalf of the Environmental Law and Land Use Clinic of University Legal Assistance in regard to the scoping process for the PacWest Smetler Proposal in Newport, Washington.

We appreciate the opportunity to provide these comments as part of the SEPA process, and requests that the comments be included in the Administrative Record and addressed or incorporated as appropriate as Ecology prepares its scoping report and begins preparation of a draft EIS.

A. CONSIDERATION OF ALTERNATIVES

Ecology must use the scoping process to further define and clarify a reasonable range of alternatives to be analyzed in the EIS to facilitate a true public discourse and ensure compliance with SEPA.

Without limiting this consideration, these alternatives should include, at a minimum, consideration of the following:

- (1) Whether to select the “no action” alternative;
- (2) Alternative economic development proposals;
- (3) Whether the Project can proceed without impacting any natural resources or cause environmental impacts;
- (4) Whether locating the smelter in an alternative location would minimize impacts associated with the transport of the coal and other resources necessary for smelter operations and better serve the public interest by mitigating economic or environmental impacts or by limiting the cumulative impacts;
- (5) Whether smelter configuration will minimize the potential for environmental injury, harm to tribal, private, and public property, and safety risks to communities near the smelter; and
- (6) Whether to reject the smelter all together as contrary to the public interest.

“Gonzaga Law students pursuing justice. Finding solutions.”

Other alternatives to the smelter are, no doubt, also available, but Ecology must at a minimum consider the possibilities listed above, as they are reasonable and bear directly on the public interest findings before it.

B. CUMULATIVE IMPACTS OF THE PROJECT WITH THE COUNTY'S LAND USE ACTION

Ecology's EIS must consider cumulative impacts to the environment associated with Pend Oreille County's proposed comprehensive plan amendment removing the Public Lands designation from a large portion of property in the County. That amendment was developed, at least in part, to facilitate the development of the smelter and accordingly, it is a related action that must be cumulatively assessed.

Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time.

Ecology must evaluate the environmental impacts that are probable as a result of the change proposed. Those impacts should be measured in terms of the maximum potential development of the property under the changed land use designation. See *Ullock v. Bremerton*, 17 Wn. App. 573, 575, 565 P.2d 1179 (1977). Accordingly, Ecology must analyze the maximum potential development of the redesigned properties that could occur as a result of the comprehensive plan amendment.

It is the combination of these effects, and any resulting environmental degradation, that must be the focus of cumulative impact analysis. While impacts can be differentiated by direct, indirect, and cumulative, the concept of cumulative impacts considers all disturbances since cumulative impacts result in the compounding of the effects of all actions over time.

It is also important to note that Ecology must also analyze the cumulative effects of the increases traffic (train and truck) as part of the cumulative impacts analysis as well – including safety impacts, air impacts, and how the increase in coal and oil train traffic contributed cumulatively with the train traffic associated with PacWest. Transportation including rail transportation, motor vehicles including trucks, walking and bicycling, and transit are elements of the environment and so impacts on these facilities and activities are environmental impacts. WAC 197-11444(2)(c)(i), (ii), (iii), (v). Traffic hazards are an element of the environment and so uses and activities that would create traffic hazards are environmental impacts. WAC 197-11-444(2)(c)(vi).

Lastly, Ecology must analyze complete development of the facility and not a proposal with any less than the maximum potential boilers at the site.

C. FAILURE TO COMPLY WITH SEPA REGULATIONS

Regulations that govern Ecology's implementation of SEPA, WAC 197-11-055, state that the SEPA process should begin when there is a proposal to evaluate – a proposal exists “when an agency is presented with an application or has a goal ... the environmental effects can be meaningfully evaluated.”

There is no application that has been submitted for the smelter and Ecology cannot have a goal of building a smelter – building a polluted industrial site is outside the agency's statutory authority.

It is unclear to the public why Ecology is so zealous to accommodate this Canadian corporation who seeks to build a significant pollution source in our region.

Moreover, there is real questions as to whether that PacWest legally owns the property in question. There is active litigation over the unlawful land transfers by the County of the Public Utility District to PacWest.

SEPA should not move forward until there is an actual application and until the legal issues surrounding this property is resolved.

D. IMPACTS TO THE LOCAL COMMUNITY

By its nature, the smelter will emit carbon monoxide, carbon dioxide, nitrogen oxide, sulfur dioxide, and silica dust. These substances are known to contribute to acid rain and associated human health issues. The smelter will impact a small rural community and have significant impacts on the Kalispel Tribe, which is renewing itself following decades of disenfranchisement. The smelter poses a direct threat to the health of their children and to their future generations.

