



Gateway Pacific Terminal and BNSF Railway Custer Spur NEPA Scope **U.S. Army Corps of Engineers Statement**

The Co-Lead Agencies evaluating the Gateway Pacific Terminal and BNSF Railway proposals have made public the scope of analysis for the draft Environmental Impact Statement. Whatcom County, the Washington Department of Ecology (Ecology), and the U.S. Army Corps of Engineers (Corps) together are conducting the EIS process for the proposed projects and will jointly prepare one EIS.

Whatcom County and Ecology must comply with the State Environmental Policy Act (SEPA), and the Corps must comply with the National Environmental Policy Act (NEPA). The joint NEPA/SEPA EIS process will enable the co-lead agencies to avoid duplicative efforts where the two laws overlap, while meeting each statute's separate requirements and providing a single document for easier public review.

Seattle District Commander Col. Bruce Estok has determined the scope of analysis that must be included in the joint EIS to meet the Corps' decision-making requirements. The Army Corps of Engineers has made public the [memo](#) signed by Col. Estok regarding the scope of analysis for the review under NEPA.

The proposals require authorization under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. For the Gateway Pacific Terminal, activities triggering the need for a Department of the Army permit under both Section 10 and Section 404 include the construction of a three-berth wharf and access trestle in Puget Sound, and filling wetlands to construct bulk commodities storage and transfer facilities. BNSF activities requiring a permit under Section 404 of the CWA include filling wetlands and impacting streams from upgrades to the existing railroad spur crossings.

For the purposes of NEPA, the Corps must identify the federal action under consideration and must decide whether the agency has sufficient "control and responsibility" for activities outside of waters of the United States such that issuance of a permit would amount to approval of those activities. The federal action is defined by those activities described above that the Corps is regulating under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The Corps extends its scope of analysis beyond waters of the United States where the environmental consequences of upland elements of the project may be considered products of either the Corps permit action or the permit action in conjunction with other federal involvement. Activities such as rail traffic, coal mining, shipping coal outside of U.S. territory, and the ultimate burning of coal overseas are outside of the Corps' control and responsibility.

The Corps will analyze the full effects of the preferred alternative, no action alternative and reasonable alternatives, as required under NEPA, for the Gateway Pacific and BNSF proposal. The Corps is required to take a thorough look at the direct, indirect, and cumulative impacts of the federal action, and we intend to do so within the legal limits of our authority.

In addition to meeting NEPA requirements, the Corps will fully comply with other legal requirements, including the Endangered Species Act and the National Historic Preservation Act, and meet our federal tribal trust responsibility, engaging with federally recognized Tribes in timely and meaningful consultations throughout the Corps' permit process.

The scope of analysis done under NEPA by the Corps will not limit the scope of the State Environmental Policy Act (SEPA) analysis; the EIS is expected to cumulatively document all potential impacts that each agency - the Corps, Washington State and Whatcom County - determine they must evaluate. The EIS will disclose the extent to which information in the joint document is for NEPA analysis and/or SEPA analysis only. It is up to each co-lead agency to determine the relevance and weight the information in the EIS will be given by each co-lead agency when making its own agency determinations, based on each agency's respective statutes, responsibilities, and legal requirements.

The co-lead agencies have begun preparing a draft EIS, which will likely take at least a year to prepare. The lead agencies will seek public comment on the draft EIS, and then produce a final NEPA/SEPA EIS.

The EIS process does not determine whether the proposal should receive permits. Decisions about issuing permits to construct the proposed projects will be made separately by the regulatory agencies only after the EIS process is complete.