



March 27, 2014

Leah Forbes, Senior Planner
Skagit County PDS
1800 Continental Place
Mount Vernon, WA 98273

RECEIVED

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SKAGIT COUNTY
PDS

Re: Response to public comments, PL13-0468

Dear Ms. Forbes:

We have reviewed the information requests regarding the Shell Puget Sound Refinery (PSR) Crude by Rail East Gate Project contained in your letter dated March 7, 2014. Per your request, on behalf of Shell, we have prepared this letter to provide further clarification for each of these items.

"Provide additional information about local fire response and spill plans."

- The Shell PSR maintains teams of trained personnel to respond to all emergencies within the refinery. The teams are trained to respond to spills both on land and on water, fires, medical, rescue, and hazardous material releases. They are trained in accordance with all federal, state, and local rules and regulations. The Shell PSR Emergency Response Teams are the first responders to all incidents within the refinery boundaries.
- Shell maintains a Refinery Emergency Response Plan, as well as individual plans for Oil Spill Response, Fire Fighting, and Emergency Notification and evacuation procedures.
- Shell is a member of the Western States Petroleum Association (WSPA) and is a part of the Mutual Assistance Emergency Response program which is organized by WSPA. In the event an emergency arises that requires additional resources (e.g., to fight a fire or manage a spill), Shell may contact a WSPA member for assistance. WSPA members presently include: Shell PSR, Tesoro Anacortes Refinery, Phillips 66 Ferndale Refinery, BP Cherry Point Refinery, and U.S. Oil and Refining Co.
- Shell is also a member of Community Awareness Emergency Response. This organization allows Shell to communicate with and assist local public emergency response and fire-fighting organizations.
- Overall, Shell has a trained and experienced team to respond to oil spills, hazardous material releases, fires, and injuries. They are a part of an expanded organization of other professionals who can assist if necessary in emergency situations to protect lives, property and the public.

“Address potential impacts on heronry located to the south east of the project site.”

Great blue herons (*Ardea herodias*) are included on the Washington Department of Fish and Wildlife (WDFW) Priority Habitat and Species (PHS) List. The PHS List is a catalog of habitats and species considered by the WDFW to be priorities for conservation and management; however, the WDFW has no required permitting process for projects that may affect PHS species or habitat. Great blue herons are considered a Priority Species under PHS Criteria #2, which refers to “vulnerable aggregations¹” (WDFW 2008). Under Skagit County Code, great blue heron nest sites are designated as Fish and Wildlife Habitat Conservation Areas (Skagit County Code 14.24.500[4]). Any project within 200 feet of a Fish and Wildlife Habitat Conservation Area requires a site assessment (Skagit County Code 14.24.520). At the federal level, great blue herons are not listed under the Endangered Species Act but are protected under the federal Migratory Bird Treaty Act.

The March Point Heronry is located between Highway 20 and Padilla Bay, approximately 1,350 feet southeast of where the Burlington Northern Santa Fe (BNSF) rail line meets Shell-owned property (Skagit Audubon Society comment letter dated February 12, 2014). Some of the land on which the great blue heron colony nests is owned by Skagit Land Trust (SLT) but other portions are privately owned (SLT 2014). The colony is bordered by South March Point Road on the north. A steel fabrication facility lies between much of the colony and the Shell refinery. In 2012, 357 great blue heron nests were counted on SLT property, but access to adjacent properties has been unavailable (SLT 2014).

Shell reviewed WDFW’s *Management Recommendations for Washington’s Priority Habitats and Species – Great Blue Heron* (Azerrad 2012). The WDFW report includes recommended buffers for nesting colonies. Year-round buffers are recommended to be 197 feet for urban settings (greater than 50 percent development within 0.25 mile), 656 feet for suburban/rural settings (2 to 50 percent development within 0.25 mile), or 984 feet for undeveloped settings (less than 2 percent development within 0.25 mile). There is over 2 percent but less than 50 percent development within 0.25 mile of the March Point Heronry, so the suburban/rural buffer widths would apply.

