BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of: Application No. 2013-01 TERSORO SAVAGE, LLC VANCOUVER ENERGY DISTRIBUTION TERMINAL	Case No.: 15-001 City of Washougal Closing Brief

I. Introduction.

The City of Washougal does not flatly support or oppose the Vancouver Energy Distribution Terminal (hereinafter VEDT). Instead, Washougal's limited role has been to point out its legitimate concerns regarding the VEDT's use of Highly Hazardous Flammable Trains (HHFT's) and their impacts on the public health, safety and welfare of the citizens of Washougal. For example, Washougal's Hydrogeologist Carl Einberger notes the City's drinking water supplies are extremely susceptible to crude oil spillage along the railroad tracks that supply the VEDT. Also, Washougal's Emergency Management expert (and former Vancouver Fire Chief) Dan Monaghan notes the City's 32nd St. crossing has the highest traffic volume of any grade level crossing along the BNSF rail line between Spokane and Vancouver, making even routine operations of the VEDT hazardous for Washougal residents needing emergency providers.

Washougal has waited, in vain, for the Applicant Tesoro Savage/Vancouver Energy (hereinafter TSVE) to provide adequate mitigation for these and other impacts to the public health, safety and welfare of the residents of the City. No funding for providing Washougal an alternate drinking water supply or an

elevated crossing at 32nd St. has been proposed. In the absence of these specific mitigation measures, combined with mitigation measures to reasonably reduce the risk of harm to Washougal "blast zone" residents, we regretfully must ask EFSEC to recommend denial of this project.

II. Vancouver Energy Distribution Terminal (VEDT) does not meet EFSEC standards for protecting Washougal's public health, safety and welfare.

The Applicant, Tesoro Savage/Vancouver Energy (TSVE) has the burden of proof to show the Vancouver Energy Distribution Terminal (VEDT) meets the EFSEC standards. *See* , RCW 80.50.010; WAC 197-11-080; WAC 197-11-100; WAC 463-60-010.

Specifically, the project must:

> **RCW 80.50.010**: (1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.
>
> (2) to preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.
>
> **WAC 463-14-020:** (1) Ensuring through available and reasonable methods that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life (emphasis added)

Also, EFSEC's recommendation must reflect its "overriding policy to avoid or mitigate adverse environmental impacts which may result from the [C]ouncil's decisions." WAC 463-47-110. The Council is to use all practicable means to "fulfill its responsibilities as a trustee of the environment for future generations"; assure that all people of Washington have a safe, healthful, productive, and aesthetically and culturally pleasing environment; and attain the widest range of beneficial uses of the environment without degrading it, risking health or safety, or causing other undesirable consequences. *Id.*

For the reasons stated below, and for the reasons provided by the Intervenors in the record (incorporated herein by reference), the City of Washougal asks EFSEC to find that the VEDT does not meet the above standards and to recommend project denial.

III. Vancouver Energy Distribution Terminal (VEDT) does not meet EFSEC standards for protecting Washougal's drinking water supplies.

A. City of Washougal's drinking water supplies are exceptionally susceptible to contamination from HHFT's oil spillage and leaks.

The City of Washougal's drinking water supplies are exceptionally susceptible to contamination from a crude oil spill. As Washougal's Hydrogeologist Carl Einberger notes:

> (T)he City of Washougal has significant concerns regarding the proximity of the BNSF rail corridor to the City's wellfields, and the increased risk of a crude oil spill associated with the proposed project. The City provides water supply to approximately 15,000 residents. The City's primary water supply source is the Westside (Lower) Wellfield. This wellfield has multiple water supply wells (Wells 5, 6, 7, and 11) located less than 100 feet from the rail corridor (See attached Exhibit B prepared by Aspect Consulting). The wells are completed in a shallow, unconfined aquifer composed of porous alluvial materials. In the vicinity of the City's wellfields, including along the rail corridor, coarse-grained materials with high infiltration rates extend from the ground surface to the water table, located at a depth ranging from 30 to 60 feet below ground surface, with total well depths of approximately 100 feet. No aquitard materials are known to be present in the wellfield area that would inhibit downward migration from a crude oil spill. Exhibit 3501, pg 3 (Emphasis added)

