

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 19____, by and between PACIFIC INTERNATIONAL TERMINALS ("PIT"); WHATCOM COUNTY ("County"); the STATE OF WASHINGTON DEPARTMENTS OF ECOLOGY ("Ecology") and FISH AND WILDLIFE ("WDFW") (hereinafter collectively referred to as "the State Agencies"); and NORTH CASCADE AUDUBON SOCIETY, PEOPLE FOR PUGET SOUND, LEAGUE OF WOMEN VOTERS OF BELLINGHAM, OCEAN ADVOCATES, and WASHINGTON ENVIRONMENTAL COUNCIL (hereinafter collectively referred to as "WEC").

RECITALS

WHEREAS, PIT seeks to develop a multi-use ocean going terminal composed of a deep water pier and ocean going barge dock with upland industrial storage and manufacturing facilities to be known as Gateway Pacific Terminal in Whatcom County, in the state of Washington;

WHEREAS, the County granted approval of PIT's applications for a Major Development Permit, MDP No. 92-0003, for development of the upland area, and a Shoreline Substantial Development Permit, SHS 92-0020, for development of the shoreline area;

WHEREAS, WEC and the State Agencies, appealed the County's issuance of the Shoreline Substantial Development Permit in actions now consolidated before the Washington State Shorelines Hearings Board, SHB Nos. 97-22 and 97-23;

WHEREAS, PIT, WEC, the County, and the State Agencies now desire to fully settle and cooperatively resolve all matters concerning this appeal; and

WHEREAS, this Agreement is for the purpose of settling disputed facts and claims among the parties and does not constitute any admission by the parties, except as specifically provided in this Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and other consideration contained herein, IT IS AGREED:

1. Settlement of Pending Appeals. It is the intent, stipulation, and agreement of the parties that this Agreement constitutes a full and complete disposition of the issues raised in the Pre-hearing Order to the Shoreline Substantial Development Permit appeal, SHB Nos. 97-22 and 97-23. The parties understand, however, that PIT must obtain additional permits, approvals and/or sub-tidal leases beyond these proceedings before it may construct its proposed pier project. Other state and federal agencies, including the United States Army Corps of Engineers and the State Department of Natural Resources, likely will require further study and analysis of environmental impacts and impose further conditions pursuant to their independent regulatory or proprietary authorities before granting approval to this project. Nothing in this Agreement shall be construed as limiting the ability or authority of other state or federal agencies to require further studies or impose conditions in addition to those provided for in the existing Shoreline Substantial Development Permit SHS 92-0020 and this Agreement. Nor shall this Agreement be construed as precluding the Appellants' right to submit whatever input they deem appropriate to other state and federal agencies in connection with these other processes. Notwithstanding

the above, on any issue or subject considered and resolved as part of this Agreement, Appellants shall not take a position contrary to that stated in this Agreement, unless based upon scientific information which the Parties reasonably believe was not available to them when the Agreement was executed or upon a material failure to implement the studies, analysis and environmental protection measures provided for in this Agreement. At least ten (10) days prior to Appellants' taking such a position in any other processes, Appellants' shall send a copy of any new scientific information to PIT.

2. Supplemental Permit Conditions. The County accepts and will incorporate into the existing Shoreline Substantial Development Permit, SHS 92-0020, the supplemental conditions set out in this paragraph ("Supplemental Permit Conditions") as additional mitigation requirements for the proposed Gateway Pacific Terminal development.

2.1. Wetlands. PIT will implement and comply with all of the provisions of the PIT Wetlands and Habitat Mitigation Plan set forth in Appendix A, provided that such plan is approved in final form by the United States Army Corps of Engineers, the State Agencies and the County in accordance with applicable requirements and this agreement.

2.2. Shading Impacts and Post Project Monitoring.

2.2.a. Reduce and Minimize Shading Impacts. Potential shading impacts associated with the pier structure will be further reduced as specified in this section.

