

BEFORE THE COUNTY COUNCIL OF THE COUNTY OF WHATCOM
STATE OF WASHINGTON

IN RE:	)	File Nos.
Application for Major Development	)	MDP92-0003 and
Permit and Shoreline Substantial	)	SHS92-0020
Development Permit by)	
GATEWAY PACIFIC TERMINAL	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
	)	MAJOR DEVELOPMENT PERMIT
	)	AND SHORELINE SUBSTANTIAL
	)	DEVELOPMENT DECISION

This matter having come before the County Council for consideration and decision on whether to accept the recommendation of the Hearing Examiner for approval of the applications by Gateway Pacific Terminal for a Major Development Permit and Shoreline Substantial Development Permit in the above-designated files, and the council having considered the official record, including the recommendation of the Hearing Examiner and the February 5, 1997, Staff Report, it now makes, enters, and renders the following:

FINDINGS OF FACT

1. The Hearing Examiner's findings of fact contained in the Findings of Fact, Conclusions of Law and Recommendation to Whatcom County Council issued on March 14, 1997, and attached hereto as Exhibit A, are hereby adopted and incorporated by reference as if fully set forth herein.

CONCLUSIONS OF LAW

The Hearing Examiner's conclusions of law contained in the Findings of Fact, Conclusions of Law and Recommendation to Whatcom County Council issued on March 14, 1997, are hereby adopted and incorporated by reference as if fully set forth herein.

DECISION

The Major Development Permit and Shoreline Substantial Development Permit in the above-designated files are **CONDITIONALLY APPROVED**, subject to the conditions recommended by the Hearing Examiner in his Findings of Fact, Conclusions of Law and Recommendation to Whatcom County Council issued on March 14, 1997, and which are hereby incorporated by reference and adopted as if fully set forth herein.

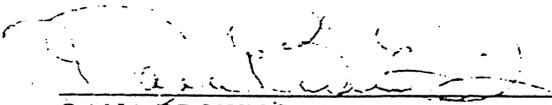
DATED this 13 day of May, 1997.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



L. WARD NELSON
Council Chair

ATTEST:



DANA BROWN-DAVIS
Clerk of the Council

WHATCOM COUNTY HEARING EXAMINER

RE: Application for	)	File No. MDP92-0003
Major Development Permit and	)	SHS92-0020
Shoreline Substantial Development Permit)	
by GATEWAY PACIFIC TERMINAL	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
	)	AND RECOMMENDATION
	)	TO WHATCOM COUNTY
	)	COUNCIL

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The Applicant, Pacific International Terminals, seeks approval of a Shoreline Substantial Development Permit and a Major Development Permit for a deep-water pier on piling, and related upland storage and support facilities on a 1,092-acre site located at Cherry Point.

The proposal includes a multi-user import and export marine terminal for bulk, break-bulk, and other marine cargoes at Cherry Point. Of the 1,092 acre site, approximately 80 acres would be used for upland terminal facilities and 100 acres would be used for a railroad loop to accommodate trains, transporting commodities to and from the site. The pier and site are located in the Cherry Point area, and the waters of Georgia Strait, between the Arco and Intalco piers, Whatcom County, Washington.

Recommendation: The Whatcom County Hearing Examiner recommends that the Whatcom County Council approve the requested Major Development and Shoreline Substantial Development Permits, subject to conditions.

II. PRELIMINARY INFORMATION

A. Background Information

Applicant: Pacific International Terminals
Harbor Center Building, Suite 156
1801 Roeder Avenue
Bellingham, WA 98225

Property Location: The 1,092-acre site is located south of the ARCO refinery. Generally, the upland terminal storage area is located west of Powder Plant Road (aka Gulf Road) and south of Henry Road. The railroad track loop is located north of the terminal site. The proposed pier is immediately south of the terminal site.

Legal Description: The subject property is located within Sections 17, 18, 19, and 24, T39N, R1E, W.M. (A complete legal description is attached hereto as Appendix 2.)

Zoning: Heavy Impact Industrial

Comprehensive Plan: Heavy Impact Industrial

Subarea: Cherry Point/Ferndale

Shoreline Designation: Cherry Point Management Unit

Shoreline of Statewide Significance: Yes, the portion of the site below extreme low tide.

Water Body: Strait of Georgia

B. Procedural Information

Authorizing Ordinances: Shoreline Management Program, Section 7.3
Whatcom County Code, Section 20.92.210

Applicable Shoreline Master Program Provisions:

Chapter 1	Purposes
Chapter 2	Goals and Objectives
Chapter 4	Shorelines of Statewide Significance
Section 6.21	Cherry Point Management Unit
Section 7.3	Hearing Examiner
Section 7.4	County Council

Section 8.4 Substantial Development Permit Criteria

Applicable Whatcom County Zoning Ordinance:

WCC 20.68	Heavy Impact Industrial District
WCC 20.80	Supplementary Requirements
WCC 20.88	Major Development Permits
WCC 20.92	Hearing Examiner

SEPA Review: Pursuant to the State Environmental Policy Act (SEPA), a Draft Environmental Impact Statement (EIS) for Gateway Pacific Terminal was published on December 23, 1996. Due to the storm conditions and in response to a request for extension, in accordance with WAC 197-11-455 and WCC 16.90.110, the comment period was extended from January 22, 1997 to January 29, 1997. A further request for extension was received and granted to February 5, 1997, the maximum time allowed under WAC 197-11-455 and WCC 16.08.110. The Final Environmental Impact Statement issued on February 21, 1997.

Legal Notice: Posted: January 24, 1997
Mailed: December 19, 1996
Published: January 2 and 10, 1997

Hearing Date: February 12 and 24, 1997. The record remained open for written comments until the end of the working day on Friday, February 28, 1997. Any comments received on that day were admitted into the record.

Hearing Testimony:

Matt Aamot
Marilyn Bentley
Bill Florea
Roland Middleton
Planning & Development Services
Mike Donahue
Division of Engineering
5280 Northwest Drive
Bellingham WA 98226

Arthur Anderson
General Contractors of WA
2211 Rimland Drive
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Bob Carmichael, Attorney
1700 D Street
Bellingham WA 98225

Mike Naylor
NW Region Dept of Natural Resources
919 N Township Road
Sedro Woolley, WA 98284

Dale Griggs
Lummi Nation
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Dept. of Natural Resources
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Sedro Woolley WA 98284

Jeff Kaspar
Bellingham Stevedoring Company
Harbor Center-Ste 156
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Bellingham WA 98225

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Lonnie Moore
Brotherhood of Allied Trades
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Bellingham WA 98225

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Shapiro & Associates
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Bellingham, WA 98226

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1616 Cornwall Ste 209
Bellingham WA 98225

Brian Williams
Habitat Program
WA State Dept of Fish & Wildlife
333 East Blackburn Rd
Mt. Vernon WA 98273

Exhibits:

