



Monday June 3, 2019

Board of Commissioners  
Port of Vancouver USA  
3103 NW Lower River Road  
Vancouver, WA 98660

Re: Discussion on Fossil Fuel Policy

Dear Commissioners:

I write today on behalf of the Greater Vancouver Chamber of Commerce Board of Directors and membership. It is our understanding, at your workshop of April 23, you expressed interest in hearing feedback regarding the discussion at the workshop around the handling of fossil fuels at the Port of Vancouver – now and going forward. Thank you for the opportunity to provide input on behalf of the nearly 1200 members of the Chamber.

The Greater Vancouver Chamber of Commerce mission is to provide positive business leadership that results in economic vitality for businesses, their employees, and our community. It is our intention, with our mission in mind, to address how the policies of the Port of Vancouver can work to support or detract from the community as a whole. It occurred to us the Chamber and the Port of Vancouver have at the very least complementary if not mutually supportive Missions – responsibly grow and enhance the economic vitality of our community.

We at the Chamber followed with great interest the development of the Port of Vancouver's Strategic Plan released in November of 2018. Significant points articulated in the Strategic Plan seem to speak specifically to the current discussion about fossil fuels at the Port and do so in a way that will accomplish, without the need for new policies, the desires of the Commission. Ultimately, they also work to enhance and grow a strong, vital, environmentally sensitive business community.

Complete with environmental goals and values stated explicitly in your Strategic Plan, so well vetted with public input and scrutiny, it is difficult for us to imagine a decision coming from the Port of Vancouver that would compromise those values and goals. Additionally, the Plan states, "A balance of economic, environment and community is central to our culture, and we approached our new Strategic Plan with an eye on robust public engagement." With these commitments in place, we are hard pressed to see a need for additional policy.

CHAMBER

Understanding the role of ports is to help create and retain jobs, increase the state's tax base, diversify Washington's economy and provide greater opportunities for Washington state businesses to participate in international trade, suggests the need for broad policy consideration over time. The Greater Vancouver Chamber of Commerce supports such policies which preserve existing jobs and allows for future jobs that are in keeping with the Port's Strategic Plan and commitment to a clean and sustainable industry base.

For over 100 years the Port of Vancouver has been an economic engine for Vancouver and Clark County, second to none. Over the last decade, the Port has also been a leader in introducing and implementing environmentally sound and friendly practices which respect our environment and the health of our community. We encourage the Board of Commissioners to allow the Port to continue in that role without artificial barriers which very likely will have unintended consequences translating into fewer jobs and less vitality for all.

Respectfully,



John P McDonagh  
President/CEO

Greater Vancouver Chamber of Commerce  
360.567.1050

CC:

Port of Vancouver Commission Chair, Jerry Oliver

Port of Vancouver Commissioner, Don Orange

Port of Vancouver Commissioner, Eric LaBrant

Port of Vancouver Executive Director, Julianna Marler

Greater Vancouver Chamber of Commerce Board of Directors

Greater Vancouver Chamber of Commerce Public Affairs Committee Co-Chairs



*Business Leaders Building Community*

June 3, 2019

Mr. Jerry Oliver, Mr. Don Orange, Mr. Eric LaBrant  
POV Board of Commissioners  
Ms. Julianna Marler  
Chief Executive Officer  
3103 NW Lower River Road  
Vancouver, WA 98660

Via Email: [povcommissioners@portvanusa.com](mailto:povcommissioners@portvanusa.com)

Dear Commissioners and Ms. Marler:

We are writing concerning efforts by Port of Vancouver USA commissioners to adopt a fossil fuel project policy and resolution.

We appreciate the Port of Vancouver and its tenants and clients driving toward a cleaner and more environmentally-responsible future while supporting local jobs and facilitating the movement of freight and commerce. With the Port's work guided by a recently-completed strategic plan, a rigorous project permitting process that was tested recently, and your own decision-making framework, we do not believe additional policies and resolutions are necessary or beneficial to advancing the Port's objectives. Indeed, they may invite confusion that weakens the Port's competitiveness and work counter to adoption of cleaner and more renewable energy solutions by the Port, its tenants and clients, and our community.

We encourage the Port to work in partnership with existing and future tenants and shippers to support marine, industrial and manufacturing activity utilizing cleaner, lower-impact energy and environmental solutions and technologies as they become viable.

Sincerely,

A handwritten signature in black ink that reads 'Tom Mears'.