2.2.b. Shade Model Group Composition. In order to provide scientific peer review to assess a model (the Shade Model) developed to predict the shading effects from the pier of the proposed project, the Parties formed the Model Group (SMG). The SMG consisted of Brian Williams and Kurt Fresh, Washington Department of Fish and Wildlife; Dr. Tom Mumford, Washington Department of Natural Resources; Dr. Paul Harrison, University of British Columbia, representing WEC; Marc Boulé, Lawrence Spurgeon, and Mark Pedersen, Shapiro and Associates, Inc., developers of the model for the Proponent; Dr. Ron Thom, Battelle Northwest Laboratories; Dr. Annette Olson, University of Washington; and Dr. Tim Nelson, Seattle Pacific University.

2.2.b.1. Pier Construction. The majority of the Shade Model Group has acknowledged that changes to the macroalgae community as a result of altering the available light, coupled with non shade environmental factors, can not be predicted with certainty. To offset this uncertainty, the construction of a macroalgae mitigation site (Phase 1) should be initiated prior to the commencement of pier construction. Pier construction shall not be initiated for a minimum of one macro algae colonization cycle (March 1 through June 15) following the construction of the Phase 1 Macro Algae Mitigation site. The Phase 1 and Phase 2 Macroalgae Mitigation Sites are specified in Appendix B, and shall be located such that pier construction activities will not impact the mitigation sites. Macroalgae colonization of the Phase 1 Macroalgae Mitigation Site shall not be used as a criterion that limits or restricts commencement of pier construction. In addition, in-water pier construction shall not occur during Department of Fish and Wildlife restricted times for protection of herring spawn and juvenile salmonids.

2.2.b.2. Macroalgae Mitigation Plan. PIT will construct and monitor the Phase 1 and Phase 2 (if required) mitigation sites, monitor the project site, and the control site as specified in the PIT Macroalgae Mitigation Plan Appendix B.

2.3. Herring Behavior.

2.3.a. Introduction. The proposed Pacific International Terminal (PIT) project site is within the documented spawning habitat for the Cherry Point herring stock. The State Agencies and WEC are concerned that the proposed trestle/wharf structures and/or the operation of the port facility could disrupt the near shore movement, schooling and spawning of the Cherry Point herring stock in the immediate vicinity of the proposed PIT port facility. The parties have worked cooperatively to develop a monitoring program which is designed to study the interaction of the herring stock at Cherry Point in relation to the PIT port facility and identify structural and operational contingencies which will be implemented by PIT in the event that significant disturbances are discovered. The monitoring program shall be referred to as the Herring Monitoring Program and is attached hereto as Appendix C. The Herring Monitoring Program is fully incorporated into this Agreement and is an essential condition thereof.

2.3.b. Implementation of Herring Monitoring Program. PIT will implement the pre-construction and post-construction monitoring provided for in the Herring Monitoring Program. Such monitoring shall proceed in accordance with the Survey Methods provided for in the Herring Monitoring Program. Monitoring will be performed by consultants approved by WDFW, in consultation with WEC. PIT will fund the entire cost of implementing the Herring Monitoring Program, including the purchase or lease of any necessary equipment and the compensation of WDFW approved consultants.

2.3.c. Monitoring Results. No later than 90 days after each season's monitoring activities, PIT's consultants shall distribute a draft monitoring report to the State Agencies and WEC for review and comment. The report shall contain a description of the monitoring activities conducted, the results of the monitoring, and an evaluation of whether any Significance Thresholds have been reached.

2.3.d. Contingency Measures. PIT will implement all applicable Contingencies provided for in the Herring Monitoring Program (Appendix C) if WDFW determines that a Significance Threshold described in the Herring Monitoring Program has been reached. In making such a determination, WDFW shall review PIT's draft report and consult with WEC.

2.3.e. Additional Mitigation. If after implementation of all applicable contingencies provided for in 2.3.d. above, the monitoring program finds continued significant impacts to herring behavior, then the parties will meet and confer to develop and implement a plan for additional mitigation measures to prevent, avoid or mitigate such impacts. Nothing in the Herring Monitoring Program or this Agreement shall in any way limit the ability of WDFW to impose additional requirements under its statutory authority if necessary to prevent significant impacts to the Cherry Point herring stock.