- 1 Major Development and Shorel
Permit applications
- 2 Affidavit of Publication dated January 3, and 10, 1997
- 3 Certification of Mailing of Notice
- 4 Certificate of Posting of Notice
- 5 Planning and Development Services staff report, agency comments, and
recommendation

- 6 Site Map
- 7 Cherry Point Saltmarsh Topography Map
- 8 Cherry Point Saltmarsh SCS Map; Cherry Point Saltmarsh NWI Map (on reverse side of sheet)
- 9 Site Surface Water Drainage Patterns
- 10 Comparison of Impacts Chart
- 11 Aerial Map
- 12 Two page document, General Arrangement & Sections, dated 5/31/95, Dwg. #91756-00-417, Rev. P1; General Arrangement, Dwg. #91756-00-425, Rev. P1.
- 13 Two page document, General Arrangement & Sections, dated May 31, 1995, Dwg. #91756-00-417, Rev. P3; General Arrangement Dwg. #91756-000-425, Rev. P3
- 14 Brief dated February 12, 1997 submitted by Robert M. Tull, and Mark J. Lee, Langabeer, Tull & Cuillier, P.S., attorneys for Gateway Pacific Terminal
- 15 Matt W. Aamot memo to Michael Bobbink dated February 12, 1997 amending staff report Condition #43
- 16 Marilyn Bentley memo to Michael Bobbink dated February 12, 1997 adding Condition #44 to staff report
- 17 Michael J. Donahue, Engineering Division, memo to Michael Bobbink dated February 10, 1997 amending staff report Condition 30f
- 18 North Cascades Audubon Society (David Schmalz) letter dated February 10, 1997
- 19 North Cascades Audubon Society (David Schmalz) letter dated February 7, 1997 expressing concern over time to respond to proposal
- 20 Lummi Indian Business Council letter dated February 5, 1997 with comments on Gateway Pacific Terminal draft EIS

- 21 Critical Areas Inventory Report Category 1 Wetlands Summary, Part II, Page 17
- 22 Whatcom County Wetlands Data Sheets - 5 pages, Cherry Point Saltmarsh
- 23 Affidavit of Wayne Schwandt (undated)
- 24 Miscellaneous correspondence from various agencies and dated from December 24, 1991 to December 14, 1994 (49 items)
- 25 USCAN Free Trade Zones, Inc. February 12, 1997 letter, and attachments recommending denial of applications
- 26 Gateway Pacific Terminal Draft Environmental Impact Statement dated December 1996
- 27 Gateway Pacific Terminal Draft Environmental Impact Statement, Appendices, dated December 1996
- 28 Cherry Point Natural Resource Studies, Appendix E-5, dated January 19 94
- 29 Letter from Skagit Audubon Society, Elsa Gruber, to Bobbink, dated February 20, 1997
- 30 Table and Maps: "Federal species status review progress and the potential ESA listing status of Washington salmonids.
- 31 Letter from WA Office of Marine Safety, Stan Norman, to Middleton, dated Feb 19, 1997, re: DEIS
- 32 Letter from WA DNR, Tomas Mumford, to Mark Pederson, dated Feb 21, 1997
- 33 Letter from WA DOE, Michael Llewelyn, to Phil Millam, dated May 31, 1996
- 34 Letter from Nooksack Tribe, Ross Cline, and Herman Almojera, to Army Corps, date Jan 3, 1995, re: Cherry Point - Religion of the Nooksack Tribe
- 35 Cherry Point Industrial Map

- 36 Diagram/Map
- 37 Herring Habitat Exhibit Map
- 38 Letter dated February 26, 1997 from Art George, UA Local 40 (Plumbers & Steamfitters) in support
- 39 Letter dated February 27, 1997 from Richard Poitras, 6914 Holeman Avenue, Blaine, WA in support
- 40 Letter dated February 24, 1997 from ReSources For Sustainable Communities, Carl Weimer, requesting environmental protection for Cherry Point.
- 41 Fax letter dated February 24, 1997 from Trillium Corporation, Roberta Balarezo to Bobbink in support of project.
- 42 Fax letter dated February 27, 1997 from People for Puget Sound, 1402 Third Ave, Seattle, WA 98101, Kathy Fletcher, to Bobbink requesting the application be denied.
- 43 Letter dated February 27, 1997 from James Freeman, 1500 West Bakerview, Bellingham, WA 98226 to Bobbink in support of project.
- 44 Letter dated February 26, 1997 from North Cascades Audubon Society, P. O. Box 5805, Bellingham, WA 98227 to Bobbink requesting project be denied.
- 45 Letter not dated, but dated received at 1 p.m. February 28, 1997 from International Longshoremen's & Warehousemen's Union, Local 7, John Munson, to Bobbink in support.
- 46 Letter dated February 28, 1997 from Simonarson, Visser, Zender & Thurston, 1700 D St, Bellingham, WA 98225, Robert Carmichael, to Bobbink comparing project with Mr. Sheckter's Cherry Point Industrial Park, Ltd.
- 47 Faxed letter dated February 28, 1997 from James Isdell, WA State Dept of Natural Resources, Northwest Region, 919 N Township ST, Sedro Woolley, WA 98284 to Middleton re concerns about the adequacy of FEIS
- 48 Faxed memo from Bill Graeber, WA DNR, to Bobbink with attached letter

from WA Office of Marine Safety, dated Feb 19, 1997 to Middleton ... memo requested letter be attached to Exhibit 47.

- 49 Faxed memo from Matt Aamot, Planning & Development Services, to Bobbink, dated 2/28/97 with final list of recommended conditions
- 50 Faxed memo from Donahue, Division of Engineering, to Aamot, dated 2/28/97, with recommended amendments
- 51 Letter from Langabeer, Tull & Cuillier, Bob Tull/Mark Lee, to Bobbink providing additional info for project
- 52 Letter from Washington Environmental Council, Toby Thaler, to Bobbink requesting the project be denied.
- 53 Letter from Shapiro & Ass, Inc., Mark Pedersen, to Bobbink in support of the project.
- 54 Letter dated 2/28/97 from Erlene McKay, Crescent Beach Oyster Farm, PO Box 46, Eastsound, WA 98245 to Bobbink requesting the permit be denied.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

I.

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearings on February 12 and 24, 1997.

II.

On June 18, 1992, Pacific International Terminals made application to Whatcom County for a Zoning Major Development Permit and a Shoreline Substantial Development Permit for what is now known as the Gateway Pacific Terminal Development. The proposal includes a multi-user import and export marine terminal for bulk, break-bulk, and other marine cargoes at Cherry Point. Of the 1,092 acre site, approximately 80 acres would be used for upland terminal facilities and 100 acres would be used for a railroad loop to accommodate trains transporting commodities to the site. The pier

would be located in the waters of Georgia Strait between the Arco and Intalco piers.

