



# Friends *of the* San Juans

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July 26, 2019

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Submitted via email: [tbrissen@whatcomcounty.us](mailto:tbrissen@whatcomcounty.us)

RE: SEP2019-00033

Dear Mr. Brissenden,

Thank you for the opportunity to submit comments on SEP2019-00033, Whatcom County's State Environmental Policy Act Mitigated Determination of Nonsignificance (MDNS) for the Phillips 66 Ferndale Refinery's proposal to construct a new 300,000 barrel crude oil storage tank and a new 80,000 barrel fuel oil storage tank. The new storage tanks are being constructed to provide additional operating flexibility for manufacturing a new product, low sulfur marine fuels, in addition to the Heavy Fuel Oil (HFO – high viscosity, tar-like fuel) that is currently manufactured at the refinery and that will continue to be used by ships with sulfur scrubbers.

Friends of the San Juans represents over 2,000 members and works with diverse stakeholders, including citizens, committees, tribal and governmental agencies, and other non-profit organizations in the transboundary region of the Salish Sea to protect and restore the San Juan Islands and the Salish Sea for people and nature — since 1979. Friends of the San Juans works to protect and recover the 113 endangered species in the Salish Sea, with the most iconic being the Southern Resident Killer Whales. In 2001, Friends of the San Juans was an original co-petitioner for the federal listing of the Southern Resident Killer Whales under the Endangered Species Act. The protection and recovery of the Southern Residents continues to be one of our top priorities.

Friends of the San Juans supports the refinery's intent to manufacture the low sulfur marine fuels that meet the International Maritime Organization (IMO) 2020 fuel specifications. However, because the Phillips 66 Ferndale Refinery (Phillips 66) did not provide direct answers regarding the additional vessel traffic associated with this project, Whatcom County did not address the proposed project's additional vessel traffic impacts to Southern Resident Killer Whales and increased oil spill risk.

The proposed project's SEPA checklist required applicants to "List any threatened and endangered species known to be on or near the site." Phillips 66 answered: "None are on the site. Several species of fish and marine mammals may be in the Strait of Georgia to west of the project site."<sup>i</sup> The critically endangered Southern Resident Killer Whales are not identified in the SEPA checklist, despite the explicit requirement to "list any threatened and endangered species known to be on or near the site" (see [WAC 197-11-960](#) (5)(b)). Phillips 66, including its marine terminal, is located on the shores of the Area 1 - Summer Core Area of the Designated Critical Habitat for Southern Resident Killer Whales.<sup>ii</sup> Whatcom County's MDNS does not address whether the project will adversely affect Southern Resident Killer Whales or their habitat as required by state law (see [WAC 197-11-330](#) (3)(e)(ii)).

Large commercial ships impact the Southern Residents' ability to communicate and successfully hunt (using echolocation) for scarce prey.<sup>iii</sup> Other impacts include direct vessel strikes,<sup>iv</sup> hearing loss, and behavioral changes.<sup>v</sup> Southern Resident Killer Whales were listed as Endangered under the Endangered Species Act, in part, because of concerns about potential oil spill impacts.<sup>vi</sup> A report from the National Marine Fisheries Service states, "Their small population size and social structure also puts them at risk for a catastrophic event, such as an oil spill, that could impact the entire population."<sup>vii</sup>

I appreciate what appears to be Whatcom County's repeated efforts to receive information from Phillips 66 about the proposed project's vessel traffic. The answers from Phillips 66 are vague and evasive. In answer to the question, "Specifically, will this proposal increase the number of trips (by marine vessel, road vehicle or rail) of unrefined fuel currently brought to the refinery? Will the proposal increase the number of trips (by marine vessel, road vehicle or rail) of refined fuel exported from the refinery?" Phillips 66 answers:

The low sulfur crude and low sulfur fuel oil products will be transported over water via the marine terminal. We do not anticipate any increase in rail or truck traffic associated with the IMO 2020 fuel specification changes.<sup>viii</sup>

Note that Phillips 66 does not answer the question regarding marine vessel traffic, and only answers the question in terms of rail and truck traffic.

