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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

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

THIS MATTER came on regularly for hearing, pursuant to notice duly given, on February 25, 1981, in Port Angeles, Washington, before the Energy Facility Site Evaluation Council (hereinafter Council) for determination pursuant to RCW 80.50.090 and WAC 463-26 of the consistency and compliance of the proposed Trans Mountain Oil Pipe Line Corporation's (hereinafter Trans Mountain) site as described in Application 79-1 with the Clallam County, Land Use Plans.

The parties were represented as follows: Trans Mountain Oil Pipe Line Corporation--Charles Blumenfeld, Attorney at Law, The Bank of California Center, Seattle, Washington 98164; Clallam County--Craig Knutson, Deputy Prosecuting Attorney, Clallam County Courthouse, Port Angeles Washington 98362.

FINDINGS OF FACT

I.

On August 21, 1979, Trans Mountain submitted its Application No. 79-1. On December 12, 1979, an initial land use hearing was held in this matter in Port Angeles, Washington. Following that hearing the Council issued its Findings of Fact, Conclusions of Law and Order of Consistency and Compliance for Clallam County. By this reference, that document is incorporated herein. By agreement of the parties, the record of the December 12, 1979 hearing was made part of the hearing held February 25, 1981;

Find. of Fact, Con. of
Law -1-

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1 including evidence, arguments and briefs.

2 II.

3 On December 31, 1980, Trans Mountain submitted an amended
4 application to the Council. The amendment, among other things,
5 contained major changes in the route of the proposed pipeline in
6 Clallam County. Exhibits 8A overlay, 8B overlay, 8C overlay, 8D
7 overlay and 10B overlay depict these route changes. The route
8 changes do not result in the proposed pipeline passing through
9 any land use designation which was not passed through by the pro-
10 posal considered on December 12, 1979.

11 III.

12 The Shoreline Management Master Program for Clallam County,
13 Clallam County SEPA Ordinances (Clallam County Ordinance 53),
14 Clallam County Building and Mechanical Code (Clallam County Code
15 21.01), Clallam County Fire Code (Clallam County Ordinance 75),
16 and Clallam County Subdivision (Clallam County Ordinance 40),
17 are not county or regional land use plans within the meaning of
18 RCW 80.50.020(15)(16), and therefore not admissable in the public
19 hearing pursuant to WAC 463.26. The purposes of the Ordinances
20 above referred are to control public welfare concerns other than
21 use of land, even though such Ordinances may have an incidental
22 effect on land uses and set performance standards for the deve-
23 lopment of land. The above referred Ordinances and Shoreline
24 Master Program are not County or Regional Land Use Plans adopted
25 pursuant to Chapter 35.63, 35.63A, or 36.70 RCW, or County or
26 Regional Zoning Ordinances adopted pursuant to Chapters 35.63,
27 35.63A, or 36.70, or Article 11 of the State Constitution.

28 IV.

29 The proposed facility site will provide a service to the
30 public by providing a means of transporting crude petroleum for
31 the petroleum shipping public.

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V.

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

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

VI.

Exhibit 17 contains Clallam County ordinance Number 127-1980 which was adopted subsequent to the land use hearing held December 12, 1979. The language of Section .160 of Ordinance 127-1980 is identical to that contained in Resolution No. 37, described above.

VII.

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

VIII.

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

IX.

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

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X.

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

XI.

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

XII.

On September 12, 1969, Clallam County adopted a Flood Plain Zoning Ordinance for the Dungeness and Elwha Rivers (Resolution No. 37). Resolution No. 37 lists specific uses which are permitted within the Flood Plains which are crossed by the pipeline portion of the proposed project. A pipeline is not a use literally permitted under the terms of the Ordinance. A pipeline is likewise not a use permitted under the terms of Ordinance 127-1980.

CONCLUSIONS OF LAW

I.

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

II.

The Shoreline Management Master Program for Clallam County, Clallam County SEPA Ordinances (Clallam County Ordinance 53), Clallam County Building and Mechanical Code (Clallam County Code 21.01), Clallam County Fire Code (Clallam County Ordinance No. 75, and Clallam County Subdivision (Clallam County Ordinance No. 40) have no applicability to the Council's consistency and compliance determination in this proceeding.

III.

The pipeline and associated facilities as proposed by the

1 applicant is a public utility.

2 IV.

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

5 V.

6 The energy facility site as contained and described in Trans
7 Mountain's Application 79-1 as amended is consistent and in
8 compliance with land use plans and zoning ordinances if it is
9 permitted absolutely or conditionally. To be inconsistent and in
10 noncompliance, the plan or ordinance must expressly, or by opera-
11 tion clearly, convincingly and unequivocally prohibit the faci-
12 lity site.

13 VI.

14 The proposed facility site as amended is inconsistent and not
15 in compliance with the Clallam County Comprehensive Plan.

16 VII.

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

20 VIII.

21 The proposed pipeline route, as amended, is not included in
22 the list of designated uses permitted in the Clallam County Flood
23 Plain Zoning for the Dungeness and Elwha Rivers and therefor is
24 inconsistent and not in compliance with both Resolution No. 37
25 or Ordinance No. 127-1980, and therefore the Council need not
26 determine which applies.

27 ORDER

28 It is hereby ORDERED as follows:

29 1. That the facility site as proposed by Application 79-1 as
30 amended, is inconsistent and not in compliance with the Clallam
31 County Comprehensive Plan.

32 2. That the facility site as proposed by Application 79-1,

1 as amended, is consistent and in compliance with the relevant
2 Clallam County Interim Zoning Maps east of Morse Creek.

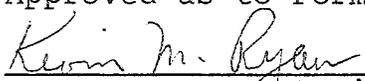
3 3. That the proposed facility site as described in the
4 amended application, is not included in the list of designated
5 uses permitted in the Clallam County Flood Plain Zoning for the
6 Dungeness and Elwha Rivers, and is inconsistent therewith.

7 DATED at Olympia, Washington, and effective this 26th day of
8 May, 1981.


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

11 ATTEST:

WILLIAM L. FITCH
13 Executive Secretary

14 Approved as to Form:

15 KEVIN M. RYAN, Assistant
16 Attorney General

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