The City of Washougal has noted the sensitivity of these wellheads in the City's Wellhead Protection Report to the Washington Department of Health, and designated them as a City's Critical Aquifer Recharge Area (CARA). As Washougal's Hydrogeologist Carl Einberger notes:

> In fact, the rail corridor crosses the 6-month, 1-year, and 5-year captures zones of the City of Washougal's water supply wells PW-5, -6, -7, -11, and -12, as shown on the attached Figure 4 from the City's Wellhead Protection Report as submitted to the Washington Department of Health (Pacific Groundwater Group, 2012). The rail corridor also crosses the City's designated Critical Aquifer Recharge Area (CARA). Exhibit 3501, page 5 (Emphasis added)

As a result, Washougal's Hydrogeologist Carl Einberger concludes:

> Clearly, a spill in close proximity to the wellfield could affect water supply quality in far less than a 6-month timeframe, while a spill further away in the capture zones could still cause significant medium to longer-term water supply contamination. Exhibit 3501, page 5 (Emphasis added).

The City of Washougal's does not have adequate backup drinking water supplies if their wellfield is contaminated by an HHFT oil spill. As Washougal's Hydrogeologist Carl Einberger notes:

The City also has a second wellfield, the Hathaway Park (Upper) Wellfield, located approximately 2,500 feet from the rail corridor, as shown on Figure 1 from the City's Wellhead Protection Report as submitted to the Washington Department of Health (Pacific Groundwater Group, 2012). As the report demonstrates, these wells are also completed in alluvial materials that are highly susceptible to contamination from surficial contaminant spills. Only one production well is active (Well 1), and typically, this well is used only to supplement summer water demand. Well 1 is unable to provide sufficient water for the City's year round demands, should a spill require shutdown the Lower Wellfield. Exhibit 3501, page 4 emphasis added.

Nor can a Camas water system intertie be relied on to cure an HHFT contaminated oil spill. As Washougal's Hydrogeologist Carl Einberger notes:

Also of note on the cross section are several of the City of Camas' water supply wells, which are also located in very close proximity (less than 300 feet) to the rail corridor. Exhibit 3501, page 4 emphasis added.

As Washougal's Hydrogeologist Carl Einberger concludes:

In summary, both of these alternative water sources have potential or known constraints on their ability to meet the City of Washougal's water demand, particularly during summer months. Id at 7, emphasis added.

B. VEDT's use of Highly Hazardous Flammable Trains (HHFT's) creates an unacceptable risk to City of Washougal drinking water supplies.

The VEDT has not proposed technically sufficient operational safeguards to protect the public health, safety and welfare of Washougal's drinking water from its use of HHFT's.. Instead, TSVE in their Pre-Hearing Brief essentially argues a spill won't happen, and if it does it will not have any more than minimal impacts.

First, TSVE's in their Prehearing Brief at 79 calls oil spill and explosion concerns "overstated". Second, TSVE flatly denies their responsibility for any such spills, as "any risks specific to rail transport cannot be attributed to the Terminal". Id. at 80. Third, TVSE argues that "federal law governing safe rail transport is adequate to mitigate the risk of that method of transport". Id. Finally, TSVE argues: "(P)erhaps most importantly, response capabilities ensure that any incident can be adequately mitigated to ensure minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life."

The recent Mosier derailment and fire has shown that the water contamination risks of the VEDT's use of Highly Hazardous Flammable Trains (HHFT's) are very real risk and not adequately mitigated. The Oregon Department of Environmental Quality (ODEQ), in response to the recent Mosier oil train spill/fire, found excessive levels of 10 petrochemicals in a nearby monitoring well. Exhibit 5629 at 2. This includes benzene levels exceeding ODEQ's safe drinking water standard by 3900% (1800 ppb found, safe level 0.46 ppb). Id.

This is a small example of the compelling evidence the Council for the Environment (CFE) of Washington's Attorney General Office, the Washington Department of Natural Resources and Intervenors have submitted on HHFT's spill and explosion risks. We hereby incorporate those more detailed proof of risk and lack of adequate mitigation by reference here.

