



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

June 13, 2011

Regulatory Branch

Pacific International Terminals, Inc.
Mr. Skip Sahlin
1131 Southwest Klickitat Way
Seattle, Washington 98134

Reference: NWS-2008-260
Pacific International
Terminals, Inc.

Dear Mr. Sahlin:

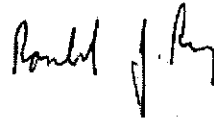
We have completed our review of your application for the construction of the Gateway Pacific Terminals project near Ferndale, Whatcom County, Washington. The work you propose includes the placement of fill in waters of the U.S. including wetlands and structures in navigable waters of the U.S. You also described proposed upgrades to the Custer Spur line by Burlington Northern Santa Fe (BNSF) Railway needing to occur to support the increased traffic from your terminal.

Based on information provided both by you and BNSF, we consider both projects to be interrelated and therefore, determined the potential impacts need to be reviewed in combination. Based on the project information provided to date, we determined the potential impacts have the potential to significantly affect the quality of the human environment. Therefore, the U.S. Army Corps of Engineers will require the preparation of an Environmental Impact Statement (EIS) to comply with the National Environmental Policy Act. The EIS will evaluate the potential environmental effects of both proposed actions.

Our next step will involve coordinating with you, BNSF and Whatcom County to select a third party contractor to assist us in conducting initial scoping and in the development of the EIS. The scoping process for this action will occur after a notice of intent (NOI) has been published in the Federal Register. I will contact you as soon as possible to discuss these arrangements. If you

have any questions, please call me at (360) 734-3156 or via email at randel.j.perry@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Randel J. Perry". The signature is written in a cursive style with a large initial "R" and a distinct "P".

Randel Perry, Project Manager
Regulatory Branch

MEMORANDUM FOR Commander

SUBJECT: Determination of the requirement for an Environmental Impact Statement

1. Name: Pacific International Terminals, Inc.
BNSF Railway

Application No: NWS-2008-260
Application No: NWS-2011-325

- NEPA EIS required.
- Permit issuance, no objections.
- Issuance, agency or tribal objections.
- Issuance, other objections.
- Issuance, special conditions.
- Categorically excluded from NEPA.
- Permit denial.

2. District Engineer sign Memorandum for the Record.

Sr. Sci. _____

Sec. Chief *MB 5/18/11*

Ch, Reg Br *MF 5/19/11*

Counsel *FXE 5/19/11*

Ch, Opns Div *AC 5/20/11*

DDE *WZA 5/23*

DE *[Signature]*

Approved by P.I.

Encl

CENWS-DE 1st End
Commander
For Ch, Reg Br
Signed form returned herewith.

MEMORANDUM FOR THE RECORD

SUBJECT: Determination of the requirement for an Environmental Impact Statement (EIS) for the Gateway Pacific Terminal and the Custer Spur Upgrades projects.

1. Decision Authority: Pursuant to 40 CFR 1501.3, "*An assessment is not necessary if the agency has decided to prepare an environmental impact statement.*" Pursuant to the Army Corps of Engineers' NEPA Implementation Procedures for the Regulatory Program, the District Engineer has the discretion to not pursue an environmental assessment "... where it is obvious an EIS is required. However, the district engineer should document his reasons for requiring an EIS." (see Part 33 CFR 325, Appendix B, Section 7(a)). This MFR will document why the subject applications, as currently proposed, will necessitate the preparation of an environmental impact statement.

2. Application Numbers and Applicants:
NWS-2008-260, Pacific International Terminals, Inc.
NWS-2011-325, BNSF Railway
Note: Projects are interrelated.

3. Permit Authority: These permit actions are being taken under authority delegated to the District Engineer from the Secretary of the Army and the Chief of Engineers by Title 33 CFR Part 325.8, pursuant to:

Section 10 of the Rivers and Harbors Act of 1899
 Section 404 of the Clean Water Act

4. Location of work: In the Strait of Georgia and wetlands adjacent and abutting named and unnamed tributaries near Ferndale, Whatcom County, Washington.

5. Description of general environmental setting: The project sites are located northwest of Ferndale and south of Birch Bay in an area of Whatcom County called Cherry Point (see Figure 1). The British Petroleum West Coast Products (BP) Cherry Point Refinery and associated industries lie north and west of the Pacific International Terminals (PIT) property. The ALCOA-Intalco Works (aluminum plant) lies less than 1 mile to the southeast. Large-lot single-family residences lie to the east. Pasture areas and the Strait of Georgia border the southern property area. The existing BNSF Railway Bellingham Subdivision line runs approximately north-south roughly parallel to Interstate 5 in the project vicinity. The main line feeds the Custer Spur, the only existing rail line developed to service the Cherry Point industrial area. The Custer Spur branches west from the Bellingham Subdivision main line at Custer, then runs south for approximately 6 miles, terminating at the Cherry Point rail yard near the Conoco-Phillips refinery. The Custer Spur line passes through the eastern edge of the PIT project area. Figure 2 provides an aerial view of the project sites and relevant local features.

An underground oil pipeline and a Bonneville Power Administration (BPA) transmission line cross the PIT project area approximately north to south. There are no functioning buildings or structures on the PIT property at this time.

The PIT project area is comprised of a mixture of pastures, hayfields, mowed utility corridors, and forested and scrub/shrub habitats. Pastures in the project area are grazed seasonally, while hayfields are annually harvested. Areas of both upland and wetland are vegetated with a variety of tree species, dominated by red alder, with a thick shrub understory. Whatcom County roads cross through the project area. The riparian vegetation adjacent to the marine environment at the site is limited to herbaceous and shrub species due to the steep bluff along most of the shoreline.

