

**SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES
FINDINGS OF FACT**

HEARING AUTHORITY: Skagit County Hearing Examiner

HEARING DATE: January 29, 2015

APPLICATION NUMBER: Shoreline Substantial Development/Variance Permit PL13-0468
Forest Practice Conversion Application PL14-0079

APPLICANT: Tom Rizzo
Brian Rhodes
Shell Puget Sound Refinery
PO Box 622
Anacortes, WA 98221

CONTACT PERSON: Jeff Walker
AECOM Technology Corporation (formerly URS Corporation)
1501 4th Avenue, Suite 1400
Seattle, WA 98101

ZONING/COMPREHENSIVE PLAN: The subject property is designated Urban Growth Area - Anacortes Urban Development as indicated on the Comprehensive Plan and Zoning maps. The City of Anacortes has designated March Point as Heavy Manufacturing. This proposal is considered a permitted use pursuant to Anacortes Municipal Code 17.15.020.

The subject site is designated as Rural in the Skagit County Shoreline Management Master Program (SMMP). Padilla Bay is designated as a Shoreline of Statewide Significance.

PROJECT LOCATION: The Shell Puget Sound Refinery (PSR) is located at 8505 South Texas Road, Anacortes, WA 98221 in western Skagit County on March's Point, along the southwestern edge of Padilla Bay.

The project area is located on Parcel P33502 in the following Sections, Townships, and Range:

- NW ¼, Section 3, Township 34 N, Range 2 E
- NE ¼, Section 4, Township 34 N, Range 2 E
- NE and SE ¼, Section 33, Township 35 N, Range 2 E
- SW ¼, Section 34, Township 35 N, Range 2 E

GENERAL PROJECT DESCRIPTION: Shell Puget Sound Refinery (PSR) proposes to build a rail spur from the existing adjacent Burlington Northern Santa Fe (BNSF) mainline onto Shell PSR property with equipment to pump oil from rail cars into the refinery. The intent of the project is to support the fundamental purpose and need of the Shell PSR to provide a variety of fuels to the Pacific

Northwest region.

The Shell PSR receives crude oil by ship from Alaska's North Slope. This crude oil supply is in a gradual decline. In its place, there is now an increased availability of Midcontinent Crude and other crudes of opportunity. Shell PSR proposes to construct and operate a new rail facility at the existing refinery to receive crude oil. The crude brought in by rail would replace some supply currently brought in by ship and would serve to maintain current production, not increase capacity. At this time, the only practicable transportation means for transporting crude oil from the mid-continent to the Shell PSR is by the use of rail.

BNSF owns and operates the existing mainline that runs adjacent to the Shell PSR. The railroad line, also known as the Anacortes Subdivision, formerly terminated farther to the west in Anacortes. Today, the railroad line ends on the western side of the peninsula and just south of North Texas Road, south of the adjacent Tesoro Anacortes Refinery, and is actively used by Shell, Tesoro, and other neighboring industries. Shell PSR currently receives an average of three trains per week with an average of 15 cars in each trip.

Existing rail facilities at the refinery are not designed to receive and unload unit train crude shipments. To accommodate the volume of railcars of crude from rail, Shell PSR proposes to construct a rail facility that would allow a train to safely and efficiently move off the adjacent BNSF rail line into an unloading facility at the refinery. Development of the rail facility must address the following basic needs: the facility must accommodate unit trains of crude oil; the facility must meet BNSF, Washington State Department of Transportation (WSDOT) and Federal Railroad Administration (FRA) rail design criteria; the site must be in close proximity to the refinery and the existing BNSF rail line; and the site must also meet basic industry and refinery-specific safety and security requirements.

Shell PSR anticipates that they would receive approximately one unit train per day. Each unit train would include approximately four locomotives and approximately 102 oil tank rail cars containing crude oil. The facility is being designed to receive a maximum of six unit trains per week, for a total of approximately 612 incoming fully loaded oil cars and 612 outgoing empty tank cars on a weekly basis.

The project scope generally includes the following improvements:

- Arrival/departure rail track;
- Unloading area with two tracks and a concrete containment pad;
- Bad order railcar tracks with repair facilities;
- Personnel operations building, appurtenant facilities, and limited parking;
- Perimeter inspection/security road;
- Pumps and below-and above-ground pipelines to connect the proposed project to the existing storage tanks;
- New road connections;
- Relocation of segments of the Olympic Pipeline, the Kinder Morgan Pipeline, and Puget Sound Energy (PSE) power lines;
- New electrical power substation;
- Oil/water separator facilities and containment for a single-car spill; and

- Stormwater facilities.

The rail extension for the crude unloading facility would extend from the existing BNSF rail line and spur (near South March Point Road) in a northwesterly direction approximately 5,500 feet to North Texas Road. The rail facility would consist of approximately 8,000 feet of unloading tracks with a concrete unloading pad, approximately 1,300 feet of track for temporary storage of rail cars that are taken out of service for repair and maintenance, and about 7,200 feet of train-staging track. Rail ingress and egress would be provided via a connection to the existing BNSF mainline located to the southeast which would require modifications to the BNSF rail configuration.

The crude oil transfer station would include vent headers, a containment area, drain connections and collection header, and tank car grounding. An operations shelter, storage shed, electrical structure and small employee parking lot would also be constructed in proximity to the crude oil transfer facility.

The proposed project would also include various site preparation activities including, but not limited to, clearing and grading, installation and construction of associated infrastructure improvements, such as stormwater infrastructure, and extension of existing services and utilities, including electricity, sanitary sewer and potable water. Two existing pipelines and some PSE power lines would have segments relocated. Two ponds are proposed to provide permanent stormwater control. An oil/water separator pond would also be provided on the west side of the rail adjacent to the new facilities.

In order to mitigate for 21.41 acres of direct permanent wetland impacts, 3.88 acres of indirect permanent wetland impacts, 0.41 acre of permanent wetland conversion, and up to 6.98 acres of temporary wetland impacts on the Shell PSR site, Shell is proposing to purchase credits at an approved Skagit County wetland mitigation bank.

SITE DESCRIPTION: The project area for the proposed Crude by Rail East Gate project is approximately 50 acres and is bordered on the north by North Texas Road, on the south by South March Point Road, on the west by developed areas of the refinery (northern two-thirds) and undeveloped forest and pasture (southern one-third), and on the east by mainly grazed pasture, undeveloped forest, and East March Point Road.

