

William T. Lynn
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E-mail: BLynn@gth-law.com

June 29, 2011

Tyler R. Schroeder
Planning Supervisor
Whatcom County Planning & Development
5280 Northwest Drive
Bellingham, WA 98226

RE: MDP2011-000001/SHR2001-00009 - Determination of Incompleteness and Requirement to Obtain a New Shoreline Substantial Development Permit Request for Reconsideration - Gateway Pacific Terminal Major Project Permit Application

Dear Mr. Schroeder:

We are writing on behalf of Pacific International Terminals, Inc. to request reconsideration, or more accurately, clarification, of your letter dated June 23, 2011, a copy of which is attached. We were directed by the County Planning & Development Services staff to the reconsideration process under WCC 23.60.150.H, and have been advised there is neither a form nor a filing fee associated with this request. Even without that provision, an agency has the inherent authority to clarify its letters.

The matter before the County Planning & Development Services Department was simply a review of the above-referenced application by Pacific International Terminals, Inc. for completeness. We are prepared to address the comments in your letter and will get the necessary information to you shortly.

To clarify your letter, we request confirmation that:

1. Your letter did not diminish or affect any rights held by Pacific International Terminals in the current Shoreline Substantial Development Permit issued by the County under SHS 92-0020, and determined to remain in effect by the County administrative determination dated October 22, 2008;

Reply to:
Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

Gordon Thomas Honeywell^{LLP}
June 30, 2011
Page 2

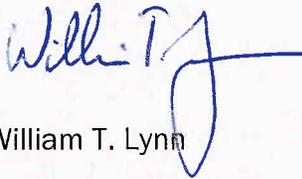
2. Your letter did not diminish or affect Pacific International Terminals' rights or obligations under the Settlement Agreement concerning SHS 92-0020 dated August 31, 1999, and executed by Pacific International Terminals, Inc., Whatcom County, and others;

3. The effect of the existing Substantial Development Permit issued under SHS 92-0020 and the August 31, 1999 Settlement Agreement on the current shoreline permit application shall be determined through the County shoreline permit process, including any appeals; and

4. Decisions as to the scope of environmental review under SEPA will be made through the processes found in WCC Ch. 16.08, RCW Ch. 43.21C and WAC Ch. 197-11.

Please let us know if anything further is necessary to perfect this request or to assist you in making the determination.

Very truly yours,

A handwritten signature in blue ink, appearing to read "William T. Lynn", with a stylized flourish extending from the end of the name.

William T. Lynn

WTL:fto

Enclosure

cc: Royce Buckingham, Prosecuting Attorney
Pacific International Terminals, Inc.

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive,
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

June 23, 2011

Pacific International Terminals, Inc.
c/o Mr. Cliff Strong
AMEC Earth & Environmental, Inc.
11810 North Creek Parkway N
Bothell, WA 98011

Re: MDP2011-000001/SHR2011-00009 – Determination of Incompleteness and Requirement to Obtain a New Shoreline Substantial Development Permit

Dear Mr. Strong:

Upon review of the application materials submitted on June 10, 2011, as well as the subsequent letter from your legal counsel dated June 23, 2011, it has been determined that the requested revision to the existing shoreline substantial development Permit (SHS1992-00020) does not meet the applicable revision criteria outlined in WCC 23.60.170 and Washington Administrative Code (WAC) 173-27-100. As such, a new shoreline substantial development permit is required to review the entire proposal within the jurisdiction of the SMA.

In addition, in review of the application materials submitted on June 10, 2011, it has been determined that the above Major Development Permit (MDP) is incomplete, as the submittal requirements of Whatcom County Code (WCC) 20.88.200 and WCC 2.33 have not been met.

Shoreline Substantial Development Permit Revision (SHR2011-00009)

According to Section 23.60.170.B, the County decision maker may only approve a request for revision upon a finding that the proposed changes are within the scope and intent of the original approval. In order to make such a determination, all of the criteria outlined in WCC 23.60.170.C.1 through 23.60.170.C.5 must be met. Whatcom County Code 23.60.170.E states that a new permit shall be required if the proposed revision constitutes development beyond the scope and intent of the original approval as set forth in 23.60.170.C.

Your letter of June 23, 2011 indicates that the revision proposed is not sought under the provisions of 23.60.170.C but rather on the sole basis of 23.60.170.E. "While the revisions now proposed by PIT were contemplated at the time of the original approval, PIT is not seeking a revision "within the scope and intent of the original approval" under those provisions." The letter goes on to suggest that the WCC defines two types of revisions, and that your proposal meets the criteria for the "second type of revision," which you term a "new permit revision."¹ That term

¹ Applicant letter of June 23, 2011, pages 2-3.

is novel and does not appear in our code. The code does not define two types of revisions, rather WCC 23.60.170 lists criteria for only one revision process.