The products now being proposed for shipment across the facility are feed grains, petroleum coke, iron ore, sulfur, potash, and wood chips. The facility is expected to handle on an annual basis approximately 8.2 million metric tons of these cargoes. This is expected to create a total of 140 ship calls.

If the facility is approved for additional or different product cargoes in the future, the number of ship visits would change.

The movement of cargo between vessels and storage areas will occur through a fully enclosed conveyor system, which has been designed to prevent release of cargo into the air or water. Cargo incoming over land will arrive by truck or rail and will be deposited into a hopper for transfer to open or covered stockpiles, or directly to a ship.

III.

The 1,100-foot long approach trestle which connects the berthing pier to the terminal will access an 80-foot water depth for berthing of cape size vessels. These are the largest vessels which will be able to use the facility. They will berth on the outside of the pier. The inside of the pier will be used to berth up to six barges which will be transported to and from the facility by tug tows.

The record supports a finding that this approximate location is extremely desirable for a cargo transfer pier because it allows reaching the 80-foot depth of water needed more quickly than any other area in the immediate vicinity. The pier is designed to parallel the beach from the end of the trestle, thereby reducing the overall length to a minimum (approximately 1,300 feet). By comparison, the trestle approved for the competing pier facility (MDP92-0002 and SHS92-0018) is approximately 2,000 feet waterward of the ordinary high water mark and the pier-head extends another approximately 1,800 feet for a total dock length of 3,775 feet. The applicant's site provides the shortest distance to access an 80-foot depth within the Cherry Point Management Unit.

IV.

The entire trestle and pier development will be placed on concrete pilings spaced approximately 75' to 100' apart. The spacing of the pilings was increased to further reduce potential impacts and to allow small boat traffic underneath the trestle.

Cargo will be transported across the trestle to the barges and vessels docked on the pier through stacked and covered conveyors.

The 1,000 plus acre upland area is mainly flat and is mostly open field. The upland terminal storage area will be located west of the Powder Plant Road and south of Henry Road. The railroad track loop is to be located north of this terminal site and the proposed pier is immediately south of the terminal site. The on-shore permanent storage facilities would be located on an approximately 80 acre triangular-shaped portion of the site adjacent to the shoreline and setback at least 100 feet from the edge of the bluff. Natural vegetation will be retained along the top of the bluff within the 100-foot setback.

The upland portion of the site is to be used for the conveyor handling and storage of commodities, as well as for site maintenance and operation facilities, including water quality treatment. The majority of the upland terminal site will be used for storage commodities. Additionally, the proposed railroad loop will impact approximately 100 acres of upland property. The remaining approximately 900 acres will remain undeveloped at this time.

V.

The site is characterized by mostly flat to gently sloping terrain on the uplands, with steep bluffs bordering the western-most 2500-feet of beach. The site contains approximately 5,460 feet of shoreline, characterized by rock cobbles, gravel, and coarse sands. Elevations range from sea level to approximately 220 feet above sea level, with most of the site lying between 60' and 160' in elevation. A small un-manned, intermittent stream flows into the strait along the eastern boundary of the site.

There are significant wetlands on the upland acreage. The upland portion of the project, including the rail loop locations, has been redesigned a number of times to minimize impacts on wetlands. Under the current proposal, approximately 5.85 acres of wetlands on the site will be negatively impacted by the proposal. The majority of these impacted wetlands are lower valued wetlands. The applicant has proposed significant mitigation. The proposed mitigation is acceptable to County Planning staff. If the mitigation plan were fully successful, it would much more than mitigate for the small portion of wetlands on the upland areas lost or disturbed as a result of this project.

The overall value and function of wetlands on the site should increase if the applicant fully complies with the mitigation plan and if it is successful.

VI.

The proposal includes stormwater collection and treatment systems designed to minimize the discharge of processed stormwater to the bay. The proposed primary

stormwater outfall will be through an engineered defuser located at the face of the pier. The outfall to the pier will be sized to convey the twenty-four hour design storm. The outfall will be designed to increase the mixing of stormwater and saltwater in order to create a broad-ban mixing zone, intended to reduce impacts to salinity, temperature, and general water quality, in the herring spawning zone. The applicant will be required to submit a stormwater design report, prepared by a licensed engineer, to the Whatcom County Division of Engineering for review and approval and strictly follow the requirements in the Whatcom County Development Standards for Stormwater. In addition, the applicant will be required to obtain a number of permits regarding discharge of the stormwater into the waters of Georgia Strait and will be required to obtain a hydrologic permit from the Washington Department of Fish and Wildlife, which may include limitations on stormwater discharge during the herring spawn season. If feasible, State agencies may require upland filtration as the sole means of stormwater discharge.

Water quality, and specifically impacts on water quality, through stormwater discharge into Georgia Strait off the pier face is extremely important in regards to this proposal because of its location, as will be described below, in an area of extreme biological and ecological importance. However, the record clearly indicates that these concerns have been taken into account in the design of the proposed stormwater system and that the specific requirements the discharge system must meet under local, State, and Federal standards should be sufficient to ensure that the proposal does not have a significant impact on water quality, or on the important marine habitat surrounding the pier area.

VII.

The project site is located within the most important herring spawning area in Washington State (Point Whitehorn to Sandy Point). The herring species is an extremely important species in the food chain. It is important as a forage fish which are fed on by salmon, ground fish, sea birds, and marine mammals during all of its life-history stages. For example, a very large portion of the herring egg roe ends up being food for other species.

Herring are known to be highly susceptible to changes in environmental conditions. The existence of the large stock of herring which spawns in the Cherry Point vicinity was the most important reason for the denial of previously proposed industrial projects in the Cherry Point vicinity.

The potential impacts of this proposal on herring have been the most controversial and contested portion of this proposal. Marine water quality in the Cherry Point vicinity remains the most important environmental concern associated with this project.

In addition to the herring resource and fishery, this area is important for other fishery resources, including salmon and Dungeness crab. In regards to salmon, this area contains, at different times of the year, all five species of adult migrating salmon. The area is also used by migrating juvenile salmon.

The area is also an important Dungeness crab resource area. Adult Dungeness crab are common along the near-shore area and juvenile Dungeness crab inhabit intertidal areas. The immediate vicinity of Cherry Point is an important area for molting and for mating during late May and early June.

The area is also used by fishers, both Tribal and non-Tribal, for salmon species, herring, and Dungeness crab.

The relative very significant importance of this area in regards to marine fishery resources has given rise to most of the concern raised by members of the public, environmental groups, and State and Federal agencies concerning this project.

The Department of Ecology will retain important jurisdiction in reference to water quality should this proposal receive the requested permits now pending. The Washington Department of Fish and Wildlife has jurisdiction over the negative impacts on fisheries resources and will require hydraulics project approval for the proposal. The Department of Natural Resources has the authority to grant or deny leases which will be necessary for the construction of the trestle and pier. In addition, National permits regarding water quality, pollution discharge, waste discharge, and permits, from the U.S. Army Corps of Engineers regarding construction of the pier and for wetland alteration and fill, will be required.

