



STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE *Planning & Development Services*

4224 - 6th Avenue SE, Bldg. 2, Rowe Six
P.O. Box 40903, Lacey, WA 98504-0903

MAR 5 1998

March 4, 1998

RECEIVED

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Department of Ecology
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Assistant Attorney General
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RE: **SHB NO. 97-22**
WASHINGTON ENVIRONMENTAL COUNCIL et al. v. WHATCOM
COUNTY & PACIFIC INTERNATIONAL TERMINALS CORPORATION
SHB NO. 97-23
DEPARTMENTS OF ECOLOGY and FISH & WILDLIFE v. WHATCOM
COUNTY & PACIFIC INTERNATIONAL TERMINALS CORPORATION

Dear Parties:

Enclosed is an Order Denying Intervention, issued by Presiding Member Jensen.

Sincerely yours,

Judy Greear
Clerk of the Board

RVJ/WEC/jg
enc.

cc: Edward M. Lane
Don Bales - Shorelands
Whatcom County Planning & Development Services

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid to the attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED 3-4-98, at Lacey, WA.



3/5/98

FYI -

John



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**BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON**

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**WASHINGTON ENVIRONMENTAL)
COUNCIL; NORTH CASCADES)
AUDUBON SOCIETY; LEAGUE OF)
WOMEN VOTERS OF BELLINGHAM;)
OCEAN ADVOCATES; STATE OF)
WASHINGTON, DEPARTMENT)
OF ECOLOGY and DEPARTMENT)
OF FISHERIES,)**

Appellants,

v.

**WHATCOM COUNTY, and PACIFIC)
INTERNATIONAL TERMINALS)
CORPORATION,)**

Respondents.

SHB NOS. 97-22 & 23

**ORDER DENYING
INTERVENTION**

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I

On January 28, 1998, Cherry Point Industrial Park ("CPIP"), and Mr. Joseph M. Sheckter filed with the Shorelines Hearings Board ("Board") a Motion for Intervention. CPIP and Mr. Sheckter contend that they should be allowed to intervene by virtue of RCW 34.05.443, CR 24 and WAC 461-08. CPIP and Mr. Sheckter own about 40 acres of uplands in the area of the development proposed by the appellant in this case, Pacific International Terminals Corporation ("PITC"). They have received approval, under the Shoreline Management Act ("SMA") for a competing deep-water pier at Cherry Point. They posit that they should be allowed to intervene to raise the issue of whether a second pier should be approved.

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II

The State Agency Appellants, the Department of Ecology ("Ecology") and the Department of Fish and Wildlife, filed their response on February 9, opposing the intervention.

The agencies contend that the motion is untimely; that intervention at this stage of the proceedings would impair the prompt and orderly conduct of this appeal; and that CPIP and Mr. Sheckter cannot show any property interest that will be impaired by this proceeding

III

PITC opposes the intervention, contending that the motion was untimely, and that CPIP and Mr. Sheckter do not have a sufficient interest in the proceedings to be granted intervention.

IV

The environmental appellants state that they presently oppose the motion to intervene, on the ground that intervention would disrupt settlement negotiations between the parties. They would not however oppose intervention by CPIP and Mr. Sheckter, in the event that the present parties do not reach settlement by March 31, 1998.

V

CPIP and Joseph Sheckter are represented by Edward M. Lane. Ecology is represented by Steven J. Thiele, Assistant Attorney General. Fish and Wildlife is represented by Neil L. Wise, Assistant Attorney General. The environmental groups are represented by John B. Arum of Ziontz, Chestnut, Varnell Berley & Slonim, and Jeffrey King of Townsend & Townsend & Crew. PTIC is represented by Robert M. Tull and Mark J. Lee of Langabeer, Tull & Cullier.

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VI

Neither CPIP and Mr. Sheckter, nor PITC own tidelands adjacent to the upland properties, but rather any piers located on such tidelands must be approved by Natural Resources and the U.S. Army Corps of Engineers. The Corps of Engineers has canceled CPIP's application, without prejudice to refile.

VII

This appeal was filed on June 12, 1997. The hearing has been continued twice, until the present starting date of September 16, 1998, while the parties pursue settlement.

VIII

CPIP and Mr. Sheckter have received a shoreline permit for their project.

