

**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 Rescission			
<b>Date:</b>	August 17, 2011	<b>Issued to:</b>	
<b>Case #:</b>	ENF2011-00047	<input checked="" type="checkbox"/> <b>Property Owner</b>	<input type="checkbox"/> <b>Contractor</b> <input type="checkbox"/> <b>Business Owner</b>
<b>Parcel #:</b>	390117-065466, -205467 & -067334 (ENF case: 390119-092500)	<b>Certified Mail #:</b>	7007 2560 0002 5871 1669
<b>Site Address:</b>	Henry Rd. and Lonseth Rd.	<b>Name:</b>	Pacific International Terminals, Inc. Attn: Mr. Mark Knudsen
<b>Designation:</b>	HII - Heavy Impact Industrial	<b>Address:</b>	1131 SW Klickitat Way Seattle, WA 98134-1108

To Whom It May Concern,

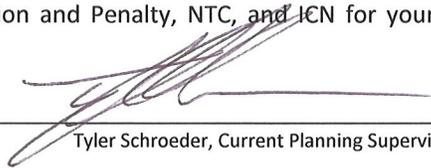
Whatcom County's Planning and Development Services Department (PDS) issued one Notice of Violation (dated Aug. 2, 2011) and one Notice of Penalty (dated Aug. 3, 2011) via certified mail. The penalty was issued in the amount of \$1,000.00 for violation of the Whatcom County Clearing Regulations. Both notices were delivered on August 5, 2011.

On August 12, 2011, PDS received copies of a Notice to Comply (NTC) and an Informal Conference Note (ICN) issued by the Washington State Department of Natural Resources (DNR). In the ICN, the DNR stated that they did not consider the timber clearing as conversion activities as defined in RCW 76.09.020. Instead, DNR considered it to have been Class III forest practices activities that would have required a Forest Practices Application/Notification (FPA/N).

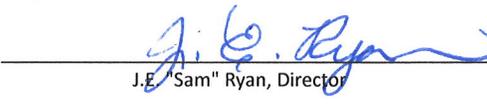
As a result, PDS is hereby rescinding the Notice of Violation (dated Aug. 2, 2011) and Notice of Penalty (dated Aug. 3, 2011). PDS has now amended and reissued both of these notices (dated Aug. 17, 2011) to reflect the above-referenced communications with DNR regarding conversion activities.

Copies are enclosed of the Notices of Violation and Penalty, NTC, and ICN for your reference. If you have any questions, please contact me.

Signature authorizing rescission:

  
 Tyler Schroeder, Current Planning Supervisor

Signature authorizing rescission:

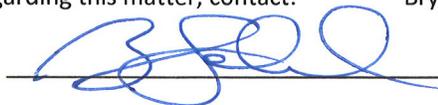
  
 J.E. "Sam" Ryan, Director

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

<b>Attachments:</b>	<input type="checkbox"/> Appeal Rights/Enforcement Authority	<input type="checkbox"/> Notice of Penalty
<b>Delivery Method:</b>	<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 1676



<b>Notice of Violation</b>			
<b>Title 20 – Clearing Regulations</b>			
<b>Date:</b>	August 2, 2011	<b>Issued to:</b>	
<b>Case #:</b>	ENF2011-00047	<input checked="" type="checkbox"/> <b>Property Owner</b> <input type="checkbox"/> <b>Contractor</b> <input type="checkbox"/> <b>Business Owner</b>	
<b>Parcel #:</b>	390117-065466, -205467 & -067334 (ENF case: 390119-092500)	<b>Certified Mail #:</b>	7007 2560 0002 5871 1645
<b>Site Address:</b>	Henry Rd. and Lonseth Rd.	<b>Name:</b>	Pacific International Terminals, Inc. Attn: Mr. Mark Knutsen
<b>Designation:</b>	HII - Heavy Impact Industrial	<b>Address:</b>	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 clearing activity impacting critical areas (wetlands) and/or their associated buffers.
  - At a minimum, the activities included clearing (including trees and stumps, shrubs, and undergrowth) resulting in exposed soils and grading (clearing activity) associated with installation of access roads.

Clearing and grading is regulated by Title 20 when it reaches the thresholds listed in WCC 20.80.734. “Clearing” is defined under WCC 20.97.053 and “clearing activity” is defined under WCC 20.97.054.

- Pursuant to WCC 20.80.734.4, the county shall review all clearing activities within a critical area or critical area buffer, and all clearing activity greater than 500 square feet within 200 feet of a wetland or habitat conservation area.

- Pursuant to WCC 20.80.734.5, the county shall review all clearing activities that meet the definition of a conversion from a forest use to another land use pursuant to WCC 20.97.085.
- 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, clearing activities were performed exceeding the general review thresholds without prior review or permit approval on record.

**Administrative Determination:** A violation of the Whatcom County Code - Title 20 has occurred.

**Violation:** Section(s) 20.80.734(4) & (5).

**Corrective Action(s):** You are required to complete the following:

1. Immediately cover all exposed soils by employing best management practices (BMPs) in accordance with the Whatcom County Development Standards (available at [www.co.whatcom.wa.us/publicworks/engineering/devstandards.jsp](http://www.co.whatcom.wa.us/publicworks/engineering/devstandards.jsp)). Once completed, contact PDS to schedule a compliance inspection.
2. The filling and grading performed on-site requires review by PDS. To pursue permitting for this work, submit to PDS 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>.
3. As part of the review of your application, you will be required to hire a qualified critical areas consultant as outlined in another Notice of Violation also dated August 3, 2011.
4. You may also be required to submit to PDS a complete SEPA environmental checklist, \$370.00 application fee, and \$100.00 noticing fee. If applicable, the application is available via mail, at the PDS office, or on the PDS website at <http://www.whatcomcounty.us/pds/forms/index.jsp>.

**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](http://www.whatcomcounty.us).

For questions regarding this matter, contact:

Bryan Sehmel

Planner – Code Enforcement

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

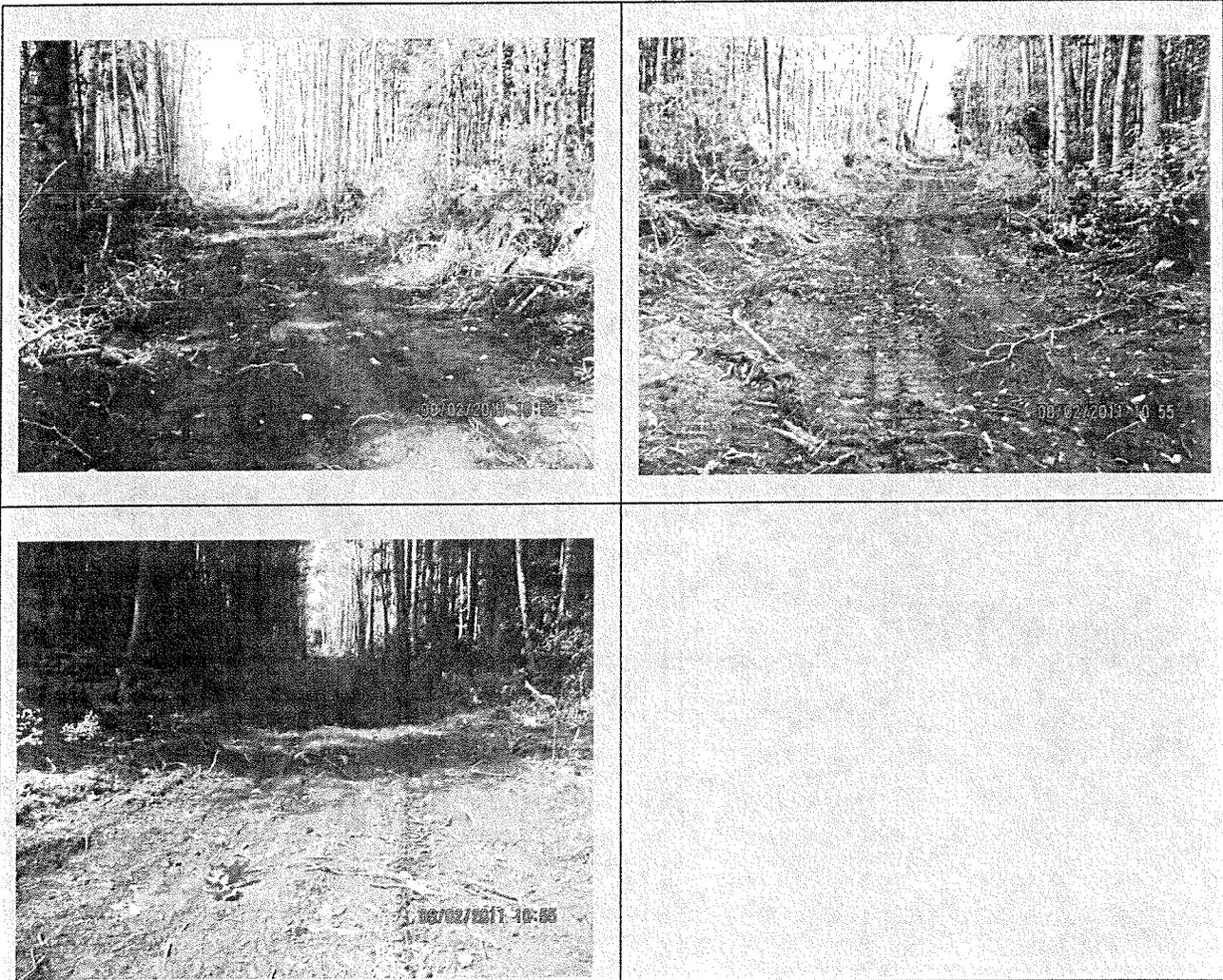
Signature:



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

<b>Attachments:</b>	<input checked="" type="checkbox"/> Appeal Rights/Enforcement Authority	<input checked="" type="checkbox"/> Notice of Penalty	
<b>Delivery Method:</b>	<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



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J.E. "Sam" Ryan  
 Director

Notice of Penalty Title 20 – Clearing Regulations			
<b>Date:</b>	August 3, 2011	<b>Issued to:</b>	
<b>Case #:</b>	ENF2011-00047	<input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> Contractor <input type="checkbox"/> Business Owner	
<b>Parcel #:</b>	390117-065466, -205467 & -067334 (ENF case: 390119-092500)	<b>Certified Mail #:</b>	7007 2560 0002 5871 1645
<b>Site Address:</b>	Henry Rd. and Lonseth Rd.	<b>Name:</b>	Pacific International Terminals, Inc. Attn: Mr. Mark Knutsen
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**Violation**

Whatcom County Planning and Development Services Department (PDS) rendered an administrative determination that a violation of the Whatcom County Code - Title 20 occurred at this site. A Notice of Violation was issued on Aug. 3, 2011. This is the first (1st) penalty issued for violation of Title 20.

**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"/> <b>Base Fine:</b> \$300 (not eligible for remission)	<b>\$300.00</b>
<input checked="" type="checkbox"/> <b>Permit Violation:</b> \$200	<b>\$200.00</b>
<b>Impact Fine</b> <input type="checkbox"/> Minor: \$100 <input type="checkbox"/> Moderate: \$250 <input checked="" type="checkbox"/> Severe: \$500	<b>\$500.00</b>
<b>Failure to Comply</b> <input type="checkbox"/> First: \$200 <input type="checkbox"/> Second and each subsequent: \$400	<b>\$0.00</b>
<b>Fine Subtotal:</b>	<b>\$1,000.00</b>
<b>Total Assessed Penalty: (not to exceed \$1,000/day/violation)</b>	<b>\$1,000.00</b>

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: \_\_\_\_\_

<b>Attachments:</b>	<input checked="" type="checkbox"/> Appeal Rights/Enforcement Authority	<input checked="" type="checkbox"/> Notice of Violation
<b>Delivery Method:</b>	<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  
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J.E. "Sam" Ryan  
Director

### Appeal Rights and Enforcement Authority Whatcom County Code – Title 20

#### Notice of Violation or Other Determination

You may **appeal the determination** to the Whatcom County Hearing Examiner, pursuant to WCC 20.94.060. 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 20.94.040). 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 20.94.060. 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.

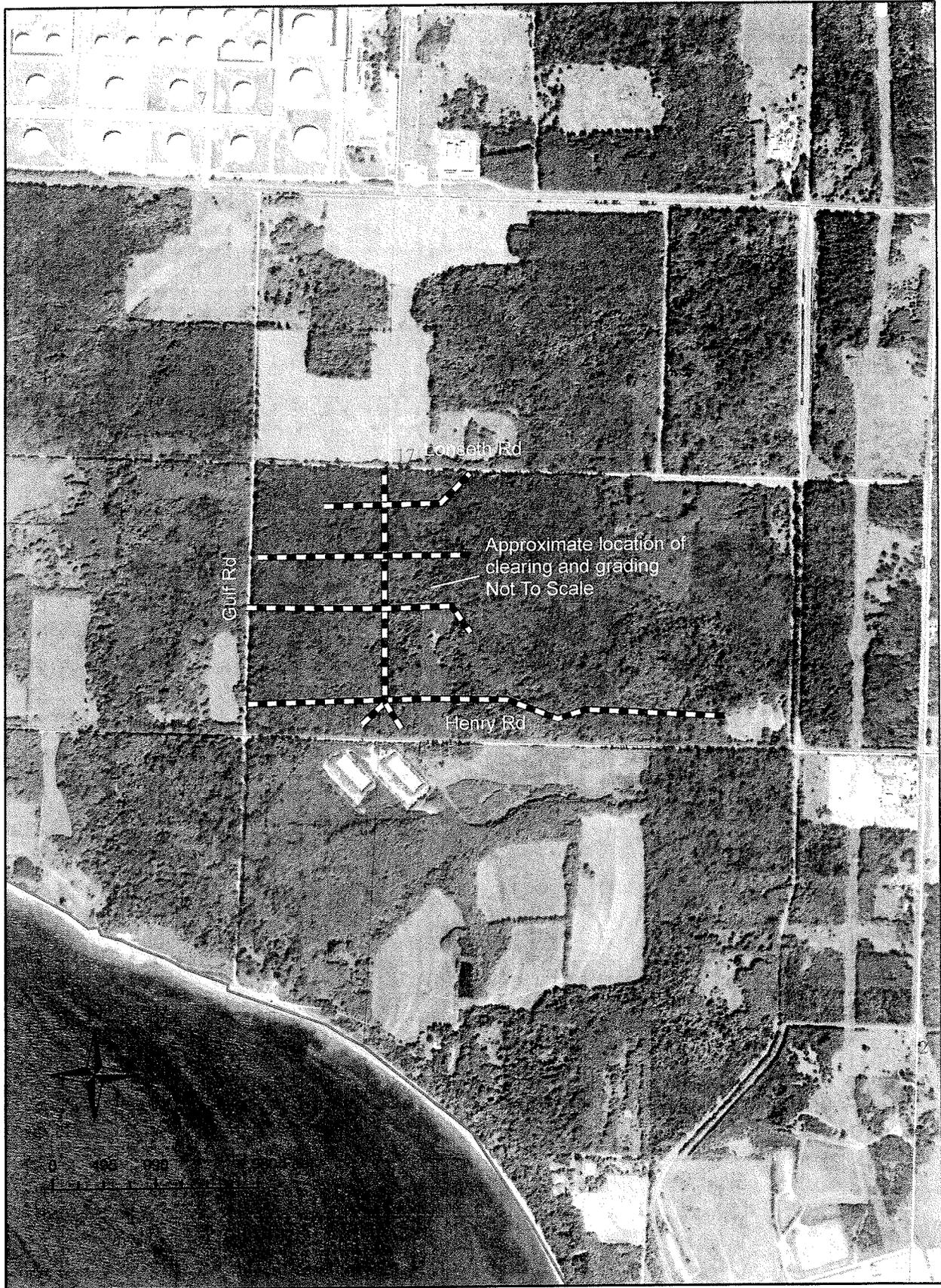
#### **Enforcement Authority**

Pursuant to WCC 20.04.010 and 20.04.035, employees of PDS are authorized to administer and enforce the provisions of Title 20. Pursuant to WCC 20.94.030, any person, firm, partnership, corporation, or other entity who violates any of the provisions of the Whatcom County Zoning Ordinance, Title 20, shall be guilty of a civil offense. Each day during which such violation is continued or committed shall constitute a separate offense, and may be fined a sum not to exceed \$1,000 for each offense.



# Forest Practices Notice to Comply

1. FPA No. No FPA		2. Region Northwest		4. Class of Forest Practice <input type="checkbox"/> Class II <input type="checkbox"/> Class IV-General <input type="checkbox"/> Class III <input type="checkbox"/> Class IV-Special		5. Legal Subdivision S1/2		
NTC No. 130126		3. County Whatcom				Section 17,18	TWP 39	Rge E/W 1E
6. Landowner Pacific International Terminals, Inc.		7. Timber Owner Same as Landowner		8. Operator Same as Landowner				
Mailing Address 1131 SW Klickitat Way		Mailing Address		Mailing Address				
City, State (Province), Zip (Postal Code) Seattle, WA 98134		City, State (Province), Zip (Postal Code)		City, State (Province), Zip (Postal Code)				
Under authority of Ch. 76.09 RCW, Title 222 WAC -- (Name of Violator): Pacific International Terminals, Inc. You are given this NOTICE TO COMPLY in connection with violation(s), deviation(s), damage(s), or potential damage(s) described below.								
9. Reasons for Notice: <input type="checkbox"/> Deviation from approved application <input checked="" type="checkbox"/> Violation of Forest Practices Act and/ or Rules <input type="checkbox"/> Immediate action is necessary to stop or to avoid material damage to public resources.						10. Damage Amount \$ NA		
						11. Assessed by: NA		
12. Description of violation(s), deviation(s), damage(s), or potential damage(s): Cutting and clearing of timber in excess of 5,000 board feet, including live, dead, and down material has occurred without an approved Forest Practices Application/ Notification (FPA/N). All trees and vegetation have been cut or pushed over in approximately 15 foot wide corridors totaling approximately 23,132 feet in length. Approximately 9.1 acres have been impacted in total. See attached map for approximate locations.  Ground disturbance with heavy equipment appears to have occurred within forested wetlands. Trees have been pushed over and stumps removed. See attached map for approximate locations.  Note: These activities have occurred on Whatcom County parcels # 390117065466, 390117065467, 390117067334, 390117278062								
13. Violation of WAC(s): 222-20-010(1)				14. Violation Observed: <u>08/01/2011</u> at: <u>02:00</u> <input type="checkbox"/> am <input checked="" type="checkbox"/> pm <i>Date(mm/dd/yyyy) Time</i>				
				15. Steps described in #16 must be completed by: <u>03/31/2014</u> <i>Date(mm/dd/yyyy)</i>				
16. You must complete the following steps: No further timber felling, cutting, or clearing shall occur without first obtaining an approved FPA/N.  Reforestation stocking standards of WAC 222-34-010(2) shall apply and must be met by March 31, 2014.  Note: Whatcom County will review and approve a mitigation plan for any impacts to forested wetlands resulting from these clearing activities.								
17. The operator, timber owner or forest landowner may request a hearing before the department to review this Notice to Comply. To be valid, the department must receive your written request at the region office within fifteen (15) calendar days of the Date of Service (box 19).  <b>CONTACT</b> Northwest Region Office with any questions. Telephone: (360) 856-3500								
18. Signature and Printed Name of Person Order Given / Mailed to: <i>MARK KNUDSEN</i>				19. Date of Service 08/12/2011		20. Signature of Compliance Officer <i>[Signature]</i>		
21. (Office Use Only) Date: _____ Initials: _____ (mm/dd/yyyy) Copies Sent To: <input type="checkbox"/> Timber Owner <input type="checkbox"/> Landowner <input type="checkbox"/> FPDM <input type="checkbox"/> FP Coordinator <input type="checkbox"/> Other <input type="checkbox"/> Other Agencies _____				22. Title of Compliance Officer Forest Practices Forester			23. Position No. 5299	



Louisa Rd

Gulf Rd

Approximate location of  
clearing and grading  
Not To Scale

Henry Rd



ICN No. 130128	Legal Subdivision S 1/2	Section 17,18	TWP 39	RGE E/W 1E	Application / Notification # No FPA	Class
<b>Landowner</b> Pacific International Terminals, Inc.		<b>Timber Owner</b> Same as Landowner		<b>Operator</b> Same as Landowner		
Mailing Address 1131 SW Klickitat Way		Mailing Address		Mailing Address		
City, State (Province), Zip (Postal Code) Seattle, WA 98134		City, State (Province), Zip (Postal Code)		City, State (Province), Zip (Postal Code)		
Meeting Location DNR NW Region Office		Telephone Conference <input type="checkbox"/>	Date 8/12/2011	Time 9am	Region NW	
<b>Subjects Discussed:</b>						
A meeting was held to discuss timber cutting and clearing that has taken place in approximately 15 ft wide corridors totaling approximately 23,132 ft. Approximately 9.1 acres have been impacted.						
<b>Decisions Made:</b>						
The Landowner informed the group that the intent of clearing these corridors was not conversion of the site. The Landowner stated that these corridors were temporary in nature and would be reforested while further potential permitting is underway. The timeframe of this permitting process is likely 3-5 years.						
DNR does not consider this timber clearing as conversion activities as defined in RCW 76.09.020. It is considered class III forest practices activities that would have required a FPA/N.						
Because an FPA/N was not approved by DNR for this activity, NTC 130126 was issued requiring reforestation requirements be met.						
<b>PRINT Participants' Names</b> MARK KNOWSEW Ari Steimberg Cliff Strong Krustie THOMAS R. SCHROEDER		<b>*SIGNATURES of Participants</b> 		Representing SSA MARINE SSA Marine AMEC for SSA Marine AMEC / SSA Marine WHATCOM COUNTY MS		<b>Copies Mailed</b> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Position No. 5299	Signature & Title of DNR Representative: Forest Practice Forester 			Date 8/12/11	Work Phone 360-856-3500	
* (Participant signature means Note is correct for subjects discussed and decisions made at the meeting.) Did not attend -- mail copies to: <input type="checkbox"/> Timber Owner <input type="checkbox"/> Landowner <input type="checkbox"/> Others:						