EXHIBITS:

- S-1. Departmental Findings 1-13.
- S-2. Shoreline Variance application PL13-0468 submitted December 18, 2013.
- S-3. Aerial photographs of the site.
- S-4. Site Plans.
- S-5. Wetland Delineation Report and Critical Areas Assessment dated November 6, 2013.
- S-6. Wetland Mitigation Bank Use Plan dated December 17, 2013.
- S-7. Environmental Checklist dated December 12, 2013.
- S-8. Biological Evaluation and Essential Fish Habitat Analysis dated April 18, 2014.
- S-9. Clean Water Act Section 404(B)(1) Alternatives Analysis dated December 10, 2013.
- S-10. Revised JARPA dated March 17, 2014.

- S-11. Forest Practice Conversion Application PL14-0079 submitted March 5, 2014.
- S-12. Floodplain Development Permit Application FP13-0070 submitted December 18, 2013.
- S-13. Drinking Well Summary.
- S-14. Skagit County Health Department Seawater Intrusion Policy dated December 5, 1994.
- S-15. Anacortes Zoning Map and Municipal Code 17.15.020.
- S-16. Notice of Development Application for PL13-0468 published January 9, 2014 and January 16, 2014.
- S-17. Notice of Development Application for PL14-0079 published March 13, 2014.
- S-18. Letter to URS/Shell requesting additional information dated March 7, 2014.
- S-19. Shell/URS reply to 3/7/14 request for information dated March 27, 2014.
- S-20. Mitigated Determination of Nonsignificance issued April 24, 2014.
- S-21. SEPA Staff Findings dated April 22, 2014.
- S-22. Memo to Interested Parties dated May 14, 2014.
- S-23. Memo to Interested Parties dated May 22, 2014.
- S-24. Letter to URS/Shell requesting additional information dated June 3, 2014.
- S-25. Shell/URS reply to June 3, 2104 request for information dated July 17, 2014.
- S-26. Memo from Public Works regarding review of Traffic Analysis dated August 4, 2014.
- S-27. Letter from Washington State Department of Archaeology & Historic Preservation dated August 14, 2014.
- S-28. Email from Jackie Ferry, Samish Indian Nation dated March 18, 2014.
- S-29. Joint Public Notice: Application for a Department of the Army Permit and a Washington Department of Ecology Water Quality Certification and/or Coastal Zone Management Consistency Concurrence dated July 8, 2014.
- S-30. Joint Public Notice Erratum/Revision dated July 15, 2014.
- S-31. Modified Mitigated Determination of Nonsignificance issued August 14, 2014.
- S-32. Federal Fish and Wildlife Permit Take Authorization No. MB29282B-1 dated October 14, 2014.
- S-33. Federal Fish and Wildlife Permit Take Authorization No. MB29283B-1 dated October 14, 2014.
- S-34. Northwest Clean Air Agency approved Air Operating Permit:
http://www.nwcleanair.org/pdf/aqPrograms/airOperatingPermits/PSR/2014AOPFI_NAL.pdf

PUBLIC COMMENTS:

- PC-1. Comments received during Notice of Development Application for PL13-0468.
- PC-2. Comments received during Notice of Development Application for PL14-0079.
- PC-3. Comments received during April 22, 2014 MDNS comment period.
- PC-4. Comments received following April 22, 2014 MDNS comment period.
- PC-5. Comments received during August 14, 2014 MDNS comment period.
- PC-6. Comments received following August 14, 2014 MDNS comment period.

GENERAL PROPERTY/PROJECT INFORMATION:

- **DEVELOPMENT SCHEDULE** – The applicant has indicated that project construction will likely begin in 2015, following receipt of all necessary permits and approvals.
- **PROJECT ACCESS** – The property is accessed from SR-20 via South March Point Road and is generally bounded by East March Point Road and North Texas Road. Private roads internal to Shell PSR would also provide access.
- **PROJECT TRAFFIC AND PARKING** – If existing plant personnel are used for the work, no new trips per day would be generated by employees. If the project requires hiring 25 new employees, approximately 50 vehicular trips per day (or approximately 25 round trips per day) would be generated by new employees following project completion. These would typically occur during shift changes, the timing of which is unknown at this time.

Two rail trips (one incoming and one outgoing unit train, each containing approximately 102 oil tank rail cars) per day are anticipated, approximately six days per week. This would result in approximately 626 train trips (312 incoming and 312 outgoing) annually to and from the area. Added to Shell's current three trains per week for incoming coking product, the overall train traffic to and from the Shell PSR site on a weekly basis would be approximately nine incoming and nine outgoing trains per week.

Potential delays for emergency vehicles at the refinery have been taken into consideration in the design of the proposed rail facility. There are five means of egress at the site. This allows for quick access to the facility while there is a train on the track being delivered or waiting to depart. Access is designed for personnel from within the refinery and also from local outside agencies to respond to any type of emergency that may be needed.

The rail project has been designed to avoid blocking East March Point Road, at the BNSF mainline crossing, during unloading by providing adequate rail track to move the train onto the Shell PSR site, beyond March Point Road. Power switches may be installed at the BNSF mainline that would eliminate the need for trains to stop and manually switch themselves into the facility.

After project completion, approximately 24 new parking spaces would be provided. The completed project would require approximately 25 employees. About 8-10 personnel would be on-site at any one time during operations. The completed project would not eliminate any existing parking spaces.

A Traffic Study was prepared by URS Corporation Traffic Engineer, Daniel W. Mills. That study was submitted on July 17, 2014. The study was reviewed by Skagit County Public Works Transportation Programs Manager, Forrest Jones. He determined that the County has no reason to dispute the findings and that the traffic study provided appears to be accurate, depicts current volumes and delays, and a sustainable growth rate.

The traffic study analyzed emergency vehicle access in the area surrounding the State Route 20 and Interstate 5 interchange. Skagit County and City of Burlington Fire Departments provided average fire response times at the request of URS. Skagit County indicated that their average response time in 2014 (YTD) is approximately 7 minutes. City

of Burlington Fire indicates that their average response time in 2012 was approximately 4 minutes. To analyze the potential impacts of a project-related unit train in the area, the travel shed was developed assuming a 5 minute response (average of both County & City provided information). The results of the emergency vehicle access analysis indicated there is little difference in the 5-minute travel shed with and without train blockages. The only difference would be found in the outlying areas northeast of the City of Burlington (Exhibit S-25, exhibit 1, pp. 15). The impact areas identified are largely in commercial agricultural production with very low population density.