Tom Mears, Chairman  
Identity Clark County

A handwritten signature in black ink that reads 'Ron Arp'.

Ron Arp, President  
Identity Clark County

## Betsy Rogers

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**From:** Julianna Marler  
**Sent:** Friday, May 31, 2019 5:15 PM  
**To:** Betsy Rogers; Alex Strogon; Elizabeth Gotelli; Jonathan Eder; Kent Cash; Michelle Allan  
**Subject:** FW: Jim Luce here - Fossil Fuel Resolution

fyi

-----Original Message-----

From: Jim <lucefamily@comcast.net>  
Sent: Wednesday, May 15, 2019 12:53 PM  
To: Jerry Oliver <JOliver@Portvanusa.com>; Don Orange <dorange@portvanusa.com>; Eric Labrant <ELabrant@Portvanusa.com>  
Cc: Julianna Marler <JMarler@Portvanusa.com>; Ryan Hart <RHart@Portvanusa.com>  
Subject: Jim Luce here - Fossil Fuel Resolution

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Commissioners

My entire professional life has been spent in the “energy business,” 25 years as a senior level Bonneville Power lawyer, and 11 years as Chair of the Energy Facility Site Evaluation Council.

I remained active in retirement opposing the Tesoro/Savage Oil Terminal. That was a bad project, both for the Port and our community.

During my career I heard and acted on many “energy policy” proposals, including those to “ban” certain resources. I particularly remember the “ban wind power” argument. The argument was - and for some still is - that wind turbines kill birds, produce “shadow flicker,” and reduce property values.

I didn’t support “banning wind turbines.” And I don’t support banning fossil fuels.

To be clear, I also don’t favor our Port seeking coal, oil, or natural gas facilities. Quite frankly, after the Tesoro project was denied, I don’t think any rational energy company would consider our Port. And in the unlikely event it did, I might very well oppose it.

But as in the case of wind projects, I will judge each project based on facts. Outright bans are counter-productive and easy, too frequently politically correct, responses to real life issues. They solve nothing.

Global warming is a real issue. I am a “believer,” not a “denier.” However, our Port’s banning any fossil fuels - coal, oil, or natural gas - would, in my opinion, be a serious mistake.

Thank you for considering my opinion.

Sincerely,

Jim Luce  
360-907-3323

May 9, 2019

Port of Vancouver Board of Commissioners  
3103 NW Lower River Road  
Vancouver, WA 98660



Dear Commissioners:

Thank you for taking time to consider the following Port of Clarkston comments on the Port of Vancouver's intent to adopt a resolution related to handling and shipment of fossil fuel related cargo on the Columbia-Snake River System. We are concerned the Port of Vancouver may approve policies that assume considerable *overnight* gains are possible, which in turn may prohibit significant *intermediate* steps that will help achieve your overall goals.

Like the Port of Vancouver, the Port of Clarkston seeks positive environmental and economic outcomes for our respective constituencies. Ports should play a role in creating local and global sustainability. Like you, we are strong supporters of clean energy. For example, the Port of Clarkston advocates strongly for Northwest hydropower, a reliable, renewable domestic power source that produces no greenhouse gas emissions. The Port also advocates for river navigation infrastructure, which allows barges to move massive quantities of freight in a low-carbon way.

One of our primary concerns of policies being created at key access points to the Columbia/Snake River system relates to terminology. Hydropower fits neither state nor federal definitions as "renewable;" it is, however, appropriately considered "clean" energy. Specific wording in your policy statement—i.e., the use of "renewable" rather than "clean"—may prohibit movement of equipment to maintain or achieve greater environmental gains for hydropower projects.

Another example of unintended consequences that might occur from a very strict policy relate to a real-world example. Several years ago, an oil refinery in Montana sought delivery, via the river system, of a very large scrubber that would result in softening the emissions impact of their facility. A very strict policy by a port at the key access point to our river system might result in the opposite effect desired (emission reduction) if alternative transportation routes cannot be achieved or simply are not affordable. The Port of Clarkston seeks to encourage movement toward fewer emissions, recognizing that changes will take time to implement.

The Port of Clarkston is proud of our history working closely with the Port of Vancouver. We respect your community's right to determine its own future. However, we believe that communities and ports up and down the Columbia-Snake River system will be stronger, and have a more positive environmental and economic impact, if we continue to communicate and work together on shared challenges.