Some of these agencies have expressed concern about the ability of this proposal to survive in harmony with the important ecological and fishery resources in the area. However, the Final Environmental Impact Statement (FEIS) has reviewed all of the significant, potential areas of ecological concern and has concluded that there is not a probability of a significant adverse environmental impact from this proposal. The FEIS indicates no significant impacts identified in regards to beach processes, such as littoral drift. No significant, unavoidable adverse water quality impacts have been identified. No significant, unavoidable impacts on Dungeness crab through normal operations of the facility; no significant, unavoidable adverse impacts on geology or slope stability; no significant, unavoidable air quality impacts; no significant, unavoidable adverse impacts on salmonoids, herring, or other marine resources; no significant, unavoidable adverse impacts to recreational and subsistence fisheries; no direct, significant, unavoidable adverse impacts on threatened/endangered species; no significant, unavoidable, adverse noise impacts; and no significant, unavoidable adverse impacts to the transportation system, including rail, marine, and roadways, were identified in the FEIS.

VIII.

The Final Environmental Impact Statement did identify a number of impacts from the proposal. For the most part, these impacts were addressed by recommended mitigation measures. In a few areas, the Final Environmental Impact Statement identified unavoidable impacts. Those identified were not thought to be significant.

The Final Environmental Impact Statement indicated the following unavoidable, adverse impacts to aquatic plants:

"Temporary increases in siltation and decreases in water quality would occur during construction of the pier. Marine flora and suitable substrate would be lost in the footprint of the piles supporting the piers. The submerged surface area of pilings would support attached macroalgae. The growth of some species of macroalgae may be somewhat impeded by shading of the proposed trestle." (FEIS, I-11.)

The indication in the FEIS that there may be unavoidable impacts to macroalgae has given rise to significant concern regarding potential impacts on the herring spawning. Macroalgae, along with eelgrass, other kelp and algae species, boulders, potentially the pilings from the pier, etc., all provide spawning substrate to which the herring eggs can attach prior to hatching. Significant impacts on macroalgae could result in significant impacts on herring spawning. The FEIS concludes that the impacts to aquatic plants will be so insignificant as to not result in any adverse impacts on herring spawning. The record contains concern and disagreement with the conclusions reached by the FEIS, but very little in the way of factual support for these concerns.

The overall pier facility proposed will have the potential to shade a total area of 0.46 acres. Under a worse case scenario, 0.46 acres would be lost for herring spawn purposes. However, this area does not contain eelgrass. The area does contain some macroalgae. The nereocystis vegetation comprises only a small percentage of the total vegetation in the shaded area. Much of the shaded area contains no vegetation. The maximum area of shaded macroalgae comprises 0.16% of the total vegetated area between Sandy Point and Point Whitehorn available for herring spawn. The total loss of 16/100ths of 1% of the vegetation of the herring spawn area would have no significant impact on herring spawning. In fact, total loss of this small portion of the area is highly unlikely. After mitigation, it is unlikely that much of this 16/100ths of 1% will actually be loss. In fact, the pilings themselves provide a potential substrate for herring spawn as well as providing habitat for vegetation, which will grow on these piles, and be available for herring spawn. In addition, there are proposed mitigation measures to enhance macroalgae survival, including potential variables which will increase the amount of light available under the trestle to support marine vegetation.

The weight of the evidence in the record clearly supports a finding that the terminal can be constructed and operated in a manner which will not have significant adverse impact on marine flora or on herring spawning.

IX.

The proposed trestle and pier will have unavoidable impacts on commercial fisheries. This area is significant for commercial salmon fisheries, commercial Dungeness crab fisheries, and commercial herring fisheries.

The construction of the trestle and pier will interfere with salmon and herring net fisheries in the general vicinity of the pier. Since these fishers drift on the current, with gear out, the construction of the pier and trestle will remove an area significantly larger than the pier and trestle itself from commercial fishing. In the area of salmon fisheries, the pier itself will have a minor impact by requiring fishers to stay away from the pier during openings. Since salmon fisheries in this area are open in an area many times larger than the general Cherry Point area, and salmon fishers do have the option of moving, the impacts, while real, should not be significant. That is, salmon fishers will be able to mitigate the impacts by changing fishing patterns, without long-term significant loss.

The impacts on the herring fishers are a little more direct. This immediate area is the only area open for herring fisheries in northern Puget Sound. Since the area is the spawning area, the fishers are required to fish in the general vicinity of Cherry Point. However, the number of fishermen in the herring fisheries is extremely limited and the fishing methods are tightly controlled. While the addition of a trestle and pier in this location will interfere with herring fishers, it will not have a substantial adverse impact on them. They, too, will be able to successfully work around the pier.

The construction of the trestle and pier should have no significant impact on Dungeness crab or on the Dungeness crab fisheries.

X.

The vessel traffic generated by this proposal will have unavoidable impacts on commercial fishers. The increase in vessel traffic in the Georgia Straits area itself will only be approximately 5%. However, the increase in traffic in Rosario Strait will be significantly higher, and the increase in traffic in the immediate vicinity of Cherry Point will be even more significant.

The movement of large vessels, including tugs and tows, has an impact on net fishers, in that they are required to avoid them, both by law within the traffic lanes and to protect their equipment anywhere. Having to move for vessels disrupts the

pattern for fishing and can result in some loss of fishing time and profit. Losses of profit and equipment by net fishers can be minimized by careful planning and by radio interaction with the Coast Guard Vessel Communication System.

The proposal will cause additional, unavoidable losses to Dungeness crab fishers through the additional loss of gear associated with vessel traffic, cutting crab pot lines, or towing pots away. The FEIS has proposed mitigation measures to minimize the impacts on commercial fishers and the applicant should be required to investigate and institute those mitigation measures which reasonably would result in a minimization of the negative impacts of the project on commercial fishers.

XI.

As identified in the FEIS, there is a risk to the marine habitat from accidents resulting in the spilling of fuel, or other hazardous materials into the waters. Subject to the conditions of approval recommended by the Hearing Examiner in this decision, and subject to the anticipated conditions which will be attached to other permit approvals, it is unlikely that cumulative, expected smaller spills will have a significant long-term impact on marine resources in the area.

There is a real but unquantified risk of a major adverse impact from a catastrophe, such as a major spill or explosion. The draft EIS indicates that this risk is extremely small. While the reasoning in the draft EIS has been questioned by persons opposed to or concerned with the project, there is no evidence which would indicate that there is more than a very small risk of a catastrophic spill or explosion, which, if it occurred, would have significant, long-term negative impacts on the environment. However, it must be recognized that this risk exists and cannot be completely eliminated. There have been three major piers in the Cherry Point area for decades. Two of these piers are associated with refineries and require the regular transportation of large amounts of crude oil and petroleum products. No significant spill or explosion event has occurred to date which has had a long-term significant impact on the valuable marine resources in this area. However, we know catastrophic events occur, it must be admitted that increasing the large vessel traffic in this area, where tankers already regularly run, can only increase the risk of a major event. The increase in risk due to the additional vessel traffic generated by the proposal is still very small. The potential impacts, should a major catastrophic, shipping accident and spill occur, are very significant indeed. The major responsibility for minimizing and managing these risks lies with the U. S. Coast Guard and the regulations and vessel control technology and system in place, which can be enhanced and revised as needs change.