- **AESTHETIC IMPACTS** – The proposed rail spur will be located adjacent to the existing rail line and within the refinery property. The largest structure would be a new overhead platform that would run the length of the unloading area and would be approximately 20 feet high. The platform would be made primarily of metal. Small buildings associated with operations are proposed. Since the site is located within an industrially zoned area, the proposed project is not expected to alter views in the immediate vicinity.
- **OTHER REQUIRED PERMITS OR APPROVALS:**
 - Clean Water Act Section 404 Individual Permit, U.S. Army Corps of Engineers
 - Clean Water Act Section 401 Water Quality Certification, Ecology
 - Coastal Zone Management Consistency Determination, Ecology
 - Construction Stormwater Permit, Ecology
 - Hydraulic Project Approval, Washington Department of Fish and Wildlife
 - Order of Approval to Construct (OAC) Air Permit, Northwest Clean Air Agency
 - Air Operating Permit, Northwest Clean Air Agency
 - Eagle Disturbance Take Permit, U.S. Fish and Wildlife Service
 - SEPA Threshold Determination, Skagit County
 - Grading Permit, Skagit County
 - Floodplain Development Permit, Skagit County
 - Commercial Building Permit, Skagit County
 - Forest Practices Permit, Skagit County/Washington State Department of Natural Resources

DEPARTMENTAL FINDINGS:

1. **PROCESSING.** A Notice of Development Application was published for PL13-0468 in a newspaper of general circulation on January 9, 2014 and again on January 16, 2014 as required by Section 14.26.9.04 of Skagit County Code (SCC). A Notice of Development Application was published for PL14-0079 on March 13, 2014. Notification was provided by mail to all property owners within 300 feet of the subject property. Notice for PL13-0468 was posted on the property on January 9, 2014. Notice for PL14-0079 was posted on the property on March 12, 2014. There was a 30 day comment period associated with the Notice of Development for PL13-0468, which ended on February 17, 2014 and a 15 day comment period for PL14-0079 which ended on March 31, 2014. Over 150 comments were received during these comment periods. A majority of the letters received during these comment periods expressed disagreement with the proposal and

requested the County seek additional information.

Planning and Development Services requested additional information from the applicant on March 7, 2014. The applicant submitted the requested information on March 27, 2014.

2. STATE ENVIRONMENTAL POLICY ACT.

See exhibit S-21 for additional staff findings related to the initial SEPA determination. Following review of all materials submitted with the permit applications, as well as the additional information requested by the County and submitted on March 27, 2014, a Mitigated Determination of Nonsignificance (MDNS) was issued for the project on April 24, 2014. The comment period ended on May 9, 2014 and the appeal period ended on May 23, 2014.

During the comment period, more than 400 comments were received. These comments were both in support of the proposal as well as opposed. Staff again requested additional information from the applicant based on concerns raised in the public comments (Exhibit S-24). The applicant submitted a response to that request on July 17, 2014 (Exhibit S-25).

Following review of the additional information, a Modified MDNS was issued on August 14, 2014. The comment period ended on August 28, 2014 and the appeal period ended on September 11, 2014. Conditions of the modified MDNS included:

1. The applicant shall receive and comply with all permits and approvals from Northwest Clean Air Agency requirements.
2. The applicant shall receive and comply with the Eagle Non-purposeful Take Permit and Eagle Nest Take Permit from U. S. Fish and Wildlife prior to disturbance of any bald eagle nest tree.
3. The applicant shall receive and comply with all permits and approvals from the Washington State Department of Fish and Wildlife including but not necessarily limited to the Hydraulic Project Approval.
4. The applicant shall receive and comply with all permits and approvals from the Washington State Department of Ecology, including but not limited to the 401 Water Quality Certification and Coastal Zone Management Consistency.
5. The applicant shall receive and comply with all permits and approvals from the U. S. Army Corps of Engineers including but not necessarily limited to the Section 404 Individual Permit.
6. The applicant shall comply with applicable provisions and regulations of the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration.
7. The applicant shall comply with all applicable provisions of Skagit County Code (SCC) 14.24, the Critical Areas Ordinance.
8. The applicant shall comply with all applicable provisions of SCC 14.32, the Drainage Ordinance.
9. The applicant shall comply with the International Building Code.
10. The applicant shall comply with the International Fire Code.

11. The applicant shall work in good faith with BNSF and other local oil refiners to develop a mutual aid agreement associated with responding to crude railcar incidents off-site of refinery property.
12. The applicant shall comply with United States Department of Transportation safety advisory 2014-01.
13. The applicant must fully transition out of using “legacy” DOT 111 cars in its fleet for transporting crude as soon as practicable. All new rail cars added to the applicant’s fleet will be “good faith CPC 1232” type cars unless the federal standards change.
14. The applicant must not knowingly accept at its facility any rail cars that do not meet all applicable United States Department of Transportation regulations.
15. The applicant shall ensure that all lighting installed for this proposal will be International Dark Sky Association Dark Sky compliant.
16. The applicant shall comply with the Washington State Department of Fish & Wildlife noise buffer guidelines and distances for great blue heron colonies.
17. The project will not involve any change in refining capacity, nor involve an increase in the amount of crude transported over marine waters.
18. The applicant shall make a request to BNSF that trains arrive and depart during non-peak traffic hours.
19. The avoidance and minimization measures listed on pages 20 & 21 of the July 17, 2014 response from Shell must be completed as proposed.

During the comment period, approximately 135 additional comments were received. Again, these comments were both in favor of and opposed to the proposal.

An appeal of the Modified MDNS was received on September 11, 2014 (file PL14-0396).

3. **FLOOD AREA REVIEW.** A small portion of the proposal is within an A4 designated flood hazard area as indicated on FIRM map panel 0225C. The applicant submitted a floodplain development permit application FP13-0070. That application is under review and will need to be approved prior to approval of the first development permit associated with this project.
4. **BUILDING DEPARTMENT REVIEW:** The project was reviewed by the Building Official. He had no comments. Structures associated with this proposal will require separate building permits.
5. **FIRE MARSHAL REVIEW:** The application was reviewed by the Skagit County Fire Marshal. Structures associated with this proposal will require separate building permits and compliance with the International Fire Code will be determined with each building permit associated with the project.
6. **CRITICAL AREAS REVIEW:** The critical areas located on the project site include the shoreline of Padilla Bay (a Type S water), multiple wetlands, including a salt marsh associated with the shoreline, and bald eagle nest sites (to be protected pursuant to SCC

14.24.520(2)(a)). A Great Blue Heron Rookery is located offsite to the southeast. Great blue heron nest sites are listed as a habitat of local importance (SCC 14.24.200(4)). Portions of March Point are also classified as a Category I aquifer recharge area (SCC 14.24.310(1)(a)(ii)).