Please feel free to visit! We would welcome your tour of this end of the river system, including nearby dams, should any of you be in this area.

Thank you for considering our perspective.

PORT OF CLARKSTON COMMISSION

Mark Brigham, President

Wayne Tippett, Vice President

Marvin Jackson, Secretary



# Port of Lewiston

1626 6th Avenue N. • Lewiston, ID 83501  
(208) 743-5531 • Fax (208) 743-4243  
E-mail: portinfo@portoflewiston.com  
Container Yard  
(208) 743-3209

## PORT COMMISSIONERS

President  
Mary Hasenoehrl  
Vice President  
Jerry Klemm  
Secretary-Treasurer  
Mike Thomason

## ADMINISTRATION

General Manager  
David R. Doeringsfeld  
Assistant Manager  
Jaynie K. Bentz  
Traffic Manager  
Kim Petrie

May 8, 2019

Port of Vancouver  
ATTN: Port Commission  
3103 NW Lower River Road  
Vancouver, WA 98660

RE: Comments Concerning Eliminating Fossil Fuel Cargo Shipments by the Port of Vancouver, USA

Dear Port of Vancouver Commissioner:

The Port of Lewiston appreciates the opportunity to provide comment on the Port of Vancouver's intent to adopt a resolution related to handling and shipment of fossil fuel related cargo on the Columbia-Snake River System. We are concerned the Port of Vancouver may approve policies that affect regional supply chains without creating the positive environmental and economic outcomes that our respective constituencies want us to produce.

Like you, we are strong supporters of clean energy. Ports should play a role in creating local and global sustainability. For example, the Port of Lewiston is a long-time advocate for Northwest hydropower, a reliable, renewable domestic power source that produces no greenhouse gas emissions. As a firm power source, hydropower makes it possible to integrate intermittent renewables like wind and solar. The system of dams and navigation locks also allows barges to move massive quantities of goods in a way that is fuel-efficient and minimizes greenhouse gas emissions.

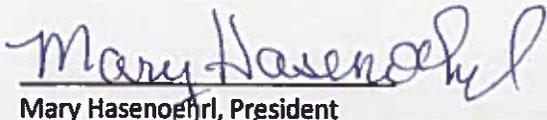
We are excited about the incredible innovation taking place in clean energy and manufacturing. Many Northwest ports are playing roles large and small in advancing these environmental and economic gains through partnerships with private and public entities.

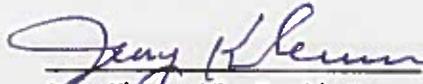
As these new approaches and technologies are developed and adopted, and as the Pacific Northwest takes steps to further lower its carbon emissions, we also recognize that our region's residents, businesses and communities are demanding and consuming products that are currently derived from or depend on fossil fuels. We believe ports need to play a role in meeting the current needs of our region.

The Port of Lewiston is proud of our history working closely with the Port of Vancouver and we respect your community's right to determine its own future. However, we believe that communities and ports up and down the Columbia-Snake River system will be stronger, and have a more positive environmental and economic impact, if we continue to communicate and work together on shared challenges.

Thank you for your consideration.

PORT OF LEWISTON COMMISSION

  
Mary Hasenoehrl, President

  
Jerry Klemm, Vice President

  
Mike Thomason, Secretary-Treasurer



May 7, 2019

Commissioner Jerry Oliver  
Commissioner Eric LaBrant  
Commissioner Don Orange  
Port of Vancouver USA  
3103 NW Lower River Rd.  
Vancouver, WA 98660

RE: Proposed Resolution

Dear Commissioners,

The Port of Morrow Commission has discussed Port of Vancouver's Policy Statement and Resolution 1-2019 adopting a Renewable/Clean Energy Policy. We would like you to know that the Port of Morrow is in full support of renewable/clean energy projects and a policy to pursue them should be applauded.

We do, however, have some concerns about the additional sections 2 and 3.a. in the Renewable/Clean Energy Policy Statement excluding any new bulk crude oil or coal terminals. We would like you to consider that by adding this statement into your Renewable/Clean Energy Policy, it may have a negative collateral effect on other Ports in the transportation industry throughout the Pacific Northwest. We appreciate the ability for each Port to make their own policy decisions, but, taking a strong stance in denial of certain types of fossil fuel projects could have far-reaching impacts on other Ports in the Northwest, in particular those along the Columbia River Corridor.