Ecology must impact the environmental justice impacts of this proposal on the Tribe and the impacts to the community and economy of Newport and the surrounding area. Also Ecology must analyze cultural resource impacts. Cultural preservation is an element of the environment and so impacts to cultural resources is an environmental impact. WAC 197-11-444(2)(b)(vi). Please evaluate the impacts of the smelter on the cultural properties on or near the site. Please identify the cultural impacts of the smelter on cultural resources. Please identify the mitigation necessary to address these impacts and require smelter proponents to pay for and implement this mitigation.

E. AIR QUALITY AND CLIMATE IMPACTS

From a global perspective, the silicon smelter will become one more contributor to greenhouse gases accelerating the onset of climate change. Emissions data recently disclosed in PacWest's Draft PSD Modeling state that the smelter would generate 320,000 tons of greenhouse gases, 760 tons of sulfur dioxide, and 700 tons of nitrogen oxides each year.

This facility would be the State's 5th largest emitter of sulfur dioxide, 12th largest emitter of nitrogen oxides, and 15th largest of emitter of greenhouse cases.

This is roughly equivalent to the amount of greenhouse gases produced by 65,000 cars driving 11,000 miles each through the streets of Newport per year, and the amount of sulfur dioxide generated by burning 165,000 woodstoves continuously for 365 days per year on one acre.

The Kalispel Tribe, in a letter dated November 2017, explains:

Even if HiTestSand's air quality modeling suggests that its emissions will meet applicable regulations, there is a possibility that its actual emissions will not. By that time, the \$300 million facility will have been built and be, for all intents and purposes, too big to fail. HiTestSand will be given time and leeway to fix any emission violations. Monitoring corrective actions will take even more time. In short, our community may have to endure elevated levels of air pollution for years before the smelter's actual emissions are adequately controlled or the facility is shut down.

Moreover, the Spokane Tribe has a designated Class 1 Airshed designation and the Kalispel Tribe designation is imminent.

Air quality is an element of the environment and so impacts on air quality are environmental impacts. WAC 197-11444(1)(b)(ii). Ecology must analyze the air and climate impacts of this proposal. This means considering consistency with the tribal airshed designations. It also means that Ecology must consider the cumulative impacts of the transportation of the raw materials, emissions from the facility, and all other foreseeable impacts. Ecology also cannot assume that the impacts will be offset because the material will be used to make solar panels absent a solid contractual commitment that it will in fact occur. PacWest has, at best, said it was possible that its materials would be used to manufacture solar panels.

Ecology's SEPA process for the Gateway Pacific Terminal sets a precedent for how climate impacts of this project must be analyzed – the EIS must include:

- Analysis of global impacts of the transportation and ultimate use of the products manufactured at the facility.
- Analysis of the global greenhouse gas emissions and climate change impacts of the combustion of coal.
- Analysis of railroad transportation impacts, including a “detailed assessment” of railroad impacts on communities throughout the state, and “general analysis” of railroad impacts out-of-state.

F. WATER IMPACTS

There are significant impacts associated with water use. At the Sept. 11, 2017, meeting in the Newport City Council Chambers, PacWest said that 300 gallons of water per day would be needed for the proposed smelter. Later estimates were reported to be about 8,000 gallons per day. In January 2018, the company requested 240,000 gallons of water per day from City of Newport.

Where will the water come from? The property that HiTestSand has purchased for the proposed smelter straddles the Little Spokane and the Pend Oreille watersheds. The Little Spokane watershed is already an over-allocated water system that has to go on water rationing at certain times of the year.

Use of ground water will impact instream flows in the Spokane River and could be contrary to the new instream flow rule. Moreover, there are significant legal questions as to whether use of water in an industrial facility amounts to a “domestic use.”

Ecology must analyze the impacts of the water withdrawals on flows in the aquifer and the Spokane River.

G. TRANSPORTATION IMPACTS

Truck transportation of raw materials is also an area of concern, even though the actual number of delivery vehicles per day has come under dispute. PacWest estimates daily materials delivery at 37 trucks per day. This will impact the City of Newport in the form of noise and fossil fuel pollution, and wear and tear on the highways and Newport's roads.

Blue gem coal needed for the smelting process will be brought in by rail. The transport of coal continues to be hazardous and accidents are well documented. An Assessment of the Health and Safety Implications of Coal Transport lists the serious risks in detail. The report documents how trains, trucks, and marine vessels hauling coal release toxic air pollutants, including nitrogen oxide and particulate

matter into the air, primarily through diesel exhaust.

Nitrogen oxides and PM2.5 are linked to stunted lung development and hospital admissions for potentially fatal cardiac rhythm disturbances. Diesel particulate matter that is less than 2.5 microns in size, is emitted by coal trains increasing the probability of heart attacks, ischemic heart diseases, disturbances of heart rhythm, and congestive heart failure. In addition, some of the coal dust that leaves the trains will enter the surface stream system, degrading water quality.