The July 3, 2019 email from Kenneth Morrill (Phillips 66) to Mark Personius (Director, Whatcom County Planning & Development Services) that is attached to the MDNS includes 13 factors to justify the statement, "it would be wholly speculative to attempt a prediction at the number of marine vessels that will call upon the Phillips 66 marine terminal at any particular future time period."<sup>ix</sup> The email goes on to state:

Refinery operations will essentially continue in the same manner – and quantity – as they did preceding implementation of the project (we say in the paragraph's first sentence not "materially affect" because while the project will marginally increase storage capacity, the "increase" in filling up the increased storage capacity is a one-time

increase and is essentially noise within the overall material input and output movements through any given time period – i.e., the refinery throughput is not increased and, therefore, after the first time the new tanks are filled the feedstock input and product output remains consistent with operations prior to project implementation).<sup>x</sup>

Despite the 13 factors that justify Phillips 66 not quantifying the vessel traffic associated with the proposed project, Phillips 66 clearly states that there will be additional vessel traffic to initially fill the new storage tanks. Phillips 66 also clearly states:

We will produce and export less heavy fuel oil when we begin exporting the IMO 2020 fuel so the net effect on marine vessel traffic should be minimal.<sup>xi</sup>

Whatcom County's threshold determination did not consider the proposed project's vessel traffic's adverse impacts due to Phillips 66 refusing to quantify the project's "minimal" net effect on vessel traffic and the vessel traffic required to fill the low sulfur crude oil storage tank.

In addition, Phillips 66 clearly states:

The low sulfur crude and low sulfur fuel oil products will be transported over water via the marine terminal.<sup>xii</sup>

And also states:

The project does not increase the overall throughput of the refinery processing capacity, so the total volume of crude we import and total volume of product we export is not expected to change. The premise of the project is to import low sulfur crudes so that we can produce low sulfur marine fuels.<sup>xiii</sup>

Even though "the project does not increase the overall throughput of the refinery processing capacity, so the total volume of crude we import and total volume of product we export is not expected to change," it appears that the production of the new product, low sulfur marine fuels, would require more low sulfur crude oil than is currently imported at the refinery. If so, Phillips 66 should be required to clearly define the net change in vessel traffic for any increase in low sulfur crude oil delivered to the marine terminal and the change in vessel traffic associated with the transport of the new low sulfur marine fuels over water via the marine terminal.

In contrast, Phillips 66 is far more forthright in response to questions regarding the proposed project's associated truck and rail traffic and pipeline throughput. Phillips 66 also makes the following statement (two times – also included above) regarding the proposed project's associated truck and rail traffic:

We do not anticipate any increase in rail or truck traffic associated with the IMO 2020 fuel specification changes.<sup>xiv</sup>

Phillips 66 also clearly states that there will be no changes to pipeline throughput:

Low sulfur crudes will be received at the marine terminal not from the pipelines and we do not use the pipeline for fuel oil transport.<sup>xv</sup>

Phillips 66 also provides detailed answers in response to questions about the truck traffic associated with the construction of the proposed project:<sup>xvi</sup>

Q: Please specify the construction haul route (i.e. roads to be used for construction traffic).

A: Haul roads will include: Unick Rd, Lake Terrell Rd, Rainbow Rd, Kickerviller Rd, Grandview Rd. N. Enterprise Rd, Zell Rd

Q: How many construction truck trips will occur each day?

A: 50 to 60 Loads per day

Q: What are the days and hours of hauling?

A: Monday through Friday, 7:00 AM to 4:30 PM

Q: How long will the haul route be in effect?

A: Approximately 60 working days.

Q: Will the vehicles be standard diesel dump trucks; with or without a pup trailer?

A: Standard diesel dump trucks, with a pup trailer.

Phillips 66 should be required to provide equally-detailed answers regarding vessel traffic as was provided regarding truck traffic.

Whatcom County's MDNS only identifies the adverse impacts associated with the construction of the tanks. The mitigating conditions include the requirement for a truck traffic control plan and the requirement for a variance if noise levels exceed thresholds in state law or if construction takes place outside normal construction hours. There are no mitigating conditions that address the adverse impacts from the marine vessel traffic associated with this project or the vessel traffic's impacts to Southern Resident Killer Whales.

On November 1, 2018, Phillips 66 and Renewable Energy Group announced plans for a new 18,000 barrels per day Renewable Diesel Project that will be co-located at the Phillips 66 Ferndale Refinery.<sup>xvii</sup> A July 16, 2019 email communication from Tim Johnson at Phillips 66 stated, "The project permitting team has been in discussions with Whatcom County and Ecology staff on preparing the project application, but don't have a submittal date yet – hopefully in a few weeks."<sup>xviii</sup> Phillips 66 answered, "No." to SEPA checklist A. Background 7.

“Do you have plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.” However, it is concerning that the MDNS has been issued just weeks before Phillips 66 and the Renewable Energy Group intend to submit the application for a significant new project. There is nothing in the project description, and no answers to questions from Whatcom County (who is “in discussions” with Phillips 66 about the forthcoming permit application) that explicitly states whether or not these new storage tanks could be utilized by the Renewable Diesel Project. The MDNS could result in the unlawful piecemeal permitting of development at the Phillips 66 Ferndale Refinery (see [WAC 197-11-060](#) (3)(b) and (5)(d)(ii)).

