



**Pacific International  
Terminals**  
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December 16, 2016

Mark Personius  
Assistant Director  
Whatcom County Planning and Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-6384

**RE: Gateway Pacific Terminal Proposal - Major Project Permit (MDP2011-00001), Zoning Variance (VAR2012-00002), and Shoreline Substantial Development Permit (SHR2011-00009)**

Dear Mr. Personius:

On behalf of Pacific International Holdings, LLC (PIH), I am responding to your letter dated October 25, 2016, suggesting Whatcom County Planning and Development Services will present a proposal to the Whatcom County Hearing Examiner without complying with the State Environmental Policy Act, RCW Ch. 43.21C (SEPA). This is not consistent with either the Whatcom County Code or with SEPA itself.

Before addressing your suggested action, we want to clarify two points made in the second paragraph of your letter. First, the US Army Corps of Engineers (USACE) decision is appealable and we are in fact considering the timing of when, or whether to file an appeal. Your letter also does not acknowledge the USACE decision was made "without prejudice" which allows PIH the ability to submit a project alternative that would have less impact on tribal treaty fishing rights and having agreed upon mitigation measures between affected tribes and the project proponent. Since proposing the Gateway Pacific Terminal (GPT) project, PIH has consistently contended that the Environmental Impact Statement (EIS) under both SEPA and National Environmental Policy Act (NEPA) is the most appropriate process to follow for the identification and consideration of the proposed project with alternatives to avoid, minimize, and mitigate those unavoidable impacts. A proposal by Whatcom County to deny a permit application without completion of an EIS deviates from the established process for addressing the very issue raised in the USACE decision. An applicant's rights to have a fully developed record for decision making is a fundamental underpinning of the land use process.

Second, your letter identifies options presented by Whatcom County to PIH in the months immediately following the USACE decision. One is to complete the SEPA draft EIS and the other sign a contract extension to ramp down and conclude EIS consultant contract. Those two options were never presented to PIH as the only paths available, nor did Whatcom County ever suggest that those two options would lead to the proposal to the Hearing Examiner requesting denial of our application without complying with SEPA. We were provided a short time in which to make a decision as to how we would modify the EIS contract for the immediate future. The



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two alternatives were never presented to or accepted by us as the only permanent options. As we advised you then, and have noted since, we are considering other alternatives to the GPT project design that was denied by the USACE in its decision. Our planning for the GPT project design currently under Whatcom County review took many years, and we have invested over \$11 million to date in the environmental review process. We invested an equally large amount in the engineering design, land assembly, environmental support and management of the project with the expectation of completing a full, and transparent regulatory and environmental review of the proposed project. We are, as you may know, working hard to develop alternatives that we believe will reduce environmental impacts and remain financially viable, but it takes time to revise our market analysis, planning, engineering, and design before submitting a new alternative for consideration. We need only to refer you to the alternatives analysis we submitted on April 18, 2014, to give you some indication of the level of work required to prepare project alternatives.

PIH does not believe Whatcom County's suggested course of action complies with State law or County Code. SEPA, of course, requires a detailed statement by the lead agency, Whatcom County, before taking permitting action. RCW 43.21C.030. Whatcom County has its own SEPA provisions at Whatcom County Code (WCC) Ch. 16.08. In that chapter Whatcom County adopts the provisions of the Washington Administrative Code Act at WAC Ch. 197-11.

The requirement to comply with SEPA, of course, pervades the whole process outlined in County Codes. As one simple example, the provisions for review of a Major Project Permit such as that requested here, require that the Hearing Examiner determine whether the project appropriately responds to an EIS prepared for the project. An EIS is required for that review to even begin.

It would be appropriate for the County to request a meeting with PIH regarding a revised EIS contract and our future plans as they have been affected by the USACE decision. Although we are not yet fully prepared to answer with details about a revised proposal or schedule, we certainly would be willing to discuss those issues. Meeting to discuss the SEPA process going forward is consistent with both our obligations as an applicant and Whatcom County's obligations to fairly process our application. For Whatcom County to unilaterally determine that it will take a proposal to deny an application to the Hearing Examiner without complying with SEPA would be an unlawful process and violate the County's obligations.

Sincerely,

Skip Sahlin  
Vice President, Project Development

CC: Jack Louws, Whatcom County Executive  
Tyler Schroeder, Deputy Executive  
Sam Ryan, Director Whatcom County Planning and Development Services  
Royce Buckingham, Civil Prosecuting Attorney