XII.

The proposed construction will have aesthetic impacts in the general area. In

the immediate site vicinity, the pier structure would dominate the view from the beach and increase the industrial character of the marine area. The upland development will be screened from the water and beach by the maintenance of trees on the bluff and on the ravine. Neutral colors and materials not prone to reflection would be utilized in the construction of larger structures. The pier structure would be visible from the water to a distance of approximately one mile. Some of the industrial structures would be visible from Henry Road and might be visible from the beach.

The proposed development would alter the visual character of the uplands and shorelines. The marine structure and berthed ships would be visible from the beach and from passing watercraft. The upland storage area would be partially visible from the water, and from Henry Road near the site.

These impacts, although unavoidable, would not be of a significantly different character than those already existing with the adjacent industrial uses (two oil refineries and Intalco). The development is in character with the other industrial development in the area. Mitigation would reduce the visual impacts to a level consistent with the shoreline designation and the industrial zoning for this site.

XIII.

The upland development will disturb an archaeological site. The site is a shell midden and the disruption will affect the integrity and information potential of the site. Development may also affect the integrity and data potential of cobble-derived artifact scatter. Staff has proposed a number of mitigation measures to deal with the disruption of the archaeological site. There was no testimony contesting the adequacy of these mitigation measures. Neither the Nooksack nor the Lummi Nation Tribes objected to the specific mitigation measures proposed, or proposed alternative mitigation measures. The impact on the existing archaeological resources is significant and is unavoidable. The mitigation measures proposed appear to be the best available means of dealing with this unavoidable impact.

XIV.

The site is zoned for Heavy Industry and the proposed use is heavy industry. Industrial levels of power, water, and transportation facilities are available or can be developed. On-site septic systems are proposed and must be approved by the Health Department. Development of the site will put additional demands on Whatcom County government, including the Sheriff's Office and Fire District #7. Of course the development will provide significant tax revenue to affected governments and school districts. The conditions of approval require significant mitigation of extra demands on public services, including impacts on roads and on fire protection.

XV.

Three deepwater piers are currently located at Cherry Point: Arco, Intalco, and Tosco. A similar bulk transfer pier proposed by Joseph Sheckter, under the name of Cherry Point Industrial Park (CPIP), received a shoreline substantial development and a major development permit, but has not yet been built. The CPIP proposal has received hydraulic approval from the Washington State Department of Fish and Wildlife. The granting of this permit for this pier was appealed to the Shorelines Hearing Board. Appellants included environmental groups and State agencies. The appeal was settled through a settlement agreement. The proposed CPIP pier reaches 65' of water depth and is significantly longer than this proposed pier. It is clear from this record that there are advantages to the Gateway Terminal pier over the CPIP pier. However, the Hearing Examiner declined to turn this into a hearing between potentially competing applicants. There may be off-setting advantages to the CPIP proposal not clear in this record. The County does not have the jurisdiction to make a decision, choosing between the potentially competing applicants. The record does indicate that State agencies insist only one additional pier will be permitted in the Cherry Point Management Unit.

The record is replete with comments from parties pointing out that the Final Environmental Impact Statement did not weigh the cumulative effects should both the CPIP and this proposed pier be developed in the Cherry Point area. The Final Environmental Impact Statement does not address the potential cumulative impacts should both proposals ultimately be developed. Instead, the FEIS appears to rely on the clear insistence of State agencies that only one pier will be allowed at this site. It is unknown what the cumulative impacts would be should both proposals actually receive all of the necessary approvals and should both move to, and complete, construction. The actual construction of two piers would increase some of the unavoidable impacts on habitat and fisheries. It is not clear if there would be an increase in actual shipping vessel traffic to this site should both piers be constructed.

XVI.

This site is part of a much larger area that has been zoned Heavy Industry for decades. The proposed industrial development on this site is compatible with the surrounding area which consists mostly of large tracts of undeveloped open space and scattered heavy industrial uses. There are some scattered single-family uses still in the area.

This Heavy Industrial zoning is on a shoreline that is undeniably one of the finer potential deepwater ports on the West Coast. It is arguably the best, undeveloped deepwater port location in the Western Continental United States.

The shoreline designation for this site changed with the adoption of the Cherry Point Management Unit. This unit was added to Whatcom County Shoreline Management Master Program, as Section 6.21, in 1987. These Shoreline Master Program changes were approved and adopted by the Department of Ecology, and the Cherry Point Management Unit became the official regulatory framework for shoreline activities in the area, under the Washington Shoreline Management Act.

The purpose of the unit was to provide a regulatory environment which recognized and balanced the special combination of deepwater port, industrial upland, and valuable natural resource needs associated with these Shorelines of Statewide Significance.

XVII.

Both the Department of Ecology and the Department of Fish and Wildlife have indicated in the past that a pier-type of development is the most appropriate development for deepwater port or other industrial facilities along this shoreline. It should be noted that the Cherry Point Management Unit was developed specifically in a response to the past denial of more intrusive industrial proposals in this shoreline area.

Two previous heavy industrial proposals were denied approval in the late 1970s and early 1980s because they involved dredging, and in one case fill, waterward of the ordinary high water mark. As indicated previously, the main reason for these denials was potential negative impacts on the sensitive and valuable herring resource in this area.

The type of development which was envisioned for the Cherry Point area in order to balance the competing deep port potential, industrial uplands, and resource rich marine environment was a pier facility which involved no dredging or filling. It was also a facility which could reasonably be expected to co-exist with the valuable marine resources in the vicinity. The entire record, although incorporating competing views and opinions, supports a specific finding that, subject to strict conditions of approval, including further conditions imposed by other government regulatory agencies with jurisdiction, this deepwater bulk transfer terminal can co-exist in the long-run with the valuable natural marine resources in its immediate vicinity. There is no reason to believe, short of an unlikely, but possible, major catastrophic spill, that this facility will significantly damage the marine resources in the area over the long-term.

XVIII.

The applicant proposes to grant an easement to allow the public to utilize approximately 600 feet of the shoreline between the eastern property boundary of the

subject site and a line extending due south from Gulf/Powder Plant Road, where it runs north/south. The applicant has also indicated a possibility of further donations of uplands, the nearby saltmarsh, and adjacent tidelands in the future. Planning Department staff has concluded that the public easement to 600' of beach and tidelands is adequate to meet the public access requirements of the Shoreline Program.

XIX.