Please reconsider the MDNS threshold determination and:

1. Require Phillips 66 to provide details on the marine vessel traffic associated with the manufacture of low sulfur fuel oil products.
2. Specifically address the project’s vessel traffic’s adverse impacts to the critically endangered Southern Resident Killer Whales.
3. Specifically address the project’s vessel traffic’s increased oil spill risk and associated adverse impacts to Southern Residents and also the Salish Sea ecosystem and neighboring communities.
4. Ensure that this MDNS does not result in inappropriate piecemeal development at the Phillips 66 Ferndale Refinery.

Thank you for your attention to these comments.

Sincerely,



Lovel Pratt  
Marine Protection Program Director

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<sup>i</sup> State Environmental Policy Act Mitigated Determination of Nonsignificance. Whatcom County, SEP2019-00033. Date of Issuance: July 19, 2019. Pages 7-8.

<sup>ii</sup> NOAA Fisheries, Northwest Region. November, 2006. Designated Critical Habitat for Southern Resident Killer Whales. [https://www.westcoast.fisheries.noaa.gov/publications/protected\\_species/marine\\_mammals/killer\\_whales/SRKW-CH-Map.jpg](https://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/killer_whales/SRKW-CH-Map.jpg) Accessed July 25, 2019.

<sup>iii</sup> Veirs S, Veirs V, Wood JD. 2016. Ship noise extends to frequencies used for echolocation by endangered killer whales. *PeerJ* 4:e1657 <https://doi.org/10.7717/peerj.1657>

<sup>iv</sup> Ferrara, G.A., T.M. Mongillo, L.M. Barre. 2017. Reducing disturbance from vessels to Southern Resident killer whales: Assessing the effectiveness of the 2011 federal regulations in advancing recovery goals. NOAA Tech. Memo. NMFS-OPR-58, 76 p.

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Fisheries and Oceans Canada. July 22, 2019. Necropsy results: Southern Resident Killer Whale J34. <https://www.pac.dfo-mpo.gc.ca/fm-gp/species-especies/mammals-mammiferes/j34-eng.html> Accessed July 25, 2019.

Ferrara, G.A., T.M. Mongillo, L.M. Barre. 2017. Reducing disturbance from vessels to Southern Resident killer whales: Assessing the effectiveness of the 2011 federal regulations in advancing recovery goals. NOAA Tech. Memo. NMFS-OPR-58, 76 p.

<sup>v</sup> Holt, M.M. 2008. Sound exposure and Southern Resident killer whales (*Orcinus orca*): A review of current knowledge and data gaps. U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC-89, 59 p.

<sup>vi</sup> Endangered and Threatened Wildlife and Plants: Endangered Status for Southern Resident Killer Whales, Federal Register Vol. 70, No. 222 (November 18, 2005) 69903 – 69912

<sup>vii</sup> National Marine Fisheries Service. *Southern Resident Killer Whales (Orcinus orca) 5-Year Review: Summary and Evaluation*. (National Marine Fisheries Service West Coast Region, Seattle, 2016) [http://www.westcoast.fisheries.noaa.gov/publications/status\\_reviews/marine\\_mammals/kw-review-2016.pdf](http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/marine_mammals/kw-review-2016.pdf).

<sup>viii</sup> State Environmental Policy Act Mitigated Determination of Nonsignificance. Whatcom County, SEP2019-00033. Date of Issuance: July 19, 2019. Page 16.

<sup>ix</sup> Ibid. Page 20 (though no page number include).

<sup>x</sup> Ibid. Pages 20-21 (though no page numbers included).

<sup>xi</sup> Ibid. Page 16.

<sup>xii</sup> Ibid. Pages 15-16.

<sup>xiii</sup> Ibid. Page 16.

<sup>xiv</sup> Ibid. Page 16.

<sup>xv</sup> Ibid. Page 16.

<sup>xvi</sup> State Environmental Policy Act Mitigated Determination of Nonsignificance. Whatcom County, SEP2019-00033. Date of Issuance: July 19, 2019. Page 15.

<sup>xvii</sup> Phillips 66 and Renewable Energy Group Announce Plans for Large-Scale Renewable Diesel Facility on West Coast. November 01, 2018. <https://investor.phillips66.com/financial-information/news-releases/news-release-details/2018/Phillips-66-and-Renewable-Energy-Group-Announce-Plans-for-Large-Scale-Renewable-Diesel-Facility-on-West-Coast/default.aspx> Accessed July 25, 2019.

<sup>xviii</sup> Email from Tim Johnson, Environmental Coordinator, Phillips 66, to Lovel Pratt, Marine Protection Program Director, Friends of the San Juans (July 16, 2019, 11:19 AM PDT) (on file with Lovel Pratt).