The PIT project area encompasses a major portion of an unnamed small coastal watershed approximately 2,000 acres in size. Five streams have been identified in the project area. Streams 1 and 2 flow for the most part in natural watercourses; all others flow in channelized drainages. Roadside drainages (numbered 1 through 9) and approximately 6 other agricultural ditches occur throughout the property. Ditches were constructed to manipulate and re-route natural drainage patterns in the area.

Marine areas are intertidal to subtidal marine habitat consisting of a nearshore macroalgae community to a depth of approximately 40 feet, growing mainly on cobble substrate. Sparse to dense patches of eelgrass are located at depths of about -3 to -5 feet MLLW in the project area. Below depths of 20 feet, the soft mud-silt substrate supports several invertebrate species. Beyond 40 feet depth, the surface substrates grade to sands, with some locations of fine sediments and cobbles.

The proposed BNSF work corridor from Custer through Elliot Yard crosses a wide range of minor and major wetland areas, wetland / upland complexes, and both major stream and minor tributary crossings. The overall study area is generally characterized as a rural / agriculturally altered environment with spot areas of naturalized conditions and adjacent mitigation and restoration sites.

A Jurisdictional Determination dated March 5, 2009, confirmed 530.6 acres of wetlands on the PIT property. This includes a coastal lagoon (Wetland 12), associated with Stream 1 and the marine shoreline. A jurisdictional determination for wetlands that may be affected by the BNSF project is pending completion of wetland delineations.

6. Description of proposed work: PIT proposes to construct and operate the Gateway Pacific Terminal (GPT), a multimodal marine terminal for export and import of multiple dry bulk commodities, including a deep-draft wharf with access trestle and other associated upland facilities. The Terminal would be developed on approximately 350 acres and would include a three-berth, deep-water wharf. The new wharf would be 2,980 feet long and 105 feet wide, with access provided by an approximately 1,100-foot-long and 50-foot-wide trestle built on approximately 730 48-inch steel piles. Upland facilities will include two commodity storage areas, each serviced by a rail loops. Each area will contain support facilities, such as roads, maintenance buildings and stormwater treatment systems. A shared services area would connect

the rail loops to the access trestle and wharf and would contain a roadway, conveyors, and service buildings. Commodities would be delivered to the Terminal by rail via the existing BNSF Railway's Custer Spur line to the Bellingham subdivision main line.

Interrelated to the PIT project, but the subject of a separate permit application, the existing 6.2 mile long Custer Spur from the BNSF Railroad mainline will be upgraded to support increased traffic. Upgrades will involve installation of a receiving/departure tracks on the south side of the BNSF Railway's Cherry Point Subdivision line, starting from BNSF Railway's Bellingham Subdivision Custer Wye through the Intalco Yard, Valley View Rd and to Ham Rd. Work includes new rail embankment, tracks, bridges and drainage structures; installation of a new main line adjacent to the Cherry Point main line from the Custer Wye about 6 miles in length to the proposed PIT Terminal connection point; and installation of new terminal lead connecting tracks to include improvements to BNSF Railway's Elliot Yard to support rail connectivity to the proposed new PIT Terminal.

7. Project purpose: PIT's stated purpose is "*To develop and successfully operate a multimodal marine terminal, including a deep-draft wharf with access trestle and other associated upland facilities, for export and import of multiple dry bulk commodities ("multimodal deep-water bulk terminal") within the Cherry Point Industrial Area to meet international and domestic demand. Development and operation of this Terminal furthers Pacific International Terminals, Inc.'s business interests as an international multimodal terminal developer and operator.*" The Corps has preliminarily determined that the PIT basic project purpose is to provide dry bulk commodity rail-to-ship transfer facilities. According to communications with BNSF Railways, their intent is to provide the main inland freight access to the Gateway Pacific Terminal.

8. Functions and values assessment of resources impacted: Marine water at the PIT project site extend from the shoreline to approximately -80.0 feet in depth (MLLW datum). According to information provided by the applicant, marine vegetation in the upper intertidal zone between +2 and -2 feet MLLW is dominated by *Ulva* sp. and *Porphyra* sp., with a narrow band of *Fucus* and *Gigartina* between -2 and -3 feet MLLW. Below -2 feet MLLW, kelp beds are characterized by a diverse assemblage of red and brown algae, such as *Sargassum* sp., *Cryptopleura* sp., *Laminaria* sp., *Neriocystis* sp., and *Iridaea* sp. Sparse to dense patches of eelgrass are located at depths of about -3 to -5 feet MLLW in the project area. The benthic fauna of the intertidal zone includes annelid worms, burrowing anemone, amphipods, and a variety of clams—including cockles, native littleneck, and butter clams. The shallow subtidal community (ranging from -3 to -16 feet MLLW) in the project area is characterized by kelp beds. Below -16 feet MLLW, the substrate is dominated by sand and mud and provides limited ecological diversity. Subtidal invertebrates characteristic of the project vicinity include seastars, red rock crabs, small shrimp, polychaetes and small clams. The deeper soft mud habitat is characterized by a sparse epifauna, which includes the sea pen, nudibranchs, Dungeness and tanner crabs, and small crangonid shrimp. The infauna is dominated by small sea cucumbers, as well as polychaetes, bivalves, burrowing anemones, and brittle stars.

Marine water in the PIT project vicinity are utilized by a variety of fish, bird, and marine mammal species. The area is particularly noted for extensive herring spawning grounds and upper intertidal areas are utilized by spawning sand lance and surf smelt. All three species are

important prey for Puget Sound chinook salmon, Coastal/Puget Sound bull trout, and Puget Sound steelhead protected under the Endangered Species Act (ESA). The subtidal kelp beds provide important refuge habitat for a number of fish species, especially rockfish and juvenile and sub-adult salmon.