Pursuant to Skagit County Code (SCC) 14.24.040(3) in cases where other agencies possess jurisdictional control over critical areas and it has been determined by the Administrative Official that the permit conditions satisfy the requirements of the Critical Areas Ordinance (CAO), those requirements may substitute for the requirements of the CAO.

Although bald eagles were removed from the federal endangered species list in August 2007 because their populations recovered sufficiently, they are still protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Bald eagles are also classified as a Washington State Sensitive Species. The United States Fish and Wildlife Service (USFWS) has the authority and the expertise to ensure that any impacts to bald eagles and their nesting sites are done appropriately and with the least impact possible. USFWS has the authority and expertise to authorize take permits to ensure the mitigation required is appropriate to the site and the species.

County staff regularly relies on Washington State Department of Fish and Wildlife (WDFW) to provide local species knowledge and recommendations on projects which may impact species of concern. WDFW has the expertise and permitting authority for the proposed modifications to the onsite stream. Their area habitat biologists are familiar with local species and appropriate project conditions and mitigation. In addition, WDFW has prepared Priority Habitats and Species recommendations that the applicant has appropriately utilized to ensure the project will avoid and minimize adverse impacts to the March Point heronry.

The requirement to comply with both Washington State Department of Ecology (Ecology) and United States Army Corps of Engineers (Corps) permitting requirements for proposed unavoidable wetland impacts, including utilization of the mitigation bank credits, is with the understanding that approval must be received from the Wetland Mitigation Banking Interagency Review Team for use of the credits on a project outside of the existing bank service area. The applicant has provided extensive review and justification for the proposed bank use in the Mitigation Bank Use Plan. If the applicant is unable to gain approval for use of mitigation bank credits, they will still be required to obtain approval from both Ecology and the Corps prior to impact of onsite wetlands. SCC 14.24.250(4)(e) allows for the use of wetland mitigation banking programs consistent with the provisions outlined in Ecology publications 06-06-011A and 06-06-011B.

A portion of March Point is considered a Category I Aquifer Recharge Area as a potential seawater intrusion area (SCC 14.24.310(1)(a)(ii)). All portions of Skagit County within ½ mile of marine water have been classified as a potential seawater intrusion area. SCC 14.24.340(1)(g) requires mitigation consistent with the Public Health Department's "Seawater Intrusion Policy". The concern in these areas is that overuse of groundwater may lead to increased seawater impacting drinking water wells.

On March Point there are no water wells that supply drinking water. Of the five well logs identified within 1000 feet of the proposal, one was originally dug for use as an injection well. That use never occurred. Three were used to show dug wells had been decommissioned. According to the 1961 well log, the last well identified is owned by Skagit PUD. All properties on March Point are served by Anacortes City Water. The proposal will not withdraw groundwater for any purpose.

7. **HEALTH DEPARTMENT REVIEW:** The application was routed to the Skagit County Health Department for review. Additional review of the proposal will take place with the development permits.
8. **PUBLIC WORKS DEPARTMENT REVIEW:** Public Works reviewed the application and offered no comments at this time. A grading permit will be required for the proposed project. Additional review will take place with that permit application.
9. **CURRENT PLANNING REVIEW:** Current Planning has no concerns with the proposal. The project site is located within the Anacortes Urban Growth Area and is designated as Anacortes Urban Development District (A-UD). SCC 14.16.220(2) states, in part:
“The County shall accept an application for, and approve a permit for, a subdivision and/or development of any lot of record located within this UGA Urban Development district, provided the proposed subdivision or development is consistent with the use, lot size and other development standards for the zone that has been identified by the city for the parcel that is the subject of the application.”
The City of Anacortes has designated March Point as Heavy Manufacturing. The proposed use is outright permitted under Anacortes Municipal Code 17.15.020.
10. **CITY OF ANACORTES REVIEW:** The subject property is located within the Anacortes-Urban Development district with a zoning designation of Heavy Manufacturing. The project was routed to the City for review and comments. Following the initial review, City staff had the following comments:
 1. *Please include the City of Anacortes in an onsite preconstruction meeting prior to work taking place.*
 2. *Please provide a traffic control plan for So. March Pt. Road for review. The plan needs to include construction haul routes etc.*
 3. *Fill material, from this site, placed on sites within the city limits will require a grade and fill permit from the city.*The applicant has been in frequent contact with the City to ensure compliance with applicable municipal regulations.
11. **CULTURAL RESOURCES REVIEW:** A cultural resources survey dated May 6, 2013 was conducted for this project by URS Corporation. A copy of this report is on file at the Washington State Department of Archaeology and Historic Preservation (DAHP). No

archaeological sites or historic structures were identified in the initial project area. The project area was subsequently expanded based on design considerations and included a portion of the BNSF rail right-of-way. A cultural resources survey dated November 4, 2013 was conducted for this expanded project area by URS.

The study identified two previously unrecorded archaeological sites and one historic rail line segment within the project area and two archaeological sites next to the project area that would not be directly affected or altered by the proposed project. A copy of this report was distributed to the affected Tribes and DAHP for review.

The study identified two historic archaeological debris scatter sites. The project was re-routed to avoid the sites, and they will not be directly affected or altered by the proposed project. A segment of the Seattle and Northern/Seattle and Montana/Great Northern Anacortes to Rockport rail line was located within the project area. URS recommended these historic resources are not significant and not eligible for listing in the National Register of Historic Places. A Determination of Eligibility was sent to DAHP for review.

DAHP concurred that the project as proposed will have no adverse effect on National Register eligible or listed historic and cultural resources. Jackie Ferry, Cultural Resources, Samish Indian Nation, provided an email response concurring with the report recommendations.

URS will prepare and implement an Archaeological Resources Monitoring Plan and Inadvertent Discovery Plan (ARMP/IDP) for the project, and a professional archaeologist will be present for the duration of major ground-disturbing activities.

12. **FOREST PRACTICE CONVERSION:** Standard County review of a Forest Practice Conversion application includes review for compliance with the critical areas ordinance and SEPA. That review was included as part of this shoreline permit application. Following approval of the shoreline permit, the Washington State Department of Natural Resources will be notified that County review is complete and they will issue a Class IV G Conversion Permit.
13. **SHORELINE MANAGEMENT MASTER PROGRAM CRITERIA:** Skagit County's SMMP, SCC 14.26, indicates that SMMP policies and regulations will be reviewed when approving or denying SMMP permits. Those items are as follows:

Shorelines of Statewide Significance – General 5.01

The Washington State legislature designated certain shorelines as shorelines of statewide significance from which all of the people of the state derive benefit and that these shorelines should, therefore, be managed with the interest of all of the people in mind. The Act requires that the Master Program give preference to uses and developments which are consistent with the principle of statewide over local interest.

