



Notice of Violation			
Title 16.16 – Critical Areas Ordinance			
Date:	August 3, 2011	Issued to:	
Case #:	ENF2011-00047	<input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> Contractor <input type="checkbox"/> Business Owner	
Parcel #:	390117-065466, -205467 & -067334 (ENF case: 390119-092500)	Certified Mail #:	7007 2560 0002 5871 1645
Site Address:	Henry Rd. and Lonseth Rd.	Name:	Pacific International Terminals, Inc. Attn: Mr. Mark Knutsen
Designation:	HII - Heavy Impact Industrial	Address:	1131 SW Klickitat Way Seattle, WA 98134-1108

Dear Mr. Knutsen,

In July and August of 2011, staff of the Whatcom County Planning and Development Services Department (PDS) researched your property. Specifically, staff reviewed related PDS records and conducted site inspections.

Elements of the Administrative Determination:

- June 2008 – Gateway Pacific Terminal (GPT) submitted a letter confirming that they would notify PDS 30-days prior to commencing all future work under SHS92-0020 and MDP92-0003. PDS would then have 30-days to review the submitted material and issue a determination whether or not the proposed work required a new permit.
- July 2008 – PDS accepted GPT’s notification proposal.
- Sept. 2008 – GPT submitted a letter notifying PDS that they intended to perform geotechnical investigations per the terms of the 1992 permits and that the work to be performed shall be done according to Terrestrial Geotechnical Investigation Field Study Plan dated Sept. 2008 by AMEC Earth & Environmental, Inc.
- Nov. 2008 – PDS approved the proposed geotechnical investigations pursuant to the 2008 field study plan. Work outside of areas covered by the 1992 permits was approved pursuant to the 2005 Critical Areas Ordinance (CAO), Section 16.16.235.F which stated that routine site investigation work in wetlands was an activity allowed with notification to PDS.
- July 16, 2011 – PDS received an email reporting recent clearing activity.
- July 19, 2011 – PDS staff conducted a site inspection and documented regulated activities impacting critical areas (wetlands) and/or their associated buffers.
 - At a minimum, the regulated activities included clearing (including trees and stumps) and grading associated with installation of access roads. Clearing and grading is regulated by the CAO when occurring within critical areas or their buffers.
- July 20, 2011 – PDS contacted GPT and requested any documentation authorizing the activity. In response, GPT submitted documentation for the Terrestrial Geotechnical Investigations that were approved in Sept. 2008 along with a new map depicting work locations dated March 2011.
- July 22, 2011 – PDS contacted GPT to inform them that the recent work was not authorized under the Field Study Plan dated Sept. 2008 and recommended ceasing work until permit approval had been approved.

- Pursuant to WCC 16.16.235, notification shall be valid for one year per activity provided that there is no change in the scope of the project. The subject clearing and grading activity not only occurred after the one-year approval, but it also exceeded the original scope of approval.
- PDS records indicated no 30-day notification of activity submitted prior to conducting the clearing and grading work and as agreed upon in 2008. PDS records further indicate no permit applications or issued permits on file authorizing the activity. The activity constituted a new violation.
- In sum, regulated activities were performed without prior review or permit approval on record.

Administrative Determination: A violation of the Critical Areas Ordinance (CAO) has occurred.

Violation: Section(s) 16.16.225 - Regulated Activities.

Corrective Action(s): You shall select and pursue one of the following options as outlined below:

1. You shall apply retroactively for a permit by submitting a complete land disturbance application and \$525.00 application fee **no later than twenty-one (21) days** following delivery and/or posting of this Notice. The application is available via mail, at the PDS office, or on the PDS website at <http://www.whatcomcounty.us/pds/forms/index.jsp>.
2. As part of the review of your application, you will be required to hire a qualified critical areas consultant. Lists of qualified consultants are available upon request. Have the specialist contact Bryan Sehmel (PDS Enforcement Office) no later than fourteen (14) days following receipt of this Notice to discuss the scope of his/her involvement.

--AND--

3. If you intend to establish the access roads permanently, you shall abide by mitigation sequencing, including avoidance etc. This may result in relocation of portions of the road and/or compensatory mitigation for unavoidable impacts. You shall also submit the \$1,260.00 fee associated with review of the wetland delineation, mitigation plan, as-built report, and monitoring.

--OR--

4. For temporary impacts only, you shall promptly restore any diminished ecological and/or habitat functions and values of the critical areas (wetlands) and their buffers. To achieve this, your critical areas consultant shall prepare a critical areas report and/or restoration plan. You shall submit the report and/or restoration plan **no later than forty-five (45) days** following contact by the consultant. The restoration plan must include performance standards, monitoring, and maintenance requirements. You shall also submit the \$1,260.00 fee associated with review of the wetland delineation, restoration plan, as-built report, and monitoring.

Updating Enforcement Staff and Failure to Comply: Please update the Enforcement staff person listed below. Failure to comply with any portion of the corrective actions by the date(s) listed above may result in imposition of monetary penalties or civil charges as allowed by law.

Appeal Rights and Enforcement Authority: Please refer to the attached appeal rights and enforcement authority in this matter.

Information Sources: The PDS Code Enforcement Office is dedicated to assisting you with development of a resolution-oriented plan. You are encouraged to contact the below-listed Enforcement staff person for any questions, resources, or possible alternative resolutions. You may also reference Whatcom County Codes on-line at: www.whatcomcounty.us.

For questions regarding this matter, contact: Bryan Sehmel

Planner – Code Enforcement

Signature: _____



Phone: (360) 676-6907, ext. 50206

E-mail: BSehmel@co.whatcom.wa.us

Attachments:	<input checked="" type="checkbox"/> Appeal Rights/Enforcement Authority	<input checked="" type="checkbox"/> Notice of Penalty	
Delivery Method:	<input type="checkbox"/> Posted on Site	<input type="checkbox"/> Hand Delivered	<input checked="" type="checkbox"/> Certified Mail

CC: Mr. Cliff Strong, AMEC Earth & Environmental, Inc., 11810 North Creek Parkway N Bothell, WA 98011
Certified Mail # 7007 2560 0002 5871 1652



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



J.E. "Sam" Ryan
 Director

Notice of Penalty Title 16.16 – Critical Areas Ordinance			
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Violation

Whatcom County Planning and Development Services Department (PDS) rendered an administrative determination that a violation of the Whatcom County Critical Areas Ordinance (CAO) occurred at this site. A Notice of Violation was issued on Aug. 3, 2011. This is the first (1st) penalty issued for violation of the CAO.

Penalty Calculation

Penalties are calculated pursuant to PDS Administrative Policy (#PL1-76-002A) effective July 25, 2008 and revised January 28, 2010. Penalties are final unless contested as provided for in the attached appeal rights.

Description			Assessed Fine
<input checked="" type="checkbox"/>	Base Fine: \$300 (not eligible for remission)		\$300.00
<input checked="" type="checkbox"/>	Permit Violation: \$200		\$200.00
Impact Fine	<input checked="" type="checkbox"/> Minor: \$100	<input checked="" type="checkbox"/> Moderate: \$250	<input checked="" type="checkbox"/> Severe: \$500
Failure to Comply	<input type="checkbox"/> First: \$200	<input checked="" type="checkbox"/> Second and each subsequent: \$400	
Fine Subtotal:			\$1,000.00
Total Assessed Penalty: (not to exceed \$1,000/day/violation)			\$1,000.00

For questions regarding this matter, contact:

Bryan Sehmel

Planner – Code Enforcement

Phone: (360) 676- 6907, ext. 50206

E-mail: BSehmel@co.whatcom.wa.us

Signature: _____

Authorized by: _____

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



J.E. "Sam" Ryan
Interim Director

Appeal Rights and Enforcement Authority
Whatcom County Code – Title 16.16 – Critical Areas Ordinance (CAO)

Notice of Violation or Other Determination

You may **appeal the determination** to the Whatcom County Hearing Examiner, pursuant to WCC 16.16.280.B. This is provided that you have not already had the opportunity to appeal such determination on a previous notice/order/letter. Determinations will be considered final if an appeal is not filed in a timely manner. Please see below for the procedure on filing an appeal.

Notice of Penalty

You have three options for responding to a Notice of Penalty. You may:

- A. Pay the fine.** By paying the fine, you are agreeing to not contest the penalty. An invoice should be mailed to you by our Finance Department within sixty (60) days of this notice. Please do not attempt to pay the fine until the invoice arrives. *Be advised, you are still required to bring the site into compliance.*
- B. Request remission or mitigation of the fine.** By entering into the remission process, you are agreeing to not contest the penalty. You may explain any mitigating circumstances and the penalty may or may not be reduced as an outcome. Remission is available by mail or by personal appearance. To request remission, you must submit a completed Request for Remission Agreement within 20 calendar days of receipt/delivery of the Notice of Penalty (WCC 16.16.285.C). The Agreement is available upon request. *Be advised, you are still required to bring the site into compliance.*
- C. Appeal the penalty.** You may appeal the penalty to the Whatcom County Hearing Examiner, pursuant to WCC 16.16.280.B. Penalties will be considered final if an appeal is not filed in a timely manner. Please see below for the procedure on filing an appeal.

Procedure for Filing an Appeal & Burden of Proof

To be valid, an appeal must be made within 14 calendar days of receipt/delivery of this Notice. It must be submitted directly to PDS and include the following: 1) A completed appeal application, and 2) The appropriate appeal fee as defined in the Whatcom County Unified Fee Schedule. An appeal application is available upon request and on the PDS webpage. In an appeal before the Hearing Examiner, the County has the burden of proving the alleged violation.

Enforcement Authority

Pursuant to WCC 16.16.200 and 16.16.240, employees of PDS are authorized to administer and enforce the provisions of the CAO. Pursuant to WCC 16.16.285.A, any person who violates any of the provisions of this chapter shall be guilty of a civil offense and may be fined a sum not to exceed \$1,000 for each offense. After a notice of violation has been given, each day of site work in conjunction with the notice shall constitute a separate offense.