2.4. Ballast Water Monitoring System. PIT agrees to comply with the attached plan for initiating and operating a vessel ballast water monitoring and contingency system. This system requires vessels intending to call at Gateway Pacific Terminal to perform open ocean ballast water transfers in order to greatly reduce the incidence of introduction of non-native organisms to local waters. See Appendix D.

2.5. Sediment, Tissue, and Water Quality Monitoring. PIT will fund annual sampling of sediments, marine water and shellfish and/or other identified indicator species in the vicinity of the project site in accordance with the State Sediment Management Standards/Sediment Sampling and Analysis Plan Appendix and the Puget Sound Estuary Program 1996 Protocols. PIT shall develop and submit for review and approval to the State Agencies a plan for sediment, marine biota (caged mussels and herring embryo) and water quality sampling and monitoring. The plan shall include background and annual sampling commencing on the effective date of this settlement in accordance with protocols, sampling design guidance and a schedule provided by Ecology. The background sampling design shall provide a scientifically sound basis for establishing existing pollutant levels and related biological conditions in the proposed Department of Natural Resources lease area for, at a minimum, the following parameters identified in Appendix E. The annual sediment sampling design shall provide a scientifically sound basis for comparison of the background data to the annual results in order to detect changes or trends in the samples over the long term. All sampling and monitoring shall be done by a contractor approved by the Parties. If, due to project operations, pollutant concentrations exceed the action levels set forth in Appendix E (and the state agencies determine that facility construction or operations have caused or contributed to such exceedences), PIT will implement all mitigation measures which the State Agencies reasonably determine to be necessary to compensate for such impact and to prevent and avoid such exceedences in the future.

2.6 Pier Design. PIT shall reduce the shading of aquatic vegetation and the potential impacts on migrating juvenile salmonids and/or herring through the following mitigation actions:

2.6.a. Ship Pier Trestle Alignment. PIT has aligned the main ship pier trestle in a manner that avoids potential shading of eelgrass and reduces potential shading of attachment macro algae species and avoids potential impacts to herring dispersion into the embayment. The final design of the ship pier trestle alignment shall be submitted to the State Agencies for review for consistency with applicable requirements and this agreement prior to construction.

2.6.b. Mapping. PIT has provided the State Agencies with accurate maps of the current location and area coverage of the *Zostera marina*, and attachment macro algae. The mapping includes an overlay of the location of the proposed pier that demonstrates the potential shading impact. In accordance with Appendix B, such mapping shall be updated within two (2) years of commencement of project construction activities. All relevant aerial photographic data shall be incorporated. The purpose of such mapping shall be to provide an accurate baseline by which to base and compare post project monitoring.

2.6.c. Pier Trestle Height and Piling Configuration. PIT has designed the pier height and piling locations to enhance light refraction and diffusion under and around the structures, in particular in the critical zone from the ordinary high water line out to the -25 tide elevation (MLLW= 0.00). The height of the pier trestle at MLLW will be approximately 37.3 feet above MLLW and the final design of the pier trestle height and piling configuration shall be reviewed for consistency with applicable requirements and this agreement by the State Agencies.

2.6.d. Use of Grating. PIT shall ensure maximum light passage to the water. The pier design shall incorporate grating or other light transmission structures along sections of the pier trestle roadway surface from the Ordinary High Water Line (OHW) to the -25 tide elevation (MLLW = 0.00). PIT will select a grating or other light transmission structure that maximizes the open space element while minimizing the thickness of the grating and operational environmental impact. A plan for use of

grating or other light transmission structure must be submitted for review for consistency with applicable requirements and this agreement by the State Agencies.

2.6.e. Conveyer and Piping Design. PIT shall design and construct any conveyer system to be totally enclosed within a gallery and shall equip the gallery with automatic shut off systems to maximize safety of the system and minimize noise and dust. The final design of any conveyer and gallery shall be reviewed for consistency with applicable requirements and this agreement by the State Agencies prior to construction.

2.6.f. Light Reflective Design. PIT agrees to use a commercially available light reflective coating on the underside of the pier and trestle over the macroalgae growing zone.