IX

CPIP and Mr. Sheckter argue that "their is a substantial question raised as to whether there should be two piers constructed in this immediate area." Reply to Objections to Intervene at 2. The prehearing order in this case contains many issues, some of which address the question of two deep-water piers. Issues 1-3, raised by the environmental appellants; issue 1(h)(i) presented by the state appellants.

X

The Board pointed out that in the previous appeal of CPIP and Mr. Sheckter's shoreline permit, that the Commissioner of Public Lands has taken the position, before the Corps of Engineers, that it would approve only one lease for a deep-water pier at Cherry Point.

1 Washington Environmental Council v. Whatcom County, Order Denying Intervention at 4-5,
2 SHB 93-68 & 70 (1995). Given this state agency posture, it is unlikely that two deep-water piers
3 will be constructed at Cherry Point. We conclude that it would not serve the interests of justice
4 to interject that issue into these proceedings by way of intervention here; where the state agency
5 with ultimate authority over the issue, has declared that it would approve only one pier, and
6 where the party raising the issue is an economic competitor of the party before the Board. RCW
7 34.05.443(1); WAC 461-08-435(2).

8 XI

9 CPIP and Mr. Sheckter's assert that their interest in this proceeding is that approval of
10 PITC's shoreline application would substantially interfere with their ability to proceed with their
11 construction of a pier. Reply to Objections to Intervene at 3-4. However, their statements in that
12 regard are merely conclusory, and lack any substantiation. Even if true, however, CPIP and Mr.
13 Sheckter's permit is no longer before the Board for adjudication. CPIP and Mr. Sheckter's
14 concerns about interference with their construction of a pier focus on potential damage to them as
15 economic competitors of PITC. These types of damages are outside of the zone of interests
16 considered by the Board, when it reviews a shoreline permit decision. Puget Sound Energy v.
17 North Bend, Order Granting Summary Judgment and Dismissal at 6, SHB 97-44 (1998).

19 XII

20 The Board concludes, therefore, that CPIP and Mr. Sheckter are not entitled to intervene,
under RCW 34.05.433(1); WAC 461-08-435(2); or CR 24. Specifically, CPIP and Mr. Sheckter

1 have failed to: (1) demonstrate that disposition of this case may impair their ability to protect an
2 interest relating to the property or transaction that is the subject of this proceeding; and (2) that
3 intervention would serve the interest of justice.

4 **XIII**

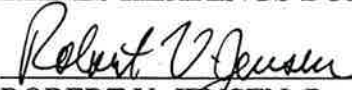
5 Based on the foregoing analysis, the Board issues this:

6 **ORDER**

7 **CPIP and Mr. Sheckter's Motion for Intervention is denied.**

8 DONE this 4th day of March, 1998. .

9 **SHORELINES HEARINGS BOARD**

10 
11 ROBERT V. JENSEN, Presiding

12 S97-220



STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

4224 - 6th Avenue SE, Bldg. 2, Rowe Six
P.O. Box 40903, Lacey, WA 98504-0903

August 31, 1999

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RE: SHB NO. 97-22
**WASHINGTON ENVIRONMENTAL COUNCIL et al. v. WHATCOM
COUNTY & PACIFIC INTERNATIONAL TERMINALS CORPORATION**
SHB NO. 97-23
**DEPARTMENTS OF ECOLOGY and FISH & WILDLIFE v. WHATCOM
COUNTY & PACIFIC INTERNATIONAL TERMINALS CORPORATION**

Dear Parties:

Enclosed is the Stipulation and Order of Dismissal in the above matter. The Settlement Agreement is not attached, as we assume the parties all have their own copy. If that is not the case, please advise the Board and one will be provided.

The parties' ongoing efforts in reaching this settlement are appreciated.

Sincerely,


Robert V. Jensen
Presiding

RJ/jg/wec

cc: Don Bales - Shorelands
Whatcom County Planning & Development Services
Leann Ryser

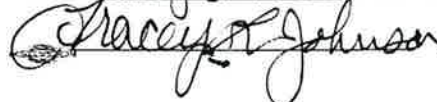
Enc.

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid to the attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED Aug 31, 99 at Lacey, WA.



