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August 30, 2022

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Via Email:
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Re: Western States Petroleum Association Comments on the City of Vancouver's August 16, 2022, SEPA Determination of Environmental Non-significance for Vancouver Fossil Fuel Standards Proposal

Mr. Snodgrass:

Western States Petroleum Association (WSPA) again appreciates the opportunity to provide comments on the City of Vancouver's (City) Determination of Non-significance (DNS) for the Vancouver Fossil Fuel Code Standards Proposal (Proposal). The Proposal consists of proposed zoning code amendments, Planning Commission version (revised July 5, 2022).

WSPA filed comments on, and appealed, the previous DNS for an earlier version of the Proposal. The City withdrew the prior DNS and reissued a new DNS concluding:

The City of Vancouver has determined that this proposal will not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030. An Environmental Checklist is available from City staff.

This determination is based on the following findings and conclusions: Uses would be prohibited in most districts in the city and where allowed in the Industrial Heavy Zoning District would be regulated according to development standards addressing size, location, operation, and health and safety.

The current DNS suffers from the same infirmities as the prior DNS as detailed in this comment letter.

WSPA is a nonprofit trade association representing companies that explore for, produce, refine, transport, and market petroleum and petroleum products in five western states, including Washington. WSPA members have operated petroleum terminals in the City for many years. These facilities supply fuel to the region, provide critical emergency infrastructure, and have many positive impacts on the economy, including providing family-wage jobs.

WSPA and operators of facilities targeted by the existing moratorium and the Proposal have previously outlined for the City the significant harm these regulations are having and will continue to have on structure safety, transition to lower-carbon fuels, reduction of greenhouse gases

(GHG), improvements to existing infrastructure, and displacement of fuel transportation to less-safe methods—all of which have direct and significant environmental impacts.

In completing a revised environmental checklist (Checklist) and issuing the DNS, the City has still yet to analyze these undesired impacts. WSPA respectfully asks the City to withdraw the DNS, issue a Determination of Significance (DS), and prepare an Environmental Impact Statement (EIS).

1. The City failed to acknowledge, investigate, and assess the full range of potential environmental impacts.

At the heart of SEPA is the legislative mandate that governmental entities “[u]tilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the environment[.]” RCW 43.21C.030(a). To that end, agencies and local governments must include with every legislative proposal a “*detailed* statement” fully analyzing environmental impacts and alternative courses of action. RCW 43.21C.030(c) (emphasis added).

Accordingly, throughout the SEPA process, cities are required to “*carefully consider* the range of probable impacts, including short-term and long-term effects[.]” both inside and outside the local jurisdiction and state.¹ A city’s careful consideration must include both direct and indirect consequences.²

As part of the threshold determination process, a city must identify, investigate, and thoroughly consider all potential environmental impacts.³ Obviously, this requires the City to first fully evaluate the operation and future development effects of a proposed legislative amendment.⁴ In determining the likely environmental impacts therefrom, a city is not permitted to blindly rely on its uninformed completion of an environmental checklist, but must obtain all information necessary to make an informed decision.⁵

The City has still not fulfilled these obligations here. Its completion of the Checklist and analysis of the potential environmental impacts of the Proposal is inadequate on its face. First, the City fails to include any analysis in the Checklist on how the Proposal will adversely impact existing facilities. The City, for instance, does not discuss how designating existing facilities as nonconforming uses will complicate and inject significant uncertainty into the review and approval of proposed improvements/alterations of current infrastructure, nor how requiring a highly

¹ WAC 197-11-060(4)(b)-(c) (emphasis added).

² WAC 197-11-060(4)(d).

³ WAC 197-11-330(4), imposing requirements of WAC 197-11-080(1) (“agencies shall obtain and include” all “information on significant adverse impacts essential to a reasoned choice among alternatives” if it “is not known, and the costs of obtaining it are not exorbitant[.]”).

⁴ WAC 197-11-060(3).

⁵ *Id.*; WAC 197-11-335; *Anderson v. Pierce Cty*, 86 Wn. App. 290, 302, 936 P.2d 432 (1997) (In order for a DNS or MDNS to survive judicial review, “the record must demonstrate that environmental factors were adequately considered [and that the decision] was based on information sufficient to evaluate the proposal’s environmental impact.”) (internal quotation marks and citation omitted).

discretionary conditional use permit for other projects will also result in deterrence, abandonment, or relocation of desirable projects, including cleaner fuel projects.