Whatcom County Code 23.60.170.E does not create a second type of "revision," but instead requires application for a "new permit." It is our reading that a "new permit" is not a second type of revision,² and WCPDS requires a new permit in order to review the entire development within SMA jurisdiction.

The requested revision to your existing Shoreline Substantial Development Permit (SHS1992-00020) does not qualify as a revision under WCC section 23.60.170, as the proposed changes are not "within the scope and intent of the original approval" as required by WCC 23.60.170 and WAC 173-27-100.

Note that any administrative permit decision, or determination by WCPDS based on a provision of WCC Title 23, may be the subject of an appeal to the office of the Hearing Examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal procedures of SMP 23.60.150.H and shall be an open record hearing before the Hearing Examiner. Such appeals shall be filed on forms provided by WCPDS within twenty (20) calendar days of any action of WCPDS being appealed.

Major Project Permit (MDP2011-00001)

In accordance with WCC 2.33, the application of MDP2011-00001 shall remain incomplete until the following information is received by Whatcom County Planning and Development Services (WCPDS):

- Provide direct references to where the Project Information Document (PID) includes the information required in WCC 20.88.205;
- Demonstrate how the proposed MDP complies with the criteria outlined in WCC 20.88.130 and the application forms provided by WCPDS;
- Include the required information on the MDP Intake Checklist (pages 6-9 of application, specifically #1 e, f, I, m);
- Approximate the anticipated fill and grade amounts as required on the Land Disturbance Permit (LDP) application;
- Provide a check or cash payment in the amount of \$100.00 per the Whatcom County Unified Fee Schedule (UFS) #9025 – Legal Notice;
- Submit a title report;
- Provide five (5) hard copies of the MDP application and associated documents, including but not limited to the PID.

Pursuant to WCC 20.84.240, you may appeal this determination to the Whatcom County Hearing Examiner within 14 calendar days from the date of this letter, along with a completed form from this office, a base fee of \$750.00 (an additional \$100 per hour will be charged after 8.0 hours) and a statement including tangible evidence substantiating the appeal.

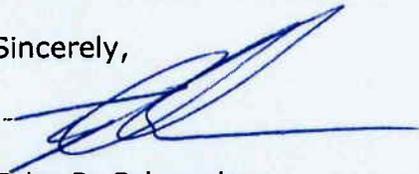
You have **90 days** from the issuance of this letter to submit the required items listed above or your application will expire, pursuant to WCC 2.33.050(E)(2)(4) & (f). If additional time is needed a time extension can be granted in 90-day increments. The applicant shall submit a written request to the County prior to 90

² On June 23, 2011, Whatcom County consulted with the Washington State Attorney General's Office, which confirmed this interpretation

days of the date of this letter with documentation as to why the additional time is necessary.

As you have been identified as the applicant's agent all correspondence and inquires will be directed to you. If you have any questions, please contact me at (360) 676-6907 ext. 50202 - or - Email: Tschroed@co.whatcom.wa.us .

Sincerely,



Tyler R. Schroeder
Whatcom County Planning Supervisor

Royce Buckingham
Whatcom County Prosecuting Attorney

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive,
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

July 11, 2011

William T. Lynn
600 University, Suite 2100
Seattle, WA 98101

Re: MDP2011-000001/SHR2011-00009 - Response to Request for
Reconsideration

Dear Mr. Lynn:

This letter is in response to your June 29, 2011 request for reconsideration of our June 23, 2011 determination of incompleteness and requirement to obtain a new shoreline development permit letter. As indicated in your letter the correspondence was more accurately a request for clarification. The clarification questions that you have posed to Whatcom County were not actually addressed in our June 23, 2011 letter. According to WCC 23.60.150.D, "Grounds for reconsideration must be based upon the content of the written decision." Therefore, the County will not reconsider the June 23, 2011 determination that a new shoreline substantial development permit is required to review the entire proposal within the jurisdiction of the Shoreline Management Act (SMA).

However, it is clear that the applicant has questions on the effect of our June 23, 2011 letter in regards to the existing shoreline approvals and future procedural issues. We are also aware of questions from other state and federal agencies in this same regard. Although the County is not required to address these issues, it is in the best interest of all parties to try and clarify these questions;

1. Our June 23, 2011 letter did not address any rights held by Pacific International Terminals in the original Shoreline Substantial Development Permit issued by the County under SHS 92-0020. As indicated in the October 22, 2008 County administrative determination (see attached), the permit authority of SHS 92-0020 and MDP 92-00003 remains active until the effective date of the Shoreline Substantial Development Permit is initiated. The effective date is initiated when all required Federal, State and Local permits have been acquired so long as the applicant has been actively pursuing those permit approvals.
2. Our June 23, 2011 letter did not address any rights or obligations under the Settlement Agreement concerning SHS 92-0020 dated August 31, 1999.
3. The effect of the original Shoreline Substantial Development Permit issued under SHS 92-0020 and the August 31, 1999 Settlement Agreement contain both obligations and benefits which have been studied and negotiated by all of the parties in good faith over a long and arduous process. These requirements and benefits will be carried forth into the new shoreline process and will give flavor and substance to how the new process

will be conducted. How the increased proposal affects these documents will have to be played out in the public process. However those documents continue to have merit and are considered binding by the County. But not so binding that they cannot be influenced by a new proposal. At this point, without the public process and review of your new proposal we cannot say how this will influence the conditions contained in those documents.