Thank you for your consideration. Please contact Ryan Neal, our Executive Director at (541) 481-7678 or [ryann@portofmorrow.com](mailto:ryann@portofmorrow.com) with comments.

Sincerely,

Jerry Healy, President  
Port of Morrow Commission

**Port of Pasco Administrative Office**

Phone: 509.547.3378

Fax: 509.547.2547

portofpasco@portofpasco.org

1110 Osprey Pointe Blvd.

Suite 201

P.O. Box 769

Pasco, Washington U.S.A. 99301

May 13, 2019

Port of Vancouver USA Commissioners  
 c/o Julianna Marler  
 3103 NW Lower River Road  
 Vancouver, WA 98660 USA

**Port Commissioners**

Jean Ryckman

James T. Klindworth

Vicki Gordon

**Executive Director**

Randy Hayden

Subject: Renewable Energy Policy

Esteemed Port of Vancouver Commission:

Thank you for the opportunity to comment on the Port of Vancouver's draft Renewable Energy Policy. As a sister port sharing stewardship of the Columbia River for a wide variety of uses, we wanted to make you aware of potential impacts that the policy could have on our port and region.

At certain times of the year, the greater Tri-Cities region can receive up to half of our gas and diesel from fuel barged up the river from the Portland/Vancouver area. A small portion of this product is transferred at Port of Vancouver tenant facilities with the rest coming from private terminals. The fuel is used for passenger vehicles, freight trucks, and farming equipment for our agricultural base.

Although the policy appears to address only new oil and coal terminals, we are concerned that it could be interpreted to include existing tenants in the petroleum business. If those businesses are not allowed to renew their leases, or to reconfigure or expand their operations to meet market dynamics, it could negatively affect the supply chain of fuel into the Tri-Cities area. As we all have observed, small perturbations in the supply of petroleum products have been shown to cause significant market reactions.

Some of the aviation gas and jet fuel used at the Tri-Cities airport also originates at the Port of Vancouver terminals. As the fourth largest commercial airport in Washington State with 23 daily flights to 9 non-stop destinations, our four airlines are reliant on that fuel to fly over 800,000 passengers per year into and out of Pasco. Our economy and air travelers would be impacted if aviation fuel sources were restricted at the Port of Vancouver.

Finally, we are in full support of your guiding principle #3, with one addition to reflect the above impacts: "The port will meet its primary purpose and obligations under state law as a special-purpose district and economic development entity that protects trade and facilitates interstate *and intrastate* commerce" (italics added). We at the Port of Pasco share in this goal and think it gets at the heart of what ports do best.

Thank you again for allowing us to provide feedback.

Respectfully,

Jean Ryckman,  
 President

Jim Klindworth,  
 Vice President

Vicki Gordon,  
 Secretary

## POVCommissioners

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**From:** Brenda Stav <Brenda@PortWhitman.com>  
**Sent:** Tuesday, May 14, 2019 11:04 AM  
**To:** POVCommissioners  
**Subject:** Renewable Energy Policy

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

*This letter is being sent on behalf of the Port of Whitman County Commissioners*

May 14, 2019

Port of Vancouver USA Commissioners  
c/o Julianna Marler  
3103 NW Lower River Road  
Vancouver, WA 98660 USA

Subject: Renewable Energy Policy

Dear Board of Commissioners, Port of Vancouver:

The Commissioners of the Port of Whitman County applaud the Port of Vancouver's leadership in supporting renewable, clean energy. Like the Port of Vancouver, the Port of Whitman seeks positive environmental and economic outcomes for our respective constituencies and therefore, we appreciate being able to respond to the Renewable/Clean Energy Policy (Resolution 1-2019) (Policy) that is being considered for adoption.

As emerging renewable and clean energy technologies become more accessible, we recognize that our region's residents, businesses, and communities remain dependent upon many products and services that are derived from fossil fuel production. Without specificity and clarification in the policy on what will or will not be allowed through the Port of Vancouver, it is our concern that the Policy may impact communities up and down the Columbia-Snake River system by reducing or eliminating access to resources they *currently* require in order to survive.

We strongly believe that Ports should play a role in creating local and global sustainability and like you, we are strong supporters of clean energy. To that end, the Port of Whitman County advocates strongly for the Northwest hydropower that is provided by the Snake River dams. Dams which produce more clean energy than is needed to power a city the size of Vancouver each year. We ask that you consider including support of the Snake River dams and the critical clean energy they produce in the Renewable/Clean Energy Policy.