Shorelines of Statewide Significance – for Skagit County – 5.02

The legislature has designated the following shorelines of Skagit County as having statewide significance:

3. Marine – b. Padilla Bay – from March Point to William Point, Samish Island.

Shorelines of Statewide Significance – Policies – 5.03

The legislature determined that in order to fulfill the goal of statewide public interest in shorelines of statewide significance, local Master Programs shall give preference to uses that are consistent with the policies applied in the following order, pursuant to RCW 90.58.020:

1. The statewide interest should be recognized and protected over the local interest.
2. The natural character of the shorelines of statewide significance should be preserved.
3. Uses of the shorelines of statewide significance should result in long term benefits to the people of the state.
4. The natural resources and ecological systems of shorelines of statewide significance should be protected.
5. Public access to publicly owned areas in shorelines of statewide significance should be increased.
6. Recreational opportunities for the public should be increased on shorelines of statewide significance.

The portion of this proposal located within shoreline jurisdiction is limited to the proposed rail between the existing BNSF main line and South March Point Road. No direct impacts are proposed that will impair current public use of the shoreline. The development will be located within the existing BNSF right-of-way. This land is private property and recreational opportunities are not appropriate at this location.

Ports and Industry – Policies – Transportation and Utilities 7.11, 1. C

- (1) Land transportation and utilities associated with ports and water related industry should follow the policies and regulations provided under "Utilities," Section 7.18, and "Transportation Facilities," Section 7.17.
- (2) Ports and water related industry should utilize existing transportation and utility corridors wherever feasible.

Refineries fall under the definition of Industrial Development, water and shoreline related industries and activities. They do not necessarily need to be located on a shoreline but rely on and are related to shoreline dependent activities. As a transportation improvement associated with a water related industry, the proposed rail spur and associated activities will be reviewed under the policies and regulations provided under Section 7.17, Transportation. The proposed improvements within shoreline jurisdiction will utilize an existing transportation

corridor associated with the existing industrial and manufacturing uses located at March Point. The existing rail line is currently utilized by both Tesoro and Shell PSR as well as neighboring industries.

Transportation Facilities – Policies – General – 7.17, 1. A.

- (1)** Coordination - Transportation facility proposals should be consistent and coordinated with all federal, state and/or local planning functions and efforts, including comprehensive plans.

The proposed rail improvements are consistent with current planning functions and efforts. The project site is designated Anacortes Urban Development under the Skagit County Comprehensive Plan and as Heavy Manufacturing in the City of Anacortes Comprehensive Plan. The proposed use is outright permitted in this zone under Anacortes Municipal Code 17.15.020.

- (2)** Geohydraulics

a. Transportation facilities should be located, designed, and maintained to avoid adverse impacts to, or if necessary, protect the active geohydraulic processes operating along Skagit County's shorelines.

b. Transportation facilities should be located and designed to minimize the need for shore defense and shoreline stabilization works.

By locating the proposed rail expansion landward of the existing rail line, there will be no impact to any geohydraulic processes and no additional shore defense or stabilization works will be necessary.

- (3)** Existing Facilities and Corridors - Transportation facilities and services should utilize existing shoreline corridors, providing such corridor or facility additions and modifications do not adversely impact the shoreline resource and are otherwise consistent with this program. If expansion of existing corridors will result in significant adverse impacts, then alternative, inland routes should be utilized.

The rail expansion will be located within the existing rail corridor, landward of the existing rail line. No significant adverse impacts to the shoreline resource are expected.

- (4)** Joint Use - Transportation corridors within shoreline areas should be jointly used by other shoreline related or dependent linear uses, such as utilities, whenever feasible.

The corridor where the proposed expansion will occur is already in use for rail traffic by both Shell PSR and Tesoro as well as vehicular traffic on South March Point Road.

- (5)** Multiple Use/Public Access - Transportation facilities, necessarily located on shorelines and funded in any way by public monies, should provide for public point or linear access along the corridors to publicly owned shorelines and water bodies. Such access or multiple use should not unduly interfere with facility

operations or endanger public health and safety. Shoreline trails, viewpoints, rest, and picnic areas are examples of public access.

The proposed project is not funded in any way by public monies.

- (6) Natural Resources, Processes, and Other Uses – Transportation facility development, if permitted on shorelines, should not significantly damage, diminish, or adversely affect:
- a. Estuaries, natural wetlands, and marshes.
 - b. Prime agricultural land.
 - c. Natural resources such as, but not limited to, sand and gravel deposits, timber, or natural recreational beaches.
 - d. Fish, shellfish, and wildlife habitats and migratory routes.
 - e. Water quality and quantity.
 - f. Public access to publicly owned shorelines and water bodies.

The project has been designed and will be constructed to avoid significant damage or adverse effect to the resources listed. The project has been located to avoid impacts to prime agricultural lands and natural resources. The design of the rail improvements includes protection of fish, shellfish, and migratory routes. The stormwater design will ensure protection of water quality and quantity. As part of the project, a salt marsh onsite will be enhanced, and all wetlands proposed to be impacted will be adequately and appropriately mitigated.

- (7) Hazardous Areas - Transportation facilities and corridors should be located, designed, and maintained to avoid, or if necessary, withstand 100-year frequency flooding and storm tides or surges without becoming hazards and without the placement of massive structural defense works.

A small portion of the project site is located within an A4 designated flood hazard area. By locating the rail improvements landward of the existing rail line, it will withstand flooding, storm tides or surges without becoming a hazard and without requiring additional structural defense works.

- (8) Non-Motorized Transportation - This program encourages the provision of safe pedestrian and/or non-motorized vehicle paths, trail systems, and other means along shoreline areas and along abandoned, existing, or proposed railroad, roadway, dikes and utility shoreline rights-of-way.

The use of the rail corridor in this location for a pedestrian trail is not safe or appropriate. Shell PSR is working closely with the City of Anacortes to ensure the project does not impact future plans for a four foot bike lane on South March Point Road.

- (9) Water Quality - Transportation facility design, construction, and maintenance activities should adhere to the guidelines, policies, standards, and regulations of water quality management programs and appropriate regulatory agencies.

The project has been designed and will be constructed and maintained in accordance with all guidelines, policies, standards, and regulations regarding water quality. Conditions have been added to the permit as well as the MDNS requiring compliance with SCC 14.32 and applicable state water quality regulations.

- (10)** Scenic drives should receive special attention by proposal reviewers regarding location, design, setback, and construction.

Although the project location is adjacent to Padilla Bay, South March Point Road and East March Point Road are not considered scenic drives.