The marine water of the PIT project site are utilized by fish and bird species protected under the ESA and may be frequented by southern resident killer whales, steller sea lions, and humpback whales protected under the ESA and Marine Mammal Protection Act, and marbled murrelets protected under the Migratory Bird Treaty Act. Essential Fisheries Habitat for Pacific salmon, groundfish, and/or coastal pelagic species occur in the project area.

The PIT site uplands contain forested and pasture habitats utilized by a variety of wildlife species. Site wetlands are rated Category I, II, III, and IV per WA State Wetland Rating System (based on a scale of I to IV, I being the highest functioning). Approximately 513 acres are rated as Category III wetland and 1.1 acre is rated as Category IV. Category I and II Wetlands totaled about 15 acres. The wetlands provided the following functions: moderate to high wildlife habitat and habitat diversity, moderate food web support (primary production and export), moderate to minimal reduction of peak flows and erosion prevention, minimal floodwater storage, minimal removal of toxins, metals and pathogens, and minimal sediment input reduction. Onsite streams provide little habitat for fish species due to access constraints.

Along the BNSF Railway work corridor, the potentially impacted wetlands range from low quality emergent pastures / farmed fields and track-side maintained flats, to medium quality emergent grasses / scrub shrub right-of-way and adjacent edges, to high quality scrub shrub / forested areas both on and off the existing right-of-way. There are some high quality forested / scrub shrub / open water areas at spot locations. The work corridor includes California Creek and Terrell Creek and their tributaries. All of the streams may potentially contain ESA-listed species along with other fish species.

9. Relationship to existing uses: The Strait of Georgia is an open water marine environment providing habitat for marine species, and is used for recreational and Tribal fishing and recreational boating. Current marine traffic in the project vicinity includes recreational boating, tribal and recreational fishing craft, and, in waters farther offshore, commercial marine traffic arriving at and departing from oil refineries and an aluminum manufacturing facility in the immediate vicinity. The PIT and BNSF sites are in an area that Whatcom County has designated for heavy industrial land uses. There are three other industrial piers along the shoreline, two to the south (1.25 and 2.30 miles respectively) and one to the north (0.80 miles). Land use in the surrounding vicinity includes single-family residential, agricultural, and industrial uses. The State of Washington has designated the marine waters in the PIT project vicinity as an Environmental Aquatic Reserve. The Cherry Point Aquatic Reserve Plan was developed with acknowledgement of, and provisions for, the proposed wharf and causeway.

In 1969, BP Cherry Point Refinery (then ARCO) received a permit from the Corps to build a dock for the delivery of crude oil. In 1996, BP received a permit from the Corps to build the northern platform and complete the refinery's original plans for separate docks for loading and unloading. During processing of the permit requests, agencies and the tribes expressed concerns

that the increase in tanker traffic as a result of the expansion would increase the possibility of a major oil spill. Ocean Advocates filed suit against the Corps in November 2000 arguing, in part, that BP's permit violated the Magnuson Amendment provisions that limited tanker traffic carrying crude oil in Puget Sound and that the Corps violated NEPA by failing to prepare an EIS. See *Ocean Advocates v. United States Army Corps of Engineers*, 402 F.3d 846 (9th Circuit) (2005). The Ninth Circuit Court directed the Corps to (1) prepare a full EIS considering the impact of reasonably foreseeable increases in tanker traffic on the environment around the terminal and (2) reevaluate the permit in light of a potential Magnuson Amendment violation. The Corps is currently undertaking both actions.

10. Description of potential impacts of concern (including short term and long term impacts): Unless otherwise noted, the following discussion of impacts applies to both the PIT and BNSF actions as currently proposed. This discussion of impacts is not intended to be exhaustive.

A. Physical and/or Chemical Characteristics.

Water Quality. The proposed construction activities may result in a temporary increase in turbidity during piling installation for the PIT project, short-term impact from run-off at upland construction areas, long-term impacts from stormwater discharge, and long-term impacts from PIT wharf/causeway and BNSF rail operations (equipment leak runoff, etc.).

Water Quantity and Flow Regime. The proposed PIT work will affect 12,814 linear feet of streams and ditches via filling, culverting, or re-routing. Construction of the facility as proposed would result in extensive modifications to local drainage patterns and could result in an increase in runoff rates (flashing) in ditches, etc. and hydrological inputs to remaining site wetlands and streams. The proposed BNSF work may require modifications to local flow regimes (via ditch alterations) and affect stream flows at crossing points.

Air Quality. Construction actions will result in an increase in vehicle emissions and particulate matter air pollution (airborne dust). The proposed operation of the PIT facility and BNSF rail services would result in an increase in airborne dust from bulk commodities (coal, ores, grains, etc.) and emissions from vehicles, rail engines, and ships.

Drainage Patterns. The proposed projects would extensively alter local drainage features via modification of streams and ditches.

B. Biological Characteristics.

Endangered Species. Potential PIT construction impacts include increased sedimentation and turbidity, increased sound levels, disturbance of foraging behaviors, dislocation of foraging species, loss of forage species habitat, and alteration to neashore foraging habitat. Long terms affects may include permanent loss of habitat, operational impacts to foraging behaviors and forage fish spawning, noise impacts, and water quality impacts. Increased maritime traffic may affect killer whale migration and breeding success. Potential BNSF construction impacts include increased sedimentation and turbidity, increased sound levels during stream crossing

modifications, disturbance of foraging behaviors, dislocation of foraging species, and alteration to in-stream foraging habitat. ESA listed species that may be affected are:

- Puget Sound bull trout (*Salvelinus confluentus*) threatened.
~ Bull trout critical habitat, designated.
- Puget Sound Chinook (*Oncorhynchus tshawytscha*) threatened.
~ Chinook salmon critical habitat, designated.
- Puget Sound steelhead (*Oncorhynchus mykiss*) threatened.
- Yelloweye rockfish (*Sebastes ruberrimus*), Georgia Basin DPS, threatened.
- Canary rockfish (*S. pinniger*), Georgia Basin DPS, threatened.
- Bocaccio (*S. paucispinis*), Georgia Basin DPS, endangered.
- Southern resident killer whale (*Orcinus orca*), endangered.
~ Killer whale critical habitat, designated.
- Stellar sea lion (*Eumetopias jubatus*) threatened.
- Humpback whale (*Megaptera novaeangliae*) endangered.
- Leatherback sea turtle (*Dermochelys coriacea*) endangered.
- Marbled murrelet (*Brachyramphus marmoratus*) threatened.