The Port of Whitman County welcomes the opportunity to continue to work together with the Port of Vancouver on the shared challenges faced by the nations, communities, businesses, and residents as the world shifts toward renewable/clean energy sources.

Thank you for your consideration.

Respectfully,  
Port of Whitman County Commissioners

Kristine Meyer  
President

John E. Love  
Vice President

Tom Kammerzell  
Secretary



**Port of Whitman County**

**Phone: 509-397-3791**

302 N Mill Street  
Colfax, WA 99111

**[www.portwhitman.com](http://www.portwhitman.com)**

**[port@portwhitman.com](mailto:port@portwhitman.com)**

May 24, 2019

**SENT VIA EMAIL AND REGULAR U.S. MAIL**

Port of Vancouver USA Commissioners  
3103 NW Lower River Road  
Vancouver, WA 98660



RE: Draft Renewable Energy Policy and Resolution (“Draft Policy and Resolution”)

Dear Port of Vancouver Commission:

Thank you for the opportunity to provide comment on the Port of Vancouver’s Draft Policy and Resolution. These comments are submitted on behalf of Tidewater Transportation and Terminals (“Tidewater”), which is headquartered in Vancouver, Washington.

Tidewater has been in business since 1932 and operates a fleet of tugboats, barges and marine terminals on the Columbia and Snake River System. Tidewater is the largest inland marine transportation company west of the Mississippi River and its vessels safely move millions of tons of freight every year on the commercially navigable 465 miles of the Columbia and Snake Rivers, reducing congestion and wear and tear on the state’s highways and railroads while producing far fewer pollutants and carbon emissions than trucks and trains transporting equivalent tonnage.

Tidewater supports environmental stewardship, including protecting the climate and preserving the waterways of the Pacific Northwest. That said, we have reviewed the Draft Policy and Resolution and are concerned that by restricting the Port’s cargos, it goes against the Port’s Guiding Principles, which includes, “meeting its primary purpose and obligations under state law as a special-purpose district and economic development entity that protects trade and facilities interstate commerce” because it creates uncertainty about the future of new and existing energy terminals. These terminals are key to the interstate fuel distribution network that allows Tidewater to supply fuel by barge from the Vancouver metro area to Eastern Washington and Oregon in an efficient and environmentally friendly matter.

There could also be unintended negative environmental consequences that result from the Draft Policy and Resolution. If these terminals cease operations, fuel will have to be distributed in other modes of transportation such as truck and railcar. Therefore, if barging is no longer a viable option for transporting fuel on the Columbia and Snake Rivers, then four barge tows could be potentially replaced with the equivalent of approximately 538 trucks or 140 rail cars travelling on the highways and railroads in the Columbia River Gorge.

Further, Washington state’s public ports were first established under The Port District Act of 1911 as a reaction to private parties with singular interests dominating of the docks and harbors on which the state’s economy depended. By adopting the Draft Policy and Resolution, you are effectively reverting back to pre-1911 policy by putting restrictions on port activities based on the desires of special interest groups and putting the livelihood of Tidewater’s over 300 regional employees, including their families, as well as the local vendors and suppliers that count on Tidewater to make a living. Tidewater is one of the many companies that account for nearly 40% of all Washington state jobs that are tied to trade related activity.



In conclusion, Tidewater is an advocate for sensible environmental policies and hopes the Port of Vancouver USA will consider having a comprehensive and constructive dialogue with the community, including impacted stakeholders, to generate an implementable renewable energy policy that addresses climate change goals, public safety and environmental protection without significantly adversely impacting the viability of the region's economy and its maritime industry that supports many family wage jobs. Tidewater urges the Port Commission not to adopt this Draft Policy and Resolution.

Thank you for your consideration and the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in blue ink that reads 'Robert Curcio'.

Robert A. Curcio  
President & CEO

cc: Julianna Marler, Port of Vancouver USA CEO



Holli Johnson  
NW External Affairs

June 11, 2018

Board of Commissioners  
Port of Vancouver USA  
3103 Lower River Road  
Vancouver, Washington 98660

Via Email and Hand Delivery  
[povcommissioners@portvanusa.com](mailto:povcommissioners@portvanusa.com)

**Re: WSPA Comment on Renewable/Clean Energy Policy**

Dear Commissioners:

The Western States Petroleum Association ("WSPA") is a non-profit trade association representing companies that explore for, produce, refine, transport, and market petroleum, petroleum products in five western states including Washington. WSPA appreciates the opportunity to provide comments on the Port of Vancouver's proposed Renewable/Clean Energy Policy (the "Resolution"), but is highly concerned about the proposal's disregard for federal, state, regional policy, and resulting unintended consequences.