Transportation Facilities – Policies – Location – 7.17, 1. B.

- (1)** Major highways, freeways, and railways should be located away from shorelines wherever feasible.

The proposed rail line will be located as far from the shoreline as possible. It will be constructed landward of the existing rail line and north of South March Point Road.

- (2)** All roadways, railways, bridges, and parking areas should not locate:
- a. in front of feeder bluffs, over driftways, or on accretion shoreforms.
 - b. where river channel direction and alignment is subject to change.
 - c. in or through designated parks, scenic, natural, historic, archaeological, or recreation areas.
 - d. along sensitive shoreline areas such as but not limited to those with steep slopes or soils subject to erosion or sliding.

The proposed rail improvements will not be located in the areas listed.

- (3)** Roadways, railways, and bridges necessary to the operation of shoreline dependent and related activities should be allowed on shorelines, provided:
- a. such facilities avoid or minimally affect the resources above (No. 2).
 - b. existing facility and corridor use is not possible.
 - c. they are consistent with the design policies and regulations of this chapter and program.

The proposed rail line will utilize the existing corridor, will be located landward of the existing line to avoid impacts to the resources listed above, and is consistent with the design policies and regulations of the Master Program.

- (4)** Parking areas for all types of vehicles and for all forms of shoreline activity should not be permitted over water and should be adequately set back to allow for shoreline dependent activities.

All parking areas associated with this proposal will be located within the refinery property and outside of shoreline jurisdiction.

Transportation Facilities – Policies – Design and Construction – 7.17, 1. C.

- (1) All roadways, railroads, bridges, and parking areas, if permitted in shoreline areas, should be designed, constructed and maintained to prevent and/or control all debris, overburden, runoff, erosion, and sedimentation generated from the affected areas.

The portion of the proposed rail line located in the shoreline area will be constructed between the existing BNSF line and South March Point Road. It has been designed and will be constructed and maintained to control all debris, overburden, runoff, erosion, and sedimentation. Conditions have been added to the permit as well as the MDNS requiring compliance with SCC 14.32 and applicable state water quality regulations.

- (2) Drainage and floodwaters

a. All transportation facilities, if permitted in shoreline areas, should be designed so as not to adversely affect or interfere with the flow of surface, subsurface, and floodwaters.

b. Transportation facilities essential to shoreline dependent and related uses should, if possible, parallel the surface drainage flow. If facilities must cross or bisect drainage and tidal flows, they should be constructed as elevated, open structures.

Constructing the additional rail line between the existing line and South March Point Road will ensure the project will not interfere with the flow of surface, subsurface, or floodwaters. It will be constructed parallel to the existing drainage patterns.

- (3) Construction and maintenance

a. All shoreline areas disturbed by facility construction and maintenance should be replanted and stabilized with compatible, self-sustaining vegetation.

b. Handling and application practices for fertilizers and pesticides should adhere to the guidelines and regulations of applicable regulatory agencies.

The proposal has been designed to have the least disturbance possible within shoreline jurisdiction. Any areas that are disturbed during construction and maintenance will be stabilized by appropriate means. The project does not include the need for fertilizers or pesticides. Should the use of these or other chemicals be needed during any phase of construction or maintenance, they will only be used in compliance with appropriate guidelines and regulations of applicable agencies.

- (4) All transportation facilities, if permitted parallel to shoreline areas, should be adequately set back from immediate shorelines and water bodies and should provide buffer areas of compatible, self-sustaining vegetation. Shoreline scenic drives and viewpoints should not be required to provide buffer areas.

The portion of the proposed rail spur that is located within shoreline jurisdiction will be parallel to an estuarine wetland that is associated with the shoreline. It will be constructed landward of the existing rail line. Because the line will be located between the existing rail line and South March Point Road, there is not enough area to safely provide vegetative screening.

- (5) Parking areas - Parking areas, if permitted within the shoreline area, should be constructed of permeable materials to minimize runoff and potential erosion and sedimentation.

All parking areas associated with the proposed site improvements will be located outside of shoreline jurisdiction.

- (6) All transportation facilities should be designed and constructed to comply with Skagit County standards.

The project has been designed and will be constructed in compliance with Skagit County standards.

Transportation Facilities – Policies – Impacts – 7.17, 1. D.

- (1) Transportation facilities and corridors should minimize impacts to the shoreline and aquatic environment and to adjacent and nearby land and water uses.

The project has been designed to avoid and minimize impacts to the shoreline and aquatic environment. The location selected for the track avoids all direct impacts to Padilla Bay, avoids the fish accessible mid to lower reaches of the onsite stream, avoids the tidal marsh, and avoids all permanent impacts west of the existing Shell railroad spur.

- (2) Review of proposed transportation facilities should adhere to applicable local, state, or federal environmental impact statement (EIS) procedures and guidelines.

The project has been reviewed in conjunction with all applicable local, state, and federal environmental procedures and guidelines. A Modified Mitigated Determination of Nonsignificance was issued on August 14, 2014. As part of the federal permitting process, the Army Corps of Engineers is reviewing the project pursuant to the National Environmental Policy Act (NEPA). That process will be completed prior to approval of any federal permits. The applicant has applied for and will receive all applicable state and federal permits prior to commencing project construction.

Transportation Facilities – Regulations – Shoreline Area – 7.17, 2. A.

The shoreline designation at the location of the proposed rail spur is Rural.

- (3) Rural
- a. Transportation facilities are permitted subject to the General and Tabular Regulations.
 - b. Airports are prohibited.

c. Ferry terminals, landing fields, and float plane related development are permitted as a conditional use.

The proposed rail spur has been designed to meet the general regulations but cannot meet the tabular regulations. Table TF requires railroads to be set back 200 feet in the Rural shoreline areas. Since the rail addition is proposed immediately adjacent to but landward of the existing rail line, it cannot meet the required 200 foot setback. The applicant has applied for a Shoreline Variance because the proposal cannot meet the tabular regulations. Staff has reviewed and analyzed the variance criteria as applied to this project (see pp. 20-22).

Transportation Facilities – Regulations – General – 7.17, 2. B.

(1) Other plans, ordinances - Proposals for transportation facilities shall comply with applicable Skagit County plans and ordinances and any revisions or amendments thereto. In case of conflicting standards or requirements, the stricter shall apply.

The project has been designed to comply with applicable plans and ordinances.

(2) Floodplains

a. Roads and railroads located within the 100-year floodplain subject to this program shall not measurably increase flood levels or profiles and shall not restrict or otherwise reduce floodplain and floodway capacities.

b. Flood control - Proposals for roads and railroads that are to be used secondarily as flood control or protection structures shall provide additional data on channel profiles, effects on flood level hydraulics, and on potential for enlargement of inundated areas.

