

**From:** [Hellman, Johan](#)  
**To:** [PDS Planning Commission](#); [Ashley Ubil](#)  
**Subject:** Comments regarding Cherry Point amendments  
**Date:** Thursday, August 13, 2020 12:32:10 PM  
**Attachments:** [Whatcom Planning Commission -- BNSF Comments -- 8.13.20 \(final\).docx.pdf](#)

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Commissioners:

Please see the attached comment letter from the BNSF Railway for consideration during your virtual hearing tonight (Thurs., 8/13).

Thank you for your consideration.

- Johan

**Johan Hellman | Executive Director of Public Affairs | BNSF Railway**



Johan Hellman  
Executive Director of Public Affairs

**BNSF Railway Company**  
2454 Occidental Ave. S.  
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August 13, 2020

Whatcom County Planning Commission  
5280 Northwest Dr.  
Bellingham, WA 98226

Dear Commissioners:

Thank you for the opportunity to comment on the Whatcom County Council Cherry Point amendments currently before you. BNSF would like to comment on two issues: first, we would like to address questions raised regarding financial responsibility; and, second, we would like to provide general comments about the impact the proposed regulations could have on local economic opportunities.

### **Financial Responsibility**

Regarding financial responsibility, we understand questions have been raised regarding who pays for damages to the local community following a derailment. Some have asserted these costs would be left to local communities. The short answer is that this assertion is absolutely not correct.

The longer answer requires a brief explanation of federal regulatory oversight of railroads as well as an explanation of the state of Washington's role in rail safety. For these explanations we will reiterate the points made previously in our letter to the Whatcom County Planning and Development Services Department dated June 25, 2020.

In that letter, we explained that regulatory authority over railroad finances is the sole jurisdiction of the federal government. In passing the Interstate Commerce Commission Termination Act ("ICCTA"), Congress conferred exclusive jurisdiction for economic regulation of interstate railroads on the Surface Transportation Board ("STB"). In considering public convenience and necessity of interstate railroad operations, the STB may consider "the applicant's financial fitness" among other factors. This authority is absolute and has been affirmed by every court that has examined it.

As common carriers – responsible for moving a variety of hazardous materials including chemicals used to treat municipal drinking water, cleaning products used to sanitize medical equipment, and fertilizers which help agricultural products grow more verdant and abundant – interstate railroads rely on regulatory consistency across multiple jurisdictions in order to ensure safe and efficient transport of essential goods. Congress and the federal government recognize safety is diminished by a patchwork of independent regulations, which is the reason why the federal government plays an exclusive oversight role in regulating railroad finances.

Each year, BNSF and other Class I railroads submit an annual report to the Surface Transportation Board which includes detailed financial information. The information included in this report informs the STB's

decision making regarding a railroad's financial fitness. At the state level, railroads provide an annual financial assurance report to the Washington State Utilities and Transportation Commission ("UTC") in accordance with WAC 480-62-300, which requires railroads to annually provide "information sufficient to demonstrate the railroad company's ability to pay the costs to clean up a worst case spill of oil."

This state regulation was enacted following a multi-year effort by the Washington State Legislature to pass comprehensive legislation regarding the transport of crude oil by rail. In 2015, following more than a year of study and discussion, the legislature passed landmark legislation requiring railroads to plan, coordinate, and perform simulated oil spill drills in accordance with state regulations. This legislation included provisions that serve as the basis for the UTC's financial assurance reporting requirement.

As we have previously shared with the Whatcom County Council, BNSF has a strong track record of financial responsibility. The railroad has never asked taxpayers to assume the expense of cleanup following a derailment. Furthermore, BNSF works closely with local first responders and state agencies to ensure prevention, training, and response programs meet the highest level of excellence. When mitigation is necessary, the railroad works aggressively to ensure cleanup is swift and thorough from the beginning of the response until the ultimate conclusion when the state Department of Ecology certifies all cleanup efforts have been satisfactorily completed.

#### **General Comments Regarding Proposed Cherry Point Regulations**

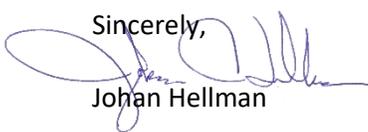
As a business that provides transportation services to a diverse cross-section of industry, we share concerns expressed by other businesses about the impact the proposed regulations could have on capital investment, economic opportunity, and job growth at Cherry Point. Policies that pick winners and losers by prohibiting investment by specific industries have a chilling effect on all industry.

Capital investment in an area like Cherry Point has a cumulative effect as dollars initially spent on a specific construction project reverberate through the local economy and are re-spent at local hardware stores, cafés and supermarkets. The companies that invest in these areas and create new jobs also pay millions of dollars in taxes that support local schools, emergency services, and community programs. By disincentivizing investment by specific industries, governments undermine this virtuous cycle of reinvestment in local businesses and community services. As local families and businesses large and small struggle through the uncertainties of COVID-19, these impacts are even more profound and acute.

For these reasons, we are grateful the Planning Commission has taken time to consider the impacts of the Cherry Point amendments as they were presented to you by the Whatcom County Commission. BNSF strongly opposed the original amendments and urge you to adopt the joint code amendments proposed by industry (which are included in the Planning Commission packet) in addition to the recommendations made during your previous work sessions.

Thank you for your consideration.

Sincerely,



Johan Hellman