2.7 Littoral Drift and Wave Dampening.

2.7.a. Wave Analysis. PIT has provided a wave analysis of littoral drift and wave dampening for review with applicable requirements and this agreement by the State Agencies. The State Agencies acknowledge that the studies provided by PIT to date, taken together with required monitoring, represent a significant contribution to the overall effort envisioned for the Cherry Point Reach. Given due consideration for existing studies and ongoing efforts, PIT shall cooperate with the State agencies and participate, in a financially proportionate manner, in a Cherry Point reach-wide monitoring study of wave dampening and littoral drift. Notwithstanding the above, PIT shall not be required to participate in a Cherry Point reach-wide monitoring study of wave dampening and littoral drift if it decides not to build the pier.

2.7.b. Barge and Ship Pier and Trestle Location. PIT shall avoid wave dampening and impacts to littoral drift by appropriate placement and operation of the pier and trestle. Existing studies have predicted that the location, construction, and design of the pier and trestle will not significantly impact littoral drift or wave dampening. A portion of the study described in subsection "a" above will be focused on verification of the predicted wave dampening and littoral drift impacts. Final construction plans shall be reviewed, revised (if warranted) and reviewed for consistency with applicable requirements and this agreement by the State Agencies in consideration of the most up-to-date scientifically sound data regarding wave dampening and littoral drift.

2.7.c. Vessel Traffic Log. PIT shall maintain a log detailing each vessel that utilizes the pier, including the vessel's tonnage, length width and primary cargoes, the time spent at the dock and at anchorage in the vicinity, the location docked or anchored, and the initial, final and average draft of the vessel and any initial, periodic and final stability calculations performed by the vessel. A copy of the log shall be supplied to Ecology on a quarterly basis and Ecology shall have access to the electronic version of the database maintained by PIT upon reasonable notice.

2.8 Facility Construction.

2.8.a. Best Management Practices. PIT has committed to using best management practices and has submitted draft plans to avoid and/or minimize the environmental impacts of construction and build-out. The final plan shall be reviewed for consistency with applicable requirements and this agreement by the State Agencies.

2.8.b. Construction Permits. PIT will obtain all necessary building permits, stormwater permits, and fill and grade permits and state approvals prior to upland site improvement construction.

2.8.c. Stormwater Runoff Calculations and Management Plan. PIT site development will be pursuant to the Stormwater Management Plan developed in accordance with Whatcom County standards, including the Whatcom Development Standards. In addition, the Stormwater Management Plan shall be developed in accordance with the Department of Ecology Stormwater Guidelines and Appendix F of this Agreement. Prior to construction, the Stormwater Management Plan, including the stormwater runoff calculations, shall be submitted to the State Agencies for their review for consistency with applicable requirements and this agreement. See Appendix F for specific requirements and objectives for stormwater management, as summarized by the Department of Ecology.

2.8.d. Pier Trestle Construction Scheduling. PIT shall submit a plan to the State Agencies with a schedule for pier trestle construction activities that avoids or minimizes the impacts of construction on juvenile salmonid migration, herring spawning, and any other fish and wildlife reproductive activities at the project site. In any event, PIT shall not conduct any construction activities below the ordinary high water line during the herring spawning season between March 15 and June 15 or as determined otherwise by WDFW. The plan shall be reviewed for consistency with applicable requirements and this agreement by the State Agencies.

2.8.e. Pier and Trestle Construction Methods. PIT will construct the piers and trestle on pilings. Only concrete, steel, or recycled plastic piling shall be used. PIT will minimize the number of piles driven in accordance with reasonable design standards and with the design conditions in paragraphs 2.3 and 2.4 above.

2.9 Facility Operations.

2.9.a. Spill Prevention, Preparedness and Response Plans. PIT shall prepare an Incident Response Plan prior to construction of the piers addressing construction and operational spills. The Incident Response Plan shall address applicable provisions of 33 C.F.R. Part 154 and be submitted to Ecology for review for consistency with applicable requirements and this agreement. PIT shall record the approved Incident Response Plan with the County prior to beginning construction. The Incident Response Plan shall identify all applicable requirements, responsible agencies, establish detailed internal and external spill reporting requirements; and it shall be updated annually. PIT agrees to not allow bunkering by vehicle or other fuel transfers of over 1,000 gallons to vessels using their pier or terminal, except in emergency situations authorized in writing in advance by DOE on a case-by-case basis. For fuel transfers of 1,000 gallons or less, DOE shall be sent prior written notification identifying the party, schedule and circumstance. DOE reserves the right to limit or prohibit any and all fuel transfers as a result of monitoring and/or observations indicating related adverse impacts.