Several WSPA members, including Marathon and BP, operate in the Port. These members, NuStar, and other businesses have responsibly operated in the Port for decades. The Port provides key energy, defense, and emergency infrastructure as recognized by various city, state, and federal documents. WSPA opposes the Port's push to regulate fuels under the Resolution, or otherwise, but submits these comments in an attempt to mitigate some of the unintended consequences of the contemplated Resolution. We respectfully ask that the Commission delay voting on this matter until the Port provides the public records that WSPA requested through counsel over a month ago, and WSPA has the opportunity to review those public records.

**POLICY CONCERNS**

The Port's effort to prohibit trade in fuels is misplaced. Our local, regional, and national economies depend on fuel to operate. The proposed Resolution would create a number of substantial unintended consequences. Specifically, the Resolution:

- Introduces a host of ambiguities and uncertainties into marketplace that is necessary for a thriving regional economy and Port;
- Prevents and discourages safety and efficiency upgrades;

- Restricts infrastructure that serves the region, without seeking input from and coordination with regional partners;
- Fails to clearly specify how existing infrastructure can expand on existing leased sites;
- Fails to provide for sufficient facilities to serve future energy needs;
- Stymies potential future technologies that do not fit within the contemplated framework;
- Attempts to exclude Vancouver from the national and regional energy market;
- Prohibits energy infrastructure without consideration of the current and future energy and transportation needs of the city, region, and state;
- Does not align with local, state and federal policy regarding siting energy infrastructure or transportation of fuels;
- Encourages less efficient (and potentially less safe) transportation by means that bypass Vancouver;
- Fails to provide any economic impact assessment;
- Pushes for an adoption timeline that is too fast to allow for thoughtful discussion and tailoring addressing the above and other concerns; and
- Fails to adequately engage adjacent jurisdictions and regional partners who would be impacted by the bottleneck in energy distribution created by the Resolution.

In light of these substantial policy concerns, we respectfully ask the Port to abandon this misguided Resolution.

## **PROCESS AND PUBLIC RECORDS CONCERNS**

WSPA submitted two public records requests to the Port under the Washington Public Records Act ("PRA"), requesting the files related to the Resolution and the Port's governing documents and agreements. We made the first request over a month ago on May 6, 2019. Thus far, the Port has provided none of the requested documents, despite our request that the documents be provided as they become available.

The PRA mandates full disclosure of public records in a timely manner. *See Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 102, 117 P.3d 1117 (2005). Agencies are to provide the "most timely possible action on requests for

information" and make records "promptly available." RCW 42.56.100; RCW 42.56.080(2). Here, the records WSPA requested are the type of documents that should be readily accessible to the Port. WSPA needs, and is entitled to the requested documents in order to fully evaluate and provide comment on the proposed Resolution. The fact that the Commissioners are scheduled to discuss the policy at their meeting on June 11 without having first produced the requested records is very distressing. It is direct evidence that the Port has not provided requested documents in a "most timely" and "prompt" manner. The attempt to conduct public business without providing the public the requested documents related to that business is a violation of the public trust and defeats one of the main purposes of the PRA.

## **LEGAL CONCERNS**

Given the inadequate process the Port has used to advance the Resolution and its failure to comply with the PRA thus far, it is impossible to identify all of the legal flaws in the current proposal. Here is a partial list of legal deficiencies of the Resolution:

### ***The Port's adoption of the Resolution exceeds its limited grant of statutory authority.***

The Port lacks the power to adopt a resolution prospectively barring leases for a specific class of facility because of concerns beyond the operation of the Port. This is an exercise of general police power, which the Port does not possess. Unlike cities and counties, port districts do not have broad statutory authority nor general police powers. Rather, port districts are special-purpose municipalities, which are distinguished by their grant of *limited* power under Washington statute. A port district, like all other "[m]unicipal authorities[,] cannot exercise powers except those expressly granted, or those necessarily implied from granted powers." *Shoulberg v. Pub. Util. Dist. No. 1 of Jefferson Cty.*, 169 Wash. App. 173, 178–79, 280 P.3d 491 (2012) (internal quotations omitted).