Essential Fish Habitat. A preliminary review indicates that the PIT activity may adversely affect EFH for pacific salmon, groundfish, and coastal pelagic species through permanent loss of habitat and modification to habitat from shading and increased noise, both during construction and during operation of the facility. BNSF stream crossing activities may affect, but is not likely to adversely affect, EFH for pacific salmon.

Special Aquatic Sites. (Sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, as defined in 40 CFR 230.40-45). The combined proposed impacts at the PIT and BNSF project sites include the permanent fill of up to 170.6 acres of wetlands including:

- 70.6 acres of PFO, Category III wetlands (PIT).
- 21.2 acres of PSS, Category III wetlands (PIT).
- 48.7 acres of PEM, Category III wetlands (PIT).
- 0.10 acre of PEM Category IV wetlands (PIT).
- 24 and 30 acres of primarily PEM/PES Category III and IV wetlands (BNSF).

Proposed impacts from the BNSF Railway Custer Spur expansion include the estimated filling of between 24 and 30 acres of primarily PEM/PES Category III and IV wetlands. Impacts to streams would result from installation of bridges and extension of culverts leading to a loss of in-stream habitat.

The proposed installation of the causeway for the PIT terminal would result in shading impacts to approximately 4,350 square feet of marine macroalgae, particularly kelp beds. Installation of piling for the causeway would displace a total of 333 square feet of shallow subtidal habitat for marine invertebrates.

Fish and Wildlife. The proposed PIT construction activities may have an impact on marine fish/shellfish, benthic and epibenthic organisms, waterfowl, shore birds, pinnipeds and other marine mammals from noise during piling installation, displacement, turbidity increases, and disruption of foraging and spawning behaviors. The proposed PIT and BNSF upland construction would affect terrestrial mammals and birds through increased noise, clearing of forested and shrub/scrub habitats, vehicle traffic, and disruption of foraging and reproductive behaviors. Impacts to both California Creek and Terrell Creek and their tributaries may occur during the BNSF Railway line expansion, particularly at the crossing of the main channel of California Creek. Impacts would include installation of new bridge components and re-routing of a segment of stream channel.

Benthic Flora & Fauna. Proposed PIT impacts include the permanent loss of approximately 0.27 acres of benthic substrate (piling installation), impacts on macroalgae from shading, disruption of foraging by fish species utilizing the seafloor, and displacement of benthic and epibenthic organisms. Causeway construction in the intertidal and shallow subtidal portions of the beach may affect invertebrate populations in muddy substrates, particularly benthic invertebrates destroyed during pile installation.

C. Human Use Characteristics.

Cultural Resources and Historic Properties. Known historic properties occur in the vicinity of the proposed projects. Known tribal cultural resources identified by the Lummi Indian Nation occur on the site. Because of their location on the landscape, there is a high likelihood that unknown historic properties occur in the project areas. A historic properties investigation has been conducted for the PIT project site. Installation of the proposed PIT facilities would directly affect one or more known sites.

Navigation. Construction impacts would result from vessels ferrying materials to the site and from barges, etc. involved in piling installation and overwater structure installation. Post-construction operations as proposed would result in an increase in vessel traffic in the project vicinity via ships coming and going through the Strait of Georgia and Strait of Juan de Fuca.

Marine Sanctuaries. The proposed PIT project would result in a new structure being installed in a State designated aquatic reserve.

Noise. The proposed PIT project would result in high levels of in-water noise during construction of the causeway and wharf, particularly from piling installation and increased noise levels over background ambient levels during construction of upland facilities (land clearing and grading equipment, etc.). Operation of the PIT facility and BNSF rail service may result in increased noise levels from overwater activities, operation of the conveyor system, and from rail traffic moving to and from the facility.

Transportation. Impacts to local vehicular traffic during construction would occur as a result of bringing materials, equipment, and personnel to and from the project site. Operation of the PIT facility, as facilitated by the BNSF project, would result in an increase of rail traffic locally as well as statewide and an increase in vehicular traffic on the local vicinity. Bulk

commodities will arrive in unit trains approximately 7,000 feet long when the terminal opens and up to 8,500 feet long at maximum operational capacity. Rail traffic would start at five trains a day, increasing to nine trains a day at maximum capacity.

Other Evaluation Factors. Other factors that may be affected by one or both of the projects include shoreline erosion and accretion, economics, aesthetics, general environmental concerns, recreation, energy needs, safety, food and fiber production, mineral needs, and the general needs and welfare of the people. The Corps has received preliminary inquiries from individuals and non-governmental organizations regarding potential impacts. Additional information and analysis are needed to make a determination of significance

D. Summary of Cumulative Impacts.

The project area is located at Cherry Point, a small promontory of land on the eastern shore of the Strait of Georgia on the west coast of Washington State in Whatcom County. The project area is located approximately 18 miles northwest of the City of Bellingham, 5 miles west of Ferndale, and 17 miles south of the US-Canada border. The area is designated for Industrial land uses under Whatcom County's Growth Management Plan. European settlement in the Cherry Point area started around 1870. Early post settlement use of the area was primarily resource extraction (logging and fishing). By the early 1900's land use shifted to agricultural, fish processing, and residential uses. Beginning in the 1950's, the vicinity saw an expansion into industrial uses with the construction of the General Petroleum Corporation Ferndale Refinery (now Conoco Phillips) followed by the Intalco Aluminum Corporation production plant in 1966 and the ARCO (now BP) Cherry Point Refinery in 1971. Industrial piers currently serve all three facilities. The BNSF Bellingham Subdivision line originated as the Fairhaven & Southern Railway, which was absorbed by Great Northern Railroad and later became part of the BNSF system. The Bellingham Subdivision is the only direct rail connection to Cherry Point. The BNSF Custer Spur line was originally installed in 1965.