2.9.b. Spill Response Equipment. In order to provide an immediate response capability for routine operational spill response from the facility and vessels, PIT agrees to acquire and maintain a rapid deployment heavy spill containment boom sufficient to circle the largest anticipated vessel plus 50%. The boom shall be stored on the dock at a location convenient for its rapid deployment. PIT agrees that dock personnel shall be equipped and thoroughly trained for rapid boom deployment including annual drill and training in conjunction with Ecology.

2.9.c. Conveyor and Piping. PIT shall operate any conveyor system, including ship loading or unloading systems to maximize safety of the system and minimize noise and dust under Best Management Practices, including Best Available Control Technology.

2.9.d. Operating Protocols. PIT shall develop and put into place operating and safety protocols for each product, for both storage and transfer prior to vessel use of the piers. The protocols shall address facility/vessel pre-transfer conferences, vessel calculations for loading stability, terminal watch keeping, terminal cargo inspections and shall be integrated with the emergency procedures required in the "Spill Prevention, Preparedness, and Response Plans" section above. The operating and safety protocols shall be submitted for review for consistency with applicable requirements and this agreement by the Department of Ecology.

2.9.e. Regardless of other operating protocols, no vessels shall be moored or operated at the facility landward of the -25 tide elevation (MLLW = 0.00).

2.10. Navigation.

2.10.a. Vessel Traffic Analysis. Pursuant to RCW 43.211.030(3), Ecology shall oversee a Vessel Traffic Analysis which describes the current environment in detail and models the changes and impacts to vessel traffic safety and the environment resulting from the operation of the GPT facility and recommends operating protocols that will reduce, to the greatest extent feasible, the risk of vessel collisions, powered and drift groundings, allisions, spills, routine discharges and other incidents resulting from the operation of the GPT facility. The scope of the vessel traffic analysis is more fully described in Appendix G. The analysis shall be performed by Jack Herrald Ph.D. and Captain Jim Townley USCG (ret.) as independent third party consultants under contract with PIT. Ecology shall appoint a technical staff to oversee the study. PIT will fund the entire cost of the Vessel Traffic Analysis, including reasonable administrative costs incurred by Ecology. The study shall be completed six months prior to the initiation of construction of the facility including the pier or wharf.

2.10.b. Vessel Safety Committee. Pursuant to RCW 43.211.030(2) and 88.46.200, Ecology shall appoint an ad hoc, advisory marine safety committee ("Committee"). PIT will reimburse Ecology for all reasonable and necessary Committee expenses. Membership on the Committee will be open to at least one representative from Department of Fish and Wildlife, Department of Ecology, the Washington Environmental Council, Whatcom County and PIT, the Puget Sound Pilots Association and representatives of other Cherry Point industries as well as other interested parties selected by the Department of Ecology. On the basis of the Vessel Traffic Analysis and other pertinent information, the Committee shall recommend revised vessel operating protocols and other mitigation measures, not inconsistent and to be coordinated with operating protocols required of other Cherry Point industries. In addition, such operating protocols shall be as effective as the "state of the art" operating protocols within the shipping and terminal industry, which shall, to the greatest extent feasible, reduce the vessel traffic risk resulting from the operation of the GPT facility. To the extent feasible, the Committee's work and membership will be integrated with a broad North Puget Sound Risk Management analysis effort. In developing operating protocols and other mitigation measures, the Committee will give great weight to the recommendations of the Vessel Traffic Analysis provided for in the preceding paragraph.

2.10.c. Implementation of Mitigation. PIT will immediately implement operating protocols and mitigation measures recommended by the Committee which involve on-site operations and do not require a formal rulemaking to be effective. If appropriate Ecology will initiate a rulemaking to consider the incorporation of off-site operating protocols and mitigation measures recommended by the

Committee into the regional marine safety plan provided for in RCW 88.46.200. Ecology shall complete the rulemaking prior to the date of projected pier operations. The parties to this Agreement agree to make good faith efforts to support the adoption by Ecology of the off-site operating protocols and mitigation measures recommended by the Committee.