4. The scope of the environmental review under SEPA for the new proposal will be made through the scoping process found in WCC 16.08, RCW 43.21C and WAC 197-11 or as determined appropriate through the SEPA process.

Also, since the applicant/proponent did not request the abeyance of the permit appeal period in writing within 10 days of the June 23, 2011 letter, the deadline for an appeal on the determination of incompleteness and requirement to obtain a new shoreline development permit is Wednesday, July 13, 2011.

If you have any questions, please contact me at (360) 676-6907 ext. 50202 – or -
Email: Tschroed@co.whatcom.wa.us .

Sincerely,



Tyler R. Schroeder
Whatcom County Planning Supervisor

Cc: Royce Buckingham, WC Prosecuting Attorney
Cliff Strong, AMEC



October 22, 2008

**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
ADMINISTRATIVE DETERMINATION**

Shoreline Management Program)	MDP92-0003
Administrative Determination)	SHS92-0020
Requested by)	
)	FINDINGS, CONCLUSIONS
Pacific International Terminals)	AND DECISION

I. SUMMARY OF REQUEST AND DECISION

Request: On September 23, 2008, Pacific International Terminals (PIT) requested an administrative determination that Major Development Permit (MDP92-0003) and Shoreline Substantial Development Permit (SHS92-0020) continues to authorize construction of Gateway Pacific Terminal, a multi-user import and export marine terminal at Cherry Point along the Strait of Georgia.

Decision: It is the determination of Whatcom County that MDP92-00003 and SHS92-0020 remain active and are not expired.

II. FINDINGS

On May 13, 1997, The Whatcom County Council approved issuance of MDP92-00003 and SHS92-0020 subject to the terms and conditions recommended by Whatcom County Hearing Examiner and Planning Staff.

A group consisting of the Washington Environmental Council, North Cascade Audubon Society, People for Puget Sound, League of Women Voters of Bellingham, Ocean Advocates, the Washington State Department of Ecology and Department of Fish and Wildlife, appealed SHS92-00020 to the Washington State Shorelines Hearings Board. All parties, including Whatcom County and PIT, entered into a Settlement Agreement subject to additional conditions of approval on August 31, 1999.

Following the Settlement Agreement, PIT has been actively engaged in obtaining other necessary permits and approvals as conditioned by SHS92-0020, MDP92-0003 along with the subsequent Settlement Agreement. This includes, but is not limited to, an aquatic lands lease from the Washington State Department of Natural Resources, Section 10, Rivers and Harbors Act and Section 404 of the Clean Water Act permit approvals from the United States Army Corps of Engineers and other Federal, State and Local permits and approvals. Similarly, the Settlement Agreement contains a number of pre-construction studies that PIT is in the process of completing.

III. CONCLUSIONS

RCW 90.58.143 sets forth deadlines for activities and uses authorized by Shoreline Substantial Development or other shoreline permits. Specifically, subsection 2 requires that construction activity be commenced within two years of the effective date as follows:

Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

Subsection 3 further provides that authorization for construction activities shall terminate five years after the effective date of the permit:

Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

The effective date of a Shoreline Substantial Development Permit, as used in subsections 2 and 3, is defined in RCW 90.58.140(4) as the date of filing. That section further states, however, that the construction authorization deadlines do not include the time construction was not pursued due to the need to obtain additional permits and approvals and/or to resolve an administrative appeal or legal action:

The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

IV. DECISION

Based on the applicable provisions of the SMA described above, it is the determination of Whatcom County that the Shoreline Substantial Development Permit SHS92-0030 and associated MDP92-0003 remain active as the effective date of the Shoreline Substantial Development Permit has not been initiated due to the fact that all required Federal, State and Local permits have not been acquired.

Pursuant to WCC 23.60.15 and WCC 20.84.240, any person has the right to appeal this determination. Appeals shall be filed on forms supplied by Whatcom County Planning & Development Services within twenty (20) calendar days of any action not associated with an initial permit decision.

Dated this 22nd day of October, 2008



Chad Yunge
Shoreline Administrator
Whatcom County
Planning & Development Services



David Stalheim
Director
Whatcom County
Planning & Development Services