A majority of wetlands in the project vicinity have been, or are still, affected by agricultural activities. Many historic drainages, including those in the project basin, have been manipulated or channelized. Recent developments in the project vicinity include expansion of the BP facilities and residential and commercial developments. The project watershed has experienced extensive disturbance over at least the past century due to road building, rail development, gas line and power line installation, homesteading, forest harvesting, and other development. Together these land uses have resulted in filling, ditching, and draining of wetlands, rerouting of streams, clear-cut logging and removal of other vegetation, and continuous grazing and hay production in some locations. Marine waters and habitats have been affected by shoreline uses, including industrial piers, and water quality impacts from local development. A number of species that occur within the Cherry Point Aquatic Reserve have shown signs of decline in the past, or are still in decline. Cherry Point herring stocks have been vastly reduced, which is likely affecting the health of other species at Cherry Point, such as birds and salmon.

Airborne pollution at Cherry Point is considerable. The primary sources of emissions affecting the proposal are vessel traffic and stationary sources. In the larger Georgia Basin, marine vessels account for 22 percent of nitrogen dioxide emissions and are the largest single source of sulfur

dioxide in the airshed, emitting 33 percent of emissions. Industrial facilities in the Cherry Point vicinity contributed an average of 92 percent of all monitored industrial air pollutants from stationary sources in Whatcom County in 2005 and 2006.

Vessel traffic within the Cherry Point region is predicted to increase within the next 10 to 20 years. Large vessels load and unload raw materials and products at the three current facilities located in the Cherry Point area. These facilities have shown a steady increase in productivity, expansion, and commercial growth, which along with the proposed pier, could result in a significant increase in regional and international vessel traffic transporting raw material and finished products.

E. Proposed Mitigation.

The Corps' review will ensure that potential impacts to aquatic resources have been avoided and minimized to the extent possible. However, given the scope and potential impacts associated with the project, PIT has proposed the following as compensatory mitigation for wetland loss:

- Enhancement of 36 acres of open water habitat to provide habitat diversity, water quality, and to protect hydrologic processes;
- Remove a portion of Lonseth Road (West Loop vicinity) and the existing culvert at Stream 1 and install fish passage-friendly log weirs, large woody debris, and habitat gravel and restore riparian, wetland, and hydrologic connectivity between Assessment Units 2 and 7;
- Replace the Stream 1 culvert under Henry Road with a bottomless box culvert to remove the blockage to fish passage and restore riparian vegetation;
- Create 136 acres of forested and shrub wetlands;
- Enhance 49 acres of existing emergent and shrub wetlands to native forest vegetation;
- Create 8,793 linear feet of new watercourses to convey current roadside streams and drainages, including a diversion for Stream 1 during high flows that will direct water to existing and created wetlands;
- Remove a portion of Lonseth Road (East Loop vicinity) and reroute roadside Stream 4, Stream 7, and roadside Drainage 1 through Wetland 3. Enhance the riparian areas with native vegetation;
- Install native a conifer buffer along the northern and western property boundary to visually and audibly screen the Terminal from adjacent wetlands and streams and riparian habitats; and
- Preserve 305 acres of wetlands.

During construction, PIT would be required to implement provisions of the Stormwater Construction Permit for Sites Greater than 5 Acres from the Washington State Department of Ecology and abide by the requirements specified under that coverage. Specific construction BMPs would be identified through this process. During operation of the facility, the applicant would be required to implement provisions of the Stormwater Industrial General Permit from the Washington State Department of Ecology and abide by the requirements specified under that coverage.

To date, BNSF has not proposed mitigation for potential project impacts pending a further analysis of wetland and stream impacts.

11. Other Applicable Federal and State Laws and Treaty Rights.

A. Federal and State Laws.

Endangered Species Act – Formal consultation under Section 7 of the Act will be required.

Magnuson Stevens Fishery Conservation and Management Act - EFH consultation with the National Marine Fisheries Service will be required.

Marine Mammal Protection Act - Consultation with the National Marine Fisheries Service will be required.

Section 106 of the National Historic Preservation Act - Section 106 consultations with the Washington State Historic Preservation Officer and applicable Tribes will be required.

Coastal Zone Management Act - The State of Washington is reviewing this work for consistency with the approved Washington Coastal Zone Management Program.

Section 401 of the Clean Water Act - The State of Washington is reviewing this work for compliance with the applicable State and Federal water quality standards pursuant to Section 401 of the Clean Water Act.

B. Treaty Rights.

The Lummi and Nooksack Indian Nations are signatories to the Treaty of Point Elliot which contains this above described treaty right. The proposed work that is the subject of this permit action encompasses waters supporting fisheries of the adjudicated fishing area and the Tribe has, in the past, provided declarations indicating that they presently fish and have fished the area in the past.

The Corps has received preliminary correspondence from the Lummi Indian Nation stating that the work may interfere with access to usual and accustomed fishing grounds or with fishing activities or shellfish harvesting. The Corps has had preliminary discussions with the Tribe and will be coordinating with both the Lummi and Nooksack tribes throughout the permit process.