2.10.d. Timing of Pier Operations. Operation of the GPT facility will not commence until PIT implements the on-site operating protocols and mitigation measures recommended by the Committee.

2.10.e. Tidal Current Study. PIT shall prepare and file with the County a tidal current study which shall be developed in consultation with interested stakeholders such as the Washington State Pilots Association, treaty and non-treaty commercial fishermen's groups, and adjacent shoreline industries. The tidal current study shall be prepared in time for utilization and incorporation in the Vessel Traffic Analysis provided for in paragraph 2.10.a. and shall be reviewed for consistency with applicable requirements and this agreement by the State Agencies.

2.11. Vessel Mooring Study and Plan.

2.11.a. PIT agrees to hire a marine engineering consultant to review the report developed by oil terminal operators in San Francisco Bay at the request of the California Lands Commission relating to vessel mooring standards. This report establishes safe vessel mooring standards, configurations and procedures to be used by vessels visiting the docks under differing tidal current and wind conditions to prevent mooring hawser failure and subsequent drift loss of the vessels. The report establishes specific mooring hawser standards and configurations for each class of vessels that visit the docks. The report also requires that product transfer operations be scaled back or shutdown during certain inclement weather and sea state conditions that may place the operation at risk.

2.11.b. After review of the California study, PIT's marine engineering consultant will prepare a draft report establishing safe vessel mooring standards, configurations and procedures for the PIT dock. The standards and procedures will be specific to the sea and weather conditions experienced in the Cherry Point area and address each class of vessels that will visit the facility. The report will also recommend provisions for real-time wind and current data acquisition at the dock with telemetry to the primary control station and appropriate alarms. The draft report shall be submitted to Ecology for review for consistency with applicable requirements and this agreement 6 months prior to the first anticipated vessel moorage at the dock. PIT agrees to fully implement the standards and procedures contained in the final approved report through its dock and terminal operations plan and through requirements placed on visiting vessels. PIT further agrees to update the plan every 5 years after initial approval.

2.12 Public Access and Aesthetics. PIT has determined that it will convey to Whatcom County for park and conservation purposes the lands depicted in Appendix H under the terms and conditions of the conveyance document included in Appendix H. All the parties hereto acknowledge that said agreement to convey is voluntary in all respects and was not required by any party as a prerequisite for settlement of the appeals referred to in this agreement. Nothing in this agreement shall be construed as affecting the state's rights under the public trust doctrine.

2.13 Voluntary Funding. PIT further agrees to pay the Department of Ecology or any designee, \$50,000.00 within thirty (30) days following commencement of construction of its marine structures for its ocean-going terminal at Cherry Point. In addition, PIT will pay Department of Ecology or its designee \$10,000.00 per year for a total of five (5) years. The payment of these yearly installments

shall commence thirty (30) days following substantial completion of the park described above. The subsequent four (4) installments shall be made upon the yearly anniversary of the payment of this first installment.

3. Environmental Appellants' Interests. PIT and the State Agencies shall provide WEC with the results of all monitoring conducted pursuant to this Agreement and copies of all logs, reports, plans or other documents required to be submitted to the State Agencies. Within 10 days of the execution of this Agreement, WEC shall designate one representative to receive these documents. Upon the request of WEC, the parties to this Agreement will meet and confer to discuss the need for additional mitigation measures to prevent, avoid or mitigate unanticipated environmental impacts. The parties agree to make good faith efforts to resolve disputes over the need for additional mitigation measures before regulatory action is taken by the State agencies. The procedures for resolving disputes between the WEC and PIT over the implementation of this Settlement Agreement shall be governed by a separate agreement between PIT and WEC.

