

**SEPA CO-LEAD AGENCY AGREEMENT  
MEMORANDUM OF UNDERSTANDING**

**Between**

**Skagit County and the Washington State Department of Ecology**

Skagit County (“the County”) and the Washington State Department of Ecology (“Ecology”) agreed to share lead agency responsibilities under the State Environmental Policy Act (SEPA), chapter 43.21C RCW, to conduct environmental review for the Rail Terminal Project at Shell’s Puget Sound Refinery (“Rail Project”) proposed by Equilon Enterprises, LLC, d/b/a Shell Oil Products, US (“Shell”). This memorandum of understanding (MOU) delineates the duties of each co-lead agency, how decisions will be made, a plan for resolution of conflicts, and how the MOU may be dissolved.

**I. DUTIES**

**A. General:**

1. The County shall act as nominal lead. As nominal lead, the adopted SEPA public notice procedures of the County shall be used for this proposal.
2. Hiring and Payment of Consultants. Consultant(s) needed to assist in completing the required analysis and documentation related to the Rail Project under SEPA shall be hired under the process established by the County and Ecology, and shall be paid by Shell pursuant to a contract(s) with the consultant(s) and Shell. Ecology and the County will participate in the selection process of the consultant(s) and both parties must agree on the consultant.
3. Public and Agency Comments. Comments received during the scoping process and on the draft SEPA document(s) shall be managed by the consultant(s) and provided to the County and Ecology.
4. Public Education and Outreach. Ecology and the County, together with the consultant(s), will coordinate the public education and outreach related to the SEPA review of the Rail Project, which includes but is not limited to: responding to media inquiries; creating and maintaining a SEPA project website; issuing press releases related to the SEPA process; responding to public disclosure requests.
5. Communications Protocol. The co-lead agencies will work together to develop an appropriate Communications Protocol to be implemented between the co-lead agencies and the consultant(s).
6. Co-lead Relationship. Except where otherwise noted in this MOU, the two co-lead agencies shall act as partners in meeting the responsibilities of lead agency under SEPA, with equal standing in all decisions to be made.

B. Preparing Analysis:

1. Shell has already provided documentation related to a number of potential impacts of the Rail Project. Shell shall provide information as determined necessary during the scoping process and the drafting of the SEPA documents. The County and Ecology, together with the consultant(s), will determine the type of supplemental information needed.
2. The parties will jointly direct the work of the consultant(s) throughout the process of EIS preparation. However, the parties may unanimously agree among themselves that one party shall take primary responsibility for reviewing and directing the work of the consultant(s) on one or more pieces of the analysis based on that party's expertise and areas of concern.

C. Scope/Content:

1. Together with any consultant(s), the co-lead agencies will work together to conduct a scoping process under SEPA that conforms to the state and county regulations and ensures ample public input. This may include scoping meetings in Skagit County as well as outside the county to provide information and solicit input from interested individuals and organizations.
2. The co-lead agencies will review the alternatives presented by Shell for the Rail Project and independently determine if there are additional alternatives that should be considered in the Environmental Impact Statement (EIS) so that both are satisfied that the range of reasonable alternatives is represented.
3. At a minimum, a representative of each agency shall review the environmental analysis and documentation prior to issuance of the draft and final EIS. A responsible official from each agency shall sign the EIS prior to issuance. The signature of the responsible officials shall represent approval of the document, including the adequacy of the environmental analysis it contains.

**II. DECISION MAKING AND DISPUTE RESOLUTION**

- A. The co-lead agencies agree to try to make decisions by consensus throughout the SEPA process in regards to scope, content, and timing. The co-lead agencies recognize that the final SEPA document must contain sufficient environmental analysis for decision-making of all agencies with jurisdiction. Therefore, areas of environmental concern, potential mitigation, and reasonable alternatives suggested by either co-lead agency shall be included in the document if agreement

cannot be reached between the two agencies that the area, mitigation or alternative need not be assessed.

- B. The SEPA process may include evaluation of potential regional and/or state-wide Washington impacts. Ecology is responsible for ensuring regional and/or state-wide interests and potential impacts are adequately addressed in the EIS.
- C. While the County is the nominal lead, for any discussions involving the contract, schedule or scope of work that is not solely an administrative or procedural issue related to billing, both co-leads will be included in all discussions, emails and reports from the consultant, unless the parties agree otherwise.
- D. If the co-lead agencies cannot agree on an issue that would prevent their approval of the SEPA document or otherwise prevent them from sharing lead agency duties, either agency may withdraw from this MOU following notification to the other co-lead agency in writing of the issue under dispute, including a suggested resolution. The co-lead agency having receipt of such a letter shall have the option to agree to the suggested resolution, offer an alternate resolution, or agree to dissolve the MOU.
- E. If at any time the MOU is dissolved, the County shall acquire full responsibility as lead agency for the proposal and shall continue with completion of the SEPA process.
- F. The County and Ecology will each participate in any appeal challenging the environmental review contemplated by this MOU. In any such appeal, the County and Ecology will cooperate and share responsibilities and decision-making authority equally consistent with the principles outlined above.

**III. OTHER TERMS**

- A. Term. The effective date of this MOU is upon date of the signatures below by the County and Ecology.
- B. Communications. The following persons shall be the contact persons for all communications regarding this MOU.

<b>Skagit County</b>	<b>Department of Ecology</b>
Leah Forbes, Senior Planner	Alice Kelly, Environmental Planner
Skagit County	Department of Ecology
Planning & Development Services 1800 Continental Place Mount Vernon, WA 98273	Northwest Regional Office 3190 160th Ave. SE Bellevue, WA 98008-5452
Phone: 360-416-1337	Phone: 425-649-7128
Email: leahf@co.skagit.wa.us	Email: alice.kelly@ecy.wa.gov


C. Changes. The parties may, from time to time, require changes to this MOU. The parties shall mutually agree to the changes by written amendment to the MOU.

D. Schedule. The parties, in conjunction with the Consultant(s), will develop and approve an EIS work plan and schedule describing key dates, issues, milestones, and process steps that is subject to revision upon agreement by the parties as needed to respond to emerging issues.

This MOU is executed by the persons signing below, who warrant they have authority to execute this MOU.

Responsible Official:  Date: 3-7-15

Agency: Department of Ecology, Northwest Regional Office

Responsible Official:  Date: 8/7/15

Agency: Skagit County Planning and Development Services