12. Evaluation of Significance: Pursuant to 102(2)(C) of NEPA and CEQ implementing regulations (40 CFR § 1502.3), an environmental impact statement is to be included in every recommendation and report for a major federal action significantly affecting the quality of the human environment. To determine whether a federal action is significantly affecting the human environment, the CEQ regulations require analysis of the project under both context and intensity. See 40 CFR § 1508.27.

A. Context:

This requires the significance of an action be analyzed in several contexts such as society as a whole, the affected region, the affected interests, and the locality. *See* 40 CFR § 1508.27(a).

The PIT and BNSF projects, as currently proposed, will have significant impacts to the human environment from the local level to the regional level. Short term and long term impacts to freshwater aquatic features (wetlands and streams) will be limited to the PIT project site (unnamed) drainage basin. The BNSF Custer Spur actions will also affect a portion of the California Creek and Terrell Creek drainage basins. The project watersheds have experienced extensive disturbance over the past century. Loss of wetlands and disturbance of streams, even with mitigation, will result in a local significant impact.

Rail system support for GPT operations will affect a broad area in western Washington due to increased rail traffic, which will result in a significant regional impact.

Vessel traffic to and from the new facility will affect marine traffic in Puget Sound and the Strait of Georgia. Given the current volume of vessel traffic and concerns for oil tanker safety, the projects will have a significant regional affect on navigation and marine safety.

B. Intensity:

This refers to the severity of the project's impacts. In considering the severity of the potential impacts to the human environment, the CEQ has highlighted ten factors which the agency may consider to determine the significance of a project's impacts. Those factors are as follows:

- (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
- (2) The degree to which the proposed action affects public health or safety.
- (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

See 40 USC 1508.27(b)(1)-(10). The *Ocean Advocates* Court has held that “one of the [CEQ] factors may be sufficient to require preparation of an EIS.” See *id* at 865.

Affects on Public Health or Safety: As discussed in paragraph 9, there will be significant effects on the physical characteristics of the region. These effects include impacts on water quality, water quantity and flow, air quality, and increased vessel traffic. Taken together, these projects may have a significant risk to public health or safety.

Unique Characteristics of the Geographic Area: Wetlands comprise approximately 530.6 acres, or approximately 49 percent, of the PIT project property. Proposed fill will eliminate roughly ¼ of site wetlands. In addition, there will be a temporary disturbance to 21.2 acres of wetlands during construction. Impacts from the BNSF Railway Custer Spur expansion include the estimated filling of between 24 and 30 acres wetlands in and adjacent to the Custer Spur right of way. Loss of wetlands may significantly affect wetland contributions to the immediate watershed via loss of wildlife habitat and habitat diversity, loss of food web support (primary production and export), decreased moderation of peak flows and increased local erosion, loss of floodwater storage, a decrease in removal of toxins, metals and pathogens, and a decrease in sediment interception. The total loss of up to 170.6 acres of wetlands in the project’s vicinity would be a significant impact to the local watersheds.

The PIT project will result in a new structure being installed in a State designated aquatic reserve, the Cherry Point Aquatic Reserve, and will have significant affects on habitat and depleted Cherry Point herring stocks.

Degree of Controversy: The Corps is aware of a high level of public interest and concern and has received numerous preliminary comments from the general public regarding impacts from the increase in rail traffic in the Bellingham and Whatcom County vicinity and concerns based on the transport of coal through the region. In addition, local non-governmental

organizations (RE Sources and Safe Guard the South Fork) have expressed concern at public meetings and in the local press over the rail impacts, impacts to the aquatic reserve, and impacts to global warming from the marketing of coal to Asian nations. The Lummi Indian Nation has stated that the proposed PIT project will have a substantial impact on the Lummi Nation's ability to exercise its treaty rights in a primary fishing area.

Cumulative Effects: The proposed projects will have a significant cumulative impact on the following elements of the human environment:

- Special aquatic sites
- Endangered species
- Navigation
- Air quality
- Tribal Treaty rights

The projects' watershed have experienced extensive development over the past century resulting in extensive wetland loss. The proposed wetland impacts, combined with recent wetland losses from developments in the projects vicinity including expansion of the BP facilities and residential and commercial developments, and reasonably foreseeable impacts, will result in significant cumulative impacts to special aquatic resources.

The nearshore ecosystems of Puget Sound are crucial in the life cycle of many ESA listed fish and wildlife species. They also are subjected to many human influences, including shoreline armoring, installation of structures, and removal of shoreline vegetation. Growth and development along Puget Sound and Strait of Georgia shorelines has resulted in habitat loss, habitat alteration, process alteration, and habitat fragmentation of marine and riverine habitats. The PIT project's impacts to marine waters may, in addition to existing and reasonably foreseeable sources, will result in significant cumulative impacts to endangered species and critical habitat.

Current marine traffic in the project vicinity includes recreational boating, tribal and recreational fishing craft, and, in waters farther offshore, commercial marine traffic arriving at and departing from oil refineries and an aluminum manufacturing facility in the immediate vicinity. The proposed PIT project will result in a significant cumulative increase in regional and international vessel traffic transporting raw material and finished products. In addition, increased vessel traffic will result in cumulative increases in impacts from fugitive dust and noise, introductions of invasive (non-native) species from ballast water, and wildlife strikes. Based on the 9th Circuit's holding in *Ocean Advocates v. United States Army Corps of Engineers*, the Corps is aware of public concern that increased vessel traffic may elevate the risk of oil spills. The PIT project, as facilitated by the BNSF project, may result in a cumulative impact to existing oil tanker use of the project offshore area via an increase in maritime traffic.

Additional air quality impacts from vessel traffic to and from the Gateway facility and from airborne dust generated at the facility and by rail traffic serving the facility, in addition to existing and reasonably foreseeable pollutant sources, may result in significant cumulative impacts.