4. Whatcom County Plan Amendments.

4.a. WEC, the State Agencies and the Whatcom County Administration agree to actively support an amendment to the Whatcom County Shoreline Master Program (SMP) which would prohibit additional on-water port development occurring within the Cherry Point Management Area, with the exception of the PIT project and existing piers. The amendment to the SMP that will be proposed to accomplish these objectives shall be substantially in the form contained in Appendix I. The proposed SMP amendment shall be processed in accordance with WAC chapter 173-26 and other applicable law. The WEC, State Agencies and Whatcom County agree to support the proposed SMP amendment and to work cooperatively towards its adoption by the governmental entities by actions that will include, but are not limited to, letters and testimony in support of the amendment.

4.b. WEC, the State Agencies and the Whatcom County Administration agree to actively support an amendment to the Whatcom County Comprehensive Plan (Comp. Plan) which would prevent further on-water port development in the Cherry Point Management, with the exception of the PIT project and existing piers. The amendment to the Comp. Plan that will be proposed to accomplish this objective shall be substantially in the form contained in Appendix J. The proposed Comp. Plan amendment shall be processed in accordance with the applicable Whatcom County Code provision and other applicable law. WEC and the State Agencies agree to support the proposed Comp. Plan amendment and to work cooperatively towards its adoption by Whatcom County, by actions that will include, but are not limited to, letters and testimony in support of the amendment.

4.c. The Whatcom County Administration agrees to initiate the above amendment processes within sixty days of signing this settlement and to support and process the proposed SMP and Comp. Plan amendments in good faith, and will submit a final decision to the Department of Ecology according to the agreed upon public process and schedules set forth in Appendix K. The Department of Ecology and the County will fully comply with the public comment and participation requirements of RCW Chapter 34.05 and WAC Chapter 173-19.

4.d. The Department of Ecology agrees to consider and process the County's submittal on the proposed SMP amendment in good faith and according to the agreed upon process and schedules set forth herein and in Appendix K. The Department of Ecology will determine whether the County's submittal is consistent with the Shoreline Management Act.

4.e. The non-governmental parties and WDFW agree not to appeal the approval of the proposed SMP and Comp. Plan amendments if they are approved in substantially the form attached hereto as Appendices I and J.

4.f. All the parties acknowledge that PIT has not sought to alter Whatcom County's or other jurisdictions' development regulations so as to affect other land owners in the vicinity of PIT. Any participation by PIT or support of proposed development regulation modification, is at the behest of the other parties to this agreement.

5. General Provisions.

5.a. PIT accepts and shall comply with all of the Supplemental Permit Conditions set out in paragraph 2 above in development of the PIT project. In the event of conflict between the provisions of this agreement and any additional agreements, permits or other regulatory approvals, or the provisions of State and federal law or regulations the most restrictive provision shall control.

5.b. **Regional Herring and Salmonid Studies.** PIT agrees to participate with the State Agencies in the region-wide herring and salmonid studies and analysis described in Appendix L provided that:

1. the studies and analysis required by this settlement agreement may be acknowledged as a portion of the overall participation effort for the region-wide studies and analysis, and
2. the studies and analysis described in Appendix L may be changed by the State Agencies following input and further discussion with, WEC, other state and federal agencies, and other Cherry Point industries, and
3. PIT is not committed to participate in these studies unless it decides to construct and operate its ocean-going terminal at Cherry Point.

5.c. **Regional Risk Assessment.** PIT will cooperate and participate in a risk assessment, including an evaluation of cumulative impacts from development, coordinated by the State Agencies, provided that:

1. any studies, analysis or information required by this settlement agreement may be acknowledged as a portion of the overall participation effort for the region-wide risk assessment, and
2. the risk assessment described in Appendix L may be changed by the State Agencies following input and further discussion, WEC, other state and federal agencies, and other Cherry Point industries, and
3. PIT is not committed to participate in this risk assessment unless it decides to construct and operate its ocean-going terminal at Cherry Point.

5.d. PIT acknowledges that it has been informed by DNR that the processing and ultimate decision on an aquatic lease likely will depend in substantial part on the successful undertaking of these regional studies and the independent review of the project and its environmental impacts undertaken by the Commissioner of Public Lands and Department of Natural Resources taking into consideration the results of these regional studies.

5.e. The State Agencies and WEC shall dismiss with prejudice their petition for review (SHB No. 97-23) upon entry of this settlement agreement.

5.f. The County shall incorporate by reference all the Supplemental Permit Conditions set forth in this Agreement in the revised Shoreline Permit for the PIT project as provided in Part 2 above.