In completing the required supplemental sheet in the Checklist for non-project actions, the City simply refers to earlier sections of the Checklist with reference to Section B without meaningful analysis or factual support. Moreover, there is no Section B in the version of the Checklist we have to confirm exactly what sections the supplemental sheet refer to. This is a significant defect in the Checklist where the supplemental sheet relies heavily on the nonexistent Section B. The City also completely ignored the issues repeatedly raised by industry experts throughout the City's ongoing fossil fuel regulation process.⁶

Another infirmity is that in the Checklist, the City notes several times that the proposed code could, as an option, allow new cleaner fuels storage and handling facilities. Page 5. Yet the proposed code does not include this option, causing further unstudied impacts through elimination of potentially beneficial projects. See Section 20.895.110.F.1 of the Proposal.

In sum, there is insufficient analysis for the threshold determination process. For this and all the other issues identified above, the City must obtain the available information necessary to adequately analyze all the environmental impacts of the Proposal. It clearly has not done so yet. Accordingly, the DNS should be withdrawn again.

2. The Proposal will cause probable significant adverse impacts.

SEPA requires a lead agency to issue a DS and prepare an EIS when a proposal is likely to have probable significant adverse environmental impacts.⁷ A threshold determination cannot rely on the fact that a proposal's purported benefit may outweigh the environmental impacts.⁸ Indeed, SEPA expressly acknowledges that even proposals that are purportedly designed to improve the environment "may also have significant adverse environmental impacts."⁹ As such, the responsible official must consider *all* probable significant adverse impacts, regardless of whether they are direct, indirect, or cumulative.¹⁰ In this case, an EIS is necessary because the Proposal will cause probable significant adverse impacts.

⁶ The ban on new terminals significantly impacts the environment by preventing new facilities and upgrades that would increase efficiency, reduce GHG, and comply with lower-emission federal and state fuels law; discouraging safety improvements, such as seismic retrofitting; blocking the introduction of future technologies to the current fuel infrastructure framework; forcing fuel facilities to stay in areas with heightened seismic and groundwater risk by prohibiting fuel suppliers from relocating to safer locations; and distorting the supply of fuel to less-efficient and potentially riskier methods of transportation and storage.

⁷ RCW 43.21C.031; see *also* WAC 197-11-330 (threshold determination process) & 197-11-782 (defining "probable").

⁸ WAC 197-11-330(5) ("A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.").

⁹ *Id.*

¹⁰ WAC 197 11-060(4); see *also* WAC 197-11-330.

For example, the Checklist wrongly concludes that there will be no significant impacts to energy resources. Page 14. The DNS offers no evidence or analysis for this statement, which is contrary to industry testimony provided throughout the legislative process. The DNS ignores the probable significant adverse impacts to energy resources that will result from the City's prohibition on new bulk terminal and fuel handling facilities, even though a reduction of fuel supply is part of the City's stated purpose for adopting the Proposal. Further, by treating existing facilities as nonconforming uses, and requiring conditional use permits for other projects, the Proposal imposes extremely restrictive and uncertain limitations on the alteration and improvement of existing infrastructure. This will clearly delay and effectively discourage the investment in facility modifications to meet changing markets and improve production efficiency.

The Proposal would also create barriers to fuel facility upgrades that would improve safety, lower facility emissions, and allow for the introduction of new fuel technology. Each time fuels with lower emissions are developed or required by a governmental entity, new or updated infrastructure is needed to provide that fuel. The Proposal would prohibit improvements and beneficial innovation to the City's fuel infrastructure. Its effect is to freeze the current fuel supply system in place. Further, by uniformly blocking new fuel infrastructure in the City, the Proposal would force fuel distribution into less-efficient routes around the City and modes such as truck that increase GHG and other emissions.

These are just a few of the "probable significant adverse environmental impacts" caused by the Proposal. From its completion of the Checklist and issuance of the DNS, it is apparent that the City has still not studied or even meaningfully considered these issues. Accordingly, the DNS must be withdrawn and an EIS must be completed to evaluate these impacts.

Sincerely,



cc: Jessica Spiegel, WSPA
Jodie Muller, WSPA