The proposed rail addition will be located landward of the existing rail line. It will not measurably increase flood levels, reduce floodplain capacity, or be utilized as a flood control or protection structure.

(3) Location

a. Roads, railroads, and other transportation facilities EXCEPT for the exception noted in C. Tabular Regulations, Page 7-119, shall be located landward of:

- 1.** estuaries and their associated wetlands.
- 2.** erosion or accretion shoreforms and associated drift sectors and backshore marshes.
- 3.** officially designated fish, shellfish, and wildlife habitats.

b. Roads, railroads, and other transportation facilities are not permitted to locate over water EXCEPT to serve shoreline and water dependent or related uses consistent with this program and unless inland alternatives have been fully proven infeasible.

c. Roads, railroads, and other transportation facilities shall not block or appropriate public accesses to publicly owned shorelines and water bodies.

The proposed rail improvements will be located landward of all sensitive areas listed. It will not be located over the water and will not block public access to any publicly owned shorelines or water bodies.

- (4)** Design, construction, and maintenance procedures
- a.** Water crossings - Transportation facilities that are allowed over water bodies and associated wetlands shall utilize elevated, open pile or pier structures and techniques. The number of water crossings shall be minimal.
 - b.** Bridge abutments and necessary approach fills shall be located landward of associated wetlands or the OHWM for water bodies without associated wetlands PROVIDED mid-river bridge piers shall be permitted.
 - c.** Overburden and excavated materials from both construction and maintenance activities including drainage ditch clearance shall not be deposited or sidecasted into or on the shoreline side of roads, or in water bodies, natural wetlands, estuaries, tidelands, accretion beaches, and other associated wetlands. Such materials shall be deposited in stable locations where reentry and erosion into waterways is prevented
 - d.** All excavation materials and soils exposed to erosion by all phases of road, bridge, and culvert work shall be stabilized and protected by seeding, mulching or other effective means immediately upon completion of operations.
 - e.** Relief culverts and diversion ditches shall not discharge onto erodible soils, fills, or side cast materials.
 - f.** Channel alignment - Stream and river channel alignment, flows, and banks shall not be altered unless through county approval and a Hydraulics Approval is obtained from the Departments of Fisheries or Game.
 - g.** Erosion control - All surface and drainage systems shall be designed and maintained so as to prevent or minimize and control runoff and sedimentation.
 - h.** Roadside brush control - Mechanical means shall be preferred over the use of herbicides for roadside brush control. If herbicides are used, they shall be applied so that chemicals do not enter streamways.

The proposed rail improvements will not occur over water bodies or associated wetlands. The proposed fill areas associated with the improvements have been minimized to the extent feasible. No material will be sidecast or deposited into or on the shoreline or associated wetlands. All exposed soils will be stabilized and protected as required by SCC 14.32, the Skagit County Drainage Ordinance. All stormwater from the refinery will be contained as required by applicable regulations. The proposed modification to the Type F stream onsite will require a Hydraulic Project Approval from WDFW prior to commencing construction. If, in the future, an herbicide is deemed necessary for road or rail side brush control, it will be applied pursuant to applicable guidelines and regulations.

- (5)** Landfills - Landfills associated with transportation facility development are not permitted in or on water bodies and all associated wetlands and beaches EXCEPT

when all structural or upland alternatives have been proven infeasible and for uses in a location consistent with this program.

This proposal does not include any fill within shoreline waterbodies or associated wetlands. The wetlands that will be directly impacted by the proposal are palustrine and are not associated with the shoreline.

(6) Parking Areas

- a.** Over water parking facilities are prohibited in all shoreline areas.
- b.** Setbacks - Unless specifically stated in Tabular Regulations for each shoreline use, parking areas for approved shoreline uses shall be located landward of the primary facility or activity.
- c.** Screening - Parking areas shall be screened from view of shoreline areas and adjacent properties through the planting of compatible, self-sustaining vegetation to be planted within six (6) months of facility completion. Screening should be effective within two (2) years of planting.

All parking areas associated with this project will be located outside of shoreline jurisdiction.

Variances – 10.01 - General

Variances from the application of specific bulk dimensional or performance standards set forth in this Master Program may be permitted where there are extraordinary or unique circumstances relating to the property. The applicant must show that the strict implementation of the Master Program would impose unnecessary hardship and that compliance with these regulations prohibits any reasonable use of the property. The fact that the applicant might make a greater profit by using the property in a manner contrary to the intent of the Master Program is not sufficient reason for granting a variance permit.

The applicant has requested a reduction of the standard 200 foot setback for rail improvements within the Rural shoreline designation. At this location, there is a salt marsh that is considered a shoreline associated wetland. Therefore the OHWM is located at the base of the existing railroad grade. The proposed spur and switches will be constructed landward of the BNSF mainline but cannot be located greater than 200 feet from the OHWM due to the need to connect to the existing rail line and the location of South March Point Road.

Skagit County Shoreline Management Master Program, Section 10.03, Criteria for Granting Variance Permits

- (1)** Variance permits for development to be located landward of the OHWM, except within areas designated marshes, bogs or swamps pursuant to Chapter 173-22 WAC may be granted provided the applicant can meet all of the following criteria; the burden of proof shall be on the applicant. (Note that responses for “a” through “e” below in italics are those of the applicant contained in the shoreline permit application).

a. The strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.

Within the 200 foot shoreline buffer, landward of the OHWM, BNSF will be revising their existing rail line. Modifications will be performed entirely within the existing BNSF right-of-way. The proposed changes include adding a short section of rail and some rail switches to allow a unit train to fully enter the Shell property while minimizing any impacts to track traffic along the same rail line. Additionally, access roads with turnouts will be provided on either side of the rail spur. If this work could not be performed, backups could occur on the BNSF mainline thereby causing delays of trains and vehicular traffic in the vicinity. As the existing BNSF line is within the 200 foot shoreline buffer and is landward of the OHWM, modifications could not occur for this project. Shell's existing capacity would decrease proportionally to the decrease in output from Alaska's North Slope, with no viable alternative for providing fuel.

b. That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Master Program and not for example from deed restrictions or the applicant's own actions.