Whatcom County Planning and Development staff have concluded that the proposal, subject to recommended conditions, is consistent with the Whatcom County Shoreline Management Program, the criteria for the Cherry Point Management Unit, and with the Shoreline Management Act, and has recommended approval.

XX.

There has been some indication of concern about, if not outright objection to, the proposal from various agencies, including the Washington State Departments of Fish and Wildlife and Natural Resources. Each of these departments has its own specific jurisdictional authority to review the proposed project. In the case of Fish and Wildlife, they have jurisdiction to accept, deny, or condition the project to protect fisheries resources, and the Department of Natural Resources has the authority to lease or not lease the underlying tidelands for the pier development.

XXI.

There was significant public comment on this proposal. There was public comment in favor of the proposal, as well as public comment opposed to the proposal. In general, the public comment in favor of the proposal focused on economic development, while the public comment opposed to the proposal focused on the protection of the natural marine resources in the area. There were also members of the public that felt that this proposal did a fair job of protecting the environment but was still too risky. And others who felt that this proposal provided economic benefit to the community while still providing adequate environmental protection.

XXII.

The subject property uplands are zoned Heavy Impact Industrial under the Whatcom County Zoning Ordinance. The proposal requires a Zoning Major Development Permit. Staff analyzed the proposal in relationship to the criteria for a Major Development Permit, on pages 23-39 of the staff report, and concluded that the proposed development, subject to conditions of approval, was consistent with the criteria for a Major Development Permit and with the Cherry Point Subarea component of the Whatcom County Comprehensive Plan, and has recommended approval of the

Major Development Permit.

Other than an occasional comment in the record by other parties in reference to wetlands, the majority of the testimony at the hearing and the documents in the record refer to impacts and criteria associated with the Shoreline Substantial Development Permit. There is nothing in the record which would indicate that the factual or analytical review of the Major Development Permit application by staff is flawed. The Hearing Examiner finds that the factual basis and analysis used by the staff on pages 23-39 of the staff report contain no substantive errors and this portion of the staff report is incorporated into these findings and conclusions by this reference, as though fully set forth herein.

XXIII.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

Conclusions of Law

I.

The proposed project requires a Major Development Permit and a Shoreline Substantial Development Permit. The authority to approve Major Development Permits, and any permits directly associated therewith, lies with the Whatcom County Council, upon review of a recommendation made by the Whatcom County Hearing Examiner, after public hearings conducted by the Whatcom County Hearing Examiner, WCC 21.20.140. This document is the Hearing Examiner's recommendation to the County Council in the above captioned matter.

II.

In order to approve a Major Development Permit, the project must be consistent with the criteria of WCC 20.88.110.130 (1-8). Subject to the conditions of approval contained in this recommendation, the proposal of Gateway Pacific Terminal is consistent with all of the applicable criteria for a Major Development Permit and should be approved.

III.

In order for the Shoreline Substantial Development Permit to be approved, the proposal must be consistent with the policies and regulations of the Whatcom County Shoreline Management Master Program and with the applicable provisions of the Shoreline Management Act of 1971. The shoreline in question is a Shoreline of State-

wide Significance and in order to approve the requested Shoreline Substantial Development Permit, the development must be consistent with the criteria for development on shorelines of State-wide Significance. The proposed development is within the Cherry Point Management Unit of the Whatcom County Shoreline Management Master Program. In order to approve this Shoreline Substantial Development Permit, the proposal must be consistent with the goals and policies of the Whatcom County Shoreline Management Master Program and with the applicable, specific criteria of the Cherry Point Management Unit, Section 6.21. The proposed development must also be consistent with the Substantial Development Criteria of Section 8.4 of the Whatcom County Shoreline Management Program.

IV.

The proposed pier is a permitted or preferred use under the Cherry Point Management Unit policies and criteria. The development of piers on pilings for marine cargo transfer is encouraged as the preferred use in the Cherry Point Management Unit. Additionally, the development of shore-dependent and shore-related industrial facilities is encouraged. Facilities that allow for the multiple use of piers, cargo handling, storage, parking, and other accessory facilities are also encouraged. Port development that requires dredge and fill is prohibited under the revised shoreline designation, adopted with the approval of the Cherry Point Management Unit. This proposed development is specifically the kind of development anticipated and encouraged by the changes in the Shoreline Management Program made when Whatcom County adopted, and the Washington State Department of Ecology approved, the Shoreline Management Unit portion of the Whatcom County Shoreline Master Program. The proposed development, subject to the recommended conditions of approval, will eliminate or minimize adverse impacts on marine habitat, feeder bluffs, littoral drift, accretion shore forms, natural wetlands, and aesthetic vistas. The proposed development includes the necessary public access. The proposed development is consistent with the pier development standards in the Cherry Point Management Unit. The proposed development conforms with the purpose and specific development standards and criteria of the Cherry Point Management Unit.

V.

The area purposed for development below the ordinary high water mark is designated a Shoreline of State-wide Significance. The proposed development, subject to the conditions of approval and all conditions which will be required by other regulatory agencies, will allow economic development of an international nature which is in both the State and local interest, while having minimal impact on the marine habitat, also both of State and local interest. Approval of this project will allow reasonable use of private property, for a water-dependent use, with only limited interference on other marine uses and limited impacts on the marine habitat. The

project appropriately balances the varying competing interests involved and its approval is consistent with recognizing the State-wide interest and protecting it over local interests.

The construction of this pier, and of the upland industrial facility setback 200' from the ordinary high water mark and 100' from the top of the bluff, will reasonably maintain the natural character of this shoreline. No significant alteration in the natural character of the shoreline will occur during construction. The facilities put on the shoreline will have aesthetic impacts that will not permanently alter the natural character of the shoreline.

The people of the State benefit through shore dependent economic development which fosters a healthy economy while protecting the resources and ecological systems of the marine waters of the State. That is the case with this development.

Furthermore, the proposed development will allow public access to now privately owned areas and increase recreational opportunities for the public on Shorelines of State-wide Significance.

The proposal is consistent with the criteria and policies set forth in Chapter Four of the Whatcom County Shoreline Management Program for Shorelines of State-wide Significance.

VI.

The proposal is consistent with the Shoreline Management Act. It allows for significant economic development which is shore-dependent and which should benefit the people of the entire State of Washington, while minimizing the impact on the rights of the public in navigable waters, and the impacts on the marine vegetation, wildlife habitat, and waters of the State. Granting of the requested permits, subject to the recommended conditions of approval, is consistent with the Shoreline Management Act and the Whatcom County Shoreline Master Program. The requested Shoreline Permit should be granted, subject to conditions.