The Corps has received preliminary correspondence from the Lummi Indian Nation stating that the proposed installation and operation of the new facility may interfere with access to usual and accustomed fishing grounds or with fishing activities or shellfish harvesting. The proposed actions, combined with historic and potential future losses of tribal shellfishing grounds, will result in a significant cumulative impact to tribal treaty rights.

Adverse Effects on Scientific, Cultural, or Historical Resources: Known historic and Lummi Tribal cultural properties occur at and in the vicinity of the proposed projects. Installation of PIT facilities will directly affect one or more known sites resulting in a significant impact to archeological and tribal cultural resources.

Adverse Effects on Endangered or Threatened Species or Designated Critical Habitat: The impacts described in Section 9.B above may result in a take of ESA listed fish species and/or adverse modification of designated critical habitat. Based on the application materials, a preliminary determination of may affect, likely to adversely affect has been made for Puget Sound chinook salmon, coastal/Puget sound bull trout, Puget Sound steelhead, and marbled murrelet. A preliminary determination of may affect, not likely to adversely affect has been made for chinook salmon and bull trout critical habitat, southern resident killer whales, killer whale critical habitat, humpback whales, and Georgia Basin yelloweye rockfish, canary rockfish, and bocaccio.

13. EIS Determination. The Gateway Pacific Terminal and the Custer Spur Upgrades projects will be undertaken by separate parties. The Corps will be processing separate permit requests from PIT and BNSF. However, based on the interrelated nature of the two projects, the Corps has determined the need to evaluate the projects in a joint, comprehensive analysis. The joint EIS will support the Record of Decision for the standard individual permits.

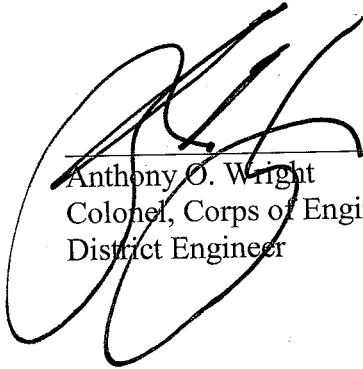
Based on the information above, I have determined that the proposed projects may have a significant individual and/or cumulative impact on the following elements of the human environment:

- Special aquatic sites
- Endangered species
- Cultural Resources and Historic Properties
- Navigation
- Air quality
- Transportation
- Tribal Treaty rights

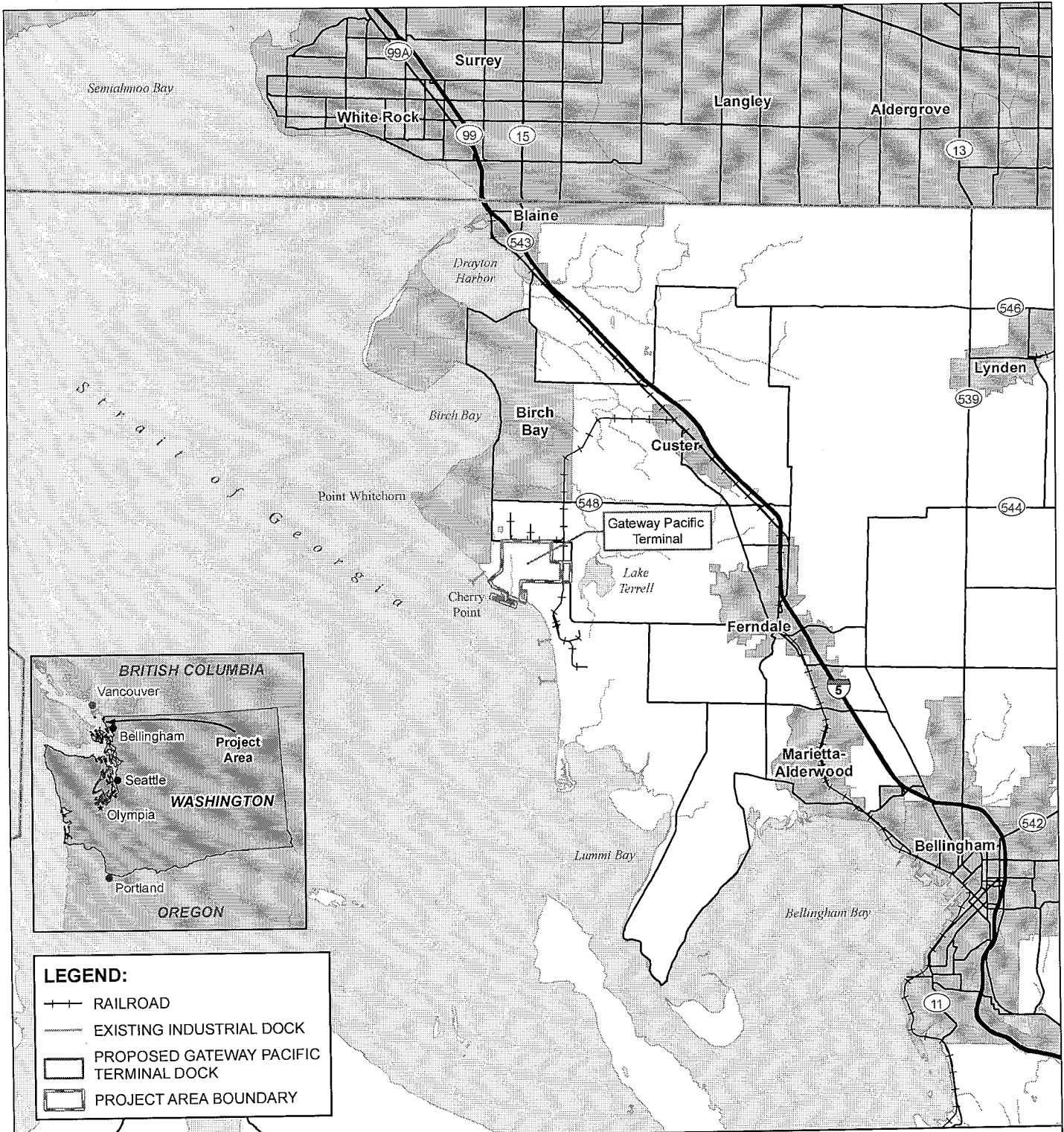
I have found sufficient preliminary information available on which to make this determination and therefore, no agency or public participation was determined necessary at this time. The scoping process for this action will occur after the notice of intent has been published and will inform the public of the breadth of issues to be covered in the EIS. Based on the projects

described and potential impacts presented in this assessment, authorization of the projects would be major Federal actions significantly affecting the quality of the human environment, and therefore requires preparation of an Environmental Impact Statement to comply with NEPA.