Impacts of transportation – environmental, increased traffic, and safety must all be analyzed.

H. LAND USE COMPATIBILITY

The PacWest site is currently zoned as public lands and located outside of the Newport Urban Growth Area. Under the County zoning code, no industrial development is allowed in the public land zone. Even if it is rezoned, the Growth Management Act prohibits industrial development outside of an urban growth area in rural areas and prohibits cities from providing water and sewer services.

Moreover, it is unclear, as discussed above, how the proposed change to land use advanced by Pend Oreille County will be analyzed. The County has proposed removing the public lands designation for land across the County. The entirety of this proposal must be analyzed – including changes to the PacWest site. SEPA requires that there is an analysis of the maximum potential development of the proposal. By starting this process too early, Ecology is inheriting the responsibility to analyze the cumulative impacts of the land use changes – include this unwise proposal to simply eliminate the public lands designation.

SEPA specifically provides that Ecology must analyze land use compatibility of this proposal. Land and shoreline use, including land use plans, are elements of the environment and so impacts on land use and land use plans are environmental impacts. WAC 197-11-444(2)(b), (i), (ii), (vii).

I. SOCIOECONOMIC CONCERNS

If the smelter is completed, housing property values may decrease. The smelter will deter economic development, decrease property values, cause the loss of tourism and recreation related jobs, and result in a generally reduced quality of life around the area. The EIS must account for the direct and indirect impacts of the smelter on economic development and decreased property values. This analysis should include an assessment of the attendant impact on state and federal sales and property taxes.

Further, studies demonstrate that the introduction of industrial facilities may have a number of other negative socio-economic impacts on the surrounding community:

Compared to neighborhoods with similar housing and demographic characteristics, neighborhoods within two miles of plants experienced 3-7 percent decreases in housing values and rents with some evidence of larger decreases within one mile and for large capacity plants. In addition, there is evidence of taste-based sorting with neighborhoods near plants associated with modest but statistically significant **decreases in mean**

household income, educational attainment, and the proportion of homes that is owner occupied.¹

Though this study focused on the impacts of a power plant, it is likely that development of a large smelter will have similar effects on the surrounding community.

The construction of the smelter will result in an influx of workers who will temporarily relocate to the areas around the project's site. As demonstrated by the experience of tribes located near the recent oil boom, transitory workers can lead to an increase in crime, including sexual crimes, such as rape, physical abuse, sexual harassment, and human trafficking. The impacts of increase crime associated with temporary workers must be analyzed.

Lastly, the smelter site is outside the boundaries of any current fire district. Ecology must analyze emergency response at the site in the event of a fire, spill of toxic substance, or failure of wastewater ponds.

J. NOISE AND LIGHT POLLUTION

Smelters like the one proposed operate around the clock, lighting the night sky and creating loud noises as they manufacture silicon. Noises and releases or potential releases of materials into the environment affect public health are elements of the environment and so these impacts are environmental impacts. WAC 197-11-444(2)(a), (i), (iii). The EIS must examine how noise and light pollution will harm the local community, as well as local fish and wildlife. The EIS must also disclose the impact of noise and light pollution from the smelter. Specifically, Ecology's analysis should evaluate the direct, indirect, and cumulative impacts of noise and light pollution:

- During the construction phase;
- In the course of the operational life; and
- During maintenance.

The EIS should include a comprehensive discussion of the impacts of noise and light pollution from the smelter on public health, including the impacts of light and noise pollution on sleep and attendant health consequence. The EIS should also assess the impact on aquatic resources and wildlife, including ESA-listed species

K. ENERGY CONSUMPTION

The smelter will require huge amounts of energy. The company currently plans to purchase power from the grid. Regardless, the EIS must address the environmental impacts of generating the power that would fuel the facility. The EIS should also assess the direct, indirect, and cumulative impacts of energy sources that currently generate power for the grid, including hydroelectric power.

¹ Lucas W. Davis, *The Effect of Power Plants on Local Housing Values and Rents*, 93(4) REV. OF ECON. & STAT. 1391 (2011) (emphasis added).

In conclusion, please fully consider the comments made above. Thank you for your careful attention in this very important matter. There is an extraordinary level of public interest in this process and the harmful impacts caused by the proposed smelter will occur at the local, regional, and global scale. We appreciate your attention to this issue.

Sincerely,

UNIVERSITY LEGAL ASSISTANCE

A handwritten signature in black ink, appearing to read 'RIS', with a long horizontal stroke extending to the right.

Rick Eichstaedt
Director of Environmental Law and Land Use Clinic/Attorney