VII.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

IV. RECOMMENDATION TO COUNTY COUNCIL

The Whatcom County Hearing Examiner recommends that the Whatcom County Council grant approval to Major Development Permit Application, MDP92-0003, and

Shoreline Substantial Development Permit Application, SHS92-0020, allowing Pacific International Terminals permit approval for a proposed water pier on piling and related industrial upland storage and support facilities on a 1,092 acre parcel, located south of the Arco Refinery in an area generally around Powder Plant Road, Henry Road, and Gulf Road, the complete legal description of which is attached as Appendix 2 to the staff report, subject to the following conditions:

1. Upland industrial development shall proceed in accordance with the application materials, plans, and Environmental Impact Statement, except when conditions of this permit necessitate modification.
2. The proposal shall comply with all Federal, State, and local laws and regulations. Specifically, the following approvals shall be obtained, if required by the administering agency:
 - a) A permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act for wetland fill.
 - b) A permit from the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act for construction of the pier.
 - c) A Section 401 Water Quality Certification, Waste Discharge Permit, National Pollution Discharge Elimination System (NPDES) Permit, and any other water quality or wastewater discharge permits required by the Department of Ecology.
 - d) A Hydraulics Project Approval from the Washington Department of Fish and Wildlife.
 - e) An Aquatic Land Lease from the Washington Department of Natural Resources.
 - f) A Fill and Grade Permit from Whatcom County Planning and Development Services.
 - g) Building Permits from Whatcom County Planning and Development Services for any structures, including signs, erected on the site.
 - h) A Revocable Encroachment Permit from Whatcom County Division of Engineering for any work performed within the County right-of-way.
3. Any building exceeding fifty (50) feet in height shall have all setbacks increased by one (1) foot for each foot of height in excess of fifty (50) feet.

4. Unlighted temporary building signs shall not exceed sixty-four (64) square feet in area, with the message limited to the name, address and phone number of the project, contractor, architect, and financial source.
5. All signs shall be an integral and coordinated part of a site design plan for the entire complex.
6. One free-standing sign shall be permitted at the entrance to each individual site provided that total sign area for any one face shall not exceed sixty-four (64) square feet.
7. One free-standing sign not higher than twenty-five (25) feet shall be permitted at each main entrance to an industrial park. The message of said sign shall be limited to the name of the park and its occupants. Sign area of any one face shall not exceed two hundred seventy-five (275) square feet.
8. Wall signs shall be flush against the building and shall not exceed twenty-five percent (25%) of the total wall area on which they are located, less windows and doors.
9. Roof signs not greater than five (5) feet above the peak of the roof and not extending beyond the roof they are located on shall be permitted.
10. Each industry shall continuously employ the best pollution and nuisance abatement technology when reasonably and practically available for each particular industry; provided that where Federal, State, or regional laws or regulations specifically provide for the level of technology to be employed, those standards shall apply.
11. No odors, dust, dirt, or smoke shall be emitted that are detectable at or beyond the property line, in such a concentration or of such duration as to cause a public nuisance, or threaten health and safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the District.
12. Any release of toxic gases or fumes shall be in compliance with Washington State and Northwest Air Pollution Control Authority (NWAPA) Standards.
13. Prior to any open burning on the site, the applicant shall obtain a Whatcom County Open Burning Permit from the County Deputy Fire Marshall, and shall submit an ambient air quality impact analysis to NWAPA for approval, in order to assure that air quality standards are not exceeded.

14. Off-street parking and loading shall comply with Section 20.80.500 of the Official Whatcom County Zoning Ordinance. In addition, loading areas must be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on public rights-of-way.
15. Lighting shall be shielded or directed away from neighboring streets and properties. Buildings shall be constructed of non-metallic materials or painted a neutral color (such as light earth-tones) to minimize the reflection of sunlight.
16. Vehicle access shall conform to the provisions of Sections 20.80.565 and 20.80.660 of the Official Whatcom County Zoning Ordinance.
17. The owner, lessee, or user shall be responsible for maintaining an orderly appearance of all properties, and shall be responsible for assuring the care and maintenance of any natural growth where appropriate, including, but not limited to, wetlands and buffers to be left undisturbed, and the natural vegetation to be left at the top of the bluff.
18. Wetland impacts shall be mitigated as required by the mitigation plan approved through Section 404 of the U.S. Army Corps of Engineers permit process.
19. The applicant shall maintain a 100 foot natural buffer along both sides of the stream.
20. If the site is developed in phases, clearing and grading shall also occur in phases to minimize the extent of the cleared area at any one time.
21. Regular maintenance of material handling areas shall occur.
22. Materials which settle in drainage ways and catch basins shall be removed on a regular basis to maintain the designed storage and operating capacity.
23. The application of best available facilities, practices and procedures shall be employed for the safe handling of fuels and toxic or hazardous materials to prevent them from entering surface or groundwater. Specifically, fuel for terminal vehicles shall be stored in double-walled tanks complete with overflow protection.
24. Contaminated stormwater and uncontaminated stormwater shall be segregated by grading, curbing or other means.
25. There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants (WCC 20.68.707).

26. No ground vibration other than that caused by highway vehicles, trains, or construction activity shall be permitted, which is discernible without instruments, at or beyond the property line for the use concerned (WCC 20.68.707.703).
27. No use in this district shall exceed the maximum environmental noise level established by WAC 173-60 (WCC 20.68.700.705).
28. Prior to the issuance of any Fill & Grade Permit, Clearing Permit, and/or Building Permit:
 - a) The applicant shall submit a complete Stormwater Design Report, prepared by a licensed engineer, to the Division of Engineering for review and approval. The report shall strictly follow the requirements in Whatcom County Development Standards, Stormwater Chapter 2. The report shall include erosion control methods, detention location and sizing and analysis of back-up power for pumping systems. As proposed by the applicant, the stormwater system shall be designed to provide water quality treatment for a 24-hour design storm with a recurrence probability of one in ten years.
 - b) An erosion and sedimentation control plan shall be prepared in accordance with the Whatcom County Development Standards, Chapter 2. This plan shall be submitted to and approved by the Whatcom County Division of Engineering.
 - c) A Memorandum of Agreement (MOA) shall be developed between the project proponent, the U.S. Army Corps of Engineers, the Washington State Office of Archaeology and Historic Preservation, the Lummi Nation, the Nooksack Tribe, and Whatcom County Planning and Development Services to address archaeological features on the property. The MOA shall include provisions for monitoring during construction and arrangements to insure contingency measures to map, sample and report sites and collect, analyze, and curate artifacts found. The MOA shall also include provisions that, in the event human remains are encountered, work shall halt and the County Coroner, the Office of Archaeological and Historic Preservation, the Lummi Nation, and the Nooksack Tribe shall be contacted immediately. Any Tribe that does not wish to participate in the MOA may opt out.
29. Prior to the issuance of any building permit:
 - a) The applicant shall arrange for a pre-construction and application meeting

with the Chief Plans Examiner.