The Anacortes Spur of BNSF's Bellingham Subdivision extends 12.4 miles west from Burlington to Fidalgo Island and hosts daily rail service. This line segment is the westernmost surviving segment of a former Great Northern branch that connected Anacortes and Rockport which was built in 1890, well before passage of Skagit County's Shoreline Master Program. The rail line skirts Padilla Bay for some distance before traveling parallel to South March Point Road in the vicinity of the project area. Due to the distance needed from the new rail switches to the new Shell railroad spur for operations and safety, work within the BNSF right-of-way could not be conducted outside of the 200 foot shoreline area. This site contains wetlands and the rail spur alignment was developed to avoid impacting the wetlands as much as possible. Alternatives to doing work within 200 feet of the shoreline were analyzed but the off-site project option would require a rezone from agriculture to industrial use, which is not consistent with Skagit County's farmland protection goals and policies.

c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent property or the shoreline environment designation.

Design of the project is compatible with other permitted industrial and transportation uses in the area and would not cause adverse effects to adjacent properties or the shoreline environment designation. Transportation facilities, including rail, are permitted in the Rural shoreline area. All work will be done within BNSF's existing right-of-way or further interior to the Shell PSR site. The railroad switches and new rail line would be low-lying and would not cause an

adverse effect to surrounding properties. Per the SMP, transportation facilities in rural areas should use existing transportation corridors within the shoreline which is consistent with this project. The railway has been designed, and will be constructed and maintained to prevent and/or control all debris, overburden, runoff, erosion, and sedimentation generated from the rail switches and spur.

d. The variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.

This variance, if authorized, would not constitute a grant of special privilege. Transportation facilities are allowed in the Rural shoreline area. Any individual seeking to construct a rail spur, rail switches, access roads or stormwater ponds in the shoreline area, landward of the OHWM, would be required to obtain a variance. The work proposed is the minimum necessary to afford relief. All work will be done within BNSF's existing right-of-way or interior to the Shell PSR site.

e. That the public interest will suffer no substantial detrimental effects.

The public interest will suffer no substantial detrimental effect due to this shoreline variance. All work activities will be conducted within the BSNF right-of-way or interior to the Shell PSR site. No new structures will be constructed for the rail spur, switches, or access roads. Normal use of the BNSF rail line will continue following the proposed construction.

- (3)** In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and this Master Program and should not produce substantial adverse effects to the shoreline environment.

The portion of this proposal that requires a variance from the SMP dimensional standards is directly associated with construction of the additional rail line between the existing main line and South March Point Road, near the shoreline associated salt marsh. The proposal is necessary to ensure the unit trains are able to exit the main line in an efficient manner.

In the vicinity of this proposal, there are two refineries and numerous industrial and manufacturing facilities. Tesoro requested and received permits to construct an unloading facility for crude transported by rail in 2012. That facility has been constructed and is in use. No portion of that crude by rail unloading facility was located within shoreline jurisdiction. The area of March Point this falls within shoreline jurisdiction is limited and requests for additional shoreline impacts are highly unlikely in this area.

RECOMMENDATION

Based on a review of all submitted information and the above findings, Skagit County Planning and Development Services recommends approval of requested Shoreline Variance and Substantial Development Permit application PL13-0468 and Forest Practice Conversion application PL14-0079 for the proposed rail spur construction for a crude by rail offloading facility with the following conditions:

1. The applicant shall comply with all conditions of the August 14, 2014 Modified Mitigated Determination of Nonsignificance.
 - a. The applicant shall receive and comply with all permits and approvals from Northwest Clean Air Agency requirements.
 - b. The applicant shall receive and comply with the Eagle Non-purposeful Take Permit and Eagle Nest Take Permit from U. S. Fish and Wildlife prior to disturbance of any bald eagle nest tree.
 - c. The applicant shall receive and comply with all permits and approvals from the Washington State Department of Fish and Wildlife including but not necessarily limited to the Hydraulic Project Approval.
 - d. The applicant shall receive and comply with all permits and approvals from the Washington State Department of Ecology, including but not limited to the 401 Water Quality Certification and Coastal Zone Management Consistency.
 - e. The applicant shall receive and comply with all permits and approvals from the U. S. Army Corps of Engineers including but not necessarily limited to the Section 404 Individual Permit.
 - f. The applicant shall comply with applicable provisions and regulations of the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration.
 - g. The applicant shall comply with all applicable provisions of Skagit County Code (SCC) 14.24, the Critical Areas Ordinance.
 - h. The applicant shall comply with all applicable provisions of SCC 14.32, the Drainage Ordinance.
 - i. The applicant shall comply with the International Building Code.
 - j. The applicant shall comply with the International Fire Code.
 - k. The applicant shall work in good faith with BNSF and other local oil refiners to develop a mutual aid agreement associated with responding to crude railcar incidents off-site of refinery property.
 - l. The applicant shall comply with United States Department of Transportation safety advisory 2014-01.
 - m. The applicant must fully transition out of using “legacy” DOT 111 cars in its fleet for transporting crude as soon as practicable. All new rail cars added to the applicant’s fleet will be “good faith CPC 1232” type cars unless the federal standards change.
 - n. The applicant must not knowingly accept at its facility any rail cars that do not meet all applicable United States Department of Transportation regulations.

- o. The applicant shall ensure that all lighting installed for this proposal will be International Dark Sky Association Dark Sky compliant.
 - p. The applicant shall comply with the Washington State Department of Fish & Wildlife noise buffer guidelines and distances for great blue heron colonies.
 - q. The project will not involve any change in refining capacity, nor involve an increase in the amount of crude transported over marine waters.
 - r. The applicant shall make a request to BNSF that trains arrive and depart during non-peak traffic hours.
 - s. The avoidance and minimization measures listed on pages 20 & 21 of the July 17, 2014 response from Shell must be completed as proposed.
2. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's office prior to approval of the first development permit application.
3. The applicant and its contractors shall comply with the State Water Quality Criteria, Surface Water WAC 173-201A and Ground Water WAC 173-200, and WAC 173-60 Maximum Environmental Noise Levels for noise and light.
4. Temporary erosion/sedimentation control measures shall be utilized in accordance with the Skagit County Code 14.32 the Drainage Ordinance.
5. URS will prepare and implement an Archaeological Resources Monitoring Plan and Inadvertent Discovery Plan (ARMP/IDP) for the project, and a professional archaeologist will be present for the duration of major ground-disturbing activities.
6. If this request is approved, the applicant shall submit a copy of the Hearing Examiner's written order (decision) with future development permit applications for the proposal.
7. The project shall be commenced within 2 years of the shoreline variance approval and completed within 5 years, in accordance with WAC 173-27-090.
8. The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modification of the subject proposal, he/she shall notify Planning and Development Services prior to the start of construction.

Prepared By: Leah Forbes
Approved By: Betsy Stevenson
Dated: January 8, 2015