These express and implied grants of power are narrowly construed. "The test for necessary or implied municipal powers is legal necessity rather than practical necessity. \* \* \* [I]f the Legislature has not authorized the action in question, it is invalid no matter how necessary it might be." *Chem. Bank v. Wash. Pub. Power Supply Sys.*, 99 Wash. 2d 772, 792, 666 P.2d 329 (1983) (quotation omitted). In addition, "[i]f there is a doubt as to whether the power is granted, it must be denied." *Port of Seattle v. Wash. Utils. & Transp. Comm'n*, 92 Wash. 2d 789, 795, 597 P.2d 383 (1979).

The authorized powers of port districts are set forth in RCW 53.04.010 and 53.08.020, and primarily concern the acquisition, development, and operation of harbor improvements and supporting intermodal transportation facilities. The Resolution is outside the narrow power of the Port and therefore facially invalid.

### ***The Resolution impermissibly contradicts the Port's comprehensive scheme, and/or city and county comprehensive planning and implementing regulations.***

Port districts are required to adopt harbor improvement plans, and their operations/development are required to be consistent with those plans. RCW 53.20.010-020. The Port has adopted a "Comprehensive Scheme of Harbor Improvements and Industrial Development," which the Port has amended. As discussed above, however, the Port has not made this document available to WSPA in response to WSPA's public records request. The Resolution likely probably contradicts RCW 53.20.010-020 and the Port's Comprehensive Scheme of Harbor Improvements and Industrial Development by prohibiting fuel facilities at the Port.

Port districts are not required to engage in comprehensive growth management planning, but they must comply with the comprehensive planning and regulations of the local jurisdictions in which the port district is located. RCW 53.08.220. The comprehensive plans of both Clark County and the City of Vancouver contain provisions related to Port operations, which the Resolution contradicts.

***The Port has no power to pass the Resolution because it is a land use regulation.***

The enabling statute creating port districts prohibits ports from passing land use regulations. Port districts may only develop and *propose* to local governments such ordinances for their approval. A port district does not have authority to adopt "regulations for the use by tenants [or others] of any properties or facilities owned or operated by it[.]" RCW 53.08.220. The Resolution is an unpermitted attempt by the Port to pass a land use regulation.

***The Resolution violates state law regarding management of state aquatic land and coordinated shoreline management, and the implementing intergovernmental agreements related thereto.***

The operations of port districts are also subject to the Shoreline Management Act of 1971 and Washington law concerning district management of state-owned aquatic lands. See RCW Title 79 and RCW Chapter 90.58. These laws require port districts to coordinate their management of shoreline and state aquatic lands with the Washington Department of Ecology and Washington State Department of Natural Resources, as well as local governments. These laws require port districts to enter into an approved Shoreline Management Agreement and a Port Management Agreement, respectively.

Like the Port's comprehensive scheme, the Port has not provided these public records to WSPA as requested under the PRA. These laws and their underlying agreements require that shoreline resources be used to further economic use of shoreline resources and provide preference to water-dependent industries. Intermodal fuel facilities, such as those proposed to be banned under the Resolution, can only be sited in these limited shoreline locations, such as the Port of Vancouver. The Resolution violates the Shoreline Management Act, the Shoreline Management Agreement, and the Port Management Agreement.

***Washington's energy facility siting law preempts the Resolution.***

Similarly, the Energy Facilities Site Locations Act (the "EFSLA"), RCW Chapter 80.50, requires that proposals for siting an energy facility—which a new fossil fuel harbor facility would qualify as—be reviewed by several Washington agencies, local governments, and ultimately the governor. The Port's prospective ban on *all* fossil fuel facilities contradicts the EFSLA.

***The Resolution is invalid under the Dormant Commerce Clause and Equal Protection Clause of the U.S. Constitution because it unreasonably burdens interstate commerce.***

The Resolution violates the Dormant Commerce Clause as an undue burden on interstate commerce. The need and demand for additional fuel facilities significantly outweighs the purported local benefits of the Resolution. Similarly, there is no material difference between fossil fuel facilities banned under the Resolution and non-fossil fuel facilities allowed under the Resolution, in violation of the Equal Protection Clause.