- b) A Solid Waste Management Plan shall be submitted to, and approved by, the Whatcom County Division of Solid Waste.
- c) The water supply system shall be approved by the Washington State Department of Health and the sewage collection and disposal system shall be approved by the Washington Department of Ecology.
- d) A landscape and parking plan be designed in accordance with WCC 20.80.300 and 20.80.500 shall be submitted to and approved by Whatcom County Planning and Development Services.
- e) Fire suppression water for the protection of life and property shall be provided as required by the Whatcom County Deputy Fire Marshal. Engineering and drawings for suppression water shall be submitted for approval to the Deputy Fire Marshal, and made available for review and comments by the local Fire District.
- f) The fire suppression system shall be tested and approved. All structures and storage tanks shall be required to meet all applicable codes and ordinances adopted by Whatcom County, which include nationally recognized standards, principles and tests, and all generally recognized and well established methods of fire prevention and control. Uniform Fire Code, Section 2.30b.
- g) Funds toward the purchase of additional special fire fighting equipment shall be paid by the applicant to the local fire department, if required by the Whatcom County Fire Marshal, in order to provide fire prevention for this proposal.

30. Prior to issuance of any Certificate of Occupancy:

- a) Railroad crossing improvements shall be completed as deemed necessary by the Whatcom County Division of Engineering, after consulting with railroad authorities.
- b) Improvements to the Grandview Road railroad crossing shall be completed as deemed reasonably necessary.
- c) Henry Road, between Jackson and Kickerville Roads, shall be widened to a total paved width of 34 feet (two eleven-foot lanes and two six-foot shoulders). The upgrade to Henry Road shall include improvements to the

railroad crossing to adequately convey truck traffic, as determined by final design. Construction shall be completed to all weather standards if the applicant does not want use to be limited by winter weather restrictions.

- d) Kickerville Road, between Henry and Grandview Roads, shall be widened to a total paved width of 40 feet (two twelve-foot lanes and two eight-foot shoulders). Construction shall be completed to all weather standards if applicant does not want use to be limited by winter weather restrictions. Whatcom County Division of Engineering will consider similar improvements to Jackson Road as a north/south alternative.
 - e) The Henry/Kickerville/Rainbow Road intersection shall be redesigned and reconstructed to provide an increased radii to accommodate safe turning movements for trucks. Reconstruction shall be completed to all weather standards if the applicant does not want use to be limited during times of weather restrictions.
 - f) All road improvements shall be designed and completed by the applicant/developer with inspection and approval by the Division of Engineering.
 - g) All drainage and stormwater facilities shall be installed, inspected and approved.
 - h) All landscaping, buffering, and parking shall be installed per the approved plan or bonded etc.
 - i) Nothing herein shall restrict the applicant and the County from utilizing improvement financing and cost recovery methods that may be available.
 - J) The applicant shall investigate and enter into an agreement with Whatcom County to institute specific, reasonable mitigation measures designed to result in a minimization of the negative impacts of the project on commercial fishers, including salmon, crab, and herring fishers; but only after consultation and advise and comment from fishers.
31. Any potential explosive or flammable materials shall require proper storage in designated areas, subject to approval of the Deputy Fire Marshal and Fire District No. 7. In addition, safety plans shall be prepared and implemented to enhance worker safety awareness.
32. Any change in traffic distribution shall require additional review by the Whatcom

County Division of Engineering and additional road improvements, if required by the Division of Engineering.

33. All development except the trestle and the direct approach to the trestle shall be setback a minimum of 200 feet from the ordinary high water mark of Georgia Strait, as depicted on the "Gateway Pacific Terminal" site plan, revised on February 3, 1997, and indicated in the Draft EIS (pp I-2 and II-10). All development except the trestle and the direct approach to the trestle shall also be setback a minimum of 100 feet from the top of the bank. The pier shall be constructed in accordance with the "Gateway Pacific Terminal" site plan, revised on February 3, 1997, except subject to modifications required by other government agencies with jurisdiction to mitigate environmental impacts.
34. Liquid petroleum on-loading and off-loading facilities shall be prohibited on the pier unless approved by the County Council following a recommendation by the Hearing Examiner after a public hearing. Prior to handling any commodities over the pier that are not identified in the current Best Management Practices (BMPs) document, revised BMPs shall be approved by the Department of Ecology in accordance with adopted policies, regulations, and programs and then filed with Whatcom County Planning and Development Services.
35. Prior to the issuance of any Certificate of Occupancy, a Spill Prevention and Emergency Response Plan shall be approved by the Department of Ecology and filed with Whatcom County Planning and Development Services Department. The subject plan shall detail prevention and response sequences and responsibilities for spill of materials during pier operations and on the upland portion of the site. The plan shall include initial response procedures, an overall response plan, telephone numbers of emergency contacts, sampling procedures and a training program including simulations with the frequency and type of training.
36. The pier shall be marked with navigational aids in compliance with U.S. Coast Guard regulations.
37. Exterior lighting shall be designed and operated to minimize glare, avoid illuminating nearby properties, prevent hazards for public traffic and navigation, and to minimize interference with fish populations and commercial fishing operations.
38. All conveyor systems on the pier and within 200' landward of the ordinary high water mark shall be completely enclosed to prevent spills and the dispersal of materials by weather.
39. Construction of the pier shall occur during periods of the year prescribed by the

Washington Department of Fish and Wildlife in the Hydraulics Project Approval in order to protect fish life.

40. If deemed necessary by the Washington Department of Fish and Wildlife to protect herring and required in the Hydraulics Project Approval, then stormwater from the facility shall not be discharged directly into marine waters during the herring spawning season (April 1 to June 15).
41. In order to avoid shade and prop scour impacts to the marine vegetation community at the project site, barge moorage shall not be permitted landward of the -30.0 tide elevation (MLLW = 0.0), unless otherwise approved by the Washington Department of Fish and Wildlife.
42. If deemed necessary by the Washington Department of Fish and Wildlife to protect fish and fish habitat and required in the Hydraulics Project Approval, then grating shall be incorporated into the trestle or other techniques utilized to ensure adequate exposure to light at the water surface.
43. Prior to issuance of a Building Permit for the pier, the developer shall grant an easement to permit public use of the area south of Gulf Road, including tide-lands, from the eastern boundary of the subject site to a line which extends due south from the centerline of Gulf Road (where it runs north and south), approximately 600' to the west. A minimum of three public access signs, approved by Whatcom County Planning and Development Services, shall be posted adjacent to the public access easement. The location of these signs shall also be approved by Whatcom County Planning and Development Services.

NOTICE OF COUNTY COUNCIL PROCEDURES

Pursuant to WCC 20.88.200 and WCC 21.20.440, this action of the Hearing Examiner is a recommendation to the Whatcom County Council. The County Council shall meet to consider the Hearing Examiner's recommendation within twenty (20) days of receipt thereof, at which time shall proceed under the options available in WCC 20.88.225 et. sec.

The Council's decision shall be based upon the official record, WCC 20.88.130, WCC 20.88.200, and other applicable law.

DATED this 14th day of March 1997.


Michael Bobbink, Hearing Examiner