RECEIVED
SEP 11 1999
Whatcom County P&DS



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**BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON**

WASHINGTON ENVIRONMENTAL
COUNCIL, NORTH CASCADE
AUDUBON SOCIETY, PEOPLE FOR
PUGET SOUND, LEAGUE OF
WOMEN VOTERS OF BELLINGHAM
and OCEAN ADVOCATES
and
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
DEPARTMENT OF FISH &
WILDLIFE,

Petitioners,

v.

WHATCOM COUNTY and PACIFIC
INTERNATIONAL TERMINALS,

Respondents.

NO. 97-22 & 97-23

STIPULATION & ORDER OF
DISMISSAL

ORIGINAL

STIPULATION


Washington Environmental Council, North Cascade Audubon Society, People for Puget Sound, League of Women Voters of Bellingham and Ocean Advocates, by their attorney of record, and the State of Washington, Departments of Ecology and Fish & Wildlife, by their attorneys of record, and Pacific International Terminals, by its attorney of record, and Whatcom County, by its attorney of record, stipulate as follows:

- 1. All claims that were or could have been asserted in this action have been fully settled per the terms of the Settlement Agreement attached hereto as Exhibit A.

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2. An order may be entered dismissing the requests for review with prejudice and without award of costs or attorney's fees to any party.

CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE
WSBA #20275

Dated: 8/20/99

Assistant Attorney General
Attorneys for Dept. of Ecology

Per phone authorization

NEIL L. WISE
WSBA #21250

Dated: 8/17/99

Assistant Attorney General
Attorneys for Dept. of Fish & Wildlife

WHATCOM COUNTY

Per phone authorization

KAREN N. FRAKES
WSBA #13600

Dated: 8/20/99

Attorney of Record

PACIFIC INT'L TERMINALS

Per phone authorization

ROBERT M. TULL
WSBA #5845

Dated: 8/19/99

Attorney of Record

1 WASHINGTON ENVIRONMENTAL
2 COUNCIL, NORTH CASCADE
3 AUDUBON SOCIETY, PEOPLE
4 FOR PUGET SOUND, LEAGUE OF
5 WOMEN VOTERS OF BELLINGHAM
6 and OCEAN ADVOCATES

7 *Per phone authorization*
8 JOHN B. ARUM
9 WSBA #19813

Dated: 8/19/99

10 Attorney of Record

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ORDER

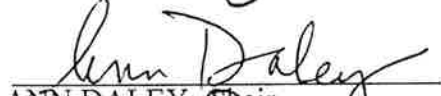
Having reviewed the foregoing Stipulation of the parties, the Settlement Agreement attached hereto, the pleadings filed herein, and having found that the parties have agreed to a full settlement of the issues raised by the Requests for Review, IT IS ORDERED:

This action is dismissed with prejudice and without costs or fees to any party.


Done at Lacey, Washington, this 31st day of August, 1999.

SHORELINES HEARINGS BOARD


ROBERT V. JENSEN, Presiding


ANN DALEY, Chair


JAMES A. TUPPER, JR., Member


O'DEAN WILLIAMSON, Member

1 Presented by:

2 **CHRISTINE O. GREGOIRE**
3 Attorney General

4 
5 STEVEN J. THIELE
6 WSBA #20275

7 Assistant Attorney General
8 Attorneys for Dept. of Ecology

9 *Per phone authorization 8/17/99*
10 NEIL L. WISE
11 WSBA #21250

12 Assistant Attorney General
13 Attorneys for Dept. of Fish & Wildlife

14 **WHATCOM COUNTY**

15 *Per phone auth. 8/27/99*
16 KAREN N. FRAKES
17 WSBA #13600

18 Attorney of Record

19 **PACIFIC INT'L TERMINALS**

20 *Per phone authorization 8/19/99*
21 ROBERT M. TULL
22 WSBA #5845

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**WASHINGTON ENVIRONMENTAL
COUNCIL, NORTH CASCADE
AUDUBON SOCIETY, PEOPLE
FOR PUGET SOUND, LEAGUE OF
WOMEN VOTERS OF BELLINGHAM
and OCEAN ADVOCATES**

Per phone with. 8/19/99
JOHN B. ARUM
WSBA #19813

Attorney of Record