***The Resolution violates procedural due process rights mandated by the 14<sup>th</sup> Amendment.***

The U.S. Constitution prohibits states from depriving entities of their property rights without certain procedural safeguards, such as the opportunity for notice and the right to be heard. The prospective prohibition on facilities without the opportunity for WSPA, Marathon, BP, NuStar, and others to address their concerns with the Resolution as it relates to current and future projects renders the Resolution invalid. Further, if the Port were to pass the Resolution without providing WSPA its requested public records related to the Resolution, the Port likely be would violating the Due Process Clause.

***The Resolution eliminates Port revenue streams, diminishing the value of existing bonds, thus breaching duties to bondholders.***

A Port that issues bonds has an obligation to bondholders to not voluntarily diminish the value of those bonds by impairing the profitability of the municipality's operations or otherwise impact its ability to repay the liability. The Port has issued millions of dollars in bonds to develop Port infrastructure to service the fuel industry and other traded sector commodities. The Resolution is an unreasonable impairment of the Port's outstanding bonds, in contravention of the Port's duties to its bondholders. In addition to the direct loss incurred by the Port by turning away fuel-industry projects, the chilling effect that the Resolution would have on other traded commodities is substantial.

**The Resolution violates the Federal Shipping Act of 1984.**

The Federal Shipping Act prohibits marine terminal operators from unreasonably discriminating in the provision of terminal services, unduly or unreasonably prejudicing or disadvantaging any person, or unreasonably refusing to deal or negotiate. 46 U.S.C. § 41106. Political decisions, such as the Resolution, to exclude select industries from using a public port is precisely the type of prejudice and unreasonable refusal to deal that the Federal Shipping Act prohibits.

In light of these substantial legal concerns, we respectfully ask the Port commissioners abandon this problematic Resolution.

Thank you for your consideration of WSPA's comments. If you have any questions, please contact me at this office at [hjohnson@wspa.org](mailto:hjohnson@wspa.org) and (360) 352-4506.

Sincerely,

A handwritten signature in blue ink that reads "Halli Johnson". The signature is written in a cursive style.

cc: Jessica Spiegel - WSPA  
Jodie Muller - WSPA

# Working Waterfront



C O A L I T I O N

SENT VIA EMAIL

Port of Vancouver USA  
Board of Commissioners  
c/o Julianna Marler  
3103 NW Lower River Road  
Vancouver, WA 98660 USA

May 28, 2019

**Subject: Renewable Energy Policy**

Dear Port of Vancouver Commission:

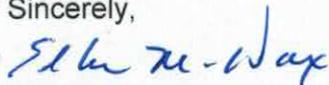
I am writing on behalf of the Working Waterfront Coalition (WWC) in opposition to the Port of Vancouver Commission's Renewal/Clean Energy Policy Statement, as it is currently written, and an adoption of Resolution 1-2019. The WWC represents a wide range of waterfront businesses including fossil fuel terminals. The WWC opposes a policy that would limit critically important energy facilities from serving in their distribution capacity for the region, the states of Washington and Oregon, and other states in the Pacific Northwest.

Limiting the ability of fuel distribution out of the Vancouver metro area creates uncertainty, which will negatively impact the rural communities in Eastern Washington and Oregon. Eastern Washington and Oregon depend on the fuel distribution from the Vancouver/Portland terminals for their agriculture and commercial aviation industries.

Vancouver metro's fuel supply and distribution is critical to both Washington and Oregon state economies and the family wage jobs supported by the supply and distribution of fuel. Limiting the capacity and restricting movement of fuel to serve the regional market creates significant supply constraints for the region, which will have a negative impact on local and state economies and make the states less economically resilient.

Lastly, this policy has had limited public opportunity to review and comment, and limited review of the impacts to local and regional stakeholders. The WWC respectfully requests that the Port of Vancouver Commission reconsider the Renewable/Clean Energy Policy Statement as it is currently written, and allow more time for the public to review and comment.

Sincerely,



Ellen M. Wax  
Executive Director

*Established in 2005, the Working Waterfront Coalition, with its extensive knowledge of harbor industry needs and active industry participation, is dedicated to working with its partners to ensure an appropriate balance between environmental concerns and the needs of river-related, river-dependent employers. Portland's Harbor is a vital employment area: home to thousands of valuable high-wage, high-benefit jobs. In addition, WWC members are conscientious stewards of the environment, making significant investments in the harbor consistent with state and federal laws.*