5.g. The State Agencies shall proceed cooperatively and expeditiously with necessary review and processing of the additional permits required for the Gateway Pacific Terminal project.

5.h. The parties agree that in carrying out the terms of this Agreement, they are operating in a relationship of trust and confidence and, except as provided herein, have neither done, nor will do, any acts that will diminish the value of this settlement Agreement to the other parties in any way or the ability of the parties to obtain the benefits of this Agreement.

5.i. Appendices A – L attached hereto, form a part of this Agreement and are incorporated by reference for all purposes. This Settlement Agreement and the attached Appendices and Exhibits incorporated by reference represent the entire agreement and understanding of the parties.

5.j. This Agreement shall be binding on and inure to the benefit of the parties, as well as their successors and assigns.

5.k. Except where expressly so designated, the terms of this Agreement are contractual and not mere recitals.

5.l. The parties recognize that this Agreement constitutes full, final, and complete settlement of this shoreline substantial development permit appeal by the parties and acknowledge that they have had the benefit of legal counsel concerning the effect of this Agreement. The persons executing this Agreement on behalf of the respective parties identified represent that they have full and approved authority to fully and completely bind the parties and the parties' officers, directors, successors, assigns, and employees to this Agreement for all purposes.

5.m. This Agreement does not affect the rights of any parties not signatory to this Agreement.

5.n. This Agreement may be executed in counterparts and is effective as to all parties upon the date of signature of the party last to sign.

PACIFIC INTERNATIONAL TERMINALS

By: _____
Its: _____

WHATCOM COUNTY

By: Marlene Dawson
Whatcom County Council Chair

WHATCOM COUNTY

By: 
Whatcom County Executive

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: _____
Tom Fitzsimmons, Director

STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

By: _____
Jeff Koenings, Phd., Director

NORTH CASCADE AUDUBON
SOCIETY

By: _____
Its: _____

PEOPLE FOR PUGET SOUND

By: _____
Its: _____

LEAGUE OF WOMEN VOTERS OF
BELLINGHAM

By: _____
Its: _____

OCEAN ADVOCATES

By: _____

WHATCOM COUNTY

By: _____
Whatcom County Executive

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

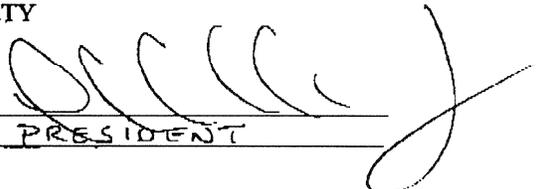
By: _____
Tom Fitzsimmons, Director

STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

By: _____
Jeff Koenings, Phd., Director

NORTH CASCADE AUDUBON
SOCIETY

By: _____
Its: PRESIDENT



PEOPLE FOR PUGET SOUND

By: _____
Its: _____

LEAGUE OF WOMEN VOTERS OF
BELLINGHAM

By: _____
Its: _____

OCEAN ADVOCATES

By: _____

WHATCOM COUNTY

By: _____
Whatcom County Executive

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: _____
Tom Fitzsimmons, Director

STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

By: _____
Jeff Koenings, Phd., Director

NORTH CASCADE AUDUBON
SOCIETY

By: _____
Its: _____

PEOPLE FOR PUGET SOUND

By: _____
Its: _____

LEAGUE OF WOMEN VOTERS OF
BELLINGHAM

By: Lois Yarbuck
Its: Representative

OCEAN ADVOCATES

By: _____

WHATCOM COUNTY

By: _____
Whatcom County Executive

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: _____
Tom Fitzsimmons, Director

STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

By: _____
Jeff Koenings, Phd., Director

NORTH CASCADE AUDUBON
SOCIETY

By: _____
Its: _____

PEOPLE FOR PUGET SOUND

By: _____
Its: _____

LEAGUE OF WOMEN VOTERS OF
BELLINGHAM

By: _____
Its: _____

OCEAN ADVOCATES

By:  _____
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Its: _____

WASHINGTON ENVIRONMENTAL
COUNCIL

By:  _____

Its: President _____