In addition to the standard buffers, WDFW recommends a seasonal buffer to be added to the outer edge of the year-round buffer when project activities occur during the breeding season (approximately March through August). The seasonal buffer is 656 feet for unusually loud activities (exceeding 92 decibels) and 1,320 feet for blasting. Neither blasting nor noise

¹ Vulnerable aggregations include species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to aggregate. Examples include heron rookeries, seabird concentrations, marine mammal haulouts, shellfish beds, and fish spawning and rearing areas (WDFW 2008).

exceeding 92 decibels is expected to occur during the project, so no seasonal buffer would need to be applied.

Project features would not be located within at least 1,350 feet of the heronry. Therefore, no project construction activities would occur within the recommended 656-foot WDFW buffer. No project features or construction activity would be located between the heronry and Padilla Bay.

Biologists for Shell (including a PhD-level avian biologist) have been on the project site numerous times between January 2013 and the present (March 2014) and have never encountered concentrated use by great blue herons. Great blue herons have consistently been seen in small numbers near the tidal marsh at the northwest corner of East March Point Road and South March Point Road. This marsh would be fenced from cattle use and the estuary buffer planted with native woody plants as part of the project. It appears that the project site does not provide prime foraging habitat or pre-nesting habitat for this species, especially in comparison to the resources available in Padilla Bay.

The portion of the great blue heron colony on SLT property has been monitored for over 20 years. The overall trend is that the number of great blue heron nests has increased (SLT 2014). This increase has occurred over the time that the steel fabrication facility began operations immediately adjacent to the colony. In addition, the adjacent BNSF line has experienced additional rail traffic from trains going to Tesoro, which has not led to abandonment of the colony. Given that these activities have not resulted in a decline, there does not appear to be evidence that increased rail activity from Shell trains will lead to a direct decline in the colony.

“Clarify whether or not this proposal will lead to increased marine vessel traffic.”

The intent of this project is to provide Shell PSR with an alternate source of domestic crude. The project will not increase crude capacity of the refinery. This project would therefore be expected to lead to less crude oil marine vessel traffic. In addition, this project will not materially affect the volumes of products produced at the refinery and therefore will not impact the current level of product marine traffic. Decisions regarding modes of transportation for crude oil, products, and intermediate feedstocks are based on safety, environmental compliance, and economic considerations—the project will not impact this decision-making process.

“Address whether or not there will be indirect impacts of wetland fill on Padilla Bay.”

The impacts analysis in the *Wetland Mitigation Bank Use Plan* for the Crude by Rail East Gate Project (URS 2013a) addresses the potential for both direct and indirect impacts from wetland fill or excavation. No direct impacts are anticipated to occur within Padilla Bay. The new rail cut will be 1,000 to 2,000 feet from the bay, which is separated from Shell property by East March Point Road.

Indirect impacts to Padilla Bay are assessed in terms of the potential to impair water quality, hydrology, and habitat.

Water Quality: Most wetlands naturally provide a measure of water quality improvement. The wetlands that will be impacted by this project generally rate low or moderate for this function (URS 2013a). Water quality functions of the remaining undisturbed wetlands between the rail and Padilla Bay should not be altered significantly. Erosion and sedimentation controls instituted during construction should prevent excessive sediments from entering the wetlands and bay. Runoff from new impervious surfaces will be detained in the new stormwater ponds. The project is designed to contain and collect process-related oily wastewaters, should they occur, and direct them to the NPDES-permitted wastewater treatment facility at the site. Spill and pollution prevention controls will be instituted. Section 8 of the bank use plan lists additional water quality measures that will be utilized to ensure that water quality in Padilla Bay will not be impaired.

Shell will develop and implement a site-specific stormwater pollution prevention plan for construction activity occurring on site for projects greater than 5 acres, as required by Section S15 of the facility NPDES permit. Best management practices, erosion control activities and any necessary monitoring will be completed as specified in this permit. During operation of the project, water quality of discharge from the stormwater ponds will be monitored per Shell's NPDES permit and/or other applicable permit requirements.

The project site is currently used for cattle grazing, and runoff from the wet pastures flows untreated into several ditches or Stream S and then into Padilla Bay. Cattle also have direct access to many of these drainages. Grazing will be eliminated from the project site, and project-related runoff will be routed through drainage ditches into the stormwater settling ponds as shown in the submitted permit documents. Although grazing will continue outside of the project area, overall water quality impacts from grazing should be reduced due to new fencing and planting around Stream S and the associated estuary in the southern part of the property.