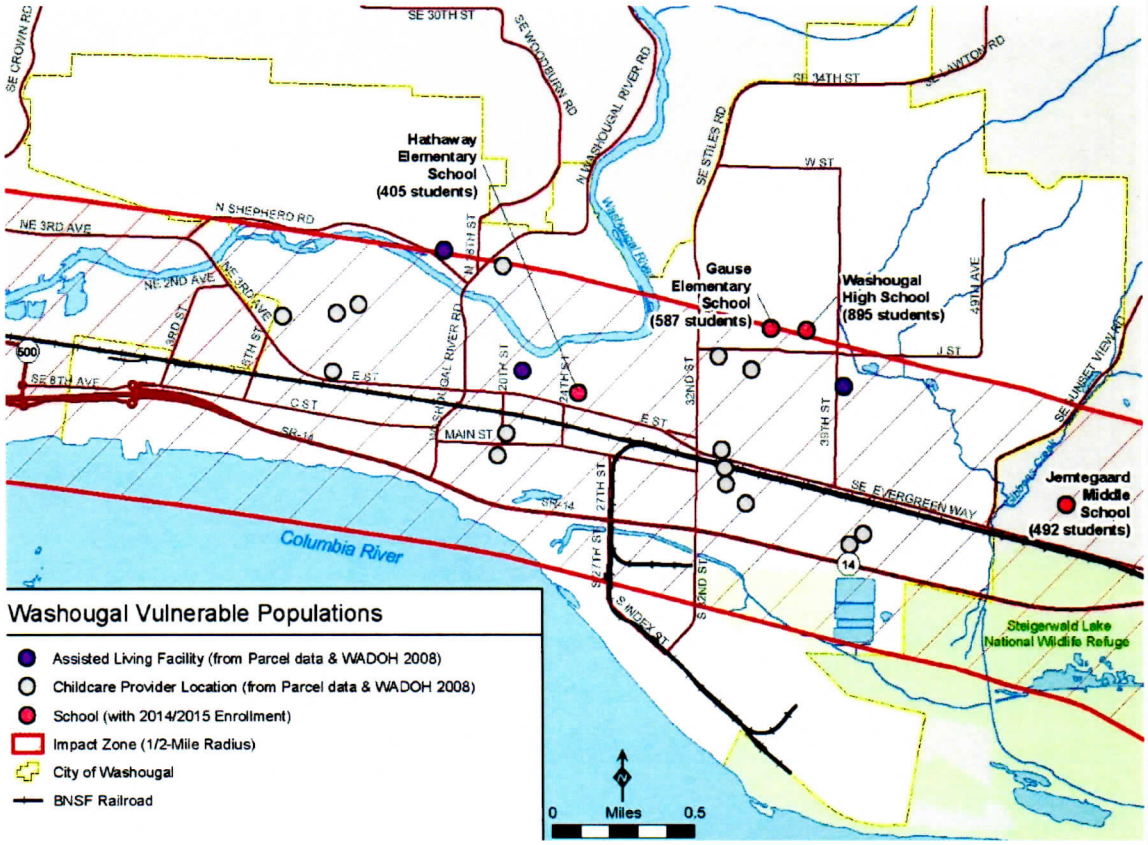
In light of the deficiencies of the VEDT, it is not surprising that Washougal's Hydrogeologist Carl Einberger concludes:

> A vulnerability of the City's wellfields combined with a lack of specific, enforceable mitigation measures in place indicate that the VEDT does not meet the EFSEC standards of preserving and protecting the environment and assuring technically sufficient operation safeguards for the public safety and welfare. Exhibit 3501, page 5 emphasis added.

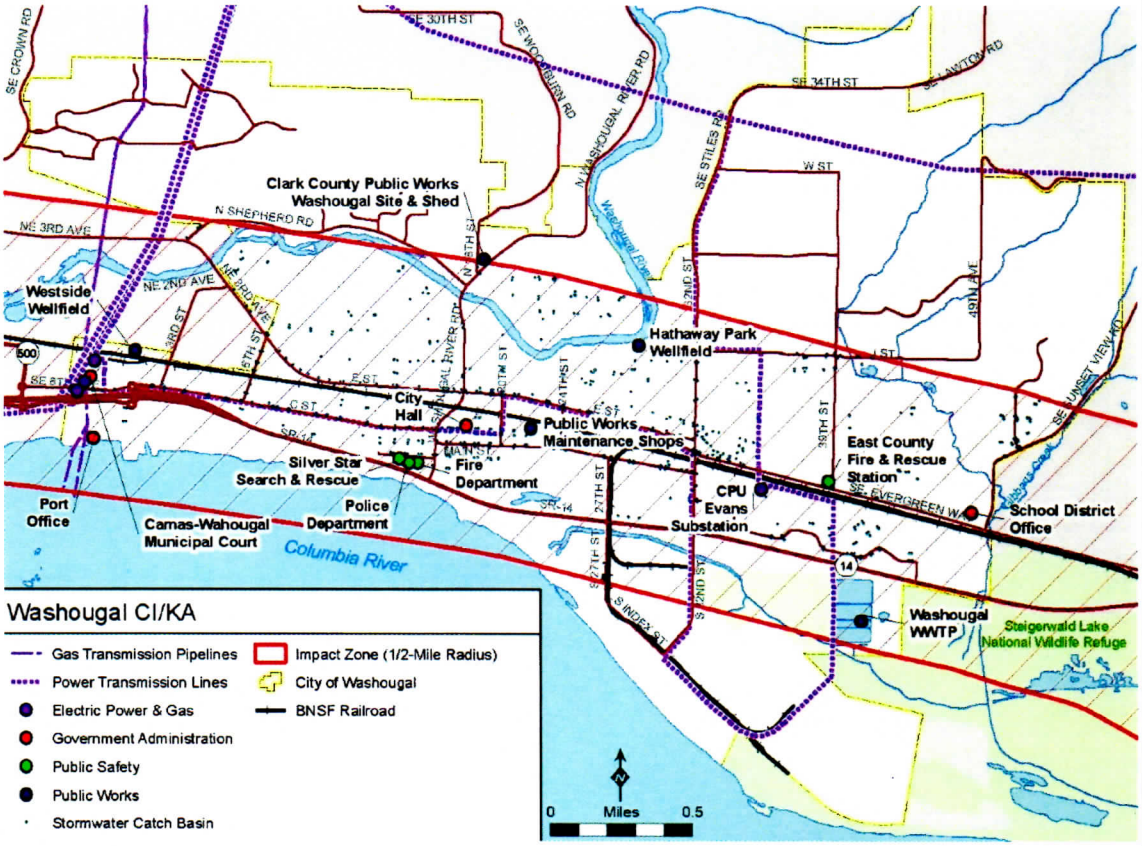
IV. Vancouver Energy Distribution Terminal (VEDT) does not meet EFSEC standards for protecting Washougal's vulnerable populations and infrastructure.

A. Washougal has critical infrastructure and vulnerable populations in the impact zones of Highly Hazardous Flammable Trains (HHFT's).

Washougal has substantial vulnerable populations in or adjacent to the HHFT ½ mile radius "impact zone". Figure 3 of Washougal's Emergency Management expert Dan Monaghan pre-filed testimony includes 4 schools, 3 assisted living centers and 14 childcare providers in the impact zone. Exhibit 3507 page 41.



Washougal also has copious critical infrastructure and key assets in the impact zone. As Exhibit 3507, figure 2, page 12 notes, Washougal City Hall, Fire Department, Police Department, East County Fire and Rescue Station and Silver Star Search and Rescue are all in the blast zone. Id. So is the school district office, the Municipal Court and 2 public works buildings. Ironically, the very emergency providers needed in a Washougal oil train fire/explosion could be compromised by such an incident. Also present in the impact zone is Clark Public Utilities Evans Substation, the City's Westside wellfield, and the City's waste treatment plant. Id.



B. Vancouver Energy Distribution Terminal (VEDT) does not meet EFSEC standards for protecting Washougal's vulnerable populations and infrastructure from an oil train explosion.

Essentially, TSVE has the same response to the risks of an oil explosion and fire as they do to an oil spill. TSVE in their Prehearing Brief essentially argues an explosion/fire won't happen, and if it does it will not have any more than minimal impacts.

The City of Vancouver and other parties have extensively described the risk of a derailment and resultant fire and explosion. See City of Vancouver Opening Brief from page 7-15. The recent Mosier derailment, explosion and fire has clearly shown the public health and safety risks of HHFT's. We hereby incorporate those more detailed proof of risk and lack of adequate mitigation by reference here.

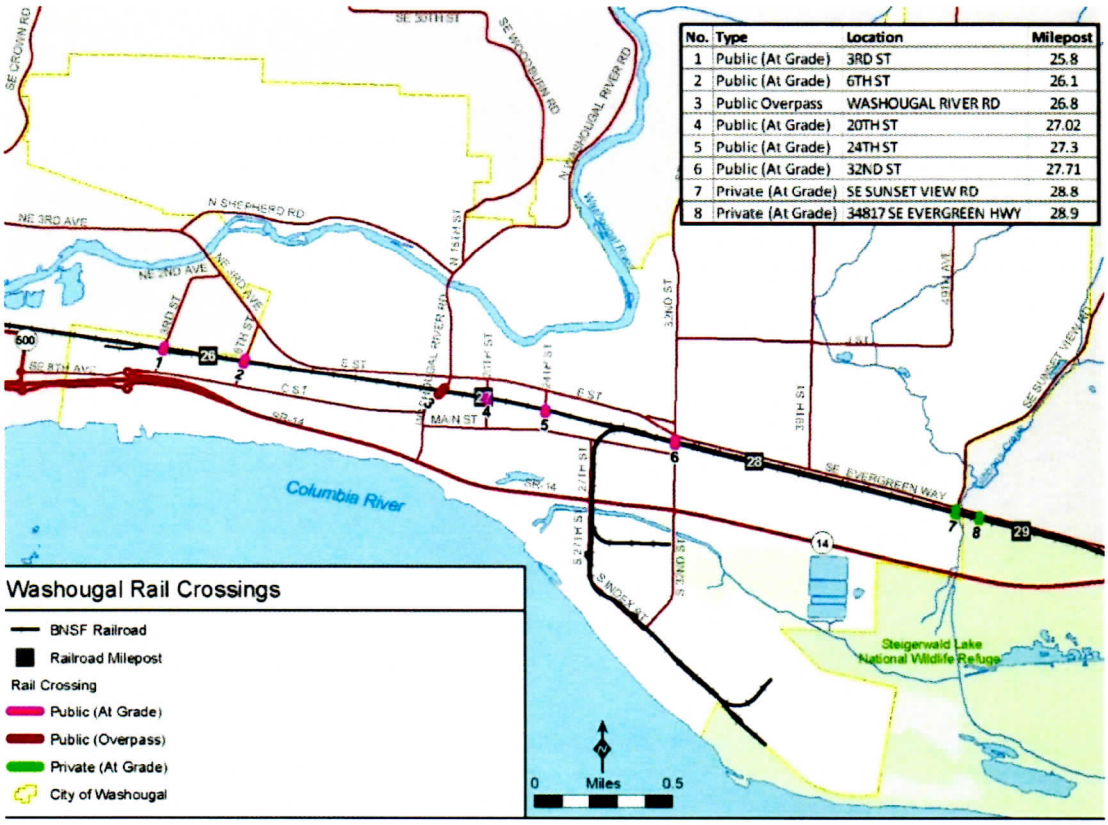
It's no wonder that Washougal's Emergency Management expert Dan Monaghan pre-filed testimony concluded:

> The greatest risk of the proposed action to public safety of the citizens of Washougal is involves a unit train accident/derailment in a populated area with a release of crude oil, resulting

in a major explosion/fire. An incident of this type could have a catastrophic impact to the public health and safety of the citizens of Washougal, depending on the location of the incident. Such an event would quickly overwhelm the abilities of local first responders and could require mass evacuation of local residents, business and schools. The loss of human life is a real possibility. This risk is not just theoretical – these scenarios have occurred throughout the nation. Exhibit 3707 at 4, emphasis added.

V. Washougal is highly susceptible to emergency services delays from HHFT's.

Even the routine passage of the project's HHFT's can adversely impact Washougal residents who need emergency services. As Figure 1 below, describes, the City of Washougal's main access road access is via State Highway 14, along the Columbia River. Exhibit 3507, page 7 .The VEDT will utilize BNSF railroad tracks which are between SR 14 and the vast majority of the City.



Washougal's Emergency Management expert Dan Monaghan describes the impacts the VEDT will have on delay in providing emergency services:

(T)he annual average traffic volume for the 32nd Street crossing is 12,629 vehicles per day (Exhibit 0051: VEDT DEIS, Table 3.14-15). This is the highest traffic volume of any grade

level crossing along the BNSF rail line between Spokane and Vancouver (Exhibit 0051 VEDT DEIS, Table 3.14-15).

The VEDT DEIS addressed the issue of local traffic delays due to the proposed increased number of unit trains (Exhibit 0051 VEDT DEIS at Chapter 3.14.3.2). This chapter of the VEDT DEIS states that four (4) additional unit trains per day would increase traffic delays at grade level crossings in Washougal from the current daily average of 138 minutes, to 159 minutes, a 15 percent increase. These additional unit trains would increase the daily number of trains (all types) from 28 to 32 trains, which is approximately 80 percent of the rail line's maximum capacity. Exhibit 3507, page 6.

A. The VEDT does not have operational controls that are technically sufficient to protect Washougal emergency services customer's welfare and protection.

TSVE claims there will no increase in VEDT related road delay because the increase in HHFT's will be "indistinguishable from baseline" conditions.

> The Applicant and its transportation expert thoroughly studied the impact of the Terminal on transportation delays at at-grade railroad crossings and found minimal impact from the four trains per day that will serve the Project. This conclusion was reached, in part, based upon the fact that rail traffic associated with the Project is indistinguishable from baseline condtions that occur and will continue to occur with or without this project. Rail traffic is dynamic, not static. The four unit trains per day expected to serve the Terminal are consistent with the natural fluctuation of existing rail traffic and existing conditions at at-grade crossings. Additionally, any increase in rail transportation from the Project is insignificant in comparison to rail traffic in Washington, which is predicted to increase steadily, by an estimated 13%, with or without the Project. TSVE Prehearing Brief at 62, footnotes omitted, emphasis added.

This argument flies in the face of the facts. The 4-5 oil trains per day to the VEDT will unquestionably be an increase in train traffic and resultant grade crossing delay. The only question is how much.

In response, TSVE submitted on May 12, 2016 Exhibit 0114-000131-TSS Technical Report: At-Grade Rail Crossing Analysis from Kittelson and Associates, Inc. However, the Adjudication testimony of Dunn shows the flaws of that analysis. The Kittelson study didn't measure the actual length the vehicle queuing nor did they use the actual speed of trains. Dunn testimony, Volume 9 Transcript page 2207 to 2208. Also, Kittelson assumed that if there was a train blocking an at-grade crossing, that another emergency vehicle was available and would be sent. Dunn testimony, Volume 9 Transcript at page 2191.

Despite these flaws, the Kittelson report does show increased delay from VEDT's train traffic. The Kittelson report found a 3 minute, 26 second delay from each oil train. Exhibit 0114-000131-TSS at 27. The Report also concedes it would take 5 minutes and 20 seconds to go around the train. Id. When seconds count in an emergency situation, an added 3-5 minute delay or more can be deadly.

VI. Conclusion.

The City of Washougal has a duty to protect the public health, safety and welfare of its residents. The VEDT, and its use of HHFT's, jeopardizes Washougal residents and municipal resources. The City would generally prefer to find a mitigation solution to the risks of this project. However, the Mosier oil train spill and explosion shows that the risks here are simply too great, and the proposed mitigation measures too ineffective.

We very much appreciate the efforts and cooperation of EFSEC, its staff, the Hearing Officer and the Parties in this proceeding.

Dated this 6th day of September, 2016.

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