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J.E. "Sam" Ryan
Director

Memorandum

TO: Pete Kremen, Executive

FROM: Tyler R. Schroeder, Planning Supervisor *TRS*

DATE: August 3, 2011

SUBJECT: Notice of Violation and Penalty Assessment for Clearing Activity at Gateway Pacific Terminal

This memo is to provide additional information in regards to the Notice of Violation and Penalty Assessment issued to Pacific International Terminals, Inc. for the recent clearing activity and wetland impacts at the Gateway Pacific Terminal property. Hopefully this information will clarify some of the misleading descriptions of the events portrayed by SSA Marine's statement on geotechnical site work, issued by press release on July 30, 2011.

Gateway Pacific Terminal (GPT) and Whatcom County Planning and Development Services (WCPDS) has established a protocol on when and how the company will notify the County of work taking place on site. This discussion mainly occurred in 2008; around the time that the County issued an Administrative Decision that the original permits (MDP92-0003 and SHS92-0020) were valid. The following is a chronology of the events and correspondences associated with the protocol on notification of work at the site and staff's involvement and response to the recent clearing activity.

- June 2, 2008 GPT submitted a letter confirming that they would notify the county 30 days prior to commencing all future work under SHS92-0020 and MDP92-0003.
- July 10, 2008 WCPDS accepts GPT's notification proposal. According to this agreement, WCPDS would then have 30 days to review the notification material and issue a determination that the proposed work is in compliance with the permits or not and whether any additional permits would be necessary.
- July 10, 2008 WCPDS agrees to review the validity of issued Master Development Permit (MDP92-0003) and Shoreline Substantial Development Permit (SHS92-0020) by way of an Administrative Determination which included public notification as well as parties of record associated with the appeal and settlement associated with the project.
- September 5, 2008 notifying WCPDS that they intend 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 September 2008 by AMEC Earth & Environmental, Inc. (See Attached)

- October 10th, 2008 GPT submits a notification of work letter for Marine Geotechnical Investigations including; marine-based site explorations, laboratory testing, and exploration log preparation.
- November 20, 2008 WCPDS approves the proposed geotechnical investigations pursuant to the Field Study Plan dated September 2008. Some of the work was approved by way of the permits (MDP92-0003 & SHS92-0020) and work outside of these areas was approved pursuant to the September 2005 Critical Areas Ordinance, WCC 16.16.235(F) which states that routine site investigation work in wetlands is an activity allowed with notification to Whatcom County Planning and Development Services. The County also approves the description of work set forth in the Notification Letter dated October 10, 2008 (Marine Geotechnical Investigations) per the approved permits (SHS92-0020 & MDP92-0003).
- July 16, 2011 WCPDS receives an email regarding recent clearing activity along Henry Road (road grading) within wetlands. WCPDS had not been contacted by GPT to notify the County of this work.
- July 19, 2011 WCPDS inspects the recent clearing activity and confirms that work has occurred within wetlands which included road grading and removal of vegetation including trees and stumps. WCPDS researched the permit activities to determine if the work performed in this location was permitted and could not find authorization for this work.
- July 20, 2011 WCPDS contacts GPT regarding recent clearing activity and requested that GPT provide documentation that the work performed was authorized by the County.
- July 20, 2011 WCPDS received documentation from GPT for the Terrestrial Geotechnical Investigations that were approved by WCPDS under the Field Study Plan dated September 2008, as well as a map depicting work locations dated March 2011 (See attached).
- July 22, 2011 WCPDS contacted GPT regarding the recent clearing to inform GPT that this work was not authorized under the Field Study Plan dated September 2008 and that work needed to cease until permits had been authorized.
- August 2, 2011 WCPDS was contacted by Department of Ecology to request a joint site inspection to determine if any State laws had been violated. WCPDS staff and Ecology staff conducted a joint site inspection.
- August 3, 2011 WCPDS issued a Notice of Violation and penalty assessment to GPT for unpermitted road grading. GPT is required to submit a Land Disturbance Permit application as well as a restoration plan for unpermitted impacts to critical areas (wetlands and associated buffers).

The Notice of Violation and Penalty Assessment has been issued for the clearing activity and the associated wetland impacts. The total penalties assessed for the violation is \$2,000, which is the severe impact fine. Also, staff has spent a total of 24 hours on the review and process of the Notice of Violation and Penalty Assessment. All staff time spent on the review of this incident will be recovered (\$2400) through the required Land Disturbance Permit (LDP). The retroactive LDP will require that for temporary impacts, the company shall promptly restore any diminished ecological and/or habitat functions and values of the critical areas and their buffers. If the establishment of these access roads are intended to be permanent, the company shall abide by the mitigation sequence, which will likely result in the relocation of portions of the road and/or compensatory mitigation for unavoidable impacts.



**Terrestrial Geotechnical Investigation
Field Study Plan**

**Gateway Pacific Terminal
Whatcom County, Washington**

Submitted to:

Whatcom County Planning and Development Services

Northwest Annex, Suite B
5280 Northwest Drive
Bellingham, Washington
98226

Submitted for:

Pacific International Terminals

1131 SW Klickitat Way
Seattle, WA 98134

Submitted by:

AMEC Earth & Environmental, Inc.

11335 N.E. 122nd Way, Suite 100
Kirkland, Washington 98034

September 2008

AMEC Project No. 891515338B

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1.0 INTRODUCTION

The proposed Gateway Pacific Terminal (GPT) is located in the Cherry Point Industrial Area, on heavy impact industrial property owned by Pacific International Terminals (PIT), located approximately 8 miles west of Ferndale in Whatcom County, Washington (Figure 1). The GPT project has started a preliminary engineering design phase leading to final construction design. To support this work, a geotechnical investigation of subsurface conditions is needed.

Both marine and terrestrial geotechnical studies are to be made. This work plan provides information on the terrestrial geotechnical investigations. A separate work plan has been developed for marine investigations (defined as those investigations to be made below the mean higher high water). The marine investigation is not discussed further in this work plan.

Under the direction of GeoEngineers, Inc. (Bellingham, Washington), terrestrial subsurface explorations, followed by laboratory testing of sampled material, will be undertaken within the terrestrial geotechnical study area. The study area (Figure 2) was determined as the approximate area of proposed development along with adjacent areas planned for future development.

The investigation will be phased based on boring purpose, location, and anticipated depth to bearing soils. The investigation will include deep borings, shallow borings, and cone penetration tests (CPTs). The phased exploration will allow for modifications based on the subsurface conditions encountered to the exploration locations and depths.

2.0 REGULATORY COMPLIANCE

The following work at the Gateway Pacific Terminal site will be completed per the terms of Shoreline Substantial Development Permit SHS 92-0020 and Major Development Permit MDP 92-0003 ("Permit"). The Permit was issued under the 1978 Whatcom County Shoreline Master Program, as amended in November 16, 1989 establishing the Cherry Point Management Area. The project's application with Whatcom County was deemed complete on June 18, 1992. During the subsequent permitting process, PIT voluntarily chose to comply with the then updated Whatcom County Code of 1997.

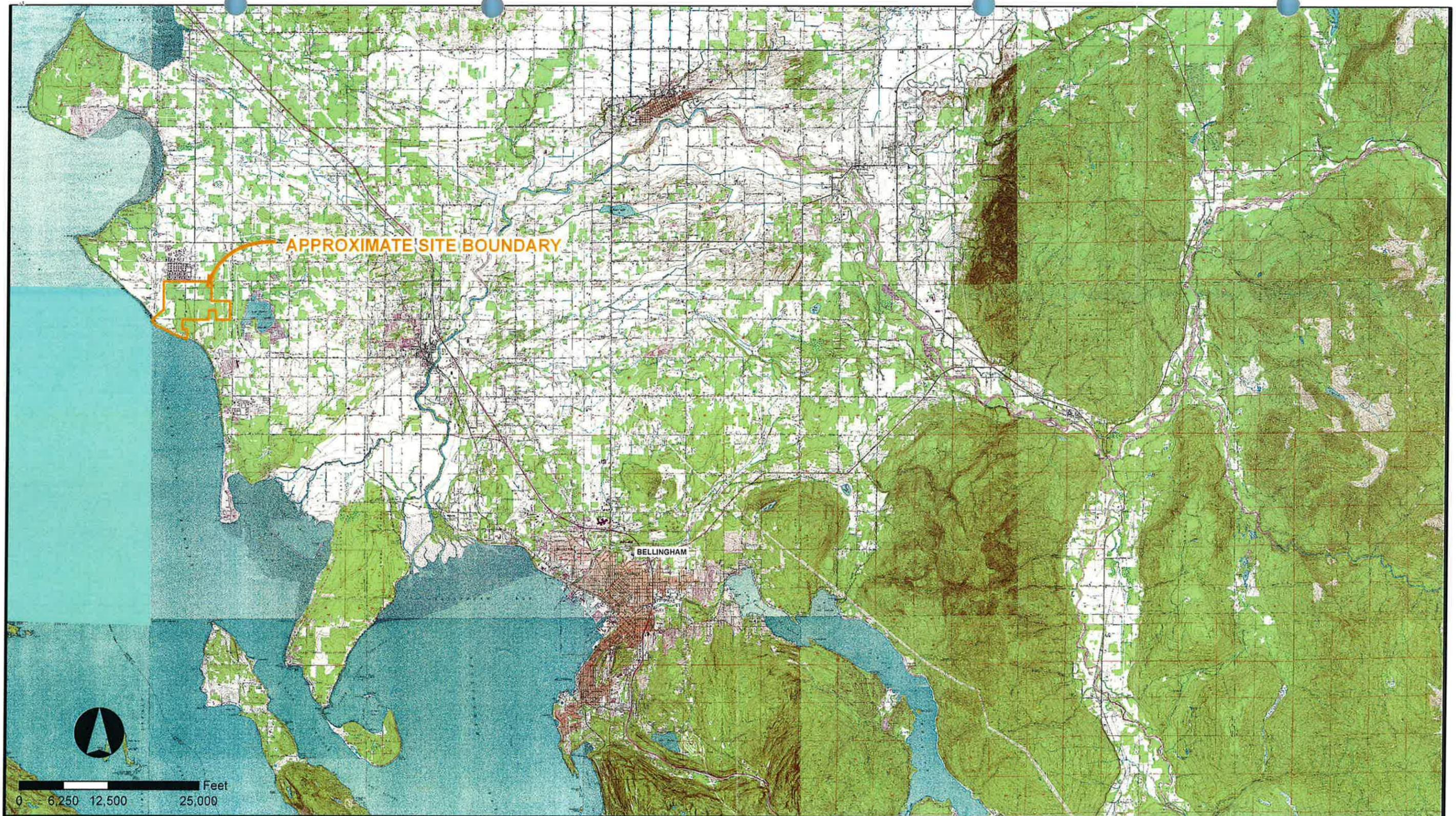
A review of the 1997 Whatcom County Code indicates no further County permits would be needed to complete the work described here.

3.0 GEOTECHNICAL STUDY AREA

The study area is located on a plateau adjacent to the Strait of Georgia in Whatcom County, Washington and west of Ferndale. The area roughly lies north of Henry Road, south of

Aldergrove Road, and west of Klickerville Road and covers approximately 800 acres. The study area is vegetated with young red alder forest, mixed-shrub communities, and pasture and hay fields.

Subsurface conditions consist of reworked glaciomarine drift, clayey glaciomarine drift, Vashon Stade advance outwash, and Cherry Point silt. The glaciomarine drift is typically normally consolidated silt and clay; the upper portion of the glaciomarine drift is typically stiff from desiccation or partial ice contact loading and grades to medium stiff or soft with depth. The advance outwash and Cherry Point silt are glacially consolidated and dense to very dense/hard.



CLIENT: GATEWAY PACIFIC TERMINALS	DWN BY: PM	PROJECT: WETLAND DELINEATION	DATE: FEBRUARY 2008
	CHK'D BY: MG		PROJECT NO.:
AMEC Earth & Environmental 7376 SW Durham Road Portland, OR, U.S.A. 97224	DATUM: NAD83	TITLE: VICINITY MAP	5-91M-15338-0
	PROJECTION: WA SP North, Ft.		REV. NO.:
	SCALE: 1 inch equals 12,500 feet		1
			FIGURE NO.:
			FIGURE 1

4.0 EXPLORATION PLAN

One or more of GeoEngineers' engineering geologists will monitor all explorations. Figure 2 shows approximate locations of borings and was developed based on proposed engineering characteristics, anticipated subsurface characteristics, and existing site conditions. The plan was reviewed in the field to confirm the locations were clear from obstructions, accessible, and the boring locations would result in minimal impacts to soils, vegetation, streams, or wetlands.

4.1 Deep Explorations

Deep explorations will be performed in areas where future development is expected to be supported on piles. These deep explorations will be performed with a track-mounted auger or mud-rotary rig capable of drilling depths of at least 150 feet.

4.2 Shallow Explorations

Shallow explorations will include evaluating near-surface conditions at locations to evaluate subgrade support, embankment design, and settlement. Evaluation of the general subsurface profile will take place in both the western and eastern vicinity of the study area.

Shallow explorations will be implemented with a track-mounted auger drill rig capable of drilling depths up to 75 feet or a truck-mounted auger drill rig capable of drilling depths up to 120 feet in more accessible areas. Cone Penetrometer Explorations

Approximately four cone penetration tests (CPTs) will be made to augment the boring explorations. Two of the four CPTs will include seismic shear wave velocity profile for use in seismic analyses. The CPTs will be conducted with track-mounted equipment.

5.0 EXPLORATION

5.1 Utilities

GeoEngineers' project manager will contact *Washington Call Before You Dig* (800-424-5555) to schedule utility locations in the study area prior to exploration. They will also coordinate with PIT regarding the location of known on-site utilities. No excavation will be performed in areas not cleared for utilities.

Access will be by county roads. No disturbance to traffic will be made unless a certified traffic flagger is present.

5.2 Wetland Protection

To the greatest extent possible, boring locations were selected or adjusted to minimize the need to drill within wetlands. Given the proposed construction footprint, approximately 10 boring locations will be performed within wetlands to comprehensively survey the study area (Table 1).

For areas that require exploration within wetlands, exploration borehole locations have been located based on field observation in existing pasture and hayfields for the greatest extent, or in areas which will be accessible by old logging roads.

All boreholes located within wetland boundaries will be drilled when areas are not inundated or saturated. Within the study area, wetlands generally lack hydrology from June through late November in most years.

Table 1 Borehole Identification and types in Wetlands

	SAMPLE IDENTIFICATION	TYPE
1	DB-5	DUMPER BOX
2	DB-6	DUMPER BOX
3	S-5	SILO
4	S-6	SILO
5	S-7	SILO
6	S-8	SILO
7	RR-5	RAILROAD
8	RR-2	RAILROAD
9	CPT-3	CONE PENETRATION TEST
10	BS-13	BULK STORAGE

When it is necessary to access a boring location within a wetland, existing roads and open upland fields (pastures and hayfields) will be used to the extent feasible as access routes to minimize disturbance and protect wetland vegetation and soils.

For all wetland areas, soil disturbance will be limited to shallow surface disturbance due to tracking. No grading or excavation will be performed. No filling by rock or other material will be performed in wetlands. In areas which require vegetation clearing, the vegetation will be crushed under the tracks to provide soil protection and organic matter input.

5.3 Vegetation and Soil Management

Temporary access routes will be cleared of shrub and larger vegetation as necessary to provide access to exploration locations. Clearing efforts will be limited to removal of above ground stems and/or branches. Existing roads and open upland fields will be utilized as access points to minimize disturbance and protect vegetation and soils.

5.4 Soil Protection

Cut vegetation will be crushed in place to create a soil protection layer. No gravel or other material is planned to be used. Any soil disturbance will be limited to shallow surface disturbance due to equipment tracking. No grading or excavation will be performed. No filling by rock or other material will be made.

6.0 BEST MANAGEMENT PRACTICES

6.1 Closure of Explorations

All borings will be backfilled with clean bentonite chips to the surface to prevent surface water draining through to the subsurface in accordance with the Department of Ecology procedures. Subsurface materials that have been removed from boreholes are not allowed to be returned to the hole. This native material will be spread in the vicinity of the borehole. Approximately 0.3 cubic yards of material will be spread a few inches thick and reseeded for most borehole locations.

6.2 Erosion and Sediment Control

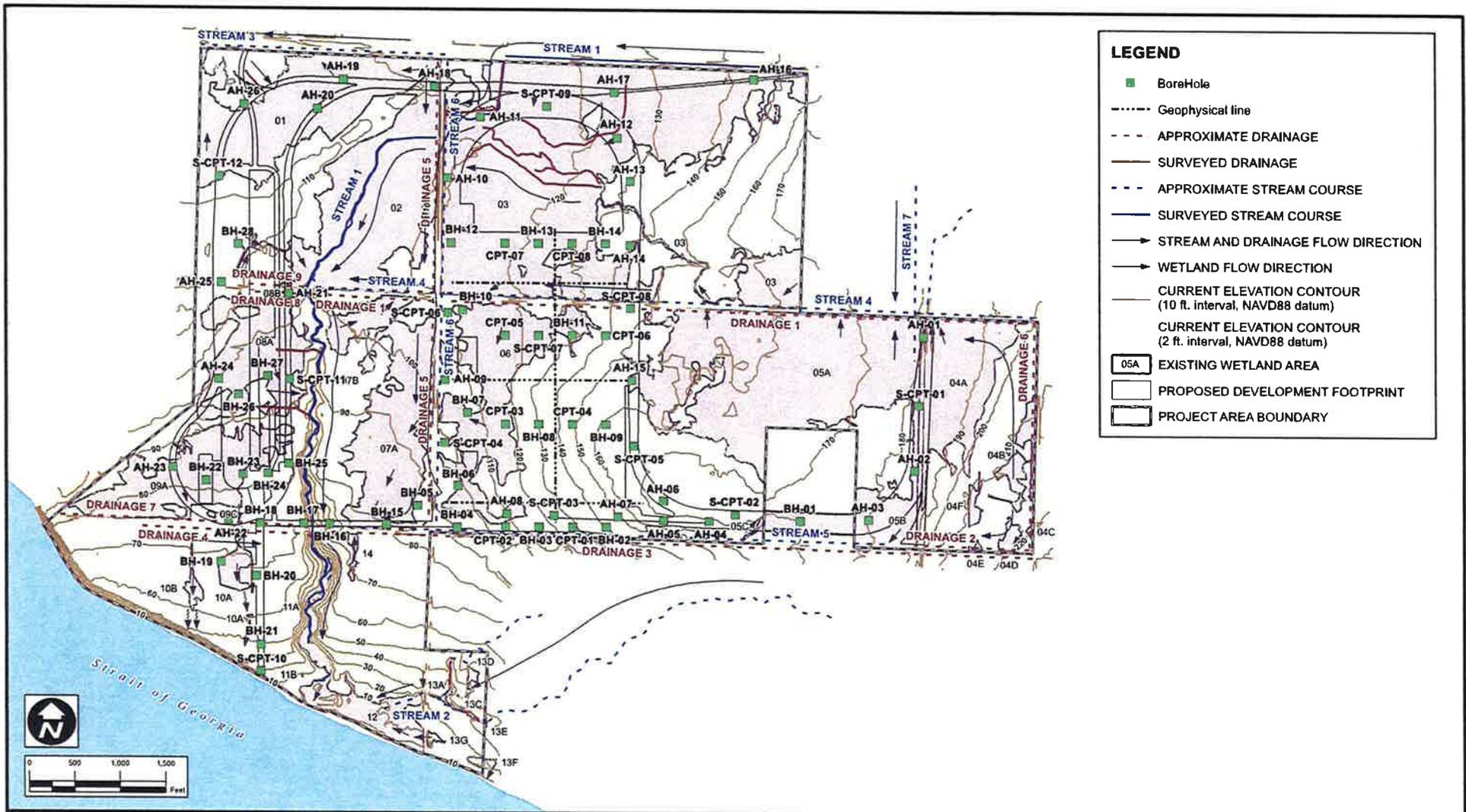
Appropriate erosion and sediment control steps will be taken in the field to reduce the possibility of subsurface material moving from the borehole location due to the movement of rain or surface water. Appropriate management practices will include temporary barriers such as straw bales or wattles, coir logs, or compost berms.

7.0 CULTURAL RESOURCES

Pacific International Terminal has notified the Lummi Nation of the proposed investigation and is coordinating directly with them on any concerns they may have regarding the Terrestrial Geotechnical Investigation work.

8.0 SCHEDULE

The investigation will start in October 2008 and is expected to require 30 to 60 work days. The schedule will be modified for severe weather, or due to equipment availability or site conditions.



LEGEND

- BoreHole
- Geophysical line
- - - - - APPROXIMATE DRAINAGE
- SURVEYED DRAINAGE
- - - - - APPROXIMATE STREAM COURSE
- SURVEYED STREAM COURSE
- STREAM AND DRAINAGE FLOW DIRECTION
- WETLAND FLOW DIRECTION
- CURRENT ELEVATION CONTOUR (10 ft. interval, NAVD88 datum)
- CURRENT ELEVATION CONTOUR (2 ft. interval, NAVD88 datum)
- 05A EXISTING WETLAND AREA
- PROPOSED DEVELOPMENT FOOTPRINT
- PROJECT AREA BOUNDARY

<p>Pacific International Terminals. A Corbridge Group</p>	<p>CLIENT:</p> <p>PACIFIC INTERNATIONAL TERMINALS, INC.</p>	<p>OWN BY: SD</p> <p>CHRD BY: KC</p> <p>DATE: NAD93</p> <p>PROJECTION: WA SP North, FL.</p> <p>SCALE: 1 inch = 1,000 feet</p>	<p>PROJECT:</p> <p>PROPOSED GATEWAY PACIFIC TERMINAL</p>	<p>DATE: MARCH 2011</p> <p>PROJECT NO.: 091515338C-01-02</p> <p>REV. NO.: 1</p> <p>FIGURE NO.: FIGURE X</p>
	<p>AMEC Earth & Environmental</p> <p>11810 North Creek Parkway N Bothell, WA 98011</p>	<p>TITLE:</p> <p>GEOTECHNICAL INVESTIGATION</p>		

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