Hydrology: Wetlands can also attenuate downstream flooding through storage and gradual release of flood waters. The wetlands in the project area have little opportunity to perform this function due to their proximity to the bay, and they all rate low for this function (URS 2013a). The small amount of storage that is currently provided by the impacted wetlands will be offset by the new stormwater system, which is designed to detain, treat, and discharge storm flows in a manner that reproduces pre-construction hydrology. Outfall from the stormwater ponds will be conveyed into downslope vegetated buffers and wetlands through the use of flow dissipaters or level spreaders.

Wetlands at the project impact site are not known to provide significant groundwater recharge that would result in freshwater seepage into Padilla Bay. This is an important hydrologic function of some coastal wetlands, but recent and past investigations in the project vicinity

indicate the presence at depth of a thick, dense clay layer that precludes vertical movement of surface water into deeper water-bearing layers (URS 2014). Delivery of freshwater into the bay by surface flow is still an important function of the wetlands and will continue after completion of the project through discharge from the remaining wetlands and from the new stormwater ponds.

Habitat: Fish and wildlife use of the impacted wetlands is addressed in the *Wetland Mitigation Bank Use Plan* and in the *Biological Assessment and Essential Fish Habitat Analysis* (URS 2013b) prepared for this project. Over 77 percent of the wetland impact area is grazed pasture that provides a low level of habitat function (URS 2013a). Habitat connectivity with Padilla Bay is currently constrained by the presence of East March Point Road next to the bay and the other roads, railroad, and developed areas in the project vicinity. The project would result in further fragmentation of some wetland habitats due to the presence of the rail cut. The elimination and impairment of these wetlands is not expected to significantly impact habitat quality or use of Padilla Bay. None of these habitats is of extremely high value or extremely rare within the project area.

A large area of wetlands will continue to exist between the new rail and Padilla Bay. This includes a large forested wetland in the northern part of the property that extends from the new rail to East March Point Road. As part of this project, the salt marsh in the southeast corner of the Shell property will be restored in areas currently impacted by cattle. A 200-foot buffer around the salt marsh will be fenced to exclude cattle and restored to forested and scrub-shrub wetlands.

“Please provide information about any contact with state and federal agencies regarding the issues raised by the public comments.”

Shell has been in contact with the following federal and state regulatory agencies with regards to the permit applications that have been submitted for the project. The agencies and their respective permit applications are listed in the table below:

Agencies	Permit Applications
U.S. Army Corps of Engineers	Section 404 Individual Permit
U.S. Fish and Wildlife Service	Eagle Non-Purposeful Take Permit; Eagle Nest Take Permit
Washington State Department of Ecology	401 Water Quality Certification; Coastal Zone Management Consistency Determination
Washington State Department of Fish and Wildlife	Hydraulic Project Approval
Northwest Clean Air Agency	Order of Approval to Construct (air permit)

Please let me know if you have any additional questions regarding the Shell PSR Crude by Rail East Gate Project.

Sincerely,
URS Corporation



Jeff Walker
Senior Ecologist

References:

Azerrad, J. 2012. *Management Recommendations for Washington's Priority Habitats and Species – Great Blue Heron*. Washington Department of Fish and Wildlife. Olympia, Washington.

Skagit Audubon Society. 2014. Shell PSR Crude Rail by East Gate project comment letter. February 12, 2014.

SLT (Skagit Land Trust). 2014. Web site. Accessed at <http://www.skagitlandtrust.org/>.

URS. 2014. Report of Geotechnical Investigation: Crude Rail Unloading Facility East. Shell Puget Sound Refinery. Anacortes, Washington.

URS. 2013a. Wetland Mitigation Bank Use Plan: Crude by Rail East Gate Project. Shell Puget Sound Refinery. Anacortes, Washington.

URS. 2013b. Biological Assessment and Essential Fish Habitat Analysis: Crude by Rail East Gate Project. Shell Puget Sound Refinery. Anacortes, Washington.

WDFW (Washington Department of Fish and Wildlife). 2008. Priority Habitats and Species List. WDFW, Olympia, WA. August 2008. Accessed at: <http://wdfw.wa.gov/publications/00165/wdfw00165.pdf>.