25 JUNE 2011
Date

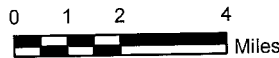


Anthony O. Wright
Colonel, Corps of Engineers
District Engineer



NOTE: Not for construction, for agency review only. All facilities are proposed, no existing structures on site currently.

PROJECT AREA:
 48° 52' 6.18" N
 122° 43' 41.92" W



PURPOSE: To meet demand for the transportation of bulk commodities locally and abroad.

DATUM: NAD83

ADJACENT PROPERTY OWNERS: See JARPA Attachment C

APPLICANT REFERENCE:

LOCATION:
 In the vicinity of Henry Road, Lonseth Road, Aldergrove Road, Powder Plant Road, and Gulf Road

PROPOSED: Construct and operate a multimodal, deep-water storage, handling, and transportation facility for the export and import of bulk commodities.

IN: Eastern Shore of Strait of Georgia
NEAR/AT: Ferndale
COUNTY: Whatcom **STATE:** WA
APPLICATION BY: Pacific International Terminals, Inc.
SHEET: 1 of 16

DATE: February 2011

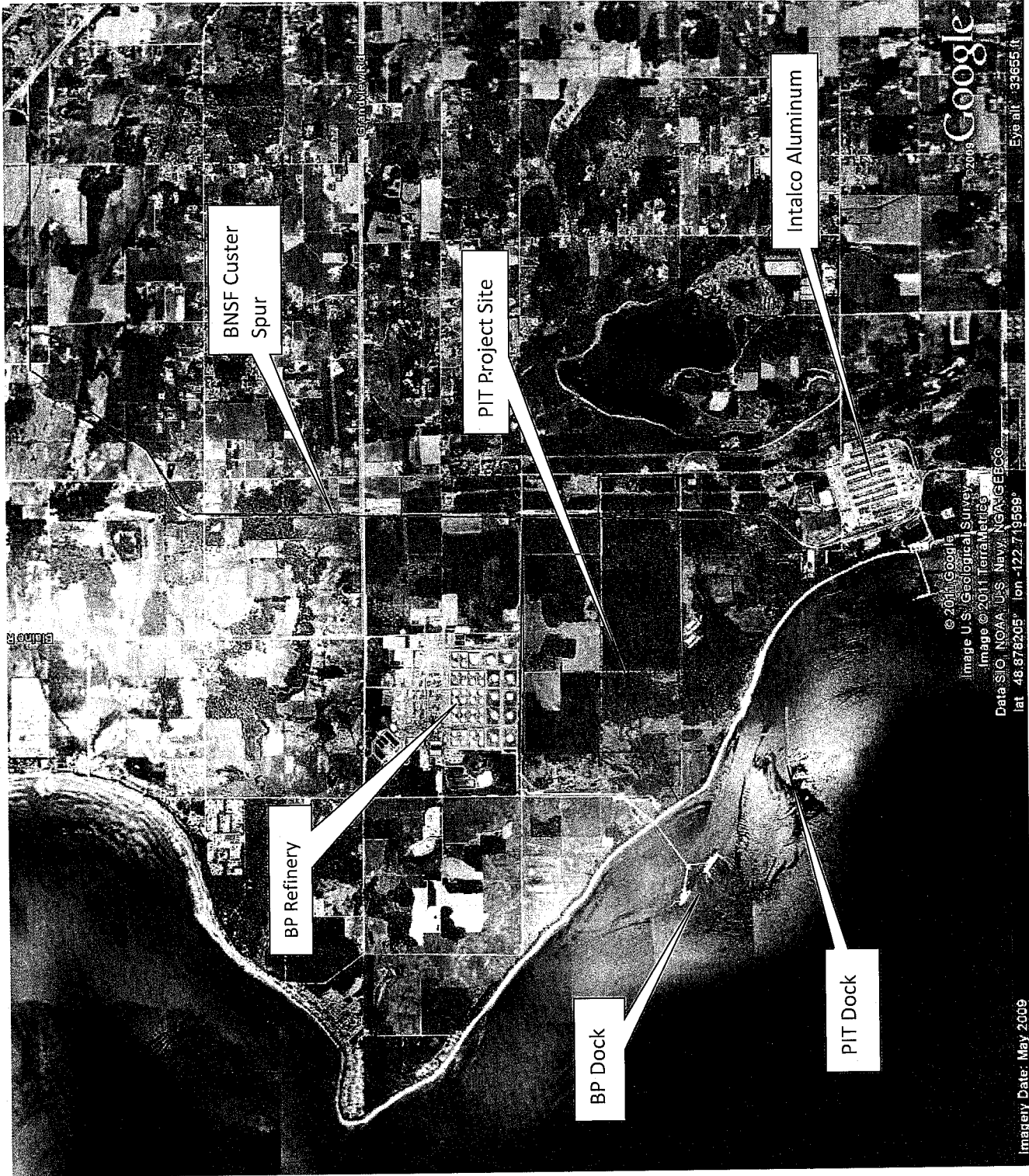


Figure 1. PIT and BNSF Project Vicinity