


WHATCOM COUNTY COUNCIL AGENDA BILL

NO. AB2012-179

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	RSB	5-14-12	RECEIVED MAY 29 2012 WHATCOM COUNTY COUNCIL	6/5/12	Fin/Cncl Consent
Division Head:	JER	5-18-12			
Dept. Head:					
Prosecutor:	RSB by KnF	5-21-12			
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT: Memorandum of Agreement Regarding the Preparation of the Vessel Traffic Study as required by the Gateway Pacific Terminal (GPT) Settlement Agreement, SHB NO. 97-22 & NO. 97-23

ATTACHMENTS:

SEPA review required? () Yes (x) NO
 SEPA review completed? () Yes (x) NO

Should Clerk schedule a hearing? () Yes (x) NO
 Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

This memorandum of agreement amends the 1999 settlement agreement which resolved the Washington Shoreline Hearings Board appeals of the 1997 Whatcom County issued Shoreline Substantial Development Permit (SHS 92-0020) for GPT. The amendment alters the requirement that the previously named experts (Jack Herrald and Jim Townley) be required to do the vessel traffic study, because it is no longer feasible to use those experts.

Because the Council was a signatory to the 1999 settlement agreement, the Council's signature is sought for this amendment to that agreement. All other parties have signed the agreement.

COMMITTEE ACTION:

6/5/2012: Forwarded to Council for approval

COUNCIL ACTION:

6/5/2012: Council Approved 7-0

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

Memorandum of Agreement regarding Gateway Pacific Terminal Vessel Traffic and Risk Assessment Study

WHEREAS, in 1992, Pacific International Terminals ("PIT") applied to Whatcom County for a Major Development Permit, MDP No. 92-003, and Shoreline Substantial Development Permit, SHS 92-0020, to develop a multi-use marine terminal at Cherry Point in Whatcom County to be composed of a deep water wharf with upland commodity storage facilities to be known as Gateway Pacific Terminal ("GPT");

WHEREAS, the Washington Departments of Ecology and Fish and Wildlife (collectively "State Agencies"), and North Cascades Audubon Society, People for Puget Sound, League of Women Voters of Bellingham/Whatcom County, and Washington Environmental Council (collectively "Conservation Groups"), appealed Whatcom County's 1997 issuance of the Shoreline Substantial Development Permit for GPT in actions that were consolidated before the Washington Shoreline Hearings Board ("SHB"), SHB Nos. 97-22 and 97-23;

WHEREAS, the appeals of the 1997 Shoreline Substantial Development Permit for GPT were resolved in a 1999 settlement agreement ("1999 Agreement");

WHEREAS, paragraph 2.10.a of the 1999 Agreement requires the Washington Department of Ecology to oversee PIT's completion of a vessel traffic analysis that "describes the current environment in detail and models the changes and impacts to vessel traffic safety and the environment resulting from the operation of the GPT facility and recommends operating protocols that will reduce, to the greatest extent feasible, the risk of vessel collisions, powered and drift groundings, allisions, spills, routine discharges and other incidents resulting from the operation of the GPT facility";

WHEREAS, the undersigned parties agree that some of the requirements of paragraph 2.10.a of the 1999 Agreement are no longer feasible to implement, particularly the requirement that the method of the analysis conform to the requirements of Appendix G of the 1999 Agreement, and the requirement that the vessel traffic analysis be performed by Jack Herrald Ph.D. and Captain Jim Townley;

THEREFORE, the undersigned parties agree that:

1. The document attached hereto entitled "Scope of Work for Gateway Pacific Terminal Vessel Traffic and Risk Assessment Study" (hereinafter "Scope of Work Document") shall be deemed to meet the requirements of Appendix G of the 1999 Agreement; and
2. A vessel traffic analysis conducted in compliance with the Scope of Work Document shall be deemed to be in compliance with Appendix G of the 1999 Agreement; and
3. PIT shall not be required to retain Jack Herrald Ph.D. and Captain Jim Townley to perform the vessel traffic analysis, but shall instead retain The Glosten

Associates, Inc., to perform the vessel traffic analysis in conformance with the attached Scope of Work Document; and

4. The provisions of the Scope of Work are hereby incorporated as provisions of the Settlement Agreement in place of Appendix G, enforceable in the same manner as other provisions, subject to the following:

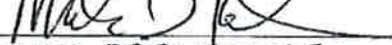
4.1 This requirement does not diminish any authority of the Department of Ecology to oversee the Scope of Work under paragraph under Paragraph 2.10.a of the 1999 Agreement, including any authority that may exist to modify the Scope of Work in light of impracticalities; and

4.2 The provisions of the Scope of Work that were requested solely by the Lummi Nation, including those that address impacts on the Lummi Nation's treaty fishing rights, natural resources, cultural rights, and other interests, or that rely upon Lummi Nation materials, information, resources or review, are not part of the 1999 Settlement Agreement and do not create enforceable rights by any party to that 1999 Agreement; and

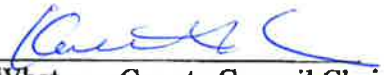
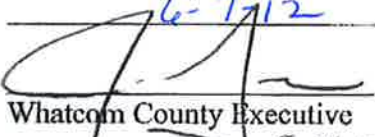
5. Except as expressly provided herein, this MOA does not amend any provisions of the 1999 Agreement; and

6. Nothing in this Memorandum of Agreement or in the attached Scope of Work Document shall be deemed to be a concession or admission by any party as to any claim, defense, or argument relating to (a) environmental impacts and risks caused by vessels calling on GPT; (b) the permitting, siting, construction, or operation of GPT; and (c) changes in the project proposal, including proposed increases in vessel volume and inclusion of coal as a commodity to be exported from the facility.

PACIFIC INTERNATIONAL TERMINALS

By: 
Its: VICE PRESIDENT
Date: 4/27/12

WHATCOM COUNTY

By: 
Whatcom County Council Chair
Date: 6-7-12
By: 
Whatcom County Executive
Date: 5-14-12

WASHINGTON DEPARTMENT OF ECOLOGY

By: Gianni Summerhayes
Its: JS
Date: 4/27/12

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By: Robert Lewis
Its: RL
Date: 7/30/2012

NORTH CASCADE AUDUBON SOCIETY

By: Steve Irvine
Its: Conservation Chair
Date: 5-8-12

PEOPLE FOR PUGET SOUND

By: © Dennis Brown
Its: Executive Director
Date: 5/11/2012

LEAGUE OF WOMEN VOTERS OF BELLINGHAM/WHATCOM COUNTY

By: Patricia
Its: Director
Date: 5/8/12

WASHINGTON ENVIRONMENTAL COUNCIL

By: John
Its: Executive Director
Date: 5/3/12