

WHATCOM COUNTY

Planning & Development Services
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J.E. "Sam" Ryan
Director

June 23, 2011

Pacific International Terminals, Inc.
c/o Mr. Cliff Strong
AMEC Earth & Environmental, Inc.
11810 North Creek Parkway N
Bothell, WA 98011

Re: MDP2011-000001/SHR2011-00009 – Determination of Incompleteness and Requirement to Obtain a New Shoreline Substantial Development Permit

Dear Mr. Strong:

Upon review of the application materials submitted on June 10, 2011, as well as the subsequent letter from your legal counsel dated June 23, 2011, it has been determined that the requested revision to the existing shoreline substantial development Permit (SHS1992-00020) does not meet the applicable revision criteria outlined in WCC 23.60.170 and Washington Administrative Code (WAC) 173-27-100. As such, a new shoreline substantial development permit is required to review the entire proposal within the jurisdiction of the SMA.

In addition, in review of the application materials submitted on June 10, 2011, it has been determined that the above Major Development Permit (MDP) is incomplete, as the submittal requirements of Whatcom County Code (WCC) 20.88.200 and WCC 2.33 have not been met.

Shoreline Substantial Development Permit Revision (SHR2011-00009)

According to Section 23.60.170.B, the County decision maker may only approve a request for revision upon a finding that the proposed changes are within the scope and intent of the original approval. In order to make such a determination, all of the criteria outlined in WCC 23.60.170.C.1 through 23.60.170.C.5 must be met. Whatcom County Code 23.60.170.E states that a new permit shall be required if the proposed revision constitutes development beyond the scope and intent of the original approval as set forth in 23.60.170.C.

Your letter of June 23, 2011 indicates that the revision proposed is not sought under the provisions of 23.60.170.C but rather on the sole basis of 23.60.170.E. "While the revisions now proposed by PIT were contemplated at the time of the original approval, PIT is not seeking a revision "within the scope and intent of the original approval" under those provisions." The letter goes on to suggest that the WCC defines two types of revisions, and that your proposal meets the criteria for the "second type of revision," which you term a "new permit revision."¹ That term

¹ Applicant letter of June 23, 2011, pages 2-3.

is novel and does not appear in our code. The code does not define two types of revisions, rather WCC 23.60.170 lists criteria for only one revision process.

Whatcom County Code 23.60.170.E does not create a second type of "revision," but instead requires application for a "new permit." It is our reading that a "new permit" is not a second type of revision,² and WCPDS requires a new permit in order to review the entire development within SMA jurisdiction.

The requested revision to your existing Shoreline Substantial Development Permit (SHS1992-00020) does not qualify as a revision under WCC section 23.60.170, as the proposed changes are not "within the scope and intent of the original approval" as required by WCC 23.60.170 and WAC 173-27-100.

Note that any administrative permit decision, or determination by WCPDS based on a provision of WCC Title 23, may be the subject of an appeal to the office of the Hearing Examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal procedures of SMP 23.60.150.H and shall be an open record hearing before the Hearing Examiner. Such appeals shall be filed on forms provided by WCPDS within twenty (20) calendar days of any action of WCPDS being appealed.

Major Project Permit (MDP2011-00001)

In accordance with WCC 2.33, the application of MDP2011-00001 shall remain incomplete until the following information is received by Whatcom County Planning and Development Services (WCPDS):

- Provide direct references to where the Project Information Document (PID) includes the information required in WCC 20.88.205;
- Demonstrate how the proposed MDP complies with the criteria outlined in WCC 20.88.130 and the application forms provided by WCPDS;
- Include the required information on the MDP Intake Checklist (pages 6-9 of application, specifically #1 e, f, I, m);
- Approximate the anticipated fill and grade amounts as required on the Land Disturbance Permit (LDP) application;
- Provide a check or cash payment in the amount of \$100.00 per the Whatcom County Unified Fee Schedule (UFS) #9025 – Legal Notice;
- Submit a title report;
- Provide five (5) hard copies of the MDP application and associated documents, including but not limited to the PID.

Pursuant to WCC 20.84.240, you may appeal this determination to the Whatcom County Hearing Examiner within 14 calendar days from the date of this letter, along with a completed form from this office, a base fee of \$750.00 (an additional \$100 per hour will be charged after 8.0 hours) and a statement including tangible evidence substantiating the appeal.

You have **90 days** from the issuance of this letter to submit the required items listed above or your application will expire, pursuant to WCC 2.33.050(E)(2)(4) & (f). If additional time is needed a time extension can be granted in 90-day increments. The applicant shall submit a written request to the County prior to 90

² On June 23, 2011, Whatcom County consulted with the Washington State Attorney General's Office, which confirmed this interpretation

days of the date of this letter with documentation as to why the additional time is necessary.

As you have been identified as the applicant's agent all correspondence and inquires will be directed to you. If you have any questions, please contact me at (360) 676-6907 ext. 50202 – or - Email: Tschoed@co.whatcom.wa.us .

Sincerely,



Tyler R. Schroeder
Whatcom County Planning Supervisor

Royce Buckingham